Foundational Strategies for Managing Bullying and Harassment in Your Practice

Feb 13, 2024 5:30 – 6:30 pm

Cherolyn R. Knapp
cherolyn@knappresolutions.com
778-966-1357

Workshop Plan

• Recognizing the Symptoms
• Legal Framework
  • WorkSafeBC – Bullying & Harassment
  • BC Human Rights Code - Discrimination
• When a report of B&H or Discrimination is made
• Investigations
• Alternative Dispute Resolution
• Other Processes
• Q&A
Symptoms

- Inappropriate behaviour
- Unmanaged emotion
- Aggression, escalation, arguments
- Avoidance, tension, shutting down
- Microaggressions
- Biased behaviour
- Fear, shame, loss of confidence
- Gossip, chatter, rumours, shunning
- Communication breakdown
- Sick calls, turnover
- Complaints

Legal Framework
Bullying and harassment is:

- any inappropriate conduct or comment
- by a person
- towards a worker(s)
- that the person knew or reasonably ought to have known
- would cause that worker to be humiliated or intimidated

Excludes: reasonable action by supervisor or manager to manage and direct workers

Examine situation carefully, taking into account all the facts and context

Examples:

- verbal aggression or insults; calling someone derogatory names
- vandalizing personal belongings
- sabotaging someone’s work
- spreading malicious gossip or rumours
- harmful hazing or initiation practices
- physical or verbal threats
- personal attacks on someone’s private life and/or personal traits
- aggressive or threatening gestures
- patterns of targeted social isolation
WorkSafeBC: Bullying & Harassment Definition

Bullying & Harassment is Not:

• expressing differences of opinion
• offering constructive feedback, guidance, advice about work-related behaviour and performance
• making a legitimate complaint about someone’s conduct through established procedures

WorkSafeBC Employer Obligations: Reasonable Steps to Prevent or Minimize B&H

• policy statement: workplace B&H not acceptable or tolerated
• take steps to prevent or minimize B&H
• reporting procedures
• procedures for how employer will deal with B&H incidents/complaints and framework for investigations
• inform workers of the policy and above steps taken
• train supervisors and workers on:
  • recognizing potential for B&H
  • responding to B&H
  • procedures for reporting, and how the employer will deal with incidents/complaints of B&H
• annual review of policies and procedures
• not engaging in B&H of workers and supervisors
• applying and complying with policies and procedures on B&H
WorkSafeBC: Employer Must

Develop and implement procedures for how employer will deal with incidents/complaints of workplace B&H including:
- how and when investigations conducted
- what included in investigation
- roles and responsibilities of employers, supervisors, workers & others
- follow-up to the investigation (corrective actions, timeframe, dealing with adverse symptoms, etc.)
- record keeping requirements

WorkSafeBC: Workers’ Duties

Worker’s obligation to take reasonable care to protect the health and safety of themselves or others includes:
- **not engaging** in B&H of other workers, supervisors, employer or persons acting on behalf of the employer
- **reporting** if B&H observed or experienced in workplace
- **applying and complying** with employer’s policies and procedures on B&H
BC Human Rights Code
15 Protected Characteristics

- Indigenous identity
- race
- colour
- ancestry
- place of origin
- political belief
- religion
- marital status
- family status
- physical or mental disability
- sex
- sexual orientation
- gender identity or expression
- age
- convicted of a criminal or summary conviction offence unrelated to the person’s employment or intended employment

BC Human Rights Code: Discrimination in Employment

- A person must not
  - refuse to employ or refuse to continue to employ a person, or
  - discriminate against a person regarding employment or any term or condition of employment
- Because of the [protected characteristics] of that person.
- Except if with respect to a refusal, limitation, specification or preference based on a *bona fide occupational requirement*
HR Code: Discriminatory Harassment

• Conduct that has a negative effect on the complainant regarding their employment including harassment based on a personal characteristic that negatively affects the work environment or leads to negative job-related consequences

• Usually repeated conduct is required. One negative comment not usually discriminatory harassment, unless egregious comment that negatively affected the work environment

• One comment may be discrimination depending on circumstances, such as:
  • nature of the comment (how bad is it?)
  • nature of the relationship between the involved parties
  • context in which the comment was made
  • whether apology offered
  • whether or not the recipient of the comment was a member of a group historically discriminated against

HR Code: What is Discrimination?

*prima facie* discrimination:

• characteristic protected from discrimination under the Code;
• experienced an adverse impact regarding their employment; and
• protected characteristic was a factor in the adverse impact.
HR Code: What is Discrimination?

- Once test for *prima facie* discrimination met, burden shifts to respondent to justify the conduct or practice
- **Not relevant:**
  - Evidence Respondent didn’t intend to discriminate or harass
  - Evidence Respondent is a person of good character
  - If the protected characteristic remains even a partial factor in the conduct, the explanation does not justify the conduct
  - If it cannot be justified, discrimination will be found to occur

When Reported

- Recognize and identify it
- Take steps according to policy and procedures:
  - Gather basic facts
  - Assess whether could meet definitions of B&H or Discrimination
  - Confidential, timely, trauma-informed, impartial
  - Review procedural options to *deal with* per policy/procedures:
    - Investigation
    - Alternative Dispute Resolution
    - Other Process
Investigation

• Take seriously
• Procedurally fair:
  • Clear allegations; Opportunity to respond meaningfully
  • Separate interviews of parties and witnesses
  • Gather and review relevant records and information
• Recordkeeping
• Written findings/report addressing:
  • Did the alleged conduct occur?
  • Does it meet elements of B&H or discrimination
• Follow up:
  • Communicate outcome to parties
  • Remedial steps (discipline, corrective action, restoration, training, etc.)

Alternative Dispute Resolution

• Instead of investigation or post-investigation
• Confidential, voluntary, impartial
• Transparent, clear, structured process e.g. mediation, restorative circle
• Potential goals: sharing impact; insight & understanding; apology; relationship restoration; rules of engagement
• When suitable
• When not suitable
Other Processes

- 1:1 Coaching: Education / behaviour-change
- Workplace Review / Environmental Scan
- Education and training
- Group facilitation
- Team charter/norm-setting
- Role clarification
- Setting expectations

Resources

- BC Human Rights Tribunal - Human rights and duties in employment: https://www.bchrt.bc.ca/human-rights-duties/employment/
Q & A Discussion

Thank you

Cherolyn R. Knapp
knappresolutions.com
gerolyn@knappresolutions.com
778-966-1357
linkedin.com/in/cherolynknapp