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Investigating Racial Microaggression in the Workplace

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INVESTIGATING RACIAL MICROAGGRESSION IN THE WORKPLACE

Racial microaggression is gaining attention as a specific concern in the workplace which may not bear the same hallmarks as more significant or recognized forms of racism. By definition, racial microaggression is 'small' or subtle, and may not amount to a breach of established workplace policy or standard. However, research shows that racial microaggression may impede employees' progress and participation at work.

This paper examines the small but growing body of case law considering complaints of racial microaggression in the workplace and provides recommendations for those tasked with investigating such allegations. The authors consider the specific problems associated with a category of conduct described as 'unconscious' or 'unintentional' that may still have an impact on the workplace. Finally, the authors reflect on how workplace standards related to racial discrimination have evolved over time and may continue to change.

I. What is Racial Microaggression?

The term "microaggression" is only relatively recently being used in workplace jurisprudence. As stated by Arbitrator Gordon F. Luborsky in *Levi Strauss & Co. v. Workers United Canada Council (Brown Grievance)*, [2020] O.L.A.A. No. 165 [*Levi Strauss*], at para. 206 (underlining added):

> … it is also appropriate to take administrative notice of the growing but regrettably all-to-slow acknowledgment of the continuing existence of racism of various forms or degrees in the workplace, including the recognition of "microaggression" defined in the Merriam-Webster on-line dictionary as "a comment or action that subtly and often unconsciously or unintentionally expresses a prejudiced attitude toward a member of a marginalized group such as a racial minority", which in reference to workplace conduct is an expression of systemic racism that similarly cannot be ignored by an employer properly fulfilling its obligations to ensure a safe and respectful working environment.

While the "'subtle'" nature of workplace racism has long been recognized in human rights jurisprudence[1], a microaggression differs in that the impact of each incident, taken on its own, may appear minor. In *Basi v. Canadian National Railway Company*, [1988] C.H.R.D. No. 2, the Canadian Human Rights Tribunal recognized early on the "subtle scent of discrimination" that may permeate an employer's decision to not offer a job to a qualified candidate – a significant impact – and made a finding on the basis of circumstantial evidence that the candidate's

protected characteristics played a part. Allegations of microaggression, by definition, concern conduct where the impact is small but the attitude of the prejudice expressed is overt, even if it is unconscious or unintentional.

Dr. Derald Wing Sue and colleagues[2] have proposed a framework for defining different types of microaggression and their "themes", ranging from ascription of intelligence (e.g. "You are a credit to your race") to assumption of foreign status (e.g. "You speak English so well!") or criminal status (e.g. clutching one's purse or wallet as a person of colour approaches) to assertion of "colour-blindness" (e.g. "I don't see colour – I treat everyone the same"). Other microaggressions convey the message that persons of colour are less deserving or do not belong (e.g. a physician is assumed to be a nurse, certain jewellery or hairstyles are deemed inappropriate or "unprofessional", an employee is perceived not to "fit in" and therefore not invited to a social gathering with co-workers, etc.). Many of these statements or behaviours may be engaged in by well-intentioned people who are unaware of the messages that are being communicated and the biases that inform them.

It is the repetition of 'small' racial microaggressions that makes them a workplace concern. Social science research suggests that ongoing exposure to microaggression may have a negative impact on job satisfaction, self-confidence, and physical and mental health.[3] The presence of racial microaggression puts employers at risk of losing valued employees who perceive themselves as alienated and isolated in the workplace – whether or not there is legal liability.

The current climate is one in which blatant and deliberate forms of racism are viewed as deeply unacceptable and therefore are less likely to occur in the workplace. Implicit biases, however, remain, and it is the behaviour resulting from those biases that manifests as microaggressions.

II. Cases Considering Legal Liability

To date, relatively few published decisions have considered the issue of an employer's liability for racial microaggressions in the workplace.

In *Canadian Union of Public Employees, Local 79 v Toronto (City)*, 2021 CanLII 22022 (ON LA), a supervisor's comment about the incidence of herpes in Africa was determined to be an "inappropriate act of racial microaggression", but did not amount to a violation of human rights legislation or the applicable collective agreement.

The grievor was employed as a sexual health counsellor in the employer City's public health department. Her evidence, which was accepted by the arbitrator, was that staff had been discussing at a team meeting whether information presented in an article about testing for herpes was accurate or not. The grievor and one other employee present were both immigrants

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[2] See Derald Wing Sue, *Microaggressions in Everyday Life: Race, Gender, and Sexual Orientation* (Etobicoke: John Wiley & Sons, Inc. 2010); Derald Wing Sue, C.M. Capodilupo, and A.M.B. Holder "Racial microaggressions in the life experience of Black Americans" (2008) *39*:3 *Professional Psychology: Research and Practice* 329; Derald Wing Sue, C.M. Capodilupo, G.C. Torino, J.M. Bucceri, A.M.B. Holder, K.L. Nadal, and M. Esquilin (2007) *62*:4 "Racial microaggressions in everyday life: Implications for clinical practice" *American Psychologist* 271.

[3] For an overview, and a discussion of the gaps and limitations of this body of literature, see: Gloria Wong, Annie O. Derthick, E.J.R. David, Anne Saw, and Sumie Okazaki, "The What, the Why, and the How: A Review of Racial Microaggressions Research in Psychology" (2014) 6:2 Race and Social Problems 181.

from countries in Africa. The grievor said she asked about the percentage of false positives for herpes testing and her supervisor, Mr. Chen, responded to the effect that, “Africans have the highest incidence of herpes”.

The grievor testified that Mr. Chen’s answer was “out of context” and “not relevant to the conversation being held”. She said she told Mr. Chen in the meeting that those types of generalizations were hurtful and offensive, as well as being “rooted” in racism. Mr. Chen acknowledged he should not have said it, and then moved on with the meeting.

Arbitrator Trachuk concluded that, by Mr. Chen making the comment without any foundational question, “it served only to embarrass the staff members who themselves or whose families immigrated from a country in Africa”, as well as propagating racial stereotypes about “black bodies being vectors of disease”. The arbitrator noted that in a different context – for example, a discussion about the prevalence of herpes worldwide – the same comment might not have been inappropriate. However, making the statement “out of context” and “in answer to a question from a Black woman” made it “a different kind of statement”.

While concluding that the statement was an act of racial microaggression, the arbitrator declined to find a violation of the article of the collective agreement prohibiting discrimination and harassment, which adopted definitions from the Ontario *Human Rights Code*. Mr. Chen’s single statement did not amount to a “course of vexatious comment or conduct” as required by those provisions, and did not, on its own, rise to the level of seriousness required for a single incident to amount to harassment. The arbitrator acknowledged the statement was “very hurtful” to the grievor and commented that it “appears to have been more the result of ignorance and insensitivity than intention.” The arbitrator then concluded that the “one microaggressive comment” was not sufficient to support a finding that the employer violated the Ontario *Code* or the collective agreement. This aspect of the grievance was dismissed.

A course of comments was considered in *Gordon v. Best Buy Canada Inc*., 2018 HRTO 1816. A supervisor in that case had made a comment to a worker who was Black and of Jamaican descent to the effect, “Aren’t all Black people afraid of dogs?” and then, when later acknowledging that he should not have made the comment, also qualified his apology by stating that he has other Black friends and he believed that the fear of dogs was rooted in slavery. A third incident took place in the presence of another supervisor, of Somali descent, where the supervisor used derogatory terms in the Somali language toward both her and the worker, which he also recognized and understood.

The panel in *Gordon* concluded that the three comments by the supervisor constituted a course of conduct, and amounted to harassment, but did not find the comments were so egregious or persistent as to create a “poisoned work environment”. Evidence of another employee also making a comment based on stereotypical views of Black people was “insufficient” to determine that other employees were emboldened to make racist comments. The panel also identified a number of reasons why the employer’s response to the applicant’s complaint about the supervisor’s conduct was unreasonable, including that the manager to whom the conduct was initially reported responded by laughing and saying the supervisor was “just like that”, and that the supervisor himself was promoted shortly after the incidents occurred. The applicant was awarded $1,500 in damages for injury to dignity, feelings, and self-respect.

In *Sahraoui v. School District No. 23 and others*, 2020 BCHRT 141, the BC Human Rights Tribunal considered whether the "demeanour" of two individual respondents constituted or supported a finding of discrimination. While the complaint in *Sahraoui* was dismissed, the decision leaves open the possibility that facial expression, gestures, and tone could, in other circumstances, amount to discriminatory conduct.

The complainant in *Sahraoui* worked as a French-speaking language assistant for the respondent Board of Education for approximately two months before his employment was terminated. He alleged, in part, that two teachers, Ms. LaPointe and Ms. Risso, did not allow him to perform his role in their classrooms (grade one and kindergarten, respectively). He said the teachers behaved "'aggressively'", were rude, treated him with "'disgust'", or looked at him with "disdain" (para 82).

Among the conduct complained of, Ms. LaPointe had asked the complainant to read with students in a corner of the classroom. Mr. Sahraoui viewed this direction as Ms. LaPointe "refusing" to let him engage in the classroom as a monitor and, because she had turned off a bank of fluorescent lights for a more peaceful environment, requiring him to be in a "'dark little corner'" (para 70). Ms. Risso had translated his words into English when he introduced himself to her students, which he characterized as "'sabotage'" (para 73). On another occasion, Ms. Risso was alleged to have "pushed" Mr. Sahraoui away while taking pictures of the students colouring, though the evidence suggested that he interpreted a direction that he move away – absent any physical contact – as a "'push'" or "'shove'" (paras 77-78).

Before the Tribunal, Ms. LaPointe and Ms. Risso provided non-discriminatory explanations for the impugned directions to Mr. Sahraoui. The respondents argued that his objections to these directions demonstrated he did not have a good understanding of his role as a language assistant for young students, and that it was for this reason that his employment, ultimately, was terminated. In considering specifically the allegation that Ms. LaPointe and Ms. Risso had treated Mr. Sahraoui with "disgust or disdain", the panel stated as follows (para 81):

> I appreciate that the kinds of behaviours Mr. Sahraoui alleges — grimaces, dismissive hand waves, aggressive tones, and the like — could cumulatively constitute an adverse impact in employment. I appreciate how those things could well spring from bias — conscious or unconscious — and that his experience in these two teachers' classrooms made him feel disrespected. There is much discussion in the public realm these days of the pernicious and persistent realities of microaggressions. The Tribunal must be alert to histories and current realities of discrimination against groups, including that to which Mr. Sahraoui belongs as a person of Arab origin and a Muslim.

The panel noted, however, that Mr. Sahraoui was interpreting the conduct of Ms. LaPointe and Ms. Risso in the context of his disagreement about his role as a language assistant in the classroom, which he viewed as illustrative of discrimination. In this case, the Tribunal concluded that Mr. Sahraoui's evidence was speculative, and he had no reasonable prospect of establishing that the teachers treated him poorly or that any protected characteristics were a factor in their treatment of him. The complaint was dismissed.

The Tribunal affirmed in *Sahraoui* that a complainant's conjecture and suspicions, in the absence of any evidence, does not transform alleged microaggressions into a breach of the BC *Human Rights Code*. As stated at paras 59-60:

> [59] Racial discrimination is often subtle and insidious: *Mezghrani v. Canada Youth Orange Network (CYONI) (No. 2)*, 2006 BCHRT 60 at para. 28, *R. v. Williams* 1998 CanLII 782 (SCC), [1998] 1 S.C.R. 1128 at pp.1142-3. However, as this Tribunal has also noted, "recognition of the subtlety of prejudice does not transform into a presumption of discrimination. Without a factual basis, a complainant's personal conclusion – no matter how sincerely felt – 'can only be said to be based on speculation and conjecture, rooted in feelings, suspicions and beliefs'": *Dibah v. Verart and others*, 2013 BCHRT 218 at para. 72, quoting *Ibrahim v. Intercon Security*, 2008 BCHRT 201 at para. 80.
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> [60] The Supreme Court of Canada made a similar point in *Québec (Commission des droits de la personne et des droits de la jeunesse) v. Bombardier Inc. (Bombardier Aerospace Training Center)*, 2015 SCC 39. Discrimination may be unconscious; however, social context of discrimination against a group is not enough on its own to establish discrimination in a given case. There must be evidence, even if circumstantial, that is "tangibly related" to the conduct at issue: para. 88.

Notwithstanding the 'subtlety' of racial microaggression, the law remains that speculation is not sufficient to establish discrimination. This principle is further illustrated in *Arnout v. LUSO Community Services*, 2020 HRTO 383 (CanLII), where the Ontario Human Rights Tribunal concluded there was no reasonable prospect that a supervisor's emails sent outside of work hours would amount to violation of human rights legislation, despite the assertion they amounted to a "microaggression".

The respondent in *Arnout* was a not-for-profit charitable organization providing community programs and services for children and families of ethnic and culturally diverse backgrounds. The applicant was employed by the respondent as a Settlement Worker.

The applicant made various allegations about workplace incidents which she claimed were racially motivated including incidents she characterized as "microaggressions". For example, she took issue with her supervisor's instructions regarding timesheets while she was attending a conference, and also her sending the applicant emails and expecting her to reply outside of work hours. The applicant mused during the hearing that she was "trying to find the link", suggesting perhaps it was "'because I was married and have a kid'" or because "'I'm a woman'" or a "Muslim wearing a veil'".

The Tribunal concluded the applicant had no reasonable prospect of successfully proving that the alleged conduct, even if accepted as fact, would amount to discrimination under the human rights legislation. The applicant's allegations of discrimination were essentially concerns about her interactions with her supervisor and the respondent's executive director in the course of the exercise of their supervisory duties and responsibilities. The complaint was dismissed.

In all but one of the above cases, allegations of racial microaggression were considered but ultimately dismissed as not constituting violations of human rights legislation. The cases demonstrate that the door is not closed to incidents of racial microaggression amounting to discrimination under the legislation, however, such a finding likely requires multiple statements or incidents, occurring outside the scope of ordinary directions from a supervisor or manager, and with evidence of a nexus to race or another protected characteristic. Even where a breach is found, the case of *Gordon* suggests that awards of damages based on a course of comments may be modest.

III. How Workplace Standards Have Changed Over Time

In a number of cases, panels have commented on the changing nature of workplace standards associated with racism and resultant change in expectations of employees. It is evident that racial slurs, which may have been treated as less serious at one time, are now generally, and rightly, considered to be egregious conduct attracting significant discipline. In turn, employers must now determine appropriate responses to conduct and remarks amounting to microaggressions, which until recently may not have been considered to warrant any discipline at all. Among the circumstances for consideration are the changing societal views of such conduct, opportunities for education, and the impact to workers who may have been affected by the impugned conduct.

This evolution framed the discussion in *Levi Strauss*, where Arbitrator Luborsky considered an employer's argument to the effect that any racial epithet directed by one employee to another, even on a single occasion, justifies terminating the employment relationship. The grievor in question had 23 years of service and a clear disciplinary record within the 12-month sunset clause under the collective agreement. At the outset of the decision, Arbitrator Luborsky stated as follows (para 1):

> In earlier times, a verbal altercation between employees was not considered as serious as one between an employee and a supervisor, often resulting in a relatively mild rebuke for an isolated offence because it didn't undermine managerial authority. Vocal clashes between workers that included racial insults rarely or minimally increased the level of discipline for an employee with an otherwise clear disciplinary record that was sometimes relegated to mere "shoptalk".

The conduct at issue in *Levi Strauss* far exceeded what would be considered a microaggression. The grievor in that case had used three (3) racial slurs towards his Black co-worker over the course of about 10 minutes. The conduct was summarized by Arbitrator Luborsky as follows (para 176):

> I therefore find that the Grievor made racially disparaging comments and slurs directed at or about Mr. Merraro before, during and after their 12-second verbal altercation on the mezzanine floor, specifically: (a) his statement to Ms. Norman, "The Black son-of-a-bitch I'm going to kill him"; (b) aggressively approaching and calling Mr. Merraro a "Black bastard" and then mouthing the word ["n-----"] in Mr. Merraro's face; and (c) stating in a "gloating" manner that he "got rid of that fucking [n-----]" or "that Black son-of-a-bitch" as he was returning to his work area where he subsequently told Ms. Norman: "I got his fucking ass fired".

The conduct amounted to "serious violations" of the employer's policies concerning workplace violence and harassment, as well as being contrary to human rights and occupational health and safety legislation.

In reviewing past labour arbitration cases regarding verbal altercations and racial comments or slurs (paras 181-198), the arbitrator noted that the "ultimate sanction of discharge" seems to have been reserved for those situations where the offensive language was egregious and the employee already had a disciplinary record. On this basis, the arbitrator rejected the employer's call for "automatic" dismissal for any racial epithet (para 203). However, commenting on legislative as well as societal changes to the meaning and understanding of workplace harassment, the arbitrator concluded that it is now appropriate to recognize and apply a

presumption that termination is *prima facie* considered to be within the range of reasonable disciplinary responses for racial slurs. As stated at para 207:

> [I]t is in my opinion now appropriate to regard any use of demeaning racial or ethnic slurs by one employee to another as very serious misconduct falling within the category of workplace offences that *prima facie* justifies terminating the employment relationship, amongst the appropriate disciplinary measures as part of the "corrective action" (in the words of [Section 32.0.7(b) of the Ontario OHSA]) that the employer is obliged to consider in response to workplace harassment, because of the hurtful nature of such conduct that undermines the smooth running of a diversified workforce.

In light of the "very serious nature" of the grievor's conduct, the arbitrator concluded that termination of his employment was within the range of reasonable disciplinary responses by the employer, and the presumption was not rebutted by the union (para 221).

It was not only the impact on the grievor's Black co-worker, Mr. Merraro, that was considered in the arbitrator's analysis, but the impact to the entire workforce. The arbitrator rejected the proposition that racially demeaning language and racial slurs could have a "lesser import" when not directed at anyone in particular. Rather, he noted that if such words are overheard by others in the workplace, they may contribute to a "poisoned work environment", as well as to an "impression that minority racial groups are somehow less entitled to equality" (para 188). In considering the grievor's conduct, specifically, he accepted the evidence of other co-workers present when the incident in question occurred, concluding that the grievor intended, through his actions, to "exercis[e] personal control over the workplace" and that his actions were both an attack on Mr. Merraro personally as well as "an affront to the workplace as a whole" (para 220). The arbitrator declined to reduce the penalty to the grievor and the grievance was dismissed.

In *Coca Cola Canada Bottling Inc. v. Teamsters, Local Union 213 (Davis Grievance)*, [2021] B.C.C.A.A.A. No. 32 [*Coca Cola*], Arbitrator Noonan considered whether dismissal was an excessive response in circumstances where the grievor had briefly worn a bandana with an image of a Confederate flag at work.

On July 7, 2020, the grievor had used a folded bandana to comply with the employer's mask policy. The bandana had a representation on it made up of part of a Confederate flag with a picture of a Confederate soldier and the words, "The South Will Rise Again". A supervisor, upon being notified of the mask by another employee, asked the grievor to remove the mask. Without objection, the grievor did so immediately (and used another piece of cloth to make a mask). In a meeting later the same day, when asked about the bandana by a manager, the grievor indicated he understood the concern and wouldn't bring the bandana to the workplace again.

Two days later, the grievor's employment was terminated on the basis of the bandana incident, as well as another incident that the arbitrator determined was not deserving of discipline. In considering the bandana incident, the arbitrator took note that societal views of certain symbols, including the Confederate flag. As stated at para 99:

> There is no doubt that the symbolic meanings of things change over time and that the Confederate flag now bears symbolic significance that may not have been obvious in society as a whole even a few years ago. Perhaps it should always have borne the same racist connotation it bears now. Societal views are changing, and education seems an appropriate method of helping workers and others to understand the historical meaning and the reasons for the negative

> symbolism of the Confederate flag. Indeed, not only did Ms. Allen say that she would bring that specific issue to crew talks to clarify that the Confederate flag is an inappropriate symbol, but the Employer planned to hold educational sessions on subjects such as unconscious bias and racism later in 2020. I certainly commend the Employer for those efforts, and I have no doubt the Grievor would have benefitted from such education.

The arbitrator characterized the grievor's misconduct in this case as the "failure to properly consider what the face mask, which he briefly wore, might symbolize to others" (para 111). In the circumstances, he concluded the misconduct was on "'the low end of the scale'" and therefore dismissal was an excessive response. The arbitrator noted there was no evidence in this case that the grievor was attached to the negative ideology or underlying symbolism of a confederate flag, and, in this context, the incident represented a "'teachable moment'" with an opportunity for education of the grievor and other employees, as well as the community at large (para 127).

In substituting a 5-day suspension for the dismissal, Arbitrator Noonan commented as follows (para 123):

> Workers today must be sensitive to issues of diversity and inclusion and must take care not to act in ways that marginalize, offend, hurt, denigrate, or otherwise discriminate against others.

Although the grievor in this case did not intend to cause harm, the bandana he wore as a mask was offensive in its symbolism and contrary to the values of the employer and Canadian society. A suspension was deemed an appropriate disciplinary response.

IV. Recommendations for Investigators

For investigators tasked with investigating workplace allegations of racial microaggression, a number of recommendations emerge from the case law as well as from the authors' own experience in such investigations.

Consider the timeframe. Expect that the allegations and evidence may span years. Complainants may find themselves prepared to come forward now about conduct that has happened in the past. Give attention to, and explore the reasons why, the complainant did not report earlier. Did the complainant not find it offensive at the time? Or did the complainant not perceive that the conduct complained of would be seriously considered for the purposes of an investigation? At the same time, consider whether the respondent can or should be held accountable for conduct that may not have been contrary to workplace policies or standards at the time the conduct occurred.

Be selective about the evidence accepted and for what purpose. For example, is a complainant's description of the respondent's past behaviour intended as a separate allegation, or as similar fact evidence?[4] If the complainant speaks about past experiences of racism, it could appropriately be considered as informing the impact to the complainant of the conduct under investigation but is not properly considered as evidence that the complainant is 'wrong' or 'mistaken' about the conduct alleged. The internal investigator in *McDonald v CAA South Central Ontario*, 2018 HRTO

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[4] For a discussion of principles, see e.g. *Neumann v. Lafarge Canada (No. 4)*, 2008 BCHRT 303, paras 11, 17-23.

163, accepted the evidence of the complainant's co-workers to the effect that the complainant was "'very pro-Black rights'" when investigation allegations of racism against the complainant's manager, without providing the complainant an opportunity to respond. The investigator in that case also failed to deal with the allegations in an impartial manner, as she commented to the manager at the beginning of the respondent interview that he had "dealt with [the complainant] great" by keeping the focus of his conversation with the complainant "on her behaviour" and "not the cultural difference" (paras 105, 184).

In addition, consider the witnesses who are interviewed and for what purpose. If a respondent has admitted making the statement at issue, then the issue for the investigator will be whether the statement demonstrates a bias or not. A witness who was present when the statement was made may not be able to provide useful insight into the subjective intentions of the person who made the statement. However, the witness may be able to corroborate (or not) the complainant's evidence of the respondent's tone, gestures, and facial expression, among other observations, which may be relevant and have bearing on the matter.

It is also worth noting that the investigator should be vigilant in ensuring that their own biases do not affect the analysis. In particular, discriminatory conduct may be perpetrated by any employee, regardless of the employee's own ethnic identity or national origin. The assertion that racialized individuals "cannot" themselves discriminate on the basis of race has been repeatedly rejected.[5]

Incorporate additional elements to the interview process. If a complaint has been made verbally, consider having the complainant review the written allegations before proceeding with balance of investigation in order to make sure all concerns have been captured and reflected. In the interview, ask the complainant how, in their view, the conduct complained of is related to race and what the impact has been. Be attuned to, and consider the impact of, stereotypes that may apply. Seemingly "neutral" words (e.g. "aggressive", "uneducated", "shy") may carry meaning associated with a prejudiced or stereotypical view of a member of a racialized group. Consider asking the complainant directly what these words mean for them and why the complainant feels they are negative or derogatory. Also consider asking witnesses, particularly those who are also members of racialized groups, what the impact, if any, has been to them in observing the conduct that is said to have occurred.

Avoid pitfalls in analyzing the evidence. The complainant's reaction, or lack of reaction, does not excuse the behaviour. A complainant who laughs when her co-worker tells a racist "joke" and then complains the next day may have been uncertain about how to respond in the moment. On the other hand, a complainant who reacts strongly or who expressly identifies a comment as being rooted in stereotypical views is not automatically an "aggressor" who has caused the conflict in question. Also remember that the respondent's innocent intent or friendly demeanour in making the comment does not preclude the investigator from finding that the comment expressed a prejudiced view.

Consider recommendations or outcomes beyond disciplinary action. As in *Coca Cola*, certain circumstances may reflect an opportunity for education and restoring relationships. Consider the

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[5] See e.g. *Armstrong v. Anna's Hair & Spa*, 2010 HRTO 1751, paras 53-55; *Bageya v. Dyadem International*, 2010 HRTO 1589, paras 136-37; *Valiani v. Canadian Labour Congress*, 2013 HRTO 684, para 100.

implications of the behaviour and the impact to those who witnessed or heard about it. Training or mediation may provide a better opening to resume effective working relationships rather than separating the parties involved. Even if the investigator's conclusion is that the statement or conduct did not amount to a breach of human rights legislation or workplace policy, ongoing efforts to address similar behaviour will assist in fostering equity and inclusion in the workplace.

Incorporating these strategies into workplace investigations provides meaningful opportunities for the complainant and other interviewees to air concerns and gain the sense that others in the workplace are listening, while also identifying and correcting incidents of conduct that could lead to legal liability. Properly conducted, workplace investigation is not just a tool for avoiding a finding of a breach of the applicable human rights legislation but for fostering workplaces where people feel valued and included.