

Annual Report

2016-2017

Ethics Officer for the Nunavut Public Service

Jeffrey Schnoor, Q.C.

Ethics Officer

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It is my honour to submit the second Annual Report of the Ethics Officer for the Nunavut Public Service, for the period from April 1, 2016 to March 31, 2017.

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

For More Information:
<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. I receive notification that they have made that internal disclosure but have no jurisdiction to investigate until they make a disclosure to me, after at least 30 days have elapsed. During 2016-17, I received notification of two internal disclosures that did not proceed to a disclosure to the Ethics Officer; this compares with three in 2015-16.

During 2016-17, I received 3 disclosures of wrongdoing; in addition, two disclosures were carried forward from the previous year. This is a significant decline from the 11 disclosures received last year.

The following chart sets out the outcome of each of these disclosures.

	Files carried forward from previous fiscal year	Files opened in current fiscal year
Wrongdoing found	0	0
Wrongdoing not found	1	0
Investigation suspended/disclosure abandoned	1	2
Investigation ongoing	0	0
Matter referred to other authority	0	0
Ethics Officer declines to investigate	0	1

Section 42(1) of the *Public Service Act* sets out circumstances in which the Ethics Officer may decline to investigate a matter. In the one case noted above in which the Ethics Officer declined to investigate, I concluded that the alleged conduct, even if proved, would not constitute wrongdoing. I also concluded that the matter disclosed was fundamentally an employment or labour relations matter that was subject to a satisfactory independent dispute resolution mechanism.

A summary of the disclosure in which wrongdoing was not found is set out in Appendix "A".

Reprisals

No complaints of reprisal were made in 2016-17.

Advice

The Ethics Officer is available to provide confidential advice to employees who are considering making a disclosure of wrongdoing. During 2016-17, I received 19 requests for advice, a significant reduction from the 51 requests I received last year.



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 2016. 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.

Observations

As noted above, there has been a substantial decrease this year in both the number of requests for advice that I received and the number of disclosures made of wrongdoing. It is difficult to know with certainty whether this represents a positive or a negative trend. On the one hand, it is possible that last year's large numbers of requests for advice and disclosures were the result of the novelty of the amendments to the *Public Service Act* and the availability of an Ethics Officer; in other words, significant numbers of employees who previously felt they had nowhere to go with their concerns came forward once the Ethics Officer and related processes were in place. On the other hand, it is possible that this year's significant decrease in requests for advice and disclosures is the result of reduced awareness by employees in the Nunavut public service of the availability of the Ethics Officer. I will continue to monitor the trend but, in the meantime, I repeat a recommendation that I made in last year's annual report: 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.

Over the course of the last two years, I have also observed that a significant number of requests for advice that I have received relate to complaints of inappropriate or unprofessional conduct in the workplace that often does not rise to the level of wrongdoing. In some cases, the allegations, if proven, would amount to conduct that should be addressed by management but that does not constitute a serious breach of the Code of Values and Ethics or otherwise meet the definition of wrongdoing. For example, an employee might complain that his or her supervisor lacks competence and is doing a poor job. While these complaints may or may not be well founded, they do deserve to be given serious consideration. However, the employees who have expressed these concerns to me often also express an unwillingness to bring them to management because they fear reprisals. It may be beneficial to consider measures to increase the willingness of employees with concerns that do not relate to wrongdoing to come forward. For example, consideration could be given to allowing members of the Nunavut public service who have made a complaint to senior management other than a disclosure of alleged wrongdoing and believe that they have therefore been the subject of reprisal to complain to the Ethics Officer; this would allow the Ethics Officer to investigate those allegations of reprisal and, if proven, recommend appropriate action. This is another trend that I will continue to monitor.

Conclusion

I would like to conclude my annual report by expressing my gratitude for the outstanding 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, confidence in the fair, efficient and ethical operation of the public service is essential for all who work within it and for all Nunavummiut. I am pleased to be able to contribute to building that confidence.

Respectfully submitted,

Jeffrey Schnoor, Q.C.
Ethics Officer

Appendix A

Case Summaries: Disclosures of Possible Wrongdoing

In order to protect the identity of individuals, all persons making disclosures of possible wrongdoing will be referred to with feminine pronouns and all persons who are the subject of the disclosures will be referred to with masculine pronouns.

Wrongdoing Not Found

1. Harassment and Bullying; Breach of Statute

Ms A is an employee of a department of the Government of Nunavut, supervising other employees of that department in her community. She had also entered into a particular arrangement with her department in her capacity as a citizen; that arrangement included the receipt of certain financial benefits from her department. Despite instructions to do so, Ms A's supervisor did not arrange for an employee from another community to take charge of Ms A's file, to avoid a conflict of interest. Instead, it appears that Ms A's supervisor took responsibility for the file himself. It also appears that little supervision or reassessment of the file ever actually took place. After several renewals, the arrangement expired and the financial benefits also ceased. Ms A alleged that the file and, in particular, the termination of the arrangement and financial benefits were handled in a manner that was contrary to the relevant statute, policies and procedures.

The Ethics Officer noted that the arrangements and financial benefits were largely discretionary in nature and the breaches of statute, policies and procedures alleged by Ms A were differences of opinion respecting their interpretation and not actual breaches. The Ethics Officer was therefore unable to conclude that wrongdoing had occurred. He noted that Ms A may have been treated in an inconsistent and unfair manner. In other jurisdictions, this might be a matter that could be addressed by an ombudsman. However, the Ethics Officer concluded that it was beyond his jurisdiction to ask the department to reconsider whether their treatment of Ms A. had been inconsistent or unfair.