



Whistleblowing Canada Research Society

- Research, Education & Advocacy

www.whistleblowingcanada.com

2656 Gulfstream Rd. ,
Roberts Creek, B.C.
V0N2W4

August 9, 2020

Hon. Jean-Yves Duclos, PC, MP
President of the Treasury Board of Canada,
House of Commons,
Ottawa, ON K1A 0A6

Dear Mr. Duclos:

We are writing to introduce our organization, Whistleblowing Canada Research Society, established as a non-profit corporation dedicated to advancing education on the whistleblowing phenomenon in Canada through research and sharing results publicly. A summary of our vision, purpose, mission and direction is attached at Attachment 1.

As Minister with substantial responsibilities under the federal whistleblower protection legislation- the *Public Servant Disclosure Protection Act* (PSDPA), sections 4, 5(1) and 54 - we would like to engage with you in working to improve whistleblowing practice, efficacy, culture and legislation in Canada. The COVID-19 pandemic has highlighted the urgency of dealing with this situation as never before in our history i.e., worker safety concerns in essential services and in resumption of work in the federal public service and in federally regulated industries, fraud on government emergency programs, and other such activities that warrant enhanced protection for whistleblowers.

We begin the conversation by expressing our concern regarding matters directly related to these responsibilities, and the dilatory response of the Government to the continuing weakness of the legislative framework for the protection of whistleblowers. Among our particular concerns, we note the following:

1. Ineffective whistleblower protection legislation – *Section 54 PSDPA* – 5 year Review. There has been a violation of the obligation of the government to conduct a review of the Act, its administration and operation within 5 years of implementation. While it was finally done, it was conducted 5 years late.
2. Dysfunctional organizational cultures – *Section 4 PSDPA* – Promotion of Ethical Practices and Dissemination of Information and *Section 5.1* - Code of Conduct – Obligation to establish – Treasury Board. There is evidence of dysfunctional cultures not acted on.
3. Dysfunctional political cultures – *Section 54 PSDPA* - 5 year Review. There has been violation of the obligation of the government under the Act to present the Report of the Review Committee to “ --- each House of Parliament on any of the first 15 days on which that House is sitting after the review is completed.” The 2017 OGGO Report with recommendations for improvement was never presented to Parliament, and none of the recommendations have been discussed by Parliament. This deficiency should be remedied immediately.



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4. Lack of effective parliamentary oversight regarding the implementation of the PSDPA. We recommend the establishment of a Standing Joint Committee on Whistleblowing to assist both the Senate and the House of Commons oversee and review the implementation of the amendments, and the effectiveness, management and operation of whistleblowing legislation and the mechanisms established pursuant to the PSDPA – including both the internal and the external mechanism (OPSIC).

(Please see Attachment 2 for a list of References attesting to these concerns.)

We would ask you to kindly inform us of the following:

First, with regard to concerns No. 1 and No. 3, when will you cause to be laid before each House of Parliament the 2017 Report No. 9 of the OGGO Committee?

Second, with regards to concern No. 2, what action will you be taking to “ --- promote ethical practices and a positive environment for disclosing wrongdoing and any other means you consider appropriate --- “ to address the fact that only 48% of public servants feel they can speak up about their concerns (Friday 2019)? Further, with regard to Section 5.1 and the Code of Conduct or “Values and Ethics Code for the Public Sector”, we note Chief Executives must ensure “ - -- their internal disclosure procedures are implemented effectively in their organizations and that they are regularly monitored and evaluated.” Would you kindly inform us as to which departments have reported to you on the results of this monitoring and evaluation and what the results might be?

Third, with regard to concern No. 3, the ongoing failure of the Government to table the report to Parliament arouses concern that the continuing failure reflects a dysfunctional organizational/political culture. Leaders’ behaviours have a large impact on cultures through behaviours modelled, those they reward and punish, policies articulated and upheld etc. When leaders themselves signal disdain for the law, bureaucracies – including managers and whistleblowers - are sensitive to and take their cues from those signals, thus undermining the rule of law and potentially, the integrity of the public service. This further diminishes public confidence and trust, something no one wants, especially at this time.

Fourth, with regard to concern No. 4, we observe that Canada’s legislation- as has been noted both by Canadian and international experts (Devine 2019) - fails to follow even one internationally accepted “best practice” for such legislation. We believe that the tremendous governmental effort to fight the pandemic poses unique risks to the integrity of governmental programs. We acknowledge that overhauling ineffective legislation and changing the culture and ethical climate towards whistleblowing will be a large task. We want to be helpful in the process of perfecting both Canada’s whistleblowing laws and the culture surrounding the treatment of whistleblowers. To ensure that Parliament develops the expertise to oversee the current legislation, and to effectively deal with future whistleblowing legislation we recommend the establishment of a Parliamentary Standing Joint Committee on Whistleblowing.



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We at Whistleblowing Canada stand ready to contribute our knowledge and expertise on these matters and look forward to collaborating with you and your officials in meeting the challenges ahead.

Yours sincerely,

Pamela

Pamela Forward
President and Executive Director

Tel. 236-317-3949 Email – Pamela@whistleblowingcanada.com



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Attachment 1

Vision, Purpose, Mission

Whistleblowing Canada's vision is to be a Canadian leader in improving whistleblowing practice, culture, efficacy and legislation through education and research.

Our purpose is to advance education and understanding of the whistleblowing phenomenon, through research and individual testimonies and disseminate results publicly.

Our mission is to improve the practice of whistleblowing, the lives of whistleblowers and Canadians at large as well as foster accountability in Canadian organizations by encouraging education and public policy dialogue and development. We will also foster the creation of a network of researchers nationally and internationally to develop and contribute to an emergent field of whistleblowing research in Canada.

Our Direction

Our work is guided by the results of a 2017 in-depth, qualitative case study of an important drug safety whistleblowing event in 1996 at Health Canada, a federal regulatory agency. The investigation uncovered evidence of questionable behaviour at senior levels of the bureaucracy, strange decisions in both a related court case and a House of Commons standing committee, all with negative implications for public health and safety, accountability and public trust in government that are still relevant today.

The study was aimed at developing a better understanding of the whistleblowing phenomenon, including why whistleblowing often led to the abnormal result of reprisals for the truth-teller and impunity for the wrong-doer. The results were surprising. It was discovered that legislation alone will not protect whistleblowers. Equally important, if not more so, is culture. Legislation becomes merely aspirational and will not be successfully implemented if it is introduced into an unwelcoming, hostile environment or dysfunctional organizational culture. The problem of reprisals involves *both* law and culture. ¹

The following are the four main issues identified leading to reprisals to which we will direct our current and future research, education and advocacy:

- i weak, ineffective whistleblower protection legislation,
- ii dysfunctional organizational cultures,
- iii dysfunctional political cultures, and
- iv attitudes and beliefs detrimental to whistleblowers in the courts.

Contact: Pamela Forward, President & Executive Director.

Tel. 236-317-3949 Email pamela@whistleblowingcanada.com

¹ See study: Forward, P. *Law, Culture and Reprisals. A Qualitative Case Study of Whistleblowing and Health Canada's Drug Approval Process*. Available at Carleton University's Library web site.



REFERENCES

1. Ineffective whistleblower protection legislation –

- i. See Government Operations and Estimates Committee (OGGO) Report No. 9 June 2017 and Government response:
<https://www.ourcommons.ca/DocumentViewer/en/42-1/OGGO/report-9/page-21>
- ii. The Report of the Public Sector Integrity Commissioner, Mr. Joe Friday, submitted to OGGO - Feb. 14, 2017.
<https://www.psic-ispcc.gc.ca/en/proposal-legislative-amendments>
- iii. See Florian Martin-Bariteau, U of Ottawa - Study - *Whistleblowing in Canada. A knowledge Synthesis Report* . https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3111851

2. Dysfunctional organizational cultures –

- i. See study commissioned by Office of the Public Sector Integrity Commissioner in 2016- *The Sound of Silence. Whistleblowing and the Fear of Reprisals*.
http://publications.gc.ca/collections/collection_2017/ispcc-ispcc/P4-23-2017-eng.pdf
- ii. Joe Friday's Opening Remarks before OGGO – February 25, 2019
<https://www.psic-ispcc.gc.ca/en/joe-fridays-opening-remarks-oggo-february-25-2019>
- iii. See in-depth case study - *Law, Culture and Reprisals – A Qualitative Case Study of Whistleblowing and Health Canada's Drug Approval Process*
https://curve.carleton.ca/system/files/etd/55116fc0-3210-4ae4-9bf4-1e242483df94/etd_pdf/357ae8deb39f97f2f7755062f126bbc7/forward-lawcultureandreprisalsaqualitativecasestudy.pdf

3. Dysfunctional political cultures

Violation of Section 54 of PSDPA re: timing of review of the Act and presentation of results of the Review by neglecting to present it to both Houses of Parliament.
PSDPA

<https://laws-lois.justice.gc.ca/eng/acts/p-31.9/page-11.html#h-403787>

Report No. 9 OGGO Report

<https://www.ourcommons.ca/DocumentViewer/en/42-1/OGGO/report-9/response-8512-421-253>

4. Lack of effective parliamentary oversight of the implementation of this legislation

Devine, Tom: Government Accountability Project. Presentation at International Whistleblowing Research Network (IWRN), Utrecht, Netherlands. June 2019.