



INFORMATIONAL BULLETIN

The Investigations Sub-Committee of MERC has agreed to jointly develop informational materials for staff regarding a section 22 investigation under the *Ministry of Correctional Services Act*. The ministry has a two-tiered investigation process, Level 1 and Level 2. Investigations that do not fall into the above two categories may be carried out by local management. Section 22 investigations are Level 1 investigations. Level 2 investigations are carried out by ministry employees who are not designated inspectors under the *Ministry of Correctional Services Act*. The investigation process is dynamic, and therefore the level of investigation may change as more information becomes available. Below you will find the answers to commonly asked questions about Section 22 investigations.

What are they?

Section 22 investigations are Level 1 investigations and they are performed by inspectors designated under the *Ministry of Correctional Services Act*. Level 1 inspectors are employed by the Correctional Investigation and Security Unit in the Ministry of Community Safety and Correctional Services. Although most inspectors are CISU staff, individuals not employed by CISU can be designated as an inspector under section 22 as required.

Investigations under section 22 of the *Ministry of Correctional Services Act* are initiated following incidents involving inmates, staff, volunteers and contractors or government property, which constitute significant high-level contravention of directives, policies, procedures and standards of professional conduct.

What types of incidents can trigger an investigation?

Several incidents can trigger an investigation. Examples include injuries to or death of an inmate and standards of employee conduct. For further information please visit http://intra.mcs.gov.on.ca/content/manuals/adult_inst/security_and_controls/investigations.asp

Who are subject/witness employees?

Subject employees are employees who have been identified as possibly having engaged in activity that is the subject of a section 22 investigation.

Witness employees are employees who have been identified as possibly having witnessed the activity resulting in the investigation, or who may have knowledge, information and/or materials relevant to an investigation.

It is possible for witness employees to become subject employees during the course of the investigation. It is also possible for witness employees who are found to have engaged in inappropriate activity to be subject to discipline, up to and including dismissal.

Roles and responsibilities

The obligation of employees is to cooperate fully, which includes providing complete and truthful statements in all types of investigations.

Employees who are the subject of an investigation under the act are required to receive a written notice notifying them of such, unless this notice would impede a police or Correctional Services investigation. When subject employees are asked to give a statement as part of an investigation, they will be shown a copy of text from "Enterprise Security Management" and will be given the opportunity to make a statement. The employer endeavours to be flexible when scheduling meetings.

Employees can attend the meeting alone but are permitted to have a union representative, lawyer or support person (hereinafter referred to as the "representative") present if they choose. The representative must not have been a participant in or a witness to the occurrence under investigation.

The following conditions apply when a representative is present during an employee's interview with a ministry inspector:

- the representative will be permitted to attend as an observer only and must neither coach nor direct the employee nor actively participate in the interview process. At the discretion of the inspector(s), the representative may be permitted to raise concerns about the application of this procedure; and
- Correctional Services reserves the right to have its own observer in attendance; and
- if the representative breaches or refuses to comply with these conditions, the inspector(s) retains the right to exclude him/her from the interview. If readily available, arrangements can be made for an alternative representative to attend; and
- if the inspector(s) must discontinue the interview because the employee refuses to participate without a representative present when the representative is not readily available, the inspector(s) will advise the employee that this might result in disciplinary action under the *Ministry of Correctional Services Act*.

Prior to the conclusion of the interview the inspector will ask the employee if there is any other information or comments relevant to the investigation that he or she would like to make. The employee will have the opportunity to caucus with their representative before responding.

Immediately before and after the interview, but prior to the conclusion of the meeting, the representative may request the inspector make an allowance to meet with them to discuss the investigation process, provide insight, bring matters to the inspector's attention that he or she might otherwise not have considered and highlight questions the inspector may want to consider asking the subject/witness employee.

Employees who refuse to make statements will be compelled, under the act, to provide "any information or thing required by an inspector for the purposes of the inspection or investigation". If the employee continues to refuse, he or she will be informed that refusal to participate may give rise to discipline, up to and including dismissal.

Supplemental Information

At any time during the investigation any employee can provide supplemental information in writing to the inspector.

Access to Employee Statement

Once the investigation is completed, as per the settlement dated March 22, 2011 regarding GSB #2010-0766, Correctional Bargaining Unit Institutional Services employees may access their employee statement by a written request to the Superintendent of his or her institution to obtain a copy of a recording of their interview statement, conditional upon meeting the criteria outlined in the above-mentioned settlement.

Employees can speak to their union or manager for assistance with their request.

Electronic Links to this Document

<http://www.opseu.org>

<http://ministry>