



Government
of Canada

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Canada



Conflict of Interest

G20 Anti-Corruption Working Group

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Public Servants Disclosure Protection Act

- The Act:
 - applies to the broader federal public sector;
 - provides substantial protections in law from reprisal for disclosures made in good faith;
 - outlines a process for dealing with reprisal;
 - includes a Public Servants Disclosure Protection Tribunal that can order a settlement or corrective action such as compensation or disciplinary action;
 - strengthens the confidentiality that can be offered to those making disclosures; and
 - established the Public Sector Integrity Commissioner as an agent of Parliament.

Public Servants Disclosure Protection Act

- What is wrongdoing under the PSDPA?
 - Wrongdoing relates to serious violations that go against the public interest, such as:
 - violating any Act of Parliament or any Act of the legislatures of the provinces;
 - misusing public funds or public assets;
 - gross mismanagement in the public sector;
 - doing something—or failing to do something—that creates a substantial and specific danger to the health, safety or life of persons or to the environment;
 - **seriously breaching the Treasury Board or your organization's code of conduct; or**
 - knowingly directing or counselling a person to commit a wrongdoing set out above.

Who is covered?

- The PSDPA covers all employees in federal departments and agencies, most Crown corporations and the Royal Canadian Mounted Police (RCMP).
- The PSDPA also provides protection for people outside the public sector, including external contractors, when they provide information about wrongdoing in, or related to, the federal public sector.
- Certain specialized bodies fall outside of the defined “public sector”.
 - They are required to establish procedures applicable to their organization for the disclosure of wrongdoing, including the protection of persons who disclose wrongdoing, deemed comparable by the Treasury Board to those established under the PSDPA.
- The Act does not apply to elected officials or their staff, and employees of the House of Commons and the Senate are excluded.

Values and Ethics Code for the Public Sector

- The Role of Federal Public Servants
 - As professionals whose work is essential to Canada's well-being and the enduring strength of the Canadian democracy, public servants uphold the public trust.
 - A professional and non-partisan federal public sector is integral to Canada's democracy.

Values and Ethics Code for the Public Sector

- Objectives
 - The Code outlines the values and expected behaviours that guide public servants in all activities related to their professional duties.
 - By committing to these values and adhering to the expected behaviours, public servants strengthen the ethical culture of the public sector and contribute to public confidence in the integrity of all public institutions.
 - The Code was developed in consultation with public servants, public sector organizations and bargaining agents (unions).

Values and Ethics Code for the Public Sector

- Statement of Values
 - These values are a compass to guide public servants in everything they do. They cannot be considered in isolation from each other as they will often overlap.
 - Respect for Democracy
 - Respect for People
 - Integrity
 - Stewardship
 - Excellence

Values and Ethics Code for the Public Sector

- Integrity / Expected Behaviours
 - Public servants shall serve the public interest by:
 - 3.1 Acting at all times with integrity and in a manner that will bear the closest public scrutiny, an obligation that may not be fully satisfied by simply acting within the law.
 - 3.2 Never using their official roles to inappropriately obtain an advantage for themselves or to advantage or disadvantage others.
 - ***3.3 Taking all possible steps to prevent and resolve any real, apparent or potential conflicts of interest between their official responsibilities and their private affairs in favour of the public interest.***
 - 3.4 Acting in such a way as to maintain their employer's trust.

OECD Recommendation on Public Integrity

- [S]etting clear and proportionate procedures to help prevent violations of public integrity standards and to manage actual or potential conflicts of interest;
 - OECD Recommendation on Public Integrity (4.c)

Supreme Court rulings

- A job in the public service has two dimensions, one relating to the employee's tasks and how he or she performs them, the other relating to the perception of a job held by the public.
 - Fraser v. Public Service Staff Relations Board, [1985] 2 S.C.R. 455
- [P]reserving the appearance of integrity, and the fact that the government is fairly dispensing justice, are, in this context, as important as the fact that the government possesses actual integrity and dispenses actual justice.
 - R. v. Hinchey, [1996] 3 S.C.R. 1128

Federal Court of Appeal

- Manifestly, the public service will not be perceived as impartial and effective in fulfilling its duties if apparent conflicts between the private interests and the public duties of public servants are tolerated.
 - Threder v. Canada (Treasury Board), [1987] 1 F.C. 41 para. 15

Avenues for Resolution

- Seeking Advice
 - When ethical issues arise, public servants are encouraged to discuss and resolve these matters with their immediate supervisor. They can also seek advice and support from other appropriate sources within their organization.
 - At Global Affairs Canada, the Values and Ethics Division promotes awareness and learning about values and ethics in addition to preventing and addressing harassment, providing advice and guidance on conflict of interest and managing disclosure of wrongdoing.

Avenues for Resolution

- Reporting
 - If public servants have information that could indicate a serious breach of this Code, they can bring the matter, in confidence and without fear of reprisal, to the attention of their immediate supervisor, their senior officer for disclosure or the Public Sector Integrity Commissioner.
 - There is no requirement that an reporting person makes a disclosure first within their organization.
 - Any person outside the public sector can provide information about a possible wrongdoing in, or relating to, the public sector to the Public Service Integrity Commissioner.

Sanctions

- Specific sanctions will depend on the type and seriousness of the wrongdoing. In addition to any sanctions that may be required by law, chief executives have the authority to apply administrative and disciplinary penalties. These may include:
 - the return of all monies;
 - financial penalties;
 - reprimands;
 - suspensions;
 - demotions; and
 - termination of employment

Reprisals

- The PSDPA clearly stipulates that no public servant shall be subject to any reprisal for having made a disclosure in accordance with this Act.
- Reprisal is any measure taken against a public servant because they made a protected disclosure or co-operated in an investigation into a possible wrongdoing. Reprisal includes:
 - disciplinary measures;
 - demotion of the public servant;
 - termination of employment;
 - any measure that adversely affects the employment or working conditions of the public servant; or
 - a threat to do any of those things or to direct someone else to do them.

Remedies for reprisal

- There are a number of possible remedial measures if an act of reprisal is found to have occurred, including:
 - permitting the person to return to their duties;
 - reinstating the person or ordering a payment of compensation in lieu of reinstatement;
 - ordering a payment of compensation for lost income as a result of reprisal;
 - overturning any disciplinary action or measures and compensating the person for financial penalties imposed;
 - ordering the reimbursement of any expenses or financial losses incurred by the person as a direct result of reprisal; or
 - awarding up to \$10,000 for pain and suffering that the complainant experienced as a result of reprisal.

Role of Public Servants

- It is the responsibility of public servants to identify apparent conflicts of interest created by their actions, and to bring themselves into compliance (typically by way of prevention and disclosure).
- Public servants must report, within 60 days of their first appointment or any subsequent appointment, transfer or deployment, all "outside activities, assets, and direct and contingent liabilities that might give rise to a conflict of interest with respect to their official duties.
- The onus extends to disclosing items about which there is doubt.
- The onus to prevent conflict of interest continues after filing a disclosure report.

Conflict of Interest Act

- Administered by the Conflict of Interest and Ethics Commissioner
 - Applies to Public office holders
 - 2,200 full- and part-time public office holders
 - More than half are part-time members of federal boards, commissions and tribunals or part-time ministerial staff and are subject only to the Act's core set of conflict of interest and post-employment rules.
 - Reporting public office holders, and include ministers, parliamentary secretaries and most ministerial staff, as well as Governor in Council appointees such as deputy ministers, heads of Crown corporations and full-time members of federal boards
 - » Ministers and Parliamentary Secretaries are subject to the Act as these are Executive and not Parliamentary roles

Codes for Parliamentarians

- Conflict of Interest Code for Members of the House of Commons
 - Administered by the Conflict of Interest and Ethics Commissioner
- Ethics and Conflict of Interest Code for Senators
 - Administered by the Senate Ethics Officer

Links

- Values and Ethics of the Public Service
 - <https://www.canada.ca/en/government/publicservice/values.html>
- *Conflict Of Interest Act*
 - <http://ciec-ccie.parl.gc.ca/EN/ReportsAndPublications/Pages/FactSheetOverviewAct.aspx>
- *Conflict of Interest Code* for Members of the House of Commons
 - <http://ciec-ccie.parl.gc.ca/EN/Pages/ConflictOfInterestCode.aspx>
- *Ethics and Conflict of Interest Code for Senators*
 - <http://sen.parl.gc.ca/seo-cse/eng/code-e.html>