

Did You Know?

Conducting Fair Reviews

The Link between Defensible Decision-making and Workplace Morale

On an almost weekly – if not daily – basis, school administrators and other workplace leaders are asked to resolve workplace issues. Some may relate to concerns about staff performance or disruptive behaviour, while others may be linked to interpersonal conflict between staff, students, parents and others.

More and more often, the way in which leaders review and resolve these issues is being scrutinized and challenged, in staff rooms, PAC meetings, arbitration hearings and beyond. If leaders have resolved issues or conflicts using a flawed process, their decisions are often overturned and their credibility is called into question.

What's key to remember is this: even if a leader's decision is 'right' on its merits, it often will be criticized and/or overturned if the decision-making process is seen as biased, disrespectful, or unprofessional. In more serious situations, the leader may also be subjected to a separate complaint of harassment.

Anyone who has been investigated through an unfair process, or has been challenged on the fairness of their own investigation, knows that it is not a positive experience and one that should be avoided wherever possible.



by

Marli Rusen

*Labour Arbitrator, Mediator,
Investigator & Workplace Consultant*

Marli Rusen brings years of experience as a labour, employment and human rights lawyer to her current work as a labour arbitrator, mediator/investigator and workplace consultant. Marli has transformed her legal knowledge of workplace dynamics into practical tools to help identify and resolve workplace challenges in order to build strong and productive teams.

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For these reasons, it is critical that all leaders learn how to make fair and defensible decisions by conducting objective, neutral and timely reviews of the issues that come before them. This is not simply a best practice – it is also a legal requirement.

General Principles

Regardless of the type of review you are conducting (individual issues or interpersonal conflicts), and regardless of who is involved (students, parents, teachers or leaders), every review must be conducted in an objective, neutral and timely manner. More specifically, the review should occur:

- shortly after the issue or concern was brought forward;
- in a confidential manner;
- in a manner that protects everyone involved from retaliation, improper influence or interference;
- in an objective manner, ensuring that all relevant information, perspectives and perceptions are genuinely considered (including those of the accused);
- in a respectful manner, using curious and open-minded questions with everyone involved; and
- in a neutral manner, by someone who is not biased or *seen to be biased* against or in favour of anyone involved. If there is any possibility of the leader being biased or seen as biased in favour of or against a particular person, they should recuse themselves and have someone else conduct the review on their behalf.

It is critical that leaders not get 'sucked into the drama of the first story' (or, conversely, into the passionate denial of those being accused), however compelling or enticing their narratives

might be. There are always, **at a minimum**, two sides to every story and it is the leader's legal and ethical responsibility to listen to both or all before arriving at a decision.

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The Two Questions That Count

Whenever a leader is asked to make a judgment call about a person's behaviour/performance or to resolve a conflict that has arisen between individuals, they must interview those involved and then answer these two fundamental questions:

1. What most likely happened – in that situation, or during that period of time, or as between particular individuals?
2. On the basis of what was decided in question 1, did one or more of those involved do anything wrong or inappropriate? Did one or more of those interviewed contribute to the conflict/dysfunction, and in what manner?

The first question requires leaders to make findings as to the **facts** that unfolded; and the second question requires them to draw **conclusions** based on those facts.

These two questions must be asked and answered whenever a leader becomes aware of outstanding concerns or issues, regardless of the fact that: (a) the leader may not have witnessed anything directly; and (b) there may not have been any witnesses to the event in question.

Many workplaces have suffered greatly from

festering and protracted issues and conflict caused by a leader's failure to inquire into, or resolve issues on, the basis that they were 'he said/she said'.

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Key Questions to Ask

When interviewing those involved, the following questions are critical:

- **What happened?** This should be in detail, unpacking broad labels such as bullying, rude, incompetent, angry.
- **Who was involved?** This should include witnesses prior to, during and subsequent to any event or exchange.
- **Where did this take place?** This should be in detail.
- **When did this take place?**
- **Why did the person being interviewed react or respond in the manner they did?** Or why did they not act in a given situation?
- **How did they – and others – act, speak or interact with each other?** This should include a description of verbal *and* non-verbal behaviour and body language, facial expressions, as well as content, tone and delivery of any conversations that have happened.

Answer each question one by one. Let the person

speak without interruption and truly listen to their responses, in contrast to 'checking the box' and waiting to ask the next question. Then ask more questions. Keep doing this until you have the full picture.

Once you're nearing the end of each interview, ask, *'Is there anything else you wish to share with me? Is there any other information that you think might be relevant to the matters we discussed today?'*

You will be surprised – and humbled – at the new information you learn by opening up the dialogue in this manner. Even in those rare situations in which you don't learn anything more, the fact that you have asked this one final question will be genuinely appreciated by those involved.

Allowing people the opportunity to be heard – and then genuinely listening to and considering what they have to say – costs nothing, yet is invaluable to building trust, strengthening relationships and increasing morale.

Interviewing the Respondent

When meeting with someone who is accused of performing or behaving poorly, it is critical to fully and genuinely hear and understand their perspective before reaching any conclusions. This is not a mere technicality you must follow before reaching a pre-determined outcome.

The person faced with concerns deserves to know the specifics of the conflict or complaint that involves them and then be given a full opportunity to share their own views on and concerns about what happened.

They have a right to deny the allegations against them. They have a right to admit to some or all of the allegations, and then provide an explanation for why they did what they did, including any instruction they had been given, any direction they were following or perhaps any personal or medical challenges with which they were faced at the time.

They have a right to be heard. Plain and simple.

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Now What?

After hearing from everyone involved, the leader needs to determine – on a balance of probabilities – what most likely happened in relation to a specific issue or during an event in question.

The *balance of probabilities* is the required civil standard of proof in BC.

The leader must then determine whether the behaviour, communication, conduct or performance of those involved is unacceptable, unreasonable or inappropriate, and must provide a clear rationale for their determination in this regard.

As a leader, you will have received numerous conflicting opinions about this during the course of your review. What is reasonable to one person is seen as unreasonable to another. However, a leader's conclusions of wrongdoing should not be based on the personal opinions of anyone involved, including those of the leader themselves. Instead, their conclusions must be based upon whatever

governing standards, policies and procedures are in place in their District, province or jurisdiction at the time. This includes current educational and teaching standards and regulations, professional codes of conduct, student codes of conduct, and relevant legislation, including school, safety and human rights laws.

The final step in a fair investigation is to clearly communicate to those involved the outcome of the review and any relevant next steps. This should be disclosed on a 'need to know' basis only, not broadcasted generally or gossiped about in any way.

The Bottom Line

This process should be consistently applied to everyone, regardless of their relative popularity, competence or reputation. It will allow leaders to make decisions that are factually accurate and evidence-based, and will help them to avoid making costly decisions that are emotionally charged, unprofessional and biased.

Investing in fair investigations is key to building credibility with staff and students, and is truly fundamental to a culture rooted in mutual respect and equality.

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