



Independent Compliance Review of the BC Public Service Agency

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1. PURPOSE OF THIS REPORT

I was commissioned by the Public Service Agency (the “PSA” or the “Agency”) to write an independent compliance review arising from the recommendations issued by Ombudsperson Jay Chalke in the report titled *Misfire: The 2012 Ministry of Health Employment Terminations and Related Matters* (the “Misfire Report”).

The Misfire Report, issued in April 2017, contains 41 discrete recommendations, all of which the government accepted. Recommendation 20 emanates from a review and subsequent report issued by Ms. Marcia McNeil, who was commissioned by the PSA in late 2014 to conduct a process-focused review of the Ministry of Health employment terminations (the “McNeil Review”) which were carried out with many flaws in policies and procedures. The PSA developed 16 measures, referred to in this report as “Action Items”, flowing from the McNeil Review findings. The McNeil Review and the Action Items were considered in Chapter 16 of the Misfire Report and resulted in Recommendation 20, which reads:

Recommendation 20: By March 31, 2018 the Public Service Agency undertake, and publish the results of, an independent compliance review of its investigatory policies established in response to the McNeil Review.

I have conducted an independent review of the 16 Action Items that the government developed as a response to the McNeil Review findings and presented to Ombudsperson Chalke in the Misfire Report. The McNeil Review, the Misfire Report, and the Action Items will be described in more detail below. The Action Items represent the commitments by the government to improve resources, processes, and training with respect to workplace investigations in the public service.

I would be remiss if I did not thank the PSA and, in particular Mr. John Davison the ADM, Employee Relations, PSA. Mr. Davison and the entire PSA, Employee Relations Division, took hours of their valuable time to meet with me and provide me with the necessary information necessary to conduct this independent review. The PSA was forthright and cooperative and its assistance was greatly appreciated. Further, the PSA’s commitment to implementing the findings from the McNeil Review and accepting my recommendations was apparent in our discussions.

2. BACKGROUND

2.1. The McNeil Review

The McNeil Review, formally titled *Investigatory Process Review: 2012 Investigation into Employee Conduct in the Ministry of Health* was authored by well-respected external

lawyer Marcia McNeil and submitted to the PSA and Deputy Attorney General in December 2014.

The review considered the 2012 investigation into allegations of employee misconduct in the Ministry of Health. It focused on evaluating the decision-making process followed as the PSA and Ministry of Health conducted an investigation of the employees, an investigation which ultimately resulted in the suspension or dismissal of seven Ministry employees and which captured the attention of the government, media, and the public.

The McNeil Review contained the following 12 findings:

The McNeil Review 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.*

...continued

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 the 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 benefited 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.*

2.2. The PSA's Response to the McNeil Review

The government accepted all 12 findings of the McNeil Review. The findings caused the PSA to reflect on the policies and procedures it uses to respond to allegations of employee misconduct. The PSA developed 16 Action Items, which generally fall into four themes¹:

- Improve the way ministries initially respond upon receiving a serious allegation.
- Ensure investigations are conducted in a manner that conforms to existing policies and procedures and best practices.
- Ensure proper decision-making processes are followed.
- Improve communication practices related to the investigation process.

Deputy Minister, PSA, Ms. Elaine McKnight wrote to Minister de Jong, Minister of Finance and Government House Leader a letter on February 11, 2015. That letter explained the four themes above and indicated that the PSA had already completed a number of measures (specifically, ten targeted Action Items) to “improve the way the public service responds to allegations of employee misconduct.” A further five Action Items were expressly identified by Ms. McKnight as measures “targeted for completion in the coming weeks”. The letter concluded with the assertion that over the medium term, the PSA would propose amendments to the *Public Service Act* Regulations.

On July 27, 2015, Ms. McKnight wrote a follow-up letter to Minister de Jong. That letter identified that at that time, fourteen of the previously described Action Items had been completed and that two remained outstanding: Action Items 13 and 15. Deputy Minister McKnight also informed Minister de Jong in that letter that amendments to the *Public Service Act* Regulations were not necessary to clarify ministry and Agency authorities in relation to the investigation, suspension, and discipline of employees.

On December 14, 2015, the new Deputy Minister, PSA, Ms. Lori Halls wrote a final letter to Minister de Jong in response to the implementation of the Action Items. That letter communicated that all sixteen Actions Items developed by the PSA in response to the McNeil Review had been completed and implemented. The sixteen Action Items were listed in an Appendix to that letter.

The Ombudsperson was commissioned to review the 2012 Ministry of Health employment terminations and related matters in September 2015. As part of that process, the McNeil Review was canvassed. Along with other information, the December 14, 2015 letter from Ms. Halls to Minister de Jong was considered by the Ombudsperson and the Appendix to Ms. Halls' letter became Appendix E to the Misfire Report (“Appendix E”).

¹ As described in the February 11, 2015 letter from Deputy Minister Elaine McKnight to the Hon. Michael de Jong.

2.3. The Misfire Report

The Misfire Report refers to the 500-plus page comprehensive report fully titled “*MISFIRE: The 2012 Ministry of Health Employment Terminations and Related Matters*” submitted in April 2017 by Jay Chalke as B.C.’s Ombudsperson.

The scope and purpose of the Misfire Report was very different from that of the McNeil Review. The Misfire Report was the product of an extensive fact finding investigation into the involvement of various government ministries, agencies, and the executive council involved in the Ministry of Health terminations file in 2012. The Executive Summary of the Misfire Report explains the scope of the Ombudsperson investigation:

In July 2015, the Select Standing Committee on Finance and Government Services passed the following motion:

...refer the Ministry of Health terminations file to the Ombudsperson for investigation and report as the Ombudsperson may see fit; including events leading up to the decision to terminate the employees; the decision to terminate itself; the actions taken by government following the terminations and any other matters the Ombudsperson may deem worthy of investigation.

Chapter 16 of the Misfire Report was dedicated to the McNeil Review. In that chapter, the Ombudsperson makes the following “Review Conclusions” at p. 341 which read as follows:

In her report, Ms. McNeil made 12 findings about the process followed by the investigation team in responding to the allegations and investigating the complaints about ministry employees. Ms. McNeil concluded that the investigation “was not conducted with a suitably open mind,” that suspending employees without pay was detrimental to the investigation process and that the complexity of the investigation indicated the need for an experienced external investigator.

Ms. McNeil also made a number of findings in relation to the conduct of the interviews. She found that the number of interviewers impaired the effectiveness of the interview process, that the interviews did not always provide an adequate opportunity for employees to review documents, respond to questions and provide full and fair responses. Moreover, she found that government should have provided an opportunity for employees to respond to the investigation report and any recommendations before any disciplinary decisions were made. Finally, she found that the decision-maker would have “benefitted from” receiving a written analysis of the case before making any decision.

Government accepted all 12 of Ms. McNeil’s findings.

Notwithstanding the many challenges she faced, Ms. McNeil prepared a credible and very useful report on a number of policy and systemic human resource issues as set out in the amended terms of reference.

Ms. McNeil's report identified a number of important shortcomings in the Ministry of Health investigation. These related particularly to the conduct of interviews, the decisions to suspend employees without pay and the lack of meaningful opportunities for employees to respond to the allegations against them. The thoughtful findings made by Ms. McNeil are echoed in our own report. Her very helpful work has meant that many of the issues that would otherwise have been the subject of recommendations have already been addressed by PSA in responding to her report.

The Ombudsperson also noted that the PSA had made changes to its practices as a result of the McNeil Review. At p. 341, the Misfire Report states:

Ms. McNeil's report was released publicly on December 19, 2014. A year later the PSA provided a report to the Minister of Finance (who is the member of the Executive Council responsible for the PSA) about changes to its employee investigation, suspension and termination policies and practices resulting from the findings made in Ms. McNeil's report.

This report to the Minister of Finance was attached as Appendix E to the Misfire Report. As previously stated, Appendix E provides a list of the 16 Action Items that the government committed to implementing as a result of the McNeil Review.

After reviewing the changes to PSA practices and Appendix E, p. 342 of the Misfire Report makes clear that in formulating recommendations, the Ombudsperson considered the response of the PSA to the McNeil Review.

The Misfire Report provides 41 recommendations, all of which were accepted by government. Recommendation 20 reads:

Recommendation 20: By March 31, 2018 the Public Service Agency undertake, and publish the results of, an independent compliance review of its investigatory policies established in response to the McNeil Review.

It is out of Recommendation 20 that this report had been commissioned. I am tasked with evaluating whether the PSA has satisfactorily implemented the 16 Action Items it developed in response to the findings in the McNeil Review.

2.4. PSA Non-Compliance Regarding Adult Custody Division (Corrections) and Liquor Distribution Branch

2.4.1. Current situation of non-compliance

The ADM, Employee Relations, PSA and I spent considerable time discussing the ADM's assessment of the Liquor Distribution Branch ("LDB") and the Adult Custody Division of Corrections ("Adult Custody"). The LDB and Adult Custody were not brought into compliance after the McNeil Review. That was a decision made by the PSA because, unlike other Ministries, both these organizations had unique cultures and/or structures which provided labour relations support. However, since the Misfire Report was issued, the PSA and these two organizations have come to the conclusion that it would be beneficial to have PSA oversight with respect to investigations. I concur with this conclusion and recommend that the organizations work to achieve full compliance with the Action Items described in this report as quickly as possible.

The reasons for the current circumstances and the plan forward were described by the ADM, Employee Relations, PSA in letters sent to me on March 4, 2018. I have not independently verified any statements in the ADM's letter but thought it appropriate to include here the ADM's assessment of the situation and the steps being taken.

a) Liquor Distribution Branch

With respect to the LDB, the ADM, Employee Relations, PSA provided me with the following in his letter sent March 4, 2018:

The Liquor Distribution Branch (LDB) is one of the largest distributors and retailers of beverage alcohol in Canada. The LDB has a workforce of approximately 4,200 full and part-time employees, including 180 management employees. Responsible for the importation and distribution of beverage alcohol in B.C., the LDB operates 197 liquor stores throughout the province.

Although the LDB is covered by the *Public Service Act* and is a part of the Ministry of Attorney General, it has always functioned with considerable independence from the rest of government, especially in matters related to human resources (HR). Unlike a regular government ministry that relies on the PSA to provide HR services, the LDB has its own full-service Human Resources department. The services that the HR department provides include conducting human resources investigations within the LDB and advising managers on employee discipline.

When it comes to disciplinary matters related to bargaining unit employees at the LDB, the PSA traditionally has no formal involvement until after a disciplinary decision has been made. It is only in the latter stages of the grievance process that the PSA gets involved in an LDB labour relations issue. As the only recognized employer bargaining agent under the *Public Service Labour Relations Act*, the PSA assumes conduct of all grievances once they are filed at arbitration. The PSA has even less involvement with excluded employee personnel matters at the LDB.

When the PSA developed its initial response to the McNeil Report, the new PSA policies and guidelines were initially not applied to the LDB because the PSA had no recognized role in overseeing LDB investigatory and disciplinary decision-making practices. Over time, the PSA began taking incremental steps to apply some of its McNeil policies to the LDB. The first such instance was in fall of 2015 when the PSA amended its *Suspension Pending Outcome of Investigation Guidelines* to make it the general practice to suspend bargaining unit members with pay during an investigation. Since the change represented a significant departure from the previous practice of making most such suspensions without pay, the decision was made to also apply the new policy to the LDB to ensure that the policy was consistently applied to all bargaining unit employees in the Public Service.

In May 2017, the PSA policy of ensuring that due process is followed before allowing a ministry terminate an employee for just cause that was developed in response to the McNeil Report was also extended to the LDB. Similarly, the LDB was also included in the Public Service's "Termination for Just Cause Policy" that came into effect on June 30, 2017 in response to the Ombudsperson's *Misfire* report. This included the requirement that Deputy Ministers must receive and consider the written advice from legal counsel or a Senior Labour Relations Specialist at the PSA before terminating an employee for just cause.

In late 2017, the PSA began discussions with the LDB on a plan to bring the LDB into full compliance with the PSA's policies and guidelines. The plan has been approved by the General Manager and CEO of the LDB, the Deputy Attorney General, and the Deputy Minister of the PSA and will come into full effect as of March 31, 2018.

b) Adult Custody

With respect to Adult Custody, the ADM, Employee Relations, PSA provided me with the following in his letter sent March 4, 2018:

The Adult Custody Division of the Ministry of Public Safety & Solicitor General employs 1,600 staff and holds on average 2,700 inmates in 10 correctional centres across the province. There are 120 excluded managers working in the correctional centres as wardens, deputy wardens and assistant deputy wardens and they are responsible for the safe operation of the correctional centres.

Unlike other areas of government, Adult Custody has a strong tradition of relying on its own management staff to conduct human resources investigations. Adult Custody conducts approximately 50 investigations into serious allegations of employee misconduct a year. Adult Custody managers also regularly conduct critical incident, quasi-judicial and operational review investigations as part of running the correctional centres and are trained on the fundamentals of administrative law.

Many of the policies and guidelines the PSA developed in response to the McNeil Report in 2015 applied to Adult Custody right from the start. When it came to investigations, however, the PSA did not require that allegations of serious misconduct in Adult Custody be investigated by a PSA or PSA-approved investigator.

Adult Custody was allowed to continue conducting its own investigations because it had significant experience in conducting HR investigations and senior management was committed, with the PSA's encouragement, to maintaining a strong investigations training program. Since 2015, Adult Custody has had 88 managers take the LR 301 investigations course taught by the PSA and has held six separate training sessions on workplace investigations that were conducted by the same external employment law expert that the PSA uses for its own mandatory training program.

The PSA also took other steps to promote quality assurance in Adult Custody investigations. In addition to the regular advice that ER Specialists provide Adult Custody management representatives while they are conducting investigations, the PSA also regularly reviews Adult Custody interview transcripts from investigations that result in a recommendation for termination for cause. This is done as part of the PSA's due process confirmation procedure that was established in response to the McNeil Report. If concerns with an investigation are uncovered during the review process, the PSA will ensure that the matters are addressed before signing off on due process and allowing the termination to proceed.

Despite the steps that have been taken to promote strong HR investigatory practices at Adult Custody, both the PSA and the PSSG now acknowledge

that the PSA's investigation policies and guidelines should be applied consistently across all government departments.

The Deputy Ministers of PSSG and the PSA have approved a plan to bring Adult Custody into full compliance with the PSA's policies and guidelines effective March 31, 2018. This includes the requirement that all investigations into serious allegations of employee misconduct in Adult Custody will be led by a PSA or PSA-approved investigator. The PSA has also recently hired additional Employee Relations Specialists to ensure that it is able to adequately resource Adult Custody investigations going forward.

2.4.2. The Path Forward to Compliance for the LDB and Adult Custody

As detailed in the section above, the PSA has stated that it has been working with both the LDB and Adult Custody, bringing them into compliance effective March 31, 2018. I received a copy of the compliance plans from both organizations on March 13, 2018. These plans have been approved by the most senior executive of each organization, including the PSA, but are beyond the scope of this review.

In addition to bringing those two organizations into compliance with the Action Items described in this report, I also suggest that the PSA implement the recommendations in this report, where applicable, when implementing the plan for the LDB and Adult Custody with respect to investigations at these workplaces.

3. ORGANIZATION OF ACTION ITEM ASSESSMENTS

3.1. Structure of Action Item Assessments

In this report, I evaluate Action Items 1 through 16 in sequential order. My assessment of each Action Item follows the format outlined below:

1. Action Item wording

This section sets out the wording of the Action Items as taken from Appendix E of Misfire Report which captures the exact wording from the December 14, 2015 letter from Deputy Minister Halls, PSA to Minister of Finance and Government House Leader Minister de Jong.

For those Action Items with multiple parts which needed to be evaluated separately, I have inserted letters [e.g. a), b) c)] into the Action Item wording to differentiate the component parts.

2. Approach to testing

This section describes what I set out to test and what information I was seeking to receive in order to test an Action Item. It then sets out what information I actually received and from what source, including document names and details about conversations or interviews that I conducted.

3. Findings

In this section, I provide an analysis of the key information I reviewed and the impact it had on my judgment. For clarity, there is also a Key Findings subsection where I succinctly provide my opinion on whether the goals stated in the Action Item objectives were achieved.

4. Recommendations

Though not part of my original Terms of Reference for this report, the ADM, Employee Relations, PSA asked for my recommendations in an effort to improve the PSA's performance and make their communications, decision-making and investigation protocol and processes stronger. I view this request a sign of the PSA's commitment to implementing the changes needed post McNeil Review.

My recommendations are placed in this section. I note that I provide recommendations for certain Action Items which I consider "fulfilled" (see below) and these recommendations should not be considered as criticism but as opportunities for improvement.

5. Concluding opinion

My terms of reference state: "The Compliance Review will identify which of the investigatory policies established in response to the McNeil Review have been fulfilled; partially fulfilled; or remain unfulfilled." In this section, I state whether, in my opinion as independent reviewer, an Action Item has been fulfilled, partially fulfilled or remains unfulfilled.

3.2. Exclusion of Adult Custody Division and Liquor Distribution Board Branches from Analysis

As described at length in Section 2.4 above, the LDB and Adult Custody were not brought into compliance after the McNeil Review.

At the beginning of my review, the PSA readily admitted that these organizations exhibited varying degrees of compliance issues regarding PSA investigation protocols and PSA oversight. The PSA disclosed at the outset of my review that it was working with these two organizations to remedy these issues of non-compliance, with an expectation of bringing them into compliance effective March 31, 2018.

Given this reality, I did not test any of the Action Items against the LDB or Adult Custody. Any non-compliance on the part of these organizations is not reflected in my concluding opinions.

4. COMPLIANCE REVIEW OF PSA ACTION ITEMS

In this section, I detail the results of my independent review of the 16 Action Items that the government developed as a response to the McNeil Review findings and presented to Ombudsperson Chalke in the Misfire Report.

For reference, the 16 Action Items as described by Deputy Minister Halls are listed as group below:

ACTION ITEMS AT A GLANCE	
1	Establishment of clear Agency and ministry roles and accountabilities for investigations. A ministry must promptly notify the Agency of any allegation of employee misconduct prior to taking action so that the appropriate level of Agency involvement is determined before the ministry responds. All investigations of alleged serious misconduct must be led by the Agency or Agency-approved investigators.
2	Enhanced investigation and discipline decision-making information provided on <i>MyHR</i> so management employees understand the process and know what to do when they are initially confronted with an issue (e.g. who to call, what steps to take if there is an immediate concern/threat, etc.).
3	Implementation of an investigations-specific training course for excluded managers in government.
4	Ongoing reinforcement of existing investigation protocols of informing employees at the start of the investigation of what happens during the investigation, their rights, and points of contact for questions or concerns.
5	Ongoing reinforcement of employees' entitlement to due process in an investigation. Where it is deemed necessary due to safety concerns, etc. that an employee cannot remain in the workplace while an investigation is carried out, the employee should be suspended from the workplace. Investigations are to be carried out as promptly as possible in recognition of the impact of the suspension on the employee.
6	Ongoing reinforcement of existing practice of considering suspensions with pay for investigations where doing so without pay may compromise the investigation.
7	Implementation of mandatory enhanced investigations training program for Agency investigators.

8	Implementation of a mentor program for Agency investigators that requires new investigators to be teamed up with an experienced colleague for several investigations prior to leading an investigation.
9	Ongoing reinforcement of existing Agency policy requiring that the investigative and decision-making parts of the process are kept separate and decision makers remain at arm's length until the findings have been rendered. Disciplinary decisions also must only be made after the investigation has been completed and labour relations and/or legal advice has been received and documented.
10	Establishment of oversight and escalation protocols for investigations that are sensitive and/or have potentially significant outcomes. In the event of a disagreement between a Deputy Minister and the Deputy Minister, BC Public Service Agency, regarding the investigation process or outcomes, the matter will be advanced to the Deputy Minister to the Premier.
11	Mandatory education sessions provided for Deputy Ministers, Assistant Deputy Ministers and senior managers on investigations and making disciplinary decisions. In addition we plan to roll out these education sessions to all other excluded managers.
12	Internal investigation protocols updated, including assessment tools to ensure: <ul style="list-style-type: none"> ○ Lead investigators on complex/sensitive investigations have significant experience leading progressively more challenging investigations. ○ Investigative teams are appropriate given the nature of the investigation, conform to best practices, and continue to be adequately resourced, and; ○ Highly specialized internal or external investigators are preferred for high-profile/contentious cases or investigations that are likely to involve specialized expertise of legal analysis, as per Agency policy.
13	Development of clear and comprehensive investigation and information-sharing protocols for multi-branch, cross-government undertakings to ensure that roles and responsibilities are clearly defined and investigations are completed in a timely fashion without unnecessary overlap.
14	Development and implementation of a communications and change management strategy to improve awareness of investigative information, training, tools, resources and protocols.
15	The Agency and GCPE have completed a review of the appropriate role of communications in employee investigations/discipline and established protocols clearly defining roles, responsibilities and the appropriate timing of communication activity.
16	The Agency completed a review of proposed amendments to the <i>Public Service Act</i> Regulations to clarify ministry and Agency authorities in relation to the investigation, suspension and discipline of employees and determined that changes to the regulation were not necessary.

4.1. Review of Action Item 1

- a) Establishment of clear Agency and ministry roles and accountabilities for investigations.
- b) A ministry must promptly notify the Agency of any allegation of employee misconduct prior to taking action so that the appropriate level of Agency involvement is determined before the ministry responds.
- c) All investigations of alleged serious misconduct must be led by the Agency or Agency-approved investigators

4.1.1. Approach to testing

I evaluated whether the three commitments outlined in this Action Item were present in the PSA's policies and procedures.

Further, I evaluated whether the three commitments were present in the files that I define in this report as the Investigation and Termination Files.

I met with the ADM, Employee Relations on January 17, 2018 and January 25, 2018 in person to discuss this Action Item. The Manager, Employee Relations, PSA attended the meeting on January 25, 2018. I also discussed this Action Item over the phone with the ADM, Employee Relations, PSA on numerous occasions. Finally, I interviewed an Employee Relations Specialist on January 30, 2018 to discuss aspects of this Action Item in relation to a randomly selected ongoing file (with the ADM, Employee Relations present for our discussion).

Defining the Investigation and Termination Files:

Before continuing with my analysis of Action Item 1, I wish to define a group of files I refer throughout this report as the "**Investigation and Termination Files**". This group of files is made up of the "**Investigation Files**" and the "**Termination Files**" and, as a group or broken out into its component parts; it is used to evaluate a number of Action Items. Please see the following graphic where I provide a description of the files and the selection techniques that were utilized.

DEFINING THE INVESTIGATION AND TERMINATION FILES

THE INVESTIGATION FILES: An Investigation File is the electronic file kept by the Employee Relations Specialists to document the investigation processes, the investigation interviews, the investigation decision-making points, and ultimately the investigation report that contains the investigators' findings. While I note that there appears to be no standardization as to how the PSA files are organized or what documents are to be kept in the file, for the most part, the Investigation Files contain the following materials:

- Correspondence between co-investigators; notes of the interviews; the physical scripts and the audio recordings of the interviews; and the investigation report.

Many of the Investigation Files also contain additional documents and evidence relating to the investigation. I did not note a practice of retaining the investigator's handwritten (or computer generated) notes to file recording phone calls or meetings held during the investigation process.

On January 18, 2018, I requested the first ten employee investigation files with completion dates between July and December 2016 and the first ten employee investigation files with completion dates between July and December 2017. The PSA sent me a total of 20 files and from those files, I selected **17 investigation files** which were from a cross section of ministries and conducted by multiple PSA investigators (the "**Investigation Files**").

THE TERMINATION FILES: Termination files are investigation files that result in the termination of an employee from the public service for just cause. On January 18, 2018, I requested all the termination files for all excluded employees for 2016 and 2017 (the "Excluded Employee Termination Files"). I received and reviewed the only **two Excluded Employee Termination Files** that took place in the requested time frame from two different ministries. I also requested a list of all bargaining unit employees terminated between Sep. 2015 and Dec. 2017. From the list I received of 66 names, I selected 14 from different ministries: one from 2015, seven from 2016, and six from 2017. I received the **14 Bargaining Unit Termination Files** from a cross section of ministries (the "**Bargaining Unit Termination Files**"). The "Bargaining Unit Termination Files" and the "Excluded Employee Termination Files" are together referenced in this report as the "**Termination Files**".

To assist in my review, I requested that the PSA send me the following specific documents from the Bargaining Unit Termination files to exclusively review and consider:

- The Termination Checklist; The Best Practices Protocols Checklist; The Legal/LR opinion document(s); The Due Process Confirmation from the PSA; and The Investigation Report.

The following table provides additional information regarding the Investigation Files that I reviewed:

Investigation Files by Ministry	Date Investigation Concluded	
Intergovernmental Relations Secretariat	-2016	
Aboriginal Relations	-2017	
Attorney General	-2017	
Finance	-2016	
Forests, Lands and Natural Resource Operations	-2016	
Forests, Lands and Natural Resource Operations	-2017	R
Health	-2017	E
Independent Investigations Office	-2016	D
Jobs, Tourism, Skills Training and Labour	-2017	A
Children and Family Development	-2017	C
Children and Family Development	-2017	T
Energy & Mines	-2016	E
Public Safety & Solicitor General ("PSSG")	-2017	D
Social Development and Social Innovation	-2016	
Technology, Innovation & Citizens Services	-2016	
Technology, Innovation & Citizens Services	-2017	
Transportation & Infrastructure	-2017	

Information withheld as personal information of a third party

For each of the Investigation Files, I queried the following:

- Whether the Ministry promptly contacted the PSA;
- Whether the PSA investigator led the investigation;
- Whether the email was sent to the Ministry co-investigator explaining roles;
- Whether the PSA Investigation Roles and Responsibilities was applied;
- Whether there was evidence of prompt investigation practices;
- Whether a PSA mentee was on the investigation file, and if so, whether there was evidence on the file of their participation;
- Whether there was a separate investigator and decision maker;
- Whether the oversight and escalation protocol was implemented or evidenced;
- Whether the PSA selection criteria for complex/sensitive investigations applied;
- The kind of investigation that was conducted;
- Whether multiple investigation units involved; and,
- Whether there were external communications present in the Investigation Files and, if so, whether they complied with policy.

In addition to the Investigation Files, I also turned to the Termination Files in order to review specific documents where employees were terminated from public service post McNeil Review. I elected to conduct this file review as it is critically important that due process and investigation best practices are adhered to in cases where employees lose their employment for just cause.

For Action Item 1, in addition to the Investigation and Termination Files provided by the PSA, I received the following documents:

- McNeil Handout for Executives (final);
- HR Investigation and Discipline Roles and Responsibilities (final);
- Investigations DM Presentation (final);
- Proposed content to *MyHR* Investigations Article – (various drafts, including draft vetted by legal counsel);
- Careers and *MyHR* Archived and Current Content;
- Approval and Sign off Process for Disciplinary Terminations – (various drafts, including draft vetted by legal counsel);
- Checklist Prior to Applying Disciplinary Action Non-Termination – (various drafts and final);
- Checklist Prior to Disciplinary Termination – (various drafts and final);
- Criteria for Composition of Investigative Team – (various drafts and updates, including draft vetted by legal counsel);
- Employee Handout – Workplace Investigation – (various drafts including draft vetted by legal counsel);
- Guideline Completion of Termination Checklist – (various drafts and final);
- Internal PSA guidance for suspensions pending investigations – (various drafts and final);
- Investigation Best-Practice Protocols Checklist – (various drafts, including draft vetted by legal counsel);
- Investigations – Definitions of Complexity (August 2017);
- Template to Ministry Co-Investigator;
- Investigation Roles and Responsibilities – (various drafts, including final);
- Major PSA Investigation Oversight and Escalation Protocols (October 2017);
- Initial Email to Ministry Co-Investigator;
- Mentoring Program for New ER Specialists (November 2017);
- Multi Government Investigations Protocol 2017;
- Policy - Termination for Just Cause (final effective June 30, 2017);
- Spot Audits of Investigation Interviews (December 2017);
- Corporate Executive Sessions- materials and attendance lists (2017);
- The Investigation and Termination Files; and,
- Emails related to this Action Item.

4.1.2. Findings

a) Establishment of clear Agency and ministry roles and accountabilities for investigations.

An internal PSA guide titled “Criteria for Composition of Investigative Team” was developed on March 3, 2015. The PSA provided an update of that guide with a date of October 17, 2017 which contained no material changes that I could identify. The guide is a useful tool for the PSA to employ in determining the composition of the investigation unit.

The requirement that clear Agency and Ministry roles and accountabilities be addressed in an investigation was outlined in the PSA presentations (slide 11) made to Deputy Ministers, Assistant Deputy Ministers, and senior leaders in sessions rolled out by the PSA in 2015. The requirement was also clearly articulated in the ADM, Employee Relations, and PSA speaking notes from those sessions. Those who attended the presentations and received the materials would have received the information regarding the PSA and Ministry roles and accountabilities. The requirement that clear Ministry and PSA roles and accountabilities be established in an investigation was further communicated to Deputy Ministers and Assistant Deputy Ministers in sessions on November 24, 27, 30 and December 1, 2017. Those who attended the 2017 presentations would have received the information regarding the PSA and Ministry roles and accountabilities. My review and recommendations of these sessions is found in Action Item 10.

In August 2017, an “Investigation Definition of Complexity” was developed for the PSA to triage human resources issues and determine the roles and accountabilities for investigations. A log of the 2017 investigations was provided to me and to test the application of the PSA triage process. I asked the Manager, Employee Relations to randomly select two files from two different ministries from the log to demonstrate the triage conclusion. Both randomly selected files from 2017 clearly indicated the triage process. One of the two files (still active in 2018) was then randomly selected by me and the file documents were sent to me for review and the Employee Relations Specialist, PSA, agreed to speak with me about the file. That file demonstrated clear Ministry and PSA roles in the investigation and the Employee Relations Specialist articulated a clear understanding for the requirement in the investigation process.

Finally, a helpful document titled “Initial Email to the Ministry Co-Investigator” was drafted by the PSA and is intended to be sent by the PSA investigator to the Ministry co-investigator after an initial discussion between the investigators has occurred. That email specifies steps in the investigation process and details accountabilities. In my review of the Investigation Files, I did not see evidence of the practice of sending this email to Ministry co-investigators. I understand from discussions from the PSA that the email is considered “transitory” for the purposes of Freedom of Information legislation and may be deleted from the investigation files.

b) A ministry must promptly notify the Agency of any allegation of employee misconduct prior to taking action so that the appropriate level of Agency involvement is determined before the ministry responds.

This requirement is found in the very first sentence of the “Investigations of Employee Misconduct” information sheet in *MyHR*. My review of this information sheet and my recommendation of *MyHR* are found in Action Item 2.

This requirement is outlined in the slide presentations (slide 7) to Deputy Ministers and Assistant Deputy Ministers, and senior leaders in 2015. Further, the requirement is evidenced in the speaking notes of the ADM, Employee Relations, PSA for the 2015 presentations. The requirement is also present in the presentations to Deputy Ministers and Assistant Deputy Ministers in 2017. This requirement is evidenced in the “Checklist for making disciplinary termination decisions” which was made available by way of a handout to attendees of the 2015 and 2017 sessions. My review and recommendations of these sessions is found in Action Item 11.

The requirement that the PSA consider whether there was prompt notification is outlined in the PSA’s internal due process confirmation steps for disciplinary termination. This due process checklist was utilized by the PSA in 100% of the Termination Files I reviewed. The issue of the timeliness of the notification was considered by the Employee Relations Specialist and identified as having been considered by way of the due process checklist in every Termination File that I reviewed.

I reviewed the timeliness of the ministry notification of an employee issue in the Investigation Files. In four Investigation Files, I found that there was a delay in the notification of the workplace issue.

I provided my findings regarding these delays to the PSA and, in my opinion, the PSA provided an acceptable response for delays in three of the four cases. I note that I could not find an analysis of the delay in the investigator’s notes to file during my initial evaluation of the Investigation Files although I concede that the Investigation Files contained many documents that I viewed electronically. In the one remaining case there was an unexplained delay in contact from the Ministry. There are no investigator notes to file indicating the follow up with the Ministry respecting this issue.

c) All investigations of alleged serious misconduct must be led by the Agency or Agency-approved investigators

This requirement is outlined in the slide presentations to Deputy Ministers, Assistant Deputy Ministers and senior leaders in 2015. The requirement is also present in the presentations to Deputy Ministers and Assistant Deputy Ministers in November and December 2017. My review and recommendations regarding these sessions is found in Action Item 11.

The requirement that all investigations of alleged serious misconduct must be led by the Agency or Agency-approved investigators is not expressly stated in the *MyHR* “Investigations of Employee Misconduct” information sheet. However, it is stated in the *MyHR* article that the ministry contact, the PSA and “... a representative will review the allegations with you and make a determination regarding the potential seriousness of the allegations and the extent of the Agency’s involvement in any response to, or investigation of, the allegations”.

The requirement is detailed in the internal PSA “Investigation Roles and Responsibilities” document updated in September 2017. This document is contained in the PSA’s centralized “M” Drive, which contains the policy materials for the Employee Relations Specialists.

I considered whether this Action Item was evidenced in the Termination Files. I found that in 100% of the Termination Files that did not involve Adult Custody (Corrections), the PSA investigator took the lead in the investigation.

❖ Key Findings ❖

1. The three independent commitments in Action Item 1 have been advanced by the PSA since the McNeil Review.

4.1.3. Recommendations

I have no recommendations for this section beyond the recommendations found in Actions Items 2 and 11.

4.1.4. Concluding opinion

It is my independent opinion that Action Item 1 is fulfilled.

4.2. Review of Action Item 2

Enhanced investigation and discipline decision-making information provided on *MyHR* so management employees understand the process and know what to do when they are initially confronted with an issue (e.g. who to call, what steps to take if there is an immediate concern/threat, etc.).

4.2.1. Approach to testing

MyHR is the provincial government’s online site that provides information about the services provided by the PSA as well as human resources information. Prior to the McNeil

Review, there was no content on *MyHR* that provided basic information for managers on the process involved in investigations of employee misconduct. The PSA developed an information sheet titled “Investigations of Employee Misconduct” (the “Information Sheet”). The first Information Sheet was posted to *MyHR* on February 6, 2015 (“the February 2015 Information Sheet”). That was replaced in March 2016 (the “March 2016 Information Sheet”) and then replaced and updated again in April 2017 (the “Current Information Sheet”).

I evaluated the *MyHR* website for the content of the Information Sheet, communication of the Information Sheet to managers, and the actual use of the *MyHR* website by government employees after the McNeil Review.

The following materials were sent to me by the PSA respecting the developing and posting the enhanced investigation and discipline decision-making information provided on *MyHR*:

- The Current Information Sheet in *MyHR*;
- A summary of updates to the Information Sheet;
- The February 2015 Information Sheet;
- The development materials for the February 2015 Information;
- The email dated February 6, 2015 advising that the Deputy Minister signed off on the February 2015 Information Sheet;
- A grid providing the traffic to the *MyHR* Information Sheet;
- The March 2016 Information Sheet; and,
- All emails related to this Action Item.

In reviewing content, I looked to ensure that the following information was included in the Information Sheet:

- a) Information advising managers of the requirement to notify the PSA promptly after being made aware of allegations of employee misconduct;
- b) Information regarding how a manager contacts the PSA;
- c) Information regarding how a manager should proceed if there is an immediate concern/threat at the workplace;
- d) Information regarding the investigation process once the PSA is contacted;
- e) Information respecting the investigation process;
- f) Information respecting what happens once the investigation has concluded; and,
- g) Information respecting due process during an investigation.

I also wanted to ensure that managers had access to the updated information in *MyHR*. As such, I looked at the communications by the PSA informing managers about the existence of the Information Sheet and the actual utilization of the Information Sheet by government employees.

I spoke with the ADM, Employee Relations on January 17, 2018 and January 25, 2018 and the Manager, Employee Relations on January 25, 2018 respecting Action Item 2. The ADM, Employee Relations confirmed that the March 2016 Information Sheet replaced the February 2015 Information Sheet without his knowledge or approval. That Information Sheet contained some inconsistent messages for managers respecting investigation practices after the McNeil Review. On the instructions of the ADM, Employee Relations, the March 2016 Information Sheet was replaced with the Current Information Sheet, which substantively resembles the February 2015 Information Sheet, with the notable enhancement of providing additional due process information.

I reviewed the February 2015 Information Sheet which was in place at that the time that the Action Items were identified as completed by Ms. Halls, Deputy Minister, PSA.

4.2.2. Findings

I found that the following information was evidenced in *MyHR*:

- a) Information advising managers of the requirement to notify the PSA promptly after being made aware of allegations of employee misconduct;
- b) Information regarding how a manager contacts the PSA;
- c) Information regarding how a manager should proceed if there is an immediate concern/threat at the workplace;
- d) Information regarding the investigation process once the PSA is contacted;
- e) Information respecting the investigation process; and,
- f) Information respecting what happens once the investigation has concluded.

In reviewing (d) above, the information provided respecting the actual investigation process was present, but did not include any information respecting due process and the rights of employees during an investigation. That omission was remedied in the Current Information Sheet.

In reviewing the Current Information Sheet, all above information remained clearly evidenced and information regarding due process and the rights of employees was included and a link to a handout called "Employee Handout: Workplace Investigations" was incorporated into the document.

In reviewing the PSA's communication to managers regarding the Information Sheet update to *MyHR*, I was informed that there was no information sent out by the PSA regarding the availability of the Information Sheet since it was posted to *MyHR* in February 2015. I consider this unfortunate as some managers may not have been aware of this important resource that was made available to them.

Despite the lack of direct communication regarding the Information Sheet, it is fortunate that many users of *MyHR* found their way to the Information Sheet and presumably benefitted from reviewing it. The following statistics were provided to me respecting the number of visits to the Information Sheet on the *MyHR* website:

***MyHR* Investigations Page Visits**

Year	# of Visits
2015	1,252
2016	1,971
2017	1,999
Total	5,222

❖ Key Findings ❖

1. The February 2015 Information Sheet and the Current Information Sheet contain information that conforms to investigation best practices and succinctly provides managers with important information respecting the process of what to do when initially confronted with an issue involving potential employee investigations.
2. The PSA has not expressly informed excluded managers of the *MyHR* updates since the McNeil Review.

4.2.3. Recommendations

Despite the evidence that the *MyHR* “Investigations of Employee Misconduct” site has had numerous views since it was posted on February 6, 2015, I recommend that the PSA specifically inform all managers in the public service of content contained in the Current Information Sheet on the *MyHR* website.

This recommendation was accepted and the ADM, Employee Relations, PSA has advised that the *MyHR* article would be sent to all managers no later than June 30, 2018.

4.2.4. Concluding opinion

It is my independent opinion that Action Item 2 is fulfilled.

4.3. Review of Action Item 3

Implementation of an investigations-specific training course for excluded managers in government.

4.3.1. Approach to testing

The PSA committed to implementing an investigations-specific training course for excluded managers. Prior to the McNeil Review, the investigations-specific course (“LR 301”) had been developed by the PSA and was being offered to excluded employees in government.

I evaluated the course content of LR 301 to ensure that the findings of the McNeil Review and the Action Items developed by the PSA were incorporated in and consistent with the information presented in the LR 301 training course. I evaluated whether this course provided participants with valuable information regarding how to conduct a workplace investigation in accordance with best practices, highlighting issues that were identified in the McNeil Review.

I was provided with the following documents by the PSA respecting LR 301:

- The LR 301 Participant Manual (May 17, 2013);
- The LR 301 Participant Manual with Appendix (July 2015);
- The appendices to the Participant Manual included in the training after the McNeil Review;
- The Learning Centre updates to the Participant Manual (July 2015); and,
- All the materials referred to by the PSA trainer in our discussion and that she references as part of her LR 301 training.

I spoke with the ADM, Employee Relations, the Manager, Employee Relations and an Employee Relations Specialist at the PSA respecting this Action Item.

4.3.2. Findings

I met with the ADM, Employee Relations, PSA on January 17, 2018 to discuss LR 301. We discussed the LR 301 Participant Manual (dated May 17, 2013) and the ADM, Employee Relations committed to providing the updates made by the PSA since the McNeil Review, but indicated that he believed the Participant Manual had not changed substantively since May 17, 2013.

On January 18, 2018, I reviewed the content of LR 301. I wrote the ADM, Employee Relations, PSA on that date expressing a number of concerns respecting the fact that the

Participant Manual did not appear to address the policies and commitments of the PSA post McNeil Review. In writing, I provided the ADM, Employee Relations, PSA a number of examples of areas in the Participant Manual where I had content concerns.

After reviewing the course content, I requested the following from the PSA:

- All versions of LR 301 from the date of the initial draft;
- The slide decks from all the presenters of LR 301, if the slide decks are different for speakers;
- The speaker's notes for LR 301; and,
- Details respecting how the Participants Manual is provided to course participants - electronically; manually; or provided only for the purpose of the training session.

On January 30, 2018 I interviewed the individual at the PSA who trains others at the PSA in LR 301 and also delivers the course to stakeholders. I was provided and independently confirmed the following information:

- The content of the May 17, 2013 Participant Manual ***had not changed*** in substance since the McNeil Review;
- There are no slide decks or Power point materials utilized by the LR 301 trainers;
- Since the McNeil Review, the PSA attached the following as appendices to LR 301:
 - Employee Handout for Workplace Investigations document;
 - The PSA Investigations Best Practice Protocols;
 - The Checklist for Making Disciplinary Termination Decisions; and,
 - The PSA Due Process Confirmation Steps for Disciplinary Terminations.
- The PSA trainers are well versed in the McNeil Review findings and speak to the McNeil Review during the course. Specifically, I was informed that the PSA trainers verbally reference the following materials in delivering LR 301:
 - McNeil Review findings;
 - The findings of two common law decisions respecting investigations;
 - Information respecting Worksafe BC bullying and harassment policy; and,
 - The internal PSA practice of triaging employee investigations.

❖ Key Findings ❖

1. The LR 301 Participant Manual has not been updated since 2013 to reflect the changes in the PSA's practices, policies or processes since the McNeil Review.
2. While the PSA intended to capture the substantive changes in investigation practices in the appendix to the LR 301 Participant Manual, I find that including conflicting material in written form to participants in the main body of the manual would lead to confusion and misunderstanding.

4.3.3. Recommendations

On January 19, 2018 I verbally recommended the PSA immediately take action to:

- Review the content of the LR 301 Participant Manual and update the course materials and replace it with a Participant Manual that reflects current practices and procedures that align with the PSA's commitments after the McNeil Review; and,
- Distribute the updated Participant Manual to all individuals that had taken the course since the McNeil Review.

The PSA accepted the recommendations above and commenced an immediate content review of the LR 301 materials.

I was informed by the ADM, Employee Relations, PSA on March 1, 2018 that the Participant Manual has been rewritten to reflect the McNeil Review findings and that every individual who is currently an employee and has taken the LR 301 (pre- and post-McNeil Review) would be receiving a copy of the updated LR 301 Participant Manual by March 31, 2018.

4.3.4. Concluding opinion

It is my independent opinion that Action Item 3 was partially fulfilled.

I was advised that the LR 301 Participant Manual is updated to reflect the policy and procedure changes after the McNeil Review. Once the updated Participant Manual is sent to all the individuals in government that took the course since the McNeil Review, together with an explanation as to the reason for the updates, Action Item 3 will be fulfilled.

4.4. Review of Action Item 4

Ongoing reinforcement of existing investigation protocols of informing employees at the start of the investigation of what happens during the investigation, their rights, and points of contact for questions or concerns.

4.4.1. Approach to testing

I evaluated whether investigation protocols that support the rights for employees involved in investigations were developed and implemented by the PSA.

I evaluated that the protocols and materials were both developed and implemented during actual investigations.

I was provided with the following information by the PSA:

- Careers and *MyHR* Archived and Current Content;
- Proposed content to replace *MyHR* articles on investigations (drafts, including draft vetted by legal counsel);
- Investigations of Employee Misconduct – Province of British Columbia;
- Investigations Protocol 2017;
- Multi Agency Investigation Protocol;
- Major PSA investigation oversight and escalation protocols – (various drafts and updates);
- Employee Handout Workplace Investigations – (various drafts, including drafts vetted by legal counsel, and final);
- Checklist Prior to Applying Disciplinary Action – (various drafting including draft vetted by legal counsel);
- Checklist for Making Disciplinary Decisions Not Involving Termination – (various drafts, updates and final);
- Guidelines for completion of the Checklist for Making Disciplinary Termination Decision – (various drafts and final);
- Investigations Best- Practices Protocols – (various drafts, including draft vetted by legal counsel and final);
- Investigations – Verbal and Written Meeting Notice document;
- Complainant/Witness/Respondent/Role Unclear document (updated September 2017);
- Meeting request - Verbal and Written Meeting Notice – Complainant;
- Policy - Termination for Just Cause Excluded & Included Employees (effective June 30, 2017);
- Criteria for Composition of Investigation Team – (various drafts, including draft vetted by legal counsel);
- Internal PSA Guide for Suspensions Pending Investigations – (various drafts and final);
- Approval and Sign Off Process for Disciplinary Terminations – (various drafts, including draft vetted by legal counsel);
- Response to McNeil Report (January 2015);
- The Investigation Files; and,
- All emails relevant to this Action Item.

4.4.2. Findings

The most relevant document pertaining to this Action Item was developed and implemented by the PSA on February 6, 2015. It is the “Employee Handout Workplace Investigations” handout (the “Handout”) which is provided to employees as a general information guide about the investigative process and the roles and responsibilities of the various individuals involved in the process. The Handout was reviewed by legal counsel.

The PSA has updated the Handout since 2015 and the most current version was updated on October 13, 2017. This is a valuable piece of information for all participants in the investigative process and is a commendable addition to the PSA’s investigation protocols. The Handout is referenced in the *MyHR* Information Sheet, referred to in my analysis of Action Item 2.

This Action Item is further supported by the checklist in the Termination for Just Cause Excluded & Included Employees Policy which requires that the Employee Relations Specialist consider whether the investigator(s) “...confirmed that the investigation was conducted in accordance with the Agency’s investigation best-practice protocols”. Although not specifically mentioned in the checklist, the provision of this information to employees in an investigation should form part of that analysis prior to a termination for just cause from the public service. The internal PSA “Investigation Best Practices Protocols Checklist” requires that for all major investigations, the investigators must ensure that prior to any interview; employees are made aware of their rights during the process and are provided the details regarding how to contact someone in the event that they have concerns during the investigative process. I was advised during the course of my review that the “Investigation Best Practices Protocols Checklist” is now used by the PSA for all investigations, which I support.

In reviewing the Investigation Files, I tested whether the Handout was provided to participants in the investigative process. The following are my findings:

- In the Children & Family Development investigation concluded 2017, the Handout was sent to the Witnesses but not to the Complainant or Respondent; Information withheld as personal information of a third party
- In the Aboriginal Relations Investigation concluded Information withheld as personal information, 2017, the Handout was sent to Witnesses but not to the Complainants or the Respondent. I further confirmed that the Handout was not mentioned in the interview through listening to the audio recording of the Respondent interview; and,
- In remaining fifteen files reviewed, the Handout was provided to all employee participants, although in some of the files it was sent by way of email while in other meetings, the Handout was sent by way of email and referenced by the investigative team at the commencement of the investigation meetings.

❖ Key Findings ❖

1. The Handout is a critical due process document.
2. The PSA should continue its work in communicating and implementing the importance of due process for employees in the investigative process.

4.4.3. Recommendations

I verbally recommended to the PSA on January 25, 2018 that the British Columbia Government and Services' Union be included in the contact information for the "Employee Handout Workplace Investigations" under the title of "Support". I followed up with this recommendation in writing to the PSA on February 25, 2018. This recommendation was accepted by the PSA and the PSA has advised it was implemented as of March 9, 2018.

In addition, I recommended in writing to the PSA on February 25, 2018, that the Handout be provided to all participants in the investigation by way of email and that receipt of the Handout is confirmed prior to any investigative meeting. If any employee has not had the opportunity to review the Handout prior to an investigative meeting, an opportunity ought to be provided for such a review prior to the commencement of an interview. This recommendation was accepted by the PSA and the PSA has advised it was implemented as of March 9, 2018.

4.4.4. Concluding opinion

It is my independent opinion that Action Item 4 is fulfilled.

4.5. Review of Action Item 5

Ongoing reinforcement of employees' entitlement to due process in an investigation.

- a) Where it is deemed necessary due to safety concerns, etc. that an employee cannot remain in the workplace while an investigation is carried out, the employee should be suspended from the workplace.
- b) Investigations are to be carried out as promptly as possible in recognition of the impact of the suspension on the employee.

4.5.1. Approach to testing

I evaluated the policies and procedures regarding minimizing the effect of suspensions of employees pending investigations.

I tested the policies relating to due process in Action Item 5 through an analysis of the Investigation and Termination Files.

I also tested the policies through discussing the policies with the ADM, Employee Relations, PSA and the Manager, Employee Relations.

The following documents were sent to me by the PSA pertaining to employee suspensions from the workplace pending an investigation:

- HR Investigations and Discipline Roles and Responsibilities (final);
- Investigations DM Presentation and speaking notes (final May 2015);
- Disciplinary Decisions Executive Overview (final);
- Proposed Content to *MyHR* article on Investigations (drafts, including draft vetted by legal counsel);
- Careers and *MyHR* Archived and Current Content;
- Investigations of Employee Misconduct – Province of British Columbia;
- Investigations Protocol 2017;
- Multi Agency Investigation Protocol;
- Internal PSA Guide for Suspensions Pending Investigation (2015 – 2017 versions and supporting documents);
- PSA Suspension Pending Outcome of Investigation Guidelines (Original and all updated versions);
- Major PSA Investigation Oversight and Escalation Protocols;
- Criteria for Composition of Investigative Team (drafts, including draft vetted by legal counsel);
- Checklist for Making Disciplinary Decisions Not Involving Termination (various drafts);
- Approval and Sign Off Process for Disciplinary Terminations (various drafts, including drafted vetted by legal counsel);
- Employee Handout Workplace Investigations (various drafts, including drafts vetted by legal counsel);
- Employee Handout Workplace Investigations (various drafts and final);
- Guidelines for completion of the “Checklist for Making Disciplinary Termination Decision” (various drafts and final);
- Investigation Best-Practice Protocols Checklist – (drafts and final copy);
- Policy - Termination for Just Cause Excluded & Included Employees (effective June 30, 2017);
- Investigation Oversight Log;
- The Investigation and Termination Files; and,
- All emails relevant to this Action Item.

4.5.2. Findings

The PSA worked to enhance due process of employees in an investigation in a number of ways. Notably, the PSA implemented the Handout (Action Item 4) and the Internal Investigation Best-Practices Protocols checklist for major PSA investigations.

This Action Item committed the PSA to considering due process rights in the event of a suspension pending investigation from the workplace. I deal with the two specific commitments in turn below.

- a) Ongoing reinforcement of employees' entitlement to due process in an investigation: Where it is deemed necessary due to safety concerns, etc. that an employee cannot remain in the workplace while an investigation is carried out, the employee should be suspended from the workplace.**

In *MyHR* (Action Item 2) the PSA provided information to managers responding to situations that occur after business hours when the manager believes that the situation necessitates suspending an employee (and no PSA Representative is available).

The PSA developed guidelines for suspending employees pending the outcome of an investigation on February 2, 2015. That was replaced by "Suspension Pending Outcome of Investigation Guidelines" dated September 4, 2015 and again on April 7, 2017 (the "Suspension Guidelines").

The most current version of the Suspension Guidelines is dated November 2017 is an internal PSA document which provides comprehensive information and guidance respecting suspensions pending the outcome of an investigation for bargaining unit employees and excluded employees.

I reviewed the Investigation and Termination Files to see if there were any files where an employee was suspended from the workplace. Three were identified from the sample. From those three, I checked for indicia of "due process" in the files as well as whether there were emergent or safety issues present.

From the Investigations Files, I note the following in respect of the one file where an employee was suspended:

- The Employee was suspended in accordance with the Suspension Guidelines;
- The Employee Handout was provided prior to the interview;
- There was a separate investigator and decision maker on the file; and,
- There was evidence that the BCPSA Investigation Roles and Responsibilities protocol was applied.

I also considered whether the circumstances dealt with safety concerns and suspensions from the workplace, which was not present in the sole Investigation File applicable to this Action Item.

There were two examples from the Bargaining Unit Termination Files where the employee was suspended from the workplace. In both cases, I confirmed that the PSA Due Process Checklist was filled out by the Employee Relations Specialist. Further, for both Bargaining Unit Termination Files, I confirmed that legal advice was sought by the PSA. From my file review, neither of the Bargaining Unit Termination Files appeared to engage the issue of safety concerns.

I met with the ADM, Employee Relations and the Manager, Employee Relations to discuss the issue of suspensions from the workplace with or without pay. The internal PSA Suspension Guidelines have been updated and revised a number of times to address updates to due process for government employees. The most recent change requires that any suspension without pay for bargaining unit employees be approved by the ADM, Employee Relations, PSA. Excluded employees must now always be suspended with pay. The PSA put in place a number of internal protocols that speak to due process, including a due process checklist.

It was also confirmed that if a Ministry took the step of suspending an employee due to safety concerns, an Employee Relations Specialist from the PSA would be expeditiously assigned to the file and would review the situation and determine the merits of the suspension in each circumstance.

b) Ongoing reinforcement of employees' entitlement to due process in an investigation: Investigations are to be carried out as promptly as possible in recognition of the impact of the suspension on the employee.

When employees are suspended pending the outcome of an investigation, the PSA has committed to carry out the investigation as promptly as possible.

I reviewed the Termination Files to ensure that specific documents were evidenced on the files. As previously discussed, due to time constraints, I did not review the entire investigation/decision-making records for the Bargaining Termination files but looked for key documents that would support my findings on this item.

In considering this Action Item, I first reviewed the "Investigation Best Practices Protocols Checklist" for each Termination File. There was no prompt in the checklist for an analysis of whether there was a suspension pending investigation and any impact such a suspension may have to a disciplinary decision. As such, I could not determine on the face of this document whether the employees had been suspended and the timelines engaged from suspension pending investigation to disciplinary decision.

I then reviewed all the documents provided for the Termination Files. The following was evidenced:

- There were no suspensions pending investigations in the Excluded Employee Termination Files;
- There were two suspensions pending investigations in the Bargaining Unit Termination Files. I found the following:
 - In the first Bargaining Unit Termination File considered, the employee was suspended without pay pending investigation on Redacted , 2016 and the “Checklist For Making Disciplinary Termination Decisions” was completed on Redacted 2016. The dismissal letter was evidenced in the file and was dated Redacted , 2016.
 - In the second Bargaining Unit Termination File considered, the employee was suspended without pay pending investigation on Redacted 2016. The employee did not participate in the investigation process and legal advice was obtained on Redacted 2017 respecting the circumstances and the options open to the PSA. The “Checklist for Making Disciplinary Termination Decisions” was completed on Redacted 2017. A copy of the termination letter was not included in the investigation documents (I understand that this letter would be kept in the decision-making file which I did not review).

Information withheld
as personal
information of a third
party

❖ Key Findings ❖

1. The PSA has developed, updated and implemented Suspension Guidelines for employees who are suspended pending the outcome of an investigation.
2. I conclude that in the cases that I reviewed, the investigations were carried out promptly in the circumstances.
3. In the first Bargaining Unit Termination File discussed above, the investigation was completed in less than three weeks from the time that the employee was suspended. In the second Bargaining Unit Termination File discussed above, there was evidence of express consideration of the fact that the employee was suspended pending investigation and the *impact* of that situation on the investigation and the timelines.

4.5.3. Recommendations

I recommend that the PSA incorporate an additional prompt into the “oversight and escalation protocols” checklist to include a consideration of whether an employee was suspended pending investigation.

I recommend that the PSA incorporate an additional prompt into the “Investigations Best Practices Protocols Checklist” to include an analysis of timeliness of the investigation in the circumstances of each case where an employee was placed on suspension pending investigation.

The PSA has committed to updating the “oversight and escalation protocols” and “Investigations Best Practices Protocols” to address the above no later than April 30, 2018.

4.5.4. Concluding opinion

It is my independent opinion that Action Item 5 is fulfilled.

4.6. Review of Action Item 6

Ongoing reinforcement of existing practice of considering suspensions with pay for investigations where doing so without pay may compromise the investigation.

4.6.1. Approach to testing

Action Item 6 has some overlap with Action Item 5. Like the evaluation of Action Item 5, I evaluated the policies and procedures regarding suspensions of employees pending investigations.

I tested the policies relating to due process in Action Item 5 through an analysis of the Investigation and Termination Files. I also tested the application and communication of the policies through discussing the policies with the ADM, Employee Relations, PSA and the Manager, Employee Relations.

The following documents were sent to me by the PSA pertaining to employee suspensions from the workplace pending an investigation:

- Investigations: Internal PSA Suspension Pending Outcome of Investigation Guidelines (2015/02/09; 2015/09/04; 2017/04/07; and November 2017);
- Proposed Content to replace the current *MyHR* article on investigations (various draft, updates and final);
- Employee Handout – Workplace Investigation (various drafts and final);
- Internal PSA Guidance Suspensions Pending the Outcome of an Investigation (various drafts and final);
- Criteria for Composition of Investigative Team (various drafts and final);
- Checklist for Ministry Prior To Applying Disciplinary Action (various drafts);
- Approval and Sign Off Process for Disciplinary Terminations;

- Excluded Suspension Policy (April 7, 2017);
- Guidelines for completion of the “Checklist for Making Disciplinary Termination Decision” (December 30, 2015);
- OH Referral MHIAW – Process Map (January 2015);
- Suspensions Pending Investigations (2017);
- Suspensions Pending Excluded (2015-2017);
- Table of Contents – PSA Investigations December 2017 Binder;
- Suspensions with Pay Pending Investigation – Template;
- The Investigation and Termination Files; and,
- All emails related to this Action Item.

4.6.2. Findings

This Action Item committed the PSA to considering the practice of suspending employees pending an investigation, which was an issue that was highlighted by the McNeil Review and the Misfire Report.

Immediately after the McNeil Review, the PSA developed the Suspension Guidelines (defined in Action Item 5). The Suspension Guidelines were first sent to Employee Relations Specialists by way of email on March 12, 2015. The Suspension Guidelines provide advice to Employee Relations Specialists on how to assist managers in determining if a suspension is warranted in the circumstances and whether the suspension should be with or without pay.

Those guidelines were updated on September 4, 2015. In February 2016, an email was sent from the ADM, Employee Relations, PSA to his management team asking that the Suspension Guidelines be shared with staff.

The Suspension Guidelines were updated again in April 2017 and again in November 2017. The most current version provides comprehensive information and guidance respecting suspensions pending the outcome of an investigation for bargaining unit employees and excluded employees.

The November 2017 Guidelines were implemented after the Misfire Report. The updated document was distributed to all Employee Relations Specialists on January 5, 2018 in advance of a team meeting. The most current Suspension Guidelines read:

Suspensions Pending the Outcome of an Investigation

In investigations involving allegations of serious employee misconduct, Employee Relations Specialists will need to assist managers in determining whether it is appropriate for the employee under investigation to remain in the workplace during the investigation. In the

event the employee is suspended, it is also necessary to determine if the employee should be suspended with or without pay.

Should the employee be suspended pending the outcome of the investigation?

The assessment for determining whether an employee who may be guilty of misconduct should stay on the job or be relieved of his or her duties while an investigation is conducted must be done in the light of a balancing of interests between employer and employee. If the alleged misconduct is related to the employment relationship and the continued employment of the employee would present a serious and immediate risk to the legitimate concerns of the employer, then a suspension may be justified. Such a suspension is not disciplinary in nature if it is protective to the interests of the employer.

The ministry manager and Employee Relations Specialist must engage in a considered assessment of whether it is reasonable to suspend the employee based on the following considerations:

1. Can the continued presence of the employee at work be considered to present a reasonable serious and immediate risk to the legitimate concerns of the employer? This requires assessing the risk that is posed in the event the allegations are founded.
2. Can it be established that the nature of the allegations is potentially harmful or detrimental or adverse in effect to the:
 - a. employer's reputation?
 - b. employee's ability to properly perform their duties?
 - c. employer's other employees or the public?
3. Is adequate information available to determine that the initial allegations are credible?
4. Have reasonable steps been taken to ascertain whether the risk of continued employment might be mitigated through techniques such as closer supervision or a transfer?

If the employee is suspended pending the outcome of the investigation, the reasons for the suspension must be included in the letter of suspension. During the period of suspension, the Employer must consider the possibility of re-instatement if new facts or circumstances arise.

Should the employee be suspended without pay during the investigation?

If a suspension pending the outcome of the investigation is warranted, the employer must consider whether the suspension should be with or without pay.

Bargaining Unit Members

For bargaining unit employees, suspensions without pay are permitted under the collective agreement; however, the general practice is to suspend employees with pay. Suspensions without pay can be considered if the following criteria are met:

1. The level of alleged misconduct is considered to be high and would result in a lengthy suspension or termination if substantiated;
2. The preliminary evidence gathered in relation to the allegation(s) at the time of temporary suspension is compelling. Hearsay evidence, on its own, is not sufficient.
3. The nature of, or circumstances giving rise to, the alleged misconduct cannot be reasonably interpreted to be motivated solely by altruistic reasons or in the name of serving the public good, e.g. whistleblowing or protecting the environment.
4. A suspension without pay must not negatively impact the conduct of the investigation.

The approval of the ADM of Employee Relations is required for any suspension without pay of a bargaining unit employee. Exceptions to the above criteria require the approval of the DM of the PSA. If the Employee Relations Specialist believes that a suspension without pay would be an appropriate response, he/she should consult with a director.

During the period of suspension of a bargaining unit employee, the Employee Relations Specialist should consider the possibility of changing the status of a with or without pay suspension if new facts or circumstances arise. The Specialist should consult with a director in such a case. The approval of the ADM of Employee Relations is required before changing the with or without pay status of any suspension pending the outcome of an investigation.

Excluded employees

For excluded employees, a suspension without pay raises the potential for constructive dismissal and must not be pursued. All suspensions of

excluded employees pending an investigation into alleged misconduct must always be with pay. No exceptions to this policy are permitted.

❖ Key Findings ❖

1. I reviewed the Investigation and Termination Files to consider the practice of suspensions pending the outcome of investigations after the McNeil Review. From the sampling, there were three examples of suspensions of employees pending investigation. It was clear from the documents reviewed in the files that the employees were suspended in accordance with the “Suspension Pending Outcome of Investigation Guidelines” and the impact of the suspensions were a consideration in the investigations.
2. I met with the ADM, Employee Relations and the Manager, Employee Relations to discuss the issue of suspensions from the workplace pending the outcome of an investigation. The internal PSA Guidelines have been updated and revised a number of times to address updates to substantive and procedural issues in response to the McNeil Review and, most recently, the Misfire Report.

4.6.3. Recommendations

I recommended that the topic of suspensions pending outcome of investigation be placed on the Employee Relations staff meeting agenda regularly to review the Suspension Guidelines to invite discussion from the Agency investigators. This recommendation has been accepted by the PSA.

4.6.4. Concluding opinion

It is my independent opinion that Action Item 6 has been fulfilled.

4.7. Review of Action Item 7

Implementation of mandatory enhanced investigations training program for Agency investigators.

4.7.1. Approach to testing

The PSA committed to implementing a mandatory enhanced investigations training program for PSA investigators. Prior to the publication of the McNeil Review, the PSA investigators were not required to attend any formalized training.

My review included the following steps:

1. Obtaining the investigative course content from the PSA;
2. Evaluating the credentials of the individual that prepared and offered the course;
3. Considering whether the training program contained the necessary content to address the fundamental requirements of an investigation;
4. Obtaining the organizational chart from the PSA in order to assess which individuals were PSA Investigators and confirming the job titles of “Agency Investigators”;
5. Obtaining the list of PSA Investigators that have completed the course and when those Investigators took the course;
6. Obtaining the list of PSA Investigators that have not completed the course and obtaining the date which those individuals were scheduled for training;
7. Obtaining the list of PSA Investigators that have taken the course as a refresher (more than one time) and what dates the PSA Investigators took the refresher courses; and,
8. Obtaining a list of the start date for all PSA Investigators.

4.7.2. Findings

The following documents were sent to me by the PSA respecting Action Item 7:

- The PSA Organizational Chart;
- And email from the ADM, Employee Relations confirming the individuals in the PSA that conduct investigations perform the role of Employee Relations Specialists;
- A copy of the mandatory enhanced training program;
- The name and contact information of the individual that prepared and delivers the mandatory enhanced training program;
- The start date for all Employee Relations Specialists;
- The dates that all Employee Relations Specialists have attended the training;
- The dates of the next scheduled training date and the list of all Employee Relations Specialists attending that session; and,
- All emails related to this Action Item.

I reviewed the mandatory training program titled “Fundamental Requirements of a Fair and Defensible Investigations” prepared and delivered by a lawyer with significant expertise in labour law and workplace investigations. The training program includes substantive and procedural information necessary to conducting workplace investigations and addresses the concerns voiced in the McNeil Review regarding the Ministry of Health Investigations.

The PSA provided the organizational chart that I cross-referenced with the attendee list provided by the PSA. I noted that there were a number of Senior LR Specialists on the organizational chart and queried whether they conducted PSA investigations as their names were not on the attendee list. The ADM, Employee Relations confirmed by way of email on February 19, 2018 that the Senior LR Specialists did not conduct investigations for the Agency.

I was advised by the ADM, Employee Relations, PSA that only Employee Relations Specialists conduct investigations for the Agency. I cross-referenced the names of the Employee Relations Specialists with the start date in the position of Employee Relations Specialist to ensure that all individuals that were expected to attend the mandatory training sessions have done so.

I received an email from the Manager, Employee Relations on February 26, 2018 indicating that the most recent “Fundamental Requirements of a Fair and Defensible Investigations” course was offered on February 13 & 14, 2018. A number of Employee Relations Specialists attended the course and that the course was opened up to 10 Human Resources Advisors because the HR Advisors advise clients on minor investigations.

Of the current 16 Employee Relations Specialists, all 16 had attended the mandatory training session at the date of writing. Commendably, a number of Employee Relations Specialists have attended the mandatory session more than once, as a refresher course.

Although not required by way of this Action Item, all 16 Employee Relations Specialists have also attended the “Administrative Decision Writing Workshop” offered by the BC Council of Administrative Tribunals and the Justice Institute of British Columbia’s course called “Conducting Internal Investigations”.

❖ Key Findings ❖

1. The training content is valuable.
2. The training has been required of all Employee Relations Specialists at the PSA.

4.7.3. Recommendations

None.

4.7.4. Concluding opinion

It is my independent opinion that Action Item 7 has been fulfilled with respect to the Employee Relations Specialists, the PSA investigators tasked with conducting serious and/or sensitive workplace investigations.

4.8. Review of Action Item 8

Implementation of a mentor program for Agency investigators that requires new investigators to be teamed up with an experienced colleague for several investigations prior to leading an investigation.

4.8.1. Approach to testing

The PSA committed to implement a mentor program for investigators during their probationary period. I evaluated the content of the mentor program (the “Mentor Program”) as well as the implementation of the program at the PSA.

4.8.2. Findings

The following documents and materials were provided to me by the PSA:

- Document titled “Mentorship Process for new ERS”;
- The Table of Contents for the PSA Investigation Resource Guide;
- The Investigation Mentoring Program for new Employee Relations Specialists document that was in place prior to the McNeil Review;
- The updated document titled Investigations: Mentoring Program for New Specialists implemented in November 2017 (the “Mentor Program”);
- The organizational chart for the PSA indicating the roles within the PSA that conduct investigations (Employee Relations Specialists);
- A grid detailing the commencement date of the Employee Relations Specialists at the PSA since the McNeil Review;
- A sample letter of Expectations indicating the presence of the mentoring program;
- Details respecting certain Employee Relations Specialists for whom the mentoring program was extended or reduced;
- Written confirmation that the Employee Relations Specialists completed the *Fundamentals of a Fair and Defensible Investigation Course* within the probation period;
- The Investigation Files; and,
- All emails related to this Action Item.

The Mentor Program was in place prior to the McNeil Review but was enhanced and updated by the PSA in November 2017.

I reviewed the commencement date of each Employee Relations Specialist since the McNeil Review and confirmed that the Employee Relations Specialists new to that role

have participated in the Mentor Program. Further, pursuant to the Mentor Program, I confirmed that the Employee Relations Specialists attended the training course required by the Mentor Program.

The Mentor Program permits that the Employee Relations Specialist mentor period may be extended or reduced. The approval of the ADM is required for reducing the mentor period. That mentor period was reduced for one Employee Relations Specialist since the McNeil Review and the ADM provided verbal approval for the reduction after reviewing the experience, qualifications and circumstances of the Employee Relations Specialist at issue.

The approval of the ADM is not needed for lengthening the mentoring period. During the time of the Employee Relations Specialist Mentorship program, the PSA provided examples of employees that had their mentorship extended at the PSA, indicating the PSA is taking into account the specific experience of each Employee Relations Specialist.

I verified that all Employee Relations Specialists have completed the *Fundamentals of a Fair and Defensible Investigation Course* since the McNeil Review, irrespective of whether they were participating in the Mentor Program. The Employee Relations Specialist currently participating in the Mentor Program attended the required course on February 13 and 14, 2018.

I considered the Mentor Program in my analysis of the Investigation Files. Since the Investigation File review was completely random, it would not necessarily evidence the implementation of the Mentor Program. That would depend on whether an Employee Relations Specialist was in fact participating in the Mentor Program at the time and was assigned to the randomly selected file.

In two of the Investigation Files, the Mentor Program was evidenced. Both files were from December 2017: one file from the PSSG Ministry and the other from the Ministry of Health. In reviewing those investigation files, I confirmed through a document review that the mentee was actively participating in the file in conjunction with the guidance and assistance of the mentor, in accordance with the Mentor Program.

❖ Key Finding ❖

1. The Mentor Program is an important program that is working well at the PSA.

4.8.3. Recommendations

It is my recommendation that when the ADM of Employee Relations reduces the mentoring period for an Employee Relations Specialist, as was the case in one occasion since the McNeil Review, that the approval be written rather than verbal. I provided this recommendation to the ADM, Employee Relations in our meeting on January 25, 2018.

The ADM accepted the recommendation at that meeting and advised on that date that it would be effective immediately.

4.8.4. Concluding opinion

It is my independent opinion that Action Item 8 has been fulfilled.

4.9. Review of Action Item 9

- a) Ongoing reinforcement of existing Agency policy requiring that the investigative and decision-making parts of the process are kept separate and decision makers remain at arm's length until the findings have been rendered.
- b) Disciplinary decisions also must only be made after the investigation has been completed and labour relations and/or legal advice has been received and documented.

4.9.1. Approach to testing

The PSA made two commitments in Action Item 9.

First, I evaluated the content of PSA's policies requiring separation of investigation and decision-making. I further considered whether such separation was evidenced in the Investigation Files provided by the PSA. Second, I tested whether labour relations/legal advice was present in the Termination Files provided by the PSA.

The PSA provided me with the following materials in support of Action Item 9:

- HR investigation and discipline roles and responsibilities (final);
- Investigations DM Presentation (final);
- Corporate Executive Sessions (Nov and Dec 2017);
- Investigations of Employee Misconduct – Province of British Columbia;
- Investigations Protocol 2017;
- Disciplinary Decisions Executive Overview (final);
- Multi Agency Investigation Protocol (2015/12/10);
- Policy - Termination for Just Cause Excluded & Included Employees (updates and final);
- Guidelines for completion of the "Checklist for Making Disciplinary Termination Decisions" (various drafts, updates and final);
- Approval and Sign Off Process For Disciplinary Terminations;
- Employee Handout Workplace Investigations (updates and final);

- Internal PSA Guidance for Suspensions Pending Investigation (various drafts and final);
- Criteria for Composition Of Investigative Team (final);
- Investigation Best-Practice Protocols Checklist (final);
- Investigation Best-Practice Protocols (final);
- Proposed Content to replace the current *MyHR* article on investigations (drafts, including draft vetted by legal counsel);
- Mentorship Process for new ERS;
- The Termination Files; and,
- All emails related to this Action Item.

4.9.2. Findings

- a) Ongoing reinforcement of existing Agency policy requiring that the investigative and decision-making parts of the process are kept separate and decision makers remain at arm's length until the findings have been rendered.**

This commitment was a direct result of the McNeil Review. The McNeil Review findings prompted immediate changes to the PSA's procedures concerning investigative and decision-making parts of the investigative process.

Prior to September 2017, the PSA communicated this change to process by way of *MyHR* – Investigations of Employee Misconduct Information Sheet (see Action Item 2). The separation between investigation and decision-making processes is also well described in the Employee Handout Workplace Investigations (see Action Item 4). Finally, the findings of the McNeil Review were presented by the ADM, Employee Relations, PSA in 2015 to Deputy Ministers, Assistant Deputy Ministers and senior leaders and in 2017 to Deputy Ministers and Assistant Deputy Ministers (see Action Item 11). These presentations included the distinction between the investigative and decision-making processes.

The PSA developed a document titled "BCPSA Investigations Roles and Responsibilities" which was implemented in September 2017. This well drafted document makes clear that the role of investigator is distinct from the role of decision maker. The PSA believes that this document was communicated to all PSA Employee Relations Specialists by way of a staff meeting, but notes of such communication could not be located.

I tested this commitment by considering whether the Investigation Files contained the investigative process information and had clear communications that once that process concluded, the decision-making process would be conducted by other individuals. In 100% of the Investigation Files, there was evidence of separation between investigators and decision makers.

- b) Disciplinary decisions also must only be made after the investigation has been completed and labour relations and/or legal advice has been received and documented.**

I reviewed the Termination Files for evidence that labour relations and/or legal advice had been received and documented prior to a decision being made by the decision maker and the results were very clear:

- In 100% of the Excluded Employee Termination Files (2/2 files) legal advice was present and documented in the files in advance of the disciplinary decision.
- In 100% of the Bargaining Unit Termination Files (16/16 files) labour relations and/or legal advice had been received in advance of the disciplinary decision.

With regard to the Investigation Files, because the disciplinary decisions are not made by the investigators, the Investigation Files appropriately do not contain any information pertaining to any disciplinary decisions.

❖ Key Findings ❖

1. Both (a) and (b) of Action Item 9 are evidenced in protocols and practice.

4.9.3. Recommendations

While 100% of the Termination Files contain clear evidence of the Employee Relations Specialists requesting and receiving advice, 19% (3/16) of the files from terminations that occurred in 2016 do not contain documentation of the *actual* advice in the file. Therefore, I recommend that the labour relations and/or legal advice received by the Employee Relations Specialist be documented in all discipline files.

Given that this Action Item was evidenced in 100% of the files I reviewed, it is clear that the Employee Relations Specialists are proceeding in a manner which demonstrates an understanding that there must be a separate investigation and decision-making process. In addition to providing the document in the centralized “M” drive accessible to all Employee Relations Specialists, I recommend that the PSA formally incorporate the “BCPSA Investigations Roles and Responsibilities” document in the material provided to during the mentorship process.

The PSA has advised that these recommendations are accepted and will be implemented by March 31, 2018.

4.9.4. Concluding opinion

It is my independent opinion that Action Item 9 has been fulfilled.

4.10. Review of Action Item 10

- a) Establishment of oversight and escalation protocols for investigations that are sensitive and/or have potentially significant outcomes.
- b) In the event of a disagreement between a Deputy Minister and the Deputy Minister, BC Public Service Agency, regarding the investigation process or outcomes, the matter will be advanced to the Deputy Minister to the Premier.

4.10.1. Approach to testing

This Action Item commits to two separate actions intended to incorporate oversight and escalation protocols into the investigation and decision making processes. The following documents were provided to me by the PSA:

- Major PSA Investigation oversight and escalation protocols (current and previous drafts);
- Major PSA Investigation oversight and escalation protocols (February 9, 2015);
- Approval and Sign off process for Disciplinary Terminations (various drafts, including draft vetted by legal counsel);
- Checklist prior to applying disciplinary action (various draft documents);
- Employee Handout - Workplace Investigation (various draft document, including drafts vetted by legal counsel);
- Guideline Completion of Termination Checklist (various drafts);
- Investigation best-practice protocols checklist - Final copy;
- Policy - Termination for Just Cause (final - effective June 30 2017);
- Proposed content to *MyHR* Investigations article Feb 6 (various drafts, including draft vetted by legal counsel);
- Spot Audit of Investigation Interviews updated December 2017;
- Investigation Oversight Log;
- Letter from Deputy Minister Halls to Corinn Bell dated February 22, 2018;
- Two specific and additional investigation files (appendices to Deputy Minister Halls February 22, 2018 letter); and,
- All emails related to this Action Item.

I spoke at length with the ADM, Employee Relations, PSA about this Action Item. I also spoke with an Employee Relations Specialist and the Manager, Employee Relations about part (a) to this Action Item to gain a better understanding of the oversight and escalation protocols.

4.10.2. Findings

- a) **Establishment of oversight and escalation protocols for investigations that are sensitive and/or have potentially significant outcomes.**

A protocol was developed in 2015 to provide guidance to PSA investigators in best-practices and escalation protocols in the event that significant issues occur during an investigation. That protocol was updated in August 2017 and now reads:

FOR INTERNAL PSA EMPLOYEE RELATIONS PURPOSES ONLY

Major PSA investigation oversight and escalation protocols

The following oversight and escalation protocols for major/sensitive investigations that involve the PSA are intended to ensure that investigations always follow best practices and PSA guidelines. In the event there is a concern with any major/sensitive investigation, the following protocols will help ensure that the issues are identified and addressed as promptly as possible.

For all major investigations:

- Prior to interviewing employees as part of a disciplinary investigation, the employees are to be made aware of their rights during the process and how to contact someone in the event that they have any concerns at any time during the process.
- The lead PSA investigator will provide weekly updates to the Manager/Director of Investigations on the status of the investigation.
- The PSA lead investigator will contact the Manager/ Director of Investigations within 24 hours if a significant issue develops that threatens the integrity of the investigation and they will together work out a plan to resolve the issue.
- The Manager/Director of Investigations will contact the ADM, Employee Relations, immediately if assistance is required in resolving an issue, including undue delay, that threatens the integrity of an investigation. The ADM will involve the DM of the PSA as necessary.
- The Manager/Director of Investigations will provide bi-weekly updates to the ADM, Employee Relations, on the status of all major/sensitive investigations involving the PSA.
- If an investigation ultimately leads to a disciplinary termination, the Agency's due process checklist for disciplinary terminations requires that there is confirmation that the investigation was carried out by an

appropriate investigator and was conducted in accordance with Agency guidelines before the termination can proceed.

* A “**major investigation**” is an investigation into an allegation of misconduct where, if the allegation(s) is sustained, the discipline would likely involve a suspension of more than 5 days in duration. This includes serious allegations of bullying, harassment or inappropriate use of managerial authority.

The ADM, Employee Relations, PSA informed me that once the oversight and escalation protocols were established in 2015, regular meetings were scheduled between himself and the Director, Employee Relations and/or the Manager, Employee Relations. Those regular meetings are now scheduled every two weeks provide a formal avenue for discussing issues relating to investigations. This is a very commendable practice.

In addition to the regular, formal meetings, the ADM, Employee Relations, PSA noted that the entire investigative staff will escalate issues as they occur during an investigation. This process and understanding is evidenced in the oversight and escalation protocol and was confirmed to me by an Employee Relations Specialist during our discussion on January 31, 2018 as well as by the Manager, Employee Relations during our meeting on January 25, 2018.

As I reviewed the Investigation Files, I looked for evidence of the escalation and oversight protocols by way of investigator notes to file or emails. While some of the files evidenced the application of the oversight and escalation protocols, most of the files that I reviewed did not contain evidence of the protocols in practice. I was advised that the meetings and discussions prompted by the investigation and oversight protocols would not necessarily be noted in the Employee Relations Specialist investigative file.

b) In the event of a disagreement between a Deputy Minister and Deputy Minister, BC Public Service Agency, regarding the investigation process or outcomes, the matter will be advance to the Deputy Minister to the Premier.

This aspect of Action Item 10 points to the procedural steps that the Deputy Minister, PSA will take in the event of a disagreement between the PSA and the Ministry regarding investigation process or investigation outcome.

The PSA incorporated clear language with respect to investigation process in cases of terminations for just cause. The Termination for Just Cause Excluded & Included Employees Policy mandates that Deputy Ministers can only exercise their duties and terminate an employee for just cause “...once the Deputy Minister of the Agency has confirmed that due process has been followed in relation to the termination.”

There is not any equivalent language in policy or protocol documents that speak to disagreements between a Deputy Minister and the Deputy Minister, PSA with respect to investigation processes not involving terminations or investigation outcomes more generally. I was informed by the ADM, Employee Relations, PSA that in those circumstances, the procedure would be as follows:

- The disagreement would be flagged by him and discussed at the Assistant Deputy Minister level;
- In the event of a continued disagreement, he would raise the issue to the Deputy Minister, PSA to discuss at the Deputy Minister level;
- In the event of a continued disagreement, the issue would go to the Deputy Minister to the Premier.

I requested that the Deputy Minister, PSA confirm that this is current practice. In that letter, she outlined that it was her expectation that staff would escalate matters if there was a belief that the disciplinary decision was not reasonable and that if agreement could not be reached with the Ministry, the matter would be taken to the Deputy Minister to the Premier for resolution. Two specific examples (with investigation file materials) were provided where this escalation occurred and discussions between Deputy Ministers were required. Escalation to the Deputy Minister to the Premier was not required in either of these cases.

❖ Key Findings ❖

1. The PSA developed internal protocols to provide regular discussion mechanisms for investigators as well as establish escalation processes when significant issues develop in an investigation.
2. The PSA does not ask the investigators to formally document the application of the oversight and escalation protocols in the course of the investigation;
3. The escalation requirement (Deputy Minister level) regarding due process in the event of a just cause termination is well-documented;
4. The escalation requirement (Deputy Minister level) regarding due process in the event of discipline other than termination and in the event of disciplinary outcome is practiced, but is not documented.

4.10.3. Recommendations

With respect to (a), I recommend that the investigators document in the investigation files when the oversight and escalation protocols are being applied, including notes to file when oversight/escalation meetings occur with other members of the PSA.

The PSA accepted this recommendation and has advised it will be implemented by March 31, 2018.

With respect to (b), I recommend that escalation requirements for the investigation process and investigation outcomes be formalized to clearly recognize the process in the event of disagreements between Deputy Ministers as outlined in Action Item 10.

The PSA accepted this recommendation and has advised it will be implemented by April 30, 2018.

4.10.4. Concluding opinion

It is my independent opinion that Action Item 10 is fulfilled.

4.11. Review of Action Item 11

Mandatory education sessions provided for Deputy Ministers, Assistant Deputy Ministers and senior managers on investigations and making disciplinary decisions. In addition we plan to roll out these education sessions to all other excluded managers.

4.11.1. Approach to testing

Action Item 11 committed the PSA to provide mandatory education sessions to specific individuals in government. It also committed to rolling out the education sessions to other excluded managers in the future. I was testing the general content of the education sessions as well as attendance at these mandatory sessions.

The following documents were provided to me by the PSA:

- Investigations DM Presentation – (March 2015);
- Investigations ADM Presentation (May 2015);
- ADM, Employee Relations, PSA speaking notes from education sessions;
- HR Investigations & Discipline Roles and Responsibilities (final draft);
- Minutes May 11, 2015 - Agency Exec Meeting;
- Disciplinary Decisions Executive Overview handout (final draft);

- Corporate Executive Sessions (Nov and Dec 2017);
- Attendance for Executive Sessions (Nov and Dec 2017);
- Draft materials for the on-line education sessions for excluded managers (roll out in 2018);
- Documents relating to education session presented in Communications Plan (Action Item 14); and,
- All emails relevant to this Action Item.

I also met with the ADM, Employee Relations on a number of occasions to discuss this Action Item as he personally presented all of the education sessions in 2015 and in 2017 except for two sessions presented by the Manager, Employee Relations, PSA in June 2015.

4.11.2. Findings

CONTENT OF THE EDUCATION SESSIONS

The materials presented by the PSA addressed the key findings of the McNeil Review at a high level for the Deputy Ministers, Assistant Deputy Ministers and senior leaders in 2015 and Deputy Ministers and Assistant Deputy Ministers in 2017.

I checked the materials to ensure that the messages in these sessions were consistent with the policies derived from the Action Items. No conflicts were present and the message was consistent throughout.

The PSA provided handouts to participants at these sessions. In 2015, the Disciplinary Decisions (Executive Overview) was provided as a handout to participants. In 2017, the Just Cause Termination Policy and the Government Internal and External Communications Policy were provided as handouts to participants.

ATTENDANCE AT THE MANDATORY SESSIONS

2015 Education Sessions

Unfortunately, no attendance records were taken for the sessions rolled out in March and May 2015. It is the recollection of the ADM, Employee Relations, PSA that the sessions were “well attended” and that there were approximately 5-8 Deputy Ministers that did not attend the sessions. The PSA did not maintain a record of absences or formally address any stakeholder gaps regarding the provision of these education sessions.

The PSA indicated it provided the Disciplinary Decisions handout for the 2015 sessions, but records were not kept for me to verify this.

2017 Education Sessions

The PSA provided education sessions again in November 2017 and December 2017. These sessions would have caught new Deputy Ministers and Assistant Deputy Ministers and provided them with essential information for their roles. The sessions would have also provided a valuable refresher for those who attended the sessions in 2015.

The PSA took attendance at the 2017 sessions and demonstrated a strong turnout. Of the 138 possible participants, 123 individuals attended the session either in person or by way of conference call. The attendance sheet identifies the 15 individuals that had not yet attended the 2017 sessions and indicates these individuals should be scheduled for a future session. Any “future session” has yet to be scheduled (see the PSA’s response to my recommendations below).

While the ADM, Employee Relations, PSA recalled personally presenting two handouts to participants for in four of the six sessions in 2017. For the other two sessions, he advised that the handouts were made available by the PSA to participants at the door.

Future Sessions for Excluded Managers

I spoke with the ADM, Employee Relations about the education sessions for all excluded managers. The PSA is currently developing an on-line education tool that will be provided to all excluded managers in government. Those on-line materials are targeted to be rolled-out by the end of June 2018. I was provided with the draft materials, but the information is under development and the materials provided were not in final form.

❖ Key Findings ❖

1. The materials presented at the mandatory education sessions were well drafted and contained important information respecting the findings of the McNeil Review.
2. The PSA did not track attendance for the sessions in 2015 and there may have been attendance gaps at the senior levels of some ministries, despite the PSA informing the invitees that the sessions were mandatory.
3. The PSA has done an admirable job in 2017 to providing the information to the Deputy Ministers and Assistant Deputy Ministers and took attendance at these sessions.
4. The PSA is actively working on an on-line education tool for all excluded managers in government respecting workplace investigations and discipline.

4.11.3. Recommendations

I recommend the following:

- That the fifteen individuals identified as not having attended the 2017 education sessions for Deputy Ministers and Assistant Deputy Ministers are sent a request to attend an education session in the near future in 2018;
- If individuals do not attend the 2018 session, the PSA develop a method of providing the education and materials to these individuals;
- That attendance is taken and materials are provided to participants for all future education sessions;
- That the PSA develop a means of tracking which excluded managers (from ministry client groups) participate in the future on-line sessions that will be rolled out in 2018; and,
- That the PSA consider the recommendation in Action Item 14 (Communications Plan) in assessing future education sessions, including gathering and assessing feedback from the sessions as a measurement/evaluation tool.

The ADM, Employee Relations, PSA provided the following commitments to me:

- All executives who did not attend the 2017 sessions will be expected to attend an education session that will be delivered by the Agency by April 30, 2018.
- New executives will attend one of two annual education sessions that will be presented by the Agency.
- Every two years, the Agency will put on refresher education sessions that all executives will be expected to attend.
- The PSA will roll out the on-line education tool by the end of June 2018 and that it will be able to identify and track the individuals who take the e-learning course.

4.11.4. Concluding opinion

It is my independent opinion that Action Item 11 is partially fulfilled.

The PSA has recently taken considerable measures to ameliorate the attendance gaps in 2015. Once the 15 individuals that have not yet attended the 2017 sessions attend the education session delivered by April 30, 2018, the PSA will have fulfilled the commitment to providing mandatory education for Deputy Ministers and Assistant Deputy Ministers on investigations and making disciplinary decisions. The ongoing commitment to refresher courses for executives is laudable. There is a plan for the roll of an on-line education tool in 2018 for other excluded managers, which would include senior managers that may not have attended the sessions in 2015.

4.12. Review of Action Item 12

Internal investigation protocols updated, including assessment tools to ensure:

- Lead investigators on complex/sensitive investigations have significant experience leading progressively more challenging investigations.
- Investigative teams are appropriate given the nature of the investigation, conform to best practices, and continue to be adequately resourced, and;
- Highly specialized internal or external investigators are preferred for high-profile/contentious cases or investigations that are likely to involve specialized expertise of legal analysis, as per Agency policy.

4.12.1. Approach to testing

The PSA committed to update internal protocols after receiving McNeil Review findings. I reviewed the internal investigation protocols generally as well as specifically to ensure that the listed assessment tools were present.

The following documents were sent to me by the PSA:

- Criteria for Composition of Investigative Team (March 3, 2015);
- Criteria for Composition of Investigative Team (October 2017);
- External investigators Terms of Reference documents;
- Major PSA investigation oversight and escalation protocols (February 9, 2015);
- Investigation Oversight and Escalation Protocols Checklist (Reviewed August 2017);
- Investigations: Complex/Sensitive Investigations (Updated November 2017);
- Internal PSA Selection Criteria for Complex/Sensitive Investigations (undated);
- Triage Priority Pyramid v3 (Feb 03 2016);
- Investigation Definitions of Complexity – Triage Pyramid (August 2017);
- Mentorship Process for new ERS document;
- The Table of Contents for the PSA Investigation Resource Guide;
- Investigations – Spot Audits of Investigations Interviews; and,
- All emails related to this Action Item.

4.12.2. Findings

The PSA developed and updated a number of internal investigation protocols after the McNeil Review. Most significant to this Action Item are the following:

- The Criteria for Composition of Investigation Team;

- Investigation Best-Practices Protocols Checklist;
- Investigations: Complex/Sensitive Investigations; and,
- Investigation Definitions of Complexity.

The protocols are well drafted and contain the following considerations:

- The composition of the investigation team which consider the nature and seriousness of the allegations;
- The avenues available for raising concerns and issues promptly and in accordance with best-practices;
- The need for specialized internal or external investigators.

The protocols are appropriately communicated by the PSA. Some of the above noted protocols are reviewed with a new employee during the Mentor Program. All of the protocols can be accessed by Employee Relations Specialists through the centralized PSA Investigation Resource Guide. Examples of circumstances where external investigators were retained were provided to me as part of this review.

In 2017, the PSA has recently implemented an excellent internal “spot audit” protocol where the primary focus will be to review the investigative meetings conducted by the Employee Relations Specialists (and implicitly the co-investigators). I did not independently assess the spot audits that have been conducted by the PSA to date, but these spot audits provide an additional means of ensuring that some of the internal protocols listed above are evidenced in the PSA investigation files.

❖ Key Findings ❖

1. The internal investigation protocols have been updated.

4.12.3. Recommendations

I recommend that the internal investigation protocols be placed on the Employee Relations Specialists staff meeting agenda regularly to invite discussion from Agency investigators. The PSA immediately accepted this recommendation.

I noted one minor inconsistency between the “Criteria for Composition of Investigation Team” internal protocol and the “Investigation Definitions of Complexity” protocol. The “Criteria for Composition of Investigation Team” protocol indicates when an issue requires an investigation the PSA is involved, unless there is an externally appointed investigator. The “Investigation Definitions of Complexity” protocol indicates that there may be instances when where the Ministry conducts the investigation (for minor employment breaches) with or without assistance from the PSA. I recommend that this inconsistency is considered and reconciled in the protocol documents. The PSA accepted this

recommendation and has indicated that it will reconcile the documents before March 31, 2018.

4.12.4. Concluding opinion

It is my independent opinion that Action Item 12 has been fulfilled.

4.13. Review of Action Item 13

Development of clear and comprehensive investigation and information-sharing protocols for multi-branch, cross-government undertakings to ensure that roles and responsibilities are clearly defined and investigations are completed in a timely fashion without unnecessary overlap.

4.13.1. Approach to testing

I evaluated the content of the protocol and tested whether the protocols were evidenced in the Investigation Files.

The following documents and materials were provided to me by the PSA:

- Multi Agency Investigation Protocol (2015/12/10);
- Investigations Protocol 2017;
- Investigations of Employee Misconduct – Province of British Columbia;
- Disciplinary Decisions – Executive Overview;
- The Investigation Files; and,
- Emails related to this Action Item.

4.13.2. Findings

An Investigation Protocol agreement was implemented on December 10, 2015. The purpose of the Investigation Protocol is described as follows:

This protocol contains guidelines for coordinating investigations between the government investigations units identified below. The protocol's objective is to ensure that in situations where there are overlapping mandates, that investigations are efficient and effective, that the mandate of each investigation is met, and that investigations are coordinated in a manner that avoids duplication or interference with another unit's investigation.

The Investigation Protocol defines specific investigation units, describes points of contact for the investigation units and guidelines for a multi-unit investigation unit. The Investigation Protocol contains a dispute resolution process if a dispute arises in respect of the Investigation Protocol agreement. The Investigation Protocol was signed by the Comptroller General, Minister of Finance, the Associate Deputy Minister and Government Chief Information Officer Ministry of Technology, Innovation and Citizens' Services and the Assistant Deputy Minister, Employee Relations Division, Public Service Agency.

An updated Investigation Protocol agreement was implemented on July 24, 2017, which enhances the guidelines.

In evaluating the investigation practices in Investigation Files, I found clear evidence of coordinated investigations in 5 files. All five files evidenced joint communication and coordination. There were no other files from the random sample that should have evidenced a coordinated investigation. As such, 100% of the files necessitating a coordinated investigation evidenced such.

❖ Key Findings ❖

1. A clear, well-drafted multi-branch protocol was developed and implemented.

4.13.3. Recommendations

None.

4.13.4. Concluding opinion

It is my independent opinion that Action Item 13 has been fulfilled.

4.14. Review of Action Item 14

Development and implementation of a communications and change management strategy to improve awareness of investigative information, training, tools, resources and protocols.

4.14.1. Approach to testing

I evaluated the Corporate Communications Plan Health Investigations (referred to as the "Communications Plan") dated 2015/04/01 for content.

I also considered whether the stated objectives of the Communications Plan had been achieved by the PSA.

This Action Item incorporates many aspects of other Action Items (in the Calendar of Tactics discussed below); many of the documents in this Action Item are identical to the documents reviewed in other Action Items.

I received the following materials from the PSA in support of Action Item 14:

- 2014 McNeil Review (referred to as the “McNeil Report”);
- Executive Committee Meeting Minutes (May 11 and June 15, 2015);
- Corporate Communications Plan Health Investigations (final);
- All documents from “Appendix C” of the Corporate Communications Plan that intersect with other Action Items;
- Feedback from DM Presentations (from some presentation meetings);
- Labour Relations Branch Staff Meeting (various dates);
- HRA meetings that McNeil and Ombudsperson recommendations discussed (various dates);
- Labour Relations Review & Revision of 3 Courses - Project Charter;
- Strategic Human Resources Council Action Items (various dates); and,
- Emails related to this Action Item.

4.14.2. Findings

This Action Item committed the PSA to improving awareness of investigative information, training, tools, resources and protocols. The Communications Plan has the following stated objectives:

- To ensure all Deputy Ministers are aware of the key findings of the McNeil Report, the Agency’s commitment to respond, as well as timelines for priority actions and communications.
- To ensure all stakeholders are aware of the Public Service Agency’s current model for investigations into serious misconduct, any changes to documentation requirements and decision-making processes and where to access resources.
- To promote opportunities for education/training tailored to individual audiences:
 - Executives
 - Managers/supervisors
- To inform managers/supervisors of the role of the Agency in assessing and advising on pending investigations – including roles and accountabilities for the Agency and ministries.
- To ensure managers are aware of their responsibilities during an investigation, and understand that employees are entitled to due process in any investigation.

The Communications Plan was thoughtfully drafted to consider communications issues relating to investigations as well as detail mitigation strategies respecting communications issues.

The Communication Plan details the “Measurement/Evaluation” that it would use to determine whether the Communications Plan was successful, including qualitative feedback from Deputy Ministers and “all other stakeholders”. That “Measurement/Evaluation” component of the Communications Plan includes a post-mortem analysis.

Appendix A to the Communications Plan is a Calendar of Tactics which was used by the PSA to roll out the Communications Plan.

The singular copy of Appendix A that I received was dated 2015/04/01 and reads as follows:

DATE	TOPICS
Ongoing	Implement investigations-specific training course for excluded managers in government (Investigative Skills Workshop) (COMPLETE)
Ongoing	Distribute information to employees regarding the investigation process, employee rights and contacts for questions/concerns
Ongoing	Direct outreach to Agency investigators and service representatives to ensure they are aware of any new protocols or requirements regarding employee misconduct investigations
Ongoing	Provide enhanced investigation and discipline decision-making information on MyHR
February	Share key findings from, the McNeil report with all Agency employees. (COMPLETE)
March/April	Share Agency responses to McNeil Report with all Agency employees
March	Mandatory education sessions for all deputies – the Deputy Minister, BC Public Service Agency and Assistant Deputy Minister, Employee Relations, BC Public Service Agency will provide the training.
April	Information sharing sessions with all Assistant Deputy Ministers
May	MyHR content updated for managers/supervisors
May	Detailed action plan completed and status updates to DMCPs and Agency Executive.
July	Outreach to ministry Strategic HR shops by Executive Advisors, including a presentation to the SHR Council, advising them of key elements of Agency action plan and clarifying roles and responsibilities.
September	Learning Centre. To date, 2 additional sessions of LR 101 and 3 additional sessions LR 201 have been scheduled for the next quarter. This reflects historic and anticipated demand for these two courses.

I received an updated (undated) final assessment of Appendix A but the methodology of assessment of the implementation measures is not clear.

Appendix B and Appendix C to the Communications Plan dated 2015/04/01 detail “key messages” that the PSA wanted to communicate to Deputy Ministers and defined stakeholders. While some measurement/evaluation tools were clearly provided by the PSA with respect to some of the “key message” strategies in Appendix B and C, in my review, I found there were some significant gaps in the stated measurement/evaluation of the roll-out of the communication strategies.

❖ Key Findings ❖

1. The PSA developed a comprehensive Communications Plan on 2015/04/01 with sound communications objectives and express measurement/ evaluation plans.
2. The Calendar of Tactics in Appendix A was used by the PSA to measure the roll-out of Communications Plan. The Calendar of Tactics included a communication strategy to implement the “key messages” outlined in Appendix B and C.
3. The PSA did not assess the Calendar of Tactics in accordance with the “Measurement/Evaluation” process outlined in the Communications Plan, including a communications post-mortem analysis.
4. The PSA did not explicitly assess the Calendar of Tactics in light of the stated objectives of the Communications Plan.

4.14.3. Recommendations

I recommend that Calendar of Tactics in Appendix A to the Communications Plan be reconsidered and a current analysis conducted by the PSA in light of the expressly stated “Communications Objectives” of the Communications Plan to assess if there are presently communications gaps with respect to investigation information, training, tools, resources and protocols.

The PSA accepted this recommendation and has advised it will complete the review by April 30, 2018.

4.14.4. Concluding opinion

It is my independent opinion that Action Item 14 has been partially fulfilled.

While a solid Communications Plan was developed with specific “Communications Objectives” and “Measurement/Evaluation” tools, I cannot conclude that the PSA satisfactorily implemented and assessed the Communications Plan as outlined. As such, it

is difficult to determine if the Communications Plan achieved the stated “Communications Objectives” or whether there were communications gaps or points of confusion from key stakeholders (defined in the Communications Plan) with respect to investigative information, training, tools, resources and protocols.

4.15. Review of Action Item 15

The Agency and GCPE have completed a review of the appropriate role of communications in employee investigations/discipline and established protocols clearly defining roles, responsibilities and the appropriate timing of communication activity.

4.15.1. Approach to testing

The PSA and the Government Communications and Public Engagement (“GCPE”) committed to reviewing the appropriate role of communications in employee investigations and discipline in the provincial government.

I evaluated the methodology of the review, the content of the protocols and the communications of the protocols to GCPE and PSA staff.

In reviewing content, I was looking to ensure that the following was considered by the GCPE and the PSA:

- Role definition;
- Responsibilities of the GCPE; and,
- Timing of internal and external communication in employee investigations and discipline.

In reviewing distribution, I was looking for confirmation that the protocols were distributed to the GCPE and PSA staff to ensure awareness and consistent application of the communications protocols.

In reviewing application, I was looking to see how the protocols were applied respecting external communications in the period following the McNeil Review.

The following materials were sent to me by the PSA and the GCPE (through the PSA):

- The drafts and final version of the GCPE Protocol Document authored by the Finance Communications Director
- A calendar entry confirming the November 24, 2015 meeting where the draft GCPE Protocol Document was discussed between the GCPE and the PSA;

- The materials sent by the PSA to authored by the Finance Communications Director during his review;
- The PSA Policy (one page) authored by the Finance Communications Director on internal disclosure (undated) which is a public document implemented on June 30, 2017;
- All external message files distributed from the GCPE respecting employee investigations or discipline for the years 2016 and 2017; and,
- All emails related to this Action Item.

I also met with the ADM, Employee Relations and Manager, Employee Relations to discuss this Action Item.

4.15.2. Findings

I wrote to the ADM, Employee Relations on January 23, 2018 and spoke with the ADM, Employee Relations on February 14, 2018 respecting Action Item 15.

The GCPE clearly considered and completed a review of the appropriate role of communications in employee investigations/discipline and established protocols defining roles, responsibilities, and timing of communication activity. The GCPE, with input from the PSA, reviewed government communications and operations when addressing disclosure of information during an investigation.

The GCPE finalized a review document on December 7, 2015 (the “GCPE Protocol Document”) which includes the following topics:

- Informing Communications of issues;
- Assessing the proactive communications;
- Considering the boundaries of disclosure; and,
- Ensuring appropriate review and approvals are obtained and documented.

In the GCPE Protocol Document, the GCPE provides general guidance respecting communications during and subsequent to employee investigations as well as a strategic approach to communications. The linkage and coordination between the GCPE and the PSA is clearly considered and identified. The GCPE Protocol Document provides valuable internal and external message guidelines to assist in messaging, both in terms of what issues cannot be communicated and what issues can be addressed. Finally, an appendix to the GCPE Protocol Document was drafted by the GCPE which outlines the “General best practices in issues management” as a practical guide to communication and issues management.

In addition to the GCPE Protocol Document, the government published a one page policy (undated) on disclosure of information during an investigation which is available to all public servants, including Government Communication and Public Engagement employees, and members of the public under the “Services & Policies for Government and Broader Public Sector” sub-section of government’s website. [\(Click here for link.\)](#)

I requested all external communications respecting employee investigations for 2016 and 2017 to assess whether the external message guidelines in the GCPE Protocol Document had been applied with respect to the actual communications. Without sufficient time during my compliance review to assess whether all the guidelines and protocols articulated in the GCPE Protocol Document had been applied, I reviewed the final external messaging as a means of evaluating whether some of the protocols were being applied. In reviewing the external communications messages for 2016 and 2017, I found that the content of external messages were appropriate and followed the documented guidelines.

Finally, as part of my compliance review, I asked for evidence that the GCPE Protocol Document had been distributed to appropriate staff in the PSA and the GCPE. I was informed that there was no formal distribution of the document but that the GCPE Protocol Document would have been communicated informally within both groups.

❖ Key Findings ❖

1. The PSA and GCPE completed a thoughtful review of the appropriate role of communications in the employee investigations/discipline. As part of that review, the GCPE established protocols that clearly define roles, responsibilities and the appropriate timing of communication activity. Further, as part of the review, the GCPE communicated best practices in issues management.
2. In assessing the content of the external communications for 2016 and 2017, I conclude that the guidelines respecting external messages were being followed.
3. There was no formal distribution of the GCPE Protocol Document within the GCPE or Employee Relations, PSA.
4. In order to ensure that the protocols and guidelines are consistently implemented, the GCPE Protocol Document needs to be distributed.

4.15.3. Recommendations

Despite the evidence that the review was completed and the protocols developed, staff at the GCPE and staff at the PSA have not formally been provided with copies of GCPE Protocol Document.

I recommended to the ADM, Employee Relations, PSA that the PSA distribute copies of the GCPE Protocol Document to all staff in the PSA that conduct investigations. The PSA

accepted this recommendation and has advised that it will distribute the document by March 31, 2018.

I recommended that all staff at the GCPE formally receive the GCPE Protocol Document. The PSA has advised that the GCPE accepted this recommendation and that the GCPE will distribute the GCPE Protocol Document by March 31, 2018.

Finally, I recommended that the GCPE Protocol Document be posted on the appropriate resource sites for both the PSA and the GCPE. I was informed by the PSA that both the PSA and the GCPE have accepted this recommendation and that the GCPE Protocol Document will be posted by March 31, 2018.

4.15.4. Concluding opinion

It is my independent opinion that this Action item is fulfilled.

4.16. Review of Action Item 16

The Agency completed a review of proposed amendments to the *Public Service Act* Regulations to clarify ministry and Agency authorities in relation to the investigation, suspension and discipline of employees and determined that changes to the regulation were not necessary.

4.16.1. Approach to testing

For this review, I set out to evaluate the methodology of the review and the conclusions reached by the individuals that conducted the review to support the determination that changes to the *Public Service Act* Regulations to clarify ministry and Agency authorities in relation to the investigation, suspension and discipline of employees were not necessary.

4.16.2. Findings

On January 24, 2018, I wrote the ADM, Employee Relations requesting materials and documents in response to the following items respecting Action Item 16:

- The name of any person who conducted the PSA review of the legislation;
- The name of any person who drafted the proposed amendments;
- An outline of the review process and any relevant notes or documents;
- The time period (dates) of the review;

- All documentation, including all proposed amendments that the PSA reviewed, regarding: investigating employees, suspending employees, and disciplining employees;
- All drafts and edits of proposed amendments (edited by PSA/Ministry participants or legal counsel during the review);
- The report/conclusion document respecting each of the proposed amendments that were reviewed by the PSA;
- Any legal advice received respecting the PSA Regulations and the proposed amendments (from JAG and/or external counsel);
- The method by which the results of the PSA review of the proposed amendments were reported;
- The name of the individual who made the final decision respecting the outcomes of the review.

I did not receive the requested information. I met with the ADM, Employee Relations on January 25, 2018 and was informed that the primary consideration at the time that the Action Item was first formulated was whether the PSA should change the *Public Service Act* Regulations to provide it with the clear legal authority to suspend excluded employees without pay pending an investigation in certain circumstances. The ADM, Employee Relations indicated that while he did have an informal discussion with legal counsel in 2015 on this issue, the PSA ultimately came to the conclusion that the regulatory change was not worth pursuing at the time.

❖ Key Findings ❖

1. Evidence of a review of proposed amendments was not provided.

4.16.3. Recommendations

None.

4.16.4. Concluding opinion

It is my independent opinion that Action Item 16 was not fulfilled.

I conclude that there was no review of the potential changes to the *Public Service Act* Regulations to clarify ministry and Agency authorities in relation to the investigation, suspension and discipline of employees.

5. CONCLUSION

It is apparent to me as an independent reviewer that the PSA made a concerted effort to implement the policies and procedures resulting from the post McNeil Review Action Items.

Out of the 16 Action Items, 12 were fulfilled, 3 were partially fulfilled, and 1 was not fulfilled. The PSA has accepted my recommendations for those Action Items that were partially fulfilled and has advised that those are expected to be fulfilled in the near future.

For those Action Items that were fulfilled but contain recommendations, the PSA has demonstrated a commitment to enhance and improve content and/or communication.

I must remind the reader that the LDB and Adult Custody were not included in this review because those two organizations are only being brought into compliance with the 16 Action Items effective March 31, 2018. I did not independently consider the compliance of those organizations and, while I received from the PSA the plans for future compliance on March 14, 2018, I did not consider or assess those plans.

I wish to conclude by again thanking the PSA for greatly assisting me in this review. The commitments made by the PSA are significant and were directly aimed at correcting the deficiencies noted in the McNeil Review, resulting in improved resources, processes and training for workplace investigations conducted in the public service.



Corinn M. Bell, QC