

# *e2r Alert!*

## **Words Can Constitute Acts of Violence Under Health and Safety Legislation**

A recent Ontario arbitration decision has held that verbal threats in the workplace can constitute workplace violence under the Ontario *Occupational Health and Safety Act*.

In *The Corporation of the City of Kingston v. Canadian Union of Public Employees, Local 109*, an Ontario arbitrator upheld the City of Kingston's decision to terminate a unionized employee with 28 years of service for issuing a verbal threat against a co-worker. The following excerpts from the decision are useful for employers in understanding their and their worker's obligations under the Bill 168 amendments:

*"First, the Bill 168 amendments have clarified the way in which the workplace parties, adjudicators, arbitrators and judges, must think about incidents involving the inappropriate use of language in the workplace. The amendments make it clear that language that is vexatious and unwelcome is harassment, and very serious in its own right. But language that is made in direct reference to end a person's life or that suggests impending danger falls into a category of its own. This is not just language, its violence."*

*"A worker who becomes aware of a danger is required to report the incident...The utterance of a threat in the workplace requires that the workplace parties stop cold. They must report. They must investigate. They must assess the existence of real danger."*

*"The employment relationship will be incapable of reparation, if the offending employee is likely to render the employer incapable of fulfilling its obligation to provide a safe workplace under the Occupational Health and Safety Act."*

Based upon the decision, it seems clear that adjudicators will require employers to take threats of violence very seriously under health and safety legislation in Ontario, giving rise to a duty to fully investigate and take appropriate action. It is important to note that a threat of violence will not automatically give rise to 'just cause' for termination, but it may be a reasonable course of action where the threat, considering all of the circumstances, poses a significant risk to the health and safety of workers.

It is also important to keep in mind that while this decision interprets Ontario's workplace violence legislation, other jurisdictions, including Alberta, British Columbia, Saskatchewan, Manitoba, Nova Scotia and Prince Edward Island, as well as Canadian federally regulated workplaces, have workplace violence legislation that may be interpreted in a similar fashion. Further, most Canadian jurisdictions have a 'general duty provision' in their Occupational Health and Safety legislation, which requires employers to take all reasonable precautions to protect the health and safety of workers, which likely includes protecting them from workplace violence and in turn giving rise to an obligation to take threats of violence in the workplace very seriously.

We encourage you to contact an e2r Solutions® Service Provider should you have any questions in regards to the foregoing.

*If you do not wish to receive further e2r Alerts!, please reply to this email with the word Unsubscribe in the subject line of your reply and your email address will be deleted from our distribution list.*

---

e2r Solutions®  
“Real Human Resources Advice in Real-Time”

70 The Esplanade, Suite 401 | Toronto, ON M5E 1R2 | 1.866.327.7657 | tel 416.867.3093 | fax 416.867.1434

Visit us online:  e2r Solutions® Website |  Facebook |  LinkedIn

---

e2r Solutions® is a service of Woolgar VanWiechen Ketcheson Ducoffe LLP, a certified MDP.

IMPORTANT/CONFIDENTIAL: This email message and any attached files are intended only for the use of the individual or entity to which it is addressed, and may contain information that is privileged, confidential and exempt from disclosure under applicable law. Any other distribution, copying or disclosure is strictly prohibited. If you have received this message in error, please notify us immediately by telephone at 416.867.3093 and destroy original message.