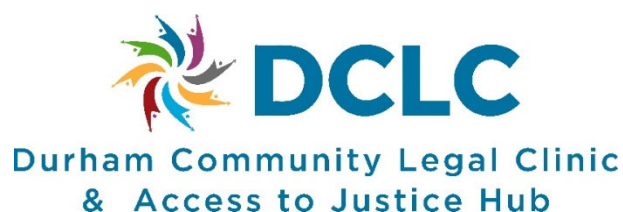

Working at Heights Training Standards Five-Year Review

Proposal Number: 21-MLTSD 003

March 25, 2021

Working at Heights Standards Review
Training and Awareness Branch
Ministry of Labour, Training and Skills
Development
400 University Avenue, 7th Floor
Toronto ON M7A 1T7



Working at Heights Training Standards Five-Year Review

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 Legal Aid Ontario (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.

Fatima Lam is a Community Legal Worker and Paralegal with the Durham Community Legal Clinic. She has worked in the public sector with the Toronto Police Service as a Human Rights Case Co-ordinator and at the Ministry of the Attorney General, Crown Law Office – Civil as a *Wagg* law clerk. Prior to those roles, she was in the private sector focused on Accident Benefits within the Personal Injury framework.

Kelsey Henderson is a Paralegal student at Durham College completing placement at the Durham Community Legal Clinic Access to Justice HUB.

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Section 1: Respondent Information

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. We are not an employer in this industry and therefore will only provide comments on the questions we have expertise in. Information about our organization and the authors of this submission can be found in the preceding page.

Section 2: Questions relating to the Working at Heights training program standard

Question 3: Working at Heights training has a minimum required training duration of 6.5 hours and the refresher training program has a minimum required training duration of 3.5 hours. Are these minimum training durations appropriate to deliver the required learning outcomes?

As of January 1, 2021, Ontario recognizes Newfoundland and Labrador fall protection training from WorkplaceNL, as an alternative to Ontario's working at heights training program.¹ We are largely in favour of this change to accept WorkplaceNL's fall protection training program as an alternate to Ontario's working at heights training program,² due in part to the fact that WorkplaceNL's program is more stringent. WorkplaceNL's fall protection certification training standard requires training to be a minimum of two days (16 hours) in total, and is divided into two components consisting of eight (8)

¹ WorkplaceNL, "Ontario Now Recognizes Fall Protection Training From Newfoundland and Labrador Workers," January 15, 2021. Available at: <https://workplacenl.ca/article/ontario-now-recognizes-fall-protection-training-certificates-from-newfoundland-and-labrador-workers/>

² See DCLC's submission fall protection training; "Submissions to Safety and Insurance Policy Branch Ministry of Labour, Training and Skills Development," Proposal to Amend Ontario Regulation 297/13 (Occupational Health and Safety Awareness and Training), November 20, 2020. Available at: <https://www.durhamcommunitylegalclinic.ca/wp-content/uploads/2020/11/Submission-to-MOL-re-WAH-Training-Nov.-11-2020.pdf>

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hours of theory followed by eight (8) hours of individualized practice training.³ This training program is over two times longer than Ontario's current requirements for the working at heights training, which requires a minimum of six (6) hours and is divided into two components consisting of three (3) hours of theory based training, followed by three and a half (3.5) hours of practical training.⁴ Upon implementing the fall protection training, WorkplaceNL saw a 24 per cent decrease in Newfoundland and Labrador of reported fall injuries in the first 16 months.⁵ Ontario recognizing the WorkplaceNL working at heights training program as an alternative to its current working at heights training program is a step in the right direction, and will result in fewer injuries and greater labour mobility in many sectors, including the automotive industry, which plays an important role in the economy of Durham Region.

While the recognition of this program will promote positive changes such as an increase in work for Canadians without requiring dual-training and a decrease in injuries resulting from falls, we submit that Ontarians would benefit further from adopting the training requirements of the WorkplaceNL, specifically the minimum two-day (16 hour) course. The adoption of this program would decrease the number of fall injuries, and therefore reduce the costs for both the Workplace Safety and Insurance Board (WSIB) and businesses since, there would be a reduction in lost-time injury claims.

³ WorkplaceNL, "Fall Protection Certification Training Standards." Available at: <https://workplacenl.ca/site/uploads/2019/08/20180306 STD Fall-Protection-4.pdf>

⁴ Government of Ontario, "Program standard for working at heights training program" October 21, 2019. Available at: <https://www.ontario.ca/page/program-standard-working-heights-training>

⁵ Workplace Safety North "What to expect from new Working at Heights training legislation" February 3, 2015. Available at: <https://www.workplacesafetynorth.ca/news/news-post/what-expect-new-working-heights-training-legislation>

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7. The Working at Heights training program standards requires that learners meet specific learning outcomes to successfully complete training. What changes should be made to the learning outcomes to ensure the program is relevant and effective?

The tragic 2009 swing stage collapse that resulted in the death of four workers due to lack of training provided by their employers,⁶ caused the Ministry of Labour, Training and Development to push for the more rigorous working at heights training program that is now our currently accepted standard. Since the implementation of this program, Ontario has seen a decrease in the number of reported incidents relating to falls by 20 per cent.⁷ However, there is still more to be done to improve this number, which is not related to changing the working at heights standard, but rather a change in culture around taking safety seriously in the construction industry.

Val Ratsh-Mazza, an OHS consultant who is writing her PhD thesis on changing construction sites and has worked in the industry since 2002 stated, “there were times when I had 100 questions a day and was a little uneasy going to the work area, but I did it anyway.”⁸ Ratsh-Mazza chose to remain silent during these times out of fear of being mocked for speaking out about a safety concern. Without a change in workplace culture surrounding safety, many workers would be in a similar situation to Ratsh-Mazza, and will not feel comfortable reporting unsafe conditions to their employers. In addition, many low-income workers are reluctant to ask questions which could jeopardize their employment, and rely

⁶ CBC News, “10 years after Christmas Eve swing stage collapse killed 4, workers still not safe enough, expert says,” 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>

⁷ Institute for Work & Health, “Ontario’s working-at-heights training led to safer practices, reduced injury claims rate,” April 11, 2019. Available at: <https://www.iwh.on.ca/newsletters/at-work/96/ontarios-working-at-heights-training-led-to-safer-practices-reduced-injury-claims-rates>.

⁸ *Supra* note6.

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upon mandated and enforced standards and a robust safety-oriented company culture to a greater degree than more secure and autonomous workers.

9. Should workers be required to refresh their training every three years in order to maintain its validity?

Do you have any suggestions for changes regarding the validity of the training and the need to complete refresher training?

Although the implementation of the working at heights training program has reduced the number of reported incidents relating to falls, there are still many workers who sustain injuries from a lack of training. Recently, a worker fell off a ladder while in the process of cutting down a tree with a chainsaw. The Ministry of Labour found that the worker had not received training upon joining the defendant's workforce and had no experience using a chain saw or working at heights. Subsequently, the employer was fined \$45,000.⁹

Holding employers accountable for ensuring their employees are properly trained before entering the job site, as well as requiring workers to retake the full working at heights training program, ensures workers remain competent with working from heights. Additionally, requiring workers to retake the entire course emphasizes to workers that this training should be taken seriously, which will also promote a change in culture surrounding safety on the jobsite. This has the added benefit of reinforcing the importance of a safety-oriented culture in these dangerous workplaces. In the same way that First Aid refreshers are required in order to ensure that skills stay fresh and workers are reminded of their value, so to should WAH refreshers should be required, in the hopes that first aid training will not be required in these scenarios.

⁹ Government of Ontario Newsroom, "Fall from Ladder Injures Workers, Landscape Employer Fined \$45,000," November 7, 2019. Available at: <https://news.ontario.ca/en/court/54511/fall-from-ladder-injures-workers-landscaper-employer-fined-45000>

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Section 3: Questions Relating to the CPO's Working at Heights training provider standard

2. What modifications, if any, should be made to the qualification criteria for instructors to enhance program delivery?

There is a list of qualifications that an instructor must possess in order to be approved by the CPO to be a Working at Heights Training Provider. These qualifications include technical occupational health and safety knowledge and experience, a combination of adult-education delivery experience and knowledge of principles, and knowledge of the approved working at heights training program topics.¹⁰ DCLC agrees with the list of qualifications, but suggests that instructors be required to have logged a certain number of practical hours working at heights each year in order to be approved to train others.

Another form of working at heights training is provided by Industrial Rope Access Trade Association (IRATA), where this training utilizes rope access work for job sites that would typically require scaffolds or other equipment. The IRATA certification is broken down into three (3) levels, and is more rigorous than both the Ontario working at heights training and the WorkplaceNL fall prevention program. To be certified as an IRATA level 1 technician you must complete a minimum 4-day training course, followed by a 1-day independent assessment, and the completion of 1000 hours of verifiable, logged rope access experience before advancement to level 2. Additionally, to be approved as an instructor you must have completed all three levels of training.¹¹ Due to this rigorous training program, the rates of injury where

¹⁰ Government of Ontario, "Provider standard for working at heights training," October 21, 2019. Available at: <https://www.ontario.ca/page/provider-standard-working-heights-training>

¹¹ IRATA, "Technician Level Flowchart." Available at: <https://irata.org/uploads/articles/Technician-Levels-Flowchart.png>

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this training is used are reported as extremely low. The Ontario Rope Access Association (ORAA) claimed in 2019 that out of 130,658 exposure hours reported by ORAA member companies, there was only one First-Aid occurrence.¹²

Based on these experiences, we conclude that Working at Heights Training is best implemented through a combination of theoretical and practical hours. DCLC submits that implementing a minimum number of practical hours that must be logged *before* the re-certification date in order to be approved to train others should be required of all instructors. This would ensure that each instructor remains competent in working from heights, from both a practical and theoretical sense.

¹² ORAA, "Rope Access Safety Statistics." Available at: <https://www.ontarioropeaccess.ca/safety>