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Combative Colleagues

Verbal threats in the workplace and the effect of Bill 168

BY BARBARA GREEN

Bill 168, which amended the Occupational Health and Safety Act, came into force in Ontario on June 15, 2010, with the goal of preventing workplace violence and harassment. Bill 168 mandates employers to carry out a risk assessment to identify potential sources of workplace harassment and to develop policies to address these incidents.

In one of Ontario's first Bill 168 decisions, arbitrator Elaine Newman of the Ontario Labour Arbitration Board acknowledged that Bill 168 includes verbal threats of violence and equates it to physical acts of violence. She upheld an employer's decision to terminate an employee for using threatening language in the workplace. The termi-

nated employee was 47 years old, with 28 years of seniority with the City of Kingston and had a history of aggressive ver-

bal conduct towards co-workers and supervisors.

Following a suspension from work for aggressive behaviour, the employee attended an anger management program paid for by

the employer. The employer also agreed to compensate her upon completion of the program. Two days following

her completion of the program, the employee made a death threat against a union president. The employer terminated the employee on the basis of the seriousness of the incident and Bill 168.

As a practical matter, employers should carefully and consistently document incidents of workplace violence.

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Newman's decision makes it clear that employers must react to verbal threats in the workplace. An intention or the ability to carry out immediate physical harm is irrelevant. Newman stated, "The utterance of a threat in the workplace requires that the workplace parties stop cold. They must report. They must investigate. They must assess the existence of real danger. They must act."

Yet, Bill 168 is not a "zero tolerance policy" for workplace threats. The employer's response must be reasonable and proportionate. As a practical matter, employers should carefully and consistently document incidents of workplace violence and the employer's responses. **OHB**