



## REPORT OF THE SUBCOMMITTEE ON HUMAN RESOURCES

The Honourable Raymonde Saint-Germain, Chair  
The Honourable Scott Tannas, Deputy Chair

# MODERNIZING THE SENATE'S ANTI-HARASSMENT POLICY

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FEBRUARY 2019

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## MESSAGE FROM THE CHAIR AND DEPUTY CHAIR

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At the behest of the Standing Committee on Internal Economy, Budgets and Administration, the Subcommittee on Human Resources was established in December 2017. It is not tasked with investigating specific harassment complaints. Its mandate is to review the *Senate Policy on the Prevention and Resolution of Harassment in the Workplace*. That policy was adopted by the Senate in 2009, superseding the Senate's first harassment policy, which dates back to 1993.

This initiative reflects the desire of all senators to provide their staff members and all Senate of Canada employees with a healthy, fulfilling workplace that is conducive to professional, individual and collective growth. For these reasons, the members of the Senate, with the support of the leaders of all groups and caucuses, the Speaker of the Senate, the Senate Administration and employee representatives, are providing themselves with the resources for success and are determined first and foremost to prevent all forms of harassment.

Accordingly, the members of the subcommittee are recommending more than a few amendments to the existing framework. In the next few months, a new policy built on a broad, modern vision that meets the highest standards will be presented on the basis of the recommendations in this report.

The subcommittee has made 28 ambitious but realistic recommendations to guide the preparation of the new Senate anti-harassment policy. For example, it is clear from our study that the instability associated with the contractual status of senators' staff helps perpetuate their employment vulnerability and insecurity. The subcommittee therefore recommends that consideration be given to increasing the length of staff members' contracts, currently limited to one year.

In another example, our study revealed that three-quarters of sexual harassment cases in Canada are not reported, in many instances because those affected by it do not believe that they will be taken seriously or are worried about retaliation. The personal decision to break the silence is closely associated with the establishment of a climate of trust and credibility, where employees are encouraged to report harassment and are properly protected when they do.

Workplace harassment complaints show the devastating impact that a single perpetrator of harassment can have on workers, on colleagues and on the institution. They also illustrate the importance of making sure that the protections and procedures for preventing and, failing that, addressing workplace harassment in all its forms are robust and credible.

For these reasons, the members of the subcommittee are committed to exercising vigilance in preventing and addressing harassment in all its forms. They recommend strengthening the existing obligation to collect data about harassment cases through a workplace assessment or survey. They also recommend ensuring that the new policy and its application are periodically reviewed, with the first review to be carried out within three years after its adoption. Participation in this process by employees, the leaders of the various groups and caucuses, and the Senate Administration is crucial in ensuring the new policy's currency and continuity.

This report would certainly be a lesser document without the remarkable – and, we want to emphasize, the voluntary – contributions of independent experts, academics and highly qualified practitioners who testified before the subcommittee in public hearings. Three independent senators also provided testimony for our study, and we are very grateful to the representatives of the various groups of employees of senators and the Senate Administration, whose input, with their pragmatism, thoroughness and vision, was invaluable. The Human Resources Directorate's new management team also lent its expertise and its full and complete cooperation. Its role, particularly in harassment prevention and training, is pivotal.

The employer-employee alliance is paramount if the Senate of Canada's modern approach to preventing harassment in all its forms is to be successful. The mutual trust and solid cooperation, combined with openness and respect, that the members of the subcommittee were given throughout their work are extremely encouraging. We would like to reiterate the unanimous support of the Speaker of the Senate and the leaders of the four parliamentary groups and caucuses. We are confident that this sensitivity, common to all levels and the behaviours it encourages, will translate into a healthy and stimulating workplace where respect, inclusion, gender equality and prevention of all forms of harassment are the daily norm.

We gratefully acknowledge the other members of the subcommittee, Senators Lucie Moncion, Jim Munson and David Tkachuk, for their commitment and valuable input. We would also like to acknowledge Senator Mobina S. B. Jaffer, a member of the subcommittee for most of this study, for her significant contributions and her personable approach. Each of them join us in recognizing the contributions and high level of professionalism of Library of Parliament analysts Laurence Brosseau and Mayra Perez-Leclerc, subcommittee clerks Daniel Charbonneau and Ariane Larouche, and Mary-Ellen Shaffer and Alexandre D'Aragnon, staff of the Deputy Chair and Chair of the subcommittee.

The Honourable Raymonde Saint-Germain, Senator  
Chair of the Subcommittee

The Honourable Scott Tannas, Senator  
Deputy Chair of the Subcommittee

## EXECUTIVE SUMMARY

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Harassment in all its forms is unacceptable. Senators, staff and members of the Senate Administration who experience harassment must be supported. Those who harass others must be held accountable for their actions.

The Senate Subcommittee on Human Resources has been engaged in a detailed review of the *Senate Policy on the Prevention and Resolution of Harassment in the Workplace*. The review was prompted in part by the adoption 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, which, among other aspects, imposes specific employer duties in relation to workplace harassment and violence under Part II (Occupational Health and Safety) of the *Canada Labour Code*. It also amends the *Parliamentary Employment and Staff Relations Act* to expand the application of the modified framework for the prevention of harassment and violence under the Code to parliamentary workplaces. At the time this report was written, there were 105 sitting senators and 260 employees working in individual Senators' offices. There were also over 430 employees of the Senate Administration.

The Senate's current anti-harassment policy was adopted by the Senate in June 2009. Its age — as well as the rise of empowering national and international movements that have prompted people to speak more openly about harassment — has also contributed to the subcommittee's decision to recommend that the Senate prepare a new anti-harassment policy, rather than simply revising the existing one.

While drafted with the best of intentions, the 2009 policy could be stronger. Expert witnesses told the subcommittee that language describing “bad faith” complaints can create a chilling effect that discourages complainants from coming forward. It is too easy, for instance, for an unsubstantiated complaint to be conflated with one made in bad faith — people who experience harassment may not report it if they fear being perceived as acting in bad faith.

Training in the prevention of harassment and violence is essential. In a June 2018 interim report, the subcommittee recommended making such training mandatory for all senators, staff and members of the Senate Administration. The majority of senators have already undergone this training, and more sessions are being scheduled to ensure that everyone has the opportunity to take it.

In this report, the subcommittee renews its recommendation for mandatory training and makes further recommendations relating to the content of this training, including that it include interactive and experiential components — as opposed to consisting merely of passive listening to presentations — and that it address bystander intervention and the role of managers or supervisors in preventing harassment.

The subcommittee also recommends that the new policy be made readily available to all senators and employees, for instance, by posting it in all offices and by incorporating it into every contract of employment.

It is important that employees who experience harassment feel comfortable reporting it. The existing policy provides for an informal dispute resolution process to be undertaken by the complainant and the alleged harasser; this is to take place before a formal process is launched. Expert witnesses advised the subcommittee that complainants should instead be encouraged to pursue resolution mechanisms that best suit their situation. The subcommittee therefore recommends including language in the new policy that would appoint an impartial third party to whom complaints can be brought on a confidential basis, provide complainants with multiple reporting options, promote bystander intervention and encourage alternative dispute resolution methods when appropriate and mutually agreed upon by the parties.

The subcommittee is also of the view that strong sanctions, up to and including termination of employment, should be available in the event that a harassment complaint is substantiated. Perpetrators should face real consequences for their actions.

Specifically, in a case where a senator has been found to have breached their obligations under the Senate anti-harassment policy by an impartial third-party investigation, the subcommittee recommends giving the members of the Standing Committee on Ethics and Conflict of Interest for Senators, sitting collectively as a designated body, the mandate to determine appropriate sanctions.

The report also recommends specific processes to impose any necessary remedies and sanctions against members of senators' staff and of the Senate Administration against whom a finding of harassment has been made.

All senators, staff and members of the Senate Administration should feel safe and secure in their workplace. The institution is only as strong as the people who work for it. The subcommittee believes its recommendations — grounded as they are in the testimony of expert witnesses and enhanced by the experience of its members — are an important step toward deterring and eradicating workplace harassment and violence.

Members of the subcommittee extend their appreciation to the witnesses who generously volunteered to share their knowledge and take part in these difficult but necessary conversations.

Together, we can improve our work environment by striving to make it a healthy one.



## THE SUBCOMMITTEE MEMBERSHIP

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The Honourable Senator  
Raymonde Saint-Germain  
Chair



The Honourable Senator  
Scott Tannas  
Deputy Chair



The Honourable Senator  
Lucie Moncion



The Honourable Senator  
Jim Munson



The Honourable Senator  
David Tkachuk

### **Previous member of the subcommittee who has participated in the study:**

The Honourable Senator Mobina S.B. Jaffer

### **Other Senators who have participated in the study:**

The Honourable Senator Renée Dupuis  
The Honourable Senator Nancy J. Hartling  
The Honourable Senator Marilou McPhedran

### **Parliamentary Information and Research Service, Library of Parliament:**

Mayra Perez-Leclerc, Analyst  
Laurence Brosseau, Analyst

### **Subcommittee Staff:**

Daniel Charbonneau, Clerk of the Subcommittee  
Ericka Dupont, Administrative Assistant  
Ariane Larouche, Legislative Clerk  
Tony Spears, Communications



## ORDER OF REFERENCE

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Excerpt from the *Minutes of Proceedings* of the Standing Committee on Internal Economy, Budgets and Administration, Thursday, December 7, 2017:

The Honourable Senator Munson moved:

That the Subcommittee on Human Resources be established and authorized to examine and report on issues related human resources in the Senate;

That the subcommittee be further authorized:

1. To monitor the transformation of the Human Resources Directorate following the report by Deloitte Canada;
2. To examine and harmonize the working conditions and benefits of Senate employees, whether they work for the Administration, for a senator, or for an officer of the Senate; and
3. To conduct a review of the *Senate Policy on Prevention and Resolution of Harassment in the Workplace*;

That the membership of the subcommittee be as follows: the Honourable Senators Jaffer, McCoy, Moncion, Tannas and Tkachuk, three of whom shall constitute a quorum;

That the Advisory Working Group on the Review of Human Resources be dissolved;

That the work accomplished by the Advisory Working Group on the Review of Human Resources be referred to the subcommittee;

That, pursuant to rule 12-9(2), the committee's authority to send for persons, papers and records, whenever required, and to publish from day to day such papers and evidence as may be ordered by it, be conferred on the subcommittee;

That, the committee's power to permit coverage by electronic media of its public meetings be conferred on the subcommittee;

That the committee's authority, pursuant to paragraph 8(3)(a) of the *Senators Attendance Policy*, be conferred on the subcommittee;

That, pursuant to the Senate guidelines for witness expenses, the authority of the committee to reimburse reasonable travelling and living expenses for witnesses, be conferred on the subcommittee; and

That the subcommittee be required to report to the committee from time to time.

After debate, the question being put on the motion, it was adopted.

Clerk of the Standing Committee on Internal Economy,  
Budgets and Administration

Pascale Legault



## **TABLE OF RECOMMENDATIONS**

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### **RECOMMENDATION 1 – REGARDING A NEW POLICY**

That the Senate Administration be instructed to prepare a new, rather than a revised, anti-harassment policy, based on the findings and recommendations contained in this report by April 30, 2019, for review by the Human Resources Subcommittee of the Standing Committee on Internal Economy, Budgets and Administration and for adoption by said standing committee and the Senate.

### **RECOMMENDATION 2 – COVERAGE FOR FORMER EMPLOYEES**

That the new Senate anti-harassment policy also apply to former employees who experienced harassment and violence while working in the Senate, subject to the time limits provided for under Bill C-65 and related regulatory amendments, as well as cover activities with work-related consequences.

### **RECOMMENDATION 3 – NEW DEFINITION: HARASSMENT AND VIOLENCE**

That the new Senate anti-harassment policy replace the definition of the term “harassment” contained in the current policy with that of the term “harassment and violence” provided by Bill C-65, with a view to harmonizing the framework for the prevention of workplace harassment and violence. In addition, that the Senate Administration be instructed to monitor any related regulatory amendments that may be made in this regard, and to recommend further revisions to the policy as necessary.

### **RECOMMENDATION 4 – BROADER SCOPE FOR HARASSMENT**

That, in the new Senate anti-harassment policy, the scope of the current definition of the term “sexual harassment” be expanded, with the objective of broadening its scope to, among other aspects, cover behaviours that extend beyond organizational time and space boundaries. Further, that the new policy take into account the suggestions for definitions made by witnesses, as well as the definition of the term “harassment and violence” provided by Bill C-65.

### **RECOMMENDATION 5 – RECOGNIZING GENDER-BASED HARASSMENT**

That the new Senate anti-harassment policy include a definition for the term “gender-based harassment,” thereby acknowledging the significant impact that this form of harassment can have on someone’s psychological well-being and job satisfaction.

### **RECOMMENDATION 6 – NOT USING TERMS THAT DISCOURAGE REPORTING**

That the new Senate anti-harassment policy not use terms such as “bad faith,” “conflict,” “severity,” and “circumstances and context,” with the objective of encouraging people who are targets of harassment to bring forward their complaints about workplace mistreatment. To further clarify the provisions in the new policy, it should include, among other aspects, examples of different forms of harassing behaviour in an appendix.

### **RECOMMENDATION 7 – MANDATORY TRAINING**

That the new Senate anti-harassment policy include a specific section on training in the prevention of harassment and violence, and that such training be made mandatory for all individuals in the Senate workplace. In addition, that every individual joining the Senate be required to sign a commitment to complete such training within the timelines to be prescribed by the new policy.

## **RECOMMENDATION 8 – IMPLEMENTING MANDATORY TRAINING PROGRAMS**

That the Human Resources Directorate be instructed to develop and implement separate and distinct mandatory training programs for senators and all other individuals in the Senate workplace, and that these training programs:

- a) be tailored to the specific needs of the workplace, as outlined in a workplace assessment or survey;
- b) include interactive or experiential components (such as role play simulations or behavioural modelling);
- c) provide information about the Senate anti-harassment policy itself and about the different types of workplace harassment;
- d) address bystander intervention as well as the role of leaders or supervisors in this regard;
- e) be offered on a recurring basis, including refresher sessions, and be provided by experts on workplace harassment and discrimination;
- f) include a requirement to provide written confirmation that an individual has completed the mandatory training; and
- g) include repercussions for failing to attend the mandatory training, as outlined in the new Senate anti-harassment policy.

## **RECOMMENDATION 9 – POLICY ACCESSIBILITY**

That the Human Resources Directorate be instructed to make the new Senate anti-harassment policy readily available to everyone in printed and electronic form, and that the policy be incorporated into every contract of employment.

## **RECOMMENDATION 10 – WORKPLACE ASSESSMENT**

That, in order to better assess the nature and extent of workplace harassment and violence in the Senate workplace and to inform further policy review,

- a) the Senate Administration be instructed to conduct a workplace assessment or survey; or
- b) should an internal survey not be a practical or efficient option in the circumstances, that Senate employees be required to take the same survey given to federal public service employees.

Further, that the results of the workplace assessment or survey be reported back to the Human Resources Subcommittee of the Standing Committee on Internal Economy, Budgets and Administration for further consideration.

## **RECOMMENDATION 11 – ACCOUNTABILITY**

That the new Senate anti-harassment policy strengthen the requirement for statistical data collection and accountability in relation to occurrences of workplace harassment and violence.

That, while respecting the privacy of the parties involved, the data collected in this regard be reported back to the Human Resources Subcommittee of the Standing Committee on Internal Economy, Budgets and Administration for further consideration, and include information such as: the nature or position of the parties involved, the forms of harassment experienced, the manners in which the

incidents were resolved, as well as the time lapses from reporting to resolution and between different incidents.

#### **RECOMMENDATION 12 – REGULAR POLICY REVIEWS**

That the new Senate anti-harassment policy include a specific requirement for regular policy reviews, the first of which must occur within three years following the adoption of the new policy or earlier at the discretion of the Human Resources Subcommittee of the Standing Committee on Internal Economy, Budgets and Administration. Further, that these reviews involve the participation of employees and any other key figures in the Senate workplace, and that follow-ups be provided as appropriate.

#### **RECOMMENDATION 13 – COMPLAINT RESOLUTION PROCEDURE**

That the Senate Administration be instructed to set up, in consultation with experts, an independent consolidated complaint resolution procedure as soon as possible, even before the new Senate anti-harassment policy is adopted, with a view to better responding to different types of complaints, increasing victim agency, and encouraging alternative dispute resolution methods when most appropriate and mutually agreed upon by the parties.

In addition, that the Senate Administration be instructed to put in place an optional and anonymous reporting mechanism for the parties to voluntarily provide comments about the effectiveness of the complaint resolution process, and that the comments obtained be reported back to the Human Resources Subcommittee of the Standing Committee on Internal Economy, Budgets and Administration for further consideration.

#### **RECOMMENDATION 14 – IMPARTIALITY OF THE PROCESS**

That the new Senate anti-harassment policy:

- a) ensure the impartiality of the intake process through the appointment of an impartial third party to whom complaints can be brought on a confidential basis;
- b) ensure victim agency by providing multiple reporting options for those experiencing harassment and violence; and
- c) encourage bystander intervention and provide guidance on how to proceed when mistreatment is observed, among other aspects.

Further, that the new policy take into account the suggestions for alternative wording made by witnesses in this regard.

#### **RECOMMENDATION 15 – INVESTIGATION BY A THIRD PARTY**

That, in relation to all complaints of harassment and violence, the new Senate anti-harassment policy require the appointment of an impartial third party to investigate the matter and produce a written report with findings and recommendations, subject to privacy requirements. For greater clarity and to further guarantee procedural fairness, specific details about the investigation process should be included in the new policy.

## **RECOMMENDATION 16 – NOTIFYING THE SENATE ETHICS OFFICER**

While recognizing the independence of the Senate Ethics Officer in conducting preliminary reviews and inquiries under the *Ethics and Conflict of Interest Code for Senators*, that the new Senate anti-harassment policy require that the Senate Ethics Officer be notified when a harassment complaint against a senator is made and is being investigated along with the results of that investigation.

## **RECOMMENDATION 17 – NOTIFYING THE STEERING COMMITTEE**

That the new Senate anti-harassment policy provide that the steering committee of the Standing Committee on Internal Economy, Budgets and Administration be notified of the conclusions of an investigation report when sanctions are recommended.

## **RECOMMENDATION 18 – STRONGER PRIVACY PROTECTIONS**

That the new Senate anti-harassment policy provide for stronger privacy protections surrounding complaint resolution, while still permitting the compilation of statistical data to meaningfully assess the complaint resolution process. In addition, that the new policy reflect the language in Bill C-65, and prohibit the disclosure of any information that is likely to reveal an affected person's identity without that person's written consent.

## **RECOMMENDATION 19 – PRESCRIPTIVE TIMELINES**

That the new Senate anti-harassment policy provide prescriptive timelines that align with best practices in similar organizations, until the framework established by Bill C-65 and any related regulatory amendments come into force, while minimizing the potential health effects these timelines may have on those persons who are undergoing the complaint resolution process.

## **RECOMMENDATION 20 – REMEDIES AND SANCTIONS**

That the new Senate anti-harassment policy include specific enforcement mechanisms (such as termination of employment for the harasser, targeted training or referral to anger-management therapy) for different situations and respondents, with the objective of deterring and ultimately eradicating workplace harassment and violence. Further, that the new policy take into account the suggestions about specific remedies and sanctions made by witnesses, along with relevant legislative provisions.

## **RECOMMENDATION 21 – DESIGNATED BODY**

That the new Senate anti-harassment policy mandate the individual members of the Standing Committee on Ethics and Conflict of Interest for Senators, sitting collectively as a designated body, to take into consideration the investigation report and to recommend in a report presented to the Senate the appropriate sanctions in cases where the investigation report:

- a) has determined that a senator has breached their obligations under the Senate anti-harassment policy; and
- b) has recommended imposing sanctions.

Further, that the rights of a senator who is the subject of an investigation report, along with the procedures and sanctions available to the designated body in these circumstances, be provided for in the new Senate anti-harassment policy.



## **RECOMMENDATION 22 – SANCTIONS FOR SENATORS’ STAFF**

That, when the impartial third party has determined that a harassment complaint made against a member of a Senator’s staff is well-founded, the investigation report be sent to the Senator and to the steering committee of the Standing Committee on Internal Economy, Budgets and Administration simultaneously. That the Senator have two working days to communicate their observations and recommendations on the matter to the steering committee of the Standing Committee on Internal Economy, Budgets and Administration.

That, taking into consideration the Senator’s observations and recommendations, the steering committee of the Standing Committee on Internal Economy, Budgets and Administration be empowered to impose any necessary remedies and sanctions against a member of a Senator’s staff, in accordance with the new Senate anti-harassment policy.

That the decision by the steering committee of the Standing Committee on Internal Economy, Budgets and Administration be subject to appeal or review by the Standing Committee on Internal Economy, Budgets and Administration, which must meet in camera when considering the matter.

## **RECOMMENDATION 23 – SANCTIONS FOR ADMINISTRATION EMPLOYEES**

That the relevant sector chief within the Senate workplace be empowered to impose any necessary remedies and sanctions in accordance with the new Senate anti-harassment policy, in cases where an impartial third party has determined that a harassment complaint made against an employee of the Senate Administration or other person under their administrative jurisdiction is well-founded.

Further, that when the relevant sector chief is the subject of an investigation report, this responsibility be transferred to the steering committee of the Standing Committee on Internal Economy, Budgets and Administration. That the decision by the steering committee of the Standing Committee on Internal Economy, Budgets and Administration regarding the relevant sector chief be subject to appeal by the Standing Committee on Internal Economy, Budgets and Administration, which must meet in camera when considering the matter.

## **RECOMMENDATION 24 – SUPPORT FOR PARTIES**

That the new Senate anti-harassment policy provide more explicit and more varied kinds of support for all affected parties, both during and after the conclusion of the complaint resolution process. Further, that the new policy take into account the suggestions for alternative wording made by witnesses in this regard.

## **RECOMMENDATION 25 – RIGHT OF EMPLOYEES TO ALTERNATIVE RECOURSE**

That the new Senate anti-harassment policy maintain the right of employees to access alternative recourse procedures, thereby acknowledging the significance of third-party redress.

## **RECOMMENDATION 26 – COMMITTEE LEADERSHIP**

That the Standing Committee on Internal Economy, Budgets and Administration commit to creating a safe space in the Senate workplace by promoting positive and proactive leadership, with the ultimate goal of eradicating workplace harassment and violence.

## **RECOMMENDATION 27 – IMPROVING WORKING CONDITIONS**

That the Standing Committee on Internal Economy, Budgets and Administration commit to improving the working conditions that impact harassment prevention for all employees in the Senate workplace, in a manner that is expeditious and also respectful of the institutional environment. To this end, that the Standing Committee on Internal Economy, Budgets and Administration review and assess the need for one-year contracts for employees of senators and consider the possibility of increasing the length of the contract period, where appropriate. That this be done in consultation with employees, senators and the Senate Administration.

#### **RECOMMENDATION 28 – CONSEQUENTIAL AMENDMENTS**

That the Senate instruct the Standing Committee on Ethics and Conflict of Interest for Senators and the Standing Committee on Rules, Procedures and the Rights of Parliament to develop and propose consequential amendments to the *Ethics and Conflict of Interest Code for Senators* and the *Rules of the Senate* and any other Senate regulatory instruments, as a direct result of the adoption of a new Senate anti-harassment policy by the Senate.

## INTRODUCTION

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Since its first iteration in 1993, the *Senate Policy on the Prevention and Resolution of Harassment in the Workplace*<sup>1</sup> (the Senate anti-harassment policy) has provided guidance to senators, the Senate Administration and Senate employees alike with respect to the prevention as well as the resolution of harassment in the Senate workplace. In order for it to remain relevant, the Senate anti-harassment policy must continue to evolve alongside recent legislative advances, and it must look to implement contemporary best practices to support the Senate as a workplace free of all forms of harassment.

On December 7, 2017, the Senate Standing Committee on Internal Economy, Budgets and Administration adopted a motion to “change the Advisory Working Group on the Review of Human Resources into the Subcommittee on Human Resources” (the subcommittee or HRRH), assigning the subcommittee the task of reviewing the Senate anti-harassment policy.<sup>2</sup> It is important to note that the subcommittee did not have the mandate to review or assess specific potential cases of harassment occurring in the Senate.

The subcommittee held a total of four meetings between May 29, 2018 and June 19, 2018, parts of which were conducted in camera with the objective of offering witnesses a safe space within which to express themselves unreservedly. Recordings of the in-camera sessions, rather than transcripts, were made, but not released publicly. The subcommittee has therefore been careful not to include in the report any information that could reveal the identity of those individuals who appeared in camera.

Overall, the subcommittee heard from 19 witnesses, including senators, employee representatives, the Working Group on Senators’ Services, employees of the Canadian Human Rights Commission, academics specializing in the fields of workplace harassment and occupational health and safety, as well as various legal practitioners. In addition, the subcommittee received a total of three briefs along with a variety of reference documents. The subcommittee is highly appreciative of the valuable expertise and time provided by all the witnesses, as well as of the insights and personal experiences shared by those individuals who appeared in camera. In particular, these personal experiences had a great impact on the subcommittee members and guided their reflections throughout the study and on all aspects of this report.

The present report has been divided into five chapters. The first chapter provides a brief overview of the Senate anti-harassment policy, along with the workplace harassment landscape in Canada and relevant legislative initiatives. Chapter two provides guidance regarding policy drafting. Chapters three and four present the main observations and recommendations from witnesses regarding various areas of the policy (given that not all were discussed during the study), while chapter five outlines witness testimony about aspects surrounding policy implementation. Where applicable, relevant provisions from the current Senate anti-harassment policy have been included in order to provide further guidance. The findings and recommendations from the subcommittee with respect to this study have been presented and explained alongside each issue identified in the report.

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<sup>1</sup> Senate of Canada, [Senate Policy on the Prevention and Resolution of Harassment in the Workplace](#), June 22, 2009.

<sup>2</sup> Senate Standing Committee on Internal Economy, Budgets and Administration, [Evidence](#), December 7, 2017.



## CHAPTER 1: Background

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### A. The Senate Policy on the Prevention and Resolution of Harassment in the Workplace

The *Senate Policy on the Prevention and Resolution of Harassment in the Workplace* is the primary mechanism for dealing with all forms of workplace harassment and violence in the Senate of Canada.<sup>3</sup> It was approved by the Senate Standing Committee on Internal Economy, Budgets and Administration on June 11, 2009 and adopted by the Senate on June 22, 2009, thereby replacing the former Senate anti-harassment policy from 1993.<sup>4</sup>

The purpose of the Senate anti-harassment policy is to prevent harassment; ensure that any allegation of harassment is taken seriously and addressed promptly; encourage early dispute resolution; offer procedures for the resolution of harassment allegations; as well as provide remedial, corrective or disciplinary measures where a finding of harassment has been made (article 1.2). The policy applies to the conduct of “all persons in the Senate workplace, including senators, staff of senators, employees of the Senate Administration, contractors and their staff, and volunteers” (article 1.4).

Overall, the Senate Administration is comprised of more than 430 employees. These include procedural clerks, stenographers, computer and audio-visual technology experts, as well as employees working in fields such as those of security, transportation, human resources, communications and maintenance.<sup>5</sup>

In addition, there are approximately 260 employees in individual senators’ offices, who work as administrative and executive professionals or in various advisory positions and are under the direct authority of individual senators.<sup>6</sup> Staff working in a Senator’s office are hired “at the direction of that senator and at that senator’s sole discretion.”<sup>7</sup> At the time this report was written, there were a total of 105 senators.<sup>8</sup>

### B. 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

The subcommittee’s study on the Senate anti-harassment policy was conducted concurrently with the legislative process for 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.<sup>9</sup> Bill C-65 was introduced in the House of Commons on November 7, 2017 by the

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<sup>3</sup> The *Senate Administrative Rules* also stipulate that “[t]he Senate shall provide to every person a work environment that is free from harassment and discriminatory practices.” For additional information, please refer to the following source: Senate of Canada, [Senate Administrative Rules](#).

<sup>4</sup> Senate of Canada, op. cit., note 1.

<sup>5</sup> Senate, [Types of jobs](#).

<sup>6</sup> Ibid.

<sup>7</sup> Senate, [Senate Administrative Rules](#).

<sup>8</sup> Senate of Canada, [Senators](#).

<sup>9</sup> [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](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament.

Honourable Patty Hajdu, Minister of Employment, Workforce Development and Labour. The bill received Royal Assent on 25 October 2018.

Bill C-65 modifies the framework under the *Canada Labour Code*<sup>10</sup> (Code) for the prevention of harassment and violence, including sexual harassment and sexual violence, in workplaces under federal jurisdiction. Specifically, Bill C-65 consolidates the existing framework under Part II (Occupational Health and Safety) of the Code, imposes specific employer duties in relation to workplace harassment and violence, modifies the existing complaint resolution process, and introduces certain provisions aimed at strengthening privacy protections, among other aspects. Bill C-65 also amends the *Parliamentary Employment and Staff Relations Act*<sup>11</sup> in order to expand the application of this framework to parliamentary workplaces, subject to modifications to ensure parliamentary privilege is respected. The federal government intends for the regulatory amendments to come into force concurrently with Bill C-65, within two years from Royal Assent.<sup>12</sup>

In order to support the implementation of Bill C-65, the federal government has announced that Part XX (Violence Prevention in the Work Place) of the *Canada Occupational Health and Safety Regulations*<sup>13</sup> will be amended. Notably, during the regulatory development process, the government will be consulting with Canadians on a series of issues, including identifying the elements to be included in a workplace harassment and violence prevention policy. The elements to be included, on which public input is being sought, have been identified in a consultation paper and include the following:

- the available options and steps in the workplace resolution process, including where the employer or supervisor is the alleged perpetrator;
- how to submit a complaint, including when the employer or health and safety representative is the alleged perpetrator;
- appropriate and inappropriate behaviours in the workplace, including what is considered reasonable conduct of an employer or supervisor in respect to performance management;
- the steps that will be taken in the event that family violence poses a risk to the workplace;
- available support to those who experience harassment and violence;
- harassment and violence prevention training;
- the role of the workplace committee;
- confidentiality;
- how the workplace will address third party harassment and violence;
- former employees' ability to submit a complaint;
- appropriate disciplinary measures that the employer can use following an investigation into an incident of harassment and violence;
- reporting policies and requirements; and
- a commitment to ensuring the privacy of all parties is protected should a complaint be brought forward.<sup>14</sup>

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<sup>10</sup> [Canada Labour Code](#), R.S.C., 1985, c. L-2.

<sup>11</sup> [Parliamentary Employment and Staff Relations Act](#), R.S.C., 1985, c. 33 (2nd Supp.).

<sup>12</sup> Ibid.

<sup>13</sup> [Canada Occupational Health and Safety Regulations](#), SOR/86-304.

<sup>14</sup> Employment and Social Development Canada, [Proposed regulatory framework: Harassment and violence - Consultation paper, Labour Program Stakeholder Consultations](#).

The consultation paper also indicates that current regulatory requirements regarding a workplace harassment and violence prevention policy would, for the most part, remain in place. These include requiring the employer to post their policy at a place accessible to all employees, and to provide regular training on the policy to everyone in the workplace.<sup>15</sup>

The impact of Bill C-65 on the Senate anti-harassment policy review will be discussed in this report through witness testimony as well as through observations and recommendations from the subcommittee.

### **C. Harassment and Violence in Workplaces under Federal Jurisdiction**

The subcommittee's study of the Senate anti-harassment policy, along with the introduction of Bill C-65, occurred in the midst of the international #MeToo and #TimesUp movements,<sup>16</sup> whose impact was felt across Canada, including on Parliament Hill. Speaking of the nature of harassment and violence on Parliament Hill, the Honourable Patty Hajdu said:

Parliament Hill features distinct power imbalances, which perpetuates a culture where people with a lot of power and prestige can use and have used that power to victimize the people who work so hard for us. It is a culture where people who are victims of harassment or sexual violence do not feel safe to bring those complaints forward. ... It is like many other workplaces across Canada, especially those that have distinct power imbalances and a lack of strong policy that protects employees from harm.<sup>17</sup>

Public consultations led by the Department of Employment and Social Development Canada between July 2016 and April 2017, to cite one example, revealed the following in relation to workplaces under federal jurisdiction, including Parliament Hill:

- Harassment was the most common type of behaviour experienced by respondents, with 60% reporting having experienced it. Sexual harassment was experienced by 30%, violence by 21%, and sexual violence by 3%.
- Among respondents who reported having experienced sexual harassment, 94% were women. They also tended to be in workplaces with a higher proportion of men in positions of power, if compared to workplaces of respondents who experienced non-sexual harassment or violence.
- People with disabilities and members of a visible minority were more likely to report experiencing harassment than other groups.
- Incidents were under-reported, often due to fear of retaliation, and when reported, they were not dealt with effectively. Indeed, while 75% of respondents who experienced harassment or violence indicated having reported the incident, 41% of them said that no attempt was made by their supervisors (or others) to resolve the issue.<sup>18</sup>

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<sup>15</sup> Ibid.

<sup>16</sup> Alix Langone, "[#MeToo and Time's Up Founders Explain the Difference Between the 2 Movements – And How They're Alike](#)," *Time Magazine*, March 22, 2018. See also [MeToo](#) and [Time'sUp](#).

<sup>17</sup> House of Commons, [Debates](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, January 29, 2018, p. 16434.

<sup>18</sup> Government of Canada, [Harassment and sexual violence in the workplace public consultations – what we heard](#), 2017.





## CHAPTER 2: Policy Drafting Instructions

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The present chapter provides general drafting instructions with respect to the new Senate anti-harassment policy. These drafting instructions are in no way intended to be exhaustive. They are to be read in conjunction with the findings and recommendations from the subcommittee as outlined in the subsequent chapters.

First, although various witnesses formulated recommendations for revising the current Senate anti-harassment policy, the subcommittee recognizes that amending the Senate anti-harassment policy to incorporate the findings and recommendations from this study may prove to be insufficient. The structure and content of the current Senate anti-harassment policy should not restrict the drafters' abilities to create a modern, relevant and clear new policy. Accordingly, the subcommittee recommends:

### **RECOMMENDATION 1 – REGARDING A NEW POLICY**

**That the Senate Administration be instructed to prepare a new, rather than a revised, anti-harassment policy, based on the findings and recommendations contained in this report by April 30, 2019, for review by the Human Resources Subcommittee of the Standing Committee on Internal Economy, Budgets and Administration and for adoption by said standing committee and the Senate.**

Second, over the course of the study, the subcommittee also noted multiple inconsistencies between the French and English versions of the current Senate anti-harassment policy, which are available on the Government of Canada's website as archived documents.<sup>19</sup> The subcommittee is of the opinion that these inconsistencies must be addressed in any future iteration of the policy in order to prevent confusion around the prevention and resolution of workplace harassment.<sup>20</sup>

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<sup>19</sup> Senate of Canada, *op. cit.*, note 1.

<sup>20</sup> Particular attention should be given to the following inconsistencies:

1. article 1.3 of the French version of the policy does not include the date on which the former policy was repealed, while the English version does;
2. article 1.7 of the French version of the policy was left blank, while article 1.8, which does not exist in the English version, contains the text provided for under article 1.7 of the English version;
3. while the English version of the policy contains articles 4.10.1 and 5.1, the French versions of these articles were respectively provided for under articles 4.10 and 5; and
4. while Appendix A is labelled as article 5.1 and Appendix B is labelled as article 5.2 in the French version of the policy, these appendices were not assigned article numbers in the English version.



## **CHAPTER 3: General Aspects of the Senate Policy on the Prevention and Resolution of Harassment in the Workplace**

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During their appearance before the subcommittee and in their written submissions, witnesses identified several broadly shared concerns regarding general aspects of the Senate anti-harassment policy, including its application and interpretation provisions. Witnesses also offered their insight about general aspects that do not currently form part of the policy, but which they recommended incorporating, such as training and more rigorous data collection. The present chapter explores witnesses' contributions in this regard.

### **A. Application of the Policy**

As indicated above, the current Senate anti-harassment policy applies to the conduct of “all persons in the Senate workplace, including senators, staff of senators, employees of the Senate Administration, contractors and their staff, and volunteers.” In this context, the Senate workplace comprises all permanent areas of the Senate as well as those places under the control of the Senate in which it temporarily conducts business. The policy also applies to “work-related activities conducted away from the Senate” (article 1.4).

It should be noted, however, that the complaint resolution processes provided under the current policy only apply to senators, senators' staff and employees of the Senate Administration, with harassment concerns or complaints from other individuals, such as contractors and volunteers, being addressed “in a manner consistent with the policy” (articles 1.4 and 4.1.1).

While generally witnesses said little about the application provision of the policy, Angela Dionisi, Assistant Professor at the Sprott School of Business of Carleton University, recommended that amendments be made to it in order to align the policy to the framework established by Bill C-65. This framework, as outlined in her written remarks, will allow former employees affected by workplace harassment and violence to take part in the complaint resolution process. As a result, she suggested that the application provision (and/or article 4.1.1 of the policy, which sets out to whom the complaint resolution processes apply) include a statement to this effect.<sup>21</sup>

Representatives from the law firm Rubin Thomlinson LLP also commented in their brief about the scope of the term “work-related activities” as used in the policy's application provision, noting that it is narrow and does not necessarily encompass behaviours that may have work-related consequences for the target of harassment (or the person experiencing harassment), such as when an employee sends a harassing text message to a co-worker after business hours. Their recommendation in this regard was amending the application provision of the policy to replace the term “work-related activities” with “activities with work-related consequences.”<sup>22</sup>

The subcommittee recognizes these concerns regarding the application provision of the policy. In addition, the subcommittee is aware that Bill C-65 expands the duties of employers regarding workplace harassment and violence to apply in relation to former employees, provided the occurrence becomes known to the employer within three months of the employee ceasing employment (clause 3). Bill C-65 also allows former employees affected by workplace harassment and violence to make a complaint in this regard within the prescribed time (clause 5). Finally, the

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<sup>21</sup> Reference document submitted by Angela Dionisi, “Senate Policy Recommendations,” pp.1-2.

subcommittee is aware that regulatory amendments may offer further guidance in this regard. Accordingly, the subcommittee recommends:

## **RECOMMENDATION 2 – COVERAGE FOR FORMER EMPLOYEES**

**That the new Senate anti-harassment policy also apply to former employees who experienced harassment and violence while working in the Senate, subject to the time limits provided for under Bill C-65 and related regulatory amendments, as well as cover activities with work-related consequences.**

### **B. Definitions and Language**

#### **1. Definition of “Harassment”**

The Senate anti-harassment policy currently defines the term “harassment” as follows:

Any improper conduct by an individual, that is directed at and offensive to another person or persons in the workplace, and that the individual knew or ought reasonably to have known would cause offence or harm. It comprises any objectionable act, comment or display that demeans, belittles, or causes personal humiliation or embarrassment, and any act of intimidation or threat. The conduct may be done on a one-time basis or in a continuing series of incidents. Sexual harassment, discrimination within the meaning of the *Canadian Human Rights Act*, abuse of authority and making a complaint in bad faith are considered forms of harassment under this policy.

Harassment does not include normal managerial activities as long as these are not being done in a discriminatory or abusive manner (article 1.5).

Witnesses appearing before the subcommittee advanced different views regarding the definition of harassment contained in the policy, including whether and how it should be amended. Indeed, according to Christopher Rootham, a lawyer with the law firm Nelligan O’Brien Payne LLP, there is no single right answer in this regard:

I want to make it clear that harassment is an elusive term to define. It is important to both define harassment broadly enough to capture all forms of abusive behaviour and, at the same time, make the definition narrow enough that it does not trivialize the term and does not capture behaviour that is innocuous or innocent in a way that trivializes what is an important workplace issue. There is no single right answer to the definition of “harassment.”<sup>23</sup>

Other witnesses, such as Sandy Hershcovis, Associate Professor and Area Chair in Organizational Behavior and Human Resources at the University of Calgary, suggested that a broad definition should be preferred to a narrow one, since targets of harassment are more likely to under-report than over-report their mistreatment. A broad definition, she noted, would send a strong message

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<sup>23</sup> Senate Subcommittee on Human Resources [HRRH], [Evidence](#), June 12, 2018 (Christopher Rootham, Lawyer, Nelligan O’Brien Payne LLP).

about the organization not tolerating harassment of any kind. She also recommended that any definition of harassment include “behaviours that may extend beyond organizational time and space boundaries,” especially as cyber-harassment (occurring over online channels, such as e-mail, social media and text messaging) has become increasingly problematic.<sup>24</sup> In her written remarks, she suggested the following definition, noting that those provided by the Ontario Ministry of Labour and the Canadian Human Rights Commission are also relevant in this regard:

*Nonsexual workplace harassment* is defined as negative behaviour that may be verbal (e.g., insults), or non-verbal (e.g., rude gestures), physical (e.g., hitting, punching) or psychological, intentional or unintentional, covert (e.g., ostracism) or overt that is perpetrated against a worker and that ought reasonably to be known to be unwelcome. These behaviours may occur either within or outside of organizational space and time boundaries (e.g., at social events, or social media).<sup>25</sup>

Similarly, Senator Renée Dupuis, in a brief submitted to the subcommittee, suggested that the definition of harassment chosen “be general and open enough to avoid a closed definition with a narrow interpretation.”<sup>26</sup> In her view, this definition should comply with the legislative and jurisprudential framework surrounding the Senate anti-harassment policy. This framework, she noted, includes legislation such as the *Canadian Charter of Rights and Freedoms*, the *Canadian Human Rights Act*, the *Criminal Code* and Bill C-65, as well as court decisions such as the Supreme Court of Canada cases *Robichaud v. Canada (Treasury Board)* and *Canada (House of Commons) v. Vaid*.<sup>27</sup>

Comparing the definition of harassment provided in the policy with that in Bill C-65, Professor Dionisi suggested changes to the former to account for vicarious harassment (which occurs when employees are negatively affected by the harassment a colleague may be experiencing). In this regard, she explained that the definition in Bill C-65 allows claims regarding psychological illness, which, as research suggests, is a likely outcome of vicarious exposure to harassment. She therefore recommended amending the beginning of the definition in the policy to read as follows: harassment is “an improper conduct by an individual that is directed at *or indirectly encountered*...”<sup>28</sup>

By contrast, rather than suggesting amendments to the current definition included in the policy, Katherine Lippel, Professor at the University of Ottawa and holder of the Canada Research Chair on Occupational Health and Safety Law, recommended that the subcommittee consider the definition of harassment in Bill C-65 and in any related regulatory amendments. According to her, it could be “problematic” and “confusing” to have different definitions.<sup>29</sup> The definition of harassment included in Bill C-65 reads as follows:

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<sup>24</sup> HRRH, [Evidence](#), June 12, 2018 (Sandy Hershcovis, Associate Professor and Area Chair, Organizational Behaviour and Human Resources, University of Calgary).

<sup>25</sup> Reference document submitted by Sandy Hershcovis, “Specific Suggestions,” p. 1.

<sup>26</sup> Brief submitted by Senator Renée Dupuis, pp. 3-4.

<sup>27</sup> *Ibid*, pp. 2-3.

<sup>28</sup> HRRH, [Evidence](#), June 5, 2018 (Angela Dionisi, Assistant Professor, Sprott School of Business, Carleton University).

<sup>29</sup> HRH, [Evidence](#), June 19, 2018 (Katherine Lippel, Professor and Holder of the Canada Research Chair on Occupational Health and Safety Law, University of Ottawa).

*Harassment and violence* means any action, conduct or comment, including of a sexual nature, that can reasonably be expected to cause offence, humiliation or other physical or psychological injury or illness to an employee, including any prescribed action, conduct or comment (clause 0.1).<sup>30</sup>

The subcommittee is aware that the framework established by Bill C-65 has a specific definition for the term “harassment and violence,” which is different from that provided for the term “harassment” in the current Senate anti-harassment policy. As this is the definition that will apply to parliamentary workplaces once Bill C-65 comes into force, and in order to avoid any inconsistencies, the subcommittee agrees that this should also be the definition provided under the new Senate anti-harassment policy, and therefore recommends:

### **RECOMMENDATION 3 – NEW DEFINITION: HARASSMENT AND VIOLENCE**

**That the new Senate anti-harassment policy replace the definition of the term “harassment” contained in the current policy with that of the term “harassment and violence” provided by Bill C-65, with a view to harmonizing the framework for the prevention of workplace harassment and violence. In addition, that the Senate Administration be instructed to monitor any related regulatory amendments that may be made in this regard, and to recommend further revisions to the policy as necessary.**

## **2. Defining Different Forms of Harassment**

The current Senate anti-harassment policy also includes definitions for different forms of harassment, such as sexual harassment, discrimination within the meaning of the *Canadian Human Rights Act*, abuse of authority and making a complaint in bad faith (also known, in this context, as abuse of process) (article 1.5).

During the course of the study, witnesses had differing opinions on these definitions. Indeed, as explained below, while some indicated that the policy had too many definitions that undermined its clarity or that were problematic (such as that provided for the term “bad faith”), others emphasized that the inclusion of definitions covering “the full spectrum of violence” (such as sexual harassment and gender-based harassment) was an important feature of the policy and made recommendations in this regard.

Yet other witnesses recommended expanding the scope of the policy to cover behaviours that, while not falling under the purview of harassment, are still unacceptable in the workplace and contribute to the creation of a toxic work environment. In their brief, representatives from Rubin Thomlinson LLP indicated that many behaviours fall within this grey area, such as using a harsh tone, rolling eyes, and sarcasm. In their opinion, anti-harassment policies could address this issue by including definitions for the terms “respect” and “civility,” along with a mechanism to address any breaches.<sup>31</sup>

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<sup>30</sup> The definition of “harassment and violence” was added under Bill C-65 by the House of Commons Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities (HUMA) during committee stage.

<sup>31</sup> Brief submitted by Rubin Thomlinson LLP, pp.3-4.

## a) Sexual Harassment

The Senate anti-harassment policy currently defines the term “sexual harassment” as follows:

Any conduct, comment, gesture or contact of a sexual nature, whether on a one-time or recurring basis, that might reasonably be expected to cause offence or humiliation, or might reasonably be perceived as placing a condition of a sexual nature on employment, training or promotion (article 1.5).

Similar to what she had suggested in relation to the definition of the term “nonsexual workplace harassment,” Professor Hershcovis indicated in her written remarks that the definition of sexual harassment should be modified to include examples of everyday harassing behaviours in order to offer greater guidance to employees. She also suggested accounting for the fact that harassment, whether it is of a sexual or a non-sexual nature, does not always occur within the confines of organizational boundaries, especially since an increasing number of employees can work remotely. With this in mind, Professor Hershcovis recommended the following definition of sexual harassment, noting that those provided by the Ontario Ministry of Labour and the Canadian Human Rights Commission are also relevant in this regard:

*Sexual harassment* is defined as any verbal or non-verbal behaviour that occurs between employees, either within or outside organizational time and space boundaries, that conveys messages that ought reasonably to be known to be unwelcome. There are three categories of behaviour that fall under this definition:

- (i) Insulting, demeaning (e.g., degrading remarks about someone’s appearance), or hostile (e.g. vulgar name-calling) attitudes about a worker’s gender. These include seemingly benevolent comments that are implicitly condescending (e.g., “honey,” “sweetie”);
- (ii) Unwanted, unreciprocated, or offensive romantic expressions (e.g., unwanted touching, unwanted requests for dates); or
- (iii) Bribes or threats that make the circumstances of a worker’s employment contingent upon sexual cooperation (e.g., promotion in exchange for sex).<sup>32</sup>

Based on the witness testimony it heard on the definition of the term sexual harassment, the subcommittee recommends:

### **RECOMMENDATION 4 – BROADER SCOPE FOR HARASSMENT**

**That, in the new Senate anti-harassment policy, the scope of the current definition of the term “sexual harassment” be expanded, with the objective of broadening its scope to, among other aspects, cover behaviours that extend beyond organizational time and space boundaries. Further, that the new policy take into account the suggestions**

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<sup>32</sup> Reference document submitted by Sandy Hershcovis, “Specific Suggestions,” p. 1. See also HRRH, [Evidence](#), June 12, 2018 (Sandy Hershcovis).

**for definitions made by witnesses, as well as the definition of the term “harassment and violence” provided by Bill C-65.**

**b) Gender-Based Harassment**

Witnesses also suggested that the policy be amended to define the term “gender-based harassment,” which they described as the most prevalent form of sexual harassment. During her appearance before the subcommittee, Professor Hershcovis explained gender-based harassment as follows, noting that it could significantly impact an employee’s psychological well-being, job satisfaction and turnover:

Gender harassment consists of demeaning or hostile gender-related comments, often from more powerful towards less powerful employees. They range in severity from obscene gestures and sexual insults to seemingly less severe comments and remarks that may even seem benevolent. For example, referring to a female colleague as “sweetie” or “honey” serves to infantilize them. Commenting on someone’s physical or aesthetic appearance, even in jest, can be degrading and may undermine the victim’s confidence.<sup>33</sup>

While Professor Hershcovis recommended including an explicit definition of the term “gender-based harassment,” Professor Dionisi proposed to account for it by incorporating the expression “or sexist nature” into the policy’s definition of the term “sexual harassment” as follows: “sexual harassment is any conduct, comment, gesture or contact of a sexual *or sexist* nature...” Professor Dionisi explained that recognizing gender-based harassment under the policy highlights the fact that sexual harassment can result from sexist conduct, thereby dispelling the misconception that it is just sexual in nature.<sup>34</sup>

Professor Dionisi also spoke about harassment as it impacts men, noting that it often takes the form of “not man enough” harassment (which occurs when a man is harassed for not conforming to traditional gender roles). For example, a man can suffer from this type of harassment when he is “teased about his role in the home or domestic responsibilities or when he is mocked for failing to participate in the objectification of women or for not laughing at sexist jokes.”<sup>35</sup> Recognizing that victimization can span gender boundaries, she noted, can be a key aspect to ensuring that all those affected by harassment are given a voice.<sup>36</sup>

The subcommittee acknowledges the importance of explicitly targeting gender-based harassment in addition to sexual harassment in the Senate anti-harassment policy, and therefore recommends:

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<sup>33</sup> HRRH, [Evidence](#), June 12, 2018 (Sandy Hershcovis).

<sup>34</sup> HRRH, [Evidence](#), June 5, 2018 (Angela Dionisi). See also Reference document submitted by Angela Dionisi, “Senate Policy Recommendations,” p.1.

<sup>35</sup> HRRH, [Evidence](#), June 5, 2018 (Angela Dionisi).

<sup>36</sup> Ibid.



## RECOMMENDATION 5 – RECOGNIZING GENDER-BASED HARASSMENT

**That the new Senate anti-harassment policy include a definition for the term “gender-based harassment,” thereby acknowledging the significant impact that this form of harassment can have on someone’s psychological well-being and job satisfaction.**

### c) Making a Complaint in Bad Faith

The Senate anti-harassment policy currently defines the term “bad faith” as follows:

Using this policy, or the complaint process, for purposes other than for its stated objectives, in particular: to injure the reputation of the person against whom the complaint is made or with reckless disregard for the reputation of that person. Unfounded complaints are not necessarily considered to be in bad faith (article 1.5).

During the course of the study, the subcommittee heard that definitions for terms such as “bad faith” are largely unnecessary, given that they are already addressed in the policy under the definition of harassment. Other witnesses expressed concerns about including a complaint made in bad faith as a form of harassment under the policy, as explained by Janice Rubin, partner at Rubin Thomlinson LLP, during her appearance before the subcommittee:

[F]rom our experience as practitioners, it is a very small number of complaints that actually are brought in bad faith. There can be complaints that are not substantiated because a person is not credible, a person is not reliable, but that’s different than bad faith. The bar of bad faith, legally, is actually quite high. So I think it would be very rare to actually encounter that in the workplace... What does happen for some employers ... is that the idea of an unsubstantiated complaint and a complaint in bad faith gets conflated: Your complaint is not substantiated, so automatically it’s in bad faith. That’s just not the case.<sup>37</sup>

Mr. Rootham also cautioned against the inclusion of a complaint made in bad faith under the scope of harassment, noting that such an inclusion can have a “chilling effect” on complaints. Indeed, he explained that targets of harassment could become reluctant to come forward with a complaint for fear of being perceived as acting in bad faith. It could also “unnecessarily complicate” the harassment investigation process, making it all the more difficult to address the root cause of what is really happening in the workplace. Mr. Rootham suggested that “there are a myriad of ways an employer can deal with bad-faith harassment complaints, without characterizing it as harassment and without dealing with it in the harassment policy itself.”<sup>38</sup>

### 3. Language Used in the Policy

During the study, the subcommittee also heard some concerns regarding the use of certain terms in the current Senate anti-harassment policy. Notably, Professor Lippel observed that the policy often refers to a “conflict” occurring between the parties. In this regard, she commented that it is important not to associate harassment and bullying with conflict, given that in some cases these behaviours

<sup>37</sup> HRRH, [Evidence](#), June 12, 2018 (Janice Rubin, Partner, Rubin Thomlinson LLP).

<sup>38</sup> Ibid. (Christopher Rootham).

can occur even when no conflict can be identified. She therefore recommended being careful when using the term “conflict” in the policy, and to define it when it is in fact used.<sup>39</sup>

Furthermore, Professor Dionisi cautioned the subcommittee about the use of the terms “severity” and “circumstances and context” in the following sentence from Appendix B of the current Senate anti-harassment policy: “[i]t is also important to consider the severity and impropriety of the act, the circumstances and context of each situation, and whether the behaviour or conduct is prohibited under the *Canadian Human Rights Act*.”<sup>40</sup>

According to her, the use of the term “severity” is problematic since even “low-intensity behaviours” can be harassing and cause harm. As such, including it in the policy may lead to under-reporting as targets of harassment may fear they will not be taken seriously and believe that they can only file a complaint if their harassment is “extreme.”<sup>41</sup> Speaking of the expression “circumstances and context,” she indicated as follows:

There are no circumstances that excuse this behaviour, or environments that legitimate it. It does not matter who you are or where you are, sexual harassment is not acceptable, and it’s the job of this policy to make that very clear.<sup>42</sup>

Other witnesses also called for greater clarity throughout the policy, suggesting that examples of harassing behaviours (such as sexual harassment, gender-based harassment and vicarious harassment) be incorporated under Appendix B of the Senate anti-harassment policy. Currently, they noted, Appendix B only provides general guidance as to what constitutes harassment.<sup>43</sup> Yet others urged the removal of provisions they deemed unnecessary, such as the definitions of the term bad faith and other forms of harassment as explained above, as well as the portion of article 2.1 (Context) of the policy outlining the various ways in which harassment can be prevented.

Acknowledging the significant impact that certain definitions and terms used in the *Senate Policy on the Prevention and Resolution of Harassment in the Workplace* can have on ensuring workplace harassment is prevented and dealt with appropriately, the subcommittee recommends:

#### **RECOMMENDATION 6 – NOT USING TERMS THAT DISCOURAGE REPORTING**

**That the new Senate anti-harassment policy not use terms such as “bad faith,” “conflict,” “severity,” and “circumstances and context,” with the objective of encouraging people who are targets of harassment to bring forward their complaints about workplace mistreatment. To further clarify the provisions in the new policy, it**

<sup>39</sup> HRRH, [Evidence](#), June 19, 2018 (Katherine Lippel).

Currently, the words “conflict” (in English) or “conflit” (in French) are used under articles 1.5 (Definitions), 2.1 (Context), and 4.2 (Step 1 - Informal Resolution) of both the English and French versions of the Senate anti-harassment policy. In the French version only, the word “conflit” is used under articles 2.2.1 (Procedural Fairness) and 3.5 (Clerk of the Senate) of the policy. In the English version only, “conflict” is used under article 3.9 (Senators, Staff of Senators, Employees, Contractors and their Staffs, and Volunteers) of the policy.

<sup>40</sup> Brief submitted by Angela Dionisi, “Senate Policy Recommendations,” p. 5.

<sup>41</sup> Ibid.

<sup>42</sup> Ibid.

<sup>43</sup> See, for example, HRRH, [Evidence](#), June 5, 2018 (Angela Dionisi).

**should include, among other aspects, examples of different forms of harassing behaviour in an appendix.**

## **C. Information and Training**

### **1. Training**

#### **a) General Aspects**

The current Senate anti-harassment policy does not contain provisions with regards to training in the prevention of harassment and violence, yet the subcommittee heard much testimony about the importance of providing such training. Indeed, in response to testimony on this topic provided during the first three meetings of the study, which suggested that such training needed to be provided to everyone in the workplace,<sup>44</sup> the subcommittee presented an interim report.

This interim report, which was adopted by the Senate Standing Committee on Internal Economy, Budgets and Administration on June 14, 2018, recommended that senators, along with individuals with supervisory or managerial responsibilities within the Senate Administration, receive “mandatory and customized training in the prevention of harassment and violence in the Senate,” by December 31, 2018. The report also recommended that senators’ staff and employees of the Senate Administration attend mandatory training by March 31, 2019. Finally, the report asked that the Human Resources Directorate report back to the Senate Standing Committee on Internal Economy, Budgets and Administration on the participation rates related to the mandatory training sessions by April 30, 2019.<sup>45</sup>

In this regard, it should also be noted that one witness recommended adding a statement on the necessity of training for all employees under article 2.1 (Context) of the policy, noting that Bill C-65 makes it the responsibility of employers to ensure all employees receive training in the prevention of harassment and violence.<sup>46</sup>

In addition to receiving testimony about who should be trained, the subcommittee heard that training should be provided by experts on harassment and discrimination, or even by legal experts in certain cases, to ensure that the training offered is accurate. Witnesses also indicated that training should be offered on a recurrent basis. In particular, Professor Dionisi mentioned that it is important to have refresher sessions so that the issue of harassment remains current in people’s minds.<sup>47</sup>

Furthermore, the subcommittee was told that a specific section on training in the prevention of harassment and violence should be incorporated into the Senate anti-harassment policy and, as explained in further detail below, was provided with insight on the level of engagement and the content of such training.

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<sup>44</sup> See, for example, HRRH, [Evidence](#), June 5, 2018 (Angela Dionisi) and HRRH, [Evidence](#), June 12, 2018 (Sandy Hershcovis).

<sup>45</sup> HRRH, [First Report](#), June 14, 2018. See also Senate of Canada, [“Start mandatory harassment prevention training in the Senate, subcommittee urges,”](#) News Release, June 14, 2018.

<sup>46</sup> Brief submitted by Angela Dionisi, “Senate Policy Recommendations,” p. 3.

<sup>47</sup> HRRH, [Evidence](#), June 5, 2018 (Angela Dionisi). See also Brief submitted by Angela Dionisi, “Prevention and Intervention,” pp. 2-4.

## b) Level of Employee Engagement

Overall, witnesses agreed that policies alone are not enough to stop harassment and that training is a necessary part of any anti-harassment program, with certain types of training being more effective than others in promoting meaningful levels of employee engagement.

Notably, Professor Dionisi explained that training which has some type of interactive or experiential components embedded in it is more effective than passively watching instructional videos or taking computerized, internet-based training. According to her, group educational sessions with a live trainer and the use of experiential methods (such as role play simulations and behavioural modelling) are approaches to training that can result in improved recognition of harassing behaviours and attitudes towards harassment.<sup>48</sup> She added that “having a post-test whereby employees can reflect on what they have just seen and have the opportunity to report on can help with knowledge development and internalization.”<sup>49</sup>

These remarks were echoed by other witnesses, including representatives from Rubin Thomlinson LLP, who in their brief summarized the most effective type of training as being “interactive, in-person, and tailored to the specific workplace.”<sup>50</sup> They also indicated the following about the impact that having an organizational commitment to training can have on employee engagement:

Training should be done in a way that shows that the employer is committed to making everyone feel safe and comfortable at work. If it is done to fulfill a legal obligation, employees will see through it and will not be motivated to learn. Part of demonstrating this commitment is ensuring that *everyone* receives harassment training.<sup>51</sup>

## c) Content of Training in the Prevention of Harassment and Violence

Some witnesses also provided valuable insight on the content training should address, noting that even though the majority of businesses have training in the prevention of harassment, this training is often ineffective.<sup>52</sup> Professor Dionisi, for example, indicated that training should explain what harassment is, provide tangible examples of harassment that employees can reflect on and potentially relate to, as well as offer information about the policy itself (including, among other aspects, the reporting procedures).<sup>53</sup> Witnesses also recommended that different types of training be provided for different forms of harassment.<sup>54</sup>

The subcommittee also heard about the importance of providing targeted training, with Professor Lippel suggesting that training that is customized to the needs of the workplace, as highlighted in a workplace survey, would be more effective than standardized training.<sup>55</sup> It was also emphasized that

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<sup>48</sup> Ibid.

<sup>49</sup> HRRH, [Evidence](#), June 5, 2018 (Angela Dionisi).

<sup>50</sup> Brief submitted by Rubin Thomlinson LLP, p.8.

<sup>51</sup> Ibid.

<sup>52</sup> HRRH, [Evidence](#), June 5, 2018 (Angela Dionisi).

<sup>53</sup> Ibid. See also Brief submitted by Angela Dionisi, “Prevention and Intervention,” pp.2-4.

<sup>54</sup> HRRH, [Evidence](#), June 19, 2018 (Katherine Lippel).

<sup>55</sup> Ibid.

specific training with respect to the role bystanders and leaders or supervisors play in preventing and addressing harassment needed to be provided.

Bystander intervention training, Professor Dionisi noted, could address aspects such as a witness' obligation to report, how to provide support to an affected person, along with the different channels or avenues that a bystander would have at their disposal.<sup>56</sup> In their brief submitted for this study, representatives from Rubin Thomlinson LLP recommended that bystander intervention training be included in the Senate anti-harassment policy, citing research that shows that, "with appropriate bystander training, bystanders are more likely than targets of harassment to take direct action to prevent it."<sup>57</sup> The role of bystanders is explained in greater detail in Chapter 4 of this report.

Regarding the training to be provided to leaders or supervisors, Professor Hershcovis indicated that managers in particular need training on how to properly and respectfully address conflict in the workplace.<sup>58</sup> Professor Dionisi added the following in this regard:

[S]upervisors or leaders should also have some unique aspects to their training, including how to carry out their responsibilities with regard to policy, but also things like how to notify somebody that they are being accused of harassment or how to notify a target of harassment of what the investigation found. Those can be sensitive issues, so some training around that can be beneficial as well.<sup>59</sup>

The subcommittee acknowledges that Bill C-65 makes it the responsibility of the employer to provide training to all employees in the prevention of workplace harassment and violence, with employers themselves also having to undergo training (clause 3). The subcommittee is also aware that further details regarding harassment and violence prevention training may be offered by the regulatory amendments. Taking the provisions from Bill C-65 into account, along with valuable witness testimony provided on the subject, the subcommittee recommends:

#### **RECOMMENDATION 7 – MANDATORY TRAINING**

**That the new Senate anti-harassment policy include a specific section on training in the prevention of harassment and violence, and that such training be made mandatory for all individuals in the Senate workplace. In addition, that every individual joining the Senate be required to sign a commitment to complete such training within the timelines to be prescribed by the new policy.**

#### **RECOMMENDATION 8 – IMPLEMENTING MANDATORY TRAINING PROGRAMS**

**That the Human Resources Directorate be instructed to develop and implement separate and distinct mandatory training programs for senators and all other individuals in the Senate workplace, and that these training programs:**

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<sup>56</sup> HRRH, [Evidence](#), June 5, 2018 (Angela Dionisi). See also Brief submitted by Angela Dionisi, "Prevention and Intervention," pp. 4-5.

<sup>57</sup> Brief submitted by Rubin Thomlinson LLP, p. 6.

<sup>58</sup> HRRH, [Evidence](#), June 12, 2018 (Sandy Hershcovis).

<sup>59</sup> HRRH, [Evidence](#), June 5, 2018 (Angela Dionisi).

- a) be tailored to the specific needs of the workplace, as outlined in a workplace assessment or survey;
- b) include interactive or experiential components (such as role play simulations or behavioural modelling);
- c) provide information about the Senate anti-harassment policy itself and about the different types of workplace harassment;
- d) address bystander intervention as well as the role of leaders or supervisors in this regard;
- e) be offered on a recurring basis, including refresher sessions, and be provided by experts on workplace harassment and discrimination;
- f) include a requirement to provide written confirmation that an individual has completed the mandatory training; and
- g) include repercussions for failing to attend the mandatory training, as outlined in the new Senate anti-harassment policy.

## **2. Making the Senate Anti-Harassment Policy Readily Available**

During the course of the study, the subcommittee heard that a large proportion of employees of the Senate are not aware of the policy or of the complaint resolution processes outlined under it. Suggestions made in this regard included posting the Senate anti-harassment policy in the office of every senator and incorporating it into every contract of employment involving the Senate.

Mr. Rootham, however, cautioned that simply making the policy readily available is not sufficient and spoke about the importance of training in this regard, stating the following:

If we're serious about dealing with harassment — and I think we are — it's important that employees are regularly reminded about harassment, are regularly required to sign-off or to review the policy, that there is regular training, that there is regular review of the workforce, and so on. Simply requiring employees to be aware of the policy is insufficient. It should be front and centre.<sup>60</sup>

The subcommittee is aware that Bill C-65 requires employers to make certain information, such as a statement of the employer's general policy regarding occupational health and safety, readily available to their employees in both printed and electronic formats (clause 3). Taking the provisions of Bill C-65 into account, along with witness testimony on the subject, the subcommittee recommends:

### **RECOMMENDATION 9 – POLICY ACCESSIBILITY**

**That the Human Resources Directorate be instructed to make the new Senate anti-harassment policy readily available to everyone in printed and electronic form, and that the policy be incorporated into every contract of employment.**

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<sup>60</sup> HRRH, [Evidence](#), June 12, 2018 (Christopher Rootham).

## D. Data Collection

The current Senate anti-harassment policy provides that the Director of Human Resources (now known as the Chief Human Resources Officer) will present statistical reports regarding the incidence and disposition of harassment complaints to the Clerk of the Senate, as required (article 5).

While no specific testimony was received about this provision of the policy, the subcommittee heard about the need to conduct a workplace assessment or survey. Indeed, according to Professor Hershcovis, conducting a survey would allow workplaces to assess the nature of the harassment, how persistent or prevalent it is, and what kinds of harassment are exhibited. Once this has been determined, the workplace can collectively identify ways to move towards “a more positive culture,” she noted.<sup>61</sup> In their brief, representatives from Rubin Thomlinson LLP remarked the following about conducting proactive assessments:

In our experience, one of the best ways to address issues with workplace culture and the existence of harassment that has gone undetected in an organization is to conduct a workplace assessment. This is a process that seeks to gather information relating to the culture, practices and behaviours in the workplace and to identify the root cause of any conflicts or issues, or to determine the effectiveness of an organization’s operations. It can involve sending out and reviewing employee surveys, conducting interviews, and analyzing data about past complaints.<sup>62</sup>

Specifically with regards to the Senate, Professor Lippel recommended that employees take the Public Service Employee Survey, which is regularly conducted in the public service of Canada. She explained that using this particular survey would be advantageous because it would allow the Senate to compare its own results over the years, being able to ascertain its strengths and weaknesses. It would also minimize the associated fees, given that this is a measure that is already in place.<sup>63</sup>

Representatives from Rubin Thomlinson LLP also recommended that organizations maintain data on each incident of workplace harassment, including who was involved and how it was resolved. This data, they noted, can reveal valuable information, such as the root causes of harassment in the workplace and whether the complaints have decreased following training.<sup>64</sup> Finally, Professor Lippel

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<sup>61</sup> HRRH, [Evidence](#), June 12, 2018 (Sandy Hershcovis).

<sup>62</sup> Brief submitted by Rubin Thomlinson LLP, p. 8.

<sup>63</sup> HRRH, [Evidence](#), June 19, 2018 (Katherine Lippel).

The Public Service Employee Survey has been taken by employees of the Public Service of Canada triennially since 1999 (with some changes and additions to the questions included since then) and started being conducted more frequently in 2018. Notably, the questionnaire used in 2017 comprised sections on workplace harassment and discrimination. The 2018 survey was conducted from August to October of 2018, and the results will be available in 2019.

For additional information about the Public Service Employee Survey, please refer to the following sources: Government of Canada, [Public Service Employee Survey, 2017 Public Service Employee Survey Questionnaire](#), and [About the 2018 Public Service Employee Survey](#).

<sup>64</sup> Brief submitted by Rubin Thomlinson LLP, p. 9.

suggested collecting statistics on various forms of harassment; noting that race, sexual orientation and disability are often linked to harassment.<sup>65</sup>

The subcommittee is aware that the framework established by Bill C-65 requires the inclusion of statistical data on workplace harassment and violence (including information that is categorized according to prohibited grounds of discrimination) in annual reports by the Minister of Labour (clause 11.1). The subcommittee is also aware that regulatory amendments may offer further guidance in this regard, including the type of information that would need to be collected by employers.<sup>66</sup>

The subcommittee recognizes the value of the information that could be acquired through surveying employees and accumulating data, and therefore recommends:

#### **RECOMMENDATION 10 – WORKPLACE ASSESSMENT**

**That, in order to better assess the nature and extent of workplace harassment and violence in the Senate workplace and to inform further policy review,**

- a) the Senate Administration be instructed to conduct a workplace assessment or survey; or**
- b) should an internal survey not be a practical or efficient option in the circumstances, that Senate employees be required to take the same survey given to federal public service employees.**

**Further, that the results of the workplace assessment or survey be reported back to the Human Resources Subcommittee of the Standing Committee on Internal Economy, Budgets and Administration for further consideration.**

#### **RECOMMENDATION 11 – ACCOUNTABILITY**

**That the new Senate anti-harassment policy strengthen the requirement for statistical data collection and accountability in relation to occurrences of workplace harassment and violence.**

**That, while respecting the privacy of the parties involved, the data collected in this regard be reported back to the Human Resources Subcommittee of the Standing Committee on Internal Economy, Budgets and Administration for further consideration, and include information such as: the nature or position of the parties involved, the forms of harassment experienced, the manners in which the incidents were resolved, as well as the time lapses from reporting to resolution and between different incidents.**

### **E. Policy Review**

In addition to requiring the Chief Human Resources Officer to present statistical reports regarding the incidence and disposition of harassment complaints, the current Senate anti-harassment policy

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<sup>65</sup> HRRH, *Evidence*, June 19, 2018 (Katherine Lippel).

<sup>66</sup> See Employment and Social Development Canada, *Proposed regulatory framework: Harassment and violence - Consultation paper, Labour Program Stakeholder Consultations*.



allows the Chief Human Resources Officer to recommend changes to the policy and its Appendices, after consultation with the Human Resources Management Committee (article 5).

While witnesses did not specifically refer to this provision of the policy either, they nevertheless suggested that the policy be amended to require regular policy review in order to adapt to the evolving concept of harassment and the specific situation of the Senate. With a clear schedule for revision, witnesses noted, changes to the policy could occur more frequently and consistently. During her appearance before the subcommittee, Professor Hershcovis spoke of the importance of employee involvement in any policy review process, stating the following:

Another way to prevent harassment is to involve all employees in the policy revision process. This engages everyone in the process of thinking about harassment and the process for dealing with it and helps to communicate to employees that the Senate takes harassment seriously.<sup>67</sup>

The subcommittee is also aware that employers falling under the purview of Part II (Occupational Health and Safety) of the *Canada Labour Code* already have obligations under the regulations regarding policy review<sup>68</sup> and that announced regulatory amendments may offer further guidance in this regard. As indicated above, Bill C-65 amends the *Parliamentary Employment and Staff Relations Act* to expand the application of the occupational health and safety framework under the Code to parliamentary workplaces, subject to modifications to account for parliamentary privilege.

Based on this information, the subcommittee recommends:

#### **RECOMMENDATION 12 – REGULAR POLICY REVIEWS**

**That the new Senate anti-harassment policy include a specific requirement for regular policy reviews, the first of which must occur within three years following the adoption of the new policy or earlier at the discretion of the Human Resources Subcommittee of the Standing Committee on Internal Economy, Budgets and Administration. Further, that these reviews involve the participation of employees and any other key figures in the Senate workplace, and that follow-ups be provided as appropriate.**

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<sup>67</sup> HRRH, [Evidence](#), June 12, 2018 (Sandy Hershcovis).

<sup>68</sup> See [Canada Occupational Health and Safety Regulations](#), SOR/86-304, s. 20.7.



## CHAPTER 4: Complaint Resolution under the Senate Policy on the Prevention and Resolution of Harassment in the Workplace

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Witnesses also raised a series of concerns with respect to the complaint resolution processes outlined under the policy, along with related matters. The following is a brief overview of their observations and recommendations in this regard.

### A. Formal and Informal Complaint Resolution Procedures

The current Senate anti-harassment policy provides for informal and formal resolution processes to address harassment-related complaints in the workplace. Specifically, the informal resolution process encourages parties to solve the dispute among themselves or, if necessary, meet with their supervisor or seek advice from “a qualified and trusted person” before the matter escalates. Methods such as counselling, coaching, facilitation and mediation are encouraged. These strategies are aimed at facilitating an early resolution of the dispute. If, however, the informal resolution process is not successful, or the Chief Human Resources Officer determines that the informal resolution process is not appropriate in the circumstances, then the complainant may file a formal written complaint. This action gives way to the start of the formal resolution process (articles 4.1 to 4.3).

Several witnesses expressed concerns over the fact that a complainant must seek an informal resolution of the dispute before being able to pursue their complaint in a formal manner, regardless of the nature of their complaint. These witnesses suggested that complainants be encouraged and assisted to pursue the resolution mechanism that best suits their situation.

Similarly, Professor Dionisi pointed out that, while the framework established by Bill C-65 requires that a complaint first be made to the supervisor or the person designated in the workplace harassment and violence prevention policy, it does not specify whether the complaint must be formal or informal. In her view, given that each procedure has its advantages and disadvantages, it would be important to allow the complainants themselves to determine whether they would like to file an informal or a formal complaint from the outset.<sup>69</sup>

Notably, in their brief to the subcommittee, representatives from Rubin Thomlinson LLP also cautioned against using alternative dispute resolution (ADR) methods, such as mediation, as a first step to resolving harassment complaints. In their opinion, while ADR methods can be an excellent first resource for resolving minor disputes between co-workers, this may not necessarily be the case where there are significant power imbalances between the parties. They noted that there is also a tendency for employers to mischaracterize workplace harassment as a “problematic relationship” or a “communication problem,” and send the parties to ADR to sort out their differences. As such, they believed that the initial onus should be placed on the employer to investigate the matter, rather than on the parties to informally resolve their dispute.<sup>70</sup> In this regard, they indicated as follows:

The benefit of conducting an investigation *before* an ADR [alternative dispute resolution] process is that it allows a complainant to tell their story to a neutral third party, who can then make findings as to whether harassment occurred. Once this process is complete, ADR may be used to remediate the relationships between the parties. Skipping the

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<sup>69</sup> HRRH, [Evidence](#), June 5, 2018 (Angela Dionisi). See also Reference document submitted by Angela Dionisi, “Senate Policy Recommendations,” p. 4.

<sup>70</sup> Brief submitted by Rubin Thomlinson LLP, pp. 4-5.

investigation process entirely means that important determinations as to what occurred and why may never be made.<sup>71</sup>

The subcommittee, however, is aware that the framework established by Bill C-65 will require the parties to try to resolve the complaint among themselves as soon as possible, with the aid of mediation if appropriate, before referring the unresolved complaint for investigation (clause 5). The subcommittee is also aware that regulatory amendments may offer further guidance in this regard.

Taking these aspects into account, the subcommittee recommends:

### **RECOMMENDATION 13 – COMPLAINT RESOLUTION PROCEDURE**

**That the Senate Administration be instructed to set up, in consultation with experts, an independent consolidated complaint resolution procedure as soon as possible, even before the new Senate anti-harassment policy is adopted, with a view to better responding to different types of complaints, increasing victim agency, and encouraging alternative dispute resolution methods when most appropriate and mutually agreed upon by the parties.**

**In addition, that the Senate Administration be instructed to put in place an optional and anonymous reporting mechanism for the parties to voluntarily provide comments about the effectiveness of the complaint resolution process, and that the comments obtained be reported back to the Human Resources Subcommittee of the Standing Committee on Internal Economy, Budgets and Administration for further consideration.**

#### **B. Reporting Occurrences of Harassment**

As briefly referred to above, under the informal resolution process, the current Senate anti-harassment policy provides that an individual who believes they have been the target of harassment should first attempt to resolve the problem with the other party before it escalates and, failing this, should meet with their supervisor or seek advice from “a qualified and trusted person.” This term is defined in the policy as including the responsible party Whip, a manager, an advisor in the Human Resources Directorate, their union representative where applicable, or someone from the Employee Assistance Program (articles 4.2.1 to 4.2.2).

During the study, the subcommittee heard that workplace harassment goes largely unreported in organizations of all sizes. Statistics from the Angus Reid Institute shared with the subcommittee by Ms. Rubin revealed that, “while approximately half of Canadian women experience sexual harassment at some point in their working lives, only a quarter ever report it.”<sup>72</sup> In other words, she noted, “three quarters of sexual harassment goes underground.”<sup>73</sup> According to Professor Dionisi, the reasons behind the underreporting of harassment are both complex and varied, a view that was echoed by other witnesses appearing before the subcommittee:

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<sup>71</sup> Ibid., p. 5.

<sup>72</sup> HRRH, [Evidence](#), June 12, 2018 (Janice Rubin).

<sup>73</sup> Ibid.

Studies show that very few victims of sexual harassment actually report their mistreatment. There are a number of reasons for that. Victims don't believe that they will be taken seriously. Victims are also worried about secondary victimization and retaliation. They may be hesitant to put their complaint into writing and have it put into their formal employment file.<sup>74</sup>

Witnesses indicated that many bystanders also refrain from intervening due to reasons such as fear of reprisals, not knowing what to say or whether the occurrence is something they should report on, assuming that someone else will step in, not believing that the complaint will be appropriately acted upon, not wanting the harasser to be officially punished or not wanting to enter into a messy battle.<sup>75</sup>

### **1. Reporting to a Supervisor or a “Qualified and Trusted Person”**

Professor Dionisi explained that it is “problematic” when the target of sexual harassment has to report their mistreatment to their immediate supervisor. This is owed to a number of reasons, including the fact that their supervisor may be the alleged harasser or be part of the larger situation. In certain cases, she added, having a male supervisor can also have an impact on the power dynamics at play.<sup>76</sup>

In addition, some witnesses said the fact that the Human Resources Directorate is yet another reporting avenue provided under the policy deters employees from bringing harassment complaints forward. Indeed, the subcommittee heard that the Human Resources Directorate is largely perceived as representing the interests of management and of the institution at large, and that this can affect the parties' overall perception of impartiality of the process.

Having party Whips as a “qualified and trusted person” under the policy was also described as problematic given their political role and perceived biased nature. In addition, witnesses noted that the lack of a Whip for the Independent Senators' Group (ISG) poses yet another challenge as not all staff have a party Whip upon whom to rely.<sup>77</sup>

Finally, the subcommittee heard that there is the potential for a conflict of interest to arise when, in an effort to avoid reporting the occurrence to a supervisor, a Senate employee who is a member of a labour union brings a harassment complaint against another employee to their union representative. Member-to-member complaints, witnesses noted, can be particularly sensitive as union representatives have a responsibility to represent the interests of all members alike.

### **2. Reporting to an Impartial Third Party**

In order to address these concerns, witnesses suggested appointing an impartial third party as the individual in charge of receiving harassment-related complaints. Notably, Professor Lippel spoke about a “person of confidence” or “person of trust” from the Belgian legislation to whom those affected by harassment could go to speak freely and anonymously, while also obtaining advice. Along the same lines, she also spoke about the reference person for harassment cases that is outlined in the 2015 harassment policy of the Quebec National Assembly. This reference person,

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<sup>74</sup> HRRH, [Evidence](#), June 5, 2018 (Angela Dionisi).

<sup>75</sup> Brief submitted by Rubin Thomlinson LLP, p. 6; and Brief submitted by Angela Dionisi, “Prevention and Intervention,” pp. 4-5.

<sup>76</sup> HRRH, [Evidence](#), June 5, 2018 (Angela Dionisi).

<sup>77</sup> As of February 11, 2019, the ISG have 54 of the total 105 Senate seats, making it the largest group of senators. See Senate of Canada, [Senators](#).

she noted, is “appointed to listen first, before investigating, to the individual experiencing harassment.”<sup>78</sup> She urged the subcommittee to consider adopting a similar practice.<sup>79</sup>

Professor Lippel emphasized the importance of tailoring this model to the needs of the organization, citing the example of small businesses that would benefit from having a person of confidence who comes from outside the organization. The Senate, in her opinion, is more of a “hybrid type organization” as it has features of both small workplaces (individual Senators’ offices) and large workplaces (the Senate Administration). As such, she noted that the Senate should consider best practices from both types of workplaces.<sup>80</sup>

Professor Lippel indicated as follows with regards to choosing a person of confidence in the Senate context:

The way to think about it is to find someone or a series of someones who are these persons of confidence. Every senator cannot be the person one or two staff can go to. It’s not functional, and that’s not your role. But you can have a person of confidence... Anyone from a senator down to the person in your office working on a one-year contract has to have a safe space to talk.

Designing a safe space is not easy. It requires consultation. It requires consultation with unions, even though your people are perhaps not unionized. The unions can have recommendations of service providers who are external and who are perceived to be fair by all parties and can be recommended. It can be someone who has worked for the Senate in the past and who is now known to the senators but who does not necessarily have a position. You can have more than one person. You can choose among different people. Gender is important.<sup>81</sup>

Similarly, other witnesses spoke about appointing an ombudsperson who could be that impartial third party and gave the example of the dedicated harassment officers present in most Ontario universities. These harassment officers, they noted, are typically in charge of handling the intake of harassment and violence complaints, but also sometimes investigate them. The dedicated harassment officers are generally not also responsible for human resources in the university as these two roles are usually split.<sup>82</sup>

In her written remarks, Professor Dionisi urged the subcommittee to consider the framework established by Bill C-65, which will require employees to make harassment-related complaints to either their supervisor or to the person designated in the policy before exercising any other recourse available to them under the legislation. She noted specifically that article 4 (Procedures) of the current Senate anti-harassment policy, along with the Resolution Process Flow Chart, may have to be modified as a result.<sup>83</sup>

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<sup>78</sup> HRRH, [Evidence](#), June 19, 2018 (Katherine Lippel).

<sup>79</sup> Ibid.

<sup>80</sup> Ibid.

<sup>81</sup> Ibid.

<sup>82</sup> HRRH, [Evidence](#), June 12, 2018 (Sandy Hershcovis, Janice Rubin and Christopher Rootham).

<sup>83</sup> Reference document submitted by Angela Dionisi, “Senate Policy Recommendations,” p. 4.

### 3. Victim Agency

During her appearance before the subcommittee, Professor Dionisi advanced the concept of “victim agency,” or the notion that targets of harassment should have as much autonomy or flexibility as possible over the reporting process, as a way to encourage more of them to come forward with their complaints. This would mean offering complainants options such as whether to make an anonymous complaint (through, for example, a sexual harassment hotline), whether to file a formal complaint from the outset, and whether to report to someone inside or outside the organization. Providing targets of harassment with options about who leads the investigation (including their gender and race) and with the opportunity to provide feedback on potential consequences for the harasser, she noted, are also important.<sup>84</sup>

In addition to the sexual harassment hotline (or 1-800 program), the subcommittee also received testimony about having a “confidential harassment web portal safe space” as yet another avenue for individuals to report harassment. As indicated in a brief submitted by Senator Nancy Hartling, this web portal could provide targets of harassment with information and instructions on how to proceed, with access to online resources with confidential third-party workplace harassment prevention experts, as well as with the means to document harassment incidents and submit complaints.<sup>85</sup>

### 4. Bystander Intervention

An additional suggestion for combatting underreporting had to do with the important role bystanders can play in this regard, and emphasized the need to incorporate bystander intervention into a harassment prevention policy. Indeed, as indicated by Professor Dionisi in her written remarks:

When it comes to preventing and combatting workplace sexual harassment, research suggests that bystander intervention is one of the most promising avenues to pursue.

Not only are many victims too afraid to come forward themselves, but communicating the responsibility of everyone to act against sexual harassment helps to re-shape the culture and provide further dissuasion of perpetrators.<sup>86</sup>

Specifically with regards to the Senate anti-harassment policy, witnesses suggested incorporating language into the policy that would stress the responsibility of bystanders to both prevent and combat harassment. It would also be important to provide guidance to bystanders in the amended policy, so that they know how to proceed if they become aware of or see a colleague experiencing harassment. This type of intervention, they noted, could range from reporting the problematic behaviour themselves to discouraging the behaviour through body language, refusing to take part in the harassing or bullying conduct, and directly confronting the person engaging in harassment.<sup>87</sup>

To this end, Professor Dionisi recommended amending various portions of the current Senate anti-harassment policy. First, she suggested amending article 2.3 (General) of the policy to include the

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<sup>84</sup> HRRH, [Evidence](#), June 5, 2018 (Angela Dionisi). See also Reference document submitted by Angela Dionisi, “Prevention and Intervention,” p. 2.

<sup>85</sup> Brief submitted by Senator Nancy Hartling.

<sup>86</sup> Reference document submitted by Angela Dionisi, “Senate Policy Recommendations,” p. 2.

<sup>87</sup> HRRH, [Evidence](#), June 5, 2018 (Angela Dionisi). See also Brief submitted by Rubin Thomlinson LLP, p. 6.

following statement: “It is a requirement of witnesses to intervene in observed harassment by either ...,” and provide examples. Secondly, to further solidify this point, she suggested modifying one of the questions in Appendix B of the policy that provide guidance as to what constitutes harassment, as follows: “Did it demean, belittle or cause personal humiliation or embarrassment *to yourself and or someone else?*”<sup>88</sup> This is in addition to amending the policy to incorporate bystander intervention training as explained in Chapter 3 of this report.

Understanding that reporting mechanisms can be of great importance in encouraging or deterring targets of harassment, as well as bystanders, from coming forward with complaints about workplace mistreatment, and considering all relevant witness testimony about the policy and Bill C-65, the subcommittee recommends:

#### **RECOMMENDATION 14 – IMPARTIALITY OF THE PROCESS**

**That the new Senate anti-harassment policy:**

- a) ensure the impartiality of the intake process through the appointment of an impartial third party to whom complaints can be brought on a confidential basis;**
- b) ensure victim agency by providing multiple reporting options for those experiencing harassment and violence; and**
- c) encourage bystander intervention and provide guidance on how to proceed when mistreatment is observed, among other aspects.**

**Further, that the new policy take into account the suggestions for alternative wording made by witnesses in this regard.**

#### **C. Investigating Occurrences of Harassment**

Following the filing of a formal complaint, the current Senate anti-harassment policy stipulates that the Chief Human Resources Officer must conduct an initial screening to determine, among other aspects, whether the alleged events may constitute harassment as defined in the policy. If the formal complaint meets the prescribed criteria, the policy provides different avenues for dealing with the complaint, depending on the identity of the respondent and under whose authority they fall.

For example, where the complaint concerns the conduct of an employee of the Senate Administration, or of other persons under the administrative jurisdiction of the Clerk, the Chief Human Resources Officer must decide whether to make a recommendation about the complaint without undertaking an investigation, or whether to appoint an investigator from inside or outside the Senate Administration. Where, however, the complaint concerns the conduct of a senator or a senator’s staff, the Government and Opposition Whips are the individuals responsible for rendering a decision without an investigation or for appointing an investigator or review panel.

Upon receipt of the investigator or review panel’s final report, along with the parties’ final submissions, the Clerk or the Government and Opposition Whips must determine whether the complaint is founded or unfounded. If the complaint is determined to be founded, these individuals

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<sup>88</sup> Reference document submitted by Angela Dionisi, “Senate Policy Recommendations,” p. 2.



must determine any remedial, corrective, disciplinary or other measures, in consultation with the Chief Human Resources Officer (articles 4.5 to 4.8).

### **1. Review of a Formal Complaint**

Witnesses expressed concerns over the power of the Chief Human Resources Officer or the Government and Opposition Whips to make a recommendation or render a decision about the complaint without first holding an inquiry.

Professor Hershcovis, in particular, suggested the removal of the relevant provisions from the policy, noting that an investigation should always be undertaken when a person launches a formal complaint. This would in turn increase the likelihood that persons who are targets of harassment will report in the future, as well as increase perceptions of fairness even when a complaint against the alleged harasser is not upheld.<sup>89</sup>

Alternatively, should the provision remain in place, she suggested appointing an impartial ombudsperson to review the complaint before an investigation occurs. She emphasized that this ombudsperson should not be anyone in a position of power in the Senate.<sup>90</sup>

### **2. Launching an Investigation**

In their brief to the subcommittee, representatives from Rubin Thomlinson LLP indicated that having a formal, signed complaint as the trigger for an investigation was too high a bar. Indeed, they noted that this could prevent the employer from dealing with incidents of harassment that are not the subject of a formal complaint, but that may have come to their attention via a different channel. Therefore, in their opinion, the Senate anti-harassment policy should be amended to make it clear that management itself, not just the complainant, may launch an investigation.<sup>91</sup>

They offered the example of Ontario legislation to better illustrate this point:

In Ontario, ... the introduction of Bill 132 in 2016 amended the *Occupational Health and Safety Act* to create an obligation for employers to conduct an investigation that is “appropriate in the circumstances,” for all complaints and incidents of harassment that come to their attention. If there is a failure to do this, the Ministry of Labour can order an investigation be conducted by an external neutral party at the employer’s expense, so there are real teeth in this provision. Since the Act was amended, the Ministry of Labour has reported a 136% increase in harassment incidents being reported. While a rise in harassment complaints might sound like a bad thing, what this means is that incidents that would not have come to light before Bill 132 are now being investigated and addressed.<sup>92</sup>

### **3. Investigators**

With respect to the investigators themselves, Ms. Rubin noted that investigators must have “substantive knowledge of workplace harassment,” regardless of whether they come from inside or

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<sup>89</sup> Reference document submitted by Sandy Hershcovis, “Specific Suggestions.”

<sup>90</sup> Ibid.

<sup>91</sup> Brief submitted by Rubin Thomlinson LLP, p. 4.

<sup>92</sup> Ibid.

outside the organization, given that this is an area that is full of nuances. In her view, investigations must be “fair, thorough, impartial and conducted by people who know what they are doing.”<sup>93</sup> Emphasizing that review panels should be impartial, Professor Hershcovis added that no one in the Senate should sit on them.<sup>94</sup>

Speaking of Bill C-65, Professor Dionisi reminded the subcommittee that the legislation contains provisions around impartiality, largely by prohibiting health and safety committees and representatives from being part of an investigation related to occurrences of workplace harassment and violence. Thus, the choice of investigator will be directly affected by these provisions, since they restrict the involvement of certain individuals in the investigation process. Professor Dionisi therefore recommended that article 4.5 (Review of a Formal Complaint) of the policy, along with those provisions from the policy setting out roles and responsibilities, be reviewed with this in mind.<sup>95</sup>

While there appeared to be consensus over the qualifications of investigators, some witnesses disagreed about the nomination process. According to Professor Dionisi, targets of harassment prefer to have a say over who conducts the investigation.<sup>96</sup> Professor Lippel, however, cautioned against the idea of allowing for a joint nomination to be made by both parties, which is one of the regulatory amendments contemplated in relation to Bill C-65. Rather, she suggested that a role be given in this regard to representatives from Human Resources and the unions. If the target of harassment is a page and the alleged harasser is a senator, she noted as an example, allowing them to make a joint nomination might result in revictimization.<sup>97</sup>

Regardless of who the investigator is or how they are appointed, representatives from Rubin Thomlinson LLP spoke in their brief about the importance of expanding the investigator’s role so that the investigator is not limited to fact-finding only. They suggested that investigators should not only be responsible for conducting investigations and making findings of fact, but that they should also be able to conduct an analysis as to whether any facts found breach the policy.<sup>98</sup> They explained their rationale for this as follows:

[I]t is our experience that at the end of a workplace investigation, the investigator has likely done a significant amount of evidence gathering and has spoken directly to parties and witnesses; it makes sense to allow the person who has received this evidence to determine whether the allegations are founded or not. Allowing anyone else to make that determination is a missed opportunity to take advantage of the skills, experience and objectivity of the individual you have trusted to undertake the investigation. Moreover, it is a missed opportunity to rely on the neutrality and objectivity of the investigator.<sup>99</sup>

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<sup>93</sup> HRRH, [Evidence](#), June 12, 2018 (Janice Rubin).

<sup>94</sup> Reference document submitted by Sandy Hershcovis, “Specific Suggestions.”

<sup>95</sup> HRRH, [Evidence](#), June 5, 2018 (Angela Dionisi). See also Reference document submitted by Angela Dionisi, “Senate Policy Recommendations,” p. 4.

<sup>96</sup> Ibid.

<sup>97</sup> HRRH, [Evidence](#), June 19, 2018 (Katherine Lippel).

<sup>98</sup> Brief submitted by Rubin Thomlinson LLP, pp. 5-6.

<sup>99</sup> Ibid., p. 6.

#### 4. Investigation Process

In addition to noting that measures needed to be taken in order to ensure adequate financing of independent inquiries,<sup>100</sup> witnesses suggested that the Senate anti-harassment policy be amended to provide greater clarity around the investigation process itself. Specifically, in her written remarks to the subcommittee, Professor Hershcovis suggested outlining what the investigation will entail under article 4.7 (Investigation) of the policy. For example, she suggested the following:

- Document the nature of the complaint;
- Interview the complainant;
- Interview the respondent with the aim to protect the identity of the complainant. This may mean delaying an interview so that it does not occur immediately after an obvious event, thereby identifying the complainant;
- Interview witnesses and potential witnesses;
- Collect and review any evidence, such as e-mails, audio recordings and written records;
- Document the findings and conclusions of the panel, including recommendations and remedies;
- Inform the complainant and respondent of the findings;
- Allow an opportunity to appeal the decision if either side can demonstrate any inaccuracies or deficiencies in the investigation process;
- Indicate that an investigation will be undertaken in a timely manner as long as it does not compromise the complainant's identity; and
- Stipulate what will happen if the panel identifies an imminent threat against a complainant.<sup>101</sup>

The subcommittee acknowledges that the framework established by Bill C-65 contemplates the appointment of a “competent person” in charge of investigating and reporting on the incident of harassment and violence as well as of making recommendations for the workplace.<sup>102</sup> The subcommittee is also aware that regulatory amendments may offer further guidance in this regard, including the qualifications of and nomination process for a “competent person,” and that a list of pre-assessed competent individuals may be provided to employers by Employment and Social Development Canada.<sup>103</sup>

The subcommittee acknowledges the significance of having an investigation process that reflects procedural fairness and that is aligned with the modified framework for dealing with harassment and violence in workplaces under federal jurisdiction. Accordingly, the subcommittee recommends:

#### **RECOMMENDATION 15 – INVESTIGATION BY A THIRD PARTY**

**That, in relation to all complaints of harassment and violence, the new Senate anti-harassment policy require the appointment of an impartial third party to investigate the matter and produce a written report with findings and recommendations, subject to privacy requirements. For greater clarity and to further guarantee procedural fairness, specific details about the investigation process should be included in the new policy.**

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<sup>100</sup> HRRH, [Evidence](#), June 19, 2018 (Katherine Lippel).

<sup>101</sup> Reference document submitted by Sandy Hershcovis, “Specific Suggestions.”

<sup>102</sup> See [Canada Occupational Health and Safety Regulations](#), SOR/86-304, s.20.9.

<sup>103</sup> See Employment and Social Development Canada, [Proposed regulatory framework: Harassment and violence - Consultation paper, Labour Program Stakeholder Consultations](#).

## RECOMMENDATION 16 – NOTIFYING THE SENATE ETHICS OFFICER

While recognizing the independence of the Senate Ethics Officer in conducting preliminary reviews and inquiries under the *Ethics and Conflict of Interest Code for Senators*, that the new Senate anti-harassment policy require that the Senate Ethics Officer be notified when a harassment complaint against a senator is made and is being investigated along with the results of that investigation.

## RECOMMENDATION 17 – NOTIFYING THE STEERING COMMITTEE

That the new Senate anti-harassment policy provide that the steering committee of the Standing Committee on Internal Economy, Budgets and Administration be notified of the conclusions of an investigation report when sanctions are recommended.

### D. Privacy Protections

The current Senate anti-harassment policy ensures the confidentiality of all inquiries, complaints and related records, subject to procedural fairness or to any disclosure required by the policy or by law. It also stipulates that disciplinary measures may be taken against those who inappropriately disclose information (article 2.2.3). Other provisions in the policy build upon this aspect (see articles 3.9(f), 4.1.2, 4.3.3, and 4.7.3).

Despite these provisions, the subcommittee heard during the study about the lack of confidentiality surrounding the complaint resolution processes. Notably, Mr. Rootham indicated as follows in this regard:

It's difficult for complaints to remain truly confidential if the Director of HR is responsible for them, because the Director of HR is ultimately also responsible for discipline and for performance management. It's hard to forget about the existence of a pre-existing harassment complaint when you are dealing with what could be unrelated or maybe related discipline or performance management issues.<sup>104</sup>

He therefore suggested the subcommittee consider ways to remove this program from the Human Resources Directorate by, for example, appointing an ombudsperson responsible for workplace wellness, including harassment. Alternatively, if the program must reside within the Human Resources Directorate, he suggested collaboration between the employers covered under the scope of the *Parliamentary Employment and Staff Relations Act*. For example, the Director of Human Resources for the Library of Parliament could be responsible for the Senate, and so forth. In his opinion, such a rotation would “create a greater confidentiality wall for these complaints.”<sup>105</sup>

Professor Hershcovis, however, suggested that the policy be amended to make clear that the identity of the parties, along with the circumstances of the incident, would not be disclosed to anyone unless such disclosure was necessary for the purposes of a complete investigation and only after

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<sup>104</sup> HRRH, [Evidence](#), June 12, 2018 (Christopher Rootham).

<sup>105</sup> Ibid.

notifying the target of the harassment. She also recommended that the policy be amended to prevent the respondent from obtaining a copy of the complaint.<sup>106</sup>

While the subcommittee is appreciative of all the witness testimony it received during the study, it is of the opinion that preventing a respondent from obtaining a copy of the complaint could raise concerns regarding procedural fairness, and therefore chooses not to retain this recommendation.

Speaking about the privacy protections in Bill C-65, Professor Dionisi suggested that the policy be amended to incorporate stronger language. The provisions in Bill C-65, she noted, largely prevent the disclosure of “any information that is likely to reveal the identity of a person who was involved in an occurrence of harassment and violence in the workplace,” without that person’s consent.<sup>107</sup>

The subcommittee is aware that the framework established by Bill C-65 largely prevents health and safety committees and representatives from being part of an investigation related to occurrences of harassment and violence (clauses 6, 7 and 10) as well as from being provided with, or having access to, information that is likely to reveal an affected person’s identity without their consent (clauses 8 and 11). The subcommittee is also aware that annual reports by the Minister of Labour are subject to similar limitations to protect the privacy of a person affected by an occurrence of workplace harassment and violence (clause 11.1). Finally, the subcommittee is cognizant of the fact that regulatory amendments may offer further guidance in this regard.

Taking the above-noted aspects into account, the subcommittee recommends:

#### **RECOMMENDATION 18 – STRONGER PRIVACY PROTECTIONS**

**That the new Senate anti-harassment policy provide for stronger privacy protections surrounding complaint resolution, while still permitting the compilation of statistical data to meaningfully assess the complaint resolution process. In addition, that the new policy reflect the language in Bill C-65, and prohibit the disclosure of any information that is likely to reveal an affected person’s identity without that person’s written consent.**

#### **E. Timelines**

Under the current Senate anti-harassment policy, a formal complaint must be submitted to the Chief Human Resources Officer within one year of the alleged incident of harassment (article 4.3.4). The policy also provides that all complaints should be dealt with within six months and that all remedial, corrective or disciplinary measures should be implemented “expeditiously and consistently,” unless there are circumstances justifying the extension of these timelines, as determined by the Chief Human Resources Officer or the Government and Opposition Whips (articles 2.2.2 and 2.3.5). The policy also provides specific timelines with regards to various aspects of the investigation process, such as the deadline by which an investigator or review panel must be appointed following the acceptance of a formal complaint (articles 4.5 to 4.8).

In this regard, the subcommittee heard from various witnesses about the importance of speedy resolution and of having clearer, more prescriptive timelines under the policy. In an environment where some contracts of employment need to be renewed on an annual basis, timelines are of

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<sup>106</sup> Reference document submitted by Sandy Hershcovis, “Specific Suggestions.”

<sup>107</sup> Reference document submitted by Angela Dionisi, “Senate Policy Recommendations,” p. 5.

particular concern. Witnesses noted that the policy should be modified to reflect this dynamic and so that “running out the clock” on a complaint is not considered a viable strategy. A specific suggestion made in this regard called for interviews to be conducted within 24 to 48 hours, and for preliminary reports to be completed within 72 hours.<sup>108</sup>

By contrast, Professor Lippel spoke about the importance of avoiding setting rigid timelines particularly where targets of harassment may be suffering from mental health problems (such as depression, psychological distress or post-traumatic stress disorder) as a result of workplace mistreatment. In this context, requiring that targets of harassment comply with rigid timelines when they may be on sick leave may not work very well in practice and constitute an added source of stress for them. Although to a lesser extent, Professor Lippel noted that this could also be true of the respondent, who may develop mental health problems from the stress associated with the process.<sup>109</sup>

The subcommittee is also aware that, though very few timelines are specified in the framework established by Bill C-65 (such as those associated with employer duties in relation to former employees), the amended regulations may offer further guidance in this regard. This may include the time frames associated with the resolution of an incident of workplace harassment and violence.<sup>110</sup>

Taking these aspects into account, and the fact that setting timelines around the complaint resolution process may help ensure reliability over a witness’ recollection of the events, the subcommittee recommends:

#### **RECOMMENDATION 19 – PRESCRIPTIVE TIMELINES**

**That the new Senate anti-harassment policy provide prescriptive timelines that align with best practices in similar organizations, until the framework established by Bill C-65 and any related regulatory amendments come into force, while minimizing the potential health effects these timelines may have on those persons who are undergoing the complaint resolution process.**

#### **F. Remedies and Sanctions**

As mentioned above, the Senate anti-harassment policy currently provides that when a complaint is founded, the Clerk or the Government and Opposition Whips, in consultation with the Chief Human Resources Officer, must determine “any remedial, corrective, disciplinary or other measures” against the respondent. Corrective or disciplinary measures that could be taken are described in the policy as “up to and including termination of employment” (articles 2.3.7 and 4.8.2).

Witnesses appearing before the subcommittee concurred that these provisions are very general in nature and that, in order to better respond to occurrences of workplace harassment, the Senate anti-harassment policy should be amended to include more specific remedies and sanctions. Notably, in

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<sup>108</sup> Reference document submitted by Senator Nancy Hartling.

<sup>109</sup> HRRH, Evidence, June 19, 2018 (Katherine Lippel). See also Reference document submitted by Katherine Lippel.

<sup>110</sup> See Employment and Social Development Canada, [Proposed regulatory framework: Harassment and violence - Consultation paper, Labour Program Stakeholder Consultations](#).

her written remarks to the subcommittee, Professor Dionisi provided a list of possible corrective measures that could be incorporated into the policy, including:

- Attendance at educational sessions on the impact of harassment;
- Attendance at coaching sessions to improve communication or conflict resolution skills;
- Restricted or prohibited access to the workplace and/or services;
- Verbal or written warning or reprimand;
- Transfer or reassignment;
- Reduction of wages;
- Suspension/demotion; and
- Discharge/termination.<sup>111</sup>

Professor Dionisi also provided examples of measures to address the effects of harassment, which could also be incorporated into the policy, including:

- A letter of apology from the respondent;
- Correction of any other harm caused by the harassment, such as compensation for losses;
- Restoration of leave taken because of harassment;
- Expungement of negative evaluations in the employee's personnel file that arose from sexual harassment; and
- Monitoring treatment of the employee to ensure they are not subjected to retaliation by the respondent and others in the workplace because of the complaint.<sup>112</sup>

Witnesses were also concerned that some types of sanctions are particularly difficult to implement when the respondent is a senator, given the nature of the position they occupy within the Senate hierarchy. Indeed, witnesses noted that the only specific remedy currently included in the policy (namely, termination of employment) is more often used in relation to senator's staff and employees of the Senate Administration. During her appearance before the subcommittee, Professor Hershcovis indicated as follows in this regard:

[For a policy] to have teeth, there need to be real consequences for perpetrators. Having a policy with no consequences isn't much of a deterrent for bad behaviour. Since powerful people are often the harassers, this presents a challenge when the perpetrator is a senator.

In other organizations, people can be fired for engaging in harassment. In the Senate, the least powerful people, those most likely to be victims, can be fired, but the most powerful people and those who are more likely to engage in harassment are much harder to fire... It's difficult to have an effective policy when there are no serious repercussions. Such a system is also very likely to discourage reporting.<sup>113</sup>

In response to these concerns, multiple witnesses recommended that specific measures for senators be incorporated into the Senate anti-harassment policy, which would be different from those applied

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<sup>111</sup> Reference document submitted by Angela Dionisi, "Senate Policy Recommendations," p. 3.

<sup>112</sup> Ibid., pp. 3-4.

<sup>113</sup> HRRH, [Evidence](#), June 12, 2018 (Sandy Hershcovis).

to other respondents, such as financial sanctions for senators when a harassment complaint against them is upheld.

## 1. Protection against Reprisal

The current Senate anti-harassment policy also provides that disciplinary or corrective measures may be taken against anyone who interferes with the resolution of a complaint through threats, intimidation or retaliation (article 2.3.7).

Witnesses appearing before the subcommittee noted that respondents often retaliate against targets of harassment who report their mistreatment and that, as such, greater protections against reprisals are needed. As briefly explained above, targets of harassment are usually reluctant to report mistreatment for fear of secondary victimization, with research revealing that 70% of women who reported suffering harassment also indicated that they did not come forward with a complaint due to fear of retaliation.<sup>114</sup>

Professor Dionisi explained that retaliation happens when targets of harassment feel negative actions are being taken against them as a result of having opposed being mistreated. She therefore suggested that workplace policies should be explicit regarding the fact that retaliation is not acceptable and will be punished. Examples of what constitutes retaliation should also be provided, especially as retaliation can come from employers and colleagues alike. Examples of retaliation include work-related retaliation, which could take the form of a discharge, an involuntary transfer, a demotion, a poor performance appraisal, or deprivation of overtime opportunities. Retaliation, she noted, could also be of a social nature and consist of further harassment, name-calling, blame, threats or “the silent treatment.”<sup>115</sup>

Acknowledging the statement against retaliation at article 2.3.7, Professor Dionisi suggested further strengthening the language used in the policy. Specifically, she recommended adding a more explicit statement under articles 2.2 (Guiding Principles) or 2.3 (General) of the policy. She also suggested incorporating an additional responsibility for respondents under article 3.11 of the policy to indicate that retaliation is not permitted behaviour, which could read as follows: “refraining from any behaviour that is retaliatory.”<sup>116</sup>

Similarly, Professor Lippel encouraged the inclusion in the Senate anti-harassment policy of “robust protection from reprisals, both for the target of bullying and for the witnesses and the whistle-blowers.”<sup>117</sup> This could be done by, for example, drawing from the protections against reprisal already provided for under the *Canada Labour Code*, such as section 147 (which prohibits employers from dismissing, suspending, laying off or demoting an employee, or from imposing other disciplinary actions, because, for example, the employee sought to enforce any of the occupational health and safety provisions under the legislation) and those provisions setting out offences and punishments with respect to a contravention of the legislation. She explained that these types of protections are necessary in order to encourage people to come forward earlier with their harassment-related complaints. The earlier people report harassment occurrences, she noted, the

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<sup>114</sup> Reference document submitted by Angela Dionisi, “Senate Policy Recommendations,” p. 2.

<sup>115</sup> HRRH, [Evidence](#), June 5, 2018 (Angela Dionisi). See also Brief submitted by Angela Dionisi, “Workplace Mistreatment Retaliation.”

<sup>116</sup> Brief submitted by Angela Dionisi, “Senate Policy Recommendations,” p. 3.

<sup>117</sup> HRRH, [Evidence](#), June 19, 2018 (Katherine Lippel).



greater the likelihood that the problem will be solved before it starts having a negative impact on someone's health.<sup>118</sup>

The subcommittee is aware that, beyond the provisions in Bill C-65 outlining the steps that will need to be taken when a direction, order or decision by the Minister of Labour or the Federal Public Sector Labour Relations and Employment Board is not complied with (clause 21), and beyond applicable enforcement mechanisms established under Part II (Occupational Health and Safety) of the *Canada Labour Code*, regulatory amendments announced in relation to Bill C-65 may offer further guidance in this regard. The subcommittee is also aware that, as explained above, under the *Canada Labour Code*, employers are prohibited from taking disciplinary action against an employee for acting in accordance with Part II of the legislation or for seeking the enforcement of provisions under this part. As indicated above, Bill C-65 amends the *Parliamentary Employment and Staff Relations Act* to expand the application of the occupational health and safety protections of the Code to parliamentary workplaces, subject to modifications to account for parliamentary privilege.

Taking into consideration all the above-noted factors, the subcommittee concludes that sanctions and remedies should be decided and implemented by different bodies, depending on whether the alleged harasser is a senator or an employee. Sanctions, however, should be used as a last resort in cases where no remedial, corrective or other measures have resolved the complaint. Accordingly, the subcommittee recommends:

#### **RECOMMENDATION 20 – REMEDIES AND SANCTIONS**

**That the new Senate anti-harassment policy include specific enforcement mechanisms (such as termination of employment for the harasser, targeted training or referral to anger-management therapy) for different situations and respondents, with the objective of deterring and ultimately eradicating workplace harassment and violence. Further, that the new policy take into account the suggestions about specific remedies and sanctions made by witnesses, along with relevant legislative provisions.**

#### **RECOMMENDATION 21 – DESIGNATED BODY**

**That the new Senate anti-harassment policy mandate the individual members of the Standing Committee on Ethics and Conflict of Interest for Senators, sitting collectively as a designated body, to take into consideration the investigation report and to recommend in a report presented to the Senate the appropriate sanctions in cases where the investigation report:**

- a) **has determined that a senator has breached their obligations under the Senate anti-harassment policy; and**
- b) **has recommended imposing sanctions.**

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<sup>118</sup> Ibid. See also Additional information submitted by Katherine Lippel.

Further, that the rights of a senator who is the subject of an investigation report, along with the procedures and sanctions available to the designated body in these circumstances, be provided for in the new Senate anti-harassment policy.

#### **RECOMMENDATION 22 – SANCTIONS FOR SENATORS’ STAFF**

That, when the impartial third party has determined that a harassment complaint made against a member of a Senator’s staff is well-founded, the investigation report be sent to the Senator and to the steering committee of the Standing Committee on Internal Economy, Budgets and Administration simultaneously. That the Senator have two working days to communicate their observations and recommendations on the matter to the steering committee of the Standing Committee on Internal Economy, Budgets and Administration.

That, taking into consideration the Senator’s observations and recommendations, the steering committee of the Standing Committee on Internal Economy, Budgets and Administration be empowered to impose any necessary remedies and sanctions against a member of a Senator’s staff, in accordance with the new Senate anti-harassment policy.

That the decision by the steering committee of the Standing Committee on Internal Economy, Budgets and Administration be subject to appeal by the Standing Committee on Internal Economy, Budgets and Administration, which must meet in camera when considering the matter.

#### **RECOMMENDATION 23 – SANCTIONS FOR ADMINISTRATION EMPLOYEES**

That the relevant sector chief within the Senate workplace be empowered to impose any necessary remedies and sanctions in accordance with the new Senate anti-harassment policy, in cases where an impartial third party has determined that a harassment complaint made against an employee of the Senate Administration or other person under their administrative jurisdiction is well-founded.

Further, that when the relevant sector chief is the subject of an investigation report, this responsibility be transferred to the steering committee of the Standing Committee on Internal Economy, Budgets and Administration. That the decision by the steering committee of the Standing Committee on Internal Economy, Budgets and Administration regarding the relevant sector chief be subject to appeal or review by the Standing Committee on Internal Economy, Budgets and Administration, which must meet in camera when considering the matter.

#### **G. Support and Follow-up**

The current Senate anti-harassment policy makes it the responsibility of managers to ensure that, “regardless of the nature or the status of the resolution process, persons who believe that they have been the subject of harassing behaviour are aware of the support and assistance available to them through the Employee Assistance Program” (article 3.8(h)).

Notably, Professor Dionisi suggested amending the above-noted provision to better align it with Bill C-65, which makes it a requirement of the employer to offer support to employees affected by

workplace harassment and violence. She recommended amending this provision slightly to include the qualifier “offered,” as follows: “ensuring that, regardless of the nature or the status of the resolution process, persons who believe that they have been the subject of harassing behaviour are aware of *and are offered* the support and assistance available to them through the Employee Assistance Program.” She also recommended that this could be included as a step to be taken under article 4 (Procedures) of the policy.<sup>119</sup>

In addition to this, multiple witnesses during the study identified the need to provide support to the complainants both during and after the complaint resolution process. Professor Dionisi, for example, encouraged the subcommittee to consider implementing intermediate measures during the complaint resolution process, such as making schedule changes, transferring the alleged harasser or placing the alleged harasser on leave.<sup>120</sup>

Professor Dionisi also emphasized that the burden of intermediate measures should not be unduly placed on the target of harassment, recommending against measures such as transferring them to a different department.<sup>121</sup> This is to be contrasted to testimony received in relation to senator’s staff, which some witnesses recommended could benefit from being relocated to another office or from taking a paid leave of absence from employment. While the subcommittee recognizes that both arguments have merit, the complexity of relocating employees in an organization such as the Senate, in addition with the burden it would put on the complainant, explains why the latter recommendation was not retained. The subcommittee nevertheless recognizes that a case by case approach should be favoured in these circumstances.

The subcommittee also heard about the importance of offering counselling and other supports to complainants following the conclusion of the complaint resolution process. Witnesses also called for greater follow-up, noting that targets of harassment are seldom contacted about their well-being or to find out if the harassment has actually stopped. In this regard, it was suggested that the policy be amended to include requirements around the submission of reports, the performance of exit interviews, and follow-ups that have consequences attached to them.

The subcommittee is aware that the framework established by Bill C-65 requires employers to offer support to employees affected by workplace harassment and violence (clause 3), with “supporting victims, survivors and employers” being the third pillar of this framework. The subcommittee also acknowledges that regulatory amendments may offer further guidance in this regard, including the specific types of support to be provided to the complainant, witnesses and respondent.<sup>122</sup> The subcommittee recognizes that the process surrounding complaint resolution can affect all people involved in it and is of the opinion that some form of support should be made available to all parties, including the alleged harasser. Accordingly, the subcommittee recommends:

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<sup>119</sup> Reference document submitted by Angela Dionisi, “Senate Policy Recommendations,” pp. 4-5.

<sup>120</sup> HRRH, [Evidence](#), June 5, 2018 (Angela Dionisi).

<sup>121</sup> Ibid.

<sup>122</sup> See Employment and Social Development Canada, [Proposed regulatory framework: Harassment and violence - Consultation paper, Labour Program Stakeholder Consultations](#).

## RECOMMENDATION 24 – SUPPORT FOR PARTIES

**That the new Senate anti-harassment policy provide more explicit and more varied kinds of support for all affected parties, both during and after the conclusion of the complaint resolution process. Further, that the new policy take into account the suggestions for alternative wording made by witnesses in this regard.**

### H. Access to Other Recourse Procedures

The current Senate anti-harassment policy indicates that employees who believe they have been harassed have the right to access other recourse procedures, such those established under a collective agreement, where applicable, or the *Canadian Human Rights Act*. In the case of assault, including sexual assault, they may also be covered under the *Criminal Code*. In such cases, the policy indicates the police should be contacted (article 4.10).

Though already provided for under the policy, during its study the subcommittee heard about the importance of having third-party redress. Indeed, in her brief to the subcommittee, Senator Dupuis spoke about the importance of ensuring that targets of sexual harassment retain the option of pursuing remedies, such as those under the *Canadian Human Rights Act*.<sup>123</sup> Fiona Keith, legal counsel with the Canadian Human Rights Commission, explained as follows in this regard:

[H]aving a third party to go to, whether it be filing a labour grievance or a human rights complaint with the Canadian Human Rights Commission, are important checks and balances. It is also consistent with the approach that the victim or the target should be able to choose his, her or their preferred mechanism and may embark on more than one mechanism at a time.<sup>124</sup>

Emphasizing the importance of having human rights-based enforcement mechanisms for targets of harassment, representatives from the Canadian Human Rights Commission indicated that harassment complaints, and particularly sexual harassment complaints, are prioritized by the Commission. Over the last ten years, they noted, the Commission has received approximately 1,100 harassment complaints. The Commission successfully mediates about one third of all harassment complaints it receives.<sup>125</sup>

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<sup>123</sup> Brief submitted by Senator Renée Dupuis, p. 5.

<sup>124</sup> HRRH, [Evidence](#), June 19, 2018 (Fiona Keith, Legal Counsel, Legal Services Division, Canadian Human Rights Commission).

<sup>125</sup> *Ibid.* (Fiona Keith; Monette Maillet, Deputy Executive Director and Senior General Counsel, Canadian Human Rights Commission; and Marcella Daye, Senior Policy Advisor, Policy, Research and International Division, Canadian Human Rights Commission).

The Canadian Human Rights Commission assists in the resolution of discrimination-based complaints, referring those that cannot be settled or that require further examination to the Canadian Human Rights Tribunal. See The Commission, [Our Work](#).

The subcommittee is aware that the framework established by Bill C-65 does not affect an employee's access to other recourse mechanisms under the *Canadian Human Rights Act* (clauses 2.1 and 21).<sup>126</sup>

Taking the above-noted aspects into account, the subcommittee recommends:

**RECOMMENDATION 25 – RIGHT OF EMPLOYEES TO ALTERNATIVE RECOURSE**

**That the new Senate anti-harassment policy maintain the right of employees to access alternative recourse procedures, thereby acknowledging the significance of third-party redress.**

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<sup>126</sup> See Standing Senate Committee on Human Rights, [Fifteenth Report](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, June 18, 2018.



## CHAPTER 5: Considerations Surrounding Policy Implementation

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On multiple occasions, witnesses appearing before the subcommittee mentioned that while adopting a new harassment policy would be a good first step in the prevention of harassment, it remains only the first step. This chapter provides a brief overview of the main issues surrounding policy implementation, which, witnesses noted, are likely to have an impact on supporting a harassment-free environment if addressed alongside specific changes to the policy as discussed above.

### A. Leaders and Creation of a Safe Space

Several witnesses appearing before the subcommittee spoke about leadership and structural support as one of the primary forces leading to the creation of a safe space. In this regard, the subcommittee was told that it is necessary for leaders to do more than just denounce harassment in the workplace, they must also take concrete action and become role models. In their brief, representatives from Rubin Thomlinson LLP made the following observation in this regard:

The practices above can be very useful in reducing, addressing and preventing workplace harassment, but none of these practices will matter if the leaders in an organization are not engaged in looking out for and addressing workplace harassment, and modelling appropriate behaviour. Leaders set the tone in the workplace. Behaving respectfully at work must be valued as a non-negotiable skillset – not marginalized as a “soft skill” – for anyone wanting to succeed in an organization and lead it.<sup>127</sup>

Professor Dionisi indicated that the ultimate goal is “to create a culture where trust is infused throughout,” noting that when leaders exhibit respectful behaviour, are vigilant about harassment, openly endorse policies and training, and follow through on their promises, harassment begins to be seen as unacceptable behaviour in the organization and targets of harassment are more likely to come forward with complaints about their mistreatment. As a result, she explained, a decrease in the rates of sexual harassment is also exhibited.<sup>128</sup>

Professor Hershcovis echoed these comments, adding that mutual accountability and communication can be valuable tools in the creation of a safe space. Speaking to the subcommittee, she indicated as follows in this regard:

[An institutional safe space is created] through mutual accountability and in recognizing that you have to hold each other accountable for how you’re behaving, and doing so in a respectful way, since we are talking about harassment. It’s important to make sure, if you see one of your colleagues behaving in a way that you think qualifies as harassment, that you let them know.

In my own research, I look at the power dynamics in witness reactions to workplace mistreatment. First of all, everyone is more likely to do nothing, but powerful people are a little bit more likely to confront the perpetrator and say something to them ... but they forget about the victim. It’s important to make sure you remember there’s a victim on the other end

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<sup>127</sup> Brief submitted by Rubin Thomlinson LLP, pp.8-9.

<sup>128</sup> HRRH, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, June 5, 2018 (Angela Dionisi). See also Reference document submitted by Angela Dionisi, “Prevention and Intervention,” p.4.

of that dynamic. Go over to them afterward and tell them, “I’m sorry that happened to you, and here is how I addressed it.” That can create a safe and respectful culture.<sup>129</sup>

Finally, as explained in Chapter 4 of this report, witnesses also insisted on the importance of maintaining confidentiality around the complaint resolution process when looking to create a safe space. Indeed, while leaders can have a role to play in this regard, Professor Lippel noted that appointing a person of confidence to whom those affected by harassment could go to speak freely and anonymously could also be highly beneficial in these circumstances.<sup>130</sup>

The subcommittee acknowledges that creating a safe space is of the outmost importance to combating and preventing harassment, and that the role of leaders in this regard is absolutely crucial. Furthermore, the subcommittee is aware that the framework established by Bill C-65 also aims to create a safe space for employees. Accordingly, the subcommittee recommends:

#### **RECOMMENDATION 26 – COMMITTEE LEADERSHIP**

**That the Standing Committee on Internal Economy, Budgets and Administration commit to creating a safe space in the Senate workplace by promoting positive and proactive leadership, with the ultimate goal of eradicating workplace harassment and violence.**

#### **B. Conditions of Employment and Related Matters**

The subcommittee is also aware of the importance of improving working conditions in general in order to prevent workplace harassment. Witnesses noted that addressing aspects such as competitiveness, stress and gender inequality in the workplace can be very beneficial in this regard. Professor Hershcovis, for example, indicated the following with respect to highly stressful environments:

[Another] way to prevent harassment is to eliminate the contextual conditions that cause harassment. In particular, highly stressful environments create a breeding ground for nonsexual harassing behaviours. When people are stressed, they become reactive and may lash out at colleagues. Ensuring the work environment is as stress-free as possible and providing opportunities for employees to deal with stress can help with prevention.<sup>131</sup>

In her written remarks to the subcommittee, Professor Dionisi suggested that workplaces could address these issues by, for example, cultivating climates of cooperation instead of competition (through means such as promoting team building, supporting and empowering employees, as well as having transparent and equitable reward and promotion systems). Workplaces could also ensure that there is a balanced ratio of men to women in work groups, that men and women are distributed

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<sup>129</sup> HRRH, [Evidence](#), June 12, 2018 (Sandy Hershcovis).

<sup>130</sup> HRRH, [Evidence](#), June 19, 2018 (Katherine Lippel).

<sup>131</sup> HRRH, [Evidence](#), June 12, 2018 (Sandy Hershcovis).



equally across different roles and levels in the organization, and that men and women have equal benefits.<sup>132</sup>

In addition, the subcommittee heard specific concerns about the job insecurity of senators' staff, who are hired at the discretion of senators on rolling annual contracts and who find themselves — or can find themselves — being released from employment far more readily than in other workplaces. Working in a high-pressure environment, which is also characterized by long and irregular hours of work and blurred lines between professional and personal activities, can also lead to harassment, the subcommittee heard.

During his appearance before the subcommittee, Mr. Rootham also noted that senators' staff do not have protected statutory rights under the *Parliamentary Employment and Staff Relations Act* to enforce, grieve and challenge decisions, a fact that exacerbates their job precariousness. As the law is currently written, he explained, “there is zero statutory protection” for these employees outside of the *Canadian Human Rights Act*, which only deals with certain forms of harassment. As a result, he indicated it is “borderline impossible” to enforce the rights under the policy for this category of employees.<sup>133</sup>

The subcommittee agrees that much work is needed regarding conditions of employment in the Senate if a new Senate anti-harassment policy is to achieve optimal results and, therefore, recommends:

#### **RECOMMENDATION 27 – IMPROVING WORKING CONDITIONS**

**That the Standing Committee on Internal Economy, Budgets and Administration commit to improving the working conditions that impact harassment prevention for all employees in the Senate workplace, in a manner that is expeditious and also respectful of the institutional environment. To this end, that the Standing Committee on Internal Economy, Budgets and Administration review and assess the need for one-year contracts for employees of senators and consider the possibility of increasing the length of the contract period, where appropriate. That this be done in consultation with employees, senators and the Senate Administration.**

#### **C. Harmonizing the Senate anti-harassment policy with other Legislative and Policy Documents**

##### **1. Bill C-65**

Various witnesses also urged the subcommittee to align the Senate anti-harassment policy with the new framework for the prevention of harassment and violence established through Bill C-65, as this framework will apply to parliamentary workplaces once it comes into force. As discussed in Chapters 3 and 4 of this report, specific recommendations provided by the witnesses in this regard touched upon various areas of the policy, including those provisions setting out the policy's application, the definition of harassment, training in the prevention of harassment and violence, as well as the complaint resolution processes.

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<sup>132</sup> Reference document submitted by Angela Dionisi, “Prevention and Intervention.” pp. 1-2.

<sup>133</sup> HRRH, [Evidence](#), June 12, 2018 (Christopher Rootham).

The subcommittee was also encouraged to be mindful of the provisions surrounding parliamentary privilege contained in Bill C-65. In this regard, Senator Dupuis indicated as follows in her brief:

The issue of privileges and immunities 1) of the Senate and 2) of the senators must be carefully studied for the next policy on harassment. According to the explanatory notes to C-65, the bill amends Part III of the *Parliamentary Employment and Staff Relations Act* in terms of how the *Canada Labour Code* applies to parliamentary employers and employees without, however, limiting in any way the powers, privileges and immunities of the Senate, the House of Commons, the senators and the members. [Section] 88.6, which addresses senators' powers, privileges and immunities, should be carefully studied to understand their scope in the framework introduced by C-65.<sup>134</sup>

## **2. Ethics and Conflict of Interest Code for Senators**

Certain witnesses spoke about the Senate anti-harassment policy within the ethics context, suggesting some alignment could also be appropriate in this regard. Indeed, in her brief, Senator Dupuis recommended that the subcommittee study “the question of whether to include the next policy on harassment, or certain aspects of it, in the *Ethics and Conflict of Interest Code for Senators*.” She also noted that the rules of conduct provisions, and particularly section 7, of the *Ethics and Conflict of Interest Code for Senators* could be relevant in this regard.<sup>135</sup>

The view expressed by Senator Dupuis in her brief, however, is in contrast to that put forth by one of the witnesses who appeared before the subcommittee during the in-camera meetings. This witness cautioned the subcommittee about the role of the Senate Ethics Officer in the realm of workplace harassment, emphasizing that this office is not qualified to deal with it.

Recognizing that the Senate anti-harassment policy is but one of the policy instruments governing the Senate workplace, and in order to ensure consistency following the adoption of a new policy, the subcommittee recommends:

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<sup>134</sup> Brief submitted by Senator Renée Dupuis, p. 4. See also [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](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, cl. 21.

<sup>135</sup> *Ibid.*, p. 5.

Section 7 of the Code sets out general guidelines about the conduct of senators. Specifically, it requires that a senator's conduct “uphold the highest standards of dignity inherent to the position of senator” and that a senator “refrain from acting in a way that could reflect adversely on the position of senator or the institution of the Senate.” The Senate Ethics Officer is responsible for administering, interpreting and applying the Code.

It should be noted that the current Senate anti-harassment policy does not refer to the Code or the Senate Ethics Officer in any of its provisions. Therefore, as currently written, the Senate anti-harassment policy does not prevent a harassment complaint against a senator from being filed under the Code.

For additional information, please refer to the following sources: Senate of Canada, [Ethics and Conflict of Interest Code for Senators](#); and Office of the Senate Ethics Officer, [About the Office](#).

## **RECOMMENDATION 28 – CONSEQUENTIAL AMENDMENTS**

**That the Senate instruct the Standing Committee on Ethics and Conflict of Interest for Senators and the Standing Committee on Rules, Procedures and the Rights of Parliament to develop and propose consequential amendments to the *Ethics and Conflict of Interest Code for Senators* and the *Rules of the Senate* and any other Senate regulatory instruments, as a direct result of the adoption of a new Senate anti-harassment policy by the Senate.**



## CONCLUSION

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Creating an institutional environment where there is zero tolerance for harassment is of the utmost importance for the modern Senate. To this end, it must adopt a policy that aligns with the highest standards and best practices to prevent and address harassment.

All recommendations that were presented in this report are intended to inform what the subcommittee views as much-needed reforms in relation to the current iteration of the Senate anti-harassment policy. In so doing, the subcommittee has remained cognizant of the fact that the framework established by Bill C-65 will apply to parliamentary workplaces once it comes into force and, as such, aligned its recommendations with it.<sup>136</sup>

The subcommittee has also taken into account the fact that regulatory amendments announced in relation to Bill C-65 will, among other aspects, specify the elements of a robust workplace harassment and violence prevention policy, a zero-tolerance policy.<sup>137</sup>

The subcommittee intends to monitor the regulatory amendments related to Bill C-65, and will remain vigilant should the need for additional updates to the Senate anti-harassment policy arise as a result.

Together, we can improve our work environment by striving to make it a healthy one.

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<sup>136</sup> [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](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament.

<sup>137</sup> See Employment and Social Development Canada, Proposed regulatory framework: Harassment and violence - Consultation paper, Labour Program Stakeholder Consultations.



## APPENDIX – LIST OF WITNESSES

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### **Tuesday, May 29, 2018**

As Individuals

In camera witnesses

### **Tuesday, June 5, 2018**

As Individuals

In camera witnesses

Carleton University

Angela Dionisi, Assistant Professor, Sprott School of Business

### **Tuesday, June 12, 2018**

Rubin Thomlinson LLP

Janice Rubin, Partner

Michelle Bird, Workplace Investigator and Training

Nelligan O'Brien Payne LLP

Chris Rootham, Lawyer

University of Calgary

Sandy Hershcovis, Associate Professor and Area Chair, Organizational Behaviour and Human Resources

### **Tuesday, June 19, 2018**

University of Ottawa

Katherine Lippel, Professor and holder of the Canada Research Chair on Occupational Health and Safety Law

Canadian Human Rights Commission

Monette Maillet, Deputy Executive Director and Senior General Counsel

Fiona Keith, Legal Counsel, Legal Services Division;

Marcella Daye, Senior Policy Advisor, Policy, Research and International Division

As Individuals

In camera witnesses