

Annual Report of the Civil Service Disclosure of Wrongdoing Regulations and Policy

2006-2007



Public Service Commission



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Message from the Minister of Human Resources

It's my pleasure to present the 2006-07 Annual Report on the Civil Service Disclosure of Wrongdoing Regulations and Policy to the citizens of this province.

Each year, the Government of Nova Scotia reports on its experience with the application of the Disclosure of Wrongdoing Regulations and Disclosure of Wrongdoing Policy, both introduced in September 2004.

As part of our commitment to the highest ethical and moral standards as we serve Nova Scotians, it is essential that our public service becomes aware of, and act on, wrongdoing within government organizations. This can only be done when public servants are aware of disclosure processes and confident that they can proceed without fear of reprisal.

I am encouraged by the increasing interest surrounding disclosure of wrongdoing as this illustrates employees are becoming more aware of the policy and regulations.

In an effort to continually improve the policies and practices for which it administers, the Public Service Commission will conduct an evaluation of the Disclosure of Wrongdoing Regulations and Policy in 2007-08. This evaluation will reflect on three years of experience working with the regulations and policy, input from various stakeholders, and employees' comfort level with the established processes.

This government is committed to the delivery of quality public services in an environment where values such as integrity, accountability, and public trust prevail.

I would like to thank the employees of the Public Service Commission and the Office of the Ombudsman for their vital work in this area.

Sincerely,



Carolyn Bolivar-Getson
Minister

Message from the Public Service Commissioner

It is my honour to present the 2006-07 Annual Report on the Civil Service Disclosure of Wrongdoing Regulations and Policy.

Nova Scotia's public servants identified human resource values to guide our decision-making, actions, and relationships within the provincial government. As such, respect, integrity, diversity, accountability, and the public good are the values used to administer the Disclosure of Wrongdoing Regulations and Policy.

This report outlines activities during the fiscal year related to the regulations and policy.

Ensuring employees across government understand how to report a wrongdoing is just as important as the mechanisms themselves. The Public Service Commission, the Office of the Ombudsman, and senior leaders from across government made a concerted effort this year to ensure information about these processes and protections were readily available to all employees.

Government deputy heads received two formal disclosures from employees.

The Office of the Ombudsman received a number of requests for information as well as began investigation on two disclosures of wrongdoing.

I would like to extend my thanks to the people who have contributed to the development and ongoing administration of these important regulations and policy. By identifying and dealing with wrongdoing in an accountable way, we can maintain the ethical and professional performance of the public service.

Sincerely,



Rosalind Penfound
Public Service Commissioner

Executive Summary

The Government of Nova Scotia is committed to ensuring that Nova Scotians continue to be served by a professional, ethical, accountable public service, worthy of the public's trust.

In September 2004, the government of Nova Scotia developed regulations and policy outlining a clear process to encourage public servants to report any wrongdoing they perceive to be in their workplace, and to protect employees who follow the established process from reprisal action.

The third annual report on the *Civil Service Disclosure of Wrongdoing Regulations and Policy* addresses the requirement of government to report annually on disclosures of wrongdoing to the citizens of Nova Scotia. This annual report covers the time period of April 1, 2006 to March 31, 2007.

During fiscal year 2006-2007, government continued to raise awareness and educate employees about the *Disclosure of Wrongdoing Regulations and Policy*. In the winter the Public Service Commission developed and distributed a brochure to all government employees. The brochure entitled "Disclosing Wrongdoing" provided an overview of the disclosing process and contact information. The Public Service Commission incorporated questions into its 2007 "How's Work Going?" Employee Survey to determine the level of awareness and understanding among employees of the Disclosure of Wrongdoing policy and process. The Public Service Commission will continue to support awareness of the regulations and policy via its disclosure of wrongdoing website. Additionally, the Public Service Commission is planning for an evaluation of the policy during 2007-2008.

Departments and offices identified a number of activities, such as sharing information about the regulations and policy through orientation programs and at staff meetings, and the distribution of the Public Service Commission's Disclosing Wrongdoing brochure, in their continuing efforts to raise awareness among their employees. In the 2006-2007 fiscal year, there were two formal disclosures of wrongdoing submitted to departmental deputy heads.

The Office of the Ombudsman sent an e-mail to all employees promoting awareness and welcoming the Ombudsman Representative responsible for Disclosure of Wrongdoing. The Office of the Ombudsman reported that it received two formal disclosures in 2006-2007, commenced two investigations, and provided appropriate information, advice and direction for 16 inquiries related to the regulations and policy, three of which resulted in investigations under the Ombudsman Act. The investigations are in progress.

Follow-up with the government agencies by the Public Service Commission determined that two-thirds of the responding agencies (31 agencies) either had a mechanism in place or under development to provide their employees with a process to disclosure wrongdoing.

The Framework: Disclosure of Wrongdoing Regulations and Policy

Government is accountable to the citizens of Nova Scotia and is committed to maintaining a professional public service that is deserving of the public's trust. One way to ensure these goals are met is through the creation of processes, under the *Disclosure of Wrongdoing Regulations and Policy*, to encourage disclosures and to protect employees who report wrongdoing.

The *Disclosure of Wrongdoing Regulations and Policy* came into effect in September 2004. The **regulations** are applicable to all civil servants. The **policy** is applicable to all direct employees of government, including Highway Workers, Adult Correction Workers, civil servants, and casual employees.

To access the *Disclosure of Wrongdoing Regulations and Policy* as well as previous years' reports and other supporting documentation visit the Disclosure of Wrongdoing website located on the Public Service Commission's homepage: www.gov.ns.ca/psc.

This annual report provides information on activities during the period of April 1, 2006 to March 31, 2007.

Defining Wrongdoing

These regulations define wrongdoing to include contravention of any *Act* of the Parliament of Canada or of the Nova Scotia Legislature, or of any regulations made under any such *Act*, if the contravention relates to the official activities of employees or any public funds or assets; gross mismanagement; an act or an omission that creates a substantial and specific danger to the life, health or safety of a person; or the taking of a reprisal against an employee.

Disclosure Process

There are a number of mechanisms available for employees to raise workplace concerns, such as the grievance process, alternate dispute resolution process, and performance management systems. The *Disclosure of Wrongdoing Regulations and Policy* provide a mechanism specifically designed to encourage employees to bring forward concerns regarding wrongdoing and to assure them of protection from reprisals.

The disclosure process prompts an investigation, requires corrective action, and protects the disclosing employee. Employees are provided with the choice of raising their concerns about wrongdoing or perceived wrongdoing with their immediate supervisor, their deputy minister, and/or the Office of the Ombudsman.

If an employee is not sure how to proceed, or is unsure if something is a wrongdoing, they may also seek confidential advice from the Conflict of Interest Commissioner.

Nothing in these regulations or policy preclude an individual's right and/or obligation to report unlawful/illegal actions or activities to the appropriate authorities. Wrongdoing can also be reported to a police organization when it is necessary to do so to prevent imminent and serious danger to the life, health or safety of a person, and when there is not sufficient time to make the disclosure using the internal processes identified above.

Protection from Reprisals and Protection of Privacy

Under the regulations and policy it is a wrongdoing to take reprisal action against an employee who reports wrongdoing.

Throughout the disclosure process, unless required by law or considered appropriate by the deputy head under the circumstances, the identity of persons involved are protected from publication. This includes employees, witnesses, or anyone who is alleged to be responsible for a wrongdoing.

Reporting & Accountability Requirements

Within the *Disclosure of Wrongdoing Regulations* and *Policy* there are reporting requirements for individuals involved in the process. These are necessary to document the information received, monitor timelines, review recommendations, provide responses to disclosing employees, and report annually to the citizens of Nova Scotia on government's experience with disclosures of wrongdoings.

Disclosing employees need to know that their concerns will be addressed in a timely manner. A 30-day response time ensures that the process moves quickly to enable timely resolution, while communicating to reporting employees that the process is working and their disclosure is being addressed.

Deputy heads and immediate supervisors are responsible for ensuring that employees are informed of the regulations and policy. They are also responsible for responding to any disclosures of wrongdoing that are reported to them.

When the Ombudsman receives a disclosure and determines an investigation is warranted, the disclosing employee, the Public Service Commissioner, and the deputy head are notified. If the Ombudsman determines an investigation is not warranted, he/she notifies the disclosing employee and the Public Service Commissioner and may notify the deputy head.

The Ombudsman must also, within three months after the end of each fiscal year, submit an annual report to the Public Service Commissioner.

The Public Service Commissioner is responsible for submitting an annual report to the Minister of Human Resources. This report summarizes disclosure of wrongdoing related activity at the deputy head and/or Ombudsman level throughout government.

The Public Service Commission is responsible for monitoring the effectiveness of the process, and may periodically conduct compliance audits of departmental practices.

Activities in 2006-2007

This annual report summarizes activities of the Public Service Commission as well as drawing information from two other principle sources: deputy heads of government departments and offices, and the Office of the Ombudsman, as per their regulatory requirement to inform the Public Service Commissioner of disclosure activity within their areas of responsibility.

During 2006-2007, the Public Service Commission, with lead responsibility for implementation, continued to raise awareness about the regulations and policy and to provide support to departments/offices. These awareness efforts included:

- ▶ the development and distribution to all employees of the “Disclosing Wrongdoing” brochure which provides information with regards to what is wrongdoing, the disclosing process, and contact information;
- ▶ an e-mail to all the deputy heads by the Public Service Commissioner regarding disclosure of wrongdoing in an effort to remind them of the requirement to ensure employees are aware of the processes available to them; and
- ▶ the commencement of work to incorporate disclosure of wrongdoing information into departmental orientation programs to ensure new employees are aware of the regulations and policy.

As part of the 2007 “How’s Work Going?” Employee Survey, the Public Service Commission developed questions to determine the level of awareness, the level of comfort, and the level of importance to employees of the Disclosure of Wrongdoing policy and process. The 2007 survey was disseminated to employees in March 2007 with a return date of April 2007. The survey results are to be released in the Fall of 2007.

In order to support managers who have a disclosure of wrongdoing brought to their attention, the Public Service Commission has begun to develop training programs that will provide managers with interviewing and investigation skills.

In 2005-2006 the disclosure of wrongdoing website (www.gov.ns.ca/psc/) which provides easy access to several resources, such as contact information, frequently asked questions, and a guide for conducting an assessment/investigation of a disclosure of wrongdoing was created. The website continued to be maintained and accessed.

In the interest of widespread application of similar processes and protections across the public sector, the Public Service Commission continued to provide advisory support to government agencies as requested.

The Public Service Commission received valuable input from the Office of the Ombudsman on the following corporate initiatives:

- ▶ Inclusion of Disclosure of Wrongdoing information in the Corporate Orientation Program.
- ▶ Designing a training program for managers/supervisors in the areas of interviewing and investigating.
- ▶ Developing a brochure on Disclosing Wrongdoing which was distributed to all employees of government.

Follow-up with Government Agencies

Government made a commitment to seek widespread application across the public sector when it approved the *Disclosure of Wrongdoing Regulations and Policy*. In 2005, the Public Service Commission initiated consultation with government agencies to learn about disclosure programs that agencies have in place, to share information about government's regulations and policy, and to obtain feedback from the agencies concerning these processes and protections. A survey of 55 agencies in the summer of 2005 indicated that one-third of the respondents (16 agencies) either had a mechanism in place or under development. Another five agencies indicated their intent to adopt government's mechanism or something similar.

In the Fall of 2005 and Winter of 2006, the Public Service Commission held a number of information sessions to encourage agencies that had not already done so to implement disclosure of wrongdoing processes and appropriate employee protections. The Public Service Commission again surveyed the 55 government agencies in the Summer of 2006 and determined that 66 per cent of respondents (31 agencies) either had a mechanism in place or under development.

Department and Office Reports

In the Spring of 2007, the Public Service Commissioner contacted all government departments and offices to which the *Disclosure of Wrongdoing Regulations and Policy* apply, asking them to respond to two questions on behalf of their department/office:

- ▶ Did your department/office deal with any formal disclosures during the 2006-2007 fiscal year? (with the request to forward copies of relevant correspondence if the answer is Yes).
- ▶ What specific actions, if any, were taken within your department/office to raise employee awareness of understanding of the *Disclosure of Wrongdoing Regulations and Policy* during this past year? (What communication, training, etc).

In 2006-2007 fiscal year, two deputy heads, i.e., Department of Health and Department of Justice, received formal disclosures of wrongdoing. The deputy head of the Department of Health referred the matter on to the Office of the Ombudsman as per section 9(4) of the regulations. In the case of the Department of Justice, the deputy head determined appropriate action had already taken place, which implied no wrongdoing occurred. Subsequently, as per section 10(a) of the regulations, the employee filed a disclosure of wrongdoing with the Office of the Ombudsman.

Two-thirds of departments and offices reported specific awareness activities during 2006-2007, such as sharing information about the regulations and policy through orientation programs, staff meetings at both the senior management and divisional levels, and circulation of the Public Service Commission's Disclosing Wrongdoing brochure. Other identified activities were presentations by the Public Service Commission and the Office of the Ombudsman's awareness campaign.

The Ombudsman's Annual Report

The Ombudsman submitted its 2006-2007 report to the Public Service Commissioner, as summarized below:

- ▶ The Ombudsman received 18 inquiries relating to the *Disclosure of Wrongdoing Regulations* and *Policy* which represents a 300 per cent increase over last year.
- ▶ There were two formal disclosures of wrongdoing received by the Ombudsman in 2006-2007.
- ▶ Two investigations commenced and were ongoing with no recommendations to report.
- ▶ Of the 16 general inquiries, three resulted in investigations under the *Ombudsman Act*. Three of the inquiries were received through the Ombudsman Disclosure e-mail address. With the substantial increase in employee inquiries, the Office has adopted the role of providing advice and direction to civil servants who are considering making a disclosure.

The Office of the Ombudsman undertook a number of initiatives during 2006-2007 supporting the *Disclosure of Wrongdoing Regulations* and *Policy* which included:

- ▶ participation in a job shadowing with the Public Service Integrity Office and other federal counterparts;
- ▶ liaison with the Public Service Commission to identify training requirements, resources and support required to ensure understanding of employees, and the development of a brochure;

- ▶ sending the second annual broadcast e-mail to employees promoting awareness and announcing the role of Ombudsman Representative responsible for Disclosure of Wrongdoing; and
- ▶ development of a three-year work plan to ensure there are procedures and training available to employees of the Office of the Ombudsman, and focus on awareness and education in the future.

As a result of the increased activity in the area of disclosure of wrongdoing, the Ombudsman has conducted a thorough review of the Regulations. As a result they made two recommendations pursuant to Section 16(f) of the Regulations.

- 1) Section 12 requires the Ombudsman to notify the deputy head of the responding department of a pending investigation and Section 13 requires the Ombudsman to provide the investigation report to the deputy head. The Ombudsman's Office feels that if the deputy head has been named in the wrongdoing, notification and reporting would not be appropriate. The Ombudsman has recommended that the regulations be amended to allow the notification and report to go to the Head of the Public Service.
- 2) Section 12 requires the Ombudsman to provide written notification to the employee, the deputy head, and the Commissioner of its intention to investigate or not to investigate. Section 9 indicates that disclosures at the department level do not require notification to the Commissioner unless the disclosure results in an investigation. There is no consistent approach in the regulations to have responding departments provide notification as per the requirements of the Ombudsman to provide notification. The Ombudsman has recommended that the regulations be amended to provide for consistent notification requirements for both the deputy head and the Ombudsman.

In the near future, the Office of the Ombudsman intends to explore with government the viability of having designated contact persons in each department who would be responsible for general administration of disclosure.

Response to the Ombudsman's 2006-2007 Report

In the Ombudsman's 2006-2007 annual report, the Ombudsman made two recommendations pursuant to Section 16(f) of the Regulations.

The Public Service Commission agrees that there is an issue with the procedures in situations when the Ombudsman is required to deal with a disclosure where the deputy head has been named in the alleged wrongdoing. The Commission has also considered the concern expressed by the Ombudsman with regards to a consistent approach for notification of a disclosure as the regulations have a different notification process for disclosures in a department, compared to disclosures to the Ombudsman. The Public Service Commission has indicated to the Ombudsman that it will proceed with determining the best course of action, in consultation with the

Ombudsman's Office, to address these issues.

The Ombudsman's Annual Report also indicates that the Office was approached by other government entities not covered by the regulations or policy regarding a potential role in their disclosure process. This prompted questions of legal authority and discussions with the Department of Justice and the Public Service Commission. Through further review of the *Civil Service Act*, the *Public Service Act*, and consultation with legal services, the Public Service Commission has determined that it does not have the legal authority to become more involved in the disclosure of wrongdoing processes of government agencies and through much consideration will not be proceeding to obtain this authority. The Commission will continue to support the government agencies in an advisory capacity.

Looking Ahead

With its mandate to provide support and interpretation for all its corporate human resources policies and regulations, the Public Service Commission will continue to fulfill this role for the *Disclosure of Wrongdoing Regulations and Policy*.

In 2006-2007, the Public Service Commission laid the ground work through the 2007 "How's Work Going?" Employee Survey to conduct an appropriate evaluation of the policy in 2007-2008. The survey results will provide valuable information regarding the level of awareness and understanding of the policy.

The Public Service Commission will also be reviewing both the regulations and the policy in response to the Ombudsman's recommendations.

The Public Service Commissioner will continue to monitor usage of the disclosure process and report annually to the Minister of Human Resources on the fiscal year's activities.