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INVESTIGATING WORKPLACE COMPLAINTS

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MAY 28, 2019

HERE COMES TROUBLE...

- Abuse of Power – personal harassment, bullying, sexual harassment, psychological abuse
- Inappropriate Workplace Relationships and Nepotism – potentially poisonous to cohesion, morale, and work performance
- Inappropriate off-duty conduct – after work, at social events, conferences etc.
- Disrespectful communications – in written form, via emails, texts, social media etc.
- Conduct fueled by alcohol or drugs – e.g. the late night abusive or incoherent email
- Dishonesty
- Why should this matter to you?

GENERAL OBSERVATIONS ABOUT WORKPLACE COMPLAINTS

- People are not always logical or rational, particularly when angry or under stress
- They will turn to others for support
- They will want immediate action
- They won't have perfect recall
- They expect (and deserve) fair, timely, complete, and objective investigations
- If they don't agree with the outcome, they'll challenge the process
- This is serious business

INDIVIDUAL NEEDS AND EXPECTATIONS

The Complainant(s)?

- To be heard
- To be believed
- To get help
- To be fairly treated
- To know how long it will take
- For the organization to take action
- For a just outcome
- So it doesn't happen to others

The Respondent?

- To know what is being alleged
- To be given a reasonable chance to respond
- To be heard
- To be believed
- To be fairly treated
- To know how long it will take
- For a just outcome

ORGANIZATIONAL NEEDS AND EXPECTATIONS

Around Process and Outcomes:

- A fair, timely and defensible process
- Meet legal, contractual and moral obligations
- Mitigate damage (to people, to reputation)
- Manage the costs

Of the Investigator:

- Find out what's going on
- Deal with it quickly
- Deal with it competently
- Arrive at definitive findings and conclusions
- Provide a rationale
- Give us something we can act upon

THE INVESTIGATOR'S ROLE

- To investigate the circumstances giving rise to the complaint
- To serve as a fact-finder, not a decision-maker
- To manage the scope of the investigation to the extent necessary to fully investigate the complaint
- To use their best judgement in deciding who to interview and in what order
- To balance timeliness, efficiency and completeness
- To address breaches in confidentiality
- To arrive at findings and conclusions applying a “balance of probabilities standard, with reasons
- To retain accurate records in the event there is a dispute over findings

FAIRNESS AND DUE PROCESS

- Notifying respondents of the allegations made against them
- Giving parties an opportunity to arrange for representation
- Ensuring investigators are free of bias
- Giving the parties a reasonable opportunity to present information in support of their position
- Giving the parties access to findings and an opportunity to rebut them
- Ensuring that investigations are timely

WHAT TO LOOK FOR IN AN INVESTIGATOR

- An open and inquiring mind
- Balance and objectivity (in attitude and approach)
- Availability
- Knowledge of applicable legislation/policies/standards
- Interpersonal skills
- Interviewing skills
- Organizational and analytical skills
- Ability to write in plain language
- Respect for confidentiality and privacy rights
- Knowledge of the sector / your organization

INTERNAL VS. EXTERNAL INVESTIGATORS

Will the internal:

- Be objective (and be seen to be objective)?
- Possess the necessary skills?
- Have the time and resources to conduct a thorough investigation?
- Be given the independence to conduct the investigation as they see fit?

Will the external:

- Possess the necessary skills?
- Have sufficient knowledge of the organization/sector to understand and interpret what is going on?
- Have the time and resources to conduct a thorough investigation?

GETTING READY TO INVESTIGATE – FIRST STEPS

- Receive and acknowledge complaint
- Conduct an initial assessment
- Determine who “needs-to-know”
- Stabilize the immediate situation – determine interim arrangements
- Decide on internal vs. external investigator
- Develop clear terms of reference (scope of investigation)
- Confirm roles and expectations
- Develop a realistic timetable for the investigation
- Consider what might go wrong – contingency planning

NOTIFYING THE RESPONDENT

- Identify the complainant(s) and their allegations
- Cite relevant organizational policies
- Name the investigator
- Indicate opportunity for respondent to seek support, advice/representation
- Discuss confidentiality requirements
- Explain interim arrangements

FIRST CONTACT BY INVESTIGATOR

With the Complainant:

- Overview of investigation process
 - Investigator's role
 - Approach to interviews
 - Questions?
- Initial walk-through of complaint
- Suggestions on who to interview

With the Respondent:

- Overview of investigation process
- Scheduling dates to meet
- Request written response to allegations
- If respondent is ready, walk through their initial response to complaint
- Suggestions on who to interview

MY APPROACH AS INVESTIGATOR

- Respectful treatment of all participants, at all times
- Plan each interview, but let participants tell their stories
- Acknowledge their anxieties around the process
- Ask each participant:
 - To provide their best recollection (not expecting perfect recall)
 - To rely on their direct, first-hand experience
 - To be truthful and complete
 - To provide supporting materials wherever possible (documents, emails, texts, photos, recordings)

INVESTIGATOR PITFALLS

- Insufficient planning and organization
- Scope creep
- Showing bias in deciding who to interview
- Asking leading, forced-choice, or multiple choice questions
- Prejudging / jumping to conclusions
- Turning interviews into interrogations
- Failing to consider alternative explanations / narratives
- Playing one witness off against another
- Trying to “trip up” a participant
- Considering irrelevant information
- Taking too long

ADDITIONAL CHALLENGES

- Balancing timeliness with completeness
- Uncooperative or elusive participants
- The hardening of attitudes
- New, significant issues emerging during the investigation
- Confidentiality breaches
- Chatter on social media / public disclosure and commentary

FACT-FINDING BEST PRACTICES

- Be respectful, authentic & genuine
- Build rapport over the whole process
- Invite them to tell their story through open questions (“Tell me what happened, in as much detail as you are able”)
- “I may have a few questions but I want to give you as much time as you need to tell me your story”
- Help them retrieve a memory (e.g. see if they can associate it with another event going on at the time)
- Loop back to confirm understanding

SOURCES OF INFORMATION

- Complainant, respondent and witness interviews
- Documents, emails, texts, photos, videos, voice recordings, screen shots, social media posts, work schedules, performance reviews, building floor plans and access records, credit card receipts etc.
- Site visits
- “Can you draw the layout for me?”
- “Is this a complete record of your communications with...”?
- Chronology of events

FACTORS THAT AFFECT MEMORY / ABILITY TO RECALL

- Passage of time
- Subsequent events
- One-time vs. multiple events
- Context
- Stress and arousal
- Impairment
- Trauma
- “Lighten the cognitive load” on the person being interviewed (Sarah MacDonald)

ANALYSIS, FINDINGS AND CONCLUSIONS

- Is there sufficient evidence to arrive at findings and conclusions?
- To what extent is the evidence relevant and reliable?
- In what ways do the various versions converge and diverge?
- Is there evidence of evasion, collusion, deception or retaliation?
- Which version(s) of events is most believable?
- What factors contribute to credibility / lack of credibility?
- Does the evidence demonstrate a one-time event or pattern of inappropriate behaviour?
- What is the most likely explanation of what happened?

ASSESSING CREDIBILITY

- Evasive, or genuinely unable to recall?
- Selective in their recall?
- Is their ability to recall impaired?
- Which version is more believable?
- Attempts to distract, deflect, or divert attention from the key issues?
- An accumulation of inconsistencies that undermine overall credibility?
- Actions uncharacteristic of their typical pattern of behaviour?
- Who has the greater motivation to lie?
- Is this how a “reasonable person” would behave?
- Which version “rings true”?

THE INVESTIGATOR'S REPORT

- Background to the Complaint
- The Investigation Process
- The Allegations, and the Response
- Findings and Conclusions
- Rationale
- Attachments

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ADDITIONAL QUESTIONS?

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