

October 8, 2019

Via e-mail [DVLeave@gov.bc.ca](mailto:DVLeave@gov.bc.ca)

Dear Minister Harry Bains:

**Re: Paid Leave for Domestic or Sexual Violence**

Please accept our submissions in response to your request for input on paid leave for domestic or sexual violence.

West Coast LEAF is a BC-based legal advocacy organization that uses the law to create an equal and just society for all women and people who experience gender-based discrimination. Our submissions are grounded in our recent report, *We Are Here: Women's Experiences of the Barriers to Reporting Sexual Assault*,<sup>i</sup> which centres the stories of survivors of sexual violence in BC.

Rise Women's Legal Centre is a community law clinic based in Vancouver, BC that provides family law and related issues to low income individuals who self-identify as women.

We welcome the Ministry of Labour's efforts to engage in a public consultation process on paid leave for domestic or sexual violence. It is our position, as gender equality organizations, that survivors of violence should receive at minimum 10 days of paid leave and the framework for accessing leave should be as low barrier as possible.

**1. Domestic and sexual violence leave must be paid to ensure that survivors are able to get the support they need following abuse.**

Survivors in BC have reported that finances constitute a huge barrier to leaving abuse.<sup>ii</sup> People experiencing domestic or sexual violence already bear a significant financial burden. The Department of Justice, Research and Statistics Division estimated the cost to all victims of domestic violence in Canada was \$5.9 million in 2009.<sup>iii</sup> A recent study from Australia, estimates it costs victims \$18,000 to leave a violent situation.<sup>iv</sup>

Moreover, violence disproportionately affects BC's most vulnerable workers.<sup>v</sup> Domestic violence affects a worker's ability to retain employment and people with a history of domestic violence are more likely to work in casual or part time positions with lower incomes. People fleeing abuse need economic security to meet the financial cost of rebuilding their lives. Paid leave is an essential element of the framework that must be put in place to support survivors of domestic and sexual violence.

**2. Survivors of domestic or sexual violence need at minimum 10 days of paid leave.**

Research by the Australian Council of Trade Unions found that it takes, on average, 141 hours to leave a domestic violence situation and most of those hours need to occur during regular business hours.<sup>vi</sup> For example, people leaving abuse may need to speak to doctors, counsellors, therapists, teachers, childcare providers, lawyers and judges all of whom work during business hours. Even if they don't need to meet with service providers, they may still need to collect documents for family court that include tax information from the CRA or financial institutions, or health and school records or they may need to meet with potential landlords to secure new housing. Being able to maintain steady employment while rebuilding a safe home environment is imperative. The amount of days paid leave is provided needs to reflect the complexity of this task.

**3. Domestic and sexual violence leave does not only benefit survivors. Research shows that paid leave may also have a positive financial impact for employers in the long-term.**

The Department of Justice estimates the cost of domestic violence to Canadian employers is \$77.9 million a year.<sup>vii</sup> This is in large part because when employees cannot take the time to access the supports they need, their work performance suffers, they miss out on work throughout the year, and employers lose output. The Canadian Labour Congress surveyed workers and found 81.9% of people who experienced domestic violence in Canada reported it negatively affected work performance.<sup>viii</sup> Conversely, Jim Stanford, a Canadian economist currently working in Australia, has estimated the cost to employers of 10 paid days of domestic and sexual violence leave to be less than 0.02% of existing payrolls. Stanford also found that costs to employers are likely to be largely or completely offset by benefits such as reduced absenteeism and turnover, and improved productivity.<sup>ix</sup>

**4. Domestic and sexual violence leave cannot be conflated with other types of leave. Any conflation of violence leave with other types of leave would likely constitute a violation of survivors' Charter rights.**

Domestic and sexual violence are gendered forms of violence disproportionately impacting women, Two Spirit, gender non-binary, and gender diverse people. If leave is insufficient and people experiencing these gendered forms of violence are expected to use other types of leave to address the impacts of violence, they would be denied a benefit afforded to everyone else. Women and gender diverse people would be unable to benefit from other forms of leave in the same way as people who do not experience gendered violence. This inequality could be adverse effect discrimination violating section 15 of the Charter.<sup>x</sup> Although the purpose of domestic or sexual violence leave is ameliorative, it may still violate section 15 if the legislation does not afford an equal benefit of the law without discrimination.<sup>xi</sup>

**5. There should be no requirement that the employee provide proof of the need for the leave to the employer in cases of domestic and sexual violence leave.**

For domestic or sexual violence leave to be successful in BC, there should be as few barriers as possible to taking leave. Survivors already face an overwhelming number of barriers when reporting or disclosing violence including socio-cultural attitudes and stigma, sexual assault myths, and personal repercussions.<sup>xii</sup> Culturally-entrenched skepticism about sexual assault is one of the most commonly cited barriers to reporting violence, including disclosing to family or friends.<sup>xiii</sup> Requiring proof for this type of leave reinforces the all-too common perception that individuals reporting violence are not credible or trustworthy.

Given the stigma that abuse carries, and the fact that it is vastly under-reported, there is little reason to believe that the leave will be widely misused. In fact, research suggests the alternative. Jim Stanford interviewed Australian employers who had leave in place for several years through enterprise agreements, and the unanimous response was that leave was infrequently used even where employers had actively promoted the leave provision.<sup>xiv</sup> Furthermore, since violence thrives in secrecy, in many cases, there will be no external way for a service provider to confirm that domestic or sexual violence has occurred.

We also submit that sections 52.5(3) and 52.5(6) should be removed from the proposed legislation. There should not be a prescribed list of reasons for the leave. This may require survivors to disclose significantly more information than is required to the employer including whether they are getting counselling for trauma. With respect to section 52.5(6), the employer should not be required to make factual determinations about the role an employee played in the abusive situation. Research indicates that such assessments are riddled with misunderstandings about the ways survivors of violence respond to domestic and sexual violence.

**6. If the proof requirements are not altogether removed from the legislation, we recommend the following clarifying elements be incorporated into the legislative framework:**

- a. The Act should explicitly state that the employer is required to cover the costs incurred by the employee.*

As mentioned earlier, violence has a severe impact on a survivor's finances and any added costs have the potential of undermining the ability of the survivor to access the leave. Imposing the cost on the employer also places an obligation on the employer to assess the need for the proof. We maintain that proof should only be required in the rarest of circumstances and should not be the default position of every employer.

- b. The type of proof required should be explicitly prescribed by the legislative framework to ensure that employers do not unfairly deny survivors leave or retaliate against survivors. The type of information provided to the employer should be minimal and disclose no personal circumstances. The list of persons who can assess the survivor's request should be expansive.*

We recommend that the language of section 52.5(7) of the *Act* and the accompanying regulation reflect the language of section 45.2 of the *Residential Tenancy Act* and sections 38 – 42 of the *Residential Tenancy Regulation*.<sup>xv</sup> The residential tenancy framework provides an extensive list of individuals who can assess the survivor's request including, for example, a representative from VictimLinkBC which is a 24-hour support line of victim service workers. Under the residential tenancy framework, the assessor is only required to confirm or deny their support for the survivor's request. The information provided to the landlord is limited to the name of the tenant, a verifier confirmation statement, and the verifier's contact information.<sup>xvi</sup>

- c. The survivor should be able to provide the proof within 60 days of the survivor's return to work to ensure that survivors can focus on accessing life-saving supports immediately following the assault.*

**7. We recommend careful consideration of provisions or guidelines that require employers to maintain confidentiality of employees using domestic or sexual violence leave, including inadvertent disclosure through employer records.**

The legislation should explicit prohibit employers from disclosing a request for leave unless they are under a legal obligation to do so or if the person seeking leave consents. In the event that the employer must disclose information about the leave request, they should be required to inform the person at risk of the information that is being disclosed, and to whom, so that they can take safety measures.

Confidentiality should also extend to wage statements or pay stubs because these may be being monitored by the abuser. Employers must have clear direction on how to draft a wage statement of a person taking leave so as not to specify the purpose of leave. Confidentiality violations have an especially severe impact in small communities, where the perpetrator may be known or easily identified by the employer or coworkers.<sup>xvii</sup>

**Conclusion**

Currently, BC is only one of two provinces without paid domestic or sexual violence leave. The province has the opportunity to not only shift this status but to lead the way in providing adequate and accessible paid leave to survivors. In our submissions we argue that survivors need at least 10 days of paid leave and the proof they should be able to provide to access this leave should be minimum reflecting the overwhelming research that indicates the overwhelmingly low rates of false reporting.

Sincerely,



Elba Bendo  
Director of Law Reform, West Coast LEAF



Kim Hawkins  
Executive Director, Rise Women's Legal Centre

---

\* Submissions prepared by Amelia Roth, Articling Student, West Coast LEAF.

<sup>i</sup> Alana Prochuk, “We Are Here: Women’s Experiences of the Barriers to Reporting Sexual Assault” (Vancouver: West Coast LEAF, 2018) [We Are Here].

<sup>ii</sup> *Ibid* at 50.

<sup>iii</sup> Ting Zhang et al, “An Estimation of the Economic Impact of Spousal Violence in Canada, 2009” (Ottawa: Department of Justice Canada, Research and Statistics Division, 2012) at 41.

<sup>iv</sup> Australian Council of Trade Unions, Media Release, “ACTU demands Turnbull back 10 days paid domestic violence leave” (28 November 2017) online: <<https://www.actu.org.au/actu-media/media-releases/2017/actu-demands-turnbull-back-10-days-paid-domestic-violence-leave>>.

<sup>v</sup> Julieta Elgarte, “Basic Income and the Gendered Division of Labour” (2008) 3:3 Basic Income Studies: An International Journal of Basic Income Research 1 at 3-4.

<sup>vi</sup> *Supra* note 4.

<sup>vii</sup> *Supra* note 3 at 60. [*This estimate does not even include retraining and recruitment costs for replacing employees who left work because of the impacts of violence.*]

<sup>viii</sup> C.N. Wathen et al with the Canadian Labour Congress, “Can Work be Safe, When Home isn’t? Initial Findings of a Pan-Canadian Survey on Domestic Violence in the Workplace. (London, ON: Centre for Research & Education on Violence Against Women and Children, 2014) at 6.

<sup>ix</sup> Jim Stanford, “Economic Aspects of Paid Domestic Violence Leave Provisions”, Briefing Paper, (Canberra, Australia: Centre for Future Work at the Australia Institute, 2016) at 3.

<sup>x</sup> *Canadian Charter of Rights and Freedoms*, s 15, Part I of the Constitution Act, 1982, being schedule B to the Canada Act 1982 (UK), 1982, c 11; *Eldridge v British Columbia (Attorney General)* 1997 CanLII 327 (SCC).

<sup>xi</sup> *Canada (Attorney General) v Hislop* 2007 SCC 10 at para 39.

<sup>xii</sup> *We Are Here*, *supra* note 1 at 5.

<sup>xiii</sup> *Ibid* at 23.

<sup>xiv</sup> *Supra* note 9 at 14.

<sup>xv</sup> *Residential Tenancy Act*, SBC 2002, c 78 s 52.5(7); *Residential Tenancy Regulation*, BC Reg 477/2003, s 38-42.

<sup>xvi</sup> Ending Fixed-Term Tenancy Confirmation Statement, online: <<https://www2.gov.bc.ca/assets/gov/housing-and-tenancy/residential-tenancies/forms/rtb49.pdf>>.

<sup>xvii</sup> *We Are Here*, *supra* note 1 at 50.