

Annual Report

2017-2018

Ethics Officer for the Nunavut Public Service

Jeffrey Schnoor, Q.C.

Ethics Officer

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It is my honour to submit the third Annual Report of the Ethics Officer for the Nunavut Public Service, for the period from April 1, 2017 to March 31, 2018.

The Ethics Officer operates under Part 6 of the *Public Service Act*, which came into force on April 1, 2015. I had the honour of being appointed as the first Ethics Officer for a five-year term commencing on January 5, 2015.

How to Disclose Wrongdoing

The role of the Ethics Officer, in a nutshell, is to receive and investigate allegations of wrongdoing in the Nunavut public service. Where wrongdoing is found, he or she makes recommendations to address the wrongdoing. The Ethics Officer provides a safe method for employees in the Nunavut public service to disclose wrongdoing that comes to their attention and provides assurance to them – and to all Nunavummiut – that those disclosures will be investigated and addressed promptly, fairly and effectively.

Wrongdoing is defined in the *Public Service Act*. It means any of the following conduct by an employee acting in his or her public service capacity:

(a) contravention of an Act of the Legislative Assembly, the Parliament of Canada or the legislature of a province or territory, or of a regulation made under any such Act;

(b) failure to comply with applicable directives made by the Minister, the Minister responsible for the Financial Administration Act, or the Financial Management Board with respect to management of the public service or public assets for which the employee is responsible;

(c) misuse of public funds or public property;

(d) gross mismanagement of public property or resources for which the employee is responsible, including an act or omission showing a reckless or willful disregard for the proper management of public property or resources;

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(e) harassment or verbal or physical abuse of any person other than an employee or violation of the human or contractual rights of any person providing services to or receiving services or information about services of any kind from a department or public body;

(f) an act or omission that creates a substantial and specific danger to the life, health or safety of persons, to public or private property, or to the natural environment, other than a danger that is inherent in the performance of the duties or functions of an employee;

(g) a serious breach of the Code of Values and Ethics;

(h) any act of reprisal against an employee or other person;

(i) a request, direction or encouragement by a supervisor or senior manager to an employee or by an employee to any other person to commit a wrongdoing set out above.

The *Public Service Act* sets out the process that employees must follow if they wish to disclose possible wrongdoing. They must first make reasonable efforts to report it to appropriate authorities in the public service. This can include:

- their senior manager
- their Deputy Minister or deputy head
- the Deputy Minister of Finance
- any other Deputy Minister who they think is appropriate

They can report the wrongdoing to any other person if they have reasonable grounds to believe that doing so is necessary to prevent imminent danger to the life, health or safety of a person or imminent danger to property or the environment.

If, after 30 days of reporting the wrongdoing, they don't think that the authorities in the public service have taken reasonable steps to investigate and correct it, they may then report it to the Ethics Officer. At this point, the Ethics Officer will begin an investigation, usually after making some preliminary inquiries to confirm that the allegations, if proven, would amount to wrongdoing. Alternatively, the Ethics Officer may:

- attempt to resolve the matter informally
- refer the matter to alternative dispute resolution
- after making preliminary inquiries, decide that an investigation is not necessary or appropriate and therefore decline to investigate
- refer the matter to other appropriate authorities.

The Ethics Officer has broad powers to investigate and collect evidence. This includes the power to summon witnesses and require them to give evidence and the power to require documents to be produced. The Ethics Officer may, in the course of an investigation, enter any premises occupied by a department or public body. The Ethics Officer decides whether an investigation will be done in private or in public. A deputy head must cooperate and ensure that his or her employees cooperate in an

investigation by the Ethics Officer. Failure to do so is an offence with a fine up to \$10,000. An employee must provide information requested by the Ethics Officer. Failure to do so is an offence with a fine of up to \$5,000.

Protection from Reprisal

It is against the law to penalize a person for making a disclosure of wrongdoing and there can be a fine of up to \$10,000. This is called an act of reprisal and includes any action, threat or attempt to suspend, demote, dismiss, discharge, expel, intimidate, coerce, evict, terminate a contract to which the person is a party without cause, commence legal action against, impose a pecuniary or other penalty on or otherwise discriminate against the person because of a disclosure of wrongdoing by that person or because the person assists in the investigation of a disclosure made by another person.

Employees may file a complaint directly with the Ethics Officer if they believe that

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<http://www.gov.nu.ca/finance/information/ethics-officer>

they are the subject of an act of reprisal; there is no requirement that an internal disclosure of the alleged reprisal be made first. The Ethics Officer must then investigate the complaint in the same way that he or she would investigate a disclosure of wrongdoing.

If the Ethics Officer concludes the complaint of reprisal is valid, appropriate disciplinary action must be taken against the person who committed the act of reprisal and other action recommended by the Ethics Officer may be taken to deal with any loss or damage suffered by the person who complained.

Where other actions recommended by the Ethics Officer are not taken, the relevant deputy head and Minister must provide an explanation to the Ethics Officer and must describe what other action, if any, will be taken in response to the recommendations.

Disclosures and Investigations

As noted above, employees must make an internal disclosure of wrongdoing before they can make the disclosure to the Ethics Officer. Departmental officials are required to notify me of these internal disclosures but I have no jurisdiction to investigate until the disclosure is made to me, after at least 30 days have elapsed. During 2017-18, I received notification of one internal disclosure that did not proceed to a disclosure to the Ethics Officer; this compares with two last year and three in 2015-16.

During 2017-18, I received two disclosures of wrongdoing. Last year, I received three disclosures and 11 were received in 2015-16 (the first year in which making a disclosure of wrongdoing was available to Nunavut public servants).

The first of the two disclosures involved allegations of harassment and subsequent reprisal. However, after investigation, I determined that there was no wrongdoing; the conduct complained of was taken in good faith and was not unreasonable in the circumstances. I determined that the alleged reprisal was in fact an appropriate exercise of the management responsibility to investigate problematic employee behaviour and did not constitute reprisal.

Section 42(1) of the *Public Service Act* sets out circumstances in which the Ethics Officer may decline to investigate a matter. I exercised this discretion in the second of the two disclosures that I received. This disclosure alleged that there had been harassment, that safety issues raised by the discloser had been ignored and that the discloser's employment had been terminated as a result of raising these safety issues. However, no evidence was provided of harassment and there was evidence that the safety concerns had been addressed. There was significant evidence that the employment had been terminated for legitimate reasons and, since the matter was being grieved in a number of forums, I concluded that the matter was fundamentally an employment or labour relations matter that was subject to a satisfactory independent dispute resolution mechanism.

Reprisals

One complaint of reprisal was made in 2017-18. However, after I became involved, the person alleging the reprisal and the relevant Department came to an agreement to reverse the actions complained of. Accordingly, that file has been closed.

As noted above, the issue of reprisal also arose indirectly in the course of the two disclosures discussed above.

Advice

The Ethics Officer is available to provide confidential advice to employees who are considering making a disclosure of wrongdoing. During 2017-18, I received 41 requests for advice, a significant increase from the 19 requests I received last year.

In last year's annual report, I commented on the significant decline in requests for advice between 2015-16 and 2016-17 and suggested that information should be given on a periodic basis to employees of the Nunavut public service to ensure that the availability of the Ethics Officer and the process for the disclosure of wrongdoing remain top-of-mind. I am pleased to report that the Government of Nunavut acted on this recommendation. The positive results of the steps taken to raise awareness of the Ethics Officer process are evident in the return to significant numbers of requests for advice.



National Public Interest Disclosure Group

The National Public Interest Disclosure Group brings together officials from across Canada who have responsibility for public service ethics and whistleblowing. The Group meets annually and I attended its annual meeting in September 2017. The meeting provides a unique forum for education and sharing experiences and I am grateful for the opportunity to learn from my colleagues across the country.

Conclusion

I would like to conclude my annual report by expressing my gratitude for the excellent support that I have received from the senior staff in the Department of Finance in carrying out my duties. It has been invaluable.

As I have said before, it is an honour to be able to contribute to the confidence in the fair, efficient and ethical operation of the Nunavut public service. That confidence is essential for all who work within it and for all Nunavummiut.

Respectfully submitted,

Jeffrey Schnoor, Q.C.
Ethics Officer