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Chair

Mr. Bryan May

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

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● (1835)

[*English*]

The Chair (Mr. Bryan May (Cambridge, Lib.)): We're going to get started.

Good evening. We're running a bit late here.

Pursuant to the order of reference on Monday, January 29, 2018, the committee is resuming its consideration of 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, No. 1.

Today the committee will hear from witnesses on the subject of the work environment and resources available to employees of the Parliament of Canada. Our witnesses include, as an individual, Katherine Lippel, professor, Canada research chair in occupational health and safety law, University of Ottawa.

Thank you very much for being here today.

From the Canadian Human Rights Commission, we have Marie-Claude Landry, chief commissioner; and Fiona Keith, senior legal counsel.

Thank you both for being here this evening.

We're missing our next witnesses, but hopefully they will arrive shortly. I'll just move on. From Rubin Thomlinson LLP, we have Christine Thomlinson, co-founder and co-managing partner as well as Jennifer White, investigator and trainer.

Thank you both for being here today.

We will give each organization seven minutes to introduce yourselves and bring greetings. Hopefully by the end, our two other witnesses will have arrived. Then, of course, we'll have a series of questions from my colleagues rounding out the evening.

First up we have Katherine Lippel, professor, Canada research chair in occupational health and safety law, University of Ottawa.

The next seven minutes are all yours.

Professor Katherine Lippel (Professor, Canada Research Chair in Occupational Health and Safety Law, University of Ottawa, As an Individual): Thank you very much, and thank you for the invitation. This was not my initiative—I was invited—and I really appreciate the invitation. As the chair said, I have brought a copy of a brief in French and English. The clerk has it, and she will distribute it to you.

I hold the Canada research chair on occupational health and safety law and have done so since 2006. I've been a member of the Quebec bar since 1978, and I was a professor at the Université du Québec à Montréal between 1982 and 2006.

More relevant to this committee is the International Labour Organization, which is currently developing debates on an international convention on occupational violence. The gender bureau of the ILO invited me to prepare a document in support of their discussions, and you have the reference in your documentation. It provides an overview of what's going on, first of all in terms of definitions of violence in the workplace, and secondly in terms of different regulatory strategies around the world. In my seven minutes, I will not try to give you a synthesis of that, but, if you are interested, you have the ILO document that is published by the ILO.

I have seven points that I want to make in my seven minutes, and it might not even take seven minutes. You have the details that are fleshed out in the brief.

First of all, I want to applaud the explicit inclusion, at section 122.1 of the Canada Labour Code and in part 1 of Bill C-65, of the prevention of psychological injuries and illnesses. I think this is to be commended. I do not fundamentally think this is a change in the law, but I think it's very pedagogical, in the sense that it will avoid litigation.

Please don't make that disappear, because you're going to hire a lot of lawyers.... I love to train lawyers, but if I could train them to do something more useful, it would perhaps be better if you eliminated that ambiguity. I applaud you for doing that in this draft legislation.

Second, and I understand completely why it can be interesting to not define harassment, but I have concerns in relation to the absence of a definition, and I'll tell you why. I think it will lead to a lot of litigation. The current version of the proposed legislation may make this legislation more vulnerable to rapid modification through regulation against the will of the parliamentarians who have adopted it, because you don't control what happens two, three, or four years down the line.

I'm not going to provide you with a definition, although I'm happy to answer questions on this. What I would say is that, minimally, you should be able to ensure a broad and open-ended definition that explicitly includes psychological harassment, sexual harassment, as well as other forms of discriminatory harassment.

I also know that cyber-bullying is a key issue, but, if you have an open-ended definition, you don't have to talk about cyber-bullying. I think at least those three elements are absolutely essential in the legislation itself. All of these categories of workplace parlance in the report that I did for the ILO, and in ILO discussions, are included in the concept of violence. However, I understand that the regulatory practices here are not to include them, and that's fine.

Third, to be more effective, the legislation should include explicit mention of the need to address psychosocial risk factors underpinning violence in the workplace. I explain that in detail in the brief, and we discuss it in the ILO. In terms of psychological harassment, sexual harassment, and physical violence in the workplace, psychosocial hazards lead to this type of violence. If you don't prevent the psychosocial hazards, you're going to have a much more difficult time in preventing the violence.

Fourth, clause 5 of Bill C-65 proposes new subsection 127.1(1), and suggests we channel all complaints to the supervisor. I explained why I think this is a bad idea. We have research data, both federally, and from EQCOTESST, which is a study of a representative population of Quebec workers, and it's very clear that the majority of cases in Canada come from the supervisor as the author of harassment.

In part 2, it makes a lot of sense to have the supervisor find out if there's a leaky faucet or there's gas leaking into the workplace—you have to tell him right away—but when you're talking about violence, it may not be a good idea to start with a supervisor. You have to have some flexibility in there in cases where supervisors are responsible for the violence or harassment.

Fifth, clause 6, amending 134.1 of the Canada Labour Code and related provisions—and there are a whole bunch of them, as you well know—exclude policy committees and representatives of the union from processes relating to harassment and violence. I suggest respectfully that this is a mistake.

● (1840)

I have a doctoral student, Rachel Cox, who is now a professor. She did her doctorate on the implementation of the Quebec psychological harassment legislation in unionized workplaces in Quebec. She has clear evidence that unions can be allies in relation to this. I think it's important to have flexibility in that it's not necessarily the health and safety committee. It might well be better served to have a specialized committee, but one whereby all members have the same regulatory protections as health and safety committee members.

I hope that's clear: in other words, protect them from the reprisals, but it's not everybody who wants to hear about harassment. You have to pick and choose the people, both on the management and union side, who are interested in this.

In crafting legislation, lawmakers should bear in mind that gender and equity issues often underpin situations of violence and harassment in the workplace. I address this aspect in the brief. In particular, if you have a specialized committee, you might want to be able to adapt that committee specifically to the needs of the population who disproportionately are affected by violence and harassment, including discriminatory harassment.

My final point is that effective legislation should be designed to provide support for the target of the harassment. I try to avoid saying "victim", but it's to support the victim of violence or the target of harassment, and the legislation should not, in my opinion, seek to regulate punishment of the perpetrator. Employers can already punish perpetrators. I find that when the legislation is punitive legislation, what happens is everybody lawyers up really quickly, and the victim gets re-victimized. I have suggestions in the brief as to how we could be more victim-friendly in this type of legislation.

Thank you very much.

● (1845)

The Chair: Thank you very much. We're going to move over to the Canadian Human Rights Commission. We have Marie-Claude Landry, chief commissioner, as well as Fiona Keith, senior legal counsel. The next seven minutes are all yours.

[*Translation*]

Ms. Marie-Claude Landry (Chief Commissioner, Canadian Human Rights Commission): Good evening. Thank you for inviting the Canadian Human Rights Commission to take part in your consideration of Bill C-65. As the chair noted, I am accompanied by Ms. Fiona Keith, senior legal counsel with the commission.

This bill is a positive step towards preventing all forms of harassment. Yet the bill is just one part of the solution to this issue that is deeply rooted in our society. While we support the establishment of proactive regulations as an important step in changing the culture in all federal workplaces, we have concerns about the process as it has been put forward.

We have three main messages.

First, in order to end harassment, and sexual harassment in particular, victims must absolutely feel safe, empowered, and supported. That is what they need to proceed. The bill does not go far enough, however.

Second, greater clarity is needed. In our opinion, too many things have been left up to the regulations.

Third, in order to find a solution to harassment and help victims deal with it, they must have access to the redress measures set out in the Canadian Human Rights Act.

Any new process must be in addition to, and must not limit or delay access to the protection afforded by the Canadian Human Rights Act, which is a quasi-constitutional piece of legislation.

Regardless of the proactive disclosure regime, whenever power dynamics are at play, there will be imbalances in power. When there are imbalances, there will often be harassment.

The commission has more than 40 years of experience dealing with human rights and harassment complaints. Time and time again, we have heard that the victims of all forms of harassment, and sexual harassment in particular, must feel safe, empowered, and supported. When there are power imbalances in the workplace, any process can be intimidating. If the process is complicated, intimidating, embarrassing, the victims will have to endure the unbearable, and they will refuse to proceed.

We encourage the committee to ensure that Bill C-65 reflects an approach that does not leave victims knocking at the wrong door. It should be amended to clearly establish that a victim will not be required to turn to their supervisor, as my colleague said.

The reality is that harassment often involves people in supervisory and management positions. We must allow the victims of harassment to choose where and in whom they wish to confide. Moreover, once they have made that choice, they must know beyond the shadow of a doubt that their job is protected.

We have to consider how the victim will feel in the proposed process. Will they feel safe? Will they feel supported? Will they feel protected? Will the process enable them to file a complaint, in spite of the power imbalance that is often at the root of harassment?

How will the process work in cases where there are several grounds for discrimination? How will it help victims who have experienced multiple forms of discrimination or systemic discrimination in a hostile or toxic work environment?

We also have questions about how the bill will apply to small employers, including MPs' offices, to small trucking companies, local radio stations, and certain first nations employers. What additional support will be offered to them to ensure that they comply with the act?

[*English*]

We support the creation of a proactive regulatory regime that will create a positive obligation on employers to foster an environment that is respectful, inclusive, and safe.

When harassment occurs, a victim needs a clear, impartial, and flexible process that is effective. To ensure this, we suggest that this bill be amended to make it clear that the right to a workplace free from hazards includes a right to a workplace free from harassment as is currently provided in Part III of the Canada Labour Code. An illness or injury should not be required to make a complaint of harassment.

As well, victim should have the choice to seek redress immediately with the CHRC before or at any time during their internal complaint process at their respective organization.

● (1850)

The burden on the victim should be minimized as much as possible. For example, if a parallel human rights complaint is filed, the competent person's report should be shared with the Canadian Human Rights Commission so that the victim does not have to start from scratch and retell their story over and over.

The commission does not believe that a definition of harassment is needed in the Canada Labour Code, but should one be included, it should be non-exhaustive, inclusive, and consistent with human rights law.

As well, the bill must make it clear that the labour program and employees have obligations to report on the effectiveness of the process, including reporting data related to human rights.

Finally, human rights are not only a priority: they are quasi-constitutional legal obligations and must be available equitably to all. These are cornerstones of access to justice.

Any legislative proposal should be a complement to the redress-based protections guaranteed in the Canadian Human Rights Act. Whereas parallel processes that apply the CHRA, such as the federal Public Sector Labour Relations and Employment Board, are empowered to provide remedies under the CHRA, this is not the case for Bill C-65.

Because of this, any victim who seeks remedies—for instance, for lost wages or for pain and suffering or for wilful and reckless behaviour—may choose to engage in two processes at the same time, the CHRA and the proposed internal process. It must be made clear to people that each system serves a different purpose. The proposed information hub and the 1-800 line must provide information that explains all the options, including the right to file a complaint under the CHRA.

[*Translation*]

In conclusion, we must address the pervasiveness of harassment and sexual harassment in the workplace, which results from unhealthy power imbalances. That means that the victims of these unhealthy dynamics must feel competent, empowered, and supported.

The committee must ensure that the process does not limit human rights protections, but rather complements the protections already afforded all Canadians under the Canadian Human Rights Act.

The commission intends to present a brief in the coming days that outlines its mandate, complaints process, and recommended technical amendments. We will of course be very pleased to help the committee as it carries out this extremely important work for Canadian society.

My colleague Ms. Keith and I will be pleased to answer all your questions.

[*English*]

The Chair: Thank you very much.

I'm very pleased to welcome to the table from the National Association of Women and the Law, Suki Beavers, project director; and Martha Jackman, co-chair of the National Steering Committee. The next seven minutes are all yours.

Ms. Suki Beavers (Project Director, National Association of Women and the Law): Good evening, and thank you very much for this opportunity to speak on Bill C-65 on behalf of the National Association of Women and the Law.

NAWL is an incorporated not-for-profit feminist organization that promotes equality rights of women in Canada through legal education, research, and law reform advocacy.

We want to begin our comments this evening 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 obligation under sections 7 and 15 of the Canadian Charter of Rights and Freedoms and with Canada's domestic and international human rights obligations.

We're also very appreciative of the support that's 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 very simply, sexual harassment is unlawful and it's a violation of women's rights. Nearly 30 years later, however, 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. Therefore, 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've identified a few key areas where critical content is not yet included or is open to a range of interpretations. Because of the particularities and the pervasiveness of gendered power dynamics in politics, our comments this evening will focus on some of the aspects of the bill that are particularly important to preventing and responding to sexual harassment on Parliament Hill. These include the following.

The legislative intent of achieving gender equality and security in the workplace could be explicitly referenced in Bill C-65. The law, and not the regulations that follow it, should include definitions of the violence, including gender-based violence, in all its forms across the continuum of harassment and sexual harassment that occur in the workplace, which 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 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 be an additional mechanism that's available to victim survivors of sexual harassment, including on the Hill, and not be seen as a mandatory prerequisite to or a replacement of other mechanisms.

The complaint process under Bill C-65 should not 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 collective agreements or, in reporting crimes committed in the workplace, through the criminal justice system. Adding a clause that confirms that nothing in the act precludes recourse under the Canadian Human Rights Act would provide clarity on this point. Ensuring that Bill C-65 bolsters rather than hinders women's access to justice is particularly important, given the range of remedies available to a complainant under other processes that are not available under Bill C-65—and we've just heard some of those same comments.

Because Bill C-65 does not include details about the investigation process that will be used, it's not possible yet 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 incredibly 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.

● (1855)

Good options for ensuring independence, removing bias and partisanship by any party, and minimizing the possibilities 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 the forms of harassment and violence that take place in a workplace.

The model chosen should adopt a human rights framework and will need to be adequately funded to ensure appropriate support for victim 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 on to conduct an investigation should reflect the population and include indigenous women and men, women and men with disabilities, racialized women and men, and LGBTQ2 people. Supportive roles can be identified for department of labour staff and/or tripartite workplace committees. For example, they could 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 critical; 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.

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 who 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 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'll end my comments here. Along with my colleague, Professor Martha Jackman, who is co-chair of the NAWL national steering committee, I look forward to answering any questions you might have.

Thank you.

● (1900)

The Chair: Thank you very much.

Up next we have, from Rubin Thomlinson LLP, Christine Thomlinson, co-founder and co-managing partner; and Jennifer White, investigator and trainer.

The next seven minutes are all yours.

Ms. Christine Thomlinson (Co-Founder and Co-Managing Partner, Rubin Thomlinson LLP): Thank you for inviting us here to make remarks on Bill C-65.

In preparing these remarks, we drew on our experience as a law firm that solely focuses on investigation and training relating to employee misconduct in the workplace, the vast majority of which involves harassment. We've been doing this work for 15 years, and we look forward today to sharing the collective experience of our team of 11 investigators who do this work full-time across the country.

Having reviewed the bill in detail, we have four areas that we want to focus on today in our limited time. They include the definitions, which we've heard some comments on already; policies and training; confidentiality; and the mechanics of investigation. I'll deal with each of those in turn.

Beginning with definitions, we've heard comments today already that the bill doesn't include definitions of violence and harassment, with the intention that those terms would be defined in the regulations. We know from the work that we do that definitions are critical. They're critical to establishing a standard of behaviour for people in the workplace so they understand how they're expected to behave, and they're critical from the perspective of the investigator, because we need them to underpin the findings that we make. We are concerned that leaving these critical definitions until the regulations will not send the strong message that you intend to send to the people who would be covered by this legislation.

We also have the unique perspective in our practice of seeing a myriad of definitions in play. Every investigation that we do takes place in a different workplace, typically under a different policy, and often under a different definition. We've seen definitions that work very well and definitions that work far less well.

For example, we see harassment definitions that require that behaviour be directed at particular individuals, which is not a definition that we would endorse. We see definitions that include a requirement that there be intent to offend, which I think is universally understood to not be an appropriate definition. We see definitions that include the requirement that the person on the receiving end suffer qualitative psychological or physical harm, which we've already heard comments on.

We really believe that you have an opportunity here to carefully consider an appropriate definition and to set that standard at the outset and not leave room for deviation later.

We wanted to address policies and training because we note that the bill includes language that talks about organizations taking measures to prevent and protect against harassment and violence in the workplace. We absolutely think those things are critical, but we're concerned that the current language in the bill is too general and leaves far too much room for organizations to interpret how they'll choose to do that.

What we've seen in our years of experience—and we have the Ontario experience to bring to bear, because similar legislation has been in place now for quite some time—is that, when organizations in Ontario were required to take efforts to generically prevent and protect, many organizations interpreted that by asking, "What is the bare minimum that I need to do in order to satisfy this statutory requirement?" That is absolutely not the intent of this legislation. The intent of this legislation is to put effective measures in place to help address this workplace problem. We're concerned right now that, without more guidance, you're going to leave that same situation in place federally.

In our work we've also had the opportunity to speak to hundreds and probably thousands of employees about their experience with harassment in the workplace, and we hear from many of them why they're reluctant to bring forward complaints about harassment at work. A recurring theme is that they tell us is that there were no policies, or if there were policies, they were unaware of the existence of the policies. They tell us that when there were policies, they didn't know they existed, they didn't understand them, and they didn't know how to use the reporting mechanisms that were set out therein.

From our perspective, language in the bill should absolutely explicitly require employers to both have policies that specifically address harassment and violence in their workplaces—that is the case in Ontario, and in our experience that has been extremely successful—and conduct meaningful and effective training on those policies. Again, the educational requirement in Ontario, has seen many employers do very little to effectively educate their people on what harassment is and how it can be addressed in the workplace.

The issue of confidentiality has been commented on by some of the other speakers tonight, so we'll make two comments here.

The first is that we understand some provisions have been put in the bill to address this, and they deal with how committees and health and safety representatives will be shrouded through confidentiality under the bill.

● (1905)

Our concern here is that in doing that really the language is too narrow because, absolutely, there are people who need to be kept out of the confidential information, who extend far beyond the health and safety committees, and health and safety representatives. There's another piece and I don't know if it's been considered. There may very well be people on those committees, amongst those representatives, who have to be involved in the investigative process. What if a respondent is a member of a committee? Certainly they have a right to participate in a process. What if they need to be a witness? What we would encourage you to do is to take a look at the language that was inserted in the Ontario legislation, and what it says in order to preserve confidentiality. It reads:

> ...information obtained about an incident or complaint of workplace harassment, including identifying information about any individuals involved, will not be disclosed unless [such] disclosure is necessary for the purposes of investigating or taking corrective action with respect to the incident or complaint, or is otherwise required by law;

You'll see that's far more general, but also more protective.

We've seen employers using that language since that particular provision was enacted in Bill 132, in September 2016, and the effect of it, in our experience, has made employers be much more thoughtful and careful about their use of confidential information surrounding investigations in the workplace.

The last comments we'd like to make relate to investigations, and here we'll echo some of the comments of the other speakers about the concern around reporting having to be through the supervisor. We absolutely in our practice see the percentage of occasions where the supervisor is the harasser; and not having a mechanism whereby someone can circumvent that reporting group, we think is extremely problematic. We would encourage you there to again consider the Ontario experience, where policies and procedures in Ontario are required to provide additional avenues for employees to complain. Even if the supervisor is not the harasser, many supervisors are not properly trained to deal with harassment complaints and are not sufficiently knowledgeable of harassment to identify it when it is brought to their attention, particularly psychological harassment which doesn't always present in the way that people understand.

The net result of that legislative gap for us means that as the bill is currently drafted, many complaints between employees and supervisors will remain unresolved, which means that they'll go to the minister, and the minister will then have to deal with them. We think that's going to leave the ministerial resources vastly over-extended.

One final note is that currently the bill talks about investigating all occurrences and complaints of harassment. While we think that is a laudable objective, we'll note one unique aspect about the Ontario legislation which contains the same requirement. In Ontario, with those investigations, the language that's used is that employers are to conduct investigations into incidents and complaints of workplace harassment that are “appropriate in the circumstances”. We would really encourage you to consider some language that allows for flexibility because not every incident and even complaint of harassment necessitates a full-blown investigation. We've seen employers struggle with even what's considered to be “appropriate in the circumstances”, but at least that language has allowed them to do some creative interpreting of what might be a way to deal with that particular situation. We fear that an inflexible requirement that everything be investigated is going to become unwieldy, and that the effect of that is going to mean that more of it is going to end up with the ministry.

We thank you for allowing us to make these comments, and as my colleagues have said, we look forward to your questions.

● (1910)

The Chair: Excellent thank you all very much. We're going to start off with six minutes from MP Blaney please.

Hon. Steven Blaney (Bellechasse—Les Etchemins—Lévis, CPC): Thank you, Mr. Chair.

It is my belief that if we were to consider your recommendation with the goodwill of the government, we could certainly improve by far this bill and give it teeth because we are all supportive of the goal of this bill, which is to tackle a very sensitive issue. But we certainly don't want it to just stay with goodwill, but also action.

I will begin with you, Madame Lippel. There's certainly a lot of experience in that document you provided us. I will get to the core of my question. I really like all of your recommendations, but there's one I like, in particular. My question will go through the other member. I've been asking the minister this many times. If the supervisor is the one who's, let's say, concerned by the...what kind of alternative mechanism would you propose? That's my question for you tonight.

Prof. Katherine Lippel: Thank you for the question. There are models around the world. The one I personally prefer is the Belgian model. It requires *une personne de confiance*, whose full-time or part-time job, depending on the size of the organization, is to be the person to whom everybody can go to anonymously to address concerns. When they first adopted the law, it was only for psychological harassment and sexual harassment, and now they also include psychosocial hazards, which come before the actual manifestation of violence. The *personne de confiance* would be the first person who would be able to address it.

[*Translation*]

Hon. Steven Blaney: We can appreciate that there may be a trusted person in large companies. In the case of small companies, however, which are essentially SMEs under federal jurisdiction, should they call upon an outside organization?

Prof. Katherine Lippel: For non-unionized workers in Quebec, it is the Commission des normes, de l'équité, de la santé et de la sécurité du travail, or CNESST, formerly the Commission des normes du travail. So the investigations are conducted by people who are completely outside the company. If the prima facie evidence is sufficient, these people represent the victim and at the same time work towards conciliation.

Hon. Steven Blaney: I should also mention that I am working on an amendment right now that would enable officials with Employment and Social Development Canada to investigate specific cases. That is not possible right now, such as in the case you mentioned.

Thank you very much.

[*English*]

I'm going to go to the other side.

Ms. Thomlinson, you've also mentioned that there should be a mechanism when the supervisor is directly involved. We just got a suggestion here of adding a third party within the organization—or not, I suppose. Would you like to say something about it? You're much more knowledgeable than I am in those areas.

● (1915)

Ms. Christine Thomlinson: I certainly echo the comments on the benefits of a third party. Certainly the benefit of a third party is that it allows people to feel more comfortable when making anonymous complaints, and it provides a better vehicle for that. I don't know that it's always practical, and it also means that the matter then has to go external to the organization.

I think our view would be that this is an added benefit, but if there's only an internal alternative, the alternative that seems to work most effectively in our experience is having a mechanism whereby—and ideally this would be enshrined in policy or procedure—employees understand that if they are uncomfortable taking it to the designated person—and I think a designated person is still a good idea because that would presumably be someone who is trained who understands these issues—they could then go to someone with whom they feel comfortable. That can be defined differently depending on the structure of the organization, but the most common definition of this that we see is anyone in a managerial position within the organization. The complement to that, though, has to be that managers are trained within an organization to understand that they are part of that reporting mechanism, and that they are able to identify issues when they're brought to their attention and understand which steps to take when they are.

Hon. Steven Blaney: What about in the case of a small organization when there isn't necessarily a designated person? Where do Ontarians go in small organizations now?

Ms. Christine Thomlinson: The model in Ontario is absolutely the managerial one. We spend an extraordinary amount of our time doing training in organizations that are small, large, and medium-sized, but we train managers to understand exactly that. In some organizations, the only reporting mechanism is for an employee to talk to their manager or any manager.

Hon. Steven Blaney: Are there no external resources like in Quebec, where they can go to an independent body?

Ms. Christine Thomlinson: It depends on the organization.

I would say that larger organizations are absolutely considering more of those mechanisms, and I think more are becoming available in the form of whistleblowing hotlines and independent organizations that are setting up. However, those would be for larger organizations that have those resources.

Hon. Steven Blaney: You are obviously conducting an inquiry about the specifics of a case, aren't you? That's your specialty.

Ms. Christine Thomlinson: That is our specialty.

Hon. Steven Blaney: Are there civil servants who are doing this before you intervene in the private sector? In Ontario, are there investigators who are enabled to do those specific investigations when there's a complaint?

Ms. Christine Thomlinson: That's our entire business.

Hon. Steven Blaney: I beg your pardon?

Ms. Christine Thomlinson: That's our business, and there are many that do it, absolutely.

Hon. Steven Blaney: It's all private.

Ms. Christine Thomlinson: Yes.

That's the investigation piece as opposed to the reporting piece.

[*Translation*]

Hon. Steven Blaney: Thank you.

[*English*]

The Chair: Thank you very much.

MP Ruimy is next, please, for six minutes.

Mr. Dan Ruimy (Pitt Meadows—Maple Ridge, Lib.): Thank you very much.

Just a quick question. When are the briefs due? What's the deadline? Ms. Landry said they were ready to submit.

The Chair: The briefs, we'll check on that. We believe it's March 5th, but we'll confirm that.

Go ahead.

Mr. Dan Ruimy: That's not a lot of time for this.

The reason I ask is that you mentioned, Ms. Landry, that you didn't think it was necessary for definitions to be in the legislation. Is that correct?

Ms. Marie-Claude Landry: What we said is that we think it's not necessary, but that if there is one it's really important that the definition be open and non-exhaustive. It should be something in which people will find themselves, so that when they look at the act, the law, and the definition, they will find themselves and they will understand that they can use that tool. That's the most important thing when you have that kind of legislation where the objective or the goal is to protect vulnerable people or people in vulnerable circumstances. They should be able to understand that.

Mr. Dan Ruimy: Right, and certainly that's what we've been hearing throughout all of the testimony. It can't be too broad and it can't be too specific. That's going to be the challenge if we put it in legislation: what are those parameters going to be?

Ms. Lippel, you mentioned three: psychological harassment, sexual harassment, and other forms of discriminatory harassment. To me, reading that, yes, great, that sounds good, but I don't know if there are other things. With what you have gone through with your training, I'd be curious to see if you would add more to that. If you had to do the definitions in the legislation, how would you do it?

● (1920)

Prof. Katherine Lippel: My thought is that it should be a broad definition that includes those three items. I'm broader as well in relation to this, but the explicit mention.... Because sexual harassment is in part 3 and discriminatory harassment is in part 3, the more you leave it ambiguous, the more somebody is going to try to say that psychological harassment isn't really included because it's the #MeToo movement, and that's why we're changing this law. Then you're going to go up to the Supreme Court, and 10 years later we'll say, yes, you should have investigated. That's what I want to avoid.

Mr. Dan Ruimy: Right, so if you include those three—

Prof. Katherine Lippel: But broadly, so that the definition of harassment includes A, B, and C, but it means that there is more than just A, B, and C.

Mr. Dan Ruimy: Right. Okay. Would you add anything to that based on your experiences?

Ms. Christine Thomlinson: No, I completely agree, and I think here you have a myriad of resources to turn to. In human rights legislation across the country, we have harassment and sexual harassment definitions that have been used for years.

I think the beauty of that for investigators like us is that we have an enormous body of case law that we can draw from when we have any concerns that we don't completely understand whether or not the behaviour in question falls within the parameters of that definition. I would encourage you to look at those definitions and consider whether you can use those. I think you can.

Mr. Dan Ruimy: Okay. I'm going to stay with you, because you guys are trainers. We've heard from a lot of unions, large unions that have resources available to them and have policies and training in place, but that doesn't stop events from happening. Putting it in law with this legislation is one thing, but how does it come back to solving the problem if people already have the resources? For smaller companies, I get that, but when you have large organizations with large unions and they face the same problems, I'm not sure where the breakdown is. Why are we still having that as an issue?

Ms. Christine Thomlinson: This is really something that I think that you can give some thought to. I'm not singling out unions here. I speak from our experience in dealing with all kinds of large organizations where they are dealing with competing resource interests. Training tends to be something that many don't like to spend money on, so when they do training, if there is a booklet people can read or an online module that they can quickly flip through, that's an attractive training method. What we know from our experience is that it often can be completely ineffective, depending upon the product.

So often, we have the opportunity to go into organizations that we're privileged to work with and to have really meaningful and deep conversations with employees about what this behaviour actually is, to answer their questions, and to have case studies where we can challenge them to deal with the situation and talk to their co-workers and figure it out. We can see how effective training can be.

The other thing I'll add is that we're not naive enough to think that even the best training is going to make all workplace problems go away, but the beauty of training is that it teaches people how to deal with issues when they come up in a live way so that they really know how to address them.

Mr. Dan Ruimy: How do you see Bill C-65 being able to address those issues?

Ms. Christine Thomlinson: One of the concerns in Ontario was that the language used was “provide education and information”. Some organizations interpreted that as a training requirement, others as putting something up in the lunchroom.

You could be explicit about training, and you could talk about the training having to be effective to achieve a particular objective.

The Chair: Yes. You're out of time, I'm afraid.

I was going to...if it were a quick question. But it sounded as if you were going down a rabbit hole there.

We have MP Trudel, for six minutes, please.

[*Translation*]

Ms. Karine Trudel (Jonquière, NDP): Thank you, Mr. Chair.

Thank you for your presentations, which are so important in our consideration of Bill C-65.

My first question is for Ms. Lippel.

In the last hour, a witness made a recommendation regarding section 122.1, which explicitly addresses the prevention of physical or psychological injuries and illnesses. The witness suggested that the section should state that this part is intended to prevent incidents or accidents and physical or psychological injuries and illnesses linked with the employment to which this part applies.

This is along the same lines as what you commended. This recommendation would simply add the word “incidents”. I would like to hear your thoughts on that.

● (1925)

Prof. Katherine Lippel: In order to prevent a fatal accident, we have to start by preventing incidents that can lead to a fatal accident in the workplace. If we do not define the nature of the incident or incidents that could lead to a physical or psychological injury or illness, I would fully support adding that word.

That is in line with what I said about psychosocial risks. These risks represent a type of incident. There are whole books devoted to explaining this term. We cannot prevent an incident without describing the type of incident that is to be prevented. Otherwise, it would not provide any pedagogical benefit because people would not know what we are trying to prevent. We are trying to stop people from treating each other badly, but under what circumstances and when? Since we know that these risks are scientifically...

In the field of health and safety, we assess psychosocial risks in the same way as we assess other risks to a healthy workplace. Incidents are among the psychosocial risks to be assessed.

I have nothing against adding the word “incidents”, as long as they are described as potentially leading to a workplace injury, to an accident, and to physical or psychological injury.

Ms. Karine Trudel: I would also like you to elaborate on point 6 of your presentation. That is something we have not talked about much and it would be very interesting to hear your thoughts. In this paragraph, you say that we should “bear in mind the gender and equity issues often underpinning situations of violence and harassment in the workplace.” Can you elaborate on that please?

Prof. Katherine Lippel: In drafting the bill, legislators and legal experts have to bear gender and equity issues in mind.

Let me give you an example. I said that the unions should be involved. I think there should be a joint committee that is committed to confidentiality, but a specialized committee. By that I mean that people would choose to be part of that committee because they are interested in the protection of employees' mental health.

In Quebec, Dr. Rachel Cox provided the best examples. Joint committees resolved cases upstream, before a complaint was even filed. The members of those committees, in particular members from the union side, took preventative action as soon as they saw a problem, before a complaint was filed.

That kind of a committee becomes specialized in psychosocial risks. It is often made up of women, visible minorities, and aboriginal persons. It is made up of people who are interested in equity issues. It is these people, including the members from the management side, who decide to seek out training and specialization. These are not at all the same people as those who are interested in a furnace explosion.

To my mind, a joint committee is needed, along with protection for its members from firing, threats, and so forth. The members would be chosen specifically to listen to complaints more effectively.

Ms. Karine Trudel: Thank you very much.

I have a question for Ms. Thomlinson.

We talked about the investigators. Various witnesses who appeared before the committee questioned the integrity of investigators because they are chosen jointly by the union and the employer, but paid by the employer. So there is a risk of their integrity being compromised.

I would like to hear your thoughts on that, and about your experience.

[*English*]

Ms. Christine Thomlinson: In the vast majority of cases we do, the employer does pay for the investigation. Occasionally, on the rare occasion that an issue is raised by one of the parties—sometimes it might be union or it may be a complainant's or respondent's counsel—as to the potential lack of neutrality on the part of the investigator because they're being paid by the employer, we've often said, “We're fine to be paid by whomever. If you'd like to split the costs, then you're welcome to do so.” That is rarely offered up.

I think for us this is never an issue, because we have always done our work with integrity. At our firm, we have an enormous client base. We're not dependent upon any particular organization for our work, and we write reports frequently that our employer clients who pay our bill are not happy to receive, but that's the hard truth of the investigation we've done.

I think there are many investigators who do that kind of work, and those are the investigators who should be doing that kind of work. I think you're right to recognize that there may be risks otherwise, but that's the way the work is done most effectively.

● (1930)

The Chair: Thank you very much.

Now over to MP Damoff for six minutes, please.

Ms. Pam Damoff (Oakville North—Burlington, Lib.): Thank you.

Thank you to all our witnesses. I have to say that it's wonderful to get witnesses who come with such very specific recommendations. It's helpful to all of us to have that, not just speaking in generalities, but giving us very specific recommendations.

I'll get to definitions in a minute. In the bill, it says competent persons. I have concerns that we should be adding the word “independent”, and I'd really like your comment on that. My concern is that someone may be competent, but they're not necessarily independent, so it could be someone within an organization who is competent to do the work, but they're not independent from the situation. I may be reading something into that. I'm not a lawyer, so I don't know if there's a legal definition of competent.

I'd love to hear from you all about what you think about adding the word “independent” in there.

Ms. Christine Thomlinson: I'd be happy to begin. First of all, I will say that I think “competent” should be clarified to make it clear that it is intended to mean trained and knowledgeable on the subject matter of the investigation.

As far as independence is concerned, I think the concern that I would have about independence is that, when I think what you're seeking is unbiased, I'd be worried that independence would suggest that, for some reason, organizations have to go external to the organization, because I don't think anybody internal is going to independent. Many investigations can be done very effectively by internal people who are trained and who are knowledgeable in the subject matter.

Ms. Pam Damoff: You suggest broadening the definition of competent—

Ms. Christine Thomlinson: —and then making clear that they need to be unbiased.

Ms. Jennifer White (Investigator and Trainer , Rubin Thomlinson LLP): I would add to that, if you don't like the word “unbiased”, “neutral” fits as well.

Ms. Pam Damoff: Okay.

Prof. Katherine Lippel: I believe the term is related to regulation 20 in the Canada Labour Code regulations, and that provides that the competent person has to be approved by all parties, so that by definition, if it's going to be a competent person, the complainant and the employer should approve the individual as such.

I don't practice in this domain—I don't practice at all, I'm just an academic—but what I've heard is that it works pretty well for the physical violence right now, which is the primary purview of that regulation. The person who is named has to be agreed upon by the target, by the employer who is supervising, and by the union, I would think, because if you have a health and safety committee, then that's part of that.

Ms. Pam Damoff: I'm sorry. Which one did you say it was? Twenty...?

Prof. Katherine Lippel: I'm sorry. I can't hear you.

Ms. Pam Damoff: You said it was in regulation....

Prof. Katherine Lippel: It's in regulation 20. Currently under the Occupational Health and Safety Regulations, chapter XX, adopted in 2008, is on violence in the workplace. Physical violence in the workplace is clearly included in that regulation, as is psychological violence, since the Federal Court decided it was. It says it's included but it's only very recently—

Ms. Pam Damoff: I'm just going to stop you because I only have a minute and a half.

Prof. Katherine Lippel: Sorry.

Ms. Pam Damoff: That's okay. You're saying it's already in there?

Prof. Katherine Lippel: I'm saying that's where the language comes from.

Ms. Pam Damoff: Okay, but it's not in Bill C-65.

Prof. Katherine Lippel: No. Well, the thing is that I think what they refer to in Bill C-65 when they talk about competent persons is that there's a whole baggage of different persons interpreting the regulations.

● (1935)

Ms. Pam Damoff: Does anyone else have anything to add to that?

In terms of definition, I've been told that if the definition is too broad, it can lead to too many unfounded cases. You want to make it fairly defined, but not so well defined that it doesn't cover everything. I don't know if you have any comment on that: if it's too broad, it can be misinterpreted, and if it's too defined, it could miss something.

Ms. Landry, were you shaking your head?

[*Translation*]

Ms. Marie-Claude Landry: I would add that, as regards human rights, which are quasi-constitutional, the definition has to be broad. If there is a definition, it must be open, and people must be able to identify with the act. If a person is the victim of harassment or violence, the important thing is for them to be able to identify with the act.

If the definition is restrictive or exhaustive, there is a risk that this could result in a barrier rather than an act that provides protection, an open act that people can identify with.

What we are saying with regard to human rights is that those that an act is supposed to protect must understand the act. The most important thing is for people to identify with the act. So it is very important that the definition is not exhaustive.

[*English*]

Prof. Katherine Lippel: Very briefly on the definitions, there are seven provinces in Canada that define psychological harassment and in seven different ways. The more it's complicated, the more the professionals who will be hired will be lawyers. If it's open-ended, there will be people who try to prevent the problem. I would really go for a broad definition and let the specialists who can actually intervene in workplaces to make them better workplaces have the wiggle room necessary to actually improve what's going on.

Quebec has the most technical definition in the world, as far as I can tell. There are six elements to it. There are thousands and thousands of litigations going on because of that.

The Chair: Thank you.

Sorry, very briefly.

Ms. Christine Thomlinson: Actually, to the point that you have been advised that a broader definition means more unfounded complaints, I think the opposite is true. I think the broader definition —and I think this echoes your point—means that there will be more cases, because more things will be found to be contained within that definition. That's not a bad thing, because recognize that even if there's a finding of harassment, it's on a spectrum and it may be a minor case of harassment, and it will be addressed in a certain way.

I would agree: I think broader is better.

The Chair: Thank you.

MP Dabrusin is next , please, for six minutes.

Ms. Julie Dabrusin (Toronto—Danforth, Lib.): Thank you.

I would like to start with the Human Rights Commission with a few points.

The first one is the exclusivity of jurisdiction. You were talking about making sure that there's something in this statute that makes it clear that it doesn't prevent going to the Human Rights Commission at the same time.

I just wanted to make sure of this. Is there anything in the Human Rights Act that, from its side, might pose a barrier? Does the only legal problem come from this bill, or is there potentially something in the Human Rights Act that could prevent people from going both routes?

Ms. Fiona Keith (Senior Legal Counsel, Canadian Human Rights Commission): If I understand your question, you're asking whether there's any condition or limit in the Human Rights Act on people accessing another process. Am I correct?

Ms. Julie Dabrusin: Or having to wait until they have completed another process before they can go to the Human Rights.

Ms. Fiona Keith: Section 41 of the Canadian Human Rights Act gives the commission the discretion to decide whether or not to defer the complaint process under the Canadian Human Rights Act so that another process can be completed.

The chief commissioner and our other commissioners regularly decide whether or not, given all the circumstances of a particular complaint, we should wait to deal with a complaint that's filed by a complainant. That's at the discretion of the commission.

We consider a number of factors, all of which have been established by Supreme Court of Canada jurisprudence, including whether or not the other process is capable of providing a human rights remedy to the complainant.

Ms. Julie Dabrusin: From your perspective, then, the potential block is only that we do what you had suggested about including just one sentence in there to say that nothing in here prevents someone from going to the Human Rights Commission, and then that would deal with the problem, but you would still have a discretion.

● (1940)

Ms. Fiona Keith: We agree with the language proposed by NAWL.

Ms. Julie Dabrusin: I'm sorry, it was actually you who proposed it.

Did you have any other comments on that, about the potential bouncing back between the two statutes?

Ms. Suki Beavers: No, just again to reaffirm the importance of ensuring that the multiplicity of mechanisms remains available to complainants, and in part because of the differences in remedies that are available under the various mechanisms.

What we would not want to see is that the remedy proposed under Bill C-65 ends up actually limiting the access to justice that those who are victim survivors of harassment, violence have available to them. Indeed, we think that making that intention clear in the act would be helpful, all around.

Ms. Julie Dabrusin: Thank you.

This is back to the Human Rights Commission.

Last week I believe one of the unions had suggested that when looking at a list of investigators to be looking into the system, if you wanted to take into account diversity issues and equity issues, the people best placed to keep a list of investigators available for people to look at would be the Human Rights Commission. Apparently they said they had spoken to you about this possibility, maybe not to you two, but to the commission.

Have you thought about that as a possibility, that down the line the Human Rights Commission could be the keeper of a list of qualified investigators with experience, who can take into account equity issues?

Ms. Fiona Keith: The commission is a multi-functional agency that serves a number of purposes, including deciding on complaints. We also have a promotion role, a research role, and other roles. But we must always be careful to keep the complaint processing function and decision-making function that the commissioners exercise impartial. It is challenging for an agency such as this to keep a list or a roster, but we would certainly be open to entertaining a role in proposing training, or being available as consultants on training if properly resourced.

Ms. Julie Dabrusin: Thank you for that.

It's just because I believe it was mentioned in the evidence we heard last week that there had been some discussion, with the possibility of you holding that roster, so I just wanted to clarify if with you directly.

My next question actually comes from Ms. Thomlinson, who mentioned adding some flexibility as to when an investigation may go ahead.

I want to bounce that out to perhaps Ms. Beavers to start with. How do you feel about adding that in as a suggestion? It was that rather than requiring an obligation to investigate every complaint that someone had been made aware of, it would be done when it's appropriate. There was more specific language.

Ms. Christine Thomlinson: The language used is that there is a requirement to conduct an investigation, but the investigation has to be appropriate in the circumstances.

Ms. Suki Beavers: I think there is some benefit to having that kind of language, but then again we go back to that is the beauty of having a multiplicity of mechanisms available. Say, for instance, there is a decision made not to pursue a complaint under a particular process, others will remain. I think flexibility is a positive element that can be considered.

Ms. Julie Dabrusin: Perfect. Thank you.

I think I'm out of time.

Ms. Christine Thomlinson: Could I add one thing, then?

The Chair: Certainly.

Ms. Christine Thomlinson: Where that language has become important is that when there are complaints of harassment, investigations seem to be the next natural step because someone has taken the step to actually come forward with a complaint.

Where it has been particularly challenging is in cases where information has come to the organization that suggests that harassment may be occurring, so what would be defined under Bill C-65 is an occurrence. That's where employers have really struggled, because how do you investigate a rumour? How do you investigate a piece of information that comes third-hand through someone? You don't have a complainant. Sometimes you don't have a respondent. That's where that flexibility has really been helpful.

They do some form of investigation. They might do an employee survey to try to find out whether there really an issue there. They might conduct a series of more generic interviews with staff. That flexibility has really helped deal with those situations.

Ms. Julie Dabrusin: Thank you for clarifying.

The Chair: Thank you.

Just for additional clarification, Julie, it was PSAC that mentioned the potential.

Ms. Julie Dabrusin: Okay. Thank you.

● (1945)

The Chair: Mark Warawa, for six minutes, please.

Mr. Mark Warawa (Langley—Aldergrove, CPC): Ms. Thomlinson, you started off your comments with the importance of having a definition. You said it would be critical to establish what type of behaviour would be defined as harassment. In my understanding that correctly, it is important that we do have a definition in the legislation.

You are a prominent employment law firm, well respected. Some cases are high profile. Some are low profile. When you are employed in a position of the investigator, who do you represent?

Ms. Christine Thomlinson: We don't represent anyone. Our role is a neutral one, and we make that very clear to the people we interact with. It's part of our standard introduction. We're not representing anyone's interests. We are primarily neutral fact finders where we collect information from the parties when there are parties, witnesses, or generically other employees in cases that are occurrences or incidents. Then we collect those facts. We collect other evidence. We make factual findings based on the information we collect. Depending upon our mandate, in many cases we're asked to then take those facts,. and measure them against a policy, and draw some conclusions about whether we think a policy has been violated. That's our role.

Mr. Mark Warawa: That's good to hear.

You highlighted the importance of training. This is not an exact science. When I ask you for the percentages of those who don't realize what they have done is harassment so I'm not asking for an exact percentage, but of the cases you're involved with as an investigator, is there a large number where the person didn't realize what they were doing was harassment? My follow-up question will be is there a large or a small percentage that have intent?

Ms. Christine Thomlinson: I'm looking at my colleagues. I think I have an idea in my head based on what I think. I would probably say it's in the 50% range, and that is highly inexact. Would you agree with that?

Ms. Jennifer White: I would say that. Fifty-fifty of respondents who didn't realize what they were doing violated the policy.

Mr. Mark Warawa: Therefore, the importance of training.

Ms. Christine Thomlinson: Yes. I think the interesting thing about training is one could argue if 50% of people are acting with intent is training going to matter? Boy, it is ever going to matter because the people who attend that training are going to realize the people who are engaging badly shouldn't be doing that, and they will know what to do about it.

Mr. Mark Warawa: The other 50% approximately—

Ms. Christine Thomlinson: They might learn something.

Mr. Mark Warawa: —realized, and they didn't think they may get caught, or they would get away with it, whatever.

What I find baffling is it's common sense, I think, that you treat people with respect. You may have responsibility over them, but there's always somebody over you; you create an environment where people enjoy working with you, and you are part of a team. Whenever you use authority over somebody as a way of controlling and manipulating, you will get in trouble. It's not good behaviour.

The training is very important.

Ms. Christine Thomlinson: Can I just add one thing? The percentage of people who abuse power in organizations I think is quite small, but, unfortunately, they are often in positions of power where they can do much harm. Overwhelmingly, the people we see in training believe in all the things you believe in: respecting people, contributing to a collegial work environment. They don't intent to offend, and yet quite a high percentage of them do just that. They do it, frankly, often because they think it's funny, because in the wonderful, diverse, multicultural society we have in Canada, they don't realize what's funny to them, or what they think is collegial, isn't received that way by other people who are different from them. That's where that education process is so effective.

● (1950)

Mr. Mark Warawa: So there may not be an intent, but what they said has offended somebody deeply.

Ms. Christine Thomlinson: Yes.

Mr. Mark Warawa: Again not an exact percentage, but what percentage approximately of the cases that you investigated where there was a complainant but actually harassment in your opinion.

Ms. Christine Thomlinson: Again I just didn't catch the end of that.

Mr. Mark Warawa: In your firm's opinion as an investigator that there was not harassment. There was a complaint but there wasn't harassment. My follow-up question would be, were they happy with the complainant? Were they satisfied because of you being not representing any body but you were trying to find the truth?

The Chair: Very briefly please.

Ms. Christine Thomlinson: It is a relatively small percentage of complaints that are unsubstantiated, in the sense that people come forward with complaints about behaviour that we find did not occur. That's a relatively small percentage. The distinction I will draw is that more frequently we make findings that the behaviour occurred, but it was not harassment, and that's a policy definition issue. For an organization that has a very narrowly defined definition of harassment, it can be challenging for us as investigators. We interview people, we collect evidence, make findings that this not so nice, perhaps even relatively awful, thing happened, but it's not harassment because of the construction of the policy. Therefore, an investigation that finds no harassment, when something pretty awful has happened, is not very satisfying. That is a small percentage of cases. In those cases, where we have given people a fair process, they are satisfied that we are neutral, which I think they overwhelmingly are, and they have been heard, so they feel satisfied.

In fact, in cases where I have felt that they would not be satisfied because I found against them, they're satisfied because they've been through the process.

The Chair: Thank you very much.

Six minutes, MP Fortier.

[*Translation*]

Mrs. Mona Fortier (Ottawa—Vanier, Lib.): Thank you very much. I will share my speaking time with my colleague Mr. Morrissey.

My question is for the officials from the Canadian Human Rights Commission.

In your experience, how long does it take to process a human rights complaint? For our part, we are trying to determine how to ensure that complaints are handled properly. I would also like to know what measures must be taken in a timely manner to prevent workplace harassment and violence.

Ms. Marie-Claude Landry: For the Canadian Human Rights Commission, I cannot tell you exactly how long it takes to process complaints. What is important to us is that sexual harassment and harassment complaints are given priority. We work on a case-by-case basis. There are certain mechanisms in the Canadian Human Rights Act. For instance, section 49 provides that, in some cases, we can refer a file directly to the tribunal when necessary and when the criteria have been met.

Mrs. Mona Fortier: There is a subject I would like to hear your thoughts on. A number of witnesses talked about cases stretching out to two or two and a half years. That is a long road for certain people, such as the complainant and witnesses. That is why we need a process that does not go too fast, but that at least gives people the time to review the case.

Can you provide any examples, based on your experience?

Ms. Marie-Claude Landry: I really understand what you are saying. At the Canadian Human Rights Commission, we have been working for two and a half or three years on simplifying many of our complaints processes. We have explained them in layman's terms and have made an online form available. We also have staff who are in regular contact with the victims of discrimination.

In my view, and in that of the commission, the objective is clearly to put the individual at the centre of each of the measures and decisions of the Canadian Human Rights Commission. We live in an era when human rights are more topical than ever. The growing number of complaints is placing significant pressure on the commission, but we are working more effectively and are developing tools to help people.

Having worked as a lawyer for 27 years before I became the chief commissioner, and having dealt with numerous harassment files, I can tell you that processing times are not always the most important thing to focus on. It is a mistake to make them a priority. The real focus should be on providing assistance. A person who makes a complaint is vulnerable and in crisis; they need to feel helped and reassured. The person needs to feel supported, and that someone is always there to provide that support. We have to respect that. Sometimes it is the victim who is not prepared to move as quickly as would be desirable.

● (1955)

Mrs. Mona Fortier: So we have to be careful to follow these principles in the bill or in the regulations.

Ms. Marie-Claude Landry: Absolutely.

One of the positive things that the Canadian Human Rights Commission does is help complaints, especially in harassment cases, from start to finish, right to the tribunal. Clearly, our role is to serve the public interest. The commission is there to work with those people and help them.

Mrs. Mona Fortier: Thank you.

I will give the rest of my time to Mr. Morrissey.

[*English*]

The Chair: Mr. Morrissey.

Mr. Robert Morrissey (Egmont, Lib.): Thank you, Chair.

Ms. Thomlinson, you are in private practice. What limitations do you see from this bill that would be placed on small employers? What would be the challenge? How should we mitigate within this bill any negativity that would be placed on the small employer, which then would be passed down to the employee, and who would ultimately have a complaint to make?

Ms. Christine Thomlinson: There were two points I referenced in my remarks with regard to what I think small employers are particularly vulnerable to. First is the requirement that employees report to their supervisor. In a small organization, that just doesn't leave sufficient flexibility. Then there's the confidentiality piece. In a small organization, it's the concern around the organization not being able to tell this person about the identity of the person involved, and any details about the situation, because they're on the health and safety committee, or because this person's the representative. It gets completely unwieldy in a smaller organization. There I think the Ontario language around confidentiality is much more flexible and adaptable in a smaller workplace.

Mr. Robert Morrissey: From your experience in your practice, have you seen a disadvantage within the workplace for the small employer? I'm talking about fewer than five.

Ms. Christine Thomlinson: I think the challenge for small employers is that often they are start-ups, so they're focused very much on their business. They don't always have the time and attention to focus on the kind of culture that avoids problems like the ones that are covered by Bill C-65. They don't always have the resources to do the kind of training we're talking about.

That's really where the legislation can be very effective. Again, I think you want flexibility, but you can certainly do meaningful training in any organization, no matter how big it is. It costs a lot less when it's in a small organization. The same employees who work in small businesses work in really big national organizations. They have the same susceptibility to this behaviour. In fact, I think one could argue that they're more susceptible in smaller organizations, because they don't always have the in-house expertise to understand how to avoid getting into these situations.

The Chair: Thank you very much.

MP Falk, five minutes, please.

Mrs. Rosemarie Falk (Battlefords—Lloydminster, CPC): Thank you guys for being here today. Thank you, ladies.

I have a couple of questions. The first one, I believe, is to Ms. Beavers. My question for you, you had mentioned about publishing data. What would be the intent to publish the data?

Ms. Suki Beavers: There are two intentions. First of all, we know that what is counted, counts. We need to have the data on exactly what is the incidence of sexual harassment, violence, and harassment in workplaces. It's incredibly important to have that data.

The second reason is to be able to understand whether or not the measures that have been put in place are effective. If you can track over time the incidents and what sorts of resolutions there are, that gives you good evidence to understand whether or not the processes you've put in place are effective or whether they need to be amended.

● (2000)

Mrs. Rosemarie Falk: In order to publish data, would you expect that the survivor of the incident would give approval for that?

Ms. Suki Beavers: No. Indeed, confidentiality in relation to the particular complainants would be incredibly important, but it should be an employer responsibility to be able to track the number of incidents of harassment, of violence, of sexual harassment that are taking place, and to be clear about understanding how they've been resolved, and to be transparent about that as well. That's an employer responsibility. That's not an obligation that falls to a complainant, and indeed, it would be incredibly important to ensure that the data that is released would in no way compromise the confidentiality of individual complainants.

Mrs. Rosemarie Falk: Perfect. Thank you.

Here's my second question. I'm trying to wrap my head around the competent person thing that's in the bill. In my previous line of work, sometimes we didn't have competent people, and that was actually very detrimental to the health of families and the person, and that type of thing.

So I know that the bill mentions competent person, but what would that mean to you? I know we talked about trained, that type of thing, but are there certain professions, are there certain skills, are there certain credentials that the competent person would have to have in order to facilitate what they're going to do?

That's for anybody to answer.

Ms. Suki Beavers: I'll be happy to start.

I think some of the points that we made in our submission include the fact that competent persons have to have specific expertise on human rights, on violence, including the spectrum of gender-based violence, and on sexual harassment.

The other aspect of being a competent person that has been debated using different language is there has to be confidence on the part of the complainant that the competent person is going to be unbiased. In some cases that will include independence; in other cases it may not, but the competent person has to be someone in whom the complainant has confidence and who has the expertise and the skills required, and also has the space to do the kind of unbiased and informed investigation of a complaint, and be able to make recommendations that can then be taken forward.

Ms. Christine Thomlinson: I would add that I think the other level of expertise they need is in how to conduct a workplace investigation. This is not a regulated industry. There's no college you can go to, to get a certificate or a degree.

The danger, of course, is that they really botch a process and do an enormous disservice to the people who come forward. On this front, lawyers for sure have an advantage because we learn in our education and through our practice various aspects of due process and natural justice, things that lay people don't typically learn. It's not a practice that needs to be exclusive to lawyers, but those who are not legally trained certainly need to obtain that equivalent training somewhere.

Mrs. Rosemarie Falk: Do I have time?

The Chair: You have 30 seconds.

Mrs. Rosemarie Falk: In your opinion, should that be defined or laid out within the bill, the competent person?

Prof. Katherine Lippel: I would just say, certainly, do not specify it has to be a lawyer.

Mrs. Rosemarie Falk: No, no, but the attributes—

Prof. Katherine Lippel: I am a lawyer. I get that. In the regulation, it is already defined to a certain extent, and you might want to look at what's written there, and the fact that the parties have to consent, and put that in the bill. That's possible, because I don't think you can define in a bill which.... Do we want psychologists; do we want...? We don't want to do that.

Mrs. Rosemarie Falk: No, for sure. I'm just worried that we won't get a competent person and it does more harm than—

Prof. Katherine Lippel: Yes, well, you have to make sure.... If you have people who have the consensus of the parties, that's going to help.

The Chair: Thank you.

Ms. Christine Thomlinson: Can I add one thing to that?

The Chair: Be very brief, please.

Ms. Christine Thomlinson: It would be lovely to get the consensus of the parties, but in an organization that deals with multiple complaints, it can become unwieldy. It's an advantage if you've got a union and you can agree to a roster, so that you've got people available, but people also expect processes to move quickly, and sometimes getting the consent of the parties to use an investigator who's actually available can be very very difficult.

● (2005)

The Chair: Thank you.

MP Trudel, you have three minutes, please.

[*Translation*]

Ms. Karine Trudel: Thank you.

Ms. Lippel, you said earlier that seven provinces have a definition of harassment. In your experience, should we draw on any one of those as regards Bill C-65?

Prof. Katherine Lippel: If you would like the document pertaining to the seven provinces, I can provide it to the committee. We conducted a study of the legislation throughout Canada. Some provinces have a poor definition. I would suggest that you stay away from Quebec's definition, although I am a proud Quebecer.

We can have a broad definition. I am reluctant to recommend something, but an enquiry into the working conditions in the public sector is conducted every three years, as you surely know. That enquiry includes a definition that is not bad. It is broader and more descriptive. I would not put that definition in legislation, but I think it is much more instructive than definitions that require six elements of the burden of proof before having a conversation.

Ms. Karine Trudel: I do not have much time left so this will be my final question.

My question is for Ms. Lippel and Ms. Thomlinson. In Quebec, for instance, there are mandatory first aid courses. Do you think we should require all companies to offer courses and training on harassment?

[*English*]

Ms. Christine Thomlinson: Yes, I absolutely do, and if you've got the opportunity in this bill to include that, I would strongly encourage you to do so.

[*Translation*]

Prof. Katherine Lippel: Training is absolutely essential. The most important thing, however—and we have seen this in Ontario—is not to think that we can wash our hands of it once there is a policy. She talked a bit about that.

If the training is bogus, that does solve the problem either. It must be real training, suited to the needs of both small and large workplaces, and in keeping with the priorities of each sector.

Ms. Karine Trudel: Thank you.

[*English*]

The Chair: Thirty seconds. You're good?

That's the end of the second round. We do have some time. If those who desire to have a final question, maybe a four-minute question? Yes?

We'll start over with MP Morrissey.

Mr. Robert Morrissey: Thank you, Chair. I'm going to split my time with my colleague, Pam.

For my question, I want to go back to Ms. Thomlinson. Do you feel the bill, as it's currently drafted, gives equal protection to an employee in a small business, small employment organization and a large one? Does it give equal protection to that person or access to making a complaint, as well as equal protection to the employing authority?

Ms. Christine Thomlinson: In referencing the employee authority, are you referring to the employer?

Mr. Robert Morrissey: The person who would be making the complaint....In a small work environment versus a large one, does that person get treated equally as the bill is presently drafted in making the complaint process as the employee in a large corporation?

Ms. Christine Thomlinson: Let me try to answer it this way. I think the bill as it's currently drafted is inadequate to address employees at all-sized organizations.

When you look at, for example, the requirement that people report to their supervisor, that may have a disproportionately more unfair effect on smaller organizations where there are fewer people, but I think the effect is the same, frankly, in any organization because if my only avenue of recourse is to report to my supervisor, and they're either the harasser or someone I don't feel comfortable reporting to, I have no other avenue, whether I'm in a big company or a small company.

● (2010)

Ms. Pam Damoff: I just have one question. We have focused a lot on federal employers, but I want to specifically talk about MPs' offices. Basically, someone who came to the committee said we have 338 small businesses.

In terms of the legislation that we have in front of us right now, are there any specific recommendations that you would make to change the legislation as it applies to the MPs' offices to give better protection to the staff?

I see that you do.

Ms. Suki Beavers: On this exact topic, having a requirement that the first complaint go to the supervisor when it's an MP in a very small office obviously presents a very difficult situation for complainants. I think that has to be given very specific consideration.

One of the points that we tried to raise in our submission is that the explicitly political nature of the way in which the Hill works and the perception and/or reality of partisanship being at play in the investigation and/or resolution of complaints really speaks to the need for neutral, independent persons to be in charge of the investigation and the decision-making. It may be very particularly important for parliamentary and political staff to have the reassurance of confidentiality and independence in the entire process of complaint-making and in the decision-making.

Ms. Pam Damoff: Do you think that should be specified right in the bill?

Ms. Suki Beavers: Yes.

Ms. Pam Damoff: We should put the independent aspect right in the bill.

Ms. Suki Beavers: Yes.

Ms. Pam Damoff: Okay. Thank you.

The Chair: Thank you very much.

Mr. Blaney is next.

[*Translation*]

Hon. Steven Blaney: Thank you.

I would just like to clarify something that I said.

We talked earlier about a “designated person”, that is, a trusted person to whom an employee who is the victim of harassment can turn.

Ms. Lippel, you are suggesting an amendment to section 127.1 of the Canada Labour Code, which is entitled “Internal Complaint Resolution Process”, and involves the supervisor. It is on page 3 of your presentation.

Are you suggesting that the complaint should be filed with the designated person? Is that really what you are suggesting, rather than going straight to a third party, as Ms. Thomlinson suggested?

I would like to hear your thoughts on that.

Prof. Katherine Lippel: The complaint could be made to a trusted person, either someone who has been appointed jointly and on a permanent basis, in the case of a large organization, or an outside party. It is very clear to me that the complaint must not be made to the supervisor.

Hon. Steven Blaney: That would be better because we must not go in that direction.

Prof. Katherine Lippel: It must not be the supervisor.

Hon. Steven Blaney: Shouldn't “designated person” also be defined then? The definition of “employee's supervisor” is clear, but the concept of a “designated person” should also be defined.

Prof. Katherine Lippel: It could be a designated person or a joint committee that is appointed, but one that specializes in harassment and violence. It could be a member of that pre-selected committee. I would rely more on the witnesses you have already heard as to what would be more effective in practical terms. Does it have to be one person? I do not think it has to be one person necessarily. That is the Belgian model. The Canadian or Quebec model...

Hon. Steven Blaney: The Belgian model refers to a trusted person.

Prof. Katherine Lippel: It refers to a trusted person, exactly.

Hon. Steven Blaney: Ms. Landry, you have worked in the area of harassment. In your opinion, should the act direct the person who wishes to make a complaint to turn first to their supervisor, or should the person turn first to...?

Ms. Marie-Claude Landry: Absolutely not.

Hon. Steven Blaney: So that has to be changed in the act.

Ms. Marie-Claude Landry: In my view, directing a person who is the victim of harassment to their supervisor is not the solution. The person needs assistance and support. They must feel they can rely on a trusted person. I completely agree with my colleague. It must definitely not be the supervisor. In most of the cases I have dealt with, the supervisor was either directly involved or failed to take action.

● (2015)

Hon. Steven Blaney: So the person is victimized again.

If we do not say “employee's supervisor” in the bill, what would you suggest? Can you make a suggestion?

Ms. Marie-Claude Landry: I think my colleague suggested “trusted person” or “designated person”, which could indeed be a solution.

Hon. Steven Blaney: Thank you.

Ms. Thomlinson, I think you wanted to say something.

[*English*]

Ms. Christine Thomlinson: If I can add, I would encourage you to have flexibility here, because there are many cases of people reporting effectively to their supervisor. I don't think they should be prevented from doing that, but I think you should recognize that there are limitations if that's their only avenue. I would also add that I think there should be an internal reporting mechanism for people. To require people to always go external, to some independent body, is not optimal in many circumstances.

Hon. Steven Blaney: It could be the supervisor or a designated person.

Thank you.

[*Translation*]

Mrs. Martha Jackman (Co-Chair, National Steering Committee, National Association of Women and the Law): May I say something?

Hon. Steven Blaney: Yes, go ahead.

[*English*]

The Chair: Be very brief, please.

[*Translation*]

Mrs. Martha Jackman: I think there is one constant in all the presentations. The word “supervisor” must absolutely be removed and replaced with “designated person”. The regulations could then suggest possible definitions. We want a range of possibilities, not just one.

For the House of Commons, the “designated person” might be someone who is designated as they are by bar associations, that is, an eminent person who conducts confidential investigations. In a small company, it could be an outside party. In any case, we must provide for multiple potential procedures, and not just one. Directing the person to their supervisor is really not a good idea.

Hon. Steven Blaney: Thank you very much.

If you have any practical suggestions, kindly forward them to us. We are working on amendments now and welcome your suggestions.

[*English*]

The Chair: Thank you so much.

MP Trudel, you have four minutes.

[*Translation*]

Ms. Karine Trudel: My question is for Ms. Landry.

In your presentation, you said that too many aspects would be left up to the regulations. In your opinion, which aspects should be in the bill instead?

Ms. Marie-Claude Landry: What I said in my presentation is that we will give you a list of recommendations for amendments of a more technical nature before the March 5 deadline.

Ms. Karine Trudel: Thank you.

[*English*]

The Chair: Thank you very much.

That's the end of our third round and the end of today's hearing. This is also the last panel we're meeting with. This has been a unique approach to reviewing legislation. All of us around this table have had to roll up our sleeves, work some extra hours, come in during a break week, and make sure that we got this done effectively but also quickly.

Many of you—not just this panel, but all the panels—have been truly amazing. Thank you from all of us for being here and for finishing this review on a high note.

Thank you to all my colleagues for the work you've done. As always, thank you to the people who make sure that these meetings get off without a hitch. The logistics around this particular review were quite extensive. Thank you very much to my clerk.

We have a lot of discussions still left to do and some very important decisions to make. We have, I believe, been given a lot of the tools necessary to make sure we make those right decisions.

Thank you very much, everybody.

This meeting is adjourned.