

Ontario Confederation of University Faculty Associations
Submission to the Ministry of Labour

Consultation Paper on Workplace Violence Prevention

October 17, 2008

OCUFA

83 Yonge Street, Suite 301

Toronto, On M5C 1S8

416-979-2117

www.ocufa.ca

Universities are intensely human places and are not immune from the worst impulses of human nature; and while violent incidents on university campuses may belie the ideal of the quad as a place of calm reflection and civil discussion, such incidents take place.

The Ministry's consultation paper speaks to the risk of violence in the education sector, the sector in which the 15,000 professors and academic librarians we represent work.

And indeed, there have been some very high-profile cases of campus violence, such as the 1989 murders of 14 women at the Montreal's *École Polytechnique* and a Concordia professor's murder of four colleagues in 1992.

Less familiar are such horrors as the vicious assault of a woman student working alone in a Carleton University lab in September 2007.

Annual reports filed by campus security officials to local police forces tell a statistical tale about the level of violence on our campuses. The attached table summarizes the four main types of violence against persons - assault, sexual assault, criminal harassment and uttering threats. Unfortunately, the data cover all members of the university community that have access to campus security services, so it is not possible to separate out acts of violence against university staff from those against others.

Nonetheless, the data reveal workplaces where crime against individuals on campus is not a rare or exceptional event, even at small universities with campuses outside major population centres, such as Guelph and Trent. Further, the evidence is clear that campus violence is not abating.

Although all campus security forces are required to report to their local police annually on enforcement activities, only nine universities have chosen to highlight such reports on the campus safety sections of the university website.

We can use the data to obtain a general picture of how much violence occurs against persons on campus, but we cannot separate out the staff, who are covered by the *Occupational Health and Safety Act*, from students and visitors, who are not. This generalized approach appears typical, as well, of university violence prevention programs. Most universities in Ontario have a workplace violence prevention program, but these programs do not reflect the fact that the campus is a *workplace*, with employees who are at risk. Current policies focus on the safety of students and other members of the community within a *general* safety environment rather than viewing the campus, as well, as a *workplace*. While we congratulate the universities on their commitment to public safety, as representative of academic staff we strongly urge the government to broaden the *Act* to recognize workplace violence as an occupational hazard. This will require universities to re-focus their violence prevention programs and policies to include, specifically, their employees *as employees*.

First, such a change will create, we believe, a “virtuous circle.” Violence on campus can take place between fellow employees, between employee and members of the public, between employees and supervisors, between staff and students. Therefore, such legislative protection for university employees – and the procedures that create it – will make safer not just the professors and librarians we represent, but other members of university staff, the public, and students as well.

Second, such coverage will provide clarity about workplace violence and the proper role of the Ministry, which is desperately needed. The faculty association at Ryerson University has gone to arbitration in the case of a professor who received death threats from a student. While the university initially allowed the professor the right to refuse unsafe work, permitting her to stay away from the workplace and out of danger, it eventually demanded that she return to work but without affording her any protection. The university and the faculty association then both appealed to the Ministry for a ruling about when and under what circumstances the professor should return to work but were told that the Ministry had no jurisdiction in such cases.

The Ontario Labour Relations Board, however, in a 1995 ruling (Moore and Barmaid's Arms [Re] {1995} OLRB, Rep. 229), familiarly called "the barmaid's case", ordered that workplace violence was a health and safety issue. The worker in question, a barmaid, had refused to serve a dangerous customer, and she was fired. She appealed to the board under the anti-reprisal section of the *Act*, and the board ruled that she had exercised her lawful right to refuse dangerous work until the matter was appropriately dealt with. By firing her without a Ministry investigation, the board said, the employer had violated her rights under the *Act*.

The *Act* should be amended to eliminate this ambiguity and make it clear that workers have the right to refuse work when faced with workplace violence.

Is the ministry definition of workplace violence appropriate for universities?

As representatives of a university community, we believe the definition could be greatly improved.

First, we would advise including – specifically – reference to *written* as well as verbal threats, as these have occurred universities, particularly death threats.

The second point to add, reflecting the goals and objectives of the *Act*, risks to a worker's *health* as well as their safety. This should include psychological and emotional health and safety, as well as physical.

Third, university faculty are responsible for evaluating students' academic performance, and some students can become upset or assertive when objecting to an evaluation. Faculty, as well, have to confront students suspected of plagiarism. The Criminal Code does cover many types of non-physical violence, such as threats of violence, stalking, and intimidation, but other, non-physical forms of behaviour should be including in the

definition of “threats”; namely, activities which may not be physical in nature but which those on the receiving end could reasonably fear would lead to physical violence, such as bullying, harassment, verbal attacks, abusive and aggressive behavior. A single event of any of these kinds of behaviour should be treated as a violent incident.

What must be included in the design of a workplace violence prevention plan?

University administrations are responsible for providing a safe and healthful workplace for their employees. We believe most strenuously that university administrations should be required to prepare workplace violence prevention programs reflecting the fact that the campus is, in fact, a workplace and so protect the health and safety of the employees in instances of workplace violence. The responsibilities of all parties involved in such a workplace plan should be explicitly described.

Such programs should be prepared in meaningful consultation with joint union-management health and safety committee and worker health and safety representatives. They must include:

1. A risk assessment of the workplace, plus full disclosure of any risks.

Legislation could include a “duty to warn”; namely, to require university administrators to warn all employees who are at risk information about the nature of the risk and the factors contributing to the risk. Such information should be provided to the employee immediately after the risk becomes known.

2. Workplace violence prevention measures and procedures that go beyond policies and procedures.

These could include such specifics as security controls and/or personal protective equipment and services to workers at risk.

3. A workplace violence response plan, including a requirement that university administrations insure appropriate action is taken to protect employees.

Such plans must also contain mechanisms and procedures about reporting and investigating incidents as well as following up on these activities with worker and health and safety committees and representatives.

4. Training for workers about preventing and responding to workplace violence.

Such training is to be of excellent quality, developed and delivered in consultation with the joint health and safety committee and worker health and safety representatives.

5. Procedures to ensure that incidents of workplace violence are thoroughly, accurately, and transparently reported, investigated, and recorded.

Incidents of workplace violence must be reported *specifically* and not merely included in a general report about campus violence.

6. Employers should be required to report all incidents of violence in the workplace to the academic staff association and to all its members, subject to the privacy rights of victims and perpetrators.

- **Should a prevention program require employers to address behaviours that are likely to lead to workplace violence, such as bullying, teasing, or other abusive and aggressive behaviour?**

Yes. It is reasonable for the people subjected to these kinds of behaviour to fear for their physical, psychological, and emotional harm. Training should cover all kinds of violence.

- **What impact, if any, would a workplace violence prevention program have on your workplace or organization?**
- **How does your workplace currently deal with workplace violence prevention and response?**

As noted before, most universities have campus violence prevention programs. A legislated requirement under the *Act* would force universities to view their campuses as workplaces and extend their current violence prevention programs beyond their client focus to include employees.

Are there issues specific to universities that should be addressed?

Yes. First, unlike many workplaces, our members' workplaces – their offices and labs – are broadly publicized, with their names, addresses, and office hours posted on websites, signage, and doors, making it easy for assailants to find them. As well, many work alone, often at night, in large labs or large office buildings. (Students often work in these circumstances, too.) Librarians, especially those working evening and night shifts, are especially visible and therefore more subject to harassment and aggressive, disruptive behaviour. Specific security and protection should be required for workers whose workplaces render them so vulnerable, especially those who work alone.

Second, there is a strong possibility that campus violence may be underreported. A 2005 study by the American College Health Association noted that only about five per cent of campus sexual assaults are reported to police and only 35 per cent of assaults against students. Campus security could well want to protect the reputation of the university (for student-recruitment purposes) and may be reluctant to report criminal cases to local police forces. One legislative requirement to be considered would be programs and policies aimed at increasing the rate of reporting of violent incidents, both to the police and via surveys. Certainly universities should be required to report campus violence statistics in a consistent manner make them readily available to the community.

Universities could also be required to report to the Ministry what measures they are taking to protect the health and safety of women faculty, faculty who are working in the area of women's studies, and faculty of colour, all of whom are more vulnerable to workplace violence.

Should domestic violence be addressed separately?

No. The definition of workplace violence should focus on the outcome to the victim, *whoever the assailant might be*. Workers on our campuses should be protected from violence and threats of violence in the same manner, with no discrimination as to their provenance, whether they come from co-workers, management, students, parents, or intimate partners.

Moreover, the violence of an intimate partner could well end up harming the victim's co-workers, too.

Should the current right to refuse unsafe work be expanded?

Yes. The level of violence on our campuses requires that all university employees have the protection of the *Act*, including the right to refuse. As noted in the preamble above, there needs to be coverage and, consequently, clarity about the right to refuse in the case of workplace violence.

- **Should there be a provision that addresses the steps that should be taken to allow a worker to remove himself or herself from the workplace when there is an imminent risk of physical injury due to workplace violence?**

The current right to refuse, however, requires workers to remain at their work station in a safe place until a Ministry inspector arrives. This will not work in the case of workplace violence. Violence is caused by people and, unlike machinery, people can move around, so there likely is no safe place close to one's work station. The worker on the receiving end of workplace violence or threats of violence must be allowed to protect themselves as best they can.

Workers must be allowed – encouraged – to leave any workplace situation they consider unsafe; this includes, but is not limited to, immediate threats of violence to themselves. A risk, for example, may be associated with the simple fact of working alone. Workers must be allowed to leave the workplace and not have to return until their employer has taken action that assures the worker that their health and safety is not threatened. Workers must be shielded from any employer intimidation that would prevent workers from exercising their right to refuse – and from any employer redress for exercising this right to refuse. Workers should continue to receive full pay and benefits if their health and safety depends of their being away from the workplace.