

# Know your rights

at meetings &  
investigations  
arising out of  
workplace  
incidents



Union of Solicitor General Employees



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# INTRODUCTION

When an unfavourable event or incident occurs in the workplace, the Employer usually examines the circumstances surrounding the occurrence in order to determine the contributing facts.

The Employer derives the authority to conduct an investigation from a wide variety of sources. Legislation, Commissioner's Directives, Policies and Guidelines, collective agreements, jurisprudence, legal advice and the principles of natural justice must all be examined to determine the rights of members faced with actions taken by the Employer following an unfavourable event or incident.

The Employer's examination can take one of a number of forms:

- fact-finding meeting,
- security intelligence report,
- internal inquiry,
- administrative investigation,
- public inquiry,
- disciplinary investigation, or
- disciplinary meeting.

USGE members can therefore find themselves required to attend meetings and investigations arising out of events or incidents.

There may be times when a member is called into a manager's office and is intimidated into answering questions.

So, when is an employee entitled to have a representative attend a meeting?

How does an employee go about getting a representative?

What are the responsibilities of our members and union representatives?

This booklet will hopefully provide a useful resource for both our members and their representatives in knowing their rights and responsibilities during any of the processes involving meetings and investigations.

# Part One - UNION REPRESENTATION

If a member believes that the investigation or meeting may result in the imposition of discipline, then the member should obtain union representation before participating.

A USGE member is entitled to union representation at any meeting:

- at which he or she reasonably believes disciplinary action may be taken;
- from which he or she reasonably believes disciplinary action may eventually result; and
- where any question relating to the member's legal rights under the collective agreement or otherwise may arise.

## **The member's responsibility**

### **(a) Before attending a meeting the member should:**

- find out the purpose of the meeting and whether there exists any possibility of

disciplinary, criminal or civil action being taken against him or her;

- determine if any specific allegations or charges have or will be made against him or her;
- insist upon union representation if he or she reasonably believes that disciplinary action may be taken at, or eventually result from, the meeting.
- If union representation is not immediately available, the member should:
- insist that the meeting be rescheduled to a time when a union representative is available; and
- decline to participate in any meeting until he or she has union representation.

**(b) In preparing to attend the meeting the member should:**

- reconstruct the incident in his or her mind, review any notes and have a consistent story to tell; and
- review the incident with the union representative.

**(c) At the start of the meeting, with the assistance of the union representative, the member should:**

- determine the purpose of the meeting and the issues to be discussed; and
- determine if allegations or charges have or will be made against him or her.

**(d) During the meeting:**

- if the member refuses to answer questions, he or she could face disciplinary action for insubordination.

A member who refuses to cooperate with any investigation conducted under the authority of the Inquiries Act is liable, on summary conviction, to a fine not exceeding four hundred dollars (\$400).

At any later disciplinary hearing an adverse inference will be drawn about the value of any explanation or alibi offered by the member that he or she had earlier refused to provide.

- Before providing answers, the member should listen carefully to the question and think about the question and his or her answer. The member should ask that the question be repeated or rephrased if he or she is not sure what it means.
- The member should only answer the question that is asked and say no more than is necessary. Additional information should not be volunteered. The member should not guess at an answer if his or her memory is incomplete. In these instances it is appropriate to state: "I do not remember."
- The member should remain as calm as possible and avoid antagonistic or cocky behaviour.
- The member should request a break or adjournment if the meeting becomes controversial or aggressive; or becomes too difficult or lengthy.
- The member should also request a break if he or she needs to privately discuss a question or issue with the union representative or simply needs to get some fresh air.

- A written statement may be produced from the member's answers. The member should not approve any statement until he or she has carefully reviewed it word by word. The member should take as much time as is necessary to review the statement and instruct the person conducting the meeting of the changes that are required.

## **The Union Representative's Responsibilities**

**(e) When the union representative is asked to accompany a member to a meeting, the union representative should:**

- determine the nature of the meeting;
- privately review the facts surrounding the incident with the member;
- privately review with the member the advice contained in parts (b), (c) and (d) above;
- privately inform the member of the role of the union representative in parts (f) and (g) below.

**(f) At the meeting the union representative should first:**

- inform management that the member has the right to union representation;
- adjourn the meeting and instruct the member not to answer any questions if management challenges the right of the member to union representation;
- assist the member in clarifying what the purpose of the meeting is, what issues are to be discussed, and what allegations or charges have or will be made against the member.

**(g) The role of the union representative at the meeting is to:**

- ensure that management fully honours all provisions of the collective agreement and all related union-management agreements;
- generally, ensure that the meeting is conducted in a fair manner and that the member is not subjected to duress or discomfort;
- challenge improper questions;

- assist the member in clarifying unclear questions;
- remind the member to only answer the question that is asked;
- prevent the member from being harassed or abused;
- ensure that breaks are taken at regular intervals;
- ensure that breaks are taken as needed to discuss privately with the member issues that arise during the meeting;
- ensure that the meeting is adjourned if the member becomes tired or distraught;
- maintain a record of the meeting.

## Part Two - Legal Representation

If the incident is of a serious nature and the member has received a misconduct notice under Section 13 of the “Inquiries Act” or believes that the investigation:

- may result in broader legal liability, such as exposure to a criminal charge or a civil action alleging, for example, negligence civil assault; or
- is being conducted by the Minister, or by the Deputy Head, as a Public Inquiry or by an external agency such as the Correctional Investigator or the police;

the member should meet with a union representative and discuss retaining a lawyer before participating in the investigation.

When a member is potentially facing criminal charges, that member should obtain legal advice before providing information to anyone.

As a general principle, a member is entitled to retain a lawyer at his or her own expense whenever he or she sees fit to do so.

However, in many situations a union representative is more familiar with and in a better position to enforce the member's rights than an outside lawyer. In other situations, it may be necessary for a member to retain a legal counsel.

### **(a) When is a lawyer needed?**

Upon being called to a meeting the member should:

- find out the purpose of the meeting and whether there exists any possibility for disciplinary, criminal or civil action being taken against him or her;
- discuss the purpose of the meeting with a union representative;
- insist upon legal representation if he or she has received a misconduct notice under Section 13 of the Inquiries Act or believes that a meeting or investigation:

... may result in broader legal liability, such as exposure to a criminal charge or civil action alleging, for example, negligence or civil assault; or

... is being conducted by the Minister, the Deputy Head, as a Public Inquiry or by an external agency such as the Correctional Investigator or the police;

If legal representation is not immediately available the member should:

- Insist that the meeting be rescheduled to a time when legal counsel is available; and
- decline to participate in any meeting until he or she has legal representation.

### **(b) Retaining legal counsel**

A member is entitled to retain a lawyer at his or her own expense whenever he or she sees fit to do so.

- As a matter of course, the USGE does not pay for legal counsel for individual members.
- The *Treasury Board Policy on the Indemnification of and Legal Assistance to Crown Servants* provides that employees of the federal public service **may** be eligible to receive legal services

at public expense.

- An employee may request the provision of legal counsel at public expense in a variety of circumstances arising from the performance of his or her duties, including if he or she is charged with an offence or is required to appear before a judicial, investigative or other inquest or inquiry.
- The Treasury Board Policy indicates that if an employee has acted honestly and without malice within the scope of his or her employment and has met reasonable departmental expectations, he or she shall receive legal assistance in any of the following circumstances:
  1. he or she is required to appear before or be interviewed in connection with a judicial, investigative or other inquest or inquiry;
  2. he or she is sued to threatened with a suit;
  3. he or she is charged or likely to be charged with an offence; or

4. he or she is faced with other circumstances that are sufficiently serious as to require legal assistance.

- The preferred option is that counsel from the Department of Justice assist the member. When the Department of Justice determines that there is a conflict of interest or where the employee is charged with an offence, consideration may be given to the employee engaging private counsel.
- Upon determining that a lawyer is required, the member should immediately apply to the Employer for the provision of legal counsel at public expense.



# CONCLUSION

Most USGE members will, at some time in their career, become involved with an employer investigation of a workplace incident.

*Know Your Rights* accordingly outlines the basics of union and legal representation effective at the time of publication of this booklet. We strongly recommend that members communicate with their Local executive officers for assistance when faced with having to attend meetings and investigations arising out of workplace incidents.

The USGE consults with the Employer on an on-going basis to ensure that management provides our members with the opportunity to have representation at the appropriate time during any of the processes involving meetings and investigations.

Of course, policies and legislation can and do change. This makes it all the more important that USGE members consult their Local officers as to possible changes regarding investigations and representation.



