

Annual Report

2019-2020

Ethics Officer for the Nunavut Public Service

Jeffrey Schnoor, Q.C.

Ethics Officer



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It is my honour to submit the fifth Annual Report of the Ethics Officer for the Nunavut Public Service, for the period from April 1, 2019 to March 31, 2020.

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. I am pleased to report that, earlier this year, I was reappointed to a further five-year term. I would like to express my appreciation to the Government of Nunavut for their continued confidence in my work.

As I have in past annual reports, I will:

- Provide an overview of what constitutes wrongdoing and how to make a disclosure
- Describe the protections from reprisal that the Act gives to public servants who make a disclosure of wrongdoing, and
- Provide some statistical information on the number of requests for advice that I received, the number of disclosures of wrongdoing and what became of those disclosures.

I have noticed a significant gap between the number of potential disclosures of wrongdoing that have come to my attention and the number of disclosures that have actually been made to me. I will offer some thoughts on that.

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;

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(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;

(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 Human Resources
- 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

<p>For More Information:</p> <p>https://www.gov.nu.ca/human-resources/information/ethics-officer</p>
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that 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 a 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 2019-20, I received notification of two internal disclosures that did not proceed to a disclosure to the Ethics Officer. This compares with four last year, four in 2018-19, one in 2017-18, two in 2016-17 and three in 2015-16.

During 2019-20, I received three disclosures of wrongdoing. The following table shows the comparative numbers for past years, going back to 2015-16, the first year in which making a disclosure of wrongdoing to the Ethics Officer was available to Nunavut public servants.



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 respect of two of the three disclosures that I received:

- One disclosure related to a dispute over the employee’s performance appraisal. In the absence of malice or other unusual circumstances, negative comments in a performance appraisal that an employee does not agree with do not constitute wrongdoing. The employee also alleged that a manager had made a threatening gesture. However, independent witnesses denied that such a gesture was ever made.
- The other disclosure did not demonstrate conduct that, even if proven, would constitute wrongdoing (in this case, harassment that would be a “serious breach of the Code of Values and Ethics”). Even if it would, the employee making the disclosure had grieved that alleged conduct

under the relevant collective agreement and I determined that the matter could be dealt with fairly under that process.

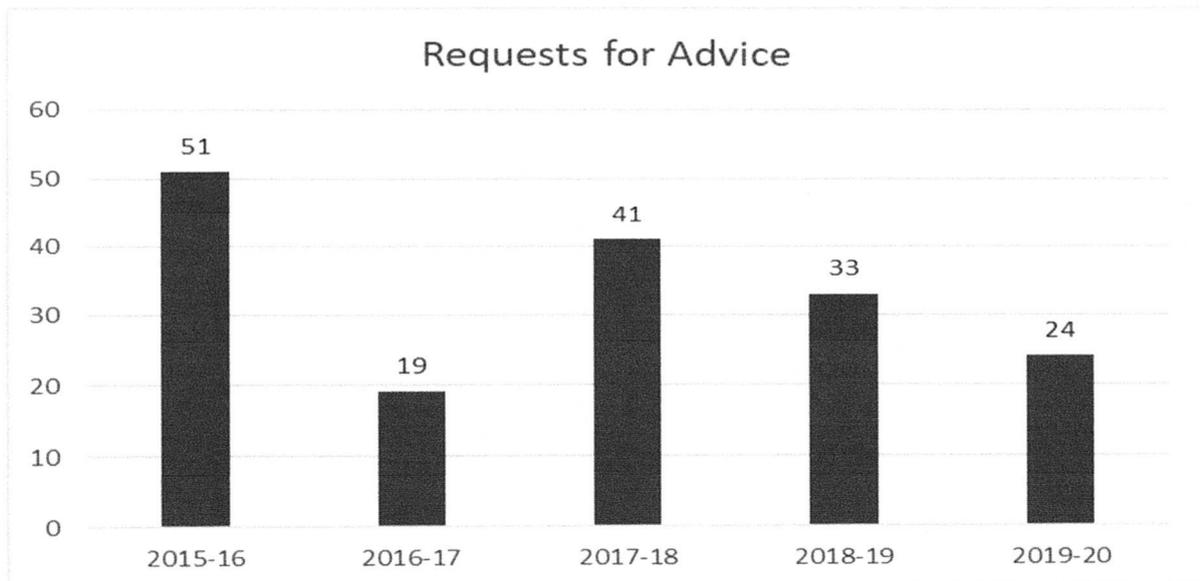
The third disclosure was received in March 2020 and has not yet been resolved.

Reprisals

No allegations of reprisal were received this year.

Advice

The Ethics Officer is available to provide confidential advice to employees who are considering making a disclosure of wrongdoing. Advice is generally given about whether specific circumstances might constitute wrongdoing and about the process that must be followed to make a disclosure. During 2019-20, I received 24 requests for advice.



Some Observations on the Disclosure Process

As described above, the *Public Service Act* provides a process whereby an employee of the Nunavut public service can report a suspected act of wrongdoing. This enhances accountability, integrity and public confidence.

However, I have observed over the course of my first term as Ethics Officer that the process set out in the Act often inhibits employees from disclosing wrongdoing. This is because the Act does not allow for

anonymous disclosures. Employees must make an initial disclosure to a person in authority within the Government of Nunavut. I believe this is intended to ensure that senior officials remain responsible for their departments or other entities and have the opportunity to make things right. However, my observation is that a number of employees who called me for advice about a possible wrongdoing that, on the face of it, seemed credible and concerning did not take the next step and make a formal disclosure. In most cases, this was because of a fear of reprisal. I appreciate that the Act contains robust protections from reprisal, with substantial penalties, but the fact remains that the employees of the Nunavut public service work in small communities and even smaller workplaces. Making a disclosure takes great courage and entails significant risk both in the workplace and in the community.

Most jurisdictions in Canada address this concern by giving employees a choice respecting where they direct their disclosure of wrongdoing. Most jurisdictions allow employees to make an internal disclosure, as is the case in Nunavut, but also allow employees to skip this step and make the disclosure directly to the relevant independent officer (in Nunavut, the Ethics Officer). The independent officer then makes best efforts to protect the identity of the person making the disclosure although, depending on the circumstances, anonymity cannot be guaranteed. Although I appreciate that this may risk an increase in frivolous disclosures, I believe that this would be outweighed by the encouragement that would be given to legitimate and serious disclosures. I suggest that the Legislative Assembly give serious consideration to the merits of such an approach.

I also note that some Canadian jurisdictions allow their equivalent of the Ethics Officer to investigate allegations of wrongdoing within the public service that are made by someone from outside the public service. That is not the case in Nunavut and, when I receive such an inquiry, I am obliged to advise the potential discloser that I have no jurisdiction to look into the matter. I suggest that consideration also be given to the merits of this approach.

National Public Interest Disclosure Group

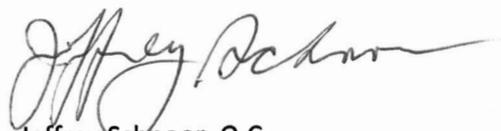
I would like to again express my appreciation to the members of the National Public Interest Disclosure Group. This informal organization brings together officials from across Canada who have responsibility for public service ethics and whistleblowing. The Group meets annually and I attended its annual meeting in September 2019. The meeting provides a unique forum for education and networking and I am grateful for the opportunity to share experiences with my colleagues across the country.

Conclusion

These are not normal times. However, the work of the public service goes on. Indeed, its work has never been as essential and as challenging. I am confident that members of the Nunavut public service will rise to the challenge with dedication and vigour. I hope (and expect) that instances of wrongdoing will remain rare. However, I wish to reassure all members of the Nunavut public service – and all Nunavummiut – that I remain available to investigate allegations of wrongdoing.

Finally, as I have in the past, I would like to conclude my annual report by expressing my gratitude for the excellent support that I have received over the past year from the senior staff in the Department of Human Resources in carrying out my duties.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Jeffrey Schnoor', written in a cursive style.

Jeffrey Schnoor, Q.C.
Ethics Officer