



XXX  
Lead Counsel for XXX

6 February 2019  
The Hague, the Netherlands

Dear XXX,

**Re: Workplace harassment prevention and the responsibilities of ICC Lead Counsel**

I am writing to you on behalf of the Executive Council of the ICC Bar Association on the above important subject. I refer also to the ICCBA's relevant previous communications and issuances on this subject, which are available online at the indicated links:

- *ICCBA Declaration on Obligations under the Code of Conduct for Counsel and Proposed Amendments thereto* (2 March 2018) ("Declaration");<sup>1</sup>
- Letter from ICCBA Working Group on Workplace Harassment on *Standards of conduct applicable to legal team members in professional settings* (14 November 2018) ("Letter")<sup>2</sup> with accompanying presentation on Workplace Harassment by the trainer Simon Ferrar;<sup>3</sup>
- *ICCBA Directive on the Establishment and Functioning of the ICCBA Hotline and Complaint Mechanism for Harassment and Sexual Harassment* (November 2018) ("Directive").<sup>4</sup>

I urge you to carefully review all of these documents in the event you have not already done so. As indicated in both the Declaration and Letter, Lead Counsel appointed to represent defendants or victims before the International Criminal Court ("ICC") have the primary responsibility, pursuant to his or her obligations under the Code of Professional Conduct for counsel ("Code of Conduct"), and in line with the principles set out in the Declaration and Letter, to ensure that the working environment of members of a Counsel's legal team is free from all types of harassment and that all members of the legal team comply with applicable legal standards.

The Letter accordingly sets out the ICCBA's expectation that Lead Counsel will adopt appropriate measures to ensure a zero-tolerance policy within his or her respective team in matters of:

- Harassment (including bullying and abuse) and sexual harassment (hereafter "harassment"); and
- Retaliation against individuals who report or complain about harassment (hereafter "retaliation").

I request that you please confirm through the ICCBA Executive Director, Mr. Dominic Kennedy ([dkennedy@iccba-abcpi.org](mailto:dkennedy@iccba-abcpi.org)), that you have taken or intend to shortly take the needed steps within your team to institute the noted zero-tolerance policy. At a minimum, the Executive Council is of the view that Lead Counsel should send the above indicated ICCBA documentation to all members of his or her legal team and underline in writing that the policy of the legal team is one of zero-tolerance with respect to matters of harassment and retaliation. Such a communication should be standard

<sup>1</sup> The Declaration is available at: [https://docs.wixstatic.com/ugd/ff5a5e\\_d2d6b8bba4ab4f1ab1a28f536401ecb2.pdf](https://docs.wixstatic.com/ugd/ff5a5e_d2d6b8bba4ab4f1ab1a28f536401ecb2.pdf).

<sup>2</sup> The Letter is available at: <https://zcs1.maillist-manage.com/click.zc?od=2d5a885a69b60a97279fcf5ab215ee4ff1185630859ca1fd0&repDgs=1298b75e42551f7d&linkDgs=1298b75e42551e73>.

<sup>3</sup> The presentation is available at: [https://docs.wixstatic.com/ugd/ff5a5e\\_cf85a3feef9c4c7f95f1794599b3ee16.ppt?dn=Workplace%20Harassment%20-%20Simon%20Ferrar.ppt](https://docs.wixstatic.com/ugd/ff5a5e_cf85a3feef9c4c7f95f1794599b3ee16.ppt?dn=Workplace%20Harassment%20-%20Simon%20Ferrar.ppt).

<sup>4</sup> The Directive is available at: <https://docs.zoho.com/file/awbm19b259529ee2e4573888366388e12b214>.

practice whenever a new member joins a legal team, including visiting professionals and interns. Please also feel free to consult the Working Group through its co-chairs<sup>5</sup> on all matters addressed in my letter.

On the subject of retaliation, I note that, as set out in Section 1 of the Directive, this prohibited form of conduct refers to undertaking one or more acts that are harmful to a person who lodges a complaint of, reports, or otherwise cooperates with the investigation of harassment, primarily on the basis that the complainant / reporter /cooperating person took such action(s).<sup>6</sup> Please note that in accordance with evolving legal standards in this area, an inference or presumption of retaliation might arise in circumstances where adverse steps are taken against a team member, following the team member's submission of a complaint/report or participation in an investigation.

The ICCBA is also in the process of organising training on the issues of harassment and retaliation. In the view of the Executive Council, given the specific nature of practice before the ICC, it is critical that all Lead Counsel on active cases before the ICC attend such training. Participation in such training therefore falls squarely within the scope of Article 7(2) of the Code of Conduct, which mandates that Counsel must participate in training initiatives which are required to maintain the necessary level of competence for practice before the ICC.

As noted by the ICC Disciplinary Board, *"the role of a lawyer is one involving a position of trust, and requires an exemplary performance in all circumstances, not only with respect to one's client, but also with respect to those who work on the client's behalf"*.<sup>7</sup> The Executive Council looks forward to all Lead Counsel joining with the ICCBA to ensure that the conduct of legal team members practicing before the ICC meets this justifiably high standard, and that the work environment on ICC legal teams is one of collegiality, free of harassment.

I thank you for your attention to this important subject.

Sincerely,



Chief Charles Taku  
President  
ICCBA-ABCPI

cc: Mr. Peter Lewis, Registrar, ICC  
Mr. Marc Dubuisson, Director, Division of Judicial Services, ICC Registry  
Dr. Esteban Peralta Losilla, Chief, Counsel Support Section, ICC Registry  
Mr. Pieter Vanaverbeke, Head, Legal Aid Unit, Counsel Support Section, ICC Registry

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<sup>5</sup> The members of the Working Group are: Melinda Taylor, Co-Chair ([melindataylor@gmail.com](mailto:melindataylor@gmail.com)); Anand Shah, Co-Chair ([ashah.iccba@gmail.com](mailto:ashah.iccba@gmail.com)); Caroline Buisman; Marion Carrin; Marie O'Leary; Colleen Rohan.

<sup>6</sup> Examples of retaliation may include, but are not limited to terminating a team member's appointment, reducing a team member's fees, or treating a team member differently than they were previously treated, when these adverse steps are taken in connection with the member having complained about or taken steps to report an incident or incidents of harassment. Differential treatment may include, but is not limited to: assigning an excessive amount of work in comparison to other team members; excluding the team member from work assignments that were previously part of their mandate; efforts to ostracize the team member.

<sup>7</sup> Decision SDO-201718-DB (6 September 2017): <https://www.icc-cpi.int/iccdocs/disc-board/18ENr.pdf>.