

SUBMISSION TO THE WORKERS COMPENSATION BOARD

WORKPLACE BULLYING AND HARASSMENT

THE BC BUILDING TRADES' POSITION

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In the end, we will remember not the words of our enemies, but the silence of our friends.

Martin Luther King, Jr.

Capitalist enterprises rarely do anything good for workers until a law forbids mistreatment or neglect.

**Dr. Gary Namie
National Director
Workplace Bullying Institute**

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INTRODUCTION

While conflict between capital and labour is structurally determined in a capitalist mode of production, conflict in the form of bullying and harassment can arise from myriad sources within a business enterprise. The reason, of course, is that workplaces possess innumerable personalities and interests, and if no measures are taken to curtail them, they can collide, sometimes tragically. Unfortunately, as the National Director of the Workplace Bullying Institute Dr. Gary Namie says, capitalist enterprises rarely do anything good for workers unless compelled to do so, and this includes safeguarding workers against bullying and harassment. Given this fact, the BC Building Trades Council welcomes the Board's attempt to curb bullying and harassment in the workplace.

As an organization representing thousands of skilled unionized construction workers, the BC Building Trades are keenly aware that bullying and harassment is a serious matter, one having far-reaching and detrimental impacts on workers as well as productivity. This awareness is wide spread in the labour movement. Indeed the BC Federation of Labour adopted a policy statement on harassment in the workplace back in 1992.

The BC Building Trades supports the general thrust of the Board's proposal. However, we think the stated objective of the proposed policy would be more effectively achieved if set out in the *Occupational Health and Safety Regulations* ("OHSR") instead of being submerged in departmental policies and procedures. We also think the Board should redefine "bullying and harassment" more comprehensively, strengthen enforcement, and increase penalties for what is clearly unacceptable behaviour.

BACKGROUND

The existing legislative, regulatory, and policy regime in British Columbia does not deal effectively with bullying and harassment in the workplace. However, the Act and the OHSR do possess several sections that may relate to bullying and harassment in particular situations.

Workers Compensation Act

Sections 115, 116, and 117 of the Act compel employers, workers, and supervisors, respectively, to ensure the health and safety of workers. These provisions read as follows:

Section 115(1)(a) & (2)(e)

(1) Every employer must

(a) ensure the health and safety of

- (i) all workers working for that employer; and
- (ii) any other workers present at a workplace at which that employer's work is being carried out,

(2) Without limiting subsection (1), an employer must

- (e) provide to the employer's workers the information, instruction, training and supervision necessary to ensure the health and safety of those workers in carrying out their work and to ensure the health and safety of other workers at the workplace,

Section 116(1)

(1) Every worker must

- (a) take reasonable care to protect the worker's health and safety and the health and safety of other persons who may be affected by the worker's acts or omissions at work,

Section 117(1)

(1) Every supervisor must

- (a) ensure the health and safety of all workers under the direct supervision of the supervisor,

Occupational Health and Safety Regulations

As well, the OHSRs speak generally to the issue of bullying and harassment under workplace conduct sections 4.24 to 4.26 and violence in the workplace sections 4.27 to 4.31. For our purpose, the most important provisions in this regard are:

Violence in the Workplace

4.27 Definition

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.

4.28 Risk assessment

- (1) A risk assessment must be performed in any workplace in which a risk of injury to workers from violence arising out of their employment may be present.
- (2) The risk assessment must include the consideration of
 - (a) previous experience in that workplace,
 - (b) occupational experience in similar workplaces, and
 - (c) the location and circumstances in which work will take place.

4.29 Procedures and policies

If a risk of injury to workers from violence is identified by an assessment performed under section 4.28 the employer must

- (a) establish procedures, policies and work environment arrangements to eliminate the risk to workers from violence, and
- (b) if elimination of the risk to workers is not possible, establish procedures, policies and work environment arrangements to minimize the risk to workers.

ANALYSIS

Putting the Bullying and Harassment Rules in the OHS Regulations

Given the necessity to provide comprehensive guidance with respect to bullying and harassment to employers, supervisors, workers, and decision-makers, sections 115 to 117 of the Act, as currently drafted, are far too generic to provide any deterrent value.

With respect to the existing regulations dealing with workplace conduct and violence, as noted by the Board, the existing regime focuses on attempted or actual expressions of physical force including threatening statements and behaviour that would give a worker reasonable cause to believe he was at risk of injury. As a result, these provisions may address the act of bullying and harassment in particular circumstances, but more often than not they lack the necessary specificity to capture instances where the

cause and effect of the bullying and harassment are amorphous, psychological, complex and obscured by myriad contending viewpoints.

Equally importantly, these regulatory provisions are crafted in such a way as to limit the circumstances under which an employer is required to respond effectively to violence in the workplace. That is to say, important segments of these provisions are conditional in nature and, strictly speaking, only compel risk assessments and the creation of policies, procedures, and work environment arrangements to eliminate the risk to workers from violence in limited situations. For example, according to section 4.28(1) a risk assessment must be performed where a risk of injury to workers from violence may be present. But what if the employer is simply unaware that a risk of injury from violence exists? Surely he would not advance to the next step, as required by section 4.28(2), to pursue a risk assessment. And having not conducted a risk assessment, he would not be required to establish the procedures, policies and work environment arrangements to eliminate the risk to workers from violence in keeping with section 4.29. In other words, the existing OHSR regulations do not unequivocally compel employers to undertake risk assessments and establish proper policies and procedures, and we suspect many employers fail to do so because of this fact. As a result, the development of bullying and harassment policies and procedures that “piggy-back” on these provisions is problematic.

Fortunately this problem can be remedied by using the Board’s regulation-making powers pursuant to section 225 of the *Workers’ Compensation Act*. The BC Building Trades firmly believes that the OHS Regulations, not policy, is the appropriate place to specify the rules, policies and procedures respecting bullying and harassment in the workplace. As stated in the proposed policy, Saskatchewan has amended its Occupational Health and Safety Act and regulations to include harassment provisions; Manitoba deals with harassment in its Workplace Safety and Health Regulation; Quebec has amended its labour standards statute to include psychological harassment; and Ontario’s Occupational Health and Safety Act speaks to violence and harassment in the workplace. There is no reason why British Columbia should not position its bullying and harassment provisions “loud and proud”.

Section 225 of the Act provides the requisite enabling legislation, namely:

- (1) In accordance with its mandate under this Part, the Board may make regulations the Board considers necessary or advisable in relation to occupational health and safety and occupational environment.

(2) Without limiting subsection (1), the Board may make regulations as follows:

- (a) respecting standards and requirements for the protection of the health and safety of workers and other persons present at a workplace and for the well-being of workers in their occupational environment;
- (b) respecting specific components of the general duties of employers, workers, suppliers, supervisors, prime contractors and owner under this Part;
- (c) requiring employers to prepare written policies or programs respecting occupational health and safety and occupational environment in accordance with the regulations;
- (e) respecting standards and requirements for the monitoring of atmospheric or other workplace conditions or to demonstrate compliance with this Part, the regulations or an applicable order; and
- (h) respecting the form and manner of reporting on any matter required to be reported under this Part or the regulations.

To repeat, pursuant to these enabling provisions, we suggest that the Board set out the proposed OHS policies D3-115-2, D3-116-1, and D3-117-2 respecting bullying and harassment in the OHSR. Specifically, the BC Building Trades suggests that the Board set out the terms “bullying” and “harassment” (as redefined below) in the applicable definitions section of the OHSR; delete the proposed policy’s background segment in its entirety; and place the *Reasonable Steps to Address the Hazard* which is currently in the proposed policy in a stand-alone segment in the OHSR. By so doing, employers, supervisors, workers, and decision-makers will all be made fully aware of the necessity to conduct risk assessments as well as develop policies, procedures, and work environment arrangements to eliminate bullying and harassment in the workplace.

Not only would addressing bullying and harassment in the regulations mirror other progressive provinces, it would reflect the purpose set out in section 107 of the OHSR:

- (1) The purpose of this Part is to benefit all citizens of British Columbia by promoting occupational health and safety and protecting workers and other persons present at workplaces from work related risks to their health and safety.
- (2) Without limiting subsection (1), the specific purposes of this Part are
 - (a) to promote a culture of commitment on the part of employers and workers to a high standard of occupational health and safety,
 - (b) to prevent work related accidents, injuries and illnesses,
 - (c) to encourage the education of employers, workers and others regarding occupational health and safety,

- (d) to ensure an occupational environment that provides for the health and safety of workers and others,
- (e) to ensure that employers, workers and others who are in a position to affect the occupational health and safety of workers share that responsibility to the extent of each party's authority and ability to do so,
- (f) to foster cooperative and consultative relationships between employers, workers and others regarding occupational health and safety, and to promote worker participation in occupational health and safety programs and occupational health and safety processes, and
- (g) to minimize the social and economic costs of work related accidents, injuries and illnesses, in order to enhance the quality of life for British Columbians and the competitiveness of British Columbia in the Canadian and world economies.

Redefining Bullying and Harassment

Generally speaking, the Board's proposed definition of bullying and harassment is consistent with other Canadian jurisdictions. Thus it is a solid attempt to capture a wide array of circumstances in which the issue of bullying and harassment may arise. The proposed definition reads as follows:

Bullying and Harassment

- (a) Includes any inappropriate vexatious conduct or comment by a person towards a worker that the person knew or reasonably ought to have known would cause that worker to be humiliated, offended or intimidated, but
- (b) excludes any reasonable action taken by an employer or supervisor relating to the management and direction of workers or the place of employment.

While the aforementioned definition provides a solid base to work from, the BC Building Trades thinks the terms need to be expanded to encapsulate all the potential situations where bullying and harassment can be manifest. More specifically, we think, as stated by Karolina Dec in her valuable 2010 report *Workplace Bullying: A Legal Reform*, "the most effective definition of 'workplace bullying' will balance interests of the affected parties (target victim, general employee population, and employers) having regard to the economic context." We believe this balance will be maintained by redefining the terms as follows:

Bullying and harassment means

- (a) any conduct, comment, display, or gesture by a person or group towards a worker that the person or group knew, or reasonably ought to have known, would cause the worker to be humiliated, offended, or intimidated; and
- (b) impinges upon the worker's dignity, safety or health; but
- (c) excludes legitimate and non-abusive action taken by an employer or supervisor relating to the management and direction of other workers.

Enforcement and Penalties

The issue of enforcement and penalties is germane to the effectiveness of the Board's proposal to strengthen prohibitions against bullying and harassment. Indeed, the BC Building Trades believe that without effective policing and penalties the proposed prohibitions – whether crafted in policy or spelled out in the regulations – will have negligible impact in the field. The state must wield a hammer in a consistent and thorough-going manner to ensure compliance, first by scrutinizing business operations on a regular basis, and secondly, by imposing significant penalties on businesses that fail to take action against bullying and harassment. With respect to the latter, the Board, pursuant to section 217 of the *Workers' Compensation Act*, possesses considerable power to impose hefty fines. The Board needs to *use* this power. Tough fines will send an unequivocal message: bullying and harassment will not be tolerated in British Columbia's workplaces.