

## HUMAN DIGNITY & WORKPLACE COMPLAINT RESOLUTION

By Gail H. Forsythe

A workplace discrimination complaint can be an opportunity for learning and growth or a crisis that tears the workplace apart. Management's handling of the complaint resolution process is usually determinative of a positive or negative outcome. A manager's response to workplace discrimination or systemic barriers can assist employees to gain greater insight or divide them into emotionally charged "camps."

How do people in positions of authority typically respond to workplace discrimination concerns? My professional experience with over 200 workplace discrimination cases indicates that managers often respond by: doing nothing and hoping the problem resolves itself (not the best course of action in light of the Supreme Court of Canada's Robichaud decision that held an employer vicariously liable for discriminatory employee conduct); putting the onus on the employees to "work it out" (again, not a wise choice due to power imbalances in the workplace); or engaging in a "knee jerk" reaction and firing the offending employee while relying on a "zero tolerance" policy (in this instance, the employer is asking for a wrongful dismissal suit if a failure to investigate occurred). Each of these responses reflects a lack of awareness about the employer's legal obligations, and the meaning and application of a "zero tolerance" policy, and demonstrates one of the key causes of racism and discrimination - abuse of power and a lack of awareness about the impact of systemic barriers.

Effective managers understand that the likelihood of discrimination complaints arising in the workplace can be reduced by heightening the awareness of all employees about the value of diversity and the legal context that defines acceptable norms in the workplace. Knowing how to recognize and respond to inappropriate or discriminatory conduct can make all the difference in moving employees, and the organization, toward a positive or negative outcome. All employees, and particularly those with the authority to foster change, benefit from understanding how adherence to well-drafted workplace policy can create a climate of "fairness" when management responds to employee concerns.

When drafting policies, employers need to carefully con-

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sider the pros and cons of various complaint resolution options. Policies that include both formal and informal complaint resolution options allow people to address different needs. For example, an investigation is a fact-driven, evidence-based process that leads to a conclusion in law about the merit of the complaint. An investigation looks at "past" conduct and often includes recommendations regarding employee sanctions. On the other hand, mediation strives to build understanding and creative problem solving. It is "future" focused and looks at repairing relationships.

Mediation can be a very powerful tool to build respect for individuals who find themselves at the heart of a discrimination based complaint. Here is an account that is based on an employee's actual experience. This employee was concerned about a senior employee's abuse of power and a discriminatory attitude that reflected negative stereotyping related to a human rights ground.

About a year and half ago, (my, how time flies), I was having an extremely difficult time with one of the senior employees in my workplace. I am employed in a workplace where people like me are a minority. My workplace can best be described as "conservative."

Every time the senior employee and I interacted, I felt intimidated, upset and nervous. I was reduced to tears on a few occasions (I am not a "crier"). Eventually, I informed a manager that I was never, ever going to work with the senior employee again. I felt that my job was extremely important to me but that I would not sacrifice my dignity for any job. I felt that interacting with this person did that. It was at that point that the manager encouraged me, and the senior employee, to consider mediation. We each had private and lengthy discussions with an external mediator made available to us through a work related program.

Eventually, the manager, the senior employee and I agreed to mediation. I must admit that all three of us were extremely sceptical about engaging in the mediation process. I really doubted it would work, but I thought I should at least do what I could to demonstrate that I was not willing to give up immediately. I remem-

ber the three of us rolling our eyes about how mediation was going to be a silly process. All of us expected to be out of mediation within the hour and with nothing changed.

Well, we spent the day in mediation. It was intense and exhausting. We all worked very hard. We began to build back some of the trust in our relationship and were able to deal with some of the misunderstandings between us; there were many. The fact that we both saw the situation so differently surprised both of us. We then worked to find a way to proceed with how we would work together in the future.

Eighteen months later, I admit that we did not exactly follow the work plan we agreed to that day. However, I can say that we work together often now; and we work together well. I am glad to have the opportunity to work with this senior employee, and although we are sometimes "short" with one another, the effects are totally different. I no longer feel threatened or upset. I feel as though I am interacting with this person as anyone else in the organization would.

If someone had told me that this would be the outcome of our relationship a year and a half ago, I would never have believed them. For that, I thank the mediation process.

This employee's experience speaks to the intangible "value" of self-esteem, dignity and acceptance. In this case, the "complaint" and the mediation process were a catalyst for positive and long term change within the organization. Mediation should not be construed as a solution for all discrimination-based complaints; knowing when and how to use the process is the key to success. In this case, mutually creating an environment that fostered human dignity was the essence of "human rights" for the employees involved. Understanding that aspect of workplace complaints is of value to us all.

*If you would like to learn more about the complaint resolution process or hear about further training opportunities in this area, contact the Cultural Diversity Institute or check our Events Calendar to find the date of the next "Conflict Resolution in the Workplace" Workshop in your area.*