



Canadian Association of Counsel to Employers
association canadienne des avocats d'employeurs

February 15, 2007

VIA EMAIL

Nova Scotia Environment and Labour
P.O. Box 697
Halifax, NS B3J 2T8

Dear Sirs:

Re: Submissions - Violence in the Workplace

This is further to the request of the Nova Scotia Department Environment and Labour (the "Department") seeking comments on a discussion paper published December 14, 2006 about violence in the workplace (the "Discussion Paper"). The following are the submissions of the Canadian Association of Counsel to Employers ("CACE") on the proposed regulatory changes to reduce the risk of workplace violence.

As you know, CACE is an association of practicing lawyers devoted to representing employers in labour and employment law matters. CACE is designed to provide a forum for counsel to share information and express their views on matters of importance. It is comprised of over 200 practicing Canadian lawyers. CACE's members act for most of the major employers in the country.

CACE acknowledges that the Discussion Paper and the Proposed Regulations contained in it will provide valuable guidance for employers in Nova Scotia on how to minimize violence in the workplace. CACE recognizes the responsibility that employers have to minimize the potential harm to their employees. However, in order for a business to grow and prosper, health and safety regulations must be reasonable and reflective of business realities. Further, any proposed regulations must be reflective of the existing occupational health and safety framework.

Section 3 of the *Occupational Health and Safety Act* requires that employers take:

...every precaution that is reasonable in the circumstances to

(a) ensure the health and safety of persons at or near the workplace;

(b) provide and maintain equipment, machines, materials or things that are properly equipped with safety devices;

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(c) provide such information, instruction, training, supervision and facilities as are necessary to the health or safety of the employees;

By requiring precautions that are “reasonable”, the Legislature has recognized that an employer cannot take every possible precaution. CACE is concerned that the proposed regulatory changes go beyond the scope of the existing occupational health and safety regime in Nova Scotia.

There is a key aspect to the Proposed Regulations that CACE says go beyond “reasonable precautions” and, consequently, may cause hardship to employers in Nova Scotia; namely the definition of “violence”.

(a) The Proposed Definition is Overly Broad

CACE is concerned about the proposed definition of violence:

“violence” means the attempted, threatened or actual conduct of a person that endangers the health or safety of an employee, including any threatening statement or threatening behaviour that gives an employee reasonable cause to believe that the employee is at risk of injury.

By including in the definition of violence, conduct that threatens the “health and safety” of an employee, “violence” is thus not limited to physical violence. The proposed definition could encompass a variety of workplace problems, such as inter-personal stress, adverse reactions to workplace instructions by Supervisors, etc. While the Discussion Paper acknowledges that certain issues, such as bullying and gossip are best left to human resources, this definition could encompass such issues.

Any regulations should be clear and should be limited to addressing specific concerns at issue. This definition goes beyond the desired goals set out in the Discussion Paper.

The proposed definition of “violence” is more expansive than definitions in other jurisdictions. By way of example:

Jurisdiction	Act	Relevant sections
British Columbia	<i>Occupational Health and Safety Regulations under the Workers' Compensation Act</i>	In sections 4.28 to 4.31, "violence" means the attempted or actual exercise by a person, other than a worker, of any physical force so as to cause injury to a worker, and includes any threatening statement or behaviour which gives a worker reasonable cause to believe that he or she is at risk of injury.

Jurisdiction	Act	Relevant sections
Alberta	<i>Occupational Health and Safety Code, under the Occupational Health and Safety Act</i>	s. 2 "violence" whether at a work site or work related, means the threatened, attempted or actual conduct of a person that causes or is likely to cause physical injury.
Prince Edward Island	<i>Occupational Health and Safety General Regulations, under the Occupational Health and Safety Act</i>	52.1 In this Part, "violence" means the threatened, attempted or actual exercise of any physical force by a person other than a worker that can cause, or that causes, injury to a worker, and includes any threatening statement or behaviour that gives a worker reasonable cause to believe that he or she is at risk of injury.
Manitoba	<i>Workplace Safety and Health Regulation</i>	"violence" means (a) the attempted or actual exercise of physical force against a person; and (b) any threatening statement or behaviour that gives a person reasonable cause to believe that physical force will be used against the person.

In short, in the above jurisdictions, violence in the workplace legislation is limited to physical violence. CACE submits that any definition in Nova Scotia should also be limited to physical violence.

(b) The Definition of "Violence" Should Exclude Co-Workers

CACE submits that the Department should give serious consideration to limiting these regulations to violence initiated by a non-worker.

Intra-workplace violence is more appropriately dealt with through the internal discipline mechanism of a particular employer. This is the approach taken in British Columbia and Prince Edward Island.

By way of example, in British Columbia, any "improper activity or behaviour" is not covered by the violence regulations. Rather, it is dealt with by the existing occupational health and safety regime. Improper activity or behaviour is defined as:

(a) the attempted or actual exercise by a worker towards another worker of any physical force so as to cause injury, and includes any threatening statement or behavior which gives the worker reasonable cause to believe he or she is at risk of injury, and

(b) horseplay, practical jokes, unnecessary running or jumping or similar conduct.

Similar, in Prince Edward Island the definition of violence excludes "*threatened, attempted or actual exercise of any physical force by a person*" by another worker.

By excluding violence between workers from the definition of violence, this issue can be dealt with by existing employer policies. Further, CACE notes that the major concern giving rise to the proposed Regulations is protection of employees from violent acts perpetrated by persons outside the workplace.

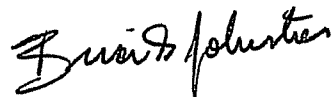
(c) The Definition

CACE says that the definition of violence in the Proposed Regulations should be:

"violence" means the threatened, attempted or actual conduct of a person other than a worker that causes or is likely to cause physical injury at the workplace.

CACE is available to discuss these concerns further with the Department.

Yours very truly,



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Directors
Canadian Association of Counsel to Employers

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