



# STAKEHOLDER CONSULTATION

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## **Backgrounder: Workplace Violence**

Fall 2017

# Letter from the Chair

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Dear Valued Stakeholder,

WorkSafeNB's board of directors is committed to involving you, our stakeholders, in its decision-making processes to help ensure open and transparent governance for the workers and employers of New Brunswick. We are aiming to continuously improve our engagement and communication practices by creating increased opportunities for civic dialogue, sharing data, and providing our clients with the information they need to better understand occupational health and safety and accident prevention in New Brunswick.



An important piece of this approach includes seeking your views on key programs, policies, and legislation. That is why we are consulting workers, employers, labour groups and other interested parties for feedback on a proposed regulatory framework on the prevention of workplace violence and harassment. Your views are needed so WorkSafeNB can make a recommendation to government on the regulation to be drafted. The proposed framework draws on the regulations in place in the Atlantic Provinces along with other jurisdictions across the country.

If you would like to comment on the proposed regulatory framework, please submit your feedback by December 1, 2017.

On behalf of WorkSafeNB's board of directors, we thank you for taking the time to share your opinions and we look forward to continuing to foster our working relationship with you in the future.

Yours truly,

A handwritten signature in cursive script that reads "Dorine P. Pirie".

**Dorine Pirie**  
**WorkSafeNB Chairperson**

# About WorkSafeNB

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WorkSafeNB is a Crown corporation that administers no-fault workplace accident and disability insurance for employers and their workers, funded through employer assessments. WorkSafeNB is committed to preventing workplace injuries and illnesses through education and the enforcement of the *Occupational Health and Safety Act (OHS Act)* and *Regulations*.

The Canadian workplace health, safety and compensation system is guided by principles formulated in 1910 by former Chief Justice of Ontario, Sir William Meredith.

- **No-fault Compensation:** Workers are eligible to receive benefits for work-related injuries or occupational diseases, regardless of fault.
- **Collective Liability:** All registered employers are responsible for fully funding the cost of workers' compensation.
- **Security of Payment:** System is operated to ensure long-term stability, financial security, and cost-effectiveness.
- **Exclusive Jurisdiction:** WorkSafeNB has final decision-making authority and is not bound by legal precedent.
- **Independent Board:** Board is stakeholder-driven, autonomous, non-political, and financially independent of government.

These principles were adopted by New Brunswick's system in 1919, and continue to guide WorkSafeNB's Board of Directors to serve more than 350,000 workers and 14,000 employers in New Brunswick.

## **WORKSAFENB'S STAKEHOLDER ENGAGEMENT GOAL**

*We will engage our stakeholders in meaningful dialogue, relationships, partnerships and decision-making to ensure a sustainable workplace health, safety and compensation system.*

Stakeholder engagement gives WorkSafeNB the opportunity to better understand your priorities and opinions, and to learn from your experience and expertise. We consult on issues that have a significant impact on stakeholder communities through a number of means including community engagement sessions, establishing technical committees and through online tools.

WorkSafeNB consults with stakeholders before creating regulation or revising existing regulation, for recommendation to the Government of New Brunswick. Topics may arise from emerging issues or trends in occupational health and safety and are often identified by the Board of Directors during its strategic planning and risk assessment process.

The topic discussed in this paper, violence and harassment in New Brunswick workplaces, originated from both the board's strategic planning process and on-going concerns expressed by stakeholders.

# The Proposed Regulatory Framework

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## ***Why is New Brunswick proposing new regulations on workplace violence?***

WorkSafeNB is committed to ensuring safe workplaces for New Brunswickers and is mandated to do so. Stakeholders from the health care, education, retail and other sectors have raised concerns about sources of violence in their work environments and the impact it has on their employees and business.

Health care staff provide around-the-clock care. Consequently, many staff working emergency rooms, psychiatric units and in long-term care facilities like nursing homes, encounter systemic workplace violence. A 2016 New Brunswick Nurses Union (NBNU) survey stated that amongst New Brunswick nurses, three out of 10 faced physical violence on the job and 73 percent of registered nurses encountered harassment while carrying out their daily duties.

New Brunswick remains one of few Canadian provinces and territories without workplace violence or harassment in its occupational health and safety legislation. The proposed provisions could apply to all workers, or specific industrial sectors. We want to hear from you, our stakeholders, on this matter. Please review the proposals and jurisdictional information to understand the legislative landscape New Brunswick is to enter.

Many employers are recognizing the impact of violence and harassment in their workplace and, as a result, are developing solutions and strategies to address the problem. An increase in awareness is usually accompanied by a decrease in tolerance for incidents of abuse.

Violence and harassment is an issue that can affect all business sectors and occupations:

- it affects the safety and security of employees, customers, clients and business owners; and
- it claims a high personal cost from the emotional trauma and physical injury experienced by victims, their families and co-workers.

It brings high costs to the employer, including:

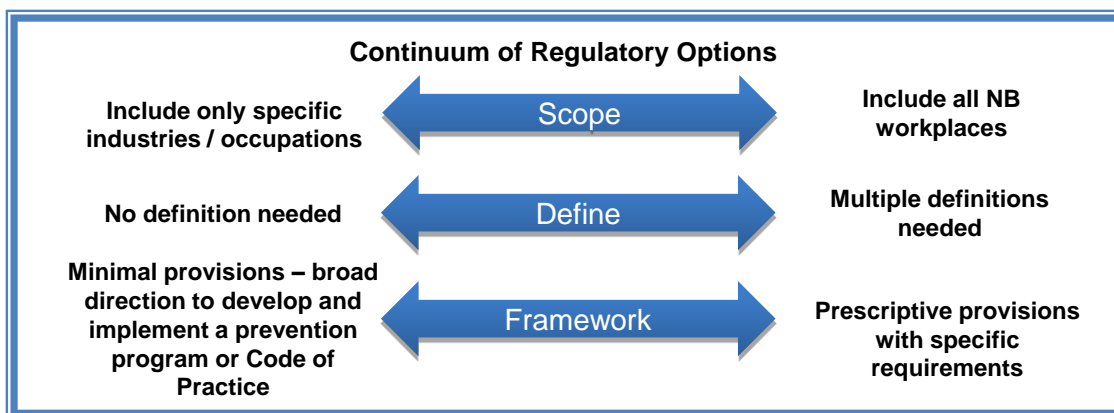
- increased absenteeism;
- higher sick leave costs;
- lost productivity;
- reduced profitability;
- high employee turn-over;
- higher insurance premiums; and
- increased workers' compensation rates.

# The Proposed Regulatory Framework

Employers need to know and understand the nature of violence or harassment that exists in their workplace to ensure they are providing as healthy and safe workplace as is reasonably possible for their employees and to reduce the impact that violence and harassment have on the business. Assessing the risk of violence can be done through an assessment of the potential hazards. Working together, employees and management are in the best position to identify existing and potential hazards and develop the appropriate control measures needed by the workplace based on their unique situation.

Regulatory provisions in New Brunswick would need to consider three elements, all of which include a minimum standard through to the highest standard in Canada:

- The scope of application for the requirements – To whom does this apply?
- Any definitions needed in the regulations – Violence? Harassment? Others?
- Whether the regulatory framework should be performance-based or more prescriptive?



Prescriptive regulation defines how activities are to be done (e.g., what techniques or materials to use, what qualifications are required, where the activities may occur). In general, the regulation itself provides a high level of detail and direction to workplaces.

Performance-based regulation puts more emphasis on specifying a desired outcome and does not restrict how compliance is to be achieved. This approach puts more responsibility on the workplace to develop programs and controls on their own.

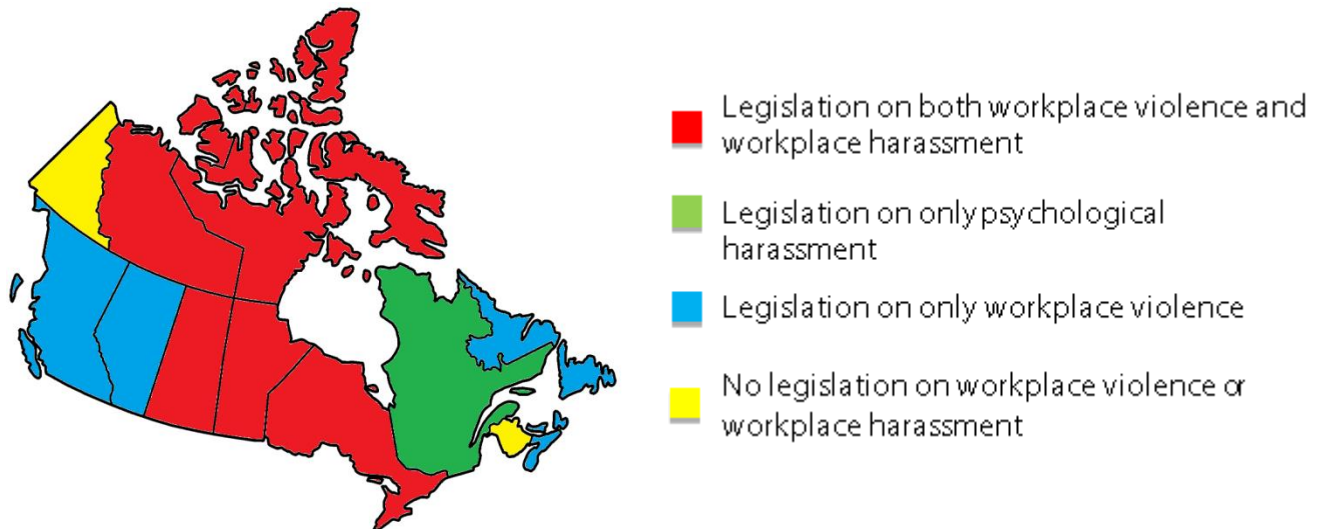
In both cases there will be a reliance on WorkSafeNB to provide guidance resources and skilled staff to help employers comply with the regulation.

WorkSafeNB needs to hear from all stakeholder groups no later than December 1, 2017 on what regulatory provisions you believe are required to prevent violence and harassment in New Brunswick workplaces. A framework is available [here](#) to take you through the options. If you would prefer a PDF version of the framework that can be printed and faxed to us please contact us by email at [consultation@ws-ts.nb.ca](mailto:consultation@ws-ts.nb.ca)

# Jurisdictional Information

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All jurisdictions have some form of legislation on the topic of workplace violence and/or harassment except for New Brunswick, Quebec and Yukon. Out of the nine jurisdictions with workplace violence legislation, four also have separate legislative provisions for workplace harassment. Quebec only has legislation on psychological harassment.



## Workplace Violence

All jurisdictions with legislation addressing workplace violence provide a definition of what that term includes. Definitions of workplace violence include some of the following language:

- *Threat of physical force to cause injury* (not contingent on there being an actual injury): five out of nine (56%) jurisdictions with legislation on workplace violence include this language
- *Attempted and actual actions*: 100% of jurisdictions with legislation on workplace violence include this language
- *Threatening statements and behaviours*: seven out of nine (78%) jurisdictions with legislation on workplace violence include this language

Out of the jurisdictions with laws on workplace violence, four out of nine (44%) prescribe the legislation only for certain industries identified as higher risk.

## Workplace Harassment

All jurisdictions with legislation addressing workplace harassment provide a definition of what that term includes. Definitions of workplace harassment include some of the following language:

- *A reference to bullying*: None of the five jurisdictions with legislation on workplace harassment include this language
- *Conduct or commentary that is known or should be reasonably known to be unwelcome*: Four out of five (80%) jurisdictions with legislation on workplace harassment include this language, though one of the jurisdictions uses the language “known to cause a worker to be humiliated or intimidated” rather than ‘unwelcome’
- *Threats at the worksite to the health or safety of an employee*: Three out of five (60%) jurisdictions with legislation on workplace harassment include this language

# Jurisdictional Information

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## **Workplace Harassment**

- *Repeated conduct, comments, displays, actions or gestures; or a single, serious occurrence of conduct, or a single serious comment, display, action or gesture, that has a lasting, harmful effect on the employee's health or safety:* Four out of five (80%) with legislation on workplace harassment include this language
- *A qualifier that any reasonable action taken by an employer or supervisor relating to the management and direction of employees or the place of employment is not included in the definition:* Two out of five (40%) jurisdictions with legislation on workplace harassment include this language

In all Canadian legislation on workplace violence and workplace harassment, none treat the topic of workplace violence and harassment as one issue. Where a jurisdiction includes both violence and harassment in its legislation or regulation, the two topics are not combined but rather have separate sections that include their specific provisions. We would like to hear from stakeholders on this issue of whether or not New Brunswick should introduce legislative provisions with respect to workplace harassment. Currently five out of twelve (42%) Canadian jurisdictions have workplace harassment legislation enacted.

# Your Turn: Please Reply

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## **Online submission**

You can reply to this consultation [online](#).

You can access this discussion paper and proposed regulatory framework before the deadline by visiting [www.worksafenb.ca/Stakeholder-engagement](http://www.worksafenb.ca/Stakeholder-engagement)

If you have any questions about this consultation, please contact [consultation@ws-ts.nb.ca](mailto:consultation@ws-ts.nb.ca)

**Deadline is December 1, 2017.**

WorkSafeNB's Board of Directors thanks you for taking the time to provide your feedback.