

# CANADA OCCUPATIONAL HEALTH AND SAFETY REGULATIONS

## Proposed Regulatory Amendments for Harassment and Violence

Labour Program



## INTRODUCTION

- Bill C-65 *An Act to amend the Canada Labour Code (harassment and violence), the Parliamentary Employment and Staff Relations Act and the Budget Implementation Act, 2017, No 1* passed Second Reading on January 29, 2018
- The Bill was referred to the Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities (HUMA)
- The Labour Program is consulting key stakeholders on regulatory amendments

## PURPOSE

- The purpose of the consultations is to gather public input on the proposed regulatory amendments. The consultations are guided by the three pillars of: Prevent, Respond, and Support
- The Labour Program will be leveraging various vehicles for the consultations, including face-to-face round tables, WebExs, and an on-line survey

## BACKGROUND

- The Minister of Employment, Workforce Development and Labour was mandated in 2015 to ensure that federal work places are free from harassment and sexual violence
- The Government of Canada (GoC) consulted Canadians on harassment and violence in federally regulated work places, and on how the current approach could be strengthened
- The results of the consultations are captured in the *Harassment and Sexual Violence in the Workplace Public Consultations - What We Heard Report*
- The consultations identified a number of inadequacies with the current federal legislation and regulations
- The GoC introduced Bill C-65 to the House of Commons on November 7, 2017
- The Bill proposes several amendments to legislation, as well as granting authority to develop consolidated regulations for harassment and violence prevention

## EXISTING LEGAL FRAMEWORK

- The *Canada Labour Code* (the Code) sets out the current legal framework for dealing with harassment and violence in federally regulated work places
- Currently, there are separate regimes in place that deal with work place violence and sexual harassment under the Code
  - Violence is dealt with under the occupational health and safety provisions (Part II)
  - This section applies to the federally regulated private sector, federal Crown corporations and the federal public service
  - Sexual harassment is dealt with under the labour standards provision (Part III)
  - This section applies to federally regulated private sector work places and federal Crown corporations, but does not apply to the federal public service

## EXISTING LEGAL FRAMEWORK

- Part II of the legislation also gives authority to the *Canada Occupational Health and Safety Regulations* (COHSR), which address violence prevention in the work place under Part XX
- The *Parliamentary Employment and Staff Relations Act* (PESRA) applies to most employers and employees working on Parliament Hill

## LEGISLATIVE CONSULTATIONS – WHAT WE HEARD

- Part II and III of the Code have different requirements and mechanisms to achieve resolution, which creates an imbalance in how violence and sexual harassment are treated
- Current prevention and response measures are not sufficient, and employees do not feel supported
- Some work places covered under Part II of the Code are not covered under Part III, meaning that sexual harassment provisions do not apply to them
- Neither Part II or Part III apply to employees working on Parliament Hill

## WHAT WILL CHANGE?

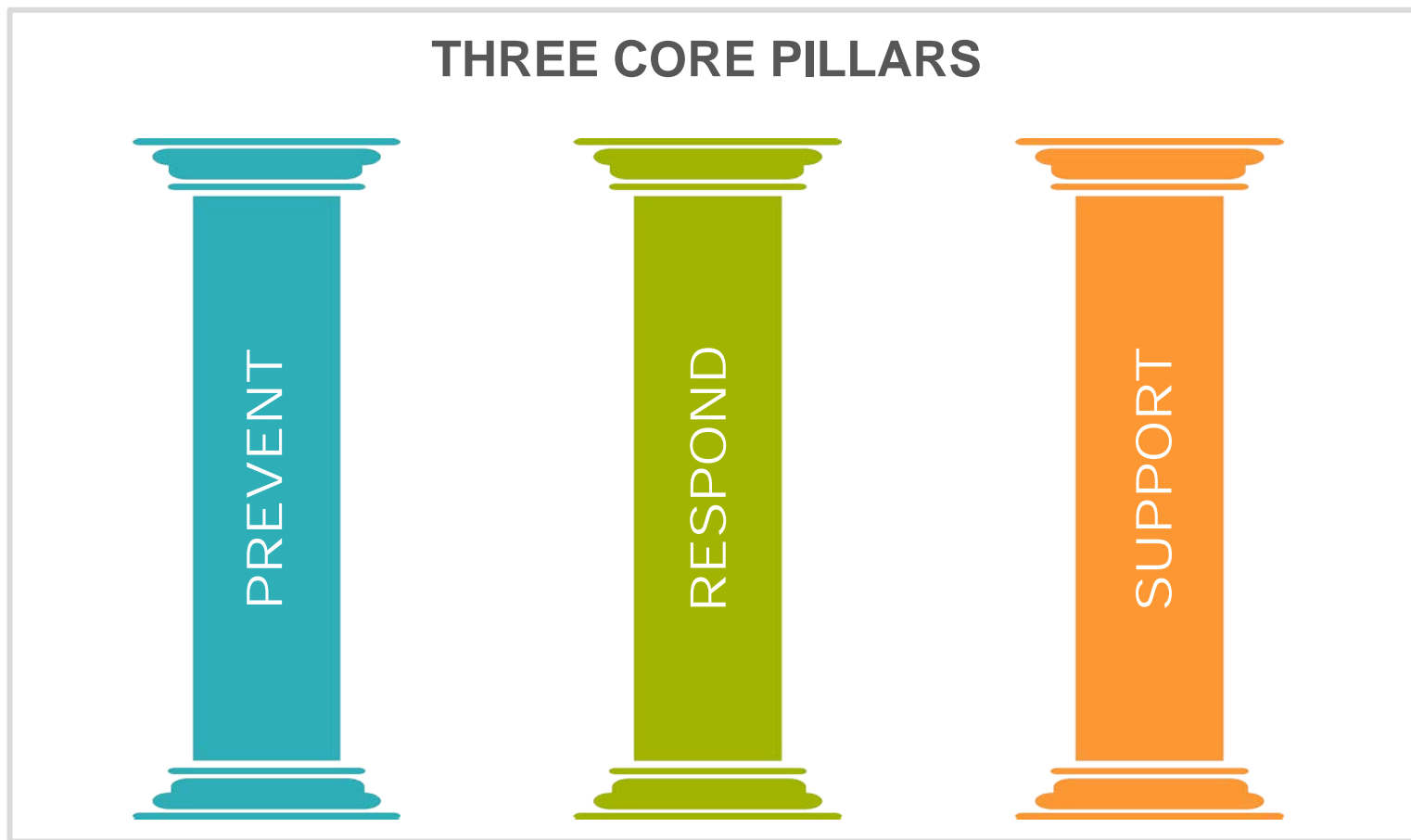
Current	New
<p>The sexual harassment provisions are weak</p>	<p>Comprehensive regime would deal with the full spectrum of harassment and violence, including sexual harassment and sexual violence</p>
<p>Part III of the <i>Canada Labour Code</i> does not apply to the public service, and current legislation and regulations don't apply to employees on Parliament Hill</p>	<p>Amended legislation and regulations would apply to federally regulated private sectors, the public service and employees on Parliament Hill</p>
<p>Occupational health and safety privacy measures are insufficient to encourage individuals to report complaints of sexual harassment or sexual violence</p>	<p>Strong privacy protections would ensure that complaints about harassment and violence are treated confidentially</p>
<p>The investigation and reporting of incidents of sexual harassment are not required</p>	<p>Employers would be required to investigate, record and report harassment and violence</p>
<p>No requirement to support employees who experience harassment and violence</p>	<p>Support for employees affected by harassment and violence</p>



# NEW REGULATORY FRAMEWORK

- Key elements that are critical for implementation:
  - Capturing the continuum of harassment and violence
  - Protecting the privacy and confidentiality of all implicated parties
  - Ensuring that both employers and employees receive appropriate training and education on harassment and violence prevention
  - Outlining the appropriate role of work place committees to prevent and respond to harassment and violence in the work place, and support those affected by it
  - Describing appropriate steps to address incidents
  - Outlining the qualifications of a mutually agreed-upon competent person
  - Recording and tracking all incidents of harassment and violence and
  - Providing appropriate support to all parties who have been involved in an incident of harassment or violence

# COMPREHENSIVE APPROACH TO HARASSMENT AND VIOLENCE





## PREVENT

- Ensure that work places have policies to protect all employees from incidents of harassment and violence
- Require education and training for employers and employees
- Enhance the role of work place committees in strengthening prevention measures
- Define harassment and violence to encompass the full continuum of inappropriate behaviours

## RESPOND

- Encourage employers to attempt to resolve complaints first through informal means
- Develop a resolution process that effectively addresses how to submit and address a complaint
- Appoint a mutually agreed-upon competent person
- Outline timeframes throughout the process
- Determine how employers can best address incidents perpetrated by a third party



## SUPPORT

- Require employers to make available an array of support measures, which may include counselling and legal services
- Ensure that all parties have a mutually agreed upon support plan
- Continue to protect employees from retaliation for speaking up against harassment and violence

# ENSURING THAT FEDERAL WORKPLACES ARE FREE FROM HARASSMENT AND VIOLENCE

## WORKPLACE PREVENTION AND RESOLUTION PROCESSES\*



Prevention of harassment and violence policy in collaboration with the workplace committee or the health and safety representative



Employer becomes aware of an incident of harassment or violence



Employer must try to resolve the incident with the employee



**INCIDENT NOT RESOLVED**



**MEDIATION (OPTIONAL)**



**INCIDENT NOT RESOLVED**



Competent person investigation and report on incident and recommendations for the workplace



Employer response and implementation of recommendations



**INCIDENT NOT RESOLVED**



**MINISTER OF LABOUR'S INVESTIGATION  
IN FEDERALLY REGULATED SECTORS  
UNDER THE CANADA LABOUR CODE**



**MINISTER OF LABOUR'S INVESTIGATION  
IN PARLIAMENTARY WORKPLACES  
UNDER THE PARLIAMENTARY EMPLOYMENT STAFF RELATIONS ACT**

**COMPLIANCE**

**NON-COMPLIANCE**

**NON-COMPLIANCE**

**COMPLIANCE**

**COMPLIANCE**

Minister of Labour enforces

Minister of Labour enforces.  
Speaker is notified and may intervene.

**COMPLIANCE**

Employer or employee can appeal  
to the Occupational Health  
and Safety Tribunal\*\*

Employer or employee can appeal  
to the Federal Public Sector Labour  
Relations and Employment Board

The Board's decision may uphold,  
rescind or amend

The Federal Public Sector Labour  
Relations and Employment Board  
notifies the Speaker who may intervene

**EMPLOYER OR EMPLOYEE CAN APPEAL  
TO FEDERAL COURT**

The Board's decision may uphold,  
rescind or amend

A complaint that the process is not  
followed can be filed at any time

**THE BOARD'S DECISION TABLED IN THE  
HOUSE OR THE SENATE BY THE MINISTER  
OF PUBLIC SERVICES AND PROCUREMENT**

\*For illustrative purposes only. Subject to change following regulatory process.

\*\*Once the amendments in the Budget Implementation Act, No. 1, 2017 come into force, directions will be appealed to the Canada Industrial Relations Board.

## RESOLUTION PROCESS

**Employer Response**



**Informal Resolution**



**Mediation**



**Investigation by a competent person**

## EMPLOYER RESPONSE



- When an employer becomes aware of an incident of harassment or violence they must begin working with the affected employee within five calendar days
- The employer must communicate to the employee the options available to them for resolution
  - Choosing one option does not preclude the employee from using other options to achieve resolution
- Within thirty calendar days, there must be a mutually agreed upon resolution plan
- The employer will be obligated to provide monthly updates to all parties while the investigation is being conducted
- It is the employer's responsibility to make sure the competent person's investigation is completed within three months
  - Extensions can be requested under certain circumstances



## INFORMAL RESOLUTION



- The new harassment and violence prevention regime emphasizes informal resolution
- It is the responsibility of employer to first try and resolve the incident informally

## MEDIATION



- The employee has the option to pursue mediation to resolve the incident
- Employers will have the responsibility to provide a mediator for the process
- All parties involved must agree on the mediator

# BREAKOUT SESSION #1

## RESOLUTION PROCESS

## INVESTIGATION BY A COMPETENT PERSON

**Impartiality**

**Qualifications**

**Competent person's report**

**Recommendations by the CP to the Employer**

## IMPARTIALITY



- A competent person must be mutually agreed upon by all parties before an investigation may begin
- They must be seen as impartial
- Employers may be required to develop a roster of impartial competent persons in collaboration with work place committees
- Impartiality can be assessed using tools such as a rubric

# ASSESSING IMPARTIALITY



	No risk (0 points)	Some risk (1 point)	Moderate risk (2 points)	High risk (3 points)
<b>Relationship</b>	CP is from an external accredited organization with no relationship to any party	CP is from external organization and is a previous colleague of one of the parties	CP is an internal employee with no relationship, or a strictly professional relationship to parties involved	CP is an internal employee with a personal relationship to one or more parties involved in the investigation
<b>Training</b>	CP has received training on all required areas and other areas relevant to the investigation	CP has received training in a number of areas relevant to the investigation, but has not received training in critical areas such as counselling or anti-corruption training	CP has little training on areas relevant to the investigation, and is missing training in critical areas such as arbitration, anti-corruption training, mental health issues, and dispute resolution	CP has received minimal or no training on any area relevant to the investigation
<b>Experience</b>	CP has extensive and recent experience conducting investigations into incidents of harassment and violence in the work place, and has positive references from a number of satisfied clients	CP has experience conducting investigations into incidents of harassment and violence, but has few references and has not conducted investigations recently	CP has some recent experience conducting work place investigations, but no experience with harassment and violence. CP has few references from former clients	CP has little to no relevant experience in conducting work place investigations in any form, or has negative references from former clients
<b>Qualifications</b>	CP has relevant and up-to-date qualifications in areas such as mediation, counselling, or as a private investigator or lawyer	CP has some relevant qualifications in areas such as mediation, but the qualifications are old or have not been recently renewed	CP has some qualifications but they are not totally relevant to the investigation	CP has no relevant qualifications that would help in the investigation

**Score**

**Total Score**

**/12**

## QUALIFICATIONS



- A competent person may be required to demonstrate that they have undergone training in areas such as:
  - Arbitration, alternative dispute resolution or mediation
  - Cross-cultural and diversity issues
  - Counselling
  - Industrial psychology
  - Occupational health and safety training
  - Audit training

## COMPETENT PERSON'S REPORT



- Reports by a competent person may be required to include:
  - A statement of the scope of the issues
  - An identification of any relevant work place policies involved
  - Legal considerations
  - Recommendations to the employer
  - Proposed disciplinary actions



## RECOMMENDATIONS TO THE EMPLOYER



- Employers will be required to implement recommendations made by a competent person, as long as they are reasonably practicable
- Employers will have six months to fully implement the recommendations made by the competent person

# BREAKOUT SESSION #2

## COMPETENT PERSONS

# HARASSMENT AND VIOLENCE PREVENTION POLICY

**Mandatory Elements**

**Role of the Work Place Committee**

**Employee Protection**

**Confidentiality**

## MANDATORY ELEMENTS



- Options/steps of the work place resolution process, including where the employer or supervisor is the alleged perpetrator
- How to submit a complaint, including when the employer or health and safety representative is the alleged perpetrator
- What qualifies as a reasonable complaint of harassment or violence
- How to address incidents of family violence
- Support to those who experience incidents
- Harassment and violence prevention training
- Role of the work place committee
- Internal reporting requirements
- A commitment to ensuring the privacy of all parties should a complaint be brought forward

## ROLE OF WORK PLACE COMMITTEES (WPCS)



- Co- develop:
  - Harassment and violence prevention policy
  - Harassment and violence awareness and training
  - Emergency notification procedures
  - Internal reporting tools
  - Roster of competent persons
- Monitor:
  - Hazards that could contribute to work place harassment and violence
  - Participate in inquiries, studies and inspections
  - Data on incidents of work place harassment
  - Impact of the training and education
- Respond:
  - Implement recommendations as a result of an investigation
- Support:
  - Ensure training is relevant and accessible to all
  - Make available the emergency notification procedures
  - When requested by an employee, provide support and guidance

## EMPLOYEE PROTECTION



- The legislation will continue to protect employees from retaliation for coming forward in cases of harassment or violence in the following ways:
  - Dismissal
  - Suspension
  - Laying off
  - Demotion
  - Imposing penalties or
  - Taking other forms of disciplinary action

## CONFIDENTIALITY



- Protecting the identity and privacy of all parties is a key priority of the proposed regime
- All parties, including the complainant, respondent and witnesses have the right to confidentiality
- Employers will be required to state in their harassment and violence prevention policies their commitment to ensuring the privacy of all parties involved in a complaint

## KEY COMPONENTS

**Third Party Violence and Harassment**

**Family Violence**

**Reasonable Complaint**

**Ability of Former Employee to Bring Forward a Complaint**



## THIRD PARTY VIOLENCE AND HARASSMENT



- Employers will be required to:
  - Address third party violence in their harassment and violence prevention policy
  - Regularly and following an incident, review and update the measures and controls to prevent and deal with third party violence and harassment
  - Provide support options to the complainant and witnesses

## FAMILY VIOLENCE



- Employers will be required to outline in their prevention policies how they will respond to family violence
- Policies will be required to outline:
  - How and in what situations an employer should intervene
  - How an employer will provide support to an employee dealing with family violence, such as developing a safety plan
  - If there is any training for employees on family violence to educate them on how to identify warning signs

## REASONABLE COMPLAINT



- Employers will be required to outline acceptable and unacceptable work place behaviour in their harassment and violence prevention policies
- In diverse organizations, the examples of such behaviour must resonate with all employees
- In work places where exposure to violence and harassment is common, policies must provide examples that make it clear what constitutes normal working conditions, and circumstances under which a complaint should be made to the employer

## ABILITY OF A FORMER EMPLOYEE TO BRING FORWARD A COMPLAINT



- Considerations are being given for a former employee to submit a complaint to the employer on an incident that occurred during their employment

## KEY COMPONENTS

**Training**

**Support to Employees**

**Internal Reporting**

**Reporting to the Labour Program**

# TRAINING



- Employers will be required to provide training on their prevention policy
- They will also be required to provide training on harassment and violence that includes following components:
  - What constitutes harassment and violence and how to recognize, minimize and prevent it
  - Sector specific examples of harassment and violence
  - Third party violence and family violence
  - The *Canada Labour Code*
  - Harassment and violence prevention regulations
  - Work place emergency response process, crisis prevention, personal safety and de-escalation techniques
  - How to respond sensitively to incidents or complaints, particularly when it includes sexual harassment and sexual violence
  - Available support services and resources

## SUPPORT TO EMPLOYEES



- The new regime places emphasis on support to all parties involved in an incident of harassment and violence in the work place.
- Employer obligations to provide support to employees as appropriate:
  - Physical support to the victim, including medical care
  - Psychological support for all parties
  - Assistance to the victim in liaising with appropriate services
  - Adjusting the environment to reduce the potential for continued H&V
  - Social support for the victim, peers or supervisors
  - Legal support and services
- Work place committees have a role in providing support to employers and employees by:
  - Ensuring that training is relevant and accessible to all
  - Making available the emergency notification procedures
  - When requested by an employee, provide support and guidance

## INTERNAL REPORTING



- Employers will be legally required to track all incidents of harassment and violence
- Employers will be required to clearly outline how they will report on, share and store information of incidents of harassment and violence that occur in their work place
- Data will be used to identify areas of concern, and to focus prevention efforts
- Data that must be captured will include:
  - How an incident was resolved: informally, through mediation, or investigation by a competent person.
  - The nature of the incident, recommended corrective measures and evidence of their implementation, and any disciplinary actions taken.
- In all reporting and data collection, the privacy of the all parties needs to be protected. Therefore, employers will also need to clarify in their harassment and violence prevention policy how the privacy of those involved will be protected



## REPORTING TO THE LABOUR PROGRAM



- Employers will be required to report all incidents of harassment and violence in their work place to the Labour Program
- To maintain confidentiality, all information provided must omit any personal identifiers
- To minimize the administrative burden, reporting will be done through the existing Labour Program's Annual Hazardous Occurrence Investigation Report
- Mandatory information will include:
  - The nature of the incident
  - Recommended corrective action, if any
  - Record of steps taken to implement recommendations, if any
  - Any disciplinary action taken

# BREAKOUT SESSION #3

## HARASSMENT AND VIOLENCE PREVENTION POLICY

## COMMENTS AND FEEDBACK

Your feedback may be submitted to:

[Hilary.flett@labour-travail.gc.ca](mailto:Hilary.flett@labour-travail.gc.ca)