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Workplace Investigation Practice Essentials Plus: A Trauma-Informed and Intersectional Lens within Your Process

by

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On Developmental Services HR Forum
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Sheraton Toronto Airport Hotel & Convention Centre**

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Workplace Investigation and Mediation

Overview of this Hour Together

- Introduction as Lawyer-Investigator Working with Developmental Services
- Essential requirements for a legally defensible workplace investigation
- Trauma and investigation techniques
- Intersectionality and investigation techniques
- Conducting trauma-informed workplace investigations through an intersectional lens
- Resources



Workplace Investigation Essentials

- Competent Investigator
- Impartial Investigator
- Fair Investigation Procedure
- Timely Investigation and Reporting
- Well-recorded Policies, Facts,
and Documents
- Well-reported Investigation





A Definition of Trauma

Traumatic events overwhelm the ordinary systems of care that give people a sense of control, connection and meaning.

Traumatic events are extraordinary, not because they occur rarely, but because they overwhelm the ordinary human adaptations to life . .

Trauma and Recovery: The Aftermath of Violence – From Domestic Abuse to Political Terror

Judith Herman (1992)

Trauma- Informed Investigation Techniques



Overall Goal: Avoid Re-traumatization



Investigation Plan – schedule the date and time to bring your best self, plan sufficient time for the interview, reserve neutral and private location



Introductory Correspondence – explain in advance what is going to happen in the interview process



Interview Scheduling – empower through choice and support



Interview – actively listen, demonstrate empathy, allow for sensory recall, avoid linear questioning, avoid asking “why”, and take breaks



Written Report – use lay language rather than jargon, avoid opinion



A Definition of Intersectionality

Intersectionality refers to the interconnectedness of social categories, such as race, gender, class, sexuality, and ability – all of which shape an individual's experiences and opportunities.

Original work by Crenshaw, Kimberlé. "Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Policies." *University of Chicago Legal Forum* 1989, no. 1 (1989): 139-167.



Intersectionality in Workplace Investigation

Overall Goal: Respecting “Diversity of Person”

Investigation Plan – allow for flexibility in process, such as providing questions in advance for a neurodiverse interviewee

Introductory Correspondence – pronounce and spell names correctly; respect honorifics; mention accommodation available

Interview – avoid assumptions and unconscious bias; use appropriate pronouns and titles, and clarify if you do not know

Report – review and reflect on language use; engage a reviewer who can identify language that could unintentionally harm

The Investigator: Competent & Impartial ... *Plus*

The investigator has workplace investigation training,
AND experience in conducting workplace
investigations,

AND is both actually and perceived to be unbiased in
relation to the interviewees and the issues at hand.

Plus ask:

Can the investigator be seen as unbiased?

Will Complainants and Respondents see the
investigator as someone who can relate to their lived
experiences?



The Investigation: Fair and Timely ... *Plus*

- Good Faith, Non-arbitrary Approach
- Impartiality – Avoid Biases
- Relevancy – Consider Relevant, not Extraneous Matters
- Competency – Interpret Laws, Policies, Rules Correctly
- Ontario Guidance on Timeliness – 90 days

Plus ask:

Were interviewees afforded procedural fairness?

Was the process flexible and accommodating to the needs of interviewees?

Policies, Facts, and Documents:

Record-keeping – *Plus*

- ✓ Policies interpreted in report.
- ✓ Interview notes or interviewee statements.
- ✓ Documents: memos, letters, emails, texts, social media screenshots, audio or visual files, etc.
- ✓ Safe storage electronically and/or physically.
- ✓ Keep on file – for seven years – or as governed by your regulator.

Plus ask:

Have all **relevant** interviewees and all **relevant** documents been considered and maintained?

Is there a record of what happened during meetings beyond the interview notes?



The Investigation Report – *Plus*

Adjudicators request reports . . . It is important to include:

- ✓ Mandate and scope
 - ✓ Investigation process
 - ✓ Facts based upon interviews
 - ✓ Document citations, or appendices
 - ✓ Credibility assessments
 - ✓ Analysis and Conclusion
- Plus: Explain –***
- Delays in the investigation
 - Reasons for credibility findings
 - Decisions not to interview all witnesses
 - Decisions not include all documents



Resources

- Ontario *Human Rights Code* <https://www.canlii.org/en/on/laws/stat/rso-1990-c-h19/latest/rso-1990-c-h19.html> and Guidance: <https://www.ohrc.on.ca/en/book/export/html/10985>
- Ontario *Occupational Health and Safety Act* <https://www.canlii.org/en/on/laws/stat/rso-1990-c-o1/latest/rso-1990-c-o1.html> and Guidance: <https://www.ontario.ca/document/guide-occupational-health-and-safety-act>
- Ontario Code of Practice to address workplace harassment <https://www.ontario.ca/page/code-practice-address-workplace-harassment>
- Forensic Experiential Trauma Interview (FETI) developed by Russell Strand, Summary article with links to more resources. (This Investigator Tip was developed by John E. Reid and Associates Inc. 800-255-5747 / www.reid.com." Inquiries regarding Investigator Tips should be directed to Toni Overman toverman@reid.com.)
- Myrna McCallum, Indigenous Lawyer, Workplace Investigator, and Trauma-Informed Practice Educator, <https://www.myrnamccallum.co>
- Courage to Act Knowledge Centre (post-secondary-institution, gender-based-violence focus, yet comprehensive resource for all) <https://www.couragetoact.ca/knowledgecentre>
- Listen, Acknowledge, Share, Empower, Return, (LASER) from *The Empathetic Workplace, Five Steps to a Compassionate, Calm, and Confident Response to Trauma on the Job*, by Katherine Manning, <https://katharinemanning.com/about-katharine/>
- The Compassion Fatigue Workbook, <https://tendtoolkit.com/the-compassion-fatigue-workbook-mathieu/>, by Francoise Matheiu.

Thank you!

***Questions, Comments, Suggestions?
I am happy to connect as well . . .***



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