

SPEAKING NOTES

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NATIONAL ASSOCIATION OF WOMEN AND THE LAW/ASSOCIATION NATIONALE FEMMES ET DROIT

to the

Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities (HUMA)

Regarding 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

Room 253D, Centre Block

Ottawa Ontario

February 28, 2018

6:30 p.m.

- Good evening. Thank you for this opportunity to speak on Bill C-65 on behalf of the National Association of Women and the Law (NAWL).
- NAWL is an incorporated not-for-profit feminist organization that promotes the equality rights of women in Canada through legal education, research, and law reform advocacy.
- We want to begin our comments by congratulating the government for prioritizing action to strengthen the prevention of and response to violence, and harassment, including sexual harassment in federally regulated workplaces and on Parliament Hill. This is consistent with the federal government's constitutional obligations under section 7 and 15 of the *Canadian Charter of Rights and Freedoms* and with Canada's domestic and international human rights obligations.
- We are also appreciative of the support that has been given to this issue by all the parties, and by the broad agreement that tackling sexual harassment is an important component of any gender equality agenda.
- The Supreme Court of Canada ruling in the 1989 *Janzen v Platy* case, confirmed that sexual harassment is a form of sex discrimination. Put simply, sexual harassment is unlawful and is a violation of women's human rights.
- Nearly 30 years later, in Canada, as elsewhere, women continue to overwhelmingly be the targets of sexual harassment at work, and men are overwhelmingly the perpetrators.
- An intersectional feminist analysis also highlights that violence and harassment including sexual harassment, are not experienced in the same way by all women, and that racialized, indigenous and disabled women are particularly at risk.
- Approaches to preventing and responding to sexual harassment must be framed in response to these realities.
- While the good intentions of Bill C-65 are clear, we have identified a few key areas where critical content has not yet been included, or is open to a range of interpretations.
- Because of the particularities and pervasiveness of the gendered power dynamics of politics, and the fact that *Canada Labour Code* provisions dealing with harassment, sexual harassment and violence will, for the first time, apply to parliamentary and political staff, our comments this evening will focus on some of the aspects of Bill C-65 that are particularly important to preventing and responding to sexual harassment on Parliament Hill.

These include the following issues:

- The legislative intent of achieving gender equality and security in the workplace could be explicitly reflected in Bill C-65.

- The law, and not regulations that will follow it, should include definitions of the violence, including gender-based violence in all its forms across the continuum, harassment, and sexual harassment that occur in the workplace, that Bill C-65 seeks to target.
- Customized approaches to respond to the unique causes of different forms of violence, including gender-based violence, sexual harassment and other forms of harassment are required, as both international human rights law, and the *Canadian Charter of Rights and Freedoms* impose on Canada the duty to eradicate all forms of discrimination against women. However, in its current form, there is no distinction between sexual harassment and other forms of workplace harassment and violence.
- Bill C-65's focus on strengthening health and safety approaches should provide an additional mechanism that is available to victims/survivors of sexual harassment in all federally regulated workplaces, including Parliament Hill, and not be seen as a mandatory prerequisite to or replacement of other mechanisms.
- It would be very useful if a clause would be added to Bill C-65 confirming that nothing in the Act precludes recourse under the *Canadian Human Rights Act*. This would provide clarity that there is no requirement that the complaint process under C-65 be pursued before any other mechanisms can be triggered, nor should it delay or have any negative impact on the complainant's ability to access other mechanisms, including under the *Canadian Human Rights Act*, as well as via a collective agreement, or when reporting crimes committed in the workplace to the criminal justice system. C-65 should aim to bolster, not hinder, women's rights and access to justice.
- This is particularly important given the range of remedies available to a complainant under other processes, that are not available pursuant to C-65. This is consistent with Canada's obligations to provide individual and systemic remedies to women when their human rights are violated. This includes providing individual compensation, punishment of aggressors and institutional reform aiming to prevent such violations in the future.
- Because Bill C-65 does not include details about the investigation process that will be used, it is not possible to assess whether the process proposed will be appropriate for and effective on Parliament Hill.
- The question of who will be appointed to undertake sexual harassment investigations and make determinations is an important one. The independence, expertise, and confidentiality of investigators will be even more important in an explicitly political environment such as that of Parliament Hill.
- If women are to trust the system and report, there can be no perception of any potential conflict of interest by the competent person appointed, or by any parties involved in the investigation or decision making about whether sexual harassment took place.

- Investigators will require specialized training and expertise to ensure that complaints of sexual harassment and gender-based violence, are dealt with appropriately, and are tailored to be effective in the political context.
- Good options for ensuring independence, removing bias and partisanship by any parties, and minimizing the possibility of conflict of interest in sexual harassment cases, especially those involving parliamentary or political staff, include either the establishment of an independent body to govern investigations, or the establishment of a list of independent external investigators with specific expertise on human rights, sexual harassment, gender-based violence, and all forms of workplace harassment and violence.
- The model chosen should adopt a human rights framework for the review and determination of complaints, and will need to be adequately funded to ensure appropriate support for victims/survivors, and the timely determination of complaints.
- At least half of the competent persons or investigators should be women, and the list of those who can be called upon to conduct investigations should reflect the population and include Indigenous women and men, women and men with disabilities, racialized women and men, and LGBTQ2I people.
- Supportive roles could be identified for department of labour staff and/or tripartite workplace committees. They could for example be used to review and agree on the list of external experts eligible for appointment.
- Significant attention has been paid in Bill C-65, to ensuring the confidentiality of complainants, which is commendable. However, clarifications may be useful to ensure that the approach to confidentiality doesn't inadvertently help harassers and harm women. Procedural fairness and respecting a victim/survivor centred approach necessitate that the complainant must be provided with a copy of the entire competent persons report and recommendations. This is a crucial amendment that should be made to Bill C-65.
- It is important that Bill C-65 be framed to drive much needed systemic changes to ensure that all federally regulated workplaces are non-discriminatory and violence and harassment free. In addition, the process established should aim to ensure that each complainant feels empowered, that she received justice, and that sexual harassment will not be tolerated.
- NAWL supports the call for a provision to be added to Bill C-65 that will require all federally regulated workplaces, and those on Parliament Hill that will also be bound by the *Canada Labour Code* provisions, to publish annual statistics on the number of incidents of sexual misconduct reported to them, the outcome of each complaint, and any financial settlement paid.
- Finally, it is important that any government measures to combat sexual harassment and violence be as effective as possible. NAWL therefore recommends that Bill C-65 provide for a formal review of the new federal regime within three years of its enactment. Because laws and

regulations governing sexual harassment in legislatures have only recently begun to emerge in Canada and elsewhere, further study of the human rights based approaches to, and the effectiveness of, measures adopted at other levels of government and in other countries to prevent and respond to sexual harassment in their legislatures would be a helpful component of such a review.

I will end my comments here and along with my colleague Professor Martha Jackman, co-chair of the NAWL National Steering Committee, look forward to responding to any questions you might have.

Thank you