



Private Members' Bills No. 604 - An Act to provide Support to Victims of Domestic Violence

June 2017

Core Issue: The purpose of this backgrounder is to provide members of the Saskatchewan Chamber of Commerce's Human Resource Committee with a clear understanding of the proposed legislation surrounding workplace-related paid and unpaid leave for victims of interpersonal violence currently being tabled before the Legislative Assembly of Saskatchewan.

The Saskatchewan Chamber of Commerce's Human Resources Committee will use the information contained in this report, as well as information gained from consultations with key stakeholders to inform an official response directed at both the provincial government and the official opposition.

Introduction

On March 15, 2017 NDP MLA Nicole Sarauer of Regina Douglas Park tabled Private Members Bill No. 603 entitled, The Critical Support for Victims of Domestic (Amendment) Act as a response to the high rates of domestic violence in the province. Private Members' Bill 603 consisted mainly of two sections. The first section would seek to ensure that victims of intimate partner abuse would have the right to break a rental agreement with a landlord in order to flee an abusive situation. The second half of the same bill addressed an employer's obligation to protect victims of domestic violence while in the workplace and to offer both paid and unpaid leave.¹

Justice Minister Gordon Wyant responded to the tabling of Private Members' Bill 603 by stating that domestic violence is a serious concern and has instructed the Saskatchewan Ministry of Justice to develop a "long-term integrated domestic violence strategy."² On April 10, 2017 Private Members Bill No. 603 was formally withdrawn and the Government of Saskatchewan under Justice Minister Wyant sponsored Bill No. 67, *An Act to amend The Victims of Interpersonal Violence Act and to Make Related Amendments to The Residential Tenancies Act, 2006*. In keeping with the intent of the first section of Private Members' Bill No. 603, Government Bill No. 67 formally amends *The Residential Tenancies Act* to allow those victims of interpersonal violence to legally opt out of a rental agreement without incurring a penalty, provided the victim possesses a certificate from an authorized person as outlined in Section 12.4 of the Bill.³

¹ Bill No. 603. *An Act to Provide Critical Supports for Victims of Domestic Violence*. 28th Legislature. Legislative Assembly of Saskatchewan. March 15, 2017.

² "Sask. NDP Introduces Bill to Support Victims of Domestic Violence." Global News Regina. March 16, 2017. <http://globalnews.ca/news/3313851/sask-ndp-introduces-bill-to-support-victims-of-domestic-violence/>

³ Government Bill No. 67. *An Act to amend The Victims of Interpersonal Violence Act and to make related*

Bill No. 67 was granted Royal Assent on April 13, 2017. The proposed legislation has been openly endorsed by several victim advocacy groups such as the Provincial Association of Transition Houses and Services Saskatchewan (PATHS) and STOPS to Violence, as well as organized labour groups like the Saskatchewan Federation of Labour (SFL), Service Employees' International Union (SEIU) West, and UNIFOR.

In an effort to have the provincial government pass the second part of Private Members' Bill No. 603 as a separate and distinct piece of legislation, Ms. Sarauer tabled before the legislature Private Members Bill No. 604, The Saskatchewan Employment (Support for Victims of Domestic Violence) Amendment Act. Bill No. 604 seeks to amend The Saskatchewan Employment Act. Under Section 2-59-2, an employee who is a victim of domestic violence and has been employed by the same employer for a minimum of 90 days is entitled to both the following periods of domestic violence leave in each 52-week period:

- (a) leave of up to 10 days, which the employee may choose to take intermittently or in one continuous period;
- (b) leave of up to 17 weeks to be taken in one continuous period⁴

The rationale behind the leave provisions are that workers who are victims of domestic violence can use the time to deal with ongoing legal issues, find new housing accommodations, and childcare, as well as heal - both emotionally and physically. Related to paid leave, Section 2-59-2 stipulates that "up to 5 days of leave taken under this section in a 52-week period is paid leave, provided that when giving notice under this subdivision the employee notifies the employer which days, if any, are to be paid leave."⁵

For a paid day of leave, Section 2-59-6 states that "the amount an employer must pay an employee for a paid day of leave under this subdivision must not be less than:

- (a) the wage the employee would have been paid had the employee worked his or her regular hours of work on the day of leave; or
- (b) 5% of the employee's total wages, excluding overtime, for the four-week period immediately preceding the day of the leave if:
 - (i) the number of hours worked by the employee in a normal workday varies from day to day; or
 - (ii) the employee's wage for regular hours of work varies from day to day⁶

In addition, an employee looking to take either paid or unpaid leave is responsible for giving their employer as much notice "as is reasonable and practicable in the circumstances." An employee is also required to provide their employer with "reasonable verification of the necessity of the leave."⁷ Should an employee decide to end their leave before the 17-week allotted period has expired, they must provide written notice at least two weeks' prior to the day they wish to end the leave. Moreover, an employer is obligated to maintain employee confidentiality in all matters related to the leave and cannot disclose information surrounding the leave without the employee's explicit consent or if an individual requires the information in order to carry out their duties as required by law.⁸ Bill 604 further expands upon an employer's legal obligation to "take every precaution reasonable in the circumstances" to protect an employee should the employer "become aware or ought reasonably to be aware

amendments to The Residential Tenancies Act, 2006. 28th Legislature. Legislative Assembly of Saskatchewan. April 10, 2017.

⁴ Bill No. 604. *The Saskatchewan Employment (Support for Victims of Domestic Violence) Amendment Act.* 28th Legislature. Legislative Assembly of Saskatchewan. April 13, 2017.

⁵ Ibid.

⁶ Ibid.

⁷ Ibid.

⁸ Ibid.

that domestic violence would likely expose a worker to physical injury in the workplace.”⁹

This provision mirrors similar bills recently passed in both Manitoba and Ontario that amended each provinces’ Occupation Health and Safety legislation to place positive obligations on employers to protect workers from domestic violence.¹⁰ Bill No. 604 is still before the legislature and had its first reading on April 13, 2017.

Background

According to a report published by Statistics Canada in 2015 entitled *Family Violence in Canada: A Statistical Profile*, Saskatchewan continues to experience the highest rate of police-reported intimate partner violence among all ten provinces for 2015 at 666 per 100,000 people.¹¹ This is just under double the national average of 358.4 per 100,000 people for the same year. In the broader category of *family* violence that encompasses not just violence directed at intimate partners but also children and other relatives, Saskatchewan had the highest police-reported rate for total physical and sexual assaults with 489.4 per 100,000 people, almost doubling the national average of 252.9 per 100,000 people for the year 2013. Breaking this down further, Saskatchewan also has the highest rate of *child and youth* victims of family violence at 465.3 per 100,000. By comparison, Manitoba has the second highest rate with 386.6 per 100,000 people.¹² On sexual assault, Saskatchewan ranked the second highest in this category with 28.3 per 100,000 people. The national average is 15.8 per 100,000 people.

Breaking it down further by sex, the rate of police-reported intimate partner violence in which a female was the victim was 1028.8 per 100,000 people, more than double the national figure of 485.6 per 100,000. Alternatively, the rate of police-reported intimate partner violence in which a *male* was the victim was 247.8 per 100,000 people. The national rate for this category was 131 per 100,000 people.¹³ While it is important to note that victims of spousal violence can be both males *and* females, evidence suggests that females are the victims in approximately 81% of total cases.¹⁴ Among those police-reported incidents, 71% were reported to involve current intimate partners while 29% involved former intimate partners.¹⁵ Data collected by Statistics Canada suggests that young adults between the ages of 20 - 29 are the demographic with the highest rates of intimate partner victimization.¹⁶

There have been a number of discussions as to why Saskatchewan has the highest rates of domestic violence (and interpersonal violence more broadly) in Canada. According to Jo-Anne Dusel who serves as the Provincial Coordinator for PATHS, Western Canada and the Territories generally have higher rates of violent crime compared to the rest of Canada. In addition, parts of Canada with larger rural populations such as Saskatchewan tend to emphasize more traditional gender-based roles, particularly for men. Compounding the problem further is the fact that victims of interpersonal violence who live in rural areas do not

⁹ Ibid.

¹⁰ C.N. Wathen, J.C.D. MacGregor, and B.J MacQuarrie with the Canadian Labour Congress, *Can Work Be Safe When Home Isn’t? Initial Findings of a pan-Canadian Survey on Domestic Violence and the Workplace* (London ON: Centre for Research and Information on Violence Against Women and Children, 2014), 11.

¹¹ Statistics Canada. *Family Violence in Canada: A Statistical Profile*. (Ottawa: Canadian Centre for Justice Statistics, 2015), 10.

¹² *Economic Impact: The Cost of One Incident of Domestic Violence* (Regina: Circle Project Association, 2016), 8.

¹³ *ibid.* 9.

¹⁴ Ting Zhang, Josh Hoddenbagh, and Katie Scrim. *An Estimation of the Economic Impact of Spousal Violence in Canada* (Ottawa: Department of Justice, 2012)

¹⁵ *ibid.* 1.

¹⁶ Statistics Canada, *Family Violence in Canada: a Statistical Profile, 2013* (Ottawa: Centre for Justice Statistics, 2015)

have the same level of access to shelters and other social supports as those who reside in urban areas.¹⁷ In rural areas, RCMP response times for domestic violence-related incidents on average are longer than those made in larger cities. Indigenous Canadians, who make up a sizable share of the province's population, are three to four times more likely to experience domestic violence due to a legacy of intergenerational trauma caused by residential schools and other systematic racism.¹⁸ Not surprising given the data, Saskatchewan has the highest rate of women accessing domestic abuse shelters in Canada.¹⁹

Impact of Domestic Violence on the Economy and Employers

Employers throughout Canada are witnessing the negative impacts of domestic violence issues on their workplaces. This is manifested in the form of higher absenteeism, productivity losses, liability costs, and in some cases, safety concerns to the victim and their coworkers.²⁰ The Alberta Council of Women's Shelters identified domestic violence as the fastest growing form of workplace-related violence in Canada.²¹ The costs associated with domestic violence go far beyond the immediate confines of the workplace. Domestic violence also places enormous strains on Canadian society more broadly. These include both tangible and intangible costs borne by the publicly funded justice system and social services, primary victims, as well as costs borne by third parties. A study carried out by the Department of Justice in 2009 estimated that the total economic impact of domestic violence in Canada was \$7.4 billion or \$220 per Canadian.²²

In a 2015 report published by the Conference Board of Canada entitled *Domestic Violence and the Role of the Employer*, the authors found that 71% of the Canadian employers surveyed had experienced a situation where it was necessary to protect a worker from domestic abuse. The prevalence of supporting victims of domestic violence was similar across industries and sectors.²³ In a pan-Canadian survey on domestic violence and the workplace carried out by the University of Western Ontario and the Canadian Labour Congress, it found that employers in Canada lost approximately \$78 million a year due to both the direct and indirect costs of domestic violence.²⁴ These direct and indirect costs included loss of output, worker tardiness and distraction, and administrative costs.²⁵ One third of those surveyed reported experiencing domestic abuse from an intimate partner. Among this figure, those respondents who were female, indigenous, disabled, and indicated a non-heterosexual orientation were more likely to be represented in the survey findings.²⁶

Furthermore, the University of Western Ontario - Canadian Labour Congress joint study also

17 Ibid.

18 Ibid.

19 Paige Kreutzwieser. "Women Accessing Domestic Abuse Shelters Highest in Saskatchewan." Regina Leader Post. July 7, 2015. <http://leaderpost.com/news/local-news/women-accessing-domestic-abuse-shelters-highest-in-saskatchewan>.

20 "From Home to Office: Canadian Workplaces Are Stepping Up to Protect Employees Who Are Victims of Domestic Violence." Conference Board of Canada. Last modified November 25, 2015.

21 Domestic Violence Doesn't Stop When Your Worker Arrives at Work: What Employers Need to Know to Help. (Toronto: Occupational Health and Safety Council of Ontario, 2010), 4.

22 Ting Zhang, Josh Hoddenbagh, and Katie Scrim, *An Estimation of the Economic Impact of Spousal Violence in Canada*. xiii.

23 Louise Chenier and Charles Boyer, *Domestic Violence and the Role of the Employer* (Ottawa: Conference Board of Canada, 2015)

24 N. Wathen, J.C.D. MacGregor, and B.J MacQuarrie with the Canadian Labour Congress, *Can Work Be Safe When Home Isn't? Initial Findings of a pan-Canadian Survey on Domestic Violence and the Workplace*, 2.

25 Ting Zhang, Josh Hoddenbagh, and Katie Scrim. *An Estimation of the Economic Impact of Spousal Violence in Canada*. xvi.

26 N. Wathen, J.C.D. MacGregor, and B.J MacQuarrie with the Canadian Labour Congress, *Can Work Be Safe When Home Isn't? Initial Findings of a Pan-Canadian Survey on Domestic Violence and the Workplace*, 3.

found that approximately 35% of survey respondents stated they knew at least one co-worker who they believed was experiencing or had previously experienced domestic violence. Roughly 12% of respondents reported being aware of at least one co-worker who they believed was *perpetrating* domestic violence or was suspected of being abusive to their partner previously.²⁷ For those who reported experiencing domestic violence firsthand, 53.5% indicated that at least one type of abusive act occurred at or near their place of work. The most common forms of harassment were abusive calls and text messages followed by stalking at or near the victim's workplace. Negative impacts of domestic violence in the workplace are not limited to intended victims but to co-workers as well. Roughly 37% of those who reported experiencing domestic violence in the workplace also indicated that co-workers were impacted. Among the estimated 37% of co-workers impacted, approximately 29% were concerned or stressed about the abusive situation. Unfortunately to no one's surprise, approximately 82% of respondents who experienced domestic violence found that the abuse negatively affected their performance at work.²⁸

Current Strategies Available for Dealing with Domestic Violence in the Workplace

Domestic violence becomes workplace-related violence or harassment when it occurs or spills from the home into the work environment. Often employers do not see domestic violence as a workplace hazard because they are unable to recognize and appropriately address it when it happens. In fact, a 2015 study carried out by the Australian Council of Trade Unions and the University of New South Wales found that few (about 20%) employers in Australia estimated the financial costs of domestic violence to their organization.²⁹ While the study was specific to Australia, the findings around the lack of knowledge on the part of employers in recognizing the signs of domestic abuse in the workplace are certainly applicable within a Canadian context. It is imperative that the private sector be aware of the factors that increase an employee's likelihood for harm in the workplace in order to better manage risk. It is in the best interest of employers to help their workers feel safe and address their personal safety issues as this has positive ramifications on both company morale and the bottom-line.

A 2010 report by the Occupational Health & Safety Council of Ontario concluded that the likelihood for domestic violence spilling over into the workplace was highly correlated with employees that were estranged from their partners either through separation and/or divorce. These risks were exacerbated further if there was a custody battle taking place or if the worker had children from a previous relationship.³⁰ In regards to workplace-related warning signs, the report suggested that victimized employees often hide bruises; become withdrawn; have trouble concentrating on a given task; make last-minute cancellations or miss work frequently; turn to drugs or alcohol to cope; or have unexplained gaps in their employment history.³¹ Perpetrators of domestic violence will often interfere with their victim's transportation to work by hiding or stealing vehicle keys or ID; show up at their workplace and pester co-workers with questions; destroy company property; or threaten (verbally or physically) co-workers.³²

More proactive organizations in other provinces have developed their own in-house awareness and prevention programs for protecting employees from domestic violence in the workplace. Some of these best practices include, but are not limited to, the following:

- A clear statement that any form of violence, including domestic violence will not be tolerated in the workplace or on company property

27 Ibid. 5.

28 Ibid.7.

29 Jan Breckenridge et al., *Implementation of Domestic Violence Clauses – An Employer's Perspective* (Sydney NSW: Gendered Violence Research Network, 2015), 11.

30 Domestic Violence Doesn't Stop When Your Worker Arrives at Work: What Employers Need to Know to Help. 5.

31 Ibid. 6

32 Ibid.

- Confidential, need-to-know reporting methods in the event of a domestic violence situation
- Regular supervisor and worker training about domestic violence and available resources
- Steps that employers will take once they are aware of an incident or a complaint is made
- Development of a workplace safety plan in consideration of the victim and co-workers' safety³³

In the event that an employer is aware of a domestic violence incident taking place or is likely to enter the workplace, proactive organizations across Canada have taken the following steps to minimize such risks. These include, but are not limited to, the following actions:

- Developing company-wide policies for unpaid/paid time off, extended leave of absences to deal with legal issues, find childcare, as well as workplace relocation options for workers
- Establishing a company hotline for reporting threatening situations, and communicating this information clearly to all employees
- Developing and implementing domestic violence awareness training for all managers and supervisors
- Developing and posting a list of resources for employees in washrooms, lunchrooms, company website, etc.
- Accommodating alternative work arrangements (schedule flexibility, transfer to different location, installation of a panic button, etc.)³⁴

In workplace situations that involve a collective bargaining unit (CBU) representing employees, both the union and management have addressed these sorts of issues surrounding domestic violence awareness, training, and flexible leave policies through the incorporation of domestic violence clauses into existing Employee Assistance Programs (EAP). UNIFOR utilizes Women's Advocates who are "specially trained workplace representatives who assist women with concerns such as workplace harassment, intimate violence and abuse." Women's Advocates are not councillors but provide support to women by directing them to the appropriate resources.³⁵

Concerns with Private Member's Bill No. 604

While the Saskatchewan Chamber of Commerce appreciates the efforts of those attempting to address Saskatchewan's appallingly high rates of intimate partner violence, there are a number of concerns with the bill that need to be addressed. The bill in its current form could inadvertently serve to undermine its very own objectives due in part to unintended consequences created by well-intended but problematic provisions. First and foremost, the prescriptive nature of the legislation requiring employers to *solely* bear the financial burden of providing paid leave above and beyond what is already required by current employment legislation has the potential to undermine the voluntary "buy in" from the private sector that is so critical to enacting meaningful and long-lasting change. The potential for pushback from employers whose sole reason for providing such accommodations is because they are mandated to do so and not because they are being proactively engaged as an equal partner, can set a negative tone from the outset. The Chamber prefers to see positive change through enhanced training and awareness.

Secondly, the proposed legislation requires that employers "take every precaution reasonable in the circumstances" to protect an employee should the employer "become aware or ought reasonably to be aware" that intimate partner violence would likely expose a worker to physical injury in the workplace. How can employers (who with the passage of the bill have an expanded positive legal obligation to be reasonably aware when their employee is a victim of intimate

33 Ibid. 7

34 Ibid. 7-8.

35 UNIFOR, What if We Had a Women's Advocate in All UNIFOR Workplaces?

partner violence) be cognisant of this if the employee in question chooses not to disclose the issue with management? Making this even more problematic is the fact that many employers currently do not have the appropriate tools on hand to recognize and deal with the spillover of intimate partner violence in the workplace; thus creating additional layers of uncertainty related to legal liability and the exercise of due diligence on the part of the employer. Moreover, this provision by its design, creates incentives for an employer to unduly meddle or interfere in the personal lives of its workers that could have far-reaching consequences. A potential unintended consequence is that some employers may decide not to hire or even dismiss workers who at least in the employer's mind, have a greater propensity to be in an abusive relationship, so as to minimise risk and avoid liability.

Conclusion

The Saskatchewan Chamber of Commerce recognizes the fact that the province has the highest rate of domestic violence by intimate partners in all of Canada and the negative impacts this imposes on members of our communities and on workplace safety and productivity. The Chamber also views this as an opportunity to engage meaningfully with the province's employers by proactively promoting education and training by knowledgeable persons to address domestic violence in the workplace.

The Saskatchewan Chamber of Commerce recommends that Private Member's Bill No. 604 be withdrawn from the legislature. Instead of employers solely bearing the responsibility of providing paid leave to workers, the Chamber recommends that Employment Insurance (EI) rules be amended so that workers who are victims of domestic violence be eligible to receive benefits. EI, while federal, is a mechanism that is already in place and any associated costs are pooled broadly across the larger society.

To better address many employers' inability to recognize and manage risks associated with domestic violence in the workplace, the Chamber recommends leveraging its membership by facilitating an awareness, education, and training campaign by collaborating with organizations that have expertise in the area, similar to how the Chamber partners with qualified agencies on promoting mental health awareness and training in the workplace. Saskatchewan business will commit to sharing the responsibility of educating themselves by collaborating in a focused but voluntary manner to bring greater awareness to the issue of domestic violence in the workplace.