

ONTARIO NURSES' ASSOCIATION

**Submission to the Standing Committee on Social Policy
On *Bill 168, Violence and Harassment in the Workplace***

November 24, 2009



ONTARIO NURSES' ASSOCIATION

85 Grenville Street, Suite 400

Toronto, ON M5S 3A2

Phone: (416) 964-8833

Fax: (416) 964-8864

Website: www.ona.org

Introduction

The Ontario Nurses' Association (ONA) is the union representing 55,000 front-line registered nurses (RNs) and allied health professionals, and more than 12,000 nursing student affiliates, providing care in Ontario hospitals, long-term care facilities, public health, the community, clinics and industry.

ONA is responding to Bill 168, the *Occupational Health and Safety Amendment Act (Violence and Harassment in the Workplace)*, 2009.

Workplace violence is a growing concern for nurses and allied health professionals and the risk of violence is higher in certain sectors, such as health care (i.e., our members' workplaces). We are pleased that the government sought our input and tabled a bill to address many of our concerns.

There is much in this bill to be commended. It acknowledges the need to address the following issues:

- some risks of "violence" in the workplace;
- "harassment" in the workplace;
- domestic violence spillover into the workplace; and
- a worker's right to refuse work when faced with some forms of workplace "violence."

We are especially pleased to see the duty to address the risk related to the personal history of a person with violent behaviour.

While there is much to applaud in the bill, two seemingly small but fundamental flaws in the definition of workplace violence threaten the value of the entire bill. In the section below, we will outline our proposed amendments that are designed to ensure Bill 168 protects workers from violence in the workplace.

ONA Recommendations to Amend the Definition of Workplace Violence in Bill 168

1. In the definition of workplace violence, "the exercise of physical force by a person against a **worker**" is problematic. Not all workplace violence is directed at a worker, but workers are involved in violent incidents as part of their workplace duties.

If this definition is not amended, nurses and others will inevitably have to argue that this legislation applies to circumstances where a worker is threatened or harmed when required to intervene during *the exercise of physical force by a **person (e.g., patient, resident, student) against a person (e.g., patient, resident, student).***

Surely the government's intent for Bill 168 is to make the workplace safe from violence, be it directed at the worker, or whether the worker is "caught in the crossfire" as part of their duties in their workplace. For instance, the root cause of a worker injury in an emergency department may have to do with weapons used by a patient against a patient. The current definition of workplace violence in Bill 168 may have little effect in preventing this kind of violence.

2. Harassment can escalate to violent behaviour causing physical injury. In fact, at the inquest into Lori Dupont's horrific workplace murder, expert witness Dr. Jaffe described a continuum of behaviour by the perpetrator, which culminated in her murder. During his testimony he identified several "missed opportunities" when steps might have been taken to prevent this workplace death. He talked about very threatening and harassing behaviours, such as stalking, that fell short of physical force, but which were recognizable precursors of that physical force.

If the proposed definition of workplace violence remains confined to the actual exercise or attempt to "exercise **physical** force," and ignores the threatening statements and behaviours at the high end of the harassment spectrum, such as stalking, then we will all continue to miss opportunities to prevent the horror that befell Lori Dupont. ONA has spoken to Ministry of Labour staff about this concern, and while we concur that it may not be appropriate to capture lesser acts of harassment in a definition of "violence," it is crucial that the dangerous actions at the high end of the harassment spectrum be included. As such, we are proposing that the definition be amended to include such situations.

The first of the two flaws noted above is discernible now and can be simply corrected by amending the definition of workplace violence to "the exercise of physical force by a person against a **person** in a workplace that may cause physical injury." This simple amendment will make employers turn their attention to the root causes of workplace violence when developing prevention policies and programs.

Without the amendment, the required “program” to “control the risks” may not capture important risks such as patient weapons, measures and procedures to control adverse patient/resident interactions, and so on.

In addition, we are proposing a new section to the definition of workplace violence to address the second flaw noted above to ensure that threatening statements and behaviours (such as stalking) are included in the measures and procedures to control workplace violence.

Priority Recommended Amendments

We recommend the current definition of workplace violence be amended as follows:

“workplace violence” means

*(a) the exercise of physical force by a person against a ~~worker~~ **person** in a workplace that causes or could cause physical injury to the worker,*

*(b) an attempt to exercise physical force against a ~~worker~~ **person** in a workplace that could cause physical injury to the worker.*

As well, we propose to amend the current definition of workplace violence to include threatening statements and behaviours (e.g., stalking). We are proposing two methods to accomplish this amendment. The first approach is to add an additional section to the definition of workplace violence:

(c) engaging in a course of vexatious comment or conduct against a worker in a workplace that provides reasonable grounds to believe it causes or could cause physical injury to a worker.

An alternative approach is to replace the current definition of workplace violence with an amended version of language contained in current Ministry of Labour policy related to workplace violence:

“workplace violence” means

(a) the attempted or actual exercise of physical force by a person in a workplace that causes or could cause physical injury to the worker; or

*(b) any threat which gives a worker reasonable cause to believe he or she is **may be** at risk of physical injury.*

These amendments to the current definition of workplace violence in Bill 168 are absolutely critical to ensure that threatening statements and behaviours are covered, and to ensure that violence between patients in our health care organizations or between residents in our long-term care homes, that impact on workers, is also covered.

ONA Recommendations to Additional Sections in Bill 168

In addition to the critical changes to the definition of workplace violence, we have further recommendations relating to our concerns in other sections that we outline below.

ONA Recommendation – Add a new Section 52 (4) (and amend corresponding notice requirements in each regulation to align with new section):

“If an employer is advised by or on behalf of a worker that the worker has a claim in respect of workplace harassment that has been filed with the WSIB by or on behalf of the worker, the employer shall give notice in writing within four days of being so advised to a Director, to the committee or a health and safety representative and to the trade union, if any, containing such information and particulars as are prescribed.”

Our proposal to add a new section 52 (4) to *Occupational Health and Safety Act* would require employers to at least report to the Joint Health and Safety Committee (JHSC) and to the union workplace harassment at the high end of the spectrum so that the JHSC can intervene if necessary by making recommendations to the employer, calling the Ministry of Labour and so on. Adding workplace harassment to S. 52 (2) would not achieve the same result because of the current definition of occupational illness, which limits what can be reported under s. 52 (2).

Amend Section 32 re: Joint Health & Safety Committees

These amendments are crucial to ensure the same level of participation for the hazard of workplace violence as for other hazards in the current health care regulation (Regulation 67/93).

Accordingly, we recommend an amendment to Sections 32.0.1 (a) (b) (c), 32.0.2 (1) and 32.0.5 (2) (a) to add **“in consultation with Joint Health and Safety Committee or health and safety representative and employers must consider the recommendations thereof.”**

Alternatively, to ensure that health care workers covered by the health care regulation do not have their existing rights challenged or risk losing their right to be consulted and have recommendations considered, add violence to the Health Care Regulation ensuring that consultation and consideration of recommendations continue to be a requirement.

Amend Section 32 re: Training and Education Programs

The current bill says "information and instruction" versus the phrase "education and training" in the health care regulation. We want to ensure the same level as we currently have in the health care regulation of the *Occupational Health and Safety Act* (OHSA) regarding education and training.

We recommend an amendment to Sections 32.0.5 (2) (a) and (b) to include "information, ~~and~~ instruction, **training and educational programs....**"

Alternatively, to ensure that health care workers covered by the health care regulation do not have their existing rights challenged or risk losing their right to training and educational programs, add violence to the Health Care Regulation ensuring that training and educational programs continue to be a requirement for the hazard of violence.

Amend language used in bill re: Risk assessment versus Hazard assessment

The language used in Bill 168 to "assess the risk of workplace violence" raises concerns regarding the use of the term "risk" versus "hazard." These concerns are based on experiences that labour has had with employers who only try to manage or control risks. We need language requiring employers to assess if there is a risk to the hazard of violence and if so, that employers put controls in place to eliminate, and where elimination is not possible, to minimize/control any risk.

The hazard/risk assessment in Section 32.0.3 (3) (a) should also be provided to the Joint Health and Safety Committee in writing. Doing so will provide the JHSC with concrete evidence that an assessment was actually conducted and will give the JHSC a baseline to analyze the assessment and make recommendations to the employer for the safety of workers.

We recommend an amendment to Section 32.0.2 (2) (a): "include measures and procedures **to eliminate, or if this is not possible**, to control the risks...."

We further recommend an amendment to section 32.0.3 (a): "...and provide a copy ~~if the assessment is in writing~~ **of the assessment in writing;**" and (b) "...and ~~if the assessment is in writing~~ provide **written** copies on request or advise the workers how to obtain **written** copies."

Conclusion and Summary of ONA Recommendations

While we applaud the government's action to introduce Bill 168 and to address workplace harassment and workplace violence, we find that this commendable action will not be fully realized without our recommended amendments to the definition of workplace violence. These amendments will ensure that threatening statements and behaviours, such as stalking, at the high end of the spectrum of workplace harassment are covered under the legislation. Without this amended definition, this legislation will not help to prevent tragedies like that which was inflicted on our colleague, Lori Dupont.

In addition, nurses and allied health professionals are often caught in violence between patients or between residents in long-term care homes. That is why we are recommending an amendment changing "worker" to "person" in the definition of workplace violence. While the violence between patients or residents may not be directed against a worker, the risk of injury to the worker is very real when they intervene to protect patients or residents.

Finally, we also have noted concerns and have proposed further amendments to address the bill's failure to:

- require notification to Joint Health and Safety Committees and the union of threatening harassment, such as stalking;
- explicitly require consultation of Joint Health and Safety Committees in violence assessments, as well as in the development of policies, programs, training, education, information and instruction;
- explicitly refer to the need for training and education, not just information and instruction;
- require that employers, based on the assessment of risks, eliminate the risk and where that is not possible, minimize/control the risk to the hazard; and
- require that the assessment of risks be in writing.

With these amendments in place, it is our opinion that Bill 168 will be better able to meet the government's intention of making the workplace safe from violence and harassment. Nurses and allied health professionals will then be able to get on with our job of delivering quality care to our patients.