

Municipal OHS Law Update

Trends and tips for best practices

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AGENDA

- 1. Overview of Statutory Regime*
- 2. Navigating OHS duties in a modern workplace*
- 3. Importance of reporting procedures*
- 4. Heightened duties and lessons from case law*
- 5. Takeaways*



Overview of statutory regime

Occupational Health & Safety Act

- Imposes certain minimum conditions on all workplaces to ensure workers are provided with an environment that does not impair their health and safety
- Requires workers take reasonable care to protect their own health and those around them at the workplace
- Provides workers with a right to refuse unsafe work
- Outlines requirements for Occupational Health & Safety Committees

Occupational Health & Safety Regulations

- Sets requirements for an OHS program
- Outlines provisions for establishing and operating an OHS committee
- Mandates that employers have systems for hazard recognition
- Requires maintenance of records and statistics including OHS committee minutes and reports of OHS inspections

Workplace Health Safety and Compensation Act

- Establishes a no-fault insurance system
- Sets out powers of the Workplace Health, Safety and Compensation Commission
- Codifies the re-employment obligation
- Outlines the reporting obligations and duties of employer

Human Rights Act

- Protects individuals from discrimination in range of common activities, including employment
- Prohibits workplace harassment as harassment is a form of discrimination when it is based upon a ground of discrimination

Labor Relations Act

- Applies to unionized workplaces



Navigating OHS duties in the modern workplace

Harassment Prevention Plan (HPP)

- Required under the *Occupational Health and Safety Regulations, 2012* under the *Occupational Health and Safety Act*
- Must be reviewed at least annually
- HPP should state the commitment and obligations of the employer, supervisor and workers and outline process and procedures for dealing with a harassment complaint
- Include definition of Harassment as set out in the OHS Regulations at Section 22(2):

“Inappropriate vexatious conduct or comment by a person to a worker that the person knew or ought to have known would cause the worker to be humiliated, offended or intimidated.”

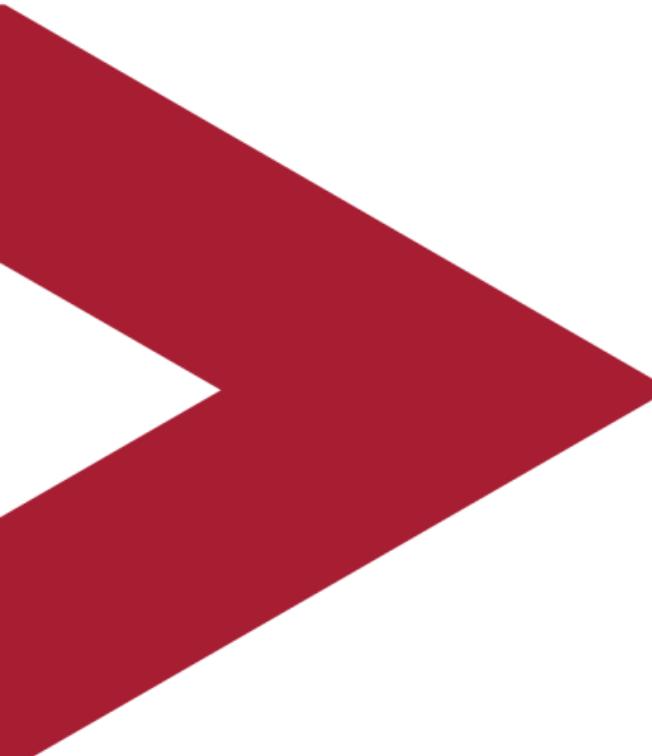
Respectful Workplace Policy

- All employers must have a Respectful Workplace Policy
- Key focus on maintaining a respectful workplace, protecting diversity and human rights, positive communications and ensuring safety from disrespectful, discriminating and harassing behavior
- Should provide examples of disrespectful workplace behavior
- Identifies employer and manager responsibilities in promoting a respectful workplace

Investigating Harassment Complaints

- Employers are required by statute to investigate complaints of workplace harassment
- Procedural fairness considerations in workplace investigations
- Best practices for investigations:
 - Obtain allegation in writing;
 - Determine if the conduct in question meets definition of harassment;
 - Create list of persons to be interviewed, including the complainant, respondent and any witnesses; and
 - Prepare report detailing findings of investigation

Modern Workplace Injuries: Psychological Health and Safety



- Stress arising out of and in the course of employment is excluded from the definition of “injury”
- Exception for stress that is a reaction to a traumatic event or events

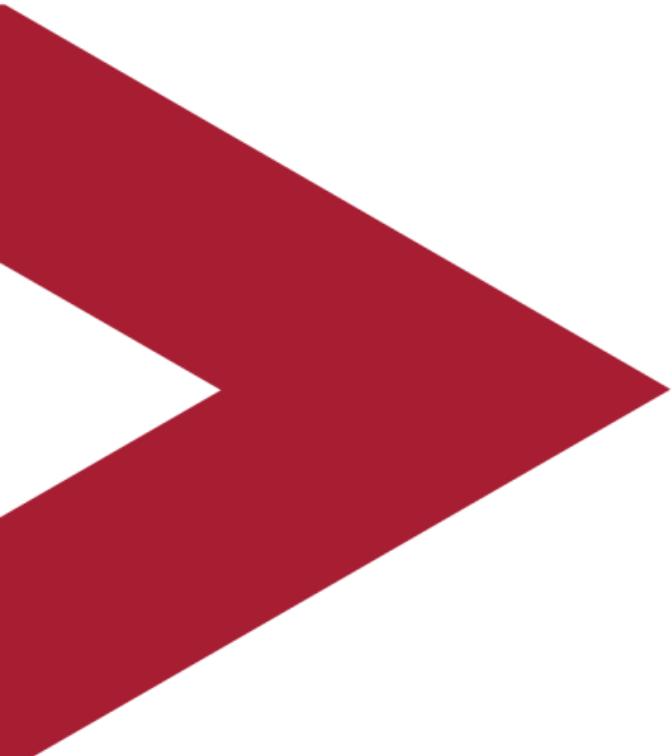
Modern Workplace Injuries: Psychological Health and Safety

- WorkplaceNL consultation on chronic stress (May 2024)
- WorkplaceNL advocates for integration of Psychological Health and Safety into your OHS program noting



Importance of reporting procedures

Three fundamental rights for workers



1. The right to participate
2. The right to know
3. The right to refuse unsafe work

Right to refuse unsafe work

- A worker may refuse to do work where they have reasonable grounds to believe that the work is dangerous to their health or safety, or to the health and safety of another worker or person at the workplace
- Worker must be in the workplace and familiar with the alleged hazards to refuse work
- Employer may not assign another worker to perform the duties refused unless the substitute worker has been informed of the prior refusal and the reasons for the refusal

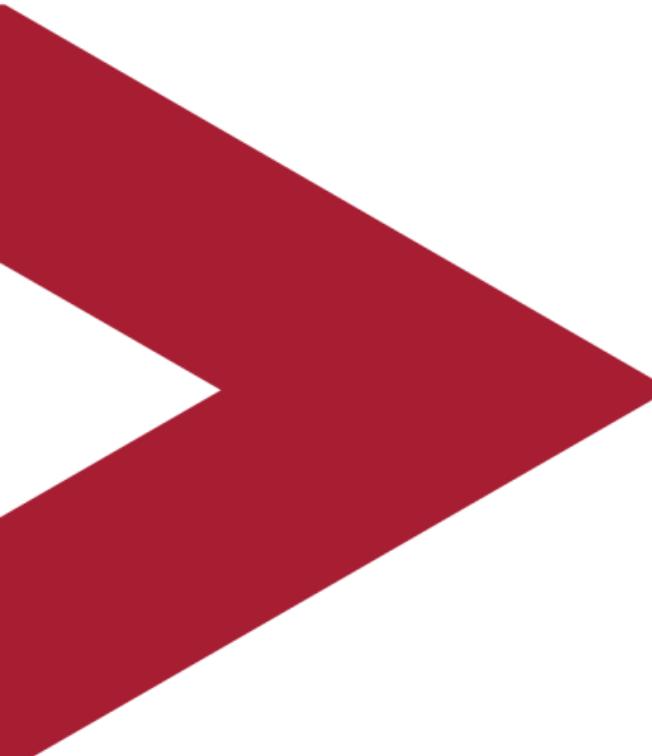
Right to refuse unsafe work

- Employer is prohibited from engaging in discriminatory action against a worker by dismissing them or taking disciplinary action against them because the worker has reported an OHS incident to WorkplaceNL or another person concerned with the administration of the OHS Act or Regulations
- *Tucker v. Newfoundland and Labrador Labour Relations Board*, 2018 NLSC 51



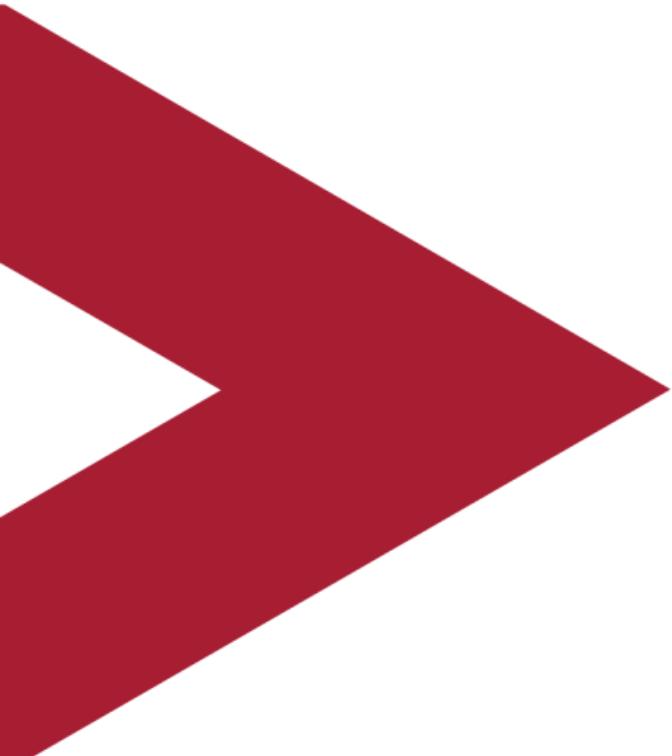
Heightened duties and lessons from case
law

Duties of Supervisors



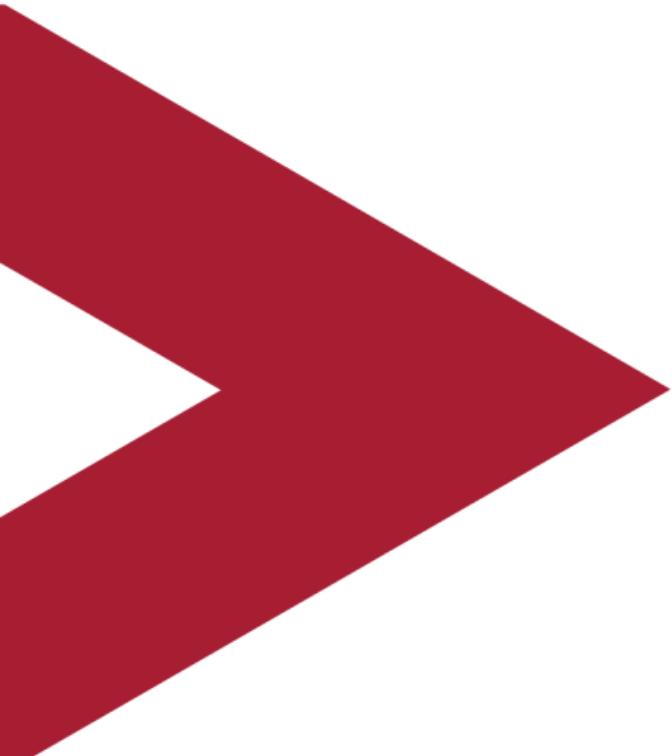
- Held to higher standard
- General duty to ensure safety of workers and inform or advise workers of potential health hazards

Duties of Supervisors



King v. R, 2025 NBCA 12

Principal Contractor Duties



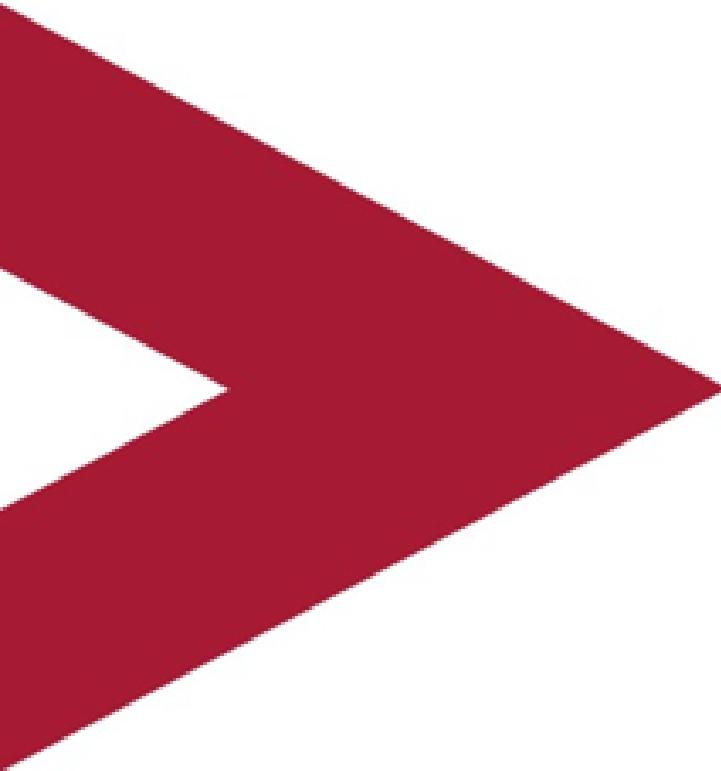
10. A principal contractor engaged in a project shall ensure, where it is reasonably practicable, that employers, workers and self-employed persons performing work in respect of that project comply with this Act and the regulations.

Principal Contractor Duties

R v. Greater Sudbury, 2023 SCC 28

Key Takeaways

- Adopt practices to ensure rigorous safety management, proactive risk mitigation and a commitment to taking all reasonable precautions to avoid an OHS incident
- Maintain, review and update policies and procedures in accordance with statutory requirements.
- Ensure you're addressing OHS incidents for a modernized workplace
- Be aware of heightened duties for supervisors and principal contractors



Questions?



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