Standards of Conduct

for Corrections Branch Employees

BRITISH COLUMBIA

Ministry of Public Safety
and Solicitor General
Corrections Branch

Employees are encouraged to write to their supervisor or Provincial Director if they believe changes are needed to the "Standards of Conduct for Corrections Branch Employees." Questions or concerns regarding particular situations should be brought to the attention of a supervisor or personnel officer.

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Standards of Conduct

for Corrections Branch Employees

This booklet outlines standards of conduct for employees of the British Columbia Corrections Branch, Ministry of Public Safety and Solicitor General. These standards satisfy the expectations of employees and management for a code of professional behaviour that is common to all Corrections Branch employees. For the Corrections Branch to provide safe, reliable and consistent service, it is important that public service employees understand and uphold these standards.

The published "Standards of Conduct for Public Service Employees" are incorporated throughout the booklet. Corrections Branch employees serve as Officers of the Court and/or Peace Officers, and are entrusted with confidential information related to clients and matters before the Courts. To comply with these responsibilities, Corrections Branch

employees adhere to special standards of on and off-duty conduct beyond those expected of regular government employees. These special standards are set out in blue text.

In addition to the standards in this booklet, Corrections Branch employees are expected to be familiar with information relevant to their responsibilities as documented in the: "Adult Custody Policy"; "Community Corrections Policy Manual"; "Management Services Policy Manual"; "Correctional Centre Rules and Regulations"; and "Master and Component Agreements."

General Standards of Conduct

Corrections Branch Standards

Our standing as employees within the criminal justice system requires that we maintain principled and honest relationships in our dealings with colleagues in corrections, the courts, police, judiciary, and other agencies, as well as with clients and former clients of the Corrections Branch.

We conduct our responsibilities according to relevant legislation, directives from the Assistant Deputy Minister, local directives, or directives related to our official responsibilities.

We recognize our obligation as Corrections Branch employees to immediately report to the local manager any breach of rules and guidelines established to ensure the safety of clients, employees and the public.

We understand that unprofessional behaviour not specified in the Standards of Conduct for Corrections Branch employees does not mean immunity from discipline.

Public Service Standards

The requirement to comply with these standards of conduct is a condition of employment. Employees who fail to comply with these standards may be subject to disciplinary action up to and including dismissal. Employees should contact their ministry personnel office for advice and assistance on the interpretation or application of this policy directive.

Loyalty

Public Service Standards

Public service employees have a duty of loyalty to the government as their employer. The duty of loyalty, committed to in the Oath of Employment, requires public service employees, irrespective of political preferences or affiliations, to serve the government of the day to the best of their ability.

The honesty and integrity of the public service demands that the impartiality of employees, in the conduct of their duties, be above suspicion. Employees' conduct should instil confidence and trust and must not bring the public service into disrepute.

Confidentiality

Corrections Branch Standards

We recognize our responsibility to protect the privacy of clients and former clients of the Corrections Branch by:

- *Using information we collect only for intended and authorized purposes;*
- *Informing them of the reasons for collecting personal information;*
- *Allowing them to correct, within reason, material they believe to be incorrect or incomplete;*
- *Using a secure method during the disposal of information about clients.*

Public Service Standards

Confidential information that employees receive through their employment must not be divulged to anyone other than persons who are authorized to receive the information. Employees who are in doubt as to whether certain information is confidential must ask the appropriate authority before disclosing it. Caution and discretion in handling confidential information extends to disclosure made inside and outside of government and continues to apply after employment ceases.

Confidential information that employees receive through their employment must not be used by an employee for the purpose of furthering private interest, or as a means of making personal gains. See the Conflicts of Interest section of this document for details.

Public Comments

Public Service Standards

Public service employees are free to comment on public issues but must exercise caution to ensure that by doing so, they do not jeopardize the perception of impartiality in the performance of their duties. For this reason, care should be taken in making comments or entering into public debate regarding their ministry's policies. Public service employees must not use their position in government to lend weight to the public expression of their personal opinions.

Political Activity

Public Service Standards

Public service employees are free to participate in political activities including belonging to a political party, supporting a candidate for elected office and actively seeking elected office. Employees' political activities, however, must be clearly separated from activities related to their employment.

If engaging in political activities, employees must be able to retain the perception of impartiality in relation to their duties and responsibilities. Employees must not engage in political activities during working hours or use government facilities, equipment or resources in support of these activities.

Partisan politics at the local, provincial or national levels are not to be introduced into the workplace. This does not apply to informal private discussion among co-workers.

Service to the Public

Public Service Standards

Public service employees must provide service to the public in a manner that is courteous, professional, equitable, efficient and effective. Employees must be sensitive and responsible to the changing needs, expectations and rights of a diverse public while respecting the legislative framework within which service to the public is provided.

Workplace Behaviour

Corrections Branch Standards

Our behaviour, on and off duty, should reflect positively on the Corrections Branch and the public service. At work, we conduct ourselves in a manner that promotes a professional image through our words and actions. Our dress and appearance while on duty comply with provincial and local policies, and are consistent with employee health and safety.

We do not report for duty while under the influence of alcohol or drugs, nor with the odour of alcohol present. We understand that the abuse of alcohol or use of illegal substances during off-duty hours may compromise our professional credibility and the reputation of the Corrections Branch.

It is understood that supervisors will take prompt action when they become aware of discrimination, harassment or disrespectful treatment of a staff member by other employees.

We do not use government radios and cellular telephones for unauthorized or personal calls, and do not use abusive or profane language during transmission. We use government electronic mail and office equipment according to Ministry policy or as authorized by management.

Public Service Standards

The conduct and language of public service employees in the workplace must meet acceptable social standards and must contribute to a positive work environment. An employee's conduct must not compromise the integrity of the public service.

All public service employees have the right to expect, and the responsibility to create, a workplace where all employees are safe. Violence in the workplace is unacceptable and will not be tolerated. Violence includes any attempted or actual exercise by any person, including another worker, of any physical force so as to cause injury to a worker and includes any express threat of violence.

Employees must report any incident of violence directed towards themselves or their co-workers. Any employee hearing a threat, including a threat to a co-worker, must report that threat if he or she has reasonable cause to believe that the threat is serious. Any incident or threat of violence in the workplace must be addressed immediately.

Employees are to treat each other in the workplace with respect and dignity and must not engage in discrimination or harassment based on any of the prohibited grounds covered by the "Human Rights Code." The prohibited grounds are race, colour, ancestry, place of origin, religion, family status, marital status, physical disability, mental disability, sex, sexual orientation, age, political belief or conviction of a criminal or summary offence unrelated to the individual's employment. Employees and supervisors should refer to the policy, Human Rights in the Workplace – Discrimination and Harassment, for additional information on appropriate workplace behaviour.

Conflicts of Interest / Professional Conduct with Clients or Former Clients

Corrections Branch Standards

We use authority to promote honesty, fairness and trust.

We do not allow off-duty activities and conduct to interfere with our work obligations as employees of the Corrections Branch.

We immediately advise our supervisors if we are arrested or charged with a "Criminal Code" or other federal or provincial statutory offence, with the exception of personal minor motor vehicle violations.

If employed in a capacity that requires us to maintain a valid driver's licence, we immediately advise our supervisors if our driving privileges are suspended.

To protect the Branch and ourselves, we will be cautious about relationships or associations with clients and former clients.

NOTE:

1. *For the purposes of this section, the following definitions apply:*

- *A "client" is an accused person or a person subject to an active criminal order, including bail, probation, conditional sentence, conditional release or custody;*
- *A "former client" is a person involved in a criminal lifestyle who was previously subject to a criminal order, including bail, probation, conditional sentence, conditional release or custody;*

2. *To safeguard our families and ourselves, we avoid circumstances where our relationships with clients or former clients might result in the possibility or perception of becoming:*
   - *Subject to a conflict of interest;*
   - *Subject to blackmail or bribery;*
   - *Vulnerable to exploitation;*
   - *Implicated in the commission of an offence.*

3. *To safeguard the Corrections Branch, we do not engage in personal relationships with clients or former clients that might compromise:*
   - *Our integrity or effectiveness as Corrections Branch employees;*
   - *The safety and security of co-workers and Corrections Branch employees;*
   - *The reputation of the Corrections Branch.*

4. *We understand that certain relationships or association with clients or former clients may be appropriate or inevitable for employees of the Corrections Branch. Examples include but are not limited to the following circumstances:*
   - *Incidental or unplanned contacts;*
   - *While engaged in volunteer work, church groups or school functions;*
   - *As part of our regular job responsibilities or as authorized by management;*
   - *With members of our family who were previously involved in a criminal lifestyle.*

5. *We understand that certain relationships or associations with clients or former clients are inappropriate for employees of the Corrections Branch. We also understand that our on and off-duty conduct will be subject to disciplinary review by the Corrections Branch if we engage in the following activities with a client or former client:*
   - *Financial agreements, personal or business transactions;*
   - *Sharing accommodations;*
   - *Sexual relations;*
   - *Using a client's services or contacts for personal gain;*
   - *Concealing or failing to report a client's illegal activities;*
   - *Receiving or giving gifts, gratuities, benefits or favours.*

6. *We have a duty to report to our supervisor, in writing, a relationship or association, past or present with a client or former client that may be subject to a Corrections Branch review, as noted in section (5) above.*

7. *When we require clarification or direction to protect the Corrections Branch and ourselves from relationships or associations with clients and former clients, we will discuss the matter in person with our supervisor.*

8. *Supervisors and managers are required to advise their District Director or Regional Manager if they believe an unprofessional relationship exists or appears to be developing between a Corrections Branch employee and a client, former client or people who may have an association with these clients.*

Public Service Standards

A conflict of interest occurs when an employee's private affairs or financial interest are in conflict, or could result in a perception of conflict, with the employee's duties or responsibilities in such a way that:

- *The employee's ability to act in the public interest could be impaired; or*
- *The employee's actions or conduct could undermine or compromise:*
  - *The public's confidence in the employee's ability to discharge work responsibilities; or*
  - *The trust that the public places in the public service.*

While the government recognizes the right of public service employees to be involved in activities as citizens of the community, conflict must not exist between employees' private interests and the discharge of their public service duties. Upon appointment to the public service, employees must arrange their private affairs in a manner that will prevent conflicts of interest, or the perception of conflicts of interest, from arising.

Employees with questions regarding interpretation of the policy may discuss them with the designated ministry contact. Employees who find themselves in an actual, perceived or potential conflict of interest must disclose the matter to the designated ministry contact, their supervisor or manager. Employees who fail to disclose may be subject to disciplinary action up to and including dismissal.

Examples of conflicts of interest include, but are not limited to, the following:

- *An employee uses government property or the employee's position, office or government affiliation to pursue personal interests;*
- *An employee is in a situation where the employee is under obligation to a person who might benefit from or seek to gain special consideration or favour;*
- *An employee, in the performance of official duties, gives preferential treatment to an individual, corporation or organization, including a non-profit organization, in which the employee, or a relative or friend of the employee, has an interest, financial or otherwise;*
- *An employee benefits from, or is reasonably perceived by the public to have benefited from, the use of information acquired solely by reason of the employee's employment;*

- *An employee benefits from a government transaction over which the employee can influence decisions (for example investments, sales, purchases, borrowing, grants, contracts, regulatory or discretionary approvals, appointments);*
- *An employee requests or accepts from an individual, corporation or organization, directly or indirectly, a personal gift or benefit that arises out of their employment in the public service, other than:*
  - *The exchange of hospitality between persons doing business together;*
  - *Tokens exchanged as part of protocol;*
  - *The normal presentation of gifts to persons participating in public functions; or*
  - *The normal exchange of gifts between friends.*
- *An employee solicits or accepts gifts, donations or free services for work-related leisure activities other than in situations outlined above.*

Allegations of Wrongdoing

Public Service Standards

Employees have a duty to report any situation that they believe contravenes the law, misuses public funds or assets, or represents a danger to public health and safety or a significant danger to the environment. Employees can expect such matters to be treated in confidence, unless disclosure of information is authorized or required by law (for example, the "Freedom of Information and Protection of Privacy Act"). Employees will not be subject to discipline or reprisal for bringing forward to a deputy minister, in good faith, allegations of wrongdoing in accordance with this policy directive.

Employees must report their allegations or concerns as follows:

- *Members of the BCGEU must report in accordance with Article 32.13;*
- *PEA members must report in accordance with Article 36.12;*
- *Other employees must report, in writing, to their deputy minister who will acknowledge receipt of the submission, investigate the matter and respond in writing within 30 days after receiving the employee's submission. When an allegation involves the deputy minister, the employee must forward the allegation to the Deputy Minister to the Premier.*

Employees must report a safety hazard or unsafe condition or act in accordance with the provisions of the WCB Occupational Health and Safety Regulations.

When an employee believes that the matter has not been resolved by the deputy minister, the employee may refer the allegation to the appropriate authority. If the employee decides to pursue the matter further then:

- *Allegations of illegal activity must be referred to the police;*
- *Allegations of a misuse of public funds must be referred to the Auditor General;*
- *Allegations of a danger to public health must be brought to the attention of health authorities; and*
- *Allegations of a significant danger to the environment must be brought to the attention of the Deputy Minister, Ministry of Water, Land and Air Protection.*

Legal Proceedings

Corrections Branch Standards

We do not provide legal advice to our clients or members of the public, but suggest they discuss problems with the lawyer of their choice.

Public Service Standards

Employees must not sign affidavits relating to facts that have come to their knowledge in the course of their duties for use in court proceedings, unless the affidavit has been prepared by a lawyer acting for the government in that proceeding or unless it has been approved by a ministry solicitor in the Ministry of Attorney General and Minister Responsible for Treaty Negotiations. In the case of affidavits required for use in arbitrations or other proceedings related to employee relations, the Labour Relations Branch, Public Service Agency, will obtain necessary approvals. Employees are obliged to cooperate with lawyers defending the Crown's interest during legal proceedings.

A written opinion prepared on behalf of government by any legal counsel is to be treated as subject to solicitor/client privilege and is, therefore, confidential. Such an opinion is not to be released to persons outside the public service without prior written approval by the Legal Services Branch and/or the Criminal Justice Branch, Ministry of Attorney General and Minister Responsible for Treaty Negotiations.

Working Relations

Public Service Standards

Employees who are direct relatives or who permanently reside together may not be employed in situations when:

- *A reporting relationship exists when one employee has influence, input or decision-making power over the other employee's performance evaluation, salary, premiums, special permissions, conditions of work and similar matters; or*
- *The working relationship affords an opportunity for collusion between the two employees that would have a detrimental effect on the employer's interest.*

The above restriction on working relationships may be waived provided that the deputy minister is satisfied that sufficient safeguards are in place to ensure that the employer's interests are not compromised.

Personnel Decisions

Public Service Standards

Employees are to disqualify themselves as participants in personnel decisions when their objectivity would be compromised for any reason or a benefit or perceived benefit could occur to them. For example, employers are not to participate in staffing actions involving direct relatives or persons living in the same household.

Outside Remunerative and Volunteer Work

Public Service Standards

Employees may engage in remunerative employment with another employer, carry on a business, receive remuneration from public funds for activities outside of their position, or engage in volunteer activities, provided it does not:

- *Interfere with the performance of their duties as a public service employee;*
- *Bring the government into disrepute;*
- *Represent a conflict of interest or create the reasonable perception of a conflict of interest;*
- *Appear to be an official act or to represent government opinion or policy;*
- *Involve the unauthorized use of work time or government premises, services, equipment or supplies to which they have access by virtue of their public service employment; and*
- *Gain an advantage that is derived from their employment as a public service employee.*

Employees who are appointed as directors or officers of Crown corporations are not to receive additional remuneration beyond the reimbursement of appropriate travel expenses except as approved by the Lieutenant Governor in Council.

Use of Reasonable Force

Corrections Branch Standards

Employees designated as Peace Officers, and employed as Correctional Officers or supervisors, are authorized and limited by the "Criminal Code of Canada" and Branch policy in using reasonable force while on duty to:

a) Prevent the commission or continuation of an offence;

b) Maintain or restore order;

c) Apprehend an offender;

d) Prevent an offender from an act of self-harm; or

e) Assist another officer in the case of a, b, c, or d.

Use of Government Resources and Employee Benefits

Corrections Branch Standards

We exercise care when responsible for government resources and property, and only use them when conducting duties that are authorized by management.

We do not use government vehicles without management approval for purposes other than direct government business, and we operate them according to the rules of the road.

We acknowledge that involvement in stealing government property will result in an immediate discharge from our duties and privileges. We also understand that the fraudulent use of an employee benefit will lead to disciplinary action up to and including dismissal.

Responsibilities

Public Service Standards

Deputy Ministers are responsible for:

- *Ensuring that the provisions of this policy directive are met;*
- *Ensuring that employees are advised of the required standards of conduct and understand the consequences of non-compliance;*
- *Designating a ministry contact for matters related to standards of conduct;*
- *Ensuring that all possible breaches of the policy directive are thoroughly investigated;*
- *Based on the results of an investigation, ensuring that appropriate action is taken;*
- *Ensuring that confidential information is handled with caution and discretion;*
- *Waiving the provision on working relationships under the circumstances indicated; and*
- *Delegating authority and responsibility, where applicable, to apply this policy directive within their organization.*

Supervisors and managers are responsible for:

- *Advising staff on standards of conduct issues;*
- *Ensuring that confidential information is handled with caution and discretion; and*

- *Assisting staff in the resolution of conflicts of interest.*

Employees are responsible for:

- *Fulfilling their assigned duties and responsibilities, objectively and loyally, regardless of the party or persons in power, and regardless of their personal opinions;*
- *Disclosing and resolving conflicts of interest situations in which they find themselves;*
- *Maintaining appropriate workplace behaviour; and*
- *Checking with their designated ministry contact, supervisor, manager or personnel advisor, when they are uncertain about any aspect of this policy directive, including:*
  - *The appropriateness of receiving outside remuneration;*
  - *Potential, perceived or actual conflicts of interest; and*
  - *Releasing any information that may be confidential.*

Legislative Authorities

Corrections Branch

Criminal Code

Correction Act

Public Service Act

Human Rights Code

Freedom of Information and Protection of Privacy Act

Workers' Compensation Act

Occupational Health and Safety Regulations

Youth Criminal Justice Act

Other Authorities and References

Corrections Branch

Adult Custody Policy

Community Corrections Policy Manual

Management Services Policy Manual

ADM Directives

Correctional Centre Rules and Regulations

Public Service

B.C. Government and Service Employees' Union Master and Component Agreements

Terms of Employment for Excluded Managers

Personnel Management Policy, Human Rights in the Workplace – Discrimination and Harassment

Notes

Notes

January 2004

STANDARDS OF CONDUCT FOR PUBLIC SERVICE EMPLOYEES

This document contains an updated outline of the standards of conduct for employees in the public service. Employees should read this document and, if necessary, seek clarification in order to avoid placing themselves in conflict with the standards. These standards protect employees.

PRINCIPLES

The Government of British Columbia believes that the highest standards of conduct among public service employees are essential to maintain and enhance the public's trust and confidence in the public service.

MANDATORY REQUIREMENTS

General

The requirement to comply with these standards of conduct is a condition of employment. Employees who fail to comply with these standards may be subject to disciplinary action up to and including dismissal. Employees should contact their Human Resources Consultant for advice and assistance on the interpretation or application of this policy directive.

Loyalty

Public service employees have a duty of loyalty to the government as their employer. The duty of loyalty, committed to in the Oath of Employment, requires public service employees, irrespective of political preferences or affiliations, to serve the government of the day to the best of their ability.

The honesty and integrity of the public service demands that the impartiality of employees, in the conduct of their duties, be above suspicion. Employees' conduct should instill confidence and trust and must not bring the public service into disrepute.

Confidentiality

Confidential information that employees receive through their employment must not be divulged to anyone other than persons who are authorized to receive the information. Employees who are in doubt as to whether certain information is confidential must ask the appropriate authority before disclosing it. Caution and discretion in handling confidential information extends to disclosure made inside and outside of government and continues to apply after the employment relationship ceases.

Confidential information that employees receive through their employment must not be used by an employee for the purpose of furthering any private interest, or as a means of making personal gains.

See the Conflicts of Interest section of this document for details.

Public Comments

Public service employees are free to comment on public issues but must exercise caution to ensure, that by doing so, they do not jeopardize the perception of impartiality in the performance of their duties. For this reason, care should be taken in making comments or entering into public debate regarding their ministry policies. Public service employees must not use their position in government to lend weight to the public expression of their personal opinions.

Political Activity

Public service employees are free to participate in political activities including belonging to a political party, supporting a candidate for elected office and actively seeking elected office.

If engaging in political activities, employees must be able to retain the perception of impartiality in relation to their duties and responsibilities. Employees must not engage in political activities during working hours or use government facilities, equipment or resources in support of these activities.

Partisan politics at the local, provincial or national levels are not to be introduced into the workplace. This does not apply to informal private discussions among co-workers.

Service to the Public

Public service employees must provide service to the public in a manner that is courteous, professional, equitable, efficient and effective. Employees must be sensitive and responsive to the changing needs, expectations and rights of a diverse public while respecting the legislative framework within which service to the public is provided.

Workplace Behaviour

The conduct and language of public service employees in the workplace must meet acceptable social standards and must contribute to a positive work environment. An employee's conduct must not compromise the integrity of the public service.

All public service employees have the right to expect, and the responsibility to create, a workplace where all employees are safe. Violence in the workplace is unacceptable and will not be tolerated. Violence includes any attempted or actual exercise by any person, including another worker, of any physical force so as to cause injury to a worker and includes any express threat of violence.

Employees must report any incident of violence directed towards themselves or their co-workers. Any employee hearing a threat, including a threat to a co-worker, must report that threat if he or she has reasonable cause to believe that the threat is serious. Any incident or threat of violence in the workplace must be addressed immediately.

Employees are to treat each other in the workplace with respect and dignity and must not engage in discrimination or harassment based on any of the prohibited grounds covered by the *Human Rights Code*. The prohibited grounds are race, colour, ancestry, place of origin, religion, family status, marital status, physical disability, mental disability, sex, sexual orientation, age, political belief or conviction of a criminal or summary offence unrelated to the individual's employment. Employees and supervisors should refer to the policy, Human Rights in the Workplace – Discrimination and Harassment, for additional information on appropriate workplace behaviour.

Conflicts of Interest

A conflict of interest occurs when an employee's private affairs or financial interests are in conflict, or could result in a perception of conflict, with the employee's duties or responsibilities in such a way that:

- the employee's ability to act in the public interest could be impaired; or
- the employee's actions or conduct could undermine or compromise:
  - the public's confidence in the employee's ability to discharge work responsibilities, or
  - the trust that the public places in the public service.

While the government recognizes the right of public service employees to be involved in activities as citizens of the community, conflict must not exist between employees' private interests and the discharge of their public service duties. Upon appointment to the public service, employees must arrange their private affairs in a manner that will prevent conflicts of interest, or the perception of conflicts of interest, from arising.

Employees with questions regarding interpretation of the policy may discuss them with the designated ministry contact. Employees who find themselves in an actual, perceived or potential

Examples of conflicts of interest include, but are not limited to, the following:

- an employee uses government property or the employee's position, office or government affiliation to pursue personal interests;
- an employee is in a situation where the employee is under obligation to a person who might benefit from or seek to gain special consideration or favour;
- an employee, in the performance of official duties, gives preferential treatment to an individual, corporation or organization, including a non-profit organization, in which the employee, or a relative or friend of the employee, has an interest, financial or otherwise;
- an employee benefits from, or is reasonably perceived by the public to have benefited from, the use of information acquired solely by reason of the employee's employment;
- an employee benefits from, or is reasonably perceived by the public to have benefited from, a government transaction over which the employee can influence decisions (for example, investments, sales, purchases, borrowing, grants, contracts, regulatory or discretionary approvals, appointments);
- an employee requests or accepts from an individual, corporation or organization, directly or indirectly, a personal gift or benefit that arises out of their employment in the public service, other than:
  - the exchange of hospitality between persons doing business together,
  - tokens exchanged as part of protocol,
  - the normal presentation of gifts to persons participating in public functions, or
  - the normal exchange of gifts between friends.
- an employee solicits or accepts gifts, donations or free services for work-related leisure activities other than in situations outlined above.

Allegations of Wrongdoing

Employees have a duty to report any situation that they believe contravenes the law, misuses public funds or assets, or represents a danger to public health and safety or a significant danger to the environment. Employees can expect such matters to be treated in confidence, unless disclosure of information is authorized or required by law (for example, the *Freedom of Information and Protection of Privacy Act*). Employees will not be subject to discipline or reprisal for bringing forward to a deputy minister, in good faith, allegations of wrongdoing in accordance with this policy directive.

Employees must report their allegations or concerns as follows:

- members of the BCGEU must report in accordance with Article 32.13;
- PEA members must report in accordance with Article 36.12;
- other employees must report, in writing, to their deputy minister who will acknowledge receipt of the submission, investigate the matter and respond in writing within 30 days after receiving the employee's submission. Where an allegation involves the deputy minister, the employee must forward the allegation to the Deputy Minister to the Premier.

Employees must report a safety hazard or unsafe condition or act in accordance with the provisions of the WCB Occupational Health and Safety Regulations.

Where an employee believes that the matter has not been resolved by the deputy minister, the employee may then refer the allegation to the appropriate authority. If the employee decides to pursue the matter further, then:

- allegations of illegal activity must be referred to the police;
- allegations of a misuse of public funds must be referred to the Auditor General;
- allegations of a danger to public health must be brought to the attention of health authorities; and
- allegations of a significant danger to the environment must be brought to the attention of the Deputy Minister, Ministry of Water, Land and Air Protection.

Employees must not sign affidavits relating to facts that have come to their knowledge in the course of their duties for use in court proceedings unless the affidavit has been prepared by a lawyer acting for government in that proceeding or unless it has been approved by a ministry solicitor in the Legal Services Branch, Ministry of Attorney General and Minister Responsible for Treaty Negotiations. In the case of affidavits required for use in arbitrations or other proceedings related to employee relations, the Labour Relations Branch, Public Service Agency, will obtain any necessary approvals. Employees are obliged to cooperate with lawyers defending the Crown's interest during legal proceedings.

A written opinion prepared on behalf of government by any legal counsel is to be treated as subject to solicitor/client privilege and is, therefore, confidential. Such an opinion is not to be released to persons outside the public service without prior written approval by the Legal Services Branch and/or the Criminal Justice Branch, Ministry of Attorney General and Minister Responsible for Treaty Negotiations.

Working Relationships

Employees who are direct relatives or who permanently reside together may not be employed in situations where:

- a reporting relationship exists where one employee has influence, input or decision-making power over the other employee's performance evaluation, salary, premiums, special permissions, conditions of work and similar matters; or
- the working relationship affords an opportunity for collusion between the two employees that would have a detrimental effect on the Employer's interest.

The above restriction on working relationships may be waived provided that the deputy minister is satisfied that sufficient safeguards are in place to ensure that the Employer's interests are not compromised.

Personnel Decisions

Employees are to disqualify themselves as participants in personnel decisions when their objectivity would be compromised for any reason or a benefit or perceived benefit could accrue to them.

For example, employees are not to participate in staffing actions involving direct relatives or persons living in the same household.

Outside Remunerative and Volunteer Work

Employees may engage in remunerative employment with another Employer, carry on a business, receive remuneration from public funds for activities outside their position or engage in volunteer activities provided it does not:

- interfere with the performance of their duties as a public service employee;
- bring the government into disrepute;
- represent a conflict of interest or create the reasonable perception of a conflict of interest;
- appear to be an official act or to represent government opinion or policy;
- involve the unauthorized use of work time or government premises, services, equipment or supplies to which they have access by virtue of their public service employment; and
- gain an advantage that is derived from their employment as a public service employee.

Employees who are appointed as directors or officers of Crown corporations are not to receive any additional remuneration beyond the reimbursement of appropriate travel expenses except as approved by the Lieutenant Governor in Council.

If you have any questions or concerns regarding your particular situation, you are encouraged to contact your supervisor or Human Resources Consultant for advice and assistance.

Responsibilities Ministries

Deputy Ministers are responsible for:

- ensuring that the provisions of this policy directive are met;
- ensuring that employees are advised of the required standards of conduct and understand the consequences of non-compliance;
- designating a ministry contact for matters related to standards of conduct;
- ensuring that all possible breaches of the policy directive are thoroughly investigated;
- based on the results of an investigation, ensuring that appropriate action is taken;
- ensuring that confidential information is handled with caution and discretion;
- waiving the provision on working relationships under the circumstances indicated; and
- delegating authority and responsibility, where applicable, to apply this policy directive within their organization.

Supervisors and managers are responsible for:

- advising staff on standards of conduct issues;
- ensuring that confidential information is handled with caution and discretion; and
- assisting staff in the resolution of conflicts of interest.

Employees are responsible for:

- fulfilling their assigned duties and responsibilities, objectively and loyally, regardless of the party or persons in power and regardless of their personal opinions;
- disclosing and resolving conflicts of interest situations in which they find themselves;
- maintaining appropriate workplace behaviour; and
- checking with their designated ministry contact, supervisor, manager or personnel advisor when they are uncertain about any aspect of this policy directive, including:
    - the appropriateness of receiving outside remuneration,
    - potential, perceived or actual conflicts of interest, and
    - releasing any information that may be confidential.

Legislative Authorities

Public Service Act

Human Rights Code

Freedom of Information and Protection of Privacy Act

Workers Compensation Act

Occupational Health and Safety Regulations

Other Authorities and References

- B.C. Government and Service Employees' Union Master Agreement, Article 1.8, Article 32
- Nurses Master and Component Agreements, Article 30
- The Professional Employees Association master and Subsidiary Agreements, Article 36
- Personnel Management Policy, Human Rights in the Workplace – Discrimination and Sexual Harassment

Discrimination and Harassment in the Workplace (Human Resources Policy 11)

This policy statement applies to all employees appointed under the *Public Service Act* and applies to incidents that occur at or away from the workplace during or outside working hours if a connection exists to the employment relationship. This policy statement supports the core policy objective of "promoting a safe and healthy workplace that supports the well-being of employees" and the objective that "public service employees exhibit the highest standards of conduct."

As an employer, the Government of British Columbia, in cooperation with its unions and associations will promote a work environment that is free from discrimination and harassment where all employees are treated with respect and dignity. Discrimination and harassment as related to any of the prohibited grounds contained in the *Human Rights Code* violate the fundament rights, dignity and integrity of an individual. Where discrimination or harassment is found to have occurred, the Employer may implement remedial action.

This policy statement promotes the prevention of discrimination and harassment and focuses on the prompt resolution of complaints. This policy statement does not prevent an employee from filing a complaint under Section 13 of the *Human Rights Code*; however, employees are not entitled to duplication of process. Where an employee directs a complaint of discrimination or sexual harassment to the British Columbia Human Rights Tribunal or where they are included as an element of a grievance, the complaint will not be pursued through the formal process specified in this policy or the applicable collective agreement. All information regarding a complaint is to be treated in the strictest confidence. Information that must be shared will be disclosed on a "need to know" basis.

This policy statement covers:

- discrimination and harassment for excluded employees
- the complaint procedures for excluded employees
- the adjudication process for bargaining unit employees

A provision regarding discrimination and harassment, including the complaint procedures for bargaining unit employees, is contained in each of the applicable collective agreements. If there is a conflict, the collective agreement will take precedence over this policy statement. An employee who files a written complaint which would be seen by a reasonable person to be frivolous, vindictive or vexatious may be subject to disciplinary action.

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Definitions

Discrimination

Discrimination relates to any of the prohibited grounds contained in the *Human Rights Code*. Prohibited conduct may be verbal, non verbal, physical, deliberate or unintended, unsolicited or unwelcome, as determined by a reasonable person. It may be one incident or a series of incidents depending on the context. Employees have the right to employment without discrimination. Discrimination includes incidences of harassment because of race, colour, ancestry, place of origin, religion, family status, marital status, physical disability, mental disability, sex, age, sexual orientation, political belief or conviction of a criminal or summary conviction offence unrelated to their employment.

Sexual Harassment

Sexual harassment is a form of discrimination and is defined as any unwelcome comment or conduct of a sexual nature that may detrimentally affect the work environment or lead to adverse job related consequences for the victim of the harassment. Examples of sexual harassment include, but are not limited to:

- A person in authority asking an employee for sexual favours in return for being hired or receiving promotions or other employment benefits;
- Sexual advances with actual or implied work related consequences;
- Unwelcome remarks, questions, jokes or innuendo of a sexual nature including sexist comments or sexual invitations;
- Verbal abuse, intimidation or threats of a sexual nature;
- Leering, staring or making sexual gestures;
- Display of pornographic or other sexual materials;
- Offensive pictures, graffiti, cartoons or sayings;
- Unwanted physical contact such as touching, patting, pinching or hugging; and
- Physical assault of a sexual nature.

The definition of sexual harassment is not meant to inhibit interactions or relationships based on mutual consent or normal social contact between employees.

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Complaint Procedures for Excluded Employees

These procedures will also apply if either the complainant or the respondent is a deputy minister. In such cases, the Deputy Minister to the Premier will assume the function of the Deputy Minister for the purpose of these procedures.

Informal Process

Employees who believe that they have a complaint of discrimination or sexual harassment may approach their supervisory personnel, association representative, or other contact person to discuss potential means of resolving the complaint and to request assistance in resolving the matter. A matter dealt with to the complainant's satisfaction is considered to be resolved.

Management Process

If the matter is not resolved to the complainant's satisfaction, or if the employee chooses not to proceed informally, the employee, within six months of the alleged occurrence, will approach the first level of excluded management not involved in the matter, for assistance in resolving the complaint. The manager will investigate the allegation and take steps to resolve the concern as appropriate within 30 days of the issue being raised by the employee. Employees may wish to have a representative present.

Formal Process

If the resolution proposed as a result of the management review is not acceptable, the complainant may refer the matter, in writing, to the deputy minister within 30 days of receiving the manager's written response or when the response was due. The complainant may seek assistance through their human resources personnel or association representative. The written complaint will specify the details of the allegation including:

- Name, title and ministry of the respondent;
- A description of the action, conduct, events or circumstances involved in the complaint;
- The specific remedy sought to satisfy the complaint;
- Dates of incidents;
- Names of witnesses (if any); and
- Prior attempts to resolve (if any).

The deputy minister will provide a copy of the complaint to the respondent. The deputy minister will acknowledge, in writing, receipt of the written complaint, have the matter investigated and take such steps as may be required to resolve the matter.

The employee and association representative, if applicable, will be advised in writing of the proposed resolution within 30 days from the date the Deputy Minister received the written complaint or a later mutually agreed upon date.

Discrimination and Harassment in the Workplace (Human Resources Policy 11)

Adjudication Process for Bargaining Unit Employees

The following adjudication process is for complaints of discrimination or sexual harassment that have not been resolved using the process set out in the applicable collective agreement:

- BCGEU: Article 1.9
- PEA: Article 1.09
- Nurses: Article 1.06

Referral for Adjudication

When a complaint of discrimination or sexual harassment has not been resolved using the process set out in the collective agreement, the Bargaining Agent may refer the matter to the Employer for adjudication.

The written notice of referral for adjudication must be received by the Employer within 30 days of receipt of the proposal from the Deputy Minister to resolve the complaint made under the formal process for resolving discrimination and sexual harassment complaints. The 30-day period may be extended with the agreement of both the Bargaining Agent and the Employer.

Appointment of Adjudicator

The Employer will appoint an Adjudicator within 10 working days of receiving the written notice of referral for adjudication. The Adjudicator will either be appointed from a mutually agreed upon list, or will be someone who is agreeable to both the Employer and the Bargaining Agent.

Conduct of Adjudication

Adjudication will be conducted in a manner that ensures that those involved receive a fair hearing. The adjudication will be conducted in private, but the Employer has the right to full representation at the hearing.

All information about a complaint is to be treated in strictest confidence and is not to be disclosed to anyone except on a 'need-to-know' basis. The Adjudicator will determine the adjudication process consistent with the principles of natural justice, and may admit any evidence that the Adjudicator feels is necessary or appropriate. The Adjudicator may:

- Make findings of fact;
- Decide if, based on the facts, discrimination or sexual harassment has occurred;
- Attempt to mediate a resolution to the complaint; and
- Make recommendations regarding resolution of the complaint, which may include discipline.

The Adjudicator's written findings and recommendations will be forwarded as expeditiously as possible to the:

- Complainant,
- Respondent,
- Deputy Minister, and
- Bargaining Agent.

The Adjudicator's decision about whether discrimination or sexual harassment has occurred is binding on all parties.

Implementation of Recommendations

Pending the outcome of the adjudication process, the deputy minister may take interim measures to separate the employees involved. Any actions taken should not be seen as disciplinary or passing judgment on the validity of the complaint. Complainants will not be relocated without their consent.

Once the Adjudicator's report is received, the deputy minister will consider the findings and recommendations and determine what action should be taken. All parties will be notified of the action being taken within five working days of receiving the Adjudicator's written report.

Any action taken by the Employer, including discipline, that is consistent with the Adjudicator's findings of fact must be accepted by all parties and is not to be used as the basis for a grievance for bargaining unit staff.

If the Adjudicator determines that discrimination or sexual harassment has occurred, the Employer will document the personnel file of the respondent accordingly.

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Responsibilities

Agency Head

- Provide timely advice to managers and employees respecting the application of this policy statement including direction that complaints and investigations be treated in confidence;
- Coordinate the development of awareness, training, and communication programs in support of this policy statement;
- Appoint an adjudicator to hear complaints of discrimination or harassment not resolved following a formal investigation;
- Establish a dispute resolution panel, when required; and
- Conduct formal investigations, when required.

Deputy Ministers

- Promote a work environment that is free of discrimination and harassment;
- Provide for employees attendance at discrimination and harassment awareness sessions;
- Provide employees information of the complaint process established by this policy statement;
- Ensure that complaints raised by ministry employees are investigated and addressed within the time frames established by the policy statement;
- Develop a system that enables all employees to be aware of their responsibilities relevant to this policy statement;
- Ensure that complaints are treated in confidence;
- Ensure that the number and grounds of complaints handled under the policy statement are tracked and reported as required;
- Ensure that resolutions are implemented; and
- Delegate authority and responsibility, where applicable, to apply this policy statement within their organization.

Excluded Managers

- Develop workplaces, for which they are responsible, free from discrimination and harassment;
- Inform all employees, for which they are responsible, of this policy statement;
- Investigate and resolve complaints within the time frames established by this policy statement;
- Report complaints that are investigated to the Deputy Minister;
- Treat complaints and investigations in confidence as appropriate; and
- Follow up on resolutions to ensure that they have been implemented and are working.

Employees

- Treat fellow employees with respect and dignity;
- Refrain from discrimination and harassment as defined by the policy statement;
- Ensure that complaints are treated in confidence; and
- Meet the time frames specified in this policy statement.

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Frequently Asked Questions

Does this policy also apply to gender and gender identity?

Yes. The policy embraces the jurisprudence of the *Charter of Rights and Freedoms* as well as the *BC Human Rights Code* rulings on gender and gender identity, including those who identify as lesbian, gay, bisexual, transgender or transsexual.

What should I do if I witness, or feel I am the victim of, harassment or discrimination?

The following are guidelines. Please refer to the formal procedures for excluded employees and bargaining unit employees.

If you think you have witnessed, or have been the victim of, discrimination or harassment by a **peer** (someone with whom you are not in a reporting relationship), try speaking with the person and explain how you perceive their actions. If this is not possible, talk to your supervisor immediately. Supervisors are responsible for taking swift and appropriate action to investigate and remedy substantiated complaints.

If the conduct you are uncomfortable with has been carried out by a person to whom you report, depending on the extremity of the situation, consider using any or all of these options:

- Request a meeting with your supervisor to discuss your discomfort and how you feel you are being bullied. You may wish to call **Homewood Human Solutions** (1-800-655-5004) for advice and counselling to help you prepare for the discussion. Bargaining unit members can also consult with their local union representative.
- If a meeting with your supervisor is out of the question, go to another excluded manager whom you trust and believe could help resolve the situation.
- If the situation cannot be addressed at the first or second levels, it should be referred to the BC Public Service Agency or your union representative.

What is 'consent' ?

Consent refers to the provision of approval or agreement, particularly and especially after thoughtful consideration.

The following are described by the Canadian Criminal Code as situations in which consent cannot be obtained:

- Force is applied.
- Force is threatened to be applied to the victim or to another person.
- The accused is in a position of authority over the victim.

Consent cannot be based on the words or conduct of someone other than the victim, nor can consent be obtained when:

- The victim is incapable of consenting (due to mental incapacity, for example);
- The accused is in a position of trust, power or authority over the victim;
- The victim expresses a lack of consent; or
- The victim, having initially consented, expresses a change of mind.

What's an example of something that might be perceived as harassment, but is not?

Feedback on performance is not considered harassment if it:

- Is delivered in a respectful and professional manner;
- Serves a legitimate purpose; and

(c) review and make recommendations to the Bargaining Principals on an earlier and consistently applied adjudication of benefits during the STIIP period by the LTD benefit carrier under a mutually agreed plan.

The Joint Advisory Committee shall consult with the Provincial Joint Occupational Health and Safety Committee, the Rehabilitation Committee and/or Ministry Joint Committees, as appropriate.

4. It is the parties' joint interest to:

(a) ensure appropriate and consistent adjudication of claims for STIIP;

(b) ensure that requests for additional information on STO2 forms are limited to instances where the information is objectively incomplete; and

(c) promote opportunities for voluntary rehabilitation initiatives that enable earlier return.

During the term of this agreement, the parties will jointly explore a process by which the above objectives may be achieved.

Where STIIP benefits have been denied and/or management is not accepting doctors' certificates which the Union believes are adequate and meet the criteria for information required consistent with the mutually agreed STO2, Part B Instruction Form, and where in the Union's view this demonstrates an abuse of process, a union director and the ADM, Employee Relations Division will expeditiously address the issue.

This is not intended to circumvent the grievance process outlined in the collective agreement.

MEMORANDUM OF UNDERSTANDING #13
Re: Bullying in the Workplace

(a) Employees have the right to work in an environment free from bullying and the parties agree that there is a need to take responsible action to prevent bullying and whenever they become aware of such behaviour, put a stop to it. Bullying refers to vexatious behaviour taking the form of repeated hostile conduct, comments, actions, or gestures that affects an employee's dignity and that results in a harmful work environment; or a single incident of such behaviour that has a lasting harmful effect on an employee may also constitute bullying.

(b) (1) Where a complaint of bullying between peers is brought to the attention of the Employer, it will be investigated by the appropriate supervisor or manager and, if substantiated, appropriate action will be taken to remedy the complaint. For the purpose of this memorandum of understanding "*peers*" refers to employees who are not in a reporting relationship where one employee is supervised by the other.

(2) If the disposition of the complaint is disputed by the complainant or respondent, either one of them may pursue the matter further with the excluded manager with jurisdiction for the worksite.

(3) The excluded manager will investigate this matter and, if substantiated, take appropriate action to resolve the complaint.

(4) A steward may be utilized to assist members at any point in this procedure.

(5) If the disposition of the complaint is still disputed by either employee, the complaint may be referred to the Public Service Agency or the Union for resolution by the Bargaining Principals. Their decision regarding the complaint will be final and binding.

(6) Any decision or action taken in response to a bullying complaint is not subject to the grievance or arbitration procedures of Articles 8 and 9 of the Master Agreement.

(7) Clauses 1.7, 1.8, 1.9 and 32.15 of the Master Agreement do not apply to this process.

This memorandum remains in force and effect for the term of the 15th Master Agreement.

MEMORANDUM OF UNDERSTANDING #14
RE: Clause 31.12 – Eligibility Requirements for Benefits

The purpose of this memorandum is to establish STIIP entitlement requirements for eligible auxiliary employees who are on layoff and subject to recall. The entitlement requirements in this memorandum apply only to claims for STIIP benefits.

(1) Auxiliary employees on layoff and who are unavailable to work due to illness or injury and who call in to their work unit/recall section at the times designated by the ministry, will be eligible for STIIP benefits provided a less senior auxiliary employee is recalled to do the available work. STIIP benefit entitlement will be based on the hours worked by the junior employee replacing the senior employee making the STIIP claim.

(2) Notwithstanding 31.5(n)(5), auxiliary employees claiming entitlement to STIIP pursuant to this memorandum, may be required to provide the Employer proof of illness for each claim in accordance with Appendix 4, 1.4 criteria.

(3) STIIP benefits under this memorandum are only payable to one auxiliary employee per recalled position in accordance with (1) above.

(4) Auxiliary employees making a STIIP claim must call in to their work unit/recall section on a daily basis, unless the employee making a claim for STIIP provides acceptable medical documentation supporting an extended absence.

MEMORANDUM OF UNDERSTANDING #15
Re: The Application of Master Agreement Article 13.3(a)(4) and Master Agreement Article 19

Regular employees who have opted for auxiliary recall and who are unable to work on recall or during the recall period due to illness or injury will be covered by Appendix 4, Part I STIIP, provided:

1. They meet all the conditions of the Plan, and

2. No other employee aside from the regular incumbent is in receipt of STIIP in respect of that work.

Notwithstanding Appendix 4, the extent of the STIIP benefit only covers the period of lost work opportunity.

MEMORANDUM OF UNDERSTANDING #16
Re: Auxiliary Employees - STIIP

Subject to the eligibility requirements of Clause 31.12, auxiliary employees will continue to be covered by the provisions of Appendix 4, Part I as outlined in the 13th Master Agreement signed May 23, 2001 (ie., 7 months).

MAKING A DECISION

(If requested as part of the investigation)

As part of your responsibilities or mandate, you may be required to make a decision as to whether the alleged offender/respondent has done something worthy of disciplinary action or dismissal. You may be doing this based on nothing more than the information from a single complainant/informant/witness and the statement of denial from the alleged offender/respondent. There is no other witness.

There may even be other witnesses who corroborate what a witness is saying, but that does not automatically mean they are being truthful or accurate.

So, who to believe? This can be very difficult.

In examining the information provided by any of the interviewees, consider the following criteria:

- their demeanour and manner
- capacity to perceive events, recollect events, and communicate them
- was there the opportunity for them to witness the event
- are they clear they saw/heard it directly as opposed to hearing about it
- their character, honesty, and openness
- is there any bias, interest, or other motives
- have they made previous statements about the events, and were they consistent
- are there unsubstantiated facts
- has there been any admissions of untruthfulness or dishonesty
- are there any gaps in their stories
- have their statements been corroborated by others
- is their statement consistent with known facts
- has their statement remained consistent when repeated and questioned
- do they have expertise or direct knowledge of the subject/matter/area

These criteria must be applied in a reasonable, logical, and objective way.

One of the more important criterion in assessing the credibility of an interviewee (as well as the facts of the case) is the inherent probabilities of their statement (or the facts) being the correct one. This concept was addressed in an often cited BC Court of Appeal case "*Faryna vs Chorny*" where the court said:

> "The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities that a practical and informed person would readily recognize as reasonable in that place and in those conditions."

Now that all the facts and evidence have been obtained and checked and re-checked, you are in a position to determine whether the alleged offender or respondent is at fault or not, and whether or not that results in the employee having given just and reasonable cause for some form of disciplinary action by the Employer. In other words, is the employee guilty of the allegations, and does this warrant taking action?

If the answer to this question is NO, then you cannot take action against the employee.

This determination should be made in consideration of the "*Wm. Scott* decision." This decision set out three questions to be posed by the arbitrator when determining a typical (culpable) discharge grievance.

1. First, has the employee given just and reasonable cause for some form of discipline by the employer?

2. If so, was the employer's decision to dismiss the employee an excessive response in all of the circumstances of the case?

3. Finally, if the arbitrator does consider discharge excessive, what alternative measure should be substituted as just and equitable.

While this case dealt with a (culpable) discharge grievance, it was later held to also apply to cases where other forms of disciplinary action had been taken against an employee.

If the decision to take disciplinary action against an employee ends up in front of an arbitrator, it can be a very expensive exercise for both parties. But what about another cost, one which is not associated with money? We are talking about the credibility of the Employer and, in particular, of the supervisor.

If the decision to take disciplinary action is dismissed by an arbitrator, then the grievor gets to go back into the workplace and embarrass the supervisor with an arbitration decision which basically says the Employer was wrong. Therefore, it is important your decision is submitted to a very critical inspection prior to it being taken. If you do so, then it is more likely that everyone, including the grievor, the union, other employees and, of course, the arbitrator, will agree the decision was correct and justified.

If someone else is making the decision based on your recommendation, you will want to ensure you maintain your credibility with that person also.

If you have conducted yourself in a professional manner up to this point, you will have nothing to apologize to the employee for. It should be explained to the employee that, while you regret having had to put the employee through this, you were simply doing your duty in the face of allegations made.

BURDEN OF PROOF

If you believe that the employee is guilty of the allegations of wrongdoing, then you must have solid evidence to support your belief. It is unacceptable to take action against an employee on flimsy evidence in the hope an arbitrator will find in your favour later on. Whether it is at this stage or later on in arbitration, the burden of proof is on the Employer. The onus is on the Employer to prove it has "just cause" to discipline or dismiss an employee. The union need only take the position that disciplinary action was not warranted. The union and/or employee is not obliged to prove their innocence.

JUST CAUSE

Management can take disciplinary action only when it can show it has "just cause" to do so. Just cause exists when it is shown that employee misconduct occurred and the misconduct warranted disciplinary action. The disciplinary action imposed must be shown to be appropriate for the type of misconduct.

STANDARD OF PROOF

In meeting the "Burden of Proof" when taking disciplinary action, it is important to understand what standard of proof you will be obliged to meet.

In criminal law, the standard to be met is that of "Beyond a Reasonable Doubt." This means the court must be "satisfied beyond a reasonable doubt that the guilt of the accused is the only reasonable inference to be drawn from the proven facts."

In arbitral law, which governs the Employer's ability to take disciplinary action against an employee, the standard of proof is that of the "Balance of Probabilities", which is the same as the standard in civil law.

> "The balance of probability means a conclusion that is more probable than not - more probably true than false. The conclusion reached must outweigh the probability of other competing hypotheses."

You may look at the overall facts and evidence and ask yourself the question "what would a reasonable person conclude in the face of the accumulated evidence?" If the balance of proof suggests the employee is guilty of the alleged offence, then you are justified in taking disciplinary action. If the balance of proof suggests otherwise, then no action should be taken.

> "However, this balance of probabilities must be applied in a flexible way, which requires a higher degree of probability to be met as the seriousness of the offence and the consequences of the disciplinary action increase."

So, for a minor offence, where the possible disciplinary action is not going to be too severe, the degree to which the balance of probabilities must be met would only have to be enough to barely tip the scales in favour of the Employer's evidence to support disciplinary action.

However, for a more serious offence (eg. theft), where the possible disciplinary action is likely to be very severe, then those same scales must be demonstrably weighted in support of the Employer's evidence. A BC Government arbitration award stated this standard as follows:

> "The very serious nature of the alleged misconduct puts the Employer to an exacting standard of proof… My analysis has therefore proceeded on the premise that the grave consequences of the allegations require the proof of the facts in issue to a high degree of probability."

Arbitrators also demand that the more serious allegations must be proven by "clear and cogent" or "convincing" evidence.

Your decision must be based on an objective and logical conclusion of the facts/ evidence.

MAKING A RECOMMENDATION

Your mandate may require you to make a recommendation to someone else as to the guilt/innocence of the alleged offender/respondent and perhaps even the level of discipline that is warranted.

It is important to keep such recommendations from the rest of your report. In the event your report is to be released to anyone as a result of legal disclosure obligations, it may be possible to keep this portion from being released, even if it is in writing. It may be that you are asked to make such recommendations verbally.

The person, or body, to whom you are making a recommendation is going to be relying on the integrity of your investigation when they make a decision as to guilt/innocence and possible disciplinary action. They will be looking to you to take the factual information and then interpret it for them.

You will need to describe both the strengths and the weaknesses of the evidence.

You will need to describe your personal observations and opinions as to what the preponderance of evidence indicates.

You may need to recommend what action, if any, should be taken, and why.

You may need to advise on what alternatives, if any, might be contemplated by the decision maker.

If you are advising on disciplinary action, you should be familiar with, and make your recommendations consistent with, the principles set out in the manual on “Effective Discipline in the Workplace”.

If you are unclear or unsure with respect to any of the foregoing, you need to advise of that also.

Keep your recommendations reasonable and sensible as well as fiscally responsible and, of course, in keeping with the collective agreement, policy, and legislation.

DECISION MAKING CHECKLIST

- determine credibility of each interviewee
- decide which story, on a balance of probability, is most believable
- ask yourself question number one from the *Wm. Scott* decision
- does the seriousness of the offense in this case demand a higher degree of proof?
- carefully consider everything, including the consequences to the offender, before making a decision
- fully explain how you arrived at your decision
- keep recommendations, for or against discipline, separate from your report
- ask yourself if another person reviewed my notes, would they come to the same conclusion

NEXT STEPS

Once the investigation is complete, and the report is written with recommendations prepared, the investigator's job is complete. Or is it?

That depends on the investigator's mandate and/or role in the organization.

Even if you are an independent investigator brought into another workplace to conduct the investigation, you may still have a further role to play.

You may be required to meet with some level of management to present and discuss your report. Before dealing with your recommendations, management may want your firsthand views and an opportunity to ask you questions. Perhaps, they might even have some information or insights to share with you which may cause you to alter your recommendations, or perhaps not. At the conclusion of the discussion, everyone should be satisfied that they fully understand the report and recommendations.

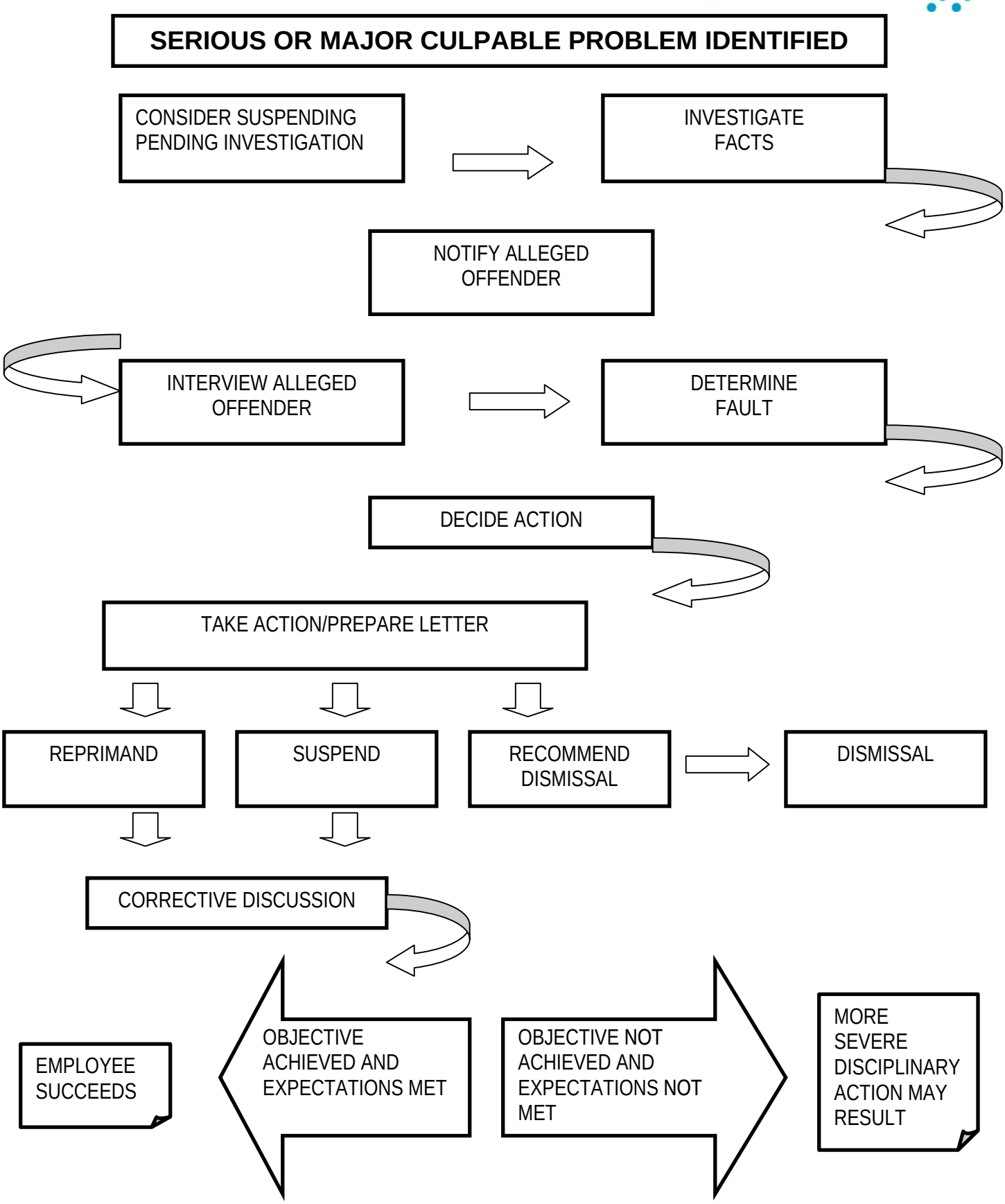
There may be issues and side issues arising from the investigation which management should be apprised of, eg.

- concern for the emotional or physical well-being of people involved in the investigation
- safety or security concerns regarding the operation
- potential for disruptive action by employees
- safety of interviewees who face possible retaliation

If the mandate is to make recommendations on the type of disciplinary action that is warranted, or if you are also the person who will decide on the outcome of the investigation and the type of disciplinary action, then you need to be familiar with the principles of effective and progressive disciplinary action and dismissal for just cause.

These principles can be found in the manual "Effective Discipline in the Workplace".

Employee Learning Services of the BCPSA also offers a training course to complement this manual.


SERIOUS OR MAJOR CULPABLE PROBLEM IDENTIFIED
CONSIDER SUSPENDING PENDING INVESTIGATION
INVESTIGATE FACTS
NOTIFY ALLEGED OFFENDER
INTERVIEW ALLEGED OFFENDER
DETERMINE FAULT
DECIDE ACTION
TAKE ACTION/PREPARE LETTER
REPRIMAND
SUSPEND
RECOMMEND DISMISSAL
DISMISSAL
CORRECTIVE DISCUSSION
EMPLOYEE SUCCEEDS
OBJECTIVE ACHIEVED AND EXPECTATIONS MET
OBJECTIVE NOT ACHIEVED AND EXPECTATIONS NOT MET
MORE SEVERE DISCIPLINARY ACTION MAY RESULT

SERIOUS OR MAJOR CULPABLE PROBLEM IDENTIFIED

Introduction

Serious or major culpable problems are those which constitute a threat to the operation of the Employer or to the safety and well-being of the individual or other employees. They represent actions which cannot be tolerated by any Employer.

While we may identify a problem as serious and that it requires progressive disciplinary action to correct it, some problems are more serious than others and would be considered a major problem. A major problem would demand a more immediate and severe response such as dismissal.

Each problem must be looked at carefully before a determination as to its seriousness is made and a decision made as to how the Employer will respond.

Problems which constitute an offence which are grounds for disciplinary action can be many and varied. The list of types of offences found in the Addendum of this manual is by no means exhaustive, as the list is only limited by the imagination and resourcefulness of the offender, but it will show the more common types of offences you may face in the workplace.

CONSIDER SUSPENSION PENDING INVESTIGATION

When making a decision to suspend an employee pending the outcome of an investigation, the Employer must establish that the presence of the employee presents a reasonably serious and immediate risk to the legitimate concerns of the Employer.

While the Employer may have wide latitude to suspend pending an investigation, there is an implied test of reasonableness. The Employer does not have an absolute and unfettered discretion.

In cases where the seriousness of the offence dictates immediate action, but time is required to adequately investigate the events or allegations, the supervisor may suspend the employee without pay pending investigation. This allows the supervisor to remove the employee from the workplace while the investigation is being completed. Before making the decision to suspend the employee, the supervisor must give careful consideration to reassigning the employee to another workplace or placing the employee under closer supervision. If this is not feasible or appropriate then suspending the employee may be the only answer. In fairness to all concerned, the investigation should be completed promptly and a decision rendered as soon as possible. Remember, if it is concluded that disciplinary action is not warranted, the employee is most often entitled to be paid for the time under suspension pending investigation.

PROCEDURE: FOR SUSPENDING PENDING INVESTIGATION

(a) If employee is at work at time of being accused	(b) If employee is off on STIIP or other type of leave at time of being accused
- Determine if employee poses a reasonably serious and immediate security or safety risk.	- Not at work so no security or safety risk.
- If employee is found to be a risk, then suspend (without pay) pending outcome of investigation.	- Cannot suspend as employee is not at work. If the employee returns to work and comes off leave then follow the procedure under (a)
- At the outcome of investigation, if the employee is deemed innocent or not enough evidence to discipline, employee is to be returned to work and paid back to date of suspension.	- Advise employee of outcome.
- If employee is deemed at fault and you would recommend dismissal, then advise employee of recommendation to Deputy Minister for dismissal.	- If employee is deemed at fault and you would recommend dismissal, then advise employee of recommendation to Deputy Minister for dismissal. - Also cancel STIIP benefits.
- If employee not suspended previously, then suspend pending recommendation for dismissal.	
- If dismissed by Deputy Minister, then conclude procedure.	- If dismissed by Deputy Minister, then conclude procedure.
- If employee is not dismissed, but is suspended, include the days served as part of suspension.	- If employee is not dismissed and suspension due, then wait until employee returns from leave to serve suspension.
- If days served exceed days of suspension then reimburse employee the difference.	

If an incident should occur at the workplace that is of such a nature that it is critical to remove an employee from the workplace (e.g. fighting between employees) then the following instructions should be followed:

At the Time of the Incident

(a) The supervisor should tell the employee to go to his/her office or some other private location and wait there.

(b) The supervisor should try to contact his/her superior and the Personnel Branch to review the situation. An attempt should be made to include a union steward unless this would result in undue delay.

(c) With his/her superior, Personnel Director, or other management witness, the supervisor should go to the employee and say, "You are relieved from duty pending investigation of this incident." Do not discuss the details of the matter or engage in a debate with the employee. The employee should be instructed to surrender Employer keys, credit cards, etc.

(d) The supervisor should tell the employee when to return to work if this can be immediately determined. Alternatively, the employee should be told that he/she will be contacted and told when to return to work.

(e) Instruct the employee to leave the premises.

(f) If the employee refuses to leave, the supervisor should call the police or security to remove the employee from the premises.

(g) After the employee has left, the supervisor should immediately write an account of the entire incident. Ask the witness to write an account of exactly what he/she observed.

INVESTIGATE FACTS

Note: For more in depth coverage of this topic, please refer to the manual on "*Labour Relations Investigative Skills*".

A serious culpable problem or offence may come to your attention in one of two ways:

(a) You, the supervisor, or manager, may have observed or witnessed the incident and now you are in a position where you must immediately act. In such a case, you would direct the employee to cease the offensive conduct or problem and state that you will require the employee to attend a meeting which may result in disciplinary action for the employee. The employee should be advised to seek union representation. Despite the fact that you were present at the time of the offence, it is still necessary to conduct an investigation. The procedures and principles set out in this phase are still generally applicable. In such cases, it may be that the offending employee is the only one to be interviewed, unless there are other witnesses to the incident or problem.

b) The alleged offence may also be reported to you by a third party, or you may see the consequences of some unknown employee having committed an offence, in which case you must conduct a thorough investigation to determine what actually occurred as opposed to what allegedly occurred.

In order to determine whether an employee is at fault or guilty of the alleged offence, we must conduct a complete and proper investigation as part of "due process." Remember, you are not conducting the disciplinary interview at this stage, that comes later.

Webster's Dictionary and Thesaurus has many verbs and nouns to define the words "investigate" and "investigation". However, all of them lead to a simple statement as to what your investigation must be - "A careful search to bring out all the facts and learn the truth of the matter."

This is what determines the success or failure of your investigation.

Through the investigation you will be seeking to determine the truth in the form of facts. In the course of the investigation you will uncover many ideas which people may proffer as facts, but they are merely opinions which, although they may be interesting, they also may or may not be true. We are seeking facts, not opinions.

In our pursuit of the facts, we must also seek to find the innocent explanation as rigorously as the guilty explanation in order to arrive at the truth of the matter.

The investigation of the grounds for disciplinary action must be thorough in the first instance as management cannot subsequently rely on grounds other than those which were the basis for the disciplinary action imposed originally for the specific offence.

Investigation Interviews

In the course of your investigation it will be necessary to interview one or more known or potential witness, and while it is important that you not jump into those interviews until you are properly prepared, it is also important that you act while memories are still fresh. Delays can lead to lost evidence and forgotten details.

While this is not a disciplinary interview, it is still important that bargaining unit employees, when asked to attend an interview, be advised that they may bring a union steward along if they wish. It should, therefore, be made clear to the employee the purpose of the interview when you are requesting their attendance.

Too often supervisors and managers jump into these interviews without giving much thought to what they are going to do. As the old saying goes, "Planning is everything."

It is important that you map out in advance how you will proceed with the interview and what things need to be covered.

Planning the Interview

Consider Location - Give some thought to the best place for conducting the interview. Depending on the circumstances, it may be wise to use an office away from the immediate workplace so that it is done away from the rest of the employees and therefore less intimidating or embarrassing for the witness. It should be held in a private location where others cannot hear the discussion and there will be no interruptions. Be sure to allow enough time to cover the interview at one time and avoid having to rush off to another meeting.

Note: At times it may be necessary to conduct such an interview by telephone if either you or the person being interviewed are at a distant location. While that may be less than a perfect situation, it may be unavoidable. However, there is no reason why it cannot be conducted in the same fashion as a face to face meeting by making arrangements to have the union steward and others required to be involved on a speaker phone or conference call.

Define your Objective - Be specific about what you hope to achieve in the interview. You know what has occurred, you know what the alleged offender is accused of, so all your efforts should be directed towards getting all of the facts to either prove or disprove the allegation.

Review Files - It is important that you be fully aware of the background and history of the workplace and any employees involved in the investigation. You may need to bring certain documents to the interview for presentation to witnesses for identification or discussion or for you to make reference to. You may identify missing items which only the witness may possess and you might need, in which case you would ask the witness to bring it to the interview.

Develop Questions - Depending upon how forthcoming the witness proves to be, you may not have to ask questions. You may be able to tick them off as the story unfolds or, if not, you are prepared with the questions that need answers. The questions should be designed to elicit the information needed to meet the objective, which is to find out the truth of the matter. Also, the type of alleged offence you are dealing with will determine the type of question to be asked.

A useful guide to use in developing questions is the tried and true "5 W's and How."

- Who - is involved?
- What - happened?
- When - did it occur?
- Where - did it occur?
- Why - did it happen?
- How - did it happen?

Conducting the Interview

Explain Procedure - At the outset of the interview be sure that everyone knows how the meeting will proceed and what everyone's rights and obligations are:

- Union Steward: Is there to observe and hear the information first hand because the steward may later be representing the alleged offender. The steward is also there to ensure the rights of the witness are protected but not to speak on the witness' behalf.

- Witness: To simply tell the truth about what was seen or heard. It is not appropriate to refuse to talk about or conceal information about any wrong doings that they are aware of because they do not want to tell on a fellow employee. To do so is to involve themselves as participants in the wrongdoing. The witness should be advised that while initially the source of your information may be kept confidential at this time, it is quite possible that they will be required to testify in a hearing some time in the future. The alleged offender has a right to face his or her accuser.

- Supervisor or Manager: To conduct the interview in an objective and professional manner with the goal being, to ascertain the truth.

Separate Witnesses - If more than one witness is involved, be sure to interview each one separately and not allow one witness to hear the story told by another. It could unwittingly colour the information they provide. At the end of the interview, the witness' information should be typed up. Have the witness read the information and confirm its accuracy by signing the notes. Provide the witness and union steward with a copy.

Document the Interview - Each case should be treated as though it will result in disciplinary action being taken, a grievance being filed, and the grievance

going to arbitration. This way, you will keep in the forefront the need for proper documentation of the interview of a witness.

- Verbatim Notes: Whether this is done by the person conducting the interview or by a steno brought in for that purpose it is absolutely necessary to write down exactly what is said by everyone at the interview, in particular, the testimony of the witness. This must be done even if it is accompanied by a tape recording of the interview.

- Tape Recording: This is an area that sometimes generates some disagreement between the parties at the interview.

  If it is the Employer who wishes to tape record the proceedings and the union or witness objects, it should be made clear that this is being done not only because the Employer has the right to do so, but also because we have an obligation to record the information in the best way possible. At the same time, we must be able to support why it is the best way and if that is the case, then we will insist on using the tape recorder. If the union or witness disagrees, challenge them to explain why they disagree.

  If it is the union or witness who brings a tape recorder to the interview and insists on using it, then the Employer should not object to it.

  In either case, there should be agreement on how the tape will be transcribed, and copies made available to everyone concerned.

- Preserve Evidence: In the course of the interview and investigation, you will likely hear references to, and be presented with, many pieces of

  evidence - eg. records, letters, documents, statements, photos, diagrams, etc. Be sure to collect and file such materials at the time they are presented or referred to, as such items have a way of getting lost over time if not secured.

Interview Steps

State the Purpose - The witness should be told up front why they are there - eg. “We are here to conduct an inquiry into some possible wrong doing by an employee which we believe you may know something about.”

State the Allegation - Get right to the point, do not beat around the bush, eg. “We are led to believe that you may know something about another employee being involved in the theft of some money from the workplace.”

Invite Witness to Speak - The witness should be encouraged to tell what it is they know about the issue. The witness may start by asking some questions for clarification and these should be answered, or they may raise a problem or concern, which should then be addressed before proceeding.

You should start by encouraging the witness to speak freely and there should be little or not interruption. Questions at this point should only be for clarification of statements made by the witness.

If the witness is not forthcoming, it may then be necessary to take a more structured approach using the questions you have prepared in advance.

Listen Carefully - The witness’ story and/or answers to the questions are more important than the questions and it is hard to listen while you are talking, so having set the stage, sit back and listen carefully. If the witness seems unsure or pauses for any length of time, encourage him to continue.

Proceed Carefully - Do not make assumptions or jump to conclusions about what you have heard from the witness so far. Encourage the witness to justify and support their statements. Ask the witness to provide examples or evidence of what they say or to name other witnesses that can support it.

Do not engage in arguments or debate with the witness, but if you have information contrary to the witness’ statement, state that and ask them to explain.

Review with Witness - Before the interview ends, it is important that you go over the main points with the witness to confirm your understanding of the facts. State your understanding and ask the witness if that is what was said and/or intended.

Follow-up - Once you have the witness' statement and you are satisfied that is all they have to tell you, you need to look at that information and determine if it can be substantiated and/or corroborated, or does it contradict information from other witnesses or evidence.

Either way, you will have to follow up and interview other witnesses or even go back and re-interview previous witnesses.

Do Not Rely On Hearsay - Some of the information you receive may well be hearsay, e.g. "John Doe told me he heard Mary say she did it." This is not good evidence. Evidence must come from individuals who were directly involved or have first hand knowledge of the incident. What such information is useful for, however, is to provide a new lead which must be followed up, i.e. you should now talk to John Doe about what he heard Mary say.

Next Step - At this point you have reason to believe that your investigation results support the allegation and you are going to confront the alleged offender.

Note that we are using the term "alleged offender" at this point - the investigation to prove fault is not yet completed.

Sample Action Plan

Interview of the Witness

Plan the Interview

- investigate ASAP
- ask witness if they want union steward
- conduct interview in private area
- review files of all concerned in case
- define objective - i.e. what you hope to achieve
- develop questions
  - who - is involved?
  - what - happened?
  - when - did it occur?
  - where - did it occur?
  - why - did it happen?
  - how - did it happen?

At the Interview

- explain how you will proceed at outset of meeting
- interview each witness by themselves
- take verbatim notes
- keep copies of any documents produced by witness
- state the purpose of the meeting and what the allegation against the other employee is
- try to get witness to tell the story without questions
- if all questions you had prepared are not answered, put them to the witness
- ask any new questions which come to mind
- listen carefully
- proceed carefully
- ask the magic question “Anything else to add or tell me?”
- review your notes with witness
- ask if they wish to sign statement
- be sure to follow-up on any new information or names of other potential witnesses which come out of interview

QUESTIONS TO CONSIDER

Prior to Interviewing an Employee
(who is alleged to have committed an offence)

	YES	NO
- Was employee advised of right to obtain union representation?	*	†
- Was employee properly trained to do job?	*	†
- Were appropriate standards/expectations set and communicated to employee?	*	†
- Could employee have held reasonable belief that behaviour was legal/proper?	†	*
- Was similar behaviour by employee or others condoned in past?	†	*
- Has this employee previously been disciplined for the same offence, resulting in a "double jeopardy" situation?	†	*
- Was any previous discipline properly documented?	*	†
- If violation involves an Employer rule, regulation or policy, was it:		
• brought to employee's attention?	*	†
• consistent with Collective Agreement?	*	†
• reasonable under circumstances?	*	†
• clear and unequivocal?	*	†
• applied consistently?	*	†
• made clear a breach could result in discipline or dismissal?	*	†
- Do employees have right to refuse compliance? (e.g. unlawful, unsafe or due to Human Rights considerations?)	†	*

	YES	NO
- Did any other such incidents result in disciplinary action?	*	†
- If violation involves a situation where order was given and not obeyed (i.e. insubordination):		
- was instruction unambiguous and clearly communicated to employee?	*	†
- was instruction specific?	*	†
- was instruction given in provocative manner?	†	*
- was instruction given by person with proper authority?	*	†
- did employee confirm understanding of instruction?	*	†
- was employee advised of consequences of non-compliance?	*	†
- was employee given opportunity to reconsider decision to not comply?	*	†
- are Employer's rights respecting instruction constrained by Collective Agreement, Human Rights Act or other statutes?	†	*
- did employee have reason to believe may have right to refuse to carry out instruction due to religious beliefs or because unlawful, unsafe or was acting as steward?	†	*
- Does nature of employee's employment provide Employer with reasonable basis for demanding high standard of off-duty conduct?	*	†
- if so, has this been unequivocally communicated to employee?	*	†
- Any witnesses who can substantiate employee's alleged misconduct?	†	*
- if necessary, are they prepared to testify at arbitration concerning their observations and reactions?	*	†
- have witnesses prepared written, signed statement setting out evidence?	*	†

	YES	NO
- If employee normally functions with supervision, was supervisor available for consultation at time of alleged offence?	*	†
- if no supervision, should there be?	†	*
- Has employee been given opportunity to resolve personal problems that may have contributed to the misconduct?	*	†
- Have all avenue of assistance in resolving personal problems been offered or identified to employee?	*	†
- Has there been any undue delays in the investigation, which may lead to the false impression that the employee's actions have been condoned or considered acceptable.	†	*

* it is okay to proceed with interview
† you should address this before proceeding with interview

Note: If the answer is not known, then it must be known before proceeding with interviews.

NOTIFY ALLEGED OFFENDER

Notice of Disciplinary Interview Meeting

It is important that proper notice be given to the employee, who is the alleged offender, that a disciplinary meeting is to take place.

Whether we do it verbally or in writing, it is important that we use words which convey very clearly to the employee what the purpose of the meeting is.

Note: Re: Representational Rights

Please refer to Section 3 of this manual.

INTERVIEW ALLEGED OFFENDER

The Disciplinary Interview

Whether you observed the offender's actions for yourself or had the offence reported to you by someone else, you should now be armed with enough information and facts with which to confront the alleged offender.

It is critical that you take this step as soon as you are reasonably able to do so following the investigation. Any undue delay could lead to the alleged offender being considered by an arbitrator to have been prejudiced by such delay, or that the alleged offender may have reason to believe that the actions are condoned by the Employer.

In spite of what you know or believe you know about this matter, it is important that you not pre-judge the outcome of this interview. It may be that the alleged offender has a rational explanation for what happened, or an airtight alibi for the time of the alleged offence, so keep an open mind and remain objective.

A fundamental consideration of this interview and indeed the whole investigation is to ensure that "Due Process" is followed. This essentially means that the investigation should not only be fair but also be perceived to be fair.

Planning the Disciplinary Interview

Whatever you do, do not jump into the interview without having taken the time to plan how you will proceed and what you want to cover.

Consider Location - Give some thought as to the best place to conduct the interview. Depending on the circumstances, it may be wise to use an office away from the immediate workplace so that it is done away from the rest of the employees. It should be held in a private location where others cannot hear the discussion and there will be no interruptions. Be sure to allow enough time to cover the interview at one time and avoid having to rush off to another meeting.

Note: At times, it may be necessary to conduct such an interview by telephone if either yourself, or the person being interviewed, is at a distant location. While that may be less than a perfect situation, it may be unavoidable. However, there is no reason why it cannot be conducted in the same fashion as a face to face meeting by making arrangements to have the union steward and others required to be involved on a speaker phone or conference call.

Define your Objective - Set out in writing what it is you hope to achieve in the interview. There is an allegation and evidence that the alleged offender may be guilty of an offence. Your focus should be to confront that employee and allow him/her to admit or deny fault and/or offer any explanation for his/her actions. You are seeking the truth and understanding.

Review Files - Before confronting the alleged offender, you want to be sure you have all the information available about this employee, eg.

- performance appraisals
- notes of previous discussions
- previous disciplinary action taken
- investigation interview notes
- witness statements

Develop Outline - Make a list of the major points you need to cover in the interview so that there is a clear overall picture of the circumstances leading up to this interview. Define what evidence you have, where you need more, and what points need clarification from the alleged offender.

Develop Questions - Depending upon how forthcoming the alleged offender proves to be, you may not have to ask any questions. You may be able to tick them off as the story unfolds. If not, you are prepared with the questions that need answers. The questions should be designed to elicit the information needed to meet the objective, which is to find out the truth of the matter. The type of alleged offence you are dealing with will determine the type of questions to be asked.

Preserve Evidence - In the course of the interview, you may hear references to, and be presented with, pieces of evidence, eg. records, letters, documents, statements, photos, diagrams, etc. Be sure to collect and file such materials at the time they are presented or referred to, as such items have a way of getting lost over time if not secured.

Documenting the Interview - Each case should be treated as though it will result in disciplinary action being taken, a grievance being filed, and the grievance going to arbitration. In that way you will keep in the forefront the need for proper documentation of the interview of the alleged offender.

- Verbatim Notes - whether this is done by the person conducting the interview or by a steno brought in for that purpose, it is absolutely necessary to write down exactly what is said by everyone at the interview, in particular the testimony of the alleged offender. This must be done even if it is accompanied by a tape recording of the interview.

- Tape Recording - this is an area that sometimes generates some disagreement between the parties at the interview.

  If it is the Employer who wishes to tape record the proceedings and the union or alleged offender object, it should be made clear that this is being done not only because the Employer has the right to do so, but also because we have an obligation to record the information in the best way possible. At the same time, we must be able to support why it is the best way, and if that is the case then we will insist on using the tape recorder. If the union or alleged offender disagrees, challenge them to explain why they disagree.

  If it is the union or alleged offender who brings a tape recorder to the interview and insists on using it, then we should not object to it.

  In either case, there should be agreement on how the tape will be transcribed and copies made available to everyone concerned.

Disciplinary Interview Steps

State the Purpose - The alleged offender should be advised again that this is a disciplinary interview that could result in disciplinary action being taken against them. Further advise him/her of the right to union representation. If the offer of a union steward is rejected by the alleged offender, encourage him/her to reconsider.

Explain Procedure - At the outset of the interview, be sure that everyone knows how the meeting will proceed and what everyone's rights and obligations are:

- Supervisor / Manager - the person conducting the interview must do so in an objective and professional manner and ensure that due process is followed. The goal must be to ascertain the truth. It may be that another supervisor or manager is required to attend as a witness to the proceedings but their role is to observe and record, not to participate.

- Union Steward - the steward has the right to fully participate in the interview and may ask questions of anyone attending, at the appropriate time. It is not the steward's place to answer the questions put to the alleged offender or tell the story on behalf of the alleged offender. The steward is there primarily to protect the rights of the employee.

Alleged Offender - the employee's obligation is to confirm or deny the allegations, explain his/her actions, and answer questions, all in a truthful and forthcoming manner. Should the employee choose to remain silent, refuse to answer questions, or not participate in the interview, then he/she should be made aware that this is an opportunity to speak on his/her own behalf and if he/she should choose not to do so, then the Employer will have to make a decision based on the facts and evidence available to them.

State the Allegation - At this point, set out very clearly what the allegation is, and what the alleged offender is being accused of. State the results of the investigation so that the alleged offender can clearly see what evidence he/she is facing. Comment on how serious the offence is considered to be by the Employer and why. Ensure that all the information and evidence you have is shared with the alleged offender and the union. Full disclosure is required.

Do not try to catch the employee with trick questions, be straightforward and factual. What you do and say at this point will set the tone for the rest of the interview.

If the alleged offender wishes to consult with the union steward at this point, before responding, he/she should be permitted to do so in private. This should take only a minimum of time and not be allowed to delay the interview from proceeding at this time.

Invite the Alleged Offender to Speak - The alleged offender should be encouraged to tell what it is he/she knows about the issue. The alleged offender may start by asking some questions for clarification and these should be answered, or raise a problem or concern which should then be addressed before proceeding.

You should start by encouraging the alleged offender to speak freely and there should be little or no interruption. Questions at this point should only be for clarification of statements made by the alleged offender. If the alleged offender is not forthcoming it may then be necessary to take a more structured approach using the questions you have prepared in advance.

Listen Carefully - The alleged offender's story and/or answers to the questions are more important than the questions and it is hard to listen while you are talking, so having set the stage, sit back and listen carefully. If the alleged offender seems unsure or pauses for any length of time, encourage him or her to continue. You should also be listening for evidence of any mitigating factors or underlying causes that may help explain the alleged offender's actions.

Proceed Carefully - Do not make assumptions or jump to conclusions about what you have heard from the alleged offender so far. Encourage the alleged offender to justify and support the statements. Ask the alleged offender to provide examples or evidence of what he/she says or to name other witnesses that can support it.

Do not engage in arguments or debate with the alleged offender, but if you have information contrary to the alleged offender's statement, state that and ask him/her to explain. Stick with the alleged offence and not attack the employee on a personal level.

If the employee becomes emotional or disruptive during the interview, then call a recess for the employee to regain his/her composure or to calm down.

Review Statement - Before the interview ends, it is important that you go over the main points with the alleged offender to confirm your understanding of the facts. State your understanding and ask the alleged offender if that is what was said and/or intended.

Closing the Interview - Try to end the interview on a positive note. Thank the employee for being cooperative and forthcoming. Do not advise the employee of your decision yet, even if you feel you have reached one. Reserve your decision until after you have had a chance to consider all the facts and statements and perhaps even discuss the matter with someone such as your personnel advisor to get their perspective on it, especially if you feel you are too close to the issue.

Follow-up - Once you have the alleged offender's statement and you are satisfied that is all he/she has to tell you, look at that information and determine if it can be substantiated and/or corroborated or does it contradict information from other witnesses or evidence. Either way, you will have to follow up and interview other witnesses or even go back and re-interview previous witnesses.

SAMPLE ACTION PLAN

Interview of Alleged Offender

Plan the Interview

- conduct interview ASAP once you have the facts
- no matter how strong the evidence, do not prejudge the outcome
- ensure employee is offered union representation
- conduct interview in private area
- review employee's file
- define your objective - i.e. what you hope to achieve
- develop questions
  - who - is involved?
  - what - happened?
  - when - did it occur?
  - where - did it occur?
  - why - did it happen?
  - how - did it happen?

SAMPLE ACTION PLAN

Interview of Alleged Offender

At the Interview

- reiterate representation rights
- explain how the meeting will proceed
- take verbatim notes
- state purpose of meeting and the allegation against the employee
- try to get alleged offender to tell the story without questions
- ask questions from your list and/or new ones
- listen carefully
- proceed carefully
- ask the magic question: “Anything else to add or tell me?”
- review your notes with alleged offender
- ask if wish to sign statement
- follow-up on any new information or names of the potential witnesses which come out of interview
- re-interview witness(es), if necessary

DETERMINE FAULT

Now that all the facts and evidence have been obtained and checked and re-checked you are in a position to determine whether the alleged offender is at fault or not, and whether or not that results in the employee having "given just and reasonable cause for some form of disciplinary action by the Employer." This relates to the first question posed in the *Wm. Scott* decision.

In other words, is the employee guilty of the allegations and does that warrant taking action?

If the answer to that question is NO, then you must take no action against the employee. The employee must be advised of such an outcome as soon as possible.

The decision to take disciplinary action against an employee may well end up in front of an arbitrator, which can be a very expensive exercise for both parties. But what about another cost, one which is not associated with money? The credibility and reputation of the Employer and, in particular, of the supervisor.

If the decision to take disciplinary action is dismissed by an arbitrator, then the grievor gets to go back into the workplace and "beat up" the supervisor with an arbitration decision which basically says that the Employer was "wrong." Therefore, it is important that your decision is submitted to a very critical inspection prior to it being taken. If you do so then it is more likely that everyone, including the grievor, the union, other employees, and of course the arbitrator, will agree that the decision was correct and justified.

If someone else is making the decision based on your recommendation you will want to ensure you maintain your credibility with that person also.

If you have conducted yourself in a professional manner up to this point you will have nothing to apologize to the employee for. It should be explained to the employee that, while you regret having had to put the employee through this, you were simply doing your duty in the face of allegations made.

Burden of Proof

If you believe that the answer to the first question in *Wm. Scott* is **yes** then you must have solid evidence to support your belief. It is unacceptable to take action against an employee on flimsy evidence in the hope that an arbitrator will find in your favour later on. Whether it is at this stage or later on in arbitration, the Burden of Proof is on the Employer. In other words, the onus is on the Employer to prove that it has "just cause" to discipline or dismiss an employee. The union need only take the position that disciplinary action was not warranted. The union and/or employee is not obliged to prove their innocence.

Just Cause

Management can take disciplinary action only when it can show that it has "just cause" to do so. Just cause exists when it is shown that employee misconduct occurred and that the misconduct warranted disciplinary action. The disciplinary action imposed must be shown to be appropriate for the type of misconduct.

Standard of Proof

In meeting the "Burden of Proof" when taking disciplinary action, it is important to understand what standard of proof you will be obliged to meet.

In criminal law the standard to be met is that of "Beyond a Reasonable Doubt." This means that the court must be "satisfied beyond a reasonable doubt that the guilt of the accused is the only reasonable inference to be drawn from the proven facts."

In arbitral law which governs the Employer's ability to take disciplinary action against an employee the standard of proof is that of the "Balance of Probabilities" which is the same as the standard in civil law.

"The balance of probability means a conclusion that is more probable than not - more probably true than false. The conclusion reached must outweigh the probability of other competing hypotheses."

You may look at the overall facts and evidence and ask yourself the question "what would a reasonable person conclude in the face of the accumulated evidence?" If the balance of proof suggests that the employee is guilty of the alleged offence, then you are justified in taking disciplinary action, otherwise you are not.

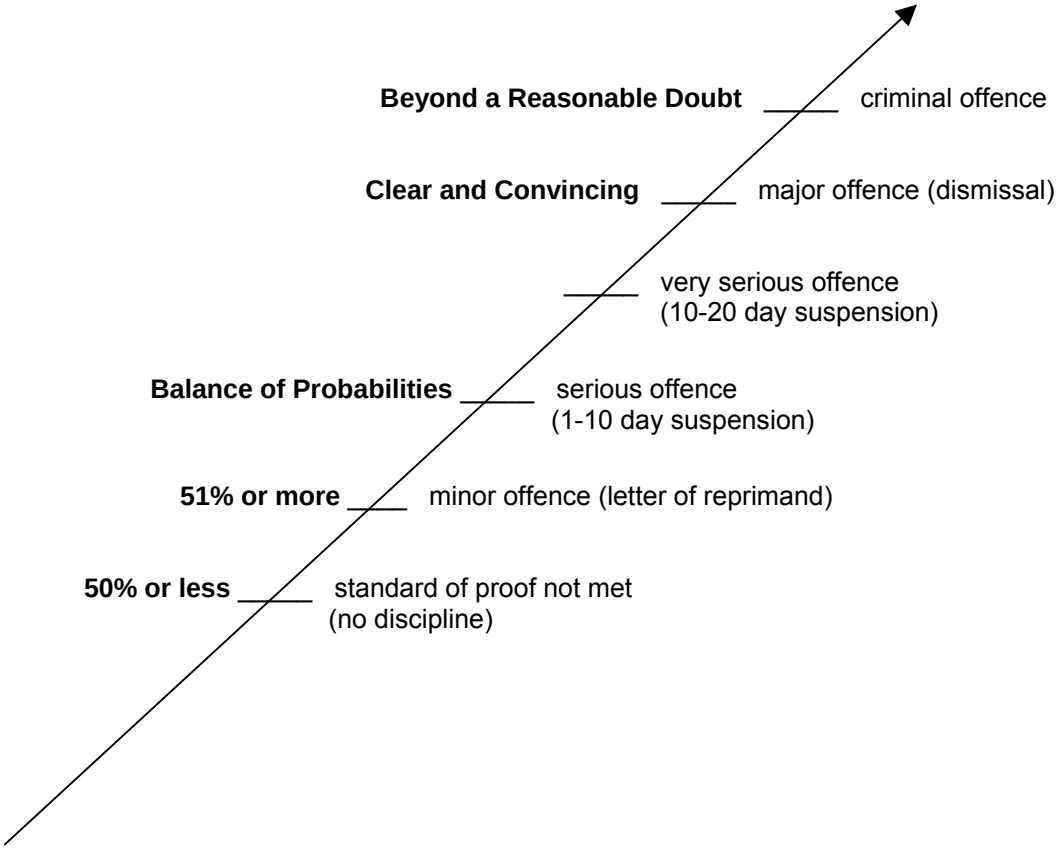
However, this balance of probabilities must be applied in a flexible way, which requires a higher degree of probability to be met as the seriousness of the offence and the consequences of the disciplinary action increase.

So, for a minor offence, where the possible disciplinary action is not going to be too severe, the degree to which the balance of probabilities must be met would only have to be enough to barely tip the scales in favour of the Employer's evidence to support disciplinary action.

However, for a more serious offence, where the possible disciplinary action is likely to be very severe, then those same scales must be demonstrably weighted in support of the Employer's evidence.

STANDARDS OF PROOF CONTINUUM

"The more serious the offence, the greater the consequences, therefore the higher the standard of proof".



DECIDE ACTION

Once you have concluded your investigation and determined that the employee is at fault, the next step is to decide what sort of disciplinary action is warranted.

There are a number of different types of disciplinary actions that are available for use by management. They are intended to be administered in an increasingly progressive manner in that if one type of disciplinary action has failed to correct a problem then generally the amount of disciplinary action would increase at the next occurrence.

While it is still open to administer a verbal reprimand or warning to an employee, it is not considered to be a formal stage since it will not go on the employee's personnel file.

Double Jeopardy

Arbitrators are consistent in their view that once management has imposed a disciplinary action for a specific incident of misconduct, it cannot impose a more severe disciplinary action than initially imposed. In essence, there is to be a single disciplinary response for a specific incident of misconduct. A stronger disciplinary action might only be permissible where management came into possession of new facts or, where such facts behind the original misconduct are not easily obtained at the time the original disciplinary action was imposed. Note, however, that warning the employee that disciplinary action may be imposed, or a suspension pending investigation, or removal from work, are not considered disciplinary actions. With the latter, disciplinary actions may or may not result from their application.

Types of Disciplinary Action

The formal types of disciplinary action are:

- written reprimand
- suspension without pay
- dismissal
- demotion

1. Written Reprimand

This is considered the first formal stage in the disciplinary process since the notice becomes part of the employee's personnel file. A written reprimand would normally apply if there is a continuation of minor infractions or for an offence or breach of conduct for which a verbal warning is considered insufficient.

While the BCGEU collective agreement provides for removal of a letter of reprimand after 18 months, at the request of the employee, it does not eradicate the fact that the employee was made aware of the unacceptability of the particular behaviour.

2. Suspension Without Pay

Suspension involves the removal of an employee from duty for a period for which he/she will not be paid. It will normally apply if there is a continuation of infractions which have not been corrected by written reprimands or for a first offence where a lesser disciplinary measure is considered inappropriate. Employees would receive progressively longer suspensions if the problem is not corrected or even if there is another unrelated offence.

3. Dismissal

Dismissal is the ultimate disciplinary sanction in the case of misconduct and should only be considered when all other disciplinary measures have failed or are considered inadequate. Dismissal may be invoked for a single serious act of misconduct or after a series of acts of misconduct when a "culminating incident" has occurred. A "culminating incident" is one which, taken by itself, may not warrant dismissal, but taken into consideration with a previous bad record, will be considered as "the straw that broke the camel's back" as far as a decision whether or not to continue the employment relationship. The principle has been well established that if the final incident merits disciplinary action of some kind, the past record of the employee may be considered along with the final incident in determining that dismissal is justified. Such infractions may have been related or unrelated to the final incident.

4. Demotion

Disciplinary demotion occurs when some specific action by employees, viewed by the ministry as misconduct, precipitates decisions to remove the employees from their job and transfer them to lower-paid positions. It is a penalty imposed as a response to what the ministry feels is blameworthy conduct of the employees.

Demotion as a disciplinary measure has been held to be proper only where the offences of the employees relate directly to their unsuitability for the particular jobs which they hold. Thus, demotion as a form of discipline is only appropriate in response to very particular types of offences.

Some examples include: vehicle drivers demoted to a non-driving position because of their involvement in a series of accidents or unsafe driving practices; employees demoted from a position of trust because they falsified timesheets; employees demoted because of specific rule violations, etc.

Disciplinary demotion can only be utilized where it can be concluded that the offences which gives rise to discipline are such that it is unreasonable to keep the employee in that particular job.

The difficulty with disciplinary demotions can be their indefinite nature. A disciplinary response ought to be for a definite time period either of fixed duration or for a period long enough for an employee to demonstrate a willingness and ability to adequately discharge the assigned duties of the lower rated or less critical job to which he/she has been demoted.

Proper Attitude Towards Corrective Disciplinary Action

Corrective Disciplinary Action can only be effective if supervisors approach the subject with the proper attitude. Supervisors should approach corrective disciplinary action in a problem-solving manner and understand its objective is to positively correct the employee problem; it is not punishment. The primary concern should be to assist the employee to reach the "objective".

But is not a suspension without pay, punitive?

- while it may seem so to the offender, arbitrator's say that, in order to make employees understand the seriousness of their acts, disciplinary actions must become progressively more severe
- this means that, except for very serious offences, if we had not previously suspended an employee we might not succeed in a dismissal

Only the employees involved can solve discipline problems. Supervisors need to remember that they cannot "make" employees change, only the employee can make this happen. Management should provide the employee with encouragement and assistance to overcome shortcomings and perform effectively

However, employees must understand that, as a result of their unwillingness to correct the problem, they may be on a road that ends in dismissal. Employees, by their own choice, can change this route at any time. Employees' options are to resolve the problems or risk the disciplinary consequences. The interactions should result in the options being clearly outlined to employees. The focus must be on the need for change and correction.

Authority

Section 22 of the *Public Service Act* restricts the power to dismiss employees to the Commissioner, Deputy Minister, or an individual delegated with the authority to dismiss by *Section 6(c)* of the *Act*. This section allows a Deputy Minister to delegate the authority to dismiss to an Assistant Deputy Minister or equivalent. It also allows the delegation of the power to dismiss to "a member or officer of a board, commission, agency or organization" to which the *Act* applies. Line managers may make a recommendation to dismiss employees which must be forwarded to the Deputy Minister for their approval.

The authority to suspend employees is limited to the Minister, the Deputy Minister, or any ministry official specifically authorized by the Minister or Deputy Minister to suspend employees. The key words are 'specifically authorized'. Excluded personnel must be delegated the authority to suspend employees before being able to do so. Please check with officials within your ministry to determine which positions have the delegated authority to suspend employees.

Most supervisors have the authority to issue written warnings. Please consult with more senior managers within your ministry to verify that this authority has been delegated to your position.

- Remember that if you do not have the Authority to Discipline, you cannot threaten or take disciplinary action against the employee.

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Public Service Act

"Dismissal and suspension of employees"

22. (1) The commissioner, a deputy minister or an employee authorized by a deputy minister may suspend an employee for just cause from the performance of his or her duties.

Should We "Negotiate" the Type of Disciplinary Action to Be Taken?

From time to time you may be faced with a situation where you face that question. A clever union steward may recognize that the employee is at fault and that severe disciplinary action or dismissal is inevitable. In such case, the steward, in cooperation with the employee, may propose a particular form of disciplinary action which is less than you may be contemplating in exchange for an agreement to accept the disciplinary action and not file a grievance. In more serious cases it may be an offer to allow the employee to resign instead of being dismissed.

While such offers should not be rejected out of hand, they should, nevertheless, be handled very carefully and only by people with the authority to do so.

While it may be tempting to avoid a grievance and possible arbitration by such an agreement, we must also consider the implications on possible subsequent disciplinary problems of this employee as well as others.

One offer that is occasionally made on behalf of an offending employee is to have the Employer agree not to prosecute criminal charges arising from work-related conduct.

Typically, these incidents involve situations in which the employee is offered the opportunity to tender a resignation on the understanding that the Employer will neither request a police investigation into the employee's misconduct nor support the laying of criminal charges against the employee. Alternatively, an employee may be persuaded to forego certain legal rights associated with Employer action, such as withdrawing grievance proceedings, in return for which the Employer agrees not to refer the matter for criminal investigation or prosecution. In some instances, the Employer may even threaten to initiate such an investigation if the employee is not prepared to "cooperate" in this regard.

Such practices are unacceptable. Both the BCPSA and the Criminal Justice Branch of the Ministry of Attorney General are adamantly opposed to any practice which involves the criminal justice process being used as a bargaining strategy to address employment-related issues.

A separate but related issue concerns the treatment by ministries of incidents of employee misconduct which are potentially criminal in nature. In all such cases, ministries should notify the appropriate police department and assist, as required, with any resulting investigation. It is imperative that relevant Employer representatives thoroughly document their associated investigation in the event they are required to appear as witnesses in a resulting prosecution.

How Do We Decide What Type of Disciplinary Action to Take Against the Offending Employee?

This is not a question which can be answered in simple terms. Making such a decision is more of an art than a science and involves many considerations.

Unfortunately, there is no measurement chart by which we can take a set of facts and find the precise amount of disciplinary action to apply in each case

What we do have is a number of factors drawn from arbitral jurisprudence which arbitrators use to determine whether our decision was appropriate or not. Knowing those factors allows us to consider and apply them in advance to help us arrive at the best possible decision. Even then an arbitrator may give different weight to those factors and subsequently change your decision. However, the more thought and effort we put into our decision and can demonstrate that thought and effort to an arbitrator, the better the chances are for our decision to be sustained.

The Factors

You will recall the material earlier in this manual which dealt with the *Wm. Scott* decision of the Labour Relations Board. This decision posed three questions to be considered by arbitrators in discipline/dismissal cases.

The first question dealt with just cause and whether the alleged offender was at fault.

Once the factors support taking disciplinary action the next two questions, as re-stated below, must be considered:

2 If so, was the Employer's decision to dismiss (or discipline) the employee an excessive response in all of the circumstances of the case?

3 Finally, if the arbitrator does consider the dismissal (or the disciplinary action) excessive, what alternative measure should be substituted as just and equitable?

As you can see, this opens the door for the arbitrator to look at the Employer's decision and, despite the guilt of the offender, can reduce the amount of disciplinary action.

As in the first question, where the onus is on the Employer to justify or show just cause, the Employer also bears the onus of demonstrating that it has considered and satisfied the second and third questions.

In the *Wm. Scott* decision, the Labour Relations Board then went on to set out a number of factors with which arbitrators would consider and measure the Employer's disciplinary decision. These and other factors laid the groundwork for the "Questions to Consider" checklist which we will be looking at shortly so it is worth reading the following except from the decision:

> "However, usually it is in connection with the second question -- is the misconduct of the employee serious enough to justify the heavy penalty of discharge? -- that the arbitrator's evaluation of management's decision must be especially searching:
>
> (i) How serious is the immediate offence of the employee which precipitated the discharge (for example, the contrast between theft and absenteeism)?
>
> (ii) Was the employee's conduct premeditated, or repetitive; or instead, was it a momentary and emotional aberration, perhaps provoked by someone else (for example, in a fight between two employees)?

(iii) Does the employee have a record of long service with the Employer in which he proved an able worker and enjoyed a relatively free disciplinary history?

(iv) Has the Employer attempted earlier and more moderate forms of corrective discipline of this employee which did not prove successful in solving the problem (for example, of persistent lateness or absenteeism)?

(v) Is the discharge of this individual employee in accord with the consistent policies of the Employer or does it appear to single out this person for arbitrary and harsh treatment (an issue which seems to arise particularly in cases of discipline for wildcat strikes)?

The point of that overall inquiry is that arbitrators no longer assume that certain conduct taken in the abstract, even quite serious employee offences, are automatically legal cause for discharge. Instead, it is the statutory responsibility of the arbitrator, having found just cause for some Employer action, to probe beneath the surface of the immediate events and reach a broad judgement about whether this employee, especially one with a significant investment of service with that Employer, should actually lose his job for the offence in question. Within that framework, the point of the third question is quite different than it might otherwise appear. Suppose that an arbitrator finds that discharge and the penalty imposed by the Employer is excessive and must be quashed. It would be both unfair to the Employer and harmful to the morale of other employees in the operation to allow the grievor off scot-free simply because the Employer over-reacted in the first instance. It is for that reason that arbitrators may exercise the remedial authority to substitute a new penalty, properly tailored to the circumstances of the case, perhaps even utilizing some measures which would not be open to the Employer at the first instance under the agreement."

In the *Wm. Scott* decision, the Labour Relations Board also commented on another case which canvassed other factors. Again, it is worth reading this excerpt from the decision so that you have a better understanding of the basis for the mitigating and aggravating factors to be found later in our checklist:

"In evaluating the immediate discharge of an individual employee, the arbitrator would take account of "the employee's length of service and any other factors respecting his employment record with the Company in deciding whether to sustain or interfere with the Company's action". The following is an often quoted, but still not exhaustive, canvass of the factors which may legitimately be considered:

1. The previous good record of the grievor.

2. The long service of the grievor.

3. Whether or not the offence was an isolated incident in the employment history of the grievor.

4. Provocation.

5. Whether the offence was committed on the spur of the moment as a result of a momentary aberration, due to strong emotional impulses, or whether the offence was premeditated.

6. Whether the penalty imposed has created a special economic hardship for the grievor in light of his particular circumstances.

7. Evidence that the company rules of conduct, either unwritten or posted, have not been uniformly enforced, thus constituting a form of discrimination.

8. Circumstances negating intent, e.g. likelihood that the grievor misunderstood the nature or intent of an order given to him, and as a result disobeyed it.

9. The seriousness of the offence in terms of company policy and company obligations.

> Any other circumstances which the board should properly take into consideration, e.g., (a) failure of the grievor to apologize and settle the matter after being given an opportunity to do so; (b) where a grievor was discharged for improper driving of company equipment and the company, for the first time, issued rules governing the conduct of drivers after the discharge, this was held to be a mitigating circumstance; (c) failure of the company to permit the grievor to explain or deny the alleged offence.
>
> The board does not wish it to be understood that the above catalogue of circumstances which it believes the board should take into consideration in determining whether disciplinary action taken by the company should be mitigated and varied, is either exhaustive or conclusive. Every case must be determined on its own merits and every case is different, bringing to light, in its evidence, differing considerations which a board of arbitration must consider."

In looking at the factors by which we measure the disciplinary decision, we must ask ourselves a number of questions based on those factors.

The answers to those questions will result in our decision (or potential decision) being either mitigated or aggravated.

By this we mean that if the answer is favourable to the offender then we would use that to mitigate or lessen the severity of the disciplinary action and partially excuse the offence.

On the other hand, if the answer to the question is not favourable to the offender then we would consider that to be an aggravating factor which would cause us to increase the severity of the disciplinary action and to consider the offence to be more severe.

To illustrate this, consider the following:

- Imagine a set of scales with a black tray and a white tray.

- Imagine the mitigating factors as white stones and the aggravating factors as black stones.

- As you review the checklist, for each mitigating factor add a white stone to the white tray and for each aggravating factor add a black stone to the black tray.

- Use the outcome to assist you in your decision.

- At the conclusion if either side of the scale is lower than the other then you should consider increasing or decreasing the disciplinary action accordingly.

- This is not an exact science and the factors may have different values to the extent that one factor may be worth two stones or more. You will have to be the judge of that but remember it is your duty to be fair and reasonable.

- Hopefully it will give you an idea of the kind of mental exercise you should go through to reach a conclusion.

Applying the Factors

One of the areas which is often misunderstood and may require some explanation is the issue of an employee's previous disciplinary record.

Some supervisors have assumed that a previous offence on file can be counted on as an aggravating factor regardless of how old it may be.

- When considering the previous disciplinary record of an offender it is important to understand the diminishing value of letters on file which contain a suspension.

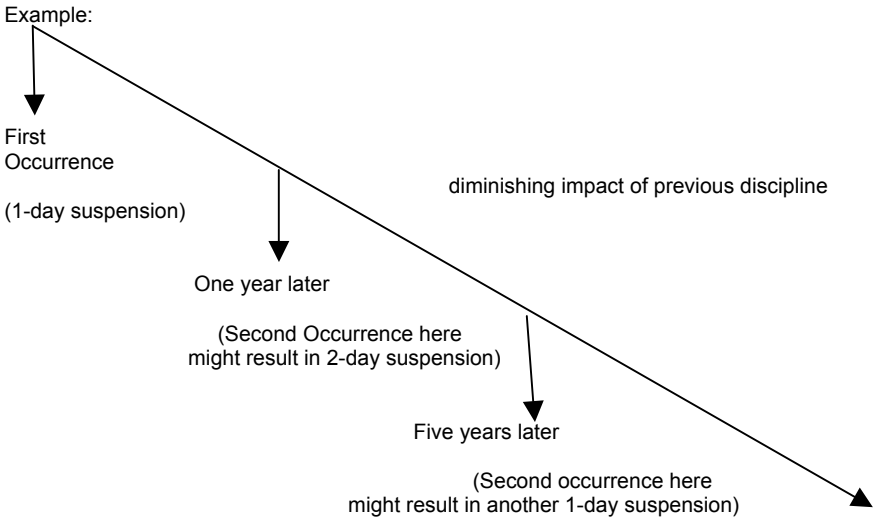
- The further you get from the previous occurrence, the less impact it will have on a subsequent occurrence.

For example:

A letter containing a one-day suspension for an offence would be considered to be a considerable aggravating factor if the offence were repeated in the first year after the offence.

On the other hand, if the second occurrence took place five years later, then it would carry very little weight as an aggravating factor. At best it would constitute proof that the employee was clearly aware that the nature of the offence was unacceptable.

The end result of such a scenario may be that you would repeat the previous disciplinary action, a one day suspension again instead of moving to the next step of a two or three day suspension (see illustration below).



Timing of Disciplinary Action

There are two important points about the timing of disciplinary action:

Immediacy of Action

Supervisors should take the appropriate disciplinary step as soon as possible after the incident has occurred. Unless the infraction occurs during an emergency situation, the supervisor should immediately conduct whatever investigation is required and take the appropriate disciplinary step. This should always be done on the same day that the offence was committed.

Building Up

Supervisors should not allow minor infractions to build up until the need is reached for a formal step. If an employee does something which is not sufficiently serious to justify a formal verbal reprimand, the supervisor should hold a counselling session about the incident.

Sequence of Steps

If an employee commits an offence (for example, tardiness), receives a verbal reprimand and later commits an entirely different offence (for example, smoking in a “no smoking” area), should another verbal reprimand or a written reprimand be given? This section provides guidelines on when to repeat a step and when to move on to the next step.

Handling Different Offences

At the verbal reprimand stage, the supervisor should keep the categories of offences separate. If an employee receives a verbal reprimand for an offence in one category (e.g. misconduct), and later a problem in a different category arises (poor performance) another verbal reprimand should be used.

Handling Repeated Offences

Once an employee commits a second offence in the same category (attendance, performance or behaviour), the supervisor should take the next step of Progressive Disciplinary Action.

Note: The most important guideline is the supervisor's judgement about which action will produce the most effective result in correcting the problem. It may be appropriate to repeat a step previously taken rather than moving onto the next more serious step.

IMPORTANT!

It is not the order of taking action against the employee that determines the progressively increasing length of suspension, it is the order of the offence taking place.

eg.	Offence (1)	(unknown at time)
	Offence (2)	20-day suspension

Investigation of Offence (1) results in dismissal

Note: You cannot rely on the 20-day suspension in Offence (2) to support a dismissal in Offence (1) in the above example.

Repeating Disciplinary Action

In most cases the steps of Progressive Disciplinary action will be followed in order. In some circumstances however, a step can be repeated.

A supervisor can repeat a step previously taken if, in his/her judgement, a second verbal or written reprimand or even a suspension would be more effective in changing the employee's behaviour than moving onto the next more serious step.

The Culminating Incident

If problems continue to occur in one or more of the categories, a concept known as "THE CULMINATING INCIDENT" may be applicable in laying the foundation for more serious discipline or dismissal. Under this concept an employee's previous record can be used in supporting strong disciplinary action or dismissal for a continuation of what might be considered a minor incident or a repetition of a minor problem.

However, with the "culminating incident," the employee's past record is relevant to the seriousness of the immediate incident and to the ability of the employee to "learn" from previous warnings or discipline. All previous incidents must have been brought to the attention of the employee at the time in which they occurred and the employee given the opportunity to explain and/or grieve the penalty imposed. Failure to explain or grieve early disciplinary action does not prohibit an employee from submitting an explanation at a hearing convened later in relation to a culminating incident.

The employee must have been advised that another occasion of misconduct leading to discipline would not be tolerated and that it could lead to further or more serious discipline up to and including discharge.

The Progressive Discipline Model

In the illustration below, you can see what would normally be the range of disciplinary responses to offences or problems. However, progressive discipline is not a lock-step process. You would first look at the nature of the offence or problem then determine where in the range the discipline should fall. This, of course, would depend on the mitigating and/or aggravating factors: eg. seriousness, previous history, years of service, etc.

Even minor offences or problems can become more and more serious if they continue to occur, and may ultimately result in dismissal. Again, caution is required, as it is not just "three strikes and you are out" like in baseball. It could be one strike or ten strikes depending on the circumstances.

NATURE OF OFFENCE/PROBLEM	RANGE OF DISCIPLINARY RESPONSES
Major	Dismissal
	↑
Very Serious	11 – 20 day suspension
	↑
More Serious	6 – 10 day suspension
	↑
Serious	1 – 5 day suspension
	↑
	demotion – if applicable
	↑
Minor	written warning
	↑
	verbal warning reprimand
	↑
	letter of expectation

When More Than One Employee is Involved

Another area of misunderstanding is the effect of more than one employee being found guilty of the same offence, and how that should impact the disciplinary action applied to each employee.

Some supervisors and stewards have mistakenly believed that in such cases the employees must all be treated the same.

This approach, of course, may result in the factors having been ignored and an inappropriate disciplinary action taken against some of the employees involved.

To illustrate this point, consider the hypothetical example below which sets out some very different mitigating and aggravating factors for each one and therefore some very different possible disciplinary action being taken:

EXAMPLE	
EMPLOYEE 1 - 10 YEARS SERVICE - FIRST OCCURRENCE - VOLUNTEERED FAULT - REMORSEFUL - SPUR OF THE MOMENT	LETTER OF REPRIMAND
EMPLOYEE 2 - 10 YEARS SERVICE - SECOND OCCURRENCE - 17 MONTHS PREVIOUS - VOLUNTEERED FAULT - SPUR OF THE MOMENT	SHORT SUSPENSION
EMPLOYEE 3 - 10 YEARS SERVICE - SECOND OCCURRENCE - 6 MONTHS PREVIOUS - DENIED FAULT - UNREMORSEFUL - UNCOOPERATIVE - PREMEDITATED	LONG SUSPENSION

Note: Given the complicated factors in taking proper corrective, progressive, disciplinary action against an offending employee, it is impossible to create a chart or table which would allow us to add up all of the elements and factors and arrive at the absolute best decision.

Questions to Consider

The following two checklists of questions to consider;

- When Deciding Disciplinary Action
- Before Taking Disciplinary Action

are based on the factors drawn from arbitral jurisprudence which are set out earlier in this phase of the manual.

The purpose of the checklists is to ensure that you have taken all of the factors into consideration.

By reviewing and addressing all the issues set out in these two checklists, as well as the checklist "Questions to Consider - Prior to Interviewing Alleged Offender", you will vastly improve your chances of making a correct decision in each disciplinary case. Needless to say, it will also improve your chances of sustaining your decision throughout the grievance and arbitration procedures, should your decision be disputed.

QUESTIONS TO CONSIDER

When Deciding Disciplinary Action
(of an employee whose actions are considered to be worthy of disciplinary action)

	YES	NO
- Any personal problems involved which may have contributed to employee's misconduct?	*	†
• If employee was referred to EFAP did employee attend and complete any recommended treatment?	*	†
- Did employee admit fault when confronted?	*	†
- Did employee come forward and admit fault without being confronted?	*	†
- Did employee lie or withhold material information concerning matter in question?	†	*
- Did employee show remorse or offer apology?	*	†
- Did employee offer restitution?	*	†
- Did employee refuse to accept behaviour was wrong?	†	*
- Did employee make commitments to correct unacceptable behaviour?	*	†
- Will showing leniency to employee be helpful in correcting future behaviour?	*	†
- Will severe disciplinary action serve as a deterrent to other employees?	†	*
- Would too-harsh discipline cause economic hardship?	*	†

	YES	NO
- Does employee's presence at workplace pose risk to security of Employer or to workplace discipline?	†	*
- Does employee's presence at workplace pose risk to safety of others or him/herself?	†	*
- Does employee's presence at workplace compromise Employer's ability to satisfactorily meet normal operational requirements?	†	*
- Would employee's continuing presence in workplace impair or give rise to reasonable possibility of impairing Employer's reputation?	†	*
- Was employee provoked in some way?	*	†
- Was offence committed on spur of the moment?	*	†
- Was offence planned in advance/premeditated?	†	*
- Were results of offence serious or costly?	†	*
- Did employee's behaviour result in injury or damage?	†	*
• If so, did employee promptly report same?	*	†
- Was offence repetitive or continued over extended period of time?	†	*
- If employee is union official, was offence committed while acting in this capacity?	?	?
- Is employee a long-term employee?	?	?

	YES	NO
- Has employee been disciplined previously:	†	*
- for any type of offence?	†	*
- for same type of offence?	†	*
- recently?	†	*
- Any extenuating circumstances which help to explain employee's behaviour?	*	†
- Did employee's behaviour appear to be intentional?	†	*
- Was employee instructed to cease offending behaviour and refused to comply?	†	*
- Is employee in position of trust?	†	*
• If so, can trust be restored?	*	†
- Does employee's behaviour render him/her, incapable, unsuitable, unqualified, or unavailable for job/duties?	†	*
- Has employee's behaviour served to undermine or demean Employer's authority?	†	*
- Has the Employer/employee relationship been irreparably damaged?	†	*
• Can it be re-established?	*	†
- Can it be said that employee has "rehabilitative potential"?	*	†
- If offence was committed off-duty, has employee's misconduct affected:		
• Employer's reputation?	†	*
• Employee's ability to perform duties satisfactorily?	†	*
• Other employees' willingness to work with employee?	†	*
• Employer's ability to efficiently manage and direct operation?	†	*

* Mitigating factor

† Aggravating factor

? Could be either, depending on circumstances

QUESTIONS TO CONSIDER
(Before Taking Disciplinary Action)

Once the Employer has decided on the disciplinary action it is going to take, the following questions should be considered by the Employer before taking action.

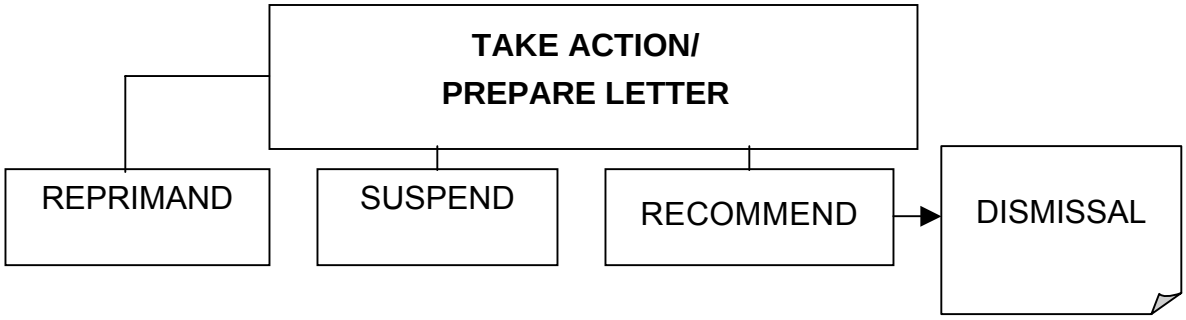
Some of them address the kinds of issues which could unravel a case in arbitration.

Some of them are to remind the Employer of things it should have covered already and if it has not, then it should go back and do so before proceeding further.

	YES	NO
- Have all identifiable mitigating considerations been taken into account in determining Employer's response to misconduct?	*	†
- If this offence is considered to be a "culminating incident", therefore resulting in dismissal, can it be shown that offence warrants some form of discipline on its own merits?	*	†
- Has any other disciplinary action been levied against employee for same offence which would result in "double jeopardy" situation?	†	*
- Any undue delay in concluding the investigation and making decision to discipline?	†	*
- Has Employer satisfied obligation to stay abreast of related matters? (i.e. associated and criminal proceedings?)	*	†
- Is discipline that is being contemplated, in accord with consistent disciplinary policy of Employer?	*	†
- Is there evidence to show, on balance of probabilities, that misconduct did occur?	*	†
- Does the case meet test of "what would a reasonable person conclude in face of accumulated evidence"?	*	†
- Was employee given full opportunity to defend, deny, admit or explain behaviour?	*	†
- Was investigation conducted in an open, fair, unbiased and non-discriminatory way?	*	†

* it is okay to proceed with disciplinary action

† you should address this before proceeding with disciplinary action



Timing

Once the decision is made to take disciplinary action it is important to prepare the letter and present it to the employee as soon as possible. It should not have been prepared in advance of the disciplinary interview in anticipation of the outcome. You must have all the facts before taking this step.

Documentation

Copies of all disciplinary documentation (e.g. letters of reprimand, notices of suspension without pay) should be forwarded to the personnel file and the union as well as the appropriate line managers. The record of discipline for specific incidents will be retained on employee's personnel file and will become part of their personal work history. Written censures, letters of reprimand, and adverse reports or performance evaluations, may be removed from employee's personnel files after 18 calendar months from the date of issue, provided there have been no further infractions. Employees must formally request to have these documents removed from their files. This does not apply to those letters which also contain a suspension.

DISCIPLINARY PORTFOLIO

- If dismissal or lengthy suspension is justified, supervisors are required to submit those recommendations to the appropriate Deputy Minister. Recommendations for dismissal should contain sufficient information to allow Deputy Ministers to consider all of the relevant facts and form reasonable opinions as to the employee's suitability for continued employment.
- The facts and recommendation should be set out in a disciplinary portfolio.
- It is important that this be prepared thoroughly and accurately as this is what the Deputy Minister will make a decision on.
- Should the decision be challenged later by the offender, the disciplinary portfolio may possibly end up in evidence at a hearing, if ordered by the arbitrator.
- For that reason, it is important that you do not include:
    - gratuitous comments
    - strategy suggestions
    - strengths/weaknesses of case

Provide as much factual detail as is available in each of the following:

- Description of unacceptable attendance/performance/behaviour
- Background to employee's actions
- Names of witnesses/participants, and how involved
- Any rules/policies etc. which were breached
- Employment history
- Employee disciplinary record
- Summary of performance appraisals
- Identify all mitigating factors, if any
- Identify all aggravating factors, if any
- Summarize above and draw conclusion
- Make your recommendation for disciplinary action
- Describe previous remedial efforts made to assist employee in correcting unacceptable performance/behaviour

Prepare Letter

- Whether the decision is a reprimand, suspension or dismissal, they all involve the need for a properly worded letter to be given to the offending employee.

The disciplinary reprimand or suspension letter has three primary purposes:

1. To indicate the Employer's concern about the employee's problem.

2. To aid in correcting the employee's problem.

3. To provide a record of the Employer's efforts to assist the employee should a grievance be filed.

The disciplinary letter should contain no more than is necessary to make the points, but you must make all the points that you are relying on in making your decision to take disciplinary action. The letter must be able to "stand alone" as being a document which tells the story of the reasons for disciplinary action.

If you cannot prove it, then do not write it in the letter. Remember that the more you write, the more you have to prove.

When writing the letter, always be specific rather than general: eg. say: "The employee was late for work on such and such dates." Do not say: "The employee is frequently tardy."

If you state a conclusion in the letter: eg. "John made a derogatory remark in public" then it must be followed and supported by facts, eg. "He stated at the reception desk where clients were seated nearby, that the supervisor was a 'no good liar'."

Always assume that disciplinary letters will end up in grievance/arbitration and write them accordingly.

Some of the disciplinary letters seen in grievance files contain remarks and personal comments which cannot be proven, this makes it more difficult in arbitration.

Point that Employer must prove (from the disciplinary letter):
Chief Witness:
Corroborating Witness(es):
Evidence:

Once your letter has been written, use the above format to analyze your letter. Take each sentence or part of a sentence and determine if we can support it. Anything that cannot be supported should be removed or re-written. If a letter has already been issued by someone and it does not meet this test it is appropriate to re-issue the amended letter and withdraw the previous one. This sometimes causes the union to withdraw a grievance as it may have been the unsupportable portion of the letter that caused the employee to file the grievance.

Extra care must be used when preparing a dismissal letter. The letter should include:

1. A comprehensive list of misconduct that has occurred (do not focus on only one if others exist).

2. An explanation of relevant circumstances considered in reaching decision (include mitigating and aggravating factors).

3. An explanation of why (in light of the foregoing), the employment relationship cannot continue.

CHECKLIST OF: ELEMENTS OF LETTERS TO EMPLOYEES

Re: Unacceptable Attendance/Performance/Behaviour

Note: Please check your letters against the list to ensure you have included those elements which are applicable in the circumstances.

	ELEMENT
	"To" employee - Not "about" employee
	Positive tone, constructive, clear, concise
	Discussion was held, include previous discussions
	Union rep. offered/present/others present
	Identify concerns/effect on workplace
	Nature of problem/offence stated
	Frequency of problem
	Employer's motives/purpose
	Record reviewed - state previous discipline
	What assistance was offered
	What assistance was available
	What referrals were made
	Decision/penalty - date/time of suspension
	Opportunity to rebut/explain - comments made
	Mitigating/aggravating factors
	What allowances were made
	Commitment sought/given - encourage employee
	Follow-up - date/time of return - who report to
	Possible consequences of further offences - "may" not "will"
	One more chance
	Nature of work identified
	Employee advised of standards - expectations stated
	Evaluation/appraisal done
	Content is specific (not general)
	Conclusions supported by facts
	Copy to Union President
	Copy to personnel file
	Authorized signature

CORRECTIVE DISCUSSION

Initial Discussion

Too often through the disciplinary process there are few or no attempts to bridge the gap that has developed between the employee and management. In fact, the less that is said and done and the longer it goes on, the wider the gap becomes.

It is not unusual for a supervisor to prepare the discipline letter and simply hand it or deliver it to an employee with nothing being said. This should never happen. It should be not only presented, but also discussed with the employee. This is a critical point of the disciplinary process. We give it the fancy name of "Corrective Discussion" but what we really mean is to simply "talk" to the employee.

In spite of what has happened, we must try to re-build the relationship with the employee who has been disciplined and, while it "takes two to tango" as they say, it is management's role and responsibility to take the initiative in this regard.

The employee should be invited to attend a meeting in the company of the union steward.

- The employee should be advised of the results of the entire investigation so that it is clear what evidence the employee is facing. Being completely open on this point may decrease the likelihood of a grievance being filed by the employee.

- The Employer's decision as to what disciplinary action is being taken should then be laid out to the employee.

- Outline for the employee the reasons for the type of disciplinary action, emphasizing the mitigating and aggravating factors which were taken into consideration. It should be clearly stated how serious the employee's offence is considered to be and why.

- Talk about what the Employer's expectations are for this employee in the future in order for the "objective" to be reached. Emphasise that the unacceptable actions which led to this disciplinary action must not be repeated.

- The employee must understand that, should the problem not be corrected, then the consequences of not doing so will mean more severe disciplinary action may be taken in the future, if the offence is repeated.

- In the course of the discussion, the supervisor should be seeking some form of commitment from the employee. A promise that the employee will not repeat the offence will help the employee to focus on what needs to be done. It also demonstrates the employee's understanding of what the problem is. In future disciplinary discussions where the offence has been repeated, any commitments made previously and then broken should be given serious consideration.

- The discussion should end on a positive note with the supervisor expressing some optimism that the employee can correct the problem and that it is the hope of the supervisor that the employee will do so.

- Once the discussion is concluded, then the disciplinary letter should be presented to the employee. This should not open the door for the employee to debate or challenge the decision. If the employee or the union attempts this, the discussion should be broken off as quickly as possible, unless of course they have some new information which was not available previously. In such case, the new information would have to be considered before the final decision is made.

- It is important that whoever presents the decision for disciplinary action also accepts the responsibility for the decision. Nothing is less productive than a supervisor saying "I did not want to do this but my manager said I have to." The whole purpose of the decision is to correct the problem and get the employee and the workplace back on track, not to further widen the gap between employee, union, and management.

Follow-up Discussion

- There is nothing worse than to have an employee return to work after a disciplinary suspension and simply commence regular work without some further discussion with the Supervisor. Too often the employee returns with a grudge and ignoring the employee only causes that grudge to fester. The employee gripes to the other employees, the supervisor gets dirty looks, and there is no attempt at closure of the issue.

- Before the employee returns to the job, there should be a brief discussion with the employee, union steward, and supervisor. The employee should be reminded of the Employer's expectations in a positive way and some expression that the supervisor is confident that the employee can, and will, correct the problem and meet the "objective."

- It is important for the supervisor to show the employee a willingness to be supportive of the employee and to offer any help that the employee may need to help overcome the problem and have a successful re-entry to the workplace.

- Hopefully the employee will express some commitment that an honest effort will be made towards correction.

- The supervisor should conclude by offering to get back together with the employee and union steward at some future date to review the progress being made by the employee.

Progress Review Discussion

- By now you are probably thinking that there is not enough hours in the day to accomplish all these discussions with problem employees, and now we are suggesting a further discussion. You will recall at the beginning of this manual we emphasized the excessive amount of time you may have to spend on problem employees. It is our experience that if you ignore the employee and the problem and do not have discussions on the problem, then it will only get worse. Then you will end up spending even more time on the matter later on when things get worse. So, to repeat an old phrase, but so true, "a stitch in time saves nine."

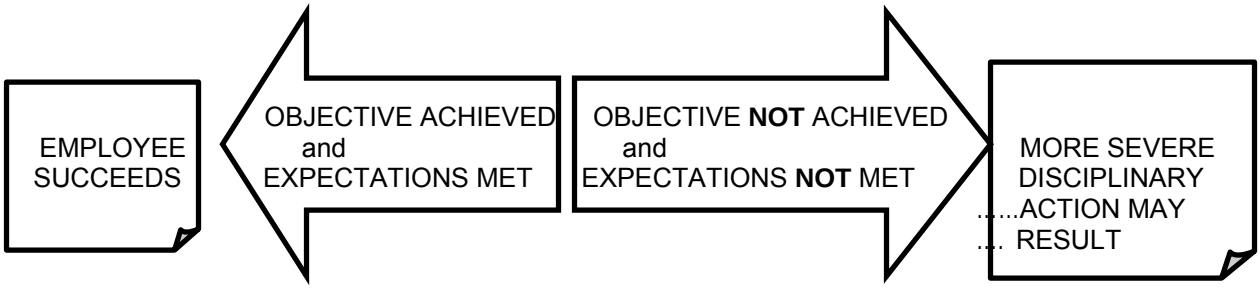
- So once more we suggest you discuss matters with the employee and the union steward to review the employee's progress.

- If the progress is satisfactory then the employee should be commended for having met the challenge. Express your confidence for continued progress by the employee.

- However, if the progress is unsatisfactory, the employee should be made fully aware of your concerns that the employee is not meeting the expectations.

- It might be helpful to reiterate the possible consequences if progress is not made quickly.

- Setting a date for a further review will give some further focus to the employee and a tangible goal for achieving some progress in spite of the absence of any to date.



As we said in the beginning of this manual, it is more likely that the supervisor will maintain a positive viewpoint and take more positive actions, if there is an end objective kept in mind. It will help to focus our efforts. The objective is simple although achieving it is often not so simple. It often requires a good deal of time, effort, energy, patience, skill, understanding and sometimes even money, to finally achieve it. But those are some supervisors' roles.

REMEMBER THE OBJECTIVE!!

- Employees understand and accept what is expected of them
- Attendance, performance, and behaviour are up to standard

When the Employer's expectations have been met and the Objective has been achieved by the employee, and this is done so **willingly** by the employee, then we have truly reached what we have been striving for:

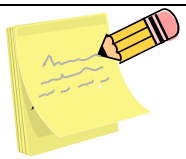
A STATE OF DISCIPLINE!

Conclusion

We leave you with this thought:

The process of correcting unacceptable attendance, performance and behaviour takes time, sometimes considerable time. We should remember that it is a process and not a one-time event. The exception to that statement, of course, is in the case of a major offence where our purpose is no longer "correction" but rather to remove the offender from the workplace permanently for the good of the Employer and other employees (and sometimes even for the offender). Dismissal is an "event."

The employee has destroyed the trust and working relationship due to his/her actions.



ADDENDUM

GROUNDS FOR TAKING DISCIPLINARY ACTION

INDEX

GROUNDS FOR TAKING DISCIPLINARY ACTION

The purpose of this part of the manual is to provide examples of behaviour warranting discipline and to provide some guidance as to considerations that should be made in determining the appropriate penalties. It is not intended to be an exhaustive list. Each case will have its own set of facts which will impact on both the decision to discipline and the magnitude of the penalty. These facts must be uncovered in the investigation stage and considered before discipline is imposed.

As mentioned above, any disciplinary action is subject to review through the grievance and arbitration procedures. Arbitrators will consider some of the issues listed in this part of the manual as well as any other issues that they feel are relevant. This is why it is so important to do the homework before the discipline is imposed rather than after.

A. Criminal Misconduct

Section 22 of the Public Service Act allows the Commissioner of BCPSA, a Deputy Minister, or an employee authorized or delegated by a Deputy Minister to suspend or dismiss an employee for just cause.

One situation which may result in such a suspension or dismissal is that of an employee charged with a criminal offence. Such a charge may be the result of on-duty or off-duty conduct.

Where the nature of the offence charged is such that, if guilty, the employee would be unsuitable for employment in their regular position, the employee may be suspended.

Prior to suspending an employee charged with a criminal offence, the Employer must:

- investigate the facts of the case to determine how the offence relates to employment, and if there is a potential risk to the public or other employees; or the security/safety of the workplace.

- consider all of the facts to determine if the employee's interests in continued employment in his/her position can be balanced against any real or perceived threat to the public or other employees;

- determine if the employee can be moved to another position where there is no risk to the public or other employees.

Arbitrators will expect the Employer to attempt to balance the interests of all parties prior to suspending an employee without pay. It is important to document all efforts in this regard so that there is hard evidence available to defend the Employer's actions. It is important to ensure no discrimination on the basis of a summary or criminal conviction unrelated to employment, which is prohibited under the *Human Rights Code*.

B. Violation of Workplace or Public Service Rules

Employees may be disciplined for violating workplace or public service rules. However a rule unilaterally introduced by the Employer and not subsequently agreed to by the Union, must satisfy the following requisites:

1. It must not be inconsistent with the collective agreement.

2. It must not be unreasonable.

3. It must be clear and unequivocal.

4. It must be brought to the attention of the employee affected before the Employer can act on it.

5. The employee concerned must have been notified that a breach of such rule could result in discipline or dismissal, if the rule is used as a foundation for discipline or dismissal.

6. Such rule should have been consistently enforced by the Employer from the time it was introduced.

7. Such rule must not discriminate or differentially impact individuals with characteristics that are prohibited grounds for discrimination under the Human Rights Act.

Arbitrators will consider each of the above tests in determining if discipline is appropriate and will overturn the discipline if the Employer fails to prove that these tests have been met. It is important that workplace rules be discussed with employees so that they know what is expected. It is also important to ensure that rules are applied consistently, except when accommodating individual needs based on Human Rights grounds, so employees are not lulled into a false sense of security.

In determining appropriate penalties for violations of workplace rules, arbitrators will consider the seriousness and consequences of the violation, the employee's seniority and work record, the employee's disciplinary record, as well as any other relevant factors.

C. Breach of Safety Rules

The Employer is legally and morally responsible for ensuring that all workplace safety rules and regulations are enforced. It may discipline employees for violating provided it meets the same tests outlined in Section III.B. Violation of Workplace or Public Service Rules. Please review this section before disciplining employees for breach of safety rules or regulations.

D. Insubordination

Insubordination is any action intended to challenge, resist or defy a supervisor's legitimate authority. It includes the use of abusive or obscene language in challenging a supervisor's authority, deliberate disobedience of a legitimate order or instruction and a physical assault on a supervisor.

In cases where employees refuse to obey orders or directions of supervisors:

- specific orders must be given;
- the orders must be communicated clearly in unambiguous, unprovokative terms;
- the orders must be communicated by persons who are clearly perceived by the employees as having the authority to issue such orders;
- employees must be given the opportunity to comply with the orders and must be clearly advised of the disciplinary consequences of failing to comply.

Once the above tests have been met, employees carry the burden of defending any refusals to obey legitimate orders or instructions. They should be asked for explanations so that any legitimate explanations such as safety concerns can be addressed.

Employer should be aware of, and determine whether, refusal to carry out orders/instructions is based upon any grounds in Human Rights Act such as religion, gender, race, etc.

Example - Human Rights decision re: Celia Moore vs. Ministry of Social Services.

E. Dishonesty or Theft

1. Falsification of Employment Applications

Employees may be disciplined or dismissed for falsifying employment applications or concealing information material to the selection decision because the Employer relies on employee truthfulness in making selection decisions. The Public Service Application-For-Employment forms contain a warning to job applicants that this may occur if they falsify information provided on the forms.

Arbitrators will consider the following in determining if discipline is appropriate:

- the nature and character of the falsification or the matter concealed (i.e. was the information concealed intentionally);

- the extent to which the information which was falsified or concealed would have affected the selection decision;

- the elapsed time between falsifying or concealing the information and the date of discovery;

- the employees' seniority and work record.

2. Falsifying Time Records and Similar Documents

Discipline is warranted when employees deliberately falsify timesheets, overtime claims, expense claims, injury and/or illness reports, etc. In determining the appropriate degree of discipline, arbitrators will consider:

- the nature and importance of the information that was falsified;
- the seniority and employment records of the employees involved;
- the planning vs spur of the moment nature of the employees' actions;
- the Employer's responses to other incidents or similar behaviour;
- the employees' responses to being caught falsifying the documents (i.e. did they admit the wrongdoing and apologize or did they attempt to cover up the falsification?).

3. Theft of Government Property

Theft of Government property is a serious offence and should be treated harshly. Dismissal is generally the appropriate response to theft unless there are mitigating factors. Arbitrators may consider the following in determining the appropriate penalty for theft:

- the value of the property stolen (is it substantial or nominal?);
- the consistency with which the ministry has imposed discipline for such thefts;
- the employees' records;
- the nature of the action (was it premeditated or impulsive? Was it an isolated incident or part of a continuing scheme of theft?).

F. Conduct Outside Working Hours

Generally, the private lives of employees are their own and what they do away from the workplace is their business and is no affair of the Employer. However, under some circumstances, employees may be disciplined for off-duty conduct if:

- the conduct harms the Employer's reputation, product or service;
- the conduct renders the employees unable to perform their duties satisfactorily;
- the conduct leads other employees to be reluctant or to refuse to work with them;
- the conduct is a serious breach of the Criminal Code and thus may adversely affect the Employer's reputation;
- the conduct adversely inhibits the Employer's ability to satisfactorily manage and direct its operation.

Arbitrators will consider the nature of the employee's employment along with the nature of the misconduct in determining if discipline is appropriate. For example, they have consistently held that peace officers must maintain a higher standard of off duty conduct than would be expected of most other employees.

G. Participating in Illegal Job Action

Employees participating in work slowdowns or work stoppages during the term of the collective agreement (other than refusing to cross a picket line as permitted by the Master Agreements) may be disciplined. Consideration should be given to the following in determining the appropriate disciplinary response:

- are some employees being singled out or are all employees who participated being disciplined;
- are there any mitigating factors which gave rise to the work stoppage;
- did the employees know that the work stoppage was illegal;
- has the Employer consistently disciplined employees for past incidents (if not have the employees been warned that they will be disciplined next time);
- was it a brief work stoppage;
- was the work stoppage peaceful or were there incidents of sabotage, fighting, and verbal and or physical abuse.

Arbitrators expect Employers to react rationally to illegal work stoppages. It is, therefore, important to conduct a thorough investigation into both the illegal work stoppage and the causes of the work stoppage. This includes a review of all of the employee records as well as any other relevant information. It is particularly important for all employees should be treated fairly and equitably in this type of case.

It should be noted that employees holding union office do not have any special duty to the Employer to take steps to prevent other employees from taking illegal job action. These employees may, however, invite a greater penalty for active breaches of the collective agreement because of their greater knowledge and higher degree of responsibility.

H. Actions of Employees During Legal Strikes

Employees are responsible for their actions during a legal strike. They may be subject to either criminal or civil proceedings if their actions result in injury to person or damage to property. They may also be disciplined by the Employer for their actions during a strike. Arbitrators will consider the following factors in determining if the Employer's disciplinary response is appropriate.

- were the employee's actions provoked;
- were the employee's actions planned rather than an emotional outburst;
- was the employee repentant;
- what was the extent of the injuries or damages;
- what was the climate in which the acts were committed (was it a bitter and lengthy strike);
- was the supervisor/subordinate relationship harmed;
- was the discipline consistent or were specific employees singled out for discriminatory treatment.

I. Absence from Work Without Notice or Sufficient Reason

Employees have a responsibility to come to work as scheduled. They are required to explain their actions if they fail to meet this responsibility and they may be disciplined if the reasons for the absences are not acceptable. Arbitrators expect the Employer to investigate each case to determine:

- were the employees aware that they were scheduled to work;
- were there valid reasons for the employees failing to report for work;
- did the employees attempt to contact the employer to advise that they would not be in.

The same principles apply to lateness, and to leaving work early without permission. In these cases, the amount of the shift that was missed should be considered as well as the operational and financial impact of the absences.

J. Fighting Between Employees

Fighting between employees is both disruptive and dangerous and, therefore, worthy of discipline. In determining the appropriate penalty, supervisors should consider:

- the extent to which the fight was vicious and one-sided;
- the extent of physical injuries;
- the use of weapons in the altercation;
- the extent of damage to property;
- the extent to which the fight was premeditated and/or repetitive;
- factors such as provocation;
- any mitigating factors such as extenuating personal circumstances that may have sparked the flare-up;
- the work records of the employees involved.

Generally, more severe disciplinary action is warranted when an employee fights with a supervisor.

K. Sleeping on the Job

Employees are being paid to be awake and working while on the job. In determining discipline for sleeping on the job, supervisors should consider:

- any mitigating personal circumstances that may have contributed to the employees' actions;
- was the 'nap' carefully arranged and planned;
- the possible consequences of the sleeping (did it place anybody or any property in jeopardy).

L. Horseplay at the Worksite

Horseplay, like fighting, is both dangerous and disruptive. Factors such as the following should be considered in determining the appropriate penalty for horseplay.

- the extent to which someone could have been injured or property damaged;
- the extent to which the employee was unduly harassing another employee;
- previous warnings for similar behaviour;
- where the prank is against a supervisor.

M. Alcohol/Drugs in the Workplace

Employer rules prohibit employees from reporting for work under the influence of either alcohol or drugs.

Any employee reporting for work under the influence of alcohol or drugs should be suspended without pay and should be transported home as soon as is reasonably possible. Do not permit those employees to drive themselves home; instead, arrange for a taxi at the employees' expenses, or arrange for another person to drive the employees home. An investigation should be conducted later to verify all of the facts and circumstances of the case, and then discipline may be imposed. This discipline could include a suspension without pay commencing from the time the employees were relieved of their duties.

- Employees who are under the influence of alcohol or drugs are not capable of performing their job duties productively.
- Employees in an intoxicated state are safety hazards to themselves, their fellow employees, the ministry's clients, and both Government and personal property.
- Employees under the influence of alcohol or drugs reflect adversely on the ministry's public image.

In alcohol and drug cases, the issue is usually whether there is a reasonable impairment of employees' abilities to perform their work. Generally, arbitrators accept the clinical symptoms of impairment - odour of liquor on breath, slurred speech, unsteady gait, glazed eyes, and so on. Employees exhibiting these symptoms should be removed from the workplace, pending investigation.

N. Discipline for Employees who are Union Officers

Different discipline is not warranted for Union officers who are employees of the Public Service simply because they are Union officers. Greater responsibility only attaches to Union officials when the combination of their office and their conduct influences the behaviour of other employees -- Did they act in such a manner that the combination of their conduct and attitude influenced the actions of their fellow employees (e.g., leading an illegal strike)?

Along the same lines and, as a general rule, a Union officer is not subject to discipline when he uses aggressive language in his meetings with management on behalf of Union members, particularly if the language is used in private and is nothing more than the everyday language in the particular work environment. It is only when the language is blatantly foul and obscene and questions the supervisor's authority that discipline may be considered appropriate; in such cases, the discussion should be terminated and a decision made as to what level of discipline, if any, is appropriate in the circumstances.

O. Refusal to Work Overtime

Clauses 16.9 of the B.C.G.E.U. and the Nurses Master Agreements give employees the right to refuse overtime except in emergency circumstances. In these circumstances, the right to require employees to work overtime is a management prerogative. Refusal to perform overtime work required by clauses 16.9 of the Master Agreements should be regarded as insubordinate conduct for which discipline is warranted. When overtime is required, supervisors should ensure that employees are advised of the overtime requirement in clear and unambiguous terms and are also advised that refusal to work the overtime will result in disciplinary action.

An employee may legitimately refuse overtime, even emergency overtime, if they have a defensible reason for the refusal. Supervisors should determine if the reasons for refusing the overtime are acceptable. In making such determination, the supervisors might decide to reject the reasons for refusing the overtime or suggest arrangements the employees can make to comply with the overtime request.

The Employer may wish to accommodate some employees by not requiring emergency overtime (e.g., Human Rights Act - "ground of family status - difficulty in arranging childcare at short notice, other religions).