

Ministry of Attorney General
Investigation & Standards Office

INTERNAL PROCEDURES MEMORANDUM

“Master Binder”

2007

DRAFT – Feb 14, 2007 /gd

G:\ADMIN\IPM\DRAFTS\MASTER SET - Drafts

SECTION ONE
Administration Memorandum

<u>IMP</u>	<u>TITLE</u>	<u>APPROVED</u>
A-01	Introduction	Draft
A-02	Computer Security	Draft
A-03	Virus Check	Draft
A-04	Maintenance of G: Drive	Draft
A-05	Manuals	Draft
A-06	Company Search	Draft
A-07	Document Disposal and Shredding	Draft
A-08	Office Security	Draft
A-09	Clean Desk Management	Draft
A-10	Bombs and Bomb Threats	Draft
A-11	Complaint Inquiries – Office of the Ombudsman (Sep 22/02)	Draft
A-12	Data & File Security	Draft
A-13	Occupational Health and Safety Program (Jan 24/02)	Draft
A-14	iExpense Procedures	Draft
A-15	Mail & File Processing	Draft

SECTION TWO
Operations Memorandum

<u>IPM</u>	<u>TITLE</u>	<u>APPROVED</u>
B-01	Investigation Reports	Draft
B-02	Performance Standards - Investigations	Draft
B-03	Notifications for Court Inspections	Draft
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INTERNAL PROCEDURES MEMORANDUM

Section B

OPERATIONS

INVESTIGATION REPORTS (1999 Version)

As our reports are distributed to the Minister and senior Ministry management, and often publicly released, they must be professional in appearance, well written, grammatically correct, factual, and exhibit thorough coverage of the issue or issues under investigation.

As a minimum, Investigation Reports will include the following standard sections:

- **Cover Page**
- **Table of Contents**
- **Executive Summary**
- **Introduction** (*or Background, if more appropriate*)
- **Scope of the Investigation**
- **Observations and Recommendations (Conclusions)**
- **Summary of Recommendations**
- **Glossary**

We have designed a standard cover page for our Investigation Reports [see attachment #1]. The **Table of Contents** will be prepared by the administrative staff in consultation with the Inspector responsible for the report and will contain sufficient information to convey to a reader the general subject matter of sections of the report, and where to find specific matters.

The **Executive Summary** will contain a short description of the subject matter, the scope of the investigation, and the significant observations, matters of fact, and our significant recommendations. We should try to avoid the usage of acronyms in this section of the report. Commonly accepted acronyms may be judiciously used.

The **Introduction** (or Background, if more appropriate) section contains a description of the context of the investigation. It may require a description of the operating unit and the major participants in order to set the stage for the reading of the rest of the report. Any acronyms to be used in the Introduction should be defined when first used.

The **Scope of the Investigation** section will describe what was investigated, any limitations on the investigation, the extent of review of documents and interviews, and any other information that will assist the reader in understanding the extent. This section should also state when we have discussed our observations and recommendations, and with whom, in the management structure. If there is a limitation on our review, it is extremely important that we advise the reader in this section of the report.

The section on **Observations and Recommendations** will contain the results of our investigation and any appropriate recommendations for improvement. This section will contain sufficient information about each observation to enable management to understand the issue and its context, the cause and effect if appropriate, and a separate recommendation requiring management to take action to effect improvement. The recommendation should be focused at the appropriate level of management who can take effective action.

The **Summary of Recommendations** contains all recommendations made in the preceding section. This section will be prepared by the administrative staff as part of the final preparation process of the report.

The **Glossary** includes a list of all acronyms or other abbreviations used in the report. This section will also be prepared by the administrative staff as part of the finalization of reports.

The Inspectors have the primary responsibility for report preparation. Inspectors are encouraged to draft and key creatively. Administrative staff are primarily responsible for formatting, spell checking, and keying editorial changes on reports. Inspectors are expected to apply quality assurance to ensure spelling is correct, grammar is correct, and that the report complies with the standards for the office.

Inspectors are expected to write in the active voice, in plain language. Whenever possible, jargon should be avoided. Inspectors should be sensitive to sentence length and paragraph length in writing reports. Variable sentence length adds to the strength of the writing.

We must write investigation reports from the point of view that there will probably be a proactive public release of the report. The Inspector should draft the report with *Freedom of Information and Protection of Privacy Act* issues in mind. That is, the report should avoid names of individuals or other personal information wherever possible. Individuals can be referenced by their job titles, but avoid classification as a substitute for a job title. As well, the Inspector should be sensitive to security information and assess the need for this information in the report. We are trying to achieve a standard of being able to release reports publicly with the minimum amount of severing.

Management Briefing

Prior to release of the report, Inspectors are expected to ensure that management is well briefed on the issues covered in the report, as well as the report's conclusions and recommendations. The management briefings will include the District Director or local manager, the Regional Director, and the Assistant Deputy Minister, or Assistant Deputy Attorney General, whichever is appropriate.

Distribution

Prior to distribution, a copy of the report should be sent to our solicitor for comment, and to the Director, Information and Privacy Branch seeking advice on FOI issues.

Investigation reports are distributed to the Assistant Deputy Minister, and the Deputy Minister to ensure coverage of the issues. A copy of the report is also sent to the issues management team, for their information. At this point, a severed version of the report should be prepared on the basis of the advice received from our solicitor and the Information and Privacy Branch.

Thereafter, a copy of the report is sent to the Minister. When the copy is sent to the Minister, the covering letter includes the advice that there is a severed version of the report available for public release. If the severed report is released publicly, the Office may need to reply to enquiries from the media. As well, if the report is released publicly, severed copies of the report can be made available to individuals on their enquiry. There is no need to go through a formal FOI request.

General appearance of an ISO report.

<p>Investigation Report</p> <p>Title Name Location Date</p> <p>Ministry of Attorney General Investigation & Standards Office</p> <p>September 1, 2006</p>	<p>Table of Contents</p> <table><thead><tr><th>Section</th><th>Page</th></tr></thead><tbody><tr><td>1.0 EXECUTIVE SUMMARY</td><td>1</td></tr><tr><td>2.0 SCOPE OF INVESTIGATION</td><td>2</td></tr><tr><td>3.0 INTRODUCTION</td><td>2</td></tr><tr><td>4.0 OBSERVATIONS AND RECOMMENDATIONS</td><td>14</td></tr><tr><td>4.1 Health Care</td><td>14</td></tr><tr><td>4.2 s.22</td><td>17</td></tr><tr><td>4.3 Corrections Operations and Program</td><td>26</td></tr><tr><td>4.4 WHMIS Issues: Access to hazardous materials</td><td>30</td></tr></tbody></table> <p>APPENDIX</p> <table><tbody><tr><td>A SUMMARY OF RECOMMENDATIONS</td><td>34</td></tr></tbody></table>	Section	Page	1.0 EXECUTIVE SUMMARY	1	2.0 SCOPE OF INVESTIGATION	2	3.0 INTRODUCTION	2	4.0 OBSERVATIONS AND RECOMMENDATIONS	14	4.1 Health Care	14	4.2 s.22	17	4.3 Corrections Operations and Program	26	4.4 WHMIS Issues: Access to hazardous materials	30	A SUMMARY OF RECOMMENDATIONS	34
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<p>Death of Inmate SPSC</p> <p>1.0 EXECUTIVE SUMMARY</p> <p>(SPSC) on s.22 in SPSC on s.22 the cause of her death. s.22 She was admitted to Surrey Pretrial Services Centre. She was found deceased in s.22 unit. The Coroner has not yet determined s.22</p> <p>This report includes recommendations for improvements in service delivery and record keeping in the health care unit. We are also recommending improvements in monitoring and compliance with the existing health care policies and standards of the BC Corrections Branch regarding inmates placed in the s.22 unit for s.22 purposes. Recommendations are also made concerning the management and use of chemical substances on custody centre living units and the monitoring of operations in the s.22 area at SPSC.</p> <p>We would like to thank the management and staff of the Surrey Pretrial Services Centre for their co-operation and assistance in this investigation.</p> <p>Vaughan Dowie Director Investigation & Standards Office</p> <p>1 Investigation & Standards Office</p>	<p>Death of Inmate SPSC</p> <p>2.0 SCOPE OF INVESTIGATION</p> <p>Surrey Pretrial Services Centre (SPSC) houses remanded male and remanded and sentenced secure females. The custody centre maintains a 24-hour health care unit as well as educational, recreational, and support programming. Inmates may also participate in work programs.</p> <p>We have investigated the circumstances following the admission to custody of the subject of this report (the subject), at SPSC on s.22 to her tragic death on s.22 at SPSC. As part of this investigation, we have reviewed the staff's compliance with the Correction Act and Correction Act Regulations, Corrections Branch's Adult Custody Policy, SPSC Standing Orders, the Health Care Services Manual, and the Health Care Record User's Manual (date issued 2000). We have also reviewed the appropriateness of the actions of staff before, during and after the incident. Additional legislation reviewed includes the Workers' Compensation Act, Occupational Health and Safety Regulations. Finally we reviewed the Critical Incident Review report for the Corrections branch and the subsequent Interim Response Table.</p> <p>Interviews were conducted with health care staff and Corrections branch staff at SPSC. All available documents, including digital video recordings, concerning the subject's Corrections history and the health care provided to her while in Corrections custody were also reviewed.</p> <p>3.0 INTRODUCTION</p> <p>s.22</p> <p>The subject was arrested s.22</p> <p>admitted to SPSC on s.22 She was s.22 s.22</p> <p>2 Investigation & Standards Office</p>																				

PERFORMANCE STANDARDS - Investigations

Many of our investigations relate to critical incidents that may be litigious when the investigation is assigned, or may become involved in litigation at a later date. For this and other reasons, we must be professional in our manner, accurate and thorough in our investigation, and our reports must present facts and be well written.

Responsibilities

Inspectors shall assume responsibility for the timely completion of assigned investigations. Where more than one inspector is assigned to an investigation, one inspector shall be identified as the Senior Inspector for that assignment.

The Senior Inspector shall be responsible for the overall coordination of the investigation, the quality, content and timeliness of the report preparation, and the timely completion of the file. Inspectors assigned to assist in investigations will industriously contribute to the fulfilment of these responsibilities.

In terms of time management, inspectors are expected to exercise good judgement and to balance the application of effort to assignments to obtain timely completion. Priority will be given to the completion of investigations, at the expense of routine complaints. This priority is only tempered with the necessity to complete appeals where the inmate is serving segregation time, or complaints where time will seriously jeopardize our ability to effectively deal with the complaint.

Independence

Independence is a state of mind. Inspectors are expected to be independent of the subject of the investigation, as well as be perceived to be independent. This will be reflected in our manner, approach, conversation and correspondence with individuals involved in an investigation. Inspectors are also expected to identify, at the outset, assignments where there are real or perceived compromises of independence.

Notes

The inspector's field notes will become part of the file which may be requested under the *Freedom of Information and Protection of Privacy* legislation. The inspector's field notes are expected to be complete, thorough, professional, and free of any intemperate or irrelevant comment. Where appropriate, the inspector's field notes should identify items for follow-up, and should also highlight issues to be reported to management.

Inspector's field notes that relate to discussions or interviews shall indicate the inspector's initials, the date, with whom there was a discussion or an interview, and anyone else present. For interviews with bargaining unit staff, it is imperative that the inspector's field notes indicate if a shop steward was present during an interview, or if the interviewee declined a shop steward. Any written material obtained from another party or a manual or document shall indicate the inspector's initials, date, from whom it was received, and the document from which it was excerpted or extracted.

Files

All investigation files will be bound in hard covers with Acco fasteners. Where appropriate, the files shall indicate if it is one of a series of files on the same investigation.

Each file shall include a copy of the index for the file. The index shall be the first document on each file. For larger section of the file, where appropriate for rapid retrieval of information, each section of the file will include a sub-index for that section of the file.

The file will be indexed in an alpha-numeric matter consistent with the indexing methodology established for the office. Because of the nature of our work, there are few instances where we index individual documents. Where we index specific documents, all indexing will be in the lower right hand corner of each document on the file. In rare cases where documents refer to other documents held in the file, cross-referencing will be done. Inspectors are expected to exercise good judgement in the need for, and amount of cross-referencing done on a file.

A completed file will include copies of all reports issued on the matter under investigation and will include notes on all discussions with management on the matters addressed in the report.

Report

Investigation reports will be distributed to the Ministry's senior management, and where appropriate, the Minister. The reports must reflect the professionalism of the office, be well written, thoroughly cover the issues and be grammatically correct. The reports must also be written in such a manner that they will require the minimum amount of severing for public release.

Inspectors are responsible for the report's content (ie., to ensure that the report contains matters of fact, that it covers the issues under investigation and complies with the format established for the office). Inspectors are not expected to format reports, rather to work with the administrative staff to ensure that the report is in the proper format.

In writing the report, Inspectors are expected to exhibit a sensitivity to protection of privacy and other issues that will affect the public release of the report. As well, Inspectors are expected to write in the present tense and active voice wherever appropriate and possible. The reports are to contain sufficient and necessary information to assist the understanding of the issue by several levels of management and members of the public.

NOTIFICATIONS FOR COURT INSPECTIONS - 2004

ASSIGNING FILE NUMBERS

- Specific location file numbers are assigned for each inspection (one file per inspection) and a file folder is created. Ensure the file number is assigned in accordance with the inventory list located under G:\Admin\Filing\Court files.doc.
- Update the Court Files list with the new file number, location name, date, and inspection type.

ADVISING THE LOCATION

- Our usual procedure is to telephone the management of the location and advise them that they are scheduled for an inspection and enquire if there are any scheduled staff absences, or any other matters that would interfere with the intended scheduled date. If they advise that it is not mutually convenient, we should explore and assess their reasons and reservations. If the reasons appear valid, we should advise them that we will re-schedule and be in contact with them later in the year.
- If the date is acceptable, we confirm the date, the inspection team, the timing of the inspection, and an approximate appointment for an introductory meeting in writing.
- We normally advise the location of an inspection, in writing, approximately 30 days in advance of the inspection date.
- The memorandum for notice of inspection is addressed to the Manager, Court Administrator, or Sheriff. Follow the instructions below for who to address the memo to and who to copy.
- A template for the memo is located under G:\Court\Forms\Court Inspection Memo. To complete it firstly save the file with a new name, then enter in the date of inspection, type of inspection, team leader or inspector name, and time frame.

PREPARING THE MEMO

Sheriffs Operational Inspections

- For Sheriff Services locations in the Lower Mainland, the memo is addressed to the Sheriff with a copy to the Executive Director, Sheriff Services and the Executive Director, Court Services Branch Headquarters.
- For Sheriff Services locations in the rest of the province we write to the Sheriff and copy the individual that the Sheriff reports to, ie. Manager, Deputy Regional Director, or Regional Director. We also send a copy to the Executive Director, Sheriff Services.
- Attach a copy of the information sheet referred to in the memo for the user interviews G:\Courts\Forms\Sheriffs Info.Sheet to the memo sent to the location.

For all other inspections (exhibits, financial and case processing programs), we write to the Manager or Court Administrator. If the memo is to the Court Administrator, it is copied to the cost centre Manager.

For exhibit inspections, attach a copy of the information sheet referred to in the memo for the user interviews G:\Courts\Forms\interview info – exhibit inspection.doc to the memo sent to the location.

All inspection memos are copied to the Regional Director and Executive Director, CSB Headquarters.

The memo is copied to the inspection team members.

At this time we are not using the information sheet for registry staff
G:\Courts\Forms\Infsheet.2).

If registry operational inspections are conducted in the future, an information sheet will need to be developed.

For Financial Inspections, the memorandum has to be slightly altered because user interviews are not conducted - do not attach an information sheet.

Do we want to address Ad Hoc inspectors here?

For Financial Inspections:

- Telephone, email, fax a request to Finance and Administration for an accountable advance report and centralized bank account report (refer to their website, if the following contacts are not current)
- For the Accountable Advance Report – contact Accounting and Report - Scott McElroy @ 356-7327
- For the Centralized Banking Report – contact Revenue and Trust - Pat Keen @ 387-8106
- Attach the reports to the inspector's (or contractor's) copy of the notice;

NOTIFICATIONS FOR COURT INSPECTIONS - 2003

ASSIGNING FILE NUMBERS

- Specific location file numbers are assigned for each inspection (one file per inspection) and a file folder is created. Ensure the file number is assigned in accordance with the inventory list located under G:\Courts\Forms\Sheriffs Info.Sheet.
- Update the 'Court Inspection File #' list with the new file number, location name, date, and inspection type.

ADVISING THE LOCATION

Our usual procedure is to telephone the management of the location and advise them that they are scheduled for an inspection in approximately 30 days. We enquire if there are any scheduled staff absences, or any other matters that would interfere with the intended scheduled date. If they advise that it is not mutually convenient, we should explore and assess their reasons and reservations. If the reasons appear valid, we should advise them that we will re-schedule and be in contact with them later in the year.

If the date is acceptable, we should confirm the date, the inspection team, the timing of the inspection, and an approximate appointment for an introductory meeting. We normally advise the location of an inspection, in writing, approximately 30 days in advance of the inspection date. Memorandums for notice of inspection are addressed to the Manager, Court Administrator, or Sheriff. For Sheriff Services locations in the Lower Mainland, we advise the Sheriff with a copy to the Executive Director, Sheriff Services and the Executive Director, Headquarters. For locations in the rest of the province, we write to the Manager, Court Administrator or Sheriff, with a copy to the Regional Director and Executive Director, Headquarters. For Sheriff Services locations in the rest of the province we write to the Sheriff and copy the Manager. The memo format is located under G:\Court\Forms\Court

Inspection Memo. To complete it firstly save the file with a new name, then enter in the date of inspection, type of inspection, team leader or inspector name, and time frame.

Notes:

"Sheriffs Operational Inspection"

- The notice goes to Sheriff and if the Sheriff reports to the Manager, the notice is copied to the Manager and the Regional Director. If the Sheriff reports to the Deputy Regional Director or Regional Director, the memo is copied accordingly. For Lower Mainland, the notice goes to Sheriff and is cc'd to the Executive Director of Sheriff's Services.

"Registry Operational Inspections" (exhibits, financial and case processing programs)

- The notice goes to Manager or Court Administrator (person in charge of the location). If the memo is going to a Court Administrator, it is copied to the cost centre Manager and the Regional Director.
- The memo is copied to the inspection team members, the Regional Director, and the Executive Director at Court Services Headquarters.
- For registry and sheriffs operationals (including exhibits), attach a copy of the information sheet referred to in the memo for the user interviews *G:\Courts\Forms\Sheriffs Info.Sheet* to the memo sent to the location. Do not attach it for financials because user interviews are not conducted.

Note: At this time we are not using the information sheet for registry staff (*G:\Courts\Forms\Infsheet.2*) as this information has been included in the memo to the location.

The memorandum for "Financial Inspections" has to be slightly altered.

Do we want to address Ad Hoc inspectors here?

"Financial Inspections"

- call Finance and order the accountable advance report and centralized bank account report (Call Scott McElroy 356-7327 for the accountable advance report, call Pat at 387-8106 for the centralized banking report);
- attach the reports to the inspector's (or contractor's) copy of the notice;
- attach a copy of the organization chart to the inspection team member's copy of the memo.

FOI REQUESTS

Privacy, Information and Records Management Division (PIRMD)
5th Floor, 910 Government Street
Victoria, BC V8V 1X6

All requests should go through Gaby. There are four FOI file folders:

- 292-30/General
- 292-30/Personal
- 293-30
- 293-30 s.22

Check the list of requests kept inside each folder. Sometimes they ask for the same file more than once.

REQUESTS FROM PIRMD (Crown Proceeding Act):

s.22 from PIRMD (Kent Tran or Uta Dunz). Always ask if it's related to
. Other requests will be from inmates.

I search everything electronically. Something to watch for is two files for the same person. On occasion, one inmate will have two files because of a spelling error or the original file was not ordered from off site.

Search:

- ATD
- G:\Filing
- G:\Cards
- CORNET for aliases
- Update G:\ADMIN\FOI\FOI Requests - s.22 Requests.xls

Copy the entire file and mail it to the person at Legal Services that PIRMD has indicated in their email. Email Kent, Uta and the person at Legal Services when you have put it in the mail.

REQUESTS FROM REPORTERS:

Check with Vaughan or Deanna. After we do the search, one of them will usually draft a response which is filed in:

- 293-30/Media

REQUESTS BY PHONE:

Complete G:\FORMS\FOI Requests TRACKING.doc if you get an FOI request by phone.

**FREEDOM OF INFORMATION and PROTECTION OF PRIVACY ACT
INFORMATION REQUESTS**

The Investigation, Inspection & Standards Office has delegated authority to administer the *Freedom of Information and Protection of Privacy Act* (the Act) where it pertains to files of this office. Requests received by the ministry Information and Privacy Program are generally transferred to the Investigation, Inspection & Standards Office unless the request includes information from files in other areas of the ministry. Although the Investigation, Inspection & Standards Office has delegated authority, we consult with staff of the Information and Privacy Program, value their advice and work closely with them in severing material.

The Office may be periodically requested to prepare copies of investigation reports for proactive public release. The procedures around severing in these circumstances will be covered in the IPM on Investigation Reports.

We have defined some of our records as transitory records under a separate IPM. These would include drafts of reports and audio tapes of interviews. Any transitory records that are on file are subject to severing and are included in the FOI request.

PROCEDURES

Acknowledgement:

We should notify the Information and Privacy Program (IPP) of the receipt of a request so they may include the request in their ministry information. They may also assign a file number that we would use.

On receipt of a request, the Act requires that we acknowledge receipt of the request and we normally have 30 days in which to respond to the request. We have standard acknowledgement letter located on g:\forms\foi\acknow.foi.

After acknowledgement of the request, we should generally advise the operating branch that we have received a request. If it involves the media, we should advise the branch and a member of the Issues Management Team. We will also notify the Deputy Minister where we receive a request for work in process or sensitive information. We will also notify Information and Privacy Program so that they can include on weekly sensitive request report.

In notifying the operating branch that we have received a request, if the request involves information about an employee, we should enquire if there is any disciplinary action pending on that employee related to the FOI request. If there is, then PSERC becomes involved in the severing of the material (Section 17). As it becomes a personnel issue, IPP would handle this request.

If there is any indication that there may be a police investigation or criminal charges pending or laid that relate to the information being requested, we have to consult with Criminal Justice Branch about the release of the material.

Severing:

Within the 30 day timeframe, we must locate the file, photocopy all the material on the file, and review each page for application of the severing provisions of the *Freedom of Information and Protection of Privacy Act*. In severing material, one must be very aware of personal information, or information that is third party information. As well, one must be aware of the possibility of harm to personal or public safety if the information is released (Section 19).

Information to be severed should be highlighted using a pink highlighter. The Information and Privacy Program have a special photocopier which can red line information highlighted, or blank out the information. The Information and Privacy Program will allow us access to their

photocopier when it is not in use. **Please check the severing very carefully** as the photocopier has missed parts of the material in the past.

A note should be prepared as to the section of the Act under which the information is being severed. The best method is to prepare a table indicating the page reference, paragraph reference, section of the Act, and notes as to why severed.

The highlighted version of the records and a copy of the severed version and the notes become part of the file in case there is an appeal of the severing and a request for the Information and Privacy Commissioner's review.

Extending Timeframes:

If the 30 day timeframe is insufficient to complete the severing, under the Act we can apply for an extension. If an extension is necessary, we must advise the applicant, in writing. The grounds for extension are 3rd Party Consultation (g:\forms\foi\extens3r.foi), Public Body Consultation (g:\forms\foi\extenspb.foi), volume (g:\forms\foi\extenvl.foi), and clarification of the request (g:\forms\foi\extencl.foi). See attachments.

Responding to the Applicant:

We have a standard responding letter to the applicant located under g:\forms\release.foi. (see attachment). We ensure that we only enclose the severed copy of the material, and advise the applicant that they have the right to appeal the severing if they so wish. Our file must have a copy of the correspondence to the applicant and a copy of the severed material. All correspondence from the Investigation, Inspection & Standards Office, or release of information is sent out under the Director's signature. We should notify the Information and Privacy Program of the response to the applicant so they may update their records.

Appeals:

If there is an appeal, the Information and Privacy Program will be notified and may assign another file number which we should use.

The Information and Privacy Commissioner's Officer will assign a Portfolio Officer who will request copies of the original version of the material, the severed version and the notes on severing.

After receipt and review of the material, the Portfolio Officer will meet and discuss the severing, and may make suggestions for release of additional material. It is in our best interests to have advice from the ministry Information and Privacy Program. As part of the review process, we may accept the advice of the Portfolio Officer and further release information.

If it goes to a full written or oral hearing, we will work with Legal Services Branch lawyers to prepare submissions and affidavits as required.

The Information and Privacy Commissioner's Office will keep us informed of their ongoing dialogues with applicants, and will advise us of closure of appeals.

INSPECTION PROCESS

This is a living document and as such will be subject to revisions as practice and policies evolve.

PLANNING

We approach our inspection mandate on a five-year planning cycle. The statutory mandate requires that we inspect youth facilities once each year, but does not dictate the scope of the inspection. We have agreed with Corrections Branch that we will inspect the full youth facility once every three years. In the intervening years, we will inspect the high-risk areas and follow-up on the previous recommendations.

We have also agreed to inspect each wilderness program once each year, except for those programs that have winter operations. Because the risks are different in winter programming, we have agreed to conduct a separate inspection of the winter programs. For this reason, some of the programs will have two inspections in each calendar year. The inspection of a wilderness program includes a review of their policies and procedures, and an unannounced physical inspection of the trail practices, equipment, and treatment of youth on a wilderness trip. Some of the wilderness contractors operate out of a base camp. For those operations, the annual inspection includes a health & safety of the base camp. The scope of this review includes such areas nutrition and menu planning, cleanliness of residential areas, sanitation of food preparation and serving areas, personal hygiene facilities for the youth, and building and fire safety procedures for the facility.

Annually, we contract for a functional specialist to assist in inspecting out door and wilderness programs. The functional specialist should have broad-based experience in hiking, camping, rock climbing, and other outdoor pursuits.

ANNUAL SCHEDULE

Each year we prepare a schedule of inspections in consultation with the operating departments. We internally co-ordinate the occupational health & safety inspector's time with the operations inspectors and the contracted wilderness inspector. We also apply resources for business inspections of locations. At this time we allocate inspectors to assignments and work out a rough timeframe. We try to ensure that one inspector does not complete an inspection at one location two years in a row.

INSPECTION OF A LOCATION

SCOPE

The full scope of an inspection of a youth custody centre will include compliance with policy, standards, procedures and directives. The scope will include a review of the business function, Occupational Health & Safety, security policies & procedures, programs, use of automated systems and record keeping, and respectful treatment of youth.

TIMING

Approximately one month prior to an inspection, inspector's plan to arrange for ad hoc inspectors to assist with the inspection. We provide approximately three weeks advance notice to the location that an inspection is scheduled. Our timing is flexible enough to work around the absence of key individuals at the inspection location.

STAFFING

The lead inspector will arrange for assistance in operations, and may arrange for assistance in automated systems reviews. Our office pays all out of pocket costs for the ad hoc inspectors, but does not cover salary or FTE charges. Prior to the inspection, ad hoc inspectors are assigned their sections of the inspection guide, and provided with a copy to for orientation prior to arriving on site.

FIELDWORK

Our fieldwork starts with an orientation tour of the facility, and a discussion with management on the scope of the review. Inspectors follow a pre-printed inspection guide and complete their assigned tasks. The guides provide advice on the key standards and policy, and provide a vehicle to document compliance or opportunities for improvements in compliance or practices.

The inspection team debriefs the management of the inspected site on the observations and preliminary recommendations on the final day of the inspection.

REPORTING

Inspectors are responsible for completing a written report on the results of the inspection. Inspectors have been delegated the authority to sign the Executive Summary of the inspection report. II&SO is trying to achieve a standard that inspection reports are issued to the operating branch within 30 days of the end of the fieldwork.

When the report is finalized, it is forwarded from II&SO to the ADM, Corrections Branch, with a covering memo signed by the inspector, a draft response document, and an electronic file of the draft response document in compatible word processing software. The covering memo requests the ADM's advice on the action taken or planned in response to the report's recommendations.

The ADM is responsible for forwarding the report to the operating staff for response.

RESPONSES TO INSPECTION REPORTS

When the operating staff's response to the inspection report is received in the ADM's office, it is reviewed for adequacy of the action taken. When the ADM's office is satisfied, the response is forwarded to the II&S office for review. If the Inspector is not satisfied with the response, they will deal directly with the centre director until the outstanding issues are resolved. Once the issues are resolved, or if the Inspector is satisfied with the original response, the Inspector will write a response to the Branch indicating acceptance of the response and the closing of the inspection file.

COMPLAINTS

To view a complete copy of the Approved Complaint IPM click on the following [LINK](#)

APPEALS - DISCIPLINARY REVIEWS

To view a complete copy of the Approved Disciplinary Reviews IPM click the following [LINK](#).

COURT INSPECTIONS – (Draft Notes)

Need to address:

Inspection process (use inspection framework and MOU)

Outline roles and responsibilities of lead inspectors and ad hoc inspectors.

Make sure that someone obtains the ad hoc's working papers once the report has been finalized.

Sample inspector and layout of working papers.

*refer to Betty Weber's notes from her file review to address other issues.

Ministry of Attorney General
Investigation & Standards Office

INTERNAL PROCEDURES MEMORANDUM

Complaint Investigations

Chapter B - 6

Approved: 

Date: May 04, 2009

Printed:

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1. COMPLAINT INVESTIGATIONS

The following procedures are for the general guidance of inspectors. They do not contemplate every complaint scenario. As well as following the general procedures, we expect inspectors to apply good analysis, logic and common sense. Inspectors are encouraged to consult with the director or deputy director on difficult or unusual issues, or issues where it may be questionable as to whether they are included in the office's mandate.

Unless otherwise indicated, the procedures apply to investigating complaints within our client base.

2. AUTHORITY – MANDATE

For the Corrections Branch side of our business we have legislated authority. Our authority is set out in Section 28 of the *Correction Act*. The legislation details the requirements for the office to be maintained, the authority to investigate and report on complaints, the director's authority to delegate certain powers and duties to ISO employees, and our entitlement to access centres, staff, and documents. The legislation also provides authority to the director to refuse to investigate, stop or postpone an investigation, where the director considers the complaint is frivolous, vexatious or trivial, or is not made in good faith.

Inspectors are required to familiarize themselves with the actual legislation and to work within their letter of authority from the director. The director's authority to refuse to investigate a complaint has not been delegated to staff.

For the Court Services Branch side of our business, our role is by agreement and policy, rather than legislative. We will investigate any complaint about the administrative processes within Court Services, which includes Sheriffs Services. Inspectors should note that their authority under the *Correction Act* to access inmate medical records is not valid when conducting court services investigations. Written consent must be obtained from the complainant prior to accessing medical records.

Inspectors should note that while our mandate involves investigating complaints about the **administration of the *Correction Act***, this does not include labour relations matters as they fall under the *Public Service Act*. This also applies to our Court Services investigations.

3. COMPLAINTS WHERE WE DO NOT GET INVOLVED OR AREAS WHERE WE HAVE LIMITED AUTHORITY

3.1 BC Board of Parole

We do not have authority to investigate complaints about the activities of, or decisions of, members of the BC Board of Parole. Appeals or complaints about the activities of the Parole Board should be referred to the Chair of the Board.

Exception: Complaints about the correctional centre's staff activities in advising inmates on their parole application, arranging for community assessments, and scheduling them for hearings fall within our mandate. In dealing with these complaints, inspectors must exercise due care to ensure that we are not encroaching on the authority of the BC Board of Parole.

3.2 Criminal Justice Branch

We do not investigate the activities of staff of the Criminal Justice Branch; these should be referred to the Criminal Justice Branch.

3.3 Health Care Complaints

Health care complaints are part of our Corrections Branch mandate. All health care complaints are to be referred to the health care inspector where possible. If the health care inspector is not on site, follow the procedures outlined in the [Health Care Protocol 2009](#). Refer to the "Practice Issues" section of this document when dealing with health care complaints.

3.4 Judiciary

We do not investigate complaints about the Judiciary; this includes both justices of the peace and judges. Complainants should be referred to Office of the Chief Judge (Provincial or Supreme), or the Judicial Council.

3.5 Mental Health Complaints

Psychiatric/psychological services are a challenging area for us because the Psychologists or Psychiatrists may be acting under a contract with the Corrections Branch, or under a contract with Forensic Psychiatric Services Commission. We do not have authority to review complaints about court ordered assessments, ie: fitness to stand trial, pre-sentencing reports to the court under the Criminal Code, or assessments for committal. If we receive a complaint of this nature, we refer the complainant to the respective college for psychiatrists and psychologists, or to the Forensic Psychiatric Services Commission.

Exception: Our mandate includes the activities of psychologists/psychiatrists who are responding to referrals on intake in correctional centres and who are under contract with the correctional centre for delivery of services. All mental health complaints involving the contractor in the correctional centres are to be referred to the health care inspector. If the health care inspector is not available, follow the procedures outlined in the Health Care Protocol (February 2009). Refer to the "Practice Issues" section of this document when dealing with Mental Health Care Complaints.

3.6 Police

Complaints about the police should be referred to the Police Complaints Commissioner or the RCMP Complaints Department, depending on the agency being complained about.

3.7 Psychiatric/Psychological Complaints (Refer to the Mental Health Complaints)

3.8 Youth Matters

With the proclamation of the Children's Officer Legislation, we are relieved of the responsibility of investigating youth justice complaints. These complaints should be referred to The Office for Children and Youth or Youth Justice Services, Ministry of Children and Family Development.

3.9 Other - Complaints on behalf of an Inmate

On occasion we receive complaints that are made on behalf of an inmate by a relative, spouse or common law partner, lawyer, or other concerned individuals. Although not addressed in our mandate, there is a customer service aspect to dealing with these complaints. Refer to the "Practice Issues" section of this document when dealing with complaints received on behalf of an inmate.

4. DUTY INSPECTOR PROCESS

We have implemented a duty inspector process to deal with incoming complaints. The reasons for establishing this process was to centralize the intake function for our office, promote consistency in our approach to complaints on the front-end, and to provide relief to the other inspectors. This process applies to complaints and enquiries by mail and by telephone. The inspector is expected to make good decisions around accepting or referring the complaint. The duty inspector checklist and details of the process can be found on our network drive in the "Duty Inspector" folder.

The role of the duty inspector in dealing with these complaints is to:

1. Determine if the complaint is within our mandate. If not, direct the complainant to the appropriate authority.
2. Determine if the complainant has attempted to resolve the complaint through the internal complaints process (for Corrections Branch - application of section 37 Correction Act Regulation and for Courts – complaint to local or regional management). If the complaint is one where the complainant should first attempt to resolve it through the internal complaints process, refer the complainant to centre/local management, with the exceptions noted in the following section.
3. Refer health care matters (including mental health issues) to the health care inspector.
4. Identify urgent issues and identify whether the correspondence is a complaint or an appeal.
5. Identify the issues in complaint letters so that items are not missed.

In making decisions about how a complaint should be dealt with, the duty inspector should consider the details of the complaint and the following criteria:

1. Is there an indication of urgency (ie. does it affect release date)?
2. Is there an indication of risk to safety of the individual, staff or other inmates, or an indication of a risk to the security of the centre or location?
3. Is there a risk of retribution?
4. Is there an indication of unfairness in the further restrictions of liberty?

5. RECEIVING & RECORDING COMPLAINTS

5.1 Written Complaints

On receipt of a written complaint by mail or fax:

1. The administrative staff date stamp the letter or complaint form and enter it into the mail log, and give the correspondence to the inspector reviewing the mail.

2. The inspector reviews the mail and identifies whether it's an appeal or a complaint and for complaints, identifies the issues being complained about.
3. The inspector completes an Intake Processing Form and notes the complaint issues (corresponding to the ATD issues categories), assigns a priority code to the complaint (high, medium, low), and indicates which inspector the file should be assigned to.
4. The duty inspector drafts the acknowledgement letters in cases where the letter both acknowledges and responds to the complaint, or where the acknowledge letter requires more than the standard acknowledgement.
5. Standard acknowledgement letters are drafted by administration staff.
6. Where possible, acknowledgement letters should be issued within 72 hours of receipt of correspondence.
7. Acknowledgement letters should reference the correspondence being responded to, the issues being complained about, and indicate we will investigate the complaint and advise him/her of the results of our investigation.
8. As noted previously, if the complainant has not attempted to resolve the issue through the internal complaint resolution process, **where appropriate**, advise the complainant to go through the internal complaints process.
9. Where the complaint does not fall within our mandate, the inspector drafts a reply to the complainant advising that the complaint is outside the mandate of the office. The reply should include the name and address of the agency to whom the complainant should write.
10. Refer to the **Practice Issues** section of this document for information on who should be copied with what correspondence.
11. Standard acknowledge letter drafted by the administration staff are reviewed and signed by the inspector assigned to investigate (or by a colleague in the assigned inspector is away for more than a few days). (For the Vancouver inspectors, administration staff should advise them by email that the letter is ready for their review and approval. Once approved, administration staff can apply the inspector's electronic signature and proceed with processing the file)
12. Acknowledgment letters dealing with referrals or matters outside our mandate, or anything other than the standard acknowledgement letters are given to the director or deputy director for review and comments, or approval.
13. Following the director's review, any suggested edits are completed by author of the letter or the administrative staff. The administration staff finalizes the letter and sends it to the inmate with an electronic signature..
14. After the acknowledgement letters are signed, the administration staff enter the complaint into the ATD system and screen print the entry on yellow paper for the file.
15. The administrative staff also distribute the letter copies and provide the file to the inspector (for Vancouver, fax the complaint information).

All staff are reminded about the importance of assigning correct file numbers and the accuracy of the entries to the ATD system.

5.2 Telephone Complaints

Upon receipt of a telephone complaint, the duty inspector:

1. Enters the complaint into the duty inspector log
2. Makes a decision on whether to accept an oral complaint, or to advise the caller to confirm the complaint in writing
3. In the majority of cases an acknowledgement letter will not be sent but in some specific circumstances a letter may be completed. If an oral complaint is accepted, an

acknowledgement letter must be done. Refer to the previous section for preparing the acknowledgement letters, the flow of the draft and assignment of the file.

4. The health care inspector will contact the health care manager via email in all cases and by telephone if the matter appears urgent. The health care contractor is copied on email generated by the telephone complaints. (See the Health Care Protocol for details about when it is necessary to copy the medical director or director , mental health services)

5.3 Miscellaneous Matters:

a) Filing Extra Materials in our Files

Periodically inmates will attempt to co-opt the office into acting as a conduit for them for matters for court, or they will attempt to file information with the office for future complaints. Staff should exercise caution in being co-opted into events beyond our mandate, and we should resist attempts to become a repository of documents for inmates. If material is not related to a complaint, we should return the material to the inmate with a covering letter outlining why we are returning it.

b) Requests to Forward Correspondence

Where incoming mail contains a request to forward correspondence that is contained in the envelope to another individual or agency, staff are not to action these requests. Extreme caution must be exercised in these matters – it should be reviewed by the duty inspector, director or deputy.

c) Requests to Transfer a Telephone Call

All staff are reminded that when an inmate telephones our office and requests the call be transferred to another number (outside our office), the request is to be denied. Please ensure that if it's a case of referring the inmate to another office or organization that the required contact information is provided to the inmate.

d) Requirement for Complaints in Writing vs. Accepting Verbal Complaints

Although the statutory authority requires that the complaints be in writing, we encourage staff to apply some discretion in the application of this requirement. While it is in our very best interest to have a written complaint, we have to be sensitive to systemic barriers on literacy, matters of confidentiality or matters of urgency. Within our clientele, there are a few inmates who do not have a high level of literacy and may not write well enough to articulate their complaints. We recognize that there is a duty and expectation of a living unit officer to assist an inmate in writing out his or her complaint. We also recognize that there are opportunities to enlist the aid of another inmate to draft the complaint. However, we have to be sensitive to the fact that some officers may not fulfil their duty to assist, and the subject matter of the complaint may not lend itself to writing or to having the complaint written by another inmate.

If the duty inspector decides to accept a verbal complaint, it is extremely important to keep detailed notes of the discussion and the elements of the complaint. Consideration can be given to recording the telephone conversation (remember – you need consent to record the conversation). In addition, in almost all cases a letter should be sent to the complainant to confirm our understanding of the complaint.

6. SCOPE OF COMPLAINT INVESTIGATIONS

A complaint investigation includes reviewing compliance with regulations, standards, policies and procedures, reviewing documentation, and where necessary, interviewing the complainant, staff and others. The Practice Issues section of this document should be referred to for guidance and requirements for investigating specific types of complaints.

Inspectors are expected to exercise good judgement around the scope of the investigation. As well, inspectors are expected to use good judgement in weighing the evidence presented and arriving at a conclusion on the complaint that is supported by the evidence.

Inspectors should be sensitive to issues of a lack of authority for policies, the adequacy of the policy, and policies that are intrinsically unfair. If in doubt about the application of some of these criteria, please discuss the specifics of your assignment with the director or deputy director.

If the complainant is drawing comparisons in the practices between centres/offices, the inspector needs to review the differences and explore with management why differences exist. We need to determine if this is the result of a lack of policy, unclear policy, or a difference in the interpretation. It is recognized that it may not always be appropriate to look systemically for fairness issues in every complaint investigation. In determining the appropriateness of looking more broadly, inspectors can apply the following criteria:

1. Is there any indication in the complaint of comparisons between the practices in different centres/offices?
2. In the inspector's experience, are there indications of differences in approach between centres/offices that are not dictated by differences in the physical plant of the centre?
3. Is it an area of innovation, or transition in one centre/office?
4. Is the topical area part of a pilot study in the centre/office involved in the complaint?

7. INVESTIGATING COMPLAINTS

Upon receipt of a complaint to investigate, the inspector will:

1. Review the complaint to ensure he/she has a clear understanding of the issues.
2. Make a working copy of the complaint document - DO NOT write on the original document.
3. If the issues are unclear, the inspector should clarify the issues with the complainant. Depending on the nature of the complaint, this can be done by writing to the complainant to seek clarification, telephoning the complainant or meeting with the complainant. The inspector needs to have a clear understanding of the issues in the complaint.
4. Refer to the Practice Issues section of this document for guidance and specific requirements for investigating some complaints.

Note: Periodically, inspectors may have cause to doubt the authenticity of the complaint. If in doubt, inspectors should contact the complainant and confirm the authenticity of the complaint. In one case we responded to an inmate's request on a medical matter only to find that it was a hoax perpetrated by someone on the living unit.

7.1 Straightforward/Basic Complaints

If the issues in a complaint are reasonably straight forward and simple, the inspector may be able to complete the investigation by:

- reviewing and printing information from the CORNET or JUSTIN systems, discussing the matters with management or staff at the centre or court;
- relating staff's advice to entries on the documents; and/or
- obtaining additional documents by fax.

- reviewing the Primary Assessment and Care System (PAC) and discussing the matter with the health care managers in the event of a health care complaint

7.2 Complex or Significant Complaints

Some complaints require the inspector to attend the centre/office to review documentation and interview the complainant, witnesses, staff and management about the complaint.

7.3 Standard Practices in Investigating Complaints

These practices apply equally to both Corrections Branch complaints and Court Services Branch complaints.

1. Review applicable policy, procedures, standards, ADM directives, other internal directives and any applicable local policies.
2. Review standard practices in the procedures/processes involved in the complaint.
3. Obtain relevant documentation and keep detailed notes of conversations with management and staff.
4. File documents in an orderly fashion. For most investigations involving a volume of documents, we strongly encourage staff to use a 3-ring binder, filing and indexing documents as you go.
5. It is a good practice to mark on documentation the source of the documents, the date, and from whom or where we obtained the document.
6. In reviewing documents, inspectors are encouraged to start lists of questions for interviewees. MS Word will allow you to open up to 8 documents at a time to facilitate lists of questions for interviewees.
7. If there is any doubt about the credibility of statements, look for corroboration from other sources. In the absence of corroborating sources or documents, consider using other evaluation techniques such as statement analysis.
8. Statement analysis can be performed by a contracted individual in certain cases. This should be discussed with the director or deputy director.
9. In considering statement analysis, inspectors should look at the context and circumstances to see if the statement has been contaminated by discussion of events with second or third parties, or the influence of automation in preparing the statement or prior to the completion of the statement. Discussion with others will contaminate the statement and defeat the objective of statement analysis. Automation may cloud the issue through the lack of evidence of editing and changing of tenses and verb choice.
10. We accept information from staff and witnesses. However, it is incumbent on the inspector to corroborate the information with other evidence to the extent possible. In this respect, documentation, video or photographs are the best evidence. There is a hierarchy on the strength of evidence: hard evidence such as documents or photographs is better than witness statements, which are better than oral evidence without corroboration. (Refer to the Evidence section of this document for more information)
11. Start an Issues List to facilitate discussions with management. Inspectors are encouraged to begin a list with the first issue, and add to the list as you encounter an issue. This will also facilitate completion of your report to management.
12. Advise management of the issues as they are developed.
13. Prior to finalizing the Issues List, we encourage inspectors to review all the working papers and interview notes to ensure a complete list of issues.
14. If you have more than one simplistic issue, then arrange to discuss all the issues with local management prior to proceeding to finalize the file.

7.4 Standard Practices in Interviewing

For complaints involving complex or significant issues, the complainant is interviewed on the specifics of the complaint.

Our usual practice is to interview individuals in a certain order:

1. Interview the complainant first;
2. the victim next (if different than the complainant);
3. then any witnesses;
4. then the person against whom the complaint is lodged.

Sometimes the order is changed to accommodate local needs such as shift-work, leave, etc. Where possible, we try to minimize call-out or overtime costs for the branches. In changing the order of interviews, inspectors have to be sensitive to their needs for information and the possibility that they may have to re-perform parts of an interview because of information that wasn't available at the time of the original interview.

7.5 Interview Location

Where possible, interviews should be conducted in a neutral environment, free from distractions such as all-page systems. Interviews with hostile or potentially volatile individuals are arranged in an environment that offers security and support. Interviews in private homes should be avoided.

In interviewing witnesses or complainants, inspectors should be sensitive to the context and any environmental threats or hazards. In some environments, it may be preferable to select hard chairs versus cushioned chairs, as the chairs may be hiding places for contraband articles.

7.6 Conducting the Interview

Prior to the interview, inspectors should review relevant documentation such as statements or Incident Reports to refresh the inspector's memory of the interviewee's involvement.

Generally, our interviews start with some background information on the individual. For employees, their position, length of time in position, length of time as an employee, locations they have worked, a quick review of their training, if appropriate, then moving on to a general description of the processes involved in the complaint.

This is followed by having the individual tell us from their perspective what their involvement was, and what happened during the matter at issue.

During interviews, the inspectors should:

1. Avoid closed questions and ask open-ended questions to stimulate explanations from the interviewee;
2. Avoid leading questions;
3. Avoid interrupting the flow of the narrative – take notes of questions as they occur to you;
4. Where the interviewee strays into irrelevant information, guide the interviewee back to the subject at hand;
5. Avoid being drawn into assisting the interviewee in answering questions or completing a thought - if the interviewee pauses, be patient.

If the interview includes having the interviewee draw a diagram or make marks on a form, the inspector should ensure that the interviewee dates and initials the document to prove the authenticity of the markings. These documents should be filed in the working papers.

Before closing the interview, the inspector should ask the individual if there is anything they were not asked but would like to add. Also, advise the interviewee how they can provide additional information, if they think of something they missed. Where necessary, the inspector may want to advise the interviewee that we reserve the right to recall the individual. For what it's worth, caution the interviewee about discussing their interview with others.

7.7 Confidentiality

Periodically inspectors are faced with requests for confidentiality from complainants or employees. Inspectors need to be very careful in addressing these requests. We cannot guarantee or assure confidentiality and as general rule we have a duty to report the information we receive. In some cases involving sensitive information, we will do what we can to protect the identity of the individual but we are not in a position to guarantee anything. Consult with the director or deputy if you require guidance in this area.

7.8 Interviewing Bargaining Unit Staff

When interviews are arranged with bargaining unit staff they should be advised of their right to have union representation present. If they show up without union representation, remind them at the start of the interview of their right to have union representation and ensure they are prepared to proceed without union representation. If they are unrepresented, they should be advised that if they wish to change their election?, we will stop the interview and arrange for union representation. The role of the union representative is to assess the fairness of the interview as it applies to their bargaining unit member. They are not there to answer questions on behalf of their colleague, and they should not interfere in the proceedings. They are not there as an advocate for their member or a cause.

Inspectors are reminded that notice about the "right for union representation" should be included in the recording of the interview.

7.9 Interviewing Management Staff

Management staff do not generally have representation but this is an evolving area. If they request representation, the inspector should give some thought to the practicalities of agreeing to the request. If there are no impediments, and the representative is not involved in the issue, the inspector should agree to the request.

7.10 Recording Interviews

Our usual practice is to record all interviews. This has two benefits: it provides a record of the interview that can later be transcribed if necessary; it also provides protection to the staff on allegations of unprofessional conduct, or denial of the accuracy of the statements.

There is an element of professional courtesy of which staff should remain conscious. In some circumstances, it may be appropriate to record interviews with senior managers such as district directors, and in other circumstances it may be appropriate to rely on good handwritten notes. Inspectors will have to exercise professional judgement and, if necessary, consult with the director or deputy director on these matters.

Recording equipment should be tested prior to starting the interview. Ensure you have sufficient supplies, such as backup batteries for any recording equipment, including the microphones, tapes, extension cords, etc. Recordings should be clearly labelled to identify the subject matter, date of the interview and who was interviewed.

At the start of the interview introduce yourself and state the time, place and the subject matter for the record, and have those present introduce themselves for the record. This will assist the transcriber in identifying voices, if the record has to be transcribed.

It is always a good idea to advise the interviewee that if for any reason they wish to pause, to advise the inspector and we will briefly pause in the interview. Where the interview is paused, the adjournment and reconvening time should be indicated on the record. At the close of the interview, the time should be indicated for the record.

7.11 Interviews by Telephone

In some circumstances, it may be appropriate or necessary to interview individuals by telephone. Depending on the nature of the interview, consideration should be given to recording telephone interviews. In these circumstances, the inspector should advise the party that you intend to record the interview, and obtain their consent to having it recorded. As part of the introduction, the inspector should then get the party's agreement on the record of the interview.

8. EVIDENCE

8.1 Types of Evidence

Evidence includes all the means of proving or disproving any matter; for example, oral testimony, written records, demonstrations, photographs, video recordings of events, etc.

The following describes various types of evidence and is provided to assist with weighing evidence:

Direct Evidence - First hand account of events; evidence of a fact actually perceived by a witness with his/her senses. This is to be contrasted with hearsay and circumstantial evidence.

Character Evidence - A summary of an individual's past actions, good or bad, or reputation in the community. Care should be taken to ensure that a party is not unfairly prejudiced by character evidence.

Circumstantial Evidence - A witness cannot always be found to prove facts from personal observation. The question in issue may then be established by proof of other facts. If sufficient other facts are proved, the court may draw an inference "from the circumstances." (Meaning - evidence not based on actual personal knowledge or observation of the facts in controversy, but of other facts from which deductions are drawn, showing indirectly the fact sought to be proved.) The existence of the facts is only inferred from circumstances.

Documentary Evidence – Written or printed matter submitted as proof of a fact.

Expert Evidence - Evidence given in relation to some scientific, technical, or professional matter by a person qualified to speak authoritatively by reason of his/her special training, skill, or expertise.

Hearsay Evidence - Second hand accounts of events; what someone says that another person has said, i.e. when the witness is introducing another person's statement as evidence of the truth of that statement. Hearsay evidence is generally not admissible in court. Administrative tribunals are not bound by the ordinary rules of evidence and may accept hearsay evidence if it deems the evidence reliable.

Indirect Evidence - Hearsay or circumstantial evidence, as contrasted with direct evidence.

Oral Evidence - Evidence given by word of mouth.

Relevant Evidence - Evidence which tends to make the existence of any fact that is of consequence to the determination more probable or less probable than it would be without the evidence.

Self-Serving Evidence - Evidence that a witness has created for himself/herself; due to the risk of fabrication, the courts generally do not allow a witness to submit self-serving evidence.

Probative Value - Means that which establishes or contributes towards proof. Evidence has "probative value" if it tends to prove an issue. Evidence which is strong in proving a point is said to have "high probative value;" evidence which is weak in proving a point is said to have "low probative value."

8.2 Weighing Evidence

Weighing evidence involves assessing the evidence according to the Standard of Proof for the Office. For the work done by the Investigation and Standards Office, the Standard of Proof is 'on the balance of probabilities' which is a less strenuous test than the criminal law test of 'beyond a reasonable doubt.'

As part of their investigation, inspectors accept all kinds of evidence for consideration. In this process, inspectors are trying to establish matters of fact on which they can base their conclusions. As well, as part of their investigation, inspectors must separate arguments from evidence. Arguments must not be allowed to masquerade as evidence.

It is acceptable for inspectors to form working hypotheses during the fieldwork. However, inspectors, as a final step, must review all the evidence as part of the process of drawing conclusions. In administrative fairness, it is an important factor to obtain all of the evidence needed to make a reasoned, rational decision.

Inspectors have to remain conscious of the potential for self-serving themes in the interviews and evidence presented to them. Inspectors can accept self-serving evidence, but they would be wise to attribute little weight or probative value to the evidence, without corroboration. This is also the case for hearsay evidence. For this reason, inspectors should refrain from assessing credibility in interviewees and look for corroborating evidence. This is the concept of "tell me, show me" that we frequently discuss.

Third party evidence is usually more reliable than evidence from involved parties. Due to the complex relationships within the office's client base, inspectors should be sensitive to the possibility of a self-serving theme in third party evidence. It would be appropriate to probe for

any self-serving aspects during an interview if the inspector senses a lack of neutrality in the third party.

In the absence of corroborating evidence, it would be imprudent to automatically side with a staff member. Rather than assessing credibility, it is a more prudent course to report to the complainant that there are two opposing views without corroborating evidence to resolve the impasse.

Probative value of evidence is defined as how much reliance should be placed on the evidence in coming to a conclusion. As well, in coming to a conclusion, inspectors must consider the relevance and reliability of the evidence. The types of evidence have been outlined previously in this IPM and that section includes some discussion on the reliability of evidence.

In assessing evidence and drawing their conclusions, inspectors must consider several aspects of the evidence:

- Is it reliable?
- Is it relevant?
- Is there a self-serving theme to the evidence?
- What is the probative value of the evidence?

Detailed discussions on the various aspects of evidence are included in the text and monographs in the Foundations of Administrative Justice course material which can be found in the office's library.

9. REPORTING THE RESULTS OF THE INVESTIGATION

Each complaint investigation results in a written report to the complainant on the results of the investigation. Our response should address the specifics of the complaint and our conclusion as to whether the complaint is substantiated or unsubstantiated. Inspectors are reminded to refer to the Practice Issues section of this document for requirements related to the specific issues.

For complaints where we do not find in favour of the complainant, we will write a letter to the complainant with copies to branch management. For complaints where we find in favour of the complainant, the report takes the form of a memorandum from the inspector to the senior manager of the location involved in the complaint, and a letter to the complainant. Periodically the issues involved in complaints are less localized and more systemic in nature. In these instances, we will report to senior management in the branch (Provincial or Regional Director, or Assistant Deputy Minister).

Inspectors should always keep in mind the need to write in plain language. As well, letters, memorandum and reports should be written with the *Freedom of Information and Protection of Privacy Act* in mind. Our usual practice is to avoid names and other personal information unless it is critical to understanding the issues. Instead of names, we use titles, not classification. The exception to the rule is if we are writing to the branch and are dealing with matters that may lead to discipline of an employee. Where possible, we should avoid unnecessary reporting of personal information such as age, birth date, correctional services number, medical information, and criminal history.

In circumstances where we are unable to conclude due to conflicting information and without information to corroborate one position or the other, we should so advise the complainant.

Our reports need to be clear on what we have established as matters of fact, and clearly identify where we have accepted the advice of others. In concluding on the merits of a complaint, inspectors should report on what evidence they have relied upon in coming to their conclusion, and also report on evidence that we have not accepted. We should also clearly identify our conclusions. Generally, inspectors should avoid expressing opinions; however, there are some circumstances where it is appropriate to do so. Where we express an opinion, it should be clearly identified as our opinion.

Inspectors need to ensure that any recommendations are reasonable and clearly supported. As well, the wording of recommendations should identify what needs to be done by whom. You also need to include sufficient information in wording to provide a context for the recommendation because the response matrix and entry to ATD only contains the recommendation.

A draft of the inspector's report, letter, or memorandum is submitted to the director or deputy for review prior to issuance.

9.1 Briefing Management on Issues

For significant recommendations, inspectors are expected to discuss their observations and recommendations with the senior manager of the location and/or branch management prior to completing the reports.

9.2 Sharing Recommendations with the Complainant

If we are making recommendations for improvements as a result of the investigation, we should carefully consider whether or not we can advise the complainant of our recommendations. In making this decision, consideration should be given to the following:

- Will sharing the details of the recommendation compromise the security, management or good order of the centre?
- Will sharing the details of the recommendation undermine the living unit officer's authority or management's authority?
- Will sharing the details of the recommendation establish an unreal expectation of immediate action in the mind of the complainant?

Where, in the considered judgement of the inspector, sharing of the recommendation will have a negative effect in one or more of the above areas, inspectors should generally advise the complainant that we are making recommendations to management without supplying specifics of the recommendations. At the same time, inspectors are required to document their reasons on the file as to why they do not consider it appropriate to share their recommendations with the complainant.

Where we share the recommendation with a complainant and it involves a change to policy, the inspector should consider whether it is appropriate to advise the complainant that implementing the recommendation may take some time, and that the complainant may not observe any changes in the immediate future.

9.3 Allegations Involving Specific Employee(s)

Although there is no requirement to write to employees about the results of an investigation when the complaint is about their conduct, in some cases it may be appropriate. Inspectors should keep this in mind and for specific cases discuss the need for a written response with the director or deputy.

10. CONCLUDING THE FILE

As part of the file finalization process, inspectors should ensure that they mark the file ATD sheet with the result of the investigation so that administrative staff can update the Assignment Tracking Database. Inspectors should also sign/date the ATD sheet for the file. (For Vancouver inspectors, this is done by email)

For each complaint investigation report in which we are making recommendations, administrative staff will include a response matrix and an electronic file for management's convenience in responding to the report's recommendations.

Administrative staff will enter the recommendations into the Assignment Tracking Database.

Where recommendations are made, the administration staff will BF the file to ensure that a response is received.

11. PRACTICE ISSUES

This list is not all inclusive and will change as issues requiring further guidance or direction arise. Where staff encounter an issue that is not covered, it should be discussed with the director or deputy.

11.1 Allegations of Assault or Criminal Activity

Where a complainant alleges they have been assaulted or that other criminal activity has occurred, we should advise them that while our office does review matters involving the actions of staff, our office does not conduct criminal investigations. We should advise them to make a complaint to the police first, as complaints involving allegations of criminal behaviour must first be investigated by the police. Our office cannot interfere or appear to interfere with a police investigation. Once the police have completed their investigation, we can proceed to investigate the complaint.

Inspectors are reminded that while it is our practice to refer complainants to the police, where they allege assault or other criminal activity, it is not mandatory that they do so. If the complainant decides not to make a complaint to the police, we can proceed with our investigation.

If during any investigation, it becomes apparent to the inspector that there may be, or has been, criminal conduct or activity, the inspector is strongly advised to pause the investigation and seek advice from the director or deputy.

11.2 Automated Progress Logs

All of the centres have automated inmate progress files known as the Corrections Network (CORNET). Inspectors can research issues on line without disturbing staff and requesting

photocopies. Inspectors can print relevant documentation for their working papers. Inspectors should be aware that the time/date recorded in the log can be adjusted, and due care should be taken around that issue.

11.3 Compensation for Loss

In cases of lost effects, where we conclude in favour of the complainant, our role is to recommend that the centre/office and the complainant negotiate compensation for the loss. It is not our role to define the quantum of the payment and inspectors should remind the complainant that they should negotiate with the management of the location identified as responsible.

11.4 Complaint Letters (Requests for Copies)

As a matter of practice, we do not give copies of complaint letters to branch staff. Staff are encouraged to paraphrase the complaint into neutral, unemotional and professional terms. Complainants are not always careful and professional in their choice of words or descriptions. Sharing the complainant's letter can provoke an emotional reaction that can interfere with a clinical, dispassionate discussion of the points of the complaint.

11.5 Complaints about the Appointment of a Hearing Officer

If we receive an appeal on the grounds that the appointment of a hearing officer is not pursuant to section 25(1) CAR, we can only review the record of the hearing for a reasonable apprehension of bias. However, we should also consider this as a complaint, and review the circumstances around the incident and whether or not the individual was involved in a fashion that does not comply with section 25(2) CAR. If the complaint is unsubstantiated, we should so report back to the inmate. If the complaint is substantiated, we are limited to reporting to management that the appointment of the hearing officer does not comply with CAR. However, this does not affect the decision on the appeal, as our appeal review is limited to the record of the hearing.

11.6 Complaints from Lawyers (on behalf of their client)

These complaints should be treated largely the same as if the complaint came directly from the client. In these cases we would correspond directly with the client and copy the lawyer. It should be noted that in some cases we may need to confirm or verify the details of the complaint with the complainant. This can be done in writing or in some cases by telephone or an in-person interview.

11.7 Complaints on Behalf of an Inmate

When a complaint is made on behalf of an inmate by a relative, spouse or common law partner, or other concerned individual, although not addressed in our mandate, there is a customer service aspect to dealing with these complaints. However, we have encountered well-meaning individuals who contact us without the consent of the alleged aggrieved individual. In one case a parent called on behalf of his son but the son advised us that he did not have any complaints and we should not be involved.

In dealing with these complaints, inspectors should:

Find out the specifics of the complaint, and advise the complainant that under the *Freedom of Information and Protection of Privacy Act* we cannot share any information about the individual, including whether or not he/she is in jail.
Advise the individual we will take the complaint and if the individual is incarcerated, we will discuss the issues with the inmate and see whether they want us to pursue them.
Contact or meet with the inmate.
Advise the inmate that we've been contacted by a relative/concerned individual and we are following up on that information. In doing this we are presenting an opportunity for the inmate to register a complaint – avoid 'fishing for a complaint'.
If the individual has complaints, follow our usual complaint processes.
If the inmate wants us to share the results of our investigation with the outside complainant, we require the inmate to confirm in writing that they waive their privacy rights and allow us to share the results of the investigation. (In accordance with the *Freedom of Information and Protection of Privacy Act*.)
Discuss any concerns with the director or deputy.

11.8 Copies of Correspondence

In preparing acknowledgement letters, we should be sensitive to the nature of the complaint and the number of copies of the letter that are necessary and appropriate. That said, acknowledgement letters should at the very least be copied to the person in-charge of the centre/office, (Warden, Local Manager). For some court services complaints it may be necessary to copy the Regional Director and for Sheriff Services, a copy of the letter should be sent to the Executive Director, Sheriff Services. **Inspectors are reminded to not copy management with acknowledgement letters that include explicit health care issues.**

We have an agreement with Corrections Branch management that Wardens are responsible for internally copying members of their staff. If the complaint is against a staff member, we do not send a copy of the acknowledgement letter to the staff member.

All decision or results correspondence on Correction Branch complaints, **except correspondence on medical matters**, are copied to the Assistant Deputy Minister, Provincial Director, Warden, Local Manager/Director, and any other **affected** parties.

Our reporting procedures for Court Services Branch complaint investigations are very similar. We will report to the Assistant Deputy Minister, with copies sent to the Regional Director and the Senior Manager in charge of the location. If the complaint involves Sheriffs' issues, we send copies of the report to the Sheriff, and the Court Manager and the Executive Director, Sheriff Services. In the lower mainland area, we report to the Executive Director, Sheriff Services instead of the Court Manager.

If we received the complaint as a referral from the Office of the Ombudsman, we should copy the appropriate Ombudsman's Officer with our response to the inmate.

In some cases, it may be appropriate to copy the Minister's office with our response to the complainant. Inspectors should consult with the director or deputy director before sending a copy of the correspondence to the Minister's office.

11.9 Correctional Services Number on Correspondence

Because of the higher concentrations of populations in centres, we have implemented a procedure of including the Correctional Services Number (CS#) on the letter, and the outside of the envelope for all inmate correspondence. This facilitates the centre's mail distribution

for inmates with common names, and assists the centre in accurately distributing the inmate mail. We do not include the CS# on the envelope for complainants in the community or where we write a complainant in care of a probation officer.

11.10 Correspondence (in general)

Inspectors should not use letterhead or memorandum templates when drafting acknowledgement letters or other correspondence. As part of their formatting, administration staff will apply the correspondence to the appropriate template.

Inspectors should always ensure that the file name and path are included on the top of all draft correspondence to assist administration staff with locating the electronic file for formatting.

All correspondence relating to complaint files requiring a review by the director or deputy director should be placed in purple folders, unless the matter is urgent, in which case the purple folder should be placed inside a red folder.

11.11 Health Care Complaints (See “G:\HEALTH CARE\Health Care Protocol”, February 2009 for particulars)

All health care related issues are referred to the health care inspector.

When a health care complaint is received, first determine whether it is about access to health care or the quality of care, and is it related to physical or mental health.

The health care inspector will gather all the relevant information from PAC, CORNET, relevant paper files and from speaking with the health care manager. In most instances, the health care inspector will be able to decide the case without additional assistance and write to the client. For complex medical or psychiatric concerns, the inspector will refer the information gathered to the Director of Medical Services or the Director of Mental Health Services for an opinion.. (See the Health Care Protocol for a detailed outline of when to notify the Medical Director or the Director, Mental Health Services.

The Doctor's advice is included in the response to the complainant and copied to the director that provided the advice. Care should be taken to ensure that the response accurately reflects the Doctor's advice and indicates that the information being provided is the Doctor's opinion. When necessary, inspectors can also seek an independent medical opinion. Please discuss this with the director or deputy director prior to proceeding with an independent medical opinion.

Note: If the complaint involves a psychiatrist or a psychologist, we need to ensure it is within the office's mandate. Some of the psychologists and psychiatrists are employees of the Forensic Psychiatric Commission and their activities may not fall within the mandate of this office, especially if they are conducting a court appointed review. We should make this assessment prior to acknowledging the complaint. We may be able to refer the complainant to the appropriate authority at the outset without acknowledging the complaint then finding that we do not have authority to investigate the complaint.

Our usual practice in writing about medical matters is to correspond with the inmate and send a copy to the health care manager.

The results of the investigation will be copied to the Medical Director , Corrections Branch in all instances. The inspector will copy the Director of Mental Health Services, Corrections Branch if the issue relates to the mental health of the individual. It is current practice to copy the president and operational manager of the health care contractor for corrections. In certain cases, the health care inspector may find it appropriate to copy the physician involved in the complaint.

We cannot compromise confidentiality and provide medical information to correctional management. If the complaint is substantiated, we may then make recommendations for improvements, unless it is an isolated incident.

11.12 Legal Opinions

Inspectors are reminded that in cases where a legal opinion is needed they must discuss the need for a legal opinion with the director or deputy prior to requesting the opinion. When an opinion is obtained, the inspector is responsible for ensuring that copies are provided to the required staff for filing. Copies of legal opinions are not to be placed on the complaint files or copied outside the office without prior consent. If further information is required, refer to the detailed legal opinion requirements document.

11.13 Remission Complaints

We can only review the fairness of the process and the compliance with the provisions of CAR. If there has been an error, we can only advise the centre of the defect in process. We have no jurisdiction to adjust the award.

11.14 Remission While in Police Lock-ups

We have been advised that we do not have jurisdiction over remission awards or lack of remission for individuals serving intermittent sentences at police lock-ups. Our only recourse is to refer the complainant to the RCMP Public Complaints Commission.

11.15 Separate Confinement (new sections 17 & 18 CAR - old Section 38.1 CCR&R)

Centres must fulfill the requirements of section 17 before moving to section 18. Inspectors should ensure that reviews of complaints regarding Section 18 decisions are made by the appropriate person in accordance with the 'Provincial Adult Custody Designation Matrix'.

Ministry of Attorney General
Investigation & Standards Office

INTERNAL PROCEDURES MEMORANDUM

Review of the Decisions and Penalties Imposed at a Disciplinary Hearing

Chapter B - 7

Approved: 

Date: January 04 2006

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1. THE DISCIPLINARY PROCESS

The Disciplinary processes described in the *Correction Act* and the *Correction Act Regulations* (CAR) are for the purpose of encouraging good behavior and compliance with the rules governing inmate behavior. Correctional centre management administers discipline for alleged violations of the rules that are listed in Sections 21 (1) and 21 (2) of the CAR. Sections 22 – 28 of the CAR describe the various steps and requirements involved in the disciplinary process. The process is, also, subject to the requirements of the rules governing administrative law. Procedures used in administrative hearings are generally less formalized than those in found in the courts. Section 29 of the CAR mandates the Director of Investigation and Standards Office (ISO) to review the decision and the penalty imposed at a disciplinary hearing when requested to do so by the inmate.

2. ADMINISTRATIVE LAW

- 2.1 The aspects of administrative law that we are concerned with have to do with issues of fairness. These are sometimes referred to as natural justice, the duty to act fairly or procedural fairness. The following elements of natural justice most regularly apply to inmate disciplinary hearings. The accused has a right to:

- a fair hearing;
- be present at the hearing (except as exempted in Sections 26(2) or 26 (3) of the CAR);
- hear the case against him/her;
- respond to charges against him/her;
- cross-examine or question witnesses;
- make submissions on sentence.

The Hearing Officer administering discipline must:

- be free from bias or the appearance of bias;
- give reasons for a decision,

3. AUTHORITY

The ISO mandate to review disciplinary hearings are described as follows in the CAR:

"Review of decision

- 29 (1)** *An inmate may, within 7 days of a decision being made under section 27, request in writing that the director review the decision and the penalty imposed.*
- (2) *On receipt of a request for a review under subsection (1), the person in charge must immediately provide the director with a record of the disciplinary hearing and information used in the hearing.*
- (3) *The director may suspend a penalty imposed under section 27 pending completion of the review.*

(4) *The director may*

- (a) *confirm the decision made and the penalty imposed under section 27,*
- (b) *confirm the decision made and substitute another penalty under section 27, or*
- (c) *rescind the decision made and the penalty imposed under section 27, and*
 - (i) *direct that the person in charge change the inmate's record to reflect the rescission,*
or
 - (ii) *direct that a new disciplinary hearing be convened and presided over by a person*
appointed by the assistant deputy minister."

Section 28 (2) (a) of the *Correction Act* allows the Director of ISO to delegate powers and duties to ISO employees. We use a delegation matrix and letter as the instrument of such delegation.

Prerequisites

There are several factors affecting the office's review of a disciplinary disposition:

- The inmate must request a review within 7 days of the determination or disposition, in accordance with section 29(1). This is a firm timeline. Where the inmate dates his letter, we will base eligibility from the date on that letter. If the inmate does not date the letter, we will allow a reasonable time for mail to be received at our office. If the inmate insists that he has requested a review of the decision and/or the disposition, and can send us a copy of the letter, although undated, we have accepted the request and reviewed the hearing.
- At the conclusion of the hearing, only the inmate may request a review of the disciplinary decision. An inmate may have another inmate or an officer write a letter requesting a review on his or her behalf, but the inmate against whom the charges are filed has to sign the letter. There is no provision for advocacy of one inmate on behalf of another inmate. However, if a lawyer requests a review on behalf of a client, we should treat that as if the inmate personally made the request.
- There must be a record of the proceedings that can be reviewed by an inspector.

N.B. Unlike an appeal court where an appeal is predicated on points of law, inmates need only register their request for a review with this office, because not all the inmates are knowledgeable about the requirements of the process or are able to express themselves effectively in writing. Therefore, the office will review the whole process, regardless of the plea the inmate entered at the hearing.

4. INDEPENDENCE

To maintain the integrity of the process, our review of a disciplinary hearing should be, and should be seen to be, independent of the centre's process of hearing the matters. On occasion, inspectors are asked to offer an opinion to Hearing Officers in advance of hearing a matter. In these circumstances, Hearing Officers should be directed to receive their advice from the Adult Custody Analyst. Inspectors must decline to offer advice in advance of a hearing. This will preserve the independence of the inspector and the Office to conduct the review.

Similarly, for the same reason, inspectors must avoid providing advice to inmates prior to the hearing. Inmates should be advised to have such discussions with a legal counsel.

5. INSPECTOR QUALIFICATIONS

The disciplinary review process is dependent upon knowledge of administrative law, the CAR and familiarity with the Corrections Branch processes. To ensure a measure of consistency in application of administrative law, and the ISO process, inspectors must be qualified to conduct a review. Once qualified, the Director may delegate authority to inspectors. The inspector qualification program will include:

- Demonstrated knowledge on administrative law and procedural fairness;
- Review and understanding of the ISO Internal Procedures Manual on "Review of the Decisions and Penalties Imposed at Disciplinary Hearings";
- A period of supervision (mentoring) by a qualified inspector;
- A review of a sample of files where the result of the review has been a decision to confirm the decision and penalty or rescind the decision or penalty;
- Completion of a number of appeals under the supervision of a qualified inspector; and,
- Where available, auditing the Corrections Branch's Disciplinary Panel Chairperson Workshop.

On completion of the above, and on the recommendation of the supervising inspector, the Director may grant a formal delegation of authority to the inspector.

6. DISCIPLINARY REVIEW PROCESS

There are two significant parts to this process – the procedures for conducting a review and our internal documentation requirements of the inspector conducting the review.

ISO staff should always remember that review of disciplinary hearings is a time sensitive and high priority matter within the Office.

On receipt of a request for review from an inmate, **administrative staff** will:

- immediately assign the review to an inspector;
- enter the review into the Assignment Tracking Database;
- request that the centre place the audio file into the centre's all-share file folder;
- ask for the documents from the centre conducting the hearing; and
- prepare an acknowledgement letter for the assigned inspector.

The **assigned inspector** will:

- review the appropriateness of the acknowledgement letter;
- if appropriate, sign the acknowledgement letter; and
- await the arrival of the documents.

When the documents arrive, the assigned inspector will review the audio file and documents within 24 hours of their receipt or arrange for a colleague to conduct the review. .

We have developed a table to be used to guide the inspector through the review of a disciplinary hearing. The table is available at *G:\Admin\Template\Forms\di.appeals*. Since we do not keep copies of the audio files of disciplinary hearings, we need a record of what the inspector heard while reviewing the record. The table allows the inspector to document what is heard on the record.

The document can be hand-written, or an electronic version can be completed. The electronic version is a table that will expand according to the quantity of information entered into the table.

If the inspector chooses to enter data directly into the table, there are some simple, yet important, steps:

- Upon calling up the original table file, save it immediately under another name in the G:\Correct\Appeal file. This will preserve the integrity of the original file and we will always have an uncorrupted master file.
- If you inadvertently corrupt the master, advise administrative staff who can assist in restoring the master.
- Enter your data according to what is heard on the tape and at the completion of the review, print a copy of the table, sign it and include it in the file.

Once the inspector has completed the review, the completed table becomes part of the file and provides evidence of the review of the record, and our analysis of compliance or non-compliance with administrative law, policies and procedures applicable to disciplinary panels. The table's contents will also provide the evidence in support of the findings of the review. Regardless of whether the table is hand-written or electronically completed, inspectors will initial and date the table, and file a copy on the inmate's file.

The Assignment Tracking Database log will be used to record contacts about the file (e.g. date of request of tapes and documents, follow-up calls for documents or tapes, discussions about the results of the review, and the result of the review). This is an important step in providing the information to the administrative staff for up-dating the Assignment Tracking Database.

Inspectors are responsible for ensuring that the audio record and documents are obtained in a timely manner, including follow-up where necessary. In the centres that are on-line, the inspector should look in the appropriate drive for the audio record of the disciplinary hearing. Administrative staff will contact the centre and request that the centre fax the documents relating to the hearing. Administrative staff will need to enquire as to whether there is evidence presented in the hearing that should also be loaded into the drive such as video clips. Alternatively, some centres are establishing a folder on-line that has the scanned documents, video clips and the audio record in the folder. For reviews originating in those centres, administrative staff only have to enter the review into ATD, and assign it to an inspector.

Our review of a hearing will include the following steps:

- a) Ensure that there is a request for the review of the disciplinary hearing made by the inmate or their legal representative.
- b) Ensure that the request was made within the seven days of the hearing decision.
- c) Ensure that audio record and documents match the inmate and the offence requested in the appeal letter.
- d) Ensure the section of CAR under which the inmate is charged is the appropriate section for the circumstances reported. If the inmate is charged under the wrong section and the error is not remedied at the hearing, then these are grounds to rescind decision made. The centre cannot remedy the defect of a wrong charge after the hearing is completed (see Charged

under the Wrong Section of CAR in Appendix – Practice Issues).

- e) Ensure that the hearing began within 72 hours of the charge approval by the supervisor – look for time/date signed on the documents. If the hearing is not commenced within the 72 hours, the Hearing Officer has lost jurisdiction. The centre cannot recover jurisdiction after it has run out of time. (See **Practice Issues** Section).
- f) Listen to the audio recording and ensure that it is audible. If the record is not audible there is no record of the proceedings. If there is no record, or there has been a malfunction of equipment or materials, and the record cannot be reviewed, then the hearing decisions may be rescinded pursuant to 29(4)(c) of the CAR..
- g) Listen to the proceedings to ensure that proper procedures have been followed to ensure that the hearing was conducted in a fair manner.
- h) Is the charge specified? For sections of the CAR that have multiple sections, the particular aspect of the charge must be specified. The inmate has the right to know the case against him/her.
- i) Is a plea taken? (See **Practice Issues** Section re: No Contest)
- j) If not a guilty plea, is oral evidence given at the hearing?
- k) Does the evidence support the allegations and do the allegations support the charge? There must be sufficient evidence presented to allow the Hearing Officer to conclude on the balance of probabilities that the breach occurred.
- l) If the inmate requests legal counsel, have procedures been followed? (See **Practice Issues Inmate's Right to Legal Counsel**)
- m) Has the inmate requested to call witnesses in defense of the charges? If the inmate requests witnesses, the Hearing Officer may limit the number of witnesses, but should hear witnesses requested by the inmate, if they are relevant. If the request to call witnesses is denied, the inspector should note the Hearing Officer's reasons for denying witnesses. (See **Practice Issues** Section)
- n) Ensure that the Hearing Officer has not reviewed past conduct or criminal history or reviewed institutional file material before making a determination of guilt or innocence. This is indicative of an apprehension of bias in the proceedings.
- o) Has the inmate been given an opportunity to speak in his own defence? Procedural fairness requires that an inmate be permitted to respond to the case against him or her, either directly or through his or her counsel (if counsel is present at the hearing).
- p) Has the inmate been given an opportunity to make submissions prior to arriving at disposition? The inmate must be given the opportunity to comment. If the inmate is not given the opportunity to comment, this is also a breach of procedural fairness as described above.
- q) Is the disposition fair and reasonable – does it match the offence? If the penalty appears unreasonable, or does not match the offence, ISO has the authority to substitute another penalty. The inspector may direct that another penalty be substituted, and the letter to the

centre should request that the inmate's records be amended to reflect the substituted penalty. **(See following sections on Substituting Dispositions).**

- r) Is there any indication of prior knowledge by the Hearing Officer of the events relating to the charge? If so, this is indicative of an apprehension of bias in the proceedings.
- s) Does the Hearing Officer explain the inmate's rights, about requesting a reduction or suspension of the disposition (section 27(5), CAR)? If not, this is a procedural error.
- t) Is the inmate advised of the review process included in section 29(1), CAR? If not completed, this is a procedural error

When we rescind the decision, and send the matter back to the centre for hearing by a new Hearing Officer, we advise the Adult Custody Analyst, Corrections Branch. The analyst works with centre management in appointing a new Hearing Officer to hear the matter.

7. REPORTING OF RESULTS

After we have reviewed the documents and the record of the hearing, we must report the results of our review to the inmate, and to the management of the centre that conducted the hearing.

Confirm the Decision and Penalty Imposed

When **we confirm the decision and the penalty imposed**, the inmate must be provided with the reasons for our decision. We write a letter to the inmate outlining the charges, the date of the hearing, and include a brief summary of the hearing itself. We also usually outline the points of compliance with administrative law. The letter may include a reference to some of the evidence presented in support of the charges.

The letter also includes our conclusion as to the fairness of the hearing, and the appropriateness of the penalty in light of the charges and the evidence presented during the hearing. The letter should also remind the inmate of his/her rights to apply to the Hearing Officer for suspension or reduction of the disposition.

Substitute Penalty

When **we substitute another penalty**, we verbally advise the Deputy Warden of the centre. We inform the Deputy Warden of the reasons for the substitution and that we will provide written reasons, as well. The inmate must be provided with the reasons for confirming the decision and for substituting another penalty. We write a letter to the inmate outlining the charges, the date of the hearing, and include a brief summary of the hearing itself. We also, usually, outline the points of compliance with administrative law. We confirm the determination of the Hearing Officer and advise the inmate that we have set aside the original penalty imposed by the Hearing Officer, and have substituted another penalty. We advise the inmate that we are requesting that the centre amend the inmate's institutional records to reflect the substituted penalty. In these cases we also write a separate memorandum to the Warden of the centre. In that memorandum, we outline the reasons for the substitution of disposition, acknowledge that the matter has been previously discussed with the Deputy Warden, and request that the centre amend the inmate's record to reflect the substituted penalty.

Disposition Increased

Where the inspector feels **the disposition should be increased**, there must be consultation with the Director, ISO. The inspector must be convinced of the justification for the increase. We must notify the inmate that we are considering increasing the disposition, and allow the inmate to make oral or written submissions on a new disposition. The inmate should be reminded of their right to legal representation. We must be prepared to review these submissions in good faith prior to making a determination.

a) Substantial Breach of Regulation or Procedural Fairness

In reviews that find **a substantial breach of procedural fairness or a breach of the regulation**, we can either rescind the decision and the penalty imposed and direct the Warden to change the inmate's record to reflect the rescission or direct that a new disciplinary hearing be convened before a new Hearing Officer. In cases where we have rescinded the decision or the penalty imposed, as a part of our discussion with the Deputy Warden, we must ensure that the inmate is released from any penalties relating to that specific review, pending receipt of the memo. Consider sending an email to the Deputy Warden. A printed copy of the email should be made for the file.

However, we do not have the authority to alter the inmate's classification. Centre management should make a decision on the appropriate classification and placement for the inmate, including whether to place the inmate in a segregation cell pending a hearing as per Section 24 of the CAR, when a new hearing has been ordered.

When we rescind the decision or the penalty imposed, inspectors must consult CORNET to ascertain whether the result of the review has an imminent affect on the inmate's possible discharge date (PDD). If so, this should be brought to the centre's attention in the discussion with the Deputy Warden or by e-mail to another senior officer present in the centre. After discussion with the Deputy Warden, we provide the inmate with a written decision outlining the charges and the date of the hearing under review. We advise the inmate of the decision and our reasons. We also advise the inmate that we are requesting that the correctional centre amend the inmate's record to reflect our decision.

We write a separate memorandum to the Warden of the centre that held the hearing, identifying the inmate, the charges, date of the hearing, and the reasons for the decision. We should also identify in this memo that we have flagged to staff that the result of our decision may have an imminent affect on the inmate's PDD. This memorandum should be phrased in a constructive manner that will assist management in preventing recurrence of this procedural error. We will also copy this memo to the Hearing Officer.

Return the Matter to Centre for a New Hearing

When, we verbally or by e-mail advise the Adult Custody Analyst and the centre, and indicate we are directing that a new hearing be held. The Adult Custody Analyst will then initiate the process of appointing a new Hearing Officer. The Assistant Deputy Minister, Corrections Branch, will appoint the new Hearing Officer, in writing.

We also write a letter to the inmate outlining the charges and the date of the hearing under review. We advise the inmate of the reasons for our decision and that we are requesting a new hearing on the matter. We write a separate memorandum to the Warden of the centre that held

the hearing, identifying the inmate, the charges, the date of the hearing, and our reasons for returning the matter to the centre for another hearing.

If the Assistant Deputy Minister decides against holding a new hearing then that is not our concern.

Our decision letters are normally copied to the Warden of the centre holding the hearing, and if it is different, the Warden of the centre holding the inmate. We also send **a copy of all correspondence** with an inmate to the **Assistant Deputy Minister** and **Provincial Director**, Corrections Branch.

Inspectors are Responsible for Drafting the Correspondence to the Inmate

Inspectors are responsible for drafting the correspondence to the inmate and to Corrections Branch management. Inspectors are responsible for proof-reading their work prior to signing the letter or the memorandum. Particular attention should be paid to the addressee and to the signature line, as these are the two areas of most common error. Inspectors check the grammar in the communication prior to giving it to administrative staff for formatting. Only the inspector can make informed decisions on the appropriate wording. Inspectors are also responsible for completing the yellow ATD Log with the result of their review.

Vancouver based inspectors should ensure that there is an initialed copy of the final correspondence on each file.

Administrative Staff

Administrative staff are responsible for formatting the letters and memoranda. This includes completing the address for the inmate, spell checking the document, and ensuring that the header, salutation and closing on the document are consistent with the type of communication, i.e. letter or memorandum. We include the inmate's CS# on our correspondence. Administrative staff should ensure the inmate's CS# is shown on the decision letter, the memorandum to management, and the outside of the envelope conveying our decision to the inmate. Once formatted, documents are returned to the inspector for final review prior to signature.

Administrative staff are responsible for file closure. This includes issuing the correspondence, securely filing our copies of the correspondence on the inmate's file, return of tapes (where applicable) to the appropriate correctional centre, and updating the Assignment Tracking Database with the date of closure and the results of the review. This is an important part of our activity recording leading to our quarterly and annual activity statistics.

APPENDIX A - Practice Issues

There are several issues that are relevant to the disciplinary process that have been clarified through legal opinions and the Judicial Review process.

Inmate's Right to Legal Counsel

In the unusual event that a hearing officer refuses the inmate's request for counsel, there should be evidence on the record that the proper factors were considered. The record should show that the Hearing Officer considered the request. Consideration of the request should include:

- a) an assessment of whether the inmate is capable of understanding the charges and/or the seriousness of the infraction and possible dispositions, and the complexity of the charge;
- b) an assessment of whether the inmate can present his own case and speak to his defence;
- c) consideration of whether there are complex legal issues that must be addressed;
- d) consideration of whether there is affect on the timeliness of the hearing;
- e) recognition of the need for fairness as between inmates and officers; and
- f) consideration of whether there is undue delay in obtaining legal counsel.

If the inmate advises the centre that a lawyer has been appointed, the centre should adjourn the hearing to accommodate the attendance of the lawyer. The only extenuating circumstance would be if there is undue delay in arranging a mutually convenient time for the hearing. Our expectation should be that the record would reflect the efforts of the centre to accommodate the attendance of the lawyer in cases where they proceed without counsel in attendance.

If the inmate requests a lawyer, and a lawyer attends the hearing, the lawyer has the right to receive reports and documents, ask questions and make submissions on determination or disposition.

Inmate's Right to Call a Witness

The inmate has a right to request a witness to present information in his defense. The Hearing Officer should listen to the information and weigh it in terms of the other information before the officer. The Hearing Officer may refuse the request to call a witness in circumstances where the witness is being requested for the purposes of providing evidence that is not relevant, the evidence to be given by the witness is redundant or the witness is unavailable and there is another method of providing the same relevant evidence.

The security of the witness has to be carefully weighed in light of the fact that the witness is being called by the inmate. It is not necessarily grounds for denial of the witness.

The Hearing Officer has the right to limit the number of witnesses for efficiency or relevancy reasons, but the record should reflect the Hearing Officer's reasons for doing so. Inmates can call witnesses, but there is nothing compelling the witness to appear at the hearing. If the witness declines to appear, so be it.

Double Jeopardy

As discipline is an administrative procedure, the accused can also be charged criminally on the same set of circumstances, as the Supreme Court of Canada has ruled that discipline is an administrative procedure within a correctional centre. An action by an inmate could also be a criminal act because it offends against society. Criminal law procedures are then carried out against an inmate. Because the Supreme Court has ruled that an incident can be handled both as an administrative matter and as a criminal matter, double jeopardy does not apply.

Adjournments

There are no defined time constraints around adjournments. A hearing may be started, adjourned and re-started at any time during the inmate's sentence. Except as provided by Section 26 (2) and (3) of the CAR, the inmate must be present when the hearing is conducted.

Seized with Hearing

If evidence is presented, then an adjourned hearing will have to be heard by the Hearing Officer. Alternatively, a new Hearing Officer would have to re-hear all of the evidence previously presented.

Review of ISO Decision

There is no provision for an internal review of our office's decisions. Once we rule on a review, we are considered "functus officio." This doctrine applies where there is no specific statutory provision for an appeal, and once a tribunal has exercised its decision-making power, it cannot revisit that decision. There are some exceptions to the doctrine of "functus officio", for example, where new evidence has come to light. The law on functus officio is driven by the facts of each case and legal counsel should be consulted on this issue.

Suspension of a Penalty

The Office is cautious in using the authority to suspend a penalty. We have used the authority in circumstances where we may require a legal opinion on issues in the proceedings, or where there is an excessive delay in commencing the review.

Varying the Penalty

Most inmates expect a reviewing inspector to substitute a lesser penalty. Despite this expectation, legally an inspector may substitute a lesser for a more severe penalty. The Office has adopted an abundance of caution in using the authority to increase a penalty, and this should only be done in exceptional circumstances where the facts clearly warrant a harsher discipline than imposed by the Hearing Officer. The substituted discipline should also clearly be in the range established for the type of offence, and the security classification of the centre. As well, we should notify the inmate, and review either written or oral submissions from the inmate or his/her counsel prior to making a determination on increasing the disposition.

Charged Under Wrong Section of CAR

If the inmate is charged under the wrong section of CAR, the charge can be amended at the start of the hearing if it is purely a clerical or typographical error. In such cases the inmate must be prepared to proceed with the hearing or be given the time necessary to prepare their defence or

consult with legal counsel.

If the hearing proceeds and the inmate requests a review of the decision, we will review the audio record and documents. There is no provision for changing the charge on a re-hearing for the same offence or set of circumstances.

Charged Under a Section with Multiple Offences

For example, Section 21(w), CAR contains two possible charges; an inmate must not . . . assault or threaten another person.” In using this section, officers must specify which charge they are using – assault or threaten. The inmate has the right to know the case against him so that he may prepare a defence to the charge. Without specifying the charge, there is a fundamental error that, unless clarified at the start of the hearing, leads to a loss of jurisdiction over the charge.

Plea of ‘No Contest’

‘No Contest’ is not a valid plea in Canada. If the inmate pleads ‘No Contest’ the Hearing Officer should either clarify the pleading to a valid plea and failing this treat this as a ‘not guilty’ plea and oral evidence should be presented to the Hearing Officer.

Suspending the Penalty & Re-instating the Suspended Penalty

S. 27(6)(a), CAR requires that the person in charge may order that a disciplinary hearing about the failure to comply with the condition be convened . The elements that we should examine are

- Has the person in charge ordered that a disciplinary hearing about the failure to comply be convened (Section 27(6) (a))?
- Were the conditions that were imposed communicated to the inmate in writing?
 - Were the conditions that were imposed established within 90 days of the hearing being ordered?

All other elements of the review are the same as other type of disciplinary hearings. Because section 29 (6) (b) requires the Hearing Officer to reimpose the suspended penalty if he/she determines that the conditions have not been complied with then the requirement to allow the inmate to comment prior to disposition becomes less critical.

Charges from Related Actions

Where the conduct of the inmate involves one action, simultaneous actions, or a number of uninterrupted actions, the question arises whether there should be one or more disciplinary charges. The material used in the branch’s training guide suggests that these actions should result in a single charge. This is predicated on trying to prevent centres from becoming ‘heavy handed’ in meting out discipline. From the point of view of inspectors conducting reviews, there is little we can do about this issue. If the charge is properly laid, and evidence provided to support the charge and lead the Hearing Officer to a finding of fact that on the balance of probabilities, a breach has occurred, then the inspector can only look at the reasonableness of the penalty based on the totality of the incident. If the inspector finds the discipline is unreasonable, the inspector may substitute another penalty.

Concurrent vs. Consecutive Dispositions

Again this is part of the branch’s philosophical move to temper a ‘heavy handed’ approach to

discipline. However, if the charge is properly laid, and evidence adduced to support the charge and lead the Hearing Officer to a finding of fact that on the balance of probabilities, a breach has occurred, then the inspector can only look at the reasonableness of the penalty based on the totality of the incident. If the inspector finds that the penalty is unreasonable, the inspector may substitute another penalty. The concurrent dispositions for segregation confinement cannot exceed 45 days.

Charter Issues

Where an inmate introduces Charter issues in a hearing the Hearing Officer has two choices – either to adjourn the hearing and seek legal advice on the issue or to advise the inmate that a disciplinary hearing as a “tribunal” is not a court of competent jurisdiction to hear a Charter argument. As well, if Charter issues arise as part of the review of a disciplinary disposition, in our reply to the inmate we should advise the inmate that the review process is not a court of competent jurisdiction to hear the argument. Staff should avoid trying to technically respond to arguments about rights and freedoms under the Charter.

Definition of Assault

We have recently dealt with a disciplinary hearing in which the Hearing Officer applied what she characterized as a definition of assault that was generally understood by the staff in the correctional centre. The definiti

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Application of Section 22(1), CAR

If the centre makes a decision to apply section 21(1) and the situation is resolved using this subsection, then the matter is concluded. Section 21(2), which deals with filing an allegation in writing, should not be utilized if section 22(1) has been successfully applied. Practically speaking, it may be quite difficult to ascertain from the record that section 22(1) has been applied. If management make a decision to proceed with charges after the living unit officer has applied section 22(1), this is usurping of the decision making authority of the living unit officer. Only the staff member referred to in 22(1) can decide to proceed with filing allegations in writing. However, it is ultimately up to the person in charge whether to proceed with a disciplinary hearing once written allegations are filed.

Charging as Soon as Practicable

Section 22(2) of the CAR indicates that “If, in the opinion of the staff member referred to in subsection 22(1), the breach has not been or cannot be satisfactorily resolved by the actions described in that subsection, the staff member must, as soon as practicable, file a written report . . .”. “As soon as practicable” is not defined in the regulation, and in the absence of a definition, the dictionary definition is ‘feasible in the circumstances’. In making decisions around the application of this section, we have to be sensitive to the context of the decision. Consideration has to be given to the demands on the officer’s time, whether ‘as soon as practicable’ could be an excuse to

generate overtime for the centre, and what other operational demands there are on the officer's time. Inspectors have to be reasonable in assessing compliance with the 'as soon as practicable' requirement. In considering the context, unless there are reasons such as further investigation, or quelling an outbreak on the unit, or an event that happens very late in the shift, as to why the officer did not complete the charging document as soon as practicable, it would be reasonable for us to apply a standard of completing the charges prior to the end of the officer's shift. Inspectors must be sure to review the circumstances on a case-by-case basis.

Requests for Reviews Based on Section 25(2)

If the grounds for requesting a review include the allegation that the hearing was not properly constituted under section 25(2), CAR, then the inspector should review the relevant documents that form part of the record of the hearing (e.g. charging documents, incident reports that form part of the record, segregation pending hearing approval, etc.). If these documents demonstrate a breach of section 25 (2) then the inspector may either rescind the decision and the penalty imposed and direct that the inmate's record reflect that decision or order a new hearing, whichever is appropriate under the circumstances.

If the alleged involvement of the Hearing Officer is not apparent and would require further investigation into areas that are not part of the hearing record then this aspect of request for review should be treated as a complaint and the following procedures would apply.

- in the acknowledgement letter to the inmate, the inspector has to acknowledge that we have treated the inmate's letter as both a request for review and a complaint,
- and that the appointment of the Hearing Officer aspect of the letter will be treated as a complaint
- the **inspector** has to advise the **administrative staff** accordingly.

APPENDIX B - Computer Based Records

Most centres are uploading to their Local Area Network (LAN) their audio records of disciplinary hearings.

We have agreed with centres' management that they advise the inmate that if they wish to request a review of the determination or disposition, the centre will fax that request to our office if the inmate waives confidentiality. This will be on the audio record of the proceedings. As well, centres have agreed to fax our office the documentation about the hearing when they are advised that the inmate wishes to request a review. This will remove inherent delays in the process.

On notice of review, if we have not already received the documentation, inspectors can request that the documents be faxed to our office. On receipt of the documentation, inspectors can access the audio record of the hearing through the LAN (except for centres that are still not uploading the file).

Inspectors' computers are equipped with external speakers to facilitate disciplinary hearing reviews.

The following is still in DRAFT:

New Standard & Procedure - CORNET (established Dec 16, 2008)

Where a review decision requires the correctional centre to amend an inmate's CORNET records, the reviewing inspector will now add the following to the memorandum to centre management:

"Please ensure that the inmate's records are amended within five working days to reflect my decision. Please advise me via email (your email address here) or letter when that action has been completed."

Please copy this and paste it into your 'Auto text'.

- The reviewing inspector is responsible for flagging a reminder in his/her calendar to follow up after five business days.

Upon receiving written confirmation from a centre:

- the inspector must review the inmate's CORNET to ensure that the amendments are accurate and complete
- the inspector will forward a copy of the notice, with his/her comments about the amendments, to admin staff for the inmate's file.