



Women and the Workplace Health, Safety and Compensation System

Comments to the

Independent Review Panel on the New Brunswick Workplace Health,
Safety and Compensation System

by the
New Brunswick Advisory Council on the Status of Women

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The New Brunswick Advisory Council on the Status of Women is a body created by provincial legislation to study and advise on issues of concern to women and to bring these before the public and the government. The Council is composed of 13 women appointed by government who meet at least four times per year to determine priorities for action on women's issues.

October 2007

Ce document est disponible en français. Demandez *Les femmes et le système de la santé, de la sécurité et de l'indemnisation des accidents au travail*

TABLE OF CONTENTS

Introduction	4
1. Gender-Based Analysis and Women’s Occupational Health and Safety	5
2. Psychological Harassment.....	10
3. Workers’ Compensation Coverage Issues	14
3.1 Compulsory Employer Coverage.....	14
3.2 Coverage for Volunteers.....	15
3.3 Cost of Coverage for Non-Profit Organizations	16
Conclusion and Recommendations	18

Introduction

As a provincial arm's length agency dedicated to promoting equity for women in all areas of New Brunswick society, the Advisory Council on the Status of Women welcomes the opportunity to present its views to the Independent Review Panel on the New Brunswick Workplace Health, Safety and Compensation system.

The three-member Independent Review Panel established in May 2007 is seeking public input in an "open-ended and comprehensive examination" of the current system to determine whether the WHSCC is functioning appropriately and to its fullest potential. Panel Chair Louis R. Comeau, Labour representative Robert Breen and Employer representative James F. LeMesurier have been asked to address two central questions.

Is the workplace health, safety and compensation system adequate compared to its Canadian counterparts?

Does the Workplace Health, Safety and Compensation Commission (WHSCC) provide appropriate coverage within the New Brunswick economic and social context?

Areas to be evaluated include governance, scope of coverage, benefits and assessment rates, education and prevention efforts, and the appeal system.¹

Six discussion papers are now available and public consultations have been announced for November 2007. The Panel is expected to report by January 2008 to the Minister of Post-Secondary Education, Training and Labour and the WHSCC.

Our comments focus on several matters of concern to women, including the need for gender-based analysis to guide policy and program decisions, inclusion of psychological harassment or workplace bullying in occupational health and safety protection, and issues related to the scope and cost of workers' compensation coverage.

We reiterate a number of concerns raised in our 2002 submission to the Workplace Health, Safety and Compensation Commission.²

¹ Panel mandate available online at <http://www.gnb.ca/irp-cri/mandate-e.asp>

² *Health and Workplace Safety Concerns of New Brunswick Women*, Comments by the NBACSW to the Workplace Health, Safety and Compensation Commission of New Brunswick, December 2002.

1. Gender-Based Analysis and Women's Occupational Health and Safety

Women's occupational health and safety remains a little-studied field, and women are underrepresented in the scant data available. Still less is known about the impact of job duties performed by women employed as day-care workers, maintenance workers, sales associates, receptionists, teachers, call-centre workers, servers in smoke-filled environments, fish-plant workers, and so on.

Existing data does show, however, that women experience specific occupational health problems as the result of differing exposure to risk factors, varying social situations and certain biological differences in body size, fat composition and reproductive systems.³

There is also some evidence that points to inequities in prevention efforts, rate of claims approval and compensation provided to women who encounter workplace hazards.⁴

Many research gaps remain. An inventory of research priorities is needed in order to identify the most important risks encountered in women's jobs and sketch the links between women's work and their most common health problems.⁵

Many researchers have strongly condemned the exclusion of women from leading studies that could shed light on women's health and the problems specific to or commonly inherent in the work they do. For example, a study published in 1976 on cancer in the lead industry excluded 950 female workers in order to ensure a uniform sample.⁶ Ten years later, a study on the causes of premature births failed to include employment-related variables.⁷

A 1989 review of major periodicals revealed that medical scientists generalized in the extreme using data concerning only men, that they failed to identify certain variables significant to women's health, and that they ignored women's health issues.⁸ Such was the case with a 1988 Harvard University study on cardiovascular disease. The findings of the study, which looked at taking an aspirin a day to reduce the risk of heart attack, were applied generally to all patients, even though the sample consisted of 22,000 men but not a single woman. Consequently, women who take one aspirin a day report different results and side effects.⁹

Far too often, these gender-blind practices are mirrored in reports and documents produced by governmental bodies. The data on accidents, injuries, claims and benefits presented in the

³ Karen Messing and Pirooska Östlin (2006), *Gender Equality, Work and Health: A Review of the Evidence*, Geneva, World Health Organization, p. 9-10, available online at http://www.who.int/occupational_health/publications/genderwork/en/index.html

⁴ *Ibid.*, p. 14-15, 20-21; Karen Messing and Jeanne Mager Stellman, "Sex, gender and women's occupational health: The importance of considering mechanism," *Environmental Research*, 101 (2006), p. 149, available online at www.sciencedirect.com

⁵ *Ibid.*, p. 158.

⁶ Cited in Karen Messing for Women's Bureau, Labour Canada (1991), *Occupational Health and Safety Concerns of Canadian Women: A Background Paper*, p. 7.

⁷ *Ibid.*

⁸ *Ibid.*

⁹ New Brunswick Advisory Council on the Status of Women (1995), *Equity Analysis Guide*, <http://www.acswccf.nb.ca/english/acsw3.asp> The inclusion of women in more clinical drug trials since the mid-1990s – although they are still not equitably represented – has meant that an increasing number of drugs have been withdrawn from use given high rates of adverse effects among women. See Canadian Institutes of Health Research, *Gender and Sex-Based Analysis in Health Research: A Guide for CIHR Peer Review Committees*, p. 5, available at <http://www.cihr-irsc.gc.ca/e/32019.html>.

publications of the New Brunswick WHSCC, including the Client Satisfaction Survey, the Report to Stakeholders and the Annual Reports, do not distinguish between the sexes.¹⁰

Such practices do not reflect gender-based comparative analysis and, if left uncorrected, their intended effects would continue to benefit only one half of the population, i.e., men.

Gender-based analysis becomes all the more imperative since women are underrepresented as policy analysts and decision makers.

The WHSCC recently welcomed its first female Chairperson, but there is currently only one woman among the seven other voting members of the Board of directors.¹¹ She sits as one of the three worker representatives, and like the two others, is drawn from the ranks of unionized workers in a province where the vast majority of workers are non-unionized.¹² Three other Board members represent employers and one represents the public.

The Board's process for seeking stakeholder input in its policy development work is also in need of reform. New Brunswick is one of the few jurisdictions that lacks a written process on how stakeholders are identified or should be engaged in the WHSCC's policy development process.¹³

International bodies including the United Nations Committee on Economic, Social and Cultural Rights recommend that governments integrate a gender perspective in all their research, policies and programs, to consider the sex-related or biological differences and the wider gender or social inequalities that shape women's and men's experiences.¹⁴ Gender-based analysis, like an environmental impact analysis, reveals potential impacts and outcomes. It ensures that differences in the way women and men live, work and play are taken into account from the conception of a policy or program through the implementation and evaluation stages. Such an approach also recognizes the differences among women and among men, based on their socioeconomic status, race, ethnicity, sexual orientation, disability etc.¹⁵

Sex-disaggregated data and gender-specific analysis are necessary because women's workplace experiences and lives are significantly different from those of men.

Men and women are not represented equally in the various occupational groups and professions. Women tend to be concentrated in the clerical, service, sales, medical and health, teaching, and retail sectors, etc.¹⁶ Women are often assigned different duties even within the same classifications. For example, an analysis of job titles revealed that in the "stores clerk" category, persons in charge of pharmacies and chemical warehouses were mostly men. However, in the

¹⁰ The 2006 editions are currently available online at http://www.whscc.nb.ca/corcntcor_e.asp

¹¹ Composition of the Board available at http://www.whscc.nb.ca/cor2_e.asp

¹² Independent Review Panel on the New Brunswick Workplace Health, Safety and Compensation System (September 2007), *Discussion Paper: Governance/Structure*, p. 4, available at <http://www.gnb.ca/irp-cri/discussion-e.asp>

¹³ *Governance/Structure*, p. 7.

¹⁴ See for example the 1995 Platform for Action of the Beijing Fourth World Conference for Women, available online at <http://www.un.org/womenwatch/daw/beijing/platform/institu.htm>

¹⁵ The importance of using a gender-sensitive approach is highlighted in many reports and studies. See for example, Canadian Institutes of Health Research, *Gender and Sex-Based Analysis in Health Research: A Guide for CIHR Peer Review Committees*, available online at <http://www.cihr-irsc.gc.ca/e/32019.html>; Beth E. Jackson, et al. (April 2006), *Gender-Based Analysis and Wait Times: New Questions, New Knowledge*, available online at http://www.hc-sc.gc.ca/hcs-sss/pubs/system-regime/2006-wait-attente/gender-sex/index_e.html

¹⁶ NB ACSW, *2006 Report Card on the Status of Women in New Brunswick*, available at <http://www.acswccf.nb.ca/english/acsw3.asp>

same occupational group the persons responsible for light duties were mostly women.¹⁷ The same is also true in other sectors. In fish-processing plants, women and men work in different areas of the production chain and perform different tasks under different conditions.¹⁸

Generally speaking, most female-dominated jobs do not pay as well, are undervalued, and are clustered at lower levels in the organization. They also tend to involve working conditions likely to have adverse health impacts.

Women are more often affected by occupational diseases than by workplace accidents that result in the more visible injuries and mortality that have historically been the focus of occupational health and safety intervention.¹⁹ A study of workplace deaths in Canada showed that women accounted for just 3% of workplace fatalities but 33% of time-loss injuries in 2005.²⁰

Only 1% to 3% of the claims accepted by the NB WHSCC are currently for occupational diseases, where the Panel notes the “effect of exposure is typically perceived over a period of time”, versus accidents which usually produce immediately obvious harm.²¹ The Commission’s prevention resources are largely concentrated on industries with high numbers of claims and costs, in particular forestry operations, sawmills, nursing homes and the fish processing industry.²²

A recent forum report from the Canadian Centre for Occupational Health and Safety notes that deaths due to work-related disease have increased steadily over the past two decades. However, identifying and preventing these diseases remains a challenge for reasons including a limited understanding of exposure-effect relationships, long latency periods for many diseases, limited disease reporting and lack of systematic data collection, and divided government responsibility for workplace and health issues between separate departments.²³

A study undertaken by the NB WHSCC in 2005-2006 to examine the future potential for increased occupational disease claims estimates that only one-third of disease claims that could be filed with the Commission are actually filed.²⁴

Occupational diseases affecting women are often associated with demanding job duties, such as rigid, fixed, or forced postures; repetitive movements over long or continuous periods; concentration of strength over a single body surface point (hand or wrist); rapid work pace; insufficient recovery time between each movement, etc. These diseases consist primarily of musculoskeletal system disorders, which can result in bursitis and carpal tunnel syndrome, for

¹⁷ Cited in Karen Messing, for Women’s Bureau, Labour Canada (1991), *Occupational Safety and Health Concerns of Canadian Women: A Background Paper*, p. 9.

¹⁸ *Ibid.*

¹⁹ Karen Messing (1999), *Building Alliances to Improve Women’s Occupational Health*, p. 7 available at <http://www.acewh.dal.ca/e/info/reports.asp>

²⁰ Andrew Sharpe and Jill Hardt (December 2006), *Five Deaths a Day: Workplace Fatalities in Canada, 1993-2005*, Centre for the Study of Living Standards, p. 48, available at: http://www.csls.ca/res_reports.asp

²¹ *Coverage/Benefits*, p. 17.

²² Independent Review Panel on the New Brunswick Workplace Health, Safety and Compensation System (October 2007), *Discussion Paper: Prevention of Injuries*, p. 6, available at <http://www.gnb.ca/IRP-CRI/discussion-e.asp>

²³ Canadian Centre for Occupational Health and Safety (October 2005), *Recognizing and Preventing Occupational Disease: Strategies and Recommendations from Canadians*, p. i, available at <http://www.ccohs.ca/products/publications/surveyreport.html>

²⁴ Independent Review Panel on the New Brunswick Workplace Health, Safety and Compensation System (October 2007), *Discussion Paper: Financial Performance*, p. 11, available at <http://www.gnb.ca/IRP-CRI/discussion-e.asp>

example. These disorders are also referred to as repetitive strain injuries, since they are caused by doing repetitive tasks.²⁵

Repetitive strain injuries tend to affect the upper limbs (hands, wrists, elbows, neck and shoulders) and are particularly common among seamstresses, cashiers, and data-entry clerks.²⁶

Not all occupational injuries sustained by women are reported, for a variety of reasons. First, since the effects of many injuries are not immediately noticeable, it is more difficult to identify the workplace as the cause in some cases. For example, work-related stress may exacerbate disease or lead to cardiovascular disorders that are ascribed to age. Second, while the causal link between a fall from a ladder and a leg fracture may seem obvious, the same cannot be said for many diseases whose symptoms may be diffuse or irregular or may not emerge until after the worker has retired.

In a recent study of Halifax call centres, female workers reported a variety of health and wellness problems, such as headaches, irritability, anxiety, depression, digestive and sleep disorders, etc. They maintain that their problems were all caused by the following work-related stresses: irregular working hours, lack of job security, repetitive and rapid job duties, unrealistic performance quotas, variable working hours, poor clarification of roles, fear of being reprimanded, verbal abuse, excessive supervision, lack of cleanliness in the workplace, poor air quality, noise, fluctuating temperatures, uncomfortable chairs, etc.²⁷

Such findings suggest that women's jobs often predispose them to deterioration of their overall health over the longer term.

Moreover, women's status in the labour force mean that they often accept unfavourable and tenuous working conditions. Women are more likely than men to be employed in small businesses and in non-standard employment: they work part time, are subcontracted, do home-based work, and work shifts.²⁸ The vast majority of women do not belong to unions, they earn less on average than men and are more likely to be lone parents, all of which adds to their precarious situation. In this context, women may have few opportunities to assert their right to safe and healthy working environments.

Under such circumstances, occupational health and safety standards and protection mechanisms, originally based on models of work that are increasingly less common today, systematically exclude women. These standards must be adjusted to include women.

In addition, sexual harassment is a real menace facing women in the labour market. Prevention of harassment is a matter of occupational safety, and the consequences of harassment are consequences of the hazards of work.

Similarly, violence in certain workplaces is a genuine threat, notably for women who work in the health care field. Employers should be required to adopt risk prevention and assessment measures.

²⁵ Karen Messing (2004), « Physical Exposures in Work Commonly Done by Women, » *Canadian Journal of Applied Physiology*, 29, (5), p. 5-6.

²⁶ Conseil du statut de la femme du Québec (March 1997), *Le travail, est-ce toujours la santé? – Document d'information sur la santé et la sécurité à l'intention des travailleuses.*

²⁷ C. Putnam, A. Fenety and C. Loppie (October 2000), *Who's on the Line? Women in Call Centres Talk about their Work and its Impact on their Health and Well-Being.*

²⁸ Isik Urla Zeytinoglu et al. (March 2003), *Occupational Health of Women in Non-Standard Employment.* Ottawa, Status of Women Canada, available online at http://www.swc-cfc.gc.ca/pubs/pubsalpha_e.html#O

Provinces such as Saskatchewan and Alberta have introduced legislative amendments that spell out the employer's responsibility to develop a policy and procedures to deal with violence in the workplace.²⁹ Nova Scotia's Department of Environment and Labour's occupational health and safety division has developed workplace violence prevention codes of practice for several high risk workplace sectors as part of a larger Workplace Violence Prevention Strategy launched in April 2007. New regulations on workplace violence in effect April 2008 will require employers to conduct risk assessments and implement violence prevention plans where needed.³⁰ Other jurisdictions have adopted policies and offer information on the prevention of workplace violence.³¹

Moreover, other specific occupational health issues arise from women's need to reconcile the demands of paid work and family. Time use data shows that despite women's increasing labour force participation, they continue to shoulder a heavier share of the unpaid work burden: responsibility for housework, child care and care for elderly relatives.³² "Women's work-related health cannot be understood without adding other frameworks related to gender roles and women's work in the domestic sphere" insist leading Canadian and Swedish health researchers Karen Messing and Pirooska Östlin.³³ For example, some studies show that while men's blood pressure declines when coming home, women's often rises, and women with three or more children have been found to be twice as likely to develop heart disease as women with fewer or no children.³⁴

The Advisory Council recommends:

- Appointments to the WHSCC Board of directors should aim for greater diversity and gender balance, with representatives from a broad range of women's employment situations, including non-unionized and non-standard employment.
- The WHSCC Board of directors should adopt a formal process of stakeholder consultations, including women's non-standard employment sectors.
- The WHSCC should adopt a policy requiring gender-based analysis of its policies and programs in order to ensure equitable protection of women in New Brunswick in the area of occupational health and safety. This policy should establish a training program and accountability instruments.
- The Commission's statistics and reports should include sex-disaggregated data and gender-based analyses.
- Research should be undertaken to study the health-related effects of various working conditions common to women's jobs and the time it takes for them to manifest.
- Representative samples of women should be included in future research on occupational health and safety.
- Sexual harassment and violence should be included as occupational safety issues.

²⁹ *Discussion Paper: Prevention of Injuries*, p. 10.

³⁰ "Workplace Violence Strategy Released," April 26, 2007 available at <http://www.gov.ns.ca/news/details.asp?id=20070426007>; Violence in the Workplace Regulations available at: <http://www.gov.ns.ca/just/regulations/regs/ohsviolence.htm>

³¹ *Discussion Paper: Prevention of Injuries*, p. 10.

³² See for example NB ACSW, *2006 Report Card on the Status of Women in New Brunswick*, p. 40, available at <http://www.acswccf.nb.ca/english/acsw3.asp>

³³ Karen Messing and Pirooska Östlin, *Gender Equality, Work and Health: A Review of the Evidence*, p. 25-26.

³⁴ CIHI, *Gender and Sex-Based Analysis in Health Research*, p. 8.

2. Psychological Harassment

Psychological harassment, or workplace bullying, has gained international recognition as a significant occupational health and safety issue. This problem warrants attention within the legislative and regulatory framework on occupational health and safety.

In March 2007, the Advisory Council adopted a position statement on the problem, incorporating the findings of North American and European research and what we heard from citizens, researchers, and health care and human resources professionals.³⁵ An abridged version follows.

Workplace bullying is repeated, unreasonable behaviour that intimidates or humiliates an employee or group of employees.³⁶ The International Labour Organization (ILO) considers bullying a type of workplace violence. Bullying at work – also referred to as psychological harassment, workplace harassment, emotional abuse or mobbing - can take various forms:³⁷

- insulting remarks or spreading rumours about a person's appearance, habits, ideas or private life.
- harsh and constant criticism of work in front of others, withholding of information or resources needed to do the job, removing responsibilities or setting impossible deadlines as punishment.
- use of the silent treatment to isolate the target and encouraging others to turn against the victim.
- co-workers ganging up to torment a fellow employee – a practice sometimes called “mobbing” – and eventually to force them out of their job.

The bully may be a manager, a supervisor or a co-worker, a client, a supplier or even a visitor to the workplace. When teachers are bullied by parents, workers by bosses, or a salesperson by a supplier, it's workplace bullying.

Studies suggest women and men are about equally represented among the bullies. But women are more likely than men to be targets.³⁸

The target of bullying may suffer from serious and often long-term physical and mental health problems including anxiety and depression, insomnia, loss of appetite and concentration, reduced self-esteem, digestive disorders and increased alcohol and drug use. Other consequences may include social isolation, family tensions and financial problems due to absences or quitting/being fired.³⁹

³⁵ Statement available at <http://www.acswcccf.nb.ca/english/acsw3.asp>

³⁶ See for example the definitions presented in European Agency for Safety and Health at Work (2002), Fact sheet 23 on Bullying at work, at <http://osha.eu.int/publications/factsheets/23?language=en>

³⁷ “Workplace bullying” is the term used most frequently in Canada, the UK and Australia. In Scandinavia and Germany speaking countries, this behaviour is referred to as “mobbing.” “Workplace harassment” or “emotional abuse” are commonly used in the U.S. , “psychological harassment/*harcèlement psychologique*” in Quebec and *harcèlement moral* in France and Belgium. Helge Hoel, Kate Sparks & Cary L. Cooper (2001), *The Costs of Violence/Stress at Work and the Benefits of a Violence/Stress-Free Working Environment*, Report commissioned by the ILO, Geneva, p. 18-19, at <http://www.ilo.org/public/english/protection/safework/violence/costof.htm>; ILO (2000), Safework, Introduction to violence at work (2000) at www.ilo.org/public/english/protection/safework/violence/intro.htm

³⁸ Gary Namie (October 2003), *The Workplace Bullying & Trauma Institute 2003 Report on Abusive Workplaces*, at <http://www.bullyinginstitute.org/res.html>; Communication with Dr. Judy MacIntosh, UNB Faculty of Nursing, May 11, 2006.

³⁹ Judy MacIntosh, Judy Wuest and Marilyn Merritt-Gray, “Impact of Work Place Bullying on Women's Health Promotion,” presentation at UNB Faculty of Nursing Research Day, Fredericton, April 28, 2006. The

Employers also pay a high cost, including increased absenteeism and staff turnover.

Low morale also reduces productivity and effectiveness, not only among the direct targets of bullying. Other employees are also demoralized and may be driven out by the negative climate at work.

A report commissioned by the International Labour Organization in 2001 estimated the costs to society of bullying, sexual harassment and physical violence at work – medical costs, benefits and welfare related to premature retirement as well as potential loss of productive workers – together accounted for between 1% and 3.5% of GDP.⁴⁰

Harassers, on the other hand, rarely pay a price for their behaviour. A 2003 survey of 1,000 self-described bullying victims by the U.S.-based Workplace Bullying & Trauma Institute found that in 70% of cases, the bullying only stopped when the victim quit or was fired. In another 17% of cases, the victim was transferred to another position with the same employer. The bully suffered consequences in only 13% of cases: 4% received punishment or sanctions, 9% were transferred or fired.⁴¹

While reliable comparative data is lacking, bullying appears to be far more common than sexual harassment or racial discrimination.⁴² Of the 640 employed respondents who participated in a 2004 Quebec-wide survey on psychological harassment in the workplace, 7% said they had been isolated from others by an individual or a group, 7% said they had been put down or ridiculed in front of others and 9% said they had been victims of offensive, threatening or degrading remarks.⁴³ A study of available survey data on the prevalence of workplace bullying in various European countries concluded in 2001 that at least 10% of workers (total, female and male) are bullied.⁴⁴

Few recourses are currently available in New Brunswick and those that exist are largely inadequate. Some employers have anti-harassment policies. Government of New Brunswick public service guidelines, for example, address personal and sexual harassment, poisoned work environment and abuse of authority.⁴⁵

But in many workplaces, there are no established policies or procedures for employees who experience this type of harassment.

While sexual harassment is explicitly forbidden by provincial and federal human rights laws, psychological harassment is not covered unless it can be shown to be motivated by the victim's race, sex, physical disability, sexual orientation, or one of the other prohibited grounds for

Fredericton team, led by Dr. Judy MacIntosh, has received funding from the Canadian Institutes of Health Research for a 3-year project (2006-2009) to investigate the impact of workplace bullying on how women take care of their health. The project may also shed some light on how WPB influences women's participation in the workforce, on whether there are similarities and differences between WPB and other abuse experiences and on the repercussions of accumulated abuse whatever the form of victimization.

⁴⁰ Hoel, Sparks & Cooper, *The Costs of Violence/Stress at Work*, p. 20-21.

⁴¹ Namie, The Workplace Bullying & Trauma Institute 2003 Report on Abusive Workplaces.

⁴² Canada Safety Council, "Targeting Workplace Bullies" at www.safety-council.org/info/OSH/bully-law.html

⁴³ Chair in Occupational Health and Safety Management at Université Laval, "Violence at Work", at <http://cgsst.fsa.ulaval.ca/violence/eng/>

⁴⁴ Hoel, Sparks & Cooper, *The Costs of Violence/Stress at Work*, p. 20-21; See also European Agency for Safety and Health at work, Fact sheet 23 on Bullying at work.

⁴⁵ N.B. Government Harassment Policy at <http://intranet/intellinet/adminman/adminman/2913-e.asp>

discrimination recognized by the N.B. Human Rights Code for provincially regulated workplaces or the Canadian Human Rights Act for federally regulated workplaces.⁴⁶

General harassment is not mentioned in the provincial or federal employment standards laws nor in New Brunswick's Occupational Health and Safety Act.

Quebec was the first province to introduce legislative protection against workplace bullying for all workers, in effect since June 2004. "Every employee has a right to a work environment free from psychological harassment" states Quebec's labour standards act. Employers must take "reasonable action" to prevent it and must put a stop to it when they become aware of such behaviour.⁴⁷

Saskatchewan recently followed suit. Effective October 1st, 2007, its Occupational Health and Safety Act includes an expanded definition of harassment to address personal harassment in the workplace, such as abuse of power and bullying. The legislation also allows for the appointment of an independent adjudicator to hear appeals arising from harassment complaints.⁴⁸ During the initial implementation period the focus will be on education, under the direction of a new harassment prevention unit within the Occupational Health and Safety Division of Saskatchewan Labour.⁴⁹

A few European countries, such as Belgium and France, have adopted special legislation on workplace bullying, while others address it through regulatory responses using charters, guidelines and resolutions.⁵⁰ The European Commission includes the prevention of bullying among the goals of its strategy for health and safety at work and has given direction on this to its member states.⁵¹

Legal remedies to deal with bullying are not enough; prevention is also key.

A study of the first 18 months of operation of Quebec's new law showed that most employers affected by complaints had no preventive measures in place. It estimated that approximately

⁴⁶ The N.B. HRA currently protects against discrimination and harassment based on 14 grounds: age, marital status, religion, physical disability, mental disability, race, colour, ancestry, place of origin, national origin, social condition, political belief or activity, sexual orientation and sex, including pregnancy. N.B.HRA at www.gnb.ca/0062/acts/acts/h-11.htm and Frequently Asked Questions about the NB HRA at www.gnb.ca/hrc-cdp/e/faq.htm; The Canadian HRA prohibits discrimination on 11 grounds: race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability and conviction for which a pardon has been granted. CHRA, at <http://laws.justice.gc.ca/en/H-6/index.html> and "Discrimination and Harassment" on the site of the Canadian Human Rights Commission www.chrc-ccdp.ca/discrimination/harassment-en.asp

⁴⁷ Section 81.19, Labour Standards Act at www.cnt.gouv.qc.ca/en/lois/normes/normes/harcelement.asp#harcelement; Guides for employers and information for employees are available at <http://www.cnt.gouv.qc.ca/en/gen/plan/index.asp>

⁴⁸ Chapter 34, An Act to amend *The Occupational Health and Safety Act, 1993*, available at <http://www.publications.gov.sk.ca/details.cfm?p=743>

⁴⁹ "Harassment Prevention Legislation Proclaimed", available at:

<http://www.labour.gov.sk.ca/Default.aspx?DN=e8383565-1c56-4e90-9c0e-ebd673aec6b>

⁵⁰ European Agency for Safety and Health at work, Fact sheet 23 on Bullying at work; « Metaguide – Protection contre la violence, le harcèlement moral ou sexuel au travail » on the Belgian federal public service web site at <http://meta.fgov.be/pc/pce/pcep/frcep19.htm>; see also guide for employers, *Clés pour... prévenir et lutter contre la violence et le harcèlement moral ou sexuel au travail* (February 2005); For France, see Institut national de recherche et de sécurité, « Dossier – Harcèlement moral : généralités », www.inrs.fr/htm/harcelement_moral_generalites.html

⁵¹ European Agency for Safety and Health at work, Fact sheet 23 on Bullying at work.

20% of complaints could have been settled within the organization if some formal or informal internal mechanisms had been developed and implemented.⁵²

Another study of the complaints lodged with Quebec's labour standards commission in 2004-2005 showed that within the organizations, managers reacted initially to complaints by denying and trivializing the situation, while organizations generally tried to "hush up" the incidents, even in some cases firing the complainants.⁵³

Authors of a large-scale British survey conducted in 2000 concluded "bullying can only thrive when it is condoned, directly or indirectly by management."⁵⁴ In fact, the survey found that 75% of the bullies were within managerial ranks. If they are to establish a work environment and work culture that is free of bullying, employers must therefore critically examine their own management practices.

Bullying researchers and health and safety experts agree that employers must introduce internal policies and procedures not only to handle complaints and provide support to victims, but also to be watching for situations that could deteriorate. Employers must also ensure that all employees and managers are educated on the issue and made aware of the mechanisms for safe reporting and redress.⁵⁵

In order to determine whether current mechanisms to deal with workplace bullying are effective and to uncover other potential solutions, the Advisory Council placed the following newspaper ads in January 2007:

"Are you a woman who has been or is currently a victim of workplace bullying*? If so, we'd like to hear from you. We are organizing focus group sessions in early February, as part of our work to develop ways to deal with this problem. If you have been a victim of bullying at work, and are willing to give us a couple of evening hours, please call ---.

*Workplace bullying is usually defined as repeated, unreasonable behaviour that intimidates or humiliates you. Examples include frequent insulting remarks, constant criticism in front of others, withholding of information. The bully can be a supervisor, a co-worker, a client, a supplier or even a visitor to the workplace.

About 60 replies were received and 45 women participated in focus groups held in February 2007 in Fredericton, Saint John, Moncton and Tracadie-Sheila, along with several individual interviews. Participants evaluated the potential of different remedies, including mediation, Ombudsman, sensitivity training and social marketing campaigns.

The report, produced by consultant Bissett Matheson Communications who conducted the sessions and the interviews, is available on request. Its key findings are as follows:

⁵² Angelo Soares (UQAM, Department of Organizations and Human Resources), "The Anti-Bullying Law: The Quebec Experience", at www.bullyinginstitute.org/res.html. Other studies by Soares are available at www.er.uqam.ca/nobel/r13566/

⁵³ Jean-Pierre Brun and Evelyn Kedl (January 2006), *Portrait et analyse de plaintes déposées pour harcèlement psychologique au travail à la Commission des normes du travail*, at <http://cgsst.fsa.ulaval.ca/>

⁵⁴ Helge Hoel & Cary L. Cooper (April 2000), *Destructive Conflict and Bullying at Work*, at www.csren.gov.uk/UMISTreportHelgeHoel1.PDF

⁵⁵ See for example, Canada Safety Council, "Targeting Workplace Bullies" at www.safety-council.org/info/OSH/bully-law.html; Brun and Kedl, *Portrait et analyse de plaintes: A Call to Action – Women's Health at Work & Violence in the Workplace* at www.cwhn.ca/resources/workplace/violence.html

Current mechanisms that are supposed to remedy workplace bullying are not only totally ineffective, but often compound the problem.

Participants felt the greatest shortcomings in these mechanisms is that they have no teeth, and that often the person who employees are supposed to consult for help, is part of the problem.

There was general consensus among the English groups that an ombudsman could represent a solution; however the Francophone participants were less enthusiastic about this option.

There was a consensus that public education has a major role to play in dealing with bullying.

We believe that it is essential to first acknowledge and name the problem. Raising public awareness is key to making this a social rather than an individual problem. Employers must make it known that bullying will not be tolerated and victims must be given recourses.

Governments should take the lead in legislating against workplace bullying, as they have done for sexual harassment and various forms of discriminatory or health issues in the workplace. Adequate enforcement mechanisms and resources for public education must also be provided, to ensure that victims are willing and able to access protection and compensation in a timely manner.

Providing a legal definition of bullying would also help employers develop their own policies and procedures to address the problem. A firm commitment from employers is essential. An effective anti-harassment strategy in each workplace must include a pro-active approach to workplace conflicts to defuse potential harassment situations, the introduction of clear and safe reporting mechanisms, information and training for employees, supervisors and managers as well as support for victims.

The Advisory Council made the following recommendations:

- Government should amend legislation to recognize workplace bullying as a workplace health issue, provide protection and assure redress for victims, including advice to victims, complaint procedures, tough penalties for employers who tolerate it and follow-up to ensure the problem is rectified.
- Government should ensure that enforcement and public education are supported by adequate human and material resources.
- Government should assist employers to develop prevention policies and codes of conduct, and to provide information and support to victims.
- As an employer, government should investigate extent of bullying in public sector and take measures to eliminate it.
- Government should launch a social marketing campaign, provide 1-800 number, web site, etc.
- The Advisory Council should conduct a public campaign to raise awareness of the need for action.

3. Workers' Compensation Coverage Issues

3.1 Compulsory Employer Coverage

The no-fault workplace accident and disability insurance for employers and workers administered by the WHSCC is funded solely through assessments on employers. However, not all employers are required to purchase coverage.

New Brunswick and Nova Scotia are the only provinces in Canada that exclude employers from compulsory workers' compensation coverage based on their size.⁵⁶ New Brunswick employers with fewer than three employees and employers in the fishing industry with fewer than 25 employees are not required to have workers' compensation coverage.⁵⁷ Those employers have the option of obtaining voluntary or personal coverage. This criterion for coverage means that industries and their employees can be excluded from application of the Act.

The NB WHSCC estimates that approximately 21,324 New Brunswick workers, or 6% of all employees in the province, had no workers' compensation coverage in 2006.⁵⁸ The sex breakdown is not provided by the Commission.

Basing employers' coverage on the size of their businesses is a form of discrimination towards female workers, since most women work in small enterprises, including non-profit organizations. Less than one in five New Brunswick non-profit agencies have five or more full-time employees, and women make up 80% of the full-time paid staff and 86% of the part-time paid staff of non-profit organizations in our province.⁵⁹

Jobs in small establishments are often unstable, part time, subcontracted, involve shift work, etc. The salaries women earn in these jobs may be insufficient to meet their primary needs and certainly not enough to be able to afford private coverage.

Moreover, excluding female-dominated industries from the field of application of the Act gives rise to exploitation and intimidation of female workers wanting to assert their occupational health and safety rights. It also means that women benefit far less from prevention activities offered by the WHSCC.

Disease and accidents can occur in all workplaces, regardless of size. Consequently, coverage should be based on the type of work being done and not on the size of the business.

The Advisory Council recommends:

- Workers' compensation coverage should be made compulsory for all employers, regardless of size of enterprise.

3.2 Coverage for Volunteers

In New Brunswick, only certain types of volunteers are covered under the Workers' Compensation Act: firefighters, emergency services workers (i.e., search and rescue personnel summoned under the Emergency Measures Act), persons assisting a peace officer, ambulance

⁵⁶ Association of Workers' Compensation Boards of Canada, "Scope of Coverage", available at <http://www.awcbc.org/english/Assessment.asp#WorkerCoverage>, consulted September 21, 2007; See also Independent Review Panel on the New Brunswick Workplace Health, Safety and Compensation System (September 2007), *Discussion Paper: Coverage/Benefits*, p. 3-4, available at <http://www.gnb.ca/IRP-CRI/discussion-e.asp>.

⁵⁷ New Brunswick Regulation 82-79 under the Workers' Compensation Act, available at <http://www.gnb.ca/0062/reg/w-13reg.htm>

⁵⁸ *Discussion Paper: Coverage/Benefits*, p. 2.

⁵⁹ Premier's Community Non-Profit Task Force (September 2007), *Blueprint for Action: Building a Foundation for Self-Sufficiency*, p. 69, available at <http://www.gnb.ca/cnb/promos/nptf/index-e.asp>

attendants/drivers and volunteer/auxiliary police officers.⁶⁰ However, many citizens, and women in particular, engage in a wide range of volunteer activities that are not included in this list.

The recent report of the Premier's Community Non-Profit Task Force conservatively estimates that 30,846 New Brunswickers donate time each year, organizing programs and activities, serving as a Board member or fundraising for volunteer groups.⁶¹ This figure is not broken down according to gender, but available national data indicates that women account for the lion's share of volunteers.⁶²

In any event, we know that there are very few women in the volunteer occupational groups covered under the Act.

The Advisory Council recommends:

- Workers' compensation coverage for volunteers should be expanded to include areas in which women are active.

3.3 Cost of Coverage for Non-Profit Organizations

The high cost of Workers' Compensation coverage for non-profit organizations is a problem that was raised by a number of women's groups we consulted when preparing our submission to the Premier's Community Non-Profit Task Force.⁶³ Many of the voluntary sector organizations that met with the Premier's Community Non-Profit Task Force also insisted that the high rates were a major financial burden for groups already struggling with limited funding.⁶⁴

The problem arises because of the way in which agencies' risks are classified by the WHSCC. Because they are categorized in a higher risk section, organizations such as child care services and transition houses are forced to pay steep rates.

Transition houses, for example, are likened to homes for physically handicapped and/or disabled individuals and are charged rates similar to drug addiction and alcohol treatment clinics and ambulance services, where the nature of work is clearly more dangerous than providing assistance to women and children victims of abuse.

One New Brunswick transition house administrator reports having to pay \$2.28 per \$100 payroll in Worker's Compensation, resulting in a bill of over \$3,700 based on gross estimate salaries for

⁶⁰ *Discussion Paper: Coverage/Benefits*, p. 4. Even these volunteers are not covered if they are working at fundraising events or crowd control.

⁶¹ Premier's Task Force on The Community Non-Profit Sector (September 2007). *Blueprint for Action: Building a Foundation for Self-Sufficiency*, p. 68.

⁶² See for example, Statistics Canada, General Social Survey, 2003 results cited in Statistics Canada (March 2006), *Women in Canada: A Gender-based Statistical Report*, 5th edition; See also Fiona MacPhail and Paul Bowles (February 2007), *Employer-Supported Volunteer Activity: How Do Women Employees and Women's Organizations Fare?* Ottawa, Status of Women Canada, available online at http://www.swc-cfc.gc.ca/pubs/pubspr/0662448754/200702_9780662448754_1_e.html

⁶³ NB ACSW, *Women's Groups in the Non-Profit and Voluntary Sector*, Brief to the Premier's Community Non-Profit Task Force, Fredericton, March 2007, p. 14, available at <http://www.acswccf.nb.ca/english/acsw3.asp#publications>

⁶⁴ Premier's Community Non-Profit Task Force (September 2007), *Blueprint for Action: Building a Foundation for Self-Sufficiency*, p. 17, 43.

the year. She notes that the equivalent rate for such organizations in PEI is 29 cents per \$100.⁶⁵ The administrator has brought this to the attention of three different governments, to no avail.

By contrast, the 2007 rate in New Brunswick for a wide range of health practitioner offices, social service providers (social workers, counselling, etc.) and financial sector offices is set at just \$0.42 per \$100.⁶⁶

The English and the French community groups that met with the Premier's Community Non-Profit Task Force called for the reclassification and realignment of WHSCC rates to reflect the safety record of the non-profit sector.⁶⁷

The Advisory Council recommends:

- WHSCC policies, regulations and rate structures should be reviewed to ensure that non-profit organizations are treated fairly.

⁶⁵ Assessment rates in other provinces for the different categories of employers are presented in "Workers' Compensation Assessment Rates – 2007", see link "Assessment Rates" at <http://www.gnb.ca/irp-cri/discussion-e.asp>

⁶⁶ NB WHSCC 2007 Industry Assessment Rates available online at http://www.whscc.nb.ca/pubs_e.asp#pubemp, consulted September 19, 2007.

⁶⁷ Premier's Community Non-Profit Task Force (September 2007), *Blueprint for Action: Building a Foundation for Self-Sufficiency*, p. 17, 43.

Conclusion and Recommendations

The New Brunswick Advisory Council on the Status of Women is dedicated to promoting equity for women in all areas of New Brunswick society. Women experience specific occupational health and safety problems, but their needs have not received the attention nor the protection they warrant in research, policy and program development, prevention and education efforts and compensation coverage.

We therefore present the following recommendations to the Independent Review Panel:

- Appointments to the WHSCC Board of directors should aim for greater diversity and gender balance, with representatives from a broad range of women's employment situations, including non-unionized and non-standard employment.
- The WHSCC Board of directors should adopt a formal process of stakeholder consultations, including women's non-standard employment sectors.
- The WHSCC should adopt a policy requiring gender-based analysis of its policies and programs in order to ensure equitable protection of New Brunswick women in the area of occupational health and safety. This policy should establish a training program and accountability instruments.
- The Commission's statistics and reports should include sex-disaggregated data and gender-based analyses.
- Research should be undertaken to study the health-related effects of various working conditions common to women's jobs and the time it takes for them to manifest.
- Representative samples of women should be included in future research on occupational health and safety.
- Sexual harassment and violence should be included as occupational safety issues.
- The provincial government should amend legislation to recognize workplace bullying as a workplace health issue, provide protection and assure redress for victims, including advice to victims, complaint procedures, tough penalties for employers who tolerate it and follow-up to ensure the problem is rectified.
- The provincial government should ensure that enforcement and public education on workplace bullying are supported by adequate human and material resources.
- The provincial government should assist employers to develop workplace bullying prevention policies and codes of conduct, and to provide information and support to victims.
- As an employer, the provincial government should investigate extent of bullying in public sector and take measures to eliminate it.
- The provincial government should launch a social marketing campaign on workplace bullying, provide 1-800 number, web site, etc.
- Workers' compensation coverage should be made compulsory for all employers regardless of size of enterprise.
- Workers' compensation coverage for volunteers should be expanded to include areas in which women are active.
- WHSCC policies, regulations and rate structures should be reviewed to ensure that non-profit organizations are treated fairly.