



## **Submission to the Standing Committee on Social Policy on Bill 168, Occupational Health and Safety Amendment Act (Violence and Harassment in the Workplace) 2009**

### **Introduction**

The Ontario Secondary School Teachers' Federation is pleased to present its views on Bill 168, *Occupational Health and Safety Amendment Act (Violence and Harassment in the Workplace) 2009*

First, we want to acknowledge that this legislation takes a significant step forward in protecting Ontario's workers from harassment and violence. OSSTF/FEESO has been advocating for changes to the current Act for some time and we applaud the government for moving ahead to define harassment and violence as workplace safety hazards and requiring employers to implement proactive policies and practices to address these serious and growing concerns. The amendment also establishes clearly that violence is a reason to refuse unsafe work.

But while we welcome these changes to the Occupational Health and Safety Act, we also have concerns about how this legislation will be applied and enforced within the education sector where OSSTF/FEESO currently represents 60,000 members across the province of Ontario. Our diverse membership is represented by 140 bargaining units and includes both English and French teaching and support staff members in public and separate elementary and secondary school workplaces, as well as universities, private schools and consortia, offering support services to school boards. From this vantage point, OSSTF/FEESO brings a wide range of experience and insight to discussions of workplace violence and harassment in the education workplace and this will be the focus of our remarks today.

## Concerns

One major source of our concern about how effectively the implementation of Bill 168 will be enforced in the education sector arises from the new obligations imposed on teachers and other education workers by the passage of Bill 157, legislation originating from the Ministry of Education. Under Bill 157 and the associated regulations, P/PMs 144 and 145, those working directly with students are now required to respond to, and all school board employees have an obligation to report, incidents of inappropriate behavior. This could include harassment, threats, intimidation and violence. While the intent is clearly to ensure that action is taken to protect students - and this is certainly important – the underlying message is contradictory to that of Bill 168 where the employer’s obligation to take steps to ensure the safety of the worker with respect to violence and harassment, including the provision of information and training, as well as the right to refuse unsafe work, are clearly spelled out.

The apparent discrepancy between these two pieces of legislation must be clarified and employers in the education sector made fully aware of their responsibilities to their employees under the amended OHSA. It has too often been our experience that education managers are not well-versed in these obligations and regularly pressure education workers to step in to deal with violent incidents for which they have not been properly prepared or trained. Those who balk are too often threatened with reprisals which may involve direct disciplinary action or indirect punishment such as changes in job assignment.

Our second concern is centred on the discretionary power that school administrators and education managers have regarding their obligation to provide information about students with a history of violent or aggressive behavior, even to staff who work directly with those students and who may be at risk. This is a clear violation of the right to know under the OHSA, yet administrators continue to insist the information is confidential and sharing it would be violation of confidentiality and privacy rights.

Staff, other than teachers, such as Education Assistants who are called upon to work one-on-one to support students, are usually not included in discussions to develop appropriate IEPs or Safety Plans despite their knowledge of the student and his/her needs. Getting serious and meaningful safety plans for individual students established, ensuring they are adhered to, and having them updated regularly, is also an ongoing problem for these workers.

Thirdly, we have significant concerns about the implementation of effective prevention policies and training by the employer. Developing practices that are firmly rooted in the precautionary principle is obviously in the best interests of both staff and students, yet too often the need for workplace violence prevention programs is ignored or addressed only superficially. Instead individual concerns raised by workers experiencing harassment and violence are often trivialized. Resources and training are only infrequently aimed at worker safety.

Students look to adults in their schools for their cues on how to approach many issues, including violence, health and safety. Students know if their school is serious about addressing these issues by examining the practices and procedures in their schools and evaluating whether the adults support their words and policies with appropriate actions. Healthy and safe workplaces are healthy and safe learning environments and as such, training and resources are key to creating and maintaining both.

Another issue for OSSTF/FEESO is reinforcing the role and responsibilities of the Joint Health and Safety Committees in the education sector. We would expect that employers would meet their responsibilities and ensure that Joint Health and Safety Committees are well-informed and are provided with the required resources and training to allow the committees to do their jobs properly. We would also expect that the committees are involved in the implementation of all components of Bill 168 and associated regulations.

OSSTF/FEESO has a concern that a regulation to deal with workplace violence issues will potentially not be drafted and that guidelines will be issued instead. Guidelines are not enforceable

by Ministry Inspectors, which means they can be frequently ignored. Some employers in the education sector lack experience and understanding of health and safety legislation as well as comprehension of their legal obligations. This is worrisome because when it comes to dealing with workplace violence prevention, the lack of a regulation and the issuance of guidelines mean that this important issue may get lost in the education workplace, especially with so many other Ministry of Education priorities competing for attention and resources.

## **Conclusion**

Certainly Bill 168 and its implementation pose opportunities and challenges within the education sector. Those of us working in education would welcome proactive steps by our employers to implement effective and meaningful workplace violence prevention programs and training that would actually protect all those in the education setting. It is essential to recognize that some students are threatening, aggressive and even violent and, as such, are a hazard to those who work with them. This includes students with special needs or behavioural issues who may not understand or be able to control their actions yet still cause injury to education workers who must be protected and it also includes those who choose to bring violence into our schools. In these situations, employers must recognize their responsibility to act promptly and effectively to respond to concerns. The belief in a student's unfettered right to learn must be balanced against the worker's right to safety.

Harassment and violent behaviour is not limited to students. Administrators, parents, colleagues, and others from outside the school, including family members or partners, may also be perpetrators. Regardless of its source, education workers deserve a workplace that is safe from violence and harassment, and education employers have no less a duty than any other employer to meet their obligations in this regard.

## **Recommendations**

To ensure that new obligations under Bill 168 with respect to violence and harassment in the workplace are met, OSSTF/FEESO recommends the following:

- The Ministry of Labour issue a regulation to clarify and reinforce the protections against workplace violence and harassment provided under Bill 168. Such a regulation would enable Ministry inspectors to issue orders where the situation requires and provide for stronger and more effective enforcement.
- The establishment of a committee with the mandate to address issues specific to the education sector.
- Maintaining the provisions currently contained in Bill 168, that recognize workplace violence and harassment, regardless of its origins, under the OHSA, and a worker's right to know and a worker's right to refuse unsafe work on these grounds without fear of reprisal.
- The Ministry of Labour work with the Ministry of Education to ensure the coordination of the implementation of Bills 157 and Bill 168 and to clarify the responsibility of education employers to meet their obligations to workers under the OHSA.
- In conjunction with passage of Bill 168, the Ministry of Labour also work closely with the Ministry of Education in taking steps to ensure all employers are educated about their obligations to develop and implement effective workplace violence and harassment policies, programs and procedures.
- Including OSSTF/FEESO representatives in the process of developing the regulations that will accompany Bill 168.