



**CONSULTATION PAPER ON WORKPLACE VIOLENCE
PREVENTION**

**SUBMISSION
TO THE
MINISTRY OF LABOUR**

**BY THE
ONTARIO PUBLIC SERVICE EMPLOYEES UNION**

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Introduction

The Ontario Public Service Employees Union welcomes this opportunity to respond to the Ministry of Labour's "Consultation Paper on Workplace Violence Prevention." Over the years OPSEU has met countless times with senior representatives from the Ministry of Labour, including various Ministers of Labour, to present to the ministry the toll that workplace violence is taking on our members and to press the Minister to introduce legislation and regulations to address this workplace hazard. We are hopeful that the Minister is finally prepared to take serious and concrete action to ensure that employers, supervisors and workers recognize workplace violence as a hazard, like other workplace hazards, that can and must be prevented and controlled.

OPSEU represents more than 120,000 members who work in a wide variety of sectors and workplaces – the Ontario Public Service, the Broader Public Service, colleges, casinos and the Liquor Control Board. In the introduction to your consultation paper, you correctly point out that, "(t)he risk of violence is higher in certain sectors such as health care, social services, retail, hospitality, education, transportation, police, security agencies and correctional facilities." The introduction also correctly identifies activities where there is an increased risk of workplace violence: "handling cash, protecting or securing valuables, transporting people and goods, a mobile workplaces (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." The sectors and high risk activities described in your paper provide a precise snapshot of OPSEU workers and workplace activities. Our members perform all of the high risk activities described. The issue of preventing and controlling workplace violence is of paramount importance to all OPSEU members.

Daily, OPSEU members face the threat of workplace violence. Regularly, we receive reports from members who have been assaulted, threatened, bullied and

harassed in their workplaces. In some sectors, such as Corrections, where the risks are high, progress has been made – usually not as a result of a Ministry of Labour inspector's orders, but largely due to long and expensive litigation at the Ontario Labour Relations Board (OLRB) following a serious incident. For example, a correctional officer had to be held up at knifepoint and the union had to appeal the inspector's failure to write any orders before the OLRB eventually ruled that correctional officers should do escorts in pairs with specific protective equipment and training. It is shameful that in this case, and in many others, workers and unions have had to resort to litigation to move the yardstick forward. It's time that we modernize Ontario's health and safety legislation to protect workers in a proactive manner against the hazards of today.

In other sectors, progress has been made only after serious situations occur. For example, one courthouse installed metal detectors only after a member of the public entered the courthouse waving a knife in the middle of a court proceeding. Serious security problems had already been identified at this courthouse, the Ministry of Labour was already involved, and an appeal of the inspector's orders was already at the OLRB. But, apparently the hazard had to be vividly demonstrated in a real-life situation, before action could be taken. Acting after a tragic event is not an acceptable way to protect workers. Changes in Ontario's legislation would compel employers to protect workers against workplace violence before something happens, rather than reacting only after serious situations occur.

In other sectors, such as developmental services, the colleges, and healthcare, few formal protections exist. Less progress has been made in these sectors for many reasons. Workers may be unwilling to call for changes in their workplaces or to complain to the Ministry of Labour, or to engage in litigation due to fear of reprisal from their employer. Frequently, they lack basic functioning health and safety structures. Often, violence is considered part of the job. In addition, many of these workplaces lack a workplace health and safety culture where employers

take responsibility for health and safety. In our liquor board sector, for example, the union faces great challenges just trying to establish functioning health and safety systems where workers are allowed to actively participate, let alone urging employers to develop effective workplace violence policies, procedures, measures and training.

In recent years, we recognize that the Ministry has taken certain steps to address the hazard of workplace violence – material has been posted on the ministry’s website, inspectors have received training, and orders have been written requiring employers to perform risk assessments and to develop policies, measures and procedures and to provide training. These are all good steps; however, the experience in OPSEU workplaces, even where inspectors have written orders to address workplace violence, has been far from satisfactory. One problem is that the Ministry of Labour does not examine or evaluate the content of an employer’s policy. Who will make sure—if not the Ministry of Labour—that employer policies are more than books on a shelf and actually prevent violent incidents in the workplace? Another problem arises where a committee separate from the JHSC is struck to work on policy development. Frequently, the work gets bogged down for months, or personnel changes, or meetings do not get scheduled – and the result is that very little is accomplished. This can happen even where the workplace violence committee is a subcommittee of the JHSC.

In one recent example, in a Toronto hospital, orders written in November 2007 to develop a written workplace violence prevention policy/procedure and to develop establish and provide training and education on the measures and procedures still have not been complied with. The compliance dates were January and February of 2008. Although much work was done, and a policy/program was created, it has not been implemented and the education and training aspects of the order were never completed. The employer appears to feel no pressure from the Ministry to fully comply with its orders. It appears that the Ministry is reluctant to prosecute this employer for failure to comply, despite assurances that OPSEU

and other Ontario Federation of Labour affiliates received only a few months ago from senior Ministry staff, that the Ministry no longer writes 'repeat orders' and that we could count on the ministry to prosecute for non-compliance with its orders. A recent assault on a worker in this facility has resulted in new orders being written, but no attempt to enforce compliance with the previous orders.

To date, in spite of the Ministry's recent interest in workplace violence and its direction to inspectors to inquire about workplace violence policies, procedures and training, and to write orders under the OHS general duty provisions, OPSEU members and other workers continue to endure high levels of workplace violence. Because of these types of experiences, we welcome this long overdue consultation on the issue and hope that it will result in legislation and regulation that employers, supervisors, and workers will use to guide them and which the Ministry of Labour will be willing to enforce.

Response to Consultation paper topics

A. Definition of Workplace Violence

The Ministry asks whether the following definition is "appropriate to your workplace or organization." It 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.

Response

OPSEU finds this definition inadequate. There are three main problems with the definition. First, the use of the word "intentional" to modify "force" is problematic. Many of the clients, residents, or patients who present a risk of violence to OPSEU members may not be capable of meeting the legal definition of formulating intent. If an employer's obligation to develop a workplace violence

policy, procedures, measures and training, is triggered only in cases where the hazard of violence is “intentional,” employers in long term care facilities, and many developmental service workplaces would apparently be relieved of this obligation.

OPSEU understands from a recent consultation with the MOL and MOHLTC, that the Ministry does not intend to ascribe the legal definition of “intent” to the word intentional in this definition. The Ministry says that it wants to communicate that the force must be “purposeful” in order to be considered workplace violence. It gives the example of a worker carrying a piece of wood on his shoulder who when turning around, hits another worker on the head inadvertently. While OPSEU understands this example, we point to workplace violence legislation which exists in other Canadian jurisdictions and where the words “intentional” or “purposeful” are not used to describe the activity. We are not aware of any problems arising from this approach. OPSEU strongly recommends against the use of the use of the word “intentional” or “purposeful” in the definition. We are convinced that the use of such a word will lead to endless legal wrangles about employer obligations, rather than actions to prevent and control workplace violence.

Although policies, procedures, measures and training may differ depending on the cognitive abilities of patients, residents, clients (or even the public), limiting the definition of workplace violence to intentional acts will leave thousands of workers unprotected. Not to mention how much time may be spent trying to divine what actions might be deemed intentional or unintentional, time which could be better spent developing measures and training to reduce violence against workers.

The next problem in the definition is restricting it to acts of “physical force.” While the use of physical force against workers is extremely serious and must be prevented and controlled, it would be imprudent to ignore instances of threats,

bullying and harassment which may lead finally to the use of physical force. We are all too aware of dramatic instances of workplace violence such as the OC Transpo case and more recently, the workplace murder of Lori Dupont, where there were numerous signs of escalating behaviour which were not addressed. How would cases such as damage to a worker's property, stalking, or work sabotage be addressed, if the definition is restricted to acts of physical force? In many instances, there are numerous precursors to the use of physical force which, if addressed, may result in a disaster being averted. Additionally, some forms of workplace violence such as verbal abuse, yelling, physical gestures, harassment and bullying may never lead to a physical force, but do result in workplace illnesses and other problems. Any definition of workplace violence must recognize that reality.

OPSEU is also concerned that the definition refers only to "physical injury" to a worker, rather than "illness or injury" to a worker. By restricting the definition to physical injuries only, violent actions which result in emotional/psychological illnesses will not be addressed. The following example illustrates the problem. In a correctional facility which was on 'lock-down' because of a health and safety concern, a female correctional officer working in Admitting and Discharge in the facility was exposed for a 12-hour shift to constant yelling and taunts of a sexual nature from inmates who were confined to the A&D cells for the duration of the lock-down. The female worker was severely traumatized by the experience, in part because the employer refused to take any action to relieve her or even to recognize the effects the barrage of abuse was having on her. This worker did not suffer a physical 'injury' but she did suffer the negative emotional and psychological consequences of the abuse. The narrow nature of the ministry's definition would not trigger the employer to develop policies, procedures, measures and training to address verbal abuse such as this.

OPSEU Recommends:

OPSEU has repeatedly argued, most recently at the Health Care Section 21 Committee for Health and Safety that the following components must be included in a definition of workplace violence:

- All sources of workplace-related violence such as clients, residents, patients, family members, co-workers, supervisors, managers, contractors, physicians and domestic sources;
- All forms of violence including verbal abuse, threats, stalking, harassment, bullying, and physical force;
- All impacts of violence including emotional, psychological and physical;
- All workplaces.

OPSEU takes the position that the *Occupational Health and Safety Act* should be amended to include the hazard of violence and that a regulation should be developed to establish the requirement for policies, measures, procedures and training.

There are many definitions of workplace violence in circulation. The definition currently used by OPSEU in its ongoing workplace violence campaigns and educationals has been slightly modified from the definition used by the Canadian Centre for Occupational Health and Safety (CCOHS) as follows:

Workplace violence is any act in which a person is abused, threatened, intimidated or assaulted during the course of, or as a result of his or her employment. Workplace violence includes:

- *Threatening behaviour: such as shaking fists, destroying property or throwing objects.*
- *Verbal or written threats: any expression of an intent to inflict harm.*
- *Harassment: any behaviour that demeans, embarrasses, humiliates, annoys, alarms or verbally abuses a person and that is known or would be expected to be unwelcome. This includes words, gestures, intimidation, bullying or other inappropriate activities.*
- *Verbal abuse: swearing, insults or condescending language.*
- *Physical attacks: hitting, shoving, pushing or kicking.*

B. Workplace Violence Prevention Program

The Ministry asks: *Should there be a requirement under the OHS Act 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)?*

OPSEU recommends:

Yes, there needs to be a requirement that employers develop and implement a workplace violence prevention program that includes a policy, risk assessment, measures and procedures and worker training.

Yes, the plan must include a workplace violence response plan that specifies specific responses and areas of responsibility for everyone concerned.

The prevention program must address all behaviours that are likely to lead to workplace violence, such as bullying, teasing, or other abusive or aggressive behaviour. And the prevention program must cover all types of violence and from all sources of violence.

Secondly, the MOL needs to provide rigorous enforcement – namely, it must examine and evaluate the policy and program against specific compulsory components. Following are the minimal components which OPSEU believes should be part of any workplace violence prevention program:

- The policy and program must be specific to the workplace, not a fill-in the blank generic procedure that pays only lip-service to the issue.
- The policy and program, and training for workers must be developed with meaningful consultation with the JHSC or Health and Safety Representative
- The prevention program should include a role for the JHSC/Health and Safety Rep in reviewing incidents/incident reports and formulating recommendations to the employer to prevent future incidents.
- The prevention program must have a commitment statement from the top of the organization, an appropriate definition of workplace violence, all sources of violence covered, a consultative risk assessment process, responsibilities and roles of employers, supervisors, JHSC or Health and Safety Representatives and workers.
- The policy and program must ensure that and clarify how, actual or potential risks are communicated to workers. Currently, such information is often not shared due to perceived privacy implications.
- The policy and program must encourage reporting and be supportive of difficulties workers face in bringing these issues forward, ie, fear of reprisal or a workplace culture where violence is considered part of the job.
- The policy and program must include physical measures and procedures and/or precautions and not focus solely on policy development. The policy approach alone doesn't work. In our 2008 poll of 500 OPSEU members in Social Services, over 80% of respondents reported that their employers had policies in place to prevent workplace violence, yet 43% of members polled faced

regular incidences of workplace violence, and only 61% had received any training.

- Prevention programs must address identified risks, such as working alone, early or late.
- The prevention program must describe mechanisms and processes to report, investigate, and provide follow-up to workers and consultation and follow-up to JHSC/Health and Safety Representatives.
- The prevention program must include processes to ensure that other mandatory reporting or investigating occurs, ie—reporting to WSIB and reporting pursuant to OHS Act sections 51/52, or investigations pursuant to OHS Act Section 9 (31).
- The prevention program must be regularly re-evaluated (ie—annually) in consultation with the JHSC or Health and Safety Representative.

C. Sector-specific Requirements

The Ministry asks: *In your sector, would it be useful to have requirements under the OHS Act 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. If so, what specific requirements would you suggest to protect workers in your sector?*

Response

OPSEU represents workers who face the hazard of workplace violence in multiple sectors. While we recognize that workers in different sectors and even in different workplaces within sectors face different levels of risk from workplace violence, OPSEU believes it would be needlessly time-consuming and possibly less protective to attempt to design sector-specific regulations for all of the sectors considered to be high-risk. We believe that, if our advice given in Part B of this paper is followed, and a comprehensive but generic

regulation is developed and enforced, the workplace parties will be able to begin to put in place effective measures, procedures and training.

Although OPSEU is not arguing for sector-specific workplace violence regulations, we believe it would be valuable for the Ministry of Labour, in consultation with sector-specific workplace parties, to develop sector guidelines which could be posted on the MOL website and distributed widely. Currently, OPSEU sits on the Health Care Section 21 Health and Safety Committee where we have drafted a Guidance Note for workplace violence in health care workplaces. Recently, a number of unions, including OPSEU have begun to consider the value of a similar committee for the education sector. If an Education s.21 Committee was formed, it could begin, among other projects, to develop guidance to the workplace parties on workplace violence. Additionally, although, the Ministry may not be interested in establishing s.21 Committees for every sector in the province, it would be possible through the OFL, unions, employer organizations and the Health and Safety Associations to develop useful sector guidance.

OPSEU recommends

OPSEU does not believe that sector-specific regulations will be as effective as one comprehensive regulation which can be implemented in all workplaces covered by OHSA. OPSEU recommends that the MOL, in consultation with sector-specific workplace parties, develop guidelines to assist different workplace sectors implement the regulation.

D. Domestic Violence in the Workplace

The Ministry asks, *“Should there be a requirement under the OHSA 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?”*

Response

In section A above, OPSEU has proposed that the definition of workplace violence encompass violence in the workplace from all sources, including domestic sources. Additionally, we proposed in the modified definition from CCOHS presented above, that violence be defined as any act in which an employee is abused, threatened, intimidated or assaulted *during the course of, or as a result of employment ...*” The modification to include “during the course of ... employment” is purposeful, to ensure that all workplace violence, even domestic violence if it enters the workplace, is covered.

The employer has an obligation to take all precautions reasonable to protect the health and safety of workers in the workplace. Accordingly, when an employer is aware that there is a risk that domestic violence may enter the workplace, the employer has an obligation to put measures in place to protect its employees. During the Lori Dupont inquest, expert witness Dr. Jaffe, pointed to numerous opportunities where the employer and others could have taken action which may have averted the workplace murder of Ms. Dupont. Dr. Jaffe also cited a statistic that “70 per cent of individuals suffering from domestic violence are victimized at work.” These observations are extremely instructive. First, in the Dupont case, we learn that there were many missed opportunities where action could have been taken which may have prevented the murder. Secondly, the 70 per cent statistic indicates the vast amount of domestic violence which enters the workplace in some fashion.

Given the evidence presented by Dr. Jaffe, and other tragedies where domestic violence has entered the workplace, OPSEU believes that it would be irresponsible not to include domestic violence in the definition of workplace violence.

It is quite probable that the measures, procedures and training required to protect workers from the hazard of domestic violence in the workplace will be

different from those required for other sources and types of workplace violence. They may be simpler, focusing on workers' obligations to report the hazard if they believe it may affect safety in the workplace and the employer's obligation to consult with law enforcement experts for advice and possible protection when they have received such a report.

We have heard employers raise concerns about employee privacy and intrusiveness if employers are obliged to consider domestic violence as a workplace hazard. OPSEU believes this concern is essentially a 'red herring' to distract the workplace parties and the Ministry. OPSEU does not believe that employers have the right to make inquiries into the personal lives of its employees without any justification. However, if an employee reports the hazard to a supervisor or the employer, or the employer sees evidence of the hazard entering the workplace, we believe that the employer has an obligation to take precautions to protect its workers. Without an explicit reference in regulation, past experience informs us, that most employers will continue to see domestic violence as a police matter at best, and as a private matter at worst.

OPSEU Recommends

The definition of workplace violence must include domestic violence when it enters the workplace. Measures and procedures, including reporting domestic violence should be included within a general workplace violence prevention program.

E. Work Refusals

The Ministry asks, "*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 corrections*

facilities, hospitals, nursing homes, and psychiatric facilities, may refuse work?

- *If so, should a worker be allowed to leave the workplace prior to the completions of the investigation in situations where there is a threat of physical violence?*

Response

Yes, legislation must make clear that violence and the threat of violence, like any other hazard, is legitimate grounds for a work refusal. This is absolutely necessary in order to revise the current MOL policy and practice to downgrade work refusals to complaints. This practice confuses workers and employers who interpret it as meaning the MOL does not view workplace violence as a serious hazard. In recent years, OPSEU has seen instances where employers advise workers they simply have no legal right refuse a dangerous assignment because of the Ministry's policy. This must change.

Limiting the right to refuse unsafe work to "devices or things" is an archaic way of thinking and does not recognize the changing nature of work with the dramatic growth of the service sector economy and the decline of our traditional industrial and resource-based sectors. Ignoring this hazard in law leaves workers vulnerable and unprotected, especially in today's world, where thousands of workers are dealing with clients who are suffering from cuts or restrictions in services, deregulation, privatization and doing more with less. With the rising aging population expected to bring substantial increases in dementia and other psychological disorders, now is the time to consider how best to improve the health and safety of these workers doing this important work. Defining workplace violence as an occupational hazard to which the right to refuse applies is absolutely necessary to change existing attitudes, enforcement practices, and culture.

There is no need to change the work refusal process as it is set out in OHSA, or current limited right to refuse provisions. A separate or different procedure is unnecessary and would only confuse the workplace parties. Given that

many employers, supervisors and workers are unaware of current procedures, developing new slightly revised procedures specific to one type of hazard would not be productive or improve worker health and safety.

The Ministry also asks whether a worker should be allowed to leave the workplace prior to the completion of the investigation of a threat of workplace violence. In essence, the Ministry is asking whether the definition of “safe place” under OHSA s.43(10) needs to be clarified or expanded. OPSEU sees no need for this issue to be addressed in the Act or regulation. Currently, “safe place” is determined on a case-by-case manner, depending on the nature of the hazard, the workplace and the work process. For example, if a work refusal is initiated because of concerns about air quality, the safe place may be across the road at a nearby coffee shop. In a group home setting, the safe place may be in a worker’s vehicle outside the home. While it may be valuable as the workplace parties develop their workplace violence prevention procedures and measures to comment on what would constitute a safe place in the event of a work refusal, it will not be helpful to try to tie that level of detail down in a regulation.

Clarification that workplace violence may be the grounds for work refusals should be accompanied by strengthening the law against reprisals and its enforceability. It is OPSEU’s experience that members in our sectors who experience the most violence are often the most fearful of reprisals from their employers. For example, many workers in developmental services and health care, even if they knew they had the legal right to refuse unsafe work, would be unwilling to use that right for fear of their employer’s response. And their fears are well-founded. We have had numerous instances in recent years, especially in the developmental services sector, where OPSEU members have been disciplined, transferred or even terminated for their health and safety activities. In these workplaces, for the most part, violence is almost always considered part of the job.

Workers fail to speak out, not just due to fear of reprisal, but also because of their unwillingness to cause any harm or disadvantage to their clients and patients who they care about. Workers in these fields provide “emotional labour,” and need—and deserve—to be assured of speedy protective action by the Ministry of Labour should the worker be penalized for asserting their rights to refuse unsafe work due to violence in the workplace.

Conclusion

OPSEU appreciates this opportunity to respond to this focused consultation paper. We believe that you have identified the critical aspects involved as the Ministry considers how best to use the *Occupational Health and Safety Act* to extend the *Act's* protections to include the threat of workplace violence. The evidence is overwhelming that workers in all workplaces are facing and enduring workplace bullying, harassment and physical violence. While workers in some workplaces have been able to use existing legislation with the help of their unions to make some improvements to prevent and control the hazard, workers in many sectors and workplaces remain totally unprotected, unaware of their rights and afraid of workplace aggressors and even of their employers.

OPSEU strongly recommends that the Ministry act quickly on the advice you receive through this consultation and on advice you have received previously to amend OHSA to include workplace violence as a hazard and to develop regulations which will address all types of workplace violence and all sources of this violence.