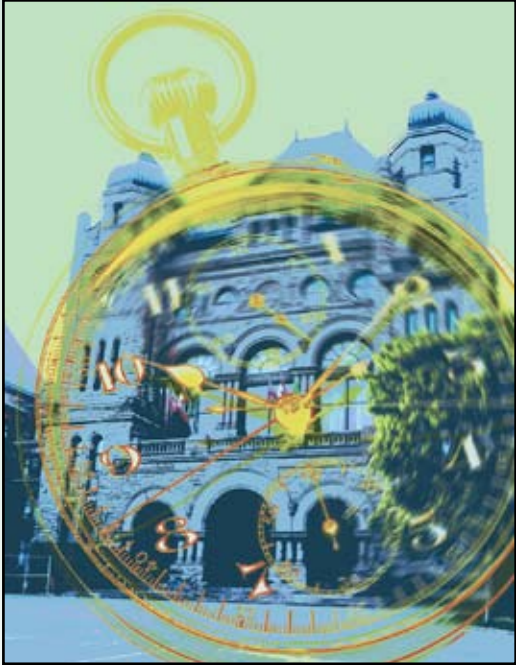


# Legislating Hazards



## Take Time. Take Action.

**P**ersistence pays, or at least it does when it comes to changing health, safety and environmental laws. With the passage of the *Toxics Reduction Act* and introduction of Bill 168, a government bill recognizing workplace violence and harassment as hazards in need of a legally enforceable prevention standard, labour health and safety activists are celebrating the achievement of these long overdue legislative milestones. What they are finding though, in both cases, there is still much room for improvement. It took time and action to get them to where they are. But it will take more time and more action to get them to where they need to go. Read on and learn how these two important pieces of legislation are progressing.

### *Ontario's Toxics Reduction Act*

#### Paper tiger or sound prevention strategy?

Ontario's legal right to know about toxic substances in the workplace got an added boost this summer. But the extent of this knowledge or whether it will translate into actual toxics reductions as it is intended remains to be seen.

On June 3, 2009, the Ontario government passed their long-awaited *Toxics Reduction Act* (formerly Bill 167). The new *Act* is an environmental law whose stated purpose is to "help prevent pollution and protect human health and the environment by reducing the use, creation and release of toxic substances and to better inform Ontarians of toxic substances in their communities."

Properly implemented the *Act* could also go some way to promoting worker health and safety. As is often the case though, it will be the regulations for this piece of legislation that will mostly determine how the *Act* is administered.

"They say the devil is in the details, but if you side with the angels then the details could be a benefit not a burden. We will be working hard to influence the development of Regulations so they

work for workers. Any legislation that reduces worker exposure to dangerous chemicals is something we in the labour movement can definitely support. The potential for toxics reduction legislation is great," says Andy King, United Steelworkers Union, National Health, Safety and Environment Coordinator/Department Leader.

In Canada there are over 23,000 chemicals and substances used in production with hundreds of new substances introduced every year. Many of these workplace substances are known cancer-causing chemicals believed to kill thousands of Ontario workers each year. Other toxic chemicals found in the workplace and in the environment cause cardiovascular, respiratory, and other diseases harming countless more. Many affect the reproductive outcomes of workers and their spouses. In their children

these outcomes include visible birth defects, learning disabilities, or problems with social integration.

Over the summer the Ministry of Environment (MOE) embarked on a consultation process with stakeholders and experts to develop the new Toxics Reduction Regulations. A draft document will be posted on the Environment Registry website for public comment and multi-stakeholder consultations early in the fall 2009 with a final Regulation expected before year end.

As it stands now, the *Act* requires companies to among other things, account for all toxic substances they use, create and release at a facility and prepare a Toxic Substance Reduction Plan for each of these substances. The plan must list all options for reducing the substances and state which of these options, if any, they intend to implement. They must also review the plan, and prepare a summary and progress report. A copy of the summary and report must be sent to the MOE and a copy made available to the public. Plans must be certified by the highest ranking employee (manager/CEO) and by a specially-trained, workplace toxic reduction planner.

It should be noted however, that while developing a Toxic Substance Reduction Plan is mandatory, implementing the plan is strictly voluntary. If a company does not intend to “reduce the use or creation of toxic substances at their facility” they must make a statement to justify this.

Other shortcomings of the legislation include:

- No provision for mandatory substitution and/or phase out of all non-essential uses of toxic substances;
- No supporting organization (and supporting fees levied from companies subject to the legislation) to help research alternatives and train toxic reduction planners; and
- No clearly established target to help inspire innovation or benchmark progress.

The Ontario government modeled their legislation after the *Toxic Use Reduction Act* (TURA) which was passed in Massachusetts in 1989, complete with sustained funding and benchmarking targets. Although TURA plans are also voluntary, Massachusetts has been very successful. Companies in this state have reportedly reduced their use of toxic chemicals by 40 per cent, waste by 71 per cent and on-site releases by 91 per cent. Economic benefits to the tune of \$14 million have also been reported.

The key to their success is the Toxics Use Reduction Institute (TURI) located at the University of Massachusetts Lowell. TURI’s mission is to help businesses with toxics use reduction by researching, testing and promoting alternatives to toxic chemicals. They also provide training for toxics use reduction planners and information and resources on toxic substances for the public.

In Ontario, the MOE’s panel of scientific experts recommended the creation of a similar institute and similar funding model, but the government chose to ignore this advice. What the government offers instead is \$24 million to contract related services. However, there is yet no specific plan as to how this money will be allocated.

Ken Geiser, former executive director for TURI, participated on the government panel. On the merits of TURI and its funding model he advised the government, “Several U.S. states have enacted toxics use reduction acts. However, the Massachusetts program has been the most effective because it, alone, has had a dedicated revenue stream based on modest annual fees paid by toxic chemical users.”

On the merits of any objections to this model he further advised, “...concerns are to be expected as any change that further internalizes the environmental and health costs of production into the cost of manufacturing appears at first to be threatening to bottom line competitiveness. However, the Massachusetts experience demonstrates that the increased responsibilities placed on businesses typically had lead to increased efficiencies, reduced compliance costs, lowered waste handling costs, improved working conditions and products more conducive to a “greener market.”

Labour and their environmental allies will continue to make the case for TURI and other improvements. Meantime, as King has indicated, they have also turned their attention to the Regulations themselves. What is yet to be determined are such items as:

- A listing of toxic substances to be regulated under the *Toxics Reduction Act*;
- Definition of who will be regulated under the *Act* (class of facilities, number of employees and thresholds of toxic substances);
- Methods of generating data on toxic substances;
- Frequency and timing for toxic substance accounting, reports and summaries;
- Minimum content requirements for each plan;
- Qualifications and curriculum for Toxic Reduction Planners.

MOE discussion documents talk about a phased approach to ‘listing’ toxins and limiting requirements of the *Toxics Reduction Act* to the manufacturing and mining sector. Other criteria would mirror requirements of Canada’s National Pollutant Release Inventory (NPRI). If implemented, these measures would effectively exclude a host of toxins, all medium and small sized businesses and at least 25 per cent of the larger polluting industries that we know about through existing NPRI data.

Another exclusion of concern to labour is the role of workers and their representatives in the *Act*. All agree its purpose statement should have included worker health.

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# Rising Above the General Duty Clause

## Ontario government announces new workplace violence legislation Labour responds with suggested amendments

**Sweet victory!** After years of lobbying and campaigning the labour movement and others have finally convinced the provincial government to amend the *Occupational Health and Safety Act* to protect workers from workplace violence and harassment.

Following months of consultations with the public last summer and fall, the Ministry of Labour (MOL) has proposed Bill 168: *An Act to amend the Occupational Health and Safety Act with respect to violence and harassment in the workplace*. Introduced on April 20, 2009, this new legislation recognizes workplace violence and harassment as occupational hazards in need of specific and enforceable measures. Previous to this, workers made due with a MOL violence policy, used when considering whether employers had lived up to their general duty to take all reasonable precautions for the protection of workers.

“This is a significant step forward. Finally we are getting close to legislation which forces employers to take this issue (of violence and harassment) seriously,” says Wayne Samuelson, president, Ontario Federation of Labour (OFL).

Under the proposed amendments employers would be required to prepare and review annually written policies and programs to address occupational violence and harassment. Of the two issues though, physical violence fares better. Employers must also assess the workplace for risks of workplace violence. More importantly, their programs must include measures and procedures:

- to control the identified risks that are “likely to expose a worker to physical injury;”
- to report incidents or threats of workplace violence to the employer or supervisor; and
- to investigate and deal with incidents, complaints and threats of workplace violence.

The new law also requires the employer to provide workers with “information” and “instruction” on the contents of the workplace violence policy and program. This includes providing workers with personal information, related to a risk of workplace violence from a person with a history of violent behaviour, but only if the worker is expected to encounter that person in the course of his or her work or if the risk of violence is likely to expose the worker to physical injury.

If passed, Bill 168 will amend Section 43 of the *Act* (which deals with a worker’s right to refuse unsafe work) to include the right to refuse work if workplace violence is likely to endanger the worker. Also new to the *Act* is the requirement for the employer to designate someone in the workplace to act as a workplace violence and harassment coordinator. The Bill also extends the provisions of the new section on workplace violence to cover the taxi industry for the first time.

Another first is a section in the *Act* addressing domestic violence. The OFL Women’s Committee and others have been campaigning vigorously for years against domestic violence. They maintain that “Ontario’s working women should not have to choose between their safety and their job.”

This new law states that if an employer becomes “aware of or ought to be aware of domestic violence (likely to expose a worker to physical injury) occurring in the workplace, the employer must take every precaution reasonable to protect the worker.”

Present in the gallery during the introduction of the Bill were the families of Lori Dupont and Theresa Vince, two female workers who were tragically murdered on the job—Dupont at the hands of a former co-worker and boyfriend and Vince at the hands of her supervisor. Recommendations from the coroner’s inquests for both of these high profile cases also called for an amendment to the *Act* to include domestic violence. Until now these recommendations have gone unheeded.

“These proposed amendments are important, however we can do better,” says Vern Edwards OFL, occupational health, safety and environment director. “As it stands now, threats of physical violence are not included in the definition of workplace violence or domestic violence. Incidents of harassment and threats are only to be reported and investigated. No prevention required.” One way to remedy this situation says labour is to broaden the legal definition of workplace violence to include harassment, threats or “vexatious behaviour,” so violence in all its forms is treated equally.

“Anyone who has ever been subject to threats and harassment knows it can be just as damaging as physical violence,” adds Edwards. Laws in other jurisdictions, in particular Quebec, include measures to prevent psychological violence.


“This is a significant step forward. Finally we are getting close to legislation which forces employers to take this issue [of violence and harassment] seriously,”

— Wayne Samuelson  
President Ontario Federation of Labour (OFL)

Another important concern with the way physical violence is defined is that it includes only those situations where the violence is directed at the worker and not those situations where violence breaks out between clients, students or patients for instance and where the worker is expected to intervene.

On August 10, representatives from the OFL met with the Ministry of Labour to discuss their concerns with the new Bill. In addition to redefining violence, labour would like to see:

- Stronger wording in the *Act*, including a stronger requirement for joint health and safety committee consultation and use of the word “training” rather than “information and instruction” when it comes to acquainting workers with a workplace violence policy and program;
- A workplace violence Regulation to better detail appropriate measures and procedures (At this point MOL representatives are saying there will be no Regulation.); and
- Sector-specific guidelines to help with the application of the law as well.

Although the new Bill has passed first reading it will be months before it becomes law. It is also unknown at this time if there will be another opportunity for the public to comment further on this new legislation. 

The Workers Health & Safety Centre (WHSC) offers comprehensive training on workplace violence and its prevention. For more information, contact a training service representative near you, or visit [www.whsc.on.ca](http://www.whsc.on.ca).

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### **Ontario's Toxics Reduction Act**



Regardless, they maintain worker representatives should be part of the process of reviewing toxics reduction plans. Section 7 of the *Act* says “review” of workplace toxics reduction plans must be conducted in accordance with the regulations. Then regulate worker participation, says labour, and be sure to train them for this important task. Experience has shown properly trained worker representatives contribute significantly to workplace hazard solutions.

“Thirty years ago, Ontario’s *Occupational Health and Safety Act* was proclaimed. We knew then (as we know today) it takes trained worker representatives to ensure our newly won rights are more than paper tigers,” says King. We will be asking the government to draw from this experience and ensure workers have a voice in another potentially groundbreaking piece of legislation.”

The Canadian Autoworkers will be making a similar demand. “Decisions about chemical choices, or the processes in which they are manufactured and used, affect workers first,” says Nick DeCarlo, CAW national representative for workers compensation and the environment. He adds, “It is absolutely essential workers have a say in any plans that will reduce their exposures too.”

Vern Edwards, Ontario Federation of Labour (OFL), occupational health, safety and environment director, agrees, “A practical approach to this opportunity would be to recognize worker reps as an invaluable source of information and natural allies for toxics reduction.” 

#### **Editor's Note**

For updates on this story visit the Workers Health & Safety Centre website, [www.whsc.on.ca](http://www.whsc.on.ca) and sign up for *Enews* today. Also visit [www.takechargeontoxics.ca](http://www.takechargeontoxics.ca). More information about the Massachusetts example can be found at [www.turi.org](http://www.turi.org). At press time the Massachusetts government had withdrawn funding arrangements for TURI, citing the economic recession. However, a similar decision was made a few years ago, only to be rescinded following an outpouring of public support for the organization. A new campaign is underway to overturn this most recent decision.