



Agence de gestion des ressources humaines
de la fonction publique du Canada

Public Service Human Resources
Management Agency of Canada



Disclosure of Wrongdoing in Public Sector Procurement: The Canadian Experience

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Canada



Topics

- To provide an overview of recent initiatives taken by the Government of Canada to protect public servants and employees who disclose a wrongdoing in the public sector and in particular concerning contracting and procurement practices.

- Provide an overview of:
 - Bill C-2, *Federal Accountability Act*
 - *Policy on the Internal Disclosure of Information concerning Wrongdoing in the Workplace (Policy)*
 - *Public Servants Disclosure Protection Act (PSDPA)*



Reinforcing Canadians' confidence in the procurement process: Bill C-2, the *Federal Accountability Act*

- On April 11, 2006, the Government of Canada introduced Bill C-2, the *Federal Accountability Act*.
- Omnibus bill designed to make government more accountable.
- The *Federal Accountability Act* is currently before Parliament.
- The Government of Canada is one of the largest purchasers of goods and services in the country: the *Federal Accountability Act* includes an overarching statement of principles to promote fairness, openness and transparency in the bidding process.



Federal Accountability Act (2)

- Creation of a Procurement Auditor to:
 - review procurement practices across government;
 - handle complaints from potential suppliers;
 - review complaints regarding contract administration;
 - manage an alternative dispute resolution process for contracts; and
 - submit an annual report to be tabled to Parliament.
- Independent procurement expert hired to review Government's policy on managing procurement to ensure that it reinforces a fair, open and transparent process.
- New accountability measures must not result in cumbersome layers of rules for public servants and those who interact with Government.



Disclosure of Wrongdoing: “*Policy on the Internal Disclosure of Wrongdoing*”

- November 2001: Government of Canada established its *Policy on the Internal Disclosure of Information Concerning Wrongdoing in the Workplace* for federal service employees.

- Under the *Policy*, wrongdoing is defined as an act or omission concerning:
 - (a) a violation of any law or regulation; or
 - (b) a breach of the *Values and Ethics Code for the Public Service*; or
 - (c) misuse of public funds or assets; or
 - (d) gross mismanagement; or
 - (e) a substantial and specific danger to the life, health and safety of Canadians or the environment.

- Definition covers possible wrongdoing in the procurement and contracting processes.



Current Policy (2)

- *Policy* applies to public servants only.
- Public Service Integrity Officer (PSIO) established to receive and investigate disclosures of wrongdoing and make recommendations to Chief Executives of departments or agencies.
- Public Servants can disclose a wrongdoing to the PSIO directly or internally to a designated senior officer within the department or agency.
- PSIO files annual report to Parliament outlining investigations and results.
- Reprisal measures against public servants prohibited and employees and managers may be subject to administrative or disciplinary measures.



Current Policy (3)

Statistics

- 2002-2003
 - 2 cases dealing with contracting and procurement investigated by PSIO: both were unfounded.
- 2003-2004
 - no reported cases involving contracting or procurement.
- 2004-2005
 - 3 cases dealing with contracting and procurement investigated by PSIO:
 - 1 case unfounded;
 - 1 case referred to Canadian International Trade Tribunal;
 - 1 case found to be inappropriate “contract splitting” and corrective measures taken.



Public Servants Disclosure Protection Act (PSDPA)

Objective:

- Disclosure of a wrongdoing process and corrective measures are meant to be preventive and serve to enhance good governance in the public sector.

Background:

- 2003: Review of *Policy* by group of imminent experts recommended statutory protection for persons who disclose wrongdoing in the public sector.
- 2004-2005: “Gomery Commission” on Sponsorship Program and Advertising Activities.
- *Public Servants Disclosure Protection Act*, enacted by Parliament on November 25, 2005, but it is not yet in force.
- New Government elected in January 2006 introduced Bill C-2, *Federal Accountability Act*.
- Bill C-2 brings important amendments to the PSDPA.



PSDPA (2)

Principles

- The PSDPA strives to achieve an appropriate balance between the two principles of freedom of expression and duty of loyalty to the employer.
- PSDPA applies to all persons employed in public sector including agencies, separate employers and parent crown corporations.
- Government committed to creating a Charter of Values of Public Service and a new Code of Conduct.
- PSDPA gives mandate to Minister responsible for Public Service Human Resources Management Agency of Canada to promote ethical practices and a positive environment for disclosing wrongdoings in the public sector.



PSDPA (3)

Disclosure Mechanism

- Public sector employees can disclose a wrongdoing internally to a designated senior officer or directly to the Public Sector Integrity Commissioner (PSIC).
- Any person can provide information about public sector wrongdoing to PSIC.
- Head of Departments and Chief Executives of Agencies and Crown corporations must establish disclosure protection mechanisms within their organizations.
- Public disclosures (whistleblowing) is permitted under exceptional circumstances only.
- Measures to protect confidentiality and protect identities of persons.



PSDPA (4)

Definition

- “Wrongdoing” means:
 - violation of laws;
 - misuse of public funds assets;
 - gross mismanagement;
 - serious breach of 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 counselling a person to commit wrongdoing.

- Definition of wrongdoing is not restricted to activities of public servants, it includes any wrongdoing in or in relation to the public sector (i.e., includes inappropriate contracting or procurement practices).



PSDPA (5)

Protection from reprisal for all employees and contractors

- Reprisal protection for all employees (not just public servants) who provide information concerning an alleged wrongdoing in the public sector.
- All employers are prohibited from taking reprisal measures against an employee.
- Violations of PSDPA prohibitions can result in severe sanctions and penalties.
- Prohibits public servants from retaliating against contractors, including recipients of grants and contributions, because they reported government wrongdoing.
- Legal Assistance for any person considering making a disclosure or providing information.



PSDPA (6)

Protection from reprisal for public servants

- Allegations of reprisals against public servants will be investigated by PSIC.
- PSIC will refer cases of possible reprisals to a new Public Servants Disclosure Protection Tribunal.
- Judges will preside and decide if reprisal measures were taken against a public servant.
- Tribunal will have wide power to order remedies for victim and order disciplinary action against person who took reprisal, (up to and including termination of employment).
- Reprisal complaints by other than public servants to be pursued through the Court system.



PSDPA: (7)

Reporting Obligations

- PSIC to present findings of investigations and make recommendations to Heads of departments/Chief Executives who will be required to take corrective action and report back to PSIC.
- The PSIC has power to make special interim reports to the Minister or to Parliament.
- PSIC to report to Parliament within 60 days of confirming a finding of wrongdoing and on the Chief Executive's response to his/her recommendations.
- Chief Executives required to disclose publicly information regarding findings of wrongdoing within their organization.
- PSIC required to file an annual report to Parliament.