

Whistleblower Protection:

Keeping governments accountable



Canadians are offended when taxpayer dollars are wasted and we see improper or illegal activities at work. Public sector workers are also offended by these practices. But, so far, those who've come forward to report government wrongdoing have done so at their own risk.

It took the Sponsorship scandal to finally prod the Liberal government into introducing legislation, over 10 years after it was initially promised. Bill C-25, the *Public Servants Disclosure Protection Act* died on the Order Paper when the federal election was called in 2004.

In October, 2004, the Liberal government re-introduced the *Public Servants Disclosure Protection Act* as Bill C-11. A number of amendments were made to the Bill when it was reviewed by the House of Commons. In spite of the fact that the Bill still contained serious flaws, the Senate chose to rush through the legislation. They heard no evidence except from several government representatives at one hearing and passed the Bill without change. It received Royal Assent on November 25, 2005.

One important change was made to the Bill when it was in the House of Commons. It removed responsibility for the administration of the Act from the hands of the President of the Public Service Commission to an independent Commissioner who is appointed by, and reports to, Parliament. Nevertheless, there is still a need for the government to ensure that the office of the Commissioner is sufficiently well funded to carry out its mandate under the Act.

The new legislation still falls well short of the mark in key areas such as protections from reprisal, transparency and access to information.

- The Commissioner may defer to another procedure or process available under another Act. Unfortunately, any existing procedures have done little to encourage the disclosure and investigation of wrongdoing.
- The legislation only protects those who make a disclosure "in good faith". As a result, the Bill sends a message that they are at risk when they make a disclosure. This provision is unnecessary as there are no requirements that a complaint before a labour board, a human rights commission or a court be initiated in good faith. Good faith is assumed and so it should be for federal public sector workers.
- The provisions in the law designed to protect employees and to ensure that reprisals can be effectively remedied are weak. It is labour boards that are entrusted with hearing complaints that a person who has made a disclosure has suffered reprisal for having done so. However, the powers of labour boards to adequately remedy the serious impacts of reprisals are insufficient. There is no power to order general or

punitive damages, or order systemic changes to deal with a particular workplace. In addition, amendments to the Bill now provide that Boards can substitute reinstatement for damages “where the relationship of trust” is gone. How can it be that an individual who has made a disclosure and has proven that he or she suffered reprisals can be refused job security because he or she can no longer be trusted? These are pressing questions that remain unanswered by this new legislation.

The law stresses the duty of loyalty “public servants” have to their employer. But how can coming forward with an allegation of wrongdoing be in conflict with federal public sector workers loyalty to the integrity of their work, to the public service as an institution and, most importantly, to the Canadians they serve?

Party actions on whistleblowing protection

Liberal Party:

While the Liberal Party did introduce legislation both in 2003 and again in 2004, both pieces of legislation were significantly flawed.

Conservative Party:

During Parliamentary discussions about the *Public Service Modernization Act*, the Alliance party introduced language on whistleblower protection, which only mandated the employer to develop policies and directives.

New Democratic Party:

The NDP introduced a private member’s bill in 2003 to provide whistleblower protection. They supported the amendment tabled by the Bloc to provide protection during parliamentary discussions on the *Public Service Modernization Act*.

Bloc Quebecois:

During parliamentary discussions on the *Public Service Modernization Act*, the Bloc tabled amendments to provide protection to whistleblowers. These amendments detailed the protection provided.

Members of Parliament from all parties in the House supported Bill C-11, as amended.

Ask your candidate:

Does your party support amending the current “whistleblowing” law to strengthen the protection provided to whistleblowers that includes third-party recourse, protection in the collective agreement for unionized workers and recourse to the courts and the agency established to oversee whistleblowing?

Will your party ensure that the office of the Commissioner is provided with sufficient funds and resources to carry out its mandate under the Act?



Public Service Alliance of Canada
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