

DEALING WITH HARASSMENT IN CULTURAL WORKPLACES:

A Report on Available and Potential Reporting and
Investigating Mechanisms for Cultural Workers and Employers

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



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EXECUTIVE SUMMARY

Building on the 2019 LeSage & CHRC study *Reporting and Investigating Mechanisms for Workplace Harassment in the Arts*, this report explores current existing reporting and investigating mechanisms and studies other solutions to be implemented to assist cultural sector workers and employers. The case for the needs of these solutions having already been made in the 2019 report, the focus of *Dealing with Harassment in Cultural Workplaces* is on the feasibility of the existing mechanisms being offered to larger user pools and/or the feasibility of implementing new alternative solutions. The articulated recommendations take into consideration how to resource new and existing solutions in regards to important development or deployment factors.

For cultural workers, indiscriminate of occupation groups, the key to access reporting and support mechanisms lies most likely in existing pooled service packages or in extending funding to the current Department of Canadian Heritage funded Helpline (for sports) to include cultural sector workers. Developing new mechanisms would necessitate new investments and resources.

For employers, continued professionalization of the HR function is the most likely avenue to success. The report concludes that it is feasible to obtain the required HR training, skills and knowledge outside of the cultural sector and to import these skills through stakeholders who are already cognizant of the sector's workplace particularities. This strategy is more efficient than expecting external service providers to learn about the sector, to adapt and to develop tailored training modules.

For both perspectives, cultural workers' and employers', Arts Service Organizations will need to be at the centre of any development or deployment of investigating and reporting mechanisms, be they discipline-wide or sector-wide.

1. INTRODUCTION

Harassment still happens.

The above statement may seem harsh but it is an unfortunate reality that, without effective counter-measures and deterrents, will continue. Awareness on the subject is growing and initiatives to remedy or prevent instances exist as well. What happens after an incident of harassment is not necessarily clear for everyone involved. Prevention and awareness of the existence of harassment is of value. However, victims and those that must respond to incidents, have a greater interest in recourse or resources available to them. Steps towards systems protecting workers and providing victims justice and/or relief have been undertaken as reports of scandals and incidents become more and more frequent. This report aims to provide a review of available resources and avenues towards systemic reporting and investigation mechanisms in the arts.

In 2018, work began on the inclusion of harassment and violence in the Canada Labour Code. To this end, Bill C-65 received royal assent. The new framework requires employers to:

1. **PREVENT** incidents of harassment and violence;
2. **RESPOND** effectively to these incidents if and when they do occur; and
3. **SUPPORT** affected employees

Further, Bill C-65 defines harassment and violence as any action, conduct or comment, including of a sexual nature, which can reasonably be expected to cause offence, humiliation or other physical or psychological injury or illness to an employee, including any prescribed action, conduct or comment.

In 2019, consultant Jeanne Lesage completed a research report for CHRC, *Reporting and Investigating Mechanisms for Workplace Harassment in the Arts*. This report concluded that resources were necessary for workers and employers in the cultural sector to manage and respond to workplace harassment situations¹. Specific recommendations towards this end were to:

- Establish a confidential, independent third-party sector-wide resource for the complainants, respondents and witnesses of workplace harassment.
- Further examine the viability for anonymous reporting mechanism. This recommendation was further qualified in that there does not appear to be a clear consensus that there should be sector-wide anonymous reporting mechanism that would result in formal investigations. There is a need, however,

¹ Reporting and Investigating Mechanisms for Workplace Harassment in the Arts © CHRC, 2019

to address the lack of reporting and mitigating concerns of backlash and retribution for those coming forward.

Further, in 2019, federal consultations² on the proposed changes and results revealed that:

- “the current regime does not appropriately address the range of inappropriate workplace behaviours;
- Canadians continue to report that they are on the receiving end of unwelcome sexual advances, requests for sexual favours, and sexually charged talk while on the job;
- Most people who have experienced sexual harassment at work have experienced it on multiple occasions;
- The majority of those who have experienced sexual harassment at work have never reported the behaviour to their employers, and many who do report it does not feel that they received a proper response or support;
- Those with disabilities and members of a visible minority group are more likely to experience harassment; and,
- Many workplaces have inadequate or weak policies on harassment and violence prevention and many employees have never received training on existing policies.”

Clearly, more work needs to be done on the prevention of, and response to, workplace harassment.

² <https://www.canada.ca/en/employment-social-development/services/health-safety/reports/workplace-harassment-sexual-violence.html>

1.1 Research question

CHRC decided to go further into researching the existing reporting and investigation mechanisms that are part of the Canadian cultural sector. Canada's Department of Justice, by funding this research project and others, is helping Canadians better understand what is at stake and what is involved after an incident of harassment. The fundamental question being asked is:

“What is the Canadian cultural sector’s current state of readiness in regards to harassment reporting and investigation”.

Two perspectives are pursued under this research question which seeks to inform on the second and third parts of Bill-C65: RESPOND and SUPPORT. The first perspective is the cultural worker's (employee or independent contractor, artist or other occupation), the second is the employer's perspective. These two perspectives are independently researched, respectively, by consultants Lise Labine and Jeanne LeSage. Both were tasked with specific but somewhat similar deliverables that are outlined in their respective sections of this joint report. In both cases, to answer the overarching question, it is necessary to 1) identify the processes and steps that follow an incident; 2) be cognizant of the essential elements tied to the processes and steps; and 3) understand, when and where necessary, the risks involved with the various elements.

Therefore, this research sets out to elaborate on the following underlying themes:

- What is currently available to support reporting and investigations on incidents of harassment;
- What is missing to support reporting and investigations on incidents of harassment;
 - Where gaps exist, what is needed;
 - What, if any, is the cost structure to implement proper reporting and investigation supports;
 - Whether the above is/are feasible.

In both major sections of this report, the data gathering leads to analysis and conclusions. Recommendations and/or solutions in line with the fundamental question and the underlying themes are presented in the final chapter.

1.2 Cultural Sector Context

To fully grasp the context around this research, it is best to understand the particularities of the cultural sector's establishments and its workers. This context also informs the research's assumptions and working theories that lead up to the data and findings collection.

The 2019 Labour Market Information study of the cultural labour force³ (LMI) provides the following: the Canadian cultural sector employs nearly 800,000 workers and represents 4% of the Canadian workforce. The share of self-employed workers in the cultural sector (28 %) is more than double the rate of all Canadian workers (12 %). Self-employment attains 41% in creative and artistic production occupations (musician, dancer, painter, etc.). Cultural sector workers are often in precarious, non-permanent and non-unionized roles.

43% of this workforce holds a bachelor's degree or higher, compared with 25% in the overall labour force. Despite the high levels of education among workers in the cultural labour force, employment income recorded among cultural occupations is on average respectively \$8,300 and \$2,300 lower for full-time and part-time workers than for the Canadian labour force overall. Further, "cultural workers in many cases earn significantly less per hour than workers in other more conventional occupations if unpaid work hours are included"⁴.

Of the 117,050 Canadian cultural establishments that hire workers, only 653 report having 100+ employees. The remaining 116,397 are either of indeterminate size (includes family businesses and sole proprietorships) or have a maximum of 99 employees. Even if there is an understanding of the importance of properly responding to and addressing complaints of harassment⁵, there can be no presumption that these establishments have the financial resources, required knowledge and expertise to develop and have in place policies and appropriate investigative methods.

1.3 Definitions / Terms of Reference

The following terms of reference are defined in order to establish a common understanding of this report's major elements.

Complainant – the person reporting/alleging having been harassed.

Establishment – this term designates both businesses and organizations.

Harassment – Workplace harassment, including sexual harassment, bullying and discriminatory harassment is typically defined as engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome.

³ Cultural Human Resources Council & Conference Board of Canada (2019). *Labour Market Information Study of the Cultural Labour Force*.

⁴ Ibid.

⁵ Cultural Human Resources Council & LeSage, J. (2019). *Reporting and Investigating Mechanisms for Workplace Harassment in the Arts*.

Incident – the what, where, whom and how of alleged harassment.

Investigation – A workplace investigation is a fact-finding process to determine whether certain types of workplace events have occurred. In most cases, the investigation is triggered by an internal complaint. In some provinces/territories, an organization has a duty to investigate whether or not there has been a formal complaint made, or if the complainant has said they do not want any action taken.

Investigation Procedure – this generally includes: 1) Preparation, 2) Fact-Gathering, and 3) Reporting and Decision-making. The Preparation phase involves the assessment of the complaint and identifying the scope and objectives of the investigation (who is involved, any union involvement, external vs internal investigator, necessary interim measures or work arrangements). The Fact-Gathering stage is the actual investigation, including taking steps against any required legislative or workplace policy in place, creating a summary of allegations, conducting interviews, and reviewing all relevant documents. The Reporting and Decision-Making stage involves a finding of fact, an investigation report, noting the outcome (determination) of if harassment has/has not occurred, and potentially discipline and remediation steps.

Policies – proscriptive or prescriptive, formal or informal, written or verbal directives by establishments on various subjects including workplace harassment.

Protocols/procedures- establishment directives on how to approach situations of harassment or otherwise.

Reporting – the act of denouncing; the allegation of; or making a complaint; of harassment *et al.*

Respondent - the alleged harasser.

Worker (Cultural) – this term is used broadly to designate an employee, an independent contractor as well as a volunteer. No distinction is made between occupation groups⁶ (Creative and artistic, Technical and operational, Heritage collection and preservation, Cultural management).

With the context and definitions acknowledged, the report on supports for reporting and investigating mechanisms for cultural workers and establishments begins.

⁶ Cultural Human Resources Council & Conference Board of Canada (2019). *Labour Market Information Study of the Cultural Labour Force*

2. SUPPORT MECHANISMS FOR CULTURAL WORKERS

Introduction

On any given day, cultural workers may experience harassment in one form or another. This section within the overall research considers, from the individual cultural worker's perspective; what the existing reporting and support mechanisms are; their costs and their feasibility and/or the feasibility and costs associated to developing new mechanisms. While this review of resources may not be comprehensive and/or exhaustive, if resources exist but could not be found through thorough searches and networking channels by an experienced consultant, it is fair to say that their inconspicuousness is of no help.

Methodology

In order to ascertain what is already available to support cultural workers after an incident of harassment, both primary and secondary data were collected.

Primary data was collected through a short survey to:

- Provincial and territorial human rights commissions;
- Art Councils.

Primary data was also collected through in-person and telephone meetings with leaders of the following service providers in Canada:

- APARTÉ (Québec);
- HAVEN helpline & Morneau Shepell/Lifeworks;
- Legal support network
- Not in our SPACE;
- UNISON;
- SPORTS CANADA Tribunal and the recently launched 1–800 complaint line.

Secondary data was collected by reviewing the consultation meeting notes from CHRC's 2019 research on Reporting and Investigating Mechanisms for Equity seeking groups⁷.

⁷ Cultural Human Resources Council, & LeSage, J. (2019). *Reporting and Investigating Mechanisms for Workplace Harassment in the Arts*

2.1 Findings

2.1.1 Survey

The following 3 questions were sent to the provincial and territorial Human Rights Commissions and to various provincial Art Service Organizations (ASO);

1. Does your Council/Organisation/Commission have a complaint mechanism that can be accessed by individual artists and cultural workers in your province or territory?
2. Can you share how your Council/Organisation/Commission would handle such a complaint? Might there be a policy or program on claims of harassment that individual artists and/or cultural workers could follow to file a complaint in your province or territory?
3. Is it possible that you might redirect them to another organisation who could handle the complaint? If so, to what organisation?

Human Rights Commissions

Upon reviewing the data from Human Rights Commissions, several provinces including British Columbia, Saskatchewan, Ontario, New Brunswick, Newfoundland and Yukon Territory confirmed that a complaint process does exist. However, the complaint must be based on a human right prohibited ground. Some provinces indicated that if the complaint was not based on a prohibited ground, they could refer the complaint to the Ministry of Labour. All human rights commissions except for New Brunswick, confirmed that they do not provide any type of legal support for complainants. Only the province of New Brunswick indicated that they could refer a complainant to the Ministry of Labour for possible legal support.

Costs: Unable to identify other than to confirm that funds for human rights commissions are provided through normal provincial budget allocations.

Table 1 Provincial Human Rights Commissions Responses

Province	Human Rights Commission <i>Does a complaint process exist?</i>
BC	Yes, if the complaint is based on one of the prohibited grounds Harassment based on a personal characteristic that negatively affects the work environment or leads to negative job-related consequences- 1-year limit to file a complaint No legal advice
Saskatchewan	Human Rights Code prohibits discrimination including harassment on the basis of prohibited grounds Complaint must be linked to a prohibited ground Volunteers are not covered If complaint is unrelated to one of the prohibited grounds, would refer to Occupational Health and Safety with Ministry of Labour Relations and Workplace Safety No legal advice
Ontario	Human Rights Code prohibits discrimination including harassment on the basis of prohibited grounds Yes, but on prohibited grounds only and in one of the social areas covered either contracts or employment No legal advice
New Brunswick	Complaint mechanism in place must be linked to prohibited grounds and protected areas 1-year time limit to file a complaint All are covered including volunteers Some legal advice may be available through the Ministry of Justice
Newfoundland and Labrador	Complaint mechanism in place based on prohibited grounds and protected areas No legal advice
Yukon	A complaint mechanism does exist- Complaint must be linked to one of the prohibited grounds and also in protected area Time limit 1 year If can't assist they would guide them to another area

Quebec: This province was kept separate from the review data as the province already has a complaint mechanism and legal support for cultural workers thru the projects of APARTÉ and JURIPOP. These will be detailed later in this section of the report. Other Human Rights Commissions such as those in Alberta, Manitoba, Nova Scotia, the Northwest Territories and Nunavut, did not respond to the survey questions.

Art Councils

Review results reveal that Art Councils from Saskatchewan, Manitoba, Ontario, New Brunswick and Nova Scotia, all funding agencies, confirmed that they do not have a complaint mechanism or process in place. They further explain that it is not in their mandate to do so. However, several indicate that they ensure that grant recipients understand their obligation to ensuring a safe workplace and that they also confirm that they are abiding by all municipal, provincial and federal laws in the creation of a safe workplace including but not limited to employment standards, occupational health and safety and human rights. Some councils will encourage individual complainants to pursue all legal sources. Several councils would also direct complainants to CHRC or to other ministries or agencies in their province. The remaining provinces and territories; British Columbia, Alberta, Newfoundland and Labrador, Northwest Territories, Yukon and Nunavut; did not respond to the survey.

Costs: Unable to obtain other than to confirm that budgets for arts organizations are established by provinces through normal provincial budget allocations.

Table 2 Provincial Art Councils Responses

Province	Does a complaint process exist?
Saskatchewan	No complaint process in place- Board has developed a Safe Workplace Policy. Grant recipients must declare: that they are committing to safe working conditions and to foster a workplace free from discrimination, harassment, and sexual misconduct. Further organisations receiving funding, must confirm that they abide by all municipal, provincial and federal legislation including but not limited to employment standards, occupational health and safety and human rights. Individual complainants are encouraged to pursue all appropriate legal sources. The council would also direct complainants to HR organisations such as CHRC or WorkInCulture.
Manitoba	No complaint process in place Not within their mandate Would not redirect.
Ontario	No complaint process in place for individual artists or workers. However, a policy is in place where grant recipients must also abide by ESA, OHSAA etc. and ensure a workplace free from all forms of harassment. Would try to redirect a complainant to other forum such as Ministry of Labour, Ontario Human Rights Commission, police, etc.
New Brunswick	No elaborate policy on Harassment Refer to CHRC for assistance and guidance
Nova Scotia	No complaint mechanism

	Nov. 2019 the Board of the NS Arts Council approved policy whereby any grant recipient must agree to commit to a workplace that is free from all forms of harassment and discrimination This organisation refers to CHRC website for resources
Québec	APARTÉ is the process in place (details in section 2.1.3)

2.1.3 Interviews

A series of interviews were conducted with cultural sector-specific service providers as well as an external service provider. Here are the findings.

APARTÉ (Québec)⁸

This service was born when it was determined that help and assistance needed to be made available in Québec for persons subjected to harassment or violence in the cultural sector. In this context, associations and unions met and agreed to put in place an action plan to respond to eliminating harassment and violence in this sector. APARTÉ offers a free, confidential complaint service and is a separate unit from the unions and associations who established the need for this support. APARTÉ also benefits from the support of JURIPOP. JURIPOP is Québec’s not-for-profit legal aid clinic that promotes help and access to legal aid at reasonable costs. JURIPOP also works on creative ways to offer education and information to the cultural clientele. APARTÉ is described as a one-stop wicket for all persons who may have been victims of or have witnessed situations of harassment or violence at work. Information and assistance are provided to the complainant. Complainants are also informed of their rights and recourses and may be referred to external counselling. However, APARTÉ and JURIPOP do not offer legal representation to complainants but rather, accompany the complainant during the process.

Costs: In 2018, JURIPOP received \$2M from the provincial Ministry of Culture to establish the service for the cultural sector. A further amount of \$2.6M in 2019 was added to the amount already invested. In August 2019, the federal minister of Justice announced funding to accompany and provide legal advice to complainants with the assistance of JURIPOP.⁹ This funding represents \$2.3M and is part of the federal government’s commitment to investing \$50M over 5 years for harassment prevention.

⁸ <https://www.aparte.ca/l-apat%C3%A9>

⁹ <https://www.canada.ca/fr/ministere-justice/nouvelles/2019/08/le-gouvernement-du-canada-appuie-des-initiatives-visant-a-lutter-contre-le-harcelement-sexuel-en-milieu-de-travail-et-a-ameliorer-lacces-a-la-justi.html>

HAVEN Helpline

In June 2019, ACTRA ¹⁰ and the DGC ¹¹ jointly launched HAVEN (Harassment and Violence Emergency Network) Helpline. This helpline is a bilingual critical incident reporting line available to ACTRA and DGC members across Canada. The HAVEN Helpline offers 24/7 support with the assistance of Morneau Shepell/Lifeworks with expertise in trauma and crisis counselling. The helpline was made available to report any incident of harassment related to the workplace and set, and total well-being support. Members can access these services by phone, web chat and online through Morneau Shepell's/Lifeworks app.

The HAVEN Helpline and associated counselling services are part of the commitment by ACTRA and DGC to a trauma-informed approach to responding to harassment in the workplace.

When the helpline was launched:

“Over the past 18 months, it has become clear that a cultural shift within our industry is needed to prevent and reduce harassment. ACTRA has remained dedicated in our commitment to address this issue,” said ACTRA National president David Sparrow.”¹²

Morneau Shepell/Lifeworks

This global assistance service provider has more than 40 years of experience and over 5,000 employees which have supported over 20,000 clients and their 37 million employees.

In Canada alone, Morneau Shepell/Lifeworks manage 5 call centres and 16 regional offices. The help centres have a total of 4,500 counsellors across Canada providing a depth and breadth of services nationally to efficiently scale the program.

A visit to the Helpline Centre, the Morneau Shepell/Lifeworks call centre in Toronto, last November, presented a carefully thought-out program and approach to first responders taking calls from members. Care Access staff are all qualified in an area of counselling or social work and all counsellors have a masters in their field of study and a minimum of five year's experience. Calls are answered within 25 seconds and all services are offered in both official languages. Morneau Shepell/Lifeworks invests in continuous training and

¹⁰ ACTRA (Alliance of Canadian Cinema, Television and Radio Artists) is the union of more than 23,000 professional performers working in English-language recorded media in Canada including TV, film, radio and digital media.

¹¹ DGC (The Directors Guild of Canada) is a national labour organization that represents over 5,000 key creative and logistical personnel in the screen-based industry covering all areas of direction, design, production and editing. The DGC negotiates and administers collective agreements and lobbies extensively on issues of concerns for members including Canadian content conditions, CRTC regulations and ensuring funding is maintained for Canadian films & television programming.

¹² <https://www.actra.ca/press-releases/2019/05/actra-and-dgc-jointly-launch-haven-helpline/>

this training begins immediately upon hire. Morneau/Shepell Lifeworks also presented on quality assurance and not only do they set high standards for service delivery but have also dedicated monitoring teams providing team benchmarking and test calls. Client satisfaction is critical and this is monitored thoroughly and throughout. Triage protocols have been established and cases are assigned using this methodology. The triage structure contains four levels from the highest—client is at risk of harm to self/others to—lowest—a general standard intake.

Costs: According to ACTRA, the cost per person for the first year is \$4.89 x 23,000 members = \$112,470.00 per annum. Costs for the second year are estimated to be lower at \$88,780.00 per annum.

Morneau Shepell/Lifeworks were also asked to provide a quote for a service offer (see Annex 1) comparable to that in place with ACTRA/DGC to cover a larger portion of the cultural sector as a benchmark for scale.

Costs: Based on a population of 350,000 potential clients, an initial retainer is established at \$350,000. Services are described in the attached proposal and a gradual scaled increase to cover higher usage is also provided. A preliminary quote of \$6.43 per member is also provided.

Legal Support

Human Rights Commissions across the country indicated that they do not provide legal support to complainants. The only way that a complainant can retain the service of legal counsel is through payment for services by independent law firms.

Research has revealed that in 2019, the Canada Council for the Arts awarded funding to the *Pacific Legal Education and Outreach Society* to research the need for the establishment of a Network of Legal Aid Clinics who could respond to the legal needs of artists by offering up services for free or a nominal fee. The *Pacific Legal Education and Outreach Society* has held consultations Canada-wide for this network and most recently held a session in Ottawa. In addition, the Society has sent out a Canada-wide survey on needs assessment.

In Ottawa, the Cultural Pluralism Movement in the Arts Ontario facilitated this session. The project is described as:

“Part of a project to develop an essential national network of federally funded legal services for the arts across Canada who work tenaciously to fund their efforts and service their local artists. A National Network of Legal

Clinics for the Arts will unify and coordinate better access to free legal resources, services and information empowering artists nationwide.

The results from this focus group together with the Artists Needs Survey will give a fulsome picture of artists needs from coast-to-coast and will be presented to the Canada Council for the Arts in April 2020.”¹³

Costs: Unable to obtain

Not in OUR Space!

EQUITY¹⁴, in collaboration with PACT¹⁵, have completed tremendous work in ensuring safe workspace for their members. Work on the Not in OUR Space! Campaign began in 2018. Not in OUR Space!¹⁶ *“is a national anti-harassment and respectful workplace collaboration campaign (...) which seeks to ensure healthy and productive working conditions for all professionals working in live performance across the country.”* When the campaign first began, the complaints were processed by the Executive Director for EQUITY supported by a small staff of trained persons in respectful workplaces. Now that the campaign is in its second year, EQUITY has decided to partner with Morneau Shepell/Lifeworks to offer access to the HAVEN Helpline for their 6000 members.

Costs: According to EQUITY’s Executive Director, the cost of subscribing to Morneau Shepell/Lifeworks will be approximately \$5.00 per member per year = \$30,000.00 per year for the first year. Costs for the second year will be lower at approximately \$24,000.00

UNISON (Music Industry outside of Québec)

Unison Benevolent Fund is a non-profit, registered charity that provides counselling and emergency relief services to the Canadian music community. The Unison Benevolent Fund is an assistance program—created and administered for the music community, by the music community—designed to provide discreet relief to music industry professionals in times of crisis. There are two distinct types of support available through the fund. In March 2019, a coalition of Canadian music community groups joined in

¹³ <https://www.surveymonkey.com/r/F6KJ8XD>

¹⁴ EQUITY (Professional artists’ union in live-performance arts) is the voice of professional artists engaging in live performance in English Canada. This national association represents almost 6,000 artists working in theatre, opera and dance from coast-to-coast-to-coast.

¹⁵ PACT (Professional Association of Canadian Theatres) is a member-driven organization of professional Canadian theatres which serves as the collective voice of its members. For the betterment of Canadian theatre, PACT provides leadership, national representation and a variety of programs and practical assistance to member companies, enabling members to do their own creative work.

¹⁶ <https://www.caea.com/Features/Not-In-Our-Space>

solidarity to work towards environments free of harassment, discrimination, violence, and bullying for the music community.

In 2019, the coalition announced that 42 music groups had formally signed on to the Canadian Creative Industries Code of Conduct.¹⁷ By signing on to the Code, the organizations acknowledged their responsibility to build safe, respectful workplaces, and committed to improving and implementing policies to keep the music community safe.

Members of the coalition formed an Education, Training and Safe Support Committee, which is working to provide each member of the Canadian music community with the appropriate resources and training to identify, confront and prevent harassment, bullying and violence in any workplace. Unison Benevolent Fund has volunteered to host a suite of educational and training resources through its website at no cost. These resources will be made available to the music community at a later date.

Costs: The Unison fund is sustained thru donations and is managed by RBC financial (undisclosed amount). It is hoped that the pilot project will see a more stable source of funding in future.

Canada Sports Helpline

In conducting the research on what might currently be available as a complaint mechanism in Canada for the cultural sector, it was discovered that Sports Canada had launched in March of 2019, a national Helpline for amateur sports. The Canadian cultural sector and the sports sector both falling under the purview of Canadian Heritage, the findings are included in this report.

Previously, in March 2018, an Investigation Unit was launched as a pilot project for federally regulated sports organizations. These services, funded by the Department of Canadian Heritage, were offered on a voluntary and fee-for-service basis. The initiatives are overseen by an advisory committee. The pilot project for the Helpline officially began in November 2018 and is being piloted until March 31, 2020.

“Federally funded sports organizations in Canada must take all necessary measures to create a workplace free from harassment, abuse or discrimination of any kind. Among other things, they must make provisions for access to an independent third party to address harassment and abuse cases.”

¹⁷ <https://unisonfund.ca/canadian-creative-industries-code-conduct>

*The SDRCC extends its expertise to offer, a list of qualified and independent investigators to assist them in handling complaints and allegations. This offer is on the basis of a pilot project until March 2020,”*¹⁸

A small unit of two lawyers from the SDRCC oversaw the development of a framework for the complaint process referred to as: “*Safe Sport Compliance System*”. The intent of the framework is to allow for allegations of harassment, abuse and discrimination to be managed professionally and independently. It is the view of the SDRCC that although some Canadian sports organizations have been able to establish sound processes to address inappropriate behaviour of their members, it is evident that it has not always been the case. Many organizations still today, despite all good intentions, simply lack the capacity and resources to address incidents that put at risk the well-being of athletes and other vulnerable participants. The Centre proposed the creation of a system with four components:

- 1- Helpline
- 2- A two-step investigation process
- 3- Review possible assertions of conduct violations by a Sports Integrity Commissioner
- 4- A hearing before a Safeguarding Tribunal

The SDRCC has collaborated with the Canadian Centre for Mental Health in Sports (CCMHS) to provide a toll-free Helpline 7 days a week to offer confidential listening and referral service for victims and witnesses in cases of harassment, abuse, and discrimination in sport. The helpline is staffed by practitioners with expertise in counselling, psychology, and sport to act as Operators of the Canadian Sports Helpline¹⁹. The service is available by telephone, text, live chat, or email in both official languages. **Costs:** TOTAL FUNDING \$1,181,000²⁰; includes \$1,100,000 Core Funding Requested from Sport Canada and \$81,100 Funding Above-Reference Level of Sport Canada.

Review of 2019 Reporting and Investigating Mechanisms for Equity Seeking groups consultation notes

In reviewing consultations held in 2018 with equity-seeking groups, the prevailing opinion from those consulted was that, with a very few exceptions, organizations are not ready to respond to an incident of workplace harassment from cultural workers. With a noted lack of HR departments and a gulf of scope between the largest

¹⁸ <http://www.crdsc-sdrcc.ca/eng/investigation-unit>

¹⁹ . <https://abuse-free-sport.ca/en/>

²⁰ http://www.crdsc-sdrcc.ca/eng/documents/Evaluation_of_Safe_Sport_Initiatives_-_Final_report_31_March_2020.pdf

organizations and smaller ones, meeting the need of all is challenging when resources and staffing vary so widely.

In addition to these realities, the following were noted:

- There exists a general support to sharing resources and training and to also use existing resources;
- A strong caution was generally felt to “not reinventing the wheel but rather use existing resources and not starting from scratch.”;
- Confidentiality of the process is imperative;
- Reporters or complainants need to feel safe;
- Designated trained individuals like workplace health and safety inspectors would be critical to have in place;
- Most expressed a need for funding from governments (both federal and provincial)
- Several organizations indicated that if they were required to handle complaints, they would need tools and templates.

2.2 Analysis

In light of the findings and data collection, the following paragraphs indicate what is currently available and what is missing for cultural workers who wish to make a complaint of workplace harassment.

What is available at present is limited to Quebec’s APARTÉ/JURIPOP and union-member based services such as HAVEN helpline. In both cases, complaint intake, triage, counselling and legal support are offered to complainants. While large cultural sector unions have put in place complaint mechanisms and/or support for their members, non-unionized cultural workers also need the same resources. Human Rights Commissions in Canada view harassment in a very serious manner and this issue has become increasingly important. However, the consideration of complaints by these commissions is based on prohibited grounds only (e.g. age, ancestry citizenship, colour, creed, disability, ethnic origin, family status, gender identity/expression etc). This leaves many complainants with no recourse or support (e.g. claim of harassment or abuse of power, bullying).

Arts Councils hold education and prevention of harassment and respect as important workplace values and promote this through the granting process. Unfortunately, Art Council’s powers are limited in large part to the control they have on funding agreements with the funded organizations and are not able to respond to individual complainants.

Several organizations and leaders indicate that ever since the increase in awareness of rights relative to harassment, they are unable to handle and respond appropriately to complaints. Several directors report being fatigued by the increase in responsibility that these harassment complaints can bring. They are small size organisations and many have no specialized HR departments or staff. It is often left to the Executive Director to also become a complaint specialist with little, if any, support.

All tolled, access to complaint mechanisms as well as effective response and support to complainants in compliance with Bill C-65 are limited for cultural sector workers. It is also important to remember that many of the 800,000 cultural workers are in precarious work arrangements and that salaries are on average \$8,300 lower for full-time and \$2,230 lower for part-time sector workers²¹. This informs the research that many cultural workers would not be in a position to afford to retain legal support for the various stages of a complaint.

All of the above strengthen the argument towards formalizing resources like the Pacific Legal Aid Outreach²², APARTÉ/JURIPOP and Haven Helpline frameworks for all cultural sector workers. An outlier in this research, the Sports Helpline demonstrates that it is possible to offer a sector-wide government funded resource to establish a complaint mechanism.

2.3 Conclusions

The purpose of this section within the overall research was to consider, from the cultural worker's perspective, the existing reporting mechanisms, their costs and their feasibility and/or the feasibility and costs associated to develop new mechanisms. With this objective in mind and based on the findings of the research, exploring the creation of new mechanisms, frameworks or resources does not seem necessary. If a sector-wide resource such as the one available for sports and/or the APARTÉ/JURIPOP framework are not made available through public funding, Haven Helpline represents a viable and affordable option even if critical mass is necessary.

²¹ Cultural Human Resources Council, & Conference Board of Canada (2019). *Labour Market Information Study of the Cultural Labour Force*.

²² The National Network of Legal Clinics for the Arts In the fall of 2019 Artists' Legal Outreach (ALO) launched a project to develop a Canada-wide network of legal clinics for the arts with our colleagues at the Artists' Legal Advice Services (ALAS) in Toronto and the Artists' Legal Services Ottawa (ALSO). The timeline for this project will include market research in collaboration with the five legal clinics currently operating in Ontario, Quebec and Nova Scotia, culminating in a final report and recommendations for next steps to be presented in the spring of 2020. This is made possible with financial support from the Canada Council for the Arts.

The findings and analysis reveal that the publicly-funded initiatives have price-points into the \$1M-\$5M annual range. APARTÉ/JURIPOP and the Sports Helpline already exist and are functional entities but would require adaptation and/or set-up costs to become national resources. The funding remains susceptible to government commitment priorities.

In considering Haven Helpline offered by Morneau Shepell/Lifeworks, the following factors apply: being an existing model, there are no development costs, only the purchase of existing services; the model is scalable to support the cultural sector's workforce across the country in both official languages; the model offers support to complainants (trauma and crisis counseling) and a timely response for complaint intake; finally, at a range of less than \$10 per individual per annum, this service is affordable even for lower-income cultural workers. The major drawback to this service is that it is not offered on an individual subscription basis, all of the buy-in quotes are based on group registrations with thousands of members enrolling.

Implementation of a sustainable funding model for this option could go as follows: the first year of operation could be seeded by public coffers, subsequent years to be funded by member-driven adhesion (ACTRA/DGC model). Other already membership-driven Arts Service Organizations (ASO) and/or unions with provincial or national reach can serve as feeder systems towards access for the service. Be it through an ASO or union membership, cultural workers would have access to an affordable reporting mechanism. In all cases, access to legal support (if and when a complaint moves to the litigation stage) is still a cross-country need. Thus, ongoing work with the Pacific Legal Outreach and APARTÉ/JURIPOP remains an important consideration.

3. SUPPORT MECHANISMS FOR CULTURAL ESTABLISHMENTS

Introduction

The purpose of this section of the research is to examine INVESTIGATIONS of Workplace Harassment in Canada's arts and culture organizations, from the point of view of: organizations' current state of compliance and 'readiness', available resources, the sector's desired resources, and potential avenues of support.

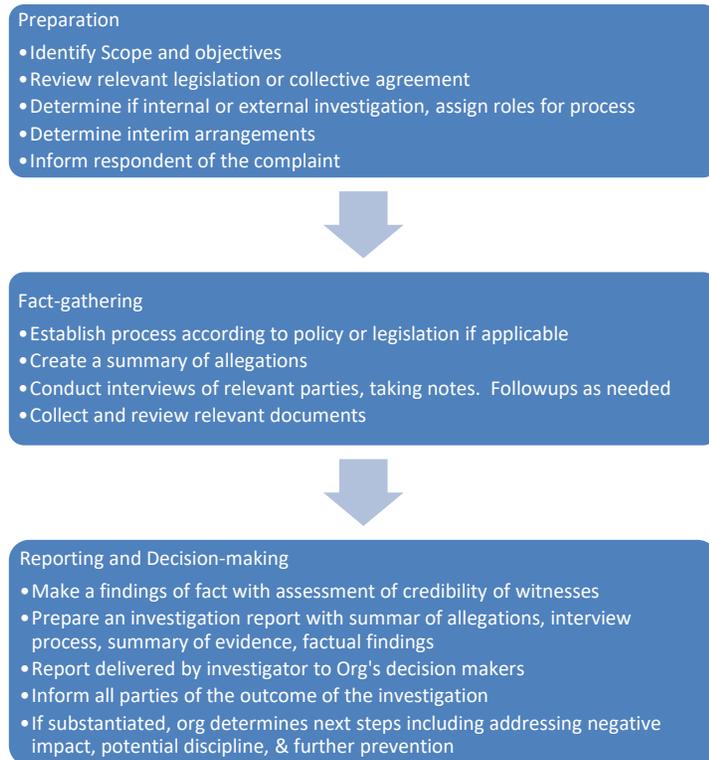
Arts and culture organizations, like any other, need to understand proper investigation processes to respond to incidents of workplace harassment. In most provincial / territorial jurisdictions, if a formal complaint of workplace harassment, or awareness of the potential for workplace harassment comes to the attention to the employer, it is their obligation to conduct an investigation appropriate to the situation. CHRC's HR Management Toolkit on Workplace Harassment and Violence provides a detailed Fact Sheet on Legislation in each jurisdiction.²³

While all complaints of incidents that come forward will necessitate a customized Investigation that varies according to the seriousness and complexity of the situation, a basic **Investigation Procedure** includes:

- 1) Preparation;
- 2) Fact-Gathering;
- 3) Reporting and Decision-making.

²³ Cultural Human Resources Council & Williams HR (2018). *Workplace Harassment and Violence – HR Management Toolkit*, p. 17, 43-49.

Figure 1 Steps in Basic Investigation Process



*Source: Derived from *Workplace Harassment and Violence HR Management Toolkit*²⁴

The **Preparation** phase involves the assessment of the complaint and identifying the scope and objectives of the investigation (who is involved, any union involvement, external vs internal investigator, necessary interim measures or work arrangements). The **Fact-Gathering** stage is the actual investigation, including taking steps against any required legislative or workplace policy in place, creating a summary of allegations, conducting interviews, and reviewing all relevant documents. The **Reporting and Decision-Making** stage involves a finding of facts, an investigation report, noting the outcome (determination) of if harassment claims are substantiated or not, and potential discipline and remediation steps.²⁵

In addition to these procedural steps, Canadian workplace investigation experts Thomlinson and Rubin have outlined an additional consideration – that all good workplace investigations also follow the “Four Pillars” for solid investigations: Fairness, Thoroughness, Timeliness, and Confidentiality.²⁶ Striking a balance amongst these

²⁴ Cultural Human Resources Council & Williams HR. (2018). *Workplace Harassment and Violence – HR Management Toolkit*, p. 17-22.

²⁵ Ibid.

²⁶ Tomlinson, C. M., & Rubin, J. (2018). *Human Resources Guide to Workplace Investigations* (2nd ed.). Canada Law Book, p. 47.

pillars in a well-constructed process strives for fairness for both parties in the process, to be as thorough as possible for the unique circumstances, applying a sense of urgency in conducting the investigation, and maintaining as much confidentiality as possible to minimize the impact to those involved.

It is crucial for arts and culture organizations to understand proper investigation processes. The complexity of sectoral work arrangements (contractors, boards, auditions, guest artists, volunteers), and the restraint of a scarcity of resources (time, personnel, money) can add additional pressures to an already delicate situation. And when combined with a possible tolerance to behaviours due to artistic status and the “small world” interconnectedness of the players, finding a process that is truly fair and unbiased is challenging.

The Risks

Regardless of the impression of the uniqueness of the arts and culture sector, the risks associated with improperly managed investigation processes are not to be dismissed:

- 1) *Compliance and Associated Liability* – organizations need to manage appropriate compliance according to the thresholds and jurisdiction of the institutional entity, and it is important to note that the process and output of an investigation could be used if the issue is escalated (i.e. in the courts, in administrative tribunals, or in the media or social media) – which could also result in significant financial penalties and legal fees.²⁷
- 2) *A People-Centric Organization* – as a sector that is collaborative and people based, managing investigations in a diligent and respectful manner will go a long way in creating a positive, trusting, and respectful environment that will attract and retain the very best people. An appropriate response to a complaint is a key signal of how people are valued and that the issues are taken seriously. Otherwise, complainants and others may eventually choose to turn down employment and/or leave the sector.
- 3) *The Organization’s reputation* – poorly handled situations can damage the brand and reputation of the organization, which could take considerable time and energy to rebuild trust. This could also jeopardize support from funders, sponsors, donors, and patrons - which directly impacts revenue.

Plus, improperly conducted investigations for specific incidents will not help organization get to the root causes of systemic problems, thus perpetuating toxic workplaces or ongoing work cultures that engender workplace harassment.

²⁷ Tomlinson, C. M., & Rubin, J. (2018). *Human Resources Guide to Workplace Investigations* (2nd ed.). Canada Law Book, p. vii.

Research Methodology

The primary research for this section of the report was conducted in two key ways:

- a) **Sector Survey with Arts and Culture Organizations** – with Performing, Visual and Literary Arts organizations in Canada.
- b) **Technical Information** - 20 interviews (most via telephone, some in person) with service providers (human resources providers, mediators), experts (insurance representatives, lawyers, legal clinic representatives), funders/government (federal/provincial), and arts service organizations – to review additional considerations and available resources.

Secondary research was also conducted on available resources (non-sector specific) from a simple desk-research perspective.

Sector Survey Process

A survey was developed in consultation with CHRC staff with a target audience of organizations in Performing, Literary and Visual Arts in Canada.

Groupings of questions sought out information from arts and culture organizations in three key areas: ‘Demographic’ information about the Organization, the Organization’s Self Assessment of Current Compliance And “Readiness”, and Resources Needed by Organizations To Manage Workplace Harassment Investigations.

The survey was distributed between the dates of November 5, 2019 - December 10, 2019. Method of distribution was:

- CHRC’s mailing list
- CHRC’s and LeSage Arts Management’s Social Media Platforms (Facebook and Twitter)
- Invitations to Arts Service Organizations and the sector community (>40)

After removing incomplete and duplicate submissions, there were 3 French and 146 English submissions. For results displayed in this report, French and English have been combined. For all qualitative responses, in some cases language has been edited for clarity/succinctness and to remove identifiers to maintain confidentiality. There are a few cases where individuals from the same organization submitted separate survey results. These results were not adjusted, but left in.

3.1 Primary Research Findings

3.1.1 Sector Survey

See Annex 2 for full quantitative and qualitative results from the survey.

A series of questions were asked to review the opinions and impressions of representatives of arts and culture organizations regarding their current compliance and

“readiness” to manage investigations for workplace harassment and requested resources to support them in conducting investigations.

1. ‘Demographic’ Information About the Organization
2. Organization’s Self Assessment of Current Compliance And “Readiness”
3. Resources Needed By Organizations To Manage Workplace Harassment Investigations

Demographic Information About Respondent Organizations

The majority of the respondents were English (146), with three (3) French respondents. Respondents represent a cross section of disciplines, with the highest representation including theatre (39%), music (18%), multi-disciplinary (11%), dance (7%), and the remaining ASOs, visual arts, museum, film, land-based, festivals and craft. 63% of organizations who responded are members of an Arts Service Organization (ASO). Respondent budget ranges vary from less than \$99,999 to greater than \$5M – with the highest number of respondents in the \$250K - \$499K range, followed by \$500K-\$999K.

Comparison between respondent budget size and HR Staff

Figure 2 Human Resources Staff

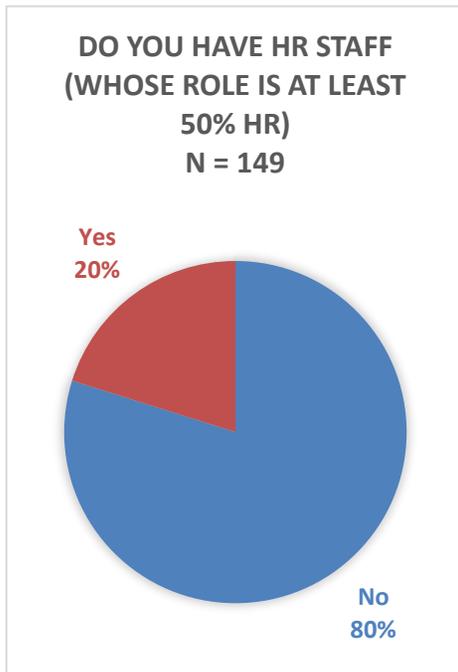
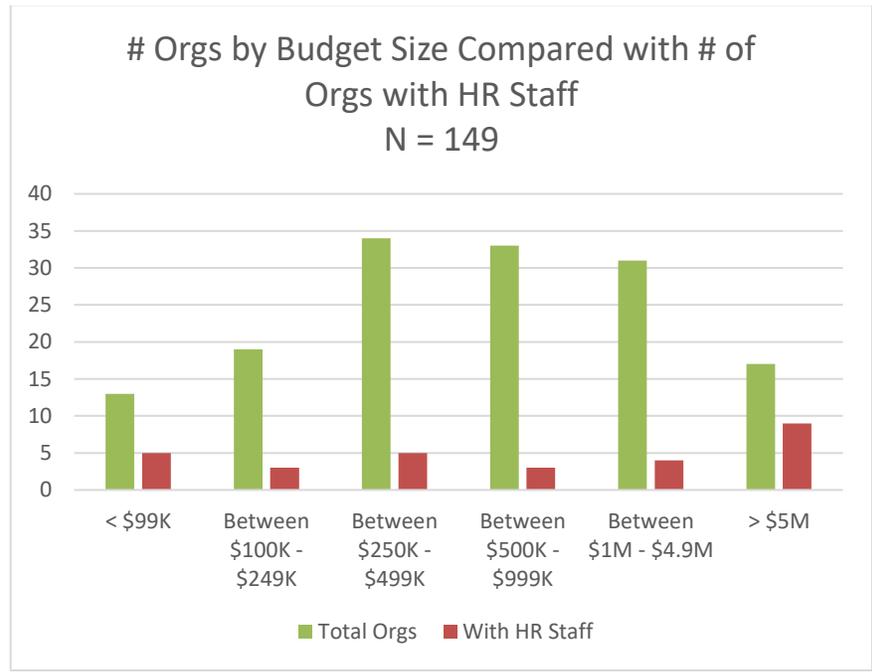


Figure 3 Human Resources Staff



As depicted in Figure 2, only 20% (n=30) of organizations stated they had Human Resources staff – which is defined by a staff person whose role is at least 50% dedicated to HR. Of those organizations that do have HR, the majority have 0.5 or less Full-Time

HR staff. And as shown above, except for the ‘high and low’ budget ranges of greater than \$5M and less than \$99K – the lack of HR staff is spread throughout the different sized organizations. In some cases, organizations utilized Human Resources staff if they were attached to a larger umbrella entity such as a municipality, and some organizations reported that the role was filled by other means, such as a volunteer or a person untrained in HR.

Organization’s Current Compliance And “Readiness”

Policies and HR resources:

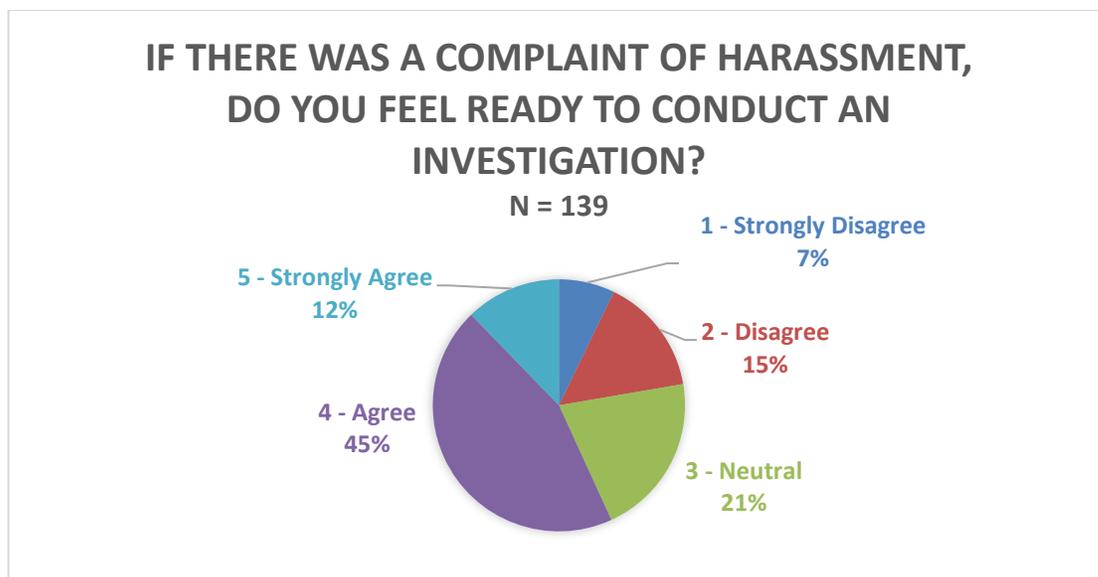
79% of organizations who responded felt they were aware of the legal requirements for their organization, and 81% did have a workplace harassment policy in place with the majority having had their board approve the policy and have communicated it annually with workers. Broken down further, there is a relationship between having an awareness of understanding required legal compliance, and having a policy in place: of the respondents that stated they were aware – 87% had policies in place, while for the organizations that were not aware of their required compliance, only 54% had workplace harassment policies in place.

Table 3 Comparing Awareness of Compliance against Existence of Policy

Awareness of Compliance?			Have Workplace Harassment Policy?		
YES	110	79%	Yes	96	87%
			No	10	9%
			In Progress	4	4%
			Not Sure	0	0%
			Blank	0	0%
NO	28	20%	Yes	15	54%
			No	9	32%
			In Progress	1	4%
			Not Sure	2	7%
			Blank	1	4%
In Progress	1	1%	Yes	1	100%

69% of all respondents said they had a clear Investigation process in place, including use of CHRC and ASO policy samples and guidelines and fulsome training and implementation. While some organizations felt they had a fulsome process in place, there were needs and gaps identified such as the fact that there was not a clear enough procedure that laid out a clear plan required to carry out an investigation, including who would be involved, sample documents, and resources. Organizations also indicated that, “Board members do not fully understand the need for HR development to assist with Harassment policies”.

Figure 2 Readiness to Conduct an Investigation



Readiness to respond:

As seen in Figure 4, more than half of respondents, 57% (n=79), felt they were ready to conduct an investigation in case of a complaint (Agree/Strongly Agree). This means that 43% (n=60) of respondents feel that they are not ready to proceed with an investigation if an incident came forward (Strongly Disagree/Disagree/Neutral). The top three barriers for all respondents for lack of readiness were: not having the specific expertise (27%), no financial resources to hire external expertise (22%), and no procedure in place (15%). Other notes regarding barriers to conducting an investigation included:

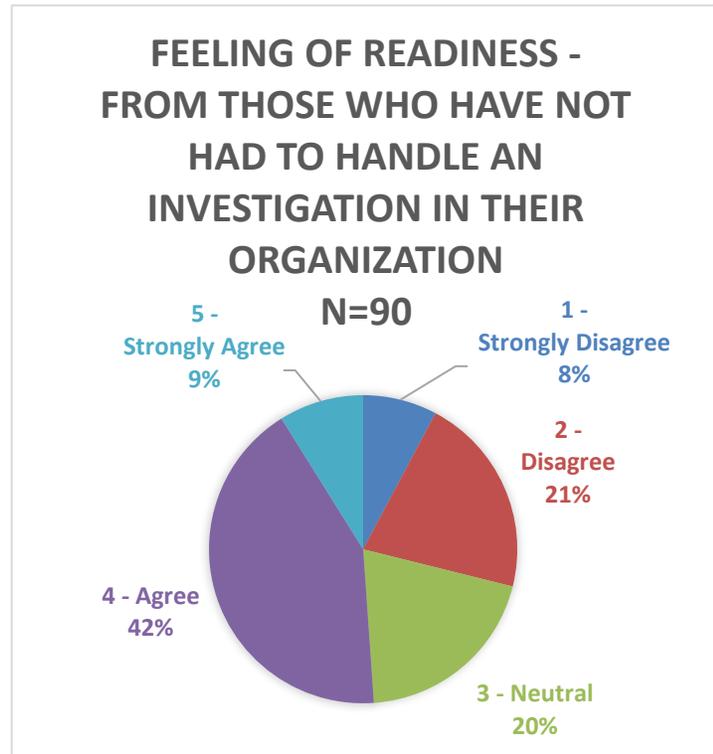
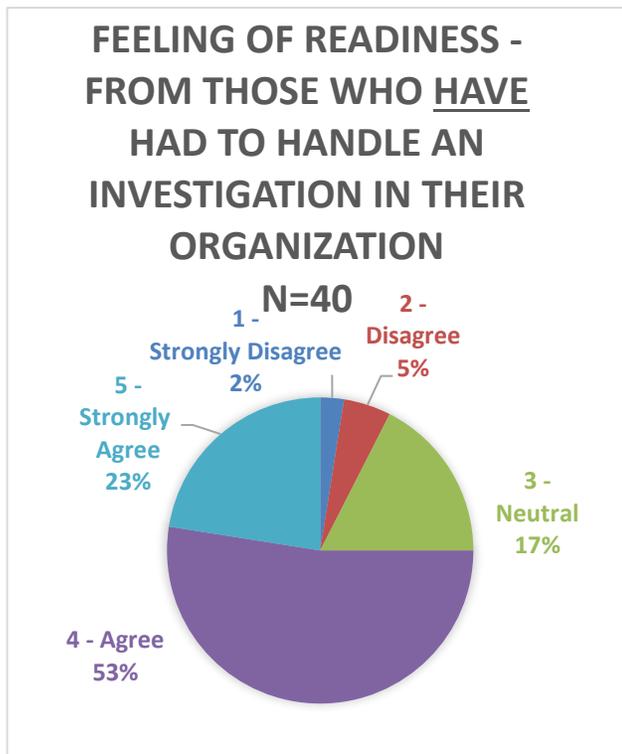
- Capacity
- Presence of Bias / Lack of Objective process / Conflict
- Would need Guidance / Help to go through the process
- Board – reluctance to proceed with formal process
- Clarity on roles and responsibility

Having conducted an Investigation in the past:

67% (n=90) of respondents have not had to conduct a workplace investigation, while 33% (n=44) have had to do so. Challenges presented by respondents included: being under-prepared to conduct an investigation, not having mechanisms in place, lack of clarity in definitions in dealing with grey areas. One respondent noted that they were, “...generally under-prepared to conduct an investigation. Truthfully, the situation ought to have been resolved at the supervisor level, prior to it becoming an official complaint, and so it felt a bit heavy-handed for the situation that it had emerged from.”

When cross-referencing the question of an organization’s readiness against those that have and have not had to handle an investigation, the numbers do change. From the organizations that HAVE handled an investigation, 76% feel they are ready (Agree/Strongly Agree), while from the organizations who have NOT had to handle an investigation, this number drops down to 51%.

Figures 3 and 6 Cross Reference of “Readiness”



Conducting Investigations:

57% (n=77) of respondents have designated staff to handle workplace harassment issues – including members of the board, the Executive Director/Leaders, an HR staff member, a designated Committee, and others. As noted by one respondent, “...we have a procedure for lines of communication, and a general idea of who would handle it, but I feel like it could be more specific”.

When asked about training for designated staff, only 39% (n=38) noted they had training in how to conduct a workplace investigation²⁸. If training had occurred, it included HR training on workplace harassment, internal training, legal training, CHRC training and more – see Table 4 for details. 61% (n=59) indicated the designated staff person did not have training.

Table 4 Types of Training - Categorized

Type of Training to Manage Reports of Harassment	n
HR Training on Workplace Harassment	22
Trained Internally	6
Legal Training on Workplace Harassment	4
CHRC Training	4
Board/Leadership/HR Staff With Existing Expertise	4
General HR Training	2
Conflict resolution	2
Training Through ASO	2
No Formal Training	2
Coaching/Training From HR Consultant/Expert	2
Formal Investigations Training	1
WorkSafe BC	1

Additional comments from respondents on training:

“Apparently I am trained since I took the training modules offered. I have ZERO confidence about this.”

“Generally inadequate. Need more training on fostering personal responsibility in the workplace, workplace interpersonal dynamics, and conflict resolution training.”

“...we need to have more individuals in the organization ready to implement.”

Internal vs External Investigations:

Internal

From those that conducted investigations²⁹, 80% (n=44) were done internally, with the main reasons for choosing this was that the issue was minor enough that it could be handled internally (n=26) and that they had the internal expertise (n=15). In additional comments, respondents stated additional reasons: inability to afford external expertise

²⁸ Research Methodology note – the follow-up question yielded more answers than the previous question.

²⁹ Research Methodology note – the follow-up question yielded more answers than the previous question.

(n=10), board decision to handle internally (n=3), at the request of the complainant (n=2), and lack of clarity on procedures (n=1).

When asked if they felt an Internal Investigation was the correct path, the grouping of qualitative responses include:

- **Yes** (n=24) – it was an issue that could be handled with available expertise of board and staff, had a clear resolution, and could rely on policy.
- **Yes...But** (n=12) – outside experts were engaged to assist/advise, if the situation had been any more serious, they would have needed external help
- **No** (n=8) – outside independent expertise would have been better, the situation was not handled properly, perception is often that the investigation is biased.

As noted by one respondent in regards to board involvement, “...the board was the group which received the complaint, as it was against the Executive Director at the time. They processed it as best they knew how, but were inexperienced in proper board governance. They technically handled the entire process themselves, but inadequately.” The top perceived risks/challenges/barriers to Internal investigations for respondents are summarized and grouped here:

Table 5 Perceived Barriers to Internal Investigation

Risks/Challenges/Barriers	n
Confidentiality	51
Conflict of Interest	48
Disclosure	23
Disciplinary Measures	23
Financial	22
Lack of Expertise	18
Bias / Lack of Impartiality	16
Small Staff	10
Lack of Time	7
Impact on Staff	3

Other: Fear of Repercussions, No Private Space, Risk To Make It Worse, Barrier - Management and Union, Board - Lack of Understanding, Complaint Coming in Long After the Incident, Desire to Protect Org from Bad Publicity, Gossip, Honesty, Small Community.

As noted by a respondent about the risk of internal investigations, “...bias (whether actual or inferred) and the difficulty in restoring a workplace after the investigation. If the allegations are very serious and/or involve senior management then an internal investigation would not be advisable.”

On the other hand, it was noted by a respondent that having an outside investigation doesn't necessarily protect the company from any of the risks or barriers noted.

External

In the case of organizations using external expertise, organizations utilized most: HR consultants/firms, Lawyers, Mediators, and Investigators. Additional resources included former police officers, lawyers, professional investigators, and Executive Director from another non-profit, and a safe disclosure expert. The cost of these external investigations ranged from \$2,000 to \$60,000.

The top perceived risks/challenges/barriers for External Investigations for respondents are overwhelmingly financial (n=71), with additional concerns noted in Table 6.

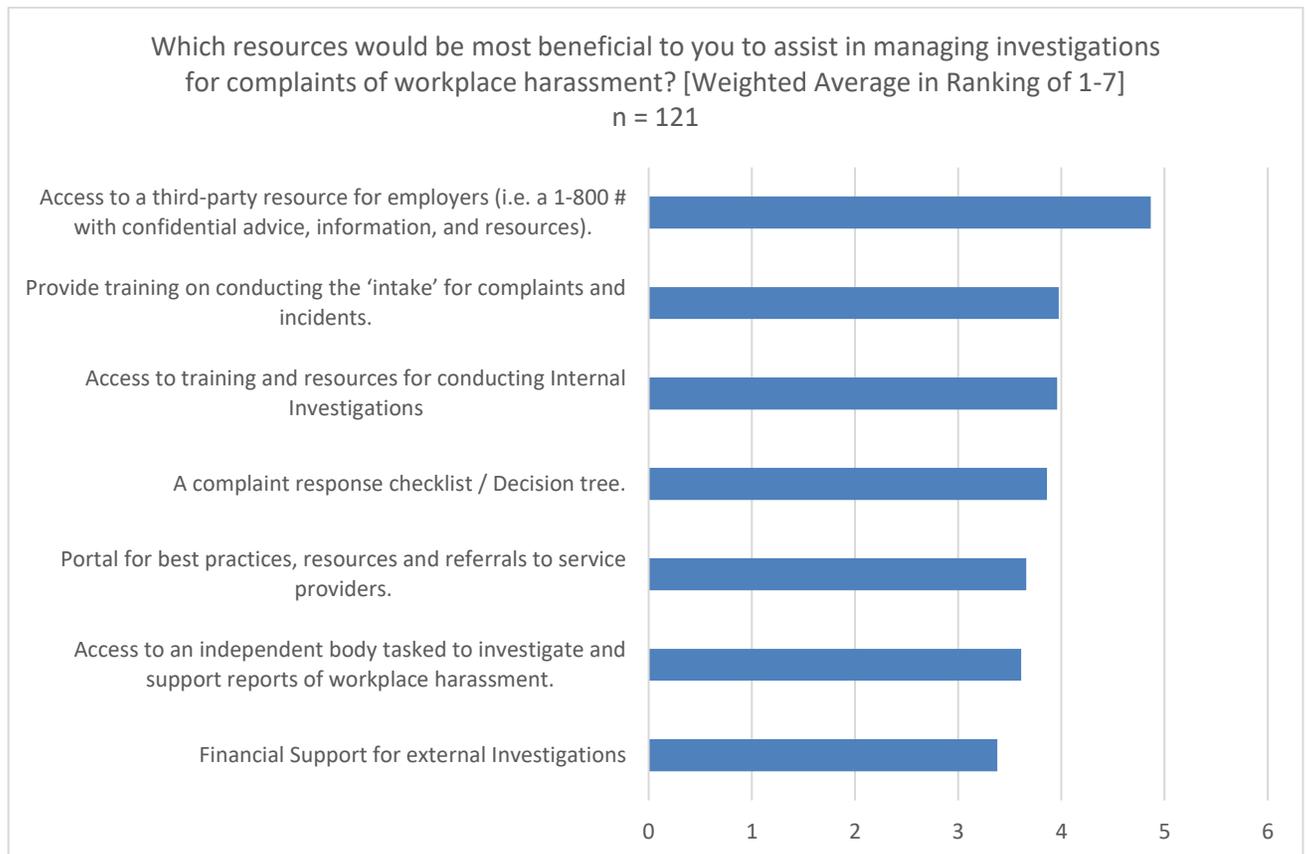
Table 6 Perceived Barriers to External Investigations

	n
Financial	71
Not familiar with sector context or specifics of organization	15
Confidentiality	10
Disciplinary Measures	10
Disclosure	9
Other: Time, Bias, Overblown Response to The Situation, Access to Skilled Experts, Lacking Proper Expertise in Cultural Diversity And/Or Regional Sensitivities, Appropriate Sensitivity to The Situation, Comfort Level for Participants Dealing with Third Party, Triggering Other Situations, Creates Distance Between Management and Worker	*1-3 mentions for each

As noted by a respondent, "The arts community needs an outside independent organization to offer this support."

Resources for Organizations

Figure 7 Resources to manage investigations



When asked to rank a set list of resources beneficial to organizations, the top selections were: Access to a Third-Party Resource for Employers, Training on Conducting Complaint “Intakes”, and Access to Training and Resources for Conducting Internal Investigations. ASOs currently provide some support to their members with resources such as: written policies/guides/tools (n=22) and training (n=13). But many (n=24) cited that their ASO’s did not provide, or they didn’t know if they provided any support.

In addition to the ranked listing above, organizations were asked what they needed to be supported in responding to complaints and conducting an investigation (in order of mentions with selected comments):

Table 7 Requested Resources

<p>Support / Somebody to Call (n=12)</p>	<ul style="list-style-type: none"> - Access to professionals, expert advice to review specific situation and guidance to proceed. - Someone to call or share our documents with to give us advice on what we might be missing or how we might better clarify our policy & procedure - Support for top administrators with the stress of managing investigations - Support in changing the old boys club culture - We need a sounding board - someone who is experienced and skilled in these processes.
<p>Templates and Tools (n=11)</p>	<ul style="list-style-type: none"> - Checklist and guidelines for Procedure - Reminder of 3-5 short points of what to do first. - Identification Guide for types of workplace harassment - Scalable resources, appropriate to different sizes of organizations - The right tools for the right situation
<p>Training (n=10)</p>	<ul style="list-style-type: none"> - Training in best practices. - Training in how to manage communications appropriately - Training to handle the cases. - Workshops to improve skills
<p>3rd Party Expertise / Legal Support (n=8)</p>	<ul style="list-style-type: none"> - Affordable legal knowledge - External Investigator Support - Insurance Companies - Mediators - The advice of legal counsel to ensure that we've complied with all of the requirements and to ask for advice on disciplinary measures (if necessary), and ongoing advice as to how we can best support the complainant, the respondent, and the witnesses during the process. - We don't know which external party we would engage to deal with the investigation.
<p>Funding (n=5)</p>	<ul style="list-style-type: none"> - Financial Resources - Money to get support while leadership deals with it - Operating Funding
<p>Policy (n=5)</p>	<ul style="list-style-type: none"> - A Policy body focused on arts and culture - External body to review policies and procedures
<p>Board Support / Training (n=5)</p>	<ul style="list-style-type: none"> - Board Expertise in this topic - Board governance training

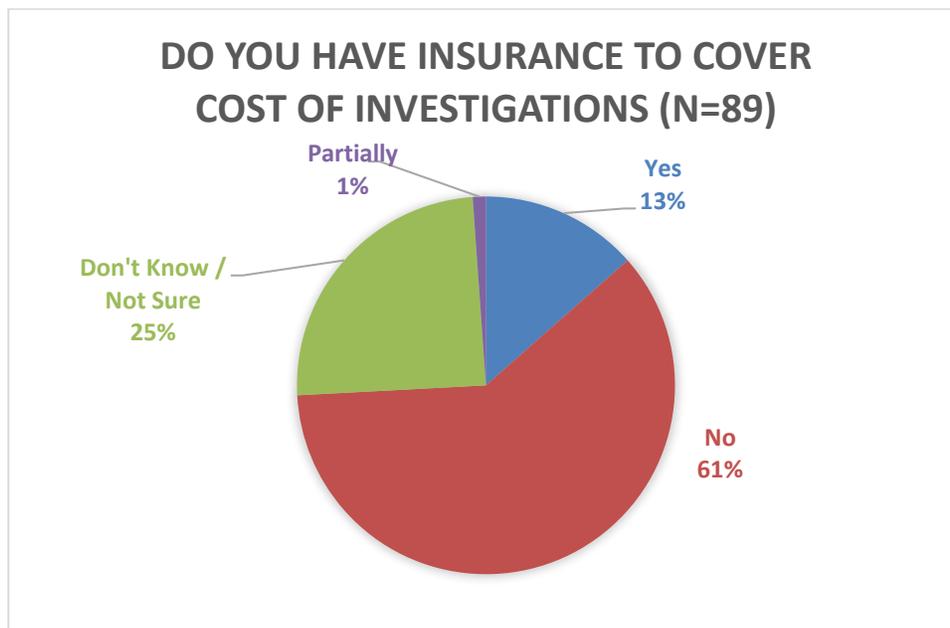
Awareness of Peers Practice / Forum for Peer Discussion (n=5)	<ul style="list-style-type: none"> - Access to Best Practices - Access to peers with experience in this area
Other (n=9):	<ul style="list-style-type: none"> - HR Support - Support on issues that are not work-related but have workplace implications - Issues that involved unconventional workplaces - Mental health Training - More support from Unions/Guilds/Associations - Recognition for the strides we have already made. - We're a very small staff, so it would be helpful to go somewhere outside the office that staff could go to if necessary.

When asked what information organizations would like to see in a shared portal – the top requests were for Mediators (n=50), Lawyers (n=44), and Investigators (n=37) – followed by the need for Resource guides with step by step processes (n=15), and an Intake Checklist/Decision Tree (n=7). Additional resources listed included Best Practices (6), HR Support (6), Counseling/Mental Health experts (5), Case Studies (5), links to information (4), contacts for 3rd party expertise in the region (4), and more.

Insurance Instruments

Survey respondents were asked if they had insurance that would cover the cost of investigations, and the type of insurance held.

Figure 8 Insurance Coverage



61% (n=54) of respondents stated that they did not have insurance to cover the cost of Investigations, with 25% (n=22) being unsure if they did have coverage, and 13% (n=12) saying they did have coverage. Some respondents did indicate that they held general insurance including:

- General Commercial Liability
- Abuse Coverage
- Directors and Officers
- Management Liability

Final Notes from Survey Respondents

Respondents were asked for a final note on best practices, resources or policies to share:

- “Build it into the culture of the organization that harassment will not be tolerated in any form”
- “Everyone whom walks into our building deserves to be treated with respect and dignity.”
- “...a diversity protocols document that reinforce our values and assist in mitigating day to day conflict and relationships.”
- “[Management] maintaining open dialogues with [the team], to be easily approachable.

3.1.2 Technical Interviews

Following on the sector survey, telephone interviews were conducted with select representatives from Arts Service Organizations, government funding agency representatives, artist legal clinics and service providers (lawyers, investigators, human resources, insurance industry).

Arts Service Organizations (ASOs)

Extensive consultation with ASOs (representing both organizations and cultural workers) and unions/guilds was conducted as part of the 2019 report on Reporting and Investigating Mechanisms – for this research, a few ASOs were interviewed to check in a year later for developments, etc.

It is noted that there has been an increase of awareness about legal requirements and setting policy and programs as a response to the #MeToo movement, and an acknowledgement of the recent influx of training as well as sample materials, policies, templates, and codes of conducts. However, there is still a need for: the training and resources to go deeper than introductory content, more trained professionals to assist in creating customized material for organizations, and for financial support for organizations to engage outside expertise.

As observed by ASOs interviewed, organizations are generally unprepared to deal with an investigation if something came to light. When it comes to conducting external workplace investigations, cost continues to be a significant barrier, but when they are done in-house you can actually reduce the number of people coming forward to report due to anonymity concerns and fears of retribution. The impact of poorly conducted investigations can be significant and given the complexity of properly conducted investigations, it is not always wise for the organization to handle it on their own. It was also noted that a major support needed for organizations is to have a resource to contact when responding to an incident to talk it through, to guide them through the process and to manage the all-important first phases of intake on a case. And while ASOs have been heavily involved in current efforts in the sector in supporting organizations in managing workplace harassment, it should not be assumed that ASOs (whether in national/provincial/local jurisdictions or discipline specific) have the resources or capacity to continue to take the lead without additional support.

Insurance Mechanisms

In consulting representatives in the insurance industry (both in and out of sector), organizations have various instruments that could be drawn upon to manage their risk for situations of abuse and harassment:

- Bodily Injury Liability
- Abuse Liability
- Management Liability (under Employment Practices Liability)³⁰

However, coverage often has several exclusions, is not always automatically offered to all, and covers only defense fees and settlements in the case of legal action, but NOT investigations or mitigation efforts. In some cases, crisis management expenses could be covered in the case of the need for public response to media.

In referring back to the sector survey interview, 14% (n=13) respondents believed that they did in fact have insurance coverage for investigations, which is contradicted by information gathered from insurance representatives. This would reveal a lack of understanding on the part of these organizations about what their own insurance will and will not cover.

While Investigations are not covered by insurance, there was an effort and willingness from the insurance industry representatives consulted to look at a wholistic approach to

³⁰ Front Row Insurance Brokers. (2020). *Abuse + Harassment Liability for Performing Arts Organizations*.

the issue. Prevention and proper complaint responses are key to proper mitigation efforts and can include:

- The organization demonstrating the existence of sound policies and programs appropriate to their company, with leadership/management making it a top priority.
- Undertaking a risk assessment audit to assess the current state of the organizations to see potential risks and where there is exposure and gaps. Identify specific areas such as work with artists, production, board, volunteers, education, etc.
- Conduct extensive training and onboarding so that all involved know the policies, know there is zero tolerance, and clear process for how to conduct an investigation.

National Network of Legal Clinics for the Arts

There are currently five legal clinics in Canada that support the arts with legal resources, workshops, conferences and more. Three of these clinics: Artists' Legal Outreach in Vancouver (ALO), Artists' Legal Advice Services in Toronto (ALAS), and the Artists' Legal Services Ottawa (ALSO) are working to develop a national network of federally funded legal services for artists across Canada to unify and coordinate the important efforts of these clinics.³¹ At the time of writing this report, the network is undergoing a survey to understand the needs of artists and arts organizations that could be supported by leveraging a national network.

Upon interviewing representatives from these clinics, the majority of the work done in these clinics is to support *individual* artists in areas such as copyright, intellectual property and contract issues and not necessarily organizations (with the exception of ALO). The clinics consulted also indicated that they are volunteer run, with extremely limited resources – some are able to provide in person consultations (but are strictly NOT providing legal advice) with referrals to assistance and expertise, but not all. The prevalence of managing workplace harassment issues in the sector has drawn attention to the need to support arts organizations, not just individuals, with access to legal expertise. There was a view that creating generic templates, checklists and training could be problematic due to potential risk in liability if they are not applied appropriately – but that with further resources, legal clinics could conduct more training sessions for organizations and advise on items to include in policy and investigations.

³¹ Artists' Legal Outreach. (n.d.). National Network of Legal Clinics for the Arts. www.artistslegaloutreach.com

Various Service Providers

Interviews were held with service providers who handle and/or have expertise in managing workplace harassment claims, including HR consulting, mediation, and employment law.

These external service providers are seeing that there are still gaps in HR expertise and training in arts and culture organizations. When it comes to supporting organizations to conduct INTERNAL investigations – this could be of value, but there is a major concern about the risk in doing this unless the individual in the organization is properly trained and has the skills and aptitude to be a good investigator – which is not always the case. What would be more impactful is to have a roster of vetted and affordable investigators that organizations could be directed to.

There is some value in looking at informal resolutions for minor cases of harassment that may not need a full formal investigation – though not likely in the case of sexual harassment. The more that informal processes and formal investigations are carried out and normalized, the more people will feel empowered to come forward and report issues.

In addition to managing the response and investigation associated with workplace harassment, there is also a need to support organizations in determining the remedies and discipline that come with the findings of an investigation appropriate to the circumstance, as well as ensuring to spend time on restorative work after the fact. Third party Human Resources service companies can provide small organizations outsource HR support including policies and procedures resources, online tools, customized consulting and a 24-hour telephone HR advice hotline.

Funding Agencies (Federal/Provincial governments, councils and associations)

At the time of writing this study, there are no mechanisms in Canadian arts funding that would financially support an organization conducting an investigation of workplace harassment. There has been funding of sector initiatives such as CHRC's *Respectful Workplaces in the Arts* (which commissioned this study), and a one-time grant initiative with provincial funding administered by Creative BC: "Respectful Workplaces, Diversity and Gender Parity Fund". This fund had a focus on delivering respectful work culture training for board and leadership levels of industry associations and regional film commissions. It is not known at this time if the funding will be renewed.

In recent years, funders have begun to require that grant recipients attest to providing workplaces free of discrimination and workplace harassment. This is often embedded in the funding agreement language, and contravention of this clause could threaten an organization's good standing status/eligibility for future funding. Funders may also be in

the position of receiving complaints directly from the public or the sector regarding issues of harassment or misconduct with grant recipients.

When various funders (federal and provincial) were asked if there could be a way for government agencies and funders to support arts organizations financially in conducting investigations – it was communicated that this was not something that would be appropriate for them to fund – as they could not get involved in individual cases, and would be a conflict of interest. Their role can be to advance the sector’s capacity, and to ensure grant recipients have appropriate policies in place.

3.2 Primary Research Analysis

In reviewing the current state of arts and culture organization compliance and “readiness” in responding to workplace investigations – simply stated: the sector is in a vulnerable position. Training, projects and policies for harassment prevention have become more commonplace but organizations in general are not prepared or equipped to manage workplace harassment investigations.

Further, while many respondents *felt* they were ready to manage investigations, it is important to note that this is a self-assessment and, as of yet, not benchmarked against a recognized standard. It is also important to note that more than 43% of respondents did not feel ready to undertake an investigation. Applying that percentage to the 117,000 Canadian cultural establishments³² means that over 50,000 establishments would need some form of help if a complaint was made.

Emerging Themes

From the data gathered from primary research (sector survey and technical interviews) – the dominant and recurring themes are as follows.

Organizational Capacity

Organizations feel they have a good understanding of what is legally required, have created workplace harassment policies that are updated and communicated – but there are still underlying capacity challenges if the organization was ever faced with conducting a proper workplace harassment investigation. Human Resources capacity, in the way of staff with specific HR training and expertise is still deeply underrepresented in the sector, and therefore falls on the shoulders of the leaders and/or boards of directors to carry out these duties. The increase in respectful workplace training and resources of recent years have been helpful, but does not go deep enough in order to manage investigations. There is also a need to engage boards to understand the

³²Cultural Human Resources Council & Conference Board of Canada (2019). *Labour Market Information Study of the Cultural Labour Force*.

importance of human resources capacity, and the board's role and responsibilities in investigations.

Access to Expertise

The top resource requested by respondents to assist in managing investigations is access to a third-party resource for employers with advice and information. While organizations have worked hard to get policies in place and communicated broadly, are working to improve their investigation procedures, and have been taking available training sessions; if an incident or complaint comes forward that requires investigation – what organizations want and need most is immediate and confidential expertise to help them navigate the specific situation. And while organizations have also asked for templates and sample procedures, experts cautioned that there is a potential risk if there is an over-reliance on “DIY” solutions using existing templates and resources without making them specific to the organization, and having trained expertise in place to respond to issues (whether that is internal or external).

Act Fast, But Act Wisely

Responding to a complaint or incident of workplace harassment in a timely fashion is key to managing the situation from the outset without escalating it. Organizations are in varying states of readiness – with 43% of organizations stating they do not feel ready to undertake an investigation if called upon. The first steps taken from this all-important ‘first response’ intake to a complaint or knowledge of an incident are crucial to start the Investigation process on good footing. This is the moment that organizations need immediate access to resources, training, and expertise to react to an incident. Clear, up-to-date policies and programs with specific procedures for investigations can help in preparation to respond to the unexpected.

Internal or External?

How an ‘appropriate to the situation’ investigation is designed has a wide and varied scope and leaves room for interpretation. One of the key decisions for an organization is whether or not to conduct an internal or external investigation, and risks for each have been identified in the research. The resource-scarce arts sector can be extremely savvy at creating “DIY” solutions, but this can be a risky business when it comes to conducting workplace harassment investigations.

80% of Investigations conducted by respondents were handled internally, which in some cases has been appropriate due to the minor nature of the incident and the ability/capacity of management to undertake the work. However, choosing an internal investigation is not always the optimal choice – with the key barrier to conducting an external investigation invariably being financial. Being compelled to conduct internal investigations due to lack of money deprives the organization access to key external expertise and exposes the organization to risk.

Understanding the Gaps

The purpose of this research was to examine INVESTIGATIONS of Workplace Harassment in Canada’s arts and culture organizations, from the point of view of: the organization’s current state of compliance and “readiness”, the available resources, the sector’s desired resources, and potential avenues of support. As previously stated in the Introduction & Background, investigations follow procedural steps (preparation, fact-gathering, and reporting/decision making); should follow Thomlinson and Rubin’s “Four Pillars” (fairness, thoroughness, timeliness, confidentiality); and need to mitigate the risks associated with improperly managed investigations (Compliance/Liability, People-Centric Organization, Organization’s Reputation).

The following is a comparison of the Emerging Themes against these frameworks:

Table 8 Emerging Themes Compared to Other Frameworks

	Four Pillars	Risks
Organizational Capacity	<p>“Thoroughness” – with lack of internal expertise, investigation may not be as fulsome as the situation requires.</p> <p>“Timeliness” – resource-scarce organizations may be challenged to address a complaint or investigation process without delays.</p> <p>“Confidentiality” – without clarity on disclosure and the number of people involved in an investigation, remaining circumspect and avoiding prejudicing others can be difficult. A complainant will find it difficult to remain anonymous in organizations with only a handful of employees.</p>	<p>“Compliance” - Lack of HR expertise lends to risk of non-compliance and potential liability and penalties.</p> <p>“People-Centric” – overburdening leaders with dealing with complex issues like harassment investigations without resources or training.</p> <p>In smaller organizations, it may be impossible to keep the alleged harasser. It is also possible that the complainant not wish to remain whether the alleged harasser is found culpable or not.</p>
Access to Expertise	<p>“Thoroughness” – as internal staff members assigned to investigations have generally little to no training.</p> <p>“Fairness” – without external expertise, impartiality/objectiveness can be challenged.</p>	<p>“Compliance” & “People-Centric” - properly conducted investigations is both the legal and “right” thing to do. HOW a process is managed will be remembered by all involved as much as the outcome, and will have long lasting effects after the results of the investigation.</p>
Act Fast, But Act Wisely	<p>“Timeliness” – with many orgs not ready to respond, first steps may take too long to get started as they scramble to get</p>	<p>“People-Centric” & “Organization’s Reputation”</p>

	<p>information, tools and a process in place. This can lead to a “Fairness” problem for all parties involved and can inflame the situation.</p>	<p>A timely investigation is optimal for all people. If there is a delay or escalation, it is possible that the situation becomes known publicly which can damage the brand and reputation of the organization as well as damage the complainant or respondent whether guilty or not.</p>
<p>Internal or External</p>	<p>“Fairness & Confidentiality” challenging when orgs only opt for Internal Investigations. Real or perceived Conflict of interest when the investigator is not objective and unbiased. Concern that internally handled investigations may not hold confidentiality.</p>	<p>“Compliance” + “People-Centric” + Organization reputation. While it is legal to handle an investigation in-house - the optics of an internal investigation when the situation may warrant an external resource could result in lack of trust and adverse result for parties involved and the organization.</p> <p>The shortlist of pitfall examples is: An ED or Board member not being skilled/equipped to investigate may cause harm to the process, the complainant and/or the alleged harasser which can lead to alienation of any and all persons involved and ultimately tarnish the organization’s reputation.</p> <p>On the other side, going immediately with external investigation resources can result in complainants feeling that the organization does not want to defend their interests and complainants may avoid making complaints fearful of a small, internally-resolvable become amplified.</p>

In all cases, the risks of a mishandled investigation can damage an organization’s reputation and cause a loss of public confidence and/or funding.

Solution elements

The following are elements to be considered when articulating solutions to bridge the gaps and reducing the sector's vulnerability.

Don't Reinvent the Wheel

Harnessing existing frameworks, networks and/or infrastructure, the sector should look to adapt these for use in the arts and culture sector:

- **Arts Legal Clinics** – with extra resources, the nascent national network of Arts Legal Clinics could provide a network of expertise for arts organizations (in addition to individual artists).
- **HR advice hotline for organizations** – negotiating a pooled package on behalf of the sector (or segments thereof) with a 3rd party HR services company who has the existing infrastructure with a 24-hour service to provide immediate advice and referrals.

Training and Capacity Building

The training and capacity building of the **HR function** in the sector needs to continue and grow – not as a replacement for outside expertise when needed – but to ensure there are trained staff to manage the proper intake and appropriate response to incidents and complaints. This will both manage risk for the organization and create an atmosphere of trust and respect for cultural workers reporting workplace harassment.

Resourcing the Solutions

- **Funders** have indicated direct support for individual cases is not an option, but continuing to professionalize the human resources function and advance the capacity of the sector is needed to continue building the resources, tools and training.
- **Insurance instruments** – lobby the insurance industry to look at support for mitigating actions – i.e. a system of organizational audits for Respectful Workplaces that can result in discounts in insurance (similar to discounts for clean driving records). Look at long-term advocacy to seek support for mitigation tactics such as investigations.

'Normalizing' Conflict Resolution and Investigations

- Attempt to 'demystify' and 'normalize' investigations with both cultural workers and management so that they are conducted any time there is an issue at any level.
- If you encourage and incentivize organizations to undertake investigations (both formal and informal) at first sign of issues – you thereby addressing the issue early, 'normalizing' the process of flagging problem behaviours, and creating an

environment where conflict resolution happens in an atmosphere of trust and accountability.

3.3 Secondary Research on Available resources

An important element of this research's objectives is bringing forward the available resources for employers facing the need to investigate workplace harassment claims.

In terms of methodology, secondary research using an internet search engine with "workplace harassment investigation" and "workplace harassment investigation training" as key-words yields numerous search results. Search results that, in appearance, rapidly satisfied the information sought were kept while others were discarded. This selection process is not a scientific approach, merely a realistic and practical one. The reported findings are grouped under two headings: DIY Investigation Resources and Training Resources. These resources are not specifically designed for the cultural sector.

****Disclaimer, the resources listed are presented under the auspices of research findings only. Other than the face-value information provided, they are not intended as formal endorsements nor do they constitute legally sanctioned approaches to workplace investigations by CHRC nor the authors of this report.**

3.4 Secondary Research Findings

3.4.1 DIY Investigation Resources

Faced with a complaint and in an effort to rapidly address the situation, resource-scarce organization managers can be tempted to turn to quick-fix DIY options. In an effort to foresee what these same managers would encounter and to list existing available resources, the following open-source findings are presented.

Bilingual resources

CHRC's tool on Workplace Harassment and Violence³³ (part of the HR Management Toolkit) can be downloaded for free. It offers recommendations on prevention as well as tips on investigating and the return to work phases. In researching toolkits for addressing workplace harassment complaints, one may also encounter the Government

³³ <http://culturalhrc.ca/sites/default/files/2019-07/HR%20Management%20Tool%20-%20Workplace%20Harassment%20and%20Violence.pdf>

of Canada’s Guide on *Applying the Harassment Resolution Process*. Available online³⁴ in French and in English, this guide offers advice on best-practices and includes a link to the resource *Restoring The Workplace Following A Harassment Complaint: A Manager's Guide*³⁵. The information from these websites are comparable to the other resources listed below.

Focussing exclusively on fact-finding, Worksafe NB has a very succinct 1-page *Sample Template*³⁶ document available for download. The *Sample Template* outlines the harassment investigation bare-bones essentials and includes tips on how to conduct the investigation.

Resources in English

If and when considering conducting an investigation, a lengthier and more in-depth resource is the “Cole-Hustoles” *Investigation Protocol Checklist*³⁷ provided by ATIXA, an American non-profit investigations training and gender equity consultant group.

Prior to the investigation, yet directly geared towards the third part of the investigation process, Chartered Professionals in Human Resources of Alberta (CPhR)’s article *Report writing for HR professionals conducting workplace investigations*³⁸ has a 7-step *Report-Writing Template*, an informative tool for managers. The 7-steps and sub-heading bullet-points can determine a report’s table of contents and crucial content elements.

Resources in French

Apart from the Government of Canada’s web pages and CHRC’s *HR Management Toolkit* tool on workplace harassment, francophone checklists or templates were a challenge to find. Schedule E at the end of the Government of Ontario’s *Code de pratique sur le harcèlement au travail*³⁹ provides a succinct checklist (comparable to Worksafe NB’s) and Unifor’s *Red-Book* provides a longer, more detailed version.

3.4.2 Training

With “workplace harassment investigation training” as a key-word search in an internet search engine, the following investigation training options were found. Again, their presentation is for information purposes. This (non-exhaustive) list of resources

³⁴ <https://www.canada.ca/en/government/publicservice/wellness-inclusion-diversity-public-service/harassment-conflict-resolution/guide-applying-harassment-resolution-process.html>

³⁵ <https://www.canada.ca/en/government/publicservice/wellness-inclusion-diversity-public-service/harassment-conflict-resolution/restoring-workplace-following-harassment-complaint-managers-guide.html>

³⁶ <https://www.worksafenb.ca/media/59793/harassment-investigation.pdf>

³⁷ <https://cdn.atixa.org/website-media/atixa.org/wp-content/uploads/2015/11/12193532/INVESTIGATION-PROTOCOL-CHECKLIST-3.pdf>

³⁸ <https://www.cphrab.ca/report-writing-hr-professionals-conducting-workplace-investigations>

³⁹ <https://www.ontario.ca/fr/page/code-de-pratique-sur-le-harcèlement-au-travail>

demonstrates various levels of cost associated with training that includes academic, private, certified, informal, online and/or in-person. In terms of research ethics, CHRC has no affiliation nor “liaison” with any of the service providers, thus, there is no conflict of interest. The courses are presented in order of the most expensive to the least expensive. A comparative table is included at the end of this section of the report.

Queen’s University⁴⁰

At the highest price point, Queen’s University’s Industrial Resource Centre offers a 4-day course for fact-finding and investigation which includes a module on rebuilding work relationships post-incident. This last feature brings forth the SUPPORT element of Bill C-65. The 4-day course may be used as a stand-alone certification or towards a CHRL or CHRP certification. The post-incident rebuilding course can be taken as a stand-alone 3-day course as well.

Cost: Early enrolment, group discounts and customized packages are available. A single enrolment for the course: \$4,995 (+HST).

Human Resources Professionals Association⁴¹

The Human Resources Professionals Association (HRPA) offers a certified training program in Ontario with an Ontario-based curriculum. The information in this course displays an array of lawyers and HR Advisors that deliver the program content. The course is geared towards the RESPOND element of Bill C-65.

Cost: Non-HRPA members price is \$2,360 (+HST), HRPA members receive a reduced rate.

University of New Brunswick⁴²

Through its College of Extended Learning, the University offers two levels of investigation training courses. These seminars include investigations into harassment as part of a broader curriculum presented by a former police officer.

Cost: Baseline cost of \$725 (+HST), early-bird and group registration discounts are offered.

⁴⁰ <https://irc.queensu.ca/training/mastering-fact-finding-and-investigation-training-courses-workplace-complaints-harassment-discrimination-laws>

⁴¹ <https://mx.hrpa.ca/pages/hrpa-meeting-details?MeetingID=%7b4A457125-1158-EA11-8112-00155D325C1D%7d>

⁴² <https://www.unb.ca/cel/career/management-leadership/fact-finding-interviewing.html>

Investigations Training ⁴³

This company offers various training sessions. Investigating Allegations of Harassment and Sexual Harassment in the Workplace has both online and in-person options delivered in 1 day. This course aims to equip attendees with unbiased investigation procedures to develop findings of fact that can be upheld in in courts and that should not cause a liability for investigators.

Cost: \$595 (+HST) for the one course, the entire suite of investigation training is priced at \$2725 (+HST).

Udemy^{44 45}

Udemy is a platform that serves a global community connecting instructors to learners via online tutorials. *Investigating Corporate Inappropriate Behavior Complaints* and *Informal and Formal Disciplinary Meetings and Investigations* are two of these courses. Being pre-recorded online tutorials, the material is immediately accessible. The courses (comprised of 11 short lectures each) require approximately 1 hour in length to complete. After completing the lectures, a quiz may be completed to receive a certificate of completion.

Cost: Each course is offered at \$55 (+HST). Early registration can discount the price to \$13 (+HST) for each.

⁴³ <https://www.investigationstraining.com/harassment-sexual-harassment-investigations/>

⁴⁴ <https://www.udemy.com/course/investigating-corporate-inappropriate-behavior-complaints/>

⁴⁵ <https://www.udemy.com/course/disciplinary-matters/>

Table 9 Compiled Investigation Training Resources

Training	Language	Delivery ⁴⁶	Offered by	Type of establishment	Location	Duration	Cost	Certification/ accreditation
Mastering Fact-Finding and Investigation	En	In-person	Queens University Industrial Resource Centre	Academic	For 2020/2021, sessions conducted in Kingston, Ottawa and Toronto ON and Regina SK.	4 days	\$4,995 (+HST)	University certificate for the course. Credits towards one of 4 university certificates and credits towards CHRL or CHRP accreditation.
Workplace restoration (part 2 of above)	En	In-person	Queens University Industrial Resource Centre	Academic	For 2020/2021 Toronto ON	3 days	\$3,795 (+HST)	University certificate for the course. Credits towards one of 4 university certificates and credits towards CHRL or CHRP accreditation.
Workplace Investigations Training and Certificate Program	En	In-person	Human Resource Professionals Association	Non-profit	For 2020, Toronto **This association operates in Ontario only.	3 days / 25 hours	\$2,360 (+HST)	Certificate
Fact-finding and investigative interviewing (Level 1)	En	In-person	University of New Brunswick College of Extended Learning	Academic	Fredericton	2 days	\$725 (+HST)	Professional development certificate of completion
Investigative Interviewing (Level 2)	En	In-person	University of New Brunswick College of Extended Learning	Academic	Fredericton	1 day	\$725 (+HST)	Professional development certificate of completion
Investigating Allegation of Harassment and Sexual Harassment in the Workplace	En Fr-online only	In-person and online	Investigations Training	Private company	For 2020/2021, sessions conducted (in-person) in Calgary, Ottawa, Vancouver, Edmonton, Toronto and online.	1 day	\$595 (+HST)	Certificate
Investigating Corporate Inappropriate Behavior Complaints	En	Online	Udemy	For-Profit	N/A	1 hour + exam	\$55 (+HST)	Udemy Certificate of completion
Informal and formal disciplinary meetings and investigations	En	online	Udemy	For-profit	N/A	1 hour + exam	\$55 (+HST)	Udemy Certificate of completion

⁴⁶ References to in-person training must be considered as the information available pre-COVID 19 pandemic.

3.5 Secondary Research Analysis

As seen in this section of the report, tools and training exist to improve workplace investigations. CHRC's Workplace and Violence tool provides a thoughtful preparation and learning process for managers. Under pressure or limited time, Worksafe NB and ATIXA's tools would efficiently cover basic necessities for anyone who needs to conduct workplace investigations (harassment or otherwise). The advantage that these documents have is that they are general enough that they include the essential aspects noted by other sources such as Tomlinson & Rubin. Where they fall short is the specific provincial or territorial context and workplace obligations that vary according to jurisdiction. The commonalities in all of the DIY or expert documents are: work with facts, remain impartial and document thoroughly.

The Government of Canada's web pages dedicated to workplace harassment investigations provide a comprehensive benchmark from a national perspective. Since many arts and cultural organizations receive funding from the federal government, it would be prudent to cross-reference any DIY workplace investigations policies or protocols with the content of these websites. In all cases, the risks explained at Chapter 3 of this report must still be heeded when considering a DIY investigation.

The written DIY tools can not be considered substitutes for actual investigation training. The training resources listed above are not geared directly towards the cultural sector however, they provide avenues to bridge the gaps identified in section 3.2. The varying price points for this training indicate that these new skills are financially attainable. Presumably, the 3 or 4-day courses would provide a more fulsome training than the 1-hour training courses. At the higher price point, group/pooled registrations would be advisable. HRPA's province-centric model could be exported to all Canadian provinces and territories through an alliance with the federally-funded legal networks. This would lead to a resource akin to APARTÉ/JURIPOP available in Quebec.

3.6 Conclusions

43% of employers responding to the survey indicated feeling unready to conduct an investigation. Of the entire survey respondent pool (N=139), 10% (15 of N=139) responded having internal expertise to conduct a workplace investigation. This is half of the 20% of respondents that have a 0.5 FTE HR staff person. No matter how the statistics are examined, the conclusion is simple: the number of trained individuals, HR specialist or not, needs to be augmented rapidly.

If it came down to an immediate need to respond and investigate, Worksafe NB's *Sample Template* and the *Investigation Protocol Checklist*, would be useful to have around in a DIY setting. Further

the *7-step Report-Writing Template* could provide additional support in that phase of the process. Awareness of these three tools and the HR Management Toolkit prior to harassment incidents would provide improvised investigators with a minimal but thorough framework before taking action.

These items do not address the articulated need for actual trained investigators and external (3rd-party) support. Training is available and if accessed by cultural stakeholders (Board members, EDs, GMs, independent HR consultants), this could help bridge the current divide between what is sought and what is available. What is urgently needed is a first wave of leaders willing to take the training and start serving the sector professionally in this capacity.

Leveraging Arts Legal Clinics and eventually lobbying insurance instruments can help towards longer-term solutions especially for more complex cases. At the onset, a first wave of stakeholders taking a step towards becoming resources (for their own organizations or for others) would improve the overall state of readiness.

In looking towards stronger solutions for employers and in consideration of the Solution Elements (in section 3.2), the key seems to lie in the continued professionalization of HR personnel. In order to “normalize” conflict resolution and investigations, HR or management personnel will need to be versed in basic investigation practices if for no other reason than to know when to look for external help or not. Leveraging Arts Legal Clinics towards vetted and better policies, protocols and internal investigation mechanisms will build organizational and sectoral capacity to respond to complaints.

4. OVERALL REPORT CONCLUSIONS

This report set out to take stock of the workplace harassment reporting and investigating mechanisms for cultural workers and employers in the cultural sector. After review, it is clear that improvements are necessary: access to response and support resources is not, yet should be, readily available to all. Investigations are costly, procrastination and avoidance can be far worse. Bringing together investigation and sector experts will require time and financial resources. The key to resolving the problem is simple: cultural sector stakeholders need to take the lead and gain the skills. Harassment prevention training and awareness have improved, it is now time to make reporting and investigation mechanisms more commonplace. In terms of feasibility, it is more cost-efficient and time-efficient for sector experts (already aware of sector subtleties and complexities) to obtain training than it would be to have sector experts work with investigation experts to adapt curriculum and techniques for tailored learning. At the very least, this report has uncovered low-cost options towards minimal certification and other options towards more robust training programs.

Arts service organizations are central to the feasibility of implementing reporting and investigation mechanisms in the sector for individuals and employers. Individuals do not have the network buying/negotiating-strength to contract service providers (e.g. Morneau Shepell) at an affordable rate. ASOs are in a position to pool resources to access training and/or leverage funding streams (government, foundations or otherwise) to pay for investigations training. What has not yet been pointed out in this report are some of the natural partners that could receive the training. Board members, Sr management personnel and HR experts are natural fits for this type of skills updating. National, provincial and discipline-specific stakeholders should take the necessary steps to ensure that these skills are available, preferably as third-party/external resources for others.

4.1 Recommendations

1. Arts Service Organizations should negotiate service packages for their members and/or extend enrolment to independent non-member cultural workers.

There is a need to provide support to cultural workers in general from the perspectives of access to reporting mechanism and support systems for victims of harassment. Existing service providers seem a natural and turnkey solution. This solution's affordability hinges on a critical-mass subscription. If new service subscriptions cannot be provided by Arts Service Organizations separately, pooling membership lists towards obtaining a critical mass is one avenue, "piggy-backing" on existing service contracts is another.

2. Funding for the Sports Helpline should be extended to include serving cultural sector workers.

Building on the existing helpline service is an almost turnkey solution that avoids "reinventing the wheel" and is already funded by the Department of Canadian Heritage.

3. Arts Service Organizations should have a designated and informed person to respond to harassment complaints as part of their anti-harassment policy and protocols.

Whether a Board member or staff person, all ASOs and establishments should clearly indicate who is responsible to receive and respond to workplace complaints especially if the establishment does not have an HR person or department. This person should be informed on the risks and benefits associated with the decision to investigate internally or externally. In consideration that the person receiving the complaint could be the alleged harasser, an alternate person should be named as well. An alternate version of this recommendation is that ASOs partner with other ASOs in naming a designated person to receive complaints. This reduces the risks of conflict of interest and corresponds to the recurring 3rd-party resource that has been requested in this report and others.

4. Arts Service Organizations should have at least one designated and trained investigator.

Whether to conduct internal investigations or to accompany and/or perform workplace investigations for others, ASOs should have someone trained and ready to investigate complaints. ASOs are already fielding requests from members and individual workers who are looking to them for help. A growing list of trained persons will build capacity for the sector and alleviate demands put on currently overburdened personnel or, at the least, provide incumbents with the necessary skills to accomplish the work efficiently and effectively with a lower legal-risk threshold.

5. Workplace investigation training should become part of HR specialist training curriculum.

At the very least, HR specialists should be aware of baseline investigation standards under their labour-relations expertise.

6. Workplace investigation policies and protocols should become an obligation for employers seeking funding, public or private.

Funders have recognized the need for recipients to commit to providing safe working conditions and fostering a workplace free of discrimination and sexual misconduct, this commitment should now also include actual reporting and investigation mechanisms through policies and protocols.

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