



## EDITORIAL

Spring has finally sprung across the country.

On that happy, positive note, this edition of the OHS<sup>TM</sup>LAW Report newsletter focuses on

some of the positive developments over the last quarter in the area of health and safety and workers' compensation across Canada. From the *Georgia Pacific Canada* decision regarding respect in the workplace, amendments in Saskatchewan for their OHS legislation and pending amendments in Ontario under Bill 160, there are some positive moves being made by decision makers, policy makers, and politicians that should improve health and safety across Canada.

Gowlings is also pleased to announce its WSIBLAW<sup>TM</sup> Outsourcing Services, a complete and comprehensive Workers' Compensation claims management system, with Compass software, that will help reduce your workers' compensation costs. Please see the enclosed information piece regarding this new service and feel free to contact myself or Ryan Campbell 1-866-862-5787 ext. 23364 if you have any questions about that important service.

**Norm Keith, B.A., J.D., LL.M., CRSP**  
Partner, Gowlings

## Bill 160 Set to Amend OHS and Workers' Compensation Law in Ontario

By: Anna Abbott, B.A., LL.B., Associate

Bill 160 is the proposed legislation that is poised to begin the process of reforming OHS in Ontario. Bill 160 is the initial legislative response to the release of the Report of the Minister of Labour's Expert Advisory Panel on Health Safety, also known as the Tony Dean Report.

Bill 160, *Occupational Health and Safety Statute Law Amendment Act, 2011*, was introduced by Minister of Labour Charles Sousa on March 3, 2011. Bill 160 has passed first and second reading, and is currently being reviewed by the legislative Standing Committee on Social Policy. If passed, Bill 160 will amend the *Occupational Health and Safety Act and the Workplace Safety and Insurance Act, 1997*.

Bill 160 does not purport to implement all of the recommendations made by the Tony Dean Panel, but is a first step toward reforming OHS in Ontario. Full implementation of all of the Dean Panel recommendations will require additional changes to the OHS Act and WSIA, numerous changes to regulations under both acts, and changes to internal

Ministry of Labour policies and procedures.

The major contention in the legislature with respect to Bill 160 is that it does not implement all of the changes recommended by the Tony Dean Panel. However, the changes set out a legislative framework that is the first step in an aggressive 'sea of change' in OHS culture in Ontario. The full effect of the changes recommended by the Tony Dean Panel will not occur until the new Prevention Council and chief prevention officer are in place and are able to assist the Ministry of Labour in shaping policy and legislative change.

In the last edition of OHS<sup>TM</sup>LAW Report, we set out the contents of the Tony Dean Report. The key recommendations included:

- Appointment of a multi-stakeholder Prevention Council to assist in implementation of recommendations and new system structure
- Establishment of a separate Prevention Organization and a chief

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- prevention officer to lead a more integrated, efficient and accountable system
- Mandatory training for workplace health and safety representatives as well as workers and supervisors regarding workplace rights and responsibilities
  - Mandatory entry-level training for construction workers on construction site safety
  - Implementation of mandatory rigorous training standards for workers who work at heights and on other high-risk activities
  - Tougher and ascending monetary penalties for those who place workers at risk of death or serious injury as well as the development of administrative monetary penalties
  - Improved integration of OHS training in schools and universities
  - Development of an accreditation program for top-flight employers, with less focus on frequency and cost of claims, that encourages them to influence the health and

safety performance of contractors in their supply chains

- Integrated and targeted enforcement for workplaces in the “underground economy”

The key provisions to be implemented by Bill 160 include:

- Prevention mandate shifted to the Ministry of Labour (Part II of W/SIA is repealed)
- Requirement for mandatory training for workers and health and safety representatives
- Expansion of powers for JHSC co-chairs to make direct recommendations to employer/constructor where committee fails to reach a consensus
- Establishment of a Prevention Council and chief prevention officer
- Development of Codes of Practice
- Inspectors given power to refer reprisal complaints to the board

Bill 160 is the skeleton legislation that gives the power to the Ministry of Labour to begin implementing some of


the recommended changes. Although the proposed legislation sets out the requirement for mandatory training for new workers and health and safety representatives, it does not identify the scope of training that will be required in either circumstance. Presumably, the training standards and approved trainers will be established by the Prevention Council once it is fully operational. The same principle applies for the development of the Codes of Practice that will assist employers and constructors with meeting the specific health and safety requirements set out in the regulations. Further, The Bill does not address some of the other recommendations made by the Tony Dean Panel, including the implementation of a new poster outlining the rights and responsibilities of workplace parties, recommendations made for tackling the underground economy and protecting vulnerable workers, or the creation of administrative monetary penalties.

Employers will have to remain patient while the recommendations are slowly implemented. On February 14, 2011,


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six members were appointed to the interim Prevention Council that will assist the minister of labour in appointing a chief prevention officer. Once the Prevention Council and the chief prevention officer are formally appointed, Employers should be prepared for more significant and specific changes that will require time, effort and resources to be implemented.

For further information on this article please contact Anna Abbott at [anna.abbott@gowlings.com](mailto:anna.abbott@gowlings.com), 1-866-862-5787 ext 87284.

### Timely Accident Investigations Can Help Reduce Costs Now and Legal Risk in the Future

By: David Marchione, B.A., CHSC,  
OHS Consultant and Paralegal

After a workplace incident occurs, it is important to conduct a thorough accident investigation as soon as possible. This may seem intuitive, yet there are many times when one does not take place.

Why conduct an accident investigation? Perhaps it is required by law. For example, section 173 of the B.C. *Workers' Compensation Act* requires that employers immediately undertake an investigation into the cause of specific accidents. Ontario's *Occupational Health and Safety Act*

requires that the Joint Health and Safety Committee undertake an investigation into a critical or fatal injury. These types of investigations often require a report to be submitted to the health and safety regulator.

Even if it is not specifically required by the legislation, timely and thorough accident investigations can help employers identify gaps in their health and safety management systems. When there is an incident in the workplace, there is a tendency to blame the worker. Perhaps the worker did not follow the proper procedure for performing a task. But the bigger question is why the worker did not follow the proper procedure. Is it because they were not trained on the proper procedure? Is it because there is no system in place for supervisors to monitor the work? Perhaps the practices within the workplace allow for workers to take shortcuts without any reprisals or discipline. Looking at all of these factors, is the root cause of the incident the worker failing to follow proper procedures, or is it a breakdown in training or supervision? Proper identification of the root cause of an incident will allow the employer to try to effectively prevent a reoccurrence, as opposed to dealing only with the remedial causes (i.e., disciplining a worker for not following proper procedures), which may have little effect on preventing a reoccurrence.

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Timely investigations help preserve evidence from the time of the incident. This evidence may be required at a later date. For example, if the health and safety regulator chooses to lay charges against an employer or an individual after an incident at a workplace, they may do so at some time well after the incident has occurred. Using British Columbia as an example again, the *Workers' Compensation Act* allows for charges to be laid two years after the last occurrence of the act or omission on which the prosecution is based. There may be many changes that occur at a workplace either following an incident, or just as a result of improving processes. This may include changing policies and procedures, changes in equipment, addition of controls and turnover of personnel. If an employer attempted to conduct an investigation

after charges were laid, it would be difficult to get an accurate description of the work and/or the workplace as it was at the time of the incident. Conducting an investigation immediately after an incident allows the employer to take a "snapshot" of the workplace at the time, and to preserve that evidence for the future, if needed.

Employers should develop and implement an Accident Investigation procedure, setting out roles and responsibilities of various parties following an incident. The procedure should set out:

- When an incident needs to be investigated, and by whom
- What forms should be used to conduct the investigation
- Internal and external notification requirements (i.e., Health and Safety Committee and/or health and safety regulator, workers' compensation boards), when the notification must take place and what information must be provided
- What evidence should be gathered
- How to identify the immediate and root cause(s) of the incident
- What information should be contained in the report, whom the report should be sent to, and what should be done with any recommendations made in the report

In the event of a fatal or critical injury, we also recommend that these investigations be augmented by

obtaining legal advice from an expert in occupational health and safety law.

For a review of your Accident Investigation Procedure, or for assistance in developing one for your workplace, please contact David Marchione at [david.marchione@gowlings.com](mailto:david.marchione@gowlings.com), 1-866-862-5787 ext. 84378.

### **Workers' Compensation Payment Based on Age Not Discriminatory**

**By: Mélanie Morin, Associate, Éric Thibaudeau, Partner and Diana Baltazar, Student**

Last February, Gowlings informed you that the Québec Workers' Compensation Tribunal ruled that the reduction of injured workers' income replacement benefits at age 65 constituted a form of discrimination prohibited by the Canadian and Québec Charters of Rights and Freedoms. On March 1, 2011, the Superior Court of Québec overruled this decision in the case *CSST v. CLP and Côté* (2011 QCCS 610 (S.C.)).

S. 56 of the *Act respecting industrial accidents and occupational diseases* provides that the income replacement indemnity for an injured worker be reduced by 25 per cent from the age of 65, by 50 per cent at 66 and by 75 per cent at 67. The initial decision by the Workers' Compensation Tribunal stated that this age-based reduction of indemnities was discriminatory under the terms of s.15(1) of the *Charter of Rights and Freedoms* as well as under

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s.10 of the *Québec Charter of Human Rights and Freedoms*. Moreover, according to this administrative tribunal, this discrimination solely based on the traditional retirement age of 65, was not justifiable under s.1 of the *Charter*.

The attorney general of Québec filed for judicial review arguing that s.10 of the *Québec Charter of Human Rights and Freedoms* allows age-based discrimination “as provided by law.” It was also argued that, contrary to the commissioner’s motives, s.56 of the Act does not perpetuate prejudice to workers aged 65 or older.

In the decision, the Superior Court explained that not all age-based distinctions are necessarily discriminatory. In 2009, the Supreme Court of Canada had ruled that, in order to allege discrimination under s.15(1) of the *Charter*, one must not only prove that the law creates a distinction based on an enumerated or an analogous ground but, furthermore, that such distinction creates a disadvantage by perpetuating prejudice or stereotyping (*Alberta v. Hutterian Brethren of Wilson Colony*, [2009] 2 R.C.S. 567).

The Superior Court reminded the parties that age-based distinctions are frequent in our society. From pension plan legislation to social aid, such distinctions exist in order to maintain orderly relationships within our society. All distinctions are not necessarily unfavorable and it is crucial to consider the entire context in which this distinction exists.

The Superior Court also stated that, in most cases, workers having reached the age of 65 have already retired and may receive various incomes that are not accessible to the younger generation, such as Old Age Security, Québec and Canada pension plans, as well as retirement pensions. Considering the social benefits available, older workers are not prejudiced by the reduction of their income replacement benefits in accordance with the Act. The failure to provide such a reduction within the legislation could create a form of disparity, since 65-year-old injured workers could get the same income replacement benefits as the younger ones, in addition to the social benefits available to them from that point forward.

As for the allegations of discrimination under the *Québec Charter of Rights and Freedoms*, the Superior Court considers that the wording of s.10 is clear and unambiguous. Any form of distinction, exclusion or preference based on age is prohibited “except as provided by law.” In the present dispute, in light of the preceding analysis, it is clear that the distinction provided in the Act respects the limits provided in the *Charter* and thus, may not be considered discriminatory.

Last month, the Supreme Court of Canada rendered a landmark decision in a case challenging a British Columbia legislation providing a reduction in federal supplementary death benefits solely based on age (*Withler v. Canada*, 2011 SCC 12). The Supreme Court confirmed that reducing pension entitlement on the basis of age is not discriminatory, adding that such a distinction is necessary in our society and reflects the reality that different groups of survivors have different needs

Readers should note that the injured worker’s motion to authorize an appeal of this recent decision has been granted. Consequently, it will be

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interesting to see how the Court of Appeal of Québec will address this controversial issue.

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## Hand Washing: Reducing the Risk of Common Infections

By: Cathy Chandler, B.A.Sc., CRSP, CHSC, OHS Consultant/Paralegal

Ensuring that employees wash their hands properly after using the washroom is very important in reducing disease transmission of germs that can lead to stomach "flus" and other gastrointestinal infections. Using soap and lathering up is very important. Rinsing hands in water only is not as effective.

Different situations where people can pick up "germs" include:

- when hands are visibly soiled
- after using the washroom (includes changing diapers)
- after blowing your nose or after sneezing in your hands
- before and after eating, handling food, drinking or smoking
- after touching raw meat, poultry or fish
- after handling garbage
- visiting or caring for sick people
- handling pets, animals or animal waste

For effective hand washing, follow these steps:

- remove any rings or other jewellery
- use warm water and wet your hands thoroughly
- use soap (1-3 mL) and lather very well
- scrub your hands, between your fingers, wrists and forearms with soap for 20 seconds
- scrub under your nails
- rinse thoroughly

Other tips include:

- Cover cuts with bandages and wear gloves for added protection (cuts are very vulnerable to infections).
- Artificial nails and chipped nail polish have been associated with an increase in the number of bacteria on the fingernails. Be sure to clean the nails properly.
- Keep your hands away from your eyes, nose and mouth.
- Assume that contact with any human body fluids is infectious.
- Liquid soap in disposable containers is best. If using reusable containers, they should be washed and dried before refilling. If using a bar of soap, be sure to set it on a rack that allows water to drain or use small bars that can be changed frequently.



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Editor, Canadian Occupational Safety

## What about antibacterial soaps and waterless hand scrubs?

While it is true that regular soap and water does not actually kill microorganisms (they create a slippery surface that allows the organisms to "slide off"), antibacterial soaps are typically considered to be "overkill" for most purposes. The exception may be in a hospital where special situations are present (e.g., before invasive procedures, when caring for severely immuno-compromised patients, critical care areas, intensive care nurseries, etc.). Antibacterial agents should be chosen carefully based on their active ingredients and characteristics, and when persistent antimicrobial activity on the hands is desired.

When there is no soap or water available, one alternative is to use waterless hand scrubs. Some of these products are made of ethyl alcohol mixed with emollients (skin softeners) and other agents. They are often available as a rinse, or on wipes or towelettes. They can be used by paramedics, home care attendants, or other mobile workers where hand-washing facilities are not available. However, these agents are not effective when the hands are heavily contaminated with dirt, blood or other organic materials. In addition, waterless hand scrubs may have a drying effect on the skin and may have odours that may be irritating to some users.

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## Basics in Managing Health and Safety

By: Wayne Warren, B.A.Sc., OHS Consultant

Every year in Canada there are over 930 work-related deaths and more than 260,000 accepted lost-time claims (Association of Workers' Compensation Boards of Canada 2009 statistics). Accidents are costly to workers and their families. They can also hurt companies because, in addition to the costs of injuries, they may incur greater costs from damage to property, equipment, lost production and, finally, monetary fines from the health and safety regulator.

Supervisors and managers are now being held personally responsible for worker accidents/injuries. How do organizations keep workers at work, reduce costs of injuries, illness, and property and equipment damage? It's simple: manage your people, and manage your system and processes.

There are five basic steps in managing health and safety.

### 1. Develop and implement your health and safety policy.

All accidents that cause injuries and workplace illnesses can cause property damage, stop production and decrease worker morale. Each company should strive to control loss from any cause. Your health and safety policy should influence your activities, including recruiting employees, and purchasing equipment and materials. A written policy statement and a

program for implementing and monitoring it shows your employees that you take safety seriously, and that hazards and risks have been identified and assessed, eliminated or controlled.

### 2. Staff organization.

Making your health and safety policy effective means creating a health and safety culture. This involves getting "buy in" from staff by getting them involved and committed to the plan. The four Cs of health and safety culture are:

- *Competence*: assess the skills needed to get tasks done safely; ensure that your supervisors are aware of their legal health and safety obligations; provide necessary training to supervisors and workers
- *Control*: ensure adequate resources and that everyone knows what they must do and how they will be held accountable; set objectives; lead by example
- *Co-operation*: involve workers in planning and reviewing performance and writing procedures; work with JHSC
- *Communication*: provide information about hazards, risks and preventative measures to employees and supervisors; include health and safety as a regular

agenda item at staff meetings; be visible

### 3. Plan and set standards.

Planning for health and safety assists in helping you understand whether your efforts are working. It involves setting objectives, identifying hazards, assessing risk, and implementing standards for performance.

Standards and procedures will help build a positive health and safety culture and control risks. Standards are generally driven by legislation or best practice. You can adopt them where applicable. Sometimes, you have to have to develop your own standards to meet the needs of your workplace.

### 4. Measure your performance.

Measure your health and safety performance to see if you're successfully implementing your standards and their underlying policy. Develop a system that

allows you to track both (leading and lagging) active and reactive indicators. An active indicator provides information (before things go wrong) and will help you stay on top of whether you're achieving the objectives and standards you set. A reactive indicator occurs after things go wrong. These include accident investigations, number of injuries and type of injuries. The information gained from the two indicators will be very valuable in helping measure your performance and to aim for improvement.

### 5. Audit/review.

Complement monitoring activities by looking to see if your policy, organization and systems are actually achieving the right results. Audits or system reviews should tell you about the reliability and effectiveness of your system. Try combining your results

from measuring performance with information from audits to improve your approach to health and safety management. As an example you should look at the following:

- What is your rate of compliance with health and safety standards (including legislation)?
- What is the achievement for the objectives that you set?
- Injury/illness data – analysis of immediate and underlying causes and trends to identify hazards and control them in the future

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For further information on this article please contact Wayne Warren at [wayne.k.warren@gowlings.com](mailto:wayne.k.warren@gowlings.com), 1-866-862-5787 ext. 84409.



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## Saskatchewan Looks to Amend Occupational Health and Safety Legislation

By: Loretta Bouwmeester,  
B.A., M.A., LL.B., Associate

On April 20, 2011 the Saskatchewan government released a discussion paper entitled "Improving Saskatchewan's Standard of Occupational Health and Safety." The 13-page document is part of the ongoing consultation regarding proposed amendments to the *Occupational Health and Safety Act*, 1993 ("Act"). A number of the proposed amendments will have a significant impact on employers in the province. There is a questionnaire located at the Saskatchewan Ministry of Labour Relations and Workplace Safety website that can be used to provide feedback. The deadline for submissions is May 20, 2011.

The majority of the proposed amendments are based on the Occupational Health and Safety Council's 2006 recommendations following its review of the adequacy of the Act. Stakeholder input was sought at that stage; however, it is also being solicited again given the significance of the proposed changes on employers and workers in the province. The paper is helpful in that it outlines the amendments proposed since 2007, while also outlining the amendments proposed in 2006.

The key changes that are proposed are with respect to: increasing and redirecting penalties; enabling officers to issue tickets; adding an inclusive definition of project owner; allowing the

director to order the retention of experts if he or she believes that workers are at risk; and shifting the onus of proof with respect to the sufficiency of worker training to the employer.

### Penalties

Feedback is sought with respect to increasing penalties (currently \$300,000), granting additional powers to judges on sentencing and redirection of penalties under the Act. An unspecified increase in fines is being contemplated to 'create a greater deterrent effect on failure to comply.' Additional powers on sentencing are set out on page 11 and could include:

- directing a person to perform community service in accordance with the requirements established by the Court;
- directing a person to post a bond to ensure compliance with a requirement;
- prohibiting a person from working in a supervisory capacity at any workplace for no more than six months; and
- requiring a person to comply with any other condition that the Court considers appropriate for securing the person's good conduct for preventing the person from repeating the offence or committing other offences pursuant to the Act.

These are all relatively novel powers for a Court in sentencing a regulatory matter after a finding of guilt. The redirection of fines issue is raised in the press release but not the paper itself.

### Administrative Fining (Alternate Penalties)

"On the Spot" fining for OHS offences is used in Ontario, British Columbia, Manitoba, New Brunswick, Nova Scotia and the Yukon, and is being considered in Alberta. In each province and territory where administrative fining is in effect, occupational health and safety officers have the authority to lay charges pursuant to the applicable legislation in their jurisdiction.

Deterrence, through a swift and expeditious delivery of penalties, is cited as the key reason for granting this administrative authority. The impact for employers (and "project owners") is very likely to be a significant increase in penalties being imposed, and monies collected, by the Saskatchewan government.

### Definition of Project Owner

A definition for 'project owner' is proposed to be added to the Act, which will replace the definition of 'contractor.' In the government's own words this change would have the effect of "casting a wide net as to who is a project owner." It is also proposed that the reference to project owners as persons who "direct the activities of" employers and self-employed persons be changed to "include all those persons who pursuant to a contract engage the services of an employer or self-employed person to perform work at a place of employment." The effect of this is that parties that currently are characterized as contractors will have more direct liability for OHS infractions under the Act.

At page four of the paper the following analysis with respect to the duty of project owners is provided:

For the most part, a project owner has met its duty under the OHS legislation where a project owner has:

- taken care to hire an employer or self-employed person who through their qualifications, experience or references appears competent;
- no reason to suspect non-compliance on the part of the employer/self-employed person in the performance of the work after some observation or reasonable oversight; and
- taken action to require the employer/self-employed person to comply when non-compliance is discovered.

The key to this duty is that every project owner must take care in ensuring that the workers they hire are competent and that they react if non-compliance is brought to their attention, something they arguably are not responsible for under the Act currently.

### **Director's Order to Retain Professionals**

This proposed change has significant potential cost implications for employers. It would enable the director to require an employer, contractor or owner to obtain:

- a professional engineer's or other expert's report on the condition of a plant where the director is of the opinion that the health and safety of a worker may be in jeopardy as

a consequence of a plant's condition; and/or

- a qualified person to conduct tests or examinations on a substance in the workplace where the director is of the opinion that workers are at risk from the substance.

### **Onus of Proof Related to Adequacy of Worker's Training**

If this proposed change is adopted, the onus would now formally be on employers to prove that the training provided to workers met the requirements of the Act and regulations. The public policy rationale behind this change is to "motivate employers to be diligent in training and documenting the training of its workers." This change could make it easier for officers to complete more thorough investigations, but will also hold employers of an injured worker more accountable and make a due diligence defence more difficult to establish.

The proper development, adoption and implementation of training programs will therefore also be that much more important. Ensuring that worker training is current and effective is also key.

There are also proposed changes to the definitions of "worker" and "owner" to make them more inclusive. The other matters addressed in the discussion paper are:

1. having the Appeal rules conform to the recent decision of *Dunkle v. Occupational Health and Safety Division (Ministry of Advanced Education, Employment and Labour, Occupational Health and*

*Safety Division*), 2011 SKQB 59 in which the director was found by the Court of Queen's Bench judge to have exceeded his jurisdiction by deciding matters and exercising discretion in the absence of any statutory grant of authority;

2. imposing a duty on an employer to provide alternate work when a stop work order is in effect;
3. administrative matters including the ability of officers to inspect and investigate compliance, and would increase their powers under the Act in terms of the ability to require the production of training records and other documents with respect to workers; and
4. enabling the director to require an employer to retain professional engineers or other experts' report on the condition of a plant where the director is of the opinion of the health and safety of a worker may be compromised or in jeopardy as a consequence of a plant's condition. It also allows the director to require an employer, contractor or owner to retain other qualified persons to conduct tests or examinations on a substance in the workplace;
5. granting immunity to adjudicators for actions taken in good faith pursuant to the Act; and
6. housekeeping matters such as the re-naming of a 'Notice of Contravention' to 'Compliance Order.'

The proposed changes are in keeping with trends elsewhere in Canada with respect to amendments to occupational health and safety legislation. However, employers are encouraged to consider the proposed changes and make a submission to the Saskatchewan government. At the very least it is recommended that employers make themselves aware of the proposed changes and consider the implications for their business. This is especially the case with respect to training, and the documentation of training, of their workers as this proposed change will most certainly be made. Deficient training and/or record keeping with respect to training is best addressed now. The failure to do so if the proposed changes are adopted could result in increased penalties through either a formal prosecution or an administrative fining process.

**Article resources** - Labour Relations and Workplace Safety site:  
<http://www.lrws.gov.sk.ca/consultations-ohs-legislative-amendments>

Improving Saskatchewan's Standard of Occupational Health and Safety discussion paper:  
<http://www.lrws.gov.sk.ca/adx/asp/adxGetMedia.aspx?DocID=1538,148,104,81,1,Documents&MediaID=919&Filename=improving-sk-ohs-discussion-paper.pdf>

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## **New CSA Standard for First Responders - AN/CGSB/CSA Z1610-11**

**By: Cathy Chandler, B.A.Sc., CRSP, CHSC, OHS Consultant/Paralegal**

CSA Standards and the Canadian General Standards Board (CGSB) have developed the first national standard for protection of first responders from Chemical, Biological, Radiological and Nuclear (CBRN) events. The CAN/CGSB/CSA-Z1610, Protection of First Responders from Chemical, Biological, Radiological and Nuclear Events standard (the "standard") was launched by CSA on January 25, 2011.

The standard specifies requirements for the selection, use and care of personal protective equipment for first responders to a CBRN incident, including deliberate attacks and releases and contagious outbreak events.

The standard is specifically targeted to fire, police and medical first responders in the front line. Fire, police and emergency medical services are the first responders in more than 90 per cent of emergencies. Most first responders in Canada have hazardous material or dangerous goods standards to guide them in responding to a CBRN incident. The new standard identifies requirements for protective CBRN equipment, such as respiratory protection and whole-body protection. The new standard takes a systems approach in identifying the requirements for whole body protection and system performance, including

integration with other equipment. It also addresses the differences between a conventional hazardous material incident and a deliberate CBRN incident in order to understand how equipment guidelines may differ.

For more information on the standards, please visit [www.csa.ca](http://www.csa.ca).

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## **Arbitrator Recognizes Shift in Attitude Towards Workplace Violence**

**By: John Illingworth, B.A., LL.B., Partners and Jordan Smith, B.A., LL.B., Associate**

An Ontario arbitrator recently acknowledged changing attitudes in unionized workplaces with respect to violence amongst co-workers. In *Georgia Pacific Canada Inc. v. Communications, Energy and Paperworkers Union of Canada, Local 192*, Arbitrator Luborsky held that the violence, harassment and bullying between co-workers may be grounds for summary dismissal, regardless of an otherwise clear disciplinary record.

The grievor, an employee of 16 years, was discharged as the result of an incident with a co-worker involving pushing, threats of violence, and a challenge to "fight outside." The workplace, like many, had undergone a transformation in recent years with respect to tolerance for workplace violence. Five years earlier, co-workers had been more accustomed to settling

disputes amongst themselves, and management may have been less likely to intervene or discipline workers for actions “which on occasion escalated into fighting or wrestling contests to settle things ‘like men’ outside of the workplace.” However, in 2006, the employer had introduced a code of conduct for employees, prohibiting all forms of “bullying, violence, threats, intimidation, and other disruptive behavior in the workplace.”

Arbitrator Luborsky found on the facts that the grievor’s conduct warranted discipline. Moreover, in assessing the penalty of discharge, the Arbitrator stated:

While violence between co-workers has in the past been considered less undermining of the employment relationship resulting in a milder disciplinary response than violence directed at members of management which more often will elicit summary dismissal, it was clear

even before the passage of Bill 168 that such attitudes were changing. Now, in appropriate circumstances, violent conduct, harassment, bullying and/or intimidation in the workplace may be grounds for summary dismissal, even for a first offence by an employee with an otherwise clear disciplinary record.

The Arbitrator went on to find that, when assessing the appropriateness of the penalty, employers must still be mindful of all the circumstances relating to the incident, in order to ensure that the disciplinary response is proportionate. In this case, the grievor’s conduct was found to have been provoked in part by the co-worker’s unsafe working methods, which were described as a “reckless disregard for the grievor’s wellbeing.” In addition, a supervisor had been alerted to the co-worker’s behaviour earlier in the day, but those concerns had not addressed. The Arbitrator noted that the circumstances, while

not excusing the grievor’s misconduct, did mitigate against upholding the discharge. Nevertheless, the Arbitrator concluded that the grievor’s actions warranted a significant disciplinary response, and substituted a suspension without pay to the date of hearing, a period of 11 months.

While it is always a high threshold for employers to meet in upholding a discharge for cause, this decision strongly suggests that arbitrators are taking note of the increasing societal intolerance for workplace violence. With this shift in attitude, more serious consequences for violent conduct may increasingly be seen to be the appropriate response.

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