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Standing Committee on Human Resources, Skills and Social
Development and the Status of Persons with Disabilities,
House of Commons

SUBMISSION 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

Submitted by

KATHLEEN FINLAY

On behalf of

The Zero Now Campaign

March 5, 2018
(revised)

“When women speak up, we have a responsibility to listen to them and to believe them.”

Rt. Hon. Justin Trudeau, Prime Minister of Canada

Background

As an advocate for combating sexual misconduct in the workplace _ and a survivor of both sexual assault and harassment in a public sector setting _ I very much applaud the government’s intent, through Parliament, to begin the process of bringing sexual harassment laws into the 21st century for federally regulated workplaces. To that end, I will address a key provision of Bill C-65 at some length because of its potential to create adverse outcomes for the very women who need the government’s protection. I have included a number of other recommendations for the Committee’s consideration, as it confronts the challenges of sexual misconduct in the workplace, at the conclusion of this submission.

An important signal was sent in advancing the cause of zero tolerance in the federal workplace _ and beyond _ when Prime Minister Justin Trudeau made his ground-breaking promise to Canadian women. It is the [fear of not being believed](#), and of being subjected to further harm as a result, that has been a prominent factor in why so many women have been reluctant to come forward. I hear the tragic stories of these women, and other survivors of sexual misconduct, every day at [The Zero Now Campaign](#) I founded.



An Epidemic of Fear and Harm

They, and so many others, are casualties of an epidemic that has become pervasive. [More than half of Canadian women](#) say they have been sexually harassed in the workplace. In the U.S., an NBC poll also found [nearly half of the women surveyed](#) have experienced job-related sexual harassment. Seventy percent of Canadians say [harassers face no consequences](#). Three-quarters of those surveyed who reported sexual harassment at work said "[their complaint was either ignored](#), not taken seriously or someone in a position of authority retaliated against them for lodging a complaint." Seven out of ten women in the U.S. who experienced sexual harassment [never talked with a supervisor](#), manager or union representative about the harassing conduct. Research shows that only between [2 percent and 13 percent of women who are harassed file a formal complaint](#). Retaliation is a common occurrence among those who do report, according to the U.S. Equal Employment Opportunity Commission, which has cited retaliation as an element in [three out of four cases](#). In a Canadian survey, [fear of retaliation](#), fear of a complaint hurting career advancement, or fear of losing one's job were cited as the most common reasons sexual harassment incidents are not reported.

Mr. Chairman and Members, we have a problem. And because it afflicts wives, daughters, sisters and mothers, it is a problem for all Canadians.

These statistics are troubling enough. But it is only when you see and hear that harm from one victim and one voice at a time _ as I do regularly _ that the full scope and impact of sexual misconduct in the workplace can be fully appreciated.

The Chill of the “Vexatious” Clause

This brings me to Bill C-65, the government’s proposed anti-harassment legislation. In my view, while the bill represents a positive step in the direction of making federal workplaces safer, I fear that one provision in particular is at odds with both that goal and the enlightened policy the Prime Minister has espoused.

I am referring to the proposed [amendment to Subsection 127.1\(9\) of the Canada Labour Code](#), which would permit the Minister to refuse to investigate a complaint of harassment or violence if the Minister is of the opinion that “the matter is trivial, frivolous or vexatious.” This is a terribly counterproductive step, and one that is both deeply offensive to women and clearly at odds with the principle that we should be respected and believed when we come forward. It loudly portrays women as possible mischief-makers in raising sexual misconduct claims, when all the evidence is precisely [contrary to that notion](#). In doing so, it perpetuates a false stereotype that has no place, and no factual justification, in the 21st century.

While there is no credible evidentiary support for the proposition that women file trivial complaints in any significant numbers, there is [abundant evidence](#) that confirms we have been treated in a [trivial fashion by organizations](#), including government and public sector entities, when we have come forward. This is in addition to the vexatious spirit of retaliation that animates too many organizations in responding to sexual misconduct complaints.

As noted above, retributive action is a [common fear](#) among Canadian women. Too many of us have found ourselves in that boat, and too many of us have had our lives and careers capsized by the waves of bad faith and reprisals that surround us.

The Risk of Unintended Consequences with the “Vexatious” Clause

Since available evidence confirms that most women who experience sexual harassment [do not come forward](#), it is submitted that lawmakers need to be very careful that in outwardly attempting to advance a culture of zero-tolerance, they do not unintentionally adopt provisions that are inimical to that goal. As a society, we cannot afford to magnify the difficulties that confront women in reporting sexual misconduct by adopting legal provisions that add to an already long list of deterrents. Anything that might be construed as a message to women that, if we come forward, there is a risk of being subjected to yet further humiliations and attacks on our character must be scrupulously avoided by governments at every level, especially when research shows that [99 percent of all sexual harassment claims are legitimate](#).



“I Lost Everything”

Many of us have already paid a gigantic price for coming forward.

It is not uncommon for women to experience waves of emotional and physical harm following sexual misconduct incidents. These waves can last for years. In this respect, the aftermath of filing a sexual misconduct complaint, especially when it is mishandled, is not unlike the traumatic emotional impacts of [medical errors on patients and families](#). Research has documented that for victims of sexual misconduct there can be [lasting consequences to their health](#), with depression, PTSD, anxiety, heart disease, sleep disorders and thoughts of [self-harm](#) prominent among them. Some experts have asserted, and my experience with survivors most convincingly confirms, that the period following the reporting of an incident of sexual misconduct can be more [stressful and damaging](#) than the originating event.

Less noted or understood are the financial costs, which can be devastating. In the *everyday* workplace _ where women cope with reality without red carpets, designer black dresses or sympathetic headlines _ the typical outcome is still *I-had-to-leave-but-my-harasser-stayed*. Many survivors are forced to quit their jobs and are never able to resume careers in their chosen field. They have to [start from scratch](#) _ and that's if they can find meaningful work at all.

Few women have summed up the nightmare of these consequences more graphically than one who reached out to me. “I lost my job, my marriage, my reputation, my income and my home,” she said. “My work colleagues didn’t want to have anything to do with me anymore. I was a pariah to them. I lost everything and I thought many, many times about taking my own life, especially when I saw my harasser continue to thrive in the organization that was more than happy to assassinate my character and then throw me under the bus.”

By any reasonable standard of morality, this courageous survivor surely endured enough losses and indignities for several lifetimes. But her ordeal was not over. When she took her case to one of Canada’s human rights tribunals, it was dismissed on the grounds of being — wait for it — “frivolous and vexatious.”

We do not wish to see that nightmare repeated for any other woman. Ever.

We need to get behind these forgotten victims, hire them back into an enlightened and welcoming workplace, and make sure government policy is not turning any more women into victims whose torment can last for decades. I fear, however, that this is precisely what the “vexatious” clause foreshadows.

In my view, the extent of sexual misconduct in the workplace is so widespread, and its damage to the dignity and personhood of women so profound, that we have reached the point where the right to be protected from it should be recognized, not just by the policy of the government of the day, but as a fundamental *human right*.



The Call of History's Conscience for Women – Again

Finally, as Parliament moves forward in what may be a once-in-a-lifetime chance to give Canadian women our lawful right to the kind of workplace dignity and safety our common sense of morality requires, I encourage it to view its decisions through the prism of history and as a part of the unfolding of a great Canadian journey for dignity and equality begun with Nellie McClung and the "Persons" movement and enshrined by the women of the "Ad Hoc Committee" in 1982.

For victims, survivors and countless Canadian women who are determined to settle for nothing less than zero tolerance when it comes to sexual misconduct in the workplace, this is now *our* time to stand up and speak out.

SUMMARY OF RECOMMENDATIONS

1. **Remove the proposed "vexatious" amendment** to Subsection 127.1(9) of the Canada Labour Code, which would permit the Minister to refuse to investigate a complaint of harassment or violence if the Minister is of the opinion that "the matter is trivial, frivolous or vexatious."

Through amendments to Bill C-65, and by other legislative and policy instruments:

2. **Establish a [sunshine law](#)** requiring the annual public disclosure of relevant sexual harassment statistics, including the number of incidents reported, the outcome of the complaint and any financial settlement paid for every federally controlled entity, including Parliament itself.

3. **Prohibit non-disclosure agreements (NDAs)** from being included in any settlement involving a sexual misconduct complaint. These devices amount to a DNR (do not resuscitate) order for the careers and reputations of victims. [They prevent survivors from speaking](#) out to defend our reputations against bad employer actors and stifle our ability to protect other women from similar abuse.

4. **Support an active policy in the federal public service to hire survivors of sexual misconduct ([Hire US Back](#))** and to provide the necessary means of creating a safe and welcoming workplace so that survivors can begin to rebuild their lives and careers.

5. **Provide for a federal-workplace-wide whistleblower system** allowing employees, as victims, witnesses or bystanders, to report incidents of sexual misconduct on a confidential and, if they wish, anonymous basis, and to provide for the follow-up of a neutral party for information on options going forward, if such guidance is sought.

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On behalf of The Zero Now Campaign, and Canadian women seeking respect and protection in the workplace, thank you for your consideration of these heartfelt representations.

Respectfully submitted,

KATHLEEN FINLAY, Founder

[The Zero Now Campaign](#)

March 5, 2018

(Revised)

Kathleen Finlay, B.A. (Hons) (Victoria University), M.A. (University of Toronto) is founder of [The Zero Now Campaign](#) to combat sexual misconduct in the workplace and advocate for more positive outcomes for survivors, and CEO of [The Center for Patient Protection](#), an international healthcare advocacy focusing on patient safety in the hospital setting and helping families deal with the harm of medical errors. Prior to her life-altering experience with sexual assault and sexual harassment in a public sector workplace, she was involved in the regulation of Canada's capital markets, and was a member of the executive management team of one of Canada's principal securities regulators.

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