

# Addressing Conflicts In The Workplace Caused By Historical Complaints



A challenging question that employers may face is how to respond to historical complaints of harmful behaviour when such complaints arise and cause conflict in the workplace. It is not unusual for complaints to *not* be brought forward immediately. At times we see complaints of incidents dating back a few years, sometimes even over a decade. The difficulty for employers is what to do in these situations, particularly when there is no indication that the behaviour has continued.

Depending on the nature of what is alleged, employers may decide to investigate the complaint. That decision may be due to a legal obligation to investigate, for example, where discrimination or harassment is alleged. In other cases, they may choose to investigate just to get a sense of what may have occurred, so that they can determine the next steps. In some instances, employers may decide not to investigate perhaps because of the passage of time. In my experience, whether there is an investigation or not, complaints about historical events can significantly impact the work environment, resulting in the need for some form of restoration.

A workplace restoration process may, therefore, be helpful in addressing the impact of historical complaints. I acknowledge that it may not be the appropriate response in all situations, but it warrants consideration to determine if it does have value. As mentioned in my previous blog, "[3 Benefits of Workplace Restoration](#)," workplace restoration is a developing and evolving area and, although there is no established definition, the Ontario Bar Association has offered the following to capture the essence of what the process is:

Workplace restoration is a response to workplace conflict that considers the larger context, and specifically what is needed to create a healthy and harmonious workplace.<sup>1</sup>

The approach to a restoration process will vary in each instance, but the following are four factors to consider when contemplating workplace restoration.

## **1. The extent or scope of the impact**

The scope of the impact is an important factor for workplace restoration. Given the historic nature of the allegations, what is alleged may only be known by a few persons, or it may be widely known in the organization. However, it should also not

be assumed that the potential impact is limited to those with knowledge of the allegations. The organization's handling of the situation can impact those who have no idea what is happening. For example, the decision to terminate the respondent's employment might cause disruptions that need to be managed by the employer. Therefore, understanding the scope of the impact of what is alleged, and any intended steps, will help to inform who should be included or excluded from a restoration process. How the organization may go about determining the scope of the impact is critical and requires careful consideration.

## **2. The timing of a restoration process**

Timing of a restoration process is a factor that may also have an impact when dealing with historical complaints. The question is, at what point should the process be engaged? For example, in an investigation against a finance manager, all the individuals in the department may be called as witnesses in the investigation. In that case, the organization may decide to defer the restoration process until after the investigation, so that they have a better idea of the nature and scope of the impact on the entire department. The question of timing is really a strategic one having regard to the circumstances of the case.

## **3. Who will manage or support the restoration process?**

An additional question when addressing historical complaints is, who will support the intervention during the restoration process? Depending on how far back the allegations go, it is possible that very few, if any, of the people that were around at the time of the events are still at the organization. If there are individuals who were around at the time of the incidents, depending on their roles, it may be worth considering what, if any, support they may offer in the restoration process. One of the ways that I may approach situations like these is to leverage these individuals to provide some sort of support during the restoration process. For example, someone who may have been the manager at the time of what is alleged and has a good rapport with the parties, but is now a director, may be asked to help communicate with the parties during the restoration process. The flexibility of a workplace restoration process facilitates this type of strategic consideration, and aids with the ultimate goal of creating a healthier and harmonious workplace.

## **4. Approach to restoration when allegations are admitted**

As mentioned above, a notable challenge in historical complaints is how to treat the respondent where the respondent has admitted the allegations, but there is no indication that they have continued the behaviour, and they have demonstrated positive change. Disciplinary action against the respondent in such circumstances may be the very thing that causes conflict in the workplace because they are likely viewed by their colleagues based on who they are now, and not who they were at the time of the events complained of.

For the employer, the underlying question is, should respondents in these situations be treated the same as if the matter had just occurred? I will offer a very "lawyerly" response and say, "It depends." The balance is between treating what has occurred with the appropriate degree of seriousness and accounting for the positive strides that the respondent may have made since then. Where the scale tips depend on the situation. For example, for allegations of sexual harassment or violence, the fact that the respondent has come a long way may carry no weight at all when determining the appropriate response. In other cases, for example, where what is alleged are inappropriate racial comments and slurs, the fact that the respondent has obtained significant learning since then and made great strides in being a positive member of the organization may carry some weight. That said, even in the latter

situation, the approach to restoration will need to consider the impact on person(s) who have been harmed by the behaviour. This takes us back to the first consideration mentioned above – the scope of the impact.

Although workplace restoration may essentially fall into the category of informal resolution, the approach to restoration ought not to be *ad hoc* or sporadic. It requires careful strategic consideration having regard to all the factors that could affect the long-term results. I recommend that organizations ensure that they have the relevant skills and expertise to engage in workplace restoration meaningfully and effectively.

## Footnote

1. Jesse Elders and Rahim Jamal, “Workplace Restoration: What is it and should we use it?” (April 5, 2021), online: Ontario Bar Association (<https://www.oba.org/Sections/Labour-Employment-Law/Articles/Articles-2021/April-2021/Workplace-Restoration-What-Is-It-and-Should-We-Us>).

*The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.*

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