

# RESPECTFUL WORKPLACES IN THE ARTS    MILIEUX DE TRAVAIL RESPECTUEUX DANS LES ARTS

## *Reporting and Investigating Mechanisms for Workplace Harassment in the Arts*

### RECOMMENDATIONS

Consultant Jeanne LeSage was contracted by CHRC to prepare a report on *Reporting and Investigating Mechanisms for Workplace Harassment in the Arts*. Now in final edit for release in late February, the report includes an extensive look at existing mechanisms and resources for dealing with workplace harassment (national and international examples); and a summary and analysis of dozens of interviews with arts leaders from across the country. Interviews focussed on what reporting mechanisms would meet the needs of victims of harassment, and what resources could be made available for employers who are faced with cases of harassment in their workplaces.

#### Recommendations for Reporting Mechanisms

**1. *Establish a confidential, independent third-party sector-wide resource for the complainants, respondents and witnesses of workplace harassment.***

It could provide the following services:

a) Resources, Counselling, Advice: A free service that provides immediate confidential support and counselling to complainants, respondents and witnesses across multiple platforms (in person, via phone, online). Services could include:

- reviewing the specifics of the situation, outlining legal alternatives, providing advice and identifying the steps to take;
- referral to further resources based on jurisdiction and location;
- counselling – intake for dealing with the person in distress.

This service could be provided by existing Employee Wellness Programs, Legal Clinics, and Ombudservices, but should be provided with customized training and information specific to different artistic disciplines and taking into consideration regional/cultural differences.

b) Case Management: Additional support for the individual by advocating and assisting through attending meetings, contacting employers/engagers, and assisting in filling out forms. It is important for unionized persons to be aware of and consider assistance from their union as well, when available.

**2. *Further examine the viability for anonymous reporting mechanisms.***

It is notable that while there were numerous mentions, there is not consensus that there should be a sector-wide anonymous reporting mechanism that would result in formal investigations. There is a need however to address the lack of reporting and mitigating concerns of backlash and retribution for those coming forward. There is support for anonymous third-party reporting mechanisms which would require further legal review:

- Anonymous reporting to a central body, so trends and data are gathered in aggregate form of the calls and situations being reported to assist in systemic change and identify specific risks.
- “Information escrow” and “Matching escrow” systems - ways to confidentially gather data and identify if there is a ‘repeat offender’ whose name occurs in multiple reports and is not released except under certain conditions with the permission of the complainant.

**3. *Develop experiential training to respond “in-the-moment” to incidents of harassment.***

The sector needs to develop and deliver more training, communication and dialogue to help individuals know exactly how to call out and respond to inappropriate behaviours – experiential training, simulations, and role playing to help deal with situations in the moment. The goal is to deal with the issue before it escalates.

**4. *Access financial support for individuals.***

In the case of individuals who have exhausted available sector resources, individuals need access to financial support that would allow them to access funds to cover legal fees or other costs associated with reporting workplace harassment.

Recommendations for Investigating Mechanisms

**5. *Create a third-party resource for employers.***

This would be separate from resource a resource created for Individuals. Provide an external resource focused on providing information on legal compliance, advice on situations and access to resources – with knowledge across provincial/territorial jurisdictions and artistic disciplines. Support can be divided into:

- Urgent/critical response: Support in responding to a report or complaint, including access to legal, HR, and Crisis Communications support. Assistance in triaging a situation and creating a plan to respond to the situation.
- Ongoing support and prevention: With a focus on education, prevention and maintenance of programs - this support would provide ongoing access to human resources and employment law expertise in the areas of policy development, training, and annual reviews of programs and procedures – i.e. employers get a set number of hours per month with an HR expert, employment lawyer, etc.

**6. *Provide training on conducting the ‘intake’.***

Employers need training on how to respond to complaints coming forward, and how to manage the intake of the report. It is crucial that reports are handled appropriately both for the sake of the individuals coming forward, and to prevent risk to the employer by proper handling of a complaint. Considerations include:

- to be trained and capable to deal with people in distress, with experience counselling them;
- understanding the definitions, the legalities and the procedures (including understanding when it is appropriate to alert the police in the case of violations of law in a timely way);
- training on what to say and what not to say if somebody reports something to an employer. Being empathetic, de-escalating, but not taking sides or prejudicing a situation.

**7. *Develop complaint response checklist / Decision tree.***

What should employers do if an incident occurs, or a complaint comes forward? Create a resource that guides an employer to build a method and response based on the specifics of the situation. Elements to consider:

- Who is going to own this process? Is the main person receiving complaints the leader? Who are the alternates? Is there an HR representative that will be involved?
- What are legal compliance requirements?
- How to triage the specific situation? (i.e. the seriousness of the situation, the parties involved)
- A checklist of information that should be gathered, and how documented.
- Provide guidance on understanding when it's time to engage outside expertise – and is that person a lawyer, a mediator, an HR consultant, etc.
- Guidance on how and when to engage the board chair and/or board of directors.
- Draft case studies with varying circumstances and various options for ways to shape the investigation process.

## **8. *External investigations***

There was considerable feedback that most employers do not have the expertise, time, or structure to carry out a fair, unbiased investigation, and that employers should be encouraged and incentivized to carry out third-party investigations when appropriate. And the more senior the alleged harasser, the more reason for early engagement of external parties to investigate. Resources to help employers could include:

- creation of a vetted list of professionals who have experience in arts sector – lawyers, mediators, investigators - or access to a shared resource in each region;
- grant funds or subsidy to help employers pay for an external investigation (with a mediator, or investigator or lawyer as required) to pay for legal fees;
- consultations with and study of viability of expanding insurance coverage to include no fault counselling that can be triggered before a claim – i.e. covering the costs of external investigations. Explore a group insurance model – i.e. could engagers pay a % of their budget into a shared policy, which could be accessed for engagers to deal with an incident – for access to coaching and investigation expertise.

While these external resources are recommended, it must be clear to leaders and boards that these are tools to assist in fulfilling their obligations, and that they need to play a strong role in overseeing this.

## **9. *Internal investigations***

Examine utilizing a Joint Health & Safety Committee model to assist in a portion of the internal investigation process. Also, an organization could designate a harassment officer – like a Fire Warden or Health and Safety Representative - to be trained in dealing with workplace harassment issues.

## **10. *Portal for best practices and resources***

Create a central portal for sharing Best Practices, research, templates, policies and procedures across peers, and cross-tagged or categorized by province, by artistic discipline, by size, entity, etc. This portal could include two components:

- Vetted / curated information – information that is reviewed and vetted by a panel of experts, including referrals to external services.
- Crowd sourced information – shared resources crowd-sourced and populated by the sector. Additional possibility for shared resources for communities and collectives to come together.