



B.C.HUMAN RIGHTS COALITION
VANCOUVER REGION
1202 - 510 W. Hastings Street
Vancouver, B.C. V6B 1L8

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Federal Labour Standards Review

165 Hotel de Ville
Phase II, Place du Portage
Gatineau, Quebec
K1A 0J2

Executive Summary

The following submission's focus is on the issue of discrimination in the workplace. In particular, it will answer the posed question: *Are there specific needs unique to other groups protected by the Canadian Human Rights Act that should be taken into account in modernizing federal labour standards, specifically the language contained in Part III Division XV.1 s. 247.1-247.4.*

Our position is that Labour Standards have an important role to play in creating a workplace free from discrimination. A proactive anti-discriminatory provision achieves both educational and preventative goals without causing any jurisdictional overlap between the *Canadian Human Rights Act (the Act)* and the *Canada Labour Code (the Code)*. The *Act* provides employees with a cause of action against sexual harassment in the workplace whereas the *Code* imposes a duty on employers to issue policy statements that define harassment and set out procedures to address it.

The current provision in the *Code* does not address any form of discrimination other than sexual harassment. We recommend extending this provision, at a minimum, to include all group characteristics as detailed in the *Act*, s. 3 (1-2). As harassment is but one form of workplace discrimination, we also recommend extending the provision so as to more adequately capture all forms of workplace discrimination as contemplated and enforced by the *Act*.

The BC Human Rights Coalition

The B.C. Human Rights Coalition is a charitable non-profit community based organization which was formed in 1982 with the very broad mandate to promote and strengthen human rights throughout B.C. and Canada. It has a membership of over 100 individuals and groups from across the province. The Coalition's general overall purpose can be found in its Constitution as follows:

- (1) To provide an opportunity for better understanding of human rights issues among organizations and individuals with an interest in those issues;
- (2) To encourage dialogue on human rights matters from different points of view, and thus to educate members and the public about human rights problems encountered by different groups and individuals;
- (3) To educate and assist people in British Columbia with respect to human rights issues;
- (4) To provide assistance and client representation services for people in British Columbia with respect to their human rights under the provincial and federal human rights legislation; and
- (5) To encourage cross-interest awareness and involvement between and among the members of the public.

Our Involvement with Federally Regulated Workplace Issues

Approximately 1 in 7 human rights complaints filed in B.C. fall under federal human rights jurisdiction. The Coalition's information and educational programs extend services to federally regulated employers and employees and last year we responded to 14,882 calls from the public and clients where there was a direct protection provided in human rights legislation. We estimate 1 in 7 of these calls pertain to federal concerns and our statistics further indicate that the grounds of sex and sexual harassment represent 22% of calls received as listed by specific ground. The Coalition also has a province wide educational program that is offered across sectors and reaches those who fall under federal jurisdiction. Our experience working with employers and employees informs us that much confusion exists in terms of workplace duties and responsibilities in relation to human rights legislation. It also informs us that anti-discrimination policy and procedures have a high educational and preventative value. Policies raise awareness, they encourage dialogue and they further understanding on critical issues. Corresponding procedures set out duties and responsibilities of all parties and they provide for a process that seeks to resolve conflicts in a timely and fair manner. The full cycle of policy development and implementation helps to build a workplace culture that is informed, responsible, respectful and non-discriminatory.

Our advocacy program extends limited service to those with federal claims, but comparisons of complaint composition across federal and provincial jurisdictions tell us that sexual harassment and other forms of discrimination in the workplace are still prevalent in 2005. Close to 30% of all files closed through our clinic program in 2005 listed sex as a protected ground of discrimination. A high rate of these complaints involved pregnancy related discrimination. 65% of all closed files alleged discrimination in the area of employment. Annual statistics from the Canadian Human Rights Commission indicate 14% of all inquiry calls were in relation to the ground of sex in 2005. 17% of new complaints for that year were filed under the grounds of sex in the area of employment. 81% of all new complaints filed with the Commission alleged employment related discrimination. These figures confirm that sexual harassment and other forms of discrimination in the workplace are still prevalent in 2005. As we outline below, labour standards have a significant role in helping to minimize and prevent future discrimination from occurring.

Workplace Diversity / Discrimination and the Role of Labour Standards.

In the last few decades Canada has become a much more diverse society. This is reflected in the workforce, which increasingly includes women, visible and non-visible minorities, people with disabilities, people of different ages, and members of other groups protected by human rights legislation. The structure of work has also become much more diverse. We continue to move from the traditional structure where work was considered secure and full-time to a structure that is characterized as less secure and offers more part-time work than full time. Both aspects of this diversity have implications and current employment standards should be revised to ensure they adequately respond to the challenges this diversity presents.

The submissions of the Canadian Labour Congress and others have addressed implications in regards to the new face of structural diversity in the workplace and they argue the need to extend minimum labour standards to groups of individuals who are not currently covered by such legislation. We support their positions on this issue, especially given the fact that women, minorities and people with disabilities tend to be the most affected by lack of protections as they are still more likely to be employed in low-paid and part-time jobs than are other groups of individuals.

In addition, we argue that labour standards have played, and should continue to play a significant role in eliminating and preventing discrimination in the workplace. The current sexual harassment provision in the *Code* was a good faith intention on the part of legislators to reflect the societal norms, expectations and obligations that were emerging at the time when this part of the *Code* was last revised. The provision is proactive and educational and serves a preventative function. It also complements the underlying policy goals of human rights legislation and imposes a positive duty on employers to help eliminate and minimize workplace discrimination.

As current complaint statistics indicate, much still needs to be done to ensure workplaces are free from discrimination and accessible to all. Societal norms, expectations and understanding of discrimination have changed since the *Code* was last revised. While sexual harassment is still problematic, discrimination based on other grounds, such as disability, race, age and pregnancy, is also pervasive and continues to present as barriers to workplace equality. Employers seem especially unclear about their duties to accommodate employees' special needs and their duties not to discriminate against pregnant employees. To this end, the public policy incentive for legislators to address discrimination through labour standards is greater than ever. The preventative and educational value of a provision in employment standards legislation is significant. It helps to raise awareness, encourage dialogue and further understanding on critical issues. It helps to foster and create respectful workplace cultures and a workplace that is free from discrimination and harassment. It also provides management with an opportunity to proactively engage in eliminating discriminatory conduct and practices. The greatest value is in systemic nature of the provision. It is a clear expectation that discriminatory harassment will not be tolerated in Canadian society and it informs both workers and employers of this expectation.

Federal legislators also have a responsibility to ensure Canadians have the best legislative solutions in regards to eliminating discrimination. International conventions and covenants speak to this obligation and we encourage the federal government to maintain a discriminatory provision within employment standards legislation. This is an opportunity for federal legislators to play a national and international leadership role in continuing to set out standards for human rights in the workplace.

The Current *Labour Code* is Restricted

The *Code* does not address any form of harassment other than sexual harassment (*Division XV.1*). We see no justification for this and recommend that the current provision be revised and extended, at a minimum, to include all grounds of protection as detailed in the *Canadian Human Rights Act*, s. 3 (1-2). These grounds are: race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability and conviction for which a pardon has been granted.

Workplace harassment on any one or more of these grounds has been prohibited by law for many years. The statutory provision should reflect both the law and current societal norms and could do so by extending the language to include all group characteristics as listed above.

We also suggest that the current provision should be replaced with a more modernized provision imposing an obligation on employers to prevent and remove *all* forms of discrimination in the workplace. Harassment is but one manifestation of discrimination and language and obligations should capture this realization. Similar

to the duty imposed on employers under the current provision, a revised duty should extend to include mandatory policy and educational obligations that seek to eliminate *all* forms of workplace discrimination. This revision would achieve greater consistency between the *Code* and the *Act*.

Jurisdictional Issues

Some have the notion that the provision in the *Code* is redundant because of the *Act*. In our view this is not the case although there are provisions in the *Code* that share jurisdiction with the *Act*, for example a claim under the maternity leave provisions in the *Code* may also give rise to a human rights claim if the complainant were also a victim of pregnancy discrimination. This is situation where joint responsibility and redress exists in more than one piece of legislation and in our view is distinct from the purpose and intent of language in *Division XV.1* of the *Code*. As detailed above, this provision requires employers to take measures to prevent discrimination before it occurs.

There are no jurisdictional issues between the sexual harassment provisions of the *Canadian Human Rights Act* and the *Canada Labour Code*. They both share the same general underlying purpose of preventing and remedying workplace harassment, but they do so in different ways. The sexual harassment provision in the *Act* provides employees with a cause of action if they have experienced harassment. In other words, it provides redress for victims of discrimination. The *Code* imposes a duty for employers to make every reasonable effort to ensure that no employee is subjected to sexual harassment. This obligation includes issuing a policy statement and ensuring that employees are aware of it. The function is considered proactive and preventative. The only complaint that can be contemplated by the *Code* is in relation to the policy statement as mandated in sections 247.1-247.4 (i.e. lack of a policy statement regarding sexual harassment, incomplete policy statements, etc.). We highly recommend that this division of function continue.

The provisions do not create an overlap in law; in fact they are complementary and interfaced in a manner that avoids overlap. If they are confusing, simplified and clear language could help achieve a better result as could a reference to the appropriate enforcement agency. We also submit that the division of function could continue, again without confusion or overlap, after extending the provision to include all grounds and all forms of workplace discrimination as detailed above.

Summary

An anti-discrimination provision in labour standards legislation is a broad based approach to eliminating and preventing workplace discrimination. A proactive provision achieves both educational and preventative goals without causing jurisdictional overlap. To achieve greater consistency between the *Code* and the *Act*, the provision should be extended to include all grounds of protection and all forms of workplace discrimination as detailed in the *Act*.

Recommendations

We recommend:

- retaining the current division of function between the *Code* and the *Act*.
- *the Canada Labour Code* extend its provision on sexual harassment to include discrimination of any form and on all grounds as detailed in the *Canadian Human Rights Act*.
- The *Canada Labour Code* should enforce its anti-discrimination provision by requiring employers:
 - to make every reasonable effort to ensure that no employee is subjected to discrimination on the grounds detailed in the *Canadian Human Rights Act*
 - to consult with employees for the purpose of issuing a policy statement concerning discrimination on the grounds detailed in the *Canadian Human Rights Act*and
 - to make each person under their direction aware of such a policy statement.

Respectfully submitted by,

The B.C. Human Rights Coalition