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June 13, 2018

Joëlle Nadeau
Clerk, Standing Committee on Human Rights
The Senate
Ottawa, Ontario K1A 0A4
By email: ridr@sen.parl.gc.ca

Dear Ms. Nadeau:

CPHR Canada wishes to share the views of our members on the subject matter of Bill C-65.

Our Vancouver-based association of nine provincial and three territorial associations is the national voice for the enhancement and promotion of the human resource profession through established designations, collaboration on national issues related to the profession and proactively positioning the national human resources agenda at the national and international level.

Our 27,000 members assist employers of all sizes in meeting the labour market challenges of today and tomorrow—challenges such as an aging workforce, the need to attract skilled workers from Canada and abroad, the diversification of the economy requiring more and higher skills, and the growing regulatory compliance burden. We are on the front lines of dealing with complaints of harassment and violence. In that respect, we are uniquely situated to assist Parliamentarians to address many policy issues including reforms to employment insurance, improving access to good quality job training for all Canadian workers, facilitating the entry of a qualified and competent workforce, and legislative initiatives such as pay equity and, of course, Bill C-65.

CPHR Canada is promoting wide acceptance of standards for human resource professionals across Canada so that employers know they can rely on competent professionals who abide to a code of ethics and rules of professional conduct. We want to make sure that employers of all sizes, especially mid-sized companies, can rely on professionals to protect their most important asset—their employees. CPHR Canada members have a pivotal role to play in addressing harassment and violence in the workplace. They are in many cases the professionals responsible for implementing harassment and violence policies in the workplace.

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Bullying, harassment and sexual violence have no place in today's workplace. Yet, according to a survey conducted for the federal government 10 percent of respondents say harassment is common in the workplace; 44 percent say while not frequent, it happens. Most respondents agreed that incidents are under-reported and often dealt with ineffectively. And according to our own data collected in Québec, 60 percent of organizations surveyed reported receiving complaints related to harassment¹.

This cannot continue. The issues underlying bullying, harassment and violence in the workplace, including challenges faced by victims in the complaints process have direct impact on mental health, absenteeism and loss of productivity. How can Canadians contribute to the organizations that employ them if they don't feel safe? Employers know they need to ramp up policies and processes to prevent harassment and violence from taking place and to address issues that may arise through investigations and discipline.

Bill C-65 is long overdue. In our submission, we will address three main issues: definitions and implications for performance management; investigations of complaints; and, thirdly, prevention of harassment and violence through culture change.

Definitions

We would like to first address the matter of defining bullying, harassment and violence.

We acknowledge that the House of Commons Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities (HUMA) has improved the original Bill C-65 in many respects including adding a needed definition to "violence and harassment". This is necessary, we argued, because it provides clarity and direction to employers, employees and to the Courts in understanding the legislators' intent.

Unfortunately, the definition currently before the Senate falls short. The proposed definition is too broad and could have unintended consequences. Let us illustrate how. An employee could file a complaint for harassment if, as an example, a colleague made a comment on the poor quality of a document that he/she had prepared. The comment could be found to be hostile. Although this might be inappropriate behaviour, it does not, in our view, constitute harassment.

¹ L'Ordre des conseillers en ressources humaines agréés 2016

To address this, we propose that harassment and violence be defined as follows:

Harassment and violence means any repeated action, conduct or comment, including of a sexual nature, that can reasonably be expected to cause offence, humiliation or other psychological injury or illness to an employee. A single serious incidence of such behaviour may constitute harassment if it has the same consequences on the employee.

The current definition considered in Bill C-65 gives the regulator unnecessary leeway. Provincial legislation defines harassment and violence and it has worked well in those jurisdictions.

One aspect that is of concern to members of CPHR Canada relates to issues surrounding performance management. Any definition must recognize that reasonable performance management is not harassment. An employee may feel anxious and stressed when receiving performance feedback, a written warning, a performance improvement plan or progressive discipline. It would be a tremendous burden on employers should they face harassment and bullying claims and because they are managing performance. Alberta legislation as well as the British Columbia WorkSafe policy both refer to the exclusion of any reasonable conduct of an employer in respect of the management in their definition.

Alberta Occupational Health and Safety Act

(q) "harassment" means any single incident or repeated incidents of objectionable or unwelcome conduct, comment, bullying or action by a person that the person knows or ought to reasonable to know will or would cause office or humiliation to a worker, or adversely affects the worker's health and safety, and includes

(i) conduct, comment, bullying

(ii) a sexual solicitation or advance

But excludes any reasonable conduct of an employer or supervisor in respect of the management or workers or a work site; ...

In British Columbia, the reference is found in the policy underpinning the Occupational Health and Safety Regulations and read as follows:

bullying and harassment" (a) includes any inappropriate conduct or comment by a person towards a worker that the person knew or reasonably ought to have known would cause that worker to be humiliated or intimidated, but

(b) excludes any reasonable action taken by an employer or supervisor relating to the management and direction of workers or the place of employment.

The fact that Bill C-65 does not recognize this potentially creates a legislative imbalance. We would recommend that regulation make it clear that reasonable performance management be explicitly recognized in defining harassment and that reference to illness (S. 122.1) is more clearly linked with events related to harassment, violence and workplace safety.

Investigations

Other key aspects of Bill C-65 of particular interest to human resource professionals are the provisions relating to investigations.

We are particularly concerned with the process when complaints are launched against supervisors and employers. Smaller workplaces much like those on Parliament Hill may be particularly affected by the lack of legislative clarity. We look forward to providing our views to the regulator to ensure the investigation process is clear, simple and impartial and the particular needs of employees in smaller workplaces be taken into account.

We strongly support that any investigation relating to a complaint of harassment or violence must be assigned to an individual who is competent to do so. It is our recommendation that regulations need to be prescriptive in defining who is authorized to conduct investigations. They must be performed by trained professionals who are subject to a code of ethics, rules of professional conduct and in some instances bound by professional secrecy. These professionals are members of bodies whose mission is to protect the public. CPHR Canada and its member organizations are such a body. Issues such as fairness, impartiality, and privacy are paramount. Done badly, investigations can cause even greater damage to workplace relations.

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Culture Change

We would like to turn to our third and final point—the issue of prevention.

The #metoo movement has created a widespread, public conversation on bullying, harassment and violence. The movement has created an environment where individuals feel safer to lodge complaints and expect these complaints to be dealt with. But each time this happens, high personal and business costs result and productivity suffers. We need to do better.

Culture change is required in Canadian workplaces to prevent bullying, harassment and violence. The government has committed to put in place support such as awareness building on harassment and violence; education and training tools for employees and employers and direct support to help employees navigate the process and support employers in putting in place policies and processes. We look forward to hearing further details and submit that support for training, especially in small and medium sized organizations is necessary.

Our members—the professionals who are responsible for policies, training and prevention of bullying, harassment and violence in the workplace are keenly aware that culture change is required. Communicating regularly with employees, ensuring supervisors and managers apply policies, disciplinary management if necessary to correct wrongdoing, education and training workshops to facilitate changing attitudes and behaviours and finally support and training for managers. Those are the key aspects, we believe, are necessary in every work place that will drive a change of culture.

Conclusion

In closing, we would like to reiterate our appreciation for having the opportunity to participate in these hearings on Bill C-65. Bullying, harassment and violence belong nowhere. Let's start with Canada's workplaces.

Sincerely,



Anthony Ariganello
President and CEO – CPHR Canada