

Workplace Violence and Harassment

Employer obligations under the *Occupational Health and Safety Act* in the wake of Bill 168

Employer obligations under the *Occupational Health and Safety Act* in the wake of Bill 168

Presentation by

BRENT FOREMAN and JANE GOODING

EVANS, PHILP LLP

1 King St. W., 16th Fl.

(905) 525-1200

www.evansphilp.com

&

SHEILA CHURCH

PeopleRight

905 512-6010

www.peopleright.net

Introduction

- Bill 168 is an act amending the *Occupational Health and Safety Act* to address workplace violence and harassment
- Effective date: **June 15, 2010**

Workplace Violence and Harassment



Workplace Violence Defined

Workplace violence is:

- a) the exercise of physical force by a person against a worker, in a workplace, that causes or could cause physical injury to the worker

- b) an attempt to exercise physical force against a worker, in a workplace, that could cause physical injury to the worker or

- c) a statement or behaviour that a worker could reasonably interpret as a threat to exercise physical force against the worker, in a workplace, that could cause physical injury to the worker

Workplace Harassment Defined

Workplace Harassment is:

“engaging in a course of vexatious comments or conduct against a worker in a workplace that is known or ought reasonably to be known to be unwelcome”

Expansion of Existing *OHS*A Duties

The *Act* sets out general duties for an:

- employer (s. 25)
- supervisor (s. 27)
- worker (s. 28)

Employer Obligations under Bill 168

There are four main areas of employer obligations:

1. Policies
2. Risk Assessment (violence only)
3. Programs
4. General Duties

Policies

Every employer must prepare a workplace violence policy *and* a workplace harassment policy.



Risk Assessment

- Violence only
- Significant work required

Risk Assessment

Must consider:

1. Risks unique to your workplace
2. Nature of the workplace
3. Type of work
4. Conditions of work
5. Risks common to similar workplaces
6. Report conclusion to JHSC

Risk Assessment

How?

1. Review history of incidents
2. Do an employee survey
3. Do a physical survey
4. Investigate experience of your peers
5. Create an inventory of all risks and corresponding controls
6. Rate the risks
7. Determine what new controls are necessary

Employee Survey

Your employees are “experts” on the risks unique to your workplace



Risk Assessment Process

Hazard Identification

What can go wrong?

Risk Analysis

Likelihood Analysis

How likely is it?

Consequence Analysis

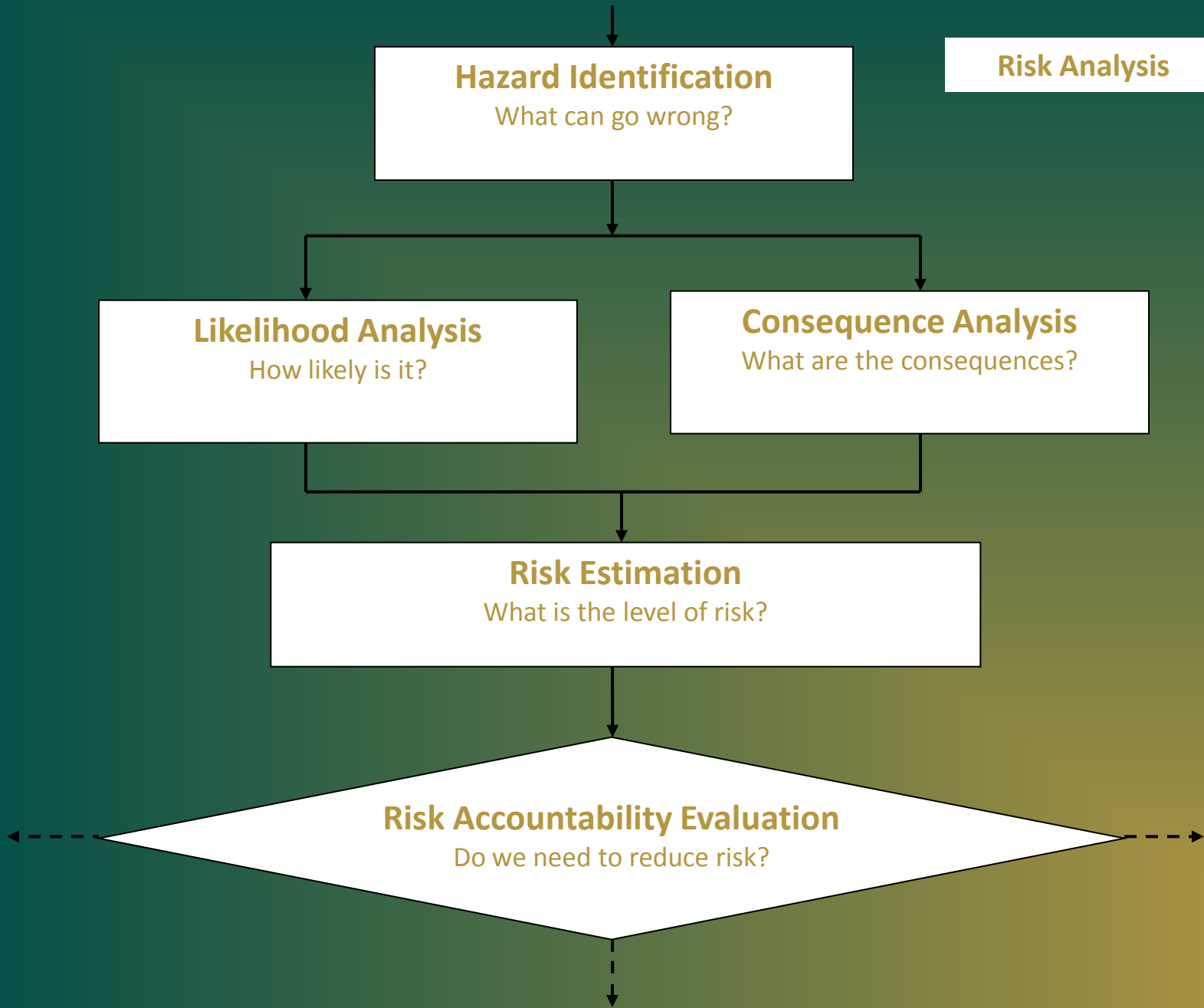
What are the consequences?

Risk Estimation

What is the level of risk?

Risk Accountability Evaluation

Do we need to reduce risk?



Risk Assessment Process

Hazard Identification

What can go wrong?

Risk Analysis

Likelihood Analysis

How likely is it?

Consequence Analysis

What are the consequences?

Assessing Probability - the likelihood of occurrence of the injury

0=Not Possible

1=Unlikely

2=Possible

3=Likely

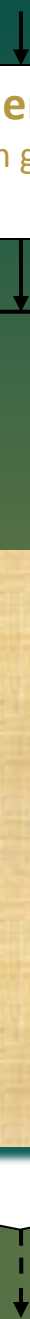
4=Highly Likely

Risk Estimation

What level of risk?

Risk Control

How to reduce risk?



Risk Assessment Process

Hazard Identification

What can go wrong?

Risk Analysis

Likelihood Analysis

How likely is it?

Consequence Analysis

What are the consequences?

Risk Estimation

What is the level of risk?

Risk Accountability

Do we need to manage the risk?

Assessing Severity-the degree of possible injury

0=No Injury or illness

1=First Aid

2=Health Care

3=Lost Time Injury/no permanent impairment, <\$5000

4=Permanent Disability, Critical Injury, Fatality

Risk Assessment Process

Hazard Identification

What can go wrong?

Risk Analysis

Likelihood Analysis

How likely is it?

Consequence Analysis

What are the consequences?

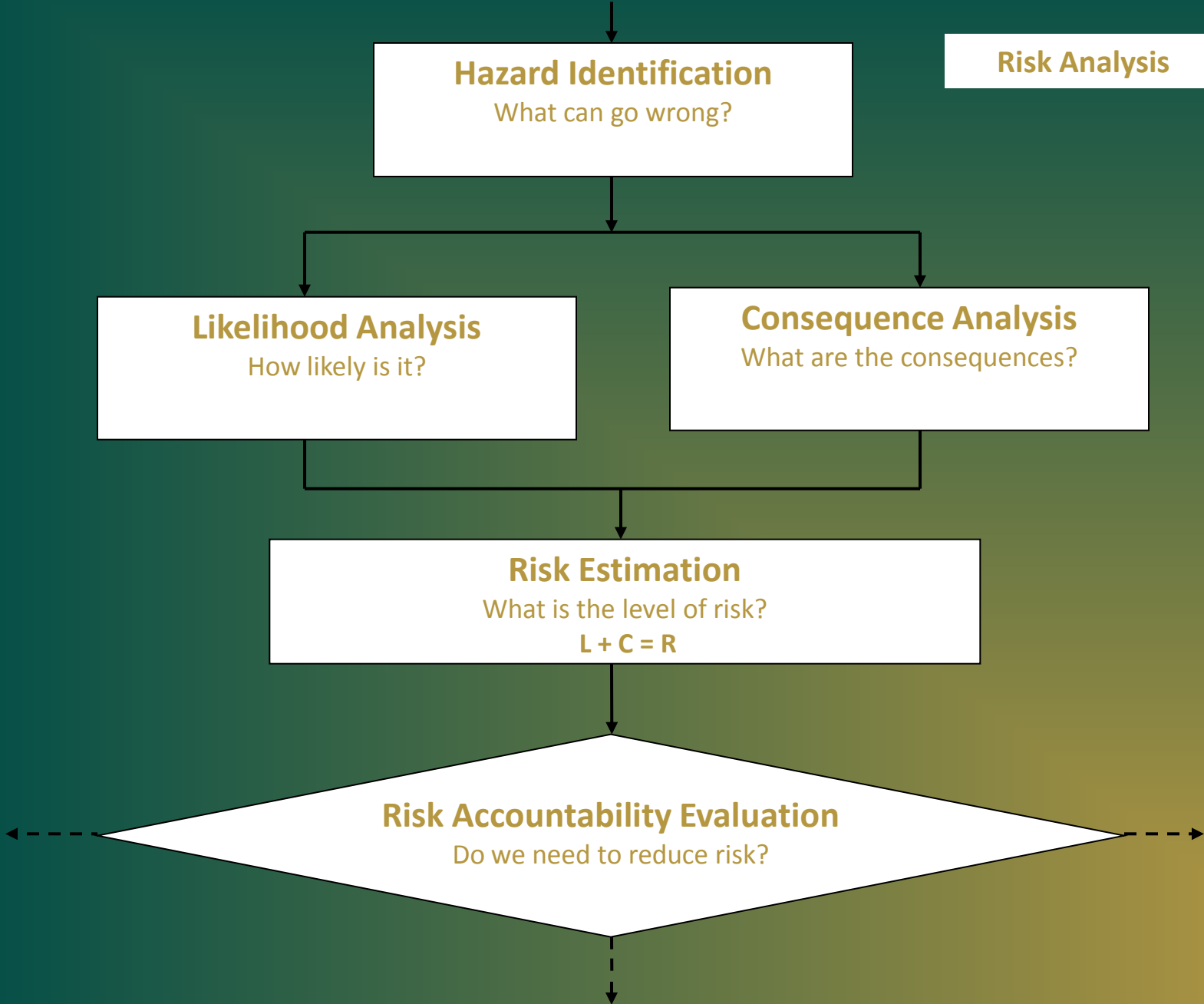
Risk Estimation

What is the level of risk?

$$L + C = R$$

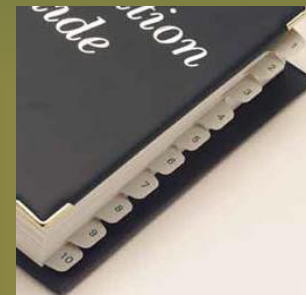
Risk Accountability Evaluation

Do we need to reduce risk?



Programs

Every employer must develop comprehensive programs to implement both the workplace violence and workplace harassment policy.



Workplace Harassment Program

The program must include measures and procedures to:

- a) report incidents of workplace harassment
- b) investigate and respond to such incidents or complaints
- c) address any prescribed elements set out in the regulations.

Workplace Violence Program

The program must include measure and procedures to:

- a) control risks
- b) summon immediate assistance
- c) report incidents and threats of violence
- d) investigate and respond to incidents or complaints
- e) Address any other elements prescribed by regulation

Controlling the Risks

- Working Alone Procedures
- Safe Travel Procedures
- Robbery Preventions
- Job Action Safety
- Preparing for Potentially Violent Meetings
- Working Off Hours/Late

Summoning Assistance

Examples:

- Two-way Radios
- Emergency Codes
- Emergency Numbers
- Silent Alarms
- Cell Phones

Incident Reporting

- Reporting is required by employees
- Incident/Complaint/Threat should be reported
- Employer must have a procedure
- Everyone must receive appropriate training around how to report and address a report
- Managers must know immediate responses required prior to investigation

Investigation

- Gather statements from anyone who is identified as having knowledge
- Wherever possible get statement in writing with signature
- Acknowledge need for sensitivity but do not guarantee confidentiality
- Remind all of your policy on not discussing the complaint, give advice on how to handle co-worker inquiries
- Consider the safety of the complainant during the investigation and after

Investigating Incidents

- Investigation is critical
- Serious legal consequences
- Assign a competent person
- Consider using an experienced investigator

Information and Instruction

Under the *Act*, Employers must provide:

information and instruction that is appropriate for the worker on the contents of the policy and program as well as any other information prescribed by regulation

Read: [Training](#)

Providing Instruction

Instruction = Training

Basic Training for All

Training by Occupation

Due Diligence

Providing Information

Employers are obligated to provide information, including personal information, to a worker about a person with a history of violent behaviour if:

- the worker could be expected to encounter that person in the course of his/her employment; and,
- there is a risk of workplace violence *likely to expose the worker to physical injury*.

Domestic Violence

From s. 32.0.4 of the *Act*:

“If an employer becomes aware, or ought reasonably to be aware, that domestic violence that would likely expose a worker to physical injury may occur in the workplace, the employer shall take every precaution reasonable in the circumstances for the protection of the worker”



Identifying Domestic Violence

When is domestic violence workplace violence?

A person who has a personal relationship with a worker – such as a spouse or former spouse, current or former intimate partner or a family member – may physically harm or attempt or threaten to physically harm that worker at work. In such situation, domestic violence is considered workplace violence.

Work Refusals - Violence

- Under s. 43(3)(b.1) of the *Act*, a worker can refuse work if he or she has reason to believe that “*workplace violence is likely to endanger himself or herself*”
- Workplace harassment is not a grounds for a work refusal

Public Safety Exception

Under s. 43(2) of the *Act*, certain workers who protect public safety cannot refuse to work if:

- the danger is an inherent or normal part of their job; or
- the refusal would endanger the life, health or safety of another person

Notices

When an incident of workplace violence takes place, the employer should:

- notify the police or emergency responders for immediate assistance
- follow other existing duties under the *Act* if the violence results in the death or critical injury of a worker
- immediately notify the Ministry of Labour Inspector, workplace JHSC, and any trade union
- within 48 hours, notify in writing, a director of the Ministry of Labour, providing circumstances of occurrence

Enforcement

- Bill 168 does not create a new basis for employees to claim compensation for workplace harassment or violence as under the *Human Rights Code*
- The duties placed upon employers are procedural – implement programs, take precautions, etc.

Enforcement

- A failure to do these acts can be the subject of normal inspection/enforcement proceedings
- Fines for infringement of the *Act* are up to \$25,000 for individuals (and/or 12 months in jail) and \$500,000 for corporations
- Police may also investigate violent incidents and complaints

Human Rights Code Concerns

- Employers are required to provide equal treatment to and prevent discrimination against persons with a disability
- When alleged violence or harassment is at the hands of a disabled co-worker or patient/client whose behaviour is affected by such disability, the Employer's duties may become complicated
- *Code* only applicable when threatening behaviour is linked to the disability

No Reprisals-Part VI OHSA

- No discipline
- Discipline can be challenged at the OLRB or at arbitration
- Onus of proof on employer
- Penalties at discretion of OLRB

Practical Notes

- Discipline employees for violations of the policies created pursuant to Bill 168
- Keep detailed records of all incidents of violence and harassment
- Ensure proper security measures are in place to protect workers from members of the public
- Practice violence response procedures

Final Thoughts/Tips

- Be prepared to invest time and energy
- Managers have training needs beyond that given to general staff
- Consider external resources for investigations and/or training
 - Skilled and efficient due to volume
 - Objective/Perception of
- If handling internally, invest in development of managers (HR and others)
- Good investigation skills are multi-purpose

Resources

- HSAGS <http://www.hsags.ca/> 1-877-250-7444
- IHSA <http://www.ihsa.ca/> 905 212-7933
- SWPS
<http://www.ossa.com/> 1-888-478-6772
- WSIB
<http://www.wsib.on.ca/wsib/wsibsite.nsf/Public/WorkplaceViolence> 1-800-387-0750
- CCOHS <http://www.ccohs.ca/> 905 570-8094 or 1-800-668-4284

Thank you for coming!

Notes for: Slide 28
