



**L**abour **O**HCO**W** **A**cademic **R**esearch **C**ollaboration

## Address the Missed Links – Prevent Harassment at Work

Submissions to the Ontario Roundtable on Violence Against Women  
And  
The Select Committee on Sexual Harassment and Violence

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<http://opseu.org/information/health-and-safety-2>

**Who are we?** The Labour OHCOW Academic Research Collaboration (LOARC) was formed in 2008 and is a network of union health and safety representatives, occupational health practitioners, and academic researchers who draw on collective experience, knowledge and research to present evidence to improve occupational health and safety. This draft was prepared by Terri Aversa, Dr. Andréane Chénier, Laura Lozanski, Lisa McCaskell, Nancy Johnson, and Andrew King.

“Twenty-eight percent of Canadians say they have been on the receiving end of unwelcome sexual advances, requests for sexual favours, or sexually-charged talk while on the job.”

Premier’s Task Force on Sexual Violence and Harassment

“Forty-five percent of Canadian workers report being bullied on the job, according to a 2014 nationwide survey. Many of those who reported being bullied suffered in silence. Just 44 per cent say they reported the bullying to the employer. Of the workers who did come forward, half said nothing was done to address the bullying. One in four chose to leave their job because of the bullying.”

2015 Harris Poll

“Ten to twenty-five percent of Canadian workplaces [are] effectively mentally injurious – not good for the mental health of their employees” ... “leading cause of short-term disability and long term disability—it’s the biggest single reason people are off work for periods of time.”

Senator Michael Kirby

### **Stating the Case—Harassment: A mental and physical continuum**

The prevalence of harassment at work is, as these quotes demonstrate, a concern to most Canadians, governments, unions and corporations. As recent events reinforce, much of Ontario’s workplace harassment includes sexual harassment, is experienced disproportionately by women, and can have mental and/or physical impacts on the victim.

Harassment should not be looked at in isolation—it is one of a continuum of behaviours. As the Ministry of Labour writes, “It is important to recognize and address these unwanted behaviours early because they could lead to workplace violence.” As a particularly salient example, the 2005 inquest into the circumstances of the workplace murder of nurse Lori Dupont underscored harassment that was just the beginning of behaviours that escalated to sexual harassment and violence causing mental and physical injury and worse. At the inquest expert witness Dr. Peter Jaffe, the Academic Director of the Centre for Research on Violence Against Women & Children at Western University, described a continuum of behaviour by the perpetrator which culminated in Lori Dupont’s workplace murder. During his testimony Dr. Jaffe identified dozens of “missed opportunities” for authorities to intervene as the perpetrator’s actions escalated from harassment to horrific fatal violence.

Statistics suggest that women disproportionately experience the extreme end of the spectrum, i.e. physical injuries from workplace violence. As a significant example, in 2012, thirty-one percent

of lost time due to workplace violence or client aggression occurred in the female-dominated healthcare sector, representing the highest amount of lost time across all schedule 1 employment sectors in Ontario (WSIB, 2012). Within the healthcare industry, the top five occupations reporting eighty-six percent of violence-related injuries are nurses' aides and orderlies, community and social service workers, registered nurses, registered practical nurses and visiting homemakers or housekeepers (WSIB, 2013).

Workers experience sexism and misogyny as well as other types of harassment such as homophobia, transphobia, racism, colonialism, and ableism. Marginalized workers often experience workplace harassment hazards and effects differently than other workers. And experiences vary between marginalized groups too. For example, racialized workers are more likely than white workers to report high levels of workplace harassment.<sup>1</sup> Workers with disabilities or long-term health conditions are more likely than their co-workers to report harassment. Ninety percent of over six thousand respondents in a US Transgender Discrimination Survey reported experiencing harassment on the job.<sup>2</sup>

It is time to look beyond the physical impacts of the harassment spectrum of behaviours and pay attention to the mental injuries as well. At the Minister of Labour's Summit on Work-Related Traumatic Mental Stress in March 2015, the Honourable Romeo Dallaire stressed that resistance by authorities needs to end now. In a stirring delivery, he asserted, "operation stress injury" must be considered an "honourable injury."

In April 2014 the Ontario Workplace Safety and Insurance Appeals Tribunal (WSIAT) decided on the constitutional questions of the case that was a study in a manager's unabated escalating verbal and emotional harassment that left a nurse very sick with post-traumatic stress disorder. In a precedent-setting decision the WSIAT allowed the appeal and determined that the WSIA sections denying entitlement to mental stress violate the Charter and are therefore unconstitutional.

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<sup>1</sup> Lewis, D. and R. Gunn. 2007. "Workplace Bullying in the Public Sector: Understanding the Racial Dimension." *Public Administration* 85.3: 641-665.

<sup>2</sup> Canadian Union of Public Employees, "Workplace Harassment and Mental Injuries: Examining Root Causes." CUPE Equality. November 2014.

The premier of Ontario, Katherine Wynne, has launched an action plan to address sexual violence and harassment at work.

With a clear concern about sexual harassment in particular, the action plan wisely promises action on harassment at work in general,

Introduce legislation to strengthen the *Occupational Health and Safety Act* to include a definition of sexual harassment. The legislation *would set out explicit requirements for employers to investigate and address workplace harassment, including sexual harassment complaints in the workplace, and include an obligation for employers to make every reasonable effort to protect workers from harassment, including sexual harassment, in the workplace.* [Emphasis added]

It's Never Okay: An Action Plan To Stop Sexual Violence And Harassment March 2015

Furthermore, in both her Action Plan and in her mandate letter to the Minister of Labour, the Premier establishes a standard of “safe, fair and respectful workplace practices.”

Indeed, workplace harassment needs to be considered and addressed along with workplace factors and practices that are enmeshed in the circumstances of the harassment cases. For example, harassment may be affected or influenced by high work demands, poor work organization, lack of organizational response, condonation, etc. Up until now, the focus of workplace law, policy, and action has been on what management is doing to react to individuals harassing other individuals at work. Typically this involves developing a policy or at least a statement of non-tolerance, and, as required by the *Occupational Health and Safety Act (OHSA)*<sup>3</sup>, processes and procedures for *reacting* to incidents. Practice and enforcement are uneven. There are still many complaints. While recognizing that these policies and practices that govern individual behaviour play an important role, our research suggests that this strategy does not address why the frequency of harassment is still increasing, nor how to prevent it from happening.

### **Workplace factors and context plays a role**

Our research suggests that part of the failure to reduce harassment at work is the failure to address the role which corporate policy, particularly the organization of work, plays in accepting, fostering and encouraging harassment and other adverse behaviours, leading also to a dramatic

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<sup>3</sup> *Occupational Health and Safety Act*, 2001, c. 9, Sched. I, s. 3 (12); 2009, c. 23, s. 5.

increase in mental illness among workers, more precisely *mental injuries* from the way their work is organized. It is important to understand the link between work organization, harassment and mental distress. The links are *psychosocial hazards*—the term used to refer to aspects of work organization that cause psychological or physical harm if not eliminated or controlled.

There is a well-established link between work organization and harassment at work. Workers in jobs with low control over how they do their jobs, with no clear definition of job roles, where their skills are not being used, or with very little responsibility or opportunity to advance, are more likely to be the victims of assault.<sup>4</sup> Mental distress comes from both work and home. But not all people suffering from mental distress or illnesses walk into the workplace that way. Organizations have an unclaimed responsibility. Workers may enter the workplace with little or no mental distress, or in full control of the mental distress they are experiencing, and then work factors may cause effects that never would have occurred otherwise. Accommodating workers to the condition or providing tools to deal with their mental distress are not enough. While those approaches are important, work factors need to be examined and addressed to truly make a difference in preventing the distress in the first place.

The mental distress caused by psychosocial hazards differs from normal emotional bursts that people may experience—either positive or negative—that we encounter that are dealt with and disappear, such as distress over losing your keys or other short-term anxieties or bursts of energy. Psychosocial hazards are experienced as unpleasant by the worker. When present for long periods of time or when they recur regularly, they are imposed on the worker where the worker has no control over the situation. For example, negative mental distress can occur when there is a poor match between workplace demands and a worker's degree of control over the way the work is organized or performed. In this case the poor match is the hazard which needs to be controlled. This kind of tight work condition affects workers and their interactions with management and can create an environment where managers and other workers are permitted to harass others. This situation will not be solved by a corporate anti-harassment policy.

Negative mental distress can also be caused by existing harassment in the workplace. Most often the worker has no control over the source of harassment or violence. Workers can be distressed

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<sup>4</sup> Rospenda, K., Richman, J., Ehmke, J., & Zlatoper, K. (2005). Is workplace harassment hazardous to your health? *Journal of Business and Psychology*, 20(1), 95-110.

by awareness of, witnessing or being victims of harassment or violence. Feelings of discomfort and unease can often develop into an unwillingness to enter the workplace. And the fact is that workers generally have little control over who they work alongside, who the boss is, how much support they receive, the size and nature of the work group, or whether the group dynamics are positive or negative. In an environment such as this, coping skills are challenged from the outset.

The truth is that workplace psychosocial hazards—such as work overload, lack of recognition and rewards, unreasonable or unmanageable deadlines, short-staffing situations, difficult working relationships, pressure for early, unsafe return to work of injured workers, lack of support from supervisors and colleagues, bullying and harassment, job insecurity—distress individuals in the workplace causing devastating effects that have potentially permanent consequences. These issues underlie much harassment in the workplace. When an individual struggles with work pressures, burdens, or worries large enough or long enough to overcome their coping skills he or she will experience mental distress. And mental distress can have dramatic effects on workers' physical health. Research tells us that incidents of harassment, sexual harassment, or bullying, can lead to development of anxiety, depression, panic attacks, sleep loss, loss of concentration, or post-traumatic stress disorder. LOARC research suggests when managers are the source of bullying and harassment workers are more likely to suffer these physical and mental effects.<sup>5</sup> Harassment places a worker at higher risk of becoming sick, injured, or being the victim of an assault.

Ontario's health and safety and enforcement system has not yet crossed the boundary from dealing with traditional health and safety hazards into the modern-day effects of today's computer driven more complex work environments, nor from obvious physical effects to more "invisible" mental injuries. Workplace stressors are not new, but they are now more pronounced and have reached epidemic proportions. In addition to physical injuries, their effects are leaving larger numbers of significant "invisible" psychological injuries.

Researchers in Ontario and around the world have been studying these psychosocial hazards for decades. Psychosocial hazards are now the most common workplace hazards that we face. Yet when many think of health and safety hazards from work, they think only of physical factors

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<sup>5</sup> Observation from MIT COPSOQ data.

such as sharp knives, machinery, chemicals, or indoor air quality and the physical impact of these hazards. There are still many who denigrate and diminish the importance of psychosocial hazards. Victims are stigmatized. Some even suggest these injuries are not real, or that they are imagined or exaggerated. Echoing the words of the Honourable Romeo Dallaire, these are *honourable injuries* requiring the same response given to workplace physical injuries.

Thankfully, researchers have developed reliable tools to investigate and evaluate psychosocial hazards. In this submission, we will describe one example currently in use in Ontario that was presented to the Ministry of Labour (MOL) in October 2013. The failure to improve conditions is not due to an inability to identify, measure and correct these hazards, but rather to a lack of will by authorities to use the bona fide tools and means available.

In Europe and at the International Labour Organization (ILO), there are guides for inspectors on how to address psychosocial hazards. The particular training and support that inspectors need is known. In this submission we will describe some of the best practices for Ontario's inspectors.

### **How can Ontario address psychosocial hazards?**

This document will answer this question by describing the existing situation and proposing an alternative approach.

### **Restating the Question**

In order to answer how Ontario could address work psychosocial hazards, we have to first understand how work hazards are currently handled. In Ontario, work hazards are addressed in three ways: compensation, prevention and enforcement. Compensation is the responsibility of the Workplace Safety and Insurance Board (WSIB). Prevention and enforcement are the responsibility of the Ministry of Labour (MOL).

### **What has the WSIB done?**

#### **No Compensation.**

Prior to 1997, it was well established that the workers' compensation boards had a responsibility to compensate victims of workplace harassment who suffered mental or other illnesses as a consequence. When the Harris Tories revised the *Workers Compensation Act* in 1997 and created



the WSIB, they added two provisions to the *Act* to restrict the entitlement of workers with particular disabilities—one limited the duration of benefits for chronic pain and the other forbade compensation for illness due to chronic stress (harassment) at work. A Nova Scotia equivalent of one of these provisions, affecting workers with chronic pain, was challenged in the Supreme Court in 2003. The decision upheld the right of a tribunal to apply the *Charter*,<sup>6</sup> and the Supreme Court struck down the restriction as a violation of the *Charter*. Despite this clear ruling Ontario's WSIB still refuses to compensate workers. Workers were forced to appeal. Today, more than a decade later, there are now two decisions of Ontario's own Workplace Safety and Insurance Tribunal that strike down the WSIB's restriction on compensation for chronic stress<sup>7</sup>, yet the WSIB is still permitted by this government to continue to refuse to do anything to compensate these workers.

As long as the WSIB is allowed to ignore the law and apply this illegal restriction, employers will not be made to comply with what the law now requires. They will be permitted to continue to discriminate against *honourable injuries* and not have to pay a cost for the preventable ill health that they are creating.

Prior to 2011, the WSIB was also responsible for Prevention. The impact of WSIB policy on compensation ensured that nothing was done to protect victims or prevent further harm.

## **What has the Ministry of Labour done?**

### **No Enforcement**

Both leaders of the Ministry, and the Ontario Labour Relations Board (OLRB) which has the responsibility to hear appeals of Ministry decisions and orders, have avoided responsibility. Prior to the legislative amendments in Bill 168 in 2009, their position, to be followed by their staff, was that specific forms of harassment should be left to the Ontario Human Rights Commission. Bill 168 clarified that workplace harassment is a hazard covered by the *OHSA*. But the new law did not explicitly require the employer to take reasonable precautions to control that hazard. The response of the Ministry and the OLRB was to limit their involvement solely to checking

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<sup>6</sup> *Nova Scotia (Workers' Compensation Board) v. Martin; Nova Scotia (Workers' Compensation Board) v. Laseur*, [2003] 2 S.C.R. 504, 2003 SCC 54,

<sup>7</sup> WSIAT Decision No. 2157/09; WSIAT Decision No. 1945/10

whether or not the employer had a policy. No clear rights to protect workers from harassment were created. At best—and this is not a position unanimously held at the OLRB—a worker may be protected by *OHS*A if he or she complained that the employer does not have a harassment policy. But the failure of the employer to apply the policy is not enforced.<sup>8</sup>

In fact, the overt Ministry-direction to staff ensures limited enforcement. Its Policy Manual restricts the inspector's role and responsibilities when addressing harassment. It reinforces the message that the inspector is restricted to enforcing only the explicit statutory requirements that the employer have a policy and inform its employees. The manual is explicit in stating that there is no obligation on the employer to assess the risk of harassment.

The Inspector shall not issue an order to an employer to follow its own policy or program. The Inspector shall not issue an order to an employer to have its harassment program in writing.<sup>9</sup>

Bill 168 amendments to the *OHS*A did require clear action by employers on the prevention of violence at work. In fact, the new section 32.0.5 (1) says, “For greater certainty,” *OHS*A employer duties such as the need to take every precaution reasonable to protect workers, apply, “with respect to workplace violence.” However, enforcement is weak. The focus of MOL policy and practice is more on how the employer manages the problem than on the protection afforded to victims. Employer plans are seldom evaluated critically.

This is exacerbated in those workplaces where government deemed that workers have to accept the violence in their job. Health care, social services, first responders, police, firefighters, corrections, child protection, and others are afforded weaker protection from the law because employers have been unchallenged in treating violence as inherent in the work or a normal condition of employment.<sup>10</sup> These are the very jobs where the protection from violence should be the strongest.

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<sup>8</sup> Compare *Conforti v. Investia Financial Services Inc.*, 2011 CanLII 60897 (ONLRB) and *Peter Ljuboja v. The Aim Group Inc. and General Motors of Canada Limited*, 2013 CanLII 76529 (ON LRB)

<sup>9</sup> Ontario Ministry of Labour, Operations Division Policy & Procedures Reference Manual Module 19.G.

<sup>10</sup> *OHS*A s 43(1)(a)

## **The Important Link Between Harassment and Exercising Health and Safety Rights**

According to Section 50 of *OHSA*, an employer cannot discipline or penalize a worker for exercising their rights under the Act. Obviously, this is incredibly important for any worker who wants to raise a concern for their health and safety. For many workers, the protection of this right is very weak. For victims of harassment, it is non-existent. The Ministry prohibits an inspector from investigating a complaint of reprisal. At most, an inspector is to refer a person who has this complaint to the Office of the Workers Advisor (OWA) and may forward information to the OLRB. The OLRB itself applies very restrictive rules and often rejects cases just on the basis of the written application form.

By comparison, in British Columbia, an inspector does investigate a complaint of reprisal, can try to resolve it and, if not, files a report whether there is a *prima facie* case for the worker's complaint. This is reviewed and a decision is made by an adjudicator. This decision is subject to appeal to the Workers Compensation Appeal Board.<sup>11</sup>

What we know, based on the complaints handled by the OWA and the Toronto Workers Health & Safety Legal Clinic who assist workers with these concerns, is that the majority of complaints of workers fired for health and safety are about harassment and about complaining to an inspector.

The implications of this are obvious. Workers in workplaces where harassment and potential violence exist are less likely overall to report any OHS hazard, not just psychosocial issues. So workers become vulnerable to an increasing number of hazards that go uncontrolled.

### **Prevention? A Need to Lead.**

“True leadership is prevention.” The statement was another key message delivered by the Honourable Romeo Dallaire, to the Minister of Labour's symposium on Work-Related Traumatic Mental Stress in March 2015. The Minister of Labour himself on a number of occasions publicly re-tweeted these words, citing Dallaire.

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<sup>11</sup> Source: Worksafe BC

[http://www.worksafebc.com/employers\\_and\\_small\\_business/improving\\_health\\_and\\_safety\\_at\\_work/discrimination\\_complaints/default.asp?\\_ga=1.102254281.950424060.1416847127](http://www.worksafebc.com/employers_and_small_business/improving_health_and_safety_at_work/discrimination_complaints/default.asp?_ga=1.102254281.950424060.1416847127)

Since 2011, when the MOL took over Prevention from the WSIB, very little has been done to address workplace harassment and its effects on workers. There is no strategy to address harassment and psychosocial hazards. In many ways the MOL reflects WSIB policy. Because Bill 168 did not specify that employers need to take every precaution reasonable to protect workers from harassment, the MOL interprets the law as if precautions to protect workers from harassment are not required.

The ministry has failed in other significant ways in its prevention role.

Ministry attention to the female-dominated health care sector is disproportionate to the comparative size and injury rate of this sector. Despite the fact that health care is a leader in all forms of accepted injuries, the ministry has strikingly few inspectors devoted to health care. The ministry spends significantly less time in this female-dominated sector than in the traditionally male areas of the workforce.<sup>12</sup> The MOL also misses other “gendered” sectors in their “high hazard approach,” such as workers in social services, child protection, and others.

The comparative frequency of *accepted physical* injuries from workplace violence is especially revealing. This comparison does not depict the totality of the real situation. These figures do not factor in the mental injuries, which are not accepted by Ontario’s WSIB, and ignores the research which shows violence in this sector is vastly under-reported. Workforce culture is such that workplace violence in this female-dominated sector of the workforce is considered “part of the job”. The ministry has missed, and continues to miss, significant opportunities to promote and effect prevention.

### **A Perfect Wall**

No compensation. No enforcement. No protection of workers who complain. No prevention. In summary, licence.

### **What Can Be Done To Change This?**

The Premier needs to ask whether the MOL’s current model of operation, distribution of enforcement and prevention resources, and direction, established decades ago when the work force looked quite different, appropriately reflects and responds to the present day work force

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<sup>12</sup> Source: MOL Enforcement Statistics <http://www.labour.gov.on.ca/english/hs/pubs/enforcement/>

reality and needs. The Premier needs to examine refusal of the MOL and WSIB to enforce the law to address the psychosocial hazards that contribute to the continuum of harassment that is wreaking such havoc particularly in female-dominated sectors of Ontario's workforce and compensate the victims.

The MOL Prevention Division needs to step out of the shadows and take proactive measures to fully and authentically promote existing, available tools, approaches and preventative measures that are nationally and internationally recognized, promoted, and used.

For instance, the Canadian Standards Association (CSA) Standard—*Psychological health and safety in the workplace—Prevention, promotion, and guidance to staged implementation* (CAN/CSA-Z1003-13/BNQ 9700-803/2013) provides a useful starting point. This consensus document involving industry, labour and technical expertise with the support of the Mental Health Commission has been promoted widely. It provides a basis for action.

The standard includes work organization as a source of risk and prevention (see under Scope in Section 1 and Section 3.1 definitions “organizational culture”). The CSA standard supports participation by worker health and safety representatives (see Section 4.2.4.1 and 4.2.4.2). The CSA standard specifically requires employers to take steps to reduce the risk of psychosocial hazards by eliminating the hazard when possible and mitigating any remaining risks. Annex A.4 to the Standards provides a detailed description of thirteen workplace factors affecting psychological health and safety that need to be addressed.

### **Can employers, workers, joint health and safety committees accurately and reliably assess their workplace for psychosocial hazards?**

Yes. This is not as difficult as one might first think. Researchers around the world have been studying the problem for years. There are now a number of available survey-based assessment tools with questions that have been tested and retested to produce reliable results. The responses to these surveys are analysed systematically and resulting patterns are reliable guides to areas of the greatest hazard. Employers can use these tools to enable its workers to participate

confidentially in the survey and to act on the anonymized findings with the advice and support of the joint health and safety committee (where there are 20 or more workers) and with the advice of the worker health and safety representatives in smaller workplaces. Workers can use these tools as well to educate co-workers, employers, inspectors, and others about the conditions of their work. In Ontario, there is a network of public occupational health clinics—Occupational Health Clinics for Ontario Workers (OHCOW)—which provide technical support for employers, health and safety representatives and workers on the best use of these tools.

These tools can also be used effectively by inspectors to require employers to make *reasonable and practicable efforts* to address the hazards as required by *OHSA* section 25(2)(h).

### **The MIT Strategy**

The Mental Injury Tool Group (MIT) was formed in 2009 to help workers, unions, joint health and safety committees, and employers prevent the health effects caused by psychosocial hazards. MIT, made up of workers, unions, worker organizations, and OHCOW, developed an online resource kit to address the gap between research and action on organizational causes of workplace stress.<sup>13</sup>

The MIT Group examined many surveys to find one that included all of the organizational aspects that research links to mental distress. The Copenhagen Psychosocial Questionnaire (COPSOQ)<sup>14</sup> is a questionnaire constructed in an attempt to cover as many general and psychosocial workplace risk factors as possible. Many other surveys are constrained to a specific theory of workplace stress (e.g. the demand-control model, or the effort-reward model or the workplace justice model etc.), whereas the COPSOQ survey attempts to include all of these dimensions in a single tool (23 dimensions in the short version). It has three versions (short, medium, and long) depending on the level of use (screening/education tool, workplace evaluation tool, and research tool, respectively). The MIT group is using a hybrid of the three

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<sup>13</sup> The full kit and explanation can be found at <http://www.ohcow.on.ca/en/MIT>.

<sup>14</sup> Kristensen, T.S., Hannerz, H., Hogh, A., & Borg, V. (2005). The Copenhagen Psychosocial Questionnaire – a tool for the assessment and improvement of the psychosocial work environment. *Scandinavian Journal of Work and Environment Health* 31(6), 438–49.

versions as its tool for measuring psychosocial hazards in the workplace and assessing which hazards are associated with symptom experience.

The MIT Group has used the COPSOQ survey extensively—in at least 15 events and in over 55 workplaces, collecting at least 1800 surveys. MIT heard feedback that using the questionnaire was educational on its own. Employers and workers have also said that crystallizing stressors as psychosocial hazards in categories with names (such as work demands and work organization) makes the issues easier to pin down and deal with. The experience using the survey has shown that harassment and bullying almost always occurs along with the existence of organizational factors such as excessive work demands, lack of organizational support, and poor work organization. Our findings reinforce our insistence that harassment cannot successfully be dealt with in exclusion of workplace factors which may be contributing to the problem.<sup>15</sup>

### **A Successful Example**

A community nursing workplace was full of harassment and bullying. Upon further investigation (using the COPSOQ survey to guide them) it was observed that: not enough time was given to do the work; there were long distances to drive between patients; a 30-minute time limit was given as time to spend with each patient; work was unfairly assigned. All these factors amounted to a workplace full of harassment and bullying. Nurses felt bullied to take calls near the end of shift that resulted in forced overtime, nurses felt that work was distributed unfairly, and managers were changing nurses' time sheets without consent. Nurses felt that management was unresponsive to all their concerns. Many nurses were off work, some quit, and turnover was very high. Over time relationships suffered, people faced harassment and targeting by their co-workers and management. Once the nurses collected data by using a survey about workplace factors and presented the results to management, the union and the employer worked together to create a zoned method for dispatching assignments which lessened the driving and provided more time to spend with patients and solved many of the root problems in the workplace. In turn, it resolved the daily disputes between staff, and lessened the harassment, and bullying. The COPSOQ questionnaire was instrumental in identifying the workplace factors contributing to a

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<sup>15</sup> For a full description of how MIT chose COPSOQ see [http://www.ohcow.on.ca/uploads/mit/pdf/MITSurveyTool\\_Background.pdf](http://www.ohcow.on.ca/uploads/mit/pdf/MITSurveyTool_Background.pdf).

toxic workplace. It gave workers an opportunity to express their views anonymously. All workers participated in brainstorming solutions for the identified problems.

**An Example of Failure** “Ghomeshi’s staff complained about ‘culture of fear’”<sup>16</sup>

After Jian Ghomeshi was charged with sexual assault and removed from the CBC workplace, it came to light that the employer had not addressed many workplace factors which contributed to what happened. For example, Ghomeshi’s staff complained of “a culture of fear.” Resources were scarce and people said they were taking on significantly more work, beyond capacity. Staff members felt that they lacked career mobility. They could not speak up or honestly express criticism without being blamed. Staff said that decisions were made in the interest of the host, without regard to anyone else’s opinions and feelings. Students were warned away from internships. The resulting report’s nine recommendations addressed not only setting behaviour standards (establishing training, investigating, a person in charge), but also recommended an audit of workplace culture, that confidential reporting be established, and that steps be taken to provide reliable work and career advancement. This case shows the critical importance of addressing organizational factors along with the harassment if future harassment is to be prevented.

The independent review conducted for the employer concluded,

It is our conclusion that CBC failed to live up to its obligations to provide its employees a workplace that is free from disrespectful and abusive behaviour. It failed to take decisive steps to deal with Mr. Ghomeshi in the workplace. The actions taken by managers were ineffective, infrequent, and inconsistent. Indeed, this tacit acceptance of disrespectful and abusive behaviour that was contrary to the Behavioural Standard had the effect of condoning the behaviour.<sup>17</sup>

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<sup>16</sup> See Globe & Mail Thursday Nov 6, 2014 at [www.theglobeandmail.com/news/national/ghomeshis-staff-complained-about-culture-of-fear/article21473254/](http://www.theglobeandmail.com/news/national/ghomeshis-staff-complained-about-culture-of-fear/article21473254/)

<sup>17</sup> Janice Rubin and Parisa Nikfarj, REPORT - CBC WORKPLACE INVESTIGATION REGARDING IAN GHOMESHI, April 13, 2015 at <https://www.documentcloud.org/documents/1894581-report-april-2015-en-1.html>.



## **What is needed?**

### **a. Clarify that *OHSA* protects workers from all hazards.**

It must be made crystal clear in the statute that the *OHSA* protects workers from all hazards, including psychosocial ones. The “greater certainty” reference in section 32.0.5 must be extended to clearly apply to the full spectrum of harassment hazards in the workplace as part of a continuum of violent behaviours. It must be clearly stated in the law that employers must take every reasonable precaution to protect workers from all hazards, including psychosocial hazards such as harassment at work.

### **Should “sexual harassment” be defined in *OHSA*?**

No. Segregating one form of harassment from others will have the same negative impact as separating violence from harassment has had in Bill 168—it ignores the continuum of harassment and would place an undue importance on the sexual nature of the harassment to the detriment of all other types, making them “lesser.” The current definition for workplace harassment in the *OHSA* is broad enough to include all types of harassment, including those instances that are of a sexual nature.

All hazards, including psychosocial hazards, can have negative mental and physical consequences. What is needed are enforceable guidelines, similar to the MOL’s guidelines on musculoskeletal disorders, to provide useful and comprehensive direction for employers, unions, workers and inspectors. These guidelines were developed with input from researchers, unions and employers.

### **b. Psychological injury must be recognized as an ‘honourable injury’.**

The Minister of Labour invited General Dallaire to guide us forward. When the government amended the *OHSA* to include its current harassment and violence provisions, it resisted being explicit about the need to include “psychological or mental injury.” Especially given the premier’s and the minister’s personal commitments to these issues, the time is now to move

forward, to heed General Dallaire's advice, and to finally and clearly make mental injury an "honourable injury" in compensation law, and in the practice of WSIB. The WSIB must develop a fair policy of entitlement for victims of harassment, review their past denials and end their obstruction.

As well, it must be made clear in occupational health and safety law that mental injury is an "honourable injury."

**c. Clarify that Notice of Accident requirements cover harassment and threat.**

The wording of section 52(1) of *OHSA* appears clear on the surface..

If a person is disabled from performing his or her usual work or requires medical attention because of an accident, explosion, fire or incident of workplace violence at a workplace, but no person dies or is critically injured because of that occurrence, the employer shall, within four days of the occurrence, give written notice of the occurrence containing the prescribed information and particulars to the following:

1. The committee, the health and safety representative and the trade union, if any.
2. The Director, if an inspector requires notification of the Director.

However, the phrase "disabled from performing his or her usual work or requires medical attention" is interpreted by MOL to apply only to physical injury. This is another example of MOL policy limiting the protection of *OHSA*. "Disabled" does not refer to a necessity for injury or a disability in the medical sense of the word but rather to a lack of ability to perform usual work task. If this interpretation of the word "disabled" were to be applied, then an incident that would cause significant emotional or psychological trauma would carry with it an obligation to report the circumstances of the incident to the required parties.

The provisions of section 52 should be expanded to include all incidents of violence, regardless of whether they result in physical injury. When it comes to incidents of violence, there are too many serious incidents that would not fit the reporting requirements of section 52 but that could have a profound impact on the workers. A precautionary approach is needed. For example, if a worker is threatened with a gun, but the assailant either does not fire or by chance misses that worker, the incident is considered a "near miss" and has no requirement for reporting. Similarly,

if a worker is restrained by an assailant with sexual misconduct in mind (ie rubbing), this would not qualify as a reportable incident under *OHSA*. Both of these events would be considered under the Criminal Code of Canada, but neither would place any obligations on an employer to examine where the breakdown in the workplace practices could result in these types of incidents to prevent their reoccurrence.

**d. Direct the Ministry of Labour to inspect psychosocial hazards and enforce *OHSA* using reliable evidence-based tools**

Provide Inspectors with training and guidelines for assessing programs and measures to prevent harassment at work. Inspectors should be enabled and directed by government policy to address work factors (how work is organized, work demands, and other organizational factors). Europe has already developed sector-based survey tools for inspectors so that they are aware of and can identify workplace factors that cause mental distress and can be at the root of harassment at work.<sup>18</sup>

Inspectors are competent to determine whether evidence establishes harassment is occurring. When they do find harassment, they should order the employer to conduct an investigation with appropriate evidence-based tools. Inspectors must be direct to inspect and enforce the law with respect to psychosocial hazards and reprisals. Guidelines similar to those used to address musculoskeletal disorders should be developed.<sup>19</sup>

Inspectors should be provided with training and guidelines to inspect and investigate the adequacy of an employer's investigation and resolution of harassment complaints. The Ontario Human Rights Commission's "Policy on Preventing Sexual and Gender-Based Harassment" can be a useful resource to evaluate the adequacy of an employer's program. For example, page 5 outlines a number of aspects used to evaluate whether an organization has met its duty to respond to a human rights claim. Namely, that the organization had procedures, that it responded quickly,

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<sup>18</sup> Committee of Senior Labour Inspectors, Psychosocial Risk Assessments, SLIC Inspection Campaign 2012 Final report, European

Union. [http://www.av.se/dokument/inenglish/European\\_Work/Sluc\\_2012/SLIC2012\\_Final\\_report.pdf](http://www.av.se/dokument/inenglish/European_Work/Sluc_2012/SLIC2012_Final_report.pdf)

<sup>19</sup> Ontario Ministry of Labour website, Musculoskeletal Disorders / Ergonomics, <http://www.labour.gov.on.ca/english/hs/topics/pains.php>

that the complaint was treated seriously, that resources were made available to deal with the complaint, that the organization provided a healthy environment for the person who complained, and that the organization kept the person who complained apprised of the status of the complaint.<sup>20</sup>

More Inspectors need to be hired and trained to address psychosocial hazards in Ontario workplaces, particularly female-dominant sectors.

### **There is a need for a broader regulatory framework**

A hurdle that is currently faced by workers attempting to deal with workplace harassment is that enforcement is restricted to the production of a workplace policy and program to address it. There are no opportunities for inspectors to judge the quality of the program, whether it has been implemented, or whether an investigation was carried out correctly and whether the recommendations to address the problems have been applied. In this, workplace harassment investigations point to the presence of workplace hazards with little obligation for employers to address these hazards.

Additionally, with the current capacity that inspectors have in terms of resources, human or other, and in a climate of fiscal restraint that is unlikely to change these resources, the ability of the current inspectorate to undertake investigations for harassment or violence is greatly impaired. Regardless of the nature of the offensive behaviours, these types of investigations are resource-intensive over the course of months. Additionally, these investigations can be the cause of additional trauma to already victimized workers—the investigating inspector would have to have extensive training to be able to deal with those workers.

It may be more feasible for inspectors to evaluate evidence of the existence of workplace harassment. Once its existence is established, the inspectorate should have the ability to ensure that workplace harassment and violence complaints are effectively dealt with in the workplace

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<sup>20</sup> See *Wall v. University of Waterloo* (1995), 27 C.H.R.R. D/44 at paras. 162-67 (Ont. Bd. Inq.)

by the workplace parties with an emphasis on ensuring that resolve is obtained and that hazards are addressed.

The provisions of section 32.0 already contain the opportunity to develop Regulations to address the workplace programs established to address the issues of workplace harassment and violence. In order to address the issues of workplace harassment and violence, once harassment is established, enable the inspectorate to order the employer to engage qualified investigators to examine the details and deliver recommendations that the inspector may enforce, when an employer does not voluntarily and substantively comply. The investigation and response framework should include the following features:

- Criteria to be met for a person investigating a complaint, such as appropriate level of knowledge and training, neutrality, and experience.
- A process to address complaints against a high-level member of the management team (ie, referral to a higher authority for example.)
- A requirement to address risks of harassment that may be uncovered by objective tools such as the COPSOQ survey or the recommendations issuing from an investigation report.
- A clear indication that the reprisals protections extend to workplace harassment complaints.
- The ability of the joint health and safety committee and/or health and safety representative to audit the policy and program for effectiveness.
- An obligation to report to the joint health and safety committee and/or health and safety representative and the respective trade union, if any, a high level report outlining the process used and outcomes/recommendations from investigation reports.
- The ability for an inspector to audit the workplace policies and programs.
- The ability for an inspector to issue orders and administrative penalties for workplaces that are not compliant and who fail to meet the due diligence test.

## **Provide Provincial support to victims**

When workers are victimized or injured at work, there are not enough resources that can be accessed to help them cope with the emotional and psychological impacts. The current system requires a diagnosis of mental illness in order to access resources to address these impacts. This approach is reactionary and requires that long-term damage be inflicted instead of attempting the more cost-effective approach of mitigating the impacts before they develop into pathology. Research into post-traumatic stress disorder (PTSD) has shown that mitigating the impact of critical incidents goes a long way to preventing the development of PTSD.<sup>21</sup> It should also be considered that access for psychological or emotional relief is not widely available, even in workplaces with Employee Assistance Programs that may offer some of these services. Too often, the access is limited to a single session with a provider that is not accessible in many regions of the Province.

As part of this initiative to address sexual harassment and violence, there should be some consideration to the establishment of a network of professionals that could be accessed by affected victims to help mitigate the impact of the workplace incidents.

## **The MOL: A role in primary prevention**

Preventing the workplace factors that lead to mental distress and that often play a role in harassment cases (a primary prevention role) puts preventing psychosocial hazards squarely within the mandate of Ontario's Ministry of Labour. In 2012 Europe's Senior Labour Inspectors (SLIC) blitzed workplaces in 22 countries in Europe to a) ask employers what psychosocial hazards they identified in their workplace, b) asked how the employer came up with the list, and c) asked employers what measures they put in place to minimize the effect. On October 24, 2013, the MIT group presented their tools to the Ministry of Labour's Enforcement Branch. MIT provided the MOL with Europe's tools, such as the checklists developed for the inspectors in health care and retail. MIT recommended that:

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<sup>21</sup> Niel Roberts. 2009. *Early intervention following traumatic events*, Psychiatry 8:8, 297-300

1. The MOL recognize that workplace psychosocial hazards are covered by *OHSA* 25(2)(a)&(h) and 4.1(2) and that related orders may be issued for specific violations
2. The MOL publish a guide for workplaces to identify their responsibility, refer them to available standards and tools (The ILO guide, the SOBANE tools)
3. The MOL blitz office work environments especially in healthcare, social services, and retail for psychosocial hazards (use Danish & Dutch tools)

### **Protect Worker Representation—Increase protection from reprisal**

No worker is safe *no matter what the legislation says* if she or he is not protected from discipline when trying to protect their health and safety. A critical role for inspectors regarding harassment (along with identification of psychosocial factors and prevention of injury) should be to ensure protection from reprisal. We have seen that non-unionized workers who are disciplined or fired for making a complaint about workplace harassment or the way an employer employs its harassment policy can expect no assistance from the MOL or the OLRB. Current MOL and OLRB practice leave workers, especially the most vulnerable, without recourse and without representation even though the law guarantees both. The law protecting workers from reprisals should be enforced to protect workers by investigating their complaints, making orders against employers and by prosecuting those employers who fail to comply.

### **Conclusion**

We applaud the premier's commitment to eliminating misogyny and its appearance in the form of harassment, including sexual harassment, in our workplaces. And kudos to the Minister of Labour for his commitment to moving Ontario forward in recognizing injuries from workplace mental stress as 'honourable injuries' deserving of the same respect, compassion, attention, and compensation as traditional workplace physical injuries.

Both the Premier and the Minister have signalled the government's will to join the world in addressing these serious issues. But the key to realizing their commitments, will begin with their examination of their own agencies and law, with expeditious legislative amendment and changes in Ministry of Labour and WSIB policy and practice, such that they can lead the workforce

forward on these most serious issues. We look forward to this government truly leading Ontario in preventing all harm from harassment, including sexual harassment in our workplaces.