



Whistleblowing  
Canada Research  
Society

[www.whistleblowingcanada.com](http://www.whistleblowingcanada.com)

July 9, 2021

Via Electronic Mail - [ccpr@ohchr.org](mailto:ccpr@ohchr.org).

UN Office of High Commissioner for Human Rights  
Human Rights Committee

Dear Sir or Madam:

**Re: List of Issues Prior to Review – Intn’l Covenant on Civil and Political Rights (CCPR)**

We are writing to request that in the course of your review of the International Covenant on Civil and Political Rights (CCPR) your committee ask Canada to account for its failure to protect whistleblowers. Contrary to its long held reputation of adherence to principles of human rights and protection of individuals, Canada has for decades ignored warnings from experts, both domestically and internationally, to implement measures to protect occupational free speech. Canada’s *Public Servants Disclosure Protection Act* (PSDPA), a federal law belatedly passed in 2005 is, by experts, considered to be a law to control, rein in and manage whistleblowers rather than afford them the right of protected free speech. By any standard of measurement, Canada can be considered a repeat violator of Article 19 of the CCPR.

We are a leading Canadian [non-profit corporation and registered charity](#). Our organization’s work builds on decades of experience in the whistleblowing area: protection of free speech rights, due process for truth tellers, and protecting the rights of those who speak out about betrayals of public trust. We research, educate and advocate with the aim of improving the lives of all through the protection of whistleblowers who are vulnerable in the face of formidable and powerful institutions including government and private sector.

We are also developing a network of researchers nationally and internationally to support our work. Our alliance with the UK’s [Parrhesia](#) Inc. and the US [Government Accountability Project](#) (GAP) links us to the latest research and knowledge on whistleblowing legislation and systems globally.

**What we know.**

**Canada’s failure to protect free speech rights.** A number of occurrences highlight our reasons for concern.

1. Canada’s commitment to the CCPR and Article 19 has been questionable from the inception of the *Public Servants Disclosure Protection Act* (PSDPA) –passed in 2005 and implemented in 2007. A number of factors establish this: a) in a watershed report by [Justice Gomery’s Commission of Inquiry into the Sponsorship Program](#) published in 2005 which investigated corruption and political wrongdoing, Justice Gomery put forth **six improvements** to the draft PSDPA legislation (p186-187). The Canadian government ignored all. b) At the same time, Canada’s first whistleblower

protection organization — the Federal Accountability Initiative for Reform (FAIR) — founded by one of Canada’s earliest and leading experts in whistleblowing rights and a retired Chair of the world’s leading whistleblower organization the Government Accountability Project (GAP) in Washington, DC, - made numerous appearances to Parliamentary Committees warning of the danger of the PSDPA and its retrograde and punitive measures that would damage whistleblowers rather than protect them. FAIR’s Joanna Gualtieri was ignored. c) Concurrently, Canada’s courts were recognizing the importance of whistleblowing and the legal requirement to protect them. Yet Canada’s government failed to introduce laws and develop a new cultural framework to accomplish this.

2. The PSDPA legally required a 5 year *independent* review of the PSDPA to be conducted in 2012. The government violated this legal requirement and did not conduct this review. Finally in 2017, the Canadian government commenced a review but as described below, this review violated the legal standards set forth for such review.
3. In 2017, some 10 years after the PSDPA’s implementation, the new government decided to ask a Parliamentary Committee to Review the law. Again there was no “[independent review](#)” as the law [stipulated](#), belated though it might be. Nor was the ensuing Report laid before both the House of Commons and the Senate as the law stipulated. The Canadian government betrayed these requirements. The unanimous 2017 [report](#) from the all-party Parliamentary Committee (Government Operations and Estimates) advanced more than twenty amendments to the Act. Neither House of Parliament ever discussed or debated these amendments. The review was symbolic with no intent to ensure that future truth-tellers would be protected no matter how harsh the truth might be for governments to hear.
4. The results of a March 2021 [landmark report](#) done by the International Bar Association and the Government Accountability Project have been made public. Analyzing whistleblower protection legislation from 37 countries including identifying minimal standards in the legislation as represented by “global best practices”, Canada’s legislation comes up as the worst in the world tied for last place with Lebanon and Norway. This certainly belies Canada’s image as a human and civil rights leader. An earlier [study](#) by a Canadian researcher/academic also underlines the deficiencies in Canada’s legal framework regarding whistleblowing.

#### **What we would like to know.**

As informed Canadians and global citizens who value human rights, democracy and the rule of law, we would appreciate it if you would inquire of Canada’s government leaders:

1. Why have they persistently refused to entrench, in law, global best practices for whistleblower protections? This is particularly egregious, perhaps even cynical, given the warnings by experts that the law was a Trojan horse that would suppress occupational free speech rather than encourage it.

2. Why has Canada been so dismissive of the statutory requirement to conduct an independent review in 2012 as per section 54 of the PSDPA?
3. Why has Canada failed to implement the amendments as per the unanimous report of the 2017 all party Government Operations and Estimates Committee?
4. What do they plan to do about the now internationally recognized failed PSDPA which is seen as suppressing rather than empowering truth-tellers?

Truth-tellers are the last bastion of defence to counter the trends to autocracy and disinformation that are plaguing democracies around the world and to which Canada is not immune as demonstrated by the contents of this letter. While other parts of the world lead with reform and advancement to protect conscientious whistleblowers, Canada remains defiant and steadfast in refusing to join this international movement. Hopefully, your committee will exercise its voice to call Canada to account.

Thank you and we look forward to your response.

*Pamela Forward*

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**Attachments:**

Appendix 1 – Status of Free Speech Rights in Canada as compared to each section of Article 19 of CCPR

Appendix 2 - List of the six Gomery Inquiry Recommendations for improvement that were not implemented prior to coming into force of the PSDPA in 2005.

Appendix 3 - List of the twenty “Global Best Practices” missing from the PSDPA as per the report *Are whistleblowing laws working? A global study of whistleblower protection litigation.*

## Appendix 1

**The Status of Free Speech rights in Canada** as compared to each section of Article 19 of the International Convention on Civil and Political Rights.

### **Article 19**

1. Everyone shall have the right to hold opinions without interference.

**Status in Canada:** *Approximately 50% only of Canada's federal public servants are covered (but not adequately protected) by the PSDPA. The Military, Canadian Security and Intelligence Service and the Royal Canadian Mounted Police are not covered. None in the federally regulated private sector are covered. A recent [Federal Public Service Survey](#) indicates that some 45% of those responding do not feel comfortable raising concerns for fear of reprisals. The status in the provinces is the same as provincial legislation, for the most part has been modelled on the federal legislation. This means that the majority of Canada's employees are unprotected if they disclose wrong-doing.*

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

**Status in Canada:** *Canadians can seek information about government activities but cannot receive it as, according to our Information and Privacy Commissioner in an appearance before a [Parliamentary Committee](#), Canada's Access to Information system is broken and "on the verge of being irreparable". Nor can they impart it safely due to lack of adequate protection in whistleblower laws.*

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order (ordre public), or of public health or morals.

**Status in Canada:** *The restrictions provided by the PSPDA are draconian and unnecessary as has been repeated by experts from the inception of the Act to the present but have been steadfastly ignored by Canada's leaders to this day.*

## Appendix 2

**List of the six Gomery Inquiry Recommendations for improvement that were not implemented** prior to coming into force of the PSDPA in 2005.

In the section RESTORING ACCOUNTABILITY: RECCOMENDATIONS one finds the following:

The Commission takes the position that the new Act could be significantly improved if it were amended. It suggests that

1. the definition of the class of persons authorized to make disclosures under the Act (“public servants”) should be broadened to include anyone who is carrying out work on behalf of the Government;
2. the list of “wrongdoings” that can be disclosed should be an open list, so that actions that are similar in nature to the ones explicitly listed in the Act would also be covered;
3. the list of actions that are forbidden “reprisals” should also be an open list;
4. in the event that a whistleblower makes a formal complaint alleging a reprisal, the burden of proof should be on the employer to show that the actions taken were not a reprisal;
5. there should be an explicit deadline for all chief executives<sup>10</sup> to establish internal procedures for managing disclosures; and
6. the Act’s consequential amendments to the Access to Information Act and to the Privacy Act should be revoked as unjustified.

## Appendix 3

**List of twenty “Global Best Practices” missing from the PSDPA** as per the report *Are whistleblowing laws working? A global study of whistleblower protection litigation* by International Bar Association and the Government Accountability Project.

1. Broad whistleblowing disclosure rights with ‘no loopholes’
2. Wide subject matter scope, with ‘no loopholes’
3. Right to refuse violating the law
4. Protection against spillover retaliation at the workplace
5. Protection for those beyond the workplace
6. Reliable identity protection
7. Protection against full scope of harassment
8. Shielding whistleblower rights from gag orders
9. Providing essential support services for paper rights
10. Right to a genuine day in court
11. Option for alternative dispute resolution with an independent party of mutual consent
12. Realistic standards to prove the violation of rights
13. Realistic time frame to act on rights
14. Compensation with ‘no loopholes’
15. Interim relief
16. Coverage for legal fees and costs
17. Transfer option
18. Personal accountability for reprisals
19. Credible internal corrective action process
20. Transparency and review