

# Navigating Allegations of Discrimination in Schools

Moderator: Asha Rampersad, TMLLP

Panel:

Archana Ravichandradeva, PDSB

HRO

Lindsay Gluck, TMLLP

**TurnpenneyMilne**<sup>LLP</sup>  
Workplace Lawyers

**peel** District  
School Board



Human Rights Office



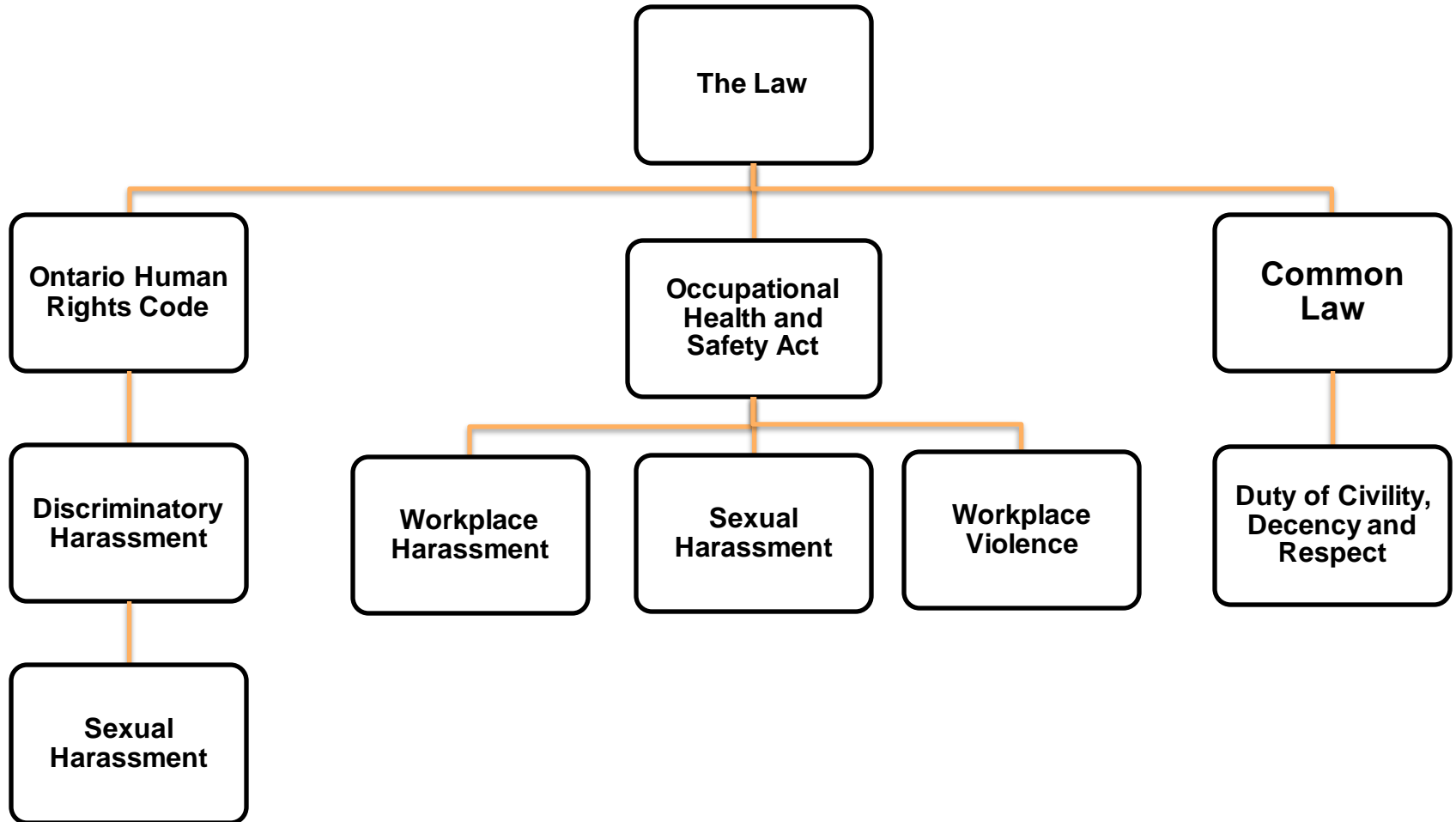
A wooden gavel with a dark, polished head and a lighter handle, resting on a matching wooden block. In the background, an open book with white pages is visible, slightly out of focus. The scene is set on a dark wooden surface.

# The Framework

# Legislative and Policy Framework

- *Occupational Health and Safety Act (“OHSA”)*
- *Ontario Human Rights Code (the “Code”)*
- School Board Policies including:
  - MOEs Policy/Program Memoranda

# The Legal Framework



# Definition – Discrimination and Harassment – OHRC

## Discrimination

- Unequal treatment based on a *Code*-related ground, whether imposing extra burdens or denying benefits.

## Harassment

- “Engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome”
- Based on a ground of discrimination



# Protected Grounds



# Types of Discrimination

## Direct

An employer not hiring women who wish to start families

## Indirect

Requirement to lift up to 50 lbs, despite no BFOR

## Subtle/ Microaggression

Women being cut off and not taken seriously in meetings

## Adverse Impact

An employer requiring all workers to work Friday evenings and Saturdays

## Systemic

Hiring and promotion decisions leading to few racialized persons in positions of leadership

# Examples of Discriminatory Harassment

- Jokes or innuendos related to a person's race, gender etc.
- Posting or circulating offensive pictures or materials
- Singling out a person for humiliating or demeaning teasing or jokes based on a protected ground
- Ridiculing a person because of characteristic related to a protected ground



# Poisoned Work Environment

- Comments or conduct based on a prohibited ground that create a discriminatory work environment
- Conduct does not have to be directed at recipient to poison work environment
- The Code prohibits creation of a poisoned environment

# Psychology of Harassment

- Intention does not matter
- Often about control and power
- Consider power imbalance between the parties – real, positional, or perceived (i.e., Administrator, teacher, support staff, tenure)



# Non-Discriminatory Harassment

# Test for Workplace Harassment



# Defining Workplace Harassment

- Normally a series of harassing incidents
- One serious incident
- Personal/psychological harassment or bullying

# Examples of Overt Bullying

- Physically or verbally abusive behaviour
- Inappropriate body contact
- Hazing, horseplay or intimidating behaviour
- Screaming or yelling
- Insults and name-calling
- Profanity
- Mimicking or mocking someone

# Examples of Subtle Bullying

- Disrespectful body language (e.g. sneering, smirking)
- Staring or glaring
- Crossing arms aggressively
- Finger pointing
- Exclusionary behaviour
- Gossip and rumour
- Silent treatment



# Forms of Complaint

- Formal or informal
- Raised by person who experienced conduct
- Raised by third party
- Anonymous

# Code of Practice

- Investigation that is appropriate in the circumstances
- Triggered by awareness of concern, regardless of formal complaint
- Must be objective

# Complaints Triage

- Conduct threshold assessment
- Does the nature of the conflict look more like interpersonal conflict vs. harassment?
- Conduct (and document) an intake meeting with complainant.
- If you assume that everything the complainant tells you is true, would it amount to discrimination or harassment?

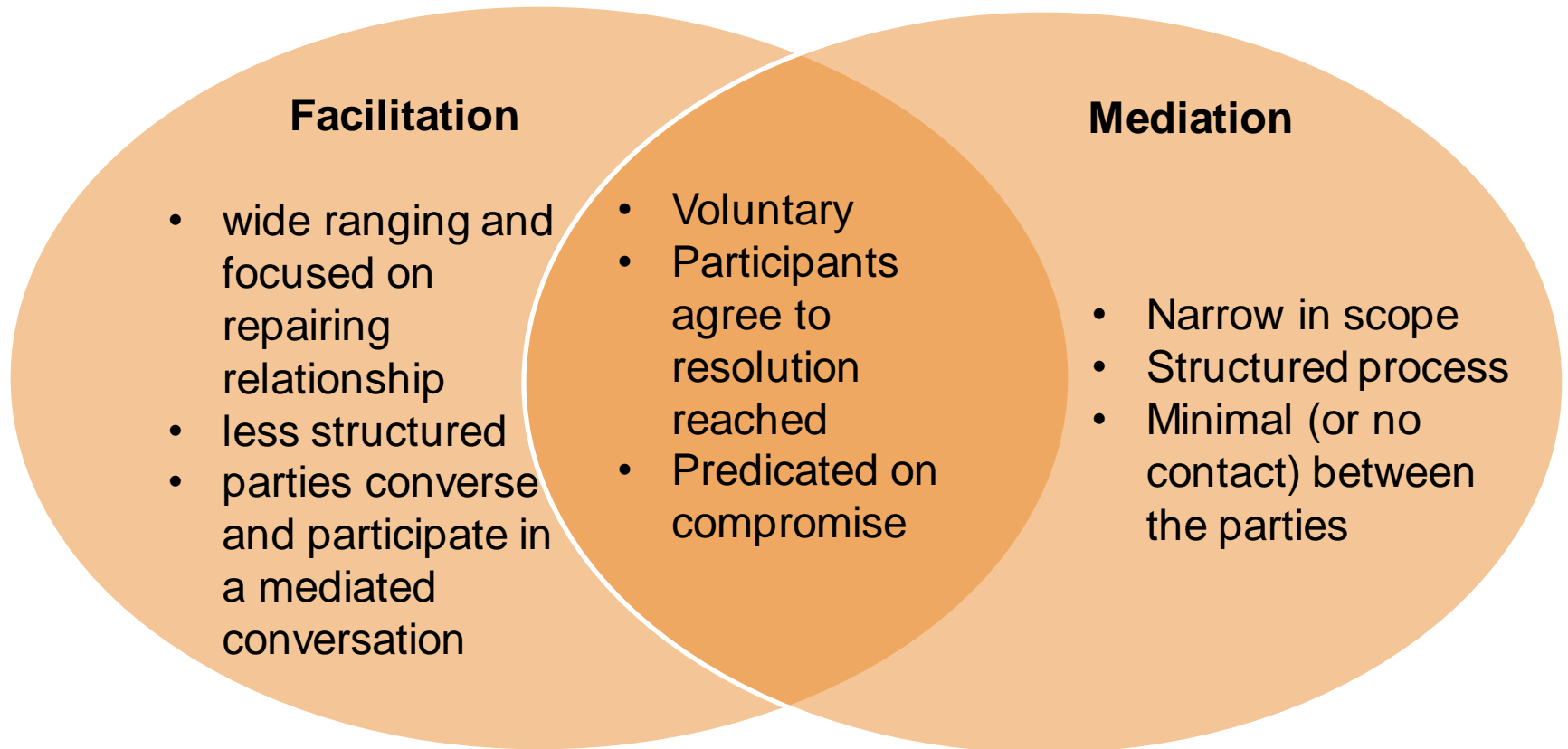
# Alternative Dispute Resolution

## Types of ADR:

- Mediation
- Facilitation
- Individual Coaching



# Facilitation vs Mediation



# Role of the HRO at PDSB



- Bring human rights lens to policies, procedures, practices and processes
- Provide confidential consults, unbiased guidance and support to PDSB community members and staff alike on Human Right concerns
- Provide alternate resolution services and provide remedial recommendations
- Investigate human right complaints where cannot be resolved through alternate resolution
- Provide education, training and outreach that center proactive approaches

# PDSB's Human Rights Policies and Procedures



## **Human Rights Office:**

- Human Rights Policy 51
- Human Rights Operating Procedure 1: Procedure for Addressing Violations of Policy 51 - Human Rights
- Human Rights Operating Procedure 2: Discriminatory Statements Response Procedure

## **PDSB:**

- Religious Accommodations
- Religious Exemptions
- Gender Identity and Expression Guidelines
- Anti – Racism Policy



# Role of the HRO at PDSB



- **Does not** have disciplinary authority
- **Cannot** find/award monetary compensation for findings under Policy 51 and/or the *Code*
- Focus is remedial, **not punitive**
- **Does not make** final remedial decisions
- **Does not** act as legal counsel or human rights counsel to the Board and/or Director's Office
- **Does not** direct Board decision-making

# Interesting Data from PDSB's HRO

## PDSB HRO

- Number of Consults between September 1, 2023 and January 31, 2024 - **137**
- In addition to the Consults the HRO provided, 1,467 reports were made under the Discriminatory Statements Reporting Procedure reporting the use of discriminatory slurs and statements in learning and working environments.
- Number of formal complaints received between September 1, 2023 and January 31, 2024 - **70**
- Data analysis on received complaints and DSRs based on Code grounds

# Human Rights Complaint at PDSB

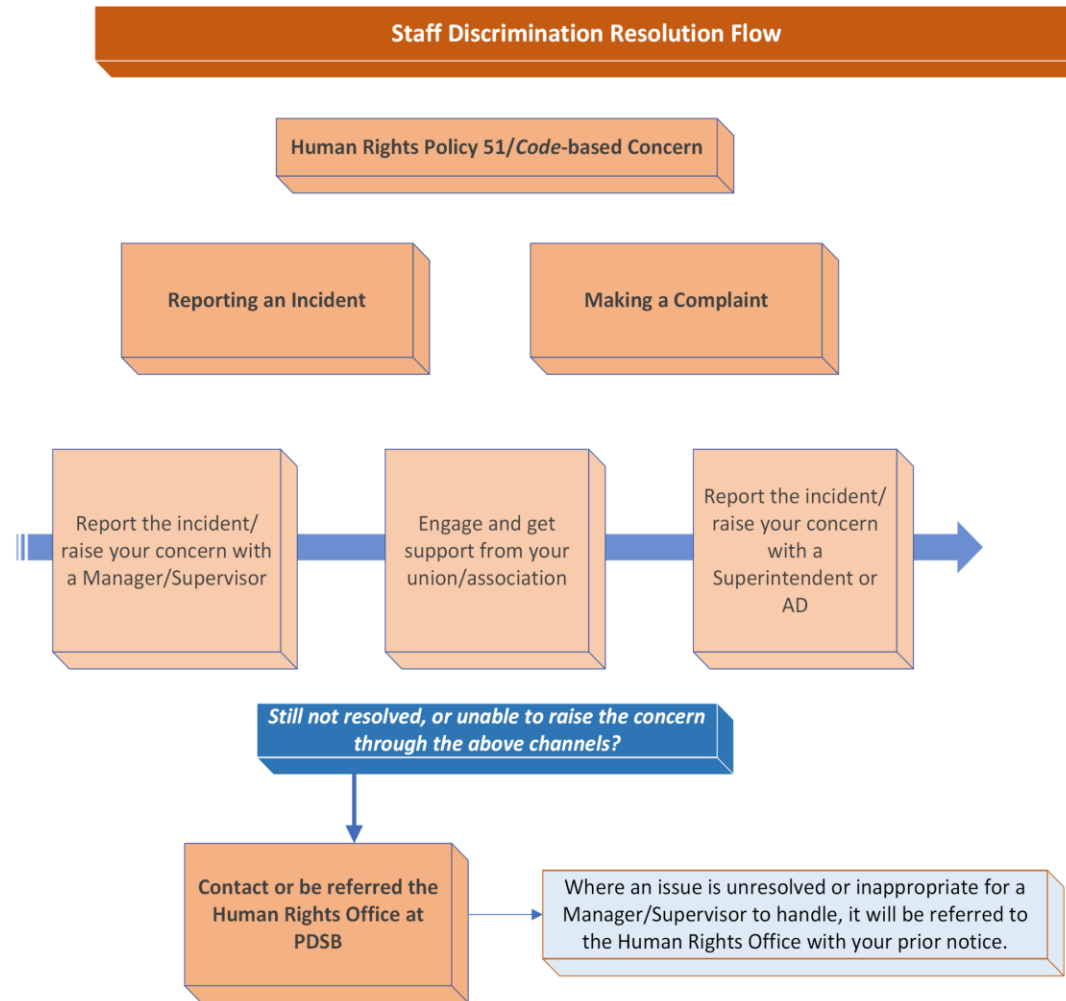
## Making a Human Rights Complaint

Discriminatory statements at PDSB can be raised:

- 1. With Board management:** School Admin → Superintendent → Associate Director
  - Most effective way of having school/student related concerns resolved quickly and effectively. Verbally, but preferably in writing
  - HRO can provide independent and impartial human rights consult to Board management to support their decision-making. Management responsible for findings and actions.
- 2. With the Human Rights Office**
  - Through online Human Rights Complaint and Support Form on PDSB Human Rights webpage.
  - Independent and impartial complaint mechanisms for:
    - Issues connected to a *Code* protected ground of discrimination;
    - cannot be resolved or raised with Board management;
    - More complex or serious in nature.

# PDSB Investigation Initiation

## PDSB Investigations Process



# Choosing an Investigator

## Things to Consider

- **When to send to external investigator?**
  - Complexity of facts
  - Capacity of Team
  - Status of Complainant and Respondent
  - Specific Expertise of Investigator required based on the facts
  - Resource Constraints
- **Considerations when choosing Investigators**
  - Lived experience of the investigator (knowledge or competency of particular forms of discrimination/oppression)
  - Look for clear and easy to understand reports





# Moving Beyond an Investigation

# Moving Beyond an Investigation

- The loop must be properly closed with parties
- Remediation requires time, attention and thoughtful consideration



# Design Appropriate Response

- Consideration of complaint
- Address the impact on others involved (witnesses, managers, students)
- Take the temperature of the team: check morale



# Next Steps

- Discipline up to and including termination
- Repair of dysfunctional team
  - Review policies
  - Conduct training
  - Workplace audit
  - Alternative dispute resolution

# Malicious Complaint

- Different than unfounded
- Bad faith, ill intentioned, with malice
- Consequences for unfounded: no discipline
- Consequences for malicious: follow discipline policy

Use caution: apply same approach to all malicious complaints

# The End

For more information please contact:

**Asha Rampersad**

**[asha@tmlp.ca](mailto:asha@tmlp.ca)**

**Lindsay Gluck**

**[lindsay@tmlp.ca](mailto:lindsay@tmlp.ca)**

**Employment Lawyers & Workplace Trainers**