



The 2002 accident injury and fatality statistics are now available from the Association of Workers' Compensation Boards of Canada. A record 934 fatalities occurred in workplaces across Canada in 2004. This sombring statistic is one of the reasons Gowlings' OHS Team works tirelessly to provide effective training and consulting services to employers across Canada.

To facilitate a more complete assessment of an employer's OHS Legislative compliance, I have developed the *OHS LAW Gap Analysis*SM. This audit tool will measure your workplace's compliance with applicable OHS legislation in all jurisdictions. Our unique multi-disciplinary team of lawyers and consultants will provide you with a report and recommendations that will help improve workplace health and safety, and reduce the risk of OHS law enforcement.

For further information on Gowlings' *OHS LAW Gap Analysis*SM, please read the information piece accompanying this newsletter or contact Yvonne O'Reilly, Senior OHS Consultant.

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Quebec Employers Must Protect Workers from Psychological Harassment in the Workplace

Effective June 1, 2004, Quebec employers will have a legal duty to protect workers from psychological harassment in the workplace, when provisions of Bill 143 amending Quebec's Act respecting Labour Standards ("the Act") come into force.

Under section 81.18 of the Act, psychological harassment is defined as "any vexatious behavior in the form of repeated and hostile or unwanted conduct, verbal comments, actions or gestures, that affects an employee's dignity or psychological or physical integrity and that results in a harmful work environment for the employee. A single serious incidence of such behavior that has a lasting effect on an employee may also constitute psychological harassment."

The Act places a specific legal duty on

all employers to take reasonable action to prevent psychological harassment whenever they become aware of it. According to the Commission des Normes du Travail:

The objective of the legislation is first and foremost to make employers and employees aware of psychological harassment in the workplace and to permit actions upstream in order to avoid a deterioration of the work environment for the employee.

The protection afforded by this legislation applies to all employees, unionized or not, including senior managerial personnel. An employee who believes that he or she has been the victim of psychological harassment is given legal recourse under section 123 of the Act.

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Ontario Employer Fined \$215,000 for not Implementing Heat Stress Management Program

Weston Bakeries Limited ("Weston") was recently fined \$215,000 plus the 25% provincial victim surcharge following the death of a worker due to heat stress. The fine, which was recommended through joint submission by the counsel for Weston and counsel for the Ministry of Labour, was considered by the Judge as appropriate in the circumstances. J. Nadeau took into account the complex of considerations including:

- ❑ The corporation has been in operation for a considerable time with 15 bakeries and has a clear safety record;
- ❑ The corporation has taken significant

steps to create, designate and enforce improved standards;

❑ On the day in question, there were recorded the highest temperatures experienced in the city;

❑ The corporation had a heat stress plan it had not yet implemented; and

❑ The corporation pleaded guilty, which is a demonstration of remorse and clear acknowledgement of responsibility which eliminates the need for a three-week trial, the inconvenience of many witnesses, and intrusion into the privacy of the deceased.

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Update to Legislative Changes to Workplace Violence

The recent Coroner's Inquest into the shooting incident at the Ministry of Water, Land and Air Pollution in Kamloops, British Columbia (B.C.) has raised the issue of workplace violence to the forefront of public discussion yet again. While the investigations conducted by the RCMP and the Workers' Compensation Board (WCB) did not find any breach of the OHS Regulations by the employer with respect to workplace violence, the WCB did point out that their investigation was limited to the sections dealing with workplace violence.

Other than B.C., Saskatchewan and Alberta, which have regulations requiring employers to develop policies and procedures with respect to workplace violence and harassment and to train workers and supervisors, most Canadian jurisdictions do not have specific legislation or regula-

tions to protect workers from workplace violence. Under current OHS legislation, employers' duties are limited to a general legal duty to exercise reasonable precautions. However, this general duty is broad and leaves employers exposed to enforcement and legal liability.

For example, an inspector with the Ontario Ministry of Labour issued Orders against an employer in 2001 during a work refusal investigation requiring the employers to develop a health and safety program including a policy on violence in the workplace. The Order also required the employer to maintain the policy and to ensure that all workers and supervisors were trained on the policy.

In February 2000 in Ontario, the Coroner's Jury provided a list of 57 recommendations from the inquest into the OC Transport incident in Ottawa, Ontario, in

which Pierre Lebrun, a former employee, shot and killed three former coworkers and injured a number of other employees, before turning the gun on himself. The jury found that there were recognizable factors that should have been addressed by the employer, and that legislative guidelines were inadequate. The recommendations included creating provincial and federal legislation and regulations dealing with workplace violence that should include policy development, communication and training.

Despite the governmental lag in creating legislation and regulations in most provinces, employers are encouraged to review their risk of workplace violence and establish and implement policies and procedures to protect workers. ■

Quebec Employers Must Protect Workers from Psychological Harassment in the Workplace

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Upon completion of the investigation of an employee's complaint, the Commission des Normes du Travail may order an employer to:

- Reinstatement of the employee;
- Payment to the employee of an indemnity up to a maximum equivalent to wages lost;
- Taking reasonable action to put a stop to the harassment;
- Payment of punitive and moral damages to the employee;
- Payment to the employee of an indemnity for loss of employment;
- Payment for the psychological support needed by the employee for a reasonable period of time determined by the Commission; and/or
- Modification of the disciplinary record of the employee. ■

Conviction

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J. Nadeau also stated:

It is clear that here that the paramount consideration must be that of general deterrence and the penalty must be sufficiently substantial so as to operate as a warning to others of the need to establish standards to protect workers in the workplace, and to insist that these standards be followed.

The tragic death of this worker and the subsequent conviction emphasises the need for employers to be proactive in assessing their workplace for hazards such as heat stress and to develop and implement controls, despite the absence of clear regulatory guidelines. ■

Register for Gowlings' Free Breakfast Seminar on Heat Stress Management

May 17, 2004: 8:30 a.m. - 9:30 a.m.

Location - Gowlings - Toronto Office
Commerce Court West
Boardroom 49A

For further information contact our Training Coordinator at 416-862-3645

Developing a Heat Stress Management Program

In review of the conviction of Weston Bakeries Limited for not implementing a heat stress management program, employers should review their heat stress program now and take action to ensure they have all their requirements in place before hot weather is upon them. Employers should:

Assess their workplace (indoor and/or outdoor) for potential heat exposure, including sources of heat and humidity.

Assess the physical demands of the jobs their workers are expected to perform. Identify light, moderate and heavy demands and the type of clothing or personal protective equipment (PPE) required for the job.

Determine if any workers require extra precautions due to medical conditions or lifestyle.

Assess the engineering and administrative controls in place or that may need to be implemented.

Review the legislative requirements for their jurisdiction.

Develop or revise their program.

- ♦ Install engineering controls where practicable.

- ♦ Perform preventative maintenance on existing exhausts fans, air conditioning units, etc.

- ♦ Determine a monitoring schedule for heat exposure.

- ♦ Determine an action plan to control heat exposure and reduce the risk of adverse health effects. (e.g. alternate work schedules, modified uniforms, modified work, provision of personal protective equipment and fluid replenishment)

Train managers, supervisors and workers to recognize the signs and symptoms of heat stress and on the requirements of the program.

Implement the program: monitor heat exposure and implement action plan, if necessary.

Document their actions.

Effectively managing heat exposure will help prevent workers from becoming ill due to heat exposure, minimize the risk of work refusals and downtime, and add to the company's due diligence. ■

“From Boardrooms to Courtrooms: Bill C-45 and the New Health & Safety Crime”

Want to learn more about how the changes to the *Criminal Code* could affect you and your organization? Gowlings is offering Bill C-45 seminars in the following locations:

- May 19, 2004 - Toronto
- May 26, 2004 - Winnipeg
- June 29, 2004 - Vancouver

Norm Keith, Yvonne O'Reilly and the national team of lawyers and consultants have conducted careful analysis of Bill C-45 and have developed practical steps to take to avoid criminal liability. These Bill C-45 Seminars will help you reduce the risk of criminal liability.

For further information, visit www.gowlings.com/ohscourses (News and Trends) or contact Yvonne O'Reilly, Senior OHS Consultant, at 1-866-862-5787 Ext. 3580. ■

Occupational Injury Rates Vary Greatly Among Canadian Provinces

The Association of Workers' Compensation Boards of Canada's publication *Work Injuries and Diseases Canada 2000-2002* reported a total of 359,174 accepted lost time injuries in Canada. The following Workers Compensation Boards reported their province's lost time claim rate:

Workers Compensation Board	Lost time claim rate (per 100 workers)
Manitoba	5
Saskatchewan	4.95
New Brunswick	4.46
Alberta	3.0
Nova Scotia	3.0
Newfoundland & Labrador	2.17
Ontario	2.10

In 2002, the AWCBC reported a total of 934 occupational fatalities in Canada, which equates to 18 occupational related fatalities per week. It is important to note, however, that the number of reported occupational fatalities in Canada includes deaths attributed to occupational diseases. Therefore, it would be inaccurate to compare Canada's occupational fatality rate with any other country that does not include deaths attributed to occupational diseases, such as the United Kingdom. ■

OHS and Workers' Compensation Fines no Longer Tax Deductible

According to the recent changes to Income Tax Act, taxpayers can no longer deduct from business or property income expenses incurred for the purpose of earning that income, regarding fines. The Federal budget proposed that "no deduction be allowed in respect of an amount that is a fine or penalty (other than a prescribed type of fine or penalty) imposed after March 22, 2004 under a law of Canada or a province or a foreign state, other than penalty interest imposed under the Excise Act, the Air Travelers

Security Charge Act and the GST/HST portions of the Excise Tax Act." The Income Tax Rulings Directorate confirmed that there are currently no prescribed fines or penalties that are tax deductible. This provision may have been added to the regulation for future use in the case that the Department of Finance determines that certain fines or penalties should be tax deductible. Accordingly, fines levied under OHS legislation will no longer be deductible for income tax purposes. ■

Alberta OHS Code In Force - What to Prepare and What To Expect

The Occupational Health and Safety (OHS) Code came into effect in Alberta on April 30, 2004. In previous editions of the *OHSLAW* Report we have highlighted the steps the government has taken over the past two years to update the OHS Act, Regulation and Code. On a more practical basis, we hope to provide you with insight into how the legislation will be enforced, and what to expect from the Workplace Health and Safety division of Alberta Human Resources and Employment (AHRE). New requirements under the Code such as conducting a hazard assessment of a worksite now provide a step-by-step methodology in which to follow, document and implement.

Health and safety officers intend to enforce the Code in the same way that the Act and Regulations have been enforced. Voluntary compliance, compliance orders and stop work orders will be issued as deemed appropriate. With the conclusion of the six-month grace period, it is expected that employers will be in full compliance with all of the requirements under the Code. To quote Chris Chodan, AHRE's Public Affairs Officer "if you aren't making the effort to make your workers safe, that's when you could have problems."

Due to a centralized reporting system and an increase in the number of officers, we have seen a dramatic change in the number of inspections conducted and orders issued in recent years:

Year	Inspections
1997	1,233
2003	13,000
Year	Voluntary, Compliance & Stop Work Orders Issued
1997	127
2003	3,009

In 2001 the role of a special prosecutor was established; a crown attorney dedicated to OHS prosecutions. Last year a second special prosecutor was added, and it would be logical to assume that the number of OHS prosecutions will continue to increase in the province. The message from Minister Dunford and the province has been very clear - making it a priority for employers to ensure appropriate health and safety protective measures are implemented for their workers. ■

Gowlings' National OHS Team

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