

# Occupational Violence: Navigating the Legal Landscape



**KATHERINE LIPPEL**  
**CANADA RESEARCH CHAIR IN**  
**OCCUPATIONAL HEALTH AND SAFETY LAW**  
**FACULTY OF LAW, CIVIL LAW SECTION,**  
**UNIVERSITY OF OTTAWA**  
**KLIPPEL@UOTTAWA.CA**

**CFNU VIOLENCE ROUNDTABLE**  
**OTTAWA, JANUARY 17<sup>TH</sup>, 2018**

# Topics considered



- Regulation for the prevention of occupational violence
  - Categories of workplace violence
  - Determinants of workplace violence
  - Regulatory protections currently in place
    - ✦ Explaining the spreadsheet on occupational violence legislation
- Strengths and weaknesses of current regulatory protections
- Conclusion: 5 key points

# Categories of occupational violence addressed in Canadian legislation



- Physical violence
- Threats of violence
- Psychological harassment/bullying/mobbing
- Sexual harassment and gender based harassment
- Other forms of discriminatory harassment
- Intimate partner violence in the workplace
- Criminal violence

# Typologies of violence: who is the perpetrator?



- ILO/Literature
  - Internal vs External violence
    - ✦ Internal: Perpetrators are colleagues, supervisors, or subordinates
  - Horizontal vs Vertical violence

# Determinants of workplace violence



- **Occupational violence**

- Physical violence
- Threats of violence
- Psychological harassment/bullying
- Discriminatory harassment
- Sexual harassment

- **Factors relating to work organisation**

- Job strain/ISO strain
- Effort Reward Imbalance
- Restructuring and job insecurity
- Precarious Employment
- Austerity measures in public services

# Regulatory protections in Canada



- Spreadsheet prepared for the CFNU
  - Katherine Lippel and Pauline Vengeroff
  - Up to date, December 31<sup>st</sup> 2017

# Existing Legal Provisions: All Provinces



Province	Physical Violence	Threats	Psychological Harassment	Sexual Harassment	Discriminatory Harassment	Domestic Violence
AB	X	X	X	X	X	X
BC	X	X	(X)	(X)	(X)	X
MA	X	X	X	X	X	
NB				X		
NL	X	X		X	X	
NS	X	X		X	X	
NT	X	X	X	(X)	X	
ON	X	X	X	X	X	X
PEI	X	X		X		
QC			X	X	X	
SK	X	X	X	(X)	X	X
Nunavut	X	X	X	X	X	
Federal	X	X	X	X	X	

# Legislation for prevention of workplace physical violence



- General duty clauses
- Examples of regulations explicitly targeting violence in the form of physical or verbal aggression
  - ✦ Nova Scotia, 2008
  - ✦ British Columbia, 1998
  - ✦ Ontario, Bill 132/OHSA, 2016
- Legislation targeting working alone



# Legislation for prevention of workplace psychological violence and discriminatory harassment



- General duty clauses (if mental health covered in the Act at least implicitly)
- Examples of regulations explicitly targeting psychological harassment/bullying
  - ✦ Québec Labour Standards Act (in force since 2004)
  - ✦ Ontario, Bill 132/OHSA
  - ✦ Alberta, Bill 30, 2017
  - ✦ Canada OHS Regulations: *Violence prevention in the Workplace*, 2008
    - Bullying included as a possible contributor to workplace violence
- Legislation explicitly targeting discriminatory/sexual harassment
  - ✦ Human rights legislation in most provinces
  - ✦ OHS legislation in Ontario (Bill 132), Saskatchewan and Alberta (Bill 30)

# Psychological harassment legislation in Québec



- applicable to all employees covered by provincial legislation, whether unionized or not
- provisions integrated into collective agreements by the Act

- Defines psychological harassment
- Establishes the right to a workplace free from harassment
- Defines employer obligations
- Includes diverse means of redress and time limits for lodging grievances
- Claim filed with CNESST or grievance if unionized.

# Ontario: regulation to protect workers from violence at work: Part III. 0.1 OHSA & bill 132

- Physical violence

- Policy
- Program
- Risk Assessment
- Information to worker about potentially violent persons at workplace

- Harassment including sexual harassment (2016)

- Policy
- Program (developed with JHSC)
- Reporting
- Investigations
- Inspector may order an investigation by an impartial person at the expense of the employer (s. 55.3)
- Right to refuse???



# Strengths and weaknesses

What to  
look out  
for

- Does the legislation protect workers from physical and psychological violence?
- What tangible recourses are available to workers?
- What role does the union play?
- Are protections different depending on identity of the perpetrator (internal vs external violence, ie PEI and BC)
- Does the legislation require identification of root causes of violence including work organization/staffing?

# Protection from other psychosocial hazards?



- Ontario

- No explicit legislative acknowledgement of requirements to protect workers' mental health outside of the violence provisions

- Québec

- No explicit legislative acknowledgement of requirements to protect workers' mental health
- Tribunals have determined that the general duty clause includes the obligation to protect workers' mental health, and the CNESST intervenes to protect workers' mental health.
- *Chagnon et Marché Bélair*,  
CLP 2000

# Internationally



- Occupational health and safety legislation in Denmark, Sweden and Belgium explicitly requires
  - protection of workers' mental health
  - systematic management of exposure to psychosocial hazards.

# Conclusion: 5 key points



- The Canadian regulatory framework is very **uneven**
  - definition of violence
  - workplaces required to address occupational violence
  - rights of workers to be protected from violence
  - obligations of workplace parties to prevent violence.

## 5 key points



- **General duty clauses** apply to the prevention of physical violence in all jurisdictions, including those jurisdictions where there is no explicit legislation.
- Legislation should include violence and threats of violence that can lead to **physical or psychological harm**, and should target violence by **all potential perpetrators**, whether they are workers, supervisors, or members of the public.

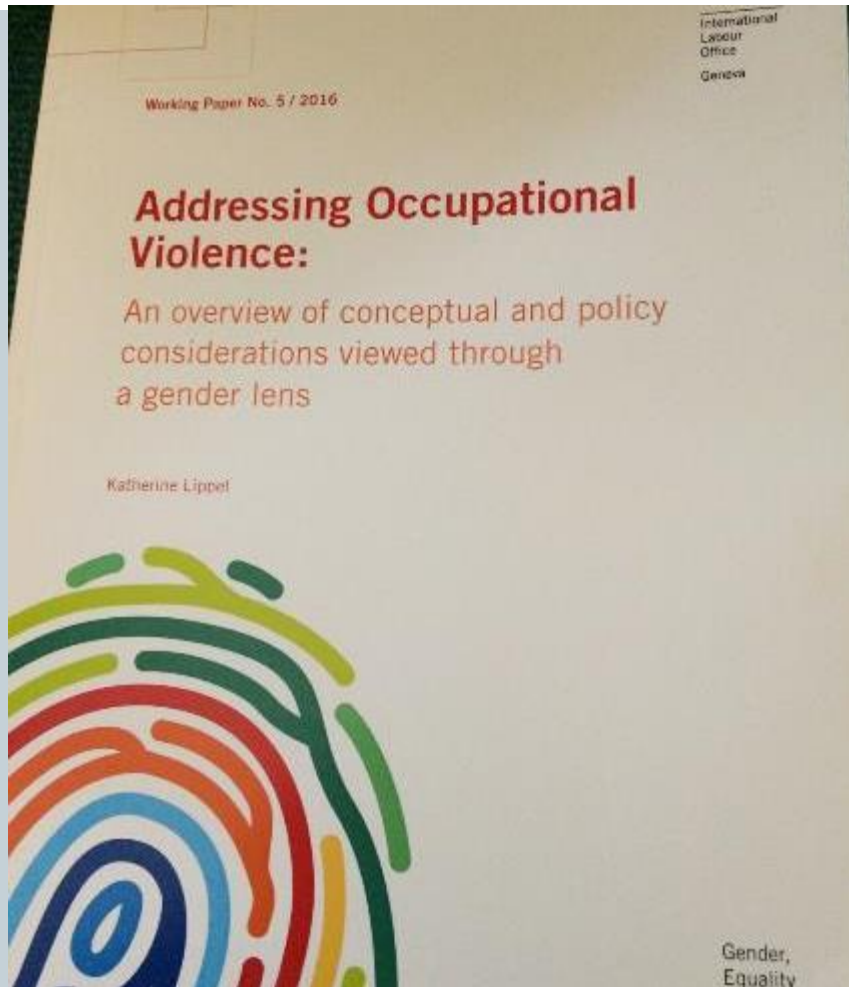


# 5 key points



- **Separate provisions should exist for psychological harassment/bullying** (not just discriminatory harassment) and should require employers to address prevention. **Individual workers should have access to remedies** for psychological harassment.
- **Risk assessments for all forms of violence** should be required in all categories of workplaces and should require **participation of the OHS committees or possibly specialized joint committees** trained in the prevention of violence and harassment, including the identification of risk factors, such as organizational factors, that may lead to violence.
  - **These should include the identification of psychosocial hazards that potentially lead to violence**

# ILO report on occupational violence



- [http://www.ilo.org/wcmsp5/groups/public/---dgreports/---gender/documents/publication/wcms\\_535656.pdf](http://www.ilo.org/wcmsp5/groups/public/---dgreports/---gender/documents/publication/wcms_535656.pdf)