

C-451 Workplace Psychological Harassment Prevention Act

Second Session, Thirty-seventh Parliament,

51-52 Elizabeth II, 2002-2003 [REDACTED]

An Act to prevent psychological harassment in the workplace and to amend the Canada Labour Code [REDACTED]

First reading, September 24, 2003 [REDACTED]

[REDACTED]

Summary

This enactment defines psychological harassment and abuse of power, requires the public service of Canada to provide its employees with employment free of psychological harassment, and requires every employee of the public service of Canada to disclose behaviour that is contrary to these principles. [REDACTED]

The enactment also provides for the exercise of recourse, the imposition of fines and the taking of remedial action when an employee who has made a disclosure is subjected to retaliation. [REDACTED]

Lastly, the enactment amends the *Canada Labour Code* to prohibit acts of psychological harassment. [REDACTED]

Preamble

Whereas the *Canadian Human Rights Act* prohibits discrimination on the grounds of 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; [REDACTED] Whereas, in addition to providing this protection, the Government of Canada affirms that, in every workplace under its authority, every employee is entitled to employment free of psychological harassment; [REDACTED] Whereas the Government of Canada, being an employer concerned about the well-being of its employees, has a duty to take concrete action to prevent any form of psychological harassment in the workplace; [REDACTED] Whereas every case of psychological harassment in the workplace must be disclosed, investigated and dealt with through remedial or disciplinary action, including termination of employment; [REDACTED] And Whereas a person subjected to psychological harassment must have the right to exercise recourse and obtain redress, and a person who discloses such harassment must be protected against any threat or retaliation; [REDACTED] Now, therefore, Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

1. Short title [REDACTED] This Act may be cited as the *Workplace Psychological Harassment Prevention Act*. [REDACTED]

2. Definitions □

The following definitions apply in this Act.

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“Commissioner” means the commissioner □ of the Public Service Commission designated as the Commissioner for the Prevention of Psychological Harassment in the Workplace. □

“Committee” means the Psychological □ Harassment Complaints Committee established by section 8. □

“disciplinary action” means any □ negative or punitive action in respect of an employee or the employee’s □ conditions of employment, and includes □ (a) a financial penalty; and □ (b) suspension or termination □ of employment.

“employee” has the same meaning as in the *Public Service □ Employment Act*.

“law in force in Canada” means any Act of Parliament or of the legislature of a province and any regulations made □ under such an Act. □

“psychological harassment” means □

(a) any vexatious behaviour in the form of hostile, inappropriate and unwanted conduct, verbal comments, □ actions or gestures that affects an employee’s dignity or psychological or physical integrity and that results in a harmful workplace for the employee, □ and □

(b) any abuse of authority, □ including intimidation, threats, blackmail or coercion, that occurs when a person improperly uses the power or authority inherent in the person’s position to endanger an employee’s job, undermine the employee’s job □ performance, threaten the economic livelihood of the employee or interfere in □ any other way with the career of the employee; □ and, for □ greater certainty, a single incident of such behaviour that has a lasting and □ harmful effect on an employee also constitutes psychological harassment. □

“Public Service” means those portions □ of the public service of Canada subject to the *Public Service Staff □ Relations Act*. □ □ □ □ □ □ □ □ □ □

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3. Rights and responsibilities □ □ □ □ □ □ □ □ □ □

Employee

(1) Every employee is entitled to employment free of psychological □ harassment.

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(2) Before filing a complaint □ with the Commissioner, an employee who is subjected to psychological □ harassment shall ensure that the person responsible for the harassment is □ requested orally or in writing by the employee or by another person acting on behalf of the employee that the harassment is taking place and that the person responsible must put an end to it.

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11.1

Employer responsibilities

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(3) The employer shall ensure that no employee is subjected to psychological harassment and for that purpose shall, after consulting the employees or the employees' representatives, establish and distribute a policy on psychological harassment that includes

(a) a definition of psychological harassment that is substantially the same as the definition in the *Canadian Labour Code*;

(b) a statement to the effect that every employee is entitled to employment free of psychological harassment;

(c) a statement to the effect that the employer will make every reasonable effort to ensure that no employee is subjected to psychological harassment;

(d) a statement setting out the disciplinary action that will be taken against any employee who subjects any other employee to psychological harassment;

(e) a statement explaining how complaints of psychological harassment are to be brought to the attention of the employer;

(f) a statement to the effect that the complainant's identity and the circumstances of the complaint will not be disclosed unless the disclosure is necessary for the purpose of investigating the complaint or taking disciplinary action in relation to the complaint; and

(g) information on the employees' right to file a complaint under the *Canadian Human Rights Act*.

(4) Due diligence

Within five days after the behaviour referred to in subsection (2) is brought to the employer's attention, the employer shall take action to put an end to it.

(5) Supervisor personally liable

Any supervisor or manager — and any other person — who, having authority over an employee, contravenes section 20 is personally liable for any damages that may be awarded to the employee as a result of a civil action or an administrative proceeding.

(6) Offence and punishment

Any supervisor or manager — and any other person — who, having authority over an employee, contravenes section 20 is liable to criminal prosecution and to a fine not exceeding \$10,000, as well as to disciplinary action, including discharge.

(7) Presumption

The provisions of subsections (1) to (6), 10(2), 16(2) and 17(3) and (4), with any necessary modifications, are deemed to be an integral part of every collective agreement, and an employee bound by such an agreement shall exercise the recourses provided for in the agreement insofar as any such recourse is available to the employee under the agreement.

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(8) Mediation █████

At any time, an employee who is subjected to psychological harassment may request the appointment of a mediator to deal with the matter or matters in dispute. ████████

(9) Absence of collective agreement █████

The provisions referred to in subsection (7) are deemed to be part of the conditions of employment of every employee appointed under the *Public Service Employment Act* who is not bound by a collective agreement, and if such an employee is subjected to psychological harassment, the employee shall exercise any recourse before the Public Service Commission.

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4. Awareness of psychological harassment ████████████████████

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Dissemination of information █████

The employer shall disseminate information relating to this Act and to its enforcement and shall take any other action that the employer considers appropriate to foster, in every workplace of the Public Service, ethical practices and an environment conducive to the disclosure of psychological harassment. ████████████████████

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5. Commissioner Designation █████

(1) The Governor in Council shall designate one of the commissioners of the Public Service Commission as the Commissioner for the Prevention of Psychological Harassment in the Workplace for the purposes of this Act. █████

(2) The duties and functions of the Commissioner under this Act are part of the duties and functions of the Public Service Commission for the purposes of the *Public Service Employment Act*. ████████

(3) The powers conferred on the Commissioner by the *Public Service Employment Act* for the purposes of that Act may be exercised for the purposes of this Act. █████

6. Not Competent Witness █████

The Commissioner or any person acting on behalf or under the direction of the Commissioner, including a member of the Committee, is not a competent witness in respect of any matter that comes to their knowledge during the exercise or performance of any power, duty or function under this Act in any proceeding other than (a) a prosecution for an offence under section 22; or (b) a prosecution for an offence under section 132 of the *Criminal Code* (perjury) in respect of a statement made under this Act.

7. Protection of Commissioner

(1) No criminal or civil proceedings lie against the Commissioner or against any person acting on behalf or under the direction of the Commissioner, including a member of the Committee, for anything done, reported or said in good faith during the exercise or performance or purported exercise or performance of any power, duty or function of the Commissioner under this Act.

(2) For the purposes of any law relating to libel or slander, (a) anything said, any information supplied or any document or thing produced in good faith and on reasonable grounds in the course of an investigation by or on behalf of the Commissioner under this Act is privileged; and (b) any report made in good faith by the Commissioner under this Act and any fair and accurate account of the report made in good faith in the press is privileged.

8. Committee established

(1) There is hereby established a committee to be known as the Psychological Harassment Complaints Committee, consisting of not more than five members to be appointed by the Commissioner to hold office during pleasure for a term not exceeding three years, which term may be renewed for one or more further terms.

(2) The Committee shall consist of (a) three persons who are not employees of the Public Service but who possess experience or professional training in staff relations and psychological harassment in the workplace; (b) a representative of the employee organization to which the employee who is subjected to the psychological harassment belongs or, if the employee does not belong to an employee organization, a person of the employee's choosing; and (c) a representative of the employer.

(3) The Commissioner shall designate one of the members of the Committee as chairperson of the Committee.

(4) In the performance of its duties and functions, the Committee has all the powers conferred on the Commissioner by subsection 5(3).

(5) The Committee shall (a) review written complaints relating to the behaviour or actions of any employee under this Act; (b) investigate complaints filed under this Act; (c) report the findings of its investigations to the Commissioner; (d) submit to the Commissioner an annual report of its activities; (e) provide advice; (f) make general recommendations on issues relating to the prevention of psychological harassment in the workplace; and (g) deal with any other matter that may be prescribed by regulation.

9. Decision of Committee

A decision of a majority of the members of the Committee is a decision of the Committee.

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10. □□Complaint to Commissioner □□□

(1) An employee who believes that he or she □□ has been subjected to psychological harassment may file a complaint in writing with the Commissioner. Such a complaint may also be filed by a □□ non-profit organization dedicated to the defence of employees' rights on behalf of one or more employees who consent in writing to such filing. □□□□□□

(2) Every complaint of psychological harassment shall be filed within 90 days after the most recent manifestation of such behaviour. □□□□□□

11. □□Disciplinary □□Action □□□

(1) An employee against whom disciplinary □□ action is taken in contravention of section 20 may exercise any recourse available in law, including a grievance under an Act of Parliament or under any other law in force in Canada. □□□□□□

(2) □□ Prosecution based on same facts. An employee against whom disciplinary action is taken □□ in contravention of section 20 may exercise a recourse referred to subsection □□ (1) even if a prosecution based on the same facts as those alleged in the □□ recourse has been or might be instituted under section 22. □□□□□□

(3) □□ Right to have presumption apply. □□ An employee against whom disciplinary action is taken □□ in contravention of section 20 may elect to have the presumption of subsection □□ 20(2) apply in a recourse exercised under subsection (1). □□□□□□

□□ 12. □□Duty to disclose □□□

(1) Every employee shall disclose to the employee's supervisor or to a public body any behaviour known to the employee that affects that employee or any other employee and that, in the opinion of a reasonable person, would constitute a contravention of this Act. □□□□□□

(2) □□ Disclosure by employee. □□ An employee who believes on □□ reasonable grounds that a person who is employed in the Public Service or who □□ is in a workplace of the Public Service has engaged or is about to engage in □□ an act of psychological harassment may □□ (a) disclose the matter in writing to the Commissioner; and □□ (b) request that the employee's □□ own identity not be revealed in connection with the disclosure. □□□□□□

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(3) □□ Form and content. The disclosure shall specify □□ (a) the identity of the employee making the disclosure, evidenced by the employee's □□ signature; □□ (b) the identity of the person referred to in the disclosure; and □□ (c) the grounds for the employee's belief that the person has engaged or is about to □□ engage in an act of psychological harassment, and the details known to the employee. □□□□□□

(4) □□ Violation of oath. □□ A disclosure made in good faith on reasonable grounds to the Commissioner under subsection (2) does not constitute a violation of the oath of office or oath of secrecy taken and subscribed by the employee and, subject to subsection (5), does not constitute neglect of □□ duty.

(5) **Solicitor-client privilege.** In making a disclosure under subsection (2), an employee shall not contravene any law in force in Canada or any rule of law that protects communication subject to solicitor-client privilege, unless the employee is motivated by a reasonable concern for public health and safety. **111111**

13. Anonymity preserved

Subject to any legal obligation of the Commissioner under this Act or any other law in force in Canada, the Commissioner shall not reveal the identity of the employee who has made a disclosure under subsection 12(2) and to whom the Commissioner has given, subject to the other provisions of this Act, assurance of anonymity. **111111**

14. Initial review

On receipt of a disclosure under subsection 12(2), the Commissioner shall review it, and may request any additional information from the employee who made the disclosure and investigate the matter in any other manner that the Commissioner considers necessary. **111111**

15. Disclosure rejected

(1) The Commissioner shall reject a disclosure made under subsection 12(2) and close the matter if the Commissioner determines, after a preliminary review, that the disclosure (a) is vexatious or has a trivial or frivolous purpose; (b) does not constitute an allegation of psychological harassment or provide sufficient details relating to the psychological harassment; (c) contravenes subsection 12(5); or (d) has not been made in good faith or on reasonable grounds. **111111**

(2) **False or misleading statement.** If a disclosure made by an employee under subsection 12(2) includes any statement that the employee knows to be false or misleading at the time the employee makes it, the Commissioner may conclude that the disclosure has not been made in good faith. **111111**

(3) **Mistake of fact.** The Commissioner is not required to conclude that a disclosure has not been made in good faith by reason only that it is based on a mistake of fact. **111111**

(4) **Notice to employee.** If the Commissioner makes a determination under subsection (1), the Commissioner shall, within 30 days after making the determination, send written notice of it to the employee who made the disclosure. **111111**

(5) **Notice to person referred to in disclosure.** If the Commissioner makes a determination under paragraph (1)(c) or (d), the Commissioner may notify the person referred to in the disclosure. **111111**

16. Disclosure Accepted

(1) The Commissioner shall accept a disclosure made under subsection 12(2) if the Commissioner determines that the disclosure

- (a) is not vexatious and does not have a trivial or frivolous purpose;
- (b) constitutes an allegation of psychological harassment and provides sufficient details relating to the harassment;
- (c) does not contravene subsection 12(5); and
- (d) has been made in good faith and on reasonable grounds.

(2) Notice to employee. If the Commissioner makes a determination under subsection (1), the Commissioner shall immediately send written notice of it to the employee who made the disclosure.

17. Investigation

(1) The Commissioner shall investigate a disclosure accepted under section 16 and, subject to subsection (2), shall prepare a written report of the Commissioner's findings and recommendations.

(2) Commissioner's decision. If the Commissioner finds that an employee has been subjected to psychological harassment and that the employer has failed to meet the requirements of subsection 3(3) or (4), the Commissioner may make any decision that the Commissioner considers fair and reasonable having regard to all the circumstances of the matter, including

- (a) ordering the employer to reinstate the employee and, if the employee so desires, ensure that the employee can safely occupy the same position;
- (b) ordering the employer to pay the employee compensation not exceeding an amount equivalent to the salary lost;
- (c) ordering the employer to make every reasonable effort to put an end to the harassment;
- (d) ordering the employer to pay the employee exemplary and punitive damages and any legal and other expenses incurred by the employee under this Act;
- (e) ordering the employer to pay the employee compensation for loss of employment;
- (f) ordering the employer to pay for the psychological support required by the employee; and
- (g) ordering the employer to modify the employee's disciplinary record.

(3) Exception. Paragraph (2)(b) does not apply in respect of a period during which an employee is the victim of an employment injury, within the meaning of a provincial law respecting industrial accidents, that results from psychological harassment.

(4) Notice to employee. If the Commissioner makes a decision under subsection (2), the Commissioner shall, within 30 days after making the decision, send written notice of it to the employee who made the disclosure.

18. Annual report

(1) The Public Service Commission shall include, in the annual report laid before Parliament under section 47 of the *Public Service Employment Act*, a statement by the Commissioner of the activities carried out under this Act, including (a) a description of the Commissioner's activities; (b) the number of disclosures received under section 12; (c) the number of disclosures rejected under section 15; (d) the number of disclosures accepted under section 16; and (e) the number of disclosures accepted that are still being investigated under subsection 17(1).

(2) Recommendations The Public Service Commission may include, in the annual report laid before Parliament under section 47 of the *Public Service Employment Act*, a review of the provisions and operation of this Act and any recommendations relating to this Act.

19. False information

(1) No person shall provide false information to the Commissioner or to any person acting on behalf or under the direction of the Commissioner, including a member of the Committee, during the exercise or performance of any power, duty or function of the Commissioner under this Act.

(2) Bad faith. An employee shall not make a disclosure under subsection 12(2) in bad faith.

20. Protection

(1) No person shall take any disciplinary action against an employee by reason only that (a) the employee, acting in good faith and on reasonable grounds, has disclosed or stated an intention of disclosing to the Commissioner that a person who is employed in the Public Service or who is in a workplace of the Public Service has engaged in an act of psychological harassment;

(b) the employee, acting in good faith and on reasonable grounds, has stated an intention of doing anything that is required to be done to ensure compliance with this Act; or

(c) the person believes that the employee will do anything referred to in paragraph (a) or (b).

(2) Presumption. Every person who takes disciplinary action against an employee in contravention of this section within two years after the employee has made a disclosure under subsection 12(2) is deemed, in the absence of any evidence to the contrary established on a balance of probabilities, to have taken the disciplinary action because the employee made the disclosure.

21. **Revelation of identity prohibited**

(1) Except as authorized by this Act or by any other law in force in Canada, no person shall communicate to any other person the fact or nature of a disclosure made under subsection 12(2) in a manner that reveals the identity of the employee who made the disclosure.

(2) Non-application. Subsection (1) does not apply if the disclosure was made in contravention of subsection 12(5) or was not made in good faith or on reasonable grounds.

22. **Offences**

Every person who contravenes subsection 12(5), section 19 or subsection 20(1) or 21(1) is guilty of an offence and liable on summary conviction to a fine not exceeding \$10,000.

23. **Regulations**

The Governor in Council may make regulations

(a) establishing criteria respecting the qualifications and training of the Commissioner, having regard in particular to the person's experience and professional training in staff relations and psychological harassment in the workplace;

(b) establishing the rules to be followed by the Commissioner and any person acting on behalf or under the direction of the Commissioner, including a member of the Committee, in the handling of complaints and investigations;

(c) providing for the establishment of an optional mediation process for dealing with the matter or matters in dispute;

(d) prescribing the conditions for paying compensation, damages, and legal and other expenses under paragraphs 17(2)(b), (d) and (e); and

(e) generally for carrying out the purposes and provisions of this Act.

24. **Grievances**

(1) Any grievance that has not been finally dealt with on the coming into force of this Act shall be dealt with and disposed of in accordance with this Act.

(2) Any proceeding that has not been finally dealt with on the coming into force of this Act shall be dealt with and disposed of in accordance with this Act.

Sections 25 - 29: Amendments to existing *Canada Labour Code*

30. The provisions of this Act and the provisions of any Act as enacted by this Act come into force on a day or days to be fixed by order of the Governor in Council.