

Support

THE ROLE OF A 'WITNESS' IN A WORKPLACE INVESTIGATION



by

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The Expectations of Witnesses, and the Support Available from the BCPVPA

The Directors of Member Support Services (MSS) represent members undergoing an investigation, most commonly as a respondent who has had a complaint lodged against them. Sometimes, Principals and Vice-Principals may be called into an investigation process in the role of a 'witness' when another employee is the respondent in an investigation.

It is the view of the MSS team that a Principal or Vice-Principal should always have representation, as an investigation is a complex, nuanced process that can take an emotional toll. Less attention has been focussed on the role of the *witness* in workplace investigations, but this proves to be a key participant for both investigators and for the investigation process.

When an investigator – whether an internal member of the district HR department, or an externally-hired individual – is tasked with carrying out a district-level investigation into allegations of bullying and harassment or misconduct, they often rely on the testimony of witnesses to substantiate what they have heard from complainants and respondents. Investigators for the Teachers Regulation Branch (TRB) and WorkSafe BC also sometimes speak with witnesses related to their investigations. The process is similar, but less frequent than with district investigations.

Workplace investigations are not the same as court cases. Witnesses are not subpoenaed to give testimony, and investigators base their findings on the balance of probability that a particular event occurred a certain way, without having to prove 'beyond a reasonable doubt'.

When employees are involved in an investigation as

either a complainant or a respondent to allegations of wrongdoing, they are given the opportunity to provide the names of individuals whom they believe can speak knowledgeably about the alleged behaviours or situation in question. Most investigators try to limit the number of witnesses they communicate with, in an effort to ensure confidentiality of the process and to secure the personal information of the people involved. Investigators say they will speak to 'as few people as possible' but 'as many people as necessary' to achieve a clear understanding of what occurred.

As such, the role of any particular witness is very important to an investigation. If an investigator wishes to speak with an administrator as a witness who potentially saw, heard, or has knowledge about a situation being investigated, they will get in touch with the district for contact information, and will reach out to witnesses directly by email or phone. The member is being requested by the employer to

participate in the investigation as a witness; this is not optional, and members need to follow the direction of their employer. It is very likely that someone receiving such a 'cold' call will have no knowledge of the situation due to the strict expectations of confidentiality surrounding an investigation. For this reason, it can raise questions when such a call comes unexpectedly. To make things even more unsettling, the investigator is unlikely to share many details on the phone. It is also common practice that the 'witness' will not be directly informed as to who the respondent or complainant is in the investigation process. This is to protect the confidentiality of the people involved, including the witness.

Witnesses are expected to maintain the same confidentiality as complainants and respondents. While it may be tempting for a witness to share the information with the person allegedly involved, it is important not to do so. Questions about the veracity of the investigator or the process can be directed to



one of the MSS Directors, or to the Labour Relations (LR) or HR department at the school district.

While each investigator will carry out their interviews in a slightly different way, there are similar steps and processes that include these common elements:

- The investigator will explain their role as a neutral party who is still in the 'fact-finding' stage of their investigation process;
- The investigator will stress the importance of confidentiality;
- The investigator will reassure the witness that they are not under investigation. As a witness they are a 'helper' to the investigation as they can shed light on what occurred. This is especially important when the investigator is faced with conflicting reports;
- The investigator will not share the names of other witnesses;
- The investigator will be open to a witness having representation on calls or in meetings.

MSS Directors work closely with BCPVPA members who have been identified as witnesses, both by helping them prepare for interviews, and by attending interviews to take notes and support the member. The most important expectation of a witness, other than maintaining confidentiality, is to always be forthcoming and truthful. The requirement to act honestly is part of the fiduciary relationship administrators have with their employer. The role of a witness can be difficult at times, as it may feel uncomfortable to acknowledge or describe a colleague's behaviour. In some situations, witness testimony can expand the scope of an investigation or lead to a new investigation. It is important to remember that a witness is not under investigation unless a complaint is filed against them. This is all part of the process, and can be explained step by step by an MSS Director.

Some interviews are done by telephone; longer interviews tend to be conducted in-person or through

an online platform. A witness should be prepared to share their educational experience, their current role, and their relationship with the individual(s) involved in the investigation. There may be a limited number of questions based on a single incident, or it may be a more in-depth interview into a pattern of behaviour or series of events. In either situation, the witness is encouraged to take their time, listening carefully to each question and asking for clarification if needed. A witness interview should not feel rushed. Sometimes, a witness may recall something after the interview is concluded; the investigator will ensure that the MSS Director and the witness have their contact information, in the event further details need to be shared.

When an investigator has completed the fact-finding stage and has made a determination about what occurred based on a balance of probabilities and/or actions that were taken in a situation, they then must determine whether there has been a breach of a policy, district administrative procedure, clause of the School Act, or other regulation. All of the findings are included in a formal written report submitted by the investigator to the district. This report includes the testimony of the witness(es). Names and roles of witnesses are deliberately omitted or redacted from reports to maintain confidentiality and, in most cases, a number is assigned to a witness in investigative reports. These reports are not shared with witnesses; they are submitted to the school district HR personnel, and redacted versions are shared with the complainant and the respondent. This can be frustrating for a witness, because they never learn the outcome of the investigation.

The BCPVPA recommends that members contact an MSS Director for more information about being a witness, or if they are asked to be interviewed as a witness. The Director will answer questions and guide members through the process, communicate with the district and investigator, and can be present during the interview process.

To find out more, contact mssinfo@bcpvpa.bc.ca.

support

**The BCPVPA is all about people, and
ensuring that our members are successful
and supported in the important work they do.**

Our Member Support Services team has a wealth of experience in school and district based administration in BC, and training in negotiation, investigations, and school law. They are available to support members and provide guidance in a variety of areas relating to employment as Principals and Vice-Principals in the public sector.



The BCPVPA supports more than 2,700 Principals
and Vice-Principals in BC's public education system.

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