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### OUR INVESTIGATIONS EXPERTISE

We conduct internal investigations for boards of directors, special committees, and management when they are confronted with critical and sensitive situations, including where investigations have been ordered by regulators. Our team is relied upon to conduct investigations with efficiency, discretion, and the utmost capability. We have an unparalleled understanding of the law, including the practical considerations courts and regulators apply in assessing an investigation.

# Internal Investigations

*“Employers should be aware that they do not need a formal complaint to trigger their obligation to investigate harassment in the workplace under the OHSA.”*

### What was the most interesting development of 2025, and why?

The Ontario Court of Appeal confirmed that employers have a duty to investigate alleged incidents of sexual harassment even without a formal complaint and even when the conduct occurs in an off-duty WhatsApp chat on employees’ personal cellphones.

In [Metrolinx v Amalgamated Transit Union](#), the Court of Appeal considered Metrolinx’s dismissal of five employees for sexual harassment. The employees were part of a WhatsApp texting group on their personal cellphones where they made derogatory and sexist comments about other Metrolinx employees. The subject of some of these messages reported them to one of her supervisors after receiving screenshots but

did not file a formal complaint. Metrolinx launched an investigation and ultimately terminated the employees for sexual harassment. The employees’ union challenged the dismissals, and an arbitrator ordered the reinstatement of the employees. Metrolinx successfully applied for judicial review at the Divisional Court, and the union appealed.

The Court of Appeal found the arbitrator’s reinstatement award unreasonable. In finding that Metrolinx should not have launched an investigation absent a formal complaint, the arbitrator failed to meaningfully address Metrolinx’s statutory obligations under the [Occupational Health and Safety Act](#) (OHSA). Employers have a duty under the OHSA to investigate both complaints and incidents of workplace harassment, even in the absence of a formal complaint. While Metrolinx’s own Workplace Harassment and Discrimination Prevention Policy states that an investigation is triggered by a complaint, the policy cannot limit Metrolinx’s statutory obligations under the OHSA.

The Court emphasized that none of the many reasons a victim of harassment might choose not to pursue a complaint erase an employer’s obligation to investigate. Employers owe this duty not only to the victim but to all employees, as they have a right to work in an environment free from demeaning and offensive comments.

The Court clarified that off-duty conduct can give rise to discipline if it manifests in the workplace, as it did in this case when the subject of some of the offensive comments learned of them and became upset by them in the workplace. Regardless of where the impugned conduct originated, it made its way into the workplace and became a workplace issue. Social media’s nature and employees’ ability to forward messages meant that unknown numbers of other employees could access the content.

Finally, the Court found that the Metrolinx investigator acted properly by asking one of the employees involved in the WhatsApp chat to provide relevant text messages from the employee’s private cellphone.

### What’s the primary takeaway for businesses from the past year?

Employers should be aware that they do not need a formal complaint to trigger their obligation to investigate harassment in the workplace under the OHSA. The language of an employer’s policy on workplace harassment cannot circumvent this duty to investigate (for example, by requiring a “complaint”). Further, the duty can arise even where the alleged harassing conduct occurred off duty on a social media chat, as long as it then “manifests” in the workplace.

Employers should ensure their workplace harassment policies are in line with their statutory obligations under the OHSA to avoid confusion.