

Mushy Mandates And Scope Creep: How Investigators Lose Their Way



"If you can't write out your mandate in a short and simple paragraph, don't start."

When delivering our [Workplace Investigation Fundamentals](#) sessions, this is how I start the discussion on mandate. Simply put, an investigator's mandate is the thing (or things) that they are being asked to do, the decision (or decisions) that they are being asked to make. It provides a roadmap for the investigator to follow across their investigation process. And like any journey (pre-smart phone, at least), if you leave without a good roadmap, it's very easy to get lost.

Regardless of whether you are an internal or external investigator, it is important that your process is, among other things, both fair to the parties and efficient for the sake of all involved: the parties, your client, your employer, etc. Understanding your mandate and then following it at all times will help you achieve both goals.

First, your mandate should tell you which specific decisions you are being asked to make at the conclusion of the evidence-gathering portion of your process. This is most often some combination of what I like to call the what, the so-what, and the now-what.

- **What?** – what happened, i.e., factual findings
- **So what?** – ok, I've found these things happened, so what, i.e., a determination as to whether a policy (or legislation) has been breached
- **Now what?** – given my findings and conclusions, now what are we going to do about it, i.e., recommendations

Knowing whether you're being asked for one, two, or all three of these decisions will impact the evidence you gather and the content of your report. For example, if I am only being asked for factual findings, the respondent's knowledge of the policy and related training is irrelevant. If I'm being asked for recommendations, it is likely important to know what has already been provided to a respondent who is found to have breached a policy.

In addition to the what, the so-what, and the now-what, as an investigator you also need to know one more thing: **About what?** The more narrowly tailored the answer to this question, the more easily an investigator can stay on mandate, gather the

information the organization needs, and produce an efficient and defensible report. Ideally, this can be as specific as, for example, “You are to investigate the six allegations of sexual harassment against (respondent) contained in (complainant’s) complaint, dated June 6, 2020, make factual findings, and apply the organization’s anti-harassment policy.” Where the starting point is not so clearly defined, it is important to still try to create a focused scope for the process.

Mushy¹ mandates – for example, “Determine whether the respondent is a bully towards their peers or subordinates” – lead to mushy processes, mushy interviews, and mushy reports. Worse, when an investigator is not given clear parameters for their process, there is a risk that they will see everything as within scope, leading to scope creep. Scope creep can turn every investigation into a culture assessment and/or 360 process; it can be duplicative of other HR processes, generally inefficient, or even non-neutral. An investigation without a clear mandate can easily devolve into fishing because the investigator might feel they can ask anyone about anything related to the respondent.²

Does this mean that we, as investigators, ignore information brought to our attention that, if true, would breach the organization’s policy but is outside of our mandate? Of course not. But it means we do not unilaterally decide to pursue this information within our investigation. Such information should trigger a conversation with the source of your mandate about what to do with that information. That conversation could lead to an expansion of the investigator’s mandate (and all the procedural steps that such an expansion would entail) or a decision to address the information outside of the current investigation.

Many of the investigator’s most challenging decisions – Who do I talk to? What do I ask them? What do I include in my report? What can I leave out? – can be answered by a good mandate. Talk to the people with information about your mandate. Ask them about the alleged incidents within mandate. Include any evidence gathered that is relevant to your mandate, leave out the rest. When put like this, it seems obvious, but I have seen many well-intentioned investigators rush into an investigation without a good mandate and quickly lose their way. And that’s why I say, “If you can’t write out your mandate in a short and simple paragraph, don’t start.” To avoid the mushy mandate, to avoid the scope creep, and to ensure a fair and efficient process for all.

Footnotes

1 What do I mean by this technical term?

mushy (adjective)

- a. having the consistency of mush
- b. lacking in definition or precision

2 See, for example, *Shoan v. Canada (Attorney General)*, 2016 FC 1003 (CanLII), or *Amalgamated Transit Union – Local 1587 (Juteram et al) v. The Crown in Right of Ontario (Metrolinx)*, 2023 CanLII 72192 (ON GSB).

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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