



Public Service Alliance of Canada
Alliance de la Fonction publique du Canada

Public Service Alliance of Canada

**Brief to the
Standing Committee
on the
Status of Women (FEWO)
on
Sexual Harassment
in the Federal Public Service**

January 29, 2013

TABLE ON CONTENTS

Introduction	3
Prohibiting Sexual Harassment in our Collective Agreements	3,4
Supporting our Members against Sexual Harassment	4
Recourses for Dealing with Sexual Harassment	4-10
1- Complaints filed under Treasury Board Harassment Policy	4,5
2- Grievance Procedures	5-8
3- Human Rights Complaints	8
4- Occupational Health and Safety Mechanisms	8-10
Preventing Harassment through Education	10,11
- Joint Learning Program (JLP)	10
- PSAC Internal Education Programs	11
Concerns about Treasury Board Policies and Practice	11,12
Recommendations	12,13

Introduction

The Public Service Alliance of Canada (PSAC) is the largest federal public sector union, representing more than 180,000 people from coast to coast to coast. While the majority of PSAC members work for the federal government and its agencies, PSAC also represents workers in the private sector, in territorial governments and in the broader public sector including universities. Almost two out of every three (63%) of our members who work in the federal public service are women.

The PSAC has a long-standing commitment to ensuring our members are free from sexual harassment. Our own Constitution recognizes that every member of the PSAC is entitled to be free from harassment by another member, both within the union and in the workplace, and makes sexual or personal harassment a constitutional violation. Our first sexual harassment policy dates back to 1984. In 1986, we negotiated a first sexual harassment clause in a collective agreement.

Prohibiting Sexual Harassment in our Collective Agreements

The collective agreements between the PSAC and Treasury Board include clauses on sexual harassment, no discrimination, and health and safety. Variations of these prohibitions exist in virtually all PSAC collective agreements. For example, in the collective agreement for the Programme and Administration (PA) group, which covers more than 70,000 federal public service workers, article 20 provides:

20.01 The Alliance and the Employer recognize the right of employees to work in an environment free from sexual harassment, and agree that sexual harassment will not be tolerated in the workplace”

The collective agreement also includes a no discrimination provision that prohibits all forms of harassment, including sexual harassment:

19.01 There shall be no discrimination, interference, restriction, coercion, harassment, intimidation, or any disciplinary action exercised or practiced with respect to an employee by reason of age, race, creed, colour, national or ethnic origin, religious affiliation, sex, ...”

While both the union and the employer recognize the right of employees to work in an environment free of sexual harassment, the employer is ultimately responsible for acts of work-related harassment. As recognized by the Supreme Court in the Robichaud case -- a sexual harassment complaint that was filed by a PSAC member -- “only an employer can remedy undesirable effects; only an

employer can provide the most important remedy – a healthy work environment”¹.

According to the 2011 Public Service Employee Survey, 31% of all women report having experienced harassment. Clearly, the Federal Government as employer is not living up to its obligation.

Supporting our Members against Sexual Harassment

The PSAC’s approach to sexual harassment is anchored in law and emphasizes the need to ensure that the employer properly follows due process in dealing with harassment issues in the workplace. The union has a key role in ensuring the employer meets this important responsibility. A variety of activities are undertaken in this regard, including information, training, support and representation for the victims of sexual harassment.

Recourses for Dealing with Sexual Harassment

A member who has been sexually harassed will usually seek support from her local union shop steward². Several different recourses exist to deal with a sexual harassment complaint. These include:

1. a complaint under the Treasury Board harassment policy
2. a grievance under the collective agreement.
3. a complaint to the Canadian Human Rights Commission
4. a health and safety complaint

1- Complaints filed under Treasury Board Harassment Policy

Most sexual harassment complaints are dealt with at a local level, by PSAC components, and local shop stewards. When complaints are filed, they are usually dealt with under the Treasury Board Harassment Policy without recourse to the grievance procedure that is provided in the collective agreement.

Most of these complaints are resolved informally, and confidential agreements are drafted between the parties. The 2011 Public Service Employee Survey indicates that 54% of the respondents said they were satisfied with the way informal complaints were resolved. This indicates that a significant proportion is not.

¹ Robichaud v Canada (Treasury Board, Department of National Defence), 1987 2 SCR 84

² We should note that while most cases of sexual harassment that come to our attention are brought forward by women, men are also sometimes sexually harassed

Case #1

A research scientist in the agriculture sector is a "habitual" harasser, who often tries to date new employees, or summer students, escalating the pressure and eventually making insistent call to the women's homes. Despite being informed of the situation, the employer refuses to effectively sanction and control the harasser. Two separate complaints were filed against him, they were sent to mediation and both times he did not dispute the facts. Promises were made and agreements were signed, but he has never really changed his behaviour and management refuses to intervene. At this point, local union representatives warn new women employees against the harasser. Management is now taking the position that it is the Union who is harassing the harasser. The next time a woman complains about the harasser, the union plans on filing a Health and Safety complaint pursuant to the Canada Labour Code.

2- Grievance Procedures

Grievances are initiated at the local level, and sexual harassment victims will get initial support from their local shop steward, and eventually their Component union. If there is no resolution, the grievance will be handled by the PSAC Representation Section through either mediation or the more formal adjudication process. The Representation Section is responsible for providing an analysis of grievance and complaint files and advocacy on behalf of members whose grievances are being forwarded to arbitration or adjudication. The Section also assesses requests to file unfair labour practice or bad faith bargaining complaints.

Given the sensitive, often private nature of the issues at play the majority of harassment grievances are treated through mediation which offers a less adversarial, confidential process wherein the parties are able to craft a mutually acceptable resolution.

While ideally the grievance process – when it works best – results in resolution in the workplace at the earliest level, engaging front line workers and managers, the process can become lengthy and conflict laden. As with other quasi-judicial processes this can result in additional stress and hardship for victims who are engaged in protracted litigation.

Case #2

In November 2008, Ms R, an employee of the RCMP, formally raised concerns about sexual harassment by a Regular Member. In April 2009 Ms R filed a formal complaint which resulted in the RCMP carrying out a Code of Conduct investigation which took until April 2010 to complete and which concluded inappropriate behaviour but not sexual harassment. The respondent received "operational guidance (oral reprimand)"

A grievance was filed concerning a flawed investigation and breach of due process and Treasury Board policy. In August 2010, Ms R was obliged to file another harassment complaint due to retaliation in the form of slanderous remarks made to her co-workers. This time, having no faith in the internal harassment complaint process or RCMP management, Ms R went straight to the grievance process, filing same on September 21, 2010.

The RCMP chose to conduct another Code of Conduct investigation and ultimately found the respondent culpable and once again levied low level disciplinary action against the respondent. However the grievance was not dealt with until much later as part of a hearing held into all of Ms R's grievances.

In the fall of 2011 Ms R's harassment grievances were finally heard at final level. This led to the RCMP's offer to settle and after a protracted process first involving the Public Service Labour Relations Board and then the parties alone, led to the signing of a settlement agreement, the terms of which have still not been fully complied with due to a combination of bureaucratic errors and oversights. As to the respondent, we know that he has been investigated under Code of Conduct a total of six times, suspended and disciplined for similar behaviour towards a total of four women and is currently under suspension.

For workers who have been sexually harassed and who have complained in the hope that the harassment will stop and their losses will be addressed, the process is often a traumatizing shock. Our experience of representing these members is that employers often drag out resolution of the matter – even where a third party chosen by the employer has independently confirmed the harassment – for months or even years. Doing so re-traumatizes the victim, sets back her recovery, makes the victim mistrustful of the employer and – where the employee is on leave without pay or receiving worker's compensation – can create significant financial losses for that employee.

These kinds of delays can wreak havoc on a worker's mental health. So too can an employer's failure to fully take action to separate the harasser and the victim: We have represented members where even after the member filed a harassment complaint against a co-worker, the employer promoted that co-worker into a position of authority over the victim, leaving the two employees working together in a sparsely populated and very isolated office.

Case #3

In another case, one of our members complained to the employer that he had been sexually harassed in the workplace by a co-worker. An independent party upheld the complaint and the employer assured him that the harasser had been removed from the victim's workplace. Notwithstanding this assurance, the victim was taken aback and greatly troubled to arrive in the workplace one day to find the harasser in the same work place. The employer had not taken seriously the need to separate the parties and the damage to the victim's mental health was considerable. The victim went back on leave; his therapist determined that seeing the harasser again had caused a relapse.

This is, unfortunately, a recurring theme. The employer's failure to implement a zero tolerance policy against sexual harassment in a meaningful and consistent way and to bring these matters to resolution sensitively and quickly, is noticed by all employees and we know that it deters many victims from reporting these unacceptable incidents.

As a union we are required to provide representation to our members seeking assistance with issues arising under collective agreements. All members are entitled to fair representation and their files are reviewed for merit and assessed to ensure both the rights of the individual grievor and the bargaining unit at large are protected. This includes ensuring that the employer meets its obligations vis-à-vis disciplinary, harassment or other collective agreement interpretation matters.

According to the 2011 Public Service Employee Survey, only 44% of respondents feel that they can initiate a formal recourse process without fear of reprisal. Women (and men) who are sexually harassed may fear embarrassment, retaliation, job loss or loss of acceptance by colleagues if they complain. They may also fear that they will not be believed. Finally, in the current context of job cuts, they may fear that their job is in danger if they appear to be "trouble-makers". The arbitrary nature of the process for lay-offs (done on subjective assessments of merit rather than by seniority) may make some workers fearful of being selected for lay-off should they enforce their rights.

Case #4

In 2005, a PSAC member working for Service Canada filed a sexual harassment complaint, and after an investigation under the employers' policy, the complaint was deemed to be founded. However, the harasser continued to work in her office, a small office of about 40 people. The complainant faced retaliation from both his friends and management.

“His behaviour didn’t go unnoticed, but it went without being dealt with until it got worse with me. The manager hated me for putting the light on her office by filing a complaint, so rather than protect me she protected the harasser, often saying to me, that he has threatened to sue, so that’s why he wasn’t being moved from the office, or his lunch time wasn’t changed (but mine was) or he didn’t have to move desks (but I was moved next to the team leader). Even after the complaint was founded, within months he was put in a position where I had to ask him to approve my vacation leave.”

The complainant requested, with the support of a medical opinion, to be removed from her workplace, but this was refused. As a result she has developed a permanent work injury, as well as anxiety issues. She was forced to stop working for several months. It took years for the employers’ medical doctor to acknowledge that she was suffering from post-traumatic stress symptoms as a result of the harassment. He indicated that she could not return to that work environment, and she was finally transferred to another workplace as an accommodation measure. As a result of her grievance, she was eventually compensated for lost wages. Unfortunately, because of the current wave of job cuts, it looks like her supervisor will now be transferred into her new workplace.

3- Human Rights Complaints

The *Canadian Human Rights Act* states that the Canadian Human Rights Commission (the “Commission”) may decline to deal with a complaint where it appears to the Commission that the sexually harassed employee ought to have exhausted the grievance or review procedures otherwise reasonably available. This often means that the Commission never assumes jurisdiction over a complaint.

In addition, recent Supreme Court of Canada jurisprudence may make it more difficult for victims of sexual harassment to have the Commission take jurisdiction after another review procedure investigating a complaint of sexual harassment has taken place, notwithstanding that the remedy has not been granted at first instance.

4- Occupational Health and Safety Mechanisms

As a form of violence, sexual harassment can also be addressed using occupational health and safety mechanisms.

Part II of the *Canada Labour Code* regulates occupational health and safety for federally regulated employers. With the introduction in 2008 of *Part 20 - Violence Prevention in the Workplace* in the *Canada Occupational Health and Safety*

Regulations, the landscape has significantly changed in terms of how we view and deal with harassment in the workplace.

Section 20.2 of the Regulations defines “workplace violence” as “*any action, conduct, threat or gesture of a person towards an employee in their workplace that can reasonably be expected to cause hurt, injury or illness to that employee*”. Violence can thus be defined as including unsolicited and un-welcomed comments, gestures or contact which cause offence or humiliation, fear or mistrust, or which compromise and devalue the individual. Of course, it also includes threats, and physical or sexual assault. The test is whether a reasonable person knows, or ought to know, that the behaviour would be considered un-welcomed or inappropriate. It may be a single event or could involve a continuing series of incidents. It may involve the abuse of authority or position, or it may involve relations among co-workers and affiliated personnel.

Under the federal health and safety framework, the employer must:

- identify all factors that can contribute to workplace violence
- assess the potential for workplace violence
- develop and implement systemic measures to eliminate or minimize workplace violence
- review the effectiveness of those workplace measures
- develop and implement emergency notification procedures in response to workplace violence
- ensure that employees are aware of the emergency notification procedures and that these procedures are posted in locations easily accessible to employees
- develop and implement measures to assist employees who have experienced workplace violence

In addition, the employer is required to develop a detailed Workplace Violence Prevention Policy, and is required to communicate this policy, educate and provide training for staff. Employers must carry out their obligations under Part 20 of the Regulation in consultation, and with the participation of the Occupational Health and Safety Policy Committee.

It should be noted that this process is not complaint driven. It is a mandatory process that the employer must engage as soon as he or she is aware of a case of violence in the workplace. Should an incident of sexual harassment occur the Regulation requires the employer to try and resolve the matter with the employee as soon as possible³. If the matter is not resolved the employer must then appoint a “*competent person*” who is impartial, knowledgeable and experienced to investigate the alleged work place violence. If this is not done, the employee or

³ We should also note, that the Canada Labour Code provides that employees can refuse to work when their health and safety is threatened (s. 128 CLC). However, in cases of psychological harm, the case law remains untested..

union can lodge a complaint challenging the employer's failure to comply with Part 20 of the Regulations.

The PSAC believes the investigation process that is provided for under these Regulations will result in a more streamlined investigation process, and provide more information on a given situation. We should note that this information would not be expunged from a harasser's file two years after a disciplinary measure. Ultimately, this process could effectively prevent sexual harassment – and other forms of workplace violence in the workplace. It could also allow for systemic change in the workplace.

The challenge that we now face is ensuring the employer and the different departments effectively develop their policies, and provide training to staff. It would be important that this House of Commons Standing Committee make a specific recommendation requiring Treasury Board to account for the compliance of all departments in this regard.

Preventing Harassment through Education

The PSAC's approach to sexual harassment is preventive and proactive. It is important for the Union to work with employers to eliminate harassment. Proactive measures, including education and training, may go a long way to preventing sexual harassment in the workplace.

- Joint Learning Program (JLP)

PSAC is proud to have negotiated the PSAC-TBS Joint Learning Program (JLP) – a unique program offering jointly developed and delivered training aimed at improving workplace relations and a greater understanding of the role of unions and management in the workplace. Of the six workshops offered by the JLP, the "*Creating a Harassment-Free Workplace*" workshop is by far the most sought-after; it accounts for 40% of all the JLP workshops delivered. In effect, between 2007 and 2012, 810 anti-harassment workshops were delivered to union and employer representatives throughout the federal public service.

Concretely, this workshop focuses on equipping individual employees with the knowledge and skills they need to proactively and effectively advocate for a healthy harassment-free workplace, developing a common understanding of what harassment is and what actions need to be taken when incidents of harassment occur. The second day of this two-day workshop brings together leaders from the union and the employer to evaluate current efforts to prevent and resolve harassment in the workplace and to develop action plans that reflect the mutual commitment of the parties to create healthy, harassment-free workplaces.

- PSAC Internal Education Programs

In 2005, the PSAC developed an extensive training kit for union stewards and activists, focused on their role and their responsibilities in cases of harassment. This training kit looks at values and beliefs, conflict and harassment, the impact of harassment on complainants and on the workplace. It reviews the different recourses that are available, the role of local union stewards when a complaint is raised, as well as a detailed discussion of the investigation process.

In addition to this anti-harassment training, the PSAC incorporates anti-oppression training in all of our education programs, such as the Local Officers Training Program, the Union Development Program, the Leadership Program and the Steward Training. This approach ensures that a human rights lens is integrated in all training, and that anti-discrimination is a main reference in all of our union education. Indeed, the PSAC is widely recognized as a leader in anti-oppression training. This work is key to changing workplace culture.

Concerns about Treasury Board Policies and Practice

On October 1st, 2012, Treasury Board ("TBS") replaced its harassment policy with a new *Policy on Harassment Prevention and Resolution*. While bargaining agents were consulted, the process was challenging. TBS refused to commit to a stand alone harassment policy, instead insisting the policy be included in a more general workplace policy. After much resistance and with pressure from the unions, TB agreed to have a stand alone policy.

It is critical to stress that while some Union proposals were accepted and incorporated into the policy, many issues of concern were not addressed by the TBS. Specifically, huge concerns remain regarding the accountability, oversight and implementation mechanisms of this policy.

The new policy states that the achievement of results will be assessed through data collection mechanisms such as the Public Service Employee Survey and the Management Accountability Framework. The PSES contains questions about harassment, and data is provided by gender. However, there is only one question that asks employees whether or not they have been the victims of harassment, which includes any form of harassment (personal/psychological harassment, sexual harassment, racially-based harassment, harassment based on other grounds of discrimination, etc). It does not separate out these different forms of harassment, so there is no concrete measurement of how many women in the public service have experienced *sexual* harassment. Clearly, this is not a useful measurement or tool. It is recommended that the PSES be amended to include more questions on harassment.

The Management Accountability Framework (MAF) outlines 10 high level expectations of deputy heads, and harassment is covered under the section entitled "Values and Ethics". The only requirement under this level related to harassment is to:

Demonstrate how the organization's values and ethics plan will serve to support the implementation of the renewed Treasury Board *Policy on Harassment Prevention and Resolution* and the new *Directive on the Harassment Complaint Process*.

Based on our limited experience with the Management Accountability Framework, issues like harassment get lost in the other criteria. FEWO may want to ask Treasury Board whether any department has ever been made accountable for having an unacceptable harassment record, if so what the consequences were, and if not why not.

In the past, TBS has taken the position that they cannot tell departments what to do and that they can only "enable" them by providing advice. The new policy now makes this reality; it states that TBS "will assist the designated officials with the implementation and application of the policy through the provision of advice and the issuance of related administrative guidelines and tools". The PSAC is very concerned that there will now be even less control and accountability for differential department action, or inaction, on sexual harassment.

Recommendations

- 1- Require that Treasury Board review the process and the outcomes of all settlements, internal investigations, arbitrations and human rights complaints involving sexual harassment, and to report back to the Standing Committee within one year.
- 2- Include a specific question on *sexual* harassment in the Public Service Employee Survey.
- 3- Collect and publish data on the gender impact of the public service budget cuts including the number of women who have lost their jobs.
- 4- Examine concrete ways to address the under-reporting of sexual harassment and other forms of harassment.
- 5- Promote cross-department workplace deployment protocols, to remove harassers from a poisoned workplace (or the victim, if necessary) and provide a safe and harassment free workplace for all.

6- Require that Treasury Board account for and report on the compliance of all departments in regards to Part 20 - Violence Prevention in the Workplace, of the Canada Occupational Health and Safety Regulations

7- Include different measures to eliminate sexual harassment in all federally regulated workplaces in a future National Action Plan against Violence against Women.

8- Reaffirm Canada's commitment to eliminating sexual harassment and other forms of discrimination and violence against women at the 57th session of the United Nations Commission on the Status of Women being held from March 4-15, 2013.