



# **Navigating Workplace Investigations: Legal Coaching and Practice Tips for SHARP Workplaces Clients**

**Jessica Forman, Forte Workplace Law  
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# About Me

- Practicing employment/human rights/investigations for several years
- Forte Workplace Law has 13 lawyers (and growing), offices in BC & AB
- Workplace sexual harassment has always been a focus
- Represented complainants, respondents, companies, unions and as an independent investigator
- Head of the firm's investigation group – we conduct external investigations for all sorts of clients

# Resources

- The Walls are Closing in on Sexual Harassment in the Legal Profession (The Advocate, March 2021)
- SHARP Manual – Key Sections:
  - Providing Legal Advice and Coaching to Your Client (Part IV)
    - Internal Workplace Processes (Chapter 30)
- SHARP Manual on Trauma-Informed Approach to Addressing Workplace Sexual Harassment

# Agenda for Today

- My tips on legal coaching for SHARP clients
- Anatomy of a workplace investigation
- Q&A
- Breakouts to practice advising clients in small groups
- Back to large group, reconvene

# Before the First Meeting Information to Gather

- Who – conflicts
- What/Where/When – chronology and documents (SHARP Essential Case Info)
- Why – questions & goals

# What Documents should you request?

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# Documents to Request (if client has access)

- Employment contract/hire letter
- Employer Policies (“Bullying & Harassment” or “Respectful Workplace” or “Sexual Misconduct”)
- Resignation/Termination letter (if applicable)
- Relevant emails, texts, etc.
- Documents from any legal processes underway
- Complaint (if one has been submitted)
- Letters about formal investigation
- Union Collective Agreement

# Before the First Meeting

- Read all documents and information\*
- Assess filing deadlines for legal actions
- Assess investigation process (if you have information)
- Current client status? (on leave, quit, new job, etc.)
- Consider client questions/goals

\*unless there is a large volume of emails/texts



# First Meeting with Client

- Review Agenda for meeting
- Introduction
- Anything I can do to make this easier for you
- Meeting structure
  - Hear from you
  - Talk about the law
  - Review options
  - Make a plan

# Clients Goals or Desired Outcomes

- Consider asking at the start
- Options as it relates to investigations:
  - Do nothing
  - File a formal complaint (internal, union grievance, human rights complaint)
  - Informal resolutions - mediation
  - Consider other venues – Criminal proceeding, Work Safe

**What are some important facts you need to assess client's case?**

# Legal Assessment

- Explain the law to the client
- *Janzen v. Platy* test:
  - Unwanted conduct
  - Of a sexual nature
  - That has negative work-related consequences
- Make sure to understand and discuss the issue of consent if relevant
- Walk through the various legal options, tests, outcomes
- Walk through the investigation process and workplace policy that relates to sexual harassment

# Limited-scope retainer

- 5 hours of SHARP funding is a consideration
- Meeting + demand letter can be 5 hours
- Meeting + draft pleadings can be 5 hours
- Meeting + draft complaint can be 5 hours
- Consider ghost writing demand/complaint

# Make a Plan

- Identify options client will pursue
- Follow up email:
  - Confirm scope of legal work
  - Links to self-help information
  - Filing deadlines/limitation periods

# Anatomy of an Investigation

- An investigation is a fact-finding process to determine whether certain conduct occurred and if so, whether it breaches a policy
- Typically triggered by an internal complaint
- Involves Complainant, Respondent and Witnesses
- Result is delivered in a verbal or written report
- Can be internal or external investigator
- Standard of proof is usually “balance of probabilities”

# 4 Key considerations of Investigation Process

1. Fair
2. Thorough
3. Quick(ly as possible)
4. Confidential



# Things to discuss with your client about investigations:

- What interim measures do they need?
- What process applies? (Policy should guide)
- Who will be doing the investigation?
- How long will the investigation take?
- Where will your client's interview take place
- What supports do they need throughout?
- What other "evidence" should they gather and provide?
- Who should they suggest as witnesses?
- What outcome are they hoping for?

**Questions?  
Thank you!**





**Thank You**