



THE CANADIAN
BAR ASSOCIATION
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June 7, 2019

Via email: EDSC.TRA.PHV-HVP.LAB.ESDC@labour-travail.gc.ca

Hilary Flett
Director, Harassment and Violence Prevention Division Labour Program
Employment and Social Development Canada
Place du Portage, Phase II, 10th Floor
165 Hôtel-de-Ville Street
Gatineau (Québec) K1A 0J2

Dear Ms. Flett:

Re: Proposed Work Place Harassment and Violence Prevention Regulations

We are writing on behalf of the Canadian Bar Association's Labour and Employment Law Section and Women Lawyers Forum (CBA Sections) in response to the proposed *Work Place Harassment and Violence Prevention Regulations*.¹ The CBA Sections previously commented on the proposed regulatory framework for Bill C-65.²

The CBA is a national association of over 36,000 lawyers, law students, notaries and law teachers. Among our primary objectives are improvements in the law and the administration of justice, and promoting the rule of law. The CBA Labour and Employment Law Section includes lawyers who act both for unions and for employers. The Section addresses issues related to law and practice affecting labour-management relations and employment standards. The CBA Women Lawyers Forum promotes women's stature and influence in the legal profession in Canada.

We generally support the proposed regulatory approach and are pleased to see some of our previous recommendations adopted, including allowing for notifications to be made anonymously. We offer several suggestions for improvement.

The proposed regulations do not appear to include any mechanism for an employer to investigate an occurrence of harassment or violence on its own initiative. It seems that all actions flow from the notification of an occurrence under s. 15. We appreciate the additional mechanisms of notification

¹ [Work Place Harassment and Violence Prevention Regulations](#). Canada Gazette, Part I, Volume 153, Number 17.

² [Consultation on Proposed Regulations to Bill C-65](#). Canadian Bar Association, (October 2018).

that remove barriers to reporting by bystanders. But the proposed regulations should also clarify that an employer can initiate an investigation on its own initiative when it is aware of facts that could give rise to a notification.

Our previous submission suggested definitions of workplace harassment, sexual harassment and violence. These definitions have not been adopted in the proposed regulation and we maintain that they would enhance certainty and reduce the risk of confusion.

For the early resolution of disputes referenced in s. 25, we suggest including a definition of “early resolution”. It appears this terminology is referring to the resolution indicated in 17(1), but the term “early” is not used in the section, only in the marginal note at section 17. Elsewhere this resolution component is referred to as “early resolution”. If no definition is added, the text should at least refer to “early resolution under section 17”.

While there is a total 180-day time allocation for early resolution and conciliation, there is no indication of how long the early resolution step can take of that 180 days. Subsection 17(2) states:

If the occurrence is not resolved under subsection (1) and the principal party chooses to proceed with the resolution process, the principal party has the choice to complete the resolution process by means of either conciliation or an investigation.

This does provide sufficient guidance to the principal party as to when they can proceed to select a conciliator (clock is ticking closer to the 180 days where this is an option) or an investigation. The regulations should clarify whether the principal party gets to decide this, whether they should wait for an early resolution to be attempted, or whether they can request a conciliator or an investigation immediately.

While we appreciate the overall emphasis on timely conclusion, the proposed six-month time limit for employers to resolve a complaint may not be feasible if both mediation or facilitation and investigation by a competent person are undertaken. We recommend that the parties be permitted to agree to extend that timeline and, if agreement is not possible, to allow either party to request an extension from the Labour Program.

We trust that our comments are helpful and would be pleased to provide any needed clarification.

Yours truly,

(original letter signed by Nadia Sayed for Kathryn Sainty and Robyn Trask)

Kathryn Sainty
Chair, CBA Women Lawyers Forum

Robyn Trask
Chair, CBA Labour & Employment Law Section