The Defensible Investigation: What Canadian HR Must Be Able to Prove After a Workplace Complaint



A Good Investigation Is Built for the Day Someone Reviews the File

Most workplace investigations are judged after the hardest part is over.

The complaint has been made. People have been interviewed. The report has been written. The employer has made a decision. The workplace has tried to move on.

Then, months later, someone asks what happened.

That person may be a lawyer, arbitrator, human rights tribunal, OHS officer, union representative, executive, board member, or external investigator. They may not care how busy HR was at the time, how difficult the personalities were, or how uncomfortable the complaint made everyone. They will care about the record. Did the employer respond promptly? Was the investigator impartial? Were the allegations clearly identified? Did the respondent have a fair opportunity to respond? Was evidence gathered and assessed? Were interim safety measures considered? Was confidentiality handled properly? Was there follow-through after the findings?

That is the real test of a defensible workplace investigation.

For Canadian HR leaders, this matters because workplace complaints are no longer viewed as informal people problems that can be managed quietly behind closed doors. Harassment, violence, discrimination, retaliation, psychological safety, and accommodation issues can trigger legal duties under occupational health and safety legislation, human rights legislation, employment standards laws, labour relations frameworks, and common law obligations.

In federally regulated workplaces, the Work Place Harassment and Violence Prevention Regulations create a structured prevention and response framework for harassment and violence occurrences. Federal guidance states that employers must understand harassment and violence, develop a prevention policy with the applicable workplace committee or representative, and assess workplace harassment and violence risks. (Canada) In Ontario, the Occupational Health and Safety Act requires employers to have workplace violence and workplace harassment policies and programs, and Ontario's employer investigation guidance is designed to help employers understand their duties

when workplace harassment complaints or incidents arise. (Ontario)

The practical message is clear: once a complaint lands, HR must be ready to show not only what conclusion was reached, but how the organization got there.

Defensibility Starts Before the Complaint

A defensible investigation does not begin when an employee makes a complaint. It begins with the employer's workplace policies, reporting channels, training, role clarity, and documentation practices.

If the organization has no clear harassment, violence, discrimination, or complaint procedure, HR may be forced to build the process while already in the middle of a sensitive file. That creates confusion. Employees may not know where to report concerns. Managers may mishandle early disclosures. The employer may lose evidence or fail to take immediate safety steps.

The stronger approach is to build the investigation infrastructure before it is needed.

Employees should know how to report concerns, including what to do if the concern involves their direct supervisor. Managers should know when they must escalate an issue to HR. HR should know how to triage complaints, decide whether an internal or external investigator is appropriate, preserve evidence, manage confidentiality, and determine whether interim measures are needed.

This is also where jurisdiction matters. A federally regulated employer, an Ontario employer, an Alberta employer, and a British Columbia employer may all have overlapping duties, but the details will vary. Alberta's OHS requirements changed in 2025, with updated violence and harassment prevention obligations under Part 27 of the OHS Code. Alberta's government resource on violence and harassment was updated in April 2025 and explains key legal requirements for preventing workplace violence and harassment. (ohs-pubstore.labour.alberta.ca)

HR does not need to memorize every section of every statute, but it does need a process for identifying which legal framework applies before deciding how to proceed.

The First 48 Hours Matter

The early handling of a workplace complaint often shapes everything that follows.

When a complaint is made, HR's first task is not to prove or disprove the allegation. It is to understand what has been reported, assess immediate risk, preserve the integrity of the process, and protect the people involved.

That early triage should be careful and disciplined. HR needs to identify who is involved, what conduct is alleged, when and where it occurred, whether there are witnesses or documents, whether there is any immediate safety concern, and whether the allegations involve harassment, violence, discrimination, reprisal, accommodation, or another workplace issue.

If there is a potential safety concern, interim measures may be necessary before the investigation is complete. Those measures could include separating employees, changing reporting lines, adjusting schedules, restricting contact, providing leave, arranging security support, or taking other steps appropriate to the risk. The key is that interim measures should be protective, not punitive, unless discipline is independently justified.

This is where employers sometimes make mistakes. They either do too little because they do not want to “prejudge” the complaint, or they overreact in a way that effectively punishes one party before the facts are established. A defensible process requires balance. The employer can take reasonable steps to protect employees and the workplace while still preserving procedural fairness.

HR should also give clear instructions about confidentiality and retaliation. The parties should understand that the complaint will be handled as confidentially as possible, but absolute confidentiality cannot be promised because the employer may need to disclose information to investigate and respond. Employees should also be warned that retaliation, interference, intimidation, or gossip that undermines the process may lead to discipline.

Procedural Fairness Is Not Optional

A workplace investigation does not need to look like a court proceeding, but it must be fair.

At minimum, the respondent must understand the substance of the allegations and have a meaningful opportunity to respond. The complainant should be treated respectfully and given the opportunity to provide relevant information. Witnesses should be interviewed where appropriate. Evidence should be considered objectively. The investigator should not reach conclusions before hearing both sides.

Procedural fairness also requires impartiality. In some cases, HR can investigate internally. In others, an external investigator may be necessary. External support may be appropriate where the allegations involve senior leadership, where HR has prior involvement in the dispute, where the facts are highly sensitive, where the workplace is unionized and the matter may proceed to arbitration, or where the organization needs greater independence to preserve confidence in the process.

A common investigation error is framing the complaint too narrowly. For example, HR may treat an issue as a “personality conflict” when the alleged conduct may actually involve harassment, discrimination, or reprisal. Another error is failing to give the respondent enough detail to respond meaningfully. A vague allegation such as “you created a toxic work environment” is usually not enough on its own. The respondent needs to know the conduct at issue, the approximate timing, and the context.

Fairness does not mean the parties control the process. It means the employer controls the process in a way that is respectful, impartial, and capable of being defended later.

Documentation Is the Investigation’s Memory

In an investigation, documentation is not administrative housekeeping. It is the memory of the process.

Months later, memories fade. Employees leave. Managers move roles. The investigator may no longer be available. If the file is incomplete, the employer may struggle to prove what was done and why.

A defensible investigation file should show the complaint or intake record, the allegations being investigated, the applicable policies, the investigator assignment, interim measures considered or implemented, communications with the parties, confidentiality and anti-retaliation instructions, evidence reviewed, interview notes, credibility assessment, findings, rationale, outcome, and follow-up steps.

The file should also document why certain decisions were made. If HR decided not to interview a witness, the reason should be clear. If interim measures were not required, the file should show that they were considered. If allegations were narrowed, expanded, or reframed, that should be documented. If accommodation issues arose during the process, the file should show how they were handled.

Good documentation does not need to be excessive, but it must be complete enough that someone outside the process can understand what happened.

Poor documentation creates avoidable risk. Even a reasonable investigation can look weak if the file does not show the steps taken. Conversely, careful documentation can demonstrate that the employer acted responsibly, even when the facts were difficult.

Credibility Findings Need Care

Many workplace investigations turn on credibility. There may be no video, no email, and no independent witness. The investigator may need to assess competing accounts and decide what likely happened.

This is difficult work, and it requires more than deciding who seemed more believable.

Credibility analysis should consider consistency, plausibility, detail, motive, corroboration, contemporaneous documents, behaviour after the incident, and whether the account aligns with other evidence. A complainant should not be disbelieved simply because they were emotional, delayed reporting, or remembered some details imperfectly. A respondent should not be disbelieved simply because the allegation is serious. The investigator must assess the evidence fairly.

The standard in most workplace investigations is not proof beyond a reasonable doubt. It is usually the balance of probabilities. The question is whether it is more likely than not that the conduct occurred.

That standard should be applied carefully. Serious allegations require careful evidence analysis because the consequences can be significant for everyone involved.

Trauma-Informed Does Not Mean One-Sided

More HR teams are using trauma-informed investigation practices, especially in harassment, violence, sexual harassment, bullying, and psychologically harmful conduct cases. This is a positive development when it is done properly.

A trauma-informed approach recognizes that people who have experienced distress may not disclose information in a perfectly linear way. They may remember details gradually. They may appear emotional, flat, angry, hesitant, or inconsistent. The investigator should avoid judgmental questioning, explain the process clearly, provide breaks where needed, and conduct interviews respectfully.

However, trauma-informed does not mean abandoning neutrality. It does not mean assuming the allegation is true before the evidence is assessed. It does not mean denying the respondent a fair chance to respond. It does not mean lowering the standard of analysis.

The best investigations combine empathy with discipline. They protect dignity while preserving fairness.

The Outcome Must Address More Than the Finding

An investigation does not end when the investigator decides whether the allegation is substantiated.

The employer must decide what to do next.

If allegations are substantiated, the response may include discipline, coaching, training, reporting-line changes, workplace restoration, policy updates, safety measures, or other corrective action. The response should be proportionate to the findings and consistent with the employer's policies and past practice.

If allegations are not substantiated, the employer may still need to act. An unsubstantiated complaint may reveal communication problems, team conflict, workload stress, unclear expectations, or a need for manager training. It may also reveal that the workplace relationship has been damaged and requires repair.

The employer also needs to close the loop with the parties. The complainant should be told that the investigation has concluded and that appropriate action has been taken, while respecting confidentiality and privacy. The respondent should be informed of the outcome as it affects them. Both parties should be reminded about anti-retaliation expectations.

HR should also monitor the workplace afterward. Retaliation risk often rises after findings are issued. Employees may avoid each other, take sides, gossip, withdraw, or continue the conflict in subtler ways. A defensible employer does not assume the workplace is fixed just because the file is closed.

The Risk of Doing Too Little

One of the most dangerous responses to a workplace complaint is informal minimization.

A manager says, "That's just how he talks." HR tells the employee to work it out. A complaint is treated as interpersonal friction. No one documents anything. No one interviews witnesses. No one assesses whether harassment, violence, discrimination, accommodation, or reprisal may be involved.

That approach may feel easier in the moment, but it creates significant risk.

Canadian employers are expected to take workplace harassment and violence seriously. Federally regulated employers must follow a structured prevention and resolution framework under the federal regulations. (Canada) Ontario employers must understand and meet duties around workplace violence and harassment prevention and investigation under the OHSA. (Ontario) Human rights issues add another layer because employers have a duty to respond appropriately to discrimination and accommodation concerns.

Doing too little can lead to complaints, grievances, constructive dismissal allegations, human rights applications, OHS scrutiny, reputational damage, and loss of employee trust.

But there is another risk as well. When employees believe complaints will not be handled properly, they stop reporting internally. Problems then surface later in more formal, adversarial, and expensive ways.

The HR Investigation File Checklist

A defensible investigation file should be able to answer the following questions

clearly.

What was reported, when, and by whom? What policies or legal duties were triggered? Who conducted the investigation, and why was that person appropriate? Were immediate safety or interim measures considered? Were the allegations clearly defined? Were the parties informed of the process? Was the respondent given a fair opportunity to respond? What evidence was gathered? Which witnesses were interviewed? How was credibility assessed? What findings were made and why? What corrective action or follow-up occurred? Were accommodation issues identified and addressed? Were retaliation risks monitored? Was the outcome communicated appropriately?

This checklist is not just for HR. It is a discipline tool for the organization. It ensures that difficult complaints are handled consistently instead of depending on the instincts of whichever manager hears the concern first.

The Investigation Is Part of the Culture

Employees judge workplace culture by how the organization behaves when something difficult happens.

A respectful workplace policy may look strong on paper, but employees notice whether complaints are handled fairly. They notice whether senior employees are treated differently. They notice whether complainants are protected or isolated. They notice whether respondents are given a fair chance to respond. They notice whether HR follows through or simply closes the file.

A defensible investigation protects the organization legally, but it also protects credibility. It tells employees that the workplace is serious about respect, safety, fairness, and accountability.

For Canadian HR leaders, that is the real standard. An investigation should not be designed only to survive legal scrutiny. It should also demonstrate that the employer can be trusted with serious workplace concerns.

When HR can prove both, the investigation has done its job.