

INVESTIGATORY PROCESS REVIEW

2012 Investigation into Employee Conduct in the
Ministry of Health

December 19, 2014

Review conducted by:

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Reviewer's Message

This report considers the 2012 investigation into allegations of employee misconduct in the Ministry of Health. The phrase “employee misconduct” potentially encompasses a broad range of activities. In the Provincial public service, all employees are expected to sign and adhere to *Standards of Conduct* (attached as Appendix “B” to this Report), which establish minimum expectations of employee conduct.

When information about possible employee misconduct comes to its attention, it is critical that the employer conduct an investigation at its first opportunity. The nature and scope of the investigation will vary widely depending on the alleged misconduct. In simple cases, the investigation may only require a conversation with the employee in question to ask whether the employee conducted him or herself in the manner alleged, if so why, and whether there are any mitigating or exacerbating factors that would reduce or increase the employee's personal responsibility.

The allegations of the employee misconduct in this case were not simple and required a broad-ranging investigation.

While looking into the contracting issues, the Ministry became aware that private personal health information may have been disclosed inappropriately to contract researchers. This potential breach of personal information later became the focus of an investigation by the Office of the Information and Privacy Commissioner (“OIPC”), which issued its report on June 26, 2013, many months after the events which are the subject of this review. The OIPC concluded that on three occasions, health data relating to BC citizens was disclosed for research purposes without appropriate security measures in place. The report found that the breaches occurred because of a lack of effective governance, management and controls within the Ministry.

Because of its knowledge of the inappropriate release of information and pursuant to its legal obligations, the Ministry was required to make a timely disclosure to the public of the potential breach. It did so in part through a media release and public statement by the then Minister and

Deputy Minister on September 6, 2012. At the same time as they reported the disclosure of health information the media release and public statement disclosed the fact that Ministry employees had been suspended or dismissed and that the matter had been referred to the RCMP. The disclosure of disciplinary consequences for seven Ministry employees put the issue of employee misconduct in the public domain. Unfortunately for the seven employees and many others, this issue has remained in the public eye.

This report is not intended to, and does not, answer questions regarding the specific allegations against the employees. Nor does it answer any lingering questions regarding whether any decision made about the employees was legally or factually sound. This report focuses exclusively on the process leading to the decision making.

While my report is critical of the process followed which resulted in the dismissal of Ministry employees, I wish to be clear that any comments made in this report regarding flaws in the investigation process are not to be interpreted as conclusions about the merits of the disciplinary decisions or any fault on the part of individuals involved in the process.

OVERVIEW

Terms of Reference

On October 3, 2014, I was asked by the head of the Public Service Agency (“PSA”) to conduct a review of the public service response to allegations of inappropriate conduct in 2012 by employees of the Ministry of Health (the “Ministry”) and to report back to her. The PSA sought this review with a view to improving both public service processes and procedures in conducting investigations into employee misconduct and the decision-making that follows such investigations.

The terms of reference for this review are attached as Appendix “A”. At my request, the date for my delivery of the report was changed to December 19, 2014. I was also directed to deliver the report to the Deputy Attorney General.

In accordance with the terms of reference the purpose of this review is not to assess the merits of the decisions to discipline or dismiss any employee during or following the investigation. Neither is its purpose to make findings of fault with respect to any of the individuals who participated in the investigatory or decision-making process or to provide the basis for such inferences to be drawn.

In this report I will:

1. Provide a chronology of steps taken in the investigations into the allegations against Ministry personnel and the actions taken against those personnel between March 28, 2012 and October 22, 2012;
2. Outline the practices, policies, procedures and training in place in the public service for responding to allegations of misconduct against government personnel, and determine whether they were adhered to; and
3. Assess the process and procedures used in the investigations against accepted labour and employee relations practices.

Background

In March 2012, an individual raised concerns with the Office of the Auditor General (“OAG”) regarding contracting and research practices within the Ministry. In May 2012, the Ministry formed a review team (the “Ministry Review Team”) to review the “procurement, grant awards and contracting, data access and related agreements and intellectual property practices in the Research and Evidence Development section of the Pharmaceutical Services Division, Ministry of Health” (the “Ministry Review”). Out of scope were issues with the management of personnel.

During the course of the Ministry Review, the Ministry Review Team became concerned that employees within the Ministry had acted in breach of the BC Public Service *Standards of Conduct*. An investigation team, which included a PSA representative and both of the members of the Ministry Review Team (the “Investigation Team”), was tasked with looking into issues of potential employee misconduct (the “Investigation”).

A number of Ministry employees were disciplined. Within the scope of my review is the process leading to the decisions to suspend seven Ministry employees without pay and to dismiss six of the employees from their employment in the public service (the “Disciplinary Decisions”).

Methodology

In conducting my review I met with or spoke to 35 individuals who were involved in or affected by the Investigation. These included the members of the Investigation Team, Executive members of the Ministry and individuals working within or for the PSA, Government Communication and Public Engagement (“GCPE”), and the Ministry of Justice.

Each of the seven employees subject to the Disciplinary Decisions pursued legal action, and were represented either by counsel, the Excluded Employees Association (“EEA”) or the BC Government and Service Employees’ Union (“BCGEU”). Early in my process I made efforts, through their representatives, to obtain the perspective of each of the employees. Only one met with me in person. I met with the BCGEU shop stewards who attended investigatory interviews

with bargaining unit employees as well as the EEA representative who attended investigatory interviews with two of the affected non-union employees.

A significant body of material was provided to me in the course of this review. This included: transcriptions and recordings of the interviews conducted by the Investigation Team; notes and materials produced by the Investigation Team; policies and other materials from the PSA; the body of materials reviewed by the Investigation Team; and emails and other communications from individuals who wished to provide comments for my consideration. In addition, I reviewed records from counsel with the Ministry of Justice which are confidential and/or privileged in nature and were provided to me on a basis that require me to preserve that confidentiality and privilege.

SUMMARY OF FINDINGS

The Investigation and decision-making process did not follow the PSA's intended model for investigations into serious misconduct, and did not follow the best practices for engaging in such investigations in a number of important respects.

By the time the Investigation Team was formed, the Ministry Review Team had already reached the conclusion that some employees had engaged in misconduct, even though this was outside the scope of its terms of reference. As a result, the participation of the members of the Ministry Review Team as members of the Investigation Team compromised the integrity of the Investigation. When the Ministry Review Team transferred the information it gathered to the Investigation Team, it presented a clearly developed theory of the alleged misconduct. This theory became reflected in the lens through which documents were reviewed and interviews conducted. In other words, the investigation process was not undertaken with a suitably open mind.

This was compounded by the lack of independent review (for example by a PSA Employee Relations Advisor) of the findings of fact and evidence gathered by the Investigation Team. Contrary to the model the PSA has established, no one at arm's length from the Investigation Team

reviewed the findings of fact and evidence gathered to assess whether there was sufficient evidence to support the decisions to dismiss for just cause.¹

¹ Pursuant to the *Labour Relations Code*, union members may only be dismissed by their employer for “just cause”. Employees who are not members of a bargaining unit may be dismissed without cause by providing reasonable notice of dismissal or pay in lieu of notice, commonly called severance, or with just cause in which case there is no obligation to provide notice or severance. Whether just cause exists will depend on the circumstances of each case.

CHRONOLOGY OF EVENTS

Note – Meetings or consultations with legal counsel are described in Appendix “D”.

March 28, 2012 - The OAG informs representatives of the Ministry that the OAG has received an anonymous complaint alleging contracting irregularities and inappropriate research practices in the Pharmaceutical Services Division (“PSD”) of the Ministry.

Date unknown - Three Ministry employees are asked to look at a single program as a sample to assess whether there were any contracting or other irregularities.

May 16, 2012 – A memo is prepared by the three Ministry employees describing contracting practices with respect to a specified drug initiative. Contracting irregularities, blurring of roles and preferential treatment of some drug researchers are identified as concerns.

May 21, 2012 – Two individuals, a representative from the office of the Chief Information Officer (“CIO”)² and a Ministry employee, are tasked with reviewing procurement, grant awards and contracting, data access and related agreements, and intellectual property practices in the Research and Evidence Development section of the PSD.

May 29, 2012 - Terms of reference for the Ministry Review are prepared. They are attached as Appendix “C”. Out of scope are matters relating to the management of personnel.

June 7, 2012- June 21, 2012 – The Ministry Review Team conducts fact-finding interviews with key employees. No audio recordings are made of the interviews.

² In this report I have referred to this individual as a representative from the office of the CIO. Prior to the events considered in this review the individual had been seconded to the Ministry of Health from the CIOs office for the purpose of conducting a different review into access to health data. As well, during the Ministry Review the individual was the successful applicant in a competition for a position within the Ministry of Health. Although he/she assumed the duties of the position for a short time, on August 22, 2012 he/she was returned to his/her position with the CIO and tasked with conducting the Ministry Review on a full-time basis.

June 8, 2012 – The health data access of three Ministry employees in the program area under review is suspended.

Week of June 18, 2012 – The PSA is contacted by the Ministry as a result of concerns regarding employee misconduct which came to the attention of the Ministry Review Team. An investigator and Employee Relations Officer from the PSA are assigned to the file. The Investigation Team is assembled including the two members of the Ministry Review Team, the PSA investigator, and a representative from the Ministry's Human Resources staff. No terms of reference are prepared for the Investigation Team.

June 22, 2012 – Representatives from the Ministry Review Team, the PSA, Ministry Executive, the OAG, and the Office of the Comptroller General ("OCG") meet to discuss the information gathered to date during the Ministry Review.

June 27, July 3, and July 4, 2012 – PSA representatives and a member of the Ministry Review Team meet to discuss the information gathered during the Ministry Review.

July 6, 2012 – A first draft of the Ministry Review report is prepared. The draft document identifies misconduct by Ministry employees including:

- Research agendas and priorities are developed without oversight and decision making by the responsible employees.
- Ministry employees are not appropriately monitoring data access and use.
- Processes for data access are not followed and projects lack necessary documentation.

Breaches of the Public Service *Standards of Conduct* are also found, including breaches of the duty of loyalty, breaches of confidentiality, conflicts of interest, and collusion between Ministry employees and contractors and external researchers.

The draft report recommends that the PSA conduct an investigation and review into the alleged breaches of the *Standards of Conduct*, and recommends corrective action with respect to some employees, who are identified by position.

July 11, 2012 – The Ministry assigns a Ministry employee with knowledge of contract processes to assist with the Investigation.

July 17, 2012 – Three Ministry employees are suspended without pay pending an investigation into allegations of workplace misconduct. The letter of suspension confirms that the employer “... will provide you with an opportunity to respond to the findings of the investigation and any recommendation regarding your employment.”

July 18, 2012 – An internal communication to employees within the PSD advises that a named employee was the “subject of an internal review and is at home”.

July 18, 2012 – The second draft of the Ministry Review report is prepared. This draft is significantly shorter, but comes to substantially the same findings as the first draft.

August 2012 – (*specific date unknown*) –Ministry representatives, the CIO representative on the Investigation Team, and OCG representatives meet with the RCMP to discuss the draft findings set out in the Ministry Review report.

August 1, 2012 – The Investigation Team commences interviews. In total, 38 interviews with 24 individuals are conducted between August 1, 2012 and October 19, 2012.

August 1, 2012 – Two Ministry employees are suspended without pay pending investigation, bringing the total number of employees suspended to five.

August 9, 2012 –The Deputy Minister, Ministry senior Executives and Investigation Team members meet.

August 10, 2012 – The Deputy Minister, Ministry senior Executives, Investigation Team members and representatives of GCPE meet.

August 16, 2012 – The third draft of the Ministry Review document is prepared. The conclusions set out in the draft remain substantially the same as in the previous draft. The document remains in this form and is not finalized.

August 17, 2012 –The Deputy Minister, Ministry senior Executives, Investigation Team members and representatives of GCPE meet.

August 24, 2012 –The Deputy Minister, Ministry senior Executives, Investigation Team members and representatives of GCPE meet.

August 27, 2012 – An Information Management specialist is assigned to assist the Investigation Team.

August 28, 2012 –The Deputy Minister, Ministry senior Executives, Investigation Team members and representatives of GCPE meet.

August 28, 2012 – A sixth Ministry employee is suspended without pay pending investigation.

August 29, 2012 – The employment of one of the Ministry's employees is terminated. No opportunity is provided to this employee to respond to the findings of the Investigation or the recommendations regarding his/her employment.

August 29, 2012 – The Deputy Minister, Ministry senior Executives, Investigation Team members and representatives of GCPE meet.

August 31, 2012 – A seventh Ministry employee is suspended without pay.

August 31, 2012 – The Deputy Minister, Ministry senior Executives, Investigation Team members and representatives of GCPE meet.

September 2 and 4, 2012 – The Investigation Team begins a review of the content of cds and data sticks found in the desk of one of the suspended employees.

September 5, 2012 – The Deputy Minister and Investigation Team members meet twice.

September 6, 2012 – The Ministry Review Team prepares a Briefing Note for the Deputy Minister. The Briefing Note does not address the employees' suspensions or dismissals.

September 6, 2012 – Three of the suspended Ministry employees are dismissed from their employment, bringing the total number of employee dismissals to four. None are given an opportunity to respond to the findings of the Investigation or the recommendations regarding their employment.

September 6, 2012 – A News Release is issued by the Ministry. The Minister and Deputy Minister make a public announcement which includes a reference to the dismissal of four employees, the suspension of three employees, and the involvement of the RCMP.

September 7, 2012 –The Deputy Minister, Ministry senior Executives, Investigation Team members and representatives of GCPE meet.

September 10, 2012 – A non-union employee who was suspended without pay asserts that he/she has been constructively dismissed, ending his/her employment with the Ministry.

September 13, 2012 – The Deputy Minister, Ministry senior Executives, Investigation Team members and representatives of GCPE meet.

September 13, 2012 – A fifth suspended Ministry employee's employment is terminated. He/she is not given an opportunity to respond to the findings of the Investigation or the recommendations regarding his/her employment.

October 22, 2012 –A sixth suspended Ministry employee's employment is terminated. He/she is not given an opportunity to respond to the findings of the Investigation or the recommendations regarding his/her employment.

Following October 22, 2012 - The Investigation Team continues its Investigation. All former employees grieve (in the case of bargaining unit employees) or commence litigation (in the case of the employees not included in a bargaining unit). Six cases are settled, one remains outstanding.

PSA INVESTIGATION RESOURCES

There are approximately 31,500 employees in the Provincial Public Service. The *Standards of Conduct* are provided to all employees and establish the expected conduct of all government employees. Although the vast majority of public service employees are never the subject of an allegation of misconduct, such allegations do arise and are diverse in their scope and complexity. Responses to such allegations need to be tailored to the nature of the allegations and the specific circumstances of the employee. The seriousness of the allegations will dictate the form of the investigation into the allegations.

In most cases of alleged employee misconduct, the investigation into the allegations will be conducted by employees in the same ministry. Advice may be sought during the investigation from the PSA or from lawyers with the Ministry of Justice. Typically, the PSA is contacted if the employee being investigated is a union member, and either the PSA or the Ministry of Justice may be contacted if the employee is excluded from the union.

In 2011 the PSA changed the manner in which it conducted or participated in serious or complex employee investigations by creating an investigations group. Currently there are 4 full-time and 7 part-time investigators in the group. The investigator's position is viewed as a developmental position within the PSA.

A matter is deemed sufficiently complex to warrant inclusion of a PSA investigator when there are allegations of a significant breach of the *Standards of Conduct*, bullying, harassment or misuse of authority, significant off-duty misconduct, or a breach of confidentiality.

There are no regulations, guidelines or formal policies regarding consultation between ministries and the PSA. Ministries are not obligated to use the services of the PSA and may proceed using their own resources. The PSA investigators become involved in an investigation at the invitation of the ministry.

Investigations may be conducted jointly between a PSA investigator and a ministry representative, usually where knowledge of the program area or subject-matter expertise is necessary.

At the conclusion of an investigation, a report setting out their findings is typically prepared by the investigators. A copy of the report is provided to the ministry, usually to the manager or director of the employee being investigated. A copy is also provided to an Employee Relations Specialist from the PSA, whose role includes making recommendations regarding whether a disciplinary or corrective response is appropriate, and if so, what it should be.

If dismissal is a possible or recommended response, the options for proceeding and strengths and weaknesses of the case are discussed with senior executives within the ministry. Although the *Public Service Act* grants the authority to dismiss public service employees to deputy ministers, it is common that a deputy minister will act based on recommendations from executives within the ministry, with advice as requested from the PSA or lawyers within the Ministry of Justice. A report containing options and recommendations for the deputy minister's consideration is sometimes, but not always, prepared.

Other than dismissal decisions, decisions regarding serious discipline are generally made at the executive level within ministries.

In the model adopted by the PSA, it is intended that the investigator or investigation team may attend meetings with the decision-makers to clarify issues surrounding the investigation, but not to participate in discussions regarding recommended outcomes. Thus, it is intended that the investigator role is separate from the advice and support role within the PSA and that these roles are not filled by the same person in relation to the same matter.

Training and Policies

Those who fill the role of investigators are provided training by the PSA in conducting a fair investigation. More recently, newly hired investigators are paired with a mentor and will "shadow" their mentor through several investigations before proceeding on their own. Post-dating

but unrelated to the Investigation, protocols have been developed for joint investigations with other agencies, including the CIO.

In the course of my review I was provided with training manuals prepared by the PSA for training of ministry personnel as well as materials prepared by a contracted labour lawyer as part of training provided to the PSA investigators. Both documents provide a clear articulation of best practices when conducting investigations into allegations of employee misconduct.

I will not repeat all of the principles articulated in the PSA training material provided to investigators but will note some principles that are germane to my findings:

A highly specialized internal investigator or an external investigator is preferred for investigations that involve “high profile”/contentious cases that may attract media/political attention; or for those investigations that are likely to involve a significant number of witnesses, significant/complex legal issues . . . or potentially significant outcomes (i.e. termination).

...

All investigations need to be conducted in an objective and independent manner by someone who truly understands and applies the presumption of innocence^[3] – in form and substance.

...

Investigators are not prosecutors. Their mandate is not to interrogate or “go after” a particular person to reach a particular outcome.

...

All relevant facts should be investigated. This should include investigating all allegations, and verifying any proposed alibis or other exculpatory evidence.^[4]

...

³ Although the terms “presumption of innocence”, “alleged”, “alibis” and “exculpatory evidence” are used in the materials, these do not imply that the issues under investigation necessarily involve criminal behaviour. These terms are used in labour and employment law in relation to issues of misconduct and relate to the individual’s personal responsibility for the alleged misconduct.

⁴ See Footnote 3.

Ensure any collective agreement requirements for representation are honoured. Excluded employees, particularly if they face potential discipline/dismissal, should be told of the purpose and seriousness of the meeting and their entitlement to have someone attend with them at the interview.

...

Questions to the employee or others should be open-ended and open-minded. Questions should not be asked with an “end-result” or anticipated outcome” in mind.

...

[Employees whose conduct is under investigation] should be given advanced notice of the nature of the investigation. They should not be blind-sided at an interview and asked to respond immediately. In more serious cases that could lead to termination, more advance particulars should be provided.

...

Give the [employee] an opportunity to consider the particulars and allow him/her time to respond and explain his/her perspective.

...

Other than these training materials relating to investigatory processes, I was told that there are no formal written guidelines or policies relating to the conduct of investigations into employee misconduct.

Although neither the PSA nor the ministries have formal guidelines or policies regarding investigations, they may take guidance from legal precedents from the courts and employment-related administrative tribunals with respect to any legal obligations which may arise in the context of an investigation into alleged misconduct. They may also seek legal advice.

DID THE INVESTIGATION ADHERE TO BEST PRACTICES?

The Creation and Composition of the Investigation Team

The anonymous allegations brought to the attention of the Ministry in March 2012 included allegations regarding potential employee misconduct. When the Ministry first became aware that the OAG had received a complaint regarding contracting and other issues within the PSD, it asked three Ministry employees to look at a single drug initiative as a representative example, and to identify any concerns arising from their examination. The employees produced a memo which highlighted some concerns about the Ministry's contracting practices.

Following receipt of this memo, the Ministry developed terms of reference for a review to be conducted by a representative of the Ministry with knowledge of contract practices, as well as a representative of the CIO. This became the Ministry Review Team. I understand that the contracting practices memo was not provided to either the Ministry Review Team or later, to the Investigation Team.

By the time the Ministry assembled the Ministry Review Team, it had knowledge that the fact-finding might uncover evidence of employee misconduct. This is reflected in the Background section of the Ministry Review Team's terms of reference, dated May 29, 2012, which includes the statement: "In addition concerns were also alleged regarding inappropriate data access arrangements, intellectual property infringement and code of conduct conflicts with employee contractor relationships including preferential treatment." (Emphasis added).

The Ministry Review Team met on a number of occasions with a number of individuals, many of whom later became the subject of the Investigation into alleged misconduct.

The Ministry informed the PSA of the concerns regarding potential employee misconduct in June 2012. By this time the Ministry Review Team had undertaken a review of the computer drives of some employees and uncovered a number of internal email and other documents which raised cause for concern. These concerns were outlined in a draft document originally dated July 6, 2012.

At least one version of the draft was reviewed by several senior Executives within the Ministry and by the new members of the Investigation Team, but the report was never finalized.

The various drafts of the Ministry Review report confirm that the Ministry Review Team had unearthed a great deal of information which raised concerns regarding employee misconduct. Despite the fact that their terms of reference stated that matters pertaining to management of personnel were out of scope, the draft Ministry Review Team report includes findings of misconduct. Some employees found to have engaged in misconduct are identified by position.

One of the recommendations of the Ministry Review Team was to refer the issue of employee misconduct to the PSA for investigation. Instead, the Ministry joined the Ministry Review Team with the human resource specialists asked to investigate employee misconduct. This decision was made with the best of intentions. The Ministry Review Team had already done a significant amount of work, in particular it had reviewed a volume of documents. There undoubtedly were efficiencies to be achieved by not duplicating the work already performed, however, I find that the composition of the Investigation Team had unintended effects.

The Ministry intended that the Ministry Review Team would operate in tandem with the human resource specialists, but that each would have distinct areas of responsibility. The Ministry Review Team would continue its work examining contracting and data access issues while the human resources specialists would focus on the allegations of employee misconduct. While this was the intent, this line was already blurred because the Ministry Review Team had earlier concluded that there had been employee misconduct.

Before any formal interviews by the Investigation Team commenced, the members of the Investigation Team met several times to review the material and issues identified by the Ministry Review Team as problematic. In the transfer of information to the new members, there was no meaningful opportunity for them to review and assess the information with fresh eyes. Because of the complexity of the information gathered, when the information was presented by the Ministry Review Team, explanations and analysis of the significance of the information were also provided

to the Investigation Team. As a result, the Investigation Team began its function with a clearly developed theory of the case.

Although it would have been a lengthy exercise to have the new members conduct their own review and analysis of the material, it is possible that had they done so, the Investigation Team may have interpreted the information differently.

Further blurring the distinction in the roles is the fact that the Ministry Review Team did not confine its inquiries to the contracting and data access issues during the employee interviews. During the interviews conducted by the Investigation Team, the role of the individual members of the Investigation Team was not clearly established. It was intended that the members of the Ministry Review Team would pursue issues regarding contracting and data management, and that the human resource specialists would focus on the issue of possible employee misconduct. Although this was the intent, the role of each of the interviewers was not made clear to the interviewee and the distinction became blurred. While the interviewers advised me they understood their respective roles, that distinction was not manifest in the questions they asked. In fact, it is clear from the transcripts and audio recordings that the interviewers did not limit their questions to topics within their assigned roles.

I find that the Ministry should have begun its formal review of employee misconduct at the same time as, but separately from the Ministry Review.

I find that the inclusion of the Ministry Review Team members on the Investigation Team did not meet best practices in that the Investigation was not conducted with a suitably open mind.

Experience of the PSA Investigators

Within the PSA, the investigator position is considered a developmental position. Most successful applicants have diplomas or degrees in Human Resource Management, and have prior experience in human resources. However, for the most part, investigation skills are learned experientially, by

conducting investigations. The training materials provided by the PSA certainly assist to remind investigators of key principles, but does not replace hands-on experience.

The PSA's training material suggests that the use of a more experienced or an external investigator is warranted when an investigation may involve a significant number of witnesses, includes significant or complex legal issues, or may lead to a significant outcome for the employee, such as dismissal. In the case at hand the number of witnesses, the complexity of the issues and the possibility of a significant outcome were well known to the Ministry and the PSA at the time the Investigation Team was formed. Not known to the Ministry or the PSA at the time was the media, political and public attention that the matter eventually attracted.

My comments in this section are not intended as criticism of the experience, training or skills of the particular investigator appointed by the PSA. However, it is difficult to imagine a more compelling set of circumstances where consideration of appointing an external or very senior investigator would be warranted based on the criteria set out in the PSA's training materials.

I find that the nature of the Investigation warranted consideration of the use of an external investigator with significant experience in complex investigations.

Privacy Issues

I spoke to a cross section of employees working in the PSA, all of whom confirmed that both during and following investigations into employee misconduct, care is used to ensure that the name of the person being investigated and the consequences, if any, arising from the investigation are not disclosed without compelling reason. Even in circumstances where an employee has engaged in serious misconduct, the employee's or former employee's right to privacy is respected. The information may enter the public domain if the employee later commences litigation or, in the case of a unionized employee, a grievance proceeds to arbitration.

On the day following the suspension of three Ministry employees, an internal memorandum was circulated by a Ministry employee within the PSD, advising that a named employee was the

“subject of an internal review and is at home.” I am unable to say whether the fact of the Ministry Review or the Investigation were well known within the Ministry prior to the date of this communication, but certainly these facts were well known thereafter.

The suspensions of senior employees, together with the detailed review of their computer and email history (which became known to some Ministry employees) created a sense of trepidation among employees arising from the concern that their own conduct would come under similar scrutiny.

By the time the Ministry released a media statement and the Deputy Minister and Minister of the day spoke publicly about the data breach in September 2012, it was not difficult for many Ministry employees to discern which of their colleagues had been suspended or dismissed. The additional information that the matter had been referred to the RCMP was cause for further anxiety to many employees working in the same departments as the affected employees.

The resulting climate of fear and anxiety within the Ministry had a negative impact on the productivity of many employees. I was told that while the Investigation was ongoing, employees would seek approval of senior managers before completing routine tasks, out of concern that their actions would also come under the same scrutiny. Employees called into interviews with the Investigation Team were manifestly cautious in their responses for similar reasons.

I find that the initial internal disclosure of the name of at least one of the suspended employees, and the later public statements regarding the suspensions and dismissals of Ministry employees, did not meet best practices. The internal disclosure naming a suspended employee should not have occurred. Employees should know that their privacy will be respected, even if it is determined that misconduct has occurred.

Suspensions without Pay, Pending Investigation

It has become the practice of the PSA to suspend both included and excluded employees without pay when there is an investigation into serious misconduct by the employee, pending any decision

regarding his/her employment status. Consideration is usually given to the seriousness of the allegations, the strength of the evidence supporting the allegation, and the feasibility of re-assigning the employee during the investigation. The rationale for suspending without pay pending investigation includes anticipated negative public response if public employees are allowed to continue to perform their duties and responsibilities in the face of serious allegations, and continue to be paid while investigations into alleged serious misconduct are ongoing.⁵ During the Investigation the Ministry suspended seven employees without pay. The employees in question were without compensation for periods ranging from one to nine weeks.

The Ministry's decision to suspend seven employees without pay hindered the Investigation in a number of manners.

The suspensions increased the time pressure on the Investigation Team to expedite the Investigation and on senior Ministry Executives to make decisions regarding the status of the impacted employees' employment.

The non-union employees under suspension took the position that the decision to suspend them without pay was a breach of their employment contracts and constituted a constructive dismissal. One of the excluded employees chose to treat his/her employment as having ended due to the constructive dismissal, and as a result did not attend interviews with the Investigation Team. This individual may have had information that was of value in the Investigation process.

Further, the suspensions affected the quality of the responses by the employees under investigation. It is not surprising that when the employees in question attended meetings with the Investigation Team, their responses to the questions put to them were frequently guarded, defensive or even at times, angry. I will discuss the tone of the interviews in more detail later, however, on reading the

⁵ I offer the following observations: although Section 25(h) of the *Public Service Act* permits the Lieutenant Governor in Council to make regulations regarding the suspension of employees, no regulation exists regarding the circumstances in which an employee may be suspended without pay. With respect to excluded employees there are no formal contractual provisions regarding suspensions without pay. For BCGEU members, suspensions are addressed in the Collective Agreement.

transcripts and listening to the recordings of the interviews, there is little doubt that the suspended employees were tense or worried. At least some part of this concern can be directly attributed to the fact that many of the employees had been out of the workplace without compensation for some time prior to being interviewed.

As well it was known by some employees working at the Ministry's offices at 1515 Blanshard Street that co-workers had been suspended from duties and were under investigation. This knowledge created a heightened anxiety within the workforce, particularly for those who worked closely with the suspended employees, and those who were called to interviews with the Investigation Team. More than two years later that heightened anxiety remains palpable, and was evident with many of those with whom I spoke. The fear and anxiety affected the quality of information that was provided to the Investigation Team. Responses were often guarded and incomplete.

I find that suspending the employees without pay pending investigation in this case negatively impacted the quality of responses of both the suspended employees and their co-workers. I find that if the affected employees had not been suspended without pay, the Investigation Team would have received more open responses from employees.

Resources available to the Investigation Team

The subject matter of the Investigation was extremely complex and involved a review of legislation, numerous technical contractual documents, business structures and relationships and thousands of emails and other documentary evidence created over a period of several years. The Investigation Team included representatives with backgrounds in technology, contracting, privacy and data disclosure, human resources and labour relations. The Investigation Team also had access to an employee relations specialist at the PSA, senior managers or Executives within the PSA and to lawyers within the Ministry of Justice.

I find that the Investigation Team had adequate resources to review and understand the complex web of issues which generated its creation.

Number of Investigation Team participants in interviews

In most of the interviews conducted by the Investigation Team, at least three or four members of the Team were present. This was detrimental for a number of reasons. Some of those interviewed found the very number of interviewers present intimidating.

As well, in some cases one interviewer would begin to question the interviewee regarding a particular subject matter, and before the matter could be fully explored another interviewer would begin to focus on a different topic. The interviewers would not always return to the original topic to complete the discussion.

I find that the number of interviewers participating in employee interviews was detrimental to conducting an effective interview.

Representation

When the Ministry Review Team conducted its meetings, the interviewees were told that the purpose was fact-finding. The interviewees were not given an opportunity to have a representative present. Although there are only a few notes of these interviews, it is apparent that information gathered in these interviews was considered in the preparation of the draft Ministry Review report, which concluded that there was employee misconduct.

When the Ministry Review Team was struck, the Ministry had enough information to recognize that it may need to look into employee conduct. The internal memo prepared on May 16, 2012, contained information supporting at least some of the concerns that had been brought to the attention of the OAG.

Once the Investigation Team was formed, notice was more consistently provided to employees that representatives were permitted in the meetings.

In the case of the BCGEU members, the collective agreement requires that the member have an opportunity to have a shop steward present if there is the possibility of disciplinary action. In each of the interviews of a BCGEU member, either a shop steward or staff representative was present.

With respect to the non-union employees, there is no contractual or other legal obligation requiring representation. However, it is the practice of the PSA to give employees under investigation an opportunity to have a representative present. The suspended employees were represented during their interviews either by the EEA or by legal counsel.

If the Ministry had commenced its investigation into the concerns about employee misconduct in the spring of 2012 in concert with its review of contracting practices, it is more likely that the interviewers' minds would have turned to the question of employee representation at an earlier date.

I find that the Ministry should have been aware that the Ministry Review might point to some level of employee misconduct. Had the Ministry began its formal review of the employee misconduct in concert with the Ministry Review, it is more likely that the issue of employee representation would have been addressed in accordance with the PSA's practice.

Effectiveness of the Investigation Team's Interviews

Prior to interviewing an employee who is alleged to have engaged in misconduct, an investigator will typically review documents and interview witnesses to the events so that all issues of concern can be addressed with the employee so that he/she has a fair chance to respond. Follow-up interviews may be necessary to clarify previous answers, to present new information or if the previous interview adjourned before all issues had been canvassed.

The purpose of the interview is to provide the employee with a full and fair opportunity to respond to the issues of concern. A variety of techniques may be used during the course of the interview to test the completeness and accuracy of the employee's responses. These techniques may include a range of question formats, pace and tone of voice.

In this section, I focus on whether the interviews conducted by the Investigation Team were effective in achieving the goal of giving the affected employees a full and fair opportunity to respond.

In the course of my meetings in preparation of this report, the interviews conducted by the Investigation Team were frequently described as an interrogation or an inquisition, rather than an investigation. I have had an opportunity to read the transcripts of most of the interviews conducted, and, in addition, heard the audio recordings of a number of the interviews. From these transcripts and recordings, as well as my own interviews, I have concluded that the interview methods used by the Investigation Team did not always meet best practices. I provide an example of those flaws by reference to the interviews of one of the employees under investigation (who I refer to in this section as the employee).

In total, the employee met with the Investigation Team on three occasions. The first of these interviews was one of the earliest conducted by the Investigation Team after it was formed, and was led by the PSA investigator. The constitution of the interview panel changed for the second and third interviews.

The tone and approach used in the first interview was generally appropriate and effective. Some care was taken to explain the purpose and intent of the interview. At the beginning of the interview, the questions asked were generally open-ended. Adequate time was given for response. Later in the interview, a different member of the Investigation Team began to ask questions. Although the tone of the interview remained respectful, the nature of the questions became less open-ended and more directive. Although this form of questioning may be necessary in an interview (for example if an interviewee is not co-operative or forthcoming, or is unfocussed in his/her answers), here, the technique was not necessary, as the employee was co-operative.

At the beginning of the second interview, the employee advised the Investigation Team that the suspension was stressful and impacting his/her health and the health of his/her family.

The second and third interviews with the employee were far less effective for a number of reasons:

- a) on a number of occasions, while one member of the Investigation Team was asking a specific line of questions, another member would interject and lead the questions in another direction. Often, the interviewer would not return to the initial line of inquiry;
- b) frequently, one member of the Investigation Team would make lengthy statements, suggesting a theory of the events, rather than asking open-ended questions designed to solicit the employee's own response;
- c) many questions were asked in the form of cross-examination, meaning the question suggested the intended answer. While this is a useful technique on some occasions, it is not a reliable method for obtaining complete information, particularly if it is used early in the interview process or to excess, and may suggest that the interviewer has a closed mind on the topic;
- d) one interviewer often interjected with a new question before the employee was able to complete his/her response to the initial question;
- e) when the employee was provided with documents, additional questions would be asked while the employee was reviewing the document. As a result the employee did not have adequate time to review the proffered document before being questioned on it;
- f) incomplete documents were provided to the employee to review. In particular, many of the documents discussed were emails authored or received by the employee. Often the email provided was an extract from a much lengthier string of emails and attachments, precluding the employee from fully appreciating the context of the issue in question or from being reminded of any exculpatory explanation for the proffered email;

- g) although the interviewers did not yell nor was the volume inappropriate, one interviewer adopted a tone of voice that can be described as snide; and
- h) although the employee did not have access to the transcripts of previous interviews, the interviewers suggested that responses in the current interview were not consistent with the employee's responses given in a previous interview. In some cases, the characterization of the statements in previous interviews was inaccurate.

On review of the latter interviews with the employee, I am left with the impression that the Investigation Team had a "closed mind" to the role of the employee in the issues discussed.

This example illustrates the manner in which the Investigation interviews did not, at all times, align with best practices. The interviews also did not align at all times with the PSA training standards which include:

1. Investigators are not prosecutors. Their mandate is not to interrogate or "go after" a particular person to reach a particular outcome;
2. All relevant facts should be investigated. This should include investigating all allegations, and verifying any proposed alibis or other exculpatory evidence; and
3. Questions to the employee or others should be open-ended and open-minded. Questions should not be asked with an "end-result" or "anticipated outcome" in mind.

I find that the interviews did not always give an adequate opportunity for employees to provide a full and fair response.

Documents

I have noted problems with the manner in which documents were produced to interviewees in the course of the interviews.

I was advised that it is not the usual practice of the PSA when conducting disciplinary interviews to provide documents to interviewees in advance of the interview. By providing documents during the interview, the intent is to obtain an unrehearsed response to any questions arising from the document. This is a common practice in most workplaces, and is not unique to the PSA.

In this case, the failure to provide documents in advance of the interviews hampered the ability of the employees to fully respond.

The Investigation included the review of a significant volume of material. Much of the material had been generated many years earlier. Interviewees should not be expected to recall accurately their involvement in the creation or review of technical documents that are several years old. Further, employees in most business settings, and perhaps in particular in government settings, send and receive a significant volume of email every day. Email communication is often read and replied to in haste and with an economy of both words and thought. It is frequently open to misinterpretation. In addition, it can be challenging for many people to read documents carefully while others are watching. There is a tendency to rush, which in turn hampers comprehension and retention of content.

In this case, the quality of responses provided during the interviews may have been compromised by the interviewees' lack of adequate opportunity to review and consider the documents and emails, either in advance of the interviews, or during the interviews.

The PSA's investigation training materials contain the following reminders:

1. [Employees] should be given advance notice of the nature of the investigation. They should not be blind-sided at an interview and asked to respond immediately. In more serious cases that could lead to termination, more advance particulars should be provided; and
2. Give the [Employee] an opportunity to consider the particulars and allow him/her time to respond and explain his/her perspective.

I find that interviewees did not have an adequate opportunity to review documents and respond to questions arising from them.

Final Opportunity to Respond

Although the investigatory meetings did give the employees some knowledge of the employer's concerns and some opportunity to respond, in the letters of suspension pending investigation, employees were informed that they would be given an opportunity to respond to the findings of the investigation and any recommendations regarding their employment. At no time were the employees given this final opportunity to respond. Each was given a letter outlining the reasons for dismissal. No opportunity was provided for any discussion or response.

It is not always necessary to give an employee who has had a full and fair opportunity during the investigation process to respond to specific allegations, a further opportunity to comment on the conclusions of the investigation. However, in this case the employees were told that they would have that opportunity, but it was not provided.

I find that because the employees were told that they would have an opportunity to respond to the Investigation Report and any recommendations regarding their employment, such opportunity should have been provided before a final decision regarding discipline was made.

Decision Making Process

Two of the most difficult questions I considered during my review were who effectively made the dismissal decisions, and what factors were considered. These questions remain unanswered.

Although the Deputy Minister signed the letters of dismissal for each of the employees, no one has taken responsibility for making the effective recommendation to dismiss the employees. Instead, those most likely to have made the effective recommendation all pointed to someone else.

Although I advised those I interviewed that my purpose was to review the process leading to the decision-making, rather than assess fault against those who participated, many of those I spoke to

articulated their concern that the significant public attention focussed on this report would lead to the naming, at least in the public's mind, of a scapegoat. As a result, participants did not acknowledge their own role in any decision-making.

This case is lacking the reports, briefing notes, meeting notes or other documents which are frequently prepared in situations where discipline may be contemplated.⁶ This dearth of documents has granted the decision-makers (whoever he/she or they may have been) an opportunity to avoid taking ownership of the decision.

Formal reports setting out the allegations, the findings of fact, the evidentiary basis for the findings, options for proceeding and recommendations for discipline are often prepared following investigations into employee misconduct. Further, briefing notes will typically be prepared for the Deputy Minister who must approve any dismissal decision. There were a number of meetings with the individuals who undoubtedly participated in the decision-making both preceding and post-dating the dismissal decisions. However, few notes were taken or kept of these meetings and those I interviewed had no consistent recollection of which discussions occurred before or after dismissal decisions were made.

As a result of the lack of documents and consistent recollection of those I interviewed, it is not clear to me whether the decision-maker had: an awareness of any exculpatory information provided by the employees during the investigation process; a clear understanding of the motivation or perceived motivation for the employees' actions; knowledge of any mitigating factors; or knowledge of the employees' service record with the public service. If formal reports of any kind had been prepared in this case, the questions of who made the effective recommendation to dismiss and what factors were considered in making the recommendations would have been answered.

⁶ Legal advice was sought on discrete issues during the course of the Investigation, however, at no time before the termination decisions were made was advice with respect to whether there was just cause to dismiss the six Ministry employees either sought or provided.

I find that the decision-maker in this case would have benefitted from receipt of a written analysis of the case (in the form of supporting advice, investigation report or briefing note) before making any decision. Had any of these documents been generated, some of the flaws I have found in the Investigation may have been identified before the final decisions regarding employee dismissals were made.

CONCLUSION

The investigation conducted in 2012 of employees in the Ministry did not at all times follow established best practices. Indeed, I have found that the investigation was flawed from the outset, as it was embarked upon with a pre-conceived theory of employee misconduct. This flaw and others I have identified do not align with the investigation training provided by the PSA. It is hoped that with more careful planning, and a closer eye to the processes recommended by the PSA, such flaws will not be repeated within the public service.

LIST OF FINDINGS

1. *I find that the Ministry should have begun its formal review of employee misconduct at the same time as, but separately from the Ministry Review.*
2. *I find that the inclusion of the Ministry Review Team members on the Investigation Team did not meet best practices in that the Investigation was not conducted with a suitably open mind.*
3. *I find that the nature of the Investigation warranted consideration of the use of an external investigator with significant experience in complex investigations.*
4. *I find that the initial internal disclosure of the name of at least one of the suspended employees, and the later public statements regarding the suspensions and dismissals of Ministry employees, did not meet best practices. The internal disclosure naming a suspended employee should not have occurred. Employees should know that their privacy will be respected, even if it is determined that misconduct has occurred.*
5. *I find that suspending the employees without pay pending investigation in this case negatively impacted the quality of responses of both the suspended employees and their co-workers. I find that if the affected employees had not been suspended without pay, the Investigation Team would have received more open responses from employees.*
6. *I find that the Investigation Team had adequate resources to review and understand the complex web of issues which generated its creation.*
7. *I find that the number of interviewers participating in employee interviews was detrimental to conducting an effective interview.*

8. *I find that the Ministry should have been aware that the Ministry Review might point to some level of employee misconduct. Had the Ministry began its formal review of the employee misconduct in concert with the Ministry Review, it is more likely that the issue of employee representation would have been addressed in accordance with the PSA's practice.*

9. *I find that the interviews did not always give an adequate opportunity for employees to provide a full and fair response.*

10. *I find that interviewees did not have an adequate opportunity to review documents and respond to questions arising from them.*

11. *I find that because the employees were told that they would have an opportunity to respond to the Investigation Report and any recommendations regarding their employment, such opportunity should have been provided before a final decision regarding discipline was made.*

12. *I find that the decision-maker in this case would have benefitted from receipt of a written analysis of the case (in the form of supporting advice, investigation report or briefing note) before making any decision. Had any of these documents been generated, some of the flaws I have found in the Investigation may have been identified before the final decisions regarding employee dismissals were made.*

DEFINED TERMS

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| OIPC: | Office of the Information and Privacy Commissioner |
| Ministry: | Ministry of Health |
| PSA: | Public Service Agency |
| OAG: | Office of the Auditor General |
| Ministry Review Team: | Team formed by the Ministry in May 2012 to conduct Ministry Review. |
| Ministry Review: | Review of procurement, grant awards and contracting, data access and related agreements and intellectual property practices in the Research and Evidence Development section of the Pharmaceutical Services Division, Ministry of Health. |
| Investigation Team: | Investigation team which conducted the Investigation, and which included the two members of the Ministry Review Team. |
| Investigation: | The investigation into issues of potential employee misconduct. |
| Disciplinary Decisions: | The decisions to suspend seven Ministry employees without pay, and to dismiss six of the employees from their employment in the public service. |
| EEA: | Excluded Employees Association |
| BCGEU: | BC Government and Service Employees' Union |
| PSD: | Pharmaceutical Services Division of the Ministry |
| OCG: | Office of the Comptroller General |
| GCPE: | Government Communications and Public Engagement |



October 10, 2014

Terms of Reference

Intent

The Deputy Minister responsible for the Public Service Agency has responsibility for identifying and implementing policy and process improvements related to human resource management across the public service.

This is a review of the public service response to allegations of inappropriate conduct, contracting and data-management practices involving employees and drug researchers for the Ministry of Health in 2012. The purpose is to review the steps taken to investigate these issues and the process taken to arrive at the termination decisions. The information gathered from this review will be used to make recommendations to improve how the public service responds to allegations of employee misconduct in the future.

Background & Context

In May 2012, the Ministry of Health first announced a formal investigation into allegations of contracting irregularities and inappropriate research grant practices in the Pharmaceutical Services Division. The allegations were first received by the Office of the Auditor General and were forwarded to the ministry.

Based on the findings of the internal investigations, the ministry terminated the services of a number of employees.

Objectives

The objectives of this review are to:

- Confirm the actions and events that took place during the investigation from the point at which the allegations were received through to the point at which the termination decisions were made and executed.
- Analyze the human resource and investigation procedures and practices utilized in responding to the allegations.

Scope

The following areas are within the scope of this review:

- The process for investigating the allegations against ministry personnel; and
- The practices, policies, procedures and training in place in the public service for responding to complaints about government personnel.



Out of Scope

- The Ministry of Health policies and practices related to research, contracting and data-management at the time the allegations were made and any changes that have been made to those policies and practices in response to the allegations.
- The circumstances of any privacy breach or inappropriate data access related to the allegations and how they were subsequently resolved.
- Decisions made following the terminations in the context of settlement of grievances and legal claims.

Deliverables

The report will include:

- A chronology of the decisions and actions taken during the response to the health research allegations.
- Identification and review of relevant human resource management and investigation policies, processes and practices in place in the public service and whether they were adhered to in this case.
- An assessment of the process used in this case against accepted labour and employee relations practices.

Approach

The review will be conducted by Marcia McNeil, LL.B. To ensure the review is completed with the necessary objectivity and expertise, the head of the BC Public Service Agency selected an individual that is not an employee of government and has a background in investigations in the area of labour and employment law. The review will be conducted independently by Ms. McNeil and is anticipated to include the following:

- Gathering and reviewing documentary evidence including all relevant materials gathered to date;
- Surveying relevant policies, practices and procedures;
- Conducting interviews of or meetings with involved parties and government officials.

A final report will be submitted to the head of the Public Service Agency no later than Oct. 31, 2014.

Standards of Conduct

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Where ideas work

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This policy statement applies to all persons and organizations covered by the Public Service Act. The policy statement supports the core policy objective that “public service employees exhibit the highest standards of conduct.”

Employees will exhibit the highest standards of conduct. Their conduct must instill confidence and trust and not bring the BC Public Service into disrepute. The honesty and integrity of the BC Public Service demands the impartiality of employees in the conduct of their duties.

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.

Loyalty

Public service employees have a duty of loyalty to the government as their employer. They must act honestly and in good faith and place the interests of the employer ahead of their own private interests. The duty committed to in the Oath of Employment requires BC Public Service employees to serve the government of the day to the best of their ability.

Confidentiality

Confidential information, in any form, that employees receive through their employment must not be disclosed, released, or transmitted to anyone other than persons who are authorized to receive the information. Employees with care or control of personal or sensitive information, electronic media, or devices must handle and dispose of these appropriately. Employees who are in doubt as to whether certain information is confidential must ask the appropriate authority before disclosing, releasing, or transmitting it.

The proper handling and protection of confidential information is applicable both within and outside of government and continues to apply after the employment relationship ends.

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 policy statement for details.)

Public Comments

BC Public Service employees may comment on public issues but must not engage in any activity or speak publicly where this could be perceived as an official act or representation (unless authorized to do so).

Employees must not jeopardize the perception of impartiality in the performance of their duties through making public comments or entering into public debate regarding ministry policies. BC Public Service employees must not use their position in government to lend weight to the public expression of their personal opinions.

Political Activity

BC Public Service employees may participate in political activities including membership in a political party, supporting a candidate for elected office, or seeking elected office. Employees' political activities, however, must be clearly separated from activities related to their employment.

If engaging in political activities, employees must remain impartial and 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 are not to be introduced into the workplace; however, informal private discussions among co-workers are acceptable.

Service to the Public

BC 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 in the proper performance of their duties.

Workplace Behaviour

Employees are to treat each other with respect and dignity and must not engage in discriminatory conduct prohibited 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.

Further, the conduct of BC Public Service employees in the workplace must meet acceptable social standards and must contribute to a positive work environment. Bullying or any other inappropriate conduct compromising the integrity of the BC Public Service will not be tolerated.

All employees may expect and have the responsibility to contribute to a safe workplace. Violence in the workplace is unacceptable. Violence is any use of physical force on an individual that causes or could cause injury and includes an attempt or threatened use of force.

Employees must report any incident of violence. Any employee who becomes aware of a threat must report that threat if there is reasonable cause to believe that the threat poses a risk of injury. Any incident or threat of violence in the workplace must be addressed immediately.

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

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 BC Public Service.

While the government recognizes the right of BC 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 BC Public Service duties. Upon appointment to the BC 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 who find themselves in an actual, perceived, or potential conflict of interest must disclose the matter to their supervisor, manager, or ethics advisor. Examples of conflicts of interest include, but are not limited to, the following:

- An employee uses government property or equipment or the employee's position, office, or government affiliation to pursue personal interests or the interests of another organization;
- 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,

Where an employee believes that the matter requires a resolution and it has not been reasonably resolved by the ministry, the employee may then refer the allegation to the appropriate authority.

If the employee decides to pursue the matter further then:

- Allegations of criminal activity are to be referred to the police;
- Allegations of a misuse of public funds are to 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 Environment.

Legal Proceedings

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. In the case of affidavits required for use in arbitrations or other proceedings related to employee relations, the Labour Relations Branch of the BC 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 privileged and is, therefore, not to be released without prior approval of the Legal Services branch.

Working Relationships

Employees involved in a personal relationship outside work which compromises objectivity, or the perception of objectivity, should avoid being placed in a direct reporting relationship to one another. For example, 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.

- investments, sales, purchases, borrowing, grants, contracts, regulatory or discretionary approvals, appointments);
- An employee accepts from an individual, corporation, or organization, directly or indirectly, a personal gift or benefit that arises out of employment in the BC 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; or
 - An employee accepts gifts, donations, or free services for work-related leisure activities other than in situations outlined above.

The following four criteria, when taken together, are intended to guide the judgment of employees who are considering the acceptance of a gift:

- The benefit is of nominal value;
- The exchange creates no obligation;
- Reciprocation is easy; and
- It occurs infrequently.

Employees will not solicit a gift, benefit, or service on behalf of themselves or other employees.

Allegations of Wrongdoing

Employees have a duty to report any situation relevant to the BC Public Service 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 statement.

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; or
- Other employees must report in writing to their Deputy Minister or other executive member of the ministry, who will acknowledge receipt of the submission and have the matter reviewed and responded to in writing within 30 days of receiving the employee's submission. Where an allegation involves a Deputy Minister, the employee must forward the allegation to the Deputy Minister to the Premier.

These reporting requirements are in addition to an employee's obligation to report to the Comptroller General as outlined in Section 33.2 of the Financial Administration Act.

Human Resource Decisions

Employees are to disqualify themselves as participants in human resource 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 hold jobs outside government, 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 BC 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; or
- gain an advantage that is derived from their employment with the BC Public Service.

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.

Responsibilities

Agency Head

- Provide timely advice to managers and designated contacts respecting the application of this policy statement including guidance on an appropriate employer response to transgressions of the policy statement; and
- Coordinate the development of awareness, training, and communication programs in support of this policy statement.

Deputy Ministers

- Advise employees of the required standards of conduct and the consequences of non-compliance;
- Designate a ministry contact for matters related to standards of conduct;
- Promote a work environment that is free of discrimination;

- Deal with breaches of this policy statement in a timely manner, taking the appropriate action based upon the facts and circumstances;
- Waive the provision on working relationships under the circumstances indicated; and
- Delegate authority and responsibility, where applicable, to apply this policy statement within their organization.

Line Managers

- Advise staff on standards of conduct issues;
- Engage the ministry-designated contact as may be appropriate in the circumstances; and
- Contribute to a work environment that is free of discrimination.

Employees

- Objectively and loyally fulfill their assigned duties and responsibilities, regardless of the party or persons in power and regardless of their personal opinions;
- Disclose and resolve conflicts of interest or potential conflict of interest situations in which they find themselves;
- Maintain appropriate workplace behavior;
- Avoid engaging in discriminatory conduct or comment; and
- Check with their supervisor or manager when they are uncertain about any aspect of this policy statement.



Review
Involving the Ministry of Health
Pharmaceuticals Services Division
Research and Evidence Development Section

Terms of Reference

Author:
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TOR Sponsors

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Reviews

This document has been sent to the following for their review and comment.

[illegible][illegible]

1.0 Overview

This document outlines the objectives, scope, approach and deliverables associated with a review of procurement, grant awards and contracting, data access and related agreements and intellectual property practices in the Research and Evidence Development section of the Pharmaceutical Services Division (PSD), Ministry of Health. Once the review is complete, a final report will be produced that will include a summary of findings including current practices, policies and procedures and recommendations.

2.0 Background

The Office of the Auditor General contacted the ADM of Financial and Corporate Services, MOH on March 28, 2012 to advise that an allegation report was received by their office concerning inappropriate procurement, contracting irregularities and research grant practices, in the Research and Evidence Development section of the Pharmaceutical Services Division, MOH. In addition concerns were also alleged regarding inappropriate data access arrangements, intellectual property infringement, and code of conduct conflicts with employee contractor relationships including preferential treatment. MOH has conducted some preliminary investigations and has decided to conduct a formal review of these allegations to ascertain current practices and to assess if government policy, procurement practices and codes of conduct are being followed.

3.0 Review Objectives:

The objectives of this review are to:

- Ensure Government's contracting, research grant practices, data access arrangements and approval processes are in place and being followed by the Research and Evidence Development section of the PSD, MOH
- Provide all findings and facts relating to allegations being reviewed.
- Identify opportunities to improve government and ministries information contracting, granting, research and data access practices in the Research and Evidence Development section of PSD, MOH

4.0 Scope

4.1 In Scope

- Current and historical contracting, research grant and data access practices of the Research and Evidence Development section of PSD, MOH
- Review of roles, responsibilities, and relationships of 3 employees and 2 contractors that primarily support and are involved in research and evaluation work in the Research and Evidence Development section, PSD MOH.
- Data access and data sharing arrangements between employees, contractors and post-secondary research institutions focusing primarily on Research and Evidence Development section, PSD, MOH, University of Victoria and University of BC.
- Government's processes, policies and practices related to areas of review especially any legislative, corporate, core policy and requirements.

4.2 Out of Scope

- Matters pertaining to other business areas of PSD, MOH;
- Matters pertaining to the management of personnel.

5.0 Major Deliverables

A final report including:

- Summary of review and findings;
- A summary of related legislation, corporate, core policy, and privacy policy requirements as applicable as it relates to areas in the review;
- Recommendations to address any concerns identified
- Review of relevant government information systems relating to this review including identification of employee and contractor data access permissions, and audit trails to monitor such access;
- Review and recommended changes in process, policy, systems, protocols, training and practices, if necessary, to reduce the possibility of any such related concerns in the future; and
- Proposals for short term solutions if required and long term remedial approaches to address the implications of any issues identified by this review.
- Final report will be presented to MOH Executive leads and shared with OCG and OAG.

6.0 Approach

The approach may include:

- a) Gathering documentary evidence;
- b) Surveying legislation, policies, practices, systems protocol;
- c) Meetings and interviews with involved parties and government officials;
- d) Meetings with universities participating in any research with identified program area
- e) Review of all contracts, grants and funding provided by the program;
- f) Review of all information sharing agreements, data access and intellectual property agreements;
- g) Review of employee/contractor relationships
- h) Ongoing liaison with affected parties once the review is complete and the report released.

7.0 Project Team:

Team Lead – OCIO, LCTZ

required

7.1 Target Audiences / Participants

ADM Pharmaceutical Services Division, MOH
ADM Health Sector IM/IT CIO, MOH
ADM Corporate and Financial Services, MOH.
Employees and Contractors identified from the Research and Evidence Development section PSD,
MOH
Team members from the Corporate and Financial Services Division, MOH
Staff in SPMIDS and Privacy and Legislation Health Sector IM/IT
Forensics Investigation Unit, OCIO, Information Security Branch
Research Areas at UBC and UVIC working with this business area MOH ?

8.0 Milestones and Timeline

| <i>Milestone</i> | <i>Start Date</i> | <i>Target Date</i> |
|---|-------------------|--------------------|
| Gathering documentary evidence and survey of legislation, policies and practice | May 31, 2012 | June 10, 2012 |
| Meetings or interviews completed | June 4, 2012 | June 22, 2012 |
| Draft report completed | June 22, 2012 | June 26 2012 |
| Draft report circulated to feedback received | June 26 2012 | June 30, 2012 |
| Report finalized | | June 30, 2012 |

APPENDIX “D” –Legal Services Chronology – Advice Provided by Legal Counsel with the Ministry of Justice (“Counsel”)

