

Restorative Workplace Investigations – Version 2.1

Restorative Solutions: responding wisely to conflict

Summary

Too often conventional workplace investigations, which focus on determining facts and assigning blame, harm the workplace, and whatever the findings, leave everyone unhappy. Restorative investigations are an alternative that is more satisfying to those directly involved, benefits the workplace community as a whole, and meet the process requirements of WorkSafe BC. Restorative investigations focus on restoring respectful workplace relationships and increasing organizational capacity to manage workplace conflict constructively.

Restorative Investigations will vary in length and complexity depending on the nature of the conflict and the size of the workplace. They always start, and often end, with a short and immediate assessment that meets WorkSafe BC requirements for an investigation. The Investigator interviews those directly involved in the dispute, giving them an opportunity to be heard, and meets with anyone else necessary to understand the nature of the conflict. In consultation with all concerned, the Investigator recommends what needs to be done to restore the workplace. This could include conflict coaching, referral to a manager for action, facilitated conversations, mediation, or possibly, conventional investigations. Only if the complaint is serious and complex - in terms of causes, affected parties and solutions – will the Investigator recommend an extended restorative investigation, the central element of which is the restorative circle.

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Participants in the restorative circle will always include the primary parties to the conflict, and may include their support persons, union and human resource representatives, and others identified as helpful to understanding the conflict and restoring the workplace. The Investigator prepares participants for the circle process, and when the restorative circle is convened, puts the following questions to it: What happened? What effect did it have? What circumstances or



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factors contributed to the dispute? What needs to be done to heal broken relationships, restore the workplace and prevent similar disputes in the future?

The Investigator drafts a report reflecting the collective wisdom of the circle, including a common narrative of what happened, where perspectives differ, insights emerging from the circle about underlying causes, and recommended preventative and restorative actions. At an appropriate later date, the restorative circle is reconvened to check in on whether the workplace has been restored or more needs to be done.

What follows is a detailed description of both the assessment investigation and the extended restorative circle process.

Definitions and Conceptual Underpinnings

Capacity building: *Increasing the skills of those in the workplace to manage conflict constructively.* A fundamental assumption of the restorative investigation process is that the long-term health of an organization depends on its capacity to manage conflict in the workplace constructively. Effective conflict management requires skill, and although some people are more natural at it than others, training and experience improve skill. The Investigator is always looking for opportunities in the process to increase the organization’s capacity to manage conflict itself, without needing to bring in someone from outside to “solve” the problem. Thus the restorative investigation process seeks to engage other potential peacemakers in the workplace, encourage collective responsibility, and, as much as possible, direct the resolution of the dispute back to the workplace where it belongs.

Circle: *The process of bringing a group together to understand one another, strengthen bonds and solve common problems.* Indigenous peoples have traditionally used the circle process. Circles reflect a holistic worldview that everything is one, and that everyone and everything within the whole is connected. The Circle itself emphasizes the oneness of the group, while at the same time respecting the diversity of the individual participants. When adequately prepared for and conducted properly, it equalizes power imbalances and creates a safe space for sharing perspectives, evolving collective wisdom and motivating individual and group action. Used in the workplace context, it provides an opportunity to demonstrate and experience respectful workplace interactions.

Conflict: *Clashing perspectives, interests, values or norms (i.e. understandings governing behaviour) between individuals or groups.* Conflict in organizations is normal, inevitable and ongoing. It can be constructive – an important motivator for action and change that helps the

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organization achieve its goals. Or it can be destructive - manifesting itself in abuse of power and disrespectful conduct. In his book *Staying with Conflict*, Bernard Mayer advocates for engaging with conflict to ensure that it is constructive, not destructive.

Dispute: *An episode of conflict; an altercation between individuals or groups that may be destructive if not addressed; this includes bullying and harassment and in conventional investigations is called the “complaint”.* John Paul Lederach in his book *Conflict Transformation* uses the term “presenting problem” and advocates seeing these presenting problems as opportunities for conflict transformation, that is, constructive change that goes beyond the resolution of specific problems. In the context of the workplace, incidents of alleged bullying, harassment or disrespectful conduct are often symptoms of underlying conflict that may have become destructive. On the basis of these definitions of “conflict” and “dispute, we speak of **managing or engaging in conflict** and **resolving disputes**.

Employer: *The individual (or individuals) responsible for the workplace and for retaining the Investigator and to whom the Investigator ultimately reports.* If the investigation is done pursuant to a collective agreement, it may be that the Investigator reports jointly to the Employer and the Union.

Investigator: *The individual (or individuals) responsible for the restorative investigation.* This document assumes that the Investigator will be external to the organization, but appropriately trained internal personnel could perform some or all of the functions of the Investigator, and all or parts of the restorative investigation process could be adapted for internal use.

Primary Parties: *The immediate parties to the dispute.* In conventional investigations, these parties are called the complainant and the respondent.

Restorative: *Contributing to the health of the workplace and enabling it to be a well-functioning whole that embraces diversity.* Workplaces are small communities, in which members of the group are both affected by and affect the functioning of the group as a whole and its individual members. A restorative approach is a systemic approach that places the dispute in the broader workplace context, and is concerned less about blaming individuals than about understanding the inter-active systemic causes underlying the dispute. Respectful relationships are necessary for a healthy community, and so a restorative process places importance on healing broken relationships that have become disrespectful and destructive for those directly involved, or for other members of the workplace. It also seeks to restore the workplace as a whole to one that manages ongoing conflict peaceably so that the organization can effectively fulfill its mandate and achieve its goals.



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Third Side: *Members of the workplace community (including fellow employees, supervisors, managers) who are not directly parties to the dispute but who can contribute to understanding the underlying conflict, and generating and implementing sustainable solutions. It could include those who would be called “witnesses” in conventional investigations, and also those who are sometimes known as “bystanders”.* The term “Third Side” is adopted from anthropologist and conflict theorist William Ury’s book *The Third Side*, in which he offers an option for bystanders (other than taking sides or distancing themselves from a dispute) of engaging constructively in resolving the dispute. It is based on Ury’s observations of “primitive” peaceful cultures, in which relatives and friends of those engaged in destructive conflict expect the disputants to work it out and take an active role in ensuring that the necessary conversations happen. The Primary Parties’ support persons, Union representatives and Human Resources personnel can be members of the Third Side.

Workplace: *A group of employees brought together to achieve a common organizational goal.* An organization can itself be defined as the workplace. However within larger organizations, there can be many workplaces. A workplace is a community of individuals and, like all communities, the boundaries of a workplace will not always be easy to draw. One of the roles of the Investigator is to understand what workplace, if any, needs to be restored.

Goals of the Process

- 1. To restore a well-functioning workplace and promote ongoing respectful relationships within it**
- 2. To respond appropriately to concerns about disrespectful conduct (in particular allegations of bullying and harassment)**
- 3. To develop group responsibility for managing conflict constructively**
- 4. To build organizational conflict management capacity**

Role of the Investigator

The Investigator’s role is **not** to assign blame, and could include any or all of the following.

- **Listening** to the Primary Parties to allow them to feel heard
- **Gathering information** to gain an understanding of the dispute, the workplace and any systemic causes of the dispute
- **Assessing** the situation and recommending an appropriate response
- **Designing**, in consultation with others, a responsive process
- **Preparing** participants for the Restorative Circle
- **Coaching** participants in respectful communications



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- **Facilitating** the Restorative Circle
- **Interpreting and reflecting in writing** what emerges from the Restorative Circle
- **Following up** to check in on whether the actions committed to and recommendations generated by the Circle have been successfully implemented.

Steps in the process

1. Assessment Investigation

And if an extended restorative investigation is called for:

2. **Preparation for the Restorative Circle**
3. **Restorative Circle**
4. **Reporting**
5. **Follow up**

1. Assessment Investigation

Note: *All restorative investigations should start with assessing the appropriate restorative process to fit the circumstances. Some organizations may choose to conduct the assessment investigation internally, using a skilled assessor trained in conflict management and knowledgeable about the workplace. If an external restorative investigator is brought in after an internal assessment and a decision has been made to do an extended restorative investigation using a circle process, the Investigator will still undertake this first step of assessing the situation, but with a view to designing the extended investigation to meet the needs of the workplace. In that case, the assessment and circle preparation stage could be combined.*

Participants: The Investigator, the Employer, the Primary Parties, and depending on the circumstances as assessed by the Investigator, the Third Side.

Objectives:

- Assessing and recommending what process or processes will best restore the workplace*
- Allowing the Primary Parties to feel heard
- Developing an understanding of what happened (including identifying the relevant factual issues in dispute) and its impact on individuals and on the workplace as a whole*
- Revealing any systemic causes of the dispute

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- Identifying and making recommendations relating to any interim safety or other issues
- Encouraging a sense of responsibility on the part of others in the workplace
- Providing the Employer with a written record of the process (**Note:** This is, in part, to satisfy WorkSafe BC requirements.)

***Note:** *It is important to understand that an Assessment Investigation is not intended to result in a finding of facts and an adjudication of the issue of whether or not bullying or harassment has taken place. It is an initial assessment of the situation for the purpose of determining the best process for restoring the workplace. In that context, understanding what happened and its impact does not require resolving factual disputes, just understanding what is at issue. While clearing up misunderstandings through a facilitated conversation or mediation may be useful, the workplace may also need to tolerate differing versions of the narrative, as a natural consequence of its diversity. It is only if action is going to be taken against an individual (for example, termination of employment), based on allegations of serious misconduct, that fairness requires an adjudication of what happened. Responsibility for this adjudication rests with the manager responsible for the disciplinary action, though it may be delegated to an outside investigator to conduct a conventional investigation.*

Process

- a. The Investigator contacts the Employer to go over the proposed process, identify any legal or organizational constraints, clarify organizational structure (including to whom and when the Investigator is to report) and explore the Employer’s insights into the conflict.
- b. If a Union is involved, the Investigator contacts the Union representative responsible to explore initial process issues and obtain the Union representative’s insights into the conflict.
- c. The Investigator meets separately with the Primary Parties (and their support persons, and/or Union or Human Resources representative, as desired by each Primary Party) to:
 - i. Orient them to the process, in particular:
 - Emphasizing the non fault-finding, restorative approach
 - Explaining that the first step is to assess the situation and recommend the appropriate process

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- Explaining the role of the Investigator, and its limitations (not the arbiter of who is to blame, nor the outsider coming up with the solution);
- ii. Outline principles regarding confidentiality:
 - Respect for the individual’s desire for confidentiality
 - Importance of the person against whom serious allegations are being made knowing what those allegations are
 - Need for transparency to avoid wrong assumptions and encourage group responsibility,and obtain necessary consents;
- iii. Listen to the narrative
 - So that the Primary Parties can feel respectfully heard by someone impartial to the outcome of the dispute
 - Not to “decide” what happened, but to assess what is being alleged, what facts are at issue, the impacts on those involved, and to gain insight into the context of the dispute and the appropriate process response
 - By asking: What happened? How were you affected? What circumstances or systemic factors contributed to the dispute? Who else was involved or affected?
 - The Investigator may ask the support people attending what they can add to each of the questions and how they have been affected;
- iv. Explore a potential Third Side involvement
 - By asking: Who else should the Investigator speak to about what happened? Who might have useful insights into the contributing factors? Who might help in restoring a respectful workplace?
 - By clarifying confidentiality issues flowing from Third Side involvement;
- v. Explain process options and clarify whose decision it is with respect to process; (This will depend on the workplace rules governing the dispute.)
- vi. Identify and address power and safety concerns by asking:
 - What, if any, power or safety issues are there that will impact you or the workplace while the process is playing out? (Note: Power dynamics will often change as a result of, and in the course of an investigation.)
 - What, if any, steps can be taken to address those concerns?
 - Who can take those steps?and by coaching about how to deal with interim issues as they arise.

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- d. The Investigator may (at the Investigator’s discretion) meet with members of the Third Side individually or in groups (depending on the circumstances) to:
 - i. Orient them to the process, in particular to explain the restorative approach and the concept of the Third Side;
 - ii. Expand the narrative and explore contributory factors by asking: What happened? How were you affected? What, if anything, did you do in response? What circumstances or systemic factors contributed to the dispute? Who else was involved or affected?
 - iii. Identify and address immediate workplace and process concerns;
 - iv. Explore alternative processes and their possible future engagement.
- e. The Investigator assesses the information gathered and determines the process or processes most likely to restore the workplace. The toolkit of possible options include:
 - i. Referral to a manager for action
 - ii. Coaching of Primary Parties, managers or members of the Third Side
 - iii. Facilitated conversations or mediation between the Primary Parties or others in the workplace with ongoing disputes
 - iv. Workplace educational workshops
 - v. Conventional investigation - in limited circumstances where the conduct complained of is isolated to one individual, there are no obvious systemic contributing factors **and** serious discipline or termination of employment would follow if the allegations were validated. For reasons of due process, someone other than the restorative investigator should conduct the conventional investigation.
 - vi. An extended restorative investigation involving a Restorative Circle.
- f. Before making a final recommendation on process, the Investigator consults with all those whose buy-in is necessary for the recommended process to be successful.
- g. The Investigator reports to the Employer what process is recommended and why.
- h. The Investigator provides the Employer whatever written recording of the assessment investigation to the extent deemed helpful for future reference.

Note: *This would be the end of the investigation unless the Investigator recommends an extended investigation involving a Restorative Circle.*

2. Preparation for the Restorative Circle

Participants: The Investigator, possibly other internal or external conflict experts, and all potential participants in the Circle (see below).

Objectives:

- Educating participants as to the process
- Developing trust for the process and alleviating fears
- Clearing away extraneous issues that would not usefully be raised during the Circle
- Developing participants' skills in active listening and assertive (as opposed to aggressive or passive) communication
- Engaging the Third Side (possibly for the first time)

Process

- a. The Investigator meets with the Primary Parties separately to:
 - i. Go over the core elements of the circle process
 - ii. Identify who should be involved in the Circle and who should not be
 - iii. Hear about any process concerns and elicit suggested ground rules to meet those concerns
 - iv. Get ideas of what might be used as a talking object for the Circle
 - v. Possibly coach them in developing skills of assertive expression and active listening
- b. The Investigator may conduct facilitated conversations (possibly using a circle format) between the Primary Parties on issues that may not be appropriate for airing in the Restorative Circle.
- c. The Investigator determines, in consultation with others, which Third Side members will participate in the Circle.
- d. The Investigator meets with members of the Third Side to prepare them for the Restorative Circle.
 - i. If this is the first time that the Investigator has met with the Third Side, all the items covered under the Third Side in the Assessment Investigation section above would be covered (except the exploration of alternative processes.)
 - ii. The Investigator goes over the core elements of the circle process, including discussion of a possible talking object, elicits concerns about the process, and suggested ground rules.
 - iii. The investigator (or another trained person) could coach or present a workshop to participants on active listening, and assertive expression.

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- iv. The number of meetings and combination of those attending will depend on the circumstances. For example, the workplace may be divided into camps and it may be necessary to meet with each camp. Or it may be appropriate to have separate management and employee meetings.
- v. For various reasons, including orienting the group to the circle process, it may work well to conduct these meetings as circles. The Investigator will provide the talking object for any preparatory circles.

3. Restorative Circle

Participants: The Investigator, the Primary Parties, their support people (if desired), the Third Side or representatives from the Third Side (as determined by the Investigator, in consultation with others), Union and Human Resources representatives (as appropriate).

Note: In a Collective Agreement environment involvement of Union representatives and Human Resources personnel can be very helpful to the process and has longer-term advantages. These individuals are in the business of managing workplace conflict and so, often have useful skills to contribute to the process. They usually have a history with the organization's system of conflict management that brings useful insights to the Circle. Also, preparation for the Circle and the Circle itself provide opportunities for the Union and Human Resources to work collaboratively together, and to build their own and the organization's conflict management capacity.

Objectives:

- Creating a safe space for all participants to share their own perspectives and listen deeply to the perspectives of others about what happened and how it affected them
- Developing a common narrative, and identifying and normalizing relevant differences in perspectives on what happened
- Witnessing collectively the impact of the incidents on Circle participants
- Creating an opportunity for the emergence of collective insights
- Generating practical and sustainable ideas for preventing the reoccurrence of similar disputes in the future, healing the relationships harmed by the dispute and promoting a respectful workplace
- Reinforcing group responsibility
- Motivating Circle participants to implement corrective actions
- Developing recommendations for possible systemic changes

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- Demonstrating and experiencing respectful workplace interactions

Process

- a. Introduction
 - i. Review of circle process
 - ii. Introduction of talking object
 - iii. Finalization of ground rules (ground rules suggested in preparatory stage on flipchart and request for suggested additions/changes)
 - iv. Ceremonial beginning (what is appropriate will depend on the circle, but the idea is to mark the beginning of the Circle with some level of solemnity, marking it as different from other processes and something to be respected in itself)
- b. Circle questions posed by the Investigator:
 - i. What happened?
 - ii. How were you affected?
 - iii. What circumstances or systemic factors contributed to the dispute?
 - iv. What needs to be done to heal broken relationships and restore the workplace?
 - v. What could prevent similar disputes from happening again?
- c. The talking object will first go to the person who has experienced workplace conduct as disrespectful, bullying or harassing, then to the person against whom the complaint of bullying and harassment has been made, and then around the rest of the Circle. (This order may change, at the discretion of the Investigator.) The passing of the talking object will continue for each question for as long as the Investigator deems necessary to allow full expression by all participants and the emergence of collective ideas for the future
- d. Debrief of Circle experience
- e. Closing of the Circle

4. Reporting

Participants: The Investigator, the participants in the Restorative Circle and the Employer

Objectives

- Documenting the restorative investigation process, including
 - Providing the group with a common narrative of what happened



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- Identifying (and normalizing) relevant differences of perspectives on what happened
- Recording insights emerging from the Circle
- Noting action commitments and recommendations to others

Note: *The report also satisfies WorkSafe BC's requirements for a record.*

- Solidifying the commitment to group responsibility
- Informing the Employer of the outcome of the restorative investigation, including recommendations to the Employer for restorative actions
- Determining on a time and process for follow up

Process

- a. The Investigator drafts a report interpreting what emerged from the Restorative Circle and answering the following questions:
 - i. What is the common narrative of what happened?
 - ii. What are the differences in perspectives on key points in the narrative that may be relevant in the future?
 - iii. How were individuals and the workplace affected by the dispute?
 - iv. What circumstances or systemic factors contributed to the dispute?
 - v. What future action items were agreed to by the Restorative Circle participants to restore the workplace, and prevent, or otherwise minimize, future disrespectful conduct in the workplace?
 - vi. What recommendations are made to those outside the Circle for systemic changes or actions to prevent further disputes of this nature?
- b. The Restorative Circle group is reconvened (with any additions to the Circle that the Investigator deems appropriate).
 - i. The Investigator outlines the written report, allowing the group to correct any misinterpretations or misunderstandings.
 - ii. The roles and commitments of participants in implementing future actions are reviewed. (It may be appropriate to have a separate written agreement, drafted by the Investigator, to be signed by those making the commitments.)
 - iii. Next steps are discussed, including the possible creation of an implementation committee, and the form and timing of a future follow up.
- c. The Investigator finalizes the report, taking into account the feedback from the Restorative Circle.
- d. The Investigator presents the report to the Employer, and meets to answer any questions and discuss follow up.

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- e. The Investigator does whatever else is necessary to allow for closure for all involved in the process.

5. Follow up Circle

Participants The Investigator (or someone from within the organization trained in conducting Circles), the participants of the Restorative Circle, appropriate additions as determined by the Investigator or other Circle facilitator (including new employees in the workplace or managers who are responsible for follow up but were not part of the original Restorative Circle)

Objectives

- Checking in on whether expectations set at the Restorative Circle have been met
- Reinforcing collective responsibility
- Modifying the action plan as necessary

Process

- a. At an appropriate later date (to be determined and included in the Report), the Restorative Circle is reconvened.
- b. The commitments and recommendations recorded in the Report (and any collateral written agreements) are outlined.
- c. The Circle is asked the following questions:
 - i. What positive experiences have you had in the workplace since the Restorative Circle?
 - ii. What made those experiences positive?
 - iii. Have the commitments been kept and the corrective actions implemented?
 - iv. What, if any, obstacles have there been to following through with the commitments or recommended actions?
 - v. Are there any changes or additions that should be made to the proposed commitments or recommended corrective actions?
 - vi. Is a further follow up required?
- d. The deliberations of the Follow Up Circle are recorded and a follow-up report made to the Employer.