

**Professional Institute
of the Public Service of Canada
(PIPSC)**



PIPSC • IPFPC

***Submission to the House of Commons Standing
Committee on Government Operations regarding the
Public Servants Disclosure Protection Act***

March 2017

Introduction

The Professional Institute for the Public Service of Canada (PIPSC) is Canada's largest union of professionals, working predominantly for the federal government. PIPSC is pleased to have the opportunity to submit our input on the Standing Committee on Government Operations' review of the *Public Servants Disclosure Protection Act*.

Canadians rely on public services every day to make their lives safer, healthier and more prosperous. Our members are the ones who provide those services. Whistle blowing must be considered a service to the public, it only happens in the rarest of circumstances, when a public service professional has tried every other avenue for resolving a significant concern, only to have their concerns dismissed by higher-level authorities. When a public service professional takes that action of blowing the whistle they are doing so in keeping with their deep commitment to protecting and promoting the public good. Sadly, whistle blowing has also meant sacrificing your career for the sake of the public interest. It shouldn't be that way.

PIPSC believes that the role of the Standing Committee is to ensure that whistle blowing is recognized and appreciated as a service, not punished as a betrayal. We need to ensure we do not put insurmountable barriers in the way of whistle blowers. This was the intent behind the *Public Servants Disclosure Protection Act*, but it has failed to do this and needs to be fixed.

RECOMMENDATIONS

Reverse the onus of reprisal in law

Fear of reprisal remains one of the main obstacles to whistle blowing and the current law fails to address that concern. Reprisal against whistleblowers who

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disclose wrongdoing is often difficult to prove. As a result, it is rare that one could find a “smoking gun” which would assist in proving that reprisals have taken place. The simple solution to this problem is to require a reverse onus, which means that an allegation of reprisal is assumed to be true unless the employer can rebut it.

Fix the investigation process under the Public Service Integrity Commissioner.

Our experience in representing members demonstrates that the Commissioner's investigation processes are often unfair, lacking in thoroughness, and insensitive to whistleblowers. The deficiencies in the Public Service Integrity Commissioner's process require unnecessary litigation and result in unacceptable delays. They have to be fixed.

The Commissioner performs a gatekeeper role in respect of reprisal complaints. This role means that only the Commissioner can decide which complaints are referred to the Tribunal. This gatekeeper role places enormous discretion with the Commissioner in determining how reprisal complaints are dealt with. As a result, very few reprisal complaints have been referred to the Tribunal.

The Committee should eliminate the gatekeeper role and replace it with a “direct access” system which would allow reprisal victims to seek relief directly from the Tribunal.

Close the outsourcing accountability loophole.

PIPSC is a leading voice in fighting against the government's over-reliance on outsourcing. Our research has shown that outsourcing is costing the federal government money, jobs, morale, accountability and productivity.

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Federal over-reliance on outsourcing is creating a shadow public service, where the rules, regulations and guidelines for accountability do not apply. The shadow public service is a massive loophole when it comes to the *Public Servants Disclosure Protection Act*.

First, the Act has no jurisdiction over private companies that receive government contracts. If the whistle is blown on a wrong-doing and an investigation leads the commissioner outside the public service, the investigators' hands are tied.

Second, contract workers have absolutely no protection under the *Act*. If a contract worker decides to blow the whistle on a wrongdoing committed by their company or the government authorities who awarded that contract, they have no recourse under this legislation. Worse still, these contractors do not even have the protection and resources of a union like PIPSC to help them navigate life as a whistle blower. One has to wonder if the whistle would have been blown on Phoenix before its implementation, if the right protections existed in the law.

The government has to end its over-reliance on outsourcing. PIPSC recommends that the Committee study the issue of outsourcing in full. But in the context of this current study of whistle blowing the Committee should pay close attention to the accountability loophole created by outsourcing.

Ensure public service professionals are free from muzzling and undue political interference.

The *Public Servants Disclosure Protection Act* should be augmented with another accountability measure that is sorely lacking, the right of public servants to be free of muzzling and undue political interference. One of the larger groups represented by PIPSC is comprised of federal scientists, who over the past decade

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felt the chill of government muzzling. Federal scientists have worked hard to enshrine their right to speak into their collective agreements. PIPSC maintains that we must bring in a code of conduct that ensures muzzling and meddling in the work of public service professionals never happens again. Years ago, the Gomery Commission called for a Code of Conduct for ministers and their political staff to ensure they do not meddle in the work of professional public servants. It is time to act on this recommendation.

Conclusion

PIPSC believes that we need to ensure that the proper protections are in place to remove the often overwhelming barriers in the way of whistle blowers. This is the intent behind the *Public Servants Disclosure Protection Act*, but it has failed to do so.

In summary, we are recommending the Committee consider the following:

- Reverse the onus of reprisal in law
- Fix the investigation process under the Public Service Integrity Commissioner
- Close the outsourcing accountability loophole, and
- Ensure public service professionals are free from muzzling and undue political interference.

Not only do we need the legislative and policy changes outlined above to be adopted; we also need a culture change when it comes to whistle blowers. No person should have to risk their career and well being in order to speak out in the interest of the public. Whistle blowing should not come at such a high personal cost.

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