

Preventing Workplace Bullying Becoming Employers' Responsibility

Universities must now mitigate risks associated with psychological harassment

by Anne Baxter, University of Lethbridge

Federal and provincial governments originally enacted occupational health and safety (OH&S) statutes to protect the physical safety of workers. Governments are now modifying these statutes and other related legislation to include workers' psychological well-being.

Consequently, universities may be held responsible if their employees are bullied at work—whether by superiors, peers, or even students or suppliers. Universities must be aware of this shifting tide to avoid fines or lawsuits.

Why the move toward expanding the definition of workplace safety to include psychological well-being? Victims of workplace bullying feel trapped and highly stressed by their poisoned work environments. At best, they suffer quietly. At worst, they respond as Pierre LeBrun did on 6 April 1999 when he shot and killed four OC Transpo workers in Ottawa before killing himself. LeBrun had worked at OC Transpo and had been bullied and teased about his stuttering.

The coroner's inquest into the OC Transpo shootings recommended that federal and provincial governments pass legislation to prevent workplace violence and that employers create policies to address violence and harassment.

Legislation in Canada

Quebec put the first anti-bullying law in North America into effect on 1 June 2004. The province amended its *Act Respecting Labour Standards* to ensure that "every employee has a right to a work environment free from psychological harassment." The amendment also states that "employers must take reasonable action to prevent psychological harassment and, whenever they become aware of such behaviour, to put a stop to it."

The Quebec law defined psychological harassment as "any vexatious behaviour in the form of repeated and hostile or unwanted conduct, verbal comments, actions or gestures that affects an employee's dignity or psychological or physical integrity and results in a harmful work environment for the employee.

Other provinces have also addressed workplace harassment (bullying and abuse of power fall under this category). On 1 November 2006, Manitoba amended its *Workplace Safety and Health Act* to require that employers take steps to prevent workplace harassment, investigate allegations of workplace harassment, and allow employees to refuse to work in certain circumstances

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Serving Our Members

We understand that the increasingly broad and complex scope of university operations can present you and your colleagues with many, and sometimes unusual, risk and claim-related questions. It's most likely, however, that the CURIE staff, through its dealings with the other 58 CURIE subscribers, have encountered issues like yours. If not, we're highly experienced in finding answers through our network of contacts.

Don't hesitate to call or email us if you have a question. We are here to help you manage your risks and protect your university – and we are always looking for ways to serve you, our valued members, better.

after harassment has occurred. And on 1 October 2007, Saskatchewan amended its *Occupational Health and Safety Act* to include personal harassment in the workplace.

Moreover, Canadian courts and tribunals are more broadly defining personal harassment at work. This broader interpretation can hold employers accountable for the way that supervisors, managers, and colleagues treat employees.

“In the past, the courts associated a safe work environment with a physically safe work environment,” says Anne Baxter, Manager, Risk and Safety Services with the University of Lethbridge. “But now the courts are saying that the workplace must also be psychologically safe. It has to be free of many of the stresses that people face today.”

Defining Workplace Harassment

Workplace harassment can assume many forms, but at minimum, it constitutes any of the following behaviours:

- Spreading malicious rumors
- Belittling a victim’s opinions
- Spying or stalking
- Persistently criticizing or scrutinizing a victim
- Tampering with someone’s desk, work space, or belongings
- Excluding or ignoring a victim
- Undermining or sabotaging a victim’s work
- Blocking a victim’s career advancement

So, who exhibits these behaviours? They’re the same people who bullied their classmates on the schoolyard playgrounds. The bullies have grown up, and so have their victims, but the dynamics of their relationships remain.

According to the Canada Safety Council, 80 percent of bullies are bosses, some are co-workers, and a few are employees

who harass their employers. Equally likely to be men or women, bullies tend to be insecure and lack social skills and empathy. They also enjoy attacking and diminishing the capable people around them. Their motivation? To control others.

The Consequences of Inaction

In the work world, these bitter relationships can cost employers. The Canadian Centre for Occupational Health and Safety states that workplaces affected by bullying could see drops in productivity and increases in absenteeism, stress, accident risks, and costs for employee assistance programs.

“Organizations also run the risk of losing good people if they fail to address workplace bullying,” says Ms. Baxter. “In addition, employers face fines or lawsuits for failing to do something that they should have done.” Ms. Baxter cited a recent case, *Charleton v. Ontario (Ministry of Community Safety and Correctional Services)*, in which a woman was awarded \$20,000 after her employer was deemed negligent in protecting her from harassment.

Other potential outcomes of unchecked bullying include grievances under collective agreements, human rights violations, constructive dismissal risks, fines for intentional infliction of mental anguish, and liability in tort for failure to respond.

Protecting Your University

In June 2005, law firm Osler, Hoskin & Harcourt LLP published the following advice pertaining to psychological harassment in the workplace. “As a result of this new risk involving both statutory and civil liability, employers would be well-advised to review policies and procedures, codes of conduct, reporting mechanisms and training programs to ensure that these kinds of behaviours are identified and addressed in a timely

manner. Employers should also make sure that prohibitions against these behaviours are clear and that penalties are appropriate.” This advice is equally valid today.

So what can employers do to both protect themselves from fines or lawsuits associated with psychological harassment and create healthy work environments? Yosie Saint-Cyr, LL.B., Managing Editor at HRinfodesk.com, recommends the following:

- Increase your understanding and awareness of the signs of harassment, bullying, and violence. Make management and employees aware of these signs as well.
- Create a harassment and violence prevention program and policy, and make the policy well known and easily accessible. The policy should inform employees that your organization is against harassment and workplace violence. Spell out unacceptable behaviour such as bullying.
- Include steps to identify potential or actual risks of harassment or violence including bullying. Institute a proper system for reporting, investigating, recording, and dealing with conflict.
- Investigate complaints quickly, while maintaining confidentiality and protecting the rights of all involved. Take all complaints seriously.
- Be prepared to discipline employees guilty of harassment.

“Universities today have a legal obligation to do something about bullying in the workplace,” says Ms. Baxter. “They are responsible for providing a safe work environment and for protecting employees from foreseeable harm—which includes harm from bullying.”

Anyone who has suffered the ill effects of an imperious boss or colleague can well appreciate the relief that this obligation promises to bring to workplaces throughout Canada.



Bestowed with Don Stuart Award

Photo and article reprinted with permission from Canadian Underwriter

Nowell Seaman of Saskatoon is the 2007 recipient of the Donald M. Stuart Award, originally created by the Ontario Chapter of RIMS in 1979 to recognize outstanding contributions to the Canadian risk management community. Seaman began his career in risk management in 1983, after a successful career as a guitarist in a Grammy-nominated band. In addition he is the father of five children, ranging in ages from three to 19.

Seaman, manager, risk management and insurance services, University of Saskatchewan, received the award at a special awards presentation at the 2007 RIMS Canada Conference in Halifax. Erin Magilton-Morneau, president of RIMS's Ontario chapter, presented the prestigious award to Seaman. In her speech, Morneau described Seaman as "a person who serves his community by inspiring and motivating his peers with his leadership, his openness and his vision for RIMS in Canada," she said. The reasons why Seaman is worthy of the award extend beyond his involvement with RIMS, Magilton-Morneau continued. Seaman has developed a benchmark in the practice for enterprise risk management for his employer, and having done so is always willing to share his experiences and ideas for the benefit of other risk managers, she said.

Seaman extended his thanks to his RIMS colleagues for "this extraordinary award."

While he "didn't have the pleasure and privilege to know Don Stuart personally," he gained a glimpse of him through a letter he received from Stuart's wife while serving as chairman of the Canada Council at the time of Stuart's passing he told the crowd.

In her letter, Stuart's widow told Seaman of the countless hours Stuart dedicated to the society and the enjoyment he gained from his long association with RIMS.

"I am so honoured to receive this award in his name," Seaman said. "I am very grateful for the opportunity to serve the evolving risk management community in Canada, and to be associated with such a fine group of people," he said, "I have received far more than I have given."

Questions & Answers

Question:

CURIE agrees to defend faculty against defamation claims where they are listed as an expert and speaking in their area of expertise. How does CURIE deal with claims where the faculty member is "publicly" speaking outside their area of expertise and outside the classroom.

Answer:

To paraphrase the additional insured language under section 6.1(a) of the CURIE General Liability policy - a faculty member is an additional insured while acting on behalf of the University with respect to acts performed in that capacity. The key words here are "acting on behalf of". When a faculty member is speaking as an expert in the area of his/her expertise such speech would usually be deemed to be acting on behalf of the University. Speech that a faculty member deems to be academic freedom "speech" would be covered if it falls within teaching activities but public speech often falls outside the "acting on behalf of" test and in such cases no coverage would apply.

Question:

Currently the schools in Atlantic University Sport (AUS) hold cross country competitions and limit the participation to student athletes. The group wants to include community based runners (non-student) in the competitions.

1. Would the coverage still apply to these events for CURIE members with the inclusion of non-student participants.
2. Would coverage extend to non-student athletes.

Answer:

1. Coverage would apply to CURIE member institutions, their coaches and student athletes even where non-students participate. There would be no coverage for AUS.
2. Liability coverage would not apply for non-student athletes. Also the "Cat Accident" program in place in many schools would apply to student athletes but not the non-student participants.

Code Enforcement Can Save Lives

Article reprinted with permission from *Campus FireZone*

By Philip Chandler

An old timer once told me one true thing: "When it comes to the fire service, remember, everything rolls down hill – horse-drawn fire apparatus, water and most importantly, s—t!" And how prescient those last words are in light of the deadly fire of August 18th in New York's Deutsche Bank where two firefighters perished. For in the aftermath of this blaze, as is often the case throughout history, someone has to take the rap, and more times than not, it's those lowest on the food chain that take the hardest hit. In this case it's the fire inspectors that last visited this site and their immediate command that so far have born the brunt of the recriminations.

To those unfamiliar with this incident, this inferno involved the last of the World Trade Center buildings, presently in the midst of a most lengthy demolition process. The fire, according to the most current thinking, was caused by careless disposal of smoking material. The spread and magnitude of the fire as well as those conditions contributing to the tragic demise of two of New York's bravest was undoubtedly aided by many violations of widely accepted safety standards for building demolition. Key among those violations was the failure to maintain the standpipe system in an operable condition as required. As a result, firefighters were greatly delayed in getting the proverbial wet stuff on the red stuff; they were forced to manually haul hose up the exterior of the building to commence suppression. In the interim, people died. The sad thing is, as some might say, the tragic outcome might have been prevented, especially in light of the fact that the impairment of the standpipe system was previously noted during routine fire inspections and for whatever reason, abatement of the violation was not vigorously pursued.

Far be it from us to judge any of the parties involved, or for that matter to even assume as truth any of the facts and conjectures swilling about. That task will undoubtedly be left to a jury to tackle. Nonetheless there is much we can learn from what we have already observed. First of all, the whole incident underscores the importance of code enforcement throughout construction and yes, even demolition activities. We have touched on this before and will again, but for now what really concerns me most is the way the fire inspection process is at the very epicenter of the whole brouhaha. I cannot but think, "There but for the grace of God, go I." The image of the lone fire inspector with his clip-on tie, notebook in hand, holding at bay all the cosmic wrath of the universe looms before mine eyes!

I really loathe entertaining the thought that a life-safety inspector needs to be forever aware that when things go wrong his shiny polyester derriere is the one ending up in a sling. But let's get real for a moment, something my detractors accuse me of rarely doing, and recognize the liabilities we in code enforcement often face. Every time we ignore our best judgment and give someone the benefit of the doubt rather than demanding documentation, every time we are cajoled into "playing ball," "being part of the team," "easing up on our demands," it is we and we alone that might likely be held accountable somewhere down the road. Don't get me wrong, there are legitimate times to be flexible, there are times where we may give a little here to gain a lot somewhere else. But we must not let our guard down and get sloppy. We need to maintain our professionalism at all times, which by that I mean document everything, eschew doubtful matters and be prepared to defend your actions. Lest I be accused of cynicism, enough said on this issue for now – "a word to the wise is sufficient."

Rather, let us reflect on the more positive aspects of being an inspector. The Deutsche Bank fire truly drives home the point that a life-safety inspector has the ability to make a real difference; the inspector has through conscientious effort, the power of life and death. I think this sentiment is deep down shared by most of us. It is what gets us up in the morning; it is what keeps our chin up all day; it is what comforts us at day's end. What we do really matters.

Many powerful interests are arrayed against us at every turn. Those that are looking for a quick buck earned by cutting corners, wish to silence us. Those that see students as solely consumers of food and lodging rather than the bearers of our future are not interested in our concerns. Those that can only envision their legacy in edifices of stone and glass call us obstructionists. Those that create glorious fast-track projects seek to push us aside. To all those that don't share our sense of right and wrong, that don't value the lives of other people's children as much as their own, we need to answer them with the heady mantra of the Sixties: "I ain't gonna let nobody turn me around, turn me around."

"Phil," asked a good friend of mine, "Did you really think when you became a code enforcement officer people were going to like you?" To those of you out there doing the job every day at our colleges and universities, be strong, be determined. We know what we need to do. We know that each day our success is not reflected in the number of friends we make, but in the number of lives we preserve.

Philip Chandler is a long time firefighter and a fulltime government fire marshal working extensively in the college environment – from large public university centers to small private colleges. His primary responsibilities include code enforcement and education. Phil welcomes your comments, thoughts and opinions (whether in agreement or opposition) to his viewpoints. He may be reached at: theinspector@campusfire.org.

Business Continuity and Recovery

by Gayle Mitcham, Marsh Canada

ARE YOU PREPARED?



In the last newsletter we introduced the concept of Business Continuity Management and reviewed why you need to be prepared. We also discussed the need to understand the risks, threats and vulnerabilities that you face.

Each threat needs to be assessed to determine the probability of its occurrence and the impact should it occur. This will help you determine what threats or risks you can live with and which ones you need to prepare for.

Once you have determined the threats to prepare for, you are ready to start the development of your Business Continuity Plan. This is usually completed using a project approach with the following project phases.

BUSINESS CONTINUITY PROJECT PHASES

Phase 1 – Preparedness Review

The first phase is planning and preparedness. This is a review of what you currently have in place and what the scope and objectives for the project will be including which departments and locations need to be involved. Depending on the geographic diversity of your organization you may be better positioned to approach the project one location at a time. Conversely if all of the locations perform the same services, you may be able to complete the planning for one location and use it as a starting base for plans for the other locations.

Defining criticality is also an important part of this phase. Executive Management should be engaged in this task to provide the basis and guidance as to what constitutes a critical service or process as you progress through the subsequent project phases. Involving Executive Management early in the project allows them to communicate

their views on criticality and recovery priorities up front.

It is also important to establish a Steering Committee to oversee and provide direction to the project team. Typically the Steering Committee is made up of 3-4 senior level people who have overall knowledge of the organization's recovery objectives. This group should also have a direct link to the Executive Management Team.

Other tasks in this phase include a number of Project Management activities, such as developing a project plan and schedule.

Phase 2 – Business Impact Analysis

The Business Impact Analysis (BIA) determines the impact on the organization if it experiences an outage impacting critical processes and services. The gathering of impact data can be done in a number of different ways with the output used to identify and prioritize the critical services and processes of

the organization. The recommended approach is to hold a workshop with the department / functional / business unit leaders to review the criticality criteria and the data collection process. Each unit leader is then asked to complete a BIA questionnaire. The questionnaire is used to gather info about critical staffing, application software required, vital records and workspace and equipment requirements. The questionnaire also determines how long the process or service can be down without severely impacting the organization. This information is used to determine the Recovery Time Objective (RTO) for the process or service. The data collected is also reviewed and assessed to ensure that linkages between processes are in place and that recovery requirements reflect the needs of the organization. Once all this data has been gathered and summarized you are ready to move on to the Strategy Development Phase.

Phase 1 - Preparedness Review

- Establish Steering Committee
- Determine scope and objectives
- Define "criticality"
- Review existing documentation
- Conduct preparedness interviews
- Identify Planning Scenarios
- Develop Project Schedule and Plan

Phase 2 - Business Impacts

- Customize BIA questionnaire
- Define Impact Criteria and Rating
- Conduct BIA workshops with Business Unit leaders
- Have BU Leaders complete questionnaire
- Review and challenge responses
- Identify critical services
- Review technology recovery capabilities
- Perform Gap Analysis

Phase 3 - Strategy Development

- Facilitate business strategy workshop
- Review technology and business recovery objectives
- Research solutions
- Perform cost benefit analysis
- Present recommended strategies

Phase 4 - Plan Development

- Develop Plan Template
- Pre-populate known data
- Develop recovery procedures and workaround workshops
- Business Unit Leaders to complete the plan
- Develop contact lists and call trees
- Walkthrough the plan with immediate stakeholders
- Obtain Plan sign off

Phase 5 - Exercise

- Develop a BC Plan Awareness Program
- Schedule and execute table top exercise
- Update plans with feedback from exercise
- Develop maintenance and testing schedule

Phase 3 – Strategy Development

Using the output from the Business Impact Analysis, strategy workshops are held to determine a recovery solution that will meet the needs of the organization and its critical services and processes. Possible solutions include the identification of recovery sites within the organization, redirecting the critical process or service to another internal location or the identification of an external recovery location using the services of a third party service provider. Each of the potential solutions are evaluated and costed in order to determine the most appropriate solution for the organization.

Information Technology requirements are also addressed during the strategy phase. Critical business processes often rely on technology being available and IT is responsible for ensuring that critical applications can be recovered to meet the business needs. If the business requires a systems application to be available immediately it may be necessary for IT to recommend a more robust recovery plan for that application.

Selected strategies for business recovery solutions and technology recovery are then presented to Executive Management for approval. A cost benefit analysis should accompany the strategy recommendations.

Phase 4 – Plan Development

Once a recovery solution has been agreed upon, you are ready to develop the plan. The plan should include the following:

- Invocation criteria – when will the plan be invoked
- Decision making criteria – who has the authority to invoke the plan
- Business Continuity Team – who would be responsible for managing the recovery effort
- Recovery Teams – identification of the teams responsible for the technical recovery of the critical process or service
- Contact lists and call trees – who to call and how to call them
- Recovery Procedures – step by step task

list of what needs to be done to recover the critical process or service, including work around procedures for critical applications

- Recovery resource requirements – staffing, equipment, applications, vital records, dependencies etc.

Once the plan is completed it is important to ensure that a plan maintenance schedule is developed and implemented to ensure that it remains current and up to date.

Phase 5 – Exercise

One way of ensuring that the plan is executable is to test it on a regular basis. This can be done by developing and documenting a typical scenario that may cause an outage for your critical services and processes. The plan is then walked through with the plan owner and key stakeholders, identifying how they would respond to the scenario as it evolves. The focus of the exercise should be on the communication elements, interaction between groups, assumptions used in procedural documentation, and the structure/usability of the documentation.

Gaps and deficiencies are identified and documented, and following the exercise the plan is updated.

Plan tests or exercises should be held at least annually.

Completed Business Continuity Plan

The completion of these project steps should ensure the development of an effective Business Continuity Plan for your organization. Going forward plan maintenance should include the annual updating of the Business Impact Analysis to ensure that planning requirements have not changed.

...Watch for the next Newsletter where the Development of IT Technology Recovery Plans will be reviewed in detail.

Gayle Mitcham is an Assistant Vice President in the Business Continuity Practice for Marsh Consulting. If you have questions about this article or would like a quote from Marsh to provide assistance with your program, Gayle can be reached at 416-868-2748



CURIE Update

STATEMENT OF INCOME AND EXPENSES

For the nine months ended September 30, 2007

	2007	2006
Written Premium	\$ 19,718,711	\$ 19,756,593
Earned Premium	14,788,269	14,815,276
Less Reinsurance Costs	422,303	1,236,926
Net Earned Premium	14,365,966	13,578,350
Net Incurred Claims	16,167,404	10,757,628
<i>Net Loss Ratio</i>	<i>112.54%</i>	<i>79.23%</i>
Underwriting Profit (Loss) Before Operating Expenses	(1,801,438)	2,820,722
Operating Expenses	2,045,746	1,909,612
<i>Net Operating Expense Ratio</i>	<i>14.24 %</i>	<i>14.06 %</i>
<i>Combined Ratio</i>	<i>126.78 %</i>	<i>93.29 %</i>
Underwriting Profit (Loss)	(3,847,184)	911,110
Income from Investment	2,023,748	1,618,989
Other Income	1,500	1,500
Other Comprehensive Income (Loss)	(78,387)	(114,745)
NET PROFIT (LOSS)	(1,900,323)	2,416,854

Welcome New Members!

CURIE is please to welcome three new members:

- University of Ontario Institute of Technology
- Ontario College of Art & Design
- University of St. Michael's College

Third Quarter Claims Highlights

Claims Incurred	Liability	Property
First Quarter	\$3,345,668	\$3,677,917
Second Quarter	\$4,742,639	\$827,321
Third Quarter	\$2,959,101	\$614,758

2007 is currently running at 112.54% on a combined property and liability basis with the liability loss experience running at 140.71% for the year to date.

We re-opened a CURIE 1 claim, to file a motion to have an outstanding Statement of Claim dismissed, as nothing had been done in 14 years, but the motion was still active in the court system.

The CURIE II run off has been positive. We received an Ontario Court of Appeal decision awarding CURIE, \$1 million, plus post judgement interest and costs.

The CURIE III runoff has been positive. We won two defamation trials, and have had costs of close to \$175,000 awarded to us.

Legal expenses have increased this year, although they slowed in this quarter, due to the trials noted above and our aggressive defence of the failure to educate claims.

CURIE Risk Management Newsletter



Published and distributed by
Canadian Universities Reciprocal
Insurance Exchange (CURIE)

5500 North Service Rd., 9th Fl.,
Burlington, Ontario L7L 6W6
ISSN 1196-085X

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Events to Mark in Your Calendar

Emergency Preparedness of Canadian Campuses: An Executive Perspective

March 27 and 28, 2008 - Toronto, ON

Hosted by CAUBO

A national workshop on Emergency Preparedness which targets executives and senior administrators and their emergency planning teams. For additional information visit www.caubo.ca or e-mail Amanda Brazeau at abrazeau@caubo.ca

Carrie & Allan Green Welcome a New Addition!



Carrie and Allan are happy to announce the arrival of their daughter Gillian Evelyn, born Friday October 26th at 8:30 AM. She is beautiful and perfect in every way. Both mom and baby are doing great!! Krisha Raveendra is replacing Carrie while she is away on maternity leave and can be reached at 888-462-8743 ext. 27.

Terry Page Retires after 15 Years

Terry Page has retired from CURIE after 15 years of service effective December 31st of 2007. She did a great job over the years in establishing a positive working relationship with all our subscribers, the CURIE Boards, insurers, adjusters, and the rest of the CURIE staff. Her hard work and loyalty to CURIE and her tireless energy will be missed.

We wish to thank her for the 15 years of outstanding service to the CURIE community and wish her well in her retirement.

Judy Knox has been hired to replace Terry. Judy has a non-profit background, having worked in fundraising and communications for a number of years. She also owned and operated a retail/import business - importing fashion accessories from China, Hong Kong and Thailand for 5 years prior to returning to the non-profit field. After taking a two year sabbatical to care for elderly family members she is excited to be back at work and looks forward to working with CURIE and our members. Judy can be reached at jknox@curie.org.