



CUPE Ontario BILL 132 Submission

Sexual Violence and Harassment Action Plan Act

Fred Hahn

President

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CUPE Ontario

80 Commerce Valley Dr., Suite 1

Markham, ON L3T 0B2

Phone: (905) 739-9739

Fax: (905) 739-9740

Email: info@cupe.on.ca

Website: www.cupe.on.ca

Twitter: twitter.com/cupeont

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Canadian Union of Public Employees Ontario

The Canadian Union of Public Employees (CUPE) Ontario is the largest union in the province with more than 250,000 members in virtually every community and every riding in Ontario. Roughly two-thirds of CUPE members are women. CUPE members provide services that help make Ontario a great place to live. CUPE members are employed in five basic sectors of our economy to deliver public services: health care, including hospitals, long-term care and home care; municipalities; school boards in both the separate and public systems; social services; and post-secondary education. CUPE members are actively involved in social justice work, and our union has a long tradition of fighting for gender equality in all dimensions of social, political and economic life. We are also strongly committed to creating healthy and safe work places. Our members work on a daily basis on Joint Occupational Health and Safety Committees and take extensive training to promote the strongest possible protection for workers.

Our members do this work every day, and as a collective experience it equips us to make a positive and informed contribution to the discussions around proposed legislation on sexual violence and harassment, notably as it relates to the workplace but also with regard to how sexual violence and harassment affect us in communities across the province. We support the elimination of sexual violence and harassment in all of its forms and work actively to this end.

Introduction: Ending Sexual Violence and Harassment Must Be a Priority

As a union that is deeply concerned with gender equality, CUPE Ontario is strongly committed to ending all forms of sexual violence and harassment. Our commitment includes fighting for improvements in workplaces, and working to eliminate violence and harassment in our communities. We support policies that are universally applicable, but also recognize that women are most likely to be the targets of sexual violence and harassment, and that men are the most likely to be the perpetrators of such violence.¹ As a society we cannot achieve gender equality without eliminating sexual violence and harassment. In light of this we would like to thank the government for making this issue a high priority.

The government's Action Plan to Stop Sexual Violence and Harassment contains a number of measures that act as good starting points to address this pervasive problem. Notably, the Action Plan identifies the need to strengthen health and safety legislation to protect workers, and legislation to protect students on college and university campuses, which have been introduced in Bill 132. The purpose of this submission is to provide comment on, and recommend changes to this particular Bill. CUPE Ontario supports the inclusion of sexual violence and harassment in the Occupational Health and Safety Act, and supports the requirement that colleges and universities establish policies on this matter. Our goal is to make Bill 132 as strong as possible, and we have included several recommendations to this end.

Since the Action Plan is an ongoing process CUPE Ontario will provide further comment on it as the process for developing and implementing it unfolds. This submission will focus specifically on amendments to the Occupational Health and Safety Act (OHSA), and the amendments to the Ministry of Training, Colleges and Universities Act (MTCUA). CUPE Ontario is supportive of strengthening protection for survivors of sexual violence, and supportive of increasing protection of tenants, which are also included in Bill 132. That being said, the crux of our submission will focus on issues of health and safety, and policies to be developed in the post-secondary education sector.

¹ Government of Ontario, *It's Never OK: An Action Plan to End Sexual Violence and Harassment*, March 2015

Analysis of the Bill

With regard to the sections of Bill 132 that amend the OHSA we would like to highlight that Joint Occupational Health and Safety committees are central to ensuring workplace safety. Joint Committees are necessary to the internal responsibility system, and give workers an important voice in identifying workplace dangers. Committee members develop the expertise to make formal recommendations on health and safety issues, and to develop plans for eliminating risks.

One of the most significant concerns we have with the proposed changes to the OHSA is that the Joint Occupational Health and Safety Committees are excluded from development, implementation and oversight of workplace policies on sexual violence and harassment. Under the proposed amendments employers have sole discretion to develop, implement and enforce policy. There is no reporting of cases of workplace sexual violence or harassment to the committee, despite the fact that it is clearly identified as a workplace health and safety risk. Committees will be deprived of the information that they need in order to participate in the work of eliminating sexual violence and harassment from our workplaces.

Bill 132 identifies measures for employers to address sexual violence and harassment once they have occurred, but does not require employers to take measures to eliminate the risks of sexual violence and harassment. Instead the proposed amendments require that worker protection is only addressed through the creation of a policy that has enforcement mechanisms. The Bill would be strengthened by including a positive obligation on employers to create a violence and harassment free workplace.

We view it as inappropriate to include a section in Bill 132 declaring that “a reasonable action taken by an employer or supervisor relating to the management and direction of workers or the workplace is not workplace harassment”. This language appears to be intended to absolve employers from risk of being accused of harassment when exercising their management rights. Bill 132 however, relates to sexual violence and harassment. Inclusion of this language in this particular piece of legislation implies that acts of sexual violence and harassment could be legitimately part of management’s right to direct the workforce. Clearly that is not the intention of this legislation and thus this section should be removed from this Bill.

Changes to the OHSA do not specifically identify risks from service recipients, clients, customers, visitors or other non-employees who are regularly in attendance at workplaces. In the absence of specific requirements on employers there is no guarantee that workplace policies will provide workers with protection against harm caused by non-employees. Public sector front line workers are regularly engaging with service recipients and clients. It is not uncommon for hospital workers, or university workers, or school board workers (to name but a few kinds of workplaces) to report that patients, students, parents of students, or visitors to their workplaces, have engaged in violent or harassing behaviour. Bill 132 needs specific direction to employers to ensure that policies include protection against sexual violence and harassment perpetrated by non-employees.

Nor does Bill 132 identify employers’ responsibility to protect workers from the risks of cyber-bullying/cyber-harassment. Sexual violence and harassment take many forms, including acts using email and social media, which do not require that the perpetrator of violence actually be in attendance at a workplace to do harm. There needs to be explicit mention in the Act of employers’ obligations to develop protection against cyber-bullying/cyber-harassment, including sexual harassment.

With regard to amendments to the MCTUA, Bill 132 does not require that unions and workers at colleges and universities participate in the creation of policies, despite the fact that workers will be

responsible for administering policies. We agree with the government's position that students must be consulted in the development of policy as they are directly affected by it. But students are not the only group to be directly affected by the policy. Staff and faculty will be required to administer the policy.

Furthermore, staff and faculty will be the first people who receive disclosure of acts of sexual violence and harassment. In fact, even in the absence of policy, staff and faculty are regularly the contact people for students in distress. Teaching Assistants and Instructors develop relationships of trust with students, who often disclose when requesting extensions or other accommodations for academic work. Staff who work in residences are often the first to know of acts of sexual violence and harassment, and also develop relationships of trust with students because they work in students' living environments. Staff and faculty already have expertise and knowledge of what happens on campus. Their input will be essential to making these policies strong and effective.

The Bill does not require that acts of student sexual violence be reported to Health and Safety Committees, despite the fact that violent students pose a potential health and safety risk to workers. Working and learning environments overlap completely in a university setting. Those students who pose a threat to other students can also pose a risk to workers. Many employees of universities are also students, for example Teaching Assistants and Research Assistants who are also graduate students. It is not possible to develop a clear distinction between one's status as a student and as an employee. The legislation should provide student-workers the opportunity to avail themselves of all protection afforded to them on the job, which would require that committees are fully informed of health and safety risks. Such a measure would strengthen the work of the Joint Occupational Health and Safety Committees, and empower them to contribute to the fulfilment of the mandate of the government's Action Plan.

Additionally, support needs to be developed to enable staff and faculty to handle student reports of sexual violence and harassment. Workers who receive reports of sexual violence and harassment have to deal with the mental stress associated with such reports. College and University policies must include sections identifying institutional support, including but not limited to Employee Assistance Programs (EAP), to protect workers from psychological harm.

Recommendations

Recommendations 1-5 relate to the sections of Bill 132 that amend the Occupational Health and Safety Act. Recommendations 6-8 relate to the sections of Bill 132 that amend the Ministry of Training, Colleges and Universities Act.

Recommendation 1: Give Joint Occupational Health and Safety Committees primary responsibility for overseeing the drafting of workplace policies on sexual violence and harassment. Joint committees will be responsible for developing the appropriate reporting and investigations processes for their workplace policies.

Recommendation 2: Require that all incidents of workplace violence and harassment are reported to Joint Committees, including sufficient detail to empower committees to make formal recommendations on improving the implementation and enforcement of the policy. This will require that results of investigations are deemed to be reports under the OHS Act.

Recommendation 3: Delete the section of Bill 132 regarding "reasonable action taken by employers" not being considered harassment.

Recommendation 4: Include specific reference to risks from non-employees (e.g. service recipients, clients, customers, visitors), and the need for workplace policies on cyber-bullying/cyber-harassment.

Recommendation 5: Using the precautionary principle as the best way to protect health and safety, require that employers take all reasonable measures to eliminate risks of sexual violence and harassment in their workplaces.

Recommendation 6: Union representatives (including but not necessarily limited to Health and Safety representatives) must be included in the development of any policies related to student sexual violence and harassment.

Recommendation 7: Workers must be given adequate support to deal with reports of student sexual violence and harassment. Support must include adequate training on the policy, and also include support for workers to adequately deal with the mental stress associated with hearing reports of sexual violence and harassment.

Recommendation 8: Incidents of student sexual violence and harassment should be reported to Joint Occupational Health and Safety Committees. Sexual violence and harassment between students (and between students and staff) occurs within our workplaces. Committees have the responsibility of overseeing the health and safety of the entire workplace.