



Labour Relations Bulletin

This bulletin is produced periodically by the OASIS Labour Relations Committee and is intended to be for informational purposes only, for OASIS members.

Bill C-45 – Criminal Code Amendments Regarding Workplace Safety

On November 7, 2003 Bill C - 45, an act to amend the Criminal Code was given Royal Assent and subsequently came into force March 31st, 2004. These amendments broadened and redefined who is responsible for workplace safety and put into law a process to criminally prosecute those found negligent in the workplace.

The amendment states:

“Every one who undertakes, or has the authority, to direct how another person does work or performs a task is under a legal duty to take reasonable steps to prevent bodily harm to that person, or any other person, arising from that work or task.”

This means that anybody with the day-to-day authority to make decisions in the workplace is now responsible for the actions or lack of actions of their employees. This includes directors, managers, supervisors, lead hands and can include front-line employees if they have been giving direction to co-workers.

Under C-45, individual fines of up to \$100,000.00 can be levied and there is no set ceiling on fines that can be levied on corporations. In addition those found responsible of criminal negligence can receive lengthy jail sentences, including life terms for those found guilty of criminal negligence causing death.

The creation and passage of Bill C-45 was driven by the Westray Mine disaster of 1992. In that disaster 26 miners lost their lives in an accident that was caused by corporate disregard for essential safety measures in the mine. No individual or corporation was ever convicted of a criminal or workplace safety offence. The following website provides a complete plain language guide to Bill C-45.

http://canada.justice.gc.ca/en/dept/pub/c45/CCL_english.pdf

The Labour Relations Committee is considering hosting a fall seminar regarding Bill C-45 in the fall. If this is of interest please send an email indicating your interest to:

dseymour@lcs.on.ca.

Ottawa Settlement

A new collective agreement was ratified by OCAPDD and CUPE on April 28th. The terms of the settlement include a 1.25% wage increase in each of the 2 years of the agreement, an improved management rights clause and a self-funded leave provision. Both sides also agreed to reopen the wage portion of the agreement in the event of higher than anticipated revitalization funding from the provincial government.

Legal Issues

This is the second of a series of articles written by Mr. Lewis Stokes a lawyer with Filion, Wakely and Thorup, Toronto ON. We believe the subject matter contained in the articles is excellent and worth reading. We offer our thanks to Mr. Stokes for providing OASIS with this timely and useful information.

Identification of Physical Abuse Requires Consideration of Surrounding Circumstances

An arbitrator ordered the reinstatement of a caregiver in a group home for people with developmental disabilities, after she was dismissed for alleged "physical abuse to a client" (*Options Northwest v. C.A.W. - Canada*, [2001] O.L.A.A. No. 83 (Luborsky)).

The grievor was alleged to have restrained a client, during the course of a self-injurious behaviour episode, in an inappropriate manner.

Shortly after returning from an afternoon outing, the client, who had a serious seizure disorder, lupus and arthritis, dropped to the floor and began to violently strike herself and bang her head against the floor. The floor was linoleum over concrete. The grievor and another employee attempted to prevent the client from harming herself, by placing a pillow under her head. When the client threw the pillow across the room, the second employee got up to retrieve the pillow, and when she returned, she was shocked to realize that the grievor's hand was grasping the client's hair "right to the scalp - clenched tight".

The grievor claimed that she had only grasped the client's hair for 5-10 seconds, while she waited for the second employee to retrieve the pillow, and that she had only done it in an effort to stop the client from injuring herself.

The grievor was dismissed pursuant to the group home's zero tolerance policy for physical abuse, which prohibited the restraining of a client by the hair. The home's policy on restraints permitted staff to physically or chemically restrain a client's movements, but only as a "treatment of last choice and only when the resident's behaviour creates a serious danger to himself or others".

The grievor, who had been a Registered Nurse since 1973, and had 15 years experience working with developmentally challenged individuals, urged the arbitrator to accept that she was just doing her best to help prevent injury to the client. The home took the position that any degree of physical abuse - even for a short duration - required dismissal.

The arbitrator found that the determination of whether an act constituted physical abuse required a consideration of the following factors:

- the circumstances in which the conduct occurred;
- the nature of the conduct;

- the words and/or gestures which accompanied the conduct;
- the nature and extent of the force applied by the employee;
- the intent, purpose, or motive of the employee; and
- the nature and extent of the consent, if any, of the patient.

The arbitrator accepted the grievor's good intentions and found that while the grievor may have made a momentary mistake in judgment, the grievor should not be held to a "standard of perfection". The arbitrator found that the grievor's dismissal was not justified and ordered the grievor reinstated with compensation for lost wages and benefits.

Repeal of Sixty Hour Work Week

From the Ministry of Labour Website – April 26, 2004

MCGUINITY GOVERNMENT ACTS TO PROTECT WORKERS

New Legislation and Beefed Up Enforcement Reaches Out to Vulnerable Workers

TORONTO--The McGuinty government is protecting workers through legislation that would end the 60-hour work week, measures to increase awareness of workplace rights and more rigorous enforcement of employment standards, Labour Minister Chris Bentley said today.

“This legislation, if passed, would let vulnerable workers decide, without undue pressure, whether to work extra hours,” said Bentley. “We will also make sure employees know their rights and employers understand their obligations. Backing this up will be tougher enforcement against those who refuse to operate responsibly, preying on workers and undermining competitors.”

Legislation being introduced today would, if passed, require employers to apply to the Ministry of Labour and obtain an employee’s written agreement to work more than 48 hours in a week. It would end the 60-hour work week created under the previous provincial government in Ontario.

To make it administratively easy, the new system will feature no-fee, on-line filing, better ministry information, simple forms and timely responses. A lead-in period would give employers time to apply before the law takes effect, said Bentley.

The legislation forms part of a broader strategy to improve the well-being of Ontarians by ensuring compliance with the [Employment Standards Act, 2000](#) (ESA), which covers such things as termination, severance and vacation pay. The strategy includes a multilingual campaign to inform workers of their rights and help employers understand their obligations. Highlights include:

- Providing businesses with web-based information so they can easily learn about their rights and responsibilities, ensuring compliance with the ESA
- Getting information to those whose first language is not English or French
- A streamlined process for quicker turnaround and file closures
- Dedicated resources to investigate alleged violations and prosecute where warranted.

“The law as written contains the enforcement tools, they just need to be used,” said Bentley. “Last year, there were more than 15,000 claims against employers and only one prosecution was started. Starting today, enforcement is back in style.”

Are there labour issues in your area that you would like to share with other OASIS members? Please submit your information to the OASIS Labour Relations Committee, in care of Don Seymour – dseymour@lcds.on.ca, or via fax at 519 882-3386.