Submissions by the Professional Institute of the Public Service of Canada on 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

INTRODUCTION

The Professional Institute of the Public Service of Canada (the "Institute") represents 57,000 professionals across Canada's public sector, including 37,000 employees in the core public administration, 6,000 employees of separate agencies and 130 employees of the Senate of Canada and House of Commons. The Institute's members in the federal public service are a highly skilled and well-educated workforce, comprised largely of scientists and other professionals. Unfortunately, a number of the Institute's members have also been the victims of workplace harassment and violence.

As a result, the Institute is very pleased that the government is taking legislative steps to prevent harassment and violence, including sexual harassment and sexual violence, in federally-regulated workplaces. These steps are much-needed and long-overdue. In fact, in recent years the problem of harassment in the federal public service has only grown worse. According to the 2017 Public Service Employee Annual Survey, 22% of all Respondents, up 3% from three years earlier, indicated that they had experienced harassment in the workplace. Not surprisingly, in the same survey, 34% of Respondents also indicated that they were experiencing high or very high levels of work-related stress. Despite these statistics, many employees are reluctant to report harassment, concerned that a complaint may result in a reprisal or negatively affect their career.

As contemporary events are demonstrating, the time has come to put an end to workplace harassment, in all of its nefarious forms. This will require not only legislative change but also a cultural shift throughout the federal public service. It is imperative to engage in conversation and include all who are oppressed by our society's systems of injustice irrespective of gender, race, sexual orientation, etc. Workplace harassment is a failure of culture and that we are all part of the solutions. It is important to empower victims and bystanders to speak out. The Institute supports Bill C-65 as an important first step. In particular, it is pleased to see the inclusion of "psychological injuries and illnesses" in s. 122.1, the purpose provision for Part II of the *Canada Labour Code ("Code"),* and the imposition of a duty on employers to respond

to harassment and violence in the workplace, to provide support to affected employees and to investigate, record and report occurrences of harassment and violence. As well, the Institute applauds the extension of this legislative framework to Parliamentary employees, including its members who work at the Senate and House of Commons, who for too long have been without adequate protection.

However, the Institute is concerned about what Bill C-65 does not include. In particular, many important and key details regarding how the legislation will operate have been left to the regulations. These include the definition of harassment, the exceptions to the employer's duty to investigate and report harassment, and the process to be followed when complaints are investigated, including what procedural fairness guarantees will be put in place, the remedies available to victims of harassment and the potential repercussions for harassers. As well, proper staffing and resources need to be allocated to these processes to ensure timely and fair investigations and effective redress for victims. In addition, consideration needs to be given to how the legislation will interact with existing processes in place, including collective agreement rights, and should explicitly address the rights of unionized employees to union representation throughout. Finally, the Institute urges members of this Committee to give consideration to what can be done to protect domestic violence victims in the workplace. Each of these concerns are discussed in more detail below.

The Institute's Concerns

No Definition of Harassment

Considering that the purpose of Bill C-65 is to strengthen the existing framework for the prevention of harassment and violence, including sexual harassment and sexual violence, in federal work places, it is both surprising and troubling that the legislation fails to include a definition of harassment, instead leaving this important matter to be resolved by way of regulation (see clause 14).

Given that the breadth and scope of the definition of harassment will have a huge impact on how effective and far reaching this legislation will be, the Institute believes that this is a matter that is too important to be left to the regulations. It is worth noting that in comparable provincial legislation, the definition of harassment is found in the statute not the regulations. For example, s. 1(1) of the *Ontario Occupational Health and Safety Act*, R.S.O. 1990, c. O.1

defines “workplace harassment” as “engaging in a course of vexatious comment or conduct against a worker in a workplace that is known or ought reasonably to be known to be unwelcome” and also includes a separate definition for “workplace sexual harassment.”

The Institute believes that a broad and inclusive definition of harassment should be added to Bill C-65. In previous rounds of bargaining, the Institute has proposed the following definition of workplace harassment:

> Harassment refers to improper contact by an individual that is directed at and offensive to another individual in the workplace, including at any event or any location related to work, and that the individual knew or ought to have known would cause offence or harm. It comprises objectionable act(s), comment(s) or display(s) that demean, belittle, or cause personal humiliation or embarrassment, and any act of intimidation or threat. It also includes harassment within the meaning of the *Canadian Human Rights Act* (i.e. based on race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability and pardoned conviction).

The Institute submits that a similar definition should be added to the legislation and urges the Committee to not leave this important issue to be determined by way of regulation.

Exceptions to the Employer’s Duty to Investigate and Report

Clause 3(1) of Bill C-65 amends s. 125(1)(c) of the *Code* to impose a duty on employer to investigate and report the exceptions to the employer’s duty to investigate and report occurrences of workplace harassment and violence but also allows for yet-to-be defined exceptions to this duty, which will be set out in regulations.

An employer’s duty to investigate and report harassment is key to resolving harassment in the workplace and to ensuring redress for victims. Any exceptions to this duty should be narrowly defined and such an important issue should not be left to the regulations.

Lack of Detail Regarding the Investigation and Complaint Process

Clause 5(1) of Bill C-65 amends the *Code* to allow employees to complain about workplace harassment, and where the employee and employer fail to resolve the complaint between themselves, that complaint can be referred directly to the Minister for investigation, by-passing the workplace health and safety committee.

While the Institute is pleased to see that the legislation provides victims of harassment with some form of investigation and that the investigation process is being elevated outside the immediate workplace where the alleged harassment occurred, it is concerned that there is a lack of clarity and detail in it regarding the process to be followed when complaints are investigated, including what procedural fairness guarantees will be put in place for both complainants and respondents, as well as the remedies available to victims of harassment and the potential repercussions for harassers. In order for this legislation to provide for real redress for victims of harassment, it must ensure that investigations are timely, thorough, independent and fair and that the respect key principles of procedural fairness. These principles include impartial investigators, the right of respondents to be informed of allegation(s) against them, the right of complainants and respondents to be heard, to present evidence, to be accompanied and to review statements and confirm their accuracy. With respect to the right to be represented, for unionized employees that includes the right to union representation throughout and Bill C-65 should make that explicit.

The importance or the selection of an impartial investigator is driven home by the experiences of some Institute members in recent years in the selection of a "competent person" in investigating complaints of violence under Part XX of the *Canada Occupational Health and Safety Regulations*. Under this part, an employer is required to appoint a competent person when a complaint cannot be resolved informally. All too frequently however, employees have had concerns about the impartiality of the "competent person" appointed and disputes about the selection of the competent person can delay an investigation for months.

In order to avoid these type of problems down the road, more thought needs to be given in Bill C-65 to who will be investigating complaints of harassment and how that process will work to ensure that investigators are truly impartial and independent. As well, proper staffing and resources need to be allocated to these processes to ensure timely and fair investigations and effective redress for victims.

Interaction with Existing Processes

Currently, there is a complex matrix governing harassment in the federal public service, with employees having access to different and overlapping recourse mechanisms depending on

the facts. For example, an employee can pursue a complaint through the employer's internal harassment complaint procedure, such as the Treasury Board Policy on Harassment Prevention and Resolution or the Senate's and House of Commons' Workplace Harassment Policy. Most Collective Agreements in the federal public service also include provisions aimed at preventing sexual harassment and harassment on protected grounds. Thus, filing a grievance is another option for unionized employees. Where the harassment is related to a protected ground, an employee also has an option of filing a complaint with the Canadian Human Rights Commission (CHRC). Finally, federally-regulated employees can also file a complaint of workplace violence, which has been interpreted by the Courts as including harassment, under Part XX of the Occupational Health and Safety Regulations. These various recourse avenues are not always mutually exclusive and may result in different remedies for complainants or varying degrees of procedural fairness.

Sub-clause 5(4) of Bill C-65 amends s. 127.1(9) of the *Code* to provide that the Minister can refuse to investigate a complaint where "the complaint has been adequately dealt with according to a procedure provided for under this Act, any other Act of Parliament or a collective agreement." This provision appears to give the Minister incredibly broad discretion to refuse to investigate complaints if any other process has been engaged. More clarity is required regarding how this provision and Bill C-65 investigations generally, will interact with existing processes in place, including collective agreement rights.

Protections for Victims of Domestic Violence

Finally, the Institute urges members of this Committee to give consideration to what can be done to protect domestic violence victims in the workplace. Section 32.0.4 of the Ontario Health and Safety Act specifically requires that employers who are aware of, or who ought reasonably to be aware of, domestic violence that would likely expose a worker to physical injury in the workplace must take every precaution reasonable in the circumstances to protect the worker. Consideration should be given to adding a similar specific provision in Bill C-65.

As well, the legislation should provide for paid leave for victims of domestic violence. It should be noted that the Ontario *Employment Standards Act* was recently amended to provide for this.