Helpful Legal Information for MAHCP Members

Workplace Safety

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No doubt when most people think about *The Workplace Safety and Health Act*, if they think about it at all, occupations in mining or construction are more likely to come to mind than the various professions carried out by MAHCP members. However, we should keep in mind that this Act does apply to the workplaces of our members as well.

In fact, from time to time, issues have arisen with regard to the application of the provisions of *The Workplace Safety and Health Act* to MAHCP members. In particular, the application of section 43(1) of the Act which provides "a worker may refuse to work or do particular work at a workplace if he or she believes on reasonable grounds that the work constitutes a danger to his or her safety or health or to the safety or health of another worker or another person".

There are usually three factors taken into consideration by arbitrators or Workplace Safety and Health officers in determining whether a refusal to work is appropriate. First, whether the individual honestly and reasonably believed there was a danger.

The second factor is whether the individual communicated his or her belief. Usually the concern is communicated before the actual refusal to work. In addition, *The Workplace Safety and Health Act* requires a worker who refuses to do particular work to promptly report the refusal and the reasons for it to his or her employer or immediate supervisor.

These first two considerations are fairly straight forward and are usually easy to satisfy. The third consideration can be more problematic. The third factor is whether the danger was sufficiently serious to justify the action taken, that is, the refusal to work or to do a particular task. The test is often articulated this way: whether the average employee at the workplace, having regard to the general training and experience would, exercising normal and honest judgment, have reason to believe that the circumstances presented an unacceptable degree of hazard. Essentially, the arbitrator or Workplace Safety and Health officer is to decide if, in all the circumstances, the decision to refuse to work was reasonable.

One factor the arbitrator or Workplace Safety and Health officer will take into consideration in determining if the refusal to work was reasonable is whether the individual now refusing to perform a task, or other employees, performed the task in the past. If there is a history of employees doing the work without incident it will obviously be much more difficult to establish that the work suddenly poses too great a danger.

It is interesting to note that the legislation not only protects the worker from danger but allows a worker to refuse work if it will constitute a danger to others, such as a patient.

If a member finds himself or herself in a position in which he or she believes *The Workplace Safety and Health Act* applies, the danger should be reported to the employer and he or she should contact a Labour Relations Officer for advice.

This paper is intended as an introduction to the topic and not as legal advice. If you require specific advice with respect to your situation, you should contact a lawyer.

This is one of a series of articles that will be appearing in future editions of the MAHCP News.