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September 18, 2005

Changing Workplaces Review
c/o CWR.SpecialAdvisors@ontario.ca
Employment Labour and Corporate Policy Branch
Ministry of Labour
400 University Ave., 12th Floor
Toronto, ON M7A 1T7

Att: Special Advisors,

The changing workforce includes a growing number of employees with disabilities and complicated health conditions. **The purpose of my submission is to draw your attention to the issue of workplace bullying, intimidation, violence, and harassment¹ vis-à-vis an employee's (disabling) health condition. The focus of my submission is on an Environmental Illness² named Multiple Chemical Sensitivities (MCS)³.** The simplest way to explain it is that individuals with MCS have an allergic reaction to numerous chemicals in amounts that may not even be detected by others, and that the condition often progresses in terms of severity and symptoms the longer that they are exposed to the allergy-inducing chemicals. Reactions may not be visible, eg., heart palpitations or restricted air flow. Reactions sometimes result in hospitalization and one of the most severe reactions is suddenly passing out.

The issue of workplace harassment pertains predominantly to the *Occupational Health and Safety Act (OHSA)*; which I realize isn't the focus of The Changing Workplaces Review. However the result of workplace harassment is most often loss of employment, which does apply to the *Employment Standards Act (ESA)* and *Labour Relations Act (LRA)*. Also, the focus of my submission does apply to one of the "trend" areas that the Review is examining: "Greater workforce diversity".

¹ Throughout this submission "harassment" is used to describe bullying, violent, and intimidating behaviours.

² The terms "Environmental Illness" and "Environmental Sensitivities" are synonymous.

³ The medical definition of MCS (1999) includes these six features: 1) The symptoms are reproducible with exposure. 2) The condition is chronic. 3) Low levels of exposure cause symptoms. 4) The symptoms improve or resolve when the incitants are removed. 5) Responses occur with multiple chemically unrelated substances. 6) Symptoms involve multiple organ systems. [Women's College Hospital's Environmental Health Clinic, Toronto]

My interest in the 'scent-free' topic

In 2003, I suddenly developed MCS in what is a **typical workplace today – the cubicle office** environment. I developed this condition as a result of an acute exposure to a colleague's cologne. In 2003, a scent-free sign or written statement in a workplace was a rare find. This was because so few people in the general population were affected.

Today, while I still have MCS, it is nowhere near as disabling as it was in the first few years. Having been employed in cubicle workplaces for seven more years, there were many times that I needed my manager or Human Resources to intervene in a situation where my health was being compromised by a colleague's fragrant personal care product.

I left full-time employment in 2011 and today I'm self-employed as a Speaker and Consultant helping employers to manage scent-related conflicts, or to transform into scent-free workplaces.

Disability statistics

One in seven Ontarians have a disability and the Government of Ontario is committed to making Ontario accessible by 2025; this includes removing barriers and making it easier for people to participate in their workplaces⁴.

"Environmental Sensitivities" have been recognized since 2000, by the Ontario Human Rights Commission as a defined disability requiring accommodation under the *Ontario Human Rights Code*⁵. Approximately one million Canadians (three percent⁶) have been diagnosed with Environmental Sensitivities; MCS is one condition captured in this statistic.

Scent-free in the workplace

Workplaces today are much more likely to address the scent-free issue, but it's almost always as a *reactive* measure to an employee reporting their health situation, rather than as a *proactive* Health & Safety directive. When the scent-free issue *is* addressed the result is typically weak, ie., with scent "awareness" statements where the intention is to *educate* and have staff *voluntarily* comply. Put another way, workplaces favour "guidelines" (interpreted as voluntary, optional behaviour) instead of "policies" (which are more likely to be enforced and deviations disciplined). This leaves the **MCS-afflicted employee in a vulnerable health and employment position.**

⁴ Message from Minister Brad Duguid, page 1 of "The Path to 2025: Ontario's Accessibility Action Plan" (2015).

⁵ <http://www.ohrc.on.ca/en/disability-and-human-rights-brochure>

⁶ Women's College Hospital's "Environmental Sensitivities-Multiple Chemical Sensitivities Status Report" (2011) <http://www.womenshealthmatters.ca/assets/legacy/wch/pdfs/ESMCSStatusReportJune22011.pdf>

Whereas the general population today is quite aware of the emergency situations experienced by people with food allergies, the same cannot be said for Environmental Illnesses. Even though the symptoms exhibited by people suffering from severe Environmental Illnesses are very similar to severe food allergy symptoms, employers and employees are much more sympathetic and likely to enforce measures to protect employees with food allergies compared to Environmental Illnesses.

Today employment is much more precarious than it was twenty years ago. Today, short-term contracts, part-time, and positions without health or pension benefits are the norm. Plus, there is greater competition for fewer jobs, greater productivity expected from employees, and compensation is comparatively lower. Many times, employees with MCS are hesitant to make their health and safety issue known, or to complain when the offending scent situation doesn't improve. I regularly hear from employees who say that their coworkers, Human Resources staff, and/or management are not taking their MCS symptoms seriously.

Here's a *sampling* of the situations of harassment which have been described to me by individuals with MCS seeking my advice:

- 1) Students purposefully wear scented products when they don't like an MCS-afflicted instructor.
- 2) The employee's manager, including the Human Resources Manager continues to wear scented products, even after the employee's medical condition has been communicated.
- 3) A colleague who would regularly "accidentally" spill perfume at work.
- 4) Employees treating their MCS-colleague poorly because they had their work duties altered to accommodate the MCS condition.

My submission's requests

IN RESPECTS TO ALL OF ONTARIO'S EMPLOYMENT-RELATED LEGISLATION – ESA, LRA, WSIB, AND OHSA:

- 1) That legislation (particularly OHSA) be amended to recognize that "chemicals" or substances causing an allergic reaction can be used against employees as a form of violence and harassment.
 - a. That section 1.2 of the document named "[Workplace Violence and Harassment: Understanding the Law – Health & Safety Guidelines" \(2010\)](#)⁷ be updated to include "chemicals" or substances causing an allergic reaction, as an example of Workplace Violence and Harassment. Also, that chemicals being used as a form of harassment be listed as an example of Workplace Violence and Harassment.

⁷ A 50 page document produced by the Occupational Health & Safety Branch of the Ministry of Labour:
http://www.labour.gov.on.ca/english/hs/pdf/wpvh_gl.pdf

- 2) Strengthening all of Ontario's employment-related legislation to prevent loss of employment due to Environmental Illnesses such as MCS, specifically in regards to:
- a. **Leaves of Absence** – Employers are able to put employees who are considered a liability – such as those whose condition causes extreme dizziness, cognitive concerns and blackouts – on leaves of absence. Even when the employee's doctor determines they can return to work (after being symptom-free for a period of time) the employer can refuse to reinstate the employee; effectively leaving the employee with a job but no paycheque. The ESA gives no protection for this situation.
 - b. **Constructive Dismissal and Termination** – Employees often find themselves in constructive dismissal situations, ie., where they are pushed out of their jobs because the employer is unhappy with their accommodation needs, or because the work environment is deemed to be unsafe by the MCS-stricken employee. For example, a co-worker refuses to stop wearing perfume and the MCS-stricken employee feeling ill, leaves the workplace. The employer refuses to discipline the perfumed co-worker and instead deems that the MCS-stricken employee has abandoned their job. Another example of constructive dismissal is that in the process of accommodating an MCS-stricken employee, their duties have been so significantly changed that it can reasonably be considered an act of constructive dismissal.
 - c. **Work Refusal** – The *Occupational Health and Safety Act* currently does stipulate that every employee has the right to refuse work which they deem to be unsafe. However, since Environmental Illnesses are not taken very seriously by society in general, or in the workplaces of today, MCS-afflicted employees don't feel secure in exercising this right. Further complicating the option of work refusal, sometimes the workplace may be safe one minute and unsafe the next minute, because all it takes is someone using fragrant personal care products to walk through the environment to make it unsafe. You can imagine the amount of stress and anxiety that this would cause an employee – to face each day not knowing if their air will be polluted with chemicals and if they will need to yet again deal with this accommodation issue with their manager.

Thank you for your consideration,

Liz Rice, President
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Cc: Alfred Spencer, Director, Outreach & Strategic Initiatives Branch, Accessibility Directorate of Ontario, Ministry of Economic Development, Employment and Infrastructure

Kim Howson, Senior Policy Advisor, Minister's Office, Ministry of Economic Development, Employment and Infrastructure

Julian Portelli, Senior Policy Advisor, Minister's Office, Ministry of Government & Consumer Services