

PUBLIC INTEREST DISCLOSURE AND WHISTLEBLOWER PROTECTION POLICY

Policy Statement

The Government of Prince Edward Island is committed to open, ethical, accountable and transparent government.

It is in the public interest to maintain and enhance public confidence in the Provincial Government and its employees, by providing for the disclosure of wrongdoing with respect to government operations.

This policy provides a procedure for reporting wrongdoing as well as protection from reprisal for all employees who, in good faith, report wrongdoing.

Background Information

Employees are expected to act with integrity as they apply judgment and discretion in the course of their employment. They are expected to use government property, services and resources responsibly in the execution of their duties.

The Conflict of Interest Policy and the Fraud Awareness and Reporting Policy provide guidance and mechanisms for employees to report suspected misuses or misappropriation of resources and assets. The effectiveness of any prevention program is dependent on employees being able to report suspected cases of wrongdoing without fear of reprisal for doing so.

Application

This policy applies to employees of entities listed in the schedules to the *Financial Administration Act*, with the exception of the Legislative Assembly, the Office of the Auditor General, the Island Regulatory and Appeals Commission and the Human Rights Commission.

Definitions

Commissioner

Commissioner means the Ethics and Integrity Commissioner.

Conflict of Interest

Conflict of Interest is defined in the Conflict of Interest Guidelines in Human Resource policy 5.03.

Reprisal

Reprisal is any harassment, dismissal, layoff, suspension, demotion, reprimand or transfer, discontinuation or elimination of a job, change of job location, reduction in wages, or change in hours of work of an employee or threat to take any of the foregoing measures as a direct result of the employee in good faith disclosing a perceived wrongdoing.

Wrongdoing

Wrongdoing means:

- a) A violation of any provincial or federal law,
- b) The gross mismanagement of public funds or government assets,

- c) An act or omission that creates a substantial and specific danger to the life, health or safety of persons or the environment, or
- d) Direction or counsel to others to engage in the above.

Reporting and Investigation

Where an employee reasonably believes that he or she has information that a wrongdoing has been committed or is about to be committed, the employee may make a disclosure to the employee's supervisor, the employee's Deputy Head, or the Commissioner.

An employee who is considering making a disclosure may request advice from the Commissioner.

The identity of persons involved in the disclosure process, including the employee making the disclosure, persons alleged to have committed wrongdoing and witnesses, shall be kept confidential, subject to the principles of natural justice and fairness and consistent with the need to conduct a proper investigation.

The disclosure shall be in writing on a form designated by the Commissioner, and shall include a description of the wrongdoing and, if known:

- (a) The name of the person or persons alleged to have committed the wrongdoing or about to commit the wrongdoing;
- (b) The date of the wrongdoing;
- (c) Whether the employee has made a previous disclosure of the wrongdoing and if so, a copy of the response;
- (d) The signature of, and contact information for, the person making the disclosure.

The employee shall provide to the person receiving the disclosure any additional information that person may reasonably require in order to investigate the allegation of wrongdoing set out in the disclosure.

If a disclosure is made to the Commissioner, the Commissioner shall:

- (a) Take any appropriate steps to help resolve the matter within the entity to which the disclosure relates;
- (b) Refer the matter to the entity for investigation, and may request that the entity notify the Commissioner within a specified period of the steps that the entity has taken or proposes to take with respect to the disclosure; or
- (c) Conduct an investigation.

The Commissioner is not required to conduct an investigation or, if an investigation has been initiated, may cease the investigation if, in the opinion of the Commissioner:

- (a) The disclosure does not contain adequate particulars about the wrongdoing to enable the conduct of a fair and

- effective investigation;
- (b) The disclosure relates to a matter that could more appropriately be dealt with according to the procedures under a collective agreement or employment contract, or another Act, regulation or policy;
 - (c) The disclosure is frivolous or vexatious, has not been made in good faith, concerns a trivial matter or does not deal with a wrongdoing;
 - (d) The disclosure relates to a matter that results from a balanced and informed decision-making process on a public policy or operational issue;
 - (e) Too great a period has elapsed between the date when the subject matter of the disclosure arose and the date on which the disclosure was made so that an investigation would not serve a useful purpose; or
 - (f) The circumstances of the case do not warrant investigation.

If the Commissioner decides not to investigate or ceases an investigation, the Commissioner shall inform the employee and the entity of the decision, and the reason for the decision.

On completing an investigation, the Commissioner shall prepare a report that sets out the Commissioner's opinion and reasons for that opinion, and any recommendations that the Commissioner considers appropriate respecting the disclosure and the wrongdoing. The Commissioner may request the entity to notify the Commissioner within a specified period of time of the steps that the entity proposes to take to give effect to the Commissioner's recommendations.

The Commissioner's report shall be provided to the senior executive of the entity, and the Commissioner shall notify the employee who made the disclosure that a report has been made. The Commissioner may provide the employee with any information respecting the report that the Commissioner considers appropriate in the circumstances.

If the Commissioner believes that the entity did not cooperate in the Commissioner's investigation or has not appropriately followed up on the Commissioner's recommendations, the Commissioner may make a report on the matter to the Minister responsible for the entity or to the Clerk of the Executive Council.

No Reprisals

No person shall take or direct, or counsel a person to take or direct, any action in reprisal against an employee for making, or being suspected of making, a disclosure of wrongdoing in good faith, pursuant to this policy.

An employee who believes that they are the subject of a reprisal related to their disclosure of wrongdoing may report the alleged reprisal to their supervisor, their Deputy Head, or the Commissioner for investigation.

An employee who is considering making a report of a reprisal may

request advice from the Commissioner.

The report shall be in writing on a form designated by the Commissioner, and shall include a description of the reprisal and:

- (a) The name of the person or persons alleged to have taken or directed the reprisal or counseled or threatened to do so;
- (b) The date of the reprisal;
- (c) Whether the employee has made a previous disclosure of the reprisal and if so, a copy of the response;
- (d) The signature of, and contact information for, the person making the report.

The employee shall provide to the person receiving the report any additional information that person may reasonably require in order to investigate the allegation of reprisal set out in the report.

Where a manager or supervisor is informed of, or becomes aware of, reprisals against an employee as a result of a disclosure of wrongdoing, the manager or supervisor will forthwith inform the Chief Executive Officer of the Public Service Commission.

Reports of reprisals received by a supervisor or Deputy Head will be investigated by the Public Service Commission, with the exception of allegations against an Executive Division member which will be referred to the Commissioner for investigation. The Public Service Commission will provide to the Ethics and Integrity Commissioner a report on the outcomes of all investigations that it conducts into allegations of reprisals. Reports of reprisals received by the Commissioner will be investigated by the Commissioner, who will provide to the Chief Executive Officer of the Public Service Commission a report on all investigations other than investigations relating to Executive Division employees.

Following completion of an investigation report which substantiates the existence of a reprisal, the Chief Executive Officer of the Public Service Commission will recommend appropriate actions to stop, reverse or remedy a reprisal against an employee.

Following completion of an investigation report which substantiates the existence of a reprisal on the part of an Executive Division employee, the Commissioner will recommend appropriate actions to stop, reverse or remedy a reprisal against an employee.

Any employee who makes a false complaint in bad faith or a false or misleading statement that is intended to mislead an investigation of a complaint, may be subject to disciplinary or legal action.