

Unsafe workplaces: The law and health and safety issues faced by low-income workers

Chetan Muram,
Workers' Health and Safety Legal Clinic

October 25, 2022





CLEO

Community Legal Education Ontario
Éducation juridique communautaire Ontario

**Connecting
Ottawa**

Effective communication
Accessible justice

**Connexion
Ottawa**

Communication effective
Justice accessible

What you can expect today

- 1.5 hour in total (presentation and Q+A)
- This is legal information, not legal advice.
- The information is current as of today's date Oct. 25, 2022
- Recording and slides will be sent out afterward.
- ASL Interpretation provided
- Put your questions in Q and A, not chat, please.
- Accredited for 1 hour EDI Professionalism Content



CLEO

Community Legal Education Ontario
Éducation juridique communautaire Ontario

**Connecting
Ottawa**

Effective communication
Accessible justice

**Connexion
Ottawa**

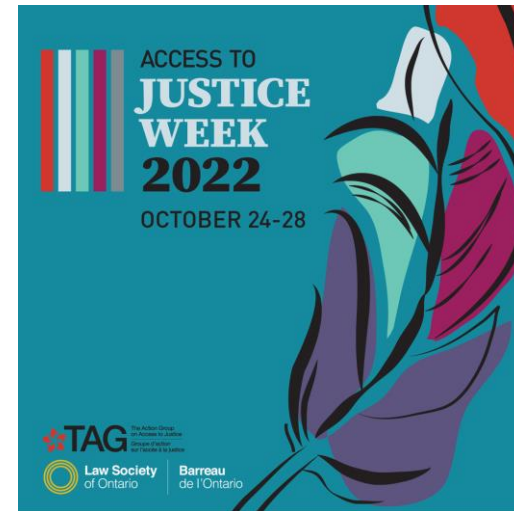
Communication effective
Justice accessible

Thank you



**The Law
Foundation
of Ontario**

Advancing access to justice





CLEO

Community Legal Education Ontario
Éducation juridique communautaire Ontario

**Connecting
Ottawa**

Effective communication
Accessible justice

**Connexion
Ottawa**

Communication effective
Justice accessible



aaronpaquette.net



CLEO

Community Legal Education Ontario
Éducation juridique communautaire Ontario

**Connecting
Ottawa**

Effective communication
Accessible justice

**Connexion
Ottawa**

Communication effective
Justice accessible



Chetan Muram

Staff Lawyer

Workers' Health
and Safety Legal
Clinic

Overview

Part I - Rights of Low Income Workers

- Occupational health and safety rights
- Human rights
- WSIB
- Rights re: COVID-19 and vaccines

Part II – Legal Advice and Representation for Low-Income Workers

- Pros and cons of each forum
- Bringing a case in multiple forums
- Case studies



CLEO

Community Legal Education Ontario
Éducation juridique communautaire Ontario

**Connecting
Ottawa**

Effective communication
Accessible justice

**Connexion
Ottawa**

Communication effective
Justice accessible

Part I – Rights of Low- Income Workers



CLEO

Community Legal Education Ontario
Éducation juridique communautaire Ontario

Connecting
Ottawa

Effective communication
Accessible justice

Connexion
Ottawa

Communication effective
Justice accessible

Occupational Health and Safety Rights

- All workers have the right to refuse unsafe work if they think the work is dangerous
- Employers have an obligation to investigate the issue as soon as possible
- Employers are prohibited from punishing workers for raising health, safety and harassment concerns

Human Rights

- Employers are prohibited from discriminating against workers on the basis of a disability
- Disability covers a broad range of conditions
- Employers have a duty to accommodate workers experiencing a disability

WSIB

- Most workers in Ontario are eligible to apply for WSIB coverage if they suffer a workplace injury
- Eligible workers are NOT permitted to take legal action against their employers following a workplace injury; they must go through the WSIB
- Employers are obligated to cooperate in the WSIB process



CLEO

Community Legal Education Ontario
Éducation juridique communautaire Ontario

**Connecting
Ottawa**

Effective communication
Accessible justice

**Connexion
Ottawa**

Communication effective
Justice accessible

Rights re: COVID-19 and Vaccines

- COVID-19 worker income protection benefit
- Limited scope for COVID-19 vaccine or mask exemption



CLEO

Community Legal Education Ontario
Éducation juridique communautaire Ontario

**Connecting
Ottawa**

Effective communication
Accessible justice

**Connexion
Ottawa**

Communication effective
Justice accessible

Question & Answer Period

- Please post any questions in the Q & A forum



CLEO

Community Legal Education Ontario
Éducation juridique communautaire Ontario

**Connecting
Ottawa**

Effective communication
Accessible justice

**Connexion
Ottawa**

Communication effective
Justice accessible

Part II – Legal Advice and Representation for Low-Income Workers

Small Claims Court

- Hears disputes for \$35,000 or less
- Claim cannot be filed more than two years after incident (i.e. termination of employment)
- Claim must be filed at the proper courthouse location

Ontario Labour Relations Board

- Hears reprisal cases under the *Occupational Health and Safety Act*, when a worker is punished for raising health and safety concerns in the workplace
- Generally, reprisal claims should be filed within six months of the incident
- All claims must be filed at the downtown Toronto head office



CLEO

Community Legal Education Ontario
Éducation juridique communautaire Ontario

Connecting
Ottawa

Effective communication
Accessible justice

Connexion
Ottawa

Communication effective
Justice accessible

Human Rights Tribunal of Ontario

- Hears discrimination cases under the *Human Rights Code*, when an individual is subject to adverse treatment connected to enumerated *Code* grounds
- Claim must be filed within one year of the incident
- All claims must be filed at the downtown Toronto head office



CLEO

Community Legal Education Ontario
Éducation juridique communautaire Ontario

**Connecting
Ottawa**

Effective communication
Accessible justice

**Connexion
Ottawa**

Communication effective
Justice accessible

Small Claims Court – Pros and Cons

PROS	CONS
1) Can hear a much broader range of wrongful dismissal cases	1) Costs
2) Mandatory settlement conference	2) Lengthy delays
3) Longer limitation period gives workers more time to decide whether they wish to take legal action	3) Ceiling on total damages

OLRB – Pros and Cons

PROS	CONS
1) No costs	1) Health and safety reprisals are a narrow subset of wrongful dismissal cases
2) Moves quickly	2) Short limitation period
3) No ceiling on total damages	3) Small general damages awards
4) Experienced mediators and adjudicators	



CLEO

Community Legal Education Ontario
Éducation juridique communautaire Ontario

**Connecting
Ottawa**

Effective communication
Accessible justice

**Connexion
Ottawa**

Communication effective
Justice accessible

HRTO – Pros and Cons

PROS	CONS
1) No costs	1) Painfully slow
2) Scope for large general damages awards	2) Inexperienced mediators and adjudicators
	3) Tribunal is unresponsive to questions and concerns
	4) Impossible to predict when deadlines and dates will be scheduled

Bringing a case in multiple forums

- Sometimes a claim can reasonably be filed in more than one forum
- Filing a claim in more than one forum allows you to take advantage of the pros of certain forums, while offsetting the cons of others
- Historically, filing a claim at both the OLRB and HRTO was useful in arguing for a larger general damages settlement amount prior to a hearing
- Must be cautious of s. 45(1) of the *Human Rights Code*
 - *The Tribunal may dismiss an application, in whole or in part, in accordance with its rules if the Tribunal is of the opinion that another proceeding has appropriately dealt with the substance of the application*

Case Study #1

- Worker raised multiple concerns with management about improper COVID-19 protocols in the workplace
- Shortly after he began raising these concerns, he contracted a severe case of COVID-19 and was forced to be off work for one month
- Worker regularly updated employer about his condition while he was off work and that he may require minor accommodations
- The day before he was set to return to work, employer terminated his employment
- Where should this case be filed?

Case Study #1

- Can file a claim at both the OLRB and the HRTO
- Strong argument for reprisal contrary to the *Occupational Health and Safety Act*
- Also merit to the argument that the employer terminated him because of his medical condition, without considering their duty to accommodate



CLEO

Community Legal Education Ontario
Éducation juridique communautaire Ontario

Connecting
Ottawa

Effective communication
Accessible justice

Connexion
Ottawa

Communication effective
Justice accessible

Case Study #2

- Worker raised multiple concerns with management about improper safety measures in place at the warehouse where she worked
- Worker also felt alienated by a couple employees, and thought they were possibly acting less friendly towards her because she was 15-20 years older than most others in the workplace
- Given that management did not appear to take her safety concerns seriously, she contacted the Ministry of Labour to do an inspection
- A few days after the Ministry of Labour inspection, her employer terminated her employment and did not give a reason
- Where should this case be filed?

Case Study #2

- Claim should only be filed at the OLRB
- Not enough to ground a discrimination claim at the HRTO on the basis of age
- Filing a weak HRTO claim could undermine your client's bargaining position and make settlement discussions more difficult



CLEO

Community Legal Education Ontario
Éducation juridique communautaire Ontario

**Connecting
Ottawa**

Effective communication
Accessible justice

**Connexion
Ottawa**

Communication effective
Justice accessible

Question & Answer Period

- Please post any questions in the Q & A forum

Resources and Supports

- **Connecting Ottawa Employment webpage:** <https://connectingottawa.com/legal-topics/employment-work/>
- **Steps to Justice Employment & Work:** <https://stepstojustice.ca/legal-topic/employment-and-work/>
- **Steps to Justice Safety at Work:** <https://stepstojustice.ca/legal-topic/employment-and-work/safety-work/>
- **Steps to Justice Migrant Workers:** <https://stepstojustice.ca/legal-topic/employment-and-work/migrant-workers/>
- **Workers' Health & Safety Legal Clinic:** <http://workers-safety.ca/>



CLEO

Community Legal Education Ontario
Éducation juridique communautaire Ontario

**Connecting
Ottawa**

Effective communication
Accessible justice

**Connexion
Ottawa**

Communication effective
Justice accessible

- **Aboriginal Legal Services:** <https://www.aboriginallegal.ca/>
- **Advocacy Centre for the Elderly:**
<http://www.advocacycentreelderly.org/>
- **ARCH Disability Law Centre:** <http://www.archdisabilitylaw.ca/>
- **Black Legal Action Centre:**
<http://www.blacklegalactioncentre.ca/>
- **Butterfly: Asian and Migrant Sex Worker Support Network:**
<https://www.butterflysw.org/>

- **Caregivers Action Centre:**
<https://www.caregiversactioncentre.org/>
- **Centre for Spanish-Speaking Peoples:** <https://spanishservices.org/>
- **Chinese and Southeast Asian Legal Clinic:** <http://www.csalc.ca/>
- **Health and Safety Contact Centre, Ministry of Labour:**
<https://www.ontario.ca/page/filing-workplace-health-and-safety-complaint>
- **Human Rights Legal Support Centre:** <https://www.hrlsc.on.ca/>
- **Industrial Accident Victims' Group of Ontario:** <https://iavgo.org/>

- **Injured Workers' Community Legal Clinic:**
<https://www.injuredworkersonline.org/>
- **Migrant Workers Alliance:** <https://migrantworkersalliance.org/>
- **Ministry of Labour's Health and Safety Contact Centre:**
1-877-202-0008
- **Pro Bono Ontario Hotline:** 1-855-255-7256
- **South Asian Legal Clinic of Ontario:** <https://salc.on.ca/>



CLEO

Community Legal Education Ontario
Éducation juridique communautaire Ontario

**Connecting
Ottawa**

Effective communication
Accessible justice

**Connexion
Ottawa**

Communication effective
Justice accessible

- **Sudbury Workers Education and Advocacy Centre** (serves NE Ontario): 1-866-470-2173, www.sudburyworkerscentre.ca
- **The 519 Legal Clinic:** <https://www.the519.org/programs/legal-clinic>
- **Workers' Health & Safety Legal Clinic:** <http://workers-safety.ca/>
- **Workers' Action Centre:** <https://workersactioncentre.org/>



CLEO

Community Legal Education Ontario
Éducation juridique communautaire Ontario

**Connecting
Ottawa**

Effective communication
Accessible justice

**Connexion
Ottawa**

Communication effective
Justice accessible

Truth and Reconciliation

- [Truth and Reconciliation Commission of Canada: Calls to Action](#)
- [Settlers Take Action](#)
- [Indigenous Canada - Free Course](#)

Thank you for joining us

Community Legal Education Ontario

- www.cleo.on.ca
- Subscribe to [CLEO Connect](#) for updates on new legal information and upcoming webinars.

Connecting Ottawa

- www.connectingottawa.com
- info@connectingottawa.com

Workers' Health & Safety Legal Clinic

- www.workers-safety.ca
- whslc@lao.on.ca