Violence in the Workplace

Negotiating Collective Agreement Language

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Nothing in this presentation supersedes the WCB Act. Legislation, Regulations and Policy. There may also be Collective Agreement rights and obligations. The information is not legal, treatment nor counselling advice. This information is for CUPE use only, cannot be used in any other proceeding and is without prejudice and precedent to any labour relations matter, bargaining, grievance, or arbitration. Each case is subject to the fact pattern and to the changing jurisprudence.
“Sometimes I think you have to march right in and demand your rights, even if you don’t know what your rights are, or who the person is you’re talking to. Then, on the way out, slam the door!”
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This Power Point is accompanied by a separate Word document version which contains greater detail. Please read both documents.
This presentation incorporates some humour – however – violence should always be taken seriously. Nothing in this presentation should detract from that.
Introduction

- **Primary responsibility of the Employer** - provide a healthy and safe workplace by removing or controlling hazards.

- **Strong Collective Agreement provisions** can enhance the safety of employees and accountability for Employers.

- Locals such as 4078, 799-01, 79, and 3447 have negotiated Collective Agreement language addressing violence. Also see the Hospital Employees’ Union and the B.C. Government and Service Employees’ Union have negotiated language as well (See Appendix 1).
Introduction Cont’d

• It is within the Joint Occupational Health and Safety Committee’s role to know the relevant facts, determine the systematic breakdown of the prevention system that allowed the violence to occur and to make formal committee recommendations to ensure that it won’t happen again.

• Changes to the Occupational Health and Safety Regulations, Policies and Guidelines may occur in the next 2 years.
CAUTION – there is a fly in the soup though...
It is within the exclusive and/or concurrent jurisdiction of WorkSafeBC to address Claims and Prevention issues. There have been at least 3 key arbitration decisions on this e.g. Moore, Dorsey and Saunders.
Check the WorkSafeBC website for the most current Legislation, Regulations, Policies, Guidelines and Practice Directives.

Ensure that your CUPE National Representative is updated and involved at all levels of occupational health and safety, labour relations and collective bargaining.

Clear communication with everyone involved is important...
BEWARE WILD ANIMALS/CHILDREN

Anyone caught Exiting thru this door will be asked to LEAVE!

IF YOU ENCOUNTER A MOUNTAIN LION:

FACE LION. BACK AWAY SLOWLY.
BE LARGE. SHOUT.
KEEP CHILDREN CLOSE.
PICK UP CHILDREN WITHOUT BENDING.

IF ATTACKED, FIGHT BACK.
Violence Statistics

- Violence is increasing.
- WorkSafeBC 2016 Statistics state that only 2% of serious injury claims result from violence - this does not reflect non-serious injury claims, bullying and harassment, claims that were not filed/unreported claims, etc. Under-reporting is rampant – especially by workers in precarious employment.
- Incidents of violence vary widely by sector with Healthcare, Education/K-12, and Social Services all having much higher levels of violence. For example, in Education (all employees) over 9% of claims generally were caused by violence. In Healthcare it may be 40%.
Violence Statistics Cont’d

Total number of workplace violence claims, 2006–2015

The majority of these claims were reported by workers in the service sectors, including nurses, health care assistants, teachers, education assistants, transit drivers, and clerks in retail, bars, and liquor stores. In fact, the top four industry subsectors — Health Care and Social Services, Education, Other Services, and Retail — account for 81 percent of all time-loss claims for workplace violence in B.C. from 2006 to 2015.

(See Trends and Statistics by Industry Subsector, page 18)
Violence can occur in any environment
The overall injury rate, all causes, has been increasing in Education as per the most recent WorkSafeBC data:

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<td>2.3</td>
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<td># Time-loss Claims</td>
<td>1,565</td>
<td>1,365</td>
<td>1,476</td>
<td>1,590</td>
<td>1,777</td>
<td>526</td>
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<tr>
<td># Serious Injury Claims</td>
<td>146</td>
<td>137</td>
<td>146</td>
<td>183</td>
<td>210</td>
<td>38</td>
</tr>
<tr>
<td>% Serious Injury Claims</td>
<td>9 %</td>
<td>10 %</td>
<td>10 %</td>
<td>12 %</td>
<td>12 %</td>
<td>7 %</td>
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<tr>
<td># Person Years</td>
<td>67,801</td>
<td>59,646</td>
<td>64,603</td>
<td>64,145</td>
<td>0</td>
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Industry Filters Applied

**Industry Classification:**
Rate Group

**Industry Selection:**
DV- Public School Districts
Violence Statistics Cont’d

- Health care workers suffer a greater number of time-loss injuries due to violence than any other occupation.

- When combined with workers in Social Services, they accounted for 63% of the time-loss claims made in 2015.

- In the past 10 years there has been a 70% increase in violence-related claims in the Health Care Sector.
Violence includes harassment and bullying. These are often precursors to physical violence.

STOP HARASSMENT: A GUIDE FOR CUPE LOCALS
Violence Statistics Cont’d

- In Ontario, per CUPE National, 61% of Social Service and Institutional employees were verbally threatened.
- 42% of employees in this sector were physically threatened.
- 30% were physically assaulted.
- Homicides at work accounted for 25% of deaths of women in Ontario over a 10 year period.
- **Women and workers in precarious employment are at higher risk.**
Violence Statistics Cont’d

• In Montreal, Inside Municipal employees 87.5% of employees reported psychological violence.
• 67% had been threatened 3 or more times.
• 23% had be assaulted.
• 12% had been sexually assaulted.
Violence Statistics Cont’d

- Across Canada, 19% of violent incidents involved a weapon.
- 66% of violent incidents were committed by someone known to the employee.
RISK FACTORS

- Direct contact with clients
- Handling cash
- Working with unstable or volatile clients
- Working in high-crime area
- Working in community based setting
- Working alone or in small numbers
- Mobile workplace
- Securing or protecting valuables
- Transporting people/goods
Where Violence Occurs

- Most violence experienced by CUPE members comes from members of the public, managers, supervisors, co-workers, board members, students, patients, parents, clients or passengers.

- Employees who are most affected include new workers, young workers, working alone or in isolation, Healthcare, Education and Social Services.

- Ensure new and young workers have received an orientation by the Union. See the resources on the CUPE BC OHS Committee website.
How is Violence Defined

- The definition of violence should be as expansive a definition as possible as the definition is always changing and there are many areas of the Collective Agreement that may apply.

- The Workers’ Compensation Act and Occupational Health and Safety Regulations, including the Guidelines, should only be the starting point.
Every step counts towards improving the Collective Agreement
CUPE National defines violence as:

“Violence in the workplace is any incident(s) in which an employee is threatened, assaulted or abused during the course of their employment that may cause physical or psychological harm. This includes threats, attempted or actual assault, application of force, verbal abuse or harassment. Harassment is offensive behaviour that a reasonable person would consider unwelcome. The workplace is any location in which work-related activities under the control of the organization are performed.”

This definition is subject to frequent change, as are the Legislation, Regulations, Policies and Guidelines.
In one study in the Education Sector, 1/3rd of all forms of violence e.g. bullying and harassment, involved management.
How is Violence Defined Cont’d

• Violence occurs on a continuum. Therefore, this has to be reflected in the Collective Agreement.

• It often escalates from one form to another, and not necessarily in any particular order or sequence.

• Include categories and broad definitions of violence, such as:
  - Domestic violence
  - Harassment and bullying
How is Violence Defined Cont’d

Consider including:

- Verbal abuse
- Verbal threats
- Threatening behaviours
- Written abuse
- Written threats
- Harassment and bullying
- Stalking
- Sexual harassment
- Physical assaults
Legislation, Occupational Health & Safety Regulations, Policy and Guidelines

- Key areas include:

Occupational Health and Safety Regulation (“OHSR”) 4.27 - 4.31 - Violence in the Workplace

"violence" means the attempted or actual exercise by a person, other than a worker, of any physical force so as to cause injury to a worker, and includes any threatening statement or behaviour which gives a worker reasonable cause to believe that he or she is at risk of injury.”
Studies show this number is now past 40% with over 2/3rds of employees witnessing bullying and harassment.
Legislation, Occupational Health & Safety Regulations, Policy and Guidelines Cont’d

- Other applicable Sections include:
  - 3.9 – Remedy Without Delay
  - 3.10 – Reporting Unsafe Conditions
  - 3.11 – Emergency Circumstances
  - 3.12 – Refusal of Unsafe Work
  - 3.13 – No Discriminatory Action
  - 3.22 to 3.25 for Young Workers e.g. 3.23(2)(e)(f)
Legislation, Occupational Health & Safety Regulations, Policy and Guidelines Cont’d

- 3.28 - Participation by Employer or Representative of Employer and Worker Representative
- 4.13 – Risk Assessment (pertaining to evacuations etc.)
- 4.13 – Risk Assessment (pertaining to evacuations etc.)
- 4.14 – Emergency Procedures
- 4.16 - Training
- 4.20.1 Definition (4.20.1 to 4.23 pertain to working alone, a risk factor and precursor to violence)
Legislation, Occupational Health & Safety Regulations, Policy and Guidelines Cont’d

- 4.21 - Procedures for checking well-being of worker
- 4.22 - Training
- 4.23 - Annual reviews of procedures
- 4.24 - Definition (4.24 to 4.26 pertain to Workplace Conduct)
- 4.25 - Prohibition
- 4.26 - Investigation
- 4.26 - Investigation
- 4.28 - Risk Assessment (4.28 to 4.31 pertain to violence)
Legislation, Occupational Health & Safety Regulations, Policy and Guidelines Cont’d

- 4.29 - Procedures and Policies
- 4.30 - **Instruction of Workers**
- 4.31 - Advice to Consult a Physician
I SOLD THE DOG
ON CRAIGSLIST
TWICE!

STRIPEY MALONE 48905
Legislation, Occupational Health & Safety Regulations, Policy and Guidelines Cont’d

- Policy Items and Guidelines:
  - D3-115-2 - Employer Duties—Workplace Bullying and Harassment
  - D3-116-1 - Worker Duties—Workplace Bullying and Harassment
  - D3-117-2 - Supervisor Duties—Workplace Bullying and Harassment
Legislation, Occupational Health & Safety Regulations, Policy and Guidelines Cont’d

❖ D4-140-1 - Participation of Worker Representative in Inspections
❖ D6-150/151/152-1 - Scope
❖ D6-153-1 - Investigation of Complaint
❖ D6-153-2 - Remedies
❖ D10-175-1 - Preliminary Incident Investigation, Report and Follow-Up Action
❖ D10-176-1 - Full Incident Investigation, Report and Follow-Up Action
Legislation, Occupational Health & Safety Regulations, Policy and Guidelines Cont’d

- **British Columbia Workers’ Compensation Act:**
  - Section 115 to 124 – **General Duties of Employers, Workers and Others**
  - Sections 150 to 153 – Prohibition Against Discriminatory Action
  - Section 172 to 177 – **Accident Reporting and Investigation**
Do you know what an incident is and what it is defined as?
Preparing for Bargaining

Information gathering to prepare for bargaining:

- Gathering all violent incident data. These include both internal reports and formal reports to WorkSafeBC e.g. Form 52E40.
- Gathering data on incidents of bullying and harassment.
- Employee surveys and complaints.
- Gathering WorkSafeBC claim data (redacted as required).
- Gathering Joint Occupational Health and Safety Committee reports and minutes data.
- Gathering any WorkSafeBC Orders.
- Gathering sick leave data where sick leave or unpaid absences have arisen due to violence.
Areas in the Collective Agreement to Address

Areas of the Collective Agreement that need to be addressed include (not an exhaustive list):

- Definitions
- Critical Incident Stress Debriefing
- Employee benefits, including Extended Health Benefits
- Employee training language
- Grievance language, including investigations
- Hazard assessment
- New employee orientations
- No discrimination or retaliation language
Know your bargaining environment
Specific Collective Agreement Articles to Address

- While WorkSafeBC legislation and Regulations form the basis for rights and entitlements, these should be expanded upon.
- It is not enough to have language stating that the Employer agrees to comply with the current WorkSafeBC Legislation and Regulations as they may change.
- The language of the Collective Agreement should not be inferior to existing Legislation and Regulations.
- The Collective Agreement should reflect that the existing Legislation and Regulations are the minimum standard.
Specific Collective Agreement Articles to Address Cont’d

There are many Articles to address. These include:

• Definition of violence. Definitions and general statements in section two below, need to be expansive e.g. the definition of incident, violence, bullying and harassment, etc.

• General statements affirming that violence is not considered part of the job; the definition of workplace; joint investigation protocols and process; staffing levels; protective measures; employees have a right to a healthy and safe workplace; right to refuse unsafe work, including violent situations, without the fear of reprisal.

• Employee training. Who has input into? Paid?
Specific Collective Agreement Articles to Address Cont’d

• Requirement to conduct Risk Assessments on regular basis.

• Role of the Occupational Health and Safety Committee:
  ❖ Hazard recognition and control, including understanding the range of hazards; various means and the importance of assessing and controlling risk, including the hierarchy of controls (from hazard elimination, engineering control, administrative controls, to PPE)
  ❖ Incident investigation and follow-up including recommendations
Specific Collective Agreement Articles to Address Cont’d

❖ Review of Legislation, Regulations, Policies, Practice Directives, Standards, Codes, and Guidelines
❖ Conducting joint regular workplace inspections
❖ Preparing recommendations to the Employer
❖ Participating in work refusals
❖ Annual evaluation of the Joint Health and Safety Committee as required by WorkSafeBC
❖ Communication skills including recommendations, general correspondence, workplace inspection reports, etc.
Are the Employer and Union equal participants in the Joint Health and Safety Committee?
Problems and Barriers to Bargaining Collective Agreement Language

- **Common problems and barriers** to negotiating Collective Agreement language include:
  - **Lack of Reporting/Under-reporting.** Employees frequently under-report incidents of violence. This is especially prevalent in employees in precarious employment e.g. casuals, temporary employment etc.
  - **No serious injury occurring**
  - **Past practices and workplace culture**
Problems and Barriers to Bargaining Collective Agreement Language Cont’d

➢ “Part of the job” expectations e.g. First Responders, K-12, Social Services and Healthcare
➢ Lack of statistics or incorrect data
➢ Retaliation by Employers
➢ Claims suppression by Employers
➢ Unclear reporting processes
➢ No follow-up by Employers or the Joint Health and Safety Committee
➢ Lack of training and education

Lack of clarity on what violence includes...
Remember that violence takes many forms – verbal violence is violence.
Problems and Barriers to Bargaining
Collective Agreement Language Cont’d

- Literacy issues
- Lack of information in multiple languages
- Alleged confidentiality. Employers have frequently sought to reduce the information given to the Joint Health and Safety Committee by referring to confidentiality or Management Rights
- Non-functioning Joint Occupational Health and Safety Committees
- Confusion over forms and overlap of processes e.g. grievance vs. OHS vs. WCB claim
Resources and Links

- See the Word version of this document for an extensive list of resources.

Everyday, thousands of innocent plants are killed by vegetarians. Help end the violence.
Questions?
The information presented in these materials are the views of the author and not the views of the Canadian Union of Public Employees (“CUPE”), CUPE Locals, or employees of CUPE.

These materials are without prejudice and precedent to any labour relations matters; grievances; Collective Agreement bargaining and contract negotiation; Labour Relations Board adjudication and applications; Workers’ Compensation claims and appeals; or any other proceeding. These materials cannot be used in any other proceeding.