



Pocket Guide on **Whistleblowing**



THE PROFESSIONAL INSTITUTE OF
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Other useful documents

Guide for Members

Membership Benefits pamphlet

Professional Institute By-Laws and Regulations

Professional Institute Policy Manual

Steward Manual

Manual for Elected Officials

Pocket Guide for Elected Officials

Pocket Guide for Stewards

Pocket Guide on the Duty to Accommodate

Pocket Guide on How to write a resolution

Pocket Guide on Leadership

Pocket Guide on Mentoring

Pocket Guide on Occupational Safety and Health

Pocket Guide on Consultation

Pocket Guide on Harassment

Pocket Guide on Employment Equity



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The public service of Canada is an important national institution. However, like in any other workplace in the world, wrongdoings can and do happen. Every once in a while, headline news reports abuse or misuse of public funds.

While rare, these wrongdoings are breaches of public trust which erode the confidence of the public in the government's practices. In the past, employees who dared to speak out about these wrongdoings were disciplined and sometimes even fired from their jobs. Thus, employees tended to remain silent when they became aware of such situations.

Proper implementation of the *Public Service Disclosure Protection Act (PSDPA)* should lead to increased public trust and confidence in public sector organizations as well as a sustained and supported ethical culture in the workplace of choice.

History

For 15 years, PIPSC and other public sector unions campaigned in favour of legislation to protect "whistleblowers", employees who denounce misuse of funds or wrongdoing in the federal government.

The original PSDPA was introduced by the Liberal Party and received Royal Assent on November 25, 2005, but, as elections

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were then called, this legislation was never implemented. The Conservative Party was elected, and shortly after, an amended version of the legislation was introduced.

The PSDPA was amended by the *Federal Accountability Act* which received Royal Assent on December 12, 2006. The *Public Servants Disclosure Protection Act* came into effect April 15, 2007.

What is the aim of the PSDPA?

The *Public Service Disclosure Protection Act* (PSDPA), commonly referred to as whistleblowing legislation, encourages employees in the public sector to come forward if they believe that serious wrongdoing has taken place. The Act provides them with protection against reprisal when they come forward. It also provides a fair and objective process for those against whom allegations are made.

Who is covered by the PSDPA?

The PSDPA applies to all employees in departments, agencies, boards, tribunals, Crown corporations, court administrations, and the Royal Canadian Mounted Police. Although it applies to chief executive officers, it does not apply to Ministers and their staff, members of boards of directors of Crown Corporations, Parliament and its institutions, or federal judges.

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Some institutions, such as the Canadian Security Intelligence Service (CSIS), the Communications Security Establishment (CSE) and the Canadian Forces, are also exempt from this legislation, but are required to create comparable disclosure protection programs.

What are the responsibilities of the employer?

Every chief executive in the federal public service must designate a senior officer and establish an internal disclosure mechanism. Each organization covered by the PSDPA must establish its own procedures for receiving and dealing with disclosures. Small organizations may be exempt from doing this, in this case, allegations of wrongdoing should be made directly to the Public Service Integrity Commissioner (PSIC).

The Act also requires Treasury Board to establish a Code of Conduct for the federal public service. Furthermore, chief executives of federal departments and agencies covered by the Act must establish their own codes, consistent with the Treasury Board Code of Conduct, but adapted to their own needs.

What is wrongdoing?

The PSDPA describes wrongdoing as the contravention of any law, the misuse of public funds or assets, gross mismanagement in the federal public sector, a serious breach of

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a code of conduct, an act or omission that creates a substantial and specific danger to the life, health and safety of Canadians or the environment, or knowingly directing or counseling a person to commit a wrongdoing.

What is disclosure?

Disclosure occurs when a public servant comes forward to denounce serious wrongdoings which have taken place and which can affect the life, health and safety of Canadians or the environment. Examples of disclosure could include speaking out against excessive costs for office renovations, the allocation of contracts to family members, or allowing a new drug on the market prior to testing.

Disclosure can be protected or anonymous.

Types of Disclosure

Protected disclosure means the disclosure is made in good faith by a public servant,

- in accordance with the PSDPA;
- in the course of a parliamentary hearing;
- in the course of a procedure established under any Act of Parliament; or
- when required by law.

Full protection of the Act is available to public servants who have made protected disclosures or who have in good faith cooperated in an investigation into a disclosure.

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Anonymous Disclosure is permissible under the Act. However, since the complainant does not wish to be identified, he cannot benefit from the protection against reprisal or protection of information afforded by the Act.

Third Party Disclosure

There is no third party disclosure.

Can a disclosure be made to the media?

Yes, but only in cases where there is not sufficient time to follow through using the regular internal process, and then only if the public servant believes there is a serious breach of law or an imminent risk of substantial and specific danger to the life, health and safety of persons or the environment.

We strongly recommend that a member who is thinking of making a disclosure to the media consult staff at a PIPSC regional office prior to doing so.

How does a public servant make a disclosure?

Should a public servant become aware of a wrongdoing, he can report it to his supervisor or to the senior officer designated for this purpose, or he can go directly to the Public Service Integrity Commissioner.

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*Members **must remember** that documents they handle during the regular course of their duties may be protected. If an employee takes or copies a protected document, he is in violation of the workplace code of conduct and will be subject to disciplinary measures. Furthermore, the employee could also lose the protection offered by the Act.*

Complaints will be investigated and recommendations on corrective measures will be made to the appropriate chief executive.

Disclosure made to a supervisor

Supervisors are the lowest level at which a wrongdoing complaint may be raised. To be able to deal with these issues, supervisors must be fully aware of the following:

- the definition of wrongdoing under the Act;
- that disclosure by an employee involves the protection of information related to the disclosure and triggers protection from reprisal for the complainant; and
- the identity and role of the senior officer in their organization.

They must also collect statistics and other information which may be required by the

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chief executive for his report to the Canada Public Service Agency regarding disclosures made within the organization under the Act.

Upon receiving a complaint of wrongdoing, the supervisor may look into the matter or refer it to the organization's senior officer. The supervisor should also advise the complainant about confidentiality and reprisal protection provisions under the Act and outline the next steps in the process. The supervisor is required to protect the identity of the complainant and the information related to the complaint to the greatest extent possible, and to act within his authority to protect the complainant from reprisal.

Disclosure made to the organization's Senior Officer

The list of senior officers is available under Values and Ethics on the website of the Office of the Chief Human Resources Officer of the Treasury Board (www.tbs-sct.gc.ca/chro-dprh). Check the list to see who your senior officer is, and submit your allegations.

The senior officer will review the disclosure to determine if there are sufficient grounds to investigate and will inform the complainant in writing of his conclusions. Should the senior officer decide to proceed, he will ensure the investigation is done by a neutral and

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professional investigator respecting the rights of both complainants and wrongdoers. He will protect the identity of all involved in the complaint.

The senior officer will review the results of the investigation, prepare recommendations for action, and report directly to the chief executive of the organization. He will inform the complainant in writing of the results of the investigation and the corrective measures that will be taken.

The senior officer **cannot** refer the disclosure to the Public Sector Integrity Commissioner. The decision to refer rests solely with the employee.

Disclosure made to the Public Sector Integrity Commissioner (PSIC)

An employee can make a complaint directly to the PSIC or refer a situation to him, should the employee believe it was not dealt with properly or adequately at the organization level.

The PSIC has the right to refuse to deal with a disclosure, to start an investigation, or even to stop an investigation if he believes the matter should be dealt with in another forum (i.e. the grievance process) or if the matter is not important enough or the disclosure was not done in good faith.

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The PSIC has the authority to investigate, report on findings, make recommendations on corrective measures to the chief executive concerned, and review reports on measures taken in response to his recommendations.

The PSIC will protect the identity of all concerned to the greatest extent possible. The PSIC may also notify others about the investigation, including those whose actions have been called into question. He does not have to hold hearings, but the individual accused or the chief executive may be given the opportunity to answer allegations.

The PSIC will write a report regarding an investigation which leads to a finding of wrongdoing, and may request that the chief executive notify him of corrective measures taken, or why no measures were taken, within a prescribed period of time.

The PSIC also reports annually to Parliament and can issue special reports to Parliament as required.

What is reprisal?

Reprisal is defined as any measure taken against a person who has made a protected disclosure or who has cooperated in an investigation, including disciplinary measures, demotion, termination of employment, the taking of any measure that adversely affects

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the employment or working conditions of a person, or a threat to do any of these things, or to direct a person to do any of these things.

Are reprisals permissible?

As already stated, the purpose of the PSDPA is to encourage employees in the public sector to come forward if they believe serious wrongdoing is taking place. The PSDPA offers protection to all employees (not only public servants) who provide information on wrongdoing. Protection is also available to employees who cooperate in investigations of possible wrongdoing. The Act also provides a fair and objective process for those against whom allegations are made.

Employers are prohibited from retaliating against employees and contractors who denounce wrongdoing.

How can an employee be protected from reprisal?

Chief executives must protect employees against reprisal when they have made a disclosure in good faith. This includes protecting the identity of the employee making the disclosure, and other persons involved in the disclosure situation, by keeping disclosure records separate from existing files, and revealing information only to the investigator or the senior officer.

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What if the identity of the discloser becomes known?

Should the identity of a discloser or witness become known in the workplace, measures must be taken to prevent potential reprisals. This could include temporarily reassigning the employee to other duties.

What can be done if reprisal occurs?

Immediate action must be taken by the chief executive. The employee must be advised of his options, including potential access to legal advice. The chief executive can also reassign the employee subjected to reprisal, and take any required measures to protect the employee.

An employee can deal with reprisals through the grievance process or other recourse processes or by making a complaint to the PSIC. The PSIC will receive reprisal complaints within 60 days of the employee becoming aware that a reprisal may have occurred. If the complaint is allowed, an investigator will be appointed. A conciliator could also be appointed to attempt to bring about a settlement.

Once the investigator submits his report to the PSIC, the PSIC may submit it to the Public Servants Disclosure Protection Tribunal (PSDPT) to determine if there was reprisal.

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If the PSDPT, composed of Federal Court or provincial superior court judges, determines there was reprisal, it can order remedial action including the following:

- allow the complainant to return to his duties;
- reinstate the complainant or pay compensation in cases where reinstatement is impossible;
- pay compensation to the complainant, to a maximum amount equivalent to any financial penalty which had been imposed;
- rescind disciplinary action;
- reimburse the complainant for financial losses incurred as a direct result of the disclosure;
- compensate the complainant to a maximum of \$10,000 for pain and suffering.

What are the sanctions for someone found guilty of wrongdoing?

The sanctions will depend on the severity and type of wrongdoing. In addition to sanctions required by law, chief executives have the authority to administer administrative and disciplinary penalties such as return of monies, financial penalties, reprimands, suspensions, demotions and termination of employment.

These penalties cannot be grieved.

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What if allegations of wrongdoing are unfounded?

If the allegations were valid but are deemed unfounded or insufficient for further action, then the case is closed.

If the allegations are deemed to have been made as retaliation against another employee or an employer, the person who made the disclosure is subject to disciplinary action.

What if the employee incurred legal fees in the course of the disclosure?

The PSIC can provide limited free access to legal counsel for legal advice to a maximum of \$1,500 for those who do not have access to legal advice. This amount could increase to \$3,000 under exceptional circumstances. This is, however, available only to people who do not have any other access to free legal advice such as that offered by PIPSC. **This is why it is crucial for members to talk with PIPSC prior to making allegations.**

Is the PSIC Accountable?

The PSIC must report to Parliament within 60 days of finding wrongdoing. Chief executives must report publicly on findings of wrongdoing.

The Public Sector Integrity Commissioner makes an annual report to Parliament on disclosure activity across the public service.

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What kind of training is available for public servants on this topic?

The Office of the Public Sector Integrity Commissioner (OPSIC) is responsible for providing learning and communication tools to help organizations meet their requirements concerning the PSDPA. The OPSIC, in collaboration with stakeholders (those covered by the legislation) is working to ensure that public servants know about the legislation, use the mechanisms provided in the Act to report wrongdoings, and feel safe and protected in making disclosures.

What is the role of the Institute in this process?

The bargaining agents must be consulted before the establishment of a code of conduct.

Public servants can consult the union at any time during the disclosure process, whether they are the whistleblower, the accused or a witness. They can be represented or accompanied by a union representative when answering allegations or being subpoenaed by the PSIC to provide information.

Employees also have the right of being represented by their union throughout the reprisal complaint process.

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What can stewards do in the workplace?

Stewards should ensure the employer advises all employees of the following:

- the definition of wrongdoing under the Act;
- the difference between a disclosure and other forms of complaints;
- the name of the organization's senior officer;
- how to make a disclosure under the Act;
- the protections against reprisal available to public servants making a disclosure.

Where can members obtain information on disclosure issues?

Detailed information and advice can be obtained from an Employment Relations Officer at your PIPSC regional office, from your Senior Officer or from the **Public Service Integrity Commissioner** at www.psic-isp.gc.ca or by phone at **613-941-6400** or **1-866-941-6400**.



Notes

Lined area for taking notes, consisting of 20 horizontal dotted lines.