

From: [Davison, John C PSA:EX](#)
To: [Main, Grant TRAN:EX](#)
Subject: Investigation roles and responsibilities - see attached presentation
Attachments: [HR investigation and discipline roles and responsibilities - final JD version2.pptx](#)



Where ideas work

HR Investigations & Discipline: Roles and Responsibilities Refresher

Overview

1. Background Chronology
2. Highlights of Changes Since 2014
3. Roles and Responsibilities
 - Phase 1: Human Resource Investigation
 - Phase 2: Disciplinary Advice
 - Phase 3: Disciplinary Decision
 - Other Termination Decisions



Background Chronology

Dec. 2014 – McNeil Report

- Government accepts all 12 findings and the PSA implements an action plan to address the findings

April 2017 – Ombudsperson's *Misfire* Report

- Government accepts all 41 recommendations and commissions former justice Thomas Cromwell to monitor implementation



Highlights of Changes Since 2014

- Ministries must consult with the PSA upon first hearing of the alleged employee misconduct before responding
- PSA has established criteria for ensuring that appropriate investigators are assigned based on the nature of the investigation
- PSA has established investigation oversight and escalation protocols for major investigations
- Suspensions pending investigation must be with pay – only exception is for bargaining unit employees if ADM of Employee Relations determines that criteria for “without pay” are met

Highlights of Changes Since 2014

- Policy established on internal and external communications during an investigation, including on matters referred to the police
- PSA DM must confirm due process for all disciplinary terminations
- Ministry DM's must receive and consider written Senior Labour Relations (included employees) or legal (excluded employees) advice on a disciplinary termination decision
- **April 2018** – All just cause termination decisions are subject to an independent process review by the Merit Commissioner

The Importance of Clear Roles and Responsibilities

Ombudsperson's *Misfire* Report

...the absence of effective oversight fostered an environment in which the investigation was allowed to expand well beyond the scope initially described in the terms of reference.

...there was confusion or difference of opinion about who was responsible for ensuring human resource investigatory processes were observed. Clarifying executive accountability between the PSA and the ministry...would be beneficial going forward.

HR Investigations and Discipline

Roles and Responsibilities

- Phase 1: Human Resource Investigation
- Phase 2: Disciplinary Advice
- Phase 3: Disciplinary Decision
- Other Termination Decisions

Phase 1: HR Investigation

Ministry Responsibilities

- Ensure that the PSA is consulted upon the Ministry first hearing of the alleged employee misconduct
- In consultation with the PSA, appoint a Ministry co-investigator for the investigation where appropriate
- Ministry and PSA must approve investigation Terms of Reference and jointly oversee the investigation to ensure it stays on track
- Confirm that the investigation was conducted in a fair and thorough manner – don't simply accept findings

Phase 1: HR Investigation

Public Service Agency Responsibilities

- Provide advice and guidance regarding allegations of employee misconduct and determine the extent of the Agency's involvement
- Approve the investigation lead for serious allegations, i.e. potential discipline of a 6 day suspension or greater
 - potential examples include theft, violence, harassment or repeated misconduct
- Employee Relations Specialist will advise on whether it is appropriate for an employee to remain at work during an investigation. PSA and Ministry must mutually agree on the decision.
 - Allegations must be credible and pose a serious and immediate risk to the employer that can't be mitigated through reassignment, closer supervision, etc.



Phase 1: HR Investigation

Lead Investigator Responsibilities

- Must be Agency or Agency-approved investigator for allegations of serious misconduct
- Confirm scope of the investigation in Terms of Reference
- Prepare the investigation report
- Review the investigation report with the Ministry representative and Employee Relations Specialist
- Confirm that the investigation was conducted in a fair and thorough manner



Phase 2: Disciplinary Advice

Public Service Agency

- Provide ministry with advice on disciplinary decision, based on all of the relevant circumstances of the case, including mitigating factors
- The roles of the investigator and the advisor are to be kept separate
- In the event of a potential disciplinary termination, seek written Senior Labour Relations (included employees) or legal (excluded employees) advice on the decision

Phase 3: Disciplinary Decision

Public Service Agency

- Complete the administrative due process and investigation best-practice checklists with the assistance of Ministry representative for disciplinary terminations
- Draft the suspension pending recommendation for termination letter (if applicable) and the termination letter for Ministry DM signature

Phase 3: Disciplinary Decision

Deputy Minister - PSA

- Upon being advised by the ADM of Employee Relations that due process has been followed for a just cause termination, provide formal confirmation to Ministry DM
- If due process has been followed, consider whether termination is best course of action and raise any concerns with the Ministry DM

Phase 3: Disciplinary Decision

Ministry

- Only the Deputy Minister has the authority to terminate an employee for just cause
- For lesser discipline, the decision-maker must have the appropriate delegated authority
- The decision-maker must be properly briefed on the disciplinary decision
 - Includes key investigation findings, labour relations considerations and written LR/legal advice for terminations (contents of binder is in the policy)
 - An Employee Relations Specialist will assist with the preparation of the detailed briefing binder to support a DM's disciplinary termination decision

Phase 3: Disciplinary Decision

Deputy Minister - Ministry

- Upon receiving confirmation of due process from Agency DM for a just cause termination, affirm in writing that the briefing materials regarding the termination decision have been reviewed and considered
- Sign the termination letter
- Ensure that the briefing materials in support of the termination decision are properly documented

Other Termination Processes

Non-culpable just cause terminations

- Follows the just cause disciplinary termination process
- Subject to process review by Merit Commissioner

Rejections on probation

- Same as disciplinary termination, but no formal requirement for written Senior Labour Relations or legal advice – not subject to process review

Excluded without cause terminations

- Requires the Ministry DM's approval – not subject to process review
- Ministry must receive PSA advice on without cause terminations
- PSA is responsible for negotiating and administering excluded employee severance agreements



Where ideas work