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LA PUISSANCE AU FÉMININ: ENSEMBLE POUR RÉUSSIR.

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

Brief submitted to the House of Commons' Standing Committee on Human Resources,
Skills and Social Development and the Status of Persons with Disabilities (HUMA)

Prepared by the Canadian Federation of University Women

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Bill C-65

The Canadian Federation of University Women (CFUW) is pleased to submit this brief on Bill C-65, *An Act to amend the Canada Labour Code (harassment and violence), the Parliamentary Employment and Staff Relations Act and the Budget Implementation Act, 2017, No. 1*.

Sexual harassment and violence in the workplace is a significant barrier to gender equality, with serious consequences on women's physical and mental health, and a negative effect on their career progression, economic security and overall participation in public life. CFUW welcomes the government's introduction of legislation to ensure federally regulated workplaces, including Parliament Hill, are free from harassment and violence.

We strongly support the adoption of a human-rights-based law that strengthens workers' rights, clarifies employers' obligations and accountability mechanisms, and is centered on survivors' needs. We urge the Committee to keep these guiding principles in mind when further analyzing and modifying Bill C-65. To strengthen Bill C-65, CFUW raises four concerns and makes nine recommendations to the committee.

Area of Concern 1: Addressing Barriers to Reporting

The current bill does not properly address several barriers to reporting sexual harassment and violence in the workplace.

When deciding whether to disclose experiences of harassment or violence, employees take into consideration possible repercussions of disclosing an incident. Individuals in lower-authority, lower-paying, and lower-status jobs, the majority of whom are women, underreport experiences of sexual harassment¹.

1.1. Fear of Reprisal – Empowering Employees to Come Forward

Employees bringing forward a complaint of harassment or violence may fear judgment or reprisal from their peers, but especially from their employer. The risk of setting back their career or losing their job and source of income frequently outweighs any potential advantage of coming forward. This documented phenomenon makes invisible the experience of harassment lived by employees, and perpetuates the culture of tolerance for incidents that may be judged "less severe," thereby restricting the use of harassment regulations.² Existing power dynamics in a work environment make employees vulnerable to their employer or the person in authority over them, especially in terms of job security.

¹ N. Pietsch (May 2015). "Barriers to Reporting Sexual Harassment". Learning Network Brief (26). London, Ontario: Learning Network, Centre for Research and Education on Violence Against Women and Children. <http://www.vawlearningnetwork.ca/>

² Anna-Maria Marshall (March 2005). "Idle Rights: Employees' Rights Consciousness and the Construction of Sexual Harassment Policies", *Law & Society Review*, Vol. 39, No. 1, p.84.

CFUW is concerned that the current bill places the employer in the position of receiving the initial complaint, without laying out alternatives. Moreover, CFUW is concerned that, in the event that the employer/supervisor is the instigator of the harassment or acts of violence, there are no clear alternatives regarding whom the employee should approach.

Recommendation 1. That Bill C-65 be amended to make the employer responsible to name a neutral and competent third party in whom employees have confidence and to whom workers can report incidents of harassment and violence. The information concerning this neutral third party should be clearly outlined in the workplace regulations and distributed to workers.

Recommendation 2. That Bill C-65 be amended to state that employers must consult with the workplace Health and Safety Committee to set out the written procedures on: a) how to report incidents of harassment and violence and b) how the incidents and complaints will be investigated.

1.2. Ensuring Financial Security, Protecting Psychological and Physical Integrity of Employees

The current Canada Labour Code makes provisions for refusal of work if an employee has a reasonable cause to believe that they may be in danger (Art. 128 (1), Canada Labour Code), but there is no mention of paid leave to address the reality of employees experiencing harassment, violence, or threat of violence.

The ability of employees to take a paid leave of absence when living in a situation of harassment, violence or threat of violence is essential to strengthen the protection of employees from further psychological and physical harm or illnesses. It is also crucial to addressing the financial barriers to reporting.

Moreover, the right to remedy and reparation should be strengthened by Bill C-65. It is the employers' obligation to prevent harassment and violence from occurring in the workplace, employees who face incidents of harassment and violence should be duly compensated.

Recommendation 3. That Bill C-65 be amended to include a provision for employees living in a situation of harassment, violence, or threat of violence to access a 10-day paid leave of absence.

We advise that the government consult Ontario's *Domestic and Sexual Violence Protection Act* and adopt a similar provision in the Canada Labour Code, to enable workers who are experiencing harassment, violence or threat of violence in the workplace, including sexual harassment and violence, to take a paid leave in order to a) seek medical attention with respect to a physical or psychological injury or disability caused by the incident of harassment or violence, b) to obtain services from a survivor's organization, c) to obtain psychological or other professional counselling, d) to initiate a

complaint and conflict resolution process, or seek legal or law enforcement assistance, e) other purposes that may be prescribed.

Recommendation 4. That Bill C-65 be amended to include a provision for financial and other relevant compensation in case of job-loss due to harassment or violence.

Area of Concern 2: Prevention: Creating an Organizational and Cultural Shift

Generating a cultural shift that deconstructs unequal power relations, gender biases, and intersecting discrimination systems based on race, religion, culture, nationality, age, socio-economic status and disabilities when responding to the endemic issue of sexual harassment and violence within federally regulated places and across Canada requires sustained comprehensive efforts.

The House of Commons has spent \$50,000 on sexual harassment training for the 338 Members of Parliament. We welcome this training and agree that it is a productive method to inform MPs and initiate a culture shift.

Bill C-65 “ensures that employees receive appropriate training to enable them to have access to the information”. However, it does not guarantee mandatory, systematic prevention training for new MPs, or current and future federal workers. The Bill must ensure that this training is delivered on a regular basis and focuses on larger sociocultural issues related to sexual harassment, as well as ensuring that workers understand their rights in cases of harassment and violence.

At the same time, employers, as well as the neutral third parties involved in the complaint, investigation, and support processes, must have a clear understanding of the policies, regulations, and workers’ rights, as it is their responsibility to prevent, investigate, and remedy all known occurrences of sexual harassment.

Recommendation 5.

To include mandatory upon-hire and annual training sessions on sexual harassment and violence for all workers in a federally regulated workplace. The provision should explicitly outline two aspects of the training: a) training on the rights and the procedures in effect in cases of sexual harassment and violence, including all the conflict resolution and legal options available to workers when making a complaint of harassment or violence and b) a training that addresses gender stereotypes and biases, power relations, bystander intervention, consent as well as sexism and other systems of discrimination.

Recommendation 6. To ensure that employers, as well as third parties (workplace investigators) involved in prevention, investigation, recording, and reporting occurrences of sexual harassment and violence, participate in effective, comprehensive training on workers’ rights, policies, and regulations in place, to be able to respond proactively to incidents of harassment and violence.

Recommendation 7. To State that it is the employers' responsibility to guarantee their workers' rights to access information, including stating all procedures available to the employees in cases of harassment and violence.

Area of Concern 3: Ensure Adequate Funding and Human Resources

Fully implementing the provisions of Bill C-65 and guaranteeing workers' rights requires that the government have access to an adequate number of professionals, as well as funds for training, investigation, reporting, and support.

Moreover, considering that sexual harassment is vastly underreported, and the intent of the legislation is to remove barriers to reporting incidents of harassment and violence in the workplace, an increase in complaints is to be expected. This will require adequate human and financial resources for investigating and supporting the employees.

Recommendation 8. That Bill C-65 be amended to explicitly state the responsibility of the Federal government to ensure that the measures outlined in the bill will be supported by adequate financial and human resources.

Area of Concern 4: Comprehensive Definitions for Clear Actions

The Canada Labour Code defines sexual harassment, however, the current Bill does not specify any definitions for its core elements: harassment, bullying, physical violence, as well as sexual and gender-based violence.

Instead of clearly outlining the large scope of behaviours that Bill C-65 is intended to cover, the definition of these acts is left to the parties responsible for drafting workplace regulations, risking a multitude of inconsistent definitions.

Existing legislation contains legal definitions for these core elements in the government's draft. For example, the Ontario Human Rights Code defines harassment as "a course of vexatious comment or conduct that is known, or ought reasonably to be known, to be unwelcome". Defining the concept of harassment is crucial and includes a broad range of incidents related to diverse discriminatory attitudes and systems.

Recommendation 9.

We recommend that Bill C-65 be amended to include a comprehensive definition of harassment and violence.

Summary of recommendations:

Recommendation 1. Make the employer responsible to name a neutral and competent third party in whom employees have confidence and to whom workers can report incidents of harassment and violence.

Recommendation 2. The employers must consult with the workplace Health and Safety Committee to set out the written procedures on: a) how to report incidents of harassment and violence and b) how the incidents and complaints will be investigated.

Recommendation 3. Include a provision for employees living in a situation of harassment, violence, or threat of violence to access a 10-day paid leave of absence.

Recommendation 4. Include a provision for financial and other relevant compensation in case of job-loss due to harassment or violence.

Recommendation 5. Include mandatory upon-hire and annual training sessions on sexual harassment and violence for all workers in a federally regulated workplace.

Recommendation 6. Ensure comprehensive training on workers' rights, policies and regulations for employers and third parties.

Recommendation 7. State that it is the employers' responsibility to guarantee their workers' rights to access information, including stating all procedures available to the employees in cases of harassment and violence.

Recommendation 8. Explicitly state the responsibility of the Federal government to ensure that the measures outlined in the bill will be supported by adequate financial and human resources.

Recommendation 9. Include a comprehensive definition of harassment and violence.

Conclusion

Over the last months, thousands of women in Canada have spoken up against harassment and abuse, and we have a duty to listen and answer their call for action. The Canadian Federation of University Women believes that a bill on sexual harassment and violence is long overdue, and represents an important step towards a safer workplace for women. We urge the committee and the government to work on creating a Bill C-65 based on human rights and survivor-centered approaches, integrating the amendments outlined in this brief.

The **Canadian Federation of University Women** (CFUW) is a non-partisan, voluntary, self-funded organization with over 100 CFUW Clubs, located in every province across Canada. Since its founding in 1919, CFUW has been working to improve the status of women and to promote human rights, public education, social justice, and peace. Every year, CFUW and its Clubs award close to \$1 million to women to help them pursue post-secondary studies.