

Family of murdered nurse sues for \$13.5 million

Tragedy puts spotlight on workplace violence and how employers can be held liable for the actions of employees

On Nov. 12, 2005, Marc Daniel, an anesthesiologist at Hotel-Dieu Grace Hospital in Windsor, Ont., fatally stabbed his former romantic interest, Lori Dupont, a nurse at the hospital. Three months after this tragedy, Dupont's parents, sister and grandmother filed a \$13.5-million lawsuit against the hospital, several of its administrators and the executor of Daniel's estate.

Although the case has yet to be tried in court, it raises complex questions regarding an employer's legal obligation to ensure employees are protected from acts of workplace violence.

Statutory obligations

Every employer has a general duty under health and safety legislation to provide a safe workplace. However, only Alberta, British Columbia and Saskatchewan have legislation that specifically identifies workplace violence as an enumerated health and safety issue that must be addressed.

The concept of vicarious liability

Under the common law an employer may be held liable for the actions of employees so long as the actions occur within the ordinary course or scope of employment or are otherwise authorized by the scope of employment. This form of liability is referred to as vicarious liability.

The leading case on the issue of vicarious liability in the workplace is the Supreme Court of Canada's 1999 decision in *Bazley v. Curry*. In *Bazley*, the court affirmed the description of vicarious liability as set out above, but also cautioned against an overly broad interpretation of the phrase "within the scope of employment." It said:

"An incidental or random at-



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tack by an employee that merely happens to take place on the employer's premises during working hours will scarcely justify holding the employer liable. Such an attack is unlikely to be related to the business the employer is conducting or what the employee was asked to do.... What is required is a material increase in the risk as a consequence of the employer's enterprise and the duties he entrusted to the employee, mindful of the policies behind vicarious liability."

An example of a case in which the court held the employer vicariously liable is the 2004 ruling in *Fallowka v. Royal Oak Ventures Inc.* In *Fallowka*, a striking miner in the Northwest Territories placed a bomb under the mancar transferring other miners to a site. When it exploded, nine miners died.

Two mine inspectors (officers of the government of the Northwest Territories) were aware of escalating hostility during the work stoppage, but failed to take appropriate action until after the tragedy. The court held the actions of the striking miner were foreseeable; that maintenance of a safe mine site was within the purview of the inspectors' employment duties; and action, including the shutting down

of the mine, could have been taken to lower or eliminate the risk of violence. The inspectors' failure to appropriately address the tension and threats of violence was therefore "negligent" and the government was held vicariously liable.

Tips for employers

There are two principal reasons to create and maintain a workplace free of violence: the well-being (physical and otherwise) of employees and visitors to the workplace and the potential for legal liability in the event an incident should occur.

Every employer should take proactive steps to create a safe workplace environment in which both management and employees appreciate that violence will not be tolerated, and that should it occur it will be dealt with swiftly, transparently and fairly.

While each workplace has unique requirements and resources, the following general steps should be considered:

Develop a workplace violence team

- Bring together managers and external resources including legal, law enforcement and health-care professionals to discuss how to best avoid workplace violence.

- Conduct a workplace risk analysis to identify potential dangers — consider external issues such as general economic conditions as well as internal risks in areas of performance and workplace stresses.

Develop a workplace violence policy

- Define workplace violence broadly (include harassment, bullying, teasing and assault).

- Unequivocally make clear that a violation of the policy will not be tolerated and may result in immediate termination.

- Provide a comprehensive reporting structure that ensures issues are quickly brought to the attention of management.

- Create a general response structure to guide managers in the handling of a complaint.

Implement the workplace violence policy

- Communicate the workplace violence policy to everyone in the workplace. Sincere buy-in from senior executives will greatly increase the likelihood of a successful implementation.

- Enforce the policy vigilantly. Workplace violence rarely occurs without warning signs. Effective enforcement can minimize tragedy.

- Develop a guide that will assist individuals faced with the task of addressing another individual who has violated the policy. The guide should include step-by-step instructions regarding room layout, posture, notices to security and language to be used during the meeting.

Develop an emergency contingency plan

- Create a checklist of contacts (police, ambulance, fire, legal, mental health and security).

- Prepare evacuation plans.

- Prepare a "recovery program" to assist with rebuilding following a violent incident. Consider using external resources including mental health professionals and grief counsellors.

While no single preventative step can guarantee that a violent act will not occur within the workplace, taken together each of these steps will help create a safer work environment, and also illustrate clearly and definitively management's commitment to employee safety and well-being.

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