

# Does Your Organization Have Investigation Overwhelm? Here's How You Can Tell.



There is no question that internal investigations are resource intensive. They need to be done fast, but thoroughly. They need to be done by people who have an appropriate skill level. Parties to an investigation need to be treated fairly and in a manner that is trauma informed. Investigation reports need to be well written and capable of withstanding legal scrutiny.

In addition to the challenges inherent in all investigations, circumstances can also arise in an organization that put a strain on its investigation program. For example, multiple complaints may come in at once, there may be an unexpected shortage of investigation staff (e.g., a departure or a leave of absence), or the organization may be going through significant organizational changes that tie up a lot of its resources.

It's easy to see, then, how an organization can get overwhelmed by its investigative work – regardless of whether that work relates to human rights issues or other types of misconduct. The issue is that investigation overwhelm can affect the quality of the investigative work and have a negative impact on those participating in the process. An investigation that never comes to an end, for example, can have a detrimental impact on the complainant and respondent and result in a lack of trust in the organization.

A faulty investigation program can also result in legal troubles for the organization. For example, in Ontario, a failure by an employer to take reasonable steps to address a complaint of discrimination can itself result in liability for the employer under the Ontario *Human Rights Code*.

So, how can an organization tell if its investigation program is at risk? Here is a list of helpful “clues”:

- There are no policies that speak to how complaints are handled.
- No one in the organization knows how many investigations are being conducted and the progress of each.
- The organization's investigators don't have a lot of training on how to conduct investigations or the required knowledge about the subject-matter of the complaints (harassment, discrimination, etc.)
- There are frequent complaints from employees who are parties to investigations; for example, complaints about not hearing about the investigation results or

investigators not communicating updates.

- Complaints “fall through the cracks” and are never investigated, or investigations begin many months after complaints are made.
- There are long periods of inactivity on files, even though there are no file-related explanations for the delays (i.e., investigators fail to move their files forward even when they can).
- The organization’s investigation staff are complaining about competing priorities or feeling overwhelmed.
- Investigation files (either physical or electronic) are not easily retrievable or are not up to date.
- Investigation reports are of poor quality – for example, the reports are disorganized, have typos and other obvious mistakes, or don’t address all of the allegations.
- There is nothing in place to track or verify the organization’s performance on its investigation program, like how long it takes to complete investigations, whether the parties were notified of the outcome, etc.
- Parties who have complained internally are turning to external means to have their complaints addressed (e.g., Human Rights Tribunal).

The more of these factors are at play, the greater the likelihood that an organization’s investigation program is in trouble.

The next question is, what should an organization do if its investigation program is at risk? I think a good first step is for the organization to appoint someone – either internally or externally – to do a review of their investigation program. This needs to be someone who knows how to conduct investigations and is familiar with the types of complaint or investigation-related issues that create risks for the organization.

The purpose of the review would be to identify any existing issues and propose solutions on how to address these. The review could include, for example, taking stock of the volume of investigations, determining whether there is an adequate system for tracking investigations, assessing whether there are sufficient resources in place to support the investigation program, and looking at a sample of investigation reports.

After doing a review, the organization can put a plan of action in place. The plan could include, for example, ensuring that there is adequate oversight for all of the organization’s investigations, obtaining training for the organization’s investigators, increasing investigation staff, implementing record-keeping procedures, and collecting data to track the performance of the investigation program. The plan should also include regular “health checks” of its investigation program.

These steps can help to elevate the quality of an organization’s investigation program. The key is to act before the overwhelm really sets in.

*The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.*

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