RNAO SUBMISSION TO:

The Standing Committee on Social Policy

Bill 168: *Occupational Health and Safety Amendment Act (Violence and Harassment in the Workplace), 2009.*

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Introduction

The Registered Nurses' Association of Ontario (RNAO) is the professional association for registered nurses who practise in all roles and sectors across Ontario. For nurses, like all working women and men, relying on a safe work environment is central to our ability to practise. We are pleased to comment on Bill 168, the *Occupational Health and Safety Amendment Act (Violence and Harassment in the Workplace), 2009*.

In explicitly tackling workplace violence and harassment, the Bill represents a significant step towards improving workplace safety. At the same time, the Bill stops short in a number of critical areas and thereby misses important opportunities to secure a healthy work environment where everybody can feel safe at work from violence and harassment in its many forms. If Ontario workplaces are truly to enjoy zero tolerance for violence, then Bill 168 needs to be amended and strengthened in ways that are specified below.

At the outset, the RNAO acknowledges and salutes the courage and commitment of the families of Lori Dupont, Theresa Vince and the many others who worked so hard and suffered such pain to bring us to this point. Lori Dupont, for one, was a registered nurse at Windsor's Hotel-Dieu Grace Hospital. She was brutally murdered by Dr. Marc Daniel with whom she had recently ended a two-year tumultuous relationship. In its verdict released on December 11, 2007, the coroner's inquest reviewed all the circumstances that led to this terrible tragedy and expressed the hope that its 26 comprehensive recommendations would "save lives in the future with regards to domestic and workplace violence".[1]

As nurses, we recognize that early intervention and prevention of harassment and violence in the workplace are the best ways to promote a healthy work environment for all workers.

Violence in the Health-Care Workplace

In the health-care workplace, violence, bullying, conflict and disruptive behaviours have negative effects at many levels: personal, team, unit, and organization, and on the outcomes of the clients and families served by the health-care team. It is estimated that 50 per cent of health-care workers will be physically assaulted during their professional careers[2], and nurses are three times more likely to experience violence than any other professional group.[3] Given that nurses comprise 60.3 per cent of all regulated health professionals[4] and about 35 per cent of Ontario's health workforce[5], the impact of workplace violence on both nursing and the delivery of nursing care is significant.

Nursing continues to be a female-dominated profession, and societal attitudes continue to devalue and sexualize nursing.[6] [7] As a result, violence against nurses can be considered part of the continuum of violence against women. Nurses, who have disabilities, come from racialized communities, are immigrants, gay, lesbian, bisexual, or transgender experience discrimination from patients, clients, and colleagues. It is therefore likely that they could face increased violence in the workplace.[8]

Nurses experience emotional distress and physical injuries- and in more serious instances, permanent disability or death - as a result of workplace violence.[9] In one study, the cost of workplace violence against nurses, including absence from work, [10] emotional distress and medical expense, was estimated at about $35,000 per assault-related injury.[11]

Nurses working in all sectors of health care are at risk for violence.[12] [13] [14] [15] Findings from the 2005 National Survey of the Work and Health of Nurses showed that in Ontario 28.4 per cent of respondents had been physically assaulted by a patient in the previous 12 months and two per cent had been physically assaulted by someone other than a patient.[16] In the same survey, the percentage of Ontario respondents who reported they had experienced emotional abuse at work, over the past 12 months was: from a patient, 44.9 per cent; from a visitor, 16.9 per cent; from a physician, 8.7 per cent; from a nurse co-worker, 10.3 per cent; and from someone else, 9.0 per cent.[17]

Indeed, while acts of aggression and violence are commonly considered physical, escalating levels of social, verbal and emotional violence are being found in workplaces. Perpetrators of such violence are not only patients and their family members, but also fellow health-care professionals. This includes acts like socially isolating a colleague, gossiping, bullying, harassment, pushing, throwing things, and other aggressive behaviour.

Nursing students have similar experiences to registered staff including experiencing violence in their clinical placements.[18] This can influence a student's decision to remain in the profession. There is also concern that students may begin to assimilate this conduct into their practice, perpetuating the behaviour.[19]

Ontario's nursing workforce is aging. In 2008, the average age of an RN was 46.1 years.[20] Twenty-six per cent of the Ontario nursing workforce is over the age of 54, and therefore able to retire and begin collecting a pension under the provisions of the *Pensions Benefits Act.*[21] In the face of an aging nursing workforce, efforts are required to retain the current workforce; absorb and retain new graduates; and attract more individuals to nursing. The provincial government made a 2007 election commitment to hire 9,000 additional nurses. This will be advanced in part by making workplaces a safe place for nurses to practise.

Harassment and violence in the workplace is believed to be on the rise[22], despite evidence of significant underreporting. Sustained exposure to violence in the workplace, including aggression, abuse and bullying can have serious physical and psychological consequences,[23] [24] [25] [26] causing some nurses to consider leaving the profession. Clearly, workplace violence matters to nurses and the nursing profession.

Definition of Workplace Violence

Bill 168 distinguishes between "workplace harassment" and "workplace violence" with both defined in s.1 of the Bill. Workplace harassment is defined as "engaging in a course of vexatious comment or conduct against a worker in a workplace that is known or ought reasonably to be known to be unwelcome". An employer is required under s.3 to prepare a workplace harassment policy, review the policy annually, post a written form of the policy and develop a program to implement the policy. This includes procedures for workers to report incidents of workplace harassment to their employers and how employers will investigate and deal with such incidents.

Workplace violence, on the other hand, specifically involves "the exercise of physical force by a person against a worker in a workplace that causes or could cause physical injury to the worker" or "an attempt to exercise physical force against a worker in a workplace that could cause physical injury". Like workplace harassment, the employer is obliged to prepare a policy with respect to workplace violence, post and review it annually, and develop a program to implement the policy. However workplace violence is treated differently in several important respects. First, the program implementing the workplace violence policy must include measures to control the risks of exposure to violence and include procedures for summoning immediate assistance. Second, employers are required to assess the risk of workplace violence that may arise from the nature of the workplace, the type of work and the conditions of work. Third, the Act gives a worker the right to refuse work if the worker is likely to be endangered by workplace violence.

An arbitrary distinction between workplace harassment and workplace violence fails to take into account the reality that harassment and violence are inextricably interrelated. As with other forms of aggression, violence and harassment in the workplace involve an abuse of power and control[27]. Recent research[28] on workplace aggression in the general population finds that 'harm-doing behaviour' or abusive bullying in the workplace is more likely to be verbal, to be passive rather than direct, and to have a 'top down element'. A narrow definition of workplace violence does not take into consideration other very important elements such as bullying, verbal abuse and harassment that are harmful to workers' health and well-being. [29]

The RNAO strongly recommends a more inclusive definition of workplace violence such as the one incorporated in RNAO's *Preventing and Managing Violence in the Workplace Best Practice Guideline*[30] which states that:

> Incidents in which a person is threatened, abused or assaulted in circumstances related to their work. These behaviours would originate from customers or co-workers, at any level of the organization. This definition would include all forms of harassment, bullying, intimidation, physical threats, or assaults, robbery and other intrusive behaviours.

RNAO's Position Statement: *Violence Against Nurses: 'Zero Tolerance' For Violence Against Nurses and Nursing Students*[31] also defines workplace violence as 'an incident of aggression that is physical, sexual, verbal, emotional or psychological that occurs when nurses are abused, threatened or assaulted in circumstances related to their work'[32]. A suitable definition would be inclusive of any and all aggressive behaviours that are physical, sexual, psychological, verbal, and/or emotional.

Physical violence includes:

- Using force against another such as beating, stabbing, shooting, raping, pushing, hitting and any other forms of physical aggression/assault.

Sexual violence includes:

- Verbal or physical behaviours based on gender and/or sexuality, such as lewd comments, inappropriate sexual touching.

Psychological violence includes:

- Verbal or physical threats, intimidation, rumours, demeaning behaviours (such as being followed, insulted, sworn or shouted at, criticized, made to feel bad or guilty),
- Passive aggressive approaches and acts of neglect or failure to acknowledge contributions of others, mobbing, bullying, harassment, intentional or unintentional, action or non-action and withholding favour.

All individuals have the right to work in a supportive environment where workplace violence in all its forms is not tolerated.

RECOMMENDATION: Amend Bill 168 to contain a broader definition of violence in the workplace, to include incidents in which a person is threatened, abused or assaulted in circumstances related to their work. These behaviours would originate from customers or co-workers, at any level of the organization. This definition would include all forms of harassment, bullying, intimidation, physical threats, or assaults, robbery and other intrusive behaviours.

Definition of Domestic Violence

Bill 168 amends the *Occupational Health and Safety Act*, s. 32.0.4, to require that an employer "take every precaution reasonable in the circumstances" if they should "become aware, or ought to be reasonably aware that domestic violence would likely expose a worker to physical injury." However, the bill does not provide a concrete definition of domestic violence. In addition, the protection an employer is expected to provide is limited only to protection from physical harm.

RNAO believes that domestic violence should be treated even more seriously than other forms of workplace violence. The Domestic Violence Death Review Committee has noted in its review of common risk factors related to domestic violence deaths that "it is of considerable concern [that] a number of cases appeared predictable and preventable in hindsight based on the high number of risk factors that were present".[33] Given the "predictable and potentially preventable" nature of many deaths from domestic violence, it is essential that prevention of domestic violence should be included in workplace safety policies and violence prevention programs. As the Domestic Violence Death Review Committee has noted:

> It is not uncommon that domestic violence can extend from the home into the workplace with the perpetrator harassing the victim by showing up unannounced, by calling repeatedly, or by forcing the victim to be late or absent

> from work. Moreover, the perpetrator may work with the victim and continuously harass and assault the victim on the job site. It is important that co-workers, human resource managers, and employers understand the negative impact of domestic violence and workplace harassment, as well as their potential role in protecting employees from it. Several of the recommendations made by the Committee addressed the need for workplaces to design and implement policies that address domestic violence and harassment in the workplace and how to enforce these policies when claims of misconduct are present. All employees should receive extensive training about the dynamics of domestic violence and workplace harassment so that they are equipped to deal with these circumstances appropriately and effectively when they occur.[34]

It is instructive that the Domestic Violence Death Review Committee included the verdict and recommendations of the Coroner's jury in the inquest into the murder of Lori Dupont by Marc Daniel as Appendix C of their Fifth Annual Report.

By providing broad definitions of workplace and domestic violence, an amended Bill 168 could prevent or reduce the incidence of all violent behaviour by intercepting it early.

RECOMMENDATION: Amend Bill 168 to add a broad definition of domestic violence that includes but is not limited to: all forms of harassment, bullying, intimidation, physical threats or assaults, robbery and other intrusive behaviours, that involves intimate partner or family violence of any sort that extends into the workplace.

Temporary Intervention Orders

Bill 168 as written only holds employers accountable for creating awareness of harassment and violence in the workplace, and implementing policies and guidelines for action should an incident occur. However, it does not allow for any emergency intervention orders for the protection of the person that is at risk of harm.

A number of factors contribute to violence in the health-care workplace depending on the practice setting. These include[35]:

- underlying assumptions that violence is 'part of the job' and must be tolerated;
- inadequate staffing and resources, resulting in long wait times to access care;
- inadequate security measures with respect to staffing or response procedures;
- inadequate training for staff on responding to potentially violent situations;
- inadequate supports for nurses who work alone - for instance, community health and home care nurses; and,
- Under-reporting of violence which limits both knowledge of scope of issue and corrective action.

Bill 168 needs strengthening to include wording that would allow a worker to seek a temporary intervention order at any time of day or night, that would restrain the respondent from attending at or near, or entering, any place that is attended regularly by the applicant, a relative of the applicant, any child or any other specified person, including a residence, property, business, school or place of employment.

RECOMMENDATION: Amend Bill 168 to include wording that would allow a worker to seek a temporary intervention order at any time of day or night.

Addressing Power Imbalance in the Health-Care Workplace

Until systemic and archaic hierarchies that are embedded in our health-care system are addressed, these power imbalances will continue to permeate and negatively affect health-care work environments.

The Coroner's jury during the Dupont/Daniel inquest recommended that every workplace policy to address workplace violence "…should reflect an analysis of the power differentials that exist between different groups of employees/workers/staff[36] (recommendation #4). Hospital managers had red-flagged Daniel as a problem physician long before Dupont filed her first complaint. Two other nurses had also filed formal complaints in 2004 over verbal abuse by the anaesthesiologist.

Hierarchies not only impact health-care workers, they can also have adverse effects on patients. The report on an inquest[37] into the deaths of 12 infants after cardiac surgery conducted in Manitoba in 1998 stated that because nursing occupied a subservient position within the hospital structure, issues raised by nurses were not always treated appropriately. Though the experiences and observations of nursing staff led them to voice serious and legitimate concerns, the nurses were never treated as full and equal members of the surgical program. Any concerns over medical issues that the nurses expressed were rejected as not having any proper basis, clearly stemming from the erroneous view that the nurses did not have the proper training and experience to hold or express such a view. It was clear that legitimate warnings and concerns raised by nurses were not always treated with the same respect or seriousness as those raised by physicians.

RNAO believes that to prevent ongoing systemic aggression – which can range from belittling and bullying colleagues to the tragic murder of a health-care professional as was the case with Lori Dupont– the underlying power structures that exist in hospitals must be addressed. As the RNAO Best Practice Guideline entitled *Preventing and Managing Violence in the Workplace* recommends "Structural changes that equalize power bases" must be enshrined in legislation.

Medical Advisory Committees (MACs), created under the *Public Hospitals Act*, are not only barriers to collaborative practice, they also reinforce inequitable power relations between physicians and other professionals. We know from the Dupont case that power differentials jeopardize both patient safety and workplace safety.

RNAO calls on the government to amend the *Public Hospitals Act* to replace hospital Medical Advisory Committees with Inter-Professional Advisory Committees (IPACs) representing and reflecting the equality and Interprofessional collaboration all health-care professionals.

RECOMMENDATION: Equalize power imbalances in the health-care workplace, including an amendment to the *Public Hospitals Act* to replace hospital Medical Advisory Committees (MAC), with Inter-Professional Advisory Committees (IPAC) to represent all professionals, advance equality and interprofessional collaboration.

Whistleblower Legislation

It is essential that there be support and encouragement for staff, without fear of reprisal, to report incidents or potential incidents of workplace violence. These reports should always be investigated and appropriate remedial action taken. Individuals who commit violent acts must be prosecuted.

There are individuals in every workplace who would report incidents they witness or experience, such as violence, harassment, abuse, theft - if they felt protected from retaliation. But whistleblowers sometimes pay a price in Canada. Whistleblowers disclose information about something they believe to be harmful. Again, using the example of the Manitoba inquiry into 12 infant deaths at a Winnipeg hospital, it was concluded that at least five of the deaths were preventable - and that whistleblower legislation would have helped protect nurses from reprisal when reporting a particular surgeon.

The Coroner's jury recommended that the Province of Manitoba consider passing 'whistle blowing' legislation to protect nurses and other professionals from reprisals stemming from their disclosure of information arising from a legitimately and reasonably held concern over the medical treatment of patients.

Though the *Occupational Health and Safety Act* does contain wording prohibiting reprisal by the employer, the RNAO's Best Practice Guideline *Preventing and Managing Violence in the Workplace* suggests that whistleblower protection for those who report violence in the workplace must be explicit.[38] Strong wording needs to be added to Bill 168 to protect workers who report incidents or potential incidents of workplace violence and harassment.

RECOMMENDATION: Amend Bill 168 to ensure whistleblower protection to those who report incidents or potential incidents of workplace violence and harassment.

Conclusion

Every worker has the right to work in a supportive environment where workplace violence, in all its forms, is not tolerated.

Thank you for the opportunity to comment on Bill 168, an important bill that affects nursing and the health and well-being of the public that we serve.

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