

impartial person to investigate the complaint pursuant to the *Canada Labour Code*.⁴ The CFIA appealed that direction to an Appeals Officer of the Occupational Health and Safety Tribunal of Canada, who supported the position of the CFIA. The employee then appealed to the Federal Court.

The Federal Court of Appeal found that Part XX to the Canada Occupational Health and Safety Regulations under the *Canada Labour Code* set out the procedural obligations of an employer if it receives a complaint of “workplace violence” (defined as “any action, conduct, threat or gesture of a person towards an employee in their work place that can reasonably be expected to cause harm, injury or illness to that employee”). It held that the alleged harassment could have constituted “workplace violence” if, after a proper investigation by a competent person, it was determined that the harassment could reasonably be expected to cause harm or illness to the employee and further, that under the Regulation, a person is a “competent person” to conduct a workplace violence investigation if he or she is “impartial and is s

The takeaway from this case is that, where there is an allegation that may impact an employee, that employee must be afforded a fair and reasonable opportunity to respond to the allegations that form part of the complaint(s) against them. Process is important. As well, if an investigation is to take place, then it has to be done fairly.

MORGAN V UNIVERSITY OF WATERLOO

That does not mean that an internal investigation cannot be fair and appropriate. In the case of *Morgan v University of Waterloo*,⁷ the applicant complained to the University that another employee sexually harassed her at a conference. The University, in response, conducted an internal investigation and found that there was no direct evidence to substantiate an allegation of sexual harassment.

The HRTO stated that employers have a duty to investigate complaints of harassment and/or discrimination and that the “duty to investigate” is the means by which an employer ensures they are achieving the “Code-mandated” responsibility of operating a

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