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Annual Report on the *Public Servants Disclosure Protection Act* 2012–13



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Introduction

Section 38.1 of the *Public Servants Disclosure Protection Act* (PSDPA) requires that the Chief Human Resources Officer prepare an annual report for the President of the Treasury Board to table in Parliament. The report must provide information on activities related to the disclosures made in public sector organizations that are subject to the Act. This report, the sixth annual report under the PSDPA, covers the reporting requirements for the period April 1, 2012, to March 31, 2013.

The PSDPA establishes procedures for handling allegations of wrongdoing and complaints of reprisal, and provides concrete support for grounding public sector culture firmly in values and ethics. For an overview of the Act and definitions of key terms used in this report, please refer to Parts E and F of the Appendix.

This report includes information on disclosures made according to internal procedures established under the Act, as reported to the Office of the Chief Human Resources Officer (OCHRO) by the senior officers for disclosure or the chief executives of public sector organizations. It does not cover disclosures or reprisal complaints made to the Office of the Public Sector Integrity Commissioner of Canada, which are covered by the Commissioner's report to Parliament.

Reported Disclosure Activity

There are 149 active organizations in the federal public sector that are currently subject to the Act.¹ Of these organizations, 124 inform OCHRO of senior officer for disclosure appointments made under the Act. Pursuant to subsection 10(4) of the Act, 25 organizations have declared that they would not establish internal disclosure procedures or appoint a senior officer for disclosure because the size of the organization made it impractical to do so.²

Subsection 38.1(1) of the Act requires chief executives to prepare a report on the activities related to disclosures made in their organizations and to submit it to OCHRO within 60 days after the end of every fiscal year. The following is a summary of these reports. Statistics from previous years are included for comparison.

Disclosure Activity 2007–13

Disclosure Activity	2012–13	2011–12	2010–11	2009–10	2008–09	2007–08
Number of active organizations	149	155	154	155	153	153
Number of general inquiries related to the Act	198	225	277	281	186	259
Number of organizations that reported inquiries	37	32	33	29	28	35
Number of disclosures received under the Act	213	197	291	213	181	234
Number of organizations that reported disclosures	31	28	33	32	27	30
Number of referrals resulting from a disclosure made in another public sector organization	9	4	3	4	2	1
Number of cases carried over on the basis of disclosures made the previous year	100	118	75	31	25	N/A
Total number of disclosures handled (new disclosures + referrals + cases carried over)	322	319	369	248	208	N/A

1. This figure does not include the three organizations excluded from the definition of “public sector” in the Act (the Canadian Forces, the Canadian Security Intelligence Service, and Communications Security Establishment Canada) or the organization that requires an order-in-council to become subject to the Act (the Canada Pension Plan Investment Board).
2. The Canadian Museum of Nature, the Canadian Polar Commission, and the Patented Medicine Prices Review Board Canada, which had previously declared an exception pursuant to section 10(4) of the Act, designated a senior officer for disclosure in 2012–13. This increases the avenues of disclosure for the employees of these organizations.

Disclosure Activity	2012–13	2011–12	2010–11	2009–10	2008–09	2007–08
Number of disclosures received that were acted upon	130	186	350	218	162	179
Number of disclosures received that were not acted upon	91	47	19	30	45	50
Number of investigations commenced as a result of disclosures received	80	78	111	75	60	87
Number of disclosures received that led to a finding of wrongdoing	18	24 ³	9	7	6	7
Number of organizations that reported findings of wrongdoing	6	10	7	4	3	6
Number of disclosures received that led to corrective measures	40	74	31	36	38	26
Number of organizations that reported corrective measures	13	15	16	14	13	14
Number of organizations that reported finding systemic problems that gave rise to wrongdoing	2	1	2	4	1	2
Number of organizations that did not disclose information about findings of wrongdoing within 60 days	5	3	7	N/A	N/A	N/A

In accordance with paragraph 11(1)(c) of the Act, it is the responsibility of organizations to provide public access to information describing findings of wrongdoing and any follow-up action taken. Consequently, OCHRO does not collect or report on the specifics of findings of wrongdoing by organizations.

Statistics on reports of organizational activities related to disclosures made under the Act are available in Part A of the Appendix. These statistics provide a useful snapshot of activity under the PSDPA. The following points should be noted:

- ▶ It is difficult to compare statistics across organizations because the cultures vary; issues may be dealt with through different mechanisms in different organizations.
- ▶ Sometimes a disclosure will contain several allegations of wrongdoing. When filling out their annual report under the PSDPA, organizations are asked to count each allegation as a separate disclosure and report it as such in their submission to OCHRO. As a result, the report captures

3. This figure includes one finding of wrongdoing that was unintentionally omitted in The National Battlefields Commission's annual report for the reporting period 2010–11.

the number of potential incidents of wrongdoing, which is a higher number than the number of public servants making disclosures.

- ▶ Cases identified through disclosure may be followed up through another process, such as a grievance procedure, as appropriate.
- ▶ The following are the most common reasons provided by organizations regarding disclosures that were not acted upon:
 - The disclosure did not meet the definition of wrongdoing under section 8 of the Act;
 - The individual making the disclosure did not provide sufficient information to support the disclosure, which precluded further investigation; and
 - The individual making the disclosure was referred to another, more appropriate, recourse mechanism due to the nature of the allegation(s).
- ▶ Disclosures can be made to a supervisor, a senior officer for disclosure or the Public Sector Integrity Commissioner. The choice of a particular channel for disclosure cannot be construed as a reflection of a lack of trust in other channels.
- ▶ Given that an anonymous disclosure does not meet the definition of a “disclosure made under the Act,” this report does not include situations where information about a possible wrongdoing is provided anonymously.⁴
- ▶ Although the Canadian Forces (CF), the Canadian Security Intelligence Service (CSIS) and the Communications Security Establishment Canada (CSEC) are excluded from the PSDPA, under section 52 they must establish procedures applicable to their organization for the disclosure of wrongdoing, including the protection of persons who disclose wrongdoing. These procedures must, in the opinion of the Treasury Board, be similar to those set out in the PSDPA. CSIS was the first excluded organization to submit their procedures, which were approved in December 2009. CSEC procedures were approved in June 2011, and CF procedures were approved in April 2012.
- ▶ Organizations are becoming more and more active in promoting the PSDPA. They do so in different ways, such as awareness sessions, dialogue or training sessions intended for employees, managers and executives. In addition, written information is made available through internal websites, pamphlets and posters. Some organizations invite speakers, such as the Public Sector Integrity Commissioner or the Chief Human Resources Officer, to give presentations to employees on the PSDPA. Many organizations also reported that a section of their organizational code of conduct is dedicated to disclosures under the PSDPA.

4. To trigger the protections of the Act, a public servant must be identifiable as the source of the disclosure or be involved in a disclosure investigation.

Appendix: Summary of Organizational Activity Related to Disclosures Under the Act

A. Organizations reporting activity under the Act in 2012–13

Organization	General inquiries	Disclosures						Investigations commenced	Disclosures that led to	
		Received	Referred	Carried over from 2011–12	Acted upon	Not acted upon	Carried over into 2013–14		A finding of wrongdoing	Corrective measures
Aboriginal Affairs and Northern Development Canada	5	4	0	0	2	0	2	0	0	0
Agriculture and Agri-Food Canada	1	8	0	0	6	2	0	1	6	6
Atlantic Canada Opportunities Agency	2	0	0	1	1	0	0	1	0	1
Atomic Energy of Canada Limited	2	30	3	5	33	0	5	30	0	10
Bank of Canada	0	2	0	0	2	0	0	2	0	0
Canada Border Services Agency	1	21	1	9	12	14	5	2	0	1
Canada Post	0	1	0	0	1	0	0	1	0	0
Canada Revenue Agency	3	1	0	0	1	0	0	0	0	0
Canadian Food Inspection Agency	4	17	0	0	4	0	13	2	1	1
Canadian Grain Commission	1	1	0	0	0	1	0	0	0	0

Organization	General inquiries	Disclosures						Investigations commenced	Disclosures that led to	
		Received	Referred	Carried over from 2011-12	Acted upon	Not acted upon	Carried over into 2013-14		A finding of wrongdoing	Corrective measures
Canadian Museum for Human Rights	0	1	0	0	1	0	0	1	0	1
Canadian Nuclear Safety Commission	3	0	0	0	0	0	0	0	0	0
Canadian Space Agency	4	0	0	0	0	0	0	0	0	0
Citizenship and Immigration Canada	0	1	0	0	0	0	1	1	0	0
Correctional Service Canada	1	5	0	12	8	8	1	0	0	5
Department of Justice Canada	2	0	0	0	0	0	0	0	0	0
Enterprise Cape Breton Corporation	2	2	0	0	0	2	0	0	0	0
Environment Canada ⁵	5	2	0	2	3	0	1	3	0	2
Export Development Canada	1	0	0	0	0	0	0	0	0	0
Fisheries and Oceans Canada	11	7	0	1	1	7	0	0	1	1
Foreign Affairs and International Trade Canada ⁶	7	0	0	0	0	0	0	0	0	0

5. This organization reported a related systemic problem that has been addressed through corrective measures.

6. As of July 17, 2013, the name of this organization changed to Foreign Affairs, Trade and Development Canada.

Organization	General inquiries	Disclosures						Investigations commenced	Disclosures that led to	
		Received	Referred	Carried over from 2011–12	Acted upon	Not acted upon	Carried over into 2013–14		A finding of wrong-doing	Corrective measures
Health Canada	12	9	0	4	5	3	5	4	0	0
Human Resources and Skills Development Canada ⁷	2	3	0	2	1	0	4	0	0	0
Immigration and Refugee Board of Canada	13	0	0	0	0	0	0	0	0	0
Industry Canada	0	1	0	0	1	0	0	0	0	0
Infrastructure Canada	1	0	0	0	0	0	0	0	0	0
Marine Atlantic Inc.	1	1	0	0	0	0	1	1	0	0
National Capital Commission	35	8	0	0	8	0	0	8	1	1
National Defence	19	36	0	14	16	24	10	5	0	0
National Energy Board	1	0	0	0	0	0	0	0	0	0
National Research Council Canada	2	0	0	0	0	0	0	0	0	0
Natural Resources Canada	8	4	0	1	3	0	2	1	0	2

7. As of August 11, 2013, the name of this organization changed to Employment and Social Development Canada.

Organization	General inquiries	Disclosures						Investigations commenced	Disclosures that led to	
		Received	Referred	Carried over from 2011-12	Acted upon	Not acted upon	Carried over into 2013-14		A finding of wrongdoing	Corrective measures
Office of the Public Sector Integrity Commissioner of Canada	0	6	0	0	0	0	6	6	0	0
Parks Canada	6	3	4	4	3	0	8	3	0	0
Passport Canada	1	0	0	0	0	0	0	0	0	0
Public Health Agency of Canada	2	0	0	0	0	0	0	0	0	0
Public Sector Pension Investment Board	0	1	0	0	1	0	0	1	0	0
Public Service Commission of Canada	3	0	0	0	0	0	0	0	0	0
Public Service Labour Relations Board	2	0	0	0	0	0	0	0	0	0
Public Works and Government Services Canada	14	8	0	11	8	0	11	2	7	7
Royal Canadian Mounted Police	5	2	0	30	2	23	7	0	0	0
Shared Services Canada	0	23	0	0	0	5	18	1	0	0
Statistics Canada	0	3	0	1	3	1	0	3	0	0
Transportation Safety Board of Canada	1	1	0	0	1	0	0	1	0	0

Organization	General inquiries	Disclosures						Investigations commenced	Disclosures that led to	
		Received	Referred	Carried over from 2011–12	Acted upon	Not acted upon	Carried over into 2013–14		A finding of wrongdoing	Corrective measures
Transport Canada ⁸	14	0	1	3	3	0	1	0	2 ⁹	2
Treasury Board of Canada Secretariat	1	1	0	0	0	1	0	0	0	0
Totals	198	213	9	100	130	91	101	80	18	40

8. This organization reported a related systemic problem that has been addressed through corrective measures.

9. Result of an investigation commenced in 2011–12 and ended in 2012–13.

B. Organizations that reported no activities related to disclosure in the reporting period

Atlantic Pilotage Authority Canada
Business Development Bank of Canada
Canada Council for the Arts
Canada Deposit Insurance Corporation
Canada Development Investment Corporation
Canada Employment Insurance Commission
Canada Industrial Relations Board
Canada Mortgage and Housing Corporation
Canada School of Public Service
Canada Science and Technology Museum
Canadian Air Transport Security Authority
Canadian Broadcasting Corporation
Canadian Centre for Occupational Health and Safety
Canadian Commercial Corporation
Canadian Environmental Assessment Agency
Canadian Heritage
Canadian Institutes of Health Research
Canadian International Development Agency¹⁰
Canadian International Trade Tribunal
Canadian Museum of Civilization

10. On March 21, 2013, the Government of Canada announced the amalgamation of the Canadian International Development Agency with Foreign Affairs and International Trade Canada.

Canadian Museum of Nature

Canadian Northern Economic Development Agency

Canadian Polar Commission

Canadian Radio-television and Telecommunications Commission

Canadian Tourism Commission

Canadian Transportation Agency

Commission for Public Complaints Against the Royal Canadian Mounted Police

Courts Administration Service

Defence Construction Canada

Department of Finance Canada

Economic Development Agency of Canada for the Regions of Quebec

Energy Supplies Allocation Board

Farm Credit Canada

Farm Products Council of Canada

Federal Bridge Corporation

Federal Economic Development Agency for Southern Ontario

Financial Transactions and Reports Analysis Centre of Canada

Great Lakes Pilotage Authority Canada

Human Rights Tribunal of Canada

Indian Oil and Gas Canada

International Development Research Centre

Laurentian Pilotage Authority Canada

Library and Archives Canada

Military Police Complaints Commission of Canada

National Arts Centre

National Film Board

National Gallery of Canada

Northern Pipeline Agency Canada

Office of the Auditor General of Canada

Office of the Chief Electoral Officer

Office of the Commissioner for Federal Judicial Affairs Canada

Office of the Information Commissioner of Canada

Office of the Secretary to the Governor General

Office of the Superintendent of Bankruptcy Canada

Office of the Superintendent of Financial Institutions Canada

Pacific Pilotage Authority Canada

Parole Board of Canada

Patented Medicine Prices Review Board Canada

PPP Canada

Privy Council Office

Public Prosecution Service of Canada

Public Safety Canada

RCMP External Review Committee

Registry of the Specific Claims Tribunal of Canada

Registrar of the Supreme Court of Canada

Royal Canadian Mint

Ridley Terminals Inc.

Sciences and Engineering Research Canada

Social Sciences and Humanities Research Council of Canada

Staff of the Non-Public Funds

Statistical Survey Operations

Status of Women Canada

The Correctional Investigator Canada

The National Battlefields Commission

Veterans Affairs Canada

Veterans Review and Appeal Board

VIA Rail Canada Inc.

Western Economic Diversification Canada

C. Organizations that do not have a senior officer for disclosure or internal disclosure procedures as of the end of the reporting period, pursuant to subsection 10(4) of the Act

Blue Water Bridge Canada

Canada Lands Company Limited

Canadian Artists and Producers Professional Relations Tribunal

Canadian Dairy Commission

Canadian Forces Grievance Board¹¹

Canadian Human Rights Commission

Canadian Intergovernmental Conference Secretariat

Canadian Museum of Immigration at Pier 21

Canadian Race Relations Foundation

Copyright Board Canada

Financial Consumer Agency of Canada

Freshwater Fish Marketing Corporation

Hazardous Materials Information Review Commission Canada

Indian Residential Schools Truth and Reconciliation Commission

International Joint Commission

Office of the Commissioner of Lobbying of Canada

Office of the Commissioner of Official Languages

Office of the Privacy Commissioner of Canada

Public Servants Disclosure Protection Tribunal Canada

11. Following the enactment of Bill C-15 in 2013, the Canadian Forces Grievance Board changed its name to the Military Grievances External Review Committee.

Public Service Staffing Tribunal

Registry of the Competition Tribunal

Security Intelligence Review Committee

Standards Council of Canada

Telefilm Canada

Transportation Appeal Tribunal of Canada

D. Inactive organizations that are subject to the Act

Assisted Human Reproduction Canada

Canada Emission Reduction Incentives Agency

Canada Employment Insurance Financing Board

Canada Investment and Savings

Cape Breton Development Corporation (amalgamated with, and reporting through, Enterprise Cape Breton Corporation)

Corporation for the Mitigation of Mackenzie Gas Project Impacts

Director of Soldier Settlement

First Nations Statistical Institute

NAFTA Secretariat – Canadian Section

National Round Table on the Environment and the Economy

Public Appointments Commission Secretariat

The Director, The Veterans' Land Act

E. Overview of the *Public Servants Disclosure Protection Act*

Introduction

Section 38.1 of the *Public Servants Disclosure Protection Act* (PSDPA) requires that the President of the Treasury Board annually table the following information in Parliament for the activities respecting disclosures made in public sector organizations that are subject to the Act:

- ▶ Number of general inquiries relating to the Act;
- ▶ Number of disclosures received under the Act, and whether they were acted upon;
- ▶ Number of investigations commenced;
- ▶ Whether any systemic problems were found that gave rise to wrongdoings; and
- ▶ Any other matter that the Chief Human Resources Officer deems necessary.

Outline of the Act

The PSDPA encourages employees in the public sector to come forward if they have reason to believe that serious wrongdoing has taken place, and it provides protections for employees against reprisal when they do so.

The Act allows any person to provide the Public Sector Integrity Commissioner with information about possible wrongdoing in the public sector. It also allows employees to make disclosures to their supervisors or to the senior officer for disclosure designated for their organization. The Act created the Public Servants Disclosure Protection Tribunal to address alleged cases of reprisal.

Through these provisions, the PSDPA enhances the ability of organizations to identify and resolve incidents of wrongdoing, while supporting employees who disclose wrongdoing and protecting them from reprisal.

The PSDPA requires allegations of wrongdoing to be treated with an appropriate degree of confidentiality. Organizations must protect any information they collect about disclosures, including the identities of those making disclosures and of others involved, subject to other Acts of Parliament and the principles of natural justice and procedural fairness. In this way, the PSDPA provides a fair and objective process for those against whom allegations are made.

The PSDPA amended the *Access to Information Act* and the *Privacy Act* to ensure that information created for the purpose of making a disclosure, or in the course of an investigation into a disclosure or reprisal complaint, cannot be released in response to requests for information under either of those Acts. To balance these provisions with the need for transparency for public sector wrongdoings, the PSDPA requires that chief executives and the Public Sector Integrity Commissioner provide prompt public access to information that describes incidents of

wrongdoing found as a result of disclosures made under the Act, and any corrective action taken as a result.

The establishment of procedures for handling alleged wrongdoing and complaints of reprisal are only one feature of the PSDPA. More broadly, the Act supports a positive public sector culture that is grounded in values and ethics. It requires that the Government of Canada establish a code of conduct applicable to the entire federal public sector, and that each public sector organization establish a code of conduct consistent with the public sector code.

The PSDPA also requires that the President of the Treasury Board promote ethical practices and a positive environment for disclosing wrongdoing in the public sector. Ultimately, the Act will help to sustain and support an ethical culture, thereby reinforcing the integrity of the federal public sector.

F. Key terms

For the purposes of the *Public Servants Disclosure Protection Act* (PSDPA), and of this report, “public servant” denotes every person employed in the public sector. This includes the deputy heads and chief executives of public sector organizations, but it does not include other Governor in Council appointees (e.g., judges and boards of Crown corporations), or parliamentarians and their staff.

The PSDPA defines “wrongdoing” as any of the following actions in, or relating to, the public sector:

- ▶ Contravention of any Act of Parliament or of the legislature of a province, or of any regulations made under any such Act, other than a contravention of section 19 of the PSDPA;
- ▶ Misuse of public funds or assets;
- ▶ Gross mismanagement in the public sector;
- ▶ Serious breach of a code of conduct established under the Act;
- ▶ Act or omission that creates a substantial and specific danger to the life, health and safety of Canadians or the environment; and
- ▶ Knowingly directing or counselling a person to commit a wrongdoing.

A “protected disclosure” is a disclosure that is made in good faith by a public servant under the following conditions:

- ▶ In accordance with the Act, to the public servant’s immediate supervisor, senior officer for disclosure or the Public Sector Integrity Commissioner;
- ▶ In the course of a parliamentary proceeding;
- ▶ In the course of a procedure established under any other Act of Parliament; or
- ▶ When lawfully required to do so.

Furthermore, any person can provide information about public sector wrongdoing to the Public Sector Integrity Commissioner.

The PSDPA defines “reprisal” as any of the following measures taken against a public servant who has made a protected disclosure or who has, in good faith, co-operated in an investigation into a disclosure:

- ▶ Any disciplinary measure;
- ▶ Demotion of the public servant;
- ▶ Termination of the employment of the public servant;

- ▶ Taking any measure that adversely affects the employment or working conditions of the public servant; or
- ▶ Threatening to do any of those things or to direct a person to do them.

Each organization subject to the PSDPA is required to establish “internal procedures” to manage disclosures made in the organization. Organizations that are too small to establish their own internal procedures can request an exception under section 10(4) of the Act. In this case, disclosures related to the Act would be handled directly by the Public Sector Integrity Commissioner.

A “senior officer for disclosure” is the person appointed within each organization to receive and deal with disclosures made under the Act. Senior officers for disclosure have the following key leadership roles for implementing the Act in their organizations:

- ▶ Providing information, advice and guidance to public servants regarding the organization’s internal disclosure procedures, including the making of disclosures, the conduct of investigations into disclosures, and the handling of disclosures made to supervisors.
- ▶ Receiving and recording disclosures and reviewing them to establish whether there are sufficient grounds for further action under the PSDPA.
- ▶ Managing investigations into disclosures, including determining whether to deal with a disclosure under the PSDPA, initiating an investigation or ceasing an investigation.
- ▶ Coordinating handling of a disclosure with the respective senior officer of another federal public sector organization, if a disclosure or an investigation into a disclosure involves that other organization.
- ▶ Notifying the person(s) who made a disclosure in writing of the outcome of any review or investigation into the disclosure and on the status of actions taken on the disclosure, as appropriate.
- ▶ Reporting the findings of investigations, as well as any systemic problems that may give rise to wrongdoing, directly to his or her chief executive, with recommendations for corrective action, if any.

Other Definitions

Acting upon a disclosure: Refers to taking any action to determine whether or not wrongdoing has occurred, such as preliminary analysis, fact-finding and investigation. It also means that the determination of whether or not the wrongdoing has occurred was made during the reporting period.

Allegation of wrongdoing: Refers to the communication of a potential incident of wrongdoing through a disclosure as defined in section 8 of the PSDPA. The person must make the allegation in good faith and must have reasonable grounds to believe that the allegation is true.

Disclosure: Refers to the provision of information by a public servant to his or her immediate supervisor or to a senior officer for disclosure that includes one or more allegations of possible wrongdoing in the public sector, in accordance with section 12 of the PSDPA.

General inquiries: Refers to inquiries about procedures established under the PSDPA or about possible wrongdoings, not including actual disclosures.

Investigation: Refers to a formal investigation triggered by a disclosure.

Not acted upon: Refers to any immediate rejection of the disclosure once it is received, including an immediate referral of the employee making the disclosure to another more appropriate recourse mechanism.