Gender-Based Violence, Harassment, and Bullying: Workplace Policy Guidelines for Response and Prevention

Ending Violence Association of BC

2019
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Ending Violence Association of BC

The Ending Violence Association of BC (EVA BC) is a provincial non-profit umbrella organization that has existed in BC since 1992 and is funded primarily by the Province of BC to serve as a resource for over 300 community-based anti-violence programs and initiatives supporting survivors of sexual violence, intimate partner violence, child abuse, and criminal harassment. Our goals include educating the public on the needs of victims and survivors of violence; fostering the development of relevant cross-sector initiatives across BC; providing education and training to criminal justice, health, social service, and professionals in other sectors working with survivors; working in partnership with other provincial organizations, systems and institutions, and key stakeholders in related fields to enhance coordination in responding to gender-based violence; and engaging in projects and programs that work toward the prevention of gender-based violence, harassment, and bullying.

EVA BC has extensive experience and subject matter expertise in gender-based violence policy and training, including the following current and recent programs and initiatives:

- Be More Than a Bystander: Break the Silence on Violence Against Women program in partnership with the BC Lions Football Club
- Community Coordination for Women’s Safety Program
- Gender-Based Violence: We All Can Help - Improving the Health Sector Response
- Independent Legal Advice Project for Sexual Assault Survivors
- Indigenous Communities Safety Project
- Interagency Case Assessment Teams (ICATs) for highest risk domestic violence
- Responding to Disclosures of Sexual Violence Training
- Safe Choices LGBT2SQ+ Support and Education Program
- Safety of Immigrant, Refugee, and Non-Status Women Project
- Third Party Reporting (TPR) for anonymous reporting to police for sexual assault
- Western Canada Sexual Assault Initiative

To learn more about EVA BC, visit www.endingviolence.org
Referencing and Reproducing this Resource

The Creating Safer Workplaces and Communities (CSWC) Policy Guidelines and associated Documents and Training Materials were developed by the Ending Violence Association of British Columbia (EVA BC). You are welcome to reproduce any portion of these guidelines for policy development or training and education purposes, provided you acknowledge the source by including the following statement on the material copied:


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Creating Safer Workplaces and Communities Project

Creating Safer Workplaces and Communities (CSWC) is a three-year project (2017–2020), funded by the Government of Canada’s Department for Women and Gender Equality (WAGE), to support women’s full and equal participation in the workplace. Through this project, EVA BC is engaging with Indigenous, immigrant and refugee, and corporate institutions, systems, and leadership in BC to enhance workplace responses to gender-based violence, harassment, and bullying through the development and implementation of policy guidelines and training curricula. This three-year project aims to transform prevention and response systems for women affected by gender-based violence, harassment, and bullying in BC, through partnerships with provincial institutions and systems that are responsible for oversight, leadership, regulations, and policy.

This resource has been created for individuals in leadership positions who have a responsibility to develop and/or implement workplace gender-based violence, harassment, and bullying policy. These guidelines will support leadership to develop comprehensive workplace policy that enhances organizational responses to and prevention of gender-based violence, harassment, and bullying.

CSWC Project Team

The CSWC project is led by three established women leaders in the province of BC: Tracy Porteous, R.C.C. (Executive Director, Ending Violence Association of BC); Chastity Davis, M.A. (Chair, Minister’s Advisory Council on Indigenous Women); and Ninu Kang, M.A. (Director of Communications, MOSAIC). The project leadership was supported by the EVA BC project team, including Kate Rossiter, Ph.D. (Research & Projects Manager); Misha Dhillon, M.A. (Research & Projects Coordinator); Audrey Wong, M.A. (Program Support & Curriculum Coordinator); and Ashley Bentley (Education Consultant).

We would also like to thank Taavita Hemraj, R.N., B.Sc.N., Chris Rahim, M.E.S., and Corinne Stavness, M.Sc. for their work to support the development and implementation of these policy guidelines and accompanying training curricula.
Project Leadership

Tracy Porteous – Executive Director, Ending Violence Association of BC

Tracy Porteous is a Registered Clinical Counsellor who for 38 years has been actively involved in a leadership capacity developing tools, resources, programs, training and collaborative strategies with various public authorities creating and implementing policy to enhance safety for those who are vulnerable to sexual and intimate partner violence. Tracy is a three-time Governor General of Canada medal recipient, the most recent in 2014 where she was honoured with the prestigious GG medal in recognition of the Persons Case for ‘exemplary contributions towards the equality of women in Canada’. Tracy was a member of B.C.’s first Domestic Violence Death Review Panel, has testified in front of federal Parliamentary committees related to violence against women, the Coroner Inquest into the murders of Sunny Park and her family, and currently sits as an advisor to the National Domestic Homicide Prevention Project. In 2012, Tracy was invited to attend the United Nation’s 57th Commission on the Status of Women in New York as an official delegate from Canada and to speak at a global session about the importance of engaging men and boys in the prevention of violence against women. In 2011 Tracy was honoured with a Lifetime Achievement Award by the Child and Youth Representative of BC after launching the groundbreaking Be More Than A Bystander; Break the Silence on Violence Against Women campaign with the BC Lions Football Club. Tracy is currently the Executive Director of the Ending Violence Association of BC, a Provincial Association that supports 300 anti-violence programs and initiatives across BC that specialize in responding to sexual and domestic violence, child abuse and criminal harassment. Tracy is also the Co-Chair of the Ending Violence Association of Canada, the national entity that helped the Canadian Football League with the development of its new national Violence Against Women Policy.

Chastity Davis – Chair, Minister's Advisory Council on Indigenous Women

Chastity Davis is a mixed heritage woman of First Nations and European descent. She is a proud member of the Tla’amin Nation, located in Powell River just off the beautiful Sunshine Coast of BC. Chastity has worked with 125+ First Nation communities in British Columbia. She has also worked with several Indigenous and non-Indigenous companies and organizations. Some of her clients are: BC Hydro, BC Lotto Corporation, TransCanada, New Gold, CTV, The Refinery Leadership Partners, British Columbia Assembly of First Nations, Native Courtworkers (BC and Nova Scotia), Federal Department of Justice, RCMP, Tsilhqo'tin Nation, Treaty 8 Tribal Association, and New Relationship Trust. Chastity has a proven ability to build strong, meaningful, and productive relationships between Indigenous communities, corporations, and government. Chastity is an active volunteer and donates countless hours of her time to building relationships between Indigenous and non-Indigenous peoples in Canada. Chastity holds several volunteer roles: Chair for the Minister’s Advisory Council for Indigenous Women (MACIW) which advises the provincial cabinet ministers on policy, programming, and funding as it relates to the optimal safety, health, and wellness of Indigenous women and children. She is the Co-Founder and Co-Chair of the Professional Aboriginal Women’s Network (PAWN). Chastity is also a past Director for the Minerva Foundation for BC Women. Chastity has also spoken at several local, provincial, national,
and international events about reconciliation between Indigenous and non-Indigenous peoples, communities, and governments. Chastity will complete her Master of Arts in Intercultural and International Communications in 2019. She has a Bachelor of Arts in Professional Communication from Royal Roads University and a Diploma in Marketing Management & Professional Sales from BCIT. Chastity is also a Registered Yoga Teacher and brings this ancient healing practice to Indigenous communities across Canada. Chastity is a recipient of the “Founders Award” from Royal Roads University which is awarded to one student in the graduating year that exemplifies the qualities of leadership, sustainability, and personal development. Chastity has also received two awards for her business, Young Entrepreneur of the Year (2017), Outstanding Business Achievement (BC Aboriginal Business Awards) and Top 40 Under 40 Business Leaders (2017), Business in Vancouver Magazine.

Ninu Kang – Director of Communications and Development, MOSAIC

Ninu Kang completed her BA in Economics at the University of Victoria in 1988. During her time at the University of Victoria, she led the Economic Students Association, founded the first India Friendship Society, and hosted the first weekly Punjabi/Hindi radio program at the university radio station to connect the South Asian community with university life. At university, she became aware of the many issues impacting the South Asian community, particularly the newcomers to Canada. Eventually her interest in of lives of new immigrants in Canada led her to start working with MOSAIC, an immigrant and refugee serving organization. MOSAIC is one of the largest settlement organizations in Canada serving the needs of newcomers all over Greater Vancouver. Services are delivered from 32 client-accessible sites and include settlement assistance; English language training; employment programs; interpretations and translations; counselling services; and community outreach for families and individuals, including children, youth and seniors. MOSAIC also offers services for the LGBTQ and temporary foreign worker communities. Over the years, Ninu has had the opportunity to work on the frontline with client services, in project and program development, on community engagement, as management and executive leader. She been a member of the Executive Leadership Team for the past 15 years where she has had the opportunity to work with newcomers settling in Canada from all parts of the world, while assisting them to make their transition as smooth as possible. As a South Asian woman, Ninu observed many gender inequities in her own extended family and tried to use her experience to learn more from women she worked with to make sure that all of our stories don't get lost in the mainstream discourse of the women's movement. Ninu enrolled in a graduate program at Simon Fraser University, while continuing to run an education treatment program at MOSAIC for South Asian men who had used violence in their intimate relationships. She graduated with a MA in Counselling Psychology in 1996. In her current role as the Director of Communications and Development, Ninu has lead MOSAIC in developing a refugee response plan to address the resettlement of Syrian refugees into our communities. She is also the spokesperson for the media in our efforts to engage the mainstream community in welcoming refugees.
Other Expertise

We also wish to acknowledge the generous contributions of:

**Myrna McCallum** (Founding Lawyer, Miyo Pimatisiwin Legal Services) for sharing her knowledge and drafting reports on trauma-informed investigations; workplace obligations with respect to on-reserve Indigenous organizations; Indigenous values and protocols which may be applied within the context of workplace gender-based violence complaints, investigations or respectful workplace environment policy; and the application of informal resolution options to address gender-based violence, harassment, and bullying in the workplace.

**Lindsay M. Lyster**, Q.C., LL.B. (Moore Edgar Lyster LLP) and **Reakash Walters**, B.C.S. (Summer Articling Student) for supporting the project team and lending their legal expertise. We thank them for their specific contributions regarding principles for responding to people who have caused harm; communications in the wake of a report; and relevant legislation and legal obligations of employers, supervisors, and employees with respect to gender-based violence, harassment, and bullying.

**Kamaljit K. Lehal**, B.A., LL.B. (Lehal Law) for her previous contributions to EVA BC’s work in the area of violence against women and immigration law, and for her input with respect to gender-based violence, harassment, and bullying as they relate to immigrant and refugee communities.

**Laura Track**, LL.B. a human rights lawyer and Director of Education in the Community Legal Assistance Society’s Human Rights Clinic, who holds a law degree from the University of British Columbia, and Masters in International Human Rights Law from Oxford University, for meeting with the project team and sharing her expertise and resources on workplace harassment and human rights.

**Gisela Ruebsaat**, LL.B., for her previous contributions to EVA BC’s work in the area of privacy legislation as it relates to gender-based violence (sexual and intimate partner violence).

**NP Hannah Varto**, M.N., N.P.(F), SANE-A, for sharing information on forensic medical exams in cases of sexual assault and domestic violence, in her role as Nurse Practitioner with the Fraser Health Authority’s Forensic Nursing Service Embrace Clinic.
Statement of Beliefs

Gender-based violence, harassment, and bullying are an epidemic in Canada, and constitute a significant barrier to women’s full and equal participation in many institutions and systems. Our project, Creating Safer Workplaces and Communities, is aimed at dismantling barriers to gender equality. The following beliefs, shared by the project team, have guided our work:

We Believe in Systemic Change

We recognize gender-based violence, harassment, and bullying as embedded in systems of power and control. Our work aims to improve gender-based violence, harassment, and bullying prevention and response in Indigenous, immigrant and refugee, and corporate institutions and systems across BC. We are deeply committed to working towards lasting institutional and systemic change to make systems and institutions across BC safer for people who experience oppression on the basis of gender identity, gender expression, and/or perceived gender.

We Believe in an Intersectional and Decolonizing Approach

We believe that an intersectional and decolonizing framework and analysis is crucial to our efforts to create safer workplaces and communities. We recognize that gender-based violence, harassment, and bullying are embedded in systemic inequality, including racism and colonization. Gender-based violence, bullying, and harassment exist in every culture and community. Through this project, we endeavour to make workplaces safer for people who experience oppression on the basis of gender identity, gender expression, and/or perceived gender, including Indigenous women, newcomer and non-status women, people living with disabilities, sex workers, and people who identify as LGBT2SQ (lesbian, gay, bisexual, trans, Two-Spirit, queer). We believe that the diversity of our leaders’ identities and perspectives serve to strengthen our intersectional and decolonizing approach to gender-based violence and gender equality.

We Believe in Working with Men to Advance Gender Equality

We believe men’s involvement is essential to our work towards ending gender-based violence, harassment, and bullying, and advancing gender equality. Our approach to engaging men who perpetrate gender-based harm is based in understanding how men are socialized and the ways that socialization can lead to violence. In doing so, we accept them as individuals while still holding them accountable for their behaviour, rather than simply demonizing or casting out people who cause harm. The policy guidelines and training curricula developed as part of this project integrate men as part of the solution. In this way, we can ensure that everyone is involved in our work to prevent gender-based violence, harassment, and bullying, and advance gender equality, and that no one is left behind or left out of the conversation, including bystanders.

Creating Safer Workplaces and Communities
1. GENDER-BASED VIOLENCE, HARASSMENT, AND BULLYING AND THE WORKPLACE

Everyone deserves a workplace that is free from gender-based violence, harassment, and bullying (GBVHB). However, it is not uncommon for gender-based violence, harassment, and bullying to occur within the workplace and/or have impacts on the workplace, creating health and safety concerns for workplaces and communities.

There are many ways in which gender-based violence, harassment, or bullying may show up in the workplace. For example, employees may experience gender-based violence, harassment, and bullying that is perpetrated by a co-worker, supervisor, or employer (or by a client or customer). Employees may also experience intimate partner violence, sexual harassment, or sexual assault in their personal lives; these experiences are often traumatic and impact the life and daily activities of the person who was harmed, including their work life. Additionally, gender-based violence, harassment, and bullying experienced outside of the workplace can enter the workplace; for instance, if an employee whose abusive partner’s controlling or violent behaviour extends into the workplace, or if an employee who is perpetrating violence and abuse is using work time and/or resources to perpetrate that violence and abuse. In some cases, a person who is being harmed by their partner may be employed in the same workplace as their abusive partner. In rare circumstances, an employee’s abusive partner may also present a risk to the safety of others within the workplace – including co-workers and employers (Domestic Violence at Work Network, 2016). Gender-based violence can have devastating social, health and economic impacts for the people who are harmed, including social isolation; negative effects on physical, mental and reproductive health; lost work days; and decreased productivity (Government of Canada, 2017).

Gender-based violence, harassment, and bullying do not only affect the individuals directly involved (whether they are the person who has been harmed, the person who has caused harm, or a co-worker or bystander); impacts often extend to their communities, including the workplace community as a whole. Gender-based violence, harassment, and bullying can reduce workplace productivity; compromise safety in the workplace; lead to disengaged staff; negatively affect workplace culture; and make organizations potentially liable for harm caused to workers and/or within the workplace.

Gender-based violence is violence that is “committed against someone based on their gender identity, gender expression or perceived gender” (Status of Women Canada, 2018a). This violence most often targets those who experience gender-based oppression, including women, transgender people, and gender non-conforming or non-binary people. Gender-based violence is an umbrella term that includes gender-based bullying and harassment, sexual harassment, sexual assault, and intimate partner violence (also known as domestic violence, relationship violence, or spousal assault).
A ‘person who has been harmed’ is someone who has experienced gender-based violence, harassment, and/or bullying, whether it happens at work or outside of work. They may identify as a ‘victim’ or ‘survivor’ but many people who have been targeted or who have experienced gender-based violence, harassment, and/or bullying will not identify with these terms. It is best practice to follow the lead of the person who has been harmed, and use the language they themselves have used to describe their experience, when referring to an incident or when communicating about what happened to them. *(In these policy guidelines, we often use the language of ‘victim/survivor.’)*

A ‘person who has caused harm’ is someone who has perpetrated gender-based violence, harassment, and/or bullying against someone else, regardless of whether it happens at work or outside of work. If the person who has caused harm (also known as the ‘perpetrator’ or ‘bully’) is an employee or the target of their harmful behaviour (the ‘victim’ or ‘survivor’) is an employee, the violence, harassment, or bullying is a workplace issue. Even if a person who has perpetrated gender-based violence, harassment, and/or bullying did not intend to cause harm, it is still possible that the impact of their behaviour could have been harmful.

**Prevalence and Nature of Gender-Based Violence, Harassment, and Bullying**

The prevalence of gender-based violence, harassment, and bullying in Canadian workplaces is not entirely clear, due to under-reporting and insufficient data (Employment and Social Development Canada, 2017). However, gender-based violence is prevalent in Canada: 67% of Canadians personally know at least one woman who has experienced physical and/or sexual violence (Canadian Women’s Foundation, 2012). Gender-based violence, harassment, and bullying in the workplace is often a pattern of behaviours; in a recent Canadian survey, most people who reported experiencing harassment, sexual harassment, or violence in the workplace had experienced it more than once (Employment and Social Development Canada, 2017). These forms of gender-based violence and harassment must also be navigated within complex organizational power structures; for survey respondents who had experienced harassment or violence, half reported experiencing harassment or violence from someone in a position with authority over them (Employment and Social Development Canada, 2017).

Compared with men, women experience higher rates of severe and lethal intimate partner violence, more injuries related to intimate partner violence, sexual violence, and criminal harassment (Perreault, 2015; Statistics Canada, 2016). However, when considering gender-based violence, harassment, and bullying, it is important not to consider gender in isolation from other aspects of identity – including race, social class, ethnicity, sexual orientation, age, religion, and ability. Rooted in power and control, gender-based violence, harassment, and bullying is embedded in various systems of social inequality including sexism, racism, colonialism, ableism, classism, heterosexism, and cissexism. The term intersectionality was coined by Kimberlé Crenshaw (1989) following her experience of workplace discrimination on the basis of her identity as a Black woman. Taking an intersectional approach can help to illuminate how people’s experiences are impacted by
the convergence of intersecting identities (e.g., gender, race, ethnicity, sexual orientation) (Status of Women Canada, 2018b). By isolating and focusing on only one aspect of identity (e.g., gender identity), we do not get a full and complete picture of the complexity of people’s experiences, including their experiences of gender-based violence, harassment, and bullying.

People who experience social marginalization and discrimination are at greater risk of experiencing gender-based violence, harassment, and bullying compared with people who do not experience social marginalization and discrimination. For example:

- Indigenous women are 3 times more likely to be sexually assaulted than non-Indigenous women (Conroy & Cotter, 2017)
- Immigrant and refugee women may be more vulnerable to gender-based violence and face barriers in seeking support due to social isolation, lack of English language skills, underemployment, or uncertain legal status (Brownridge & Halli, 2002; Menjivar & Salcido, 2002)
- People of colour are more likely to experience workplace harassment than other groups (Employment and Social Development Canada, 2017)
- Lesbian, gay, and bisexual people experience sexual assault at a rate 6 times higher than heterosexual people (Conroy & Cotter, 2017)
- 20% of trans people experience physical or sexual assault (Bauer, Pyne, Francino & Hammond, 2013)
- Women with disabilities are more than twice as likely as women without disabilities to have been physically or sexually abused by a current or former partner (Cotter, 2018)
- People with disabilities (mental or physical) are twice as likely to be sexually assaulted than people without disabilities (Cotter, 2018)
- People with disabilities are more likely to experience workplace harassment than other groups (Employment and Social Development Canada, 2017)

Marginalization and oppression can also impact the experience and impacts of gender-based violence, harassment, and bullying. For example, gender-based violence, harassment, and bullying experienced by immigrants and refugees may be shaped by their immigration status and background. Immigration status can heighten women’s vulnerability to intimate partner violence and also impacts the nature of that violence (Hass, Ammar & Oroloff, 2006 as cited in Tabibi, Ahmad, Baker & Lalonde, 2018). Marginalized groups also often experience multiple barriers to disclosing and/or reporting what happened to them, and accessing relevant support services.

People who perpetrate gender-based violence, harassment, and bullying may target individuals who experience intersecting forms of oppression, recognizing that having less power, privilege, and/or access to resources may decrease the likelihood that the person harmed will disclose and/or report the violent or abusive behaviour. People who experience intersecting forms of oppression also face barriers to accessing support,
including culturally appropriate practical and emotional support, support from other people within the workplace, and financial or legal support (Ending Violence Association of BC, 2016). In creating safer workplaces and communities, it is important to approach issues of gender-based violence, harassment, and bullying from an intersectional lens, recognizing how multiple intersecting forms of oppression shape who is most affected by gender-based violence, harassment, and bullying and how people experience marginalization and oppression in society may be differentially impacted, emotionally, physically, financially, and spiritually.

It is important to remember that everyone has intersecting identities; however, only some groups experience oppression on the basis of their identities. Individuals and groups who do not experience social marginalization as a result of their identities often experience social advantages (or ‘privilege’) resulting in greater access to power and resources; whereas individuals and groups who experience social marginalization as a result of their intersecting identities often experience social disadvantages (or ‘oppression’) resulting in less access to power and resources.

**Continuum of Gender-Based Violence, Harassment, and Bullying**

Gender-based violence, harassment, and bullying exist on a continuum, from discriminatory attitudes and beliefs to lethal violence. Discriminatory attitudes and beliefs are all too common and underlie a variety of harmful behaviours, including discrimination, harassment, and bullying. Some people may minimize the impacts of these behaviours; however, not only are they harmful in and of themselves, but tolerance and acceptance of these behaviours can create a culture where violent behaviours are normalized.
Discriminatory attitudes and beliefs (e.g., racism, sexism, heterosexism, ableism, and body-shaming) create a culture where gender-based harassment and bullying (e.g., sexual harassment) are tolerated, which in turn provides a context within which other forms of gender-based violence (e.g., sexual assault, intimate partner violence) are normalized and minimized. For example, sexist attitudes that support ideas about women’s bodies as ‘commodities’ contribute to a culture where sexual harassment is seen as acceptable; where sexual harassment of women is accepted, sexual contact without consent (i.e., sexual assault) is not taken as seriously. In this way, discriminatory attitudes and beliefs work to support gender-based bullying, harassment, and violence.

It is not uncommon to respond to only the most visible forms of gender-based violence; for example, behaviours prohibited by human rights legislation or criminal law. However, there are many behaviours that are neither violations of human rights nor criminal that may nevertheless cause harm – both directly and indirectly through their contributions to a culture where more severe gender-based violence is tolerated. It is important to remember that the severity of an incident does not determine the severity of its impact; everyone will have a different response to gender-based violence, harassment, and bullying depending on a variety of factors, including previous experiences of harm and/or oppression and the type and degree of support they receive.

1.1. Harassment and Bullying in the Workplace

| Harassment and bullying | refer to inappropriate behaviours or comments that cause humiliation and intimidation. Within WorkSafeBC’s Occupational Health and Safety policies, ‘harassment and bullying’ are used as a single term (WorkSafeBC, 2013a). |

In Canadian workplaces, 60% of employees report having experienced workplace harassment, with 40% having experienced harassment within the last two years (Employment and Social Development Canada, 2017). Examples of workplace harassment and bullying include:

- Criticizing an employee, especially when it unjustified
- Repeated and unwarranted checking of an employee’s work
- Humiliating an employee, especially in front of others
- Denying employment and development opportunities
- Deliberately sabotaging an employee’s work
- Excluding an employee from work-related activities and/or events
- Gossipping and/or spreading rumours about an employee
- Putting down an employee, or calling them derogatory names

(Public Services Health & Safety Association, 2010)
Experiences of harassment and bullying are all too common in workplaces, and these behaviours are often gender-based, targeting a person based on their gender identity, gender expression, or perceived gender. Gender-based harassment and bullying is rooted in sexist, heterosexist, and cissexist attitudes and beliefs, and is often directed at women, transgender, and gender non-binary individuals, or LGBT2SQ+ individuals.

Gender-based harassment and bullying also often targets people experiencing other and intersecting forms of oppression (for example, on the basis of age, race, ethnicity, religion, sexual orientation, ability, education level, and class). People of colour and people with disabilities are more likely to experience workplace harassment than other groups (Employment and Social Development Canada, 2017). While there is limited research in Canada on the subject of workplace harassment against lesbian, bisexual, and trans women and gender diverse and Two Spirit people (Bucik, 2016), international data indicate that employees who are lesbian, gay, bisexual, transgender, and queer (LGBTQ) frequently face workplace violence and/or harassment: 47% of lesbian, gay, and bisexual employees have experienced workplace violence and/or harassment based on their sexual orientation, and 80-90% of transgender and gender variant employees have experienced workplace violence and/or harassment based on their gender identity or expression (Catalyst, 2015 as cited in Bucik, 2016; James et al., 2016). Examples of gender-based harassment and bullying include:

- Making gender-related comments about a person’s body or mannerisms
- Making comments about a person for not conforming with gender-role stereotypes
- Requiring an employee to wear clothes that objectify or sexualize them
- Requiring an employee to wear clothes that do not align with their gender expression
- Ostracizing, belittling or otherwise treating women in a male-dominated workplace worse than male co-workers

(sources include Ontario Human Rights Commission, 2011)

Many forms of gender-based harassment and bullying, including micro-aggressions, are often less visible, perceived as less harmful, and more easily dismissed when someone who has been harmed comes forward and discloses their experiences. While many workplaces have policy and protocol in place for addressing harassment and bullying, within BC’s diverse workforce, it is important to consider who is being harassed and/or bullied and how they are being harassed and/or bullied. Stakeholders in Canada – including labour and employer organizations, federal government departments, academics, and advocacy groups – stress the importance of approaching the issue of harassment “from the perspective of gender-based violence and other forms of discrimination” (Employment and Social Development Canada, 2017, p. 6).
1.2. Sexual Harassment in the Workplace

Sexual harassment involves someone repeatedly saying or doing something related to gender or sex that is insulting or offensive; it includes unwanted touching, making offensive jokes, sexual requests or suggestions, commenting on someone’s body, and showing sexual pictures or images (Government of British Columbia, n.d.). Sexual harassment is a form of sexual violence and discrimination on the basis of sex, and is a human rights violation.

Sexual harassment is a common experience in Canadian workplaces that overwhelmingly impacts women; in a recent Canadian survey, 94% of survey respondents who had been sexually harassed at work were women (Employment and Social Development Canada, 2017) and over half (52%) of Canadian women have experienced workplace sexual harassment (Angus Reid, 2018). Examples of workplace sexual harassment include:

- Demanding hugs or other physical contact of a co-worker or employee
- Unwelcome and unnecessary physical contact
- Inappropriately staring at an employee
- Telling jokes of a sexual nature
- Making sexually suggestive comments
- Displaying sexually explicit material
- Demanding sexual activity as an explicit or implicit condition of employment

(sources include Ontario Human Rights Commission, 2011)

Although workplace sexual harassment is prevalent, employers are often unaware of the extent of the problem; a full 94% of Canadian C-Suite Executives (e.g., CEOs, CFOs) did not see sexual harassment as a problem at their company (The Gandalf Group, 2017). Research on sexual harassment in the workplace shows that gender matters: compared with non-sexual harassment or violence, people who had experienced sexual harassment in the workplace were generally employed in workplaces with more men in positions of power (Employment and Social Development Canada, 2017).

Recent research in Canada (Angus Reid, 2018) shows that sexual harassment in the workplace impacts the way that women navigate their work environments. 76% of women avoid people who have previously made them feel uncomfortable (Angus Reid, 2018). Nine in 10 women (89%) report using strategies to avoid unwanted sexual advances in the workplace; these strategies include:

- Avoiding people with a reputation for inappropriate behaviour (65% of women)
- Warning others about people who have behaved inappropriately (46% of women)
- Avoiding certain situations with colleagues and coworkers, including avoiding social outings (22% of women) or avoiding drinking alcohol (37% of women)
The majority of women (64%) either resent having to use these strategies or wish they did not have to use them (Angus Reid, 2018).

1.3. Sexual Assault and the Workplace

**Sexual assault** is any form of sexual activity that is imposed or forced upon another person without their consent. This includes imposed or forced mouth to mouth contact, imposed or forced sexual touching, imposed or forced mouth to genital contact, and imposed or forced penetration of the mouth, vagina, or anus. Sexual assault is a form of sexual violence and a criminal offence. It is also a form of sexual harassment and a human rights violation.

**Consent** refers to the voluntary agreement to engage in a sexual activity, and can be communicated through words or conduct. Consent cannot be obtained through threats, control, or intimidation; if a position of trust, power, or authority is abused; if the person is incapacitated (drugs/alcohol, asleep, unconscious); when their body language says no; or when they are incapable of giving consent (e.g., due to a mental health issue or physical disability).

(Criminal Code of Canada, 1985)

Sexual assault impacts employees across Canada, whether the assault occurs within the workplace or outside the workplace. Over the last decade in Canada, the rate of all violent crime has decreased with the exception of sexual assault (Conroy & Cotter, 2017). In 2014, an estimated 633,000 women and young women were sexually assaulted in Canada (Perreault, 2015).

Sexual assault also happens in the workplace. Almost a third (28%) of Canadian women have experienced non-consensual sexual touching in the workplace (Angus Reid, 2018) and, in a survey of people in Canada, 3% report having experienced some form of sexual violence within the workplace (Employment and Social Development Canada, 2017). Research suggests that workplaces that sexual assault is more likely in workplaces that tolerate sexual harassment; half of women in Canada who have experienced workplace sexual harassment in the workplace have also experienced sexual assault in the workplace (Angus Reid, 2018).

**Sexual violence** refers to a continuum of non-consensual sexual contact and behaviour. It includes any sexual act attempted or obtained using violence or coercion, as well as acts directed against a person's sexuality.

(WORLD Health Organization, 2002, p. 149)

Sexual harassment and sexual assault are both forms of sexual violence.
The term ‘sexual misconduct’ is also sometimes used as an umbrella term for various forms of sexual violence; however, the language of ‘sexual misconduct’ can serve to minimize the severity of sexual violence by equating it to general employee misconduct.

Research has found that sexual violence is more likely to occur in workplaces where there is a lack of institutional support for people who have been harmed, inadequate sanctions against people who have perpetrated sexual violence, and/or weak policy related to sexual violence and gender equity (Employment and Social Development Canada, 2017).

Whether the sexual assault took place within or outside of the workplace, a person who has been harmed in this way may find their work impacted in a number of ways. One in four victims/survivors of sexual assault in Canada report difficulty carrying out everyday activities after being sexual assaulted (Conroy & Cotter, 2017). After a sexual assault, victims/survivors may experience emotional shock, disbelief, embarrassment, shame, guilt, powerlessness, disorientation, denial, fear, confusion, and anger (Ending Violence Association of BC, 2017), all of which can significantly impact their work life. They may be distracted from their work, be concerned about sexually transmitted infections (STI) or an unwanted pregnancy, and/or miss work due to appointments (e.g., with a counsellor, to make a police report, medical care). They may have difficulty maintaining employment, avoid going to work, or change their place of employment to avoid being reminded of the assault (Ending Violence Association of BC, 2017). If the sexual violence occurred within the workplace, there may be additional impacts including the person harmed not feeling safe at work, being concerned about their job security, and/or feeling conflicted about reporting what happened.

Sexual violence also has financial costs for organizations. Canadian employers lose an estimated $18.4 million each year due to impacts of sexual assault and other sexual offences, including administration costs, tardiness and distraction costs, and lost additional output (Hoddenbagh, Zhang & McDonald, 2014).

1.4. Intimate Partner Violence and the Workplace

Intimate partner violence (also called ‘domestic violence’, ‘relationship violence’, or ‘dating violence’) can involve many different types of harmful and abusive behaviour. This harm can take many forms, including physical violence, sexual violence, psychological abuse, neglect, or harassment. Intimate partner violence can take place regardless of the partners’ genders or relationship status (e.g., married, common-law partnership, or dating relationship). (Status of Women Canada, n.d.)

Women in Canada are more likely to be physically assaulted by an intimate partner than by anyone else (Burczycka, Conroy & Savage, 2018). Intimate partner violence is often seen as taking place in the home, and presumed to not be a workplace matter. However, when people come to work, intimate partner violence does not stay at home. Intimate
partner violence has a “significant impact on workers and workplaces and is therefore a significant form of ‘workplace violence’” (Wathen, MacGregor & MacQuarrie, 2015, p. 69).

Intimate partner violence is about exerting power and control (Domestic Assault Intervention Programs, 2017), with controlling behaviour often impacting the work life of the person harmed. The workplace is important in that it is often the one place where a violent (current or former) partner knows they can locate the victim/survivor (as cited in Domestic Violence at Work Network, 2016). This creates opportunities for abusive and/or violent behaviours within or related to the workplace, with implications for the person who has been harmed, their co-workers, and the organization itself. In Canada, more than 50% of intimate partner violence victims/survivors shared that the violence extended to or near their workplace (Chief Public Health Officer, 2016).

A recent Canadian survey, the first national study on intimate partner violence and the workplace, confirmed that intimate partner violence does not remain at home: of survey respondents from across Canada (94% of whom were employed) who had experienced intimate partner violence, over a third (38%) said the violence impacted their ability to get to work and over half (53.5%) said the violence continued at work, including through abusive phone calls and text messages, stalking or harassment, and/or the violent partner coming to the workplace (Wathen, MacGregor, MacQuarrie with the Canadian Labour Congress, 2014). A violent partner may impact a victim/survivor’s ability to get to work by limiting their transportation (e.g., taking away their car keys) or impeding their childcare plans (UN Women, 2011). A victim/survivor may also miss work if the violence resulted in bruising and other visible injuries, due to shame, embarrassment, and/or not wanting their co-workers to find out (UN Women, 2011).

The vast majority (82%) of victims/survivors of intimate partner violence reported that it negatively affected their work performance, often as a result of feeling distracted, tired, or unwell (Wathen et al., 2014). A victim/survivor may experience: changes in work attendance (e.g., often missing work, coming to work earlier than usual); workplace interruptions (e.g., texts, emails, or phone calls from an abusive partner); unusual levels of stress; changes in concentration or job performance (e.g., difficulty concentrating, decreased productivity); self-isolation from co-workers; fear of working alone; concern about others finding out; difficulties related to lying to co-workers to cover the abuse; concerns about job security; and/or reluctance to develop their career or pursue new challenges (Cambridge Public Health Department, 2013; Government of Manitoba, n.d.; Wathen et al., 2014).

Women who have experienced intimate partner violence are more likely to report lower incomes and greater economic hardship, more casual and part-time employment, disrupted work histories and frequent job changes, and having been fired or needing to leave a job due to intimate partner violence (Preventing Violence Across the Lifespan Research Network, 2014; Wathen et al., 2014). Employment – and the financial security and independence that comes with employment stability – is critical for women to leave violent relationships and support their children to live without violence (Alsaker et al., 2016). Employment also combats isolation, which may contribute to a victim/survivor of
intimate partner violence feeling supported to leave their abusive partner (as cited in Wathen et al., 2014).

Employment instability is a risk factor for escalating intimate partner violence; however, many people who cause harm to their intimate partners are employed. They may be “our co-workers, our supervisors, and those working under our supervision” (Scott et al., 2017, p. 4).

Intimate partner violence also often shows up in the workplace of the person who has caused harm. A recent Canadian study (Scott et al., 2017, p. 4) found that abusive and controlling behaviour may directly enter the workplace: 34% of perpetrators of intimate partner violence had contacted their (current or former) partner during work hours in order to enact emotional abuse and/or monitor their partner through messages (e.g., text, email), at their partner’s workplace and/or at their partner’s home (Scott et al., 2017). Additionally, 45% of perpetrators reported that issues related to the intimate partner violence often negatively affected their job performance and 9% reported causing or almost causing a workplace accident because they were distracted or preoccupied (Scott et al., 2017).

The impacts of intimate partner violence also extend beyond the relationship between the person who is causing harm and the person who is being harmed; co-workers often know or suspect that there is violence or abuse taking place. Almost 40% of workers in Canada believed that they have a co-worker who is or was either a victim/survivor or perpetrator of intimate partner violence (MacGregor, Wathen, MacQuarrie, 2016). Almost half (43%) of victims/survivors said they had discussed intimate partner violence with someone at work (Wathen et al., 2014). For perpetrators of intimate partner violence, 21% said someone at work – most often a co-worker – knew about their behaviours (Scott et al., 2017). Where someone at work was aware that the perpetrator was abusive or monitoring their partner, in 19% of these cases the co-worker also ‘covered’ for the perpetrator while they enacted that abuse or monitoring (Scott et al., 2017).

More than one third (37%) of victims/survivors reported that their co-workers were impacted by the intimate partner violence, predominantly due to stress or concern (Wathen et al., 2014). For example, co-workers may:

- Be concerned about the person who has been harmed;
- Be affected by not knowing how to address the situation;
- Need to take on extra work to support a victim/survivor with their workload;
- Experience changes in their work relationships;
- Show decreased productivity;
- Become desensitized to the abuse after seeing patterns of abuse repeated;
- Fear for their own safety; and/or
• Need to make accommodations to support a victim/survivor’s physical, emotional, and/or mental wellbeing

(BC Women’s Hospital + Health Centre, Ending Violence Association of BC & BC Ministry of Health, 2018; Government of Manitoba, n.d.)

The dynamics of intimate partner violence and abuse can also be replicated in workplace power dynamics and relationships if, for example, an employer or supervisor were to:

• Shout at an employee
• Intimidate an employee
• Threaten to terminate an employee
• Blame the person who has been harmed
• Show support for the person who has caused harm

(Duthie, 2012)

Intimate partner violence also significantly impacts organizations’ bottom lines: in a single year, Canadian employers lose an estimated $77.9 million due to the direct and indirect impacts of intimate partner violence (Zhang, Hoddenbagh, McDonald & Scrim, 2012).

1.5. The Benefits of Addressing Gender-Based Violence, Harassment, and Bullying in the Workplace

The impacts of gender-based violence, harassment, and bullying on the workplace are significant, and the costs are borne not only by the people who are directly or indirectly harmed in this way, but also by institutions and systems across British Columbia. With 60% of women in Canada participating in the workforce (Statistics Canada, 2019), and women comprising 47% of the Canadian workforce (Statistics Canada, 2018), it is critical that employers understand how gender-based violence, harassment, and bullying might show up in the workplace and what to do when it does. Improving workplace gender-based violence, harassment, and bullying prevention and response is crucial to supporting the full and equal workforce participation of women and people who experience oppression on the basis of gender identity, gender expression, or perceived gender. By developing a comprehensive workplace gender-based violence, harassment, and bullying prevention and response strategy, employers fulfill their legal obligations to ensure the safety of their employees and workplaces. Given the serious potential financial and legal implications of failing to address gender-based violence, harassment, and bullying in the workplace, developing a prevention and response strategy will also help to protect organizations’ bottom lines.

There are many benefits to effectively addressing these issues in the workplace. Addressing gender-based violence, harassment, and bullying in the workplace can improve employees’ psychological health and, in doing so, reduce absenteeism, reduce employee turnover and associated training costs, enhance employee health and
wellbeing, reduce impacts of violence on employees’ work lives, and increase productivity (Wang & Karpinski, 2016). The development and implementation of policy and training to address gender-based violence, harassment, and bullying is crucial not only to supporting people who have been harmed, but also to addressing the behaviour of people who have caused harm and creating safer workplaces and communities.

Recent research on harassment, sexual harassment, violence, and sexual violence in Canadian workplaces (Employment and Social Development Canada, 2017) revealed that survey respondents and stakeholders agreed that employers should be primarily responsible for:

- Discouraging inappropriate workplace behaviour, before it escalates to violence or harassment
- Supporting the workplace safety and security of people who have been harmed
- Taking corrective action where harassment or violence has occurred, including providing resources for employees who have caused harm
- Ensuring there is clear written policy guiding organizations’ response to disclosures or reports of workplace violence and harassment, including explicit protections from retaliatory action against those who report an incident

Research also shows broad support for progressive responses to gender-based violence, harassment, and bullying, and support for people who have been harmed. Three-quarters of respondents who took part in a pan-Canadian survey on domestic violence and the workplace believed that “workplace supports such as paid leave and safety policies for [domestic violence] can reduce the impact of [domestic violence] on the work lives of workers” (Wathen et al., 2014, p. 9).

Despite the prevalence of gender-based violence, harassment, and bullying in the workplace, its impacts on the workplace, legislation requiring employers to address these issues, and broad support for workplaces to take action to prevent and respond to gender-based violence, harassment, and bullying, employers are often ill-equipped to take action. Developing and implementing workplace policy is an important first step to preventing and responding to gender-based violence, harassment, and bullying, and mitigate its impacts in the workplace. This resource was created to support the development and implementation of policy and training to prevent and respond to gender-based violence, bullying, and harassment, particularly for Indigenous leadership, organizations, and communities; immigrant and refugee serving organizations; and corporate systems and institutions.

In Canada, there is not a long history of policy or training designed to prevent and respond to gender-based violence, harassment, and bullying. These issues have traditionally been considered ‘women’s issues’; however, everyone has a role to play in addressing gender-based violence, harassment, and bullying. While women have historically championed efforts to address sexual harassment, sexual assault, and intimate partner violence, there have been notable shifts in recent years; researchers and advocates are emphasizing the
importance of men speaking up about gender-based violence and looking at how masculinities support a world where this violence continues.

In recent years, high-profile cases and heightened public awareness have led to increased dialogue about how gender-based violence, harassment, and bullying show up in the workplace. As public awareness and dialogue continues to grow, workplaces across Canada are looking to develop strategies to prevent and respond to gender-based violence, harassment, and bullying, and support workers who have been harmed.

Through a recent partnership with the Ending Violence Association of Canada, the Canadian Football League (CFL) developed its first Violence Against Women policy and implemented training for all CFL staff, players, and coaches. The Make It Our Business initiative has also developed training and resources to address domestic violence in the workplace (Centre for Research & Education on Violence Against Women & Children, 2019). In British Columbia, the Sexual Violence and Misconduct Policy Act (2016) required all public post-secondary institutions to develop and implement a stand-alone sexual violence and misconduct policy. Post-secondary institutions, in implementing their new policy, have also ensured that staff and faculty receive training to better respond to disclosures of sexual violence. WorkSafeBC (2012a) has also developed several resources on domestic violence in the workplace to increase safety for workers and workplaces, including a handbook for employers.

Everyone in the workplace has a role to play in preventing and responding to gender-based violence, harassment, and bullying. Employers in British Columbia have an ethical responsibility to address these issues (Glass et al., 2016), as well as a legal obligation “to protect workers and other persons present at workplaces from work-related risks to their health, safety, and well-being” (WorkSafeBC, n.d.). Such risks include workplace violence, which includes domestic violence. By developing and implementing policy and training to prevent and respond to workplace gender-based violence, harassment, and bullying, bystanders may be more likely to speak up, people who have been harmed may feel safer and more supported to disclose, and the behaviour of people who have caused harm may be addressed, thereby creating safer workplaces and communities.
2. WORKPLACE POLICY GUIDELINES FOR RESPONSE AND PREVENTION

Workplace policy guidelines for gender-based violence, harassment, and bullying response and prevention must include a policy statement, outline the scope of the policy, key definitions, and the roles and responsibilities of people in the workplace. The policy should be accompanied by a set of procedures that articulates options for disclosing and reporting gender-based violence, harassment, and bullying, and investigating incidents that are reported to the organization. It should also address communications following an incident or report; articulate strategies for mitigating risk from people who have caused (or who may cause) harm, enhancing safety for people who have been harmed, and responding to critical incidents; and address privacy and confidentiality considerations. Workplace gender-based violence, harassment, and bullying policy should specify when and how the policy will be reviewed and by whom. (See Appendix C for a workplace policy template for gender-based violence, harassment, and bullying.)

2.1. Policy Statement

It is important that every workplace develop policy to address workplace gender-based violence, harassment, and bullying. This policy should begin with a statement of the policy’s purpose. A policy statement conveys why the policy is needed (Make It Our Business, 2010a) and outlines the organization’s position on the issue of gender-based violence, harassment, and bullying and the workplace (Cambridge Public Health Department, 2013). The policy statement also communicates why the organization believes this issue is important, and the organization’s commitment to addressing gender-based violence, harassment, and bullying.

Some workplaces may choose to have a stand-alone policy, which can be an effective means of conveying that the workplace is committed to addressing these issues. Some workplaces will have a Code of Conduct, Respectful Workplace policy, or workplace discrimination and/or harassment policy already in place, but it is important to recognize that gender-based harassment policy already in place, but it is important to recognize that gender-based violence, harassment, and bullying have unique impacts and necessitate a unique approach. If gender-based violence, harassment, and bullying are to be integrated into existing policy, this should be done in a manner that emphasizes its seriousness and impacts.

A victim/survivor-centered policy starts from a place of believing the person who has been harmed and includes a commitment to providing support and workplace accommodations to the person who has been harmed, even in the absence of a formal report and/or investigation process (Cambridge Public Health Department, 2013). Workplace policy must also ensure that all persons, including the person who is reported to have caused harm, are treated fairly.
Even in the absence of legislation that entitles people who have been harmed by gender-based violence to paid leave from work, workplaces should consider including provisions for paid leave in their policy. Additionally, where legislation for paid leave applies only to cases of intimate partner violence, workplaces should consider extending paid leave entitlements to people who have been harmed as a result of sexual violence, and gender-based harassment and bullying. Alternatively, employers might consider explicitly articulating that people harmed by gender-based violence, harassment, and bullying are entitled to take sick leave to attend to physical, emotional, and/or safety needs related to these experiences.

Gender-based violence, harassment, and bullying policy should align with other organizational policy and should be reviewed on a regular basis, along with any protocols or procedures developed to accompany and support the policy.

### 2.2. Policy Scope

Workplace gender-based violence policy needs to outline the scope of the policy’s application to ensure that everyone working in or with the organization is aware of when, how, where, and to whom policy applies. The contexts in which the policy applies may include physical locations where the work of the organization/company is performed (e.g., job sites, offices), events organized by the organization/company or involving organization/company staff (e.g., meetings, conferences, staff socials), or where organization staff are engaged in domestic or international business travel. It may also include situations where organization/company equipment (e.g., computers, phones) and/or accounts (e.g., social media, videoconferencing) are used to perpetrate gender-based violence, harassment, and/or bullying.

The full range of behaviours addressed by the policy should be clearly articulated and defined, and should not be limited to behaviours that fall under criminal or human rights legislation (e.g., BC Human Rights Code, Canadian Human Rights Act, Criminal Code of Canada).

### 2.3. Defining Gender-Based Violence, Harassment, and Bullying

Workplace policy addressing gender-based violence, harassment, and bullying should clearly define key terminology relevant to the issue and appearing in the policy, including terminology related to:

- types of gender-based violence (e.g., sexual violence, intimate partner violence, sexual harassment, bullying);
- intersecting forms of social inequality and oppression that impact who is most at risk of experiencing gender-based violence (e.g., racism, sexism, heterosexism);
- courses of action for someone who has experienced gender-based violence (e.g., disclosing, reporting, accommodations, investigation);
• individuals involved in incidents of gender-based violence (e.g., victim/survivor, person who caused harm, person who made a disclosure/report, person about whom a disclosure/report has been made)

• and a framework for appropriate and effective approaches (e.g., trauma-informed, victim/survivor-centered, culturally safe).

WHY NOT ‘ALLEGED’?

Except where legally required, we recommend that workplaces avoid use of the word ‘alleged’ to refer to an incident or person who has caused harm that has been disclosed or reported – for example, “...the alleged sexual harassment” or “...he was allegedly abusive”.

The word ‘alleged’ conveys doubt regarding the gender-based violence that has been disclosed or reported. To avoid this connotation, you can instead use the language of disclosure and reporting – for example, “...the reported sexual harassment” or “...she disclosed that he was abusive”. Legally, care must be taken to ensure that a person who is reported to have caused harm cannot plausibly argue that their conduct and potential culpability have been prejudged.

Definitions can be found in the Glossary (see Appendix A).

2.4. Roles, Responsibilities, and Legal Obligations

Workplace policy on gender-based violence, harassment, and bullying (GBVHB) should outline the roles and responsibilities of employers, employees, and other people connected to the organization, and should highlight relevant federal and provincial laws, policy, and regulations (e.g., criminal law, human rights law, labour law, employment law, GBVHB policy, occupational health and safety regulations), and the intersection of GBVHB and other policy within the organization.

Workplace GBVHB policy should outline the roles and responsibilities of employers, employees, and other people connected to or working with the organization/company. Individuals in leadership and/or decision-making roles within an organization will generally have a greater level of responsibility for preventing and responding to incidents of gender-based violence, harassment, and bullying in the workplace, and should be held to a higher standard with respect to their own conduct and modeling respect and inclusion in the workplace. This requires people in leadership positions to reflect on their own power and privilege and consider how they can use these in positive ways to foster a more respectful and inclusive workplace culture. Roles and responsibilities with respect to responding to incidents of gender-based violence, harassment, and bullying in the workplace may be determined, in part, by legislation, policy, and regulations relevant to the particular workplace context (e.g., federal vs. provincial, union vs. non-union).
The information included in this document is for informational purposes only and is not legal advice. If you are in need of legal advice, please contact a lawyer.

**Legislation and Policy Relevant to GBVHB and the Workplace**

Employers and employees should all be familiar with legislation and policy relevant to gender-based violence and harassment within their particular workplace contexts, as well as their rights and responsibilities (see Appendix B). Individuals in organizations who have a responsibility to develop and implement gender-based violence policy and procedures, in conjunction with other gender-based violence response and prevention strategies, should ensure alignment with relevant federal and provincial laws and regulations. The most relevant laws and regulations within the BC context are highlighted in Table 1, though they do not all apply to every organization and/or workforce.
Table 1. Legislation and Regulations Relevant to BC Workplaces

<table>
<thead>
<tr>
<th>Legislation, Regulation, or Policy Relevant to Gender-Based Violence, Bullying, and Harassment and the Workplace</th>
<th>Applies to Provincially Regulated Employment and Services</th>
<th>Applies to Federally Regulated Employment and Services</th>
<th>Applies to Unionized Workers</th>
<th>Applies to Non-Unionized Workers</th>
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</thead>
<tbody>
<tr>
<td><strong>Criminal Law</strong></td>
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<tr>
<td>BC Crime Victim Assistance Act</td>
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<td>X</td>
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<tr>
<td>Criminal Code of Canada</td>
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<tr>
<td><strong>Human Rights Law</strong></td>
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<tr>
<td>BC Human Rights Code</td>
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<td>Canadian Human Rights Act</td>
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<tr>
<td>Employment Equity Act</td>
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<td><strong>Labour Law</strong></td>
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<tr>
<td>BC Labour Relations Code</td>
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<tr>
<td>Canada Labour Code Part 1</td>
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<td><strong>Employment Law</strong></td>
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<td>Employment Standards Act</td>
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<td>Canada Labour Code Part 3</td>
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<tr>
<td>Occupational Health and Safety</td>
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<tr>
<td>BC Workers Compensation Act</td>
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<tr>
<td>Occupational Health and Safety Regulation of BC</td>
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<tr>
<td>Canada Labour Code Part 2</td>
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<tr>
<td>Canada Occupational Health and Safety Regulations</td>
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<thead>
<tr>
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<tr>
<td>Personal Information Protection Act</td>
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<tr>
<td>Freedom of Information and Protection of Privacy Act</td>
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<td>BC Privacy Act</td>
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<tr>
<td>Federal Privacy Act</td>
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<tr>
<td>Personal Information Protection and Electronic Documents Act</td>
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</tbody>
</table>

Creating Safer Workplaces and Communities  

20
Employers, workers, and supervisors must all take reasonable steps to prevent where possible or otherwise minimize workplace bullying and harassment (WorkSafeBC, 2013b); the general duties for each group differ slightly depending on their level of responsibility, as per policies for the Workers Compensation Act (see Table 2).

Table 2. Workplace Bullying and Harassment Duties

<table>
<thead>
<tr>
<th>Duties</th>
<th>Worker</th>
<th>Supervisor</th>
<th>Employer</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Do not engage</strong> in bullying and harassment of others</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td><strong>Report</strong> any bullying and harassing behaviours you observe or experience in the workplace*</td>
<td>X</td>
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<tr>
<td><strong>Apply and comply</strong> with the employer’s policies and procedures on bullying and harassment</td>
<td>X</td>
<td>X</td>
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<tr>
<td><strong>Develop a policy statement</strong> on workplace bullying and harassment</td>
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<td>X</td>
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<tr>
<td><strong>Take steps to prevent or minimize</strong> workplace bullying and harassment</td>
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<td>X</td>
</tr>
<tr>
<td><strong>Develop and implement procedures for reporting</strong> and investigating incidents or complaints, including when the employer, owner or supervisor is the bully or harasser</td>
<td></td>
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<td>X</td>
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<tr>
<td><strong>Inform workers</strong> of the workplace bullying and harassment policy statement and prevention measures</td>
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<td>X</td>
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<tr>
<td><strong>Train supervisors and workers</strong> on recognizing and responding to workplace bullying and harassment, including procedures for reporting and investigating incidents or complaints</td>
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<td></td>
<td>X</td>
</tr>
<tr>
<td><strong>Annually review</strong> policy statements, prevention initiatives, and procedures for reporting and investigating incidents or complaints of workplace bullying and harassment</td>
<td></td>
<td></td>
<td>X</td>
</tr>
</tbody>
</table>

(WorkSafeBC, 2013c)

*In reference to policy that requires workers to report bullying and harassment that is “observed or experienced in the workplace”, WorkSafeBC has clarified that this “would
not encompass situations where the worker was informed of conduct that he or she had not personally observed or experienced” (Correspondence from Lori Guiton, Director of Policy, Regulation, and Research Division, 2017). Based on this communication, it is our understanding that, if someone discloses to a co-worker they have experienced bullying or harassment, Occupational Health and Safety Guidelines do not require that co-worker to report the bullying or harassment that was disclosed.

2.5. Privacy Considerations

There are various pieces of legislation that govern organizations’ privacy obligations on both the federal and provincial levels (see Appendix B).

2.5.1. Limits to Confidentiality

Privacy rights are not absolute. While a workplace can support victims/survivors disclosing without requiring a formal report, there are legal limits to confidentiality that should be clearly articulated within workplace policy and procedures. Confidentiality and its limitations should also be reviewed with the person who has made a report and with the person(s) about whom a report has been made, and then confirmed in writing.

Organizations may be required to take immediate action, such as contacting the police or child welfare authorities, in relation to a disclosure of gender-based violence, in the following circumstances:

- There are reasonable grounds to believe that others in the work community may be at significant risk of harm based on the information provided.
- An individual is at imminent risk of severe or life threatening self-harm.
- An individual is at imminent risk of harming another person.
- There is a duty to report to child welfare under ss. 13 and 14 of the Child, Family and Community Service Act where a child (someone under 19 years) is in need of protection.
- There is a requirement to comply with a court order for release of information.

Workplace policy and procedures should specify who within the workplace has the authority to make the decision to release information without consent in the above circumstances. A decision to disclose information about the person who has been harmed without the individual’s consent should only be made where legally required. If a decision is made to release information without consent, only information relevant to the health or safety concern in question should be released. The person who has been harmed should be kept informed of any decision to release personal information.

2.5.2. Sharing Information About the Person Who Caused Harm

In addition to providing their own personal information, the person making the initial disclosure or report of gender-based violence, harassment, or bullying may include, in
their disclosure or report, personal information about the person who harmed them. Generally speaking, subject to the previously listed exceptions to confidentiality, consent from the perpetrator would be required before this information could be disclosed further by the person receiving the disclosure or report. However, privacy laws allow such information to be shared without consent in the following circumstances:

- If there are compelling circumstances that affect anyone’s health or safety
- To assist in an investigation or in making a decision to start an investigation
- If the disclosure is for the purposes for which the information was originally collected and the disclosure is necessary for those purposes

Any exceptions to maintaining confidentiality must be clearly articulated in workplace policy and procedures and to all those involved.

2.6. Cultural Considerations

There may also be cultural considerations that should be taken into account in Indigenous organizations and communities, and immigrant and refugee serving organizations.

2.6.1. Considerations for Indigenous Communities

All Indigenous cultural groups possess their own traditional approaches to resolving disputes and conflicts, and addressing harms perpetrated by one or more members of their community. These approaches are rooted in specific spiritual teachings. However, some key values at the core of these teachings are strikingly similar: respect, honesty, humility, and inclusivity.

The failure of an employer to meaningfully and immediately address complaints of gender-based violence, harassment, and bullying in the workplace is often directly linked to ignorance; frequently, this is the result of a lack of education on gender-based violence, harassment, and bullying. Many employers do not realize that gender-based violence, harassment, and bullying can manifest in the workplace and present in the form of sexual harassment, criminal harassment, voyeurism, abuse of power, or assault. An Elder and gender-based violence expert can jointly facilitate a conversation on how to respond and provide support when gender-based violence, harassment, and bullying appears in the workplace. It is the focus on relationships rather than policy which will create a safe workplace intolerant of gender-based violence because those who create the culture will possess connectedness, personal accountability, respect, humility, and an honest commitment to fostering successful and healthy relationships within their workplace.

Gender-based violence which occurs in the workplace on-reserve attracts a few complexities which administrators must consider when drafting workplace policy including policy on respectful workplace environment, codes of conduct, anti-harassment, retaliation and employment agreements. With respect to some Indigenous organizations or businesses operating on reserve, jurisdiction may be split between federal and
provincial governments. Self-governing First Nations also have human rights or worker protection responsibilities, as per their negotiations with Canada. As a result, jurisdiction will vary from one First Nation to another.

**Human Rights Laws**

The federal government possesses jurisdiction over Indigenous governments and some Indigenous organizations. However, due to modern treaties and self-government negotiations, the provincial government may also possess jurisdiction over other on-reserve or Indigenous owned and operated businesses.

Due to the unique relationship between the provincial and federal Governments and the various First Nations, it is beyond the scope of these guidelines to identify where jurisdiction lies for each on-reserve Indigenous organization or employer. However, when drafting workplace policy, it is advisable that policymakers consider those federal and provincial legislations governing the specific Indigenous communities.

In addition to the application of federal or provincial human rights laws on reserve, the United Nations Declaration on the Rights of Indigenous Peoples or specific Indigenous human rights processes and laws may also govern employee rights and responsibilities. These specific governance and justice protocols will differ nation-to-nation and will be determined according to the traditions and protocols of each First Nation.

For policy to be effective, and for employees to feel confident in their employer’s commitment to address gender-based violence complaints, employee training sessions on workplace policy will be necessary to outline and highlight the range of options available to those who experience gender-based violence in the workplace.

The grounds for discrimination related to gender-based violence are the same between the province and the federal government, however the procedures involved in submitting a discrimination complaint will differ according to the distinct criteria set out by the Canadian Human Rights Commission and the BC Human Rights Tribunal.

The protected grounds of discrimination for gender-based violence under both sets of human rights laws falls within the enumerated grounds of sex and gender identity or expression. Additionally, if a complainant believes that race, transphobia, homophobia, religion or other prohibited grounds of discrimination was related to the act of gender-based violence, then they can include those grounds simultaneously as the basis for their discrimination complaint. It will then be up to the Commission or Tribunal to determine whether to process the complaint on all of the grounds that have been included. In doing so, the Commission and the Tribunal will take an intersectional approach.

When a human rights complaint is lodged against an employer and/or colleague, an organization should have procedures in place to address retaliation as well as interim measures and accommodation options to ensure a safe workspace for the complainant and other employees.
**WorkSafeBC**

The Workers’ Compensation Board, otherwise known as WorkSafeBC, is the provincial authority which oversees a no-fault insurance system for workers in BC. In regulating standards for occupational health and safety for provincial workers, WorkSafeBC is one authority responsible for investigating incidents of violence in the workplace.

WorkSafeBC confirms that Indigenous organizations or organizations located on an Indian reserve falls under the jurisdiction of the federal government where the following criteria are confirmed:

- Is the operation run by a band council?
- What is the nature of the operation? Is it a commercial enterprise? Does it carry out tasks related to band or reserve administration or governance (i.e. policing, municipal services, governance, providing reserve housing, or health care)?
- If the organization is a contractor/subsidiary, what is the nature of the organization’s normal activities? Does the organization have a permanent and very close relationship with a band council? Is the council dependent on the contractor/subsidiary to carry out tasks relating to governance or administration?
- Does the organization have a purpose of benefiting band members or First Nations?

Jurisdiction remains with WorkSafeBC where the operations in question are not linked to band administration or Indian status, rights or identity.

Due to the unique relationship an on-reserve Indigenous organization possesses with Canada as per the Canadian Constitution, a self-government agreement, or a modern-day treaty, it is necessary for the employer to specify in their policy whether WorkSafeBC has jurisdiction over their operations.

Where WorkSafeBC has jurisdiction, the *Workers Compensation Act* and the Occupational Health and Safety regulations dictate that an employer has a legal duty to protect workers from violence in the workplace. Where a threat of violence has been made an employer must assess the risk to the recipient of the threat as well as the workplace over all. For this reason, it benefits an employer to create a risk or threat assessment procedure. Where an incident or threat of gender-based violence occurs in the workplace, the employer must report the incident to WorkSafeBC. In response, WorkSafeBC will initiate an investigation under the *Worker’s Compensation Act* regulation governing “improper activity or behaviour”.

WorkSafeBC (2012b) created a handbook for employers to educate them on domestic violence in the workplace. The recommendations offered in this handbook address education, prevention and response measures which could be adapted to gender-based violence.
In the absence of WorkSafeBC jurisdiction, an on-reserve Indigenous organization should seek advice to determine whether their organization falls under the *Canada Labour Code* which sets out the duties of employers to create a safe workplace.

Regardless of jurisdiction, Indigenous on-reserve organizations should create education, prevention and response measures to address threats and incidents of gender-based violence in the workplace. These measures should include clear policy and procedures related to investigations, interim measures, accommodations, threat or risk assessments and clear disciplinary outcomes. In addition, employers should be very clear about when they will call the police or support the filing of a police report.

Employers are under a legal obligation to create a safe workplace free from violence and employees possess the right to be free from violence while at work. Where an organization or employer has not created procedures to address gender-based violence in the workplace, employment law offers recourse and remedies to employees.

**Employment Law**

The laws governing employer and employee relationships, rights, and responsibilities outline several remedies available to employees who experienced gender-based violence in the workplace as a result of their employer’s failure to execute one or more of their legal obligations.

Depending on the nature of the failure or negligence, a non-unionized employee who experienced or witnessed gender-based violence in the workplace and subsequently experiences negative effects could bring a civil suit against their employer. In most if not all cases, unionized employees who experience or witness gender-based violence in the workplace and subsequently experience negative effects cannot bring a civil suit, but they can file a grievance through their union.

An employer’s failure to meet their duty of care to their employees could cost an organization, financially and reputationally. Conversely, where an employee is aware that there is an imminent risk of violence in the workplace and they fail to notify their employer or colleagues of the imminent risk or threat of physical harm or injury, a liability claim could be brought against them.

For detailed advice on the rights and responsibilities of both employers and employees to create a safe workplace free from gender-based violence, consult an employment lawyer.

**2.6.2. Considerations for Immigrant and Refugee Communities**

While most people working in immigrant and refugee serving organizations will be Canadian citizens or have Permanent Resident status, some employees may have immigration status directly tied to their work (i.e., temporary foreign workers) or have an intimate partner to whom their immigration status is attached. For example, their intimate
partner may have entered Canada on a work or study permit and the employee obtained an open work permit by virtue of their intimate partner’s status. The employee may also be married to a Canadian Citizen or Permanent Resident and have obtained an open work permit through the in-land spousal sponsorship route. Regardless of immigration status, all employees have the right to file human rights, WorkSafeBC, and employment standards complaints; however, they may be reluctant to do so out of fear of the impact on their immigration status. This may be of particular concern for those employees whose status is directly tied to their intimate partner’s status or whose status is in the control of their intimate partner. An employee with temporary status may also face barriers in addressing gender-based violence, harassment, and/or bullying experienced within the workplace, such as workplace sexual harassment.

Generally speaking, it is important to be cognizant of the ways in which immigration status can impact experiences of gender-based violence, harassment, and bullying. Immigration law and policy in Canada remain embedded with systemic and structural barriers for people who have experienced intimate partner violence (Alaggia, Regehr & Rishchynski, 2009). Additionally, the forms of abuse victims/survivors experience can vary depending on immigration status: for immigrant women with legal status, abuse may be linked to their experience as a newcomer in Canada (e.g., increasing isolation, preventing her from learning English); women without legal status are in a vulnerable position and may be reluctant to call the police for fear of deportation or losing their children, which is a very real risk; and women with refugee claims may be told that they must remain in an abusive relationship during the refugee process, although they may be able to separate their refugee claim from their partner’s (Tabibi, Ahmad, Baker & Lalonde, 2018).

People who have been harmed may find themselves living with precarious immigration status after fleeing gender-based violence, including intimate partner violence – for example, if a woman is dependent on her abusive partner for sponsorship and chooses to leave the relationship, she may face barriers in retaining or obtaining status (Ending Violence Association of BC, MOSAIC & Vancouver Lower Mainland Multicultural Family Support Services Society, 2009; Mattoo, 2017). As of 2019, newcomers to Canada experiencing family violence can apply for a fee-exempt Temporary Resident Permit (TRP) that will give them legal immigration status in Canada and the ability to obtain an open work permit; their legal right to remain in Canada and work will not be tied to their abusive partner. This new federal expedited process for TRPs came about as a result of years of advocacy by the anti-violence sector, including by the Ending Violence Association of BC through Lehal Law. People who do not have Permanent Resident status and are in an abusive relationship should seek legal advice if they are thinking about leaving or have left that relationship (Ending Violence Association of BC, MOSAIC & Vancouver Lower Mainland Multicultural Family Support Services Society, 2009).

To learn more about Temporary Resident Permits for victims of family violence and dependent children, please refer to the Government of Canada webpage: https://www.canada.ca/en/immigration-refugees-citizenship/services/immigrate-canada/family-sponsorship/fees-permits-victims.html
3. WORKPLACE RESPONSE TO GENDER-BASED VIOLENCE, HARASSMENT, AND BULLYING

3.1. Approaches and Principles for Workplace Response

When gender-based violence, harassment, and bullying show up in the workplace, employers, managers, and co-workers often feel unsure of what to say and do. You do not need to be an expert in gender-based violence to respond to a disclosure or report; however, your response may have a significant impact on the person who has been harmed.

3.1.1. Approaches for Responding

| Responses to workplace gender-based violence, harassment, and bullying should be trauma-informed, victim/survivor-centered, and culturally safe. |

**Trauma-Informed** approaches recognize that experiencing gender-based violence can be traumatic, often with lasting effects. Trauma refers to an event that is “extremely upsetting, at least temporarily overwhelms the individual’s internal resources, and produces lasting psychological symptoms” (Briere & Scott, 2015, p. 10). Recognizing this, information, resources, and services – including those within workplace prevention and response strategies – should work to avoid re-traumatizing people who have experienced violence (Status of Women Canada, n.d.). Trauma can result from a recent incident of gender-based violence, harassment, or bullying, but also from previous experiences of violence, harassment, and bullying, and/or experiences of marginalization and oppression (e.g., pre-migration trauma, intergenerational trauma).

**Victim/Survivor-Centered** means prioritizing the rights, needs, and wishes of the person who has experienced harm (UN Women, 2011), recognizing the victims/survivors are the experts in their own experience of gender-based violence and their needs in its aftermath (Gilfus, Fineran, Cohan, Jensen, Hartwick & Spath, 1999). Workplace responses to gender-based violence should respect this principle and, wherever possible, enable victims/survivors to make decisions about how to proceed following an incident of workplace gender-based violence. In order to be responsive to the diverse experiences and needs of each victim/survivor, victim/survivor-centered responses must be accessible (e.g., for victims/survivors with disabilities), inclusive (e.g., inclusive of transgender victims/survivors), and pertinent to the victim/survivor (e.g., prioritizing cultural needs).

**Culturally Safe** approaches acknowledge the unique history of Indigenous people (Provincial Health Services Authority, n.d.) and “recognize and challenge unequal power relations between service providers and survivors by building equitable, two-way relationships characterized by respect, shared responsibility, and cultural exchange”
Though often used in the context of health care provision, cultural safety has also been identified as an occupational health issue for First Nations workers in Canada (National Aboriginal Health Organization, 2006). The idea of ‘cultural humility’ takes this further, requiring a self-reflective process focused on understanding one’s own biases and systemic biases (First Nations Health Authority, n.d., p. 11). These concepts of ‘cultural safety’ and ‘cultural humility’ are also essential in immigrant and refugee communities; working across different cultures necessitates approaches that are culturally sensitive and culturally appropriate (Rossiter et al., 2018).

3.1.2. Principles for Responding

Key principles for responding to a disclosure or report of gender-based violence, harassment, or bullying:

- **Do no harm** – It is crucial, when responding to an incident, disclosure, or report of gender-based violence, that we consider the implications of our actions and decisions, so that we do not cause further harm to individual(s) who have been harmed by gender-based violence. By ensuring that the processes and systems in place to respond to gender-based violence within the workplace are trauma-informed, victim/survivor-centered, and culturally safe, we increase the likelihood that our responses will not be harmful or re-traumatizing.

- **Do not rush to judgement** – It is best not to make any assumptions, including assuming that the person who has caused harm did or did not do what has been reported, in advance of a proper investigation. A good rule of thumb is to ask yourself: will you be satisfied with your course of action regardless of whether the report is ultimately determined to be well founded?

- **Consider your legal obligations** – Consider what legal obligations you may have, and ensure you comply with them. For example, common law employment principles, individual contracts of employment, other relevant employer policy (e.g. harassment, discrimination and respectful workplace policy); collective agreements, Workers Compensation legislation, privacy and other applicable legislation.

- **Seek appropriate advice** – Balancing the rights and interests of the person who has made a report of gender-based violence (sometimes referred to as the ‘complainant’), the person who has caused harm (sometimes referred to as the ‘respondent’), other workers, and the organization itself may be very difficult. Seek appropriate advice if in doubt about how best to move forward.

- **Respond proportionately** – The appropriate steps to take following an incident of gender-based violence will vary depending on the nature, seriousness and potential impact of the conduct or incident reported. Proportionality is key, even if action is required on an interim basis.
3.2. Disclosing and Reporting

**Disclosing** is telling someone about what has happened – such as a friend, family member, co-worker, supervisor, counsellor, settlement worker, cultural/religious leader, or health provider.

**Reporting** is making an official or formal complaint to authorities, such as reporting to police or to the workplace (e.g., Human Resources).

Many people who have been harmed by gender-based violence, harassment, and bullying will disclose what happened to someone in their workplace. We know that the first response to a disclosure of gender-based violence, harassment, or bullying can make a significant impact on the person who was harmed.

For those who do disclose to someone in the workplace, workers who experienced workplace harassment, sexual harassment, violence, or sexual violence are most likely to disclose to a co-worker (64%) or a supervisor (58%), rather than a human resources advisor, workplace committee, or health and safety representative (Employment and Social Development Canada, 2017). Victims/survivors of intimate partner violence who told someone in the workplace were also most likely to disclose to a co-worker (82%), but much less likely to tell a supervisor or manager (45%) (Wathen et al., 2014).

Workplace gender-based violence policy should clearly distinguish between disclosing and reporting violence; identify options for people who have been harmed and people who have caused harm to disclose and/or report; acknowledge barriers and risks to disclosing gender-based violence; outline any disclosure and/or reporting requirements and processes; and address privacy and confidentiality concerns and limitations.

Gender-based violence can be incredibly difficult to talk about, and many victims/survivors choose not to share what happened to them. In Canada, only 5% of sexual assaults (Conroy & Cotter, 2017) and 30% of intimate partner violence (Burczycka, 2016) incidents are reported to police. While it is more common for people who have been harmed to tell someone what happened (i.e., disclose) without making a formal report, there are many reasons why someone who has experienced gender-based violence, harassment, or bullying may be hesitant to report and/or disclose what happened to them.

A person who has been harmed may be hesitant to disclose or report because the harm they experienced was humiliating and they therefore feel ashamed or embarrassed; they may have been sexually harmed in the past and this event may have brought back painful memories; they may worry they will not be believed; they may wish to avoid judgement or gossip; have concerns about safety (for themselves and/or others); feel conflicted about getting the person who harmed them in trouble; and/or do not think anything can be done about the situation. Within small and/or tight-knit communities (e.g., rural communities, queer communities, immigrant communities, on-reserve), it is likely that others would know the person who harmed them; as a result, people who have been harmed may feel
unsure that they would be believed, be concerned about gossip or ostracism, or worry about harming the other person’s reputation in the community.

Additionally, a person who has been harmed by gender-based violence, harassment, or bullying may face unique barriers to disclosing or reporting within the workplace. For example, they may:

- Want to avoid being ostracized or being a part of workplace gossip
- Be supervised by the person who caused harm
- Worry it could impact their career progression/promotion
- Fear it could impact their reputation
- Have concerns about being fired for impacting company brand
- Have concerns about their manager seeing them as less capable or as someone who “causes issues”
- Believe the workplace response will be ineffective and/or slow-moving
- Face discrimination embedded within systems that respond to gender-based violence, harassment, and bullying (e.g., racism, cissexism, ableism)
- Lack awareness of their legal rights
- Experience stigma if they are LGBT2SQ+ or engage in sex work
- Face language barriers
- Have concerns about their legal status
- Lack economic resources
- Be experiencing social isolation
- Not have access to culturally safe resources

(employment and Social Development Canada, 2017)

People harmed by gender-based violence, harassment, and bullying who experience discrimination and social inequalities may face unique barriers to accessing services and support, including:

- **Discrimination embedded within systems** that respond to gender-based violence (e.g., health services, justice system). This may include racism, heterosexism, colonialism, cissexism, ableism, and discrimination against people who use drugs.
- **Lack of awareness of legal rights and/or support services** available.
- **Stigma against victims/survivors**. Immigrant and racialized victims/survivors of violence may face concerns about speaking up without stigmatizing their whole community (Ahmad, 2018). Concerns about stigma may also impact victims/survivors who are LGBT2SQ+, or who engage in sex work.
• **Language barriers** for victims/survivors who are Deaf, have low literacy, or are English language learners.

• **Concern about legal status** for victims/survivors with precarious immigration or refugee status, especially if their status is dependent on a violent partner.

• **Lack of economic resources** for victims/survivors who are low-income and/or financially dependent on a violent partner.

• **Social isolation** for victims/survivors who live in rural areas or are newcomers.

• **Culturally unsafe systems or services** that are not attentive to the needs of Indigenous, immigrant and refugee, or LGBT2SQ+ victims/survivors.

These factors impact whether people who have been harmed feel able and willing to disclose or report within the workplace. For example, LGBTQ employees are less likely to report workplace harassment and/or violence due to a lack of appropriate policy and procedure (Catalyst, 2015 as cited in Bucik, 2016).

People who have been harmed by gender-based violence, harassment, or bullying within the workplace face similar barriers to coming forward, in addition to unique workplace considerations. Within the workplace, people who have been harmed might be hesitant to disclose or report because they: do not want to worry their co-workers; have concerns about confidentiality (often heightened in small organizations and communities); have concerns about their safety; do not feel comfortable speaking with their supervisor or employer; fear their supervisor/employer will see them as less capable or as someone who ‘causes problems’; believe the workplace response will be ineffective and/or slow-moving; and/or want to avoid negative work impacts (e.g., barriers to career progress, retaliatory actions, losing their job).

An online survey of Canadians (Employment and Social Development Canada, 2017) indicated that employees who did not report violence or harassment often made that decision due to fear of retaliation; for sexual harassment, the main barrier was feeling that the incident was ‘too minor’ to report. Even when people who have been harmed do report, employees who experience gender-based violence have often found existing workplace responses to be inadequate; 41% of people who reported experiencing workplace harassment, sexual harassment, or violence said that ‘no attempt was made to resolve the issue’ (Employment and Social Development Canada, 2017); in turn, knowing that a situation was handled ineffectively can deter the person who was harmed and others in the workplace from reporting or disclosing in the future.
3.2.1. Options for Disclosing & Reporting

Workplace gender-based violence policy should clearly outline all options available to people who have been harmed by gender-based violence, harassment, and bullying, both within the workplace and outside of it.

Experiencing gender-based violence is often disempowering and, wherever possible, it is important to give the person who was harmed opportunities to reclaim control through making decisions about what happens next.
People who have been harmed by gender-based violence, harassment, and bullying should be made aware of the following options for disclosing and reporting, and may consider one or more of these options depending on their access and availability:

**Disclosure Only**

A person who has been harmed can choose to tell someone that they have experienced gender-based violence, harassment, and/or bullying. Someone might disclose because they want emotional support or access to medical services.

**Disclosing to the Workplace**

Requiring that a disclosure of gender-based violence lead to a formal report can have unintended negative consequences for the person who was harmed, as well as for the organization as it may discourage people who are harmed from coming forward. A person who has been harmed may want to disclose to someone within the workplace or a community support person without making a formal report, in order to access supports (e.g., Employee & Family Assistance Services, anti-violence professional for safety planning, looking at options, etc.) and/or workplace accommodations (e.g., adjustments to work schedule and/or location).

While it is understandable that workplaces hope that instances of violence, harassment, or discrimination will be formally reported, we strongly caution against mandatory reporting policy. The Ending Violence Association of BC recommends that workplaces consider having policy that supports a person who has been harmed to disclose within the workplace, without necessitating a formal report or complaint.

If this disclosure-only option is available in the workplace, ensure the person disclosing understands the legal limits to confidentiality. (Please refer to Privacy Considerations.)

**Report to the Workplace**

A person who has been harmed can choose to make a formal statement to their workplace (for example, report to human resources). What results from this statement depends on the organization’s policy and procedure, but may include an investigation, access to counselling supports, sick or disability leave, and/or accommodations in the workplace.

**WorkSafeBC Claim**

A person who has experienced a work-related injury or illness may be entitled to receive support (e.g., health care) and/or compensation (e.g., for time missed from work) through WorkSafeBC to support their recovery and return to work (WorkSafeBC, 2019).

For more information, visit the WorkSafeBC Claims webpage.
Report to Police

A person who has been harmed by gender-based violence (for example, by intimate partner violence or sexual assault) may choose to report to police. Making a statement to police will initiate a criminal investigation. Community-based and/or police-based victim services can support the person who has made a report throughout the reporting and/or investigation process. The person who was harmed may also choose to be accompanied and/or supported by another person, such as a friend, family member, or Elder.

‘Third Party Report’ to Police (Sexual Assault)

In British Columbia, victims/survivors of sexual assault can also make an anonymous ‘third party’ report to police. Third Party Reports are sent to police departments through a community-based anti-violence agency. The report provides information about the crime and the perpetrator, but does not include any details (e.g., name, contact information) regarding the victim/survivor. Third Party Reports are meant to be an option of last resort for victims/survivors who would not otherwise provide information to police, but may want to let police know about a potential sexual predator, in order to protect others (Community Coordination for Women’s Safety & Ending Violence Association of BC, 2015).

To learn more about Third Party Reporting, please visit EVA BC’s website: http://endingviolence.org/prevention-programs/ccws-program/third-party-reporting-tpr/

To find a local community-based anti-violence organization, please visit: http://endingviolence.org/need-help/services or call VictimLinkBC at 1-800-563-0808

Protection Orders

These are orders made by a judge, with the intent of protecting one person from another. Protection orders will outline a set of conditions for the person who caused harm to follow, based on the victim/survivor’s safety needs. Often a condition of the protection order will be prohibiting both direct and indirect contact with the victim/survivor (and their children, if applicable). Violating a protection order is a criminal offence.

*Criminal Code* Peace Bonds can protect you from *anyone*, including family members, someone you are dating, or a co-worker. It is meant to protect you if you fear for your safety, the safety of your child(ren), your current partner, or your property. To begin the process, call the local police or RCMP to ask for a police bond.

*Family Law Protection Orders* can protect you from a *family member*, such as your partner or former partner. It is meant to protect you from ‘family violence’, which includes “physical abuse (or attempts); sexual abuse (or attempts); emotional or mental abuse;
and children being exposed to family violence” (Legal Services Society, 2017, p. 11). To begin the process, you can apply to court, with or without a lawyer’s assistance.

**Human Rights Complaint** (Sexual Harassment, Discrimination)

If a person is discriminated against on protected grounds, as outlined in the BC Human Rights Code or the Canadian Human Rights Act, they may choose to make a human rights complaint to the BC Human Rights Tribunal or the Canadian Human Rights Tribunal. There are time limits that apply – generally, one year from the last discriminatory action. The BC Human Rights Clinic (operated by the Community Legal Assistance Society) can provide advice to people who are considering or making a complaint.

For more information, visit the BC Human Rights Clinic website. You can also call them at 604-622-1100 or 1-855-685-6222 (toll-free)

**Civil Claim**

A victim/survivor may choose to pursue a civil lawsuit, to seek financial compensation.

In cases where several victims/survivors have come forward, victims/survivors may pursue a class action lawsuit. In a class action lawsuit, people with a common claim are grouped together against the same defendant.

**Medical Assistance**

A person who has been harmed may choose to access medical services for reasons related to the violence they experienced. This may include treatment of physical injuries or therapy for psychological harm. A victim/survivor of sexual assault may also seek medical services to address the possibility of a pregnancy and/or sexually transmitted infections (including HIV).

A victim/survivor of sexual assault can also purchase emergency contraceptive pills (also known as the ‘morning after pill’ or ‘Plan B’) from a pharmacy without a prescription, to prevent a pregnancy.

**Forensic Medical Exam** (Sexual Assault, Intimate Partner Violence)

A person who has been harmed may also decide to ask for a forensic medical exam, where forensic evidence is collected. This evidence can be useful if they want to report what happened to the police, or are considering reporting to police. The process of
collecting evidence is guided by the victim/survivor, based on what happened to them and what they choose to have included in the forensic medical exam.

**Sexual Assault:** A person who was sexually assaulted may get a forensic medical exam (sometimes also called a ‘rape kit’), where samples are collected from their body and clothes. Ideally this is done within 72 hours of a sexual assault, but the samples can be collected up to 1 week after. In British Columbia, if a person who was sexually assaulted is unsure if they want to report to police at the time of the exam, the samples collected can be stored for up to 1 year while the person who was harmed decides whether they want to report.

**Intimate Partner Violence:** Some programs (hospital-based or community-based) that offer forensic medical exams for sexual assault may also offer forensic exams for victims/survivors of intimate partner violence. However, this is program-specific. The examination is based on what type of violence has occurred, which may include sexual assault. Often, the exam will focus on documenting injuries (e.g., bruises, cuts) but it may also involve collecting specimens for forensic analysis such as DNA or foreign material.

Forensic medical exams are usually run through emergency departments, and are available 24/7 at select hospital Emergency Rooms in British Columbia, while other hospitals offer forensic medical exams on a more limited basis (e.g., weekdays only).

### 3.3. Communications Following an Incident or Report

All communications following a report of gender-based violence, harassment, or bullying should be on a ‘need to know basis.’ Within the management team, information should only be shared as required to perform an investigation, and to manage the persons directly affected. If both the person who has made the report and the person about whom the report has been made are still in the workplace, it is especially important to be as circumspect as possible in communications. Those needing to know about changes in roles and assignments, or any other changes, can be advised about them without being told the reasons for those changes. Similarly, any absences of the person who made a report and/or the person about whom a report is made can usually be communicated in a manner which does not reveal the reasons for their absences.

If there is already knowledge, or worse, rumours, in the workplace about an incident, disclosure, or report, or the interim measures an employer has taken in response to an incident or report, further communication will be necessary:

- Acknowledge that an incident has occurred and/or a report has been made, and reassure employees that the organization is addressing the incident or report (the specifics of this will vary depending on what has happened and the knowledge/rumours in circulation);
- Acknowledge that co-workers are understandably concerned about their colleagues and/or the situation, and may themselves be distressed by what they
may have heard, but explain that the organization needs to protect the privacy of those directly affected as much as possible, and is therefore limited in what can be said at this time;

- Say what needs to be said about the current situation, as appropriate depending on who was reported to have caused harm (e.g., junior employee vs. senior leadership) and the type of harm caused (e.g., bullying vs. sexual assault);
- Direct employees not to speculate or gossip because that can be damaging to having the issues resolved in a fair and efficient manner;
- Tell employees who to talk to if they have questions or information to offer;
- If possible, offer Employee & Family Assistance Services or other outside confidential assistance to employees who may be adversely affected by the incident.

All appropriate steps should be taken to secure any written materials, both hard copies and electronic versions, including any emails.

3.4. Mitigating Risk from People Who Have Caused Harm

People within the workplace have rights, even if they have caused harm. It is important to respect the rights of the person about whom a report of gender-based violence has been made. Failure to respect those rights in the wake of a report of gender-based violence is not only unfair, it may lead to liability. If the workplace is unionized, comply with any specific collective agreement obligations, in particular around rights to union representation.

It is important to give notice about a report of gender-based violence to the person about whom the report has been made as soon as possible. Initially, it may not be necessary to reveal the identity of the person who has made the report, though procedural fairness will require that when the matter is ultimately investigated that the identity of the person who has made a report be shared. Ask the person about whom a report of gender-based violence has been made what would be appropriate in terms of mitigating risk on an interim basis. While their input is not determinative, it may be helpful. If no other interim solutions are feasible, it may be appropriate to consider suspending the person reported to have caused harm with pay, if this action is necessary to protect the interests of the person harmed. Suspensions without pay would be appropriate in only the rarest of circumstances – they are punitive in effect, effectively prejudge the issue, and should not be imposed unless clearly justified.

In any incident of gender-based violence, it is important to consider whether any action is required on an interim basis, and what possible interim courses of action could be taken to enhance safety for the person(s) who have made a disclosure or report of gender-based violence, and others; to mitigate risk from the person(s) about whom a report has been made, depending on the circumstances; to ensure the fairness of the process; and to protect the organization’s interests.
Decisions about appropriate interim measures may depend upon whether the person harmed (complainant) and the person reported to have caused harm (respondent) work together, closely, or not at all. If they do not work together, it may be relatively straightforward to put in place some interim measures which effectively prevent contact. If the person who has been harmed has left the workplace (e.g., they have asked for temporary leave or accommodation to work offsite), there may be more time available to determine what measures need to be taken before they return to the workplace. If there is a reporting relationship between the complainant and the respondent, then steps will likely need to be taken to modify that reporting relationship on an interim basis.

Below, we outline considerations and strategies for mitigating risk with respect to the workplace following an incident, disclosure, or report of gender-based violence.


INTIMATE PARTNER VIOLENCE RISK FACTORS

There are a number of risk factors that have been associated with greater likelihood of future intimate partner violence, with some indicating greater likelihood of increased severity (escalation) of intimate partner violence. These evidence-based risk factors are drawn from the Summary of Domestic Violence Risk Factors (BC Ministry of Public Safety and Solicitor General, 2016).

Relationship History

**Current Status of Relationship:** Is there a past, recent, or pending separation in the relationship? (Note: In relationships with coercive control, the intensity and lethality of violence often escalates after the victim leaves the relationship.)

**Escalation in Abuse:** Is there escalation in the frequency and/or intensity of violence or abuse towards the victim/survivor (or their family members, a pet, or another person)?

**Children Exposed:** Are there children living in the home? Who are the parents and is there a child access or guardianship dispute?

**Threats:** Has the person who caused harm ever threatened to kill or harm the victim/survivor (or their children, family members, a pet, or another person)?

**Forced Sex:** Has the person who caused harm ever forced sex on (i.e., sexually assaulted) the victim/survivor?
Strangling, Choking, or Biting: Has the person who caused harm ever strangled, choked, or bitten the victim/survivor?

Stalking: Has the person who caused harm displayed jealousy or obsessive/controlling behaviours; stalked, or harassed the victim/survivor or a past intimate partner? Is this behaviour persistent and/or escalating?

Information on Relative Social Powerlessness: Are there social marginalization and/or cultural factors present that impact the relationship (e.g., living with a disability, language barriers, literacy issues, poverty, addiction, pregnancy, lack of transportation, financial dependency, mental illness, family pressures/shame, cultural beliefs, culture of male privilege or entitlement)?

Victim/Survivor’s Perceptions of Risk

Victim/Survivor’s Perception of Personal Safety: Does the person who has been harmed believe that the person who caused harm will disregard the terms of their release from custody or a no-contact order?

Victim/Survivor’s Perception of Future Violence: Does the person who has been harmed fear further violence? What is the basis for this fear, and does the person who caused harm have access to the victim/survivor?

History of Person Who Caused Harm

History of Criminal Violence: Does the person who caused harm have a history of threats, violence, sexual assaults, and/or criminal harassment?

History of Intimate Partner Violence: Does the person who caused harm have a history of stalking, violence, or abusive behaviour in the current or a previous relationship? Have there been threats or violence and abuse toward children, other family members, pets, friends, or co-workers?

Court Orders: Has the person who caused harm ever violated a court order? Are they currently bound by any court orders, including protection orders? Are they in a reverse onus situation for bail?

Alcohol/Drugs: Does the person who caused harm have a history of drug or alcohol abuse?

Employment Instability: Are they unemployed or experiencing financial problems? Have there been recent changes in employment?

Mental Illness: Does the person who caused harm have a history of mental illness (e.g., depression, paranoia)? Are they complying with mental health care?

Suicidal Ideation: Has the person who caused harm ever discussed, threatened, or attempted suicide?

Access to Weapons and Firearms
**Weapons/Firearms Use or Threat:** Has the person who caused harm used or threatened to use a firearm or weapon against the victim/survivor, family member, children, or pets?

**Access to Weapons/Firearms:** Do they have access to weapons or firearms?

### 3.5. Enhancing Safety for People Who Have Been Harmed

It is important to ensure that the person disclosing or reporting gender-based violence, and the workforce as a whole where relevant, is safe and supported. Enhancing safety for people who have been harmed requires consideration of both their immediate and long-term safety needs, and providing referrals to anti-violence workers who can help them develop a safety plan.

#### What is a Safety Plan?

Safety planning is the process of identifying risk factors for a victim/survivor and developing strategies, tools, and resources that can increase their safety (Community Coordination for Women’s Safety & Ending Violence Association of BC, 2017).

WorkSafeBC (2015) makes a distinction between a personal safety plan and a workplace safety plan.

A **personal safety plan** addresses the risk to a worker who may be experiencing gender-based violence, harassment, or bullying.

A **workplace safety plan** addresses the workplace as a whole, and all workers.

#### 3.5.1. Personal Safety Planning (for the Workplace)

Ask the person disclosing or reporting gender-based violence what would enhance their safety on an interim basis. While their wishes are not determinative, they will know best what they need and may have valuable input. Asking them about what they want and need may also be empowering. For example, can work schedules, tasks, and/or supervisory structures be varied to eliminate or sufficiently reduce contact between the person harmed and the person reported to have caused harm? Is the complainant agreeable to moving the location where they work, altering their schedule, etc., in order to reduce or eliminate contact with the person reported to have caused harm? The person harmed (complainant) should never be forced or pressured to change their location, schedule, etc., but they may be willing to do so, especially if it will increase their sense of safety.

Co-workers, supervisors, and employers may be in a position to help create and/or implement a safety plan for the workplace to enhance victim/survivor safety.
Safety planning for the workplace should address safety while at work and while travelling to and from work. Safety plans should always be created in collaboration with the person who has been harmed and address their unique needs (Occupational Health and Safety Council of Ontario, 2010). For example, a person who was harmed may want to consider:

- Having their phone calls screened and documented
- Changing their work schedule and the patterns of when they arrive to and leave work
- Changing their work location (e.g., within the building, to another worksite)
- Changing their route, if possible, and the way they travel to and from work
- Asking about safer (e.g., closer, brighter) parking options
- Identifying someone (e.g., co-worker, security) to walk them to their vehicle or public transit
- Discussing when a co-worker or employer should call the police for their safety
- Identifying ways to get out of the workplace safely in an emergency
- Determining where to go in an emergency and how to get there safely
- Distributing a photo or description of a person who has caused harm to staff/security
- Sharing additional emergency contact information with the workplace and/or co-workers
- Ensuring they have contact information for community-based anti-violence support services (see Appendix D for Resources and Support)

(WorkSafeBC, 2012b)

Developing a safety plan may also involve preparing an emergency bag with identification, medications, money, keys, a list of phone numbers (e.g., support services), and a photo of the person who has caused harm in case there is a need to leave and get to safety in a hurry.

In cases where people who are harmed by gender-based violence, harassment, and bullying take leave from work, employers should offer support and a plan for returning to work.

3.5.2. Workplace Safety Planning

Workplace safety plans will depend on a number of factors including the organization’s size and location. The safety plan could include actions to be taken by co-workers in the event of a critical incident. Workplace safety plans may include (WorkSafeBC, 2012b):

- Ensuring security of the workplace (e.g., building locks, security alarms)
- Ensuring all employees have emergency phone numbers
• Identifying ways to get out of the workplace safely in an emergency
• Determining where to go in an emergency and how to get there safely
• Ensuring all staff are aware of and follow working alone policy
• Creating discrete communication plans for emergency situations

3.6. Critical Incident Response Strategy

WorkSafeBC (2018) defines a workplace critical incident as “a sudden and unexpected workplace situation or event that causes a person to experience unusually strong emotional reactions that have the potential to interfere with [their] ability to function” (p. 1). Workplace critical incidents usually involve a threat to someone’s physical integrity and can be considered a form of trauma, with potentially long-lasting effects on people in the workplace who experienced, witnessed, and/or were otherwise exposed to the impacts of the incident. Examples of critical incidents include witnessing violence against a co-worker, responding to a serious injury or fatality, or involvement in an incident involving a weapon, any of which could occur as a result of gender-based violence, harassment, or bullying.

WorkSafeBC typically becomes involved following a critical incident, through its Critical Incident Response Program. This program provides a confidential intervention led by qualified mental health professionals for people who have been involved in a traumatic workplace situation or event. The purpose of a Critical Incident Response is to provide early intervention to reduce distress in the short-term and prevent long-term impacts.

Workplace gender-based violence, harassment, and bullying policy should outline the organization’s strategy for responding to workplace critical incidents, including investigating and reporting on critical incidents, assessing the impacts and ongoing risk to people in the workplace and/or community, debriefing critical incidents and providing support to organization personnel, and reviewing and communicating about risk management and safety plans to prevent future critical incidents. Organizations should demonstrate accountability, transparency, and consistency in decisions related to workplace critical incidents.
3.7. Trauma-Informed Investigations

In the context of workplace investigations, a trauma-informed approach can simply be defined as the application of an investigator’s awareness that the interviewee may have experienced trauma or is currently operating under traumatic responses. Accordingly, an investigator will focus on accommodating this potential by creating a safe interview approach where the interviewee controls the space, speed, and flow of information, in an effort to minimize any risk of re-traumatizing the interviewee.

A trauma-informed approach should not be confused with a victim/survivor-centered approach. A victim/survivor-centered approach prioritizes the needs of the victim/survivor, whereas a trauma-informed approach prioritizes the needs of all parties to an investigation including the organization, respondents, and witnesses.

The rationale in support of utilizing a trauma-informed approach from the interview stage through to the report-writing stage is that, at a minimum, it promotes an investigatory process which strives to do no harm to the parties and, at best, offers an opportunity to facilitate healing for the complainant.

Investigators cannot know exactly the traumatic experiences an interviewee has experienced historically or as a result of recent experiences in the workplace. They cannot know what their triggers might be, but they can anticipate that an interview (whether complainant, respondent, or witness) could be perceived as a stressful or fearful experience which has the potential to trigger a traumatic response.

For this reason, it is imperative that any individual investigating a gender-based violence complaint possess cultural competency training or expertise; a significant understanding of gender-based violence and its specific dynamics; and a thorough understanding of trauma including the ability to recognize and respond to traumatic symptoms when they arise.

A trauma-informed investigator should be experienced in:

a. Identifying specific cultural or historical factors which may inform the physical/mental/spiritual/emotional needs of each of the parties during an investigation;

b. the effects of traumatic experiences on the brain and body;

c. recognizing traumatic symptoms when they surface;

d. offering accountability, honesty and transparency to the parties; and

e. demonstrating a commitment to doing no harm to the parties throughout the process.

A trauma-informed investigator will be flexible enough and sufficiently responsive to allow their style to be guided by the interviewee, according to how that individual defines a “safe space.” The investigator must also demonstrate some degree of vulnerability to offer an
interviewee validation that an investigation can cause stress, anxiety, anger and depression. Trust, connection and self-awareness are key to an effective trauma-informed interview. It must be clearly conveyed to all parties including the employer that adopting a trauma-informed approach does not compromise an investigator’s neutrality or impartiality.

An investigator’s ability to successfully execute a trauma-informed approach to an investigation begins before the first interview. After reviewing the allegations, the investigator should conduct a self-assessment to determine if it is within their personal capacity to adapt their techniques to accommodate the physical, mental, spiritual, and/or emotional needs of the parties.

The self-assessment will inform the investigator on their strengths and weaknesses with respect to their present capacity to respond to silence, anger, harsh language, evasiveness, time and space. The practice of undertaking a self-assessment pre-interview also helps the investigator detect any de-sensitization, unconscious bias or vicarious trauma they may be experiencing as a result of the work they do.

Until trauma-informed practice standards are created and adopted by law or policy, an employer can ensure that any investigator retained is well versed in trauma-informed practice in the context of gender-based violence investigations by asking the following questions:

- What do you know about gender-based violence? What is your source of information?
- What is your understanding of trauma? How might the presence of trauma impact the investigation process?
- Have you been trained in trauma-informed interview techniques? If not, describe your approach and would you define it as being trauma-informed?
- How would you respond to a situation where an interviewee displays behaviours akin to despair, rage or anxiety?
- How do you greet an interviewee and prepare for the interview process?

This basic assessment of an investigator’s qualifications not only demonstrates an employer’s commitment to trauma-informed investigations and cultural competency requirements but also puts the profession on notice as to the standards investigators are expected to meet.

When an employer commits to engaging investigators who are trauma-informed and well versed in gender-based violence, they improve the credibility of their investigatory process, reduce risk to reputational harm, and provide some defence against specific liability concerns. Trauma-informed investigations avoid practices such as cross examination, interrogation, the overuse of narrow questions, or imposing time limits on verbal response. It also avoids truth-seeking in favour of corroboration. (This is important because truth-seeking is futile and can be detrimental to a survivor who conflates
establishing credibility with establishing the burden of proof.) These are the areas which give rise to risk and harm for the employee and the employer.

A trauma-informed approach does not undermine an investigator’s ability to maintain impartiality or uphold procedural fairness. An empathetic attitude and ability to accommodate the tensions and the traumatic symptoms which arise will leave the parties to an investigation with a sense of dignity, safety, and respect.

It is also important to recognize some of the harmful cultural stereotypes embedded in traditional forms of evidence gathering such as demeanour evidence which is often used to assess the ‘credibility’ of the person who has made a report, and can impact how people are read negatively based on factors such as the colour of their skin or cultural attire. In some cases, women have been asked to remove hijabs and niqabs during investigations, which is discriminatory. Understanding this is important as a part of a trauma-informed approach (Rahmath, Chambers & Wakewich, 2016)
4. WORKPLACE PREVENTION OF GENDER-BASED VIOLENCE, HARASSMENT, AND BULLYING

Workplace gender-based violence, harassment, and bullying policy should outline the organization’s commitments to prevention and training.

4.1. Training and Education

Training and education are key means through which employers can learn how to respond to workplace violence and harassment and support people who have been harmed (Employment and Social Development Canada, 2017), and are important to the successful implementation of workplace policy addressing gender-based violence, harassment and bullying (Cambridge Public Health Department, 2013; Centre for Research & Education on Violence Against Women & Children, 2010b).

Training should assist employers and employees to recognize signs of gender-based violence, respond in a supportive and sensitive manner, and identify appropriate referral resources (Samuel et al., 2011). Workplace gender-based violence training should be evidence-based, easily accessible, and widely available (Glass et al., 2016).

4.1.1. Elders and Spiritual Leaders as Educators

Recognized and respected Elders and spiritual leaders who exemplify these core values are the most qualified to deliver spiritual teachings alongside experts on gender-based violence, harassment, and bullying. Elders are under-utilized and under-valued educators capable of delivering education to employers and employees on how to build and maintain respectful workplace relationships free from gender-based violence, harassment, and bullying.

Elders as educators on gender-based violence, harassment, and bullying in the workplace allows for the delivery of specific teachings which contribute to healthy, respectful, inclusive and honest relationships in the workplace, which sets the tone, expectations, and threshold for the entire participant group.

Elders tend to be consistent in their approach to opening a knowledge-sharing session by beginning with a prayer and a ceremony, such as a smudge or brushing off, as per their customary cultural practice. The experience of being in ceremony with an Elder is disarming, calming and allows for the teachings of humility, honesty, inclusivity and respect to ground the group which is necessary for the participants to listen and learn from one another.

Without an education on what gender-based violence, harassment, and bullying is, employers and employees alike may not recognize it when it arises in the workplace.
Elders and gender-based violence experts are the ideal team to deliver gender-based violence, harassment, and bullying education and its unique implications in the workplace.

Together, the Elder and gender-based violence expert will ensure that the employees and employers have been equally, accurately and consistently educated and informed from an Indigenous knowledge centered world view(s) on what gender-based violence, harassment, and bullying is, how to identify it in the workplace, the various disclosing and reporting mechanisms, trauma-informed investigation procedures, support options for people who have been harmed, and bystander supports.

Inviting an Elder into the workplace to educate and train employees and employers on the teachings of respect, humility, honesty and inclusivity is trauma-informed and consistent with the educational objectives set out in the Truth and Reconciliation’s Call to Action #92. Furthermore, Elder inclusion in the workplace as educator is innovative, progressive and consistent with placing meaningful value on workplace relationships.

An Elder holds a deep understanding of trauma in all its forms and can recognize that many people experience or have experienced gender-based violence, harassment, and bullying which can impact performance and workplace relationships. Accordingly, an Elder would accommodate the expression of traumatic symptoms and employ safeguards against triggering participants throughout the educational process while highlighting the need for more education and supports in the workplace.

The centrality of an Elder as educator meets Call to Action #92 which calls on the corporate sector in Canada to - among other things - adopt the United Nations Declaration on the Rights of Indigenous Peoples as a reconciliation framework and cites, in part, the following:

iii. Provide education for management and staff on the history of Aboriginal peoples, including the history and legacy of residential schools, the United Nations Declaration on the Rights of Indigenous Peoples, Treaties and Aboriginal rights, Indigenous law, and Aboriginal–Crown relations. This will require skills-based training in intercultural competency, conflict resolution, human rights, and anti-racism.

Inviting Elders into the workplace to offer education on cultural values, healthy relationships and trauma resulting from gender-based violence, harassment, and bullying answers Call to Action #92.

The invitation creates a platform for the Elder to share cultural values and histories, including: the legacy and continuation of colonial violence including gender-based violence, harassment, and bullying; the effects of residential schools on nations of Indigenous people; and the manifestations of inter-generational trauma which has seen a higher than average prevalence of gender-based violence in many Indigenous communities.
In effect, the teachings of respect, humility, honesty and inclusivity shared by an Elder are tantamount to training in intercultural competence, conflict resolution, human rights and anti-racism.

The assignment of gender-based violence, harassment, and bullying and respectful environment education to an Elder and gender-based violence expert rather than a human resources manager demonstrates that an employer’s priorities exist in the spirit of reconciliation, relationships, and learning and listening rather than a workplace policy which lacks meaning or significance for the individual employee.

4.1.2. Training and Education on Gender-Based Violence, Harassment, and Bullying

While many workplaces have training and education focused on workplace safety more generally, violence, harassment, and bullying are less frequently discussed as a gender-based and intersectional issue. Education, including awareness campaigns, addressing gender-based violence, harassment, and bullying is crucial in supporting both prevention and response.

Canadian labour and employer organizations, federal government departments, academics, and advocacy groups have emphasized the need for education, with over half of these stakeholders saying that all supervisors and all employees should receive education in this area (Employment and Social Development Canada, 2017). Additionally, almost 40% of these stakeholders agreed that an awareness campaign would be beneficial (Employment and Social Development Canada, 2017).

4.1.3. Training and Education on Workplace Policy and Procedures

While developing a workplace gender-based violence policy is a crucial step, this policy must also be effectively implemented. Even where Canadian workplaces do have policy related to gender-based violence in place, many employees have indicated that they did not receive training on this policy (Employment and Social Development Canada, 2017).

Workplace gender-based violence policy should outline the organization’s commitment to prevention and response training including education about: gender-based violence, harassment, and bullying; responding to disclosures of gender-based violence, harassment, and bullying; and bystander intervention strategies.

Training and education on workplace policy and procedure ensures that the workforce: knows about and understands the policy; can recognize gender-based violence, harassment, and bullying; know their options for disclosing or reporting incidents; and understands their roles and responsibilities in responding to incidents that are reported or disclosed to them.
4.1.4. Training on Responding to Disclosures

You do not need to be an expert, but how you respond to a disclosure of gender-based violence can be critical to the well-being and recovery of the person who was harmed. Training on responding to disclosures can help your workforce develop the skills and competence they need to respond in a way that is both effective and supportive.

4.1.5. Training on Investigations

Not all organizations will have the resources to bring in external investigators whenever an incident of gender-based violence, harassment, and/or bullying is reported to the workplace. Training on conducting a trauma-informed investigation can be beneficial in providing some guiding principles and strategies, as well as considerations for determining at what point it may be necessary to bring in an expert to conduct or support an investigation.

4.1.6. Training on Risk Assessment and Safety Planning

For those with a responsibility to respond to disclosures or reports of gender-based violence, harassment, and/or bullying, it may be useful to arrange for training to assess and mitigate risks within the workplace. Training on safety planning can support efforts to accommodate the needs of people who have been harmed by gender-based violence, harassment, and bullying, and increase their safety in the workplace. However, risk assessment and safety planning should be undertaken by individuals with knowledge of the relevant risks, such as a community-based anti-violence or victim support worker.

4.1.7. Training on Bystander Intervention

Your workforce may also benefit from training that focuses on prevention through culture change. One powerful example of this is bystander intervention training, which can increase the skills and confidence of your workforce in speaking up when they witness violence, harassment, or bullying. Bystander intervention training often focuses on both covert and overt intervention strategies, emphasizing the many options that bystanders may have for addressing an incident they witness.

Be More Than a Bystander

The Be More Than a Bystander program emphasizes the crucial role of bystanders – especially male bystanders – in breaking the silence on gender-based violence and abuse. Developed through a partnership between the Ending Violence Association of BC (EVA BC) and the BC Lions football team, Be More Than a Bystander is a groundbreaking initiative that utilizes male athletes’ profile and platform as role models to substantially increasing awareness and understanding about the impact of gender-based violence and abuse. The program provides tools, language and practical ideas about how to be more than a bystander, how to speak up, and how to communicate that violence and abuse are not acceptable.
The corporate *Be More Than a Bystander* program focuses on providing practical tools that empower people to ‘stand up instead of standing by’. This training supports employers in addressing workplace gender-based violence, harassment, and bullying through:

- Recognizing that the vast majority of men and women in the workplace want to do the right thing and value a fair, respectful environment;
- Providing their employees with the practical tools and information to recognize the range of behaviours that contribute to a negative culture where sexual violence, harassment, and bullying can occur; and
- Equipping leaders and employees at all levels with concrete skills to appropriately address these issues and create a respectful workplace culture.

EVA BC delivers this bystander intervention training to organizations of all sizes, working with each organization to tailor the approach based on organization size, culture, and context.

If you are interested in bringing *Be More Than A Bystander* into your workplace, please visit [http://endingviolence.org/prevention-programs/be-more-than-a-bystander](http://endingviolence.org/prevention-programs/be-more-than-a-bystander)

### 4.1.8. Creating Safer Workplaces and Communities Training

As a part of this Women and Gender Equality Canada-funded project, subject matter experts at the Ending Violence Association of BC (EVA BC) have also developed a two-day *Creating Safer Workplaces and Communities* train-the-trainer curriculum and accompanying one-hour workplace training. The train-the-trainer includes essential content related to gender-based violence, harassment, and bullying in the workplace. Through this training, participants:

- Gain increased awareness and understanding of gender-based violence, harassment, and bullying (in and outside of the workplace)
- Understand roles and responsibilities in terms of policy development and implementation
- Gain understanding of trauma-informed response strategies
- Enhance trauma-informed risk assessment and safety planning skills
- Gain understanding of prevention and education strategies
- Develop capacity to facilitate a one-hour action-based workforce training for employees

The training also equips participants with fundamental knowledge and skills around responding to disclosures and bystander intervention.
4.2. Creating Safer Workplaces and Communities

Respectful environment policy which governs expected behaviours in the workplace sets out the rights and responsibilities employees possess and the standards they must abide by in their communications and actions with their colleagues. Oftentimes, however, policy misses an opportunity to set out specific guiding values that each employee must commit to over the course of their employment and in their workplace relationships.

Any workplace that prioritizes relationships over individual interests or organizational self-interest will create an environment that cultivates respect, tolerance, patience, engagement, and belonging. These values will, in turn, create an overall culture that is positioned to take a stand against gender-based violence, harassment, and bullying in the workplace.

4.2.1. Code of Conduct

Everyone within your workplace should know what constitutes acceptable and appropriate behaviour within the context of their work. Workplace gender-based violence policy should include a Code of Conduct, which sets standards for behaviour expected of all employees. If a Code of Conduct is already in place, it should be reviewed and revised to ensure gender-based violence, in its many forms, is explicitly identified as unacceptable. All employees (regardless of gender, age, position, or type of employment) should be made aware of the Code of Conduct and agree to: (a) comply with the Code of Conduct and with the workplace gender-based violence policy and refrain from engaging in the forms of gender-based violence outlined in the policy (e.g., sexual assault, sexual harassment, intimate partner violence); (b) appropriately respond to gender-based violence in the workplace, depending on their role and responsibilities (e.g., manager, co-worker); and (c) contribute to the creation of a safer workplace and community free from gender-based violence.

A Code of Conduct may also stipulate that workplace resources and equipment (e.g., phones, computers, vehicles) may not be used to perpetrate gender-based violence, harassment, or bullying. This document may also specify that, while gender-based violence, harassment, and bullying are not condoned at any time, the workplace strictly prohibits perpetrating these harmful behaviours on at work or work-related events, during work time or during work hours (Cambridge Public Health Department, 2013).

4.2.2. Recruitment and Consequences

During the recruitment and hiring process, workplaces should be mindful of the costs and implications of hiring staff who have a history of perpetrating gender-based violence,
harassment, and/or bullying. Hiring committees should take proactive steps to undertake criminal record checks, where appropriate, and inquire about applicants' willingness to comply with the organization’s expectations about respectful workplace conduct and contribute to creating safer workplaces and communities. In doing so, the organization must be mindful of its legal obligation under human rights legislation not to discriminate against an applicant on the basis of a criminal or summary conviction offence unrelated to that person's employment or intended employment.

A Code of Conduct should also delineate the circumstances under which employees are required to disclose their own perpetration of gender-based violence, harassment, and/or bullying. Employees may be required to disclose (to their immediate supervisor or human resources manager) any incidents that result in criminal charges or other legal consequences, in cases where those incidents, charges, or consequences are relevant to the employee's role and responsibilities within the workplace. This may include perpetration of domestic violence or sexual violence, abuse of power, and protection orders.

Workplace policy that includes stipulations for the immediate termination of employees who do not act in accordance with the organization’s Code of Conduct, and immediately cast them out of the workplace, may increase risk for the people whom they have harmed (especially in cases of intimate partner violence, for which employment instability is a risk factor for continued and/or escalating violence) and/or for workplaces (for example, in cases where a person who has caused harm and been terminated perpetrates retaliatory violence, harassment, or bullying against former co-workers/employers). Such a policy may also increase the risk of employer liability, as “zero tolerance” policies that provide for mandatory termination in all cases are very unlikely to be enforceable. Because people who cause harm will continue to live within the community and may seek employment elsewhere, this approach may create risks for other individuals and workplaces. Even in cases where employment must be terminated, it is important to consider the ways in which the person who has caused harm might be supported to prevent further harm. In all cases, an individualized approach that considers all relevant factors must be taken.
References


Appendix A – Glossary

**Consent** refers to the voluntary agreement to engage in an activity, including sexual activity, and can be communicated through words or conduct. Consent cannot be obtained through threats, control, or intimidation; if a position of trust, power, or authority is abused; if the person is incapacitated (drugs/alcohol, asleep, unconscious); when their body language says no; or when they are incapable of giving consent (e.g., due to age, a mental health issue or physical disability) (Criminal Code of Canada, 1985).

**Culturally Safe** approaches acknowledge the unique history of Indigenous people (Provincial Health Services Authority, n.d.) and "recognize and challenge unequal power relations between service providers and survivors by building equitable, two-way relationships characterized by respect, shared responsibility, and cultural exchange" (Status of Women Canada, n.d.). Though often used in the context of health care provision, cultural safety has also been identified as an occupational health issue for First Nations workers in Canada (National Aboriginal Health Organization, 2006). The idea of ‘cultural humility’ takes this further, requiring a self-reflective process focused on understanding one’s own biases and systemic biases (First Nations Health Authority, n.d., p. 11). These concepts of ‘cultural safety’ and ‘cultural humility’ are also essential in immigrant and refugee communities; working across different cultures necessitates approaches that are culturally sensitive and culturally appropriate (Rossiter et al., 2018).

**Disclosing** is telling *someone* about what has happened – such as a friend, family member, co-worker, supervisor, counsellor, settlement worker, cultural/religious leader, or health provider.

**Gender-based violence** is violence that is “committed against someone based on their gender identity, gender expression or perceived gender” (Status of Women Canada, 2018a). This violence most often targets those who experience gender-based oppression, including women, trans people, and gender non-conforming or non-binary people. Gender-based violence is an umbrella term that includes gender-based bullying and harassment, sexual harassment, sexual assault, and intimate partner violence (also known as domestic violence, relationship violence, or spousal assault).

**Harassment and bullying** refer to inappropriate behaviours or comments that cause humiliation and intimidation. Within WorkSafeBC’s Occupational Health and Safety policies, ‘harassment and bullying’ are used as a single term (WorkSafeBC, 2013a).

**Intersectionality** is a term coined by Kimberlé Crenshaw (1989). Taking an intersectional approach can help to illuminate how people’s experiences are impacted by the convergence of intersecting identities (e.g., gender, race, ethnicity, sexual orientation) (Status of Women Canada, 2018b). By isolating and focusing on only
one aspect of identity (e.g., gender identity), we do not get a full and complete picture of the complexity of people’s experiences, including their experiences of gender-based violence, harassment, and bullying.

**Intimate partner violence** (also called ‘domestic violence’, ‘relationship violence’, or ‘dating violence’) can involve many different types of harmful and abusive behaviour. This harm can take many forms, including physical violence, sexual violence, psychological abuse, neglect, or harassment. Intimate partner violence can take place regardless of the partners’ genders or relationship status (e.g., married, common-law partnership, or dating relationship) (Status of Women Canada, n.d.).

‘Person who has been harmed’ is someone who has experienced gender-based violence, harassment, and/or bullying, whether it happens at work or outside of work. They may identify as a ‘victim’ or ‘survivor’ but many people who have been targeted or who have experienced gender-based violence, harassment, and/or bullying will not identify with these terms. It is best practice to follow the lead of the person who has been harmed, and use the language they themselves have used to describe their experience, when referring to an incident or when communicating about what happened to them.

‘Person who has caused harm’ is someone who has perpetrated gender-based violence, harassment, and/or bullying against someone else, regardless of whether it happens at work or outside of work. If the person who has caused harm (also known as the ‘perpetrator’, ‘bully’ or ‘harasser’) is an employee or the target of their harmful behaviour (the ‘victim’ or ‘survivor’) is an employee, the violence, harassment, or bullying is a workplace issue.

**Reporting** is making an official or formal complaint to authorities, such as reporting to police or to the workplace (e.g., Human Resources).

**Sexual assault** is any form of sexual activity that is imposed or forced upon another person without their consent (see Criminal Code of Canada). This includes imposed or forced mouth to mouth contact, imposed or forced sexual touching, imposed or forced mouth to genital contact, and imposed or forced penetration of the mouth, vagina, or anus. Sexual assault is a form of sexual violence, a criminal offence, and a human rights violation.

**Sexual harassment** is a form of sex discrimination. It is unwelcome conduct of a sexual nature that detrimentally affects the work environment or leads to adverse job-related consequences for the victims of harassment. It is an abuse of power. Sexual harassment is any sexually-oriented practice that endangers an individual’s continued employment, negatively affects their work performance, or undermines their sense of personal dignity (Janzen v. Platy Enterprises Ltd., 1989 CanLII 97 (SCC). It includes unwanted touching; making offensive jokes; sexual demands, requests or suggestions; commenting on someone’s body; sexualized emails or
texts’ and showing sexual pictures or images (Government of BC, n.d.). Sexual harassment is a form of sexual violence and is a human rights violation.

**Sexual violence** refers to a continuum of non-consensual sexual contact and behaviour. It includes any sexual act attempted or obtained using violence or coercion, as well as acts directed against a person’s sexuality (World Health Organization, 2002, p. 149). Sexual harassment and sexual assault are both forms of sexual violence. The term ‘sexual misconduct’ is also sometimes used as an umbrella term for various forms of sexual violence; however, the language of ‘sexual misconduct’ can serve to minimize the severity of sexual violence by equating it to general employee misconduct.

**Trauma-informed** approaches recognize that experiencing gender-based violence can be traumatic, often with lasting effects. Trauma refers to an event that is “extremely upsetting, at least temporarily overwhelms the individual’s internal resources, and produces lasting psychological symptoms” (Briere & Scott, 2015, p. 10). Recognizing this, information, resources, and services – including those within workplace prevention and response strategies – should work to avoid re-traumatizing people who have experienced violence (Status of Women Canada, n.d.). Trauma can result from a recent incident of gender-based violence, harassment, or bullying, but also from previous experiences of violence, harassment, and bullying, and/or experiences of marginalization and oppression (e.g., pre-migration trauma, intergenerational trauma).

**Victim/survivor-centered** means prioritizing the rights, needs, and wishes of the person who has experienced harm (UN Women, 2011), recognizing the victims/survivors are the experts in their own experience of gender-based violence and their needs in its aftermath (Gilfus, Fineran, Cohan, Jensen, Hartwick, & Spath, 1999). Workplace responses to gender-based violence should respect this principle and, wherever possible, enable victims/survivors to make decisions about how to proceed following an incident of workplace gender-based violence. In order to be responsive to the diverse experiences and needs of each victim/survivor, victim/survivor-centered responses must be accessible (e.g., for victims/survivors with disabilities), inclusive (e.g., inclusive of trans, non-binary or gender non-conforming victims/survivors), and pertinent to the victim/survivor (e.g., prioritizing cultural needs).
Appendix B – Legislation and Policy Relevant to Gender-Based Violence, Harassment, and Bullying and the Workplace

Employers and employees should all be generally familiar with legislation and policy relevant to gender-based violence, harassment, and bullying within their particular workplace contexts, as well as their rights and responsibilities. Individuals in organizations who have a responsibility to develop and implement GBVHB policies and procedures, in conjunction with other GBVHB response and prevention strategies, should ensure alignment with relevant federal and provincial laws and regulations. The most relevant laws and regulations within the BC context are outlined below, though they do not all apply to every organization and/or workforce.

### Human Rights Law

Human rights legislation in Canada protects people from discrimination on prohibited grounds.

1. **BC Human Rights Code**

The BC Human Rights Code promotes human rights and protects against discrimination on the grounds of race, colour, ancestry, place of origin, political belief, religion, marital status, family status, physical or mental disability, sex, sexual orientation, gender identity or expression, age, and criminal conviction unrelated to a person’s employment. Harassment may fall under the BC Human Rights Code if harassment is based on any protected ground under the Code, including sex, gender identity, gender expression, sexual orientation, race, religion, place of origin, or disability. The BC Human Rights Code prohibits discrimination against individuals and groups in the provision of accommodations, services, purchase of property, tenancy, and employment.

Sexual harassment is considered to be a form of discrimination on the basis of sex and/or gender identity or expression. Sexual harassment occurs when an individual repeatedly says or does something to discriminate against an individual related to their sex or gender. Sexual harassment is an abuse of power, even in the absence of an explicit power imbalance. For example, an employee could be sexually harassed by a co-worker, supervisor, or employer – it does not matter if the person engaging in discriminatory behaviour is in a position of relative power. Repeated sexual harassment may create a poisoned work environment. Examples of sexual harassment include (but are not limited to):

- Unwanted touching

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2 Ibid.
3 Ibid.
• Offensive jokes or remarks about women or men
• Sexual demands, requests, or suggestions
• Staring or making unwelcome comments about someone’s body
• Showing sexual pictures or images
• Sexualized texts or emails
• Being verbally abusive to someone because of their gender identity or expression

The BC Human Rights Code is enforced by the BC Human Rights Tribunal. People can file a complaint directly with the Human Rights Tribunal, and are protected against retaliation if they do so or are otherwise involved in a complaint process. There is a one year time limit for filing a complaint, which runs from the last act of discrimination. If a complaint is filed after one year, the Tribunal may still accept the complaint, if the complainant demonstrates that it is in the public interest for the Tribunal to accept the complaint, and that “no substantial prejudice will result to any person because of the delay.”

Many complaints made to the BC Human Rights Tribunal are settled by the parties, often with the assistance of mediation through the Tribunal. Other complaints are dismissed by the Tribunal on a preliminary basis. A minority of complaints proceed to a hearing before the Tribunal in which case the complainant must present evidence and argue their case. If the complainant is successful, the Tribunal will order a solution or ‘remedy.’ Complainants may seek any of the following remedies:

• Cease and refrain order
• Declaratory order that what happened was discrimination
• Steps or programs to address the discrimination
• Getting what the complainant was denied (e.g. their job back)
• Compensation for lost wages
• Compensation for expenses
• Compensation for injury to dignity, feelings and self respect
• Interest

The BC Human Rights Clinic can provide advice to individuals who file (or are considering filing) a human rights complaint.

2. BC Human Rights Commission

In 2002 the BC government disbanded the former Human Rights Commission. For a long time, British Columbia was the only province in Canada without a Commission. In November 2018, the BC government introduced legislation to re-establish a human rights

4 Ibid.
5 Supra note 1 s 22(3).
6 The BC Human Right Clinic offers a range of free services, including legal representation, summary advice and referrals. Individuals in need of assistance may contact the clinic by phone at 604-622-1100.
The new Human Rights Commissioner will be independent from the Human Rights Tribunal. The Commissioner will be responsible for promoting and protecting Human Rights in the province by examining discrimination and building tools to educate residents to help them combat inequality.

3. **Canadian Human Rights Act**

The *Canadian Human Rights Act* protects people from discrimination on the grounds of race, national or ethnic origin, colour, religion, age, sex (including discrimination on the basis of pregnancy or childbirth), sexual orientation, gender identity or expression, marital status, family status, genetic characteristics, disability, or conviction for an offence for which a pardon has been granted or in respect of which a record suspension has been ordered. For example, in the context of employment, it is discriminatory to refuse to employ or continue to employ any individual, or to differentiate adversely in relation to any employee, on a prohibited ground of discrimination.

The *Act* applies only to organizations under federal jurisdiction (e.g., the federal government, First Nations, and federally-regulated private companies). The *Act* prohibits discrimination in a variety of contexts, including the provision of goods, services, facilities or accommodation, the workplace, and employment applications and advertisements.

4. **The Canadian Human Rights Commission**

The Canadian Human Rights Commission is an independent governmental organization with a mandate to research, raise awareness and speak publicly on matters related to human rights in Canada. The Commission is tasked with representing the public interest and keeping the Government of Canada accountable on human rights matters. The Commission is responsible for administering human rights law to protect Canadian residents from discrimination based on the protected grounds outlined in the section above.

Persons who believe they have been discriminated against can file a complaint with the Commission. In practice, when the Commission receives a complaint, they first work with the complainant and respondent through mediation to try to resolve the issue. The Commission investigates complaints that cannot be resolved by mediation or settlement. If the Commission considers it warranted, it will refer the complaint to the Canadian Human Rights Tribunal for hearing.

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8 *Canadian Human Rights Act*, RSC 1985, c H-6 s 7.
The Commission is also mandated to ensure federally regulated employers comply with the *Employment Equity Act*. This work helps to remove barriers to workplace success for women, Indigenous peoples, persons with disabilities and racialized persons.\textsuperscript{12}

5. **Employment Equity Act**

The *Employment Equity Act* is a federal law requiring federally-regulated organizations to provide equal employment opportunities to women, Indigenous people, people with disabilities, and members of visible minorities.\textsuperscript{13} The Legislated Employment Equity Program (LEEP), administered and enforced by the Labour Program, is mandatory and requires federally-regulated organizations to report annually on the representation of each of the four designated groups in their workplaces, and efforts they have made to ensure representation of these designated groups.

### Criminal Law

1. **Criminal Code of Canada**

The *Criminal Code* of Canada is the overarching criminal law that applies across the country.

Sexual assault is not defined in the *Criminal Code* of Canada; however, consent is defined as “the voluntary agreement of the complainant to engage in the sexual activity in question.”\textsuperscript{14} Any sexual contact without consent is legally considered to be sexual assault. According to the law, consent cannot be given on behalf of another person, and cannot be obtained if a person is unconscious or otherwise incapable of consenting, expresses a lack of agreement (by words or conduct) to engage or continue to engage in the activity, or if consent is sought by abusing a position of trust, power, or authority. The *Criminal Code* explicitly states that the complainant’s history of sexual activity (with the accused or with any other person) does not imply or serve as evidence that they provided consent to the activity in question, or that they are less worthy of belief.\textsuperscript{15}

The *Criminal Code* also outlines three classifications (or levels) of sexual assault:

- **Level 1 – Sexual Assault [Criminal Code s. 271]**
  Although sexual assault is not defined in the *Criminal Code*, the broader category of 'assault' is defined as the intentional application of force to another person, directly or indirectly, without the consent of that other person. Following this, Canadian courts have interpreted sexual assault to mean an assault committed in sexual circumstances, which violates the sexual integrity of the victim/survivor. This offence carries a maximum sentence of ten years imprisonment if prosecuted.

\textsuperscript{12} Ibid.
\textsuperscript{14} *Criminal Code*, RSC 1985, c C-46 s 153.1(2).
\textsuperscript{15} *Supra* note 9 at s 276(1).
as an indictable offence, or a maximum of 18 months imprisonment if prosecuted
as a summary conviction offence.

- **Level 2 – Sexual Assault with a Weapon, Threats to a Third Party, or Causing Bodily Harm [Criminal Code s. 272]**
  This is a sexual assault where a person carries, uses, or threatens to use a weapon
  (or imitation of a weapon), threatens to cause bodily harm to a person other than
  the victim/survivor (e.g., a child or friend), causes bodily harm to the
  victim/survivor, or is party to the offence with any other person. This indictable
  offence carries a maximum sentence of 14 years imprisonment, and a minimum
  sentence of four years imprisonment if a firearm was used.

- **Level 3 – Aggravated Sexual Assault [Criminal Code s. 273]**
  This is when a person wounds, maims, disfigures, or endangers the life of the
  victim/survivor in the course of committing a sexual assault. This offence carries a
  maximum sentence of life imprisonment, and a minimum sentence of four years
  imprisonment if a firearm was used.

The *Criminal Code* additionally outlines several sexual offences that can be considered
part of a continuum of sexual violence. These include:

- Sexual interference [Criminal Code s.151]
- Invitation to sexual touching [Criminal Code s.152]
- Sexual exploitation [Criminal Code s.153]
  - Sexual exploitation of person with disability [Criminal Code s.153.1]
- Incest [Criminal Code s.155] – sexual intercourse with a person, knowing they
  have a blood relationship with the perpetrator.
- Voyeurism [Criminal Code s.162]

The *Criminal Code* does not include specific offences for domestic or intimate partner
violence, but several offences are relevant to intimate partner violence, including:

- Murder, manslaughter, and infanticide [Criminal Code ss.229-240]
- Criminal harassment [Criminal Code s.264]
- Uttering threats [Criminal Code s.264.1]
- Kidnapping [Criminal Code s.279]
- Assault, Assault with a weapon or causing bodily harm, and Aggravated assault
  [Criminal Code ss.265-268]
- Extortion [Criminal Code s.346]
In 2017, Women and Gender Equality Canada (WAGE Canada, formerly Status of Women Canada), released *It’s Time: Canada’s Strategy to Prevent and Address Gender-Based Violence*, a federal government initiative with three pillars: (1) prevention; (2) support for survivors and their families; and (3) promotion of responsive legal and justice systems. As part of this initiative, the Canadian government amended the *Criminal Code* to clarify and strengthen the sexual assault provisions in the *Code* to reflect decisions of the Supreme Court of Canada, for example on the subject of consent. The amendments also expanded ‘rape shield’ laws that protect a sexual assault victim’s sexual history to include prior communications of a sexual nature or communicating for a sexual purpose, ensure that sexual assault victims have the right to legal representation in rape shield proceedings, and protect sexual assault victims against the introduction of their private records at trial, if those records are in the possession of the accused. The Canadian government also amended the *Criminal Code* to include violence motivated by gender identity as a hate crime.

In 2019, Parliament enacted An Act to amend the *Criminal Code*, the *Youth Criminal Justice Act*, and other Acts and to make consequential amendments to other Acts, which defines ‘intimate partner’ in the *Criminal Code* to include their current or former spouse, common-law partner and dating partner, provides more onerous interim release requirements for offences involving violence against an intimate partner, and increases the maximum term of imprisonment for repeat offences involving intimate partner violence and provide that abuse of an intimate partner is an aggravating factor on sentencing.

Victims of crimes in British Columbia, including sexual violence, can access BC’s Crime Victim Assistance Program (CVAP) for support. CVAP is authorized by the *Crime Victim Assistance Act*. CVAP provides financial benefits to help support victims who have experienced financial loss in the course of their recovery. Benefits for victims can include medical service, prescription drug expenses, counselling and other benefits.

**Labour Law**

Labour law is the law governing relationships in unionized workplaces and the legal rights of unionized workers. While some sectors, organizations, and workers in BC are regulated by federal labour law, most sectors, organizations, and workers in BC are regulated by provincial labour law.

1. **BC Labour Relations Code**

The BC *Labour Relations Code* governs labour relations involving provincially-regulated employers and employees, and applies to the vast majority of employers and employees in BC. All labour relations matters under the BC *Code* are mediated and adjudicated by

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17 Statute of Canada, 2019, c 25.
19 Individuals in need of support from CVAP can call 1-866-660-3888.
the BC Labour Relations Board. The Labour Relations Board has the authority to make final and conclusive decisions in the settlement of labour disputes.

2. **Canada Labour Code – Part 1**

Part 1 of the *Canada Labour Code* legislates labour relations procedures, including collective bargaining, dispute resolution, strikes and lockouts for federally-regulated workers.

The *Canada Labour Code* applies to any federal work, undertaking or business that is within the legislative authority of Parliament. This includes workplaces such as the federal government, radio and television, telecommunications, interprovincial and international transportation, the RCMP and military, some First Nations undertakings, public and private sector activities in Yukon, Nunavut and the Northwest Territories, and Federal Crown corporations.

Neither the *Canada Labour Code* Part 1 nor the BC *Labour Relations Code* deals specifically with gender-based violence. However, the fact that the employees of an employer are unionized under either statute will have significant implications for how the employment consequences of gender-based violence will be addressed.

3. **Collective Agreements**

Collective agreements are written contracts between employers and unions that set out the terms and conditions of employment negotiated through collective bargaining. Every collective agreement has clauses related to termination without just cause and the right to a grievance process if there is a dispute regarding a unionized employee’s termination. However, the nature of that process is determined by the parties (i.e., the employer and the union).

Collective agreements vary considerably with respect to the extent to which they address the issue of gender-based violence, harassment, and bullying. Many collective agreements have specific language related to sexual harassment; that is, they define sexual harassment, describe the behaviours that constitute sexual harassment, and provide for policy to address these behaviours, while others lack any mention of sexual harassment. However, even in the absence of express language in the collective agreement that explicitly addresses sexual harassment, human rights legislation prohibits workplace harassment that is based on any of the protected grounds outlined in human rights law. A violation of the *Human Rights Code* is a violation of the collective agreement. Human rights legislation and other employment related statutes constitute minimum employment standards, beneath which an employer and a union cannot

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20 *Labour Relations Code*, RSBC 1996, c 244 s 89.
Labour arbitrators are empowered to interpret and apply any Act intended to regulate the employment relationship, including the Human Rights Code.

Incidents of sexual harassment in the workplace are often dealt with through individual grievance and arbitration processes. Unions can bring grievances against employers both on behalf of individuals experiencing sexual harassment and on behalf of those who have been disciplined by the employer for having engaged in such behaviour. For example, a union may bring a grievance on behalf of an employee who was terminated due to being found to have committed sexual assault, claiming unjust dismissal. Unions can also file individual or group grievances to challenge workplace environments that encourage or tolerate sexual harassment. In such circumstances, the Union will have to consider and meet its duty of fair representation of both the union member(s) who experienced sexual harassment, and the union member(s) who were disciplined for engaging in sexual harassment.

**Employment Law**

Employment law refers to the laws that govern employment relationships in a non-unionized workplace. There are statutes that set out minimum terms and conditions of employment and common law principles that apply in non-unionized workplaces.

1. **BC Employment Standards Act**

The Employment Standards Act and Regulation are administered by the Employment Standards Branch and set minimum standards and working conditions for provincially regulated workplaces in BC. The Act includes employees' entitlements to pregnancy and parental leave, and unpaid leave for the purposes of family responsibility, compassionate care, and bereavement.

In the spring of 2019, the BC Government introduced Bill 8, the Employment Standards Amendment Act. Under the amended Act, an employee who experiences domestic violence, which is defined to include sexual abuse by an intimate partner, will receive up to 10 non-consecutive days of unpaid job-protected leave in each calendar year (to be taken in units of one or more days or in one continuous period) and in addition up to 15 weeks of consecutive unpaid leave. This Bill has not yet been enacted into law.

Several provinces across Canada have amended, or are in the process of amending, legislation to include domestic and/or sexual violence leave for employees experiencing gender-based violence. For example, the Ontario Employment Standards Act now provides Domestic or Sexual Violence Leave of up to 10 days (5 days of which are paid) and 15 weeks every calendar year if an employee or their child has experienced or been threatened with domestic or sexual violence, regardless of whether the employee is working full-time or part-time. In Alberta, eligible employees can take up to 10 days of

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24 Supra note 14 at s 89(9).
unpaid, job-protected leave due to the effects of violence in the home.\textsuperscript{26} New Brunswick has also introduced a Regulation for Domestic Violence, Intimate Partner Violence or Sexual Violence Leave, which entitles employees to up to 10 days (intermittent or continuous) or 16 weeks (continuous), the first 5 days of which are paid.\textsuperscript{27} The Regulation specifies that the leave of absence must be to seek medical attention, obtain victim services, obtain psychological or other counselling, relocate temporarily or permanently, seek legal or law enforcement assistance, or “for any other purpose related to or resulting from the domestic violence, intimate partner violence or sexual violence.”\textsuperscript{28}

2. \textit{Canada Labour Code – Part 3}

Part 3 of the \textit{Canada Labour Code} applies to employment in or in connection with the operation of any federal work or undertaking. Part 3 of the \textit{Code} is not limited to unionized workplaces and governs employment standards of both union and non-unionized workplaces. The \textit{Code} sets out minimum standards related to hours of work, vacation and holidays, leave, termination, wages, and sexual harassment.\textsuperscript{29}

The \textit{Code} addresses sexual harassment in the workplace and defines sexual harassment as, “any conduct, comment, gesture or contact of a sexual nature that might reasonably be perceived by that employee as placing a condition of a sexual nature on employment...”\textsuperscript{30} and states that “every employee is entitled to employment free of sexual harassment”\textsuperscript{31} The \textit{Canada Labour Code} requires employers to make all reasonable attempts to prevent instances of sexual harassment in the workplace.\textsuperscript{32} Employers must, after consulting with employees, issue workplace policy on sexual harassment that includes:\textsuperscript{33}

- A definition of sexual harassment that aligns with the \textit{Canada Labour Code} definition
- A statement that all employees are entitled to a workplace free of sexual harassment
- A statement that all employers must take reasonable steps to ensure no employees are subjected to sexual harassment at work
- A statement that employers will take disciplinary action against workers who sexually harass their colleagues

\textsuperscript{26} Government of Alberta, Domestic violence leave, online: <https://www.alberta.ca/domestic-violence-leave.aspx>.
\textsuperscript{27} NB Reg 2018-81, s 3.
\textsuperscript{28} \textit{Supra} note 29 s 4.
\textsuperscript{30} \textit{Supra} note 12 at s 247.1(b).
\textsuperscript{31} \textit{Supra} note 12 at s 247.2.
\textsuperscript{32} \textit{Supra} note 12 at s 247.3.
\textsuperscript{33} \textit{Supra} note 12 at s 247.4(1).
• A statement that informs employees of the rights of individuals seeking remedy for sexual harassment under the Human Rights Act.

The Canada Labour Code states “no employer shall dismiss, suspend, lay off, demote or discipline an employee because of an absence from work due to work-related illness or injury.” Thus, employers may not discipline an employee for missing work due to a work-related injury acquired as a consequence of a sexual assault. If an employee is absent due to a work-related injury, the employer is obligated to subscribe to a plan to provide the employee proper wage replacement.

3. Common Law

Common law (judge made law) applies in all non-unionized workplaces. There are several ways in which common law may apply to gender-based violence.

Wrongful dismissal law may apply. At common law, and subject to the terms of any individual contract of employment, an employer can terminate any employee without cause, provided they provide them with reasonable notice or compensation in lieu of notice. An employer can terminate an employee without notice or compensation if they have just cause to do so. If an employer determines that an employee has committed wrong-doing, such as workplace sexual assault or harassment, they might, depending on the nature of the wrong-doing, determine that they have just case to terminate that employee. A terminated employee who disagreed could sue the employer in court for wrongful dismissal, and the court would have to decide if there was just cause or not.

Equally, a person who has suffered sexual harassment or assault at work might have the basis to sue the employer in court for wrongful dismissal. A basis for wrongful dismissal might arise if the employer terminated an employee for making what the employer believed was a false allegation. More commonly, an employee who experienced gender-based violence at work, whose employer did not take appropriate steps to address that violence, such that the workplace became intolerable, might sue the employer for constructive dismissal. In such a case the court would have to decide if the employee had been constructively dismissed, and if so, what damages they are entitled to.

Legal claims for sexual assault and battery can be brought in civil proceedings in court, but the Human Rights Tribunal has exclusive jurisdiction over claims for sexual harassment. Sexual harassment is broadly defined as “unwelcome conduct of a sexual nature that detrimentally affects the work environment or leads to adverse job-related consequence for the victims of the harassment.” All claims for sexual harassment must be brought under the relevant human rights legislation to either the BC Human Rights Tribunal or the Canadian Human Rights Commission.

34 Supra note 12 at s 239(1).
35 Supra note 12 at s 239(2).
In contrast, victims/survivors of sexual assault and battery may have the option of suing their aggressors for monetary damages. Rape and sexual assault fall within the civil law definitions of battery and assault and can result in civil causes of action. In civil law, battery is defined as “intentionally bringing about a harmful or offensive contact with the person of another” while assault is defined as an act demonstrating an immediate intention to commit a battery, in conjunction with the ability to bring effect to that intention. In other words, civil causes of action can arise in situations where an individual interferes or threatens to interfere with the bodily autonomy of another person.

The question of when employees can sue their employers or co-workers for gender-based violence is complex and the law is continuing to develop. There are strict limitations on the extent of employer and employee liability according to British Columbia’s Workers Compensation Act. It states that employees are barred from bringing legal action against employers and workers “in respect of any personal injury” that occurs “in the course of employment.” This section is framed by the courts as a trade-off wherein workers give up the right to sue in the employment context in exchange for no-fault workplace benefits. This legislation seemingly grants employers complete immunity from suits related to workplace injury, including injuries caused by sexual assault suffered at work. This is an area in which it is essential that affected persons seek legal advice.

### Occupational Health and Safety

1. **Provincial Occupational Health and Safety Regulations**

   **Workers Compensation Act** and **Occupational Health and Safety Regulation of BC**

   The Workers Compensation Act is administered by the Workers’ Compensation Board of British Columbia, more commonly referred to as WorkSafeBC, and provides the authority for the Occupational Health and Safety Regulation of British Columbia (OHSR). The purpose of the OHSR is “to promote occupational health and safety and to protect workers and other persons present at workplaces from work-related risks to their health, safety, and well-being.” WorkSafeBC is responsible for supporting and enforcing compliance with the OHSR in workplaces across BC, with the exception of mining companies (which fall under the authority of the BC Ministry of Energy, Mines and Petroleum Resources) and federally regulated employers, which are governed by the Canada Labour Code, Part 2.

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37 Corfield v Shaw, 2011 BCSC 1529.
39 Canada (Attorney-General) v Connolly, [1989] 64 DLR (4th) 84; 41 BCLR (2d) 162.
40 Workers Compensation Act, RSBC 1996, c 492 s 10.
41 Bagri v Workers Compensation Appeal Tribunal, 2009 BCSC 300 para 18.

Under the BC *Workers Compensation Act* and *Occupational Health and Safety Regulation*, employers have a legal duty to protect the health and safety of workers, including preventing and addressing workplace bullying and harassment, and to protect workers from violence arising out of their employment. In some cases, this may include domestic or intimate partner violence.\(^{43}\) If an employer learns of a threat or hazard, they must (1) assess the risk, (2) eliminate or minimize the risk, (3) instruct their workers of the risk, and (4) respond to any incidents.\(^{44}\)

In 2012, amendments were made to section 5.1 of the *Workers Compensation Act* such that workers are now entitled to compensation for a mental disorder that “is predominantly caused by a significant work-related stressor, including bullying or harassment, or a cumulative series of significant work-related stressors, arising out of and in the course of the workers’ employment.”\(^{45}\)

According to WorkSafeBC, “employers, workers, and supervisors must all take reasonable steps to prevent where possible or otherwise minimize workplace bullying and harassment.”\(^{46}\) The general duties for each group differ slightly depending on their level of responsibility (see Table 2).

\(^{44}\) *Supra* note 38.  
\(^{45}\) *Supra* note 35 at s 5.1.  
Table 2. Workplace Bullying and Harassment Duties

<table>
<thead>
<tr>
<th>Duties</th>
<th>Worker</th>
<th>Supervisor</th>
<th>Employer</th>
</tr>
</thead>
<tbody>
<tr>
<td>Do not engage in bullying and harassment of others</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Report any bullying and harassing behaviours you observe or experience in the workplace*</td>
<td>X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Apply and comply with the employer’s policies and procedures on bullying and harassment</td>
<td>X</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Develop a policy statement on workplace bullying and harassment</td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Take steps to prevent or minimize workplace bullying and harassment</td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Develop and implement procedures for reporting and investigating incidents or complaints, including when the employer, owner or supervisor is the bully or harasser</td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Inform workers of the workplace bullying and harassment policy statement and prevention measures</td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Train supervisors and workers on recognizing and responding to workplace bullying and harassment, including procedures for reporting and investigating incidents or complaints</td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Annually review policy statements, prevention initiatives, and procedures for reporting and investigating incidents or complaints of workplace bullying and harassment</td>
<td></td>
<td></td>
<td>X</td>
</tr>
</tbody>
</table>

(WorkSafeBC, 2013c)

*In reference to policy that requires workers to report bullying and harassment that is “observed or experienced in the workplace”, WorkSafeBC has clarified that this “would not encompass situations where the worker was informed of conduct that he or she had not personally observed or experienced.” Based on this communication, it is our understanding that, if someone discloses to a co-worker they have experienced bullying or harassment, Occupational Health and Safety Guidelines do not require that co-worker to report the bullying or harassment that was disclosed.

Correspondence from Lori Guiton, Director of Policy, Regulation, and Research Division, 2017.
The *Occupational Health and Safety Regulation* of BC defines violence in the workplace as “...the attempted or actual exercise by a person, other than a worker, of any physical force so as to cause injury to a worker, and includes any threatening statement or behaviour which gives a worker reasonable cause to believe that he or she is at risk of injury.”

2. Federal Occupational Health and Safety Regulations

*Canada Labour Code* - *Part 2, Canada Occupational Health and Safety Regulations* and the *Canadian Centre for Occupational Health and Safety Act*

Part 2 of the *Canada Labour Code* applies to the operation of all federal works or undertakings that take place in British Columbia and across the country. The purpose of this legislation is to prevent workplace related accidents and injury. According to the *Code*, every employer has the duty to ensure the health and safety of every person employed by the employer. The *Code* is designed to strengthen employers’ and employees’ self-reliance in dealing with occupational health and safety issues to make federal workplaces safer.

The *Canada Occupational Health and Safety Regulations* prescribe steps federally regulated employers must follow to protect employees from violence. Employers must take the following steps to prevent violence in the workplace:

- Develop a workplace violence prevention policy
- Identify all factors that contribute to workplace violence
- Assess the potential for workplace violence
- Develop and implement systematic controls to eliminate or minimize workplace violence or a risk of workplace violence
- Review the effectiveness of the workplace violence prevention measure
- Develop and implement written notification procedures in response to situations of workplace violence and measures to assist employees who have experienced workplace violence
- Attempt to resolve cases of workplace violence, and failing this, appoint a competent person to investigate the matter
- Provide information, instruction and training on the factors that contribute to workplace violence to each employee exposed to workplace violence or at risk of

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48 BC Reg 269/97, s 4.27.
50 Supra note 12 s 124.
workplace violence and maintain signed records on the information, instruction and training provided to each employee.

In instances of non-emergency workplace violence, employers are required under the Canada Occupational Health and Safety Regulations to try to resolve the matter with the affected employees as soon as they have been made aware. The employer must develop and implement systematic controls to eliminate or minimize workplace violence no later than 90 days after the day the risk of workplace violence has been identified and assessed.

The Canadian Centre for Occupational Health and Safety Act established the Canadian Centre for Occupational Health and Safety. The purpose of this organization is to advance safe and healthy workplaces to prevent work-related injuries, illnesses and deaths.

Bill C-65, An Act to amend the Canada Labour Code (harassment and violence), was developed following the Canadian government’s Harassment and Sexual Violence in the Workplace Public Consultations: What We Heard report (Employment and Social Development Canada, 2017). This report summarized findings from consultations (with stakeholders and an online survey open to all Canadians) and found that there are high levels of harassment, sexual harassment, violence, and sexual violence in Canadian workplaces.

These public consultations emphasized the need to undertake prevention measures (e.g., education, awareness-raising); improve responses to incidents (e.g., increase efficiency) and workplace support of victims/survivors; differentiate sexual harassment from other types of violence (as it is “highly sensitive and raises different privacy considerations” (p. 6); and address the underreporting and insufficient data on workplace harassment and violence.

The stated purpose of Bill C-65 is to strengthen the existing Canada Labour Code framework for the prevention of sexual harassment and violence in the workplace. The Bill will incorporate sexual harassment and violence into activities employers are required to prevent and act on under Occupational Health and Safety responsibilities. It will compel employers to investigate and report any instances of sexual harassment they are notified of. Bill C-65 also brings parliamentary and political staff under the protection of the new provisions. While portions of the Bill have come into force, substantive employer obligations on sexual harassment under Bill C-65 are expected to come into force in 2020.

53 Ibid.
Privacy Legislation

There are various pieces of legislation that govern organizations’ privacy obligations on both the federal and provincial levels.

Provincially, the Office of the Information and Privacy Commissioner of British Columbia enforces the *Freedom of Information and Protection of Privacy Act* (FOIPPA) and the *Personal Information Protection Act* (PIPA). FOIPPA establishes the access to information and privacy rights of individuals in the public sector. It sets out individuals’ right to access records, including access to a person’s own personal information. PIPA applies to provincial private sector organizations, such as businesses, corporations, unions, political parties etc., that collect personal information about individuals. PIPA requires organizations to take all reasonable steps to protect and secure personal information against unauthorized use or disclosure.55 BC’s *Privacy Act* defines and establishes the tort of violation of privacy, creating civil liability depending on the circumstances.56

Federally, the Office of the Privacy Commissioner of Canada (OPC) oversees compliance under two federal privacy laws: the *Privacy Act* and the *Personal Information Protection and Electronic Documents Act* (PIPEDA). The *Privacy Act* covers the personal information-handling practices of federal government departments and agencies and establishes a person’s right to access and correct personal information that the government of Canada holds about them. The *Privacy Act* also applies to the federal government’s collection, use and disclosure of personal information in the course of providing services. PIPEDA legislates the personal information-handling practices of federally regulated businesses. It establishes rules for how private sector organizations may collect, use and disclose personal information in the course of for-profit, commercial activities across Canada.57

While there are differences between the various pieces of legislation establishing privacy rights, certain basic principles apply across the board. In general terms:58

- The employer should say what personal information it collects from employees, why it collects it, and what it does with it.
- Collection, use, or disclosure of personal information should normally be done only with an employee’s knowledge and consent.
- The employer should only collect personal information that is necessary for its stated purpose, and collect it by fair and lawful means.

56 *Privacy Act*, RSBC 1996, c 373.
• The employer should normally use or disclose personal information only for the purposes that it collected it for, and keep it only as long as it is needed for those purposes, unless it has the employee's consent to do something else with it, or is legally required or permitted to use or disclose it for other purposes.

• Employees' personal information needs to be accurate, complete, and up-to-date.

• Employees should be able to access their personal information, and be able to challenge the accuracy and completeness of it.

1. Limits to Confidentiality

Privacy rights are not absolute. While a workplace can support victims/survivors disclosing without requiring a formal report, there are legal limits to confidentiality that should be clearly articulated within workplace policy and procedures. Confidentiality and its limitations should also be reviewed with the person who has made a report and with the person(s) about whom a report has been made, and then confirmed in writing.

Organizations may be required to take immediate action, such as contacting the police or child welfare authorities, in relation to a disclosure of gender-based violence, in the following circumstances:

• There are reasonable grounds to believe that others in the work community may be at significant risk of harm based on the information provided.

• An individual is at imminent risk of severe or life threatening self-harm.

• An individual is at imminent risk of harming another person.

• There is a requirement to report to child welfare under s. 13 of the *Child, Family and Community Service Act* where a child (someone under 19 years) is in need of protection.

• There is a requirement to comply with a court order for release of information.

Workplace policy and procedures should specify who within the workplace has the authority to make the decision to release information without consent in the above circumstances. A decision to disclose victim/survivor information without the individual's consent should only be made in circumstances where it is legally required. If a decision is made to release information without consent, only information relevant to the health or safety concern in question should be released. The victim/survivor should be kept informed of any decision to release personal information.

2. Sharing Information About the Person Who Caused Harm

In addition to providing their own personal information, a victim/survivor making the initial disclosure or report of gender-based violence, harassment or bullying will often include,
in their disclosure or report, personal information about the person who harmed them. Generally speaking, subject to the previously listed exceptions to confidentiality, consent from the perpetrator would be required before this information could be disclosed further by the person receiving the disclosure or report. However, privacy laws allow such information to be shared without consent in the following circumstances:

- If there are compelling circumstances that affect anyone’s health or safety
- To assist in an investigation or in making a decision to start an investigation
- If the disclosure is for the purposes for which the information was originally collected and the disclosure is necessary for those purposes

Any exceptions to maintaining confidentiality must be clearly articulated in workplace policy and procedures and to all those involved.
Appendix C – Gender-Based Violence, Harassment, and Bullying: Workplace Policy Template

A workplace gender-based violence, harassment, and bullying policy should include the following components:

1.0 Policy Statement
Begin with a policy statement that outlines the organization’s position on gender-based violence, harassment, and bullying and the workplace, why the organization believes it is important to address this issue, and its commitment to addressing this issue. The purpose(s) of the policy (e.g., to create safer workplace and communities; to foster a respectful and inclusive workplace culture) should also be clearly articulated.

2.0 Policy Scope
Outline the scope and/or application of the policy so that everyone in the organization knows what behaviours the policy addresses (e.g., bullying, sexual harassment, sexual assault, intimate partner violence), whom the policy applies to (e.g., employees, employers), when the policy applies (e.g., during work hours, on work time, when using organization equipment, during work-related events and travel), and where the policy applies (e.g., at the work site, at work events, at events involving organization staff).

3.0 Definitions
Define key terms that appear in the policy, including those relevant to gender-based violence, harassment, and bullying (e.g., gender-based violence; harassment and bullying; discrimination; sexual harassment; sexual assault; sexual violence; intimate partner violence; consent), disclosing and reporting options and processes (e.g., disclosure; report; complaint; confidentiality, investigation; procedural fairness; accommodation; trauma-informed), and all parties involved (e.g., complainant, respondent; investigator).

4.0 Roles and Responsibilities
Outline the various roles and responsibilities of leadership, employers, supervisors/managers, employees, and other people who have a relationship with the organization with respect to creating safer workplaces and communities, and responding to incidents, disclosures, and reports of gender-based violence, harassment, and bullying. Highlight relevant federal and provincial legislation, regulations, and policy that stipulate various levels of responsibility for different roles, and articulate how the gender-based violence, harassment, and bullying policy aligns and intersects with the organization’s other workplace policy.

5.0 Options for Disclosing and Reporting
Outline all disclosing and reporting options available to a person who has been harmed by gender-based violence, harassment, and bullying. These should include support and possible accommodations, while the person who was harmed
decides what actions to take (if any). It is essential to specify who in the workplace is responsible for receiving formal reports or 'complaints' that will initiate a formal fact-finding investigation, and how a person may make a complaint to them. Workplace policy should also identify external agencies to which a report or complaint may be made (e.g. Human Rights Tribunal, WorkSafeBC, police).

6.0 Mitigating Risk from People Who Have Caused Harm
Workplace policy and procedures should describe when and how risk assessments will be conducted, who will conduct risk assessments, and what steps will be taken to manage risks identified through a risk assessment. Companies should outline how voluntary disclosures of gender-based violence, harassment, and bullying perpetration will be addressed, referral procedures for people who have disclosed causing harm to seek help, and how voluntary protective provisions and Protection Orders or Peace Bonds will be managed and/or coordinated within the workplace.

7.0 Enhancing Safety for People Who Have Been Harmed
Workplace policy and procedures should clearly outline the rights and protections available for victims/survivors of GBV, supports and referrals for victims/survivors who choose to disclose and/or report experiences of GBV, and what steps will be taken to develop and implement safety plans with survivors to manage risks identified through a risk assessment. Companies should also outline the types of accommodations available to victims/survivors of GBV (e.g., voluntarily moving to a different worksite or work space, working remotely, safer parking options, flexible work hours, permission to miss work to attend meetings/appointments, schedule changes, changes in supervision, leave provisions, return-to-work processes).

8.0 Critical Incident Response Strategy
Workplace policy should describe what the organization will do to respond to critical incidents, including investigating and reporting on critical incidents, assessing the impacts and risk to anyone in the workplace or community, debriefing critical incidents and providing support to affected organization personnel, and reviewing and communicating about risk management and safety plans to prevent future critical incidents. Organizations must demonstrate accountability, transparency, and consistency in decision-making related to critical incidents.

9.0 Investigations
Outline the process in place for undertaking workplace investigations of gender-based violence, harassment, and bullying and/or include a reference to the relevant related procedures where this process is articulated more fully. This section of the policy should articulate protections against retaliation during and after an investigation and may include the right to any appeal following completion of a formal fact-finding or investigation process. It is important to indicate who is responsible for undertaking investigations, and the trauma-informed principles underlying investigations.
10.0 **Privacy and Confidentiality**
Outline expectations and legislation related to privacy and confidentiality for all parties following an incident, disclosure, or report of gender-based violence, harassment, and bullying. This component of the policy should also articulate expectations for confidentiality in communications about any incidents, disclosures, or reports of gender-based violence, harassment, and bullying within the workplace.

11.0 **Consequences**
Workplace policy should identify potential consequences for employees who are found to have engaged in gender-based violence, harassment, and bullying, or to have retaliated against a person in relation to a complaint or investigation, or to have breached confidentiality (e.g. warning, training, suspension, transfer, demotion, termination, etc.).

12.0 **Training and Prevention**
Workplace policy should outline the organization’s commitments to workplace gender-based violence, harassment, and bullying training and prevention, including education about the policy, bystander intervention training (including covert and overt intervention strategies), and training on how to identify signs of gender-based violence, harassment, and bullying, and responding to disclosures (including case studies and scenarios).

13.0 **Policy Review**
Articulate when the policy will be reviewed (e.g., on an annual basis) to ensure that the policy statement and associated processes remain relevant, and who will be involved and/or consulted in the review process.
Appendix D – Resources and Support

Information for Employers

WorkSafeBC Resources

- Bullying and Harassment: https://www.worksafebc.com/en/health-safety/hazards-exposures/bullying-harassment

WorkSafeBC Prevention Information Line

Answer questions about workplace health and safety, worker and employer responsibilities, and reporting a workplace incident; accept anonymous calls.

Phone (toll-free in Canada): 1-888-621-SAFE (7233)
Phone (Lower Mainland): 604-276-3100

Domestic Violence at Work Network (DV@worknet)

Research and knowledge mobilization about the impacts of domestic violence in the workplace.

Website: http://dvatworknet.org/

Make It Our Business: Addressing Domestic Violence in the Workplace

Information and education to help employers and other workplace stakeholders address domestic violence in the workplace in Ontario.

Website: http://makeitourbusiness.ca
Legal Information for Employers and Workers

Legal Services Society (LSS)

*Provides legal aid in BC. The law is complicated, but not everyone can afford a lawyer. LSS may be able to help you with your legal issue.*

Website: [https://lss.bc.ca/](https://lss.bc.ca/)
Phone (Greater Vancouver): 604-408-2172
Phone (Elsewhere in BC): 1-866-577-2525

BC Federation of Labour

*Represents over 500,000 members from affiliated unions across BC, working in every aspect of the BC economy, and fights for the rights of all working people to a safe workplace and fair wages.*

Website: [https://bcfed.ca/](https://bcfed.ca/)
Phone: 604-430-1421

Workers’ Advisors Office

*Provides free advice and assistance to workers and their dependents on disagreements they may have with WorkSafeBC decisions.*

Website: [https://www2.gov.bc.ca/gov/content/employment-business/employment-standards-advice/personal-injury-and-workplace-safety](https://www2.gov.bc.ca/gov/content/employment-business/employment-standards-advice/personal-injury-and-workplace-safety)

BC Human Rights Clinic – Community Legal Assistance Society (CLAS)

*Legal assistance to people in BC with problems in the areas of workers’ rights, income security, housing, mental health, and human rights.*

Website: [https://www.bchrc.net](https://www.bchrc.net)
Email (general): infobchrc@clasbc.net
Email (legal representation): intakebchrc@clasbc.net
Phone: 604-622-1100
Phone (toll free): 1-855-685-6222

Lawyer Referral Service – Access Pro Bono

*Available across the province, the Lawyer Referral Service is a program that connects you with a lawyer to discuss your legal problem. Initial half hour consultations are free.*

Website: [www.accessprobono.ca/lawyer-referral-service](http://www.accessprobono.ca/lawyer-referral-service)
Phone (Greater Vancouver): 604-687-3221
Phone (toll free, elsewhere in BC): 1-800-663-1919

Access Pro Bono

Promotes access to justice in BC by providing and fostering quality pro bono legal services for people and non-profit organizations of limited means.

Website: http://www.accessprobono.ca
E-mail: help@accessprobono.ca
Phone: 604-878-7400
Phone (toll free): 1-877-762-6664

Rise Women’s Legal Centre

Provides accessible legal services for self-identifying women. Rise clients are often caught in the gap between being ineligible for legal aid services yet unable to afford legal representation. They offer unbundled legal services in the area of family law, and can also assist with some immigration matters.

Request an Appointment: https://womenslegalcentre.ca/request-an-appointment
Phone: 236-317-9000

Family Justice Centres

Each centre is staffed by accredited Family Justice Counsellors, specially trained to help families with parenting arrangements, contact with a child, guardianship, and support issues.

Website: https://www.clicklaw.bc.ca/helpmap/service/1019

Justice Access Centres

The place to come when you need help with family and civil law issues that affect your everyday life, such as separation or divorce, income security, employment, housing or debt.

Website: https://www2.gov.bc.ca/gov/content/justice/about-bcs-justice-system/jac
Support for People Who Have Been Harmed

If there is an emergency situation, call 9-1-1 immediately for assistance.

VictimLinkBC

*Information and referral services for all victims of crime and immediate crisis support for victims of family violence (including intimate partner violence) and sexual violence. Accessible 24/7, in 110 different languages and TTY*

Website: [www.victimlinkbc.ca](http://www.victimlinkbc.ca)
Phone: 1-800-563-0808
Text: 604-836-6381

Ending Violence Association of BC – Need Help

*Information about the dynamics and impacts of gender-based violence; known risk factors; who to call in an emergency; services available in BC; safety planning; and additional resources and information you can access.*

Website: [http://endingviolence.org/need-help](http://endingviolence.org/need-help)

WAVAW Rape Crisis Centre

*Immediate crisis assistance and emotional support, information and referrals for cis and trans women, Two-Spirit, trans and/or non-binary people who are survivors of sexual assault and sexualized violence. The crisis line is free and confidential.*

24-Hour Crisis and Information Line: 604-255-6344
National Toll-Free: 1-877-392-7583

Crisis Intervention and Suicide Prevention Centre of BC

Website: [https://crisiscentre.bc.ca](https://crisiscentre.bc.ca)
Online Chat: [https://crisiscentrechat.ca](https://crisiscentrechat.ca)
Phone: 1-800-SUICIDE (784-2433)

HealthLinkBC

*You can speak with a health service navigator, who can also connect you with a registered nurse any time. Translation services in more than 130 languages.*

Phone (toll free): 8-1-1
Phone (Deaf and hard of hearing): 7-1-1
Employee & Family Assistance Services for Provincial Government Employees

Free, confidential, voluntary services, available 24/7, including short-term counselling, career support services, family support services, financial and legal services, and healthy living services. Services are available to everyone, including auxiliary employees, co-op students, and employees receiving Short Term Illness and Injury Plan or long term disability benefits. Services are provided through a contract with Morneau Shepell. Family members who normally reside with an employee can also access these services. Personal information related to service use is not shared with anyone without written permission of the employee accessing service.

Website: https://www2.gov.bc.ca/gov/content/careers-myhr/all-employees/safety-health-well-being/health/efas
Phone (toll-free): 1-800-655-5004

Support for Indigenous People

Native Courtworker and Counselling Association of British Columbia

Provides access to justice for Indigenous people in BC, and offers culturally appropriate services to all Indigenous people and communities.

Contact a location to access services: https://nccabc.ca/about-us/our-team/

KUU-US Crisis Line Society

First Nations and Indigenous specific crisis line available 24/7 from anywhere in BC. Services are for First Nations, by First Nations.

Phone (toll-free): 1-800-588-8717

Support for Immigrants and Refugees

MOSAIC

Settlement assistance, English language training, employment programs, interpretation and translation, counselling services, and community outreach.

Website: www.mosaicbc.com
Phone: 604-254-9626
Support for LGBTQ2S+ People

Trans Rights BC

Trans Rights BC aims to disseminate human rights information that is accurate, accessible, and relevant to the safety and well-being of trans and gender-diverse individuals and their supportive allies across British Columbia.

Website: https://www.transrightsbc.ca

Trans Lifeline

National trans-led organization dedicated to improving the quality of trans lives by responding to the critical needs of our community with direct service, material support, advocacy, and education. Trans Lifeline’s vision is to fight the epidemic of trans suicide and improve overall life-outcomes of trans people by facilitating justice-oriented, collective community aid. Peer support hotline is run by and for trans people, and available 7am-1am PST / 9am-3am CST / 10am-4am EST. Volunteers may be available during off hours.

Website: https://www.translifeline.org
Phone (Canada): 877-330-6366

QMUNITY – BC’s Queer, Trans, and Two-Spirit Resource Centre

Free counselling, social and support groups, LGBT inclusion workshops, and referrals to lawyers, housing, and other resources.

Website: https://qmunity.ca

Trans Care BC

Trans Care BC aims to enhance the coordination of trans health services and supports across the province, bringing gender-affirming care closer to home wherever possible.

Website: http://www.phsa.ca/transcarebc

Health Initiative for Men

Low-barrier counselling and peer support services.

Website: https://checkhimout.ca
Support for People with Disabilities

DisAbled Women’s Network (DAWN) Canada

*DAWN Canada is an organization that works towards the advancement and inclusion of women and girls with disabilities and Deaf women in Canada. Its mission is to end the poverty, isolation, discrimination and violence experienced by women with disabilities and Deaf women.*

Identifying Abuse: https://www.dawncanada.net/issues/identifying-abuse/
Tips on Safety Planning: https://www.dawncanada.net/issues/tips-on-safety-planning/

Disability Alliance BC

*Provincial, cross-disability organization in BC whose mission is to support people, with all disabilities, to live with dignity, independence and as equal and full participants in the community.*

*How I Need to Know* project videos and help sheets on:
- Videos: http://disabilityalliancebc.org/how-i-need-to-know-videos/
  - How the criminal justice system works and what to expect
  - What to do if you have been sexually assaulted

Inclusion BC

*Non-profit federation working with partners to build community and to enhance the lives of children and youth with special needs, adults with intellectual disabilities and their families.*

Advocacy Line (toll free): 1-844-488-4321
Advocacy Email: advocacy@inclusionbc.org

Support for Men

BC Society for Male Survivors of Sexual Abuse

*Support for male survivors of sexual abuse and domestic violence.*

Website: www.bc-malesurvivors.com

Creating Safer Workplaces and Communities