

Workplace Inspection

Provide participants with an understanding of their legal rights and responsibilities with regard to workplace inspections and to prepare them for carrying out effective workplace inspections.

Slips, Trips and Falls

Objective of this training is to: understand the causes and effects of falls in the workplace, to understand legislation relating to slip, trip and fall hazards, to be able to identify potential slip, trip and fall hazards, etc.

WHMIS

Explain how WHMIS is implemented in law, explain how the law defines a controlled product, explain how the law defines hazardous ingredients, identify the exclusions, etc. Register to access the complete training material.

Worker Safety Orientation

Worker Responsibilities, Right to Refuse, Joint Health and Safety Committee, Hazard Recognition, First Aid, Workplace Accidents and more.

OCCUPATIONAL HEALTH & SAFETY AMENDMENT ACT (HARASSMENT & VIOLENCE), 2007, BILL 29

**Written by Heenan Blaikie
Labour & Employment in the News**

Ontario's OH&S legislation has long required employers to take "every precaution reasonable" to protect workers. However, Ontario has remained one of the few Canadian jurisdictions where the occupational health and safety and workers' compensation regimes do not expressly address employer obligations to protect workers from workplace violence. On December 13, 2007, proposed legislation passed first reading in the Ontario legislature which would bring Ontario into the mainstream by amending the *Occupational Health & Safety Act* to increase employer responsibility for protecting workers from actual or threatened incidents of workplace-related harassment or violence.

Known as the *Occupational Health & Safety Act* (Harassment & Violence), 2007, Bill 29 would require an employer, in consultation with the Joint Health & Safety Committee or other workplace health and safety representative, to prepare, as part of its occupational health and safety policy, guidelines and processes for identifying, eliminating and dealing with incidents of workplace related harassment or violence. It would also require every employer to develop and deliver regular harassment and violence prevention training.

Violence would be broadly defined to include threatened, attempted or actual physical force, and threatening statements or behaviour that reasonably lead the worker to believe he or she is at risk of physical injury. Harassment would be defined as a vexatious course of conduct which is known, or ought reasonably to be known, to be unwelcome and which may adversely affect a worker's psychological or physical well-being. Bill 29 would give workers an expressed right to refuse to work where there is reason to believe that a danger is likely posed by workplace-related harassment or violence. It further prescribes that where workplace-related harassment or violence occurs or is likely to occur, the employer must ensure that the source of the harassment or violence is identified and prevented or stopped, and contact law enforcement where appropriate. Employers would also have an explicit obligation to ensure that adequate steps are taken to remedy the effects of the harassment or violence, and to compensate workers for any absences related to the harassment or violence that are not compensated under workers' compensation legislation.

Bill 29 is a private member's Bill. Often such Bills do not achieve full support and passage. However, the introduction of Bill 29 follows a joint province-wide initiative by the WSIB and the Ontario Ministry of Labour over the past year to prevent workplace violence. Under this initiative, Ministry of Labour Health and Safety Inspectors have exercised their authority to make orders and issue directives to employers in "high risk" industries where the employer has not established a workplace violence prevention program or an existing program is deficient. The government's first commitment to strengthening anti-violence workplace initiatives through this project, and the successful first reading of Bill 29, suggest that Ontario is now poised to join the majority of Canadian jurisdictions in recognizing workplace violence and harassment as matters deserving of protection under occupational health and safety laws.

PUBLIC TRAINING COURSES

The following is an example of a few of the training courses we offer. For a full list, please contact us.

JHSC Certification Part 1 Training (2-day course)

\$349.00 +GST - 2-day Course

May 6-7, June 3-4, July 8-9

JHSC Certification Part 2 Training (length depends on industry)

Service Sector (office, hotels/restaurants, retail, etc.)

\$245.00 +GST - 1 day - May 27, June 24, July 22

Healthcare, Warehouse/Distribution, Manufacturing

\$350.00 +GST - 2 days - May 27-28, Jun. 24-25, July 22-23

Construction (including 1 day fall Protection)

\$475.00 +GST - 3 days - May 27-29, Jun. 24-26, July 22-24

proceeded to swear at the inspector, who responded by walking away. The inspector headed for the construction site trailer and went inside to speak to the site supervisor. The defendant followed the inspector into the trailer. He shouted and swore at the inspector and then grabbed and pushed the inspector across the trailer.

This case begs the question of whether physical force, like in the case above, is the necessary factor for a court to sentence a person to jail for obstructing a Ministry of Labour inspector. Section 62 of *OHS*A, the subsection under which the defendant in the above case was convicted, indicates that it is not. Under that section a court can convict a person with obstruction and sentence them to jail based on behaviour that did not involve physical force.

Firstly, section 62, generally, prohibits a person from interfering in any way with an inspector while performing their duty or exercising their powers under *OHS*A. Secondly, section 62 places a positive obligation on persons to “facilitate any entry, search, inspection, investigation, examination, testing or inquiry by an inspector...”. Finally, the section specifically prohibits a person from knowingly furnishing an inspector with false information or neglect or refuse to furnish information required by an inspector in the exercise of his or her duties under *OHS*A or in execution of a warrant.

A violation of any of the above can be grounds for a court to convict a person with having obstructed a Ministry of Labour inspector. However, there are exceptions to the rules set out in section 62.

For example, while every effort should be made to ensure cooperation with an inspector, a person is not obligated to voluntarily disclose incriminating evidence. Neither is a person obligated to give an inspector access to documentation prepared for the purpose of obtaining legal advice or prepared in contemplation of litigation. Legal counsel should be consulted to determine what other documentation can be classified as privileged and therefore should not be handed over to an inspector.

It is worthy of note that the court in *Ministry of Labour v. 1353837 Ontario Inc.*, 2006 CanLII 15751 (ON S.C.) found in passing that “intemperate interpersonal interactions” (in other words, tempers flared and harsh words were spoken) between a Ministry of Labour inspectors and company officials did not amount to obstruction.

While the facts noted above in *Ministry of Labour v. Cenuser* are somewhat extreme, this case underscores the seriousness with which the court views obstruction of inspectors and the fact that a person, be it an employer, employee, volunteer, etc. can be sentenced to jail for obstructing a Ministry of Labour inspector.

WEB BASED TRAINING

Raise the safety, health, and productivity of your employees to the top of your agenda and provide training solutions that deliver real results. We provide web-based training programs for the convenience of your organization. Please visit our web-site to register.

Hand Tools and Automotive Lifts

Identify the Hazards and Controls Regarding: Hand Tools, Hoists, Fixed, Power, Electrical and Pneumatic Tools, Guarding, Powered Lifting Equipment, Automotive Lifts.

Joint Health and Safety Committee

Participants will be able to: know the legislative requirements for establishing a JHSC, describe the powers, functions and duties of JHSCs and their members, describe the activities of an effective JHSC, etc.

Machine Safety and Lockout / Tagout Procedure

Learn about Workplace Responsibilities, Machine Guarding and the Law, Understanding Machine Related Hazards Lockout / Tagout, Applicable Legislation, Hazard Identification, Lockout Procedures.

Health, Safety and The Law

Provide participants with a working knowledge of the Occupational Health and Safety Act and related legislation and more.

Manager and Supervisor Safety Orientation

Learn about Management Responsibilities, Right to Refuse, JHSC, Hazard Recognition, Workplace Accidents, Emergency Procedures, New Employee Orientation, Transfer and Promotion, etc.

Material Handling

This course is designed to teach workers about proper material handling techniques. Upon completion of this course, workers should be able to: describe what factors contribute to back injuries, explain proper lifting techniques, etc.

Accident Investigation

The goal of this module is to ensure you will be able to: recognize the need for an investigation, investigate the scene of the accident, interview victims & witnesses, determine root causes, compile data and prepare reports, make recommendations, etc.

Health Hazards: Recognition, Assessment and Control

The goal of this module is to ensure you will be able to: understand the law pertaining to health and safety hazards, define occupational injury and illness, understand the four types of workplace health hazards, etc.

THE TURNING POINT

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The Vision of the Turning Point

This newsletter is to inform you of recent changes and trends regarding health and safety. The Turning Point is a monthly newsletter covering topics from various industries and sectors. The Turning Point will respond to your inquiries and inform you of current services and updates regarding Raising the Standard Consulting Inc. (RTSC).

SEVEN DAYS IN JAIL FOR OBSTRUCTING MINISTRY OF LABOUR INSPECTOR

Written by Jeremiah A. Eastman, Hons. B.A., LL.B.
Barrister & Solicitor, Carters Professional Corporation

In the very recent case of *Ministry of Labour v. Cenuser* Justice of the Peace J. Opalinski sentenced a plumbing contractor to 7 days in jail and a fine of \$3,000 pursuant to section 66 of the *Occupational Health and Safety Act* ("OHS") for obstructing a Ministry of Labour inspector contrary to section 62 of OHS. In addition, the court imposed a 25 percent victim fine surcharge on the \$3,000 total pursuant to the *Provincial Offences Act*. The facts of the case are as follows.

On January 24, 2006 a Ministry of Labour inspector paid a visit to the construction site at which the defendant and his employees were working. The inspector was questioning two workmen as to why they were not wearing protective eyewear when the defendant approached. The inspector noticed the defendant was not wearing protective footwear and asked the defendant why this was so. The defendant

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MINISTRY OF LABOUR UPDATES

SAINT JEROME, Que. - In a judgment that is the first of its kind in Canada, a company has been ordered to pay a fine for being criminally negligent in the death of one of its employees.

Quebec Court Judge Paul Chevalier delivered his sentence Monday in the criminal case filed in St. Jerome against Transpave, a paving stone company based in St. Eustache, near Montreal. The company was ordered to pay a \$100,000 fine, a sentence based on a joint recommendation made in the case during sentencing arguments earlier this year. It was also ordered to pay a \$10,000 compensatory fine for court costs.

Sylvain L'Ecuyer was killed on Oct. 11, 2005 when he was crushed by heavy machinery at the company plant. He was not properly trained to operate the machinery and the company was aware its motion detector safety mechanism was turned off.

In accepting the joint recommendation Chevalier noted that Transpave has already addressed several safety issues at its two factories since the accident. The company spent more than \$750,000 since 2006, including improvements to increase workplace safety to European standards, which are more stringent than those required of North American companies. The company has also followed every recommendation made by the provincial workplace health and safety board (CSST) after its investigation of the death.

Andree Beaulieu, the victim's mother, said she was disappointed in the sentence. She said no amount of money could address the loss of her son and that she had hoped someone from the company would be sentenced to prison for its negligence.

The Crown prosecutor in the case said the police investigation of L'Ecuyer's death turned up "no evidence beyond a reasonable doubt" that would lead to an individual being charged.

Montreal Gazette

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