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Chair

Mr. Bryan May

Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities

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● (1200)

[*English*]

The Chair (Mr. Bryan May (Cambridge, Lib.)): I call the meeting to order.

Good afternoon. Pursuant to the order of reference of Monday, January 29, 2018, the committee is resuming its consideration of 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.

Today the committee will hear from federally regulated private sector employers. We are very pleased to be joined today, via teleconference from the Quebec Employers' Council, by Yves-Thomas Dorval, president and chief executive officer, and Guy-François Lamy, vice-president, work and legal affairs.

Can you gentlemen hear me?

Mr. Yves-Thomas Dorval (President and Chief Executive Officer, Quebec Employers' Council): Yes. We hear you very well. Thank you.

The Chair: Excellent. Before I forget, when you are speaking, just for the recording of the testimony, please identify yourself, because if you go back and forth, we won't know who said what.

Joining us here today from Canada Post Corporation are Ann-Therese MacEachern, vice-president, human resources, and Manon Fortin, vice-president, operations integration.

Welcome to both of you.

From the Canadian Bankers Association, we have Marina Mandal, assistant general counsel. Welcome.

From the Federally Regulated Employers—Transportation and Communications, or FETCO, we have Derrick Hynes, executive director. Welcome, sir.

From Fogler, Rubinoff LLP, we have Sheryl Johnson, lawyer. Welcome.

Each of you will have seven minutes for your opening remarks, and we'll have a series of questions. We're going to start off with the Quebec Employers' Council.

Gentlemen, the next seven minutes are yours. If you can identify yourself, that would be great. Thank you very much.

Mr. Yves-Thomas Dorval: My name is Yves-Thomas Dorval. I'm the CEO of the Conseil du patronat du Québec, the Quebec Employers' Council.

I'd like to thank the committee for hearing us on Bill C-65. I will speak in French, but you can ask your questions in English. Of course, for people who need it, they will need translation from French to English.

● (1205)

[*Translation*]

The Conseil du patronat du Québec, or CPQ, is an association of employers that either directly or indirectly represents over 70,000 employers, including several subject to provincial legislation and many others, to federal legislation. Our mission is to advocate best-possible conditions for employers to ensure they can be successful. Workplaces that are free form harassment and violence are essential for maintaining healthy working relationships, they give rise to productive environments and benefit the health of all workers.

In general, we support the goals and objectives pursued in the bill, which seeks to reinforce the code's regime to help ensure that workplaces are free from harassment and violence. Nevertheless, in the opinion of the CPQ, certain elements in the bill could be improved, at least in part. In the brief we have provided, we include our position on the regulation of harassment, which is based on our experiences with similar provisions under Quebec law.

Generally speaking, in terms of regulation, experiences in Quebec have shown that the subjective nature of perceptions can prove problematic when addressing and dealing with psychological harassment situations. The brief also contains quotes from a Quebec author who said that there can be no off-the-shelf solutions in these matters. Each situation is unique and must be assessed in the light of the particular facts and circumstances. The CPQ agrees with this statement. Moreover, experience has also shown that in some instances accusations of psychological harassment were brought forward by individuals suffering from personal problems. This can create workplace conflict situations that lead to an unhealthy work environment for everyone.

As for the CPQ's specific comments, we note that, in the section entitled “Definitions of the notions of violence and harassment”, the bill does not include any definitions of the terms “harassment” and “violence”. However, clause 14 of the bill provides that the definitions are to be prescribed by regulation.

In our opinion, this provision raises several questions. Foremost among these, the CPQ is left wondering why the definition of such a key notion should not be inserted directly into the code. A concept as potentially complex as harassment should warrant a carefully worded definition. To help illustrate this point, we cite another example from Quebec. In the Act respecting labour standards, psychological harassment is defined as follows: 81.18 … any vexatious behaviour in the form of repeated and hostile or unwanted conduct, verbal comments, actions or gestures, that affects an employee's dignity or psychological or physical integrity and that results in a harmful work environment for the employee.

The following article should also be taken into consideration: A single serious incident of such behaviour that has a lasting harmful effect on an employee may also constitute psychological harassment.

In strictly theoretical terms, the definition of "psychological harassment" does not appear in the least problematic. However, experience has shown that the definition, which seems appropriate at first glance, could have been improved through the addition of a more complete explanation.

In our brief, we mention an employer's management rights can sometimes be a factor at the root of a workplace conflict. In short, it is important to recognize and clearly explain what constitutes psychological harassment and violence.

As for the expanded scope of the regime under the code, we note in our brief that the notions of harassment and violence, which will apparently cover acts of a sexual nature, will in future be prescribed by regulation. If the bill is to be adopted in its current form, it is essential that the regulation be simultaneously adopted, as otherwise it could occasion a regulatory vacuum.

If an investigation by the Minister of Employment, Workforce Development and Labour becomes necessary at some point in the process, it should be done at the appropriate time. As such, the involvement of the Minister of Employment, Workforce Development and Labour in the resolution of complaints, as currently outlined in the bill, raises a few questions.

It should be kept in mind that international best practices mention that more intervention is needed, meaning that the community must take on these types of issues. We are not against the fact that there is intervention when appropriate, but we want to remind you that it should occur sparingly. Our brief contains several questions about this.

In closing, I would like to stress that we support the bill. We are providing some nuances from the Quebec experience and invite members of the committee to take these examples and situations into consideration. I think that some additional clarification could be added.

Thank you.

● (1210)

[*English*]

The Chair: Thank you very much.

Up next, from the Canada Post Corporation, we have Ann-Therese MacEachern and Manon Fortin. The next seven minutes are yours.

Ms. Ann-Therese MacEachern (Vice-President, Human Resources, Canada Post Corporation): Thank you, Chair and committee members, for inviting us to participate in this important discussion on Bill C-65.

I'm Ann-Therese MacEachern, vice-president of human resources. I'm with my colleague, Manon Fortin, who is vice-president of operations integration. We're proud to represent Canada Post, where we both have more than 25 years of experience at various levels within the organization.

Harassment and violence in the workplace are incredibly important issues, and we hope to contribute in a positive way to the development of this legislation. In the next few minutes, I will outline our approach to help ensure that our people feel safe, respected, and able to do their jobs without threat of harassment and violence.

First, it's important to understand the size and scope of our operations. More than 50,000 people, full- and part-time employees, work for Canada Post, not including our subsidiaries. With our size, our employees represent a microcosm of Canadian society. They interact with their colleagues, their supervisors, and countless customers in every province and territory.

It's our job to serve Canadians, and we're proud to do so, but it's also important to note that two-thirds of the complaints registered come from employees who believe they've been harassed, or worse, by a customer. As you see, our approach must be comprehensive, clear, and collaborative.

At Canada Post, our commitment is to create a workplace that brings out the best in our people and fosters a safe, supportive, and productive environment. Harassment, violence, or bullying in any form is not tolerated between our employees or against our employees. While nobody's perfect, we walk the walk with an approach that's focused on three main pillars.

The first is prevention through leadership, standards, training, and policies that reinforce expectations. Collaboration with our unions is also key. The second is an effective, appropriate, and timely response if an issue occurs, with numerous avenues for employees to be heard. The third is to review results, seek input, and look for areas to evolve and continuously improve our approach.

Prevention is the most important, so let me start there. It starts first with the tone that's set by the corporation through our values, our code of conduct, and our policies. As well, all five of our collective agreements include provisions with human rights clauses. These are more than just paper: they shape the culture and define the standards to which all employees must hold themselves accountable.

Leadership is where this approach is most evident. The day-to-day interactions our team leaders have with their employees and the tone they set are incredibly important. It's where I've seen a great deal of positive change in the last few years. Leaders who are accessible, know their people, engage with them in the workplace, and recognize good performance see better results. It also helps them to address issues with coaching, communication, and common sense.

To assist them, we provide training when they're first hired and refresher sessions on a regular basis. Core to the training is how to create a workplace free of discrimination and harassment. We also provide this type of training to all employees, starting with our onboarding process. I can provide more detail on the training during our discussion, but I'd like to highlight one example that demonstrates the importance we put on collaboration.

For more than 10 years, employees who are members of the Canadian Union of Postal Workers have participated in a training program called “Human Rights and Conflict in the Workplace”. This half-day training session was jointly developed and is co-facilitated with CUPW, our largest union. Approximately 30,000 employees have completed the training. Topics such as diversity in the workplace, harassment related to human rights, discrimination, and resolving conflicts are well received by participants.

This collaboration is not limited to training programs. Within our major facilities, we have long-standing local joint health and safety committees, where local management and union representatives work to prevent health and safety risks and address issues in a timely manner. In the event an incident occurs, employees have access to several options whereby they can be heard and supported, based on their comfort level. These are communicated to employees through various means to ensure they're aware of their options, as well as the consequences of inappropriate behaviour.

● (1215)

In all, employees have access to no less than eight different avenues, ranging from a discussion with a supervisor to confidential or anonymous programs run by third parties on behalf of Canada Post. I'd be happy to outline these in greater detail when we move to questions.

Regardless of their choice, complaints are addressed in a prompt and respectful manner. When investigating, management will not disclose the complainant's identity unless doing so is essential to resolving a complaint. This is important to the integrity of the process, just as important as ensuring the employee has the proper support in place once a report is filed. The investigation is quickly initiated and logged to ensure a proper response. The employee also has various avenues to turn to, such as employee assistance, for additional support.

Following an investigation, and depending on the circumstances, a range of consequences can apply. Some incidents are resolved with a frank conversation or a warning, while others involve more in-depth intervention. For serious violations, nothing short of dismissing the employee is the right thing to do. These decisions are never taken lightly.

As I said at the beginning, we've made progress, but improving workplace health, safety, and well-being is a continuous evolution. We collect and examine data on all our programs and review it regularly for trends, root-cause analysis, and improvement opportunities. This isn't just number-crunching; it's important in our ongoing improvement. Data allows us to detect trends to determine systemic issues. For example, this detailed level of analysis will greatly help to determine where we should place additional resources and support.

On behalf of Canada Post, I'd like to thank the committee for inviting us to appear. We applaud the government and members of the committee for working to provide clear expectations and direction for all federal employers through Bill C-65. Harassment, intimidation, and violence should not be tolerated in the workplace or any place. Employees should feel they have proper training, support, and protection, regardless of where they work.

Our approach has evolved over many years and aligns with the desired future state described in Bill C-65. We will continue to evolve and improve our approach to not only comply with the final legislation but also seek further improvements.

This is an important conversation, and you're on the right track. Start with prevention and collaboration, as it will have a tremendous positive impact on workplace culture. Ensure there are numerous avenues for employees to be heard and respected, constantly monitor progress, and look for opportunities to improve.

We'll be happy to take your questions. Thank you.

The Chair: Thank you very much.

Now, from the Canadian Bankers Association, we have Marina Mandal, assistant general counsel, for seven minutes, please.

Ms. Marina Mandal (Assistant General Counsel, Canadian Bankers Association): Thank you for inviting the Canadian Bankers Association to appear this afternoon to participate in the committee's review of Bill C-65. My name is Marina Mandal, and I'm the CBA's assistant general counsel.

The CBA is the voice of more than 60 domestic and foreign banks that drive Canada's economic growth and prosperity. The CBA advocates for public policies that contribute to a sound, thriving banking system to ensure Canadians can succeed in their financial goals.

Canada's banks fully support the federal government's actions to strengthen legislation on harassment and violence in the workplace. The CBA's position on this issue is clear: harassment and violence have no place in the workforce or in society. Canada's banking sector will continue to set an example for creating safe, rewarding, and respectful work environments for all employees.

The CBA actively participated in the government's consultations leading to Bill C-65, and we're pleased that the bill contains provisions that address what was a key focus for us: protecting the privacy and confidentiality of employees throughout the process of investigating any allegation of harassment or violence. We look forward to working with the government to ensure that Canada continues to have world-class health and safety advancements for all Canadians, including the more than 275,000 diverse employees of Canada's banking sector.

Canadian banks pride themselves on having leading practices in place to help prevent and address harassment in the workplace. In fact, many of the measures outlined in Bill C-65 are already reflected in existing bank practices. Banks have clear written policies that outline the following: behaviours considered to be workplace violence or harassment, steps employees should take when aware of an incident, how the organization will respond to allegations, and explicit protection against retaliation for raising a concern about workplace violence or harassment. Banks also have mandatory training for all employees on violence and harassment as a condition of continued employment.

If a complaint is brought forward in a bank, there are multiple channels through which incidents of violence or harassment may be reported. This includes channels that do not involve the parties' direct management. An example is an ombudsman office that is independent of other bank departments and reports directly to the most senior levels of the bank—directly to the general counsel or the bank's president and CEO.

Banks investigate all allegations of workplace violence or harassment, and more generally inappropriate conduct, regardless of whether the alleged conduct, if it was found to have occurred, would meet the definition of “workplace violence” or “harassment” under either the bank's own code of conduct or employee policy or under the law.

Prior to commencing an investigation, banks will determine whether it is appropriate for the parties to remain in the workplace during the course of the investigation and will ensure all parties are offered personal support during the investigation—for example, through counselling services offered through the bank's employee assistance program. Once the investigation is complete, they will communicate the findings of the investigation to all complainants and respondents prior to notifying them of the outcome or implementing corrective action. Internal bank review processes must align with legislation and common law, but are created to be flexible in order to account for practical realities. Banks also ensure that all investigations are conducted by a trained investigator who is impartial to the parties involved.

In her speech in the House of Commons, Minister Hajdu said, “... our government recognizes that safe workplaces, free of harassment and violence, are critical to the well-being of Canadian workers....” We agree with the minister's statement, and banks have long worked hard to ensure this is the case within their institutions.

Thank you once again for inviting the Canadian Bankers Association to participate in the committee's review of Bill C-65. I welcome any questions you may have.

● (1220)

The Chair: Thank you, Ms. Mandal.

Next, from Federally Regulated Employers—Transportation and Communications, or FETCO, we have Derrick Hynes, executive director.

Mr. Derrick Hynes (Executive Director, Federally Regulated Employers - Transportation and Communications (FETCO)): Thank you, Chair. Thank you, committee, for having me here today. I'm pleased to be here to speak to you on behalf of FETCO about Bill C-65.

By way of background, I should tell you that FETCO stands for Federally Regulated Employers—Transportation and Communications. That's a mouthful, so we usually go by the acronym of FETCO. Our members are all federally regulated firms in the transportation and communications sectors. We've existed as an employers' association for over 30 years. We are generally large employers in the federal sector, encompassing nearly 500,000 employees and representing well-known firms such as Air Canada, Bell, CN, CP Railway, and Telus, to name a few. Our members are almost exclusively predominantly unionized firms, and we have a rich history of tripartite collaboration within the federal sector.

Our key message today is this: FETCO members are highly supportive of the spirit and intent of Bill C-65. We support the minister's commitment to ensure employees have access to an efficient and effective process when they bring forward complaints of violence or harassment in the workplace.

Canadian workplaces should be free from harassment and violence, period. To this end, our member organizations typically have in place workplace policies that are already largely consistent with the process that will henceforth be mandated under part II of the Canada Labour Code via this bill. We are committed to doing all that we can as employers to improve these processes where deficiencies might exist.

FETCO members applaud the minister and senior officials from ESDC on the work completed to date on this matter, especially related to the comprehensive consultation that has been undertaken over the past 18 months, which we expect will continue once the bill becomes law. This bill, I believe, in fact comes from that consultation. The consultation work dates back to June 2016. In tripartite meetings held on harassment in the workplace, FETCO members noted that government has heard and subsequently responded to concerns raised by key stakeholders. Bill C-65 acknowledges these concerns, which are related to the protection of privacy in the process, the role of the workplace committees, and the responsibilities of the ESDC health and safety officers.

FETCO members also appreciate that government has chosen to provide a broad framework via this piece of legislation but to allow some of the details to be worked out by the parties via the regulatory process. As an example, we are pleased to see that the definition of "harassment" will be tackled by a regulation, thereby allowing two things: first, that the definition can be revised on an ongoing basis in a more seamless manner via a regulatory review; and second, that key stakeholders—of note, representatives from both the labour and business communities—can be involved in developing these important definitions.

FETCO's review of Bill C-65 has resulted in two specific concerns that we hope your committee can consider in your ongoing review of the bill. In fact, I think it's fair to say that our concerns are probably more on the operationalization of the bill through the regulatory process, but I'd like to raise them at this table nonetheless.

First, we would appreciate it if the government provided greater clarity on the potential intersection of this new ESDC harassment process under Bill C-65 with the investigatory powers of the Canadian Human Rights Commission. Our hope is that there would be a single clearly defined process for all harassment complaints. Bill C-65 and the Canadian Human Rights Act provide dual opportunities for such complaints. Each, however, has specific language that could refuse complaints that are being heard elsewhere. It would add certainty if government provided clear direction that these clauses would be used when dual complaints on essentially the same issue are filed.

Second, Bill C-65 speaks to the appointment of a competent person to investigate all harassment and/or violence complaints. We request that government provide greater clarity on this process, as there is already some confusion in this space under the current violence investigation process. Specifically, we request that government acknowledge competent persons can be employees in the organization in question and that the employer would retain the ultimate responsibility for appointing the competent person, as long as they meet the clear criteria that are outlined under regulation. The process should not necessarily default to an outside investigator.

● (1225)

In conclusion, I'd like to repeat our key message: Canadian workplaces should be free from harassment and violence, period. FETCO members are highly supportive of the spirit and intent of Bill C-65. Our members' current practices generally align with this bill. We support the minister's commitment to ensure that employees have access to an efficient and effective process when they bring forward complaints of violence or harassment in the workplace. We are pleased to be part of this solution.

Thank you.

The Chair: Thank you, Mr. Hynes.

Next, from Fogler, Rubinoff LLP, we have Sheryl Johnson, who's a lawyer.

The next seven minutes are all yours.

Ms. Sheryl Johnson (Lawyer, Fogler, Rubinoff LLP): Thank you.

I think primarily the reason I'm here is that I think my textbook has come to the attention of someone. Published in September, it's a guide for the understanding and prevention of sexual harassment. It's not focused on just the workplace, but I have been practising labour and employment law for over 20 years now. I've had a lot of experience on both sides of the road and also with regard to the practical implementation of what you're suggesting with regard to the bill.

I thought I could comment with regard to what my friends have said, and I do agree that what needs to be included in the bill is recognition that it should be dealt with by the parties internally. However, there should be mechanisms built in as well so that if the parties don't get it right and the employer doesn't do a proper investigation, it does default back to the government to address it. It's just to make sure that there's a safety valve there with regard to getting it right in the workplace, because it never should be the case that anyone has to endure that as part of the terms and conditions of their employment.

With regard to the definition of harassment, generally it is included right in the legislation. Currently there is the definition of sexual harassment in the code. It's there specifically. I believe that the definition should be updated. Especially when I was doing training with regard to sexual harassment, and even when I was doing the cover for my book, a lot of people were coming back to me with pictures that involved touching—and it was a man touching a woman. Sexual harassment can happen to anybody in the workplace. It can happen regardless of your gender, your gender identity, your gender expression, your sexual orientation. The way that sexual harassment is currently defined, it still seems that it involves a man and a woman, and there's touching or something of a sexual nature. As discussed earlier, there is also psychological harassment. All forms of harassment can happen in the workplace, and sexual harassment is not limited to actual sexual advances, sexual solicitation, unwanted touching, or unwanted comments. I think the code needs to be updated in that regard.

I agree with my friends on the practicality with regard to balancing this important issue—preventing anyone from having to endure, as a term and condition of employment, harassment or violence—with a need for privacy. Lately we haven't had that. Lately it's been the case that people have been assumed guilty without due process. Unfortunately, that ruins people's reputations and their careers. I applaud the efforts made in this bill to ensure that privacy is respected with regard to the process.

Again, as part of my process in writing the book and part of my practical experience—and hearing what my friends, especially Canada Post, have said with regard to their process—I'd say you need to have prevention and collaboration, effective and timely responses, and review and updating. I did look at the bill with regard to subclauses 3(1) and 3(3), about proposed subsection 125(1) and the regulations. I would encourage the consideration of not only addressing general policies but also having policies for anti-harassment, anti-discrimination, and anti-violence as specific requirements. I don't see that specific wording currently in the bill as it's drafted. I believe this would be a way of giving it some teeth and ensuring that this is implemented and the process followed through in the way you intend it to be.

There's one other potential pitfall that you might experience with the way it's currently drafted. Subclause 5(1) of the bill talks about amending subsection 127.1(1) of the act by having it be reported to a "supervisor". It can well be the case that the supervisor is the one who is the alleged harasser. That person can't be the one you go to or the one you address the complaints to.

With regard to what the banks do, they have an independent outside party, the ombudsman, accepting those complaints, because the complaints might be against the supervisor or the supervisor's manager.

● (1230)

The supervisor isn't in a position to be the one to address the issues or concerns, so having an outside individual who's not directly in that person's chain of command is something that should be addressed and included in the legislation.

I'm happy to answer any other questions or concerns you have with regard to practicalities of implementation or anything with regard to sexual harassment generally.

The Chair: Excellent. Thank you very much, Ms. Johnson.

First up is MP Kmiec, for six minutes.

Mr. Tom Kmiec (Calgary Shepard, CPC): Thank you, Mr. Chair.

[*Translation*]

I will begin with the Conseil du patronat du Québec.

In your presentation, you made some suggestions for improving the bill, but you also spoke about the management rights of employers. Based on what the committee heard yesterday and other testimony, there are sometimes differences of opinion. I'm not talking about sexual harassment, but harassment in the workplace, so the difference between harassment that may occur in managing staff for performance purposes and what an employer must do to ensure that employees do the work they are paid for.

Where is the fine line between harassment and employee management by the employer? What advice do you give to employers to draw the line between the two? Is there another source of information or do you have examples of advice you give to your members?

● (1235)

Mr. Guy-François Lamy (Vice-President, Work and Legal Affaires, Quebec Employers' Council): Thank you.

I would refer you to the definition of psychological harassment found in Quebec's Act respecting Labour Standards, that Mr. Dorval mentioned in his response. Psychological harassment is defined as hostile vexatious behaviour with a generally repetitive nature that leads to a situation of psychological harassment.

The Quebec experience has shown that since 2004, many complaints filed in Quebec related to the employer's right to manage; that's why we talked about it. This was because the complainants had a poor understanding or misinformation about the definition of psychological harassment. In other words, the fact that a manager monitors the performance or work performance of an employee should not constitute psychological harassment.

Of course, if this monitoring or management is done in such a way that it sounds like vexatious, hostile and repetitive conduct and it falls into abuse, that's where the thin separation you talked about should be made. This is why we find it interesting to specify, perhaps in a definition in the legislation, that the employer's right to manage does not constitute psychological harassment.

Instead, it is the analysis of how the interventions are made that makes it possible to determine if a person is turning toward psychological harassment. In our opinion, we must go back to what constitutes vexatious conduct. In other words, unpleasant comments are not necessarily vexatious, but if they are made in such a way that you feel a malicious intent, they could be problematic. To answer your question, that's where we should draw the line.

Mr. Tom Kmiec: Do you think the federal legislation should be more like the Quebec act that I have before me? The definition in the Quebec legislation is fairly long and lists criteria like vexatious behaviour in the form of repeated and hostile or unwanted conduct, verbal comments, actions or gestures that affects dignity or integrity and results in a harmful work environment.

Should criteria like this be put in the federal legislation?

Mr. Guy-François Lamy: We think so. As we mentioned, the definition in the Quebec legislation is good. To improve this act, I would suggest that clarification be made about what is not psychological harassment.

Subsection 15(1) of the Canadian Human Rights Act specifies what is not discrimination. This federal provision should be used as a model for what is not psychological harassment and make clear that the right to manage does not constitute it either.

[*English*]

Mr. Tom Kmiec: Mr. Chair, how much time do I have left?

The Chair: One minute.

Mr. Tom Kmiec: Very quickly, Mr. Hynes, you said that your preference was not to have a definition in the law on what constitutes harassment. Can you please explain some more on why you say that? I'm not a lawyer, as I'll say right away, but my understanding is that it would be preferable to have either a fixed definition in the law or a very fixed definition in common law to eliminate all the gray zones and make it easier for an employer or an employee to understand where that fine line is and where the risks are. If you have a definition that could possibly change from year to year, something that could be considered harassment one year would not be considered harassment the next year. How would your members feel about being placed in such a situation?

● (1240)

Mr. Derrick Hynes: The argument we've been making is that we believe the definition is more suitably placed in the regulations because they allow it to be updated as our understanding of this particular issue changes and evolves over time.

The minister alluded to this in her comments when she talked about cyber-bullying. That was something we didn't even know existed a decade ago. Regulations don't change on a dime. They have to go through a process. Regulations are as strong, in terms of how they have to be enforced by those over whom they are held, as if the language was written directly into the law.

We believe the experts should be engaged fully in developing that definition of what is and what is not harassment. We believe that process will take some time, as it did when we went through part XX and did the violence piece of the occupational health and safety regulations. It's a process the parties should go through—the experts from labour, the experts from business, the experts from government, and outside stakeholders—so that we can engage fully and comprehensively to get a full understanding of what should and should not be contained in that definition.

At the end of the day, whether it's in the legislation or in the regulation, I don't think it makes a difference in terms of how it will be enforced, but I think having it in the regulation gives us the opportunity, under this broad framework the government will be creating with Bill C-65 and the changes to the Canada Labour Code, to go through that process, which will take some time, and I frankly don't think it could be solved at this table in the weeks ahead in finishing this piece of legislation in particular.

The Chair: Thank you, sir.

MP Dabrusin is next, please, for six minutes.

Ms. Julie Dabrusin (Toronto—Danforth, Lib.): Thank you.

My first question is for Canada Post.

I don't know if you were both here earlier today, but we had Monsieur Girouard, from the union. He spent his entire opening statement setting out what he described, from his perspective, as a systemic issue of harassment within his workplace. I hear that you have set out all of the processes you have in place for people to come forward, but for me, it kind of goes to the heart of what we're trying to do here. You spoke a lot about collaboration, but this morning there was clearly a fair bit of complaint.

How does this legislation help us to bridge that gap between what I heard this morning to what I'm hearing this afternoon? How can this legislation help, and is there anything that needs to be improved so we can bridge that gap?

Ms. Ann-Therese MacEachern: Canada Post has been focused for many years on ensuring we create the right workplace climate. We have a very collaborative relationship with our unions. We share a goal in this particular space, both in health and safety and in workplace harassment, to make sure our people are safe and are free of harassment. The way we manage that is through joint committees with our unions. We have both local and national joint health and safety committees in facilities across the country. We also have joint human rights and employment equity committees with our unions. We meet with them at a minimum of twice a year to—

Ms. Julie Dabrusin: I don't have much time, but what I'm getting at is that I was presented with two very different perspectives on the same workplace. I believe you when you say that you both want to have a workplace free of harassment. That's fair. However, I'm looking at this legislation and I'm trying to figure out how it's going to address exactly that scenario. How is it this legislation can respond or help you better respond to what I heard this morning? Do you see any gaps where you feel it might not be responding and might not get us to where we need to go?

Ms. Ann-Therese MacEachern: I'm not sure the legislation will change things for Canada Post, in the sense that we already have many of the goals of the legislation in place. We already have policies on no discrimination, no harassment. We train our people. We have many avenues for them to seek support and redress, and we have consequences.

Maybe where the legislation would be helpful is in the fact that it's coming up, and it'll be another conversation for us to repeat the same things that we do today. In other words, can we do things differently? Are there things that our union would like to see us do differently in the joint committees that we have? That would be perhaps an opportunity for us.

● (1245)

Ms. Julie Dabrusin: If I may drag the lawyer into this scenario, maybe you can help me with this one.

Ms. Sheryl Johnson: One of the things that might be good, and what is done in Ontario, is to have a requirement, either in your regulations or in the legislation, that there be consultation with the health and safety committee, or whatever committee is involved, on the drafting of the anti-violence and anti-harassment policy, as well as on its implementation, because you have a program. If you just have a policy and it's sitting on a shelf, that isn't helpful. You need to have education, a reinforcement of it, and go back at least annually and assess if it is working or why it isn't working. We need to address this issue and concern sooner than annually. How can we do that? I think having the consultation as part of it would be very helpful.

Ms. Julie Dabrusin: All right. Because you have experience with the Ontario system, can we learn things from that legislation that we should be bringing in? You just mentioned one.

Ms. Sheryl Johnson: There are many things. I heard the questions earlier with regard to the concern about an exemption. With any kind of reasonable workplace discipline that occurs, you have an exemption built right into the legislation to say that any proper management action in disciplining an employee is not going to be considered harassment under the legislation. We have that in Ontario. It's a simple exemption. It's not very long, and it covers that kind of scenario.

We do have the definitions in the legislation itself as to what constitutes harassment.

Ms. Julie Dabrusin: I'll stop you on that one, then. Do you like the definitions of harassment in the Ontario legislation, or would you amend that wording if we were going to adopt wording?

Ms. Sheryl Johnson: I think it's appropriate. The way the Quebec legislation is drafted—I have looked at it because I reviewed all of Canada's legislation on the issue—their definition of “psychological harassment” is probably the best definition. In defining “harassment” and “sexual harassment”, the Ontario version is very good. It's meant to be flexible, because not every situation fits every definition, but it's broad enough. The way that the regulation in this bill is worded is in expressions of harassment and violence. You have a general definition in the legislation, and then you give more clarification in the regulation, and that can be updated more easily. You have exactly what the one question was; you had the basis, so everybody knows the rules of the game. Then, as society and our cultural values change, and as the law changes—because it is fluid—that is dealt with in the regulations. I think that's a fair compromise between the two viewpoints.

The Chair: Thank you.

MP Trudel is next, please.

[*Translation*]

Ms. Karine Trudel (Jonquière, NDP): Thank you for your interventions and for your participation in this committee meeting.

My question, which follows on those of Ms. Dabrusin, is for Ms. Fortin and Ms. MacEachern.

A few weeks ago, Canada Post employees spoke out in the press and denounced a culture of psychological harassment and reported on certain events. In addition, during the public consultations conducted by the Prime Minister, a worker called on him directly to denounce this culture.

In this committee, witnesses said that supervisors were psychologically harassing and bullying employees. It seems that these behaviours were directly related to their bonuses.

Is this kind of remuneration part of the culture at Canada Post? We were talking about sick leave and people working overtime on their own route.

You said you have already implemented measures, but I would like to know whether you think Bill C-65 could help to improve the situation and mitigate these common practices that have emerged in recent weeks at Canada Post.

● (1250)

Ms. Manon Fortin (Vice-President, Operations Integration, Canada Post Corporation): With respect to the compensation of our supervisors, I want to make it clear that they do not receive financial incentives related to overtime or work by employees. Supervisors are responsible for operating a postal station, a work unit, safely and productively, and ensuring that good service is provided to clients. In general, this is what we ask them. They have all kinds of procedures to follow as part of their job. We ask them to follow these procedures. In general, they provide the results we ask them to provide. In short, there are no incentives specifically for our supervisors.

I am aware of what has been said in the media and in public. For my part, I have long worked in operations. I worked in Quebec as well as in Atlantic Canada and the Prairies. I have met a good number of work teams and was able to observe the evolution of the situation. We are not perfect, far from it—

Ms. Karine Trudel: I'm sorry for interrupting, but I don't really have a lot of time. These are the only minutes I've been given.

Do you agree that, under the bill, health and safety committees should be able to handle complaints?

Ms. Manon Fortin: Our health and safety committees have union representatives and management representatives at all levels, even in the postal stations, which are the smallest workplaces. I absolutely agree that unions and employers have to work together to solve workplace problems. Whether it is harassment or any other difficulty, the goal is to improve the workplace.

In terms of working to improve the workplace, I think that's the job of the health and safety committees. This is also the case for discussions about workplace issues. As far as individual cases are concerned, I am not sure, because that affects privacy. These are difficult situations. I have been involved in many situations like this since I worked in operations. Some aspects must be kept confidential so that people are protected.

Ms. Karine Trudel: If the complaint concerns a supervisor, what can employees do if they don't have the opportunity to consult the health and safety committee?

Ms. Manon Fortin: There is always the union representative. There are also the possibilities that Ms. MacEachern mentioned. We are talking about the union representative, the human resources representative and the independent whistleblower line, the number for which we published at Christmas. I think there are several avenues. Over the years, I have found that, in general, all these possibilities made it possible to resolve and manage these situations.

[*English*]

Ms. Ann-Therese MacEachern: Perhaps I'll just add to that.

One of the reasons we have so many avenues is that we recognize that you may need different avenues depending on the situation. However, I want to assure the committee that every one of those issues that comes forward is looked at. We have zero tolerance for harassment in the workplace. We share that value. We share that goal, and we honour it.

The Chair: You have 20 seconds.

[*Translation*]

Ms. Karine Trudel: Ms. Johnson, would you like to add anything based on your experience?

[*English*]

Ms. Sheryl Johnson: I have so much to add.

Very briefly, one of the things that was mentioned is with regard to ensuring they can go to somebody. It's not always the human resource department. It's not always.... I think what the bank is doing with regard to the ombudsman makes employees feel more comfortable coming forward, because retribution is one of the main reasons employees are afraid to come forward or are afraid to follow through on their complaints and are experiencing what they are in the workplace.

It is maybe not the case with this employer, but with many employers it's about efficiency. Nowadays, with the economy the way it is, I see a lot of people going off on disability leave and having burnout because it is about bonuses at the end of the day. The incentive is that everybody needs to do more for less. That does have an impact. It's not meant to have the impact that it has, but it does, and they are right in that regard.

● (1255)

The Chair: Thank you.

MP Fortier is next, please.

[*Translation*]

Mrs. Mona Fortier (Ottawa—Vanier, Lib.): Thank you very much, Mr. Chair.

I thank the witnesses for being here today. I think we are all here because we want to find a way to strengthen the proposed legislation. A number of questions have been answered from the beginning and that has allowed us to see that the bill can be improved.

We must help to change the culture. As my colleague said this morning, the status quo is not an option in this case. So we need to find a way to help to change the culture and improve inquiry processes.

What can be done to protect victims and their witnesses or the people who support them? How can Bill C-65 be strengthened? Is this bill sufficient or should it be amended to protect victims, complainants and their witnesses? I would like answers to be brief, please.

Ms. Mandal, would you like to start?

[*English*]

Ms. Marina Mandal: As Mr. Hynes mentioned earlier, we see this as framework legislation. As the Canadian Bankers Association, our main concerns with the bill in its initial proposal form were addressed. Those were the privacy and confidentiality of all parties involved in the investigation, as well as the role of the workplace health and safety committee. Those concerns were addressed.

From this point forward, we want to continue the productive dialogue we had with the government to create regulations that fill out the details of the process and provide for clarity and flexibility for all the parties involved.

[*Translation*]

Mrs. Mona Fortier: Ms. MacEachern or Ms. Fortin, would you like to comment?

[*English*]

Ms. Ann-Therese MacEachern: What I would say is similar to what you heard from our colleague in FETCO. If there's a dual track happening in terms of an issue coming up—either through the health and safety committee or the Human Rights Act—it's important to clarify how that will be managed.

At Canada Post we actually created a situational analysis for our team leaders, so that they understand, if a complaint comes up, whether it relates to physical versus psychological violence, versus a human rights complaint, versus general harassment. We've actually created a template to help team leaders understand which avenue they go to. To clarify or provide some clarity through the bill would be really helpful.

Mrs. Mona Fortier: Mr. Hynes, I know you've shared some comments, but would you add anything else?

Mr. Derrick Hynes: This bill is coming at the tail end of what we view to be a very positive consultation, and it's in the context of a broader, very positive, societal conversation around the issues of harassment and sexual harassment. That's all good. We've taken what was a one-line obligation under part III of the Canada Labour Code to ensure an employer has a policy in place, expanded it, put it into part II, and developed a process that employers will now have to follow. As I stated earlier, many of the employers I represent are already aligning themselves with the steps the minister has laid out here.

In sliding it into part II, we've broadened the organizations that are affected and will be responsible for applying this law within their workplaces. We view that all to be extremely positive, and we're happy to be a part of that solution.

Mrs. Mona Fortier: Madam Johnson, here's some time for you if you want to add some ways to reinforce this.

Ms. Sheryl Johnson: I do. With regard to what could be included in the legislation to help protect witnesses, as well as complainants, as well as respondents—everybody who is part of the process—I would recommend that there be, either in the bill itself or in regulations, bare minimum standards that are included in companies' policies or programs. When they have their written policy, I would see it having to be posted in the workplace so employees know about it, or available electronically, or however it's accessible, so people know they have an avenue.

Have it in there, as well, that all of them have to include that there will be no reprisal for anybody who participates in the process or makes a complaint, if it's made in good faith. The caveat needs to be in there that there won't be any reprisals for anything done in good faith, whether you're a witness or whether you're a complainant.

It should also state in there that everything will be as confidential as possible. I do investigations myself. Sometimes you have to give out who the complainant's name is in the circumstances, because you have to do the investigation. Have in there a statement that it will be as confidential as possible.

Last, with regard to all the different horses that you can ride federally, in Ontario it's only been between human rights and civil that there's a limitation: you can do one or the other. You might want to consider that with regard to if it doesn't really fit.... It depends on how you want it addressed. The definition of workplace violence and harassment under part II is far broader than human rights. It's not limited to human rights. I would see there being some overlap, because it can be based on enumerated grounds, but having it so that you can only do occupational health and safety versus human rights doesn't really fit in the circumstances. Generally, have it that if you're going to choose to do it this way, then you can't do the other.

● (1300)

Mrs. Mona Fortier: Thank you very much.

[*Translation*]

Mr. Dorval or Mr. Lamy, do you have any other suggestions?

[*English*]

The Chair: Be very brief, please.

[*Translation*]

Mr. Guy-François Lamy: I would add a decisive element for a policy against psychological harassment to be effective. It should be ensured that information is accessible to employees. You mentioned the culture change in your question. It is also speaking that we will succeed in changing the culture.

I fully agree with Ms. Johnson. She mentioned that confidentiality must be respected, but that the limits to this confidentiality, which are necessary to conduct an inquiry effectively, must also be taken into account.

[*English*]

The Chair: Thank you.

MP Vandenbeld is next.

Ms. Anita Vandenbeld (Ottawa West—Nepean, Lib.): Thank you very much, all of you.

It seems to me, in listening to the testimony that we heard this morning and the testimony this afternoon, there is a gap in terms of policy versus implementation.

I know, Ms. Johnson, that you are an expert in terms of implementation. I know that Bill C-65 isn't just about having a policy and implementing the policy. We need to make sure that there are processes in place and that there is recourse if the processes are not followed.

Ms. Johnson, could you talk a little bit about how you...? Sometimes this is one of the systemic issues or part of the workplace culture. How do you bridge the gap between having the perfect policy and people who probably believe the policy is being implemented, and then the lived experience of the employees on the ground who would tell you otherwise?

Ms. Sheryl Johnson: I think it's the idea of collaboration again, as well as the idea of being open-minded as an employer. You want to believe you're doing everything, but I always believe in and encourage employers to do workplace audits, to go in, see the culture of the organization, see what it's doing, see how the employees treat each other, and see how the employees treat the employer's belongings and property. That gives you a pretty good example of whether they think you're actually doing what you say you're doing as an employer, because if you don't respect your employer, you're not going to respect your employer's property.

If an employer is saying that everyone is to be treated with dignity, and people are not, they must look at the fact that they have high absenteeism or high turnover, all these different things. I think that as organizations, with regard to implementation, they have to be realistic and open-minded beyond just having the best policy.

Education is one of the most important parts with regard to implementation. As was said by my friend with regard to leadership, the leadership needs to own it, and not just talk the talk, but walk the walk.

Ms. Anita Vandenbeld: How do we get more people to step forward? We heard yesterday that 22% of people in the public service say they've experienced harassment, yet very few of them actually take action.

I know one of the solutions that was proposed was having an arm's-length body, like a tip line or something like that. I'd like to know more about the ombudsperson office that Ms. Mandal mentioned, and then I'll go to the rest of you on how to get more people to step forward.

● (1305)

Ms. Marina Mandal: I think, as Ms. Johnson alluded to, it's a really great way to ensure that there is the chilling effect that other stakeholders have talked about, the concerns that employees have from a privacy perspective as well as from a fear of reprisal perspective.

In terms of the concerns they have about coming forward, a lot of that, if not all of it, is taken away with the anonymous tip line. Information is disclosed about the person who is being accused—not necessarily, but it is disclosed. The complainant can stay anonymous, and the investigation can proceed in the background. In most cases the employee ombudsman's office reports directly to the president and CEO. Again, that independence through the lines of business, including the person's own business, is extremely helpful.

There are other ways in which privacy, confidentiality, and fear of reprisal are managed at the banks, but for the particular function you're talking about, that's the general outline.

Ms. Anita Vandenbeld: Okay.

Ms. MacEachern or Ms Fortin, would you comment?

Ms. Manon Fortin: I think creating those independent avenues for employees to report what they're living through is really important. The ombudsman is one that we have as well. The whistle-blowing line is another. Ultimately, it's about the action that follows. The witnesses are watching. Having been involved in a few of these through some of the independent lines, I think that's probably most important.

On the leadership piece, building those things into performance management plans, really taking care to put the right words there, and evaluating leaders appropriately according to that is very critical in all of this. I'm not sure you should put that in the law, but that's what I think could work.

Mr. Derrick Hynes: Consistent with that, when I asked our member organizations about this, many were proud of the way they're handling it. It starts at the top. There is leadership involved. Offices that are handling complaints report directly into the CEO. There's a culture around the importance of bringing forward complaints. A clearly defined process is in place, a well-communicated policy. Training is delivered to those who have to do the investigations. There's a growing awareness building around the issue.

To Ms. Mandal's point about the ombudsman, I've heard that some of our members have that. Some have anonymous tip lines. The number of avenues you can provide a complainant to bring forward a complaint certainly seems to enhance the number of reports as well.

Ms. Anita Vandenbeld: One of the deterrents for many people in putting forth a complaint is seeing that other people have done it before, but no action or discipline or anything has taken place. That's a bit of a dilemma, because of course it may be that privacy needs have actually prevented people from being able to say when some of those actions have taken place.

How do you overcome that? Is there anything in Bill C-65 that would help with that, or could there be?

Ms. Sheryl Johnson: There could be.

In Ontario, when the complainant is a worker and an investigation is done, both the complainant and the respondent get advised of the result of the investigation as well as any implementation of progressive discipline or any action taken by the employer. They have to be informed. I know of employers who have done the investigation and have done all that properly, but didn't follow through with advising the parties, and they actually got an order from the minister to advise. There is some teeth with regard to that.

The Chair: Thank you very much.

Now, for six minutes, we have MP Genuis, please.

Mr. Garnett Genuis (Sherwood Park—Fort Saskatchewan, CPC): Thank you, Mr. Chair.

I think Mr. Dorval talked about vexatiousness as a key element to psychological harassment. Is vexatiousness a subjective concept? In whose eyes would this be—in the eyes of the harasser, the harassed, or a dispassionate observer? How do you define "vexatiousness"?

[*Translation*]

Mr. Yves-Thomas Dorval: I would ask Mr. Lamy to answer your question.

Mr. Guy-François Lamy: The concept of vexatious conduct is not understood in a purely subjective way under the Quebec regime. It is understood from the perspective of a reasonable person in the same circumstances. That is very important. Whether or not the conduct is considered vexatious depends from one person to another, but under Quebec's regime it is understood from the perspective of a reasonable person in the same circumstances. This criterion is widely used in other circumstances in Quebec civil law and has been incorporated here as well. Its application has not really been problematic.

● (1310)

[*English*]

Mr. Garnett Genuis: I think we usually call that the "reasonable people" rule.

I wonder if any other witnesses have thoughts on how we define "vexatiousness".

Ms. Sheryl Johnson: You can define it in the legislation. What is vexatious and what isn't is a generally understood legal concept, and I think it's the same.... We've had no problems dealing with that in Ontario. Just as my friend has mentioned with regard to Quebec, it's generally understood, so using that word generally isn't a stumbling block.

Mr. Garnett Genuis: Thank you.

I want to follow up on some of the discussion about Canada Post and some of the previous testimony on that. To me, this gets to the heart of the question of what constitutes the definition of "harassment".

We heard a gentleman speak previously about how the response by Canada Post to...I think the phrase he used was "innocent absenteeism", or something like that. He said that in his view, their response constituted harassment.

I'm curious to know how Canada Post responds to innocent absenteeism. As an employer with a parliamentary office here, I think you need to have some kind of response to absenteeism, innocent or otherwise. Does it create problems for an employer when that is qualified in some quarters as a form of harassment, depending on what the response is?

Ms. Ann-Therese MacEachern: There are a couple of things. When people are absent from work, as an organization, as an employer, we want to see them be well, so following up and making sure people have the right support is absolutely important. That's the principle we keep in mind. Do we talk to people and make sure they're getting the support through their physician or otherwise? Yes, we do.

At Canada Post we have a pretty extensive disability management team. They're professionals, and their job is to ensure that the right medical processes are being followed and the right support is provided. With respect to absenteeism, again, we have a desire to make sure that people do get the right attention so that they're back at work, which is probably a healthy place to be.

Maybe Manon has experience that she can add to that.

Ms. Manon Fortin: I think you've said it all. All I'm going to say is that as a leader in operations, I always encourage team leaders to be good human beings and to welcome their employees back to work. They know their employees the best.

Welcome them back to work, ask them if they're okay, and provide the support systems that Ann-Therese talked about if they're not. I think that's just being a good leader, so I certainly don't see it as harassment in the definition that we know.

Mr. Garnett Genuis: I'll ask a follow-up question and then maybe open it up.

Yes, employers of course want to do everything they can, generally speaking, to help their employees be well and be able to come to work, but is there a risk in a situation of an employee basically not doing their job in the proper way and seeking to use a complaint of harassment as a way of basically countering their employer's efforts?

Ms. Johnson is shaking her head.

Please tell me how we avoid that potential risk.

Ms. Sheryl Johnson: It's hard to avoid, because it happens all the time. That's why there's the exemption that should be in there with regard to good faith allegations being made. The exemption with regard to anything that's done by management as part of its proper management rights and doing its proper progressive discipline wouldn't be considered to be harassment.

You can't avoid the possibility that someone may make a complaint that they're being harassed, but that's why you investigate and that's why you decide on the appropriate manner of investigating. It may well be looking into the history and finding out that it really isn't a case of harassment, and then having it done there, without having to bring in a third party investigator in order to deal with the situation.

Mr. Garnett Genuis: I wonder if it raises some concerns in the parliamentary context, Ms. Johnson, if I could have your thoughts on this. Basically, it's the Minister of Labour's office that is involved in making those investigations, which could involve investigations into the offices of opposition MPs. It could theoretically involve her having to do an investigation into her own parliamentary office as well. Does that seem like—

● (1315)

Ms. Sheryl Johnson: That wouldn't be appropriate—

Mr. Garnett Genuis: Thank you.

Ms. Sheryl Johnson: —so in those contexts there should be flexibility built in. It should be an investigation done as is appropriate in the circumstances. I think that language should be in there in order to give it some flexibility with regard to what you do in the circumstances. In that context, it should be someone who is independent, is trained to do those kinds of investigations, and is completely neutral and impartial with regard to the process.

The Chair: Thank you.

Go ahead, MP Fraser, please, for six minutes.

Mr. Sean Fraser (Central Nova, Lib.): Thank you very much.

Over the course of the testimony, I think we're narrowing the number of issues on which there seem to be different perspectives. I sense that most people are pretty happy that this issue is being tackled, but it comes down to the details. One of the areas where I think the details are still controversial, to a limited degree, is how we ensure that there's integrity in the process, specifically on the issue of the role of the committees versus a more employer-driven process.

Mr. Hynes, I think you said that we shouldn't automatically default to an external third party investigation. I'm curious. I have just a few questions on this issue. It was your comment, I think, so why would the employer be the better first stop?

Mr. Derrick Hynes: When we first started talking about the issue of sexual harassment in the federal sector in a tripartite way and we were considering what the alternative ways forward were, one of the options presented by the government was to take this clause in part III of the Canada Labour Code and move it into part II, for a number of reasons, one of which was that it would broaden the scope of who that clause now is applied to.

One of the issues that percolated during that initial discussion was who should be involved in these investigations, and there was, I believe, a general recognition and acceptance at that table that sexual harassment complaints and sexual violence complaints were different, that there was a sensitivity around them that made them different from a typical violence complaint. I think what was generally agreed on at that table was that the number of people with access to that information throughout an investigation should be really tight, as tight as you can possibly make it. I think that really was the genesis of removing the workplace committee from the investigatory process.

That did not mean the workplace committee could not be involved in setting the policy, ensuring the policy is enforced properly, and dealing with any systemic issues of harassment in the workplace. What it meant was that in individual investigations there would not be a specific role for the committee. That doesn't mean that there wouldn't be a role for the union. The employee could go to their union rep to seek assistance and guidance, to file a grievance, and to go through the process.

That's kind of where that came from. I don't know if that answers your question.

Mr. Sean Fraser: Yes, it's very helpful.

I want to ask Ms. Johnson a similar question.

I noted the testimony in response to the questions by my colleague Mr. Genuis to the folks in the airline industry, who I think are still in the room here. They were essentially saying that this is a serious issue for them. I understand why, and you don't want the investigator to be the harasser. It makes no sense.

Ms. Sheryl Johnson: No.

Mr. Sean Fraser: Ms. Johnson, you suggested there's a process that I think you would have faith in, as long as there were a government backstop to ensure the investigation was done in a reasonable way.

Can you explain why that's the appropriate safeguard that both protects the privacy of everyone involved and also maintains integrity in the process?

Ms. Sheryl Johnson: What I was saying is that I agree there should be flexibility initially with regard to the workplace parties themselves being the ones to address the issue, to investigate it, and to try to resolve it. I think that is what's being reflected in the bill as it's currently drafted.

With regard to what my friend said about privacy requiring that the health and safety committee be kept out of those kinds of complaints, it is reflected in the bill. There are the exceptions with regard to sections 128 and 129 when you're talking about the investigations.

To me, having the parties own it and being committed to it is very important to the integrity of the process. However, when they aren't doing what they are supposed to do, and if the union or an individual employee is concerned that the employer has only gone through the motions with regard to the investigation, or the employer has had an inappropriate result, then you go to an independent third party as the safety valve. That's where the internal process hasn't worked.

● (1320)

Mr. Sean Fraser: Building on that, I want to create a system whereby we encourage people who have been harassed to come forward. If the option feels like you're going to not be given justice, I would understand why there would be a chilling effect and somebody may choose not to report.

You mentioned the idea of ensuring there is someone in a separate chain of command. I think it was our witnesses from Canada Post who suggested that they have an ombudsperson-type model for this kind of scenario.

Does the legislation need to be changed to accomplish this? If so, how so?

Ms. Sheryl Johnson: It does, because language as it's currently drafted says that the employee reports to their supervisor. That's too closed. You need to expand that to be the employer's supervisor, and then perhaps have a subsection saying that when the person involved in the allegations is the employer or the supervisor, then it's to be a neutral third party.

You can leave it flexible as to who that is, but it's for the employer and the workplace parties to think about who would be the appropriate person that people would feel comfortable coming forward to without fear of reprisal.

Mr. Sean Fraser: Excellent.

My final 30 seconds is on a different topic.

Mr. Hynes, you talked about the consultation to date and referred briefly to the regulation versus the legislation for the definition of harassment.

One of the things I have some concerns with is the inability of this committee, over the course of about eight hours, to properly consult all the stakeholders to make sure we get the definition correct.

Do you think a reason to get it right is by putting it into regulation so stakeholders can be properly consulted, both on the employer and on the union side?

Mr. Derrick Hynes: Yes, I think that is the most appropriate place to have that conversation. The experts, the stakeholders, can meet and go through what honestly is sometimes a painful process of fighting over words—ands and ors and buts—that matter at the end of the day. What we would end up with, I believe, is a solution that is mutually agreed to. We have language that is then embedded in regulations that literally have the force of law and that I believe accomplish a better result, and, to your point, we do that in the next few hours.

The Chair: Thank you very much.

Go ahead, MP Harder, please, for five minutes.

Ms. Rachael Harder (Lethbridge, CPC): Thank you very much, Chair.

My first question is to Ms. Johnson.

You have made some excellent comments and observations with regard to the power of investigative work and where that's concentrated, I suppose you could say.

Once a report has been composed, an investigation has been completed, and there is a report, right now the legislation doesn't say that the report needs to make its way back to the complainant. Do you believe that would be a good addition to this piece of legislation, or do we leave the complainant out of it?

Ms. Sheryl Johnson: No, I don't think the report itself, especially if it's with regard to a sexual harassment situation.... You do as much as you possibly can, as an investigator, to make sure that the witnesses aren't identifiable either. To a certain extent, exposing the entire report undermines the commitment to confidentiality and other concerns you may have with regard to the process.

I think the results, as well as the implementation of what happens as a result of the results, should go to both the complainant and the respondent, but I don't think the report itself should be provided.

Ms. Rachael Harder: Okay. Thank you.

A competent person can be put in place to help work through the investigative process. Right now there's no definition of what would qualify a person as competent. Do you believe that should be added to this legislation?

Ms. Sheryl Johnson: I think it falls along the same line as what we were discussing with some of the other definitions. That might be better put in one of the regulations or....

“Competent” should mean someone who's had training, who's done it before. In Ontario some of it is built into the legislation. As an example, if it's going to be a private investigator, it has to be a licensed one, or a lawyer. Those things are given as examples. It says, “a competent person”, and then they give examples such as a licensed private investigator, but they don't specifically say it has to be this or that. I think you limit yourself too much if you put a very specific definition in the code itself.

Ms. Rachael Harder: Would you even caution against a general definition?

Ms. Sheryl Johnson: I think a general definition is a very good idea. I never caution against the general one. It's the specific one, saying it's limited to these set people, that would be problematic.

● (1325)

Ms. Rachael Harder: Okay. Thank you.

Mr. Hynes, this piece of legislation is interesting because it allows the department to conduct pilot projects to test the effectiveness of new rules or new regulations. It says in the legislative review that the purpose of a pilot program is to test new rules in a specific industry or region. Given that the federal government regulates businesses that operate across provincial borders, wouldn't this create a competitive disadvantage for one region or one industry over another?

Mr. Derrick Hynes: I don't think that's necessarily so. I think what that clause is trying to get at is examples whereby the department can try to learn ways of doing its work better. It wants to launch a pilot project around the way it, for example, ensures compliance under the act or the associated regulations. Unless that pilot project involved some onerous responsibility of reporting on the employer community, there might be a way of managing it in a way that has not much of an impact, but I think we'd have to negotiate that with the department as we moved forward.

Ms. Rachael Harder: Let's say new regulations are put in place for fishing boats in Nova Scotia, but those same regulations are not in place for fishing boats in New Brunswick. Would that not put Nova Scotia at a significant disadvantage because of the costs of meeting those regulations in that area?

Mr. Derrick Hynes: In that example, it would impose a burden in that particular place, yes.

Ms. Rachael Harder: Speaking on behalf of industry stakeholders, would you support that?

Mr. Derrick Hynes: I think the intention behind this clause is not to do as you've described but to ensure the department is doing its best to ensure compliance. They may look at the way specific industries are doing their work and review their work in that regard. I don't think it's necessarily to create standards that exist only in one region.

Ms. Rachael Harder: Ms. Johnson, would you care to comment?

Ms. Sheryl Johnson: If it's done in the industry as a whole, I think that's fair. Doing it by region, I think, could lead to those issues that you raised.

The Chair: Thank you.

MP Trudel is next.

[*Translation*]

Ms. Karine Trudel: My question is for Ms. Johnson and pertains to small, non-unionized workplaces.

Under Bill C-65, the employee must complain directly to the employer. How would the bill apply if the harasser is the employer?

[*English*]

Ms. Sheryl Johnson: That's difficult, because there are fewer resources and less anonymity. The employee is going to feel much more exposed. They're probably going to feel much more intimidated coming forward.

In my experience, the size of the organization shouldn't matter in their obligations in the workplace. However, perhaps some of the plants.... In Ontario, if there are six or more employees, every obligation applies. Under five employees, you don't have to post everything and you don't have to do some of the other things that are required as a bare minimum, because you're so small.

I think the general obligations as a duty of an employer to ensure the health and safety of their workplace should apply no matter the size of the organization. The difficulty is going to be having another person they can report to, but it doesn't necessarily have to be someone internal to the organization. In Ontario, you are allowed to have someone outside the organization as that safety valve, and that could be considered by the small workplaces.

[*Translation*]

Ms. Karine Trudel: In the case of small employers, should we make calling upon on an outside resource one of the regulatory requirements?

[*English*]

Ms. Sheryl Johnson: I think the regulations would be helpful. I'm always conscious of over-micromanaging situations as well and making it difficult for employers to function. However, depending on how it's done, if they're not going to do it on their own and it becomes a problem or is demonstrated to be a problem, then a requirement should be built in that there be an external resource.

● (1330)

The Chair: Thank you.

That ends the second round.

We have about half an hour remaining of our time. I think we have enough time to do a third round.

Up first, we have MP Genuis.

Mr. Garnett Genuis: Thank you, Mr. Chair.

How much time do I have?

The Chair: You have six minutes. Use as much of it as you wish.

Mr. Garnett Genuis: All right.

Maybe one of my colleagues will jump in; we'll see.

Let me start with this question in terms of the general environment around this legislation.

It seems to me that having new rules—potentially stronger rules, arguably maybe weaker in some respects, but in any event new rules—doesn't change the fact that some of these questions will be discussed and partially adjudicated in the public and in the media.

What happens when somebody either doesn't use the designated process, even a new process, and instead allegations are made in public against a company that is maybe represented here or maybe is not, or let's say an investigation is undertaken and a determination is made that harassment did not occur, or maybe the complainant isn't satisfied by the remedies, and then there's further public comment around that? How should companies respond to these kinds of public discussions? How should we all respond to them?

It seems that there's a legitimate concern when people hear these kinds of stories and they don't necessarily see other aspects of the process that may or may not have occurred.

Ms. Sheryl Johnson: With regard to what we can regulate, we can regulate how people treat each other inside of the workplace. With regard to people going out and making public statements and dealing with them publicly, we can't regulate that, but I think we as a society and we as people reacting to it need to remember that we live in a democracy and that there's due process. We have to remember, as in any context, to always ask questions. Accept what's being said in good faith; however, ask the questions, follow up, look underneath, and make sure you're fully informed of what's happening before you make a comment or make a decision.

Mr. Garnett Genuis: Does anybody else want to comment on that? Okay.

If not, then I wanted to further probe this issue of whether harassment should be defined in the legislation or in regulation. I think we've heard some perspectives from both sides.

Mr. Hynes, I know you suggested regulation. Maybe I'll just make a quick comment from my own perspective and then give you a chance to respond to that.

It seems to me that given some of these fine distinctions that we're talking about and the potential slipperiness in certain cases about what is covered by a term and what isn't, it is important that we have a clear definition, one that's well known and one that has broad buy-in. It would seem to me that the function of legislation is to establish the framework and also to deal with the most important aspects and leave the details to regulation, but to ask us as legislators to pass a bill that creates a specific process for dealing with something called "harassment" but that doesn't actually say what that something is is a little bit of an unusual way of legislating. It's like saying we're going to have a process for dealing with thing X and we'll leave it to the government in the future to define exactly what thing X is and revise that definition in the future. I suppose leaving it to regulation requires us to trust the good faith of government and to assume that they have the noblest of intentions in providing that definition, and very often I'm sure they do, but our function as a legislature is to hold the government accountable for establishing clear parameters when we legislate. It's not simply to say, "Okay, go ahead and define this thing that we think is very bad but have yet to define."

Mr. Hynes, what do you think of those arguments? Do they hold water in your view?

Mr. Derrick Hynes: I think leaving the details to the regulations is the legitimate way of approaching an exercise like this. In the case of occupational health and safety in the workplace, we have the Canada occupational health and safety regulations, and that document is maybe 250 pages long. It has in it provisions that set the framework for the occupational health and safety requirements in the workplace. Employers are held to that standard, and compliance is enforced by the government.

For example, in the case of violence in the workplace, the definition of "violence", as I understand it, is embedded in the regulations. The argument we've made is that the same should occur here. We don't necessarily negotiate, but we bring together the experts, those around the table with on-the-ground experience of what this looks like—the legal community, the business community, the labour movement, government officials, and others—and we work through the details of what that definition looks like. I think this bill, with the changes it will bring to the Canada Labour Code, does create a strengthened and strong umbrella framework for addressing harassment and violence in the workplace. It moves the chains along further from where they were previously, but in terms of those specific details around the definition, I fundamentally think that it just makes the most sense.

● (1335)

Mr. Garnett Genuis: I want to get Ms. Johnson in, but for me, honestly, that doesn't address my issue. Yes, there's obviously a working-out process that has to happen, but legislators are being asked to pronounce on a process for dealing with something before that working-out process has happened. Generally what you expect with legislation is that the working-out process happens, yes, and it happens in places such as here in the parliamentary committee, but then we ultimately have the ability in a third reading vote to pronounce on that, right?

Ms. Johnson, I'd like to hear your comments on this.

Ms. Sheryl Johnson: I believe that—and I could come up with one right now—what the definition of harassment or violence would be.... You need that general one that everybody understands built into the legislation. It's either common—like violence, for example—or conduct that could result in physical or psychological harm to an employee, whether it's threatened or actual, right? The employee has to believe that they're going to be harmed.

That is something that I think should be very broad and can be applied to many circumstances. Then you have the regulations to flesh it out. I do believe that a broad definition should be in the legislation itself, with the fleshing out done in the regulations.

The Chair: Thank you very much.

Go ahead, MP Morrissey, please, for six minutes.

Mr. Robert Morrissey (Egmont, Lib.): Thank you, Chair. I want to briefly follow up on the last discussion.

Mr. Hynes, you have witnessed numerous pieces of legislation. Is it unique for a piece of legislation such as this to put an item that would require a lot of examination—such as when you're defining harassment—within regulation, versus legislation?

Mr. Derrick Hynes: No, it's not unique. Frankly, I think it's the way the process works.

On the regulatory side, when it comes to occupational health and safety in the workplace, we meet in a tripartite way regularly. There is a go-forward regulatory plan that the department publishes when it looks at regs that they feel need to be updated because circumstances have changed, our understanding of issues has changed, or technology has changed.

What we do, then, is open those regulations, go through them in a tripartite way, and discuss ways of revising them. We just finished one a number of months ago on the issue of confined spaces in the workplace. This is, I believe, just a fundamental part of the process. The legislation lays the overarching framework for the way forward, and then we work out the details through the regulatory process, which can be time-consuming but is fruitful, because I think we end up with the result that all the stakeholders around the table and society at large can agree is a logical way forward.

Mr. Robert Morrissey: Could you do both? Ms. Johnson made a reference to maybe a general definition and a more detailed definition. Would you think that it would be a conflicting process?

Mr. Derrick Hynes: I'm not sure it would be conflicting. I think what we would have to do at that stage is have a discussion around what the language was in that overarching definition. I believe that as parliamentarians you might want to hear from the stakeholder community around the specific language that's embedded. It could work. I don't know if it's normally the way we would do it federally, but it could work. I do think that there should be certainly a complete conversation at the front end around what the specific language would be.

Mr. Robert Morrissey: Okay.

I have two very different questions. One is for Ms. Johnson. I believe it was you who made the reference—and this has not been discussed a lot—to mitigating against being found guilty without due process. Nobody likes to talk about that much.

● (1340)

Ms. Sheryl Johnson: That's a very important part of the process. You're going to get a lot of strong reaction, one way or the other, from the employees in your workplace as well. Generally, in my experience, when anyone comes forward, there always will be camps of employees with regard to the complainant versus the respondent. In order for the entire process to be respected, the confidentiality and dignity of everybody involved needs to be respected and encouraged. That includes no gossiping, not talking about it, not coming to judgment about decisions.

We need to go through our process. We need to apply natural justice. We live in a democracy. We have a criminal justice system in which you are innocent until proven guilty, and that is something everybody—the stakeholders, the employers, the employees—all need to grasp and hold onto to ensure this is all done right. If we go too far to one extreme or the other, we'll undermine the entire process.

Mr. Robert Morrissey: Do you think the legislation is strong enough in that area?

Ms. Sheryl Johnson: There is some definite language you can add to make it stronger. I didn't see anything in there with regard to minimums. As I mentioned earlier, there are no reprisals if you come forward with an allegation or you participate as a witness, as long as you do so in good faith and you're not vexatious about the complaint.

There are exceptions that can be put in, as mentioned earlier, with regard to the proper exercise of management rights not constituting harassment or violence in the workplace. There are definitely gaps in there that could be filled.

Mr. Robert Morrissey: I want to go back to Canada Post.

There was really conflicting testimony given earlier, versus today's. In fact—this is not a direct quote, but it's close—a witness said that there is systemic harassment in Canada Post in managing overtime on routes, and that bonuses to supervisors are determined by managing overtime.

Would you care to comment on that? The testimony we're given now is that this does not happen.

Ms. Ann-Therese MacEachern: We talked earlier about the importance of leadership when creating a positive workplace culture. There's probably no more important role than that of a team leader with his team, so it's counterintuitive for an organization, including ours, to incentivize people to—

Mr. Robert Morrissey: Can I stop you there?

Ms. Ann-Therese MacEachern: Sure.

Mr. Robert Morrissey: I want you to comment specifically on how Canada Post manages postal workers, especially postal route deliverers, with respect to excessive overtime and what Canada Post determines to be the timeline to complete a route.

The Chair: Make it very brief, please.

Ms. Ann-Therese MacEachern: I'm going to turn this over to my colleague.

Ms. Manon Fortin: We have thousands of routes delivering parcels and mail to Canadians every day, and as in every other business, there is overtime required on certain days. There is a process for employees to have an interaction with their supervisors. They know their routes best, so before they leave, we say, "You've seen the mail that you have. Come and talk to us about what you think you will have in overtime." There's also a process after they're done for the day. They need to come in and talk to us about their overtime.

That's the interaction. It happens thousands of times every day in our operation. When there's what's considered above-average overtime, it stands out, and of course, as a responsible employer, we need to have a look. We need to understand why an employee would work four hours a day, every day, on a route that's built on averages. There's a process to handle that, and that's how we manage overtime at Canada Post. It's a daily occurrence.

● (1345)

The Chair: I hate to jump in, but we're actually over time.

MP Trudel is next, please.

[*Translation*]

Ms. Karine Trudel: Thank you, Mr. Chair.

My first question is for Mr. Dorval. Mr. Hynes and Ms. Mandal may also join in after.

On February 12, 2018, officials appeared before this committee. They noted that implementing the act would entail costs for employers. They said that these costs would fall over time, owing to a potential drop in absenteeism, increased productivity, and a reduced number of disputes.

Would you like to comment on those costs? What might they represent for smaller employers?

Mr. Yves-Thomas Dorval: The costs will depend on the regulations made under the act. As we indicated in our brief, it would be best if the regulations are provided at the same time as the law comes into force. In any case, employers have the duty to maintain a healthy workplace, among other things. So they are already required to be vigilant to processes and to develop internal policies.

The bill will not completely change everything for employers. For them, it will really depend on the regulations. As for small companies, if the regulations establish very detailed processes requiring small companies to call upon outside expertise to develop a policy internally or an assistance mechanism, that would certainly represent a cost to those companies or SMEs. As I said earlier, employers already have certain costs related to their responsibilities.

I would like to pick up on the question asked earlier. With regard to obligations, that is already being done to some extent. Rest assured that the environment will not be revolutionized overnight. Nor will we be on very different terrain. As regards workplace health and safety, for instance, many things are already being done.

There will be costs and they will depend above all on the scope of the regulations and the obligations set out in them, but employers already have responsibilities and the vast majority of them fulfill those responsibilities appropriately.

Ms. Karine Trudel: Thank you.

Ms. Mandal or Mr. Hynes, would you like to add anything?

[*English*]

Ms. Marina Mandal: Sure. I think with the banking industry, as I set out in my opening remarks, a lot of the measures required by the bill and the regulations are already in place, so it's lucky that way, but to echo what Mr. Dorval just said, that was in a sense always the obligation, and banks take some proactive steps to have policies and processes in all the things I mentioned earlier.

In terms of costs, there are of course always going to be costs of compliance with new rules, whether that's on the reporting side or whether it's audit functions. Whatever is put in place, to meet the letter and the spirit of the law there will be additional costs, which might be more burdensome for our smaller banks that have fewer resources than the largest.

I have two things to suggest there. First is that to the extent possible, the regulations be streamlined and made clear, so that not a lot of money is spent on lawyers on how to interpret them—and I'm a lawyer, so I can say that. The second is flexibility, so that those employers who do have practices and policies in place could leverage off them. It would be good if there could be some recognition that the way you do this, the way you meet the objectives of Bill C-65, doesn't have to be exactly prescribed either in the legislation or the regulations, but managed and understood by the labour program and others so that we don't have to replicate what we're already doing.

● (1350)

Mr. Derrick Hynes: I can't add much to what Ms. Mandal said. I wholeheartedly agree with every point she just made.

The large employers I represent in FETCO generally already align with the new provisions that will be put in place. Will there be some incremental costs around new regulatory requirements and reporting? We can expect there to be some, as there are when any new legislation or regulation is introduced. At the outset, as we've been articulating, a harassment-free workplace is the ultimate goal that any employer wants to see. Not only is it simply the right thing to do, but it's good for business: absenteeism goes down, productivity goes up, and your employees are happier. It's good for everyone, which is why we are supportive of this bill.

Will there be some incremental cost increases? Likely yes, but as we stated earlier, and as Marina did, we generally align with the principles that are laid out in the bill and the processes that are articulated anyway, so we don't expect a tremendous change.

The Chair: Thank you.

MP Fraser is next, please.

Mr. Sean Fraser: I want to shine a bit of light on the "competent person" selection process.

There was some testimony that perhaps the appropriate method of selecting them would be to say, "Look, give some clear guidelines, but potentially default to the employer's choice." I keep coming back in my mind, trying to put myself in the shoes of a harassed person in the workplace, who's not at their best because they have been harassed and they have no faith in the process. The natural human reaction is not to go to the legislation and the provisions in the regulation and say, "Oh, I have faith the employer will put a good person there." They would tend to say, I think, if I can read human emotion well, "I don't want to go before the person selected by the person or company that has perpetrated the harassment."

Is there a role for the unions and the employees to have a voice in who the competent people are who are going to be conducting this investigation?

I'll open it up to whoever wants to jump in.

Mr. Derrick Hynes: Currently in the health and safety regulations, under the violence investigation process there are criteria laid out for who the competent person is. They are as follows. The competent person is to be defined as somebody "who is impartial and is seen by the parties to be impartial; has knowledge, training and experience in issues relating to work place violence"—in this case, of course, it would be harassment—"and...has knowledge of relevant legislation."

Normally that works fine: a competent person is appointed. In large organizations, it is often a person within the organization who has met these criteria, is agreed by parties to be reflective of the criteria, and could therefore conduct an investigation.

In issues where the complaint is more egregious or more sensitive, you might bring in an outside investigator to conduct an investigation on your behalf. One of the issues that we see come up from time to time is some complexity around choosing the competent person, and a debate, if you will, between the employee—or the union—and the employer around who that person should be. One side might agree that the criteria are met; the other side might not. Therefore, what is implied is some sort of a veto right over who the competent person is.

This is an important matter that we should work out through the regulatory process. There could be a consultation around this, to figure out a way forward.

I know some organizations have an agreed-to roster, for example. The union and the employer sit down and agree to a list of names, and we all agree they're all acceptable. We think there might be a way of getting through some of those complexities—

Mr. Sean Fraser: Excuse me, but I'm a bit limited on time. I'm just curious to ask the other witnesses, very quickly: would there be a problem with having, for example—in the arbitration context, this happens all the time—a roster of qualified people who both the unions and employers have agreed to ahead of time?

I see some nods. I'll give a chance to the witness from Antigonish.

Ann-Therese, go ahead.

Ms. Ann-Therese MacEachern: Certainly that's our practice at Canada Post. We're a large employer, so we have the ability to do that. That's our practice, and we publish it on our website as well.

The other thing we do, which is important to keep in mind, is agree to the person prior to an investigation taking place. I say that because although I may be competent, perhaps if I'm too close to the matter, you might want to have a different person. What we do is agree, prior to an investigation, on whether we are still going to assign a particular person or someone from a different part of the country or a different part of the city. That's worked well for us.

● (1355)

Mr. Sean Fraser: I have one more topic. Maybe we can revisit the competent person if we have a minute left. We have a bit of time.

Ms. Johnson, you talked about there being a need to explicitly prohibit reprisals. Of course, a fear of reprisals puts a chill on anybody who would consider reporting. I've heard of many examples at our constituency office of people not knowing what to do. Sometimes federally regulated employers can't point to a specific example of being bullied because they launched a complaint, but they haven't been promoted in eight years and all their contemporaries have been. There is this soft, informal feeling of reprisal. They can never prove it, because it hasn't been proactive discrimination following the harassment complaint.

Ms. Sheryl Johnson: It hasn't been direct. Yes.

Mr. Sean Fraser: That's right. Are there safeguards we can put in place to not just put on paper that reprisals are bad and you shouldn't do that, but to prevent reprisals from happening in the workplace? How would we go about doing that?

Ms. Sheryl Johnson: That comes down to how you enforce the legislation. I don't know if you can specifically regulate that or legislate that. You have your set rules. If they're not followed, then what's the process for dealing with it?

It's what I mentioned earlier with regard to making sure you have the bare minimums in there so that employees know, "Okay, I can make a complaint. This is the process. These are my protections under the process." That was the one thing I was talking about. However, with regard to that scenario, there's no way that I can think of to directly legislate that.

Mr. Sean Fraser: Essentially, if you've prohibited reprisals and an employee feels they're suffering reprisal, they could sue the employer, for example.

Ms. Sheryl Johnson: They could sue the employer, or you could build in, as an enforcement mechanism, that they have the ability to make a complaint to the government with regard to that, and then they can have an independent investigator, an officer or investigator, look into it to see whether or not there was a violation of the legislation.

Mr. Sean Fraser: Thank you.

I think that's my time.

The Chair: It's pretty close. That is the end of the third round. We don't really have time to get into a fourth, but I am going to take this opportunity we have, just two minutes, to ask a question about something I have not heard addressed today.

I know that for those who find themselves the victims of harassment and choose to avail themselves of whatever processes and opportunities are in front of them, one of the biggest concerns is the time it takes to address the complaint, and then, of course, to resolve the complaint. Are there benchmarks within each of your organizations right now that you try to achieve? What are those benchmarks? Do you measure that in any way, shape, or form?

Maybe we'll start with Canada Post.

Ms. Ann-Therese MacEachern: We don't have a benchmark. The reason we don't have a benchmark is that situations vary so much. Depending on the details of a situation, it would be very difficult to establish a benchmark.

I would say two things. Timeliness is really important. Being able to not only begin an investigation but to close an investigation as quickly and as effectively as possible is important. It also reflects on the whole notion of how you prevent these situations from recurring. If you're able to address things effectively and quickly, it will help prevent the recurrence of an incident. That's our position.

The Chair: I will put the question to the banks.

Ms. Marina Mandal: There are no benchmarks, no set time limits within which a complaint has to be fully investigated and resolved, for reasons similar to what was just mentioned.

What I can say is that there's a commitment from the banks to the complainant to have a timely, thorough, confidential investigation. When you think about the range of things that could be alleged or brought forward, from inappropriate conduct to sexual violence, to have a timeline of six months, 12 months, or whatever doesn't make sense. The commitment really is that these are some of the most sensitive things we could be dealing with in the workplace, and we don't want to manage to deadline, because that's not going to guarantee the most optimal outcome and the most optimal resolution.

The added factor to timelines is that there are certain complexities that are fully outside the control of the employer, such as if one of the parties is on a leave of absence and cannot be interviewed, or if there are IT issues like an email pull that takes *x* number of weeks or days, or if there are other experts involved, medical or legal.

● (1400)

The Chair: I'm almost out of time, but I just want to jump in here. I understand the idea and the concern around benchmarks, but there's another part of the question: is it measured?

In my past employment, if it wasn't measured, it wasn't done. My concern is that I'm not hearing that this is being measured at all in many industries. We hear time and time again from victims that the time it takes to go through this process re-victimizes them. It becomes a mental health issue due to stress and all these things.

We're out of time, but I want to leave that thought with you. Regardless of whether it's in the legislation, we really need to get to a point where we're at least communicating to the victim what that timeline will look like.

At any rate, I have to close it at that. I want to thank all of you for being here. To all of you who stuck around from the earlier session, again I thank you as well.

Thank you to my colleagues and thank you to everybody who makes these meetings possible—people to my left, to my right, and behind me. Enjoy the rest of your week. We will see everybody back here next week.

Thank you very much.

The meeting is adjourned.