**Final Session of the RIAL/OAS Cooperation – Violence and Harassment in the Workplace**

**Trinidad and Tobago & Canada**

**Questions from Trinidad and Tobago**

**Legal Services Unit**

1. Other than the Canadian Centre of Occupational Health and Safety (CCOHS), what other government organisations address issues of violence and sexual harassment presently? Are these organisations federal, provincial or municipal?
 **Answer:** The Canada School of Public Service (CSPS), a federal organization, also offers a number of training courses on harassment and violence prevention, including:
	1. [Harassment and Violence Prevention for Employees (W101)](https://www.csps-efpc.gc.ca/catalogue/courses-eng.aspx?code=W101);
	2. [Harassment and Violence Prevention for Managers and Committees/Representatives (W102)](https://www.csps-efpc.gc.ca/catalogue/courses-eng.aspx?code=W102); and,
	3. [Harassment and Violence Prevention for Designated Recipients and Employers (W103)](https://www.csps-efpc.gc.ca/catalogue/courses-eng.aspx?code=W103).

The Ontario Ministry of Labour, Training and Skills Development also offers tools and resources on harassment and violence prevention for employees who fall under the provincial jurisdiction. You can access their tools and resources at the following link: <https://www.labour.gov.on.ca/english/hs/topics/workplaceviolence.php>.

1. Are the laws guided by the ILO R206 and C190 and/or other similar international human rights standards/conventions/protocols/treaties?

**Answer:** When the new harassment and violence prevention policy framework was being developed, efforts were made to align various aspects of the policy framework with the International Labour Organization’s (ILO) C190 - Violence and Harassment Convention, 2019 (the Convention). For example, the *Work Place Harassment and Violence Prevention Regulations* (the Regulations) align with Articles 9 (a), (c) and (d) of the Convention, which calls for each member state to adopt regulations that require employers to implement a work place policy on harassment and violence; identify hazards and assess the risks of harassment and violence; and, provide concerned workers with information and training on the identified harassment and violence hazards and risks. The Regulations also align with the Preamble of the Convention, which calls on member states to recognize, respond to, and address the impacts of domestic violence. In addition, the Regulations align with Article 10(f) of the Convention, which also calls on member states to take the appropriate measures to recognize the effects of domestic violence on the world of work and mitigate its impact.
2. What protection is in place in Canada for migrant workers in respect of violence and harassment?

**Answer:** If a migrant worker is employed in the federal jurisdiction then the Regulations and the protections under the Canada Labour Code (the Code) would apply to them.
3. What would be considered a reasonable time frame to accept a complaint from a victim who makes a report of an act of violence and sexual harassment after the deadline to file a complaint has passed?

**Answer:** Under the Regulations there is no deadline to make a report of an act of harassment or violence so long as the employee is still employed by the employer. For example, an employee could file a notice of an occurrence for an occurrence of harassment or violence that happened 20 years in the past. If the employee is no longer employed by the employer then the employee has up to three months from when the they to be employed by the employer to submit a notice of an occurrence (see paragraph 4(a) in the Regulations). However, this notice could still be about an occurrence that happened many years in the past.
4. How do workplaces protect victims of violence and harassment from discrimination/ stigmatisation?

**Answer:** The Regulations protect victims of violence and harassment from discrimination and stigmatisation by requiring employers to protect the privacy and confidentiality of the parties involved in the occurrence and in the resolution process for the occurrence. For example, the Regulations require at subsection 30(2) that the investigator’s final report not reveal, directly or indirectly, the identity of the persons who are involved in an occurrence or the resolution process for an occurrence. The Code also now prohibits at subsections 134.1(4.1), 135(7.1) and 136(5.1) policy committees, workplace committees, and health and safety representatives from participating in an investigation related to an occurrence of harassment and violence.
5. If an employer retaliates or maliciously acts against a victim (employee) for filing a claim against him/her for violence and sexual harassment, how would this be treated/dealt with?

**Answer:** Under section 147 of the Code, employers are prohibited from dismissing, suspending, laying off, demoting, imposing a financial penalty or any other penalty, refusing to pay remuneration or take any disciplinary action against or threaten to take disciplinary action against an employee because that employee has pursued his or her rights under the Code or associated regulations. If an employee feels that the employer has taken action against them in contravention of section 147 they have a right under subsection 133(1) of the Code to make a complaint in writing to the Canada Industrial Labour Relations Board (the Board) of the alleged contravention.
6. Should an employer carry out further adverse treatment against the employee who is a victim or witness to violence and harassment how would such action be treated? Are there any provisions which speak to places of work where there are multiple offences/instances or repeated incidences of violence and harassment?

**Answer:** If the employee has filed a complaint with the Board for the employer’s adverse treatment against them for exercising their rights under the Code or associated regulations and if the Board determines that an employer has contravened section 147, the Board may, by order, require the employer to cease contravening that section and may, if applicable, by order, require the employer to (subsection 134(1) in the Code):
	1. permit any employee who has been affected by the contravention to return to the duties of their employment;
	2. reinstate any former employee affected by the contravention;
	3. pay to any employee or former employee affected by the contravention compensation not exceeding the sum that, in the Board’s opinion, is equivalent to the remuneration that would, but for the contravention, have been paid by the employer to the employee or former employee; and,
	4. rescind any disciplinary action taken in respect of, and pay compensation to any employee affected by, the contravention, not exceeding the sum that, in the Board’s opinion, is equivalent to any financial or other penalty imposed on the employee by the employer.
7. Can the policy user guide for harassment and violence by shared? If not are there any provisions or best practices for its revisions or updating?

Answer: The sample workplace harassment and violence prevention policy user guide can be accessed at the following link: <https://www.canada.ca/en/employment-social-development/programs/workplace-health-safety/harassment-violence-prevention/sample-user-guide.html>. In addition, the sample workplace harassment and violence prevention policy can be accessed at the following link: <https://www.canada.ca/en/employment-social-development/programs/workplace-health-safety/harassment-violence-prevention/sample-policy.html>.
8. Are complaints of violence and harassment also filed at any Criminal Court, Tribunal or Commission? If not, do these complaints reach any of these Offices at any time during the investigative process?

**Answer:** The principal party can, in addition to pursuing the resolution process under section 14 the Regulations, concurrently file a complaint with the local policy authority for alleged contraventions of the *Criminal Code (R.S.C., 1985, c. C-46).* The principal party can also pursue a concurrent complaint with the Canadian Human Rights Commission if they feel that the harassment and violence is based on one of the prohibited grounds of discrimination outlined at section 2 in the *Canadian Human Rights Act*.
9. If the accused is found guilty, will a criminal charge follow?

**Answer:** Whether or not criminal charges are laid depends on whether the criminal activity is reported to the police and investigated. In a situation of sexual or physical assault the employer or their delegate (i.e., a supervisor or manager), any witnesses, and the principal party (the victim) are encouraged in our guidance documents to report the assault to the police in addition to pursuing the resolution process under the Regulations.
10. How is confidentiality maintained in the processing of these complaints?

**Answer:** As mentioned in the answer to Question 5, the Regulations require at subsection 30(2) that the investigator’s final report not reveal, directly or indirectly, the identity of the persons who are involved in an occurrence or the resolution process for an occurrence. The Regulations also require at paragraph 10(2)(h) that the employer describe in their harassment and violence prevention policy the manner in which the employer will protect the privacy of persons who are involved in an occurrence or in the resolution process for an occurrence. In addition, the Code also now prohibits at subsections 134.1(4.1), 135(7.1) and 136(5.1) policy committees, workplace committees, and health and safety representatives from participating in an investigation related to an occurrence of harassment and violence.
11. Has ICT been used to support actions against violence and harassment? Can details be shared?

**Answer:** Information and Communications Technology was used throughout the extensive awareness campaigns that the Labour Program engaged in to promote the new harassment and violence legislation and the tools and resources that were developed to support the new legislation. For example, the Labour program:
	1. emailed stakeholders (employee representatives, employer representatives, Indigenous communities, etc.) to highlight the final publication and coming into force of the Regulations and the new tools and resources that are available online;
	2. ran a social media campaign on Facebook, Twitter and Linked in from June 24 to October 29, 2020 to promote the final publication of the new Regulations, and from December 29 to February 23, 2021 to promote the coming into force of the new Regulations; and,
	3. developed and posted on the Candada.ca website and on social media four sample awareness posers which can be accessed at the following link: <https://www.canada.ca/en/employment-social-development/programs/workplace-health-safety/harassment-violence-prevention/posters.html>.

**Conciliation Advisory and Advocacy Division (prepared by Consultant)**

*Employee support/ Support to Victims/Survivors*

1. Bearing in mind the psychological impacts of sexual harassment and harassment more broadly, were any mechanisms put into place in the roll out of the new regulations that directly or indirectly provided access to mental health and psychosocial support for employees? How was this done, via the State or employer? At what stage of the complaint process was mental health support offered?

**Answer:** For the Federal Public Service, federal public service employees could access mental health and psychological support through the Employee Assistance Program (EAP). The Regulations require at section 13 that employers make available to all employees information respecting the medical, psychological or other support services that are available within their geographical area. This information should have been made available to employees by the coming into force date of the Regulations (January 1st, 2021).
2. Was any special outreach done for vulnerable groups e.g. migrants, the LGBTQ community, youth)? If yes, can you share more details on this?

**Answer:** During our awareness campaign some of the vulnerable groups that were targeted for special outreach were various indigenous groups, who were sent three rounds of emails to highlight the final publication and coming into force of the Regulations, and the new tools and resources that are available online.
3. Were NGOs or other civil society organisations involved in your working groups or in public awareness campaigns? The MOL is considering partnering with women’s rights groups and/or the Ministry of Gender Affairs to ensure the elements of sexual harassment are addressed competently.

**Answer:** The Centre for Research & Education on Violence Against Women & Children (CREVAWC) was an NGO that was involved in our Interpretations, Policies and Guidelines (IPG) Working Group. CREVAWC is a collaborative venture between The University of Western Ontario, Fanshawe College and London Coordinating Committee to End Women Abuse. The Centre conducts research and develops tools and resources to prevent family and domestic violence against women and children.

*Trade Unions*

1. In T&T, trade union negotiated collective bargaining agreements are utilised in many sectors and so, to give effect to anti-harassment legislation, an anti-harassment clause will need to be included in these agreements. Similar clauses, e.g. maternity protections, retrenchment benefits are mandatory and must be included before a collective bargaining agreement can be registered. The MOL is considering making anti-harassment clauses mandatory as well. Is there any discretion in the application of the anti-harassment regulations in Canada or are they mandatory across all sectors covered by the regulations?

**Answer:** The rights and obligations under the Code and Regulations provide the minimum requirements for employers vis-à-vis preventing harassment and violence in the workplace and responding to occurrences. If the harassment and violence clauses in a collective agreement do not meet these minimum requirements then the Code and the Regulations prevail and the collective agreement should be amended to meet the minimum legislative requirements.
2. What were the types of concerns shared by trade unions during your consultation process?

**Answer:** Some key concerns shared by union representative during the consultation process included:
	1. Concerns about various definitions in the draft Regulations, including that:
		1. the definition of “designated recipient” was not sufficiently clear;
		2. the definition of “principle party” should not include the employer; and,
		3. the definition of the “applicable partner” excludes workplace committees from participating in assessing hazards and implementing preventive measures.
	2. Concerns that some elements of the draft Regulations need to be more prescriptive, such as:
		1. the need for more detail around the development and implementation of preventive measures; and,
		2. the need for more prescriptive information about how an anonymous complaint is received.
	3. Concerns that the workplace assessment and the development and implementation of preventive measures would be done superficially by employers. Union stakeholders suggested to include language such as “root-cause analysis”, “site-specific hazards,” and “systemic” in the Work Place Assessment section of the Regulations.
	4. Concerns that the timelines prescribed at various sections of the draft Regulations, particularly as they relate to the resolution process, are too long and should be reduced by half.
	5. Concerns about exemptions to the resolution process, in particular that the draft Regulations did not require investigations for incidents of harassment and violence that are perpetrated by people external to the workplace (third parties).
	6. Concerns that the draft Regulations maintain the status quo by allowing the employer’s decision to prevail when the employer and applicable partner are unable to agree on whether the occurrence meets the definition of harassment and violence (union stakeholders wanted the principal party’s decision to prevail in such a situation).
	7. Concerns that the final investigator report did not include a requirement to provide information on the methodology that the investigator used, which union stakeholders felt was an important component of evaluating the effectiveness of the investigation.

*Investigation Process*

1. In T&T the MOL adopts a hands off role during the investigation process and participates primarily in the role of independent conciliator (via the conciliation unit or soon to be established sexual harassment unit).

Under the National Workplace Policy on Sexual Harassment, complaints are heard by a designated officer who is empowered to facilitate a discussion between the alleged perpetrator and complainant or refer the matter to an internal or external investigator. It is the responsibility of the employer to ensure that the designated officer and investigator has the competence and capacity to conduct the investigation and the training to do so.

* 1. Does the state maintain a similar independent stance in Canada?

	**Answer:** Yes, the Labour Program maintains a similar independent stance in Canada. If a principal party wishes to pursue an investigation, the Regulations require at paragraph 27(1)(a) that the employer selects an investigator from an internal roster that the employer has jointly developed with their policy committee, or if there is no policy committee, the workplace committee or health and safety representative. If the employer does not have a jointly developed list of investigators then the employer, the principal party and the responding party must agree to an investigator within 60 days after the day on which the employer provided the notice to the principal party and responding party that an investigation is to be carried out (see subparagraph 27(1)(b)(i) in the Regulations). If no agreement can be reached within 60 days, then the employer must select an investigator from the list maintained by the CCOHS (see subparagraph 27(1)(b)(ii) in the Regulations). It is the employer’s responsibility to ensure that the investigator possesses the prescribed knowledge, training and experience to conduct the investigation.

	The Labour Program only gets involved in a situation where an employee feels that their employer has contravened their obligations under the Code or the process outlined in the Regulations. As such, when a complaint is filed with the Labour Program, the Labour Program does not investigate whether the allegation is true or false or who is guilty of the occurrence, but rather whether the employer has followed the process outlined in the Regulations and their obligations under the Code.

We understand that the Labour Program in Canada established a tri-partite (gov’t, labour and employer) working group to develop the Roster of Investigators over 18 months. The MOL is interested in exploring the implementation of a trained cadre of investigators similar to the Roster, but as a primary resource and not as a last resort.

* 1. The Roster is described as a last resort if a joint list of investigators have not been established. Could you share a bit more about the joint list of investigators? Is that specific to every organisation, comparable to an ‘internal investigator’ in the T&T policy? Is there any State oversight of who is included on that joint list? Is the development of the joint list mandatory under the regulations?

	**Answer:** The Roster of Investigators (the Roster) is a list of “last resort” in the sense that the Regulations require the employer first to select an investigator:
		1. from the list of investigators that the employer has developed jointly with the policy committee or, if here is no policy committee, the work place committee or the health and safety representative (paragraph 27(1)(a) in the Regulations); or,
		2. that has been agreed upon jointly by the employer, the principal party and the responding party within 60 days of when the notice of investigation was submitted (subparagraph 27(1)(b)(i) in the Regulations).

Yes, the joint list of investigators that the employer develops with their policy committee is an internal list of investigators that is specific only to their organization. The Roster housed by the CCOHS is only used in the situation where the employer does not have an internal list of investigators or where the employer, principal party and responding party could not come to an agreement on who shall investigate the occurrence within 60 days of when the notice of investigation was issued by the employer to the principal party and responding party.

The Roster currently has 75 investigators with language profiles in both official languages (English and French) across nine provinces and territories in Canada. All federally regulated organizations can use the investigators from the Roster so long as they have exhausted the other avenues for selecting an investigator under the Regulations.

Yes, the government of Canada does provide oversight on who is included on the Roster.

No, the joint development of an internal list of investigators with the policy committee as described at (i) in the answer above is not mandatory under the Regulations.

* 1. Could you share a bit more about the Roster of Investigators? A very rigorous, collaborative approach seems to have been taken in the development of this roster in particular – why was this deemed necessary?

	**Answer:** As mentioned in the answer above, the Roster currently has 75 investigators with language profiles in both official languages (English and French). The Roster represents investigators distributed across Canada from the following nine provinces and territories: Alberta, British Columbia, Manitoba, New Brunswick, Northwest Territories, Nova Scotia, Ontario, Quebec, and Saskatchewan. All the investigators are willing to work remotely. The Labour Program is expecting to reach 200 investigators on the Roster, with the next call out for additional investigators targeted to commence in late 2021 to early 2022.

	It was deemed necessary to take a rigorous and collaborative approach in the development of the Roster in order to have buy-in from both employer and union stakeholders who will be utilizing the Roster. It is hoped that parties who are involved in a workplace harassment and violence investigation will perceive the investigator selected by the employer from the Roster as unbiased since he or she was jointly assessed and selected to be placed on the Roster by employer and union representatives.
	2. Is the Roster of Investigators included in the regulations? Is its use mandatory?

	**Answer:** The Roster is included in the Regulations at subparagraph 27(1)(b)(ii). The use of the Roster is not mandatory, it is one of three options for selecting an investigator. That is to say, the employer has the option of selecting an investigator from an internal list that they have jointly developed with their policy committee (see paragraph 27(1)(a) in the Regulations). If such an internal list has not been developed, the employer also has the option of selecting an investigator that has been jointly agreed upon by both the employer, the principal party and the responding party (see subparagraph 27(1)(b)(i) in the Regulations).
	3. It is unlikely that the MOL will have 18 months to collaboratively engage labour and trade unions in the development of a Roster. Would a pared down version of this perhaps over 3-6 months be recommended given your experience?

	**Answer:** This depends on the relationship between the employer and union representatives, on how willing they are to work cooperatively with each other, on how quickly they are able to reach consensus on the investigator qualification criteria, and on how quickly they are able to assess applicants.
	4. For both the joint list of investigators and the Roster – are investigators trained by the State or were applicants required to already be qualified and experienced in these types of investigations? What are the required qualifications?

	**Answer:** The investigators that are on an employer’s internal list of investigators are not trained by the Government of Canada. It is the employer’s duty to ensure that the investigators on their internal jointly-developed list possess the knowledge, training and experience prescribed in the Regulations at subsection 28(1).

	Concerning the investigators on the Roster, the applicants were required to already be qualified and experienced in investigating occurrences of harassment and violence. Under the Regulations an investigator is required to be trained in investigative techniques; have knowledge training and experience relevant to harassment and violence in the workplace; and have knowledge of Bill C-65 (the Bill), the *Canadian Human Rights Act*, and any other legislation that is relevant to harassment and violence in the workplace (see subsection 28(1) in the Regulations).

	The 2020-2021 selection process for the Roster included the following steps:
		1. pre-screening of candidates;
		2. application of exams to assess candidate’s knowledge of the *Canada Labour Code*, the *Work Place Harassment and Violence Prevention Regulations* and the *Canadian Human Rights Act*;
		3. assessment of candidate’s ability to conduct a workplace investigation and produce a written report; and,
		4. two reference checks.
1. In practice in T&T, even at the preliminary investigation stage employers usually hire an attorney, trade union official and HR consultant and employees also hire attorneys. Or they call the Employer’s Consultative Association.
	1. Could you please share a bit more about the stages of the complaints process and under the Canadian regulations and when the State becomes involved?

	**Answer:** A principal party or witness has the option of submitting a notice of an occurrence to either their employer or the designated recipient (a person or work unit that has been designated by the employer to receive complaints). When a notice of an occurrence is submitted to the employer or the designated recipient, the employer or designated recipient (whoever received the notice) is required to contact the principal party within seven (7) days after the day on which the notice was provided and inform them that: their notice has been received; how they can access the harassment and violence prevention policy; each step of the resolution process; and, that they may be represented at any time during the resolution process. The employer or designated recipient is then required to initiate negotiated resolution, which is a form of early resolution, with the principal party within 45 days of when the notice of occurrence was received.

	During negotiated resolution, the employer or designated recipient meets (either virtually or in-person) with the principal party to: discuss the occurrence and determine whether it meets the definition of harassment and violence as outlined at subsection 122(1) of the Code; clarify the information that was submitted in the notice; and, attempt to reach resolution. If the principal party and the employer or designated recipient jointly agree that the occurrence does not meet the definition of harassment and violence then the occurrence is deemed resolved. If, however, the principal party and the employer or designated recipient cannot agree on whether the occurrence meets the definition of harassment and violence and the principal party wishes to proceed with the resolution process, then the employer must provide the principal party with the option to continue negotiated resolution or to pursue conciliation or an investigation. The responding party may or may not be involved in negotiated resolution depending on the nature of the occurrence and the principal party’s preferences.

	The principal party can engage in conciliation if both the principal party and the responding party agree to engage in conciliation and they both agree on who will facilitate the conciliation. Conciliation can run parallel to an investigation up until the investigator has provided their final report under subsection 30(1) of the Regulations.

	If the principal party wishes to proceed to an investigation, the employer or designated recipient is required to select an investigator either from: their internal list of investigators that has been jointly developed with the policy committee (or if there is no policy committee then the workplace committee or health and safety representative); or, if no such list exists, then they must select the investigator that has been jointly agreed upon by the employer, the principal party, and the responding party. If the employer, principal party and responding party cannot agree to an investigator within 60 days then the employer must select an investigator form the Roster of Investigators housed by the CCOHS.

	The Regulations allow for negotiated resolution, conciliation and an investigation to run as parallel processes. However, once the investigator’s report is provided to the employer the occurrence can no longer be resolved through negotiated resolution or conciliation. When the investigator’s report is received, the employer must provide a copy of the report to the principal party, responding party and the workplace committee or health and safety representative. The employer must then meet with the workplace committee or health and safety representative to jointly determine which of the recommendations set out in the report are to be implemented and then must implement those recommendations.

	If an occurrence is investigated, the resolution process is considered complete once the employer has implemented the recommendations that have been jointly agreed upon from the investigator’s report. If the occurrence is not investigated, the resolution process is considered complete when the principal party agrees that the occurrence is resolved. The employer must ensure that the entire resolution process (negotiated resolution, conciliation and/or an investigation) is completed within one year after the day on which the notice of occurrence is provided. The principal party has the right to end the resolution process at any time during the resolution process by informing the employer or designated recipient that they choose not to continue with the process.

	The Labour Program only gets involved if the principal party or another employee believes that the employer or designated recipient did not follow the requirements of the Code or Regulations. In such a situation the employee who submits the complaint to the Labour Program is required first to:
		1. notify their supervisor or the person designated in their harassment and violence prevention policy to receive such a complaint (who can be the same person as the designated recipient or a different person), of the violation of the Code or Regulations; and,
		2. try to resolve the issue with their supervisor or the person who is designated in the HVP policy as soon as possible.

If the complaint related to the alleged violation of the Code or Regulations is still not resolved after following these two steps, then the employee may file a formal complaint with the Labour Program. The Labour Program will not investigate the occurrence of harassment and violence, but rather will investigate whether the employer has appropriately fulfilled its obligations under the Code as it relates to harassment and violence in the workplace, and whether the employer has followed the resolution process for resolving the occurrence as outlined in the Regulations.

If an employee is not satisfied with the conclusions or recommendations in the investigator’s report, or they believe the investigation was flawed, they may also be able to request judicial review of the investigation by the Federal Court within 30 days of receiving the investigator’s report.

* 1. Are attorneys usually a part of the internal investigation process?

	**Answer:** No, attorneys are not usually part of the internal investigation process. However, the Regulations do allow the principal party and responding party to be represented during the resolution process (see paragraphs 20(d) and 22(d) in the Regulations). The Regulations are not prescriptive about who a principal or responding party can choose to represent them, as such they may be represented by a lawyer, a union representative, a colleague, a spouse, or a friend. The principal and responding party are still required to personally provide information about the occurrence and respond to questions regarding the occurrence during negotiated resolution, conciliation or an investigation. The representative may only speak on behalf of the principal or responding party regarding matters related to the administration of the resolution process such as:
		1. scheduling meetings or interviews; and,
		2. receiving updates on the status of the resolution process.
		More information about this matter can be accessed at the following link: <https://www.canada.ca/en/employment-social-development/programs/laws-regulations/labour/interpretations-policies/104-harassment-violence-prevention.html>.

*Working Groups*

1. As with the Roster, it is noted that a working group including labour and employer representatives was convened for the creation of material and tools to support end users. Would a pared down version of this perhaps over 3-6 months be recommended given your experience? Alternatively, given our tighter deadline, would you recommend that labour and employer representatives be invited only to provide feedback on these documents before they are published?

**Answer:** As with the answer to question 6(e) it depends on the relationship between the employer and union representatives, on how willing they are to work cooperatively with each other, and on how quickly they are able to reach consensus on the information that will be included in the tools, resources, and guidance material.

Yes, we would recommend given the tight deadline to prepare the tools and resources and allow the labour and employer representatives to be invited to provide feedback on these documents before they are published.

*Confidentiality*

1. Where sexual harassment claims are addressed within organisations, there have been concerns about the serial harassers. The National Workplace Policy on Sexual Harassment stipulates that employers maintain a sexual harassment log of complaints and provide an annual report to the MOL. Employers shall also notify the Minister of Labour and/or the Secretary with responsibility for Labour of all cases of sexual harassment within one (1) month of the date of the report to the employer. Employers who fail to notify of such incidents shall be liable to a fine.
	1. How does the Canadian regulations handle serial harassers?

	**Answer:** Under the *Work Place Harassment and Violence Prevention Regulations* the onus is on the principal party or any witnesses (a witness could also be the employer/manager/supervisor who becomes aware of additional occurrences of harassment) to report any additional occurrences of harassment and violence. Under such circumstances, the employer would be required to go through the resolution process again with the principal party and responding party. In addition, the employer is required to review their workplace assessment and update it, if necessary, in order to address any systemic issues in the workplace that are conducive to harassment and violence.
	2. How are employers incentivized or encouraged to prevent repeat cases of harassment?

	**Answer:** Employers are encouraged to prevent repeat cases of harassment and violence by requiring them to review and update their workplace assessment at least once every three years and:
		1. whenever there is a change to the risk factors that contribute to harassment and violence in the workplace; and,
		2. whenever there is a change in the workplace that compromises the effectiveness of a preventive measure that has been developed and implemented to mitigate the risk of harassment and violence in the workplace.
2. High profile perpetrators – can you provide any recommendations either via practice or policy to help foster an environment in which employers are encouraged to hold high profile or powerful perpetrators to account?

**Answer:** Some recommendations to help foster an environment in which employers are encouraged to hold high profile or powerful perpetrators to account include:
	1. encouraging all managers, supervisors and employees not be a bystander and to come forward with a complaint when they see an occurrence of harassment and violence;
	2. encouraging all managers, supervisors, and employees to address workplace conflict and discriminatory or harassing behaviour at the onset rather than letting such behaviour build up over time; and,
	3. requiring all managers, supervisors and employees to undergo mandatory harassment and violence prevention training in order to be able to recognize harassment and violence and be able to minimize, prevent and respond to it appropriately.

*Occupational Safety and Health*

1. In the development of the new process was there an international review of best practices done to arrive at the implemented model?

**Answer:** Yes, an internal review of best practices was done when developing the new harassment and violence framework. In addition, we also conducted a jurisdictional review of the harassment and violence legislation in the Canadian provinces as well as an international review of harassment and violence legislation.

2. If so, can you please share which country examples/models were reviewed?

**Answer:** International jurisdictional scans included Australia, Finland, Ireland, the United Kingdom and United States.

3. Are there any supporting bodies which assist the implementation of this initiative?

**Answer:** The Canada School of Public Service and the Canadian Centre for Occupational Health and Safety are two supporting federal organizations that have assisted with the implementation of the Bill and Regulations.

4. What are the qualifications and experience required by your OSHA Inspectors to be able to competently provide such a service (knowledge, skills, awareness, and attitudes)?

**Answer:** Please note that the Labour Program OHS Officers are not the “Investigators” identified in the Regulations who are responsible for deciding whether or not harassment and violence occurred. Labour Program OHS Officers only investigate whether the employer has fulfilled their obligations and duties and appropriately followed the process outlined in the Code and Regulations.The training the OHS Officers received included online training modules and virtual in-class sessions to assist them with understanding, interpreting and applying the amendments to the Code and the new Regulations. Employees who work in the Harassment and Violence Outreach Hub (the Hub) also received training regarding:

* telephone skills;
* managing workplace stress;
* mental health; and,
* working with difficult people.

The Hub was launched in April 2018 and provides outreach services to employees and employers to help them navigate the new workplace prevention and resolution process outlined in the Regulations and to direct victims to resources and support services.

5. Was any special training/re-training given to the existing OSHA Inspectors to provide this service?

**Answer:** Yes,internal training by the Labour Program was provided to OHS Officers who are responsible for enforcing the Regulations. [Note: as mentioned in the answer to the question above, these OHS Officers are not the “Investigators” identified in the Regulations who are responsible for deciding whether or not harassment and violence occurred.]

OHS Officers and Program Advisors from the Labour Program, as well as officers from each of the extended jurisdiction sectors were required to complete online Harassment and Violence training modules, as well as two virtual in-class half day sessions. Separate sessions were held for each official language.

6. Is there a stepwise level of service provision OSHA national, local government to individual company Safety and Health Officer for implementation and upward reporting?

**Answer:** No.

7. Does the Canadian jurisdiction have OSH Regulations established for lone working to mitigate sexual harassment/attacks?

**Answer:** No, there are no specific regulations for lone working. However, the Regulations require at sections 5 to 9 that the employer and their policy committee (or if there is no policy committee, the workplace committee or health and safety representative) jointly carry out a workplace assessment that consist of:

* the identification of various risk factors, internal and external to the workplace, that contribute to harassment and violence in the workplace; and,
* the development of preventive measures that, to the extent feasible, mitigate the risk of harassment and violence in the workplace.

As such, an employer who has employees that work in isolation (especially employees who work alone at night) would have to identify lone working as a risk factor and develop appropriate preventive measures to mitigate the risk of harassment and violence occurring because of the lone working.

8. Was there any modification to the OSH Act to facilitate the introduction of this measure?

**Answer:** No.However, the Bill introduced a new requirement under the Code at 125(1)(z.16) for employers to “prevent and protect against harassment and violence in the workplace, respond to occurrences of harassment and violence in the workplace and offer support to employees affected by harassment and violence in the workplace.” As such, an employer would be required to prevent harassment and violence from occurring in the context of lone working through introducing preventive measures (i.e. surveillance cameras, security systems, a security guard accompanying an employee to their car at the end of a shift, etc.) that protect employees who work in isolation.

9. Is occupational stress specified in your OSH Act?

**Answer:** No. However, as mentioned in the answer to Question 7, if occupational stress is identified as a risk factor that contributes to harassment and violence in the workplace then the employer is required at section 9 of the Regulations to develop preventive measures that, to the extent feasible, mitigate this risk factor.

10. Was there a national communication effort done to prepare the citizens for the introduction of this initiative?

**Answer:** Yes. The Labour Program engaged in an extensive awareness campaign to promote the new legislation and the tools and resources developed to support it. The awareness campaign consisted of:

* Emails to stakeholders (employee representatives, employers representatives, and Indigenous communities).
	+ Three rounds of emails were sent in 2020 and 2021 to highlight the final publication and coming into force of the Regulations and the new tools and resources that are available online.
* Social media campaign on Facebook, Twitter and LinkedIn.
	+ The campaign ran from June 24 – October 29, 2020 to promote the final publication of the new Regulations and from December 29 – February 23, 2021 to promote the coming into force of the new Regulations.
* Awareness posters posted on Canada.ca website and promoted on social media.
	+ Four posters were developed and made available online, they can be accessed at the following link: <https://www.canada.ca/en/employment-social-development/programs/workplace-health-safety/harassment-violence-prevention/posters.html>.
* A series of awareness videos promoted on social media, including:
	+ A video with general information about the Regulations posted on June 26, 2020, which can be accessed at: <https://twitter.com/ESDC_GC/status/1276591056193114113?s=20>.
	+ A video on civility and respect in the workplace posted several times in 2020, which can be accessed at: <https://twitter.com/ESDC_GC/status/1316450122318913536?s=20>.
	+ A video on the definition of harassment and violence posed on February 17, 2021, which can be accessed at: <https://twitter.com/ESDC_GC/status/1362133078056071168?s=20>.
	+ A video about employer requirements under the new Regulations posted on February 25, 2021, which can be accessed at: <https://twitter.com/ESDC_GC/status/1364964792394539022?s=20>.

11. Was there a tripartite consultation process with relevant stakeholders prior to the introduction?

**Answer:** Yes. The Labour Program established two tripartite working groups comprised of government, labour and employer representatives in order to jointly develop the Roster of Investigators and the necessary tools and resources, these working groups included the:

* Roster of Investigators Working Group, which was established in April 2019 to develop the Roster of Investigators; and,
* IPG Working Group, which was also established in May 2019 to develop an Interpretation, Policies and Guidelines (IPG) guidance document and other tools and resources to assist with interpreting various aspects of the new harassment and violence legislation.

The working groups met monthly or biweekly over the course of 18 months to complete the Roster and the tools and resources.

12. It was previously mentioned that the focus of investigation was not punitive but rather quality improvement oriented (the police and organizational disciplinary actions being separate). Is there a legal requirement for organizations to comply with the recommendations provided?

**Answer:** Yes, the Regulations require at subsection 31(1) that the employer and the workplace committee or health and safety representative jointly determine which of the recommendations from the Investigator’s report are to be implemented. The employer is then required at subsection 31(2) to implement all the recommendations that were jointly determined to be implemented.

13. What happens if there is a non-compliance to recommendations made and a repeat offence occurs?

**Answer:** If an employer is found to have violated the Code or Regulations, the Labour Program may pursue any of the of the following escalating compliance and enforcement actions, including:

* **assurance of voluntary compliance:** An employer's written commitment to the Labour Program that they will correct a contravention(s) within a specified period of time. A contravention may be:
	+ monetary; or,
	+ non-monetary.
* **letter of determination:** A formal written request that the employer correct the non-compliance situation. For example, the Labour Program may ask the employer to:
	+ pay wages or other amounts owing immediately; or,
	+ implement appropriate workplace policies and practices.
* **compliance order:** As of January 1, 2021, the Labour Program may issue a compliance order to stop non-compliance. This order prevents recurrence of any contravention of the Code and Regulation, including a contravention related to an ‘excess hours’ permit.
* **administrative monetary penalty:** As of January 1, 2021, the Labour Program may issue a notice of violation with an [administrative monetary penalty (AMP)](https://www.canada.ca/en/employment-social-development/corporate/portfolio/labour/administrative-monetary-penalties.html). The Labour Program may issue the notice if the employer does not correct a contravention of the Code.
* **filing in federal court:** The Labour Program may file a payment order and a notice of violation in federal court to ensure that it is enforceable as a judgment of that court. The Labour Program may also publish information on the Labour Program website concerning a:
	+ [payment order](https://www.canada.ca/en/employment-social-development/programs/employment-standards/employer-compliance/payment-orders.html); and,
	+ notice of violation.
* **prosecutions:** If the employer does not correct a violation with the Code or Regulations, the Labour Program may choose to prosecute the employer. The Labour Program may also take this route if the employer is fully aware of their legal obligations and still willfully break the law. Repeat violations indicate an intentional or willful action. If found guilty, the employer may be subject to the following fines:
	+ corporations will receive a fine up to:
		- $50,000 for the first offence;
		- $100,000 for the second offence; and,
		- $250,000 for the third (and subsequent) offences.
	+ an employer who is not incorporated is liable to a fine of up to:
		- $10,000 for the first offence;
		- $20,000 for the second offence; and,
		- $50,000 for the third (and subsequent) offences.
* **public naming of violators:** The Labour Program will publish information about employers who violate the Code, including:
	+ all payment orders of $5000 or greater filed in federal court;
	+ administrative monetary penalties; and,
	+ prosecutions.

14. Is there a potential conflict between OSHA's enforcement role and the persuasive recommendation role?

**Answer:** No, because Labour Program OHS Officers are not the “Investigators” identified in the Regulations, who are responsible for deciding whether or not harassment and violence occurred and making recommendations to prevent a re-occurrence. As such, there is no conflict between enforcement activities and recommendations.

15. Could both OSHA and the company be held legally liable should repeated non-compliance to suasive recommendations result in physical or emotional injury?

**Answer:** OHS Officers have liability immunity under the legislation for any action they take, as long as it taken in good faith. The company could be held liable and either fined or prosecuted by the Labour Program for non-compliance with the Code or Regulations. It may also be possible for an employee to civilly sue their employer for related issues.

16. If you had to do the process again, would you do anything differently?

**Answer:** If I was to work on the regulatory framework again, what I would do differently is to make sure that the policy team that is responsible for developing the harassment and violence regulatory framework thoroughly consults and works very closely with the division that enforces the Regulations to ensure that the new policy framework is clear and fully enforceable.

17. What were the lessons learned?

**Answer:** Some of the lessons learned include:

* involving the extended jurisdictions (Transport Canada and the Canada Energy Regulator) earlier in the regulatory development process;
* making it clear at the onset to industry partners who sit on any working group related to the development of tools/resources or other guidance documents that the Labour Program has the final say in the content that is developed and published online, especially when it comes to the interpretation of legislation and statutory obligations;
* making sure that working groups that involve major stakeholders (i.e. employer and labour groups, advocacy groups, subject matter experts) are chaired by a Labour Program employee at the manager or director level;
* consulting more subject matter experts when developing the risk assessment tool and the sample policy tool; and,
* undertaking a lager call-out for the grants and contributions program to allow more organizations a chance to apply for funding.

**Ministry of Labour**

**December 2021**