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## Workplace Harassment, Investigations & Prosecutions

# EP 71

Wednesday, June 17th, 2026  
10:30 a.m. E.D.T.



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# Meet Your Presenters

**Shauna Fabrizi**

SpringLaw Lawyer

**Vivian Liu**

SpringLaw Lawyer

A portrait of Shauna Fabrizi, a woman with long, wavy brown hair, wearing a dark blue blazer over a white top. She is smiling and looking towards the camera. A green name tag is positioned over her chest.

Shauna Fabrizi

A portrait of Vivian Liu, a woman with long, wavy dark hair, wearing a purple blazer over a black turtleneck. She is smiling and looking towards the camera. A green name tag is positioned over her chest.

Vivian Liu

# Land Acknowledgement

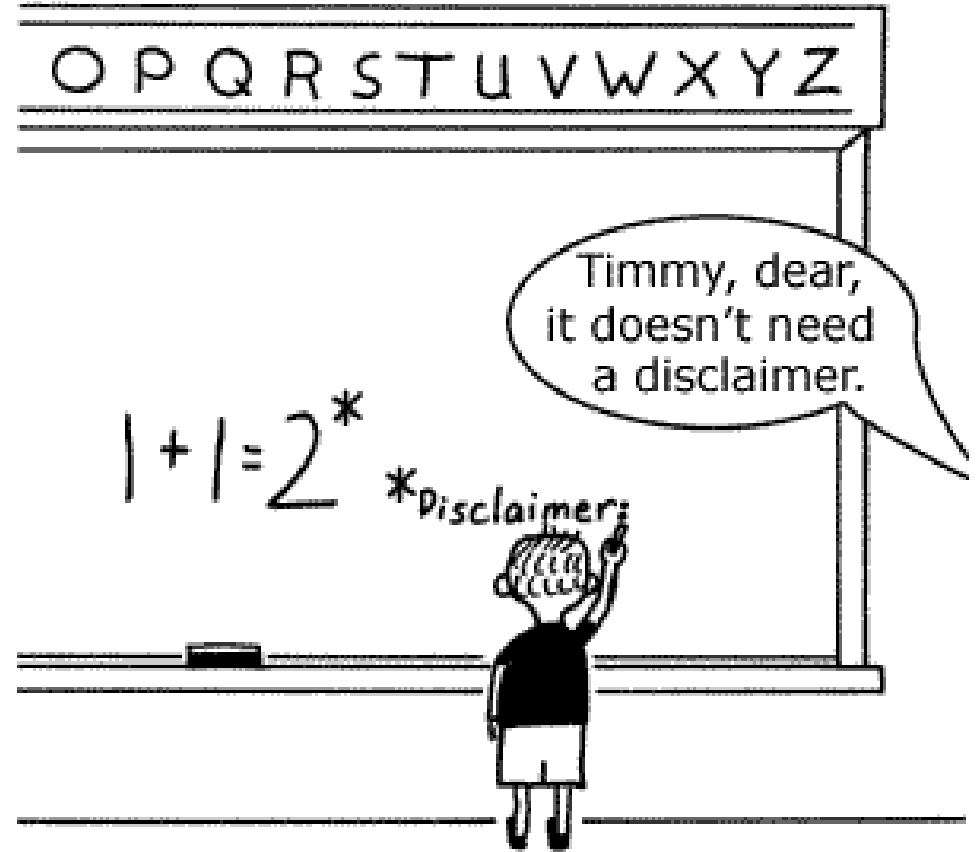
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We recognize that Indigenous Peoples lived and thrived here long before the arrival of settlers, and we acknowledge the lasting impacts of colonialism. As part of our commitment to truth and reconciliation, we strive to learn, unlearn, and understand the history and effects of these wrongs.

We are grateful to live and work on this land.

## Legal Disclaimers

Timmy  
doesn't need  
a disclaimer  
but we do...



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# Presentation Roadmap

1. **What is workplace harassment in Ontario**
2. **Employer legal obligations**
3. **Early warning signs**
4. **Conducting a procedurally fair investigation**
5. **When issues escalate (HRTO, WSIB, OHSA enforcement, courts)**

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# Why this matters



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## Why This Matters

- Early missteps create legal risk quickly
- Delayed or inadequate responses may be treated as a failure to investigate
- Issues often grow from “small” concerns into formal claims
- Employer response (or lack of it) is often the real liability

# Key Definitions



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# What is workplace harassment in Ontario

## Workplace harassment (OHSA):

Engaging in a course of vexatious comment or conduct against a worker in a workplace, including virtually through the use of information and communications technology, that is known or ought reasonably to be known to be unwelcome.

## Cont'd

### **Workplace sexual harassment (OHSA):**

Engaging in a course of vexatious comment or conduct against a worker in a workplace because of sex, sexual orientation, gender identity, or gender expression, or making a sexual solicitation or advance where the person knows or ought reasonably to know it is unwelcome.

## Cont'd

### **Overlap with Human Rights Code:**

Harassment may also constitute discrimination where linked to protected grounds under the Code.

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# Human Rights Overlay

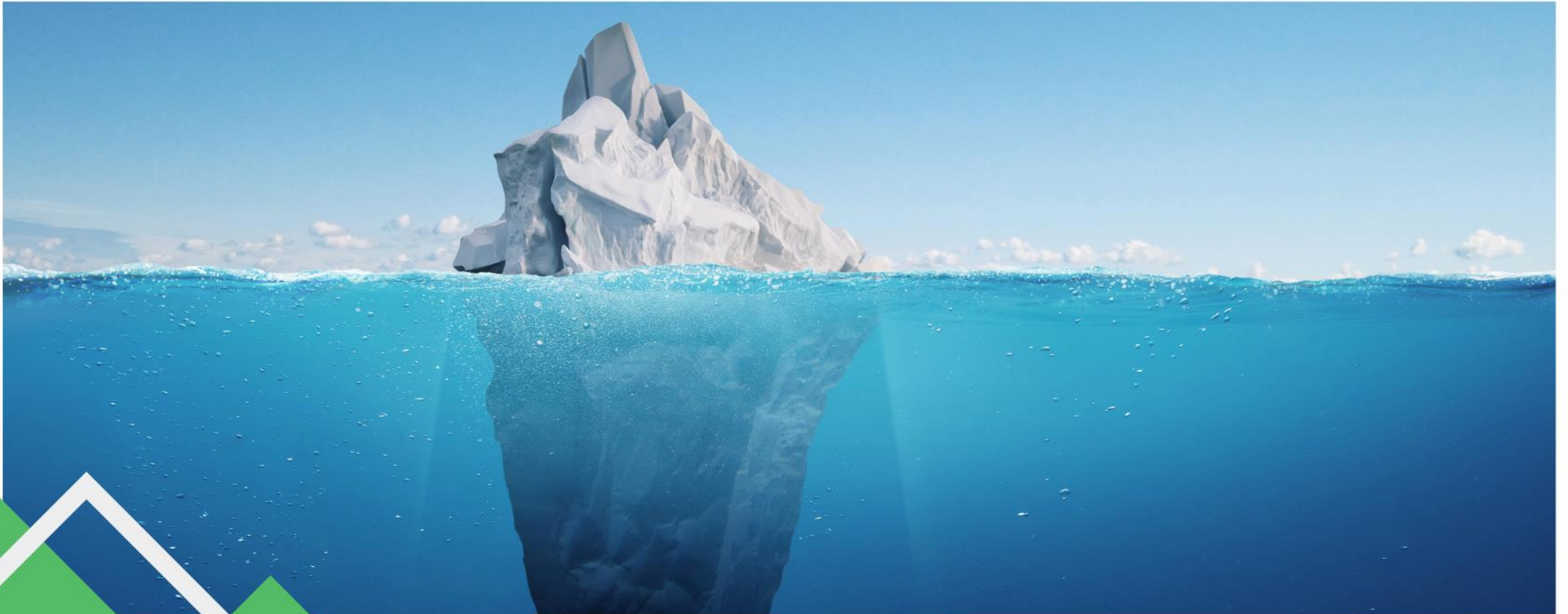


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# Human Rights Overlay

- Harassment tied to protected grounds (e.g., sex, race, disability) triggers Code obligations
- Employers may have concurrent duties under OHSA and the Code
- Remedies may include damages, regulatory penalties, and public scrutiny

# It's Not Always Obvious



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## It's Not Always Obvious

- Overt and subtle conduct may both qualify
- Patterns of exclusion or undermining can be relevant
- “Jokes” may still count
- Virtual communications are included (email, chat, messaging apps)
- Intent is relevant but not determinative; impact is also assessed

# Early Warning Signs



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## Early Warning Signs

- Decline in engagement or performance (potential indicator, not proof)
- Increased absences or role change requests
- Informal or repeated concerns raised to managers
- Changes in team dynamics, collaboration, or workplace interactions

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# Trigger for Employer Obligations



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# Trigger for Employer Obligations

- Duty to act arises upon awareness of harassment (formal or informal)
- Manager awareness = employer awareness
- Employers must investigate “as appropriate in the circumstances”
- Delay or inaction may itself constitute non-compliance

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# Immediate Response



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# Immediate Response

- Acknowledge concerns promptly
- Assess immediate safety or workplace disruption risks
- Limit disclosure on a need-to-know basis
- Reinforce non-reprisal obligations early

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# Interim Measures



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## Interim Measures

- Used to preserve integrity of process, not to punish
- Examples: reporting structure changes, schedule adjustments, remote work
- Must be proportionate and regularly reassessed
- Avoid actions that appear to prejudge the outcome

# Do You Need an Investigation?



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## Do You Need an Investigation?

- Required in most harassment complaints
- Must be a “reasonable investigation in the circumstances”
- Consider:
  - Seriousness of allegations
  - Credibility of information
  - Safety Risks
  - Workplace Impact
- When in doubt → investigate

# Who Should Investigate?



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## Who Should Investigate?

- Internal: appropriate for less complex matters, with impartial and trained investigator
- External: preferred for senior employees, bias concerns, or high risk
- Key requirement: independence and fairness
- Credibility of investigation matters as much as outcome

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# Investigation Framework



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# Investigation Framework

- Clearly define allegations before starting
- Provide notice and details to respondent
- Identify witnesses and relevant documents
- Conduct interviews → analyze → make findings
- Maintain structured, consistent approach

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# Procedural Fairness



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# Procedural Fairness

- Respondent must understand allegations
- Opportunity to respond fully before findings
- Neutral decision-maker required
- Failure to follow fair process undermines outcome

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# Interview Techniques



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# Interview Techniques

- Open-ended questions
- Avoid leading
- Start broad, then narrow into specifics
- Ask for examples, detail, and context
- Test inconsistencies respectfully
- Keep accurate, contemporaneous notes

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# Assessing Credibility



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# Assessing Credibility

- Internal consistency of each account
- External corroboration (documents, witnesses)
- Plausibility in context
- Avoid relying on demeanour alone

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# Making Findings



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# Making Findings

- Based on balance of probabilities
- Address each allegation clearly
- Tie findings directly to evidence
- Avoid legal conclusions unless necessary

# Investigation Timeline & Requirements



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# Investigation Timeline & Requirements

- Investigate incidents as soon as possible, ideally within 90 day
- Extensions may be justified where there are compelling reasons (e.g., multiple witnesses or key witnesses unavailable due to illness)
- Timelines depend on complexity, but delay increases risk
- Written report or documented findings required
- Process must be defensible under OHSA

# Communicating Outcomes



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# Communicating Outcomes

- Written summary of findings required after investigation completion
- Must be provided to complainant and respondent within 10 days of completion
- Includes results and any corrective actions (not full evidence disclosure)
- Maintain confidentiality of detailed investigation materials

# Taking Action



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## Taking Action

- Discipline must align with findings and severity
- Consider training, coaching, or policy updates
- Address broader workplace impacts
- Follow-up is part of the duty to prevent recurrence

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# Retaliation Risk



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## Retaliation Risk

- Reprisal is a standalone violation under OHSA and the Code
- Includes subtle or indirect behaviors
- Often forms the basis of escalation to claims
- Monitoring should continue after case closure

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# Regulatory Escalation



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# Regulatory Escalation

- Ministry of Labour: failure to investigate or improper process
- HRTO: discrimination/harassment claims
- OLRB: OHSA reprisal complaints
- Regulators often focus on process failures

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# Criminal Exposure



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# Criminal Exposure

- Some conduct crosses into criminal law
- Examples: threats, assault, stalking
- Employers may need to involve police depending on severity and safety risk
- Employers still have independent obligations to investigate and address workplace safety
- Parallel criminal processes can run with workplace investigations

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# WSIB & Mental Stress Claims



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# WSIB & Mental Stress Claims

- Chronic workplace harassment can ground mental stress claims
- Requires medical diagnosis under WSIB framework
- Employer conduct and response will be scrutinized
- Poor handling of complaints increases exposure

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# Civil Exposure



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# Civil Exposure

- Constructive dismissal where workplace becomes intolerable
- Additional damages may arise from a deficient or unfair investigation/process
- Aggravated damages: mental distress caused by employer conduct
- Punitive damages: exceptional misconduct (malicious, oppressive, high-handed)
- Human rights damages often overlap

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# Prevention & Policy



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## Prevention & Policy

- OHSA requires employers to have written policies and programs addressing workplace harassment
- Policies must be reviewed at least annually
- Multiple reporting pathways should be available
- Training must be practical, not just check-the-box compliance

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# Building a Defensible Record



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## Building a Defensible Record

- Document every step: complaint, response, investigation, and outcome
- Records must be factual, clear, and dated,
- Avoid informal/off-the-record decision-making
- Documentation is critical in OHSA, HRTO, and civil proceedings

# Key Takeaways



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# Key Takeaways

- Act early
- Investigate properly
- Document everything
- Process matters

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**SEE YOU IN SEPTEMBER!**



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# Thank you!

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Jonathan

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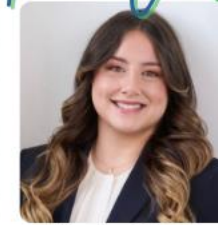
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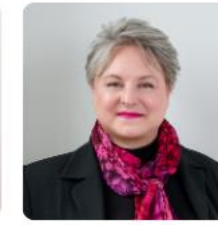
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