

## Concept of Procedural Fairness as applied to Civility Investigations

The more serious the allegations and potential negative repercussions for the person accused of harassment or bullying, the more stringent the aspects of procedural fairness should be. Investigators should always respect procedural fairness, but the extent to which measures are taken to protect these principles will depend on the nature of the allegations and the consequences for the parties.

### 5 KEY POINTS TO REMEMBER

#### **I. The Right to be Informed of the Allegation(s)**

The respondent has the right to know the totality of the allegation(s) made by the other party and must be afforded a reasonable opportunity to respond to them. It is generally the role of the person responsible for managing the harassment complaint process to notify the accused party of the allegations at the outset by providing him or her with a copy of the allegations and an opportunity to respond.

#### **II. Investigator Must be Impartial**

The parties have the right to an impartial investigator. Investigators must be neutral third parties with no interest or stake in the case or its outcome. It is imperative that their skills be exercised impartially and independently. An investigator must refrain from taking part in an investigation should a situation arise where bias or a reasonable apprehension of bias may be perceived by the parties. A written request by a party that the investigator withdraw from the case because of a real or reasonable apprehension of bias on his part must be presented at the outset of the investigation or as soon as the party has knowledge of circumstances that could justify this apprehension. In other words, the parties may be considered to have agreed to proceed before this investigator by the fact that they have not objected. If a request for the investigator to be removed from the investigation reveals circumstances that could give a reasonable person grounds to believe that the investigator could be seen to have an interest in favouring one party over another or if the investigator demonstrates bias towards one of the parties, the person responsible for managing the harassment complaint process should decide whether it would be appropriate to hire the services of a different investigator to maintain the integrity of the process.

#### **III. The Right to be Heard and to Present Evidence**

The parties must be afforded the opportunity to present their version of the facts, identify witnesses and submit documentary evidence (documents, videos, tapes, electronic files, photographs, etc.).

It is then up to the investigator to decide whether the evidence submitted is relevant and admissible. Any evidence that confirms or refutes incidents related to the allegations should be admitted as evidence.

The investigator may disregard evidence that would be inadmissible in law because of:

- Laws governing privilege (e.g. lawyers, mediators); and
- Laws protecting the confidentiality of medical records or other documents (e.g. psychologists, physicians, psychiatrists, Employee Assistance Program counsellor).

## Concept of Procedural Fairness as applied to Civility Investigations

### **IV. The Right to be Accompanied**

The parties may designate someone to accompany them during the investigation. This person may select a union representative, a spouse, a friend, etc. This person does not represent the party, but is there to assist.

### **V. The Right to Review Statements to Confirm their Accuracy**

Every person who testifies in the investigation should have access to the statements to verify their accuracy. To ensure this, the investigator should ask the witness to sign and date their statement, before the preliminary summary of facts is written and disclosed to the parties.