

RESOLVING WORKPLACE DISPUTES

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Workplaces are breeding grounds for conflict, including those arising out of harassment, discrimination and personality clashes (between employees or between employees and their managers, particularly recently assigned managers).

The result is often performance problems, violations of company rules or the need for discipline or termination. And, as we've seen from our American counterparts, sometimes these conflicts escalate into violence.

This increase in the level and effect of workplace conflict illustrates the importance of dispute resolution processes to resolve problems, before they lead to litigation or violent confrontations.

There are many benefits to implementing dispute resolution processes in your workplace:

- reducing conflict increases productivity;
- you are less likely to have wrongful dismissal claims or human rights or other complaints;
- any complaints you do receive, can be resolved quicker and more effectively;
- your conflict-related absenteeism rate decreases;
- you demonstrate commitment to your employees and foster their trust and loyalty; and
- you hold your staff accountable for their actions.

How Do You Deal with Workplace Conflict?

All organizations have some form of system for dealing with workplace disputes, ranging from a "rough and ready" informal system, (which may not be part of written company policy) to a more sophisticated approach. For example:

- managers may unilaterally resolve conflicts;
- employees may be required to work differences out themselves;
- the Human Resources Manager may attempt to mediate the dispute; or
- the President may phone the organization's lawyer the minute a conflict develops.

Some organizations also allow an appeal upwards through the organization's chain of command. If an employee has a dispute with a manager, the employee is encouraged to discuss the matter with the manager. If the dispute is unresolved at that level, the employee can take the dispute to the next level (which, in organizations with a human resource department may involve having the dispute mediated by an HR representative), and so on, ostensibly to the highest level within the organization.

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Alternative Methods of Dispute Resolution

These days, the acronym ADR (alternative dispute resolution) and the phrase “conflict resolution systems design” have been receiving a lot of attention.

Put simply, ADR uses faster, more user-friendly methods of dispute resolution, instead of traditional, adversarial approaches (such as unilateral decision making or litigation.) Systems Design refers to the proactive development, in consultation with employees, of customized formal and informal processes to address workplace conflict.

Types of ADR include:

- *Facilitation*: an informal process in which a third party (often someone familiar to the disputing parties, such as a manager) attempts to facilitate communication and the development of an interest-based resolution to the dispute.
- *Conciliation*: an informal process in which a passive third party is positioned between the disputing parties to create a channel for communication. This is generally done by conveying messages between parties who are unwilling to meet face to face, to identify common interests and to eventually re-establish direct communication.
- *Mediation*: a formal process in which an impartial third party, with no decision-making power, helps the disputing parties voluntarily settle the dispute by establishing ground rules for negotiation, opening channels of communication, articulating the needs of each party, identifying the issues, and, if requested, making recommendations on disputed issues.
- *Arbitration*: a formal process in which a third party who has been chosen by the disputing parties, renders a decision on the legal merits of the dispute. The arbitrator renders this decision after a hearing that generally involves the presentation of evidence and oral argument.

Conciliation facilitation and mediation are interest based processes; the disputing parties themselves craft a resolution that meets their needs. Arbitration is a rights-based process; a third party determines the legal rights of the parties.

How Does Your Organization Stack Up?

To improve their dispute resolution processes, many organizations are taking a hard look at their current approach and asking difficult questions:

- Are our employees aware of our dispute resolution system and do they use it?
If not, why not?
- Does our system seek to find blame as its primary goal?
- Is our system confidential?
- Is it committed to timely and fair resolution?
- Do we encourage communication when differences arise?

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- Does our system foster trust and facilitate growth in relationships?
- Does it take into account inherent power imbalances between managers and employees?

These organizations are seeking fresh approaches to dispute resolution and, in so doing, are sending a clear message: conflict is not bad nor should it be avoided. Disputes should be met head on and recognized as a healthy by-product of growth and change.

Implementing Dispute Resolution Processes to Meet Your Needs

Ideally, your organization should have a dispute resolution process everyone knows about, respects and uses. It does not have to be expensive or sophisticated. What is important, is that it be approachable and responsive.

While a complete system design will most likely require professional assistance to create, it should contain the following components:

- an investigation process;
- an opportunity to explore internal dispute resolution options through dialogue between the parties;
- a formal internal complaints process;
- an opportunity for internal or external interest-based dispute resolution e.g., mediation or arbitration;
- access to formal rights-based dispute resolution;
- ongoing training to teach and reinforce the process; and
- feedback mechanisms to allow for revisions to the process as needs change.

Even if your organization does not have a formal process, there are still some tips you can use to make your dispute resolution process better.

1. Be Proactive Not Reactive

You have a lot to deal with every day; the last thing you need is two co-workers who get on each others nerves. Rather than interceding, you may hope the parties will work it out themselves. Unfortunately, this is too often not the case—conflict left alone does not go away on its own!

Occasional flare-ups could point to a larger problem between co-workers and that may impact on work-team dynamics and productivity. Furthermore, other employees are watching you to see how you handle the conflict. Failing to act may send a message that petty conflict is acceptable. Be proactive and address the problem before the conflict becomes systemic.

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2. LISTEN to all sides – get the whole story!

Frequently, disputes escalate because a proper, confidential investigation is not conducted. An effective investigation requires impartiality and a non-judgmental approach. Learn to become comfortable with employee venting and handling strong emotions productively.

Exercising caution and ensuring that you conduct a fair investigation is not just important in avoiding allegations of breaches of due process. It helps develop trust and an atmosphere conducive to collaborative dispute resolution.

3. Make a preliminary DIAGNOSIS as to the cause(s) of conflict – but, exercise humility, it's their dispute!

After you complete your investigation, you may discover that what appeared to be a personality conflict was actually two people who have never discussed their expectations and boundaries.

Before you make a definitive diagnosis and recommendations, sit down with the disputants (perhaps, separately first and then jointly, depending on the circumstances) to discuss your impressions and get their input. This will reduce defensiveness and help get their commitment to resolve the conflict.

4. Explore interest-based options for resolution

You have spent time with the disputants discussing your impressions and getting their feedback. In doing so, you have earned their trust and established the foundation for collaborative problem solving. Depending on the level of trust, you may be able to play the role of informal facilitator or conciliator to help the disputants improve the channels of communication so that they can come to their own resolution. Resolutions crafted by the disputants have a better chance of success, due to their direct involvement and investment in the outcome.

Sometimes a formal mediation process is required. Whether or not you should use an internal mediator depends on the kind of dispute resolution system your organization has in place. The key to successful mediation is the existence - and, just as importantly, the perception- of mediator neutrality. Therefore, exercise caution when using an internal mediator. This is especially true if the mediator is seen as being aligned with management and the dispute is between an employee and another manager.

Ideally, in order to avoid issues such as perceptions of bias and conflict of interest, you should choose independent outside mediators to mediate. There are a number of mediators with employment law and human resource backgrounds available privately or through various service providers, who can assist your organization.

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5. Explore RIGHTS-BASED options for resolution as a last resort

While it would be nice to think that all disputes could be resolved internally through dialogue, facilitation, conciliation and mediation, a small percentage of disputes require a determination of rights. These include claims of sexual discrimination or wrongful dismissal. Regardless of the internal dispute resolution process you offer, employees generally have the right to explore formal rights-based remedies.

For example, even if you have an internal process for resolving sexual harassment, complainants generally retain the right to a formal complaint to the appropriate human rights tribunal. It is, therefore, important to ensure that you do not discourage employees from pursuing their legal rights.

6. Communicate, Communicate, Communicate

Everyone is working harder, longer and, in most cases, with less resources. Face it - most of the people you work with are stressed out. Conflict is often the result.

Never underestimate the power of clear, honest and open communication in avoiding and resolving conflict. You may need to work on developing the set of communication tools you can pull from your toolbox at the appropriate time, such as:

- active listening;
- open-ended questioning (how, what, when, where, who);
- probing for underlying interests;
- empathizing;
- paraphrasing;
- reframing; and
- summarizing.

Also important is your ability to pick up on non-verbal clues, such as body language.

7. Model Good Practice

Follow the above steps consistently, but do so with humility and care. Let your employees know you are available and approachable. Manage by being visible. This demonstrates that you are committed to effective dispute resolution and that you explore all disputes fairly and seriously.

Reinforce these steps by providing in house and off-site training opportunities to employees in effective communication techniques and ADR processes. Conduct regular team meetings to solicit feedback from employees regarding your dispute resolution process and encourage suggestions for how it could be improved. Regularly upgrade your own skills with ongoing training. Be open to refining your organization's existing process as needs change.

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What if You're the Problem?

Sometimes conflicts that arise with your staff are not due to issues between them. Instead, your management style may be the source of the problem.

Employee expectations have changed considerably over the past few years. Now, more than ever, employees want:

- more flexibility, such as the ability to work from home;
- to know that their input is valued and that they are making an important contribution to the bottom line;
- to achieve balance between their careers and personal lives (even if it means a pay cut); and
- to maximize their professional growth, not necessarily climb the ladder within a single organization.

If your management style doesn't reflect the demands of the new workplace culture, you may need to do what you expect your employees to do: accept responsibility, take appropriate steps to rectify your behaviour, reevaluate your own management style and offer an apology, when called for.

While no one approach can guarantee results, using the methods outlined above will go a long way to helping you prevent and resolve workplace disputes – before they drain productivity or worse, escalate into violent confrontations.

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At Bernardi Human Resource Law we know that today's response to your workplace challenges can become tomorrow's precedent. We think ahead and help you make the best decisions to meet your needs both now and in the future.

Balancing your legal obligations and business objectives can be hard. We act as your trusted advisors; not simply as lawyers but as an integral part of your management team. Through our practical advice, workshops and articles, we arm you with the knowledge and tools to address rapidly changing human resource issues.

Above all, we're on your side. We work with you to prevent costly problems and when litigation is necessary, we act as strong advocates to protect your interests.

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About Lauren Bernardi

Lauren is a lawyer and human resource advisor with the Mississauga firm of Bernardi Human Resource Law. Lauren's advisory, training and educational services help managers direct their human resources in a strategically sound and legally appropriate manner. She is an accomplished and entertaining speaker on management and human resource issues.

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