



**Ministry of Labour,
Training and Skills
Development**



**Durham Community Legal Clinic
& Access to Justice Hub**

Written Submissions to:

**Safety and Insurance
Policy Branch
Ministry of Labour,
Training and Skills
Development**

Prepared by:

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**Re: Proposal to Amend
Ontario Regulation
297/13 (Occupational
Health and Safety
Awareness and Training)**

About

The **Durham Community Legal Clinic (DCLC)** is a Community Legal Clinic that provides legal services, information, education, and representation for historically marginalized and low-income residents of Durham Region. DCLC also engages in advocacy and law reform activities, in particular to ensure that our laws properly consider the perspectives of historically marginalized and low-income Ontarians. The main areas of services DCLC provides includes employment law and related services, housing and tenancy issues, and social benefits.

The **Durham Access to Justice Hub®** (the “Hub”) was established by the clinic in 2019 with the assistance of LAO. This inter-agency and inter-disciplinary initiative intended to provide legal services beyond the income thresholds and subject matter of LAO, and other social, financial, and psychological services. These cooperative relationships seek to foster better client-centered services, reduce administrative barriers and silos, and improve efficiency of services that are funded or subsidized by taxpayer dollars. Some techniques used to achieve these goals include recruitment of volunteers to contribute towards improving access to justice, and by embedding students into workflows and innovative projects through experiential education. Through the Hub, DCLC provides even broader services to focus on the root causes of poverty, and engages in deeper forms of poverty alleviation.

Omar Ha-Redeye is a lawyer and the Executive Director of DCLC. He holds a JD from Western University, and an LLM from Osgoode Hall. He has received numerous awards for his efforts in law reform and advocacy on behalf of historically marginalized and low-income populations, including the Queen Elizabeth II Diamond Jubilee Medal, and the OBA Foundation Award.

Reid Jackson is a Community Legal Worker and Paralegal with the Durham Community Legal Clinic. He focuses primarily on human rights law, employment law, and workers’ compensation law at the clinic. He was previously a Human Resources Specialist within the construction industry, with a focus in labour relations and workers’ compensation.

Melissa Rodgers is a paralegal student at Durham College, completing a placement at the Durham Community Legal Clinic and Access to Justice Hub.

1. The Ontario *Occupational Health and Safety Act*¹ (OHSA) and its regulations are key pieces of legislation in the area of employment law. The Ministry of Labour, Training and Skills Development is proposing to amend the *Occupational Health and Safety Awareness and Training*,² a regulation to OHSA, to recognize alternative methods of fall protection training. This would allow for the acceptance of Fall Prevention training approved by WorkplaceNL as an alternative to Ontario's training.
2. This regulation also proposes to expand an existing exemption, so that it applies to more workplaces owned and operated by an automobile manufacturer or assembler, in order to eliminate the need for those auto sector companies to maintain two separate training programs for some workers who are directly employed by them. This is of particular importance to the businesses in Oshawa, Ontario, and in Durham Region.
3. OHSA is widely referenced and relied upon by much of the provincial workforce, especially in the construction industry. The OSHA Training Reg requires workers to complete Working at Heights Training (WAH) if they are required to use certain fall protection equipment on construction projects.³ Working at Heights is one of the most dangerous jobs that Ontarians can undertake, a fact underscored by the tragic Christmas Eve swing stage collapse in Toronto in 2009.⁴ It is only on the heels of this tragedy that our current safety framework was enacted.

¹ RSO 1990, c O.1.

² O. Reg. 297/13 (the "OHSA Training Reg").

³ *Ibid*, ss 6-11.

⁴ Ministry of Labour, "Swing N Scaff Inc., Company Director Fined Total of \$400,000 in Deaths of Four Workers,"

Government of Ontario, Dec. 4, 2014, available at:

<https://s3.amazonaws.com/files.news.ontario.ca/mol/en/learnmore/swing_n_scaff_inc_company_director_fined_total_of_400000_in_deaths_of_four_workers/2014-53_EN.pdf>.

4. The 2009 swing stage collapse also highlighted the fact that many of those working in the construction industry, and in other dangerous occupations across the province, are from low-income and marginalized communities, including many new Canadians. These populations do not have the same ability to refuse unsafe work, or to advocate for their rights that other Canadians enjoy.
5. DCLC submits that amending this regulation to recognize the fall protection training offered by WorkplaceNL is a positive step. Driving improved safety within the construction industry has long been a battle waged on two fronts, both in law and in culture. While the law in Ontario has largely achieved its aim of creating a framework which protects workers, it has long been a struggle to change the culture within the construction industry to one which puts safety first.
6. In Ontario the current regulatory framework requires workers to undergo a minimum of 6.5 hours of training⁵. With 3 of those hours been spent on theory and 3.5 spent on practical demonstration. By contrast the training required by WorkplaceNL is significantly more rigorous. It must be a minimum of 16 hours in length with 8 hours spent on theory and 8 spent on individualized practical training.⁶ It is our hope that an increased number of workers on Ontario jobsites with this more rigorous training will contribute to a culture shift within the construction industry, recognising the importance of extensive safety training, and inspiring generations of young workers in Ontario to put safety first.

⁵ Government of Ontario, "Program standard for working at heights training," Jan. 3, 2019, available at: <<https://www.ontario.ca/page/program-standard-working-heights-training>>.

⁶ WorkplaceNL, "Fall Protection Certification Training Standard," February 2018, available at: <https://workplacenl.ca/site/uploads/2019/08/20180306_STD_Fall-Protection-4.pdf>.

7. The stage swing collapse of December 24, 2009 gives us a clear picture of the dangers of allowing workers without adequate safety training to perform dangerous work on elevated worksites. Four workers, all new Canadians, perished when the stage they were working on collapsed. During the investigation into the accident it was discovered that some of the workers involved had less than 30 minutes of training with the lifesaving harness equipment. This sobering accident illustrates what can happen if a worker does not have the proper Working at Heights and fall protection training.

8. In an email to the CBC in December of 2019, highlighting Ontario’s response to this tragedy, Ontario's Ministry of Labour, Training and Skills Development explained, that “while the province has one of the best safety records in the country, it has made extensive changes to the regulations that govern the use of suspended access equipment. This includes more rigorous manufacturing and maintenance practices and improves working in heights training – now an all day, six-hour course.”⁷ DCLC commends this response, and hopes that allowing workers who have been trained by WorkplaceNL to work on job sites in Ontario is a recognition that further progress towards eliminating workplace fatalities is possible.

9. The seriousness of workplace safety is also underscored by provisions under s. 217.1 of *the Criminal Code*,⁸ and s. 27(1) of OHSA, which put a duty on employers and supervisors to take steps to prevent the harm of workers. It also places an onus on them to ensure that workers use protective devices, measures and procedures, as set out by the Act and regulations. We can see this underscored in *R. v. Vadim Kazenelson*,⁹ which spoke to the criminal implications of

⁷ Shannon Martin, “10 years after Christmas Eve swing stage collapse killed 4, workers still not safe enough, expert says,” CBC, December 23, 2019, available at: <<https://www.cbc.ca/news/canada/toronto/10-years-after-christmas-eve-swing-stage-collapse-killed-4-workers-still-not-safe-enough-expert-says-1.5381116>>.

⁸ R.S.C., 1985, c. C-46.

⁹ *R. v. Vadim Kazenelson*, 2015 ONSC 3639 (CanLii) at 148; 2016 ONSC 25 (CanLII).

workplace safety. The reverberations of lax safety standards are felt well beyond the worksite in Ontario and failures in this area can lead to costly and time-consuming litigation which puts further strain on our court system, both provincially and federally.

10. DCLC is also in favour of the amendment that would expand the existing exemption for automobile manufactures. The clinic's main office is located in downtown Oshawa, and DCLC has witnessed first-hand the devastation caused to our community through the closure of the GM Oshawa plant, and the subsequent effect this has had on the low-income and historically marginalized populations of Durham. Fortunately, a tentative agreement to reopen the Oshawa plant was recently announced. This proposal would see up to 2,500 jobs created in Durham, and significantly benefit the local economy.¹⁰ The government must take steps to make Ontario an attractive place for major employers to do business, and supports initiatives which encourage automakers to keep jobs in our communities, and those regulatory initiatives which also promote greater safety in the workplace will have our support.

11. It is during uncertain times such as those the province is currently experiencing that Ontario's workers look to their legislators to know they are being protected. Like many labour rights, the current Working at Heights standards have been attained through loss and tragedy. We are encouraged by the proposed regulation, which sends the message to Ontario's workers that their government is working for them, and looking beyond our provincial borders for inspiration to make our worksites safer.

¹⁰ Joe Warmington, "Inside look at Unifor's historic deal with GM to reopen Oshawa," Nov. 14, 2020, available at: <<https://torontosun.com/news/local-news/warmington-inside-look-at-unifors-historic-deal-with-gm-to-re-open-oshawa>>.

12. Labour mobility is increasingly important as we deal with the fallout of the COVID-19 pandemic, which continues to ravage Canada's economy. We support the proposal to allow workers to complete refresher training in Ontario, and to be eligible for a WAH training record issued by the Chief Prevention Officer. Promoting labour mobility for essential services in the construction industry during this time ensures that workers have the skills and tools they need to stay on the job, without unnecessary travel during a pandemic.

13. If additional training sources are used to improve the health and safety of low-income and historically marginalized populations, the health and safety of these workplaces will invariably be enhanced. During the pandemic, changes which allow for more options for workers to complete safety training will ideally allow for smaller class sizes and greater social distancing protocols. Utilizing additional providers, who have been approved by a comparable jurisdiction, is an effective manner to achieve these goals. We are encouraged by the steps the government is taking to ensure worker safety, encourage worker mobility, and to make Ontario an attractive place for the large employers who support our communities in this proposed regulation.