

Operations Division Occupational Health and Safety

Field Visit Report

OHS Case ID: 02918DVRN424

Field Visit no: 02918DVRN425

Visit Date: 2011-NOV-29

Field Visit Type: INITIAL

Workplace Identification CORP OF THE TWP OF HEAD, CLARA & MARIA, THE
15 TOWNSHIP HALL ROAD, STONECLIFFE, CLARA AND MARIA, ON

Notice ID:

Telephone:
(613) 586-2526

JHSC Status:
Inactive

Work Force #:
8

Completed %:

Persons Contacted MELINDA REITH - MUNICIPAL CLERK, GAIL WATTERS - ADMINISTRATIVE ASSISTANT/WORKER HEALTH & SAFETY REPRESENTATIVE.

Visit Purpose: COMPLIANT INVESTIGATION REGARDING WORKPLACE HARASSMENT.

Visit Location: TOWNSHIP OFFICE LOCATED AT 15 TOWNSHIP HALL ROAD

Visit Summary: PLEASE SEE NARRATIVE SECTION OF REPORT.

Detailed Narrative:

A compliant was filed with the Ministry of Labour regarding alleged workplace harassment and the failure of the employer at this workplace to follow their own policies and procedures.

It is not the role of a Ministry of Labour investigator to resolve or mediate specific allegations of harassment in a workplace.

The employer is responsible for investigating and dealing with incidents and complaints of workplace harassment in a timely manner as per the employers policy and procedures. It is noted that the employers own policy indicates that such complaints will be dealt with within 30 days, where possible. It is reported that there has yet to be a resolution to the complaint which was filed more than 30 days ago.

The employer is reminded of their legal duties as set forth in the Occupational Health & Safety Act. Elected members of Council are considered directors of a corporation. Section 32 of the ACT states:

Every director and every officer of a corporation shall take all reasonable care to ensure that the corporation complies with,

- (a) this Act and the regulations;
- (b) orders and requirements of inspectors and Directors; and
- (c) orders of the Minister. R.S.O. 1990, c. O.1, s. 32.

As noted in this section a director may be held responsible for failure to ensure that the corporation complies with the ACT, which includes protection of the workers from workplace violence and harassment. It should also be noted that the definitions of workplace violence and harassment not only include issues between workers, workers and supervisors but also from the public.

Recipient	Inspector Data	Worker Representative
Name: <u>Melinda Reith</u>	PETER STEWART OCCUPATIONAL HEALTH & SAFETY INSPECTOR PROVINCIAL OFFENCES OFFICER 347 PRESTON ST, 4TH FLR OTTAWA, ON K1S 3J4 Tel: (613) 288-3833 Fax: (613) 432-5260	Name: <u>GAYLE WATTERS</u>
Title: <u>Municipal Clerk</u>		Title: <u>ADMIN ASST / H&S Rep</u>
Signature: <u>[Signature]</u>	Signature: <u>[Signature]</u>	Signature: <u>[Signature]</u>

You are required under the Occupational Health and Safety Act to post a copy of this report in a conspicuous place at the workplace and provide a copy to the health and safety representative or the joint health and safety committee if any. Failure to comply with an order, decision or requirement of an inspector is an offence under Section 66 of the Occupational Health and Safety Act. You have the right to appeal any order or decision within 30 days of the date of the order issued and to request suspension of the order or decision by filing your appeal and request in writing on the appropriate forms with the Ontario Labour Relations Board, 505 University Ave., 2nd Floor, Toronto, Ontario M5G 2P1. You may also contact the Board by phone at (416) 326-3335 or 1-877-339-3335 (toll free), mail or by website at <http://www.gov.on.ca/lab/olrb/home.htm> for more information.

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The Internal Responsibility System is the set of responsibilities that the Occupational Health and Safety Act is based upon. It is a system where all parties at the workplace have a responsibility for safety.

- EMPLOYER /DIRECTORS - must develop policies and procedures for the safety of workers and provide required protective devices and safe equipment.
 - SUPERVISOR - must follow and enforce the safety policies and procedures and inform workers of hazards and safety precautions for their jobs.
 - WORKERS - must follow the safe working policies developed by the employer, always work in a safe manner and must report any safety hazards to their employer.
- Everyone at the workplace has a responsibility for safety.


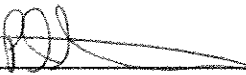
ADVICE FOR THE WORKPLACE PARTIES:

- The employer is reminded that workplace harassment is considered a serious issue and that adherence to the employers own "Workplace Harassment and Violence Policy" is required.
- A worker may seek resolution of a workplace harassment incident or complaint outside of the employer's internal investigation procedure. In particular, a worker may do this if he or she believes the employer did not properly deal with the matter. A worker may contact the Human Rights Tribunal of Ontario if it is felt that the incident is based on violation of one of the prohibited grounds under the Ontario Human Rights Code or seek to resolve the harassment issue through civil litigation.
- The employer is reminded that reprisal against a worker is prohibited for seeking enforcement of the Occupational Health and Safety Act. Section 50 states:

(1) No employer or person acting on behalf of an employer shall,

- (a) dismiss or threaten to dismiss a worker;
- (b) discipline or suspend or threaten to discipline or suspend a worker;
- (c) impose any penalty upon a worker; or
- (d) intimidate or coerce a worker,

because the worker has acted in compliance with this Act or the regulations or an order made thereunder, has sought the enforcement of this Act or the regulations or has given evidence in a proceeding in respect of the enforcement of this Act or the regulations or in an inquest under the Coroners Act, R.S.O. 1990, c. O.1, s. 50 (1).

Recipient	Inspector Data	Worker Representative
Name _____	PETER STEWART OCCUPATIONAL HEALTH & SAFETY INSPECTOR PROVINCIAL OFFENCES OFFICER 347 PRESTON ST, 4TH FLR OTTAWA, ON K1S 3J4 Tel: (613) 288-3833 Fax: (613) 432-5260	Name _____
Title _____		Title _____
Signature 	Signature 	Signature 

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- For information or guidance with this or any other health & safety matter the employer may wish to contact the Public Services Health & Safety Association (PSHSA) Tel: 416-250-2131 Toll-free: 1-877-250-7444 www.hsags.ca

- A copy of the Ontario Labour Relations Board Information Bulletin NO.14 is provided with this report.

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Title _____	347 PRESTON ST. 4TH FLR OTTAWA, ON K1S 3J4 Tel: (613) 288-3833 Fax: (613) 432-5260	Title _____
Signature <i>MR</i>	Signature <i>PJL</i>	Signature <i>ED</i>

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**ONTARIO LABOUR RELATIONS BOARD
INFORMATION BULLETIN NO. 14**

**Unlawful Reprisal Applications under Section 50 of the
Occupational Health and Safety Act**

This Information Bulletin describes how the Labour Relations Board handles applications by workers who complain that their employer has violated Section 50 of the Occupational Health and Safety Act. Section 50 prohibits employers from dismissing, disciplining, or suspending a worker (and from threatening to do any of those things) and from penalizing, intimidating, or coercing a worker because the worker has acted in compliance with or sought the enforcement of the Occupational Health and Safety Act or its Regulations. A worker who believes that an employer has violated s.50 may file a complaint with the Labour Relations Board. (If there is a collective agreement, the worker may choose to have the matter dealt with through the grievance/arbitration process instead.)

FILLING OUT AN APPLICATION

Applications to the Labour Board alleging a violation of Section 50 of the Occupational Health and Safety Act must be made on Form A-53. The application must describe fully and in an organized way all of the facts that are being relied on to support the allegation that the employer imposed an unlawful reprisal on the worker.

FILING THE APPLICATION

Before filing the application with the Board, the worker must deliver an Application Package to the employer and to any other person who the worker identifies as potentially affected by the application.

The Application Package consists of: 1) a copy of the completed application, 2) a blank response form (Form A-54), 3) a Notice of the Application (Form C-26), and 4) a copy of this Information Bulletin. The worker must fill in his or her name and the employer's name on page 1 and the date on page 3 of the Notice before making the delivery.

The package may be delivered by hand, courier, facsimile transmission, or regular mail.

No later than five days (not including weekends, statutory holidays or any other day the Board is closed) after delivering the Application Package to the employer and other affected parties, the worker must file one (1) signed original and one (1) copy of the application with the Board. The application may be filed in any way other than by facsimile transmission or registered mail. If the application is not filed within five days after delivering the package to the employer and other affected parties, the matter will be terminated.

FILING A RESPONSE

The employer and any other party who wants to participate in the case have ten days (not including weekends, statutory holidays or any other day the Board is closed) after receiving the Application Package to respond. They must first deliver a copy of the response to the worker and each other party by hand, courier, regular mail or facsimile transmission. They must then file one (1) signed original and one (1) copy of their response with the Board, using any method other than facsimile transmission or registered mail.

MEDIATION

Soon after the response is filed, one of the Board's mediators (called Labour Relations Officers or LRO's) will contact the parties and try to help them reach an agreement that will settle the application. The Officer may meet with the worker and the employer separately, or at the same time.

Labour Relations Officers do not decide the case. They do not represent any of the parties in the case, nor do they act as advisors to any of the parties in the case. The role of the LRO is to help the parties reach a settlement of the application. In order to encourage frank and open discussion between the parties and the LRO and increase the likelihood of settlement, LRO's do not tell the Vice-Chair or panel who will be hearing the case what was said at the meeting or what they think about the merits of the parties' positions. Also, LRO's will not submit documents to the Vice-Chair or panel -- if parties want documents to be considered by the Vice-Chair or panel, they must submit them.

During the settlement discussions, the LRO may explain the Board's case law. These comments are made to help parties realistically assess their chances of success and evaluate the settlement proposals, and are not to be taken as legal advice.

THE HEARING

If no settlement is reached, a hearing will be held with a Vice-Chair or panel. Each party is responsible for bringing to the hearing witnesses they want to testify on their behalf and documents that support their claim, and for presenting their own case. Parties are entitled but not required to be represented by a lawyer or other representative. The Board does not provide lawyers or representatives for people.

At the hearing, the employer must establish that it did not impose an unlawful reprisal on the worker. Usually, but not always, the employer gives its evidence first.

The Board does not charge any service fees for the hearing. However, other costs associated with the hearing (for example, witness attendance fees or the cost of photocopying documents that you want the Board to read) are the responsibility of each party. It is not the Board's practice to have the "loser" pay the "winner's" costs.

The hearing is a legal proceeding that will determine the parties' legal rights. If a party does not attend the hearing, it will go ahead anyway and their rights will be determined in their absence.

Board hearings are open to the public unless the panel decides that matters involving public security may be disclosed or if it believes that disclosure of financial or personal matters would be damaging to any of the parties. Hearings are not recorded and no transcripts are produced.

The Board issues written decisions, which may include the name and personal information about persons appearing before it. Decisions are available to the public from a variety of sources including the Ontario Workplace Tribunals Library, and over the internet at www.canlii.org, a free legal information data base. Some summaries and decisions may be found on the Board's website under *Highlights* and *Recent Decisions of Interest* at www.olrb.gov.on.ca.

IMPORTANT NOTE

IN ACCORDANCE WITH THE *ACCESSIBILITY FOR ONTARIANS WITH DISABILITIES ACT, 2005*, THE BOARD MAKES EVERY EFFORT TO ENSURE THAT ITS SERVICES ARE PROVIDED IN A MANNER THAT RESPECTS THE DIGNITY AND INDEPENDENCE OF PERSONS WITH DISABILITIES. PLEASE TELL THE BOARD IF YOU REQUIRE ANY ACCOMMODATION TO MEET YOUR INDIVIDUAL NEEDS.

WORKERS MAY ALSO CONSIDER CONTACTING THE TORONTO WORKERS' HEALTH & SAFETY LEGAL CLINIC (416-971-8832 or www.workers-safety.ca) WHICH PROVIDES FREE INFORMATION, LEGAL ADVICE AND REPRESENTATION TO LOW INCOME WORKERS WHO FACE HEALTH AND SAFETY PROBLEMS AT WORK.