

From Complaint to Conclusion

Managing the Investigation Process





**Consider: What would
you like to learn about
workplace
investigations?**

Introductions

Session Overview

1. Planning an Investigation
2. Conducting the Interviews
3. Post Interview Actions
4. Additional Items to Consider
5. Preparing Your Documentation for Arbitration
6. Consequences of a Bad Investigation
7. Case Studies
8. Key Takeaways



***“When you fail to plan
you plan to fail”***

Benjamin Franklin



Planning an Investigation

What you know, What you need to know and Who you need to talk to.



**Consider: What is the
purpose of a workplace
investigation?**

Purpose of a Workplace Investigation

Fact Finding

Risk Management

Fairness

Culture and Trust

A Requirement

The
Complaint

Article 29
Requirements

Other
Investigations

Guiding Principles

Impartial

Confidential

Timely

Documented

Procedurally
Fair



**Consider: When
would you conduct a
formal investigation
or a preliminary
investigation?**

Deciding to
Investigate



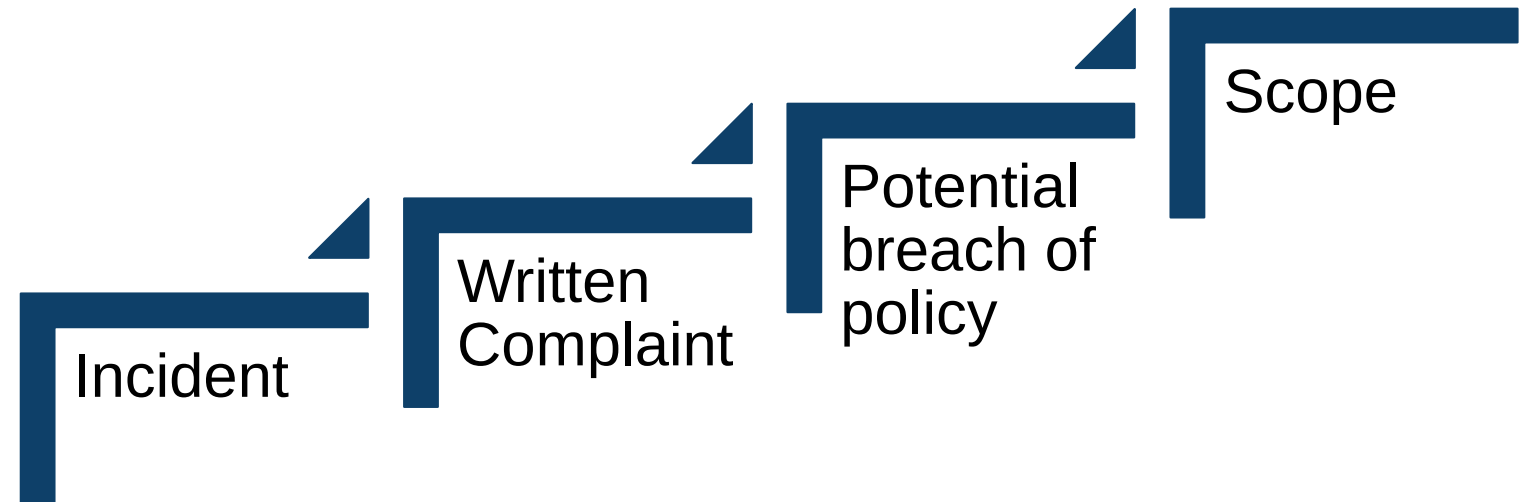
Misconduct



Performance
Management



Article 29 Investigation



Does the
respondent
need to be
removed
from the
workplace?

Safety at risk

Clients at risk

No other reasonable
option

Choosing the Investigator

Impartial

Qualified

Knowledge

Experience

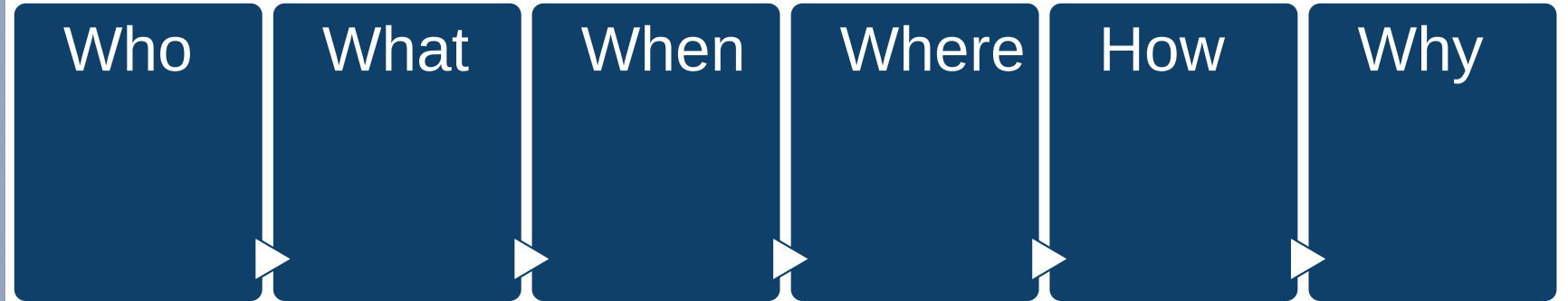
Credible

Current Role

Time

Confidentiality

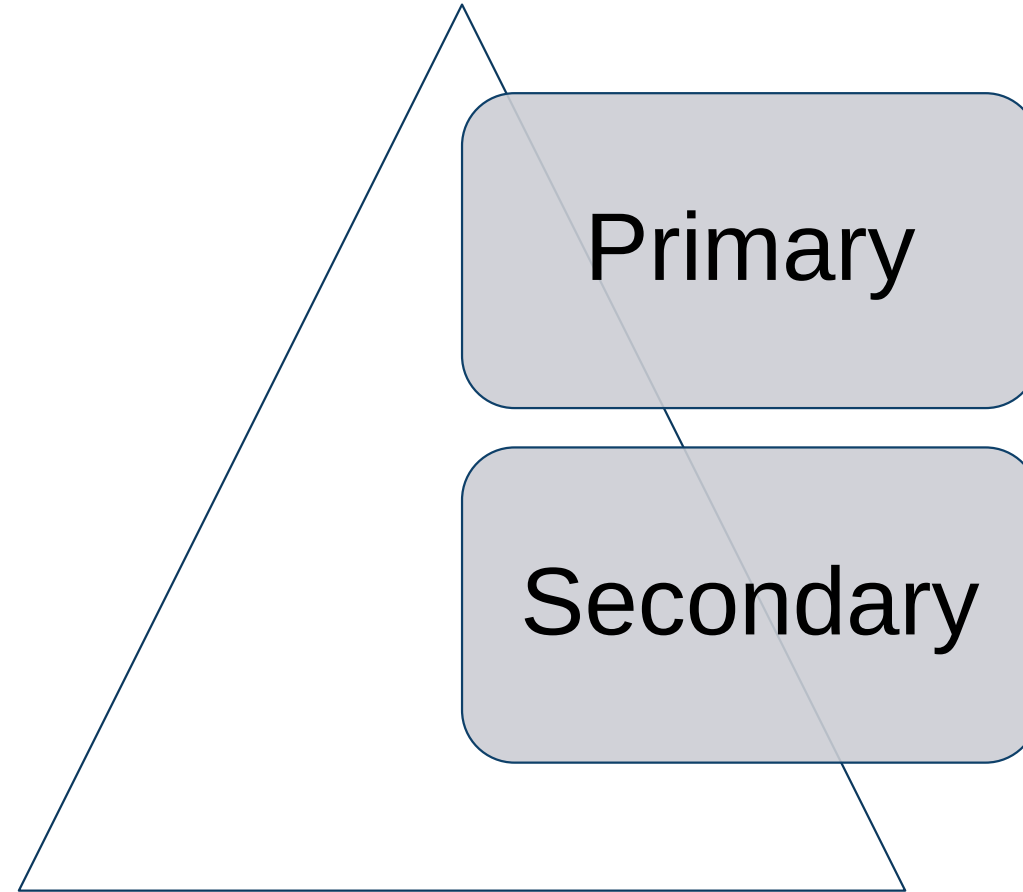
Mechanics of the Plan





Consider: what evidence needs to be collected?

Gathering Evidence



Identifying Relevant Law, Policies & Training

Key Policies

Enforceability

Threshold of
Discipline

Confidentiality

Confidentiality is the ethical and legal duty to protect sensitive information from unauthorized access, disclosure, or misuse. It ensures that personal, professional, or classified data is only shared with individuals who are authorized to receive it, and only for appropriate purposes.



Consider: what is an ethical practice when it comes to confidentiality?

Common Mistakes

Leading Questions

Failing to Notify the Respondent

Scope Creep

Low Quality Documentation

Procedurally Fair

Misunderstanding Role

Personal Bias



Questions?

Conducting Interviews

Preparing for the Interview

Review the complaint, allegations and scope

Identify what you need to learn from this interview (facts, context, corroboration)

Draft neutral, open-ended questions

Prepare documents and evidence you may want to reference

Arrange a private, neutral location or a secure virtual setting



Consider: What makes a good investigative question?

Questions

5W

Establishes
or reviews a
timeline

Open Ended

Seeks to
Clarify

Seeks to
Understand

Suspends
Judgement

Scripted

Flexible

Leave no
stone
unturned

Notifying the Respondent

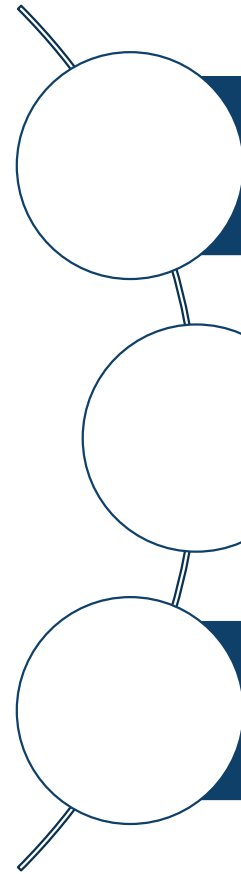
Inform in Writing

Provide Purpose of Meeting

Outline Next Steps

Consider Risks

Arranging The Interview



Context & Location

Union Representation

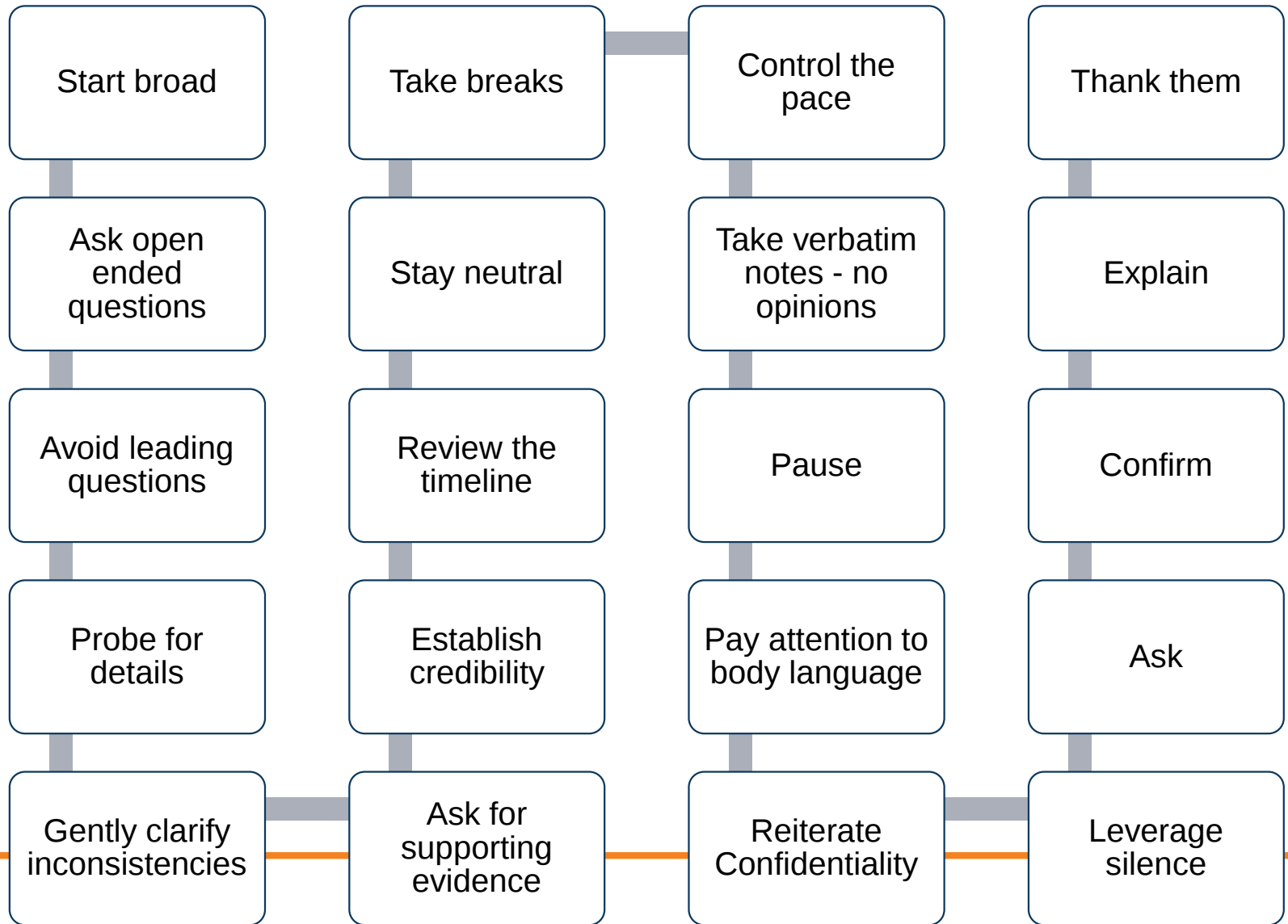
Time

Consider: When should the union be involved?

Opening the Interview

- Have a **checklist**
- **Introduce** yourself, explain your role
- Explain the role of the **Steward**
- Review the **purpose** of the meeting
- Outline the **roles** of the participants in the meeting
- Give an overview of **confidentiality** and a disclosure of what happens with the information gathered
- Explain the interviewee's **rights**
- Confirm their **understanding** and ask if they have any questions
- Confirm what happens after the interview and what **follow up** (if any) they can anticipate

Asking the Questions



Procedural Fairness

“...the purpose of the participatory rights contained within the duty of **procedural fairness** is to ensure that administrative decisions are made using a fair and open procedure, appropriate to the decision being made and its statutory, institutional, and social context, with an opportunity for those affected by the decision to put forward their views and evidence fully and have them considered by the decision-maker.”

- Supreme Court in Baker v. Canada

Elements of Procedural Fairness

Understanding
the Complaint

Considering All
the Evidence

Absence of
Bias

The
Opportunity to
be Heard

The Entitlement
to Notice

To Present
Contrary
Evidence

Right to
Representation

Right to a
Reason for
Decision

Hostile & Uncooperative Interviewee



Questions

BREAK TIME

Post Interview Actions



Consider: What happens next?

Immediately After the Interview

Review your notes

Flag key information

Update evidence log

Decide on next steps

Follow up

After All the Interviews

Review your notes

Flag key information

Update evidence log

Write your report

Reflect on findings

Facts

Assess the
Information

Inventory
the Facts

Review for
Bias

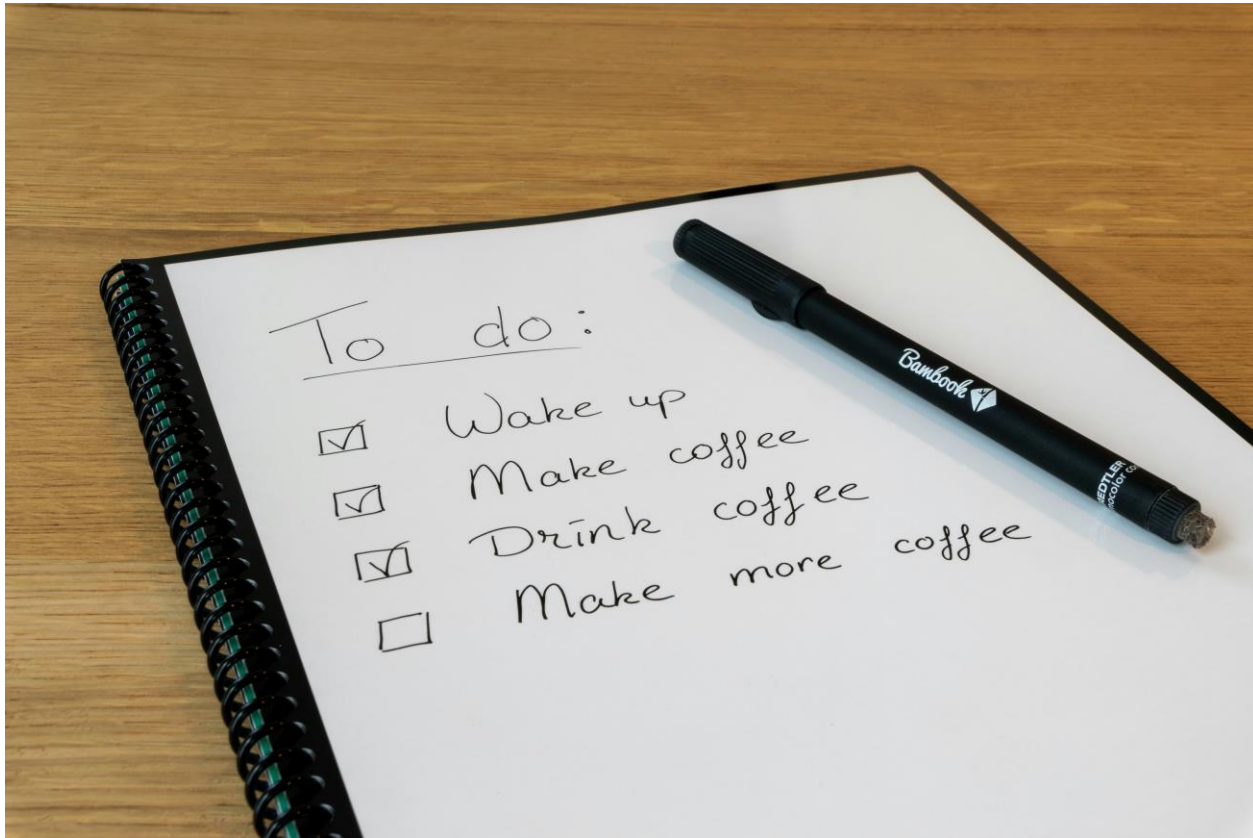
Consider
Corrective
Action



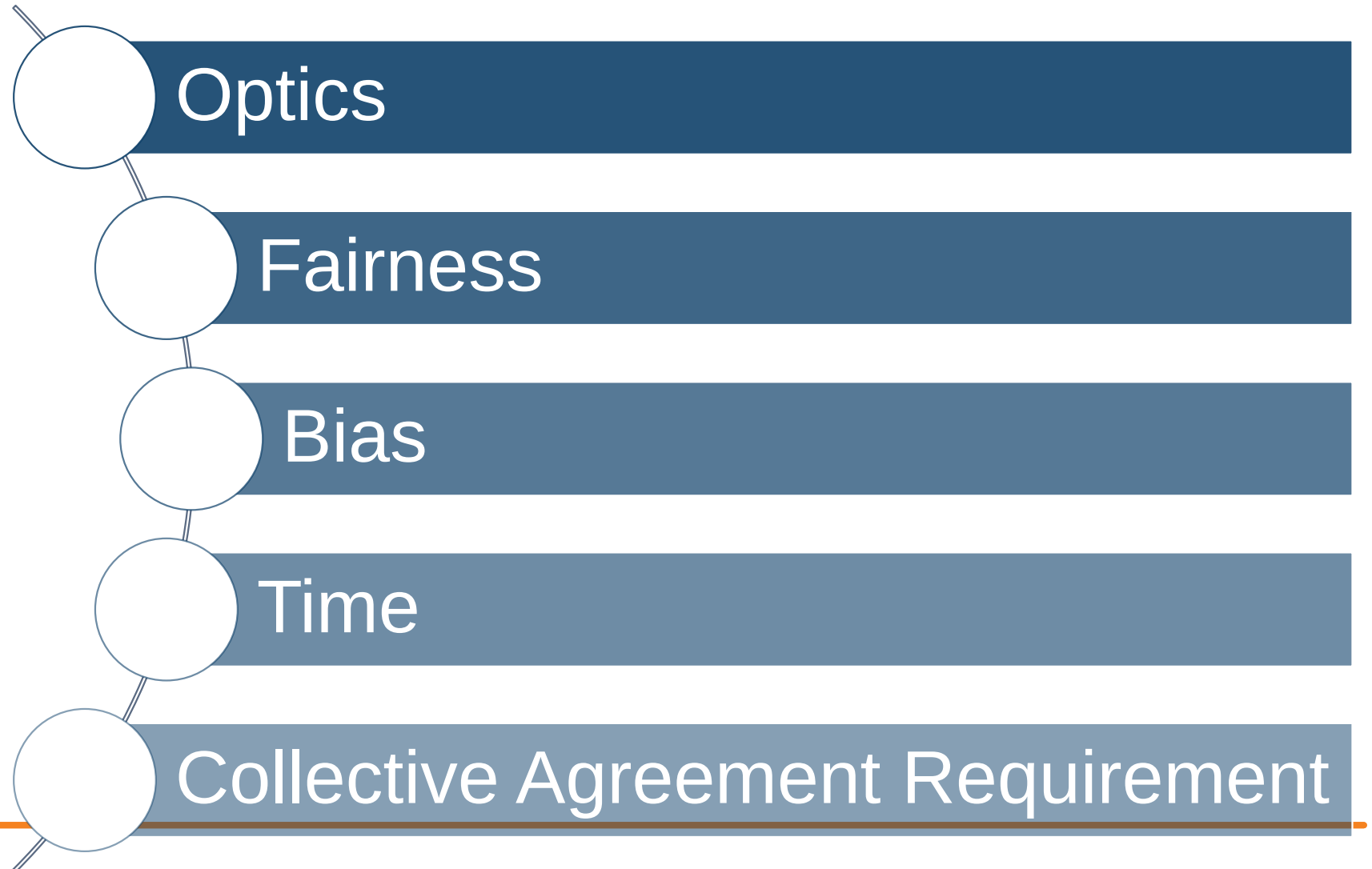
Questions?

Additional Items to Consider

The Checklist



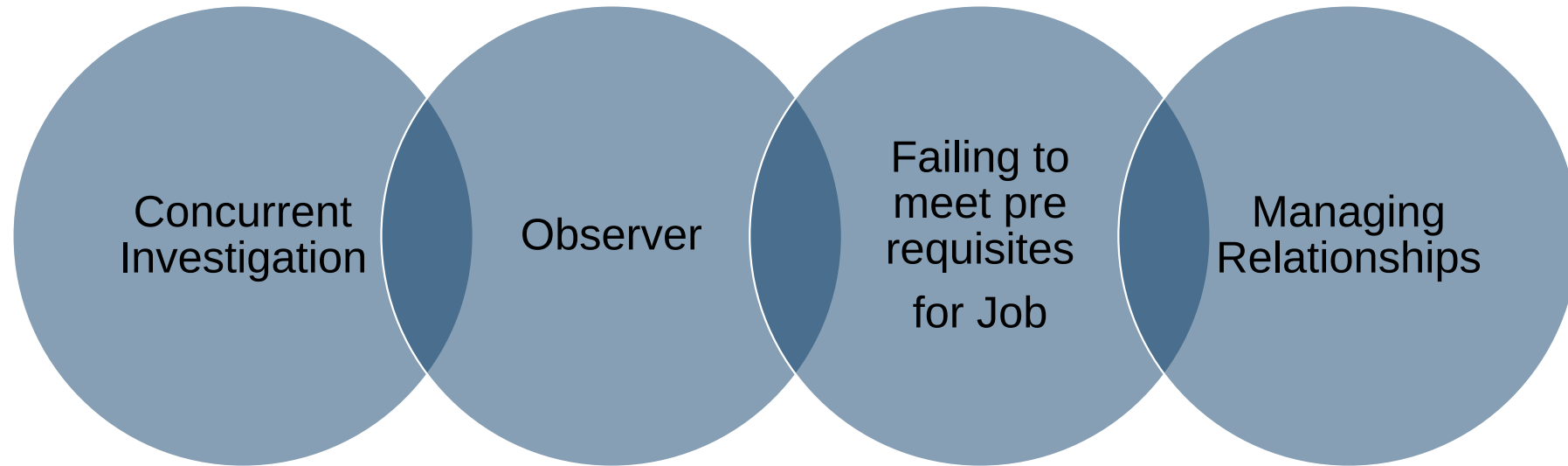
When to Retain an External Investigator





**Consider: When do
you need to notify the
police or licensing?**

Investigations Conducted by Funders and Law Enforcement: An Employer's Responsibilities



Preparing Your Documentation for Arbitration

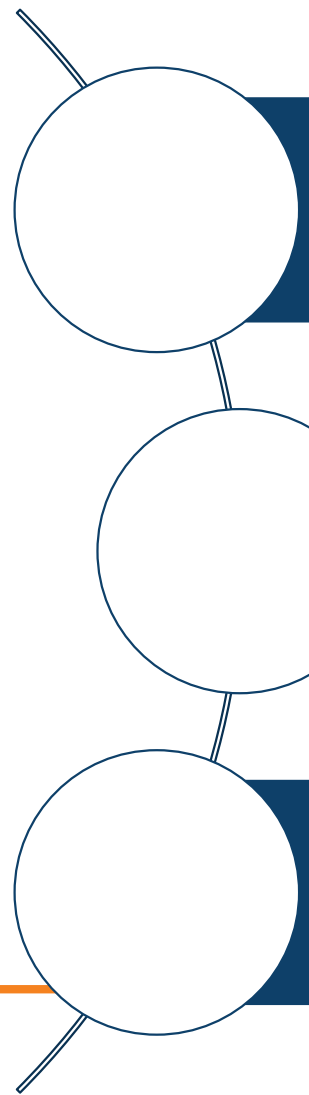
Preparing your File for Arbitration



Arbitrator's Role



Burden of Proof and Arbitrator's Role



Burden of proof is on the Employer

Balance of probabilities

Arbitrator's role is passive and limited

W.M. Scott Test

Was the discipline Justified? The Employer must show it was reasonable.



Was the degree of discipline excessive in all of the circumstances?



If so, what discipline should be substituted?

Chronology of Events

DATE	EVENT	SUPPORTING DOCUMENT	WITNESSES	NOTES
October 7, 2025	Written Warning Issued	Letter to Employee dated September 30, 2025	Employee, Union Steward, Manager A	Two letters were issued on the same date as there was an error on the first letter

Critical Documents for the File

Grievance

Employer Responses

Meeting Notes

Employee Records

Documents & Correspondence

Investigation Notes & Report

Witness Statements

Policies & Procedure

All Other Evidence



Questions?

Consequences of a Bad Investigation

Case Studies

Canadian Mental Health
Association (CMHA)-
Kootenays v British Columbia
Government and Service
Employees' Union, 2019
CanLII 78838 (BC LA)

CMHA
Kootenays v.
BCGEU
2019

The Employer

Failed to
conduct an
investigation

Relied on
hearsay
evidence

Did not provide
notice of the
investigation

Did not provide
union
representation

Alberta v. A.U.P.E., 2007 CarswellAlta 1786

Alberta v.
A.U.P.E.,
2007
CarswellAlta
1786

Union representation needs to
be provided from the beginning

Failing to provide representation
is a critical procedural flaw

British Columbia Maritime
Employers' Assn. v.
International Longshore and
Warehouse Union, Local 502
(Chauhan Grievance), [2023]
C.L.A.D. No. 124

BC Maritime Employers' Assn. v. International Longshore and Warehouse Union 2023

An investigation should not be cursory,
reactive or a rush to judgement

You do not have to uncover the sole
cause of an incident

There could be multiple contributing
factors

Houston (District) v.
Canadian Union of Public
Employees, Local 2086
(Standbridge Grievance),
[2019] B.C.C.A.A.A. No. 89

Houston (District) v. CUPE 2019

An investigation cannot rely on suspicion alone

There must be credible, objective evidence to justify the process

Asco Aerospace Canada Ltd. v.
International Assn. of Bridge,
Structural, Ornamental and
Reinforcing Iron Workers,
Shopmen's Local No. 712
(Niedbalski Grievance), [2012]
B.C.C.A.A.A. No. 14

Key Take Away's

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