

## DISCUSSION PAPER

# Alternative Approaches to Preventing, Minimizing or Responding to Complaints of Bullying or Harassment in the Workplace

### Purpose:

The purpose of this discussion paper is to present some alternative approaches to prevent, minimize or respond to complaints of bullying or harassment in the workplace that align with Bill 14 and the new OHS policies which took effect on November 1, 2013. These approaches use training, coaching and mediation to focus on restoring a healthy workplace by identifying and addressing the underlying root causes of bullying or harassing behaviours.

### OHS Policies

Employers are required to follow nine steps to comply with their legal obligations to prevent and address workplace bullying and harassment:

1. Develop a policy statement on bullying and harassment
- 2. Take steps to prevent or minimize bullying and harassment**
3. Develop and implement procedures for workers to report incidents or complaints
- 4. Develop and implement procedures for dealing with incidents or complaints**
5. Inform workers of the policy statement and steps taken to prevent bullying and harassment
6. Train supervisors and workers
7. Annually review 1 – 4
8. Do not engage in bullying and harassment of other workers
9. Apply and comply with the employer's policies and procedures on bullying and harassment

Policy D3-115-2 clarifies that an employer must take reasonable steps to prevent where possible, or otherwise minimize, workplace bullying and harassment including “developing and implementing procedures on how to deal with incidents and complaints”. The policy states:

*“The employer must implement procedures for responding to complaints or incidents of bullying and harassment. The procedures must ensure a reasonable response to the complaint or incident and aim to fully address the incident and ensure that bullying and harassment is prevented or minimized in the future.”*

While the policy does not appear to mandate an “investigation”, the remainder of the policy focuses on investigations and implies that an investigative approach must be the first line of inquiry with any allegation of bullying and harassment

## Who are we?

Mediate BC Society is a not for profit organization committed to providing people with practical, accessible, and affordable choices to prevent, manage and resolve disputes. Mediate BC administers rosters of qualified mediators. Its [Civil Roster](#) includes many skilled workplace mediators.

In order to consider these issues fully, Mediate BC consulted with an Advisory Group of Roster workplace mediators.

## What is Mediation?

In mediation, a neutral third party assists parties to discuss the issues between them. Usually, a mediator tries to uncover the parties' underlying interests that are driving the conflict and producing the behaviours in question. Mediation is not adversarial and, unlike investigation, does not assign blame or recommend "corrective action".<sup>1</sup>

## Why is Mediation Helpful for Bullying & Harassment?

Mediators, unlike investigators, are not searching to uncover facts and to make recommendations, but are inviting many facts from many different points of view to come forward. In this way, the organization starts to build a picture of the myriad factors that created the bullying or harassment situation. We believe that incidents of bullying and harassment in the workplace are most often symptomatic of underlying causes which must be uncovered and addressed directly in order to end repeated behaviours and endless cycles of claims of fact, counter-claims and escalations of grievances and other power-over tactics. Working to bring together the people who are directly affected by the bullying and harassment (which often involves the whole work unit rather than just one individual) allows a deeper and systemic assessment of the situation that can lead to more enduring solutions. Mediation is focused on the future; investigations are focused on the past.

Using a mediation process instead of an "investigative" approach at the outset can uncover root causes of bullying:

- Sometimes bullying is a result of a manager's inability to set clear expectations and boundaries. Suggesting "zero tolerance" ends up driving conflict under-ground as employees work to hide conflict to avoid punishment. A gap in management training needs to be identified and discussed.

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<sup>1</sup> Note: page 26 of the Handbook indicates a misunderstanding of mediation – it indicates that written reports could be used as "testimony" for mediation sessions. Mediation does not involve witness "testimony".

- Sometimes bullying is a result of a lack of awareness or a lack of skill (most often both). In these situations, the best "corrective action" comes from the individual first (as all motivation to change comes from within). Mediation encourages the development of self-awareness, as mediation is a highly engaging process, unlike an investigation that tends to be more prescriptive.
- Sometimes bullying is a result of a toxic workplace (a systemic problem) and/or stressful working conditions (which brings out the worst in people). Again, these kind of findings are best arrived at with a process that brings members of the work unit together to facilitate dialogue about what people are observing, what meaning they are making about what is going on, and how they believe the dysfunction could be addressed.

Mediation has a “restorative” function as it is capable of uncovering and addressing root causes of the impugned behaviour. It has an educational function as it assists the people involved to learn about their own behavior and the effect it has on others. It can be remedial and produce outcomes that do not focus on punishment but instead help to build insight, motivation and skills for enduring positive change.

## Submissions

- We fully support Bill 14 and the related OHS policies
- We believe that a mediation approach can be helpful at three stages:
  - As a preventative tool;
  - As one of the steps with which employers are required by the policy to comply to meet their legal obligations; and
  - As part of the rehabilitation process to encourage workers to get back to work quickly
- Bullying behaviours can be changed. Effective strategies require insight, motivation and skills.<sup>2</sup>
- Prevention:
  - Training should identify mediation as a way of addressing behaviour in its early stages.
  - Training in effective workplace communication and conflict resolution (to prevent or minimize bullying and harassment). Conflict is inevitable and employers should nurture a culture of conflict competence.
- Policy steps: Steps available to employers should not be limited only to “investigation”.

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<sup>2</sup> Article by Roy Johnson December 2013: [http://www.theneutralzone.ca/Newsletters\\_files/ITZ%202013.pdf](http://www.theneutralzone.ca/Newsletters_files/ITZ%202013.pdf)

- A purely investigative approach should be one of the last tools to use in a bullying and harassment situation. There should be other options available to employers before instituting a formal investigation including mediation.
- There are risks with a purely investigative approach:
  - Underlying issues (the root causes of the bullying or harassing behaviors) are not dealt with and they persist when the worker returns to the workplace.
  - Multiple claims are therefore likely.
  - Chronic unresolved conflict has a high human cost. Workers leave dysfunctional workplaces and they take their institutional knowledge with them.
  - There is also a serious financial cost. When workers choose to leave, employers incur high replacement and retraining costs.
  - If mental disorder claims are denied, many employers will have to pay for:
    - Stress leave
    - Long term disability
    - Grievances
    - Constructive dismissal claims
- Alternatively, we suggest that there could be two forms of investigation under the policy:
  - Fault-based investigation (a traditional formal investigation approach); and
  - Restorative investigation (a process incorporating a mediation-focused approach).
- Rehabilitation:
  - Efforts to get workers reintegrated into the workplace will be thwarted if the injured worker has to return to the same toxic workplace.
  - Mediation can be used to address and resolve the workplace issues that led to the bullying and harassment and restore a safe working environment for the workers affected. Affected workers will get back to the workplace sooner.
  - Effective rehabilitation will often consist of intensive work with all workers within the work team or workplace not only with the injured worker
- There are other approaches that can be used prior to, or to supplement, an investigation that may achieve better, more lasting outcomes.
- Employers have an opportunity to develop a comprehensive, multi-stage “system” to deal with conflict incorporating preventive and restorative approaches in addition to investigative processes which:
  - focuses on dialogue to identify and address the underlying issues (root causes)
  - offers coaching and training
  - offers mediation if required

- These proposed approaches are consistent with the Act and OHS policies (and the Handbook that refers to coaching page 23 & 33, mediation and cross-cultural awareness training page 26 & 28). In particular, they “ensure a reasonable response to the complaint or incident and aim to fully address the incident and ensure that bullying and harassment is prevented or minimized in the future” as required by the Guidelines.
- These resolution processes are useful NOT JUST for mere interpersonal conflict (which appears to be the assumption underlying the passage at page 30 of the Handbook) but can provide a key first level strategy for many situations involving bullying and harassment.
- They are focused on the future (whereas investigation focuses on the past)

### **Our Offer**

We offer to partner with WorkSafe to:

- develop options for employers and workers that offer a restorative approach
- create sample policy wording and procedures
- develop appropriate language describing these options for the WorkSafe website

We also offer to provide:

- training and coaching services to support these approaches and
- a list of qualified and experienced workplace mediators who are members of Mediate BC’s Civil Mediator Roster – [www.mediatebc.com](http://www.mediatebc.com)

Thank you for this opportunity to provide input into this very important initiative.

We look forward to discussing it with you further.

**Yours very truly,**



**Kari D. Boyle**  
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