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National Health & Safety Conference

September 12, 2024
Virtual Event



National Health & Safety Conference

Virtual Event, September 12, 2024



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	Agenda Thursday, September 12, 2024
12:30 p.m.	Introduction
12:35 p.m.	Panel 1 Precedents and Prosecutions: Examining key caselaw, enforcement action, and legislative developments
1:50 p.m.	Break
2:00 p.m.	Panel 2 Investigations through a Health and Safety Lens: Conducting compliant and effective incident and harassment investigations
3:10 p.m.	Break
3:20 p.m.	Keynote Dr. Jennifer Quaid - The illusion and the reality of corporate accountability for workplace health and safety offences: reflections on the Westray amendments 20 years later
3:50 p.m.	Break
4:00 p.m.	Panel 3 Culture Shifts: Expert guidance on transforming organizational approaches to health and safety
5:00 p.m.	Closing Remarks

Continuing Professional Development



This program has been approved by **CPHR BC & Yukon** for **4 Continuing Professional Development hours**.
(Event ID: LH101122089)



This program has been approved for **4 Continuing Professional Development (CPD) hours** under Section A of the Continuing Professional Development (CPD) Log of the **Human Resource Professionals Association (HRPA)**.
(Event ID: 310482)



This program has been approved by **CPHR Alberta** for **4 Continuing Professional Development hours**.

This program has been approved by the **Law Society of British Columbia** for **4 Continuing Professional Development hours**.

Members of the **Nova Scotia Barristers' Society** may count this program for **4 Continuing Professional Development hours**.

Members of the **Law Society of New Brunswick** may consider this program for **4 Continuing Professional Development hours**.

CPD for Members of the **Law Society of Ontario**:
4 Substantive Hours; 0 Professionalism Hours.

This event contains **3.5 technical hours** and would be eligible for **BCRSP CEU** points. See the BCRSP website at www.bcrsp.ca for CEU point criteria.

Panel 1 - Precedents and Prosecutions: Examining key caselaw, enforcement action, and legislative developments

September 12, 2024, 12:35 p.m. – 1:50 p.m. ET

Panelists

Michelle Jones, Employer Counsel, Lawson Lundell LLP

Jeremy Warning, Employer Counsel, Mathews, Dinsdale & Clark LLP

Aminah Hanif, Union Counsel, Cavalluzzo LLP

Michael Fisher, Union Counsel, RavenLaw LLP

In this session, expert panelists will address recent cases and legislative developments impacting workplace health and safety. Topics to be addressed include:

- What are notable trends in recent prosecutions for workplace health and safety violations? What key legislative developments impacting occupational health and safety have been implemented cross-country in the past year?
- When will an employer be held liable under occupational health and safety legislation for injuries or deaths that occur in the course of work that is not performed under the employer's direct supervision or control? How does the recent Supreme Court of Canada decision in *v. Greater Sudbury (City)*, which interprets Ontario's occupational health and safety legislation, apply to other jurisdictions?
- How have arbitrators and adjudicators assessed the reasonableness of employer-ordered drug and alcohol testing in recent decisions?
- What key principles have emerged in recent caselaw regarding workplace harassment investigations conducted pursuant to occupational health and safety legislation? For example, how much information regarding the investigation must an employer disclose to the union and/or the complainant? What consequences may flow from a failure to conduct an investigation?
- How should workplace parties respond when employee's human rights conflict with an employer's occupational health and safety obligations?

Break

1:50 p.m. – 2:00 p.m. ET

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Panel #1 – Precedents and Prosecutions: Examining key caselaw, enforcement action, and legislative developments

1. Employer Liability Under Occupational Health and Safety Legislation

- 1.1 "Municipality that contracted out roadwork liable as an 'employer' under occupational health and safety legislation, Supreme Court of Canada rules," *R. v. Greater Sudbury (City)*, 2023 SCC 28 (CanLII), Lancaster's *Health and Safety/Workers' Compensation Law*, eAlert No. 277

See also: Jeremy Warning & John Illingworth, "Is Everyone Who Employs Anyone Responsible for Everything Anyone Does? Maybe. SCC Splits on Scope of Owner/Employer OHSOA Obligations on Construction Projects," *Insights*, Mathews, Dinsdale & Clark LLP, November 13, 2023, online: <https://mathewsdinsdale.com/is-everyone-who-employs-anyone-responsible-for-everything-anyone-does-maybe-scc-splits-on-scope-of-owner-employer-ohsa-obligations-on-construction-projects/>

2. Substance Use Testing

- 2.1 *CUPE, Air Canada Component v. Air Canada*, 2024 CanLII 46083 (CA LA), online: <https://canlii.ca/t/k4sq4>
- 2.2 "Employer breached employee's privacy rights by attending employee's home to demand post-incident drug test, Alberta arbitrator rules," *Canadian Energy Workers Association v. ATCO Electric Ltd.*, 2024 CanLII 37038 (AB GAA), Lancaster's *Workplace Privacy Law*, eAlert No. 61

Further Reading:

- 2.3 "Federal Court of Appeal grants injunction to stay implementation pending appeal of random drug and alcohol testing of workers in nuclear industry," *Power Workers' Union v. Canada (Attorney General)*, 2023 FCA 215 (CanLII), Lancaster's *Workplace Privacy Law*, eAlert No. 60

3. Workplace Harassment Investigations Under Occupational Health and Safety

Legislation

- 3.1 "Arbitrator awards \$30,000 for employer's failure to investigate workplace harassment and human rights allegations," *Toronto Metropolitan University Faculty Association v. Toronto Metropolitan University*, 2023 CanLII 93288 (ON LA), Lancaster's *Workplace Investigations*, eAlert No. 7
- 3.2 "Employer required to disclose details of harassment investigation, including identity of perpetrators and specific corrective measures taken, labour board holds," *S.H. v. Stelco Inc.*, 2024 CanLII 16448 (ON LRB), Lancaster Report

Further Reading:

- 3.3 "Award reinstating workers dismissed for workplace harassment was unreasonable, court holds," *Metrolinx v. Amalgamated Transit Union, Local 1587*, 2024 ONSC 1900 (CanLII), Lancaster's *Health and Safety/Workers' Compensation Law*, eAlert No. 280
- 3.4 "Arbitrator orders employer to produce harassment investigation report," *Federation of Teachers in Hebrew Schools v. Anne & Max Tanenbaum Community Hebrew Academy of Toronto*, 2024 CanLII 1398 (ON LA), Lancaster's *Education Employment Law*, eAlert No. 166

See also: *Durham Regional Police v. Ontario Civilian Police*, 2024 ONSC 2214 (CanLII), online: <https://canlii.ca/t/k42xd> [Editors' Note: In this decision, the Court held that any solicitor-client privilege in two workplace investigation reports was waived due to the previous disclosure of the reports to the association. The first report was also filed as evidence in an arbitration and appeal and judicial review and portions summarized by the media.]

4. When Rights Conflict With Safety

- 4.1 *International Brotherhood of Electrical Workers, Local 213 v. Fortis BC Energy Inc.*, 2024 CanLII 33103 (BC LA), online: <https://canlii.ca/t/k44cf>
- 4.2 "Arbitrator upholds correctional institute's decision to place pregnant security officer on unpaid leave until she could complete use-of-force training following her pregnancy," *BCGEU v. Government of British Columbia*, 2023 CanLII 88236 (BC LA), Lancaster's *Public Service and Crown Agency Employment Law*, eAlert No. 190

Further Reading:

- 4.3 "Employer's investigation into union steward's statements at union meeting constituted unfair labour practice, labour board rules," *British Columbia Teachers' Federation (North Vancouver Teachers' Association) v. Board of School Trustees of School District No. 44*, 2024 BCLRB 16 (CanLII), Lancaster's *Workplace Investigations*, eAlert No. 8

5. Right to Counsel in Occupational Health and Safety Interviews

5.1 *Neustaedter v. Alberta (Labour Relations Board)*, 2024 ABCA 238 (CanLII), online: <https://canlii.ca/t/k5hrk>

See also: Dalton McGrath & Michael O'Brien, "Alberta Court of Appeal Upholds Ruling on Denying Legal Counsel in Occupational Health and Safety Interviews," Blakes, Cassels & Graydon LLP, July 4, 2024, online: <https://www.blakes.com/insights/alberta-court-of-appeal-upholds-ruling-on-denying-legal-counsel-in-occupational-health-and-safety-in/> [Editors' Note: This article addresses the above decision in *Neustaedter v. Alberta (Labour Relations Board)*, 2024 ABCA 238 (CanLII), Document 5.1.]

6. Prosecutions and Fines

Note: Please refer to the online sources listed below. The following highlights selected recent significant prosecutions and fines and is not meant to constitute an exhaustive list.

a) **British Columbia**

- "Search for penalties," WorkSafeBC, online: <https://www.worksafebc.com/en/health-safety/create-manage/incident-investigations/penalties/penalty-summaries/search>
- Alex Nguyen, "B.C. company fined \$290K after falling pallets killed worker," *CBC News*, July 6, 2024, online: <https://www.cbc.ca/news/canada/british-columbia/bc-packing-company-worksafebc-fine-1.7256281>
- Liam Britten, "B.C. shipbuilder fined \$710K for worker's CO poisoning," *CBC News*, June 18, 2024, online: <https://www.cbc.ca/news/canada/british-columbia/seaspan-worksafebc-penalty-carbon-monoxide-poisoning-1.7237886>
- Todd Humber, "Industrial camp operator fined \$200K by WorkSafeBC after worker found dead from COVID-19," *OHS Canada*, January 12, 2024, online: <https://www.ohscanada.com/features/industrial-camp-operator-fined-200k-by-worksafebc-after-worker-found-dead-from-covid-19/>
- Jim Wilson, "Two employers hit with big fines after workplace death, injury," *Canadian Occupational Safety*, January 4, 2024, online: <https://www.thesafetymag.com/ca/topics/safety-and-ppe/two-employers-hit-with-big-fines-after-workplace-death-injury/471764>
- Courtney Dickson, "Province fined over \$700K for unsafe wildfire mitigation work in northern B.C.," *CBC News*, January 3, 2024 (updated January 4, 2024), online: <https://www.cbc.ca/news/canada/british-columbia/province-worksafe-bc-fine-1.7073410>

- Shane Mercer, "BC employer's workplace safety penalty slashed by tribunal," *Canadian Occupational Safety*, December 11, 2023, online: <https://www.thesafetymag.com/ca/topics/manufacturing/bc-employers-workplace-safety-penalty-slashed-by-tribunal/469601>
- Shane Mercer, "Owners of tugboat ordered to pay \$310K for fatal sinking," *Canadian Occupational Safety*, September 22, 2023, online: <https://www.thesafetymag.com/ca/topics/ohs-law-and-legislation/owners-of-tugboat-ordered-to-pay-310k-for-fatal-sinking/460636>

b) Alberta

- Grant Funtla, "Fines justified for Volker Stevin workers who refused to give statements in death investigation," *Canadian Occupational Safety*, July 2, 2024, online: <https://www.thesafetymag.com/ca/news/general/fines-justified-for-volker-stevin-workers-who-refused-to-give-statements-in-death-investigation/495529>
- Michael Franklin, "\$546K in fines laid in Airdrie workplace fatality from 2019," *CTV News*, June 24, 2024, online: <https://calgary.ctvnews.ca/546k-in-fines-laid-in-airdrie-workplace-fatality-from-2019-1.6938695>
- Jim Wilson, "Alberta employer fined nearly half a million for worker's fatal injuries," *Canadian Occupational Safety*, June 26, 2024, online: <https://www.thesafetymag.com/ca/topics/ohs-law-and-legislation/alberta-employer-fined-nearly-half-a-million-for-workers-fatal-injuries/494852>
- Madeline Smith, "Alberta company to pay \$350K penalty for 2021 worker death," *CBC News*, May 24, 2024, online: <https://www.cbc.ca/news/canada/edmonton/alberta-company-to-pay-350k-penalty-for-2021-worker-death-1.7214007>
- "Alberta company ordered to pay nearly \$360K to Energy Safety Canada in 'creative sentence'," *OHS Canada*, May 3, 2024, online: <https://www.ohscanada.com/features/alberta-company-ordered-to-pay-nearly-360k-to-energy-safety-canada-in-creative-sentence/>
- Jim Wilson, "Alberta employer fined \$330,000 for workplace fatality," *Canadian Occupational Safety*, April 26, 2024, online: <https://www.thesafetymag.com/ca/topics/ohs-law-and-legislation/alberta-employer-fined-330000-for-workplace-fatality/486921>
- Jim Wilson, "Suncor-operated company fined \$390,000 following worker's death," *Canadian Occupational Safety*, April 10, 2024, online: <https://www.thesafetymag.com/ca/topics/safety-and-ppe/suncor-operated-company-fined-390000-following-workers-death/484638>

- Jim Wilson, "Alberta employer must pay \$295,000 for worker's asphyxiation," *Human Resources Director*, March 13, 2024, online:
<https://www.hcamag.com/ca/specialization/employment-law/alberta-employer-must-pay-295000-for-workers-asphyxiation/481052>
- Jim Wilson, "Ontario construction employer must pay six-figure fine for workplace injury in Alberta," *Canadian Occupational Safety*, March 8, 2024, online:
<https://www.thesafetymag.com/ca/topics/safety-and-ppe/ontario-construction-employer-must-pay-six-figure-fine-for-workplace-injury-in-alberta/480464>
- Jim Wilson, "Alberta power generator fined for bypassing safety regulatory tests," *Canadian Occupational Safety*, February 14, 2024, online:
<https://www.thesafetymag.com/ca/topics/ohs-law-and-legislation/alberta-power-generator-fined-for-bypassing-safety-regulatory-tests/477189>
- Jim Wilson, "Alberta employer fined nearly \$300,000 for worker's death," *Canadian Occupational Safety*, November 20, 2023, online:
<https://www.thesafetymag.com/ca/topics/safety-and-ppe/alberta-employer-fined-nearly-300000-for-workers-death/467327>

c) Saskatchewan

- "News and Media," Government of Saskatchewan, online:
<https://www.saskatchewan.ca/government/news-and-media> [Editors' Note: Recent sentencing decisions may be found by filtering news releases by Ministry and selecting "Labour Relations and Workplace Safety."]
- "Workplace Injury of Two Workers Results in \$95,000 Fine," Government of Saskatchewan, August 9, 2024, online: <https://www.saskatchewan.ca/government/news-and-media/2024/august/09/workplace-injury-of-two-workers-results-in-95000-fine>
- "Village of Laird Fined \$150,000 for Violating Occupational Health and Safety Regulations," Government of Saskatchewan, July 19, 2024, online:
<https://www.saskatchewan.ca/government/news-and-media/2024/july/19/village-of-laird-fined-150000-for-violating-occupational-health-and-safety-regulations>
- "Company fined \$325,000 for Workplace Injury and Fatality," Government of Saskatchewan, May 23, 2024, online: <https://www.saskatchewan.ca/government/news-and-media/2024/may/23/company-fined-325000-for-workplace-injury-and-fatality>
- "City of Prince Albert Fined \$95,000 for Workplace Injury," Government of Saskatchewan, May 8, 2024, online: <https://www.saskatchewan.ca/government/news-and-media/2024/may/08/city-of-prince-albert-fined-95000-for-workplace-injury>

- "Company Fined \$260,000 for Serious Workplace Injury," Government of Saskatchewan, May 3, 2024, online: <https://www.saskatchewan.ca/government/news-and-media/2024/may/03/company-fined-260000-for-serious-workplace-injury>
- "Company Fined \$85,000 for Workplace Injury," Government of Saskatchewan, March 25, 2024, online: <https://www.saskatchewan.ca/government/news-and-media/2024/march/25/company-fined-85000-for-workplace-injury>
- "Company Fined \$200,000 for Workplace Injury," Government of Saskatchewan, January 3, 2024, online: <https://www.saskatchewan.ca/government/news-and-media/2024/january/03/company-fined-200000-for-workplace-injury>
- "Construction Company Fined \$70,000 for Serious Workplace Injury," Government of Saskatchewan, September 8, 2023, online: <https://www.saskatchewan.ca/government/news-and-media/2023/september/08/construction-company-fined-70000-for-serious-workplace-injury>

d) Manitoba

- "Stop Work Orders, Penalties & Convictions," Labour, Consumer Protection and Government Services, Government of Manitoba, online: <https://www.gov.mb.ca/labour/safety/compliance.html>

e) Ontario

- "Newsroom," Labour, Immigration, Training and Skills Development, Government of Ontario, online: <https://news.ontario.ca/mlitsd/en> [Editors' Note: Recent sentencing decisions may be searched under the News Type "Court Bulletin" and the topic "Law and Safety."]
- *R. v. 1222149 Ontario Ltd. (Dairy Queen and/or Embrun DQ Grill & Chill)*, 2024 ONCA 543 (CanLII), online: <https://canlii.ca/t/k5nlq>
- Mike MacLellan, "Ontario Court Finds Supervisor Guilty of Criminal Negligence In Avoidable Death of Truck Driver," Crawford Chondon & Partners LLP, August 1, 2024, online: <https://www.ccpartners.ca/blog/the-employers-edge/2024/08/01/ontario-court-finds-supervisor-guilty-of-criminal-negligence-in-avoidable-death-of-truck-driver>
- Shane Mercer, "Regulator charged with criminal negligence causing death," *Canadian Occupational Safety*, June 21, 2024, online: <https://www.thesafetymag.com/ca/topics/energy-and-resources/regulator-charged-with-criminal-negligence-causing-death/494312>
- "Workplace Fatality and Injury Result in \$200,000 Fine for Trent Lakes, Ontario-based Company," *Court Bulletin*, Government of Ontario, May 16, 2024, online: <https://news.ontario.ca/en/court/1004605/workplace-fatality-and-injury-result-in-200000-fine-for-trent-lakes-ontario-based-company>

- "Construction Company and Director Fined \$117,500 Total After Worker Fatally Injured," *Court Bulletin*, Government of Ontario, May 16, 2024, online: <https://news.ontario.ca/en/court/1004600/construction-company-and-director-fined-117500-total-after-worker-fatally-injured>
- "Workplace Fatality Results in \$220,000 Fine for Metal Processing Company," *Court Bulletin*, Government of Ontario, April 26, 2024, online: <https://news.ontario.ca/en/court/1004495/workplace-fatality-results-in-220000-fine-for-metal-processing-company>
- "Tank Truck Manufacturer and Director Fined \$680,000 Total After Workers Fatally Injured," *Court Bulletin*, Government of Ontario, April 12, 2024, online: <https://news.ontario.ca/en/court/1004436/tank-truck-manufacturer-and-director-fined-680000-total-after-workers-fatally-injured> [Editors' Note: For an article addressing this decision, see Cheryl Edwards & Jeremy Warning, "Ontario OHSa Fine Signals Future Significant Director & Officer Prosecution Risk," Mathews, Dinsdale & Clark LLP, April 10, 2024, online: <https://mathewsdinsdale.com/ontario-ohsa-fine-signals-future-significant-director-officer-prosecution-risk-2/>.]
- "Workplace Injury Results in \$75,000 Fine for Temporary Help Agency and \$55,000 Fine for Powder-coating Facility in Southwestern Ontario," *Court Bulletin*, Government of Ontario, April 5, 2024, online: <https://news.ontario.ca/en/court/1004413/workplace-injury-results-in-75000-fine-for-temporary-help-agency-and-55000-fine-for-powder-coating-facility-in-southwestern-ontario>
- "Two Oxford County Construction Companies Fined a Total of \$400,000 After Workplace Fatalities and Injuries," *Court Bulletin*, Government of Ontario, January 5, 2024, online: <https://news.ontario.ca/en/court/1004024/two-oxford-county-construction-companies-fined-a-total-of-400000-after-workplace-fatalities-and-injuries>
- "Greater Sudbury Mining and Construction Contractor Fined \$125,000 After Workplace Injury," *Court Bulletin*, Government of Ontario, December 20, 2023, online: <https://news.ontario.ca/en/court/1004006/greater-sudbury-mining-and-construction-contractor-fined-125000-after-workplace-injury>
- "Guelph Manufacturer Fined \$65,000 and Supervisor Fined \$3,000 After Worker Injured," *Court Bulletin*, December 18, 2023, online: <https://news.ontario.ca/en/court/1003995/guelph-manufacturer-fined-65000-and-supervisor-fined-3000-after-worker-injured>
- "Lumber Producer Fined \$500,000 After Worker Fatally Injured," *Court Bulletin*, Government of Ontario, December 15, 2023, online: <https://news.ontario.ca/en/court/1003994/lumber-producer-fined-500000-after-worker-fatally-injured>

- "Belleville Roofer Forced Out of Construction Due to Repeated Safety Violations," *Court Bulletin*, Government of Ontario, December 6, 2023, online: <https://news.ontario.ca/en/court/1003940/belleville-roofer-forced-out-of-construction-due-to-repeated-safety-violations>
- "Workplace Fatality Results in \$280,000 Fine for Toronto Waste Management Company," *Court Bulletin*, Government of Ontario, December 1, 2023, online: <https://news.ontario.ca/en/court/1003926/workplace-fatality-results-in-280000-fine-for-toronto-waste-management-company>
- "Mining Company and Mining Service Company Fined a Total of \$430,000 After Workplace Fatality," *Court Bulletin*, Government of Ontario, November 16, 2023, online: <https://news.ontario.ca/en/court/1003825/mining-company-and-mining-service-company-fined-a-total-of-430000-after-workplace-fatality>

f) Québec

- Sarah-Émilie Dubois, "Québec Court of Appeal upholds guilty verdict in a case of criminal negligence causing the death of a worker," *Dentons Canadian Occupational Health & Safety Law*, Dentons, September 12, 2023, online: <https://www.occupationalhealthandsafetylaw.com/quebec-court-of-appeal-upholds-guilty-verdict-in-a-case-of-criminal-negligence-causing-the-death-of-a-worker/>

g) Nova Scotia

- Sean Kelly & Tiegan Scott "Occupational Health and Safety sentencing decision – Nova Scotia," Stewart McKelvey, April 29, 2024, online: <https://stewartmckelvey.com/thought-leadership/occupational-health-and-safety/>
- Anjuli Patil, "Foreman cleared of criminal negligence in Dartmouth construction site death," *CBC News*, January 5, 2024, online: <https://www.cbc.ca/news/canada/nova-scotia/foreman-cleared-criminal-negligence-dartmouth-death-1.7074375>

h) New Brunswick

- "Court cases," WorkSafeNB, online: <https://worksafenb.ca/policy-and-legal/cases-and-decisions/court-cases/>
- Hanna Rudderham, "Judge orders Horizon to pay \$80K for potentially exposing Fredericton hospital workers to asbestos," *CBC News*, February 22, 2024, online: <https://www.cbc.ca/news/canada/new-brunswick/horizon-asbestos-alternate-penalty-1.7122338>

- Bobbi-Jean MacKinnon, "American Iron & Metal sentenced to pay \$107K to establish scholarship in name of killed worker," *CBC News*, February 14, 2024, online: <https://www.cbc.ca/news/canada/new-brunswick/american-iron-and-metal-sentenced-107-000-scholarship-nbcc-darrell-edward-richards-safety-1.7114802>
- David Eaton & Chris Pelkey, "3 Years' Jail Time for Workplace Fatality; 3 OHS Law Lessons for Employers," *McInnes Cooper*, October 13, 2023 (updated January 10, 2024), online: <https://www.mcinnescooper.com/publications/3-years-jail-time-for-workplace-fatality-3-ohs-law-lessons-for-employers/>
- Aidan Cox, "Company ordered to create \$100K education fund in memory of teen who died on jobsite," *CBC News*, December 15, 2023, online: <https://www.cbc.ca/news/canada/new-brunswick/springhill-construction-michael-henderson-1.7060589>

i) Yukon

- Jonalyn Cueto, "Saffa Engineering penalized \$80k+ for 2021 death of geotechnical driller," *Canadian Occupational Safety*, July 24, 2024, online: <https://www.thesafetymag.com/ca/news/general/saffa-engineering-penalized-80k-for-2021-death-of-geotechnical-driller/498546>

j) Northwest Territories

- Jim Wilson, "Diamond mine contractor fined \$200,000 over worker's death," *Canadian Occupational Safety*, July 30, 2024, online: <https://www.thesafetymag.com/ca/topics/safety-and-ppe/diamond-mine-contractor-fined-200000-over-workers-death/499315>

7. Legislative, Regulatory, and Policy Updates

Note: The following highlights selected recent key legislative, regulatory, and policy updates and is not meant to constitute an exhaustive list of changes.

a) Federal

- 7.1 "Federal legislation requiring disclosure of measures to prevent forced labour and child labour in supply chains in force as of January 1, 2024," *Fighting Against Forced Labour and Child Labour in Supply Chains Act*, S.C. 2023, c. 9, *Lancaster's Labour Law News*, eAlert No. 521
- 7.2 "Federal employers now required to provide employees with free menstrual products," *Regulations Amending Certain Regulations Made Under the Canada Labour Code (Menstrual Products)*, S.O.R./2023-78, *Lancaster's Labour Law News*, eAlert No. 522

b) British Columbia

7.3 "British Columbia introduces new obligations for injured workers and employers," *Workers Compensation Amendment Act (No. 2), 2022, S.B.C. 2022, c. 37, Lancaster's Health and Safety/Workers' Compensation Law*, eAlert No. 279

See also: "Board of Directors approves amendments to the Occupational Health and Safety Regulations," WorkSafeBC, July 24, 2024, online: <https://www.worksafebc.com/en/about-us/news-events/announcements/2024/July/bod-approves-amendments-to-ohsr>

See also: "Occupational first aid regulatory change: Summer 2024 update," WorkSafeBC, June 27, 2024, online: <https://www.worksafebc.com/en/about-us/news-events/announcements/2024/June/occupational-first-aid-regulatory-change-summer-2024-update>

See also: "App-based ride-hailing and delivery drivers to be covered by WorkSafeBC as of September 3," WorkSafeBC, June 13, 2024, online: <https://www.worksafebc.com/en/about-us/news-events/announcements/2024/June/app-based-ride-hailing-and-delivery-drivers-to-be-covered-by-worksafebc>

See also: "New return-to-work requirements for employers and workers now in effect," WorkSafeBC, January 1, 2024, online: <https://www.worksafebc.com/en/about-us/news-events/announcements/2024/January/new-return-to-work-requirements-employers-and-workers-now-in-effect> [Editors' Note: This news release addresses and provides links to resources relating to the workers' compensation amendments discussed in Document 7.3. For policy changes introduced to provide guidance on these obligations, see: "BOD decision: Return to work obligations: Duty to cooperate and duty to maintain employment," WorkSafeBC, December 8, 2023, online: <https://www.worksafebc.com/en/about-us/news-events/announcements/2023/December/bod-decision-return-to-work-obligations-duty-to-cooperate-duty-to-maintain-employment>.]

See also: "WorkSafeBC reminds asbestos abatement employers and workers about new requirements taking effect January 1," WorkSafeBC, October 30, 2023, online: <https://www.worksafebc.com/en/about-us/news-events/news-releases/2023/October/worksafebc-reminds-asbestos-abatement-employers-workers-about-new-requirements-taking-effect-January-1>

See also: "Board of Directors approves 2023 amendments to the Occupational Health and Safety Regulation," WorkSafeBC, October 12, 2023, online: <https://www.worksafebc.com/en/about-us/news-events/announcements/2023/October/bod-approves-2023-amendments-to-ohsr>

See also: "Consultation on proposed amendments to Part 3 of the Occupational Health and Safety Regulation," WorkSafeBC, online: <https://www.worksafebc.com/en/home/law-policy/public-hearings-consultations/closed-public-hearings-and-consultations/consultation-proposed-amendments-part-3-ohsr-2023-december>

See also: "Consultation on proposed amendments to Part 4 of the Occupational Health and Safety Regulation," WorkSafeBC, online: <https://www.worksafebc.com/en/home/law-policy/public-hearings-consultations/closed-public-hearings-and-consultations/consultation-on-proposed-amendments-to-part-4-of-ohsr-2023-august>

c) Alberta

See: "OHS Code review," Government of Alberta, last updated February 20, 2024, online: <https://www.alberta.ca/ohs-code-review>

d) Saskatchewan

See: "Deadline looming for Saskatchewan employers to draft violence policies," *OHS Canada*, May 2, 2024, online: <https://www.ohscanada.com/features/deadline-looming-for-saskatchewan-employers-to-draft-violence-policies/>

See also: Jim Wilson, "More protection coming for Saskatchewan radiation workers," February 21, 2024, online: <https://www.thesafetymag.com/ca/topics/safety-and-ppe/more-protection-coming-for-saskatchewan-radiation-workers/478173>

e) Manitoba

See: "Manitoba bringing back Advisory Council on Workplace Safety and Health," *OHS Canada*, March 13, 2024, online: <https://www.ohscanada.com/features/manitoba-bringing-back-advisory-council-on-workplace-safety-and-health/> [Editors' Note: Bill 17 received royal assent on June 4, 2024: see *The Workplace Safety and Health Amendment Act*, S.M. 2024, c. 11, online: <https://canlii.ca/t/569ch.>]

f) Ontario

7.4 "Ontario government introduces *Working for Workers Five Act, 2024*," Bill 190 – *An act to amend various statutes with respect to employment and labour and other matters*, 43rd Leg., 1st Sess., Ontario, 2024 (second reading May 16, 2024), *Lancaster's Labour Law News*, eAlert No. 524 [Editors' Note: At the time of writing, this Bill had been referred to a Standing Committee following second reading on May 16, 2024.]

7.5 "Ontario's third *Working for Workers Act* becomes law, key amendments now in force," *Working for Workers Act, 2023*, S.O. 2023, c. 15, *Lancaster's Labour Law News*, eAlert No. 518

See also: "Ontario Supporting Women at Work," *News Release*, Government of Ontario, May 6, 2024, online: <https://news.ontario.ca/en/release/1004536/ontario-supporting-women-at-work>

See also: "Requirements for Menstrual Products at Construction Projects," Government of Ontario, online:

<https://www.ontariocanada.com/registry/view.do?postingId=47401&language=en>

See also: Jeremy Warning, Cheryl Edwards, & Deanah Shelly, "Ontario Hikes Corporate OHSA Penalties to Highest in Canada," Mathews, Dinsdale & Clark LLP, October 31, 2023, online:

<https://mathewsdinsdale.com/ontario-hikes-corporate-ohsa-penalties-to-highest-in-canada/>

g) Québec

See: "Quebec Adopts New Bill to Tackle Psychological Harassment and Sexual Violence in the Workplace," Blakes, Cassels & Graydon LLP, April 18, 2024, online:

<https://www.blakes.com/insights/quebec-adopts-new-bill-to-tackle-psychological-harassment-and-sexual-violence-in-the-workplace/>

h) Nova Scotia

See: "Consultations to Improve Workers' Compensation System, Protect Workers from Harassment," Labour, Skills, and Immigration, Government of Nova Scotia, October 24, 2023, online: <https://news.novascotia.ca/en/2023/10/24/consultations-improve-workers-compensation-system-protect-workers-harassment>

i) New Brunswick

See: "Amendments from the Phase III review are now in effect," WorkSafeNB, July 31, 2024, online: <https://www.worksafenb.ca/about-us/news-and-events/news/2024/amendments-from-the-phase-iii-review-are-now-in-effect/>

See also: "Changes to the Occupational Health and Safety Act," WorkSafeNB, June 7, 2024, online: <https://www.worksafenb.ca/about-us/news-and-events/news/2024/changes-to-the-occupational-health-and-safety-act/>

See also: "Amendments to the First Aid Regulation under the OHS Act," WorkSafeNB, January 12, 2024, online: <https://www.worksafenb.ca/about-us/news-and-events/news/2024/amendments-to-the-first-aid-regulation-under-the-ohs-act/>

j) Newfoundland and Labrador

See also: "New requirements for workplace occupational health and safety committees effective March 1, 2024," WorkplaceNL, March 1, 2024, online: <https://workplacenl.ca/article/new-requirements-for-workplace-occupational-health-and-safety-committees-effective-march-1-2024/>

8. Further Reading

a) COVID-19 Vaccination Policies and Decisions

See: *Ottawa-carleton Public Employees' Union, Local 503 v. Ottawa (City)*, 2024 CanLII 67071 (ON LA), online: <https://canlii.ca/t/k5v78> [Editors' Note: In this decision, an Ontario arbitrator found the employer's mandatory vaccination policy to be reasonable, even insofar as it applied to remote workers, given that the City was subject to specialized legislation and emergency orders that raised a reasonable prospect workers may be required to return in-person in certain situations.]

See also: *Cargill Limited v. United Food and Commercial Workers, Local No. 401*, 2024 CanLII 52128 (AB GAA), online: <https://canlii.ca/t/k53ti> [Editors' Note: In this decision, an Alberta arbitrator concluded that the employer met its obligations under the province's *Occupational Health and Safety Act* through its precautions taken in response to the COVID-19 pandemic, which were adopted largely based on public health guidance. The arbitrator further found that the employer met its obligations under the collective agreement to engage with the union regarding safety issues, but did not fully meet its obligations under *OHSA* and the collective agreement to consult with the joint health and safety committee.]

See also: "Humber River Health successful in upholding mandatory vaccination policy," Fasken Martineau DuMoulin LLP, June 2024, online: <https://www.fasken.com/en/solution/clientwork/2024/07/humber-river-health-successful-in-upholding-mandatory-vaccination-policy> [Editors' Note: This article addresses the decision in *National Organized Workers Union (NOWU) v. Humber River Hospital*, 2024 CanLII 52386 (ON LA), online: <https://canlii.ca/t/k555g>.]

See also: Erin Porter et al., "Arbitrator Finds Non-Compliance with Hospital's Vaccination Policy Grounds for Discipline," Fasken Martineau DuMoulin LLP, July 25, 2024, online: <https://www.fasken.com/en/knowledge/2024/07/hr-space-arbitrator-finds-non-compliance-with-hospitals-vaccination-policy-grounds-for-discipline> [Editors' Note: This article addresses the decision in *Unifor Local 27 v. London Health Sciences Centre*, 2024 CanLII 48714 (ON LA), online: <https://canlii.ca/t/k4xkw>.]

See also: *Union of Postal Communications Employees (PSAC) v. Canada Post Corporation*, 2024 CanLII 38829 (CA LA), online: <https://canlii.ca/t/k4fkh> [Editors' Note: In this decision, a federal arbitrator found that the employer's vaccination practice was unreasonable to the extent that it applied to employees who worked exclusively remotely. The arbitrator rejected the argument that the employer acted unreasonably in placing unvaccinated employees who *could have* done their work remotely on unpaid leaves of absence, holding that management rights included the ability to direct where employees performed their work and that it did not amount to a failure to accommodate.]

See also: *Teamsters Local Union No. 419 v. Humber River Hospital*, 2024 CanLII 19827 (ON LA), online: <https://canlii.ca/t/k3d7g> [Editors' Note: In this decision, an Ontario arbitrator found that the employer did not have just cause to discipline the grievors for failing to get vaccinated and/or disclose proof of vaccination, holding that to permit discipline in these circumstances would "be a significant departure from long-standing arbitral principles" holding that discipline is not "an appropriate response to an employee's exercise of the right to determine whether to consent to medical treatment or disclosure of medical information." The arbitrator further found that the hospital had not established that there were justifiable grounds to terminate the grievors' employment on non-culpable grounds, such as due to staffing needs or there being "no reasonable likelihood the grievors would be able to work in the foreseeable future."]

See also: *Ontario Nurses Association v. Quinte Health*, 2024 CanLII 14991 (ON LA), online: <https://canlii.ca/t/k34gz> [Editors' Note: In this decision, allowing a policy grievance in part, an Ontario arbitrator held that, while the mandatory vaccination requirement in a hospital's COVID-19 policy was reasonable, its automatic termination penalty was not, and that non-compliant employees should have been placed on indefinite leaves of absence instead. Holding that, in treating termination as a pre-determined outcome for non-compliance, the hospital employer failed to balance the interests of the employees against its own interests and failed to respect the principle of just cause, the arbitrator found no evidence to indicate that the employer's health and safety or operational interests required it to terminate the employment of nine non-compliant nurses rather than allow them to take an unpaid leave. Accordingly, the arbitrator upheld the policy grievance with respect to penalty and ordered the employer to reinstate the grievors.]

See also: *Ontario Public Service Employees Union, Local 110 v. Fanshawe College*, 2024 CanLII 11422 (ON LA), online: <https://canlii.ca/t/k2wn7> [Editors' Note: In this decision, allowing a grievance, an Ontario arbitrator held that an employer's decision to place a remote worker on unpaid leave because he failed to comply with a COVID-19 vaccination mandate was not reasonable. Finding that the employer had provided no evidence to support its contention that the employee, a college professor who taught courses in an entirely online program, would ever be required to attend campus, the arbitrator held that the grievor's interest in his bodily integrity outweighed the interests of the employer and allowed the grievance.]

See also: *Teamsters Local Union No. 31 v. Purolator Canada Inc.*, 2023 CanLII 120937 (CA LA), online: <https://canlii.ca/t/k1tvz> [Editors' Note: In this decision, a federal arbitrator concluded that, while the employer's vaccination mandate was reasonable when implemented, the improvement in workplace safety achieved by the policy became nominal by the late spring of 2022 such that the continued application of the policy was unreasonable. The arbitrator further found the employer's failure to verify whether third-party vaccination requirements continued to apply at that time was unreasonable and did not find that the policy was justified in light of public health communications at the time.]

See also: *United Food and Commercial Workers, Local 175 v. Coca-Cola Canada Bottling Limited*, 2023 CanLII 109733 (ON LA), online: <https://canlii.ca/t/k19bl> [Editors' Note: In this decision, an Ontario arbitrator found that the employer's vaccination policy was reasonable, that the grievor was insubordinate in refusing to disclose his vaccination status, and that his suspensions were proportional. The arbitrator declined to award backpay from the date of his termination to the date of his employer-initiated reinstatement.]

See also: Cody MacKay, "UPEI violated P.E.I.'s health and safety act during pandemic, board rules," *CBC News*, October 4, 2023 (updated October 5, 2023), online: <https://www.cbc.ca/news/canada/prince-edward-island/pei-arbitration-board-rules-1.6985447>

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Panel 2 - Investigations through a Health and Safety Lens: Conducting compliant and effective incident and harassment investigations

September 12, 2024, 2:00 p.m. – 3:10 p.m. ET

Panelists

Madeleine Loewenberg, Employer Counsel, Loewenberg Psarris Workplace Law LLP

Carissa Tanzola, Union Counsel, Filion Wakely Thorup Angeletti LLP

Employers have an obligation to ensure that workplace investigations are conducted effectively and comply with legislation, workplace policies, and collective agreements. These obligations extend to both investigations into allegations of harassment and investigations following workplace injuries or accidents. In this panel, experts will address:

- What lessons can be drawn from recent caselaw about an employer's duty to investigate claims of harassment? What about the essential elements of a fair, adequate, and effective investigation? Under what circumstances have investigations raised procedural fairness concerns?
- Do options besides an investigation, such as alternative dispute resolution, satisfy the duty to investigate under the *Occupational Health and Safety Act*?
- When will an employer's request for post incident drug and alcohol testing be found unreasonable by an arbitrator?
- How much should independence factor into who should investigate workplace incidents and harassment? How can employers determine whether an external investigator is necessary?
- What are best practices for ensuring that systemic inequities and unconscious biases do not impact the investigatory process?
- How can investigators protect employee's privacy rights during a workplace investigation?
- What considerations are particularly relevant to workplace investigations pertaining to off-duty conduct? Can employers justify access to employees' personal devices for the purposes of an investigation?

Break

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National Health & Safety Conference

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Panel #2 - Investigations through a Health and Safety Lens: Conducting compliant and effective incident and harassment investigations

1. What lessons can be drawn from recent caselaw about an employer's duty to investigate claims of harassment or violence?

[*Editors' Note:* Certain procedural requirements may be dictated by occupational health and safety legislation and may vary between jurisdictions. Readers are encouraged to consult the requirements of their own jurisdiction.]

- 1.1 Jeffrey Sack & Peter Neumann, *Unionized Workplaces in Canada: Labour Laws and Contract Clauses* (Toronto: Lancaster House, 2024, online),
 - Workplace Harassment – Applicable Legislation (19.2)
 - Excerpts from: Sexual Harassment (19.2.1)
 - Health and Safety – Applicable Legislation (20.1)
- 1.2 "Arbitrator awards \$30,000 for employer's failure to investigate workplace harassment and human rights allegations," *Toronto Metropolitan University Faculty Association v. Toronto Metropolitan University*, 2023 CanLII 93288 (ON LA), Lancaster's *Workplace Investigations*, eAlert No. 7 [*Editors' Note:* This is a decision on remedy, with Document 1.3 constituting the decision on the merits.]
- 1.3 "University's failure to adequately investigate professor's complaints of harassment breached health and safety legislation, human rights law, and the collective agreement, arbitrator holds," *Toronto Metropolitan University Faculty Association v. Toronto Metropolitan University*, 2023 CanLII 22957 (ON LA), Lancaster's *Workplace Investigations*, eAlert No. 4 [*Editors' Note:* This is a decision on the merits, with Document 1.2 constituting the decision on remedy.]

- 1.4 "Dismissal upheld by arbitrator for time theft, but dismissed employee awarded \$15,000 in damages for sexual harassment and unreasonable investigation of her complaint," *Canadian Union of Public Employees and its Local 3791 v. Wexford Residence Inc.*, 2023 CanLII 39486 (ON LA), Lancaster's *Workplace Investigations*, eAlert No. 5

[*Editors' Note*: The following resources include cases relating to investigations conducted pursuant to human rights legislation and in other contexts. While certain principles may be instructive, as noted above, readers should consult the individual requirements of the occupational health and safety legislation in their jurisdiction.]

See also: *Young v. Via Rail Canada Inc.*, 2023 CHRT 25 (CanLII), online:

<https://canlii.ca/t/k0mw9> [*Editors' Note*: In this decision, in the context of a human rights tribunal decision, the adjudicator found that while the investigation interview process appeared to be "thorough and comprehensive," the lack of transparency in the employer's subsequent decision-making process, coupled with the absence of a written investigation report, led to the conclusion that it had not exercised all due diligence in its investigation process.]

See also: *Labourers' International Union of North America, Local 183 v. Iron Forming Inc.*, 2023 CanLII 39143 (ON LA), online: <https://canlii.ca/t/jx411> [*Editors' Note*: In this decision, in finding that an employer breached its obligations under provincial human rights legislation, the arbitrator found that the employer failed to conduct a reasonable investigation, noting that although the employer initially appeared to take the incident seriously and that it was not unreasonable to use an internal investigator since the facts were relatively uncomplicated, its failure to interview any witnesses and to provide the grievor with a copy of the investigation report or advise him of the status of his complaint was unreasonable.]

See also: *Kastner v. Health Professions Appeal and Review Board*, 2023 ONSC 629 (CanLII), online: <https://canlii.ca/t/jv6d1> [*Editors' Note*: In this decision, relating to the decision of a committee of the College of Physicians and Surgeons to dismiss a professional misconduct complaint against an Emergency Department Chief, the Ontario Divisional Court quashed the decision, ruling that the committee's investigation was inadequate because it failed to interview the complainant's witnesses and consider important evidence.]

See also: *Rutledge v. Markhaven Inc.*, 2022 ONSC 3183 (CanLII), online:

<https://canlii.ca/t/jwg36> [*Editors' Note*: In this decision, an Ontario judge allowed a wrongful dismissal action brought by an employee fired for failing to disclose her relationship with an employee of a contractor who had been given an expanded role. The Court found that the employer conducted a flawed and coercive investigation, including that it was not conducted by an independent third party, contrary to what the employer advised; the investigation actually began prior to this notification; the employer failed to take reasonable steps to keep the matter confidential; the scope of the investigation was expanded from its mandate; and efforts were made to coerce the employee to change her answers during the investigation.]

See also: *Ahluwalia v. British Columbia (Workers' Compensation Board)*, 2022 BCCA 165 (CanLII), online: <https://canlii.ca/t/jp8lw> [Editors' Note: In this decision, the B.C. Court of Appeal upheld a ruling issued by a WorkSafeBC review officer determining that an employer had adequately investigated a former employee's bullying and harassment complaint.]

See also: *Cybulsky v. Hamilton Health Sciences*, 2021 HRTO 213 (CanLII), online: <https://canlii.ca/t/jdvkx> [Editors' Note: In this decision, in the context of a human rights decision, the arbitrator found that no formal complaint is required to trigger the duty to investigate.]

See also: *Saskatchewan Polytechnic Faculty Association v. Saskatchewan Polytechnic*, 2020 CanLII 78471 (SK LA), online: <https://canlii.ca/t/jb5f9> [Editors' Note: In this decision, a Saskatchewan arbitrator held that an employer's decision to dismiss an employee for making racist comments to an Indigenous co-worker was excessive in the circumstances. In part, the arbitrator found that the employer had breached the employee's rights to procedural fairness by failing to follow its own harassment policy, including providing the grievor with a copy of the complaint, giving him a "real opportunity" to respond, appointing an investigator from the employer's approved list, and preparing notes for him to approve and sign, as well as a report.]

See also: *Society of Energy Professionals v. Ontario Power Generation*, 2020 CanLII 142 (ON LA), online: <https://canlii.ca/t/j4fc2> [Editors' Note: In this decision, the arbitrator reinstated an employee who made inappropriate comments to a summer student, finding that the employee's conduct fell on the milder end of the spectrum of sexual harassment and that the dishonesty exhibited by the employee during the disciplinary interviews was mitigated by the procedural unfairness of the employer's investigation. The arbitrator found that "[t]he employer did not approach the process with an open mind" but accepted the complainant's allegations "at face value" and was critical of the employer's failure to interview the complainant or seek to clarify context, as well as the employer's refusal to provide the grievor with the written allegations.]

See also: *TM v. Manitoba (Justice)*, 2019 MBHR 13 (CanLII), online: <https://canlii.ca/t/j4934> [Editors' Note: In this decision, in the context of a human rights tribunal decision, the adjudicator found the employer's refusal to conduct an investigation in response to an employee's complaints of harassment given that the employee would not disclose the names of his harassers to be unreasonable and found that the investigation and its findings was flawed.]

See also: *Amalgamated Transit Union, Local 113 v. Toronto Transit Commission*, 2018 CanLII 69588 (ON LA), online: <https://canlii.ca/t/ht76t> [Editors' Note: In this decision, a Toronto transit worker who was fired for filing a bad-faith sexual harassment complaint against a supervisor was ordered reinstated by an arbitrator who found on the evidence that she was, in fact, the victim of sexual harassment. Among other things, the arbitrator found that the employer's investigation failed to properly consider the impact of the power imbalance between the grievor and the supervisor on the issue of consent and relied on stereotypes relating to sexual assault in disbelieving the victim's report.]

See also: *Canadian Union of Public Employees, Local 37 v. Corporation of the City of Calgary*, 2018 CanLII 53482 (AB GAA), online: <https://canlii.ca/t/hshwv> [Editors' Note: In this decision, the arbitrator determined that the City of Calgary was responsible for the ongoing harassment and discrimination suffered by a female truck driver at the hands of her supervisor, foreman, and fellow co-workers. In the first investigation, an internal investigator from the city's Human Resources Department submitted a report without interviewing any co-workers and without following up on the grievor's statement that she had surreptitious recordings, adding that he did not have enough technical knowledge to address the grievor's allegations about safety concerns. The union subsequently sent an e-mail to the investigator enclosing two statements obtained from co-workers corroborating many of the grievor's allegations, but the investigator replied that the information was insufficient to justify re-opening the investigation.]

See also: *McDonald v. CAA South Central Ontario*, 2018 HRTO 163 (CanLII), online: <https://canlii.ca/t/hqhbr> [Editors' Note: In this decision, in the context of a human rights tribunal decision, the adjudicator found that the employer's investigations into the employee's allegations of harassment was inadequate, including its failure to investigate some of the employee's main allegations, concluding that the comments did not amount to harassment because there were no "mali[cious] intentions," prejudging the incident by assuring one of the interviewees that he had handled the situation correctly, relying on accusations by the employee's co-workers which had "racial undertones" without giving the employee an opportunity to respond, and relying on the fact that the employee had "contributed" to the comments in finding that there was no harassment. A request for reconsideration was denied: 2018 HRTO 678 (CanLII), online: <https://canlii.ca/t/hs4kx>.]

See also: "Ontario's Bill 190: Addressing the Challenges of Virtual Sexual Harassment in the Workplace," Sultan Lawyers, June 4, 2024, online: <https://sultanlawyers.com/blog/ontarios-bill-190-addressing-the-challenges-of-virtual-sexual-harassment-in-the-workplace/> [Editors' Note: As at the time of writing, Bill 190, *An Act to amend various statutes with respect to employment and labour and other matters*, 1st Sess., 43rd Leg., Ontario, 2024, online: <https://www.ola.org/en/legislative-business/bills/parliament-43/session-1/bill-190/status> was ordered to second reading on May 16, 2024.]

See also: Clea Parfitt, "Respectful Workplaces: A Guide to Best Practices in Internal (and Other) Investigations," Pacific Legal Education and Outreach Society, November 9, 2020, online: <https://www.pacificlegaloutreach.com/news/internal-workplace-processes-addressing-sexual-harassment-and-misconduct-in-the-present-moment>

See also: "Workplace Investigations: When Are They Necessary?," Achkar Law, March 20, 2024, online: <https://achkarlaw.com/workplace-investigations-when-are-they-necessary/>.]

2. Do options besides an investigation, such as alternative dispute resolution, satisfy the duty to investigate incidents of harassment under occupational health and safety legislation?

[*Editors' Note:* Certain procedural requirements may be dictated by occupational health and safety legislation and may vary between jurisdictions. Readers are encouraged to consult the requirements of their own jurisdiction.]

- 2.1 Ruthie Wellen & Jesse Elders, "Does Mediation Satisfy the OHSA Duty to Investigate Workplace Harassment?," Kastner Lam LLP via Ontario Bar Association, June 10, 2022, online: <https://www.oba.org/Sections/Labour-Employment-Law/Articles/Articles-2022/June-2022/Does-Mediation-Satisfy-the-OHSA-Duty-to-Investigat> [reproduced with permission]

See also Document 1.1: Jeffrey Sack & Peter Neumann, *Unionized Workplaces in Canada: Labour Laws and Contract Clauses* (Toronto: Lancaster House, 2024, online), Workplace Harassment – Applicable Legislation (19.2)

See also: *Gemini-SRF Power Corporation v. Unifor Local 89-04*, 2022 CanLII 79945 (ON LA), online: <https://canlii.ca/t/jrrf9> [*Editors' Note:* In this decision, the arbitrator found that no investigation into allegations of harassment was in breach of the requirements under OHSA.]

See also: Lai-King Hum, "Workplace Harassment Complaints: Investigate when necessary but don't necessarily investigate," *Hum Law Firm*, February 11, 2020, online: <https://thehumlawfirm.ca/workplace-harassment-complaints-investigate-when-necessary-but-dont-necessarily-investigate/>

3. What are the key steps and best practices when conducting such an investigation?

[*Editors' Note:* Procedural requirements may be dictated by occupational health and safety legislation and may vary between jurisdictions. Readers are encouraged to consult the requirements of their own jurisdiction.]

- 3.1 Jeffrey Sack & Peter Neumann, *Unionized Workplaces in Canada: Labour Laws and Contract Clauses* (Toronto: Lancaster House, 2024, online), Health and Safety (20.1)
- Excerpts from: Joint Health and Safety Committee (20.1.9)
 - Investigation and Inspection (20.1.10)

See also Document 1.1: Jeffrey Sack & Peter Neumann, *Unionized Workplaces in Canada: Labour Laws and Contract Clauses* (Toronto: Lancaster House, 2024, online),

- Workplace Harassment – Applicable Legislation (19.2)
- Health and Safety – Applicable Legislation (20.1)

See also: "Incident Investigation," *Health and Safety Program*, Canadian Centre for Occupational Health and Safety (CCOHS), last revised November 26, 2019, online: <https://www.ccohs.ca/oshanswers/hsprograms/investig.html>

See also: "Health and Safety Legislation in Canada – Injury Reporting," Canadian Centre for Occupational Health and Safety (CCOHS), last revised February 23, 2024, online: https://www.ccohs.ca/oshanswers/legisl/legislation/injury_reporting.html

See also: "Accident Investigation: A Responsibility to be Taken Seriously!," Employment and Social Development Canada, Government of Canada, modified September 9, 2022, online: <https://www.canada.ca/en/employment-social-development/services/health-safety/reports/accident.html>

See also: "Conducting an employer investigation," WorkSafeBC, online: <https://www.worksafebc.com/en/health-safety/create-manage/incident-investigations/conducting-employer-investigation>

See also: "OHS incident investigations," Government of Alberta, online: <https://www.alberta.ca/ohs-incident-investigations>

See also: "Section 818: OHS Incident Reporting and Investigation," Government of Saskatchewan, February 1, 2012 (revised September 7, 2020), online: <https://taskroom.saskatchewan.ca/manager-resources/human-resource-manual/section-800-employee-relations-/section-818-ohs-incident-reporting-and-investigation>

See also: "Incident Investigations," SAFE Work Manitoba, online: <https://www.safemanitoba.com/topics/Pages/Incident-Investigations.aspx>

See also: "Conducting an Effective Incident Investigation," *Small Business Safety Toolkit*, Workers' Compensation Board of Nova Scotia, online: <https://www.wcb.ns.ca/toolkit/Learn-from-Experience/Conducting-an-effective-incident-investigation>

See also: "OHS Program: 8. What is an incident investigation?," WorkplaceNL, January 2020, online: https://workplacenl.ca/site/uploads/2020/10/20200113_Incident-investigation8.pdf [Editors' Note: Clicking this link may download a PDF document to your device.]

See also: "Workplace Incident Investigation," WorkSafeNB, online: <https://ohsguide.worksafenb.ca/topic/incident.html>

See also: "Incident Investigation," Workers Compensation Board of Prince Edward Island, online: https://ohsguide.wcb.pe.ca/topic/incident_investigation.html

See also: "How to Conduct a Workplace Incident Investigation," Canada Safety Training Centre, online: https://www.canadasafetytraining.com/Safety_Blog/how-to-conduct-a-workplace-incident-investigation.aspx

See also: Jeremy Warning et al., "Serious Workplace Accidents in Canada: Managing the Consequences Coast to Coast," Mathews, Dinsdale & Clark LLP, July 27, 2020, online: <https://mathewsdinsdale.com/serious-workplace-accidents-in-canada-managing-the-consequences-coast-to-coast/>

4. When is an external investigator necessary? How much should independence factor into who should investigate workplace incidents?

[*Editors' Note*: Requirements relating to investigators may be dictated by occupational health and safety legislation and may vary between jurisdictions. Readers are encouraged to consult the requirements of their own jurisdiction.]

- 4.1 Peter Neumann & Jeffrey Sack, *Wrongful Dismissal & Employment Law eText* (Toronto: Lancaster House, 2024, online), Duty to Provide a Safe Work Environment (5.1.3)

a) Harassment and Violence

- 4.2 "Employer directed to appoint external investigator in order to satisfy impartiality requirement in workplace violence investigation," *Employment and Social Development Canada v. Canada Employment and Immigration Union*, 2018 OHSTC 11 (CanLII), Lancaster's *Federal Labour and Employment Law*, eAlert No. 123

See also Document 1.1: Jeffrey Sack & Peter Neumann, *Unionized Workplaces in Canada: Labour Laws and Contract Clauses* (Toronto: Lancaster House, 2024, online), Workplace Harassment – Applicable Legislation (19.2)

See also: "Workplace harassment: investigation by the employer," Government of Ontario, March 11, 2022 (updated July 18, 2022), online: <https://www.ontario.ca/page/workplace-harassment-investigation-employer>

See also: "Workplace harassment: investigations by an impartial person," Government of Ontario, March 11, 2022 (updated July 18, 2022), online: <https://www.ontario.ca/page/workplace-harassment-investigations-impartial-person>

See also: Sean Bawden, "Labour Board Refuses to Appoint Alternate Workplace Harassment Investigator," *Labour Pains* via *CanLII Connects*, April 22, 2023, online: <https://canliiconnects.org/en/commentaries/91048> [*Editors' Note*: This article addresses the decision in *Erin MacKenzie v. Orkestra SCS Inc.*, 2023 CanLII 13891 (ON LRB), online: <https://canlii.ca/t/jvth9>.]

b) Incident Investigations

Please refer to the resources under Question 4.

c) General

See: Emily Sheppard, "Steps toward procedural fairness in workplace investigations," *HRD Canada*, March 7, 2024, online: <https://www.hcamag.com/ca/specialization/employment-law/steps-toward-procedural-fairness-in-workplace-investigations/480240>

See also: Yola Ventresca & Andrea Levstik, "When Should Employers Engage an External Investigator?," Lerner LLP, February 16, 2023, online: <https://www.lerners.ca/lernx/when-should-employers-engage-an-external-investigator/>

See also: "When should I hire a third-party investigator?," Siskinds LLP, August 29, 2022, online: <https://www.siskinds.com/when-should-i-hire-a-third-party-investigator/>

See also: Lisa Corrente, "Key Reasons for Hiring an External Investigator," Association of Workplace Investigators (AWI), online: https://www.awi.org/page/External_Investigate

5. What are best practices for witness interviews during an incident or violence or harassment investigation? How can parties ensure that unconscious biases and systemic inequities do not impact the investigatory process?

See: *Amalgamated Transit Union, Local 113 v. Toronto Transit Commission*, 2018 CanLII 69588 (ON LA), online: <https://canlii.ca/t/ht76t> [Editors' Note: In this decision, a Toronto transit worker who was fired for filing a bad-faith sexual harassment complaint against a supervisor was ordered reinstated by an arbitrator who found on the evidence that she was, in fact, the victim of sexual harassment. Among other things, the arbitrator found that the employer's investigation failed to properly consider the impact of the power imbalance between the grievor and the supervisor on the issue of consent and relied on stereotypes relating to sexual assault in disbelieving the victim's report.]

See also: *McDonald v. CAA South Central Ontario*, 2018 HRT0 163 (CanLII), online: <https://canlii.ca/t/hqhbr> [Editors' Note: In this decision, in the context of a human rights tribunal decision, the adjudicator found that the employer's investigations into the employee's allegations of harassment was inadequate, including its failure to investigate some of the employee's main allegations, concluding that the comments did not amount to harassment because there were no "malicious intentions," prejudging the incident by assuring one of the interviewees that he had handled the situation correctly, relying on accusations by the employee's co-workers which had "racial undertones" without giving the employee an opportunity to respond, and relying on the fact that the employee had "contributed" to the comments in finding that there was no harassment. A request for reconsideration was denied: 2018 HRT0 678 (CanLII), online: <https://canlii.ca/t/hs4kx>.]

See also: Carla Maclean & Surveer Bopari, "Cognitive Bias in OHS Investigation: The Biasing Power of Source Identity," *Occupational Health and Safety*, May 31, 2024, online: <https://ohsonline.com/Articles/2024/05/31/Cognitive-Bias-in-OHS-Investigation-The-Biasing-Power-of-Source-Identity.aspx?Page=4>

See also: Joan Dunlop, "Leaning into Discomfort: Workplace Investigations & Equity, Diversity and Inclusion," *Cenera*, December 21, 2023, online: <https://www.cenera.ca/blog/leaning-into-discomfort-workplace-investigations-equity-diversity-and-inclusionnavigating-a-career-transition-during-the-holidays-ylsdj>

See also: "Rock and Hard Place – Separating You from Your Investigation," *Persaud Employment Law*, August 22, 2023, online: <https://persaudemploymentlaw.com/hr-training-and-development/rock-and-hard-place-separating-you-from-your-investigation/>

See also: Muznah Naeem, "9 Consequences of Biased Workplace Investigations," *Polonious Systems*, August 29, 2023, online: <https://www.polonious-systems.com/9-consequences-of-biased-investigations/>

See also: Sophia Guild, "Are unconscious biases affecting your safety investigations?," *Business & Industry Connection Magazine*, September 1, 2022, online: <https://www.bicmagazine.com/departments/hse/are-unconscious-biases-affecting-your-safety-investigations/>

See also: Alden Habacon, "Workplace Investigations Section Meeting – Unconscious Bias in Workplace Investigations," *Canadian Bar Association West*, May 5, 2020, online (video): <https://vimeo.com/418312459/dda4750ea5>

See also: "Is Your Investigator More Biased Than You Think? Part II: How to Keep Truthiness Out of Your Workplace Investigations," *Ogletree Deakins*, July 18, 2017, online: <https://ogletree.com/insights/is-your-investigator-more-biased-than-you-think-part-ii-how-to-keep-truthiness-out-of-your-workplace-investigations/>

See also: "Is Your Investigator More Biased Than You Think? Part I: How Unconscious Bias Can Disrupt Your Workplace Investigations," *Ogletree Deakins*, July 17, 2017, online: <https://ogletree.com/insights/is-your-investigator-more-biased-than-you-think-part-i-how-unconscious-bias-can-disrupt-your-workplace-investigations/>

See also: Ashley Lattal, "The Hidden World of Unconscious Bias and its Impact on the 'Neutral' Workplace Investigator" (2016), 24:2 *Journal of Law and Policy* 411–466, online: <https://brooklynworks.brooklaw.edu/cgi/viewcontent.cgi?article=1510&context=jlj>

See also: Kristin Zinkl, "Understanding how our bias impacts Incident Investigations," *Center of Visual Expertise (COVE)*, online: <https://www.covectr.com/understanding-how-our-bias-impacts-incident-investigations/>

See also: "Dealing with bias in a workplace investigation," Method Workplace Investigation LLP, online: <https://workinvestigations.com/dealing-with-bias-in-an-investigation/>

See also: Patti Perez, "The 10 Point Checklist for Eliminating Bias in Workplace Investigations," PersuasionPoint Inc., online: <https://persuasionpoint.com/eliminate-bias-checklist/>

See also: "Racism and racial discrimination: Systemic discrimination (fact sheet)," Ontario Human Rights Commission, online: <https://www.ohrc.on.ca/en/racism-and-racial-discrimination-systemic-discrimination-fact-sheet>

See also: Adele Blackett, *A Transformative Framework to Achieve and Sustain Employment Equity – Report of the Employment Equity Act Review Task Force*, Employment and Social Development Canada, Government of Canada, 2023, online: <https://www.canada.ca/content/dam/esdc-edsc/documents/corporate/portfolio/labour/programs/employment-equity/reports/act-review-task-force/EEA-Review-Task-Force-Report-2023-v2.pdf> [Editors' Note: Clicking this link may download a PDF document to your device.]

6. When may off-duty conduct legitimately give rise to a harassment or incident investigation under occupational health and safety legislation? Can employers justify access to employees' personal devices for the purposes of an investigation?

- 6.1 Mort Mitchnick & Brian Etherington, *Leading Cases on Labour Arbitration*, 2nd ed. (Toronto: Lancaster House, 2024, online), Off-Duty Conduct (11.6)
- 6.2 "Comments made by employees on private WhatsApp chat group not subject to discipline, arbitrator rules," *Amalgamated Transit Union – Local 1587 v. The Crown in Right of Ontario (Metrolinx)*, 2023 CanLII 72192 (ON GSB), Lancaster's *Public Service and Crown Agency Employment Law*, eAlert No. 189 [Editors' Note: see Arbitrator Gordon Luborsky's analyses on employee communications falling outside the employer's scope of disciplinary authority, and an employer's right to access an employee's personal cellphone.]
- 6.3 "Electronic timesheet system that required daily 'selfie' photos and GPS tracking on employees' personal devices was unreasonable infringement on employees' privacy rights, arbitrator holds," *International Union of Operating Engineers, Local 793 & Labourers' International Union of North America, Local 183 v. Earth Boring Company Limited*, 2021 CanLII 42419 (ON LA), Lancaster's *Labour Arbitration*, eAlert No. 307
- 6.4 "Arbitrator orders reinstatement and damages for employee who was fired after employer unreasonably searched private accounts left on company computer," *Canadian Media Guild v. Canadian Broadcasting Corporation*, 2021 CanLII 761 (CA LA), Lancaster's *Discharge and Discipline*, eAlert No. 287

See also: *York Region District School Board v. Elementary Teachers' Federation of Ontario*, 2024 SCC 22 (CanLII), <https://canlii.ca/t/k5cq6> [Editors' Note: Supreme Court of Canada rules public school teachers are protected from unreasonable search and seizure under section 8 of the *Charter*.]

See also: Lorenzo Lisi & Michael Horvat, "Off-Duty Conduct and the Employment Relationship: Where is the Line?," Aird & Berlis LLP, December 18, 2019, online: <https://www.airdberlis.com/insights/publications/publication/off-duty-conduct-and-the-employment-relationship-where-is-the-line>

7. What are the requirements for concluding and closing off an investigation?

See: "Conclusions and preparing an investigation report," United Nations HR Portal, online: <https://hr.un.org/page/conclusions-and-preparing-investigation-report>

See also: Yola Ventresca & Jeffrey Risdon, "Workplace Investigations 101: The Workplace Investigation is Complete – Now What?," Lerner LLP, April 18, 2023, online: <https://www.lerners.ca/lernx/workplace-investigations-101-the-workplace-investigation-is-complete-now-what/>

See also: Cynthia Lazar, "What to do with your workplace investigation report," Taylor McCaffrey LLP, 2021, online: <https://www.tmlawyers.com/?resources=what-to-do-with-your-workplace-investigation-report>

8. How do the steps in an incident investigation differ when substance use or abuse is suspected? When will an employer's request for post-incident drug and alcohol testing be found unreasonable by an arbitrator?

- 8.1 "Employer breached employee's privacy rights by attending employee's home to demand post-incident drug test, Alberta arbitrator rules," *Canadian Energy Workers Association v. ATCO Electric Ltd.*, 2024 CanLII 37038 (AB GAA), Lancaster's *Workplace Privacy Law*, eAlert No. 61
- 8.2 "B.C. arbitrator finds employer's request for post-incident IME and random drug testing to be unreasonable, awards \$15,000 in damages for privacy breaches," *Marine and Shipbuilders, Local 506 v. Vancouver Shipyards Co. Ltd.*, 2022 CanLII 100825 (BC LA), Lancaster's *Labour Arbitration*, eAlert No. 331
- 8.3 "Employees entitled to damages for infringement of privacy due to employer's imposition of drug and alcohol tests without reasonable grounds, Saskatchewan arbitrator rules," *Unifor, Local 649 v. SaskEnergy Incorporated*, 2022 CanLII 126109 (SK LA), Lancaster's *Labour Arbitration*, eAlert No. 331

- 8.4 "Employer failed to demonstrate that a 'near miss' workplace accident constituted a significant event that justified post-incident drug and alcohol testing," *United Steelworkers, Local 1-405 v. Interfor Corporation*, 2022 CanLII 15915 (BC LA), Lancaster's *Labour Arbitration*, eAlert No. 319
- 8.5 "Arbitrator orders reinstatement of employee despite positive drug tests as both tests were improperly administered," *Unifor, Local 595 v. Gibson Energy (Moose Jaw Refinery Partnership)*, 2021 CanLII 16446 (SK LA), Lancaster's *Discharge and Discipline*, eAlert No. 285
- 8.6 "Employer's decision to order post-incident testing justified in one case but not in another, arbitrator holds," *United Steelworkers, Local 2009 v. Interfor Acorn*, 2020 CanLII 47162 (AB GAA), Lancaster's *Health and Safety/Workers' Compensation Law*, eAlert No. 255

See also: *International Brotherhood of Electrical Workers, Local 530 v. Mellon Inc.*, 2023 CanLII 79409 (ON LRB), online: <https://canlii.ca/t/jzxf> [Editors' Note: In this decision, the arbitrator found that the demand for a post-incident test was unreasonable given that the incident was not sufficiently serious. For further discussion of the case, see: Apollonia Mastrogiacomo, "Ontario Labour Relations Board Finds Employer Cannot Use Results Of Post-Incident Drug Test To Suspend Or Dismiss Employee," Koskie Minsky LLP, October 19, 2023, online: <https://kmlaw.ca/ontario-labour-relations-board-finds-employer-cannot-use-results-of-post-incident-drug-test-to-suspend-or-dismiss-employee/>.]

Panel 3 - Culture Shifts: Expert guidance on transforming organizational approaches to health and safety

September 12, 2024, 4:00 p.m. – 5:00 p.m. ET

Panelists

Dr. Lynda Robson, Scientist, Institute for Work and Health

Eleni Kassaris, Employer Counsel, Dentons

Robin Angel M.Sc. CRSP, Strategic Advisor Occupational Health & Safety, Department of Justice, Government of Nova Scotia

Katherine Ferreira, Union Counsel, Koskie Minsky LLP

Joanne Hay, Director, Health and Safety, Unifor

In this session, expert panelists will explore best practices in building organizational cultures which prioritize health and safety. Speakers will address questions such as:

- How does creating a strong organizational health and safety culture differ from an employer's requirement to provide a safe workplace under occupational health and safety legislation?
- How can employers and unions promote an organization-wide commitment to health and safety and achieve employee "buy-in" to health and safety initiatives? Should workplace parties seek to shift organizational culture through incentives, consequences for non-compliance, or some combination of the two?
- How can organizations ensure a robust workplace health and safety culture in remote work settings? Will obligations imposed under occupational health and safety legislation apply in such cases?
- Will new technologies, such as artificial intelligence (AI), assist or hinder the creation of a strong health and safety culture?
- How have organizations achieved positive shifts in their health and safety cultures?

Closing Remarks

5:00 p.m. ET

National Health & Safety Conference

Virtual Event, September 12, 2024



LancasterHouse

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Panel #3 – Culture Shifts: Expert guidance on transforming organizational approaches to health and safety

1. What is "culture"? What is "safety culture"? How does creating a strong organizational health and safety culture relate to and go beyond an employer's requirement to provide a safe workplace under occupational health and safety legislation?

- 1.1 Jeffrey Sack & Peter Neumann, *Unionized Workplaces in Canada: Labour Laws and Contract Clauses* (Toronto: Lancaster House, 2024, online), Health and Safety (20.1)
- Applicable Legislation (20.1)
 - Employer's Obligation to Maintain a Safe and Healthy Workplace (20.1.1)
 - Discussion (20.1)
- 1.2 "Safety Culture – Reducing Workplace Illness and Injury: A Framework for Change in Manitoba," SAFE Work Manitoba, online:
https://www.safemanitoba.com/Page%20Related%20Documents/resources/FS_SafetyCultureInfographic_17SWMB.pdf [Editors' Note: Clicking on this link may download a PDF document to your device.] [Reproduced with permission]

See also: Mark Rosanes, "What is safety culture? Industry experts share their views," *Canadian Occupational Safety*, January 15, 2024, online: <https://www.thesafetymag.com/ca/topics/safety-and-ppe/what-is-safety-culture-industry-experts-share-their-views/472985> [Editors' Note: See the heading, "What is safety culture?"]

See also: "Safety Culture," Canada Energy Regulator, Government of Canada, last modified July 17, 2024, online: <https://www.cer-rec.gc.ca/en/safety-environment/safety-culture/>

See also: "Policy statement on Transport Canada's rail safety culture," Transport Canada, Government of Canada, May 18, 2022, online: <https://letstalktransportation.ca/policy-statement-on-transport-canada-rail-safety-culture>

See also: "6 Tips to Help You Build a Positive Safety Culture," Occupational Safety Group Inc. (OSG), online: <https://osg.ca/six-tips-to-help-you-build-a-positive-safety-culture-in-your-workplace/> [Editors' Note: See the heading "What is Safety Culture?"]

See also: Eric Marsden, "Safety Culture: A contentious and confused notion," Risk Engineering, March 30, 2020 (updated January 18, 2021), online: <https://risk-engineering.org/concept/safety-culture>

2. How can employers and unions promote an organization-wide commitment to health and safety and achieve employee "buy-in" to health and safety initiatives? Should workplace parties seek to shift organizational culture through incentives and/or consequences for non-compliance?

a) Assessing Organizational Health and Safety Culture

2.1 "IWH Organizational Performance Metric," Institute for Work & Health (IWH), January 2016, online: <https://www.iwh.on.ca/tools-and-guides/iwh-organizational-performance-metric> [Reproduced with permission]

2.2 "Safety Culture Assessment Guidance," Canada Energy Regulator, Government of Canada, 2022 (modified February 9, 2023), online: <https://www.cer-rec.gc.ca/en/safety-environment/safety-culture/safety-culture-learning-portal/safety-culture-assessment-guidance/> [Reproduced with permission]

See also: "IWH tool comes out ahead in Australian study of OHS leading indicator tools," Institute for Work & Health (IWH), February 7, 2023, online: <https://www.iwh.on.ca/plain-language-summaries/iwh-tool-comes-out-ahead-in-australian-study-of-ohs-leading-indicator-tools>

See also: "WSIB includes Institute safety culture tool in Health and Safety Excellence Program," Institute for Work & Health (IWH), March 2022, online: <https://www.iwh.on.ca/impact-case-studies/wsib-includes-institute-safety-culture-tool-in-health-and-safety-excellence-program> [Editors' Note: See the links at the bottom of this page relating to this tool's use in other provinces.]

See also: "Can an eight-item questionnaire pick up on real-world differences in OHS practice?," Institute for Work & Health (IWH), February 14, 2020, online: <https://www.iwh.on.ca/plain-language-summaries/can-eight-item-questionnaire-pick-up-on-real-world-differences-in-ohs-practice>

See also: "Safety Culture Assessment," SAFE Work Manitoba, online:

<https://www.safemanitoba.com/safetyculture/pages/safety-culture-assessment.aspx>

See also: "Leading Indicators for Workplace Health and Safety: a user guide," Government of Alberta, 2020, online: <https://open.alberta.ca/dataset/0998a751-ab73-497c-a1a8-4ed321eef963/resource/99b1c0d2-779d-4f11-a325-184e89b0be80/download/lbr-leading-indicators-for-workplace-health-and-safety-user-guide-2020.pdf> [Editors' Note: Clicking on this link may download a PDF document to your device.]

See also: "OHS Vulnerability Measure," Institute for Work & Health (IWH), January 2016, online: <https://www.iwh.on.ca/tools-and-guides/ohs-vulnerability-measure>

See also: "Safety Climate Questionnaire – NOSACQ-50," Det Nationale Forskningscenter for Arbejdsmiljø, last update August 22, 2024 online: <https://nfa.dk/vaerktoejer/spoergeskemaer/safety-climate-questionnaire-nosacq-50>

See also: "What is a Safety Culture Assessment and How Does It Work?," Railway Association of Canada, online: <https://www.railcan.ca/wp-content/uploads/2023/03/SPARK-RAC-INFOGRAPHIC-SAFETY-CULTURE-ASSESSMENT-2023-EN1.pdf> [Editors' Note: Clicking on this link may download a PDF document to your device.]

b) Shifting and Maintaining Organizational Health and Safety Culture

2.3 Jeffrey Sack & Peter Neumann, *Unionized Workplaces in Canada: Labour Laws and Contract Clauses* (Toronto: Lancaster House, 2024, online), Health and Safety (20.1)

- Health and Safety Training (20.1.4)
- Joint Health and Safety Committee (20.1.9)
- Information, Monitoring and Testing (20.1.11)
- Checklist (20.1)

2.4 *Safety Culture Learning Portal*, Canada Energy Regulator, Government of Canada [Reproduced with permission]

- "Safety Culture Defence: Committed Safety Leadership," Canada Energy Regulator, Government of Canada, last modified November 26, 2023, online: <https://www.cer-rec.gc.ca/en/safety-environment/safety-culture/safety-culture-learning-portal/safety-culture-defence-committed-safety-leadership.html>
- "Safety Culture Defence: Resiliency," Canada Energy Regulator, Government of Canada, last modified February 9, 2023, online: <https://www.cer-rec.gc.ca/en/safety-environment/safety-culture/safety-culture-learning-portal/safety-culture-defence-resiliency.html>

- "Safety Culture Defence: Empowerment and Accountability," Canada Energy Regulator, Government of Canada, last modified February 9, 2023, online: <https://www.cer-rec.gc.ca/en/safety-environment/safety-culture/safety-culture-learning-portal/safety-culture-defence-empowerment-accountability.html>
- "Safety Culture Defence: Vigilance," Canada Energy Regulator, Government of Canada, last modified February 9, 2023, online: <https://www.cer-rec.gc.ca/en/safety-environment/safety-culture/safety-culture-learning-portal/safety-culture-defence-vigilance.html>
- "Safety Culture Threat: Normalization of Deviance," Canada Energy Regulator, Government of Canada, last modified February 9, 2023, online: <https://www.cer-rec.gc.ca/en/safety-environment/safety-culture/safety-culture-learning-portal/safety-culture-threat-normalization-deviance.html>
- "Safety Culture Threat: Production Pressure," Canada Energy Regulator, Government of Canada, last modified February 9, 2023, online: <https://www.cer-rec.gc.ca/en/safety-environment/safety-culture/safety-culture-learning-portal/safety-culture-threat-production-pressure.html>
- "Safety Culture Threat: Tolerance of Inadequate Systems and Resources," Canada Energy Regulator, Government of Canada, last modified February 9, 2023, online: <https://www.cer-rec.gc.ca/en/safety-environment/safety-culture/safety-culture-learning-portal/safety-culture-threat-tolerance-inadequate-systems-resources.html>
- "Safety Culture Threat: Complacency," Canada Energy Regulator, Government of Canada, last modified February 9, 2023, online: <https://www.cer-rec.gc.ca/en/safety-environment/safety-culture/safety-culture-learning-portal/safety-culture-threat-complacency.html>
- "Human and Organizational Factors," Canada Energy Regulator, Government of Canada, last modified November 10, 2023, online: <https://www.cer-rec.gc.ca/en/safety-environment/safety-culture/safety-culture-learning-portal/human-organizational-factors/>
- "Just Culture," Canada Energy Regulator, Government of Canada, last modified November 9, 2023, online: <https://www.cer-rec.gc.ca/en/safety-environment/safety-culture/safety-culture-learning-portal/human-organizational-factors/just-culture/>
- "A Regulatory Priority for Safety Culture," Canada Energy Regulator, Government of Canada, last modified February 9, 2023, online: <https://www.cer-rec.gc.ca/en/safety-environment/safety-culture/safety-culture-learning-portal/regulatory-priority-safety-culture.html>

See also: *R v. Greater Sudbury (City)*, 2023 SCC 28 (CanLII), online: <https://canlii.ca/t/k127r> [Editors' Note: In this case, as a result of a split 4-4 decision, the Supreme Court of Canada dismissed the appeal of the City of Greater Sudbury from a decision by the Ontario Court of Appeal, which had affirmed that the city was an employer for the purpose of Ontario's *Occupational Health and Safety Act* in relation to a death of a pedestrian at one of its construction sites. Determining that the question of control over the worksite was relevant only to a due diligence defence, the majority of the Court found that the city, as an employer, was equally responsible, with the constructor it had contracted to oversee the project, for ensuring that regulatory safety measures were implemented. Since compliance with these measures was not met, the Court held that the city breached the Act, and remitted the case to the Ontario Superior Court to consider the city's due diligence defence. An eAlert summarizing this decision is included in the Panel 1 materials as Document 1.1.]

See also: "Safety Culture Indicators Research Project: A Regulatory Perspective," Canada Energy Regulator, Government of Canada, March 17, 2016 (last modified September 29, 2020), online: <https://www.cer-rec.gc.ca/en/safety-environment/safety-culture/safety-culture-indicators-research-project-regulatory-perspective.html>

See also: "Enhancing health & safety culture & performance," WorkSafeBC, online: <https://www.worksafebc.com/en/health-safety/create-manage/enhancing-culture-performance>

- See also: "Active health & safety management," WorkSafeBC, online: <https://www.worksafebc.com/en/health-safety/create-manage/enhancing-culture-performance/active-health-safety-management>
- See also: "Planning for health & safety," WorkSafeBC, online: <https://www.worksafebc.com/en/health-safety/create-manage/enhancing-culture-performance/planning-health-safety>
- See also: "Leadership & commitment," WorkSafeBC, online: <https://www.worksafebc.com/en/health-safety/create-manage/enhancing-culture-performance/leadership-commitment>
- See also: "Engaging workers in health & safety," WorkSafeBC, online: <https://www.worksafebc.com/en/health-safety/create-manage/enhancing-culture-performance/engaging-workers>
- See also: "Due diligence," WorkSafeBC, online: <https://www.worksafebc.com/en/health-safety/create-manage/enhancing-culture-performance/due-diligence>

See also: "Culture Check: Best Practices to Improve Your Workplace Safety Culture," SAFE Work Manitoba, online:

https://www.safemanitoba.com/Page%20Related%20Documents/resources/Safety_Culture_Assessment_Guide_Web.pdf [Editors' Note: Clicking on this link may download a PDF document to your device.]

See also: "Workplace Dimensions – Strengthen Your Workplace Culture," SAFE Work Manitoba, online:

<https://www.safemanitoba.com/Page%20Related%20Documents/resources/SafetyCultureWorkplaceDimensionsWorksheet.pdf> [Editors' Note: Clicking on this link may download a PDF document to your device.]

See also: "Safety Culture Maturity – Committee," SAFE Work Manitoba, online:

<https://www.safemanitoba.com/Page%20Related%20Documents/resources/SafetyCultureMaturityCommittees.pdf> [Editors' Note: Clicking on this link may download a PDF document to your device.]

See also: "Safety Leadership Series," WorkSafeNB, online: <https://www.worksafenb.ca/safety-topics/safety-leadership-series/>

See also: Mark Rosanes, "What is safety culture? Industry experts share their views," *Canadian Occupational Safety*, January 15, 2024, online: <https://www.thesafetymag.com/ca/topics/safety-and-ppe/what-is-safety-culture-industry-experts-share-their-views/472985> [Editors' Note: See the headings, "How can organizations promote safety culture in the workplace?" and "What challenges do organizations face when establishing a safety culture in the workplace?"]

See also: Rhys Fraser, "Want a strong safety culture? Listen to your employees to gain trust, respect," *OHS Canada*, October 24, 2022, online: <https://www.ohscanada.com/opinions/want-a-strong-safety-culture-listen-to-your-employees-to-gain-trust-respect/>

See also: Maia Foulis, "12 Effective ways to build a culture of safety in your workplace," *Canadian Occupational Safety*, April 28, 2022, online:

<https://www.thesafetymag.com/ca/topics/leadership-and-culture/12-effective-ways-to-build-a-culture-of-safety-in-your-workplace/404063>

See also: Meaghan Whitney, "Best practices for achieving a holistic safety culture," *OHS Canada*, August 12, 2021, online: <https://www.ohscanada.com/opinions/best-practices-for-achieving-a-holistic-safety-culture/>

See also: Gina Gould, "The pros and cons of behavior-based safety (BBS)," Wolters Kluwer, March 7, 2019, online: <https://www.wolterskluwer.com/en/expert-insights/the-pros-and-cons-of-behaviorbased-safety-bbs>

See also: Martin Greene, "Behavior-based safety: A study of pros and cons," *Safety + Health*, August 1, 2009, online: <https://www.safetyandhealthmagazine.com/articles/behavior-based-safety-a-study-of-pros-and-cons-2?page=1>

See also: "5 Tips for Building a Strong Safety Culture," SET Safety, online: <https://setsafety.ca/blog/5-tips-for-building-a-strong-safety-culture/>

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3. How can organizations ensure a robust workplace health and safety culture in hybrid/work-from-home work settings? Will obligations imposed under occupational health and safety legislation apply in such cases?

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