

SENATE



SÉNAT

STANDING COMMITTEE ON ETHICS AND
CONFLICT OF INTEREST FOR SENATORS

CANADA

COMITÉ PERMANENT SUR L'ÉTHIQUE ET LES
CONFLITS D'INTÉRÊTS DES SÉNATEURS

Tuesday, April 20, 2021

The Standing Committee on Ethics and Conflict of Interest for Senators has the honour to present its

SECOND REPORT

Your committee, which is responsible on its own initiative for all matters relating to the *Ethics and Conflict of Interest Code for Senators* (the Code), pursuant to rule 12-7(16) of the *Rules of the Senate*, has undertaken a study regarding amendments to the Code in relation to the *Senate Harassment and Violence Prevention Policy* (the Policy) and presents herewith an interim report.

Background

On February 16, 2021, the Standing Committee on Internal Economy, Budgets and Administration (CIBA) informed the Senate that it approved a new *Senate Harassment and Violence Prevention Policy* as part of its Fourth Report.

While CIBA determined the content of the Policy, your committee is responsible for matters relating to the Code. Your committee's role is limited to determining whether Code amendments are advisable to ensure coherence with the resolution process under the Policy and, if so, recommending them to the Senate for its consideration.

Your committee therefore met in February and March 2021 to discuss potential amendments to the Code in light of the Policy. The amendments proposed herewith by your committee would provide a process under the Code in relation to harassment and violence matters disclosed to the Senate Ethics Officer (SEO) in accordance with the Policy.

During your committee's study, the SEO was invited to share his views on the proposed amendments. Your committee would like to thank him for his assistance on this important matter.

The Senate Harassment and Violence Prevention Policy

CIBA's Policy provides a process to resolve occurrences of harassment and violence in the workplace through a recourse guided by an impartial third party, known as the

“designated recipient.” The designated recipient has many responsibilities, one of which is to ensure that an investigation occurs when it is required under the Policy. If a matter proceeds to investigation, an investigator who is external to the Senate is selected to investigate the occurrence.

The external investigator produces two reports – a summary report and a final report – both of which are submitted to the designated recipient, unless the parties otherwise resolve the matter before the investigation is completed, such as through conciliation. The final report details the allegations and sets out the investigator’s conclusions as to whether any conduct that constitutes harassment and violence occurred.

Under the Policy, a final report of an external investigator concerning a senator’s conduct is to be provided to the SEO for consideration under the Code.

The Policy also provides that the SEO may consider the investigator’s final report and may report to your committee. Your committee may subsequently recommend disciplinary measures to the Senate such as those mentioned in the Code. It may also refer the matter confidentially to a subcommittee of CIBA designated for the purpose of the Policy to consider – and, if appropriate, impose – remedial or corrective measures.

Current Code

When the SEO is seized of an issue, the current provisions of the Code provide that the SEO must first conduct a preliminary review and then, if warranted, conduct an inquiry. These two processes can take time and may involve many procedural requirements, including notices to parties and interviews under oath. The Code, when it was drafted, did not provide a different enforcement process for cases involving a senator’s conduct that constitutes harassment and violence.

Although the Code does not explicitly refer to harassment and violence, the SEO has addressed allegations of harassment and violence in the past. Additionally, as part of his 2019 inquiry report concerning former Senator Don Meredith, the SEO shared his thoughts regarding roles and responsibilities in cases involving harassment. He observed that “his role is not to usurp the role of the Senate as an employer by interpreting and applying the Senate’s policies” and that he should not act under the Code unless an allegation of harassment has been substantiated by the Senate.¹ During its deliberations on possible amendments, your committee considered these observations from the SEO.

Office of the Senate Ethics Officer, [*Inquiry Report under the Ethics and Conflict of Interest Code for Senators concerning former Senator Don Meredith*](#), June 28, 2019, Annex, at p. ii.

Committee Consideration

Principles

Your committee was guided by several principles in considering amendments to the Code in light of the Policy.

First, your committee was mindful of the realities of workplace harassment resolution processes as reflected in previous Senate reports. For example, the 37th report of CIBA from the 1st session of the 42nd Parliament explained that “targets of harassment are usually reluctant to report mistreatment for fear of secondary victimization.”² Your committee considers it important that any process under the Code should seek to minimize any further impacts on a person who experienced violence and harassment.

Second, your committee considered the confidentiality and privacy of the parties as prescribed by the Policy. Section 1.6.1 of the Policy states that “[r]espect for the privacy of all involved is paramount in any matter related to harassment and violence.” Your committee sought to ensure that its amendments also safeguard the confidentiality of the parties involved in the resolution process. Your committee noted, however, that the disclosure of certain information is sometimes required, such as the name of a senator in a report brought to the Senate for decision.

Third, your committee was conscious of the importance of timeliness in matters related to harassment and violence as expressed in its previous report.³ It also noted the six-month time limit for the completion of the resolution process as prescribed by the Policy. Your committee believes that the consideration of an investigator’s final report must be dealt with efficiently and diligently. Accordingly, certain procedural requirements as currently prescribed under the Code should be dispensed with when the SEO is provided with a report from an investigator.

Fourth, your committee was mindful of the SEO’s limitations in investigating cases involving harassment and violence and finds it appropriate to defer to the work of investigators who are experts in this area. It noted that investigators under the Policy are required to possess the relevant knowledge, training and experience required by federal regulations.⁴

Finally, your committee considers that any amendment to the Code should provide your committee with the flexibility necessary to fulfill its obligations, recognizing that context is important and the circumstance of any two cases may be quite different.

Proposed Approach

While conduct that constitutes harassment and violence may, for example, breach the obligation of a senator to “uphold the highest standards of dignity inherent to the position of Senator,”⁵ the

² Subcommittee on Human Resources, [Modernizing the Senate’s Anti-Harassment Policy](#), 1st Session, 42nd Parliament, February 2019, tabled by the Standing Committee on Internal Economy, Budgets and Administration on March 21, 2019.

³ Standing Committee on Ethics and Conflict of Interest for Senators, [Sixth Report](#), 1st Session, 42nd Parliament, July 29, 2019, at p. 4.

⁴ [Canada Labour Code and the Work Place Harassment and Violence Prevention Regulations](#), SOR/2020-130, subsection 28(1).

⁵ [Ethics and Conflict of Interest Code for Senators](#), section 7.1.

Code at present does not mention harassment specifically. Your committee has therefore determined that the Code requires a new rule of conduct that relates to the Policy: “A senator shall refrain from engaging in conduct that constitutes harassment and violence.” The Code would employ the same definition of “harassment and violence” as found under the Policy, which itself reflects the definition found in the *Canada Labour Code*.

By adding this explicit provision, the Code would clearly and directly address harassment and violence. In consequence of this amendment, a senator would breach their obligations under the Code by engaging in conduct that an independent expert investigator determines to be harassment or violence.

Once seized of the investigator’s final report, the SEO would provide it to your committee as soon as possible without conducting any additional investigation in respect of conduct that could constitute harassment and violence. Your committee may then direct the SEO to provide recommendations regarding remedial, corrective, or disciplinary measures. As necessary, your committee would report to the Senate with a recommendation for disciplinary measures or communicate with CIBA or its subcommittee designated for the purposes of the Policy for the imposition of remedial or corrective measures. In all reports and communications, your committee would redact – to the extent possible – information that could identify parties involved in a resolution process.⁶ To minimize potential revictimization, your committee would not ordinarily hear from any witnesses in considering an investigator’s final report but would retain the right to invite witnesses in exceptional circumstances.

Based on previous experiences and concerns, your committee proposes that the SEO provide the investigator’s report to your committee regardless of whether the concerned senator ceases to serve in the Senate or whether the conduct at issue may also require investigation by authorities outside the Senate.

Your committee therefore proposes the following amendments to the Code in light of the Policy.

Amendments to the Code — Harassment and Violence

1 Subsection 3(1) of the *Ethics and Conflict of Interest Code for Senators* is amended by adding the following in alphabetical order:

harassment and violence has the same meaning as in the *Senate Harassment and Violence Prevention Policy*, as amended from time to time.

2 The Code is amended by adding the following after section 7.2:

Harassment and violence

7.3 A senator shall refrain from engaging in conduct that constitutes *harassment and violence*.

⁶ A report from your committee recommending disciplinary measures to the Senate will, necessarily, name the senator concerned. As well, certain identifying information may need to be divulged to CIBA for the purpose of implementing a remedial or corrective measure.

3 The Code is amended by adding the following after section 52:

Harassment and Violence

Interpretation

52.1 (1) The following definitions apply in sections 52.1 to 52.9.

investigation report means the report of an investigator under the ***policy***.

policy means *the Senate Harassment and Violence Prevention Policy*, as amended from time to time.

respondent senator means a senator who is the responding party in an ***investigation report***.

Paramountcy

(2) In relation to conduct that may constitute ***harassment and violence***, sections 52.1 to 52.9 prevail over any other provisions of the Code to the extent of any inconsistency between them.

Official recourse

52.2 (1) If the Senate Ethics Officer is of the opinion that conduct may be addressed under the ***policy***, the Senate Ethics Officer

(a) shall, despite sections 47 and 48, conduct neither a preliminary review nor an inquiry in respect of that conduct; and

(b) shall inform a person who feels they are a victim of or witnessed ***harassment and violence*** that recourse may be available under the ***policy***.

Limitation

(2) Section 7.3 and sections 52.3 to 52.9 apply only if the Senate Ethics Officer has received a final ***investigation report*** from the designated recipient within the meaning of the ***policy***. In respect of any other ***investigation report*** that they receive in any other circumstance, the Senate Ethics Officer may conduct a preliminary review and inquiry in accordance with sections 47 and 48 but may not disclose to the Committee or any person either

(a) the existence or contents of an ***investigation report***, except to the extent necessary to communicate with a senator who is the subject of a preliminary review or inquiry regarding conduct that may contravene the Code; or

(b) information that could identify individuals as participating in a resolution process under the ***policy***.

Investigation report — receipt

52.3 (1) Upon receipt of an ***investigation report***, the Senate Ethics Officer shall provide it to the Committee at the first possible opportunity and on a confidential basis. The Senate Ethics Officer shall, despite sections 47 and 48, conduct neither a preliminary review nor an inquiry in respect of any conduct therein that may constitute ***harassment and violence***.

Not tabled

(2) For greater certainty, the *investigation report* is not a public document and shall not be tabled in the Senate upon its receipt by the Committee.

Additional matters

52.4 (1) If the report discloses to the Senate Ethics Officer information in respect of conduct that is not *harassment and violence*, the Senate Ethics Officer may proceed to conduct a preliminary review and inquiry under sections 47 and 48. However, after providing the report to the Committee, the Senate Ethics Officer may not disclose to any person either

(a) the existence or contents of an *investigation report*, except to the extent necessary to communicate with a senator who is the subject of a preliminary review or inquiry regarding conduct that may contravene the Code; or

(b) information contained in the *investigation report* in respect of conduct that may constitute *harassment and violence*.

Limitation — investigation

(2) The Senate Ethics Officer shall not conduct any additional investigation in any circumstance in respect of conduct in an *investigation report* that may constitute *harassment and violence*.

Committee consideration

52.5 (1) The Committee shall consider an *investigation report* as promptly as circumstances permit and may, if it considers doing so to be appropriate in the circumstances,

(a) direct the Senate Ethics Officer to provide to the Committee, on a confidential basis and without consulting any person mentioned in the *investigation report*, recommendations on any of the following:

(i) remedial or corrective measures, and

(ii) disciplinary measures; and

(b) request that a person who participated in the resolution process under the *policy* that resulted in the *investigation report* appear before the Committee or provide written submissions if the Committee is of the opinion that

(i) exceptional circumstances require hearing from that person, and

(ii) measures are in place to minimize the further victimization of any person who may have experienced *harassment and violence*.

Certainty

(2) For greater certainty,

(a) a recommendation of the Senate Ethics Officer under paragraph 1(a) is in relation to the senator's breach of section 7.3; and

(b) a finding in an *investigation report* that a senator engaged in *harassment and violence* is deemed to be breach of section 7.3.

Committee report

52.6 Upon conclusion of its consideration of an *investigation report*, the Committee may

(a) recommend to the Senate disciplinary or other measures in respect of a *respondent senator*; and

(b) refer the matter confidentially to the Standing Committee on Internal Economy, Budgets and Administration — or its subcommittee designated for purposes of the *policy* — for the purpose of considering or implementing remedial or corrective measures.

Tabling

52.7 (1) The Committee shall not table an *investigation report* or a recommendation from the Senate Ethics Officer in the Senate but may, subject to subsection (2), append these documents to or cite from them in a Committee report to the Senate that contains a recommendation for a disciplinary or other measure.

Redaction

(2) In any Committee report under this section, the Committee shall redact all information that could identify a person who has experienced *harassment and violence* unless that person has authorized the Committee, through written consent, to dispense with redacting the information that could identify them.

Suspension

52.8 (1) Despite subsection 52(1), the Senate Ethics Officer shall not suspend the completion of an obligation under subsection 52.3(1) or paragraph 52.5(1)(a).

Referral

(2) For greater certainty, subsection 52(5) applies in respect of conduct disclosed in an *investigation report*.

Senator no longer serving

52.9 For greater certainty, an obligation of the Committee or the Senate Ethics Officer under sections 52.2 to 52.8 applies even if the *respondent senator* ceases to serve as a senator.

Recommendation

Your committee recommends that these amendments come into force on the earlier of these events:

- The adoption of this report, provided that the Policy is in force; or
- Upon the coming into force of the Policy.

These proposed amendments, if adopted, would apply to any final report of an investigator under the Policy, including in relation to a resolution process under the Policy that began before the adoption of this report.

Your committee further recommends:

- That the Law Clerk and Parliamentary Counsel maintain a consolidation of the Code that reflects these amendments, which consolidation would be made available on the website of the SEO; and
- That the Law Clerk and Parliamentary Counsel be empowered, in preparing the consolidation, to renumber the provisions as necessary and to correct any grammatical or typographical issues, as well as to make any other changes of a non-substantive nature that may be required.