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Tuesday 17 November 2009

**Journal
des débats
(Hansard)**

Mardi 17 novembre 2009

**Standing Committee on
Social Policy**

Occupational Health
and Safety Amendment Act
(Violence and Harassment
in the Workplace), 2009

**Comité permanent de
la politique sociale**

Loi de 2009 modifiant la Loi
sur la santé et la sécurité
au travail (violence et
harcèlement au travail)

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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

**STANDING COMMITTEE ON
SOCIAL POLICY**

**COMITÉ PERMANENT DE
LA POLITIQUE SOCIALE**

Tuesday 17 November 2009

Mardi 17 novembre 2009

The committee met at 1613 in committee room 1.

**OCCUPATIONAL HEALTH
AND SAFETY AMENDMENT ACT
(VIOLENCE AND HARASSMENT
IN THE WORKPLACE), 2009**

**LOI DE 2009 MODIFIANT LA LOI
SUR LA SANTÉ ET LA SÉCURITÉ
AU TRAVAIL (VIOLENCE ET
HARCÈLEMENT AU TRAVAIL)**

Consideration of Bill 168, An Act to amend the Occupational Health and Safety Act with respect to violence and harassment in the workplace and other matters / Projet de loi 168, Loi modifiant la Loi sur la santé et la sécurité au travail en ce qui concerne la violence et le harcèlement au travail et d'autres questions.

BARBARA DUPONT

The Acting Chair (Mrs. Linda Jeffrey): Good afternoon. This is the Standing Committee on Social Policy. We're here to discuss Bill 168, An Act to amend the Occupational Health and Safety Act with respect to violence and harassment in the workplace and other matters. Our first delegation is Barbara Dupont. Could she come forward, please?

Ms. Dupont, when you are ready to begin, you'll have 15 minutes. Should you leave time, there will be an opportunity for members to ask questions. Whenever you're ready to begin, if you could state your name for the record.

Ms. Barbara Dupont: My name is Barbara Dupont. I am here today to share with you a very personal, tragic story about an experience I shared with my daughter Lori. This is her story.

Lori died November 12, 2005, nine days before her 37th birthday, a victim of workplace harassment and violence—harassment which was allowed to continue over an eight-month period and escalate into the most severe form of physical violence.

She was viciously attacked in the OR unit of Hotel-Dieu Grace Hospital, Windsor, Ontario, where she was employed as a recovery room nurse, stabbed seven times by a man with whom she'd had a past relationship—a fellow employee, a doctor.

Lori died almost immediately, despite heroic efforts to save her life. Her assailant, the anesthesiologist, then committed suicide by injecting himself with drugs routinely used in the OR. We never did find the source of the drugs because the hospital made no attempt to investigate.

Following her death, one of my immediate thoughts was, how did this happen? Something went terribly wrong in the workplace. I knew the hospital was well aware of the harassment issues, as formal and verbal complaints had been brought forward to administration not only by Lori but by other employees.

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We began receiving phone calls, some anonymous, stating that a big cover-up was taking place at the hospital: Files were being removed and papers shredded.

After speaking with Lori's friends and co-workers, our family sat down and compiled a two-page list of questions we wanted answered. We needed them answered. But the hospital had already taken a defensive stance and attributed the entire tragedy to domestic violence. They then proceeded to hold their own internal inquiry and conveniently absolved themselves of all responsibility.

A criminal negligence investigation by Windsor Police Services came to an abrupt halt due to the hospital's failure to co-operate. The Ministry of Labour refused to investigate, as Lori's death did not meet their criteria for a workplace death and therefore did not fall under their mandate.

We were faced with the terrible, stark reality that our two-page list of questions might never be answered. Fortunately an inquest was held two years later, but only after the coroner's office received over 10,000 signatures resulting from a petition drive spearheaded by Michelle Schryer of the Chatham-Kent Sexual Assault Crisis Centre.

It was a lengthy and very costly inquest. Many startling and unbelievable facts were revealed. Complacency and arrogance on the part of the employer was clearly evident. No one in a position of authority had been willing to deal with the situation. Many of these seemingly intelligent, highly skilled professionals appeared to lack the knowledge to deal with the situation. Many a blind eye was turned.

They had a zero-tolerance harassment policy, but policies and procedures were not followed; bylaws and codes of conduct not enforced. This doctor was never

confronted and held accountable for his harassing and disruptive behaviour.

An expert witness at the inquest testified to over 50 missed opportunities to intercede and break the terrible chain of events which led to the tragedy. The majority of these missed opportunities occurred at the hospital. In his summation, the coroner's counsel stated, "The fact is that most of the harassment occurred at the hospital."

Lori, in the end, had been abandoned by her employers and left to her own devices to survive the best she could in the hostile environment, surrounded by her fellow nurses, who attempted to protect her to the best of their ability. Despite all of these facts coming out of the inquest, there was still no accountability on the hospital's part and no guarantee that the inquest recommendations would be implemented.

The inquest action group, of which I am a member, was formed to monitor and address compliance with the recommendations. We have been working hard for over four years. I was going to present their statement here today regarding Bill 168, but I'm hoping they will have the opportunity to present themselves next week.

In order to achieve some accountability on the part of the hospital, the only avenue left to us to confront the terrible injustice and prevent its recurrence, our family initiated a civil suit against the hospital.

The aftermath in the workplace is still being felt today. Many employees sought counselling. Many were unable to return to work for months. Others requested transfers to different units. Some sought employment elsewhere; they just were unable to return to the unit.

You see that there were many mistakes made, many missed opportunities. Lori and I also made mistakes. Our biggest mistake was in trusting the employer. We trusted they would do the right thing and provide a healthy and safe environment for their employees. This misplaced trust, for us, proved to be a deadly mistake.

Before closing, I would just like to add one more thing. My future hope would be that no one will ever have to endure what Lori and her co-workers did in the workplace, and that no other family will ever have to struggle, as we have over the past four years and as Theresa Vince's family has for over 10 years, in a quest for answers, justice and change.

The Acting Chair (Mrs. Linda Jeffrey): Thank you. We have two minutes for each party to ask questions, beginning with Mr. O'Toole.

Mr. John O'Toole: First and foremost, Ms. Dupont, I want to thank you very much for your courage, for coming forth and for bringing the real circumstances, which are so important for us to understand the injustice or the trust you presumed was there.

I'm just wondering: If you were to say to the members of the government primarily—as you would probably know, you were helpful when I introduced the bill in honour of your daughter's name, the Lori Dupont Act, and it's my feeling that they simply blocked that act, which would have at least allowed for a restraining order to be issued by a justice of the peace, seven days a week,

24 hours a day. That is not in this bill. There is no specific direction or action required for access to a restraining order. Would you encourage the government members to listen to your story of your daughter, of Theresa and of others who have been victimized—I could list three or four cases that I'm familiar with, also in the workplace, where it was perpetrated.

Ms. Barbara Dupont: As you know, my daughter had applied for a peace bond in April and it was not due to be held in court until December, the month after she died. The man against whom it was brought forward offered up various excuses as to why he was not ready to appear in court. It had been rescheduled three times, and the hospital was well aware of the peace bond issue.

Mr. John O'Toole: Again, I think your story and your words are more input than my questions or comments. I commend you again for your courage, and would encourage the government members to listen and act to protect mostly women—almost entirely women—from violence in the workplace. There must be responsibilities on the courts as well, which is the legitimate arm of the government to intervene in all settings. This is the most important part of the statement that I hear from you. Thank you again for coming before the committee today.

The Acting Chair (Mrs. Linda Jeffrey): Thank you, Mr. O'Toole. Ms. DiNovo?

Ms. Cheri DiNovo: Thank you, Madam Chair. First and foremost, I want to give you my prayers and condolences and those of our leader, Andrea Horwath. Thank you for your testimony. Thank you for your courage and your social justice action coming out of this tragedy.

As you know, Andrea submitted a bill, Bill 29, that was much stronger than this one, based on Lori's death and murder. We in the New Democratic Party are going to try to make this bill a whole lot stronger, certainly so that there are not those missed opportunities. I think those missed opportunities of psychological harassment that lead up to violence are where we have to begin to address violence before it ever happens.

Again, you are certainly a beacon of social justice action for women right across this country. Thank you for what you and your family have done. I wish you didn't have to have done it; I wish that the government had acted sooner; I wish the hospital had acted sooner. But now, because of your actions, something is going to change. Again, it's because of women like you that change does occur. Thank you again.

The Acting Chair (Mrs. Linda Jeffrey): Ms. Mitchell?

Mrs. Carol Mitchell: Thank you, Chair. Ms. Dupont, I can't imagine the courage it must take for you to do this, and I want to thank you on behalf of all the women whose lives you're helping. As the mother of two girls, I can appreciate how difficult a journey it has been for you, and I do sincerely want to thank you.

My question to you is, do you feel that Bill 168 does raise awareness for harassment in the workplace?

Ms. Barbara Dupont: I feel it continues to focus more on physical injury and does not focus enough on the psychological and emotional areas of harassment that lead up to and can lead into physical violence. In Lori's case, there were many signs and signals, and they gradually escalated over an eight-month period. Harassment needs to be caught when it first starts, so that it doesn't continue to escalate, and I don't think the bill reflects enough the continuum of violence where it starts and gradually seems to escalate.

Mrs. Carol Mitchell: Thank you for your presentation today. We from the government side sincerely appreciate all your words.

The Acting Chair (Mrs. Linda Jeffrey): Thank you very much for being here today.

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CANADIAN FEDERATION OF INDEPENDENT BUSINESS

The Acting Chair (Mrs. Linda Jeffrey): Our next delegation is the Canadian Federation of Independent Business. Welcome. As you get yourselves settled, if you're both going to be speaking, could you state your names for Hansard and the organization you're speaking for? When you begin, you'll have 15 minutes.

Mr. Satinder Chera: My name is Satinder Chera. I'm director of provincial affairs for the Canadian Federation of Independent Business. I'm joined today by my colleague Angela Cloutier, who is the federation's policy analyst here in Ontario.

We appreciate this opportunity to appear before the committee in respect of Bill 168, a very monumental and certainly a serious matter that this committee is grappling with, with this legislation. We will be speaking entirely from the slide deck that is in your kit. On the right side of your kit there are additional materials as well that we will be referring to throughout the presentation.

Starting with slide 2, as members will know, we represent about 42,000 small and medium-sized businesses in the province of Ontario. This slide gives you an indication of the diversity of the membership we hold. We have virtually every type of business you can think of; mostly these are small businesses, though.

On page 3, this is a slide we often show with pride: the fact that most Canadians count on the small and medium-sized business sector to create most of the new jobs in the province and in the country. I think it sort of speaks as well to a sector that dominates the Ontario business landscape. On page 4 you will see that 81% of Ontario's businesses employ fewer than five employees and 60% have no employees at all.

On slide 5, we have our business barometer. The results of the recent barometer were taken in October and released about two weeks ago. What they indicate is that we've seen a gradual increase in expectations among the small business sector, but in the most recent results there was a small dip, primarily owing to the manufacturing

sector, which has been hurt by the high dollar over the past couple of months.

On slide 6, we speak to our members' top priorities in terms of the challenges they face. One area that is a concern is the government regulation on paper burden. We certainly appreciate the government's efforts in this area with the Open for Business initiative, which we think is a step in the right direction.

On page 7, I think it's safe to say that every government regulation has at least one laudable public goal; in other words, it's a good thing. But it can be a bad thing if it fails the following test in terms of effectiveness and a cost-benefit analysis. Also, the sum of all regulations is a bad thing if it exceeds government's capacity to administer it or it also exceeds the capacity of small and medium-sized businesses to cope with the requirements that are being placed upon them.

On slide 8, as you can see, most SMEs derive revenues of less than half a million dollars a year. We want to illustrate in this slide the type of resources that small and medium-sized firms are working with. It has never been said to us that we do not want to do good by the laws that are in our province. The challenge, of course, is: If we don't have the resources or the information, how can we make that happen?

On slide 9, we've also estimated the cost of training. Primarily, smaller firms incur huge costs when they train their employees, but they recognize that their employees are their most prized asset, their most valuable resource. We know, in talking to our members, that they work primarily side by side with their employees day in and day out, and so training is definitely one area we want to commend to your attention.

With that, I'm going to pass it over to my colleague, Angela, to take you through the rest of our presentation.

Ms. Angela Cloutier: Thank you, ladies and gentlemen. The reality of a small business environment is that the owner is the human resource person on top of everything else they have responsibility for, such as running the business, looking after the customers, payroll, inventory and taxes. Owners are not trained risk assessors. They are not medical diagnosticians. They are not trained mediators. Owners bear the risk of running afoul on human rights, employment standards, civil law requirements if they mishandle sensitive situations. The reality is that small businesses have limited resources and expertise in complying with regulations, and if they make a mistake, government comes down quite hard on them.

Slide number 11 shows that we cannot blame small business owners for being confused with the mishmash of different government associations and their mandates that try to help them out in these situations. We understand that the health and safety association under the WSIB has undergone realignment recently, but the jury is still out as to the meaningful impact they will have on the product delivery to the small business customer.

What is the government's role? The government's role which is most fundamental is to protect citizens from violence, external and internal. The workplace is simply another form of location. Government has a respon-

sibility to its own workplaces and to the broader public sector workplaces, and in privately owned workplaces as well. Slide number 13 shows that government as an employer, directly and in the broad public sector, has not been able to eliminate workplace violence. Under Bill 168, employers must take every reasonable precaution to protect the worker, creating serious and significant obligations on small and medium-sized enterprises. What we have here is the potential of government creating two sets of rules: one for the public sector and another for the private sector.

In conclusion, our recommendations are such: Small and medium-sized businesses will need to add to their training costs and make improvements as are suggested quite often, such as locks, doors or physical barriers; government needs to provide funds to meet these additional responsibilities, such as conducting risk assessments in individual businesses or any necessary training and facility improvements; we'd like to follow the Alberta model, a prevention of workplace violence policy statement, which is included in your package on the right-hand side and has the blue stripe on the top. We'd like to use this as a template for small businesses in Ontario: Limit the employer's responsibility to referral of problem employees and customer-client relations to police or alternative interviewers; and immunize small business owners from human rights, employment standards and civil law exposure in their attempts to identify and deal with problem employees and customer clients.

Mr. Satinder Chera: Thank you very much for that. We'll take any questions that you have.

The Acting Chair (Mrs. Linda Jeffrey): We have just over two minutes for each party, beginning with Ms. DiNovo.

Ms. Cheri DiNovo: Thank you for that presentation. What I'm reading from it is that your recommendation is the sort of thing that Alberta has in place. I'm going to ask you seriously: Do you really think that by signing this, Lori Dupont's death would have been prevented?

Mr. Satinder Chera: Actually, Ms. DiNovo, our intent in including this in your kit was to demonstrate what other provinces are doing in terms of helping and supporting small businesses. You of all people know that small businesses have limited resources; they have limited capabilities; they have hundreds upon hundreds of regulations to deal with. They are more than serious about their obligations to their employees. Let's not forget they work side by side with their employees.

Our intent, in including this document in here, was to demonstrate yet another tool that if the government really wants to work with small business, here is something they can create and that they can help small businesses to navigate through the mishmash that Angela talked about: a health and safety system in the province of Ontario which is a complete disaster. It has been for many, many years. So this was intended as a recommendation.

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Certainly our heart goes out to Ms. Dupont and her family. Our intent here is to provide solutions to help the

small and medium-sized business sector to comply with the regulations that the government is proposing.

Ms. Cheri DiNovo: But Bill 168 purports to do that. We obviously, as I've said, in the New Democratic Party would like to see Bill 168 strengthened, not weakened. As small business critic, I'm absolutely aware of what small business has to go through, and there's no doubt that you're right in some of the regulatory burden, but this is about protecting women's lives, quite frankly, and I can't see anything short of Bill 168—in fact, we think more than Bill 168 is necessary to bring that about. I don't see that that is going to be onerous for small business, any more than it would be for the hospital in which she was killed.

The Acting Chair (Mrs. Linda Jeffrey): Thank you.

Mr. Satinder Chera: Again, if I can just—

The Acting Chair (Mrs. Linda Jeffrey): A short, quick answer.

Mr. Satinder Chera: Yes. Again, as we've stated in our recommendations, what we're talking about is giving businesses the resources and the information so that they can be in compliance with Bill 168. As it currently stands, there are no provisions to support our sector.

The Acting Chair (Mrs. Linda Jeffrey): Thank you. Mr. Dhillon.

Mr. Vic Dhillon: Thank you very much, Mr. Chera and Ms. Cloutier.

I understand that you guys have met with the Ministry of Labour in the past and you've discussed the Alberta model. Would it be a fair assumption to say that you would be supportive of this bill if similar types of easy-to-follow materials were made available?

Mr. Satinder Chera: We've actually had, I would say, good discussions with the ministry, and the minister's office in particular, on this legislation. I think they clearly understand where our concerns are. They know that we want to work with the government in terms of this legislation that's being proposed. It's a serious piece of legislation. It's needed. There's no question about that.

What we're saying is that there are solutions to help our sector. We've brought forward one recommendation, which is something that they've done in Alberta to support small businesses, to give them the resources that they need so that they have a policy in place, that they are able to train their employees about their rights and responsibilities. We're quite confident that the minister's office has heard us loud and clear.

We know that they are talking about potentially allowing the WSIB, for example, to have control over this. Our preference would be for the Ministry of Labour to put this type of policy package together for our members, sort of this type of template that you have before you.

The Acting Chair (Mrs. Linda Jeffrey): Thank you. Ms. Jones.

Ms. Sylvia Jones: A quick question. With your fourth point under your recommendations, you talk about, "Immunize small business owners from human rights/ESA/civil law exposure...." Would that immuniz-

ation include when the harassment occurs on the premises, within the workplace environment?

Mr. Satinder Chera: No, no. Our point with number 4 is to suggest that there are a lot of obligations on employers, and if they identify that there is harassment going on in the workplace and they work to act very, very quickly, as a result of quickly trying to react to that situation, to make the authorities aware that this is happening, could they inadvertently violate one of the other rights and obligations out there, whether it's under the Employment Standards Act? Our only reason for pointing this out is that that may potentially happen in that an employee who may be potentially identified as being aggressive may turn around and then try to imply that the employer has violated their Employment Standards Act rights and obligations. So our point is, there needs to be sort of a road map for small businesses so that you don't put them in a situation where, yes, they've complied with this piece of legislation, but they may have inadvertently violated another piece of legislation.

The Acting Chair (Mrs. Linda Jeffrey): Thank you very much for being here today. We appreciate your time.

Mr. Satinder Chera: Thank you.

ONTARIO COALITION OF RAPE CRISIS CENTRES

The Acting Chair (Mrs. Linda Jeffrey): Our next delegation is the Ontario Coalition of Rape Crisis Centres. Welcome. As you get yourself settled, if you could state your name for Hansard and the organization you speak for. Once you begin, you'll have 15 minutes.

Ms. Michelle Schryer: Thank you and good afternoon. I'm Michelle Schryer from the Ontario Coalition of Rape Crisis Centres. I thank you for the opportunity to appear before the committee regarding this issue of utmost importance and consequence.

The Ontario Coalition of Rape Crisis Centres has been in existence since 1977 and currently represents a membership of 24 sexual assault centres throughout the province.

The coalition works for the prevention and eradication of sexual violence, including gendered workplace harassment and violence; promotes legal, social and attitudinal change in this regard; and encourages, generates and supports research and, in fact, provided sponsorship for the research project by the Centre for Research and Education on Violence Against Women and Children.

In 2004, that organization produced the report entitled *Workplace Harassment and Violence*. The report offered many dozens of recommendations to address workplace harassment and violence, including two recommendations to the Ministry of Labour. Specifically, the report recommended amendments to the Occupational Health and Safety Act requiring employers to protect workers from workplace-related sexual harassment, give workers the right to refuse to work in certain circumstances after

sexual harassment has occurred and take steps to prevent further occurrences of workplace-related sexual harassment. The other recommendation to the Ministry of Labour was that it "provide appropriate training for health and safety committees to assist them in acquiring the expertise needed to address prevention, policies and investigations."

It follows, then, that the coalition very much supports the passage of Bill 168, but we have some concerns about the proposed legislation and believe that amendments are in order.

Through our member centre in Chatham-Kent, the coalition was present throughout the entirety of the inquests into the murders of both Theresa Vince and Lori Dupont. Through these proceedings, it was made evident that legislative change to better address workplace harassment and domestic violence under the Occupational Health and Safety Act is absolutely essential.

The Theresa Vince inquest proved beyond doubt that workplace harassment is an occupational danger that can and has resulted in death. The Lori Dupont inquest proved that domestic abuse can and does spill into the workplace, that it can and has resulted in death. It should be noted that in nurse Lori Dupont's situation, she also experienced harassment on the job by her abuser, as did other nurses and a nurse manager.

Perhaps you are aware that Theresa Vince was not the first Ontario woman to be murdered by her harasser after experiencing workplace harassment. She was at least the fourth, and as we are painfully aware, she was not the last. She and Lori were two in a line of women whose lives were ended at the hands of men who had harassed them at work. And so it becomes the responsibility of this Legislature to pass workplace health and safety laws that are as good and as effective as they can possibly be.

Bill 168 introduces enhanced protections against workplace violence and new measures to address workplace harassment as well as violence and harassment that occur as a result of domestic violence. While this legislation is an important step forward, in its current form, the bill separates definitions of "workplace violence" and "workplace harassment" and sets out separate provisions to address workplace violence, harassment and domestic violence. The result is that the legislation continues to emphasize the risk of physical violence rather than focusing on the continuum of behaviours that result in risk to safety, well-being and health. That is of concern to us, and we firmly believe that amendments are required before this bill is passed into law.

It is our view that Bill 168 does not adequately recognize the continuum of violence that can occur and that can most certainly result in physical harm and injury, compromised emotional health and well-being, physical stress-related illness and other stress-related symptoms caused by workplace harassment or the presence of domestic violence that spills into the workplace. We believe that the definition of "workplace violence" needs to be broadened to effectively address not only physical violence, but the continuum of violence. It is important

that the language in health and safety legislation recognizes that some acts of violence are easily interpreted as violent, while others are less clear and not necessarily overt. Nonetheless, these acts can lead to more physically destructive, violent behaviours and can have significant consequences for workers.

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We want as much emphasis on workplace harassment and domestic violence as there is on physical violence. For someone like Theresa Vince, who experienced an escalation of harassing behaviour, it is doubtful that the proposed legislation in its present form would have been an effective tool. As I have previously alluded, the inquest into her death proved that her murder was the final and very direct result of workplace harassment. Accordingly, it is crucial that occupational health and safety legislation recognizes the complexity of harassing behaviour and how it escalates. For Theresa Vince, what began as unwelcome compliments escalated until it ended in her murder. It was revealed that an adequate investigation would have in fact resulted in the possibility of laying criminal harassment charges. Ontario needs an Occupational Health and Safety Act that better protects workers from violence, whether or not that violence is physical in nature.

Similarly, in the case of nurse Lori Dupont, evidence revealed an escalation of behaviour, as her mother shared with you, and tactics by her killer indeed did escalate until finally Lori was killed. There were dozens of opportunities to intervene on her behalf, and they were missed. I will say again: The proposed legislation has a focus on physical violence and in our view does not adequately recognize that continuum of violence. We want as much emphasis on domestic violence when it spills into the workplace and on workplace harassment as there is on physical violence.

We support Bill 168 in principle because we know that the current system lacks the ability to effectively keep workers safe and healthy when they experience workplace harassment or when domestic violence spills into the workplace. It fails to effectively protect that fundamental right that workers have to safe work conditions and to be able to go home at the end of the day healthy and whole.

The family of Theresa Vince can attest to this. At the inquest into her workplace murder, evidence was given about the Occupational Health and Safety Act as a vehicle for addressing workplace harassment. It wasn't a coincidence that the jury recommendation to the Ministry of Labour was regarding change to the Occupational Health and Safety Act.

The family of Lori Dupont can attest to this. It wasn't a coincidence that the inquest jury into Lori's death directed a recommendation to the Ministry of Labour regarding change to the Occupational Health and Safety Act.

We believe that with amendments, Bill 168 can make a positive difference, that the legislative reform of Bill 168 has the potential to strengthen, in a very real and

meaningful way, the protection of workers' health and safety in Ontario. And we believe that the most effective way to prevent workplace violence, including harassment and domestic violence, is to include them in the same definition as physical violence. Experience and the lessons of two public coroner's inquests have shown that all forms of violence are a threat to workers' health, safety and security, and therefore should be addressed under one program.

We believe that the legislative reform of an amended Bill 168 has the potential to save lives, but if the bill passes in its current form, with more emphasis on physical violence than on workplace harassment and domestic violence, then Bill 168 may well be another missed opportunity to protect women from gendered violence when it occurs at work, and another missed opportunity to better protect all Ontario workers who experience harassment and violence on the job.

The province has finally embarked on the important mission of creating legislative change to advance the health and safety of Ontario workers who experience harassment on the job and who experience domestic violence that spills into the workplace. By doing so, the province is promoting equality, safety, dignity and respect of all Ontario workers. We want to recognize Minister Fonseca for being the first Minister of Labour to demonstrate political will to improve the health and safety of Ontario workers since the workplace murder of Theresa Vince nearly 13½ years ago.

It is important to also acknowledge, however, that the bill didn't happen simply because government proactively decided that it would be a good idea. It happened because Theresa Vince and Lori Dupont were killed at work and both their murders were preventable and both their families made a conscious decision that the deaths of their loved ones would not be in vain.

In 1996, the Vince family petitioned for an inquest and shared the most horrific tragedy of their lives to make sure that another family would not lose a wife, a mother, a daughter, a grandmother, a sister or an aunt as a result of workplace violence. Then, just four years ago, Lori Dupont was taken from her family when she was killed at work, and her family, as you heard earlier, petitioned for an inquest and shared the most horrific tragedy of their lives to make sure that another family would not lose their loved one to violence on the job.

Again, it is the responsibility of this Legislature to pass workplace health and safety laws that are as good and as effective as they can possibly be. In the spirit of making new legislation as meaningful and effective as possible, we respectfully suggest that Bill 168 revise its definition of workplace violence to make it inclusive of physical violence, all forms of harassment and domestic violence. A definition that focuses on the continuum of behaviours that result in explicit or implicit challenges to safety, well-being or health would provide a framework that is preventive and systemic and, we believe, would serve to honour the memories of Theresa Vince and Lori Dupont.

Issues of workplace harassment and violence, including bullying and domestic violence—

The Chair (Mr. Shafiq Qaadri): You have about a minute left, Ms. Schryer.

Ms. Michelle Schryer: Thank you—have become topical in all of Canada, and other jurisdictions have incorporated psychological violence into their legislation. I won't read to you all the things it can involve because you can read that for yourself, but certainly it's very, very significant. Psychological violence is currently covered under the definition of Bill 168, but again, we believe it should be included as part of the workplace violence definition. Otherwise, critical warning signs that physical violence or serious illness may occur could be easily overlooked.

On behalf of the Ontario Coalition of Rape Crisis Centres, I want to thank the government of Ontario and the Ministry of Labour for their efforts, commitment and work in drafting Bill 168 to improve the protection of all Ontario workers.

In closing, I want to thank the families of Theresa Vince and Lori Dupont, who have worked long and hard for occupational health and safety reform. I urge you to honour the memories of their loved ones by ensuring that when Bill 168 passes into law, it is the best legislation that it can possibly be—and I would ask you to just read that other little paragraph on your own. Thank you so much.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Schryer, on behalf of the committee, for your written deputation and your presence here today on behalf of the Ontario Coalition of Rape Crisis Centres.

I'd also like to thank my colleague Linda Jeffrey for filling in as Chair for a few of the presentations.

ONTARIO HUMAN RIGHTS COMMISSION

The Chair (Mr. Shafiq Qaadri): I'd now invite our next presenter to come forward: councillor, mayor and chief commissioner the honourable Barbara Hall, a well-known public servant and colleague who serves, as you know, as the Ontario Human Rights Commission's chief commissioner. I will now return to reinforcing with military precision the 15-minute time constraint, and I'd invite you, Commissioner Hall, to please begin.

Ms. Barbara Hall: Thank you, Mr. Chair. I'm Barbara Hall, chief commissioner of the Ontario Human Rights Commission. I'm accompanied by Jeff Poirier, senior policy staff person from the commission.

1700

The Ontario Human Rights Commission is pleased to have this opportunity to come before the Standing Committee on Social Policy and speak in support of Bill 168, the Occupational Health and Safety Amendment Act.

As you know, Bill 168 calls for new requirements for employers to develop, implement and annually review policies and programs to address workplace harassment and violence. This would include incident reporting, complaint and response procedures, measures to protect

workers from domestic violence, as well as providing information to workers about the policies and programs.

The commission views these provisions as important because workplace harassment and violence are human rights issues as well as health and safety issues. Often, workers are disproportionately targeted and harassed, or sometimes assaulted or killed, as Barbara Dupont has so eloquently and passionately described in the case of her daughter Lori. These workers are targeted and harassed, assaulted or killed because of their gender, race, ethnic origin, creed, sexual orientation or other prohibited grounds of discrimination under the Ontario Human Rights Code.

The code requires discrimination-free workplaces, including freedom from sexual solicitation made by a person in a position to confer, grant or deny a benefit, as well as protection from other forms of harassment and discrimination targeted at vulnerable individuals and groups that can sometimes lead to violence. Yet workplace harassment in particular has been the subject of many complaints filed with the commission over the years, and applications continue to be filed directly with the Human Rights Tribunal under Ontario's new human rights system.

Workplace harassment and violence is a systemic problem that deserves a systemic solution. The commission believes the type of legislative change proposed by Bill 168 is very much needed to help protect and promote the human rights of all workers. If enacted, this bill would complement Ontario's Human Rights Code and system because it would provide mechanisms directly into workplaces to promote compliance province-wide rather than having to address human rights issues and litigate compliance one case at a time.

This also benefits employers because it provides a structured means and a consistency for them to meet their obligations under human rights law. It also puts employers in a better position if they're challenged by human rights complaints.

At the same time, the commission would like to identify some areas that might be given additional consideration.

The commission is pleased to see that the bill adopts the Human Rights Code definition of "harassment," which includes both vexatious conduct and comment that's known, or ought reasonably to be known, to be unwelcome. The definition of "workplace violence," on the other hand, is specific to "physical force" against a co-worker.

While this may be one threshold to trigger a worker's right under the proposed bill to refuse or stop work if an incident or threat of violence is likely to endanger the health and safety of the worker, it should also be understood that violence and harassment are not always physical. They can take the form of psychological or emotional harm. Violence can also be the culmination of escalating acts of harassment and other forms of discrimination. Preventing violence starts with preventing and addressing harassment and discrimination. The bill

or its implementation should account for this continuation of interrelation between discrimination, harassment and violence.

Bill 168 would require employers to assess and report on the risk of workplace violence, as well as put in place measures and procedures to control the risks identified. Consideration might be given to having similar requirements for assessing and addressing the risks of workplace harassment. This can be important, particularly for preventing situations where harassment may become routine and systemic, potentially poisoning an entire workplace, negatively impacting targeted groups.

As a result of Bill 168, occupational health and safety inspectors would have a role to play in situations involving workplace violence. Inspectors or other ministry staff may have a role to monitor and enforce compliance with other provisions of the bill, including development and implementation of policies, procedures and programs. Ideally, procedures would include mechanisms to investigate allegations, mediate and resolve matters.

As well, other provisions of the Occupational Health and Safety Act may be relevant to an employer's new obligations to address harassment and violence, such as training, inspections, orders and penalties, particularly in situations where an employer has failed to take measures that could have prevented violence and harassment. In our experience, making sure these types of steps are taken will go a long way in preventing human rights violations and unnecessary litigation.

Bill 168 also provides for authority to make regulations, including a regulation "requiring an employer to designate a workplace coordinator with respect to workplace violence and workplace harassment." The commission would encourage enacting such a provision as soon as possible, because it has both symbolic and practical value. Workers will see that management takes these issues seriously, and if and when incidents occur, workers will know where to go for help. Ideally, workplace coordinators would deal with other forms of discrimination that relate to harassment and violence.

Lastly, the commission would suggest that successful compliance begins with good public education and information sharing, as well as monitoring impact on those the bill is intended to help. Provision of resources, such as templates and samples for workplace policies and procedures, would also help employers, particularly smaller ones, meet their obligations under the proposed bill.

Bringing harassment and violence under the protection of occupational health and safety legislation would help to further harmonize employment and human rights law. It also helps to promote much-needed public attention and broader social responsibility, and it demonstrates a serious commitment to addressing a serious problem.

The commission continues its own promotion and compliance work under our new public interest mandate, offering our assistance wherever and whenever we can.

Right now, Jeff and I would be pleased to answer any questions that members of the committee have had, and I will leave you copies of my remarks. Thank you.

The Chair (Mr. Shafiq Qadri): Thank you, Commissioner Hall. We have about 90 seconds per side, beginning with the government.

Mr. Vic Dhillon: Thank you, Ms. Hall, for your presentation and as well thank you for all the good work that the commission is doing in protecting Ontarians from discrimination.

1710

What's your view about the commission's role in the provisions of Bill 168? Do you see them both working together?

Mr. Jeff Poirier: Sure. As we said in the presentation, what's being proposed in the bill certainly complements what's in the Human Rights Code. The human rights system in Ontario is there when it's needed. It should be seen as the process or the option of last resort.

Really, the commission's job is to prevent complaints from coming into the human rights system, looking for complementary initiatives like what is being proposed under Bill 168, to put in place mechanisms so that employers can engage in their responsibilities under human rights law.

We should be clear: The obligation to have a discrimination- and harassment-free workplace is there under human rights law. But what's being proposed in Bill 168 really helps to put procedures and mechanisms in place to help prevent things from going too far.

The Chair (Mr. Shafiq Qadri): Thank you, Mr. Dhillon; I need to intervene there. To Ms. Jones.

Ms. Sylvia Jones: Commissioner Hall, you mentioned that you receive a number of complaints and files now. Could you give me a rough idea of the breakdown of how many would be worker on worker and how many would be outside to worker?

Ms. Barbara Hall: Jeff can.

Mr. Jeff Poirier: We don't have a breakdown of complaints exactly like that, but looking over many years, approximately 10%—actually, I should say 75% of all the complaints that come into the human rights system have to do with employment. There are other areas, like housing and services, but by far, discrimination or harassment is in employment. About 10% of the cases that come in deal with sexual harassment. Harassment takes many other forms—racial harassment, sexual orientation and so on—but for sexual harassment, it's 10% right there. We don't have anything further broken down the way you've asked.

Ms. Sylvia Jones: Okay.

The Chair (Mr. Shafiq Qadri): Thank you, Ms. Jones. Ms. DiNovo.

Ms. Cheri DiNovo: Thank you, Mr. Chair. It's always a pleasure, Commissioner Hall. I was listening with some interest. Can I take out of what you're saying that you support the recommendations that came before, by Ms. Dupont and Ms. Schryer, concerning the extension of the definition of violence in Bill 168 to include psychological violence and harassment?

Ms. Barbara Hall: We certainly believe that the legislation, in its implementation, ultimately needs to take into account the continuum.

Mr. Jeff Poirier: And I would just add, the way the bill is written right now, there are a number of things that are covered, both on the side of harassment and violence, so there's a lot that is similar for both. Departure happens in two areas: one is for workers who want to stop the workplace or refuse to work—that's tied to the narrower definition of violence being physical; and the other area being the employer's responsibility, in advance, to look at what the risk factors are for violence in the workplace.

We're proposing in our submission that employers also should have the same obligation to look at the risk factors around harassment.

The Chair (Mr. Shafiq Qadri): Thank you, Ms. DiNovo, and thanks to you, Mr. Poirier and Commissioner Hall, for your deputation and your written submission, which I understand is forthcoming.

CANADIAN SOCIETY FOR INDUSTRIAL SECURITY

The Chair (Mr. Shafiq Qadri): I'd now invite our next presenter to please come forward: Mr. Robertson of the Canadian Society for Industrial Security. Welcome, Mr. Robertson. You've seen the protocol. You have 15 minutes in which to make your presentation. I invite you to begin now.

Mr. Brian Robertson: Thank you, Mr. Chair. My name is Brian Robertson. I'm the regulatory affairs adviser to the national board of directors for the Canadian Society for Industrial Security.

CSIS is a national industry association for private security professionals. We were incorporated federally in 1954. Although we have membership all across Canada, about 60% of our membership currently is from the province of Ontario, where we have active local chapters operating in the greater Toronto area, the National Capital Region, and southwestern Ontario.

By and large, we represent the kind of people who employ security workers in the province of Ontario. There are about 65,000 security workers licensed under the Private Security and Investigative Services Act here in Ontario. These are typically contract security guards, in-house security officers, bouncers in nightclubs and other licensed premises, retail loss prevention officers in department stores, private investigators, bodyguards—that kind of thing.

If you're in one of those occupations, workplace violence is and has for a long time been an important occupational issue for you. In the security industry and at CSIS, we're particularly proud of the role that we have always played and continue to play in helping to protect other workers in the workplace from the threat of violence in the workplace. But we in that role face some challenges.

The primary challenge that we face in terms of this issue is that, whereas our workers are often the people who get inserted between other workers and the violent folk, we as employers recognize that our employees are themselves workers who are entitled to expect us to take

reasonable measures to protect them from the threat of workplace violence in their workplace. The challenge here is that in most cases when you're dealing with a workplace hazard, the primary paradigm for protecting somebody from it, the most basic way to protect somebody from it, is to tell them to avoid it, to get them away from the hazard. The problem for our employees is that if the hazard is workplace violence, their job description says that they're supposed to run toward the hazard. This creates a real problem for us, a real dilemma.

Now, this is not a description of every security worker in the province. There are lots of security employers' situations where the employer's instructions to the workers are to take a hands-off, no-intervention approach: observe and report, call the police, that kind of thing. But it's also true that there are a significant number of employers in this province, if you consider that we're talking about bouncers in bars, security in hospitals, security at special events, security in retail, loss prevention officers, who do require their employees to use force in the execution of their duties.

We spend a lot of time in my industry debating over the exact role of the private security industry versus public police: What should we be doing, what shouldn't we be doing? We spend a lot of time debating and get a lot of media attention around issues of use of force. But there are three observable facts that we're kind of stuck with. One is that criminal law in Canada in fact confers on our workers fairly significant authority to make citizen's arrests, to use force to make arrests, to remove trespassers, to protect other workers from violence. The second thing is that there are a significant number of employers who, as a matter of course, require security workers to do that. And thirdly, as a result, there are a significant number—and I'm talking some tens of thousands of workers in this province—who do in fact on a day-by-day basis use force in order to execute the duties that they carry out.

Some employers in our industry do a really good job of protecting our workers from the threat of workplace violence to them, but some don't. I think it's axiomatic that regulations tend to be designed to change the behaviour of employers or members of the public who aren't inclined to be compliant. Because of that, we at CSIS have looked forward with positive anticipation to workplace violence legislation in the province of Ontario.

By and large, I should say that we respond fairly positively to Bill 168 and we think the province has taken advantage of being late into the field compared to other provinces and has come up with a fairly comprehensive piece of legislation. In contrast to some of the previous speakers today, our view is that a good job has been done of balancing the different kinds of workplace violence. Our view is that whether the violence is at the hands of an intimate acquaintance, at the hands of a co-worker, at the hands of an irate customer or at the hands of a felon who has come in off the street, all workers deserve protection from violence. Not all the violence that workers are subjected to is the culmination of a long pattern of harassment based on intimate relationships.

1720

We think it's salutary that the province is dealing with domestic violence, discrimination and workplace violence all under the same piece of legislation, without unnecessarily muddling the definitions. Our experience in other jurisdictions where we've looked at this kind of legislation is that often disproportionate attention on policies to prevent discrimination in the workplace results in there being short shrift given to practical measures in place to protect workers from physical violence who aren't subject to that violence as a result of the culmination of a long series of events.

We are generally in favour of the legislation, but we also have concerns about it. The concern we have and the reason that we've come forward today is that although the legislation is very specific in some areas, it is in some cases not specific enough, we think, to get at least the employers in our industry to the line. For that reason, we come forward with two recommendations.

The first relates to the right to refuse unsafe work. You're all aware that under section 43 of the act, workers have the right to refuse unsafe work and that Bill 168 will be extending that right in circumstances where there's an apprehension of a threat of workplace violence.

You're also all aware that there are essentially three exceptions to this set out in the legislation. There is an exception where it can be said that the threat of exposure to workplace violence is a normal condition of employment, that it's inherent in their work. There is provision for exception from the right to refuse in circumstances where a refusal to do the work would endanger the life, safety or health of someone else. And there are four specific categorical exceptions for four broad categories of occupation—essentially police, fire, corrections, and hospital workers. There is also provision, again as you're aware, for the minister to make regulations specifically designating occupational groups as groups for which the threat of workplace violence is inherent. But our view and our recommendation is that licensed security workers, who are a very clearly defined group in Ontario, should be added as a fifth categorical exception.

The reason for that is that we have a significant apprehension that if Bill 168 passes in its present form and security workers are given the right to refuse on the basis of workplace violence, there will be a significant number of security workers who exercise that right. We're going to end up, we think, in situations where the employer says, "Go in and break up that fight," or "Protect that woman from violence," and the worker is going to say, "I'm not going to. I'm going to exercise my right to refuse under section 43." The employer is going to say, "Ah, but it's an inherent condition of your work," and the employee is going to say, "No, it isn't, because if it were, you'd give me a bulletproof vest." At the end of the day, we're going to have legislation being made by Ministry of Labour inspectors coming out and making rulings in the field or by arbitrations.

Our view is that we should maintain the status quo, create an exception for licensed security workers, and

avoid jeopardizing an apparatus that's already in place. Our workers are a key component in protecting other workers from physical workplace violence. If we extend to them the right to refuse unsafe work under these circumstances, we're going to be dismantling one of the few tools we have that's working right now to protect other workers from workplace violence.

Now, there are, no doubt, some in our industry who oppose that idea. In fact, we have had colleagues say to us, "Gee, you better not ask for a categorical exception, because if we do that, we'll be tacitly admitting that the threat of workplace violence is inherent to the work that our workers do." We said, "What's wrong with that?" The reply we got was, "Well, if we admit that, then the Ministry of Labour people are going to come around and require us to do a whole bunch of things to protect our workers from workplace violence." We replied to that, "Bingo."

Our position in coming here today isn't to make the situation worse for workers in the security industry but, rather, to make it better. Our view is that there is in our industry a group of employers who specifically require their employees to use force in the execution of their duties. If you're in that position as an employer, we feel that this legislation should have a provision which specifically imposes some duties on you as an employer to make sure that you are protecting those workers.

In essence, there are four things that we think that legislation should require those employers to do:

(1) Have clearly articulated use-of-force policies, so that the workers know whether they are or are not expected to get involved in a use-of-force situation.

(2) Conduct risk assessments to determine whether or not your workers need to have protective equipment like slash-proof vests or bulletproof vests or handcuffs.

(3) Make sure that your employees have training on basic things like their legal authority to use force, verbal de-escalation skills—that sort of thing.

(4) If you are one of those employers who expect your employees to use force, you need to provide them with training and current certification on how to do that: arrest and control tactics, force guidelines—that sort of thing.

In conclusion, workplace violence is a really big problem in the economy, but the work that security workers do is a really big part of the solution. Thousands of security workers in this province put themselves in harm's way every day to protect other workers from workplace violence. What we're recommending to the committee, to the government and to the province is that you do two additional things to respond to that fact:

One is to require employers to make a decision one way or the other: Either clearly instruct them that they're not to use force, or, if they're going to require them to use force, make sure to provide them with the necessary training, protective equipment and direction so that they can be safe as workers while they're protecting other workers.

The other recommendation we make is that we not dismantle a system we have in place for protecting other

workers by giving security workers the ability to refuse to do the very thing they're trained and equipped and tasked with doing.

That concludes my remarks.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Robertson. We have a brisk 40 seconds per side. Ms. Jones.

Ms. Sylvia Jones: A quick question: How many members do you have in your organization?

Mr. Brian Robertson: About 600 or so, nationally.

Ms. Sylvia Jones: Thank you.

The Chair (Mr. Shafiq Qaadri): Ms. DiNovo.

Ms. Cheri DiNovo: It sounds to me like your members need to organize a union across the board to protect themselves. Having said that, you raise some very interesting points that bear further study, as far as I'm concerned. I certainly will look into it and take your amendments seriously.

The Chair (Mr. Shafiq Qaadri): Now to the government side: Mr. Dhillon.

Mr. Vic Dhillon: Mr. Robertson, you may be aware that the Ministry of Community Safety and Correctional Services oversees security workers under the Private Security and Investigative Services Act. Would you recommend that these pieces of legislation work together in your industry?

Mr. Brian Robertson: It would be delightful if occupational health and safety legislation and regulatory licensing legislation could be coordinated. It hasn't been our experience that that happens in any jurisdictions, but we think it would be a delightful thing if it did.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Robertson, for your deputation on behalf of the Canadian Society for Industrial Security.

BULLYING EDUCATION AND AWARENESS CENTRE OF ONTARIO

The Chair (Mr. Shafiq Qaadri): I now invite our next presenter, Ms. Beacock, of Bullying Education and Awareness Centre of Ontario, to please come forward. Welcome, and I respectfully invite you to please begin.

Ms. Marina Beacock: My name is Marina Beacock. I'm a director of a newly registered non-profit organization known as the Bullying Education and Awareness Centre of Ontario.

Currently, we're in start-up phase, getting our organization up and running. We serve all of Ontario and are located in Dufferin county, most recognizable as the town of Orangeville.

While our non-profit status is new, the work we have done is not. It evolved from volunteering our time to help a growing number of individuals who have experienced bullying in the workplace and did not know where to turn for help.

In the coming months, we'll be offering access to a greater number of resources, an extensive network of referrals, and education and awareness workshops to

individuals, employers, government, unions and interested groups.

We're affiliated with the Workplace Bullying Institute, which has been doing this work for the past 10 years. They're dedicated to everything that is related to workplace bullying, including lobbying for healthy workplace legislation.

For the purposes and simplicity of this presentation, the term "bullying" will be used from here on, with the intention that it is interchangeable and represents all of the following, but it is not a synonymous term: psychological harassment in the workplace, abuse of power, abuse of authority, psychological violence and violence in the workplace.

1730

If you turn to your handout, on the first page, the Workplace Bullying Institute provides the following definition of "bullying":

"Bullying at work is repeated, health-harming mistreatment of a person by one or more workers that takes the form of verbal abuse; conduct or behaviours that are threatening, intimidating or humiliating; sabotage that prevents work from getting done; or some combination of the three. Perpetrators are bullies; those ... receiving ... are targets.

"It is psychological violence—sublethal and non-physical—a mix of verbal and strategic assaults to prevent the target from performing work well. It is illegitimate conduct in that it prevents work from getting done. Thus, an employer's legitimate business interests are not met.

"The bully puts her or his personal agenda of controlling another human being above the needs of the employing organization."

I was fortunate to be able to attend the International Conference on Workplace Bullying in Montreal in 2008. At that conference, I heard speakers from all over the world who provided a great deal of research on workplace bullying and the damaging effects on targets. This is a silent epidemic of enormous global proportions.

We applaud the province of Ontario for stepping up to the plate in an effort to join two other Canadian provinces and the federal government by introducing Bill 168. We are in full support of healthy workplace legislation, which includes measures to address workplace violence, workplace harassment and domestic abuse as it relates to the workplace. While this is a step in the right direction, we believe that Bill 168 requires further amendments before it is passed into law, as it falls short in a number of key areas.

In section 1 of the proposed legislation, there are definitions of workplace harassment. The language in those definitions needs to be amended to be more specific. In its present form, it has the potential for employers to be faced with many frivolous complaints. "Workplace harassment" needs to be broadened to include both the terms and individual definitions of "workplace bullying," "psychological harassment," "abuse of power" and "abuse of authority."

The definition of workplace violence also needs to be expanded to include psychological violence in addition to physical violence. Psychological violence is much more prevalent than physical violence and significantly impacts both the psychological well-being of targets and their physical health.

On the next page, you will see the Statistics Canada Ontario labour force survey of 2007. That survey showed that there are 10,362,000 residents of Ontario 15 years of age and older, of which 6,594,000 were employed, 450,000 were unemployed and 3,318,000 were not in the labour force—we don't have current statistics in the province of Ontario. We have used a survey called the WBI-Zogby workplace bullying survey for the same year, 2007. In that particular survey, 7,740 interviews were conducted to create a representative sample of all American adults.

The key findings were: 37% of workers had been bullied, 12% had been witnesses or bystanders of bullying, 72% of bullies were bosses, 57% of targets were women, 62% of employers ignore the problem, 45% of targets suffer stress-related health problems, 40% of bullied individuals never tell their employers it is happening and 3% of bullied people file lawsuits. These are American statistics, but we feel that this survey is a fairly accurate reflection of what Ontario would look like.

Using those statistics and applying them to the Ontario labour force survey would mean that in Ontario we would have 2,440,000 employed workers who have been bullied at their workplace, 791,280 employed workers who were witnesses or bystanders of bullying, 166,500 unemployed workers who in the past have experienced bullying at work and 54,000 unemployed workers who have been witnesses in the past. These figures are astronomical. They represent almost half of the workers in Ontario.

On the next page, you will see damages that relate to bullying. Work shouldn't hurt, and yet the emotional, psychological and health damages—and I won't read them all, but I will focus on a few key ones: loss of sleep, fatigue, post-traumatic stress disorder, nightmares about the bully, panic attacks, anxiety, clinical depression, self-destructive behaviours such as drug and alcohol abuse and workaholism. Suicidal thoughts are on that list as well. Physical stress in relation to bullying: heart attacks and high blood pressure; stress headaches; migraines; reduced immunity to infections, which means people would have more flu and colds; and neurological changes in the brain structures and neurotransmitters.

Social damages, on the next page: Co-workers are isolating the targets because they themselves are afraid that they are going to be the next target of the workplace bully. There's abandonment by co-workers. There's wavering support from family. The stress has been so severe that it has caused separations and divorce by immediate family members and abandonment by friends outside of work.

Finally is economic and financial damages: People are taking sick leaves, they're going to their doctor, they're

taking unpaid leave, they're taking vacation times just to deal with these things. They're exhausting their personal savings. They have credit problems because they over-extend their credit cards and lines of credit when their income is cut. When their disability payments run out and the money runs out, their house is sold, their assets are liquidated, they cash in their retirement savings plans, and some are even forced into bankruptcy.

When bullying in the workplace occurs, targets are not at fault. They do not invite this type of toxic and harmful behaviour and have no way of making it stop, because the employer controls the work environment. It's about time bullying in the workplace is recognized as being a forerunner to what can and does lead to physical violence in the workplace. This is a silent epidemic. It's responsible for a vast number of workplaces in the province that are toxic and harmful to employees. If bullying is ignored or not appropriately dealt with by employers and strong legislation, this can lead to people being pushed over the edge, resulting in violence in the workplace such as suicides and homicides.

WBI-Zogby survey findings indicate 62% of employers ignore the problem. We are recommending that employees who have situations or complaints in connection with bullying in the workplace be provided with unrestricted access to the services of an independent investigator, and that needs to be in the legislation.

When investigations of complaints are done internally by human resources, health and safety committees or representatives, it is more difficult for the internal investigators to be objective, since the bully, the investigator and the target are all paid by the same employer. This is like having a fox guarding the henhouse.

Lastly, provisions need to be made in legislation that the results of investigations into complaints in connection with bullying are open and transparent. Too many are buried by employers who insist employees sign gag orders in order to settle disputes.

In conclusion, we support healthy workplace legislation such as Bill 168 to protect all workers in the province of Ontario, and we recommend that the Standing Committee on Social Policy take these recommendations under advisement. Bill 168 needs to be further amended and broadened to include bullying in the workplace, psychological harassment in the workplace, abuse of power and abuse of authority in the workplace, psychological violence and violence in the workplace. If 62% of employers ignore the problem, then complaints need to be handled by an independent investigator.

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Lastly, upon completion of investigations, decisions should not be hidden by gag orders; they need to be open, transparent, and the information accessible to the public. We recommend that Bill 168 be further amended and significantly strengthened before it is passed into law. Let's make Ontario's Occupational Health and Safety Act the very best that it can be. Let it be the model for the other provinces and territories to follow.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Beacock. Nous commençons avec le NPD. Monsieur Marchese, une minute, s'il vous plaît.

Mr. Rosario Marchese: Thank you. Is it Marina? Sorry.

Ms. Marina Beacock: Yes.

Mr. Rosario Marchese: Marina, you made some very strong arguments. I'm not sure from what I heard that I disagree with anything you said. I'm assuming we will be making many of the amendments that you have suggested. I'm assuming many others who have deputed probably are making similar kinds of comments. Thank you very much.

Ms. Marina Beacock: Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Marchese. The government side: Mr. Dhillon.

Mr. Vic Dhillon: Thank you very much, Ms. Beacock. Could you give a bit of a background about your organization and exactly what types of services you provide?

Ms. Marina Beacock: As I mentioned in the introduction, we are a newly minted non-profit organization, so we're in start-up phase right now. Once we're actively up and running, we are going to continue what we've been doing on a volunteer basis, and that's helping people who contact us. They don't know where to go or where to turn. We're going to be providing them with resources where they can get some help. That will include medical services—not directly from ourselves, but referrals—potentially legal counselling services, whatever it is that they need in order to help in their situation.

We'll be doing awareness workshops and educational workshops because this—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Dhillon. To you, Ms. Jones.

Ms. Sylvia Jones: A quick question, Marina: I'm gathering from your last page that you are not supportive of the workplace coordinator that is currently being recommended in Bill 168. You want to take that outside of the workplace?

Ms. Marina Beacock: I could see a coordinator being perhaps the first point of contact in the workplace.

Ms. Sylvia Jones: Or an educator.

Ms. Marina Beacock: A coordinator or an educator. Perhaps the coordinator can resolve smaller disputes, but where there are serious allegations and complaints, we feel that investigations need to be handled externally.

One reason we feel that way is that the people who are coming to us are fearful. They don't know who to trust—

Ms. Sylvia Jones: Sorry, and separate from the Human Rights Commission? Because that's the option you have right now.

Ms. Marina Beacock: That would be something that we have not discussed, but I did hear the presentations—

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Jones, and thanks to you, Ms. Beacock, for your deputation and written submission on behalf of the Bullying Education and Awareness Centre of Ontario.

CANADIAN UNION OF PUBLIC EMPLOYEES

The Chair (Mr. Shafiq Qaadri): I'd now invite our next presenter to please come forward: Mr. Fred Hahn, Ontario secretary-treasurer of CUPE, Canadian Union of Public Employees, and colleagues. You know very well the protocol here. Please do introduce yourselves for Hansard, and I invite you to begin now.

Mr. Fred Hahn: Thank you. My name is Fred Hahn. I'm the secretary-treasurer of CUPE in Ontario. With me today are Blain Morin, who is an occupational health and safety staff representative with our union, and Archana Rampure, who is a research representative with our union.

We have a formal presentation in writing which we'll also distribute, so there's some more detailed information there, but I'm going to do a bit of a summary for the committee now.

We welcome the introduction of Bill 168, on behalf of our 220,000 members of the Canadian Union of Public Employees who work in the broader public sector. We have members who work in health care, hospitals and long-term-care facilities, municipalities, hydro utilities; members who are paramedics, librarians, social service workers in child care and developmental services; and in all parts of the education sector, from early learning, elementary schools and secondary schools right up to universities all across the province.

Since the 1980s, CUPE Ontario has made deputations to several provincial ministerial committees about the increasing aggression and violence experienced by our members in workplaces across the province. Due to the nature of their work, many of our members are exposed to varying forms of violence, from verbal and written aggression, acts of bullying and harassment, to direct physical aggression and violence from members of the public, co-workers, clients and their families.

CUPE Ontario is also deeply concerned by the increasing instances of psychological, physically aggressive and verbal acts of violence aimed specifically at racialized workers. We think that the act would be much more powerful if it addressed these issues separately.

We're convinced that workplace downsizing and restructuring, combined with the increased reliance on part-time and casual staff by employers, is actually fuelling workplace violence. The devastation to productivity that workplace violence has been documented, time and again, to result in has real economic impacts that negatively impact us all—and they're never good. But they're even more problematic in our current economic climate.

In our response to the Ministry of Labour's consultation before the bill was tabled, we'd emphasized that we saw a real need for the Occupational Health and Safety Act to be amended to include workplace violence and harassment as occupational hazards. We had also urged the Ministry of Labour to bring forward the issue of domestic violence and its impact at work under the purview of these amendments. We're very glad to see

that that is how the ministry has chosen to proceed, but we're here today in hopes that Bill 168 can be further strengthened in order to actually complete the critical task of protecting Ontario's working people.

CUPE Ontario, like the human rights commission and other deputants, is asking that Bill 168 be broadened to encompass all forms of violence, including physical acts, bullying, and verbal and psychological aggression, and that it should allow for the right to refuse unsafe work based on all of these forms of violence. The broadening of the act covers these forms of violence, and with a comprehensive definition that would include verbal assault, harassment, bullying, psychological trauma, domestic violence in the workplace, as well as physical acts of violence and aggression, would send the strongest possible message about the complete unacceptability of workplace violence and harassment. The act needs to explicitly define harassment and to include single events. It needs to explicitly cover all workplaces in all provincial sectors, including the homes of clients or other off-work-site locations.

Specific recognition in the act that violence is an occupational hazard and inclusion of the precautionary principle both in the act and in regulations will ensure that the application of violence as a workplace hazard is equally important to others.

We think that the standing committee needs to ensure that there's an obligation on employers to actually protect workers against violence in the workplace—as opposed to control risks, which is what the bill currently says. It's not enough to assess risks or to develop policies and programs. Protection must enter the bill as an actual obligation.

The section on harassment is much weaker than the section on violence. For example, there's no requirement to control the risks of harassment. Harassment is on a continuum which can lead to escalations and other forms of violence, and this just isn't good enough for the workers of Ontario.

Further, we're convinced that strong reprisal protection for workers must be enshrined in the act to ensure that employers and no others intimidate workers from reporting incidents of harassment or violence. Our members would like to see specific reference to meaningful consultation and participation of worker representatives on workplace joint health and safety committees in dealing with workplace harassment and violence.

It's very important that employers will be required to develop and annually review policies on harassment and violence, but they must also be made to develop and maintain programs to implement these policies. Bill 168 should clearly and explicitly state what these policies would include. Policies should include commitment statements; a definition of workplace violence; the roles and responsibilities of employers, supervisors, health and safety committees, health and safety representatives and workers; as well as a commitment to debrief a worker who has been exposed to violence and harassment and to provide them with other required supports and services.

We're concerned that the bill, in this regard, is too vague with reference to simply developing and maintaining policies and programs against harassment and violence. We think the bill must include some parameters for such policies and programs to be truly effective.

I've outlined some general amendments that we'd like to see and that we think are necessary in Bill 168 to make it an even more effective mechanism to better protect workers in the province of Ontario. Specific changes to language are included in our written submission.

In closing, I'd like to note that in the main, we're supportive of the introduction of this bill and its amendments. We believe that it is a good first step. But changes to law like this do not happen very often, and we think that the government has a real opportunity to get it right. We simply want to make sure that this bill is as comprehensive as possible and that it affords the protections that all working people in Ontario deserve. We believe very strongly that when workers are afforded such protections, we will all benefit.

Thank you very much.

The Chair (Mr. Shafiq Qadri): Thank you, Mr. Hahn. We have about two and a half minutes per side, beginning with the government. Mr. Dhillon.

Mr. Vic Dhillon: Thank you very much for your presentation. In your view, what would be the most correct definition for workplace violence?

Mr. Fred Hahn: Well, there are several definitions of violence. I think that in our brief—I'm trying to remember if we include a definition that we would prefer.

Mr. Blain Morin: I do believe that there was a European definition that we brought forward in our original brief. As well, we made reference to the brief that was passed by the federal government—so the federal code definition, which included psychological components.

Mr. Vic Dhillon: Thank you.

The Chair (Mr. Shafiq Qadri): Thank you, Mr. Dhillon. To the PC side: Ms. Jones.

Ms. Sylvia Jones: You make reference to "all provincial sectors, including the homes of clients and other off-site workplace locations." How would you envision that protection actually showing up in legislation?

Mr. Fred Hahn: Well, the reality for many of our workers who work in people's homes is that those homes, while they are of course those people's homes, are work sites for our members. There would have to be protections enshrined for those workers. There are a variety of ways in which that could happen, and they would have to be decided through the joint health and safety committees.

It's not about infringing on the individual's home; it's about providing mechanisms for the worker to be able to contact people outside, should they be subject to some form of harassment or violence.

Ms. Sylvia Jones: They have that now with the right to refuse, correct?

Mr. Fred Hahn: Well, the right to refuse can be a complicated right in dealing with people, but the reality is that what's being imagined in this amendment to law is

that it's important to make sure that it covers all workplaces. For our members and for many other workers, it's important to understand that workplaces are not just work sites; sometimes they're people's homes.

Ms. Sylvia Jones: Okay.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Jones. Mr. Marchese.

Mr. Rosario Marchese: Fred, like the previous speaker, you talked about the need to broaden the definition to include psychological harassment, psychological trauma or bullying and verbal acts of violence. I think it applies. Did you say that it needs a separate act to be dealt with, or that it can be dealt with in this bill by simply redefining what should be included? Is that what you were saying?

Mr. Fred Hahn: We believe that it can be dealt with here. As long as the definition is broadened and clearly defined, it can be dealt with in this piece of legislation, and that's what we would prefer.

Mr. Rosario Marchese: I agree with that. I'm assuming you met with staff of the ministry before—ministerial staff, political staff possibly—and you presented these views. Were they receptive at all, or did they say, “Yes,” “No,” “It's hard”—what did they tell you before?

Mr. Fred Hahn: Do you want to do it, Blain?

Mr. Blain Morin: I think that we had some very good discussions with ministry staff around the policy advisement. They were open, and we did have lots of discussion about the federal definition. There seemed to be a barrier in including the psychological components of workplace violence. The psychological aspects, those harassments—it just didn't seem that we could expand upon that or make good enough headway.

Mr. Rosario Marchese: So what's the barrier, sorry?

Mr. Blain Morin: The psychological components, it would appear.

Mr. Rosario Marchese: It's a barrier to the government, to the minister, to this bill, to what?

Mr. Blain Morin: I guess to the definition. It would be a barrier if we don't include it. I guess when we discussed it, we discussed a lot of things—psychological harassment—but again, we did the split definition. I guess we didn't make a good enough argument, but we feel very strongly that that should still be in there.

Mr. Rosario Marchese: I'm not the critic; Cheri DiNovo is the critic. I'm sure that we will be introducing amendments that will reflect this. It seems to me eminently reasonable, and we hope that the members are going to accept it. Thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Marchese, and thanks to you, Messieurs Hahn and Morin and Ms. Rampure, for your deputation on behalf of CUPE, Canadian Union of Public Employees.

I would now just advise my colleagues that, first of all, we will invite our next presenters to please come forward momentarily, but our presence is due in Parliament for a vote which takes place in eight minutes exactly. Until such time as it is completed, committee is recessed.

The committee recessed from 1750 to 1804.

ONTARIO PROFESSIONAL FIRE FIGHTERS ASSOCIATION

The Chair (Mr. Shafiq Qaadri): Thank you, colleagues. I reconvene the committee for our next presenters: Messieurs McKinnon, Doherty, Ashfield and possibly others, on behalf of the Ontario Professional Fire Fighters Association.

Gentlemen, I invite you to begin now.

Mr. Mark McKinnon: Thank you very much. Just for the record, my name is Mark McKinnon. I'm the executive vice-president of the Ontario Professional Fire Fighters Association. I have with me, to my left, Hugh Doherty, chair of the Ontario Professional Fire Fighters Association human relations committee. He is also co-chair of a joint health and safety committee here in Toronto and a fire captain. Kevin Ashfield, on my right, is a member of the Ontario Professional Fire Fighters Association health and safety committee. He's also a firefighter and a member of a joint health and safety committee in Toronto, where he works. With us also, but not joining us up front, is Jeff Braun-Jackson, our office manager and researcher. Unless questions get really tough, the three of us will try to deal with them.

1810

The Ontario Professional Fire Fighters Association represents approximately 11,000 full-time professional firefighters across Ontario. Our members provide emergency response, training, prevention, inspection, public education, fire investigation, emergency communications and maintenance for much of Ontario's fire services.

Our members also represent 80 locals or associations—77 municipal fire departments, two airports and one industrial—and we're all chartered with the International Association of Fire Fighters. Relying upon our most recent Canada census data for 2006, our 77 municipal firefighter associations represent and respond to the emergency needs of approximately 81% of Ontarians. As I said earlier, members of the Ontario Professional Fire Fighters Association sit on several standing committees. Two of these committees—our occupational health and safety committee and our human relations committee—focus on the issues contained within Bill 168.

As an organization, I should stress that the OPFFA takes seriously its commitment to the health, safety and well-being of our members and a workplace free of harassment.

As a bit of background, we see that Bill 168 has three goals: (1) to clarify the obligations and rights of workers through policies and programs with respect to violence and harassment in the workplace, (2) to show employers what minimum standards are expected to keep workplaces free of violence and harassment and (3) to provide workers the right to refuse work if their situation is unsafe as a result of workplace violence. These goals are based on the tragic deaths of Theresa Vince and, as we heard today, Lori Dupont, women who were brutally murdered by their colleagues in their places of work.

Workplace violence and harassment is intolerable in any form, and we laud the Minister of Labour in his

efforts to curtail the harms visited upon workers across this province. However, we do have a couple of concerns with regard to the legislation in its current form.

The entire concept of workplace health and safety is based on the foundation of joint responsibility between the worker and management, employers and employees. The current Occupational Health and Safety Act, as well as Bill 168, outline the responsibilities of employers, supervisors and employees as well. However, what we see as noticeably absent from the proposed bill is the joint nature of developing some of the most sensitive health and safety workplace policies we have witnessed.

Bill 168 calls on the employer to conduct all the critical tasks, such as developing policies regarding workplace violence and harassment, and setting a schedule for the review of such policies; developing and maintaining a program to implement these policies, which includes the reporting and investigation of risks; assessing the risk; and providing a worker with information and instruction regarding the policy and program with respect to workplace violence.

When it comes to the employer's responsibility to engage employee representatives, it is only to advise them after the assessment and the reassessment of risk. Yet, under the duties respecting workplace violence, the responsibilities of the supervisor, as set out in section 27 of the act, apply. This is important in the fire service, as we follow a paramilitary structure. As such, our supervisors are typically part of the same bargaining unit as the majority of our members.

This is a critical concern, given the obligation to share personal information respecting a person's history of violence. However, there are limits to the disclosure of this personal information to the point of what is "reasonably necessary." We would suggest that the term would have a considerable amount of latitude in its interpretation, depending on the person disclosing the information.

The bill extends authority to the Lieutenant Governor to make regulations, including the designation of a workplace coordinator with respect to workplace violence and workplace harassment, and also to amend section 43 of the act regarding employees with a limited right to refuse work.

The question will be raised as to what latitude the employer will have in the designation of the coordinator's position. Will it be considered a bargaining unit position and contain bargaining unit work? Can a bargaining unit member refuse the designation? Will the union or the association be consulted prior to any of the new working conditions associated with the position?

Second, we have concerns with respect to the right to refuse work. Invoking this right results in an investigation where the worker is removed from the unsafe situation until the investigation is completed. Many of our fire service workplaces are small, with very few employees on duty and having the responsibility to respond in an emergency vehicle. Further, it is important to note that in some cases where the fire service has experienced workplace violence, it has involved volunteer or part-time firefighters. Will volunteer and/or part-time fire-

fighters also be considered employees for the purpose of workplace violence and harassment?

The OPFFA strongly suggests that, given the sensitive nature of these proposed amendments, the employer "shall" work through the joint occupational health and safety committee, where one exists, or in the absence of a joint occupational health and safety committee, through a committee composed of an equal number of representative members—employee and management—or at least a voluntarily recognized employee representative, with respect to the development of policies and programs respecting workplace violence and harassment.

Further, we believe the employer "shall" work through the joint occupational health and safety committee for the investigation and the development of recommendations that flow from these or any such events that may occur with respect to Bill 168. The designation of the workplace coordinator must be done in consultation and agreement where a union, association or voluntarily recognized employee representative exists.

Full specialized training must be provided to members responsible for investigating acts of workplace violence and harassment, especially when supervisors and employees are both within the same bargaining unit. Also, all employees should receive training as to their rights and responsibilities as they relate to violence and harassment in the workplace.

Finally, consideration must be given to unique workplaces when developing regulations with respect to the right to refuse work, i.e. emergency vehicles, small work locations etc.

In conclusion, the OPFFA supports this government's initiative; however, we feel there needs to be greater recognition of the inclusion of employee representatives, where they exist, to be successful in the implementation of Bill 168. The use of joint occupational health and safety committees has proven successful in joint acceptance and advocacy of workplace safety under the current act, and we believe the same vehicle needs to be utilized in these circumstances.

Lastly, we would suggest sector-specific consultation in those areas with unique workplaces and circumstances respecting the right to refuse work prior to the creation and enactment of a regulation. Thank you for the opportunity to say these words. The three of us are obviously available for questions.

The Chair (Mr. Shafiq Qadri): Thank you, Mr. McKinnon. We have two minutes per side, beginning with Mr. Hillier.

Mr. Randy Hillier: Thank you very much for being here. I want to expand a little bit on your discussion regarding privacy and your concerns about the sharing of personal information. We can see that it's going to be very difficult to put this in a prescribed formula, which is what we're always trying to do with legislation. How do you see this actually working in the fire services, where people will have to know—if they do know personal information—and will have to divulge that personal information to other people in the fire crew? Do you see

any concerns or difficulties as far as morale and everything else within the fire crew?

Mr. Mark McKinnon: My experience has been from human relations. If we have an issue in some workplaces, depending on the policies that are implemented by the employer in conjunction with the association, if you take an individual who, say, has an alcohol issue with violence, as he or she goes through the appropriate rehabilitation process and meets certain targets for his or her return to work, my experience has been that if those targets are addressed and met, and you sit down with the crew and say, "Here are the targets they met," we don't need to get into what that individual has done outside of that. We urge people, if they see changes in behaviour, to immediately contact the employer officer in charge.

1820

Mr. Randy Hillier: And what about any concerns— one phrase in here is that if the employer—and again, this will be a little bit more confusing, whether it's a supervisor—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Hillier. Mr. Marchese.

Mr. Rosario Marchese: One of the questions that Marina Beacock raised was that you should have an outside investigator to investigate acts of violence, bullying and all those things because to have an internal person is problematic. It creates problems. Do you have any suggestions or opinions about that?

Mr. Mark McKinnon: We believe that with a joint committee, like a joint occupational health and safety committee, with the confidence of the employer-employee relationship and management-union relationship that exists in a joint health and safety committee, if you can deal with matters internally, you're further ahead. When we can't deal with things internally, then we would see that as the role of the human rights commission and the tribunal.

Mr. Rosario Marchese: Okay.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Marchese. To the government side, Ms. Sandals.

Mrs. Liz Sandals: Thank you for coming, Mark and colleagues. I'm a little bit confused around the right to refuse. I would have thought that for firefighters the workplace is inherently dangerous and you're exempted from the right to refuse because the workplace is dangerous. Are you concerned that right to refuse, because of harassment issues, could be layered over that normal anticipation of an exemption?

Mr. Mark McKinnon: I'll give a brief answer to that and then allow my colleagues to expand. If in a small fire service—Kapuskasing—where there may be two or three people on duty at any given time, you come into your workplace and there's an issue of harassment or, God forbid, violence and you have to separate and can't have those people working together, you then do not have an emergency apparatus that's available to respond.

Mrs. Liz Sandals: You need a full crew to go on the truck when the bell rings.

Mr. Mark McKinnon: Yes, and then our right to refuse exists when the bell goes, and then, regardless of

what's going on, whoever's in the station or who's been in response—

Mrs. Liz Sandals: The crew needs to get on the truck and go. Is this something where we need to capture this unique circumstance in legislation or is this the sort of thing where, if there were policy guidelines around this capturing, that would work?

Mr. Mark McKinnon: One of our requests, when we get into the right to refuse and setting regulations, is that there be sector-specific discussions so we can sit down with and maybe involve the fire chiefs' association, our association, and come up with a resolve that we all agree is the best thing for number one, the citizen.

Mrs. Liz Sandals: So we don't need to sort out legislation—

The Chair (Mr. Shafiq Qaadri): Thank you, Mrs. Sandals, and thanks to you, Mr. McKinnon, Mr. Doherty and Mr. Ashfield and your colleagues on behalf of the Ontario Professional Fire Fighters Association, for your presence and deputation today.

Mr. Mark McKinnon: Thank you for your time.

EMPLOYMENT DISPUTE RESOLUTIONS

The Chair (Mr. Shafiq Qaadri): I now call upon our final presenter of the evening, Ms. Campagna, of Employment Dispute Resolutions, and colleague. Welcome and please begin.

Ms. Carin Campagna: My name is Carin Campagna. I'm a paralegal who represents employees in wrongful or constructive dismissal disputes and workplace discrimination before the Ontario Small Claims Court and the Human Rights Tribunal, respectively.

First, I commend the ongoing commitment of all those who continue to advocate for the prevention of domestic violence and violence against women in the workplace. Years ago I was a volunteer for two women's shelters and honoured by the city of Toronto and the Family Service Association for my role in inviting Toronto Star reporter Catherine Dunphy to write and enlighten the public about the poverty issues women face in the shelters as they embark on their journey to build a safe and productive future for themselves and their children. What's not included in my submission is that I'm also a 12-year survivor of domestic abuse until 1993, when I was able to leave that marriage.

I relay this now so that I'm not misjudged as I convey that this bill that I thought was originally intended to protect all six-million-plus employed Ontarians from workplace violence, harassment and company bullying as reflected in Bill 29 has somehow evolved into the prevention of domestic violence against women in the workplace bill, in response to the Lori Dupont tragedy, combined with the Ontario unions' prevention of violence against health care, social, community and educational service workers bill.

However, there are millions of employees who have never encountered, and never expect to encounter, work-related physical harassment, threats, stalking and/or domestic violence from clients, students, patients or cus-

tomers in their daily course of operation. The harassment my clients typically experience is limited to psychological harassment: bullying, overt and subtle, demeaning remarks and belittling comments from an unruly employer or manager who thrives on humiliating their employees.

Nor is it mandatory for all companies to register for WSIB coverage, and in so saying, Bill 168 is of no working benefit to the nine categories of industries specifically excluded from WSIB coverage or the over 100 industries that are omitted from WSIB coverage, although some may apply for the same. Therefore, those working in real estate or law firms, travel agencies, barber and beauty shops, photography, banks, trust companies and more will continue to apply for benefits through Service Canada and HRSDC. In this respect, Bill 168 will be more counterproductive than productive to these industries and its employees as they all attempt to comply with the bill's unrelated provisions.

While Ontario unions' issues certainly deserve and merit legislation, it should not be at the exclusion of the rest of Ontario employees who work each day at their \$10-an-hour WSIB-excluded jobs while inventing new ways to avoid the company bully.

Other presenters may have already commented on the enabling effect this bill will have on workplace bullies given the vagueness of the term "unwanted comments," or that the right of work refusal in Bill 168 is not extended to employees who fear psychological harm.

I ask whether non-unionized employees will maintain their rights to a civil remedy for general damages or damages in tort in wrongful or constructive dismissal disputes, or will their rights to a civil remedy be waived for having been compensated for mental distress through WSIB?

I ask how Bill 168 will protect workers from code violations once a claim is filed for work-related psychological harm, a crisis wrongfully passed over in this bill. Once an investigation is launched to examine allegations of harassment effecting work-related mental distress, how will Bill 168 protect a worker's privacy, dignity and self-worth in compliance with the code? As importantly, what privacy guidelines and procedures will the employer be bound by to prevent any unwarranted reprisal from the harasser upon their return to the workplace?

Statistics on workplace bullying, as reported by Dr. Gary Namie, reveals that 39% of employees have experienced workplace bullying. And I have a few different statistics from an earlier presenter: Targets endure bullying for almost two years before filing a complaint; targets have a 70% chance of losing their jobs; 17% of targets have to transfer to other jobs; only 13% of bullies are ever disciplined or terminated; 71% of bullies outrank their targets; bullying is three times more prevalent than sexual harassment; as many as 10% of suicides may be related to workplace trauma caused by bullying; and 50% of victims still suffer burnout after five years.

Following that, she's already mentioned the rest of the bullets, so I'll move on.

I am confident that Ontarians are demanding a bill for the prevention of violence, harassment and bullying in

the workplace for all employees, many of whom are bullied to the detriment of their health and welfare, and whose children wonder why their mother cries every day or why their father won't get out of bed anymore.

Ontarians deserve a bill that will reflect the rights of all its workers—no worker left behind. Failing to insert those two magic words, "psychological harassment" or "psychological harm," into the definition of harassment, there is no bullying prevention in this bill—in which case, Bill 168 would appear to be a wolf in sheep's clothing.

As reported in 2001, 26.8% of Ontario's population is foreign-born. Many of them immigrated here to escape violations in their own countries. Show this most vulnerable community that our government will not let them down. Give them a bill that will protect them, too.

1830

Give Ontario the more pragmatic legislation of Bill 29 that speaks to both physical and psychological harm, inclusive of an employer's duty to prepare guidelines to identify potential work-related harassment and domestic violence in the workplace as set out at section 49.1. In fact, Bill 29 speaks to the majority of concerns reflected in OPSEU's, CUPE's, CAW's, RNAO's and OFL's submissions to the government's consultation paper including, but not limited to, the right of work refusal, safe place investigative procedures, violence prevention training, single event harassment and an employer's duty to prepare programs and policies reflecting the same.

I'm moving on to page 4 because I think my presentation will exceed the 15-minute limitation. It's as if Ontario's unions formed an alliance to develop a common wish list without really thinking through how this wish list would realistically translate into the workplace. Their submissions, speeches, media events and campaigns describe work-related violence as the epidemic of the day. I suggest that the violence analysis be broadened to include the epidemic of workplace bullying, and in so saying, commit to equal consideration to changes in legislation for employee protection against psychological harm and company bullying in the workplace.

The last few years have seen a dramatic increase in the number and length of claims for workplace-related mental disorders at not only a financial cost to the employer and the economy, but an emotional cost to the employee and his/her family as well.

Current WSIB decisions use the objective "average worker test." If the "average worker" does not view the conduct of the bully as mentally stressful, then there will be no entitlement to benefits without additional medical documentation in support of the claim at cost to the same. As it is, I understand only 40% of WSIB claims for mental distress are approved. How will Bill 168 improve these results?

With OPSEU reporting that 43% of their community sector workers—I'm on page 5 now, paragraph 3—experienced work-related violence in a one-year period, combined with the Minister of Labour reporting last April that 39% of health care workers experience violence on a daily basis, is it any wonder that the gov-

ernment is nervous about inserting the words “psychological harassment” into any bill for fear of opening the floodgates for WSIB claims for work-related mental distress? Excluding this crisis from Bill 168 is not the response Ontario is calling for.

Apart from company harassment policies and procedures and the OHSA, there’s been an implied term of employment at common law for over 13 years that defines an employer’s obligation to ensure a safe, dignified and respectful environment to its employees, yet company bullying and psychological harassment still exists. We have a zero tolerance for violence in our schools; we have a zero tolerance for guns, gangs and violence in our communities; we have a zero tolerance for discrimination. The workers of Ontario need a bill that will reflect a zero tolerance for workplace bullies. We must establish a zero tolerance for bullies policy.

Discipline, educate or fire—I have in my submission, just fire them, but I had to give it some reconsideration—the bully and give all Ontarians a safe place to work. Give all workers the confidence that the government of Ontario has got their backs.

Insert the definitions of “workplace harassment and violence,” inclusive of the term “psychological harassment or harm” or “psychological well-being,” into not just the Occupational Health and Safety Act, but also into the Canada Labour Code, as both Bill C-487 and C-451 proposed, into the Employment Standards Act and the Labour Relations Act, to protect all Ontarians from physical or psychological injuries regardless of whether they are federal, provincial or unionized employees. Or give the unions Bill 168 to rightfully protect their health care, social, community and educational service workers at risk. But please give the rest of us back Bill 29.

I recognize that the inclusion of union-specific sections are reflected in Bill 29 too, but Bill 29 still remains, to me, the more comprehensive bill that will best serve Ontario as it works towards legislation that will reflect policies and procedures to protect its workers against harassment, violence and company bullying in the workplace.

Thank you for your time.

The Chair (Mr. Shafiq Qadri): Thank you, Ms. Campagna. We’ve about a minute or so per side, beginning with the NDP. Mr. Marchese?

Mr. Rosario Marchese: Thank you, Ms. Campagna. You have to admit, the Chair pronounced your name beautifully, didn’t he?

Ms. Carin Campagna: Excellently, I usually get “Champagne,” which is also—

Mr. Rosario Marchese: —equally beautiful, but it’s not your name.

Ms. Carin Campagna: Well, it’s better. “Carin Campagna” is the correct pronunciation, but it’s close.

Mr. Rosario Marchese: I got it.

I just wanted to support what you’ve been saying—and you’re not the only one, as you’ve heard, because you’ve been here for a while. Most of the other folks are saying that we need to expand the definition of what should be included, and I agree with that absolutely. We

will be making amendments to that effect and we hope the government will accept them.

Ms. Carin Campagna: I’m never clear about how many people are supportive of that because I’m all by myself. I don’t belong to any groups and I don’t have a lot of opportunity, apart from the employment lawyers—so I was really appreciative to hear almost everybody express that same opinion.

Mr. Rosario Marchese: Thank you.

The Chair (Mr. Shafiq Qadri): To the government side: Mr. Dhillon.

Mr. Vic Dhillon: Thank you very much for your presentation.

I just wanted to clarify that Bill 168 provisions will be included in the Occupational Health and Safety Act, which would mean that all employees covered by this act will be covered by Bill 168.

As well, we’ve heard from many groups about the different types of harassment. Assuming that the different types of harassment definitions are clarified, would that address some of your concerns?

Ms. Carin Campagna: I’m not a lawyer, so I’m not as legal-minded as some of the people who are lawyers or are in employment law firms. What I would need to see is that my clients, who have little access to justice because they’re of limited income—they make \$10 an hour—that there’s not a two-tier. Until I try my first claim, I’m not going to know if it’s going to work or not.

The Chair (Mr. Shafiq Qadri): To the PC side: Ms. Jones.

Ms. Sylvia Jones: Just a quick question: You mentioned that you are a paralegal who represents employees in—

Ms. Carin Campagna: Oh, I’m sorry; I’m blind as a bat. I was looking to see who was speaking to me.

Ms. Sylvia Jones: I understand you’re a paralegal.

Ms. Carin Campagna: Yes, I am.

Ms. Sylvia Jones: Where are the majority of your clients from? I’m assuming they’re non-unionized?

Ms. Carin Campagna: No, I can’t take unionized clients, although I do have union people calling all the time with questions about the way their union is taking too long to handle a case, or questions in general. But no, I can’t take union; union is a law unto itself. My clients are just the average \$10-, \$12-an-hour workers. Their average age is 35 years old. I take them from Pickering to Hamilton. The majority of my cases, probably seven out of 10, involve workplace bullying. I tell them all the time, “If it goes to court, you had to have taken it to your supervisor or the court will ask ‘What did you do?’” And if the court hears—

The Chair (Mr. Shafiq Qadri): Thank you, Ms. Jones, and thanks to you, Ms. Campagna, for your deputation and your submission on behalf of the Employment Dispute Resolutions group.

If there’s no further business before the committee, I’d like to thank all members and advise them that we are adjourned for further hearings until Monday, November 23, in this room at 2 p.m.

The committee is adjourned.

The committee adjourned at 1833.

STANDING COMMITTEE ON SOCIAL POLICY

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Mr. Shafiq Qadri (Etobicoke North / Etobicoke-Nord L)

Mrs. Elizabeth Witmer (Kitchener–Waterloo PC)

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