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Chief Review Services Chef - Service d'examen

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## Disclosure of Wrongdoing

Guidelines for Department of  
National Defence (DND)  
Managers and Employees, and  
Canadian Armed Forces (CAF)  
Supervisors and Members

June 2014



Canada 

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## Acronyms and Abbreviations

AIA	<i>Access to Information Act</i>
CAF	Canadian Armed Forces
CDS	Chief of the Defence Staff
CRS	Chief Review Services
DAOD	Defence Administrative Orders and Directives
DM	Deputy Minister
DND	Department of National Defence
DSEI	Directorate of Special Examinations and Inquiries
IDO	Internal Disclosure Office
OCHRO	Office of the Chief Human Resources Officer
PIDO	Principal, Internal Disclosure Office
PA	<i>Privacy Act</i>
PSDPA	<i>Public Servants Disclosure Protection Act</i>
PSIC	Public Sector Integrity Commissioner
QR&O	Queen's Regulations and Orders
TBS	Treasury Board Secretariat



## PART ONE—INTRODUCTION

In the course of performing their duties, DND employees and CAF members may perceive that wrongdoing has been committed, or is about to be committed, in their workplace, or they may be asked to commit wrongdoing. The *Public Servants Disclosure Protection Act* (PSDPA), enacted in April 2007, provides for the disclosure of wrongdoings<sup>1</sup> by DND employees and other public servants, and prohibits taking reprisals against a public servant who has made a protected disclosure in good faith, or has cooperated in an investigation. The Canadian Forces Disclosure Process, enacted in April 2013, provides for the disclosure of wrongdoing by a CAF member, and prohibits taking reprisals against a CAF member who has made a disclosure in good faith, or has cooperated in an investigation.

### Disclosure of Wrongdoing—Program Responsibilities

**Chief Executive.** The PSDPA assigns departmental responsibility for implementing the provisions of the *Act* to the Chief Executive. Within DND, the Chief Executive is the Deputy Minister (DM), who is responsible to designate a Senior Officer to direct the development and implementation of internal procedures for the receipt and investigation of wrongdoing, and to ensure that obligations under the PSDPA are fulfilled. The Chief Executive will also review investigation reports and recommendations from the Senior Officer, and take appropriate action as required.

**Chief of the Defence Staff.** Under the CAF Disclosure Process, the Chief of the Defence Staff (CDS) has designated the Chief Review Services (CRS) as a “Proper Authority” for purposes of articles 4.02 and 5.01 of the Queen’s Regulations and Orders (QR&O).

**Senior Officer/Proper Authority.** CRS was appointed Senior Officer under the PSDPA by the DM on 27 September 2001, and was appointed Proper Authority under the CAF Disclosure Process 1 April 2014, and responsible to:

- direct the development and implementation of internal procedures for the disclosure of wrongdoing;
- ensure that obligations under the PSDPA and the CAF Disclosure Process are fulfilled;
- ensure that corrective measures are taken when wrongdoing is found as the result of a disclosure; and
- oversee, on behalf of the DM and the CDS, the preparation of the annual report required by the Office of the Chief Human Resources Officer (OCHRO).

The Senior Officer/Proper Authority has the discretion to deal or not deal with a disclosure under the PSDPA or the CAF Disclosure Process. Where a public servant or a CAF member chooses to file a disclosure of wrongdoing under the PSDPA, or the CAF Disclosure Process, respectively, notwithstanding that other complaint mechanisms exist, if the Senior Officer/Proper Authority is of the opinion that the matter cannot be more appropriately dealt with by another group, the Senior Officer/Proper Authority has the jurisdiction and the discretion to investigate such

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<sup>1</sup> Disclosure of Wrongdoings refers to a formal submission under the PSDPA or the CAF Disclosure Process.



disclosures. Should the matter be referred to another mechanism, the Senior Officer/Proper Authority, under the PSDPA/CAF Disclosure Process, retains oversight authority for the proper resolution of the matter since the individual did first disclose the matter in question to the Senior Officer/Proper Authority.

The CRS has delegated responsibility for management of the PSDPA and the CAF Disclosure Process to the Directorate of Special Examinations and Inquiries (DSEI). The Director DSEI has created the Internal Disclosure Office (IDO), which is responsible for receipt of all disclosures of wrongdoing.

**Internal Disclosure Office.** The IDO receives disclosures of wrongdoing and provides advice to all members of the defence team. The IDO is available for advice and guidance, and provides information to DND employees on procedures, alternatives and the parameters of confidentiality. The IDO is also available to provide advice on options available to CAF members who wish to report wrongdoing. Specifically, the IDO is responsible to:

- disseminate information on the PSDPA/CAF Disclosure Process and the internal disclosure process, and provide interpretations and related advice, including guidance to DND employees and CAF members who may be considering making a disclosure;
- develop and implement the internal disclosure process in respect of disclosures by DND employees and CAF members;
- develop procedures to ensure the protection of the identity of any persons involved in and information created during the internal disclosure process, and any resulting investigation;
- receive, record and review disclosures;
- determine if there are sufficient grounds for further action in respect of a disclosure and, if not, advise the DND employee or CAF member;
- refer disclosures, if appropriate, to another organization or process, including DND management or the CAF chain of command;
- initiate investigations, if required;
- review and report the results of investigations, and make recommendations to the CRS;
- ensure that any disclosure concerning a possible breach of the Code of Service Discipline or the Criminal Code is discussed with the Judge Advocate General or the DND/CF Legal Advisor, as appropriate, and reported to the CAF National Investigation Service or the appropriate police service, as required; and
- inform all parties in writing of the results of the investigation, subject to applicable provisions in the *Access to Information Act (AIA)* and *Privacy Act (PA)*.

**Supervisors (Military and Civilian).** Supervisors, including CAF members who exercise any authority of the DM, should be trained in dealing with disclosures, and are responsible to:



- provide a positive environment in which DND employees and CAF members may disclose, in good faith, information concerning wrongdoing in the workplace;
- be knowledgeable about the provisions of the PSDPA and the CAF Disclosure Process, be fully aware of the definition of wrongdoing and of the internal disclosure process;
- know the identity of the Senior Officer/Proper Authority and the role of the IDO;
- inform DND employees and CAF members about the PSDPA and the CAF Disclosure Process, their options for making disclosures, the protections afforded, and sources of additional information;
- provide guidance to DND employees and CAF members who are considering disclosing any wrongdoing or who are involved in the process, and inform them that the process provides a degree of confidentiality and protection from reprisal;
- receive disclosures of wrongdoing from DND employees and CAF members. Supervisors must forward all disclosures of wrongdoing to the IDO. Any questions regarding confidentiality issues can be addressed to the IDO;
- protect the identity of DND employees and CAF members who make disclosures, and that of others involved in the disclosure process; and
- protect DND employees and CAF members who make disclosures and others involved in an investigation from reprisals.

### **Making a Disclosure**

While public servants and CAF members are encouraged to come forward if they are aware that serious wrongdoing has or is about to occur, many do not do so for various reasons. It is not easy to come forward with an allegation of wrongdoing, especially if the allegation pertains to one's supervisor. Most DND employees and CAF members will come forward if they:

- are aware they can make a disclosure of wrongdoing, know from whom they can seek advice and guidance, and know how to go about making the disclosure;
- believe that making a disclosure of wrongdoing will serve some good purpose, and that appropriate action will be taken by the IDO and the Department; and
- are confident that they will be protected from suffering reprisals for having made the disclosure.

Vexatious and frivolous disclosures, or disclosures made in bad faith, will not be investigated and individuals who make such disclosures may be subject to administrative or disciplinary measures. In the event of such disclosures, the IDO shall ensure that the appropriate supervisor is so advised.

The purpose of these Guidelines is to provide DND managers and employees, and CAF supervisors and members, with an overview of the PSDPA and the CAF Disclosure Process, and describe how they will be implemented within the DND/CAF. In the preparation of these



Guidelines, the IDO has taken advantage of the extensive literature published by the OCHRO of the Treasury Board of Canada Secretariat (TBS), responsible for leadership and support to organizations in the implementation of the PSDPA. The IDO acknowledges and appreciates the support provided by staff of the OCHRO.

These Guidelines complement the PSDPA, TBS OCHRO directives, the CAF Disclosure Process, and the Defence Administrative Orders and Directives (DAOD), 7024-0 (Disclosure of Wrongdoings in the Workplace) and 7024-1 (Internal Procedures for Disclosure of Wrongdoings in the Workplace). In the event of any discrepancy, the PSDPA, the CAF Disclosure Process, and Government and DND policy documents take precedence over these Guidelines. DND managers and employees, and CAF supervisors and members, should review the PSDPA, the CAF Disclosure Process, Departmental DAODs, and TBS policies and directives related to disclosures of wrongdoing.

These Guidelines will be reviewed periodically and revised accordingly. The Guidelines will also be immediately revised in response to changes in the PSDPA, the CAF Disclosure Process, or other policy guidance issued from the OCHRO.





## PART TWO—THE PUBLIC SERVANTS DISCLOSURE PROTECTION ACT

### Purpose

The PSDPA, as amended by the *Federal Accountability Act*, came into force on 15 April 2007. The purpose of the PSDPA is to encourage employees in the public sector to come forward if they have reason to believe that serious wrongdoing has taken place or may take place, and to provide protection to them against reprisal when they do so. The Act also provides a fair and objective process for those against whom allegations are made.

### Scope

These Guidelines and the associated internal disclosure process provide a means for addressing alleged or perceived wrongdoing as defined by the PSDPA, and are not intended to replace existing DND or CAF redress/recourse mechanisms—such as those that allow for the filing of grievances or harassment complaints, or the submission of issues for consideration by the DND/CAF Ombudsman.

### Application

The PSDPA applies to all employees in federal departments and agencies, most Crown Corporations, and the RCMP. Within the DND, the PSDPA applies to DND civilian employees, to CAF members who are supervisors of DND employees and exercise any authority of the DM, and employees of the Staff of the Non-Public Funds (a Schedule 5 organization under the *Financial Administration Act*).

### Definition of Wrongdoing

The PSDPA defines wrongdoing as:

- a contravention of an Act of Parliament or of the legislature of a province or of any regulations made under any such Act;
- a misuse of public funds or a public asset;
- a gross mismanagement in the public sector;
- an act or omission that creates substantial and specific danger to the life, health and safety of persons or to the environment, other than a danger that is inherent in the performance of the duties or functions of a public servant;
- a serious breach of a code of conduct; or
- knowingly directing or counselling a person to commit any of the wrongdoings as set out above.

The definition of wrongdoing is not restricted to activities of public servants and includes any wrongdoing in or relating to the federal public sector. The PSDPA is intended to address forms of wrongdoing that, because of their scale and nature, have the potential to adversely affect public confidence in the integrity of the federal public sector. In two of the six elements of the definition of wrongdoing there is reference to the notion of seriousness, that is to say “gross



mismanagement” and “serious breach of a code of conduct.” The wording in the other four elements also suggests a degree of seriousness.

All unethical behaviour is unacceptable and will be addressed by the DND, however, not all ethical breaches amount to “wrongdoing” as defined in the PSDPA. The PSDPA was not intended to address every possible mistake or improper action by employees or managers. Occasionally, poor management decisions are made, but the vast majority of those decisions would not qualify as “wrongdoing” under the Act.

Wrongdoing relates to serious violations that go against the public interest, as opposed to wrongdoing against a personal interest, i.e., against individuals as victims—such as in the case of an unfair denial of a professional development request, or a perceived unfair performance evaluation.

### **Gross Mismanagement**

The PSDPA does not specifically define “gross mismanagement,” and very few forms of mismanagement would rise to this level. Factors affecting whether a given situation meets the threshold of “gross mismanagement,” include:

- the degree of departure from standards, policies or accepted practices;
- the significance of the resources compromised;
- the position and responsibilities of the alleged wrongdoer;
- the degree of deliberateness or recklessness involved;
- the repetitive or ongoing nature of the actions or inaction;
- the consequences of the action or inaction on the organization’s ability to accomplish its mandate, or on the well-being, health or safety of persons or the environment; and
- the impact of the action or inaction on the public’s trust and confidence in the organization.

### **Serious Breach of the DND and CF Code of Values and Ethics**

In order to set a consistent standard of conduct, the PSDPA required that the TBS and all government departments develop their own codes of conduct. The TBS Values and Ethics Code for the Public Sector was enacted in 2011, and the DND and CF Code of Values and Ethics (June 2012) was developed by the Defence Ethics Program and CRS, with input from all Level 1s.

Although the PSDPA does not define what constitutes a “serious breach” of a code of conduct, the following factors would be considered in the determination as to whether a breach meets the standard of seriousness intended by the Act:

- the position and responsibilities of the alleged wrongdoer;
- the degree of deliberateness or recklessness involved;
- the repetitive or ongoing nature of the actions or inaction;



- the consequences of the action or inaction on the organization’s ability to accomplish its mandate, or on the well-being, health or safety of persons or the environment; and
- the impact of the action or inaction on the public’s trust and confidence in the organization.

### **Protected Disclosure**

A Protected Disclosure means a disclosure made in good faith and that is made by a public servant:

- in accordance with the PSDPA;
- in the course of a parliamentary proceeding;
- in the course of a procedure established under any other Act of Parliament; or
- when lawfully required to do so.

### **The Canadian Armed Forces**

As the CAF is an organization that is excluded from the definition of “public sector,” a CAF member may not make a disclosure of wrongdoing under the PSDPA. CAF members may submit a disclosure of wrongdoing under the CAF Disclosure Process. Additional information regarding the CAF Disclosure Process is contained within Part 3 of these Guidelines.

A DND employee may make a protected disclosure to a CAF member who acts as their supervisor and who exercises any authority of the DM. A CAF member may exercise the authority of the DM in several areas, including:

- supervision, staffing, leave approval and other personnel functions in respect of DND employees; and
- financial matters under the *Federal Administration Act* and in other areas.

If a DND employee is uncertain as to whether the CAF member acting as their supervisor exercises any authority of the DM, the DND employee should contact the IDO.

A DND employee may make a protected disclosure with respect to any wrongdoing by a CAF member who exercises any authority of the DM, but may not make a protected disclosure that relates to the CAF.

A DND employee who witnesses wrongdoing in the CAF should advise their immediate supervisor or contact DSEI.

### **Confidentiality**

The DND is required under the PSDPA to protect, subject to any other Act of Parliament and to the principles of procedural fairness and natural justice, the identity of persons involved in the disclosure process, including that of the person making the disclosure, witnesses, and the person alleged to be responsible for the wrongdoing. The DND is also responsible to establish procedures to ensure the confidentiality of information collected in relation to a disclosure under the PSDPA.



Generally, a person facing an allegation of wrongdoing has the right to be informed of the allegations. However, this does not automatically require that the identity of the person who made the allegations must be identified. When conducting an investigation under the Act, the IDO and investigators will protect the identity of the person making the disclosure and all others (e.g., witnesses) involved in the process to the greatest extent possible under the law. However, there are limits to which confidentiality can be guaranteed, and these may include:

- the disclosure involves something illegal or of a criminal nature which may have to be reported to the appropriate police authorities;
- there is or may be an imminent threat of serious harm to an individual, or a threat to public health and safety, or to the environment;
- it may be necessary to disclose information to carry out a proper review or investigation;
- the disclosure may not have been made in good faith, or was made with malicious intent; and
- the person against whom the allegations are made may need certain information in order to make a defence against the allegation.

In order for the Department to implement appropriate corrective/disciplinary action, the identity of individuals involved in the investigative process may have to be revealed. Furthermore, the PSDPA requires that if wrongdoing is found as a result of a disclosure, the Department is required to provide public access to information that describes the wrongdoing, including information that could identify the person found to have committed it, if it is necessary to identify the person to adequately describe the wrongdoing.

### **Duty to Cooperate and General Prohibitions**

According to DAOD 7026-1 Special Examinations and Inquiries—Access to Records and Personnel, all CAF members and DND employees shall cooperate with and facilitate the work of DSEI investigators.

The PSDPA states that no person shall, in a disclosure of wrongdoing or in the course of any investigation under the Act, knowingly make a false or misleading statement, wilfully obstruct an investigation, or destroy, alter, falsify or conceal information or records.

### **Public Sector Integrity Commissioner**

The PSDPA has established the Office of the Public Sector Integrity Commissioner (PSIC<sup>2</sup>). As an alternative to making a disclosure to a supervisor or the IDO, any public servant or member of the public may disclose information to the PSIC about alleged wrongdoing in the public sector.

### **Reprisal**

The PSDPA prohibits reprisal against a public servant or former public servant because that employee has, in good faith, made a protected disclosure of wrongdoing or has cooperated in an

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<sup>2</sup> The abbreviation “PSIC” is used in these Guidelines and in DAOD 7024-1 to mean *Public Sector Integrity Commissioner*. The official meaning of the abbreviation is *Public Sector Integrity Canada*.



investigation into a disclosure. Only the PSIC may deal with a complaint of reprisal. Reprisal is defined as any of the following measures taken against a person who has made a protected disclosure or has cooperated in an investigation into a disclosure:

- a disciplinary measure;
- the demotion of the public servant;
- the termination of employment of the public servant;
- any measure that adversely affects the employment or working conditions of the public servant; and
- a threat to take any of the measures referred to above.

### **Reprisal Protection Process**

DND employees who believe that an act of reprisal has been taken against them for having made, in good faith, a protected disclosure under the Act or cooperated in an investigation into a disclosure, can contact the IDO for information and advice. However, the conduct of investigations into formal complaints of reprisal and the protections against reprisal afforded by the Act rests solely with the PSIC. The PSIC cannot receive complaints of reprisal from CAF members.

The fact that an employee's disclosure of wrongdoing is screened out for any reason does not preclude an employee from filing a complaint of reprisal to the PSIC.

If, after having received a protected disclosure, the IDO believes that there is potential for reprisals to occur, the IDO may take steps to prevent or mitigate the reprisal. Such steps could include the temporary reassignment of individuals involved.

Employees should note that, under the PSDPA, a complaint of reprisal must be filed with the PSIC 60 days from the time they knew or, in the Commissioner's opinion, should have known, that the act of reprisal occurred. The PSIC has the discretion to waive this caveat depending on the circumstances of the reprisal. The PSIC has 15 days after the filing of a complaint of reprisal to decide whether or not to deal with the complaint.

If the PSIC decides to deal with the complaint, they will undertake an investigation. At any time during the course of their investigation, their investigator may recommend to the PSIC that a conciliator be appointed in an attempt to bring about a settlement. After receiving the investigation report, the PSIC may apply to the Public Servants Disclosure Protection Tribunal for a determination as to whether or not an act of reprisal was taken against the complainant.

On application by the PSIC, if the Tribunal, composed of federal court or provincial superior court judges, determines that an act of reprisal occurred, it can order remedial action, including:

- permit the complainant to return to his or her duties;
- reinstate the complainant, or pay compensation in an amount in lieu of reinstatement, if the relationship of trust between the parties cannot be restored;



- pay to the complainant compensation in an amount not greater than the amount that is equivalent to any financial or other penalty imposed on the complainant;
- rescind any disciplinary action;
- pay the complainant an amount equal to any expenses or other financial losses incurred as a direct result of the reprisal; and
- compensate the complainant by an amount of not more than \$10,000 for any pain and suffering experienced as a result of the reprisal.

Public servants may also choose to deal with reprisal through the grievance process, if applicable, but can only use one mechanism. The PSIC may not deal with a reprisal complaint if a person or body acting under another Act of Parliament or a collective agreement is dealing with the subject matter of the complaint.

### **Access to Information Act and Privacy Act**

In order to protect the identity of persons involved in the disclosure process, the AIA and the PA were amended to provide that the head of a government institution shall refuse to disclose any record requested under either of these Acts that contains information “created” for the purpose of making a disclosure under the PSDPA or in the course of an investigation into a disclosure under the PSDPA. This protection still applies even if a disclosure is subsequently screened out.

### **Right to Assistance and Representation**

The disclosure process and any investigation are meant to be as informal and expeditious as possible. DND employees may request permission to be accompanied during a disclosure investigation, although the individual accompanying the witness is not permitted to respond to any question or provide any comments. Such requests will be assessed on a case-by-case basis, keeping in mind the principles of procedural fairness and natural justice, as well as the need to ensure that the process is not delayed or hampered as a result.



## **PART THREE—THE CANADIAN FORCES DISCLOSURE PROCESS (CAF DISCLOSURE PROCESS)**

### **Background**

In recognition of the specialized nature of operations by CAF members, primarily in regards to national security, and also the existence of formal processes for dealing with or responding to wrongful activities by members, which makes combining military regimes with a broader government regime more difficult, the CAF are excluded from the definition of “public sector” in Section 2 of the PSDPA. However, Section 52 provides that the CAF must establish procedures for the disclosure of wrongdoing, and these procedures must, in the opinion of the Treasury Board, be similar to those set out in the PSDPA.

### **Purpose**

In the course of performing their duties, CAF members may perceive that any wrongdoing has been committed or is about to be committed in their workplace, or they may be asked to commit any wrongdoing. The purpose of the CAF Disclosure Process is to encourage CAF members to come forward if they have reason to believe that serious wrongdoing has taken place or may take place, and to provide protection to them against reprisal when they do so. The CAF Disclosure Process also provides a fair and objective process for those against whom allegations are made.

### **Scope**

These Guidelines and the associated internal disclosure process provide a means for addressing alleged or perceived wrongdoing as defined by the CAF Disclosure Process and are not intended to replace the established system of reporting wrongdoing to the chain of command, the existing CAF redress/recourse mechanisms such as those that allow for the filing of grievances or harassment complaints, or the submission of issues for consideration by the DND/CAF Ombudsman.

### **Application**

On 1 April 2013, the CAF Disclosure Process came into force. CAF members may make a disclosure of wrongdoing under the CAF Disclosure Process, which provides the same rights and protections that are afforded to public servants under the PSDPA.

### **Definition of Wrongdoing**

The definition of wrongdoing from a CAF Disclosure Process perspective is currently under review, however in the interim, wrongdoing is considered:

- a contravention of any Act of Parliament or of any regulations made under any such Act;
- a contravention of any Act of the legislature of a province or territory or of any regulations made under any such Act;
- a misuse of public property or non-public property;
- a gross mismanagement;





- an act or omission that creates a substantial and specific danger to the life, health or safety of persons, or to the environment, other than a danger that is inherent in the performance of the duties or functions of a person;
- a serious breach of the Value and Ethics Code for the Public Sector or the DND and CF Code of Values and Ethics; or
- knowingly directing or counselling a person to commit any wrongdoing set out in any of the above bullets.

Note: The definition of wrongdoing is restricted to activities within the CAF.

The CAF Disclosure Process is intended to address forms of wrongdoing that, because of their scale and nature, have the potential to adversely affect public confidence in the integrity of the CAF. In two of the six elements of the definition of wrongdoing there is reference to the notion of seriousness, that is to say “a serious breach of the Code of Service Discipline” and “gross mismanagement.” The wording in the other four elements also suggests a degree of seriousness.

All unethical behaviour is unacceptable and will be addressed by the CAF, however, not all ethical breaches amount to “wrongdoing” as defined in the CAF Disclosure Process. The CAF Disclosure Process was not intended to address every possible mistake or improper action that CAF members make. Poor management decisions or actions happen, but the vast majority of them would not qualify as “wrongdoing” under the CAF Disclosure Process.

Wrongdoing relates to serious violations that go against the public interest as opposed to wrongdoing against a personal interest, i.e., against individuals as victims, such as in the case of an unfair denial of a professional development request or a perceived unfair Performance Evaluation Report.

### **Gross Mismanagement**

The CAF Disclosure Process does not specifically define “gross mismanagement” and very few forms of mismanagement would rise to this level. Factors affecting whether a given situation meets the threshold of “gross mismanagement,” include:

- the degree of departure from standards, policies or accepted practices;
- the significance of the resources compromised;
- the position and responsibilities of the alleged wrongdoer;
- the degree of deliberateness or recklessness involved;
- the repetitive or ongoing nature of the actions or inaction;
- the consequences of the action or inaction on the CAF’s ability to accomplish its mission, or on the well-being, health or safety of persons or the environment; and
- the impact of the action or inaction on the public’s trust and confidence in the CAF.





### **Serious Breach of the DND and CF Code of Values and Ethics**

In order to set a consistent standard of conduct, the PSDPA required that TBS and all government departments develop their own codes of conduct. The TBS Values and Ethics Code for the Public Sector was enacted in 2011, and the DND and CF Code of Values and Ethics (Jun 2012) was developed and promulgated by the Defence Ethics Program, CRS, with input from all Level 1s. Furthermore, the conduct of CAF members is governed by the Code of Service Discipline. Although the CAF Disclosure Process does not define what constitutes “a serious breach of the Code of Service Discipline,” the following factors would be considered in the determination as to whether a breach meets the standard of seriousness intended by the CAF Disclosure Process:

- the position and responsibilities of the alleged wrongdoer;
- the degree of deliberateness or recklessness involved;
- the repetitive or ongoing nature of the actions or inaction;
- the consequences of the action or inaction on the CAF’s ability to accomplish its mission, or on the well-being, health or safety of persons or the environment; and
- the impact of the action or inaction on the public’s trust and confidence in the CAF.

### **DND Employees**

A CAF member may make a disclosure to a DND employee who acts as their supervisor under the CAF Disclosure Process. A CAF member may not make a disclosure under the CAF Disclosure Process related to the federal public service.

### **Confidentiality**

The DND/CAF is required under the CAF Disclosure Process to protect, subject to any other Act of Parliament and to the principles of procedural fairness and natural justice, the identity of persons involved in the disclosure process, including that of the person making the disclosure, witnesses and the person alleged to be responsible for the wrongdoing. The DND/CAF is also responsible to establish procedures to ensure the confidentiality of information collected in relation to a disclosure under the CAF Disclosure Process.

Generally, a person facing an allegation of wrongdoing has the right to be informed of the allegations. However, this does not automatically require that the identity of the person who made the allegations must be identified. When conducting an investigation under the CAF Disclosure Process, the IDO and investigators will protect the identity of the person making the disclosure and all others (e.g., witnesses) involved in the process to the greatest extent possible under the law.

However, there are limits to which confidentiality can be guaranteed, which may include:

- the disclosure involves something illegal or of a criminal nature which may have to be reported to the appropriate police authorities;
- there is or may be an imminent threat of serious harm to an individual, or a threat to public health and safety, or to the environment;



- it may be necessary to disclose information to carry out a proper review or investigation;
- the disclosure may not have been made in good faith or was made with malicious intent; and
- the person against whom the allegations are made may need certain information in order to make a defence against the allegation.

In order for the CAF to implement appropriate corrective/disciplinary action, the identity of individuals involved in the investigative process may have to be revealed. Furthermore, the CAF Disclosure Process requires that if wrongdoing is found as a result of a disclosure, the DND/CAF is required to provide public access to information that describes the wrongdoing, including information that could identify the person found to have committed the wrongdoing, if it is necessary to identify the person to adequately describe the wrongdoing.

### **An Obligation to Report**

Under articles 4.02 and 5.01 of QR&O, CAF members must report any infringement of “pertinent statutes, regulations, rules, orders and instructions governing the conduct of any person subject to the Code of Service Discipline”, unless the member, in the case of an officer, can adequately deal with the matter. This positive obligation to report wrongdoing in the CAF relates not only to the wrongdoings of subordinates, but extends as well to the misconduct of one’s superiors. A failure by a CAF member to report wrongdoing is an offence under the Code of Service Discipline. While the obligation under the QR&O to report does not apply in respect of any DND employee’s wrongdoing that is observed by a CAF member, a member could voluntarily report such wrongdoing to their supervisor or DSEI.

### **Duty to Cooperate and General Prohibitions**

According to DAOD 7026-1 Special Examinations and Inquiries—Access to Records and Personnel, all CAF members and DND employees shall cooperate with and facilitate the work of DSEI investigators.

In a disclosure of wrongdoing, or in the course of any investigation under the CAF Disclosure Process, any CAF member who knowingly makes a false or misleading statement, wilfully obstructs an investigation, or destroys, alters, falsifies or conceals information or records, may be charged under sections 125 or 129 of the *National Defence Act*.

### **Reprisal**

As per QR&O 19.15—Prohibition of Reprisal, the CAF Disclosure Process prohibits reprisals against a CAF member because that member has in good faith made a disclosure of wrongdoing or has participated in an investigation into a disclosure. Only the CRS may deal with a complaint of reprisal under the CAF Disclosure Process. Reprisal is defined as any of the following measures taken against a CAF member who has made a disclosure or has cooperated in an investigation into a disclosure:

- a disciplinary action;
- a career remedial or other administrative action;



- the demotion of the person;
- the release, recommendation for release, or termination of employment of the person;
- any measure that adversely affects the service, employment or working conditions of the person; or
- a threat to take any of the actions referred to in the paragraphs above.

### **Reprisal Protection Process**

CAF members who believe that reprisal has been taken against them for having made a disclosure under the CAF Disclosure Process, or for having cooperated in an investigation into a disclosure, should contact the IDO. The CRS is the sole authority within the CAF for conducting reprisal investigations for having submitted a disclosure of wrongdoing under the CAF Disclosure Process.

The fact that a member's disclosure of wrongdoing is screened out for any reason does not preclude a member from filing a complaint of reprisal to the IDO.

If, after having received a disclosure, the IDO believes that there is potential for reprisal to occur, the IDO may take steps to prevent or mitigate the reprisal. Such steps could include DSEI contacting the discloser's chain of command or the temporary reassignment of the CAF member involved.

CAF members should note that under the CAF Disclosure Process, a complaint of reprisal must be filed to the CRS within 60 days from the time they knew, or should have known, that the reprisal occurred. The CRS has the discretion to waive this caveat depending on the circumstances of the reprisal. The CRS has 15 days after the filing of a complaint of reprisal to decide whether or not to deal with the complaint.

### **Access to Information Act and Privacy Act**

In order to protect the identity of persons involved in the disclosure process, the AIA and the PA were amended to provide that the head of a government institution shall refuse to disclose any record requested under either of these Acts that contains information created for the purpose of making a disclosure under the PSDPA or in the course of an investigation into a disclosure under the PSDPA. DSEI has been advised that this applies to CAF members for disclosures made under the CAF Disclosure Process.

### **Right to Assistance and Representation**

The disclosure process and any investigation are meant to be as informal and expeditious as possible. CAF members may request permission to be accompanied during a disclosure investigation, however, the individual accompanying the witness is not permitted to respond to any question or provide any comments. Such requests will be assessed on a case-by-case basis, keeping in mind the principles of procedural fairness and natural justice, as well as the need to ensure that the process is not delayed or hampered as a result.



## **PART FOUR—THE DISCLOSURE OF WRONGDOING PROCESS**

### **General Information**

Implementation of the PSDPA and the CAF Disclosure Process within the DND/CAF ensures that disclosures of wrongdoing are properly assessed, investigated and actioned. The procedures in place also ensure the protection of disclosers from reprisals taken against them as a result of their having made a disclosure of wrongdoing.

Information received in a disclosure or identified in the course of an investigation concerning criminal activity or actions in violation of the Code of Service Discipline, including sources of such information, cannot be kept confidential. The file will be referred to the proper authorities for criminal investigation, and issues of confidentiality will be subject to their procedures. In some cases, the IDO will seek legal advice prior to referring a file, or a portion of a file to a police authority. A referral for criminal investigation does not necessarily mean that an administrative investigation will not be conducted concurrently or subsequently, depending on the circumstances.

Managers and supervisors who receive formal disclosures of wrongdoing under the PSDPA or the CAF Disclosure Process must refer them immediately to the IDO. In accordance with the PSDPA and the CAF Disclosure Process, the CRS is required to submit an annual report to the TBS regarding the number and types of all disclosures of wrongdoing within the DND/CAF.

In order to meet the requirements of the PSDPA and the CAF Disclosure Process for receiving disclosures of wrongdoing, managers and supervisors must be familiar with the provisions of the PSDPA and the CAF Disclosure Process, as well as the Departmental internal procedures respecting disclosures. Advice and guidance may also be sought from the IDO.

### **Submitting a Disclosure of Wrongdoing**

DND employees and CAF members may make disclosures of wrongdoing to their supervisor or to the CRS (the senior officer under the PSDPA and the proper authority under the CAF Disclosure Process). In the case of DND employees, a disclosure of wrongdoing may also be made to the PSIC. In the event that a DND employee is dissatisfied with the results of a Departmental investigation under the PSDPA, they may subsequently make a disclosure to the PSIC.

Disclosers must be aware of their responsibilities with respect to the submission of disclosures. They must:

- cooperate and assist in the conduct of an investigation into a disclosure of wrongdoing and disclose only the information necessary for the investigation;
- maintain confidentiality with respect to the details of a disclosure, including the identity of any individual suspected of wrongdoing; and
- respect the reputation of other persons by not making trivial or vexatious disclosures.



The discloser must clarify the allegations in sufficient factual detail to allow the supervisor or IDO to determine the nature and substance of the alleged wrongdoing. Any disclosure of wrongdoing should contain the following information:

- the nature and description of the wrongdoing;
- the name of the person(s) alleged to have committed the wrongdoing;
- the date of the wrongdoing; and
- as much other pertinent information as possible.

The IDO will not normally initiate an investigation into a disclosure of wrongdoing if an existing alternate recourse mechanism (grievance, harassment process) is available or has already been engaged. The mandate of the IDO is not to replace or challenge the decisions made by existing recourse mechanisms that gave proper consideration to all relevant information.

A disclosure may be made in writing, by e-mail, by telephone or in person to a supervisor, CRS, the IDO or, in the case of public servants, the PSIC. Contact information for the IDO is available at Annex C. Disclosers will be requested to complete the disclosure of wrongdoing form, which is available on the IDO website (see Annex C).

### **Initial Screening and Preliminary Assessment**

When a disclosure of wrongdoing has been submitted, the IDO will confirm receipt of the disclosure and then conduct an initial screening assessment to determine if the submission can be accepted under the PSDPA or the CAF Disclosure Process. Regardless of the nature of the alleged wrongdoing, the IDO has the discretion to determine whether an alleged act of wrongdoing is serious enough to be accepted. If the disclosure of wrongdoing is accepted under the PSDPA or the CAF Disclosure Process, the IDO will initiate a preliminary assessment to determine if sufficient information has been provided to launch a formal investigation and consider what would be the best recourse mechanism to resolve the allegations in question. The preliminary assessment should identify critical issues that may require immediate attention, such as urgent health and safety issues or potentially criminal acts.

If, in the opinion of the IDO, the matter requires an independent examination of the facts, the CRS has the jurisdiction and authority to investigate such disclosures. If, in the opinion of the IDO, the matter should be referred to another recourse mechanism, the discloser will be advised to submit the necessary documentation for that specific recourse mechanism. However, CRS may retain oversight authority for the proper resolution of the matter since the individual made the initial disclosure to the IDO.

In the event that the IDO screens out a disclosure on the grounds that the allegation does not meet the definition of serious wrongdoing under the PSDPA or the CAF Disclosure Process, the file will be passed to DSEI for consideration and possible investigation under DSEI's mandate. If a disclosure is screened out, the discloser will be informed.



A disclosure may be screened out or an investigation into a disclosure ceased for the following reasons:

- the disclosure does not fall under the definition of wrongdoing, as defined by the PSDPA or the CAF Disclosure Process;
- the disclosure refers to any wrongdoing against a personal interest, versus against the public interest;
- the subject-matter of the disclosure relates to a matter that results from an employee or member disagreeing with a decision or policy that a manager or supervisor has made in good faith and with the necessary authority, or results from a balanced and informed decision-making process on a public policy issue;
- the subject-matter of the disclosure has been investigated or adequately dealt with, or could more appropriately be dealt with, according to a procedure provided for under another Act of Parliament;
- there are more appropriate departmental resolution mechanisms available;
- the discloser has not provided sufficient information to enable appropriate action in respect of the alleged wrongdoing;
- the disclosure is frivolous or vexatious, or was otherwise not given in good faith or on the basis of reasonable belief, or does not deal with a sufficiently serious subject matter;
- the length of time elapsed since the date when the subject-matter of the disclosure arose is such that investigating it would not serve a useful purpose; or
- there is a valid reason for not dealing with the subject-matter of the disclosure.

An anonymous disclosure is not considered a formal disclosure made under the PSDPA or the CAF Disclosure Process, since the source of the disclosure is not identifiable as a public servant or a CAF member, respectively. This means that protection against reprisal and provisions respecting protection of information under the PSDPA or the CAF Disclosure Process are not available to those who make an anonymous disclosure or those who cooperate in an administrative investigation. The IDO will refer anonymous disclosures to either DSEI, or to the responsible management or chain of command for their action, as they deem appropriate. Disclosers must be aware that an anonymous disclosure may be inherently difficult to investigate as the investigator cannot request clarification, obtain additional evidence, or verify relevant information during the course of a preliminary assessment or a formal investigation.

During the initial screening or the preliminary assessment, if a disclosure is screened out, the IDO may recommend that the matter be referred to a manager or supervisor, or to another organization or process for resolution. The discloser will be consulted. In some cases, a disclosure may meet the definition of wrongdoing, yet, in the opinion of the IDO, the matter would be best dealt with by an existing recourse mechanism or organization. Such matters will be referred and duly tracked by the IDO.





As has been noted earlier in these Guidelines, the fact that a disclosure of wrongdoing has been screened out does not preclude the discloser from filing a reprisal complaint. For this reason, the IDO maintains records of disclosures that have been screened out and those referred to an alternate authority.

### **Formal Investigation**

Once it has been decided that the disclosure has been screened in and that there are no other more appropriate recourse mechanisms, DSEI will conduct an investigation. DSEI investigations are conducted independently and in accordance with the principles of procedural fairness and natural justice. Investigations are conducted as expeditiously as possible, given priorities and workload.

An investigation is a systematic process of gathering evidence in order to prove or disprove the validity of a set of allegations. The investigator is required to obtain and evaluate information in a fair and impartial manner regarding the circumstances and facts surrounding a disclosure.

### **Investigation Results**

At the conclusion of an investigation into a disclosure of wrongdoing, the investigator will prepare a written report detailing the findings with respect to the allegations. This report will be submitted to the IDO. The IDO will make a determination as to whether or not the results of the investigation support a finding of wrongdoing under the PSDPA or the CAF Disclosure Process.

The Director, DSEI, upon consideration of the IDO's findings, will submit the report, the findings and possible recommendations to the CRS. As the Senior Officer under the PSDPA and the Proper Authority under the CAF Disclosure Process, the CRS will determine the best course of action regarding the dissemination of the investigation results, and make recommendations as appropriate.

Under the PSDPA, the DM will review investigation reports and recommendations from the CRS, and direct that appropriate action be taken. The CRS will ensure that corrective measures have been taken on behalf of the DM. In the case of the CAF Disclosure Process, the CDS will review investigation reports and recommendations from the CRS, and direct that appropriate action be taken. The CRS will ensure that corrective measures have been taken on behalf of the CDS.

The IDO will inform the discloser and alleged wrongdoer of the results of the investigation, subject to applicable provisions in the AIA and PA.

### **Publication of Founded Wrongdoing**

In the event that an investigation leads to a finding of wrongdoing, the PSDPA and CAF Disclosure Process require that prompt public access to certain information be provided. The following information will be posted on the CRS internet and intranet sites:

- a description of the wrongdoing;
- any recommendations that result from the finding of wrongdoing; and
- details of any corrective action taken in relation to the wrongdoing, or an explanation why no corrective action was taken.

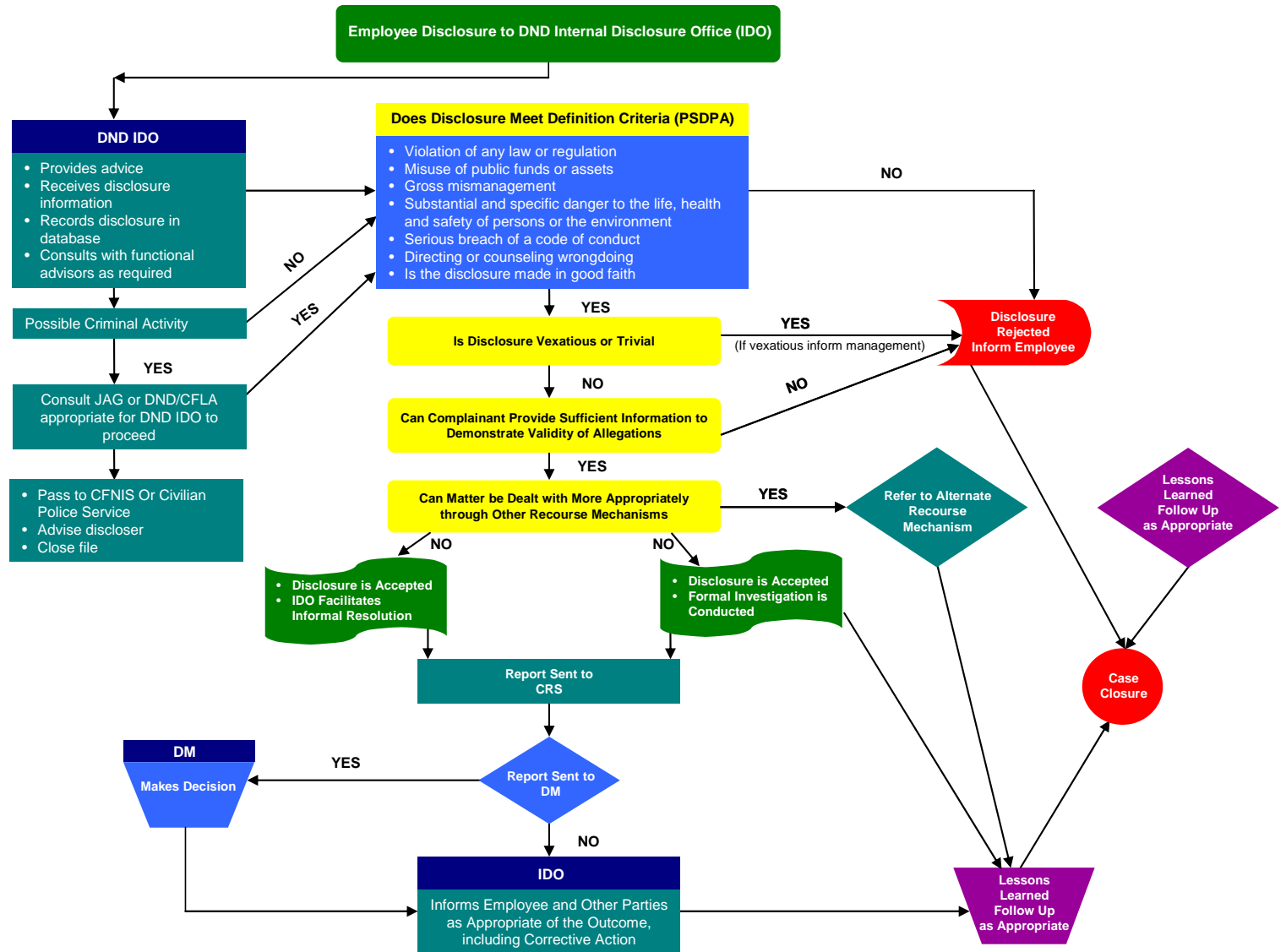


At this point, the file shall be closed and all records related to the disclosure of wrongdoing and a copy of the investigation report will be held by the IDO.

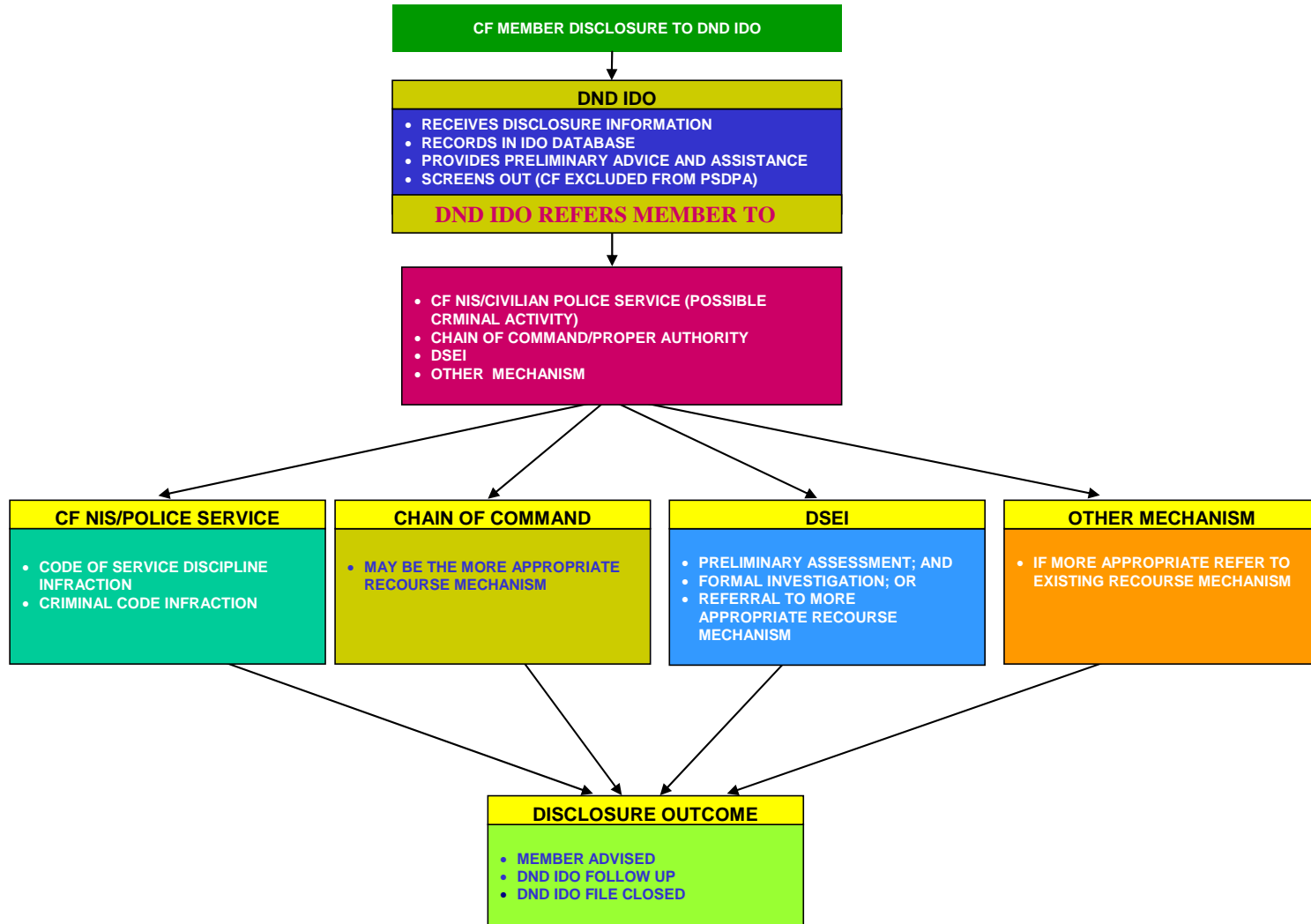




## ANNEX A—REPORTING WRONGDOING TO THE IDO DND EMPLOYEES



## ANNEX B—REPORTING WRONGDOING TO THE IDO CAF MEMBERS



## ANNEX C—CONTACTS

**DND Chief Executive:** Deputy Minister

**CAF Disclosure Process release authority:** Chief of the Defence Staff and Deputy Minister

**Senior Officer (PSDPA)/Proper Authority (CAF Disclosure Process):** Chief Review Services  
(613) 992-7975

**Director Special Examinations and Inquiries (DSEI):** Director DSEI (613) 992-0395

**Principal, Internal Disclosure Office (PIDO):** Principal IDO (613) 992-0356

**Public Sector Integrity Canada:** (613) 941-6400 or Toll free 1 (866) 941-6400

**Internal Disclosure Office Mailing Address:** Internal Disclosure Office  
Chief Review Services  
Lord Elgin Plaza  
66 Slater Street  
Ottawa, ON, K1A 0K2

### DND IDO Toll-Free Disclosure Line

The CRS has set up a toll-free bilingual line which members of the defence team can call to obtain information and guidance on the PSDPA, the CAF Disclosure Process as well as the DND internal disclosure of wrongdoing process and the submission of a disclosure of wrongdoing.

Calls to the Disclosure Line are answered between the hours of 0900 to 1700 Eastern Time, Monday to Friday. Confidential voice mail is active at all other times.

**The IDO toll-free Disclosure line: 1-866-236-4445**

### Internal Disclosure Office Intranet e-mail:

- +[IDO@CRS@Ottawa-Hull](mailto:IDO@CRS@Ottawa-Hull) (English)
- +[BDI@CRS@Ottawa-Hull](mailto:BDI@CRS@Ottawa-Hull) (French)

### Internal Disclosure Office Internet e-mail:

- +IDO-BDI@CRS DSEI@Ottawa-Hull

**For more information, please visit the Internal Disclosure Office DIN website:**

- IDO.mil.ca (English)
- BDI.mil.ca (French)



## ANNEX D—DEFINITIONS

### Bad Faith Complaint

Intent to deceive. A complaint that is made dishonestly for an improper or questionable purpose. A disclosure in bad faith requires the element of deliberate effort to make false accusations, i.e., the employee making the disclosure knows the allegations are false yet passes them off as true.

### Corrective Measures

Those measures that can be taken to resolve the situation being examined, and can include recovery, process changes, controls or policy changes.

### Criminal Offence

An offence under the Criminal Code or any other Act of Parliament committed by any person.

### Frivolous Complaint

A complaint that is void of substance. Examples of frivolous disclosures include:

- petty accusations involving office supplies;
- complaints about the amount of time spent at lunch;
- the use of the internet to read a news article; or
- accusations of favoritism because a manager and an employee have coffee or smoking breaks together.

### Interviewee

An individual who will be interviewed in order to obtain information, including documentation, relating to the disclosure of wrongdoing.

### Investigation

A systematic process of gathering information in order to prove or disprove the validity of a set of allegations.

### Protected Disclosure

A disclosure that is made in good faith and that is made by a public servant/CAF member:

- in accordance with the PSDPA/CAF Disclosure Process;
- in the course of a parliamentary proceeding;
- in the course of a procedure established under any other Act of Parliament; or
- when lawfully required to do so.



## **Public Sector**

Public Sector means:

- the departments named in Schedule I to the *Financial Administration Act* and other portions of the federal public administration named in Schedules 1.1 to V to that Act; and
- the Crown Corporations and the other public bodies set out in Schedule I.

However, with respect to the PSDPA, “Public Sector” does not include the CAF, Canadian Security Intelligence Service or Communications Security Establishment.

## **Recommendations**

Those measures that, in the opinion of the investigator, will correct the situation referred for examination and/or help to prevent it from reoccurring. Recommendations can include corrective and/or remedial measures but will not involve disciplinary measures that can best be determined by those responsible for the performance of the individual(s) involved.

## **Reprisal**

Any of the following measures taken against a public servant because that public servant had made a protected disclosure or has, in good faith, cooperated in an investigation under the PSDPA:

- a disciplinary measure;
- the demotion of the public servant;
- the termination of employment of the public servant;
- any measure that adversely affects the employment or working conditions of the public servant; and
- a threat to take any of the measures referred to above.

Any of the following measures taken against a CAF member because that CAF member had made a protected disclosure or has, in good faith, cooperated in an investigation under the CAF Disclosure Process:

- a disciplinary action;
- a career remedial or other administrative action;
- the demotion of the person;
- the release, recommendation for release, or termination of employment of the person;
- any measure that adversely affects the service, employment or working conditions of the person; or
- a threat to take any of the actions referred to in any of paragraphs above.



## **Service Offence**

An offence under the *National Defence Act*, the Criminal Code or any other Act of Parliament, or an offence under foreign law committed by a person while subject to the Code of Service Discipline.

## **Trivial Complaint**

A complaint that is of no consequence.

## **Vexatious Complaint**

A complaint that is unsubstantiated and was made with a malicious intent.

## **Witness**

An individual who, on being interviewed on a particular topic, provides information of relevance to the topic under investigation.

## **Wrongdoing**

The PSDPA applies to the following wrongdoing in and relating to the public sector:

- a contravention of any Act of Parliament, or of the legislature of a province, or of any regulations made under any such Act, other than a contravention of Section 19 (reprisal) of the PSDPA;
- a misuse of public funds or a public asset;
- a gross mismanagement in the public sector;
- an act or omission that creates a substantial and specific danger to the life, health and safety of persons or the environment, other than a danger that is inherent in the performance of the duties or functions of a public servant;
- a serious breach of a code of conduct; and
- knowingly directing or counselling a person to commit any wrongdoing set out above.

The CAF Disclosure Process applies to the following wrongdoing in and relating to the CAF:

- a contravention of any Act of Parliament, or of any regulations made under any such Act;
- a contravention of any Act of the legislature of a province or territory, or of any regulations made under any such Act;
- a misuse of public property or non-public property;
- a gross mismanagement;
- an act or omission that creates a substantial and specific danger to the life, health or safety of persons, or to the environment, other than a danger that is inherent in the performance of the duties or functions of a person;



- a serious breach of the Value and Ethics Code for the Public Service, or the DND and CF Code of Values and Ethics; or
- knowingly directing or counselling a person to commit any wrongdoing set out in any of the above bullets.



## ANNEX E—REFERENCES

*Federal Accountability Act*

*Public Servants Disclosure Protection Act*

Criminal Code

*Financial Administration Act*

*Access to Information Act*

*Privacy Act*

*Personal Information Protection and Electronic Documents Act*

QR&O 4.02, General Responsibilities of Officers

QR&O 5.01, General Responsibilities of Non-Commissioned Members

QR&O 19.15 Prohibition of Reprisals

DAOD 5012-0, Harassment Prevention and Resolution

DAOD 5046-0, Alternate Dispute Resolution

DAOD 7021-0, Conflict of Interest and Post Employment

DAOD 7023-0, Defence Ethics

DAOD 7024-0, Internal Disclosure of Wrongdoing in the Workplace

DAOD 7024-1, Internal Procedures for Disclosure of Wrongdoings in the Workplace

CANFORGEN 097/07, Public Servants Disclosure Protection Act Enters into Force

CANFORGEN 056/13, Interim Guidance CF Disclosure Process

Office of the Public Sector Integrity Commissioner website

Office of the Chief Human Resources Officer, Treasury Board of Canada Secretariat website

Guide for the Conduct of DSEI Investigations

Conducting Administrative, Oversight and Ombudsman Investigations, by Gareth Jones

