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FAIR DECISION-MAKING FOR FAIR OUTCOMES

*A review of the whistleblowing
process for DND employees*

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Table of Contents

Legal and policy framework	1
Organizational structure	10
Operational reality / implementation	14
Findings and recommendations	19

Whistleblowing

There are complaint mechanisms within the Federal Public Service that allow public servants to draw attention to matters of concern so that they can be addressed internally. The DND's disclosure of wrongdoing process (whistleblowing) is meant to allow employees to flag internal cases of potential wrongdoing so the Department can address them.

Legal and policy framework

In this section, we examine the legal and policy basis that gives decision-makers the authority to act and outlines how the process must be directed.

In past process reviews conducted by the Ombudsman's office, serious issues were identified with respect to the DND's whistleblowing process. Gaps in the existing policy structure had allowed for frequent procedural defects and breaches of procedural fairness, resulting in numerous complaints, internal challenges, Ombudsman process reviews, a Public Sector Integrity Commissioner investigation, and at least one highly critical decision by the Federal Court. Recommendations were made by this office for the DND to review its internal procedures and build-in the necessary safeguards for procedural fairness in its processes.

We recognize that the Assistant Deputy Minister, Review Services [ADM(RS)] has recently reworked many aspects of this process. ADM(RS) provided us with the most recent iterations of applicable policy documents and internal procedures. The Ombudsman is pleased to see that this office's past recommendation for the DND to review its internal procedures and build-in procedural fairness safeguards appears to have been implemented.

Legal authority

Legal authority is the lawful basis for a decision-maker's authority to act and usually outlines the decision-making process. This authority is generally set out in Acts of Parliament and Regulations. In some cases, it exists in instruments under the Royal Prerogative.¹

¹ The Royal Prerogative means "the powers and privileges accorded by the common law to the Crown" (*Ross River Dena Council Band v Canada*, 2002 SCC 54, [2002] 2 SCR 819 at para 54) and includes the authority that Parliament has left in the hands of the King from the wide powers his ancestors enjoyed as absolute monarchs (*Canada v Operation Dismantle Inc.*, [1983] 1 FC 745 at 779, 49 NR 363, Marceau J (FCA)). Always subject to parliamentary statute, these prerogative authorities currently include aspects of military operations such as the authority to deploy the CAF internationally – see *Aleksic v Canada (Attorney General)* (2002), 215 DLR (4th) 720, 165 OAC 253 (DC) at para 41.

Whistleblowing requirements for the public service are set out in the *Public Servants Disclosure Protection Act*.² This legislation is meant to provide employees with a secure and confidential process for disclosing serious wrongdoing and contains provisions to protect federal whistleblowers from reprisal.

The *PSDPA* provides whistleblowers with two distinct channels for making disclosures of wrongdoing (whistle-blowing complaints). The first channel is to a manager or designated senior officer internal to the whistleblower's department or agency. The second channel is to the Public Sector Integrity Commissioner (the Commissioner), an independent federal entity reporting to Parliament. As the resolution process administered by the Commissioner is external to the DND, it does not fall within the scope of this review.

Under the *PSDPA*, “wrongdoing” comprises:

- the contravention of any Act of Parliament or of a provincial legislature, or of any regulations made under any such Act
- the misuse of public funds or public assets
- gross mismanagement in the public sector
- acts or omissions creating a substantial and specific danger to the life, health, or safety of persons or the environment
- serious breaches of a code of conduct
- knowingly directing or counselling a person to commit any of the above

The Treasury Board's *Values and Ethics Code for the Public Sector* elaborates the requirements for the internal administration of whistleblowing processes within federal departments and agencies.³

Policy framework

Subject to applicable legislation and Treasury Board policy, each department is responsible for establishing its own internal policy and procedures for whistleblowing that is tailored to its organizational needs.

² SC 2005, c 46 [PSDPA]. General information about the application of the Public Servants Disclosure Protection Act can be found at: Treasury Board of Canada Secretariat, *Overview of the Public Servants Disclosure Protection Act* (Ottawa: Treasury Board of Canada Secretariat, 2008) online: <<https://www.canada.ca/en/treasury-board-secretariat/services/values-ethics/disclosure-protection/overview-public-servants-disclosure-protection-act.html>>.

³ Treasury Board of Canada Secretariat, *Values and Ethics Code for the Public Sector* (Ottawa: Treasury Board of Canada Secretariat, 2011) at 7-9 [Values and Ethics Code].

Process

In keeping with statutory requirements and Treasury Board policy, the Deputy Minister for the DND must designate a senior officer responsible for establishing internal procedures to manage disclosures of wrongdoing within the Department.⁴

The principal avenue for addressing serious wrongdoing is the Department's internal whistleblowing process. This process is initiated when an employee (discloser) submits a whistleblowing complaint ("disclosure of wrongdoing") to either their manager or the designated senior officer for the Department. In either case, the disclosure is transferred to a dedicated team within the senior officer's organization for an initial screening.

If the discloser provides sufficient information and it is determined that the complaint, if true, would constitute wrongdoing under the *PSDPA*, a formal investigation may be launched. At the investigation's conclusion, a report is provided to the senior officer containing findings and recommendations.

Should the investigation find that wrongdoing has occurred, the senior officer will advise the appropriate officials within the Department and ensure that necessary follow-up actions are taken, including disciplinary action where warranted. An anonymized description of the wrongdoing and any actions taken in response must then be made available to the public.

Policy documents

The central policy framework for addressing internal⁵ whistleblowing complaints within the Department currently consists of two DAODs, a guidelines document, and internal standard operating procedures. The contents of each document are as follows:

- **DAOD 7024-0, *Disclosure of Wrongdoings in the Workplace***⁶: sets out the Department's general whistleblowing obligations and identifies the ADM(RS) as the Department's designated senior officer under the *PSDPA*.⁷
- **DAOD 7024-1, *Internal Procedures for Disclosure by DND Employees of Wrongdoings in the Workplace***⁸: sets out the internal process for submitting whistleblowing complaints⁹ and identifies the Internal Disclosure Office (IDO) as the office within ADM(RS) responsible for receiving complaints.¹⁰

4 PSDPA, supra note 2, s 10(1) & (2).

5 The Department's policy framework recognizes that employees may choose not to submit whistleblower complaints internally and instead submit them to an independent federal organization, the Office of the Public Sector Integrity Commissioner of Canada. The complaint and investigation process administered by the Commissioner is external to the Department and does not fall within the scope of this review. See Canada, Deputy Minister of National Defence, and the Chief of the Defence Staff, Defence Administrative Order and Directive 7024-1, Internal Procedures for Disclosure by DND Employees of Wrongdoings in the Workplace (31 August 2010 updated 24 August 2016) at s 3.4 [DAOD 7024-1].

6 Canada, Deputy Minister of National Defence, and the Chief of the Defence Staff, Defence Administrative Order and Directive 7024-0, Disclosure of Wrongdoings in the Workplace (30 November 2001) [DAOD 7024-0].

7 Ibid at s 4.1. Note that the ADM(RS) is referred to by its previous title, "Chief Review Services" or "CRS" in this DAOD.

8 DAOD 7024-1, supra note 5.

9 Ibid, ss 4.7 - 4.9.

10 Ibid, ss 4.1 - 4.2.

- ***Disclosure of Wrongdoing Guidelines*¹¹ (*Disclosure Guidelines*):** provides an overview of the requirements set out in the PSDPA,¹² fleshes out the whistleblowing complaint and investigation process,¹³ and provides a step-by-step guide for submitting complaints to the IDO.¹⁴
- ***Procedures Manual for the Conduct of DSEI Investigations*¹⁵ (*Investigation Procedures Manual*):** sets out the standard procedures for whistleblowing investigations, as well as other administrative investigations falling within ADM(RS)'s mandate.
- ***Internal Disclosure Processes for the Canadian Armed Forces and the Department of National Defence - Procedures Manual (Internal Disclosure Procedures Manual)*¹⁶:** elaborates ADM(RS)'s legislative obligations and sets out revised procedures for the intake, screening, and investigation of disclosures of wrongdoing.

At the time of writing, updates are being made to DAODs 7024-0 and 7024-1. Officials within ADM(RS) are also aiming to revise and improve the *Disclosure Guidelines* by the end of the 2023-2024 fiscal year.¹⁷

Compliance

In all cases, the policy framework must be consistent with the enabling legal authority. Inconsistencies with the legal requirements could result in successful challenges to the decision-maker's decision.

The Department's revised whistleblowing policy framework is consistent with applicable legislation, regulation, and Treasury Board policy. (Finding 1)

Finding 1

The DND's policy framework for whistleblowing is compliant with applicable legislation, regulation, and Treasury Board policy.

11 Canada, Department of National Defence, Assistant Deputy Minister for Review Services, *Disclosure of Wrongdoing Guidelines for Department of National Defence (DND) Managers and Employees, and Canadian Armed Forces (CAF) Supervisors and Members* (Ottawa: Department of National Defence, 2014) [Wrongdoing Guidelines].

12 Ibid at 6-11.

13 Ibid at 17-20.

14 Ibid at Annexes A & B.

15 Canada, Department of National Defence, Assistant Deputy Minister (Review Services), *Procedures Manual for the Conduct of DSEI Investigations* (Ottawa: Department of National Defence, 2014) [Investigation Procedures Manual].

16 Canada, Department of National Defence, Assistant Deputy Minister (Review Services), *Internal Disclosure Processes for the Canadian Armed Forces and the Department of National Defence - Procedures Manual* (Ottawa: Department of National Defence, 2024) [Internal Disclosure Procedures Manual].

17 Canada, Department of National Defence, Assistant Deputy Minister (Review Services), Directorate of Special Examinations and Inquiries - Strategic Plan for Operations 2023 (Ottawa: Department of National Defence, 2023) [DSEI Strategic Operations Plan].

Procedural fairness

Procedural fairness for government decision-making exists in common law regardless of whether legislation explicitly identifies it. It is critical that departmental policy documents identify baseline principles of procedural fairness, especially where applicable legislation or regulation is silent or lacks sufficient detail. Clarity contributes to the consistent administration of the decision-making process and to fair outcomes for parties.

Recent updates to the DND's whistleblowing policy framework have brought a high degree of clarity to the procedural fairness protections afforded to parties. The most recent iteration of the *Internal Disclosure Procedures Manual* bolsters this through the addition of new, more robust, protections. The extent of these protections and any existing gaps are identified in the sections below.

Given that the whistleblowing process can result in corrective action up to and including termination, the Courts have found that the process requires procedural fairness at the higher end of the scale.¹⁸

Consequently, parties are owed a high level of procedural fairness protections during the decision-making process.

Disclosure of wrongdoing (whistleblowing)

Instrument	Unbiased decision-maker	Notice	Right to be heard	Timeliness	Reasons
Legislation	Silent	Silent	Silent	Partial	Partial
Regulation	N/A	N/A	N/A	N/A	N/A
TBS policy	Silent	Silent	Silent	Silent	Silent
Departmental policy	Partial	Substantial	Substantial	Partial	Substantial

Unbiased decision-maker

Decisions must be based on a fair and unbiased assessment of the facts and evidence before the decision-maker. When a decision-maker is perceived to be influenced by personal interests, relationships, or inappropriate external considerations, a reasonable apprehension of bias may exist, delegitimizing the decision and opening it to challenge.

¹⁸ See *Marchand v Public Sector Integrity Commissioner*, 2014 FC 329, 452 FTR 182. See also *Chapman v Canada (Attorney General)*, 2019 FC 975, [2020] 1 FCR 3.

ADM(RS)'s internal *Investigation Procedures Manual* explicitly notes the importance of unbiased investigations and lists potential factors that could impact real or perceived bias.¹⁹ The *Investigation Procedures Manual* encourages investigators who believe that they may be in a potential conflict of interest or reasonable apprehension of bias situation to flag their concerns to their section head so that a more appropriate investigator can be assigned.²⁰

While there is a requirement in the *Code of Values and Ethics* for DND employees to report conflicts of interest, this may not always be practicable in the context of a confidential whistleblowing process. In addition, no equivalent requirement exists in the Code for reporting potential instances of bias.

The Department's policy framework and internal procedures do not presently identify an explicit avenue for parties or witnesses to flag concerns of conflict or bias in the context of a whistleblowing complaint. It is also unclear how disclosures are processed if they are made within the organization of the ultimate decision-maker, the ADM(RS). (Finding 2)

Finding 2

The DND's policy framework for whistleblowing does not presently identify an alternate decision-maker in the event that a complaint is filed within the ADM(RS)' reporting chain, creating a potential risk for breaches of procedural fairness.

Recommendation: The DND review its policy framework for whistleblowing to identify an alternate decision-maker in the event that a complaint is filed within the ADM(RS)'s reporting chain.

Officials within ADM(RS) have indicated that they are currently engaged in consultations to determine what options are available to address this issue.

Notice

Sufficient notice at the outset of a process leading to a decision, including the substance of what is being decided, is essential to ensuring that parties can prepare and bring forward relevant evidence. Without sufficient notice, decision-makers may not receive or be aware of relevant information, resulting in unfair outcomes.

ADM(RS)'s *Internal Disclosure Procedures Manual* explicitly requires that the responding party receive a formal notification letter informing them that they are subject to an investigation. This letter must include a summary of the allegations against the respondent and must be sent prior to any communication between officials within ADM(RS) and potential witnesses. In addition, the notification letter invites respondents to communicate directly with the investigator if they have any questions about the process.²¹

¹⁹ Investigation Procedures Manual, supra note 15 at 5.

²⁰ Ibid.

²¹ Internal Disclosure Procedures Manual, supra note 16 at p 14.

This recent addition to ADM(RS)'s SOPs provides a high degree of procedural fairness to the parties and clarifies an issue that had been left unaddressed in previous iterations of the Department's policy.

Right to be heard

Parties to a decision-making process must be able to make a fulsome response to any allegations or information that may serve as the basis for a decision. If they are unable to do so, the decision-maker may not receive or be aware of relevant information, resulting in unfair outcomes.

In contrast with previous internal procedures, ADM(RS)'s new *Internal Disclosure Procedures Manual* provides robust protections that effectively balance the parties' right to be heard with the confidentiality requirements set out in the PSDPA.

Under the new procedures, investigators must provide a copy of the preliminary investigation report to the respondent before it is finalized. The respondent then has 21 calendar days to review the report and provide a written response.²²

Once the investigator has received a full answer to the allegations and evidence, every point made by the respondent is analyzed in detail. Following this analysis, the investigators must determine whether the evidence or conclusions contained in the preliminary investigation should be amended. If a new witness is identified during this analysis, any new evidence provided by that witness must be shared with the respondent for additional comments.²³

This procedure provides the respondent with a full opportunity to respond to all allegations, evidence, and information that will serve as the basis of the decision-maker's decision. It is a strong procedural fairness protection for the parties.

Timeliness

The longer an administrative process is delayed, the higher the likelihood that relevant witnesses or evidence will become unavailable to the decision-maker. Memories can gradually fade and pertinent information may be moved or misplaced over time. The timely administration of a process reduces these risks.

Timeliness is of particular concern in the whistleblowing process as witnesses and respondents who retire from or leave the public service fall outside the jurisdiction of the PSDPA.²⁴ Once these participants leave, the potentially relevant information that they could have provided to the decision-maker is effectively lost.

This issue is compounded by the complete absence of timelines in either the PSDPA or applicable Treasury Board policy.

²² Ibid at p 16.

²³ Ibid.

²⁴ PSDPA, supra note 2.

The Department's policy framework echoes the *PSDPA*'s broad requirement for an "expeditious" investigation process,²⁵ but does not identify any measures to address lengthy or untimely delays. (Finding 3)

Finding 3

The DND's policy framework for whistleblowing does not identify measures or mitigating strategies to address lengthy or untimely delays in the administration of the process.

Recommendation: The DND review its policy framework for whistleblowing to clearly identify measures or mitigating strategies to address lengthy or untimely delays in the administration of the process.

The officials within ADM(RS) who are responsible for screening and investigating whistleblowing complaints are currently identifying and incorporating new service standards and best practices with the goal of establishing shorter timelines.²⁶

ADM(RS)'s new *Internal Disclosure Procedures Manual* prescribes a 90-day timeframe for screening complaints²⁷ and indicates that formal investigations should be completed within 12 months.²⁸

Reasons

The parties to a process must understand the basis upon which the decision-maker's decisions are made. The reasons provided for a decision must be sufficiently clear, precise, and understandable for the parties to be able to adequately challenge it if needed.

In the event of a founded occurrence of wrongdoing, the *PSDPA* requires that the Department provide public access to an anonymized description of the wrongdoing and any actions taken in response.²⁹ Although this general information is made public, there is no requirement in either the *PSDPA* or Treasury Board policy for the DND to provide public reasons for its findings.

The DND's policy framework addresses a gap in the *PSDPA* by requiring that the parties be directly informed of any findings of wrongdoing.³⁰ The most recent version of the DND's policy framework for whistleblowing now requires that respondents receive both the final investigation report and decision letter at the conclusion of the investigation. These documents contain a full explanation that addresses any comments or evidence provided by the respondent³¹

25 Ibid, ss 19.7(2) & 26(1).

26 DSEI Strategic Plan, supra note 17 at 4; Canada, Department of National Defence, Assistant Deputy Minister (Review Services), Directorate of Internal Disclosures - Strategic Plan (Ottawa: Department of National Defence, 2023) [DID Strategic Plan].

27 Internal Disclosure Procedures Manual, supra note 16 at 16.

28 Ibid at 7.

29 PSDPA, supra note 2, s 11(1)(c).

30 Wrongdoing Guidelines, supra note 11 at 18.

31 Internal Disclosure Procedures, supra note 16.

Other expectations / commitments

The DND's policy framework allows witnesses to request accompaniment during investigations. Requests for accompaniment are assessed on a case-by-case basis and are not guaranteed. The individual accompanying the witness is not permitted to respond to any questions or provide comments. The framework does not address potential accompaniment for parties.³²

Witnesses are informed of their right to be accompanied once engaged in the process and are provided with clear information regarding the support person's role.

³² Wrongdoing Guidelines, *supra* note 11 at 11.

Organizational structure

Even where the legal authority and the policy frameworks are fully aligned and incorporate principles of procedural fairness, the decision-maker needs to be supported by an organizational structure that includes the delegation of appropriate authorities, robust quality controls, relevant training, and sufficient resourcing.

Governance

The governance, or process design, of any administrative complaint mechanism must consider the needs of the organization, including its culture, its size, the anticipated use of its process, and like considerations. The decision-makers, in addition to being adequately trained, must be individuals who, have the appropriate level of authority within the organizational structure.

ADM(RS) is the designated senior officer with the final authority and responsibility for handling whistleblowing complaints submitted internally within the Department.

Reporting to the ADM(RS) is the Director General (DG) Corporate Integrity. The DG Corporate Integrity's mandate includes fraud risk management program, administrative investigations, conflicts of interest, and whistleblowing, as well as providing support to boards of inquiry and summary investigations.

In May of 2023, the DG Corporate Integrity's Ethics and Investigations' organization was subject to a design review conducted by the Assistant Deputy Minister, Human Resources Civilian [ADM(HR-Civ)]. The purpose of the review was to align the organization's structure with the DG's current mandate, ensure that roles and responsibilities are appropriately reflected, and create efficiencies between business lines.³³ The review concluded in August 2023, with a new structure implemented in 2024.

Reporting to the DG Corporate Integrity is the Director of Investigations and Internal Disclosures (DIID). The DIID is responsible for overseeing the Department's internal whistleblowing complaints process and for investigating whistleblowing complaints.

Reporting to the DIID is the Internal Disclosure Office (IDO). The IDO is responsible for receiving, assessing, and screening disclosures of wrongdoing. Complaints screened by the IDO may be recommended for investigation.

The IDO had previously been extracted to ensure more senior level engagement in the screening process, but was reintegrated into the DIID's organization following the organizational review.³⁴

³³ Canada, Department of National Defence, Assistant Deputy Minister (Review Services), Director General Ethics and Investigations (Ottawa, Department of National Defence, 2023) [DGEI Deck].; Prior to 2024, the DG Corporate Integrity's title was "Director General Ethics and Investigations".

³⁴ Ibid.

Quality control

A properly functioning administrative process must incorporate quality-control measures to ensure consistent and fair decision-making. These measures are even more important where processes are de-centralized and where decision-making authority is widely delegated. Further, controls themselves need to be bolstered by a constant evaluation of how the process is functioning and where it might need to be adjusted.

The DG Corporate Integrity's organization is responsible for tracking information relating to the Department's whistleblowing complaints process. The DG's case management system, known as MAIVIS, is used to collect, store, manage and interpret data related to whistleblowing complaints. Each case file in MAIVIS is linked to an accompanying file in the federal government's standardized electronic document and records management system, GCdocs.³⁵

MAIVIS is also used to manage data relating to processes administered by other parts of the ADM(RS)'s organization, including general administrative investigations and conflict of interest reviews. This information, along with information relating to whistleblowing complaints, is siloed and only accessible to the relevant teams for each process.

Each year, ADM(RS) prepares an annual report to the Treasury Board Secretariat that provides the following information:

- the number of general inquiries received relating to the PSDPA
- the number of whistleblowing complaints received
- how many complaints related to each form of wrongdoing under the PSDPA
- the number of complaints involving other departments or agencies
- the number of complaints carried over from previous years
- the number of complaints that were acted upon
- the number of complaints that were not acted upon
- the reasons for which any complaints were not acted upon
- the number of complaints that will be carried over into the next year
- the number of investigations commenced
- the number of working days to complete each investigation
- If delays occurred, their duration and the reasons behind them
- the number of complaints resulting in a finding of wrongdoing
- the number of complaints leading to corrective measures
- whether systemic issues were identified and addressed
- how many days elapsed between a finding of wrongdoing and the date the finding was made public
- an explanation if more than sixty days elapsed before the finding was made public
- any changes to how whistleblowing complaints are handled within the DND

³⁵ Statistics Canada, GCdocs - Privacy impact assessment (Ottawa: Statistics Canada, 2021) online: <<https://www.statcan.gc.ca/en/about/pia/GCdocs>>.

In addition to the information collected for reporting purposes, staff within the DG Corporate Integrity's organization use MAIVIS to record the following information for individual complaint files:

- the file number
- the identity of the discloser (of alleged wrongdoing)
- the subjects of the disclosure (individuals alleged to have committed wrongdoing)
- any witnesses
- allegations
- whether the disclosure is admissible
- the tasking order
- the investigator(s) assigned to file
- the investigation plan
- case approvals
- associated file documents
- notes
- the outcome of the process
- case closure information
- the action history for the file
- references
- general information

Moving forward, DND officials have indicated that they also intend to track the implementation of recommendations and corrective action more closely in cases of founded wrongdoing.

When interviewed, DND officials indicated that they are not currently using MAIVIS to its full potential. (Finding 4) Prior to 2022, MAIVIS was only used sporadically and not all information was entered into the system. This has resulted in substantial missing or incorrect data, compromising the accuracy of internal reporting.³⁶

Efforts are currently underway to manually clean existing files and to identify better ways of entering, organizing, and displaying data. This includes the development of standardize templates and naming conventions for documents in GCdocs.

DND officials have also flagged that the current iteration of MAIVIS, which is built on the Microsoft Dynamics platform, is coming to the end of its useful lifespan and will no longer receive technical support from Microsoft. The DND is currently exploring the possibility of migrating the system to a newer version of Microsoft Dynamics or another platform.

³⁶ Internal Disclosure Office, IDO Intake Data Report (Report) (Ottawa: Department of National Defence, 2023). [IDO Intake Data Report]; For the purposes of complaint screening, nearly 50% of case outcomes were left unrecorded or unidentified for the 2020-2021 fiscal year. This percentage decreased to approximately 17% by 2022-2023 and currently sits at around 5% for 2023-2024.

Finding 4

The DND's internal case-management and quality assurance practices for whistleblowing have been ineffective, resulting in inconsistent and inaccurate data entry. This has compromised internal reporting and has necessitated a manual cleanup of files.

Recommendation: The DND continue the manual cleanup of its files and review its case management procedures and practices for whistleblowing to ensure logical and consistent data collection and capture. As part of this review, we recommend that the DND identify dedicated resources for quality assurance and the maintenance of case-management tools.

Aside from case-management practices, we note that the DG Corporate Integrity's organization does not currently have the necessary dedicated resources for quality control or file review. The current internal practice is for investigators to review other investigators' files upon request before they are passed up their reporting chain for additional review and approval. (See Finding 4)

Operational reality / implementation

The reality of designing and implementing a complaints process necessarily involves more than a pretty process chart and the right organizational resourcing. Once the responsible official determines that the step-by-step process is compliant with the enabling lawful authority and policy, there are a myriad of other tools and best practices that should be established.

Communication

Adequately communicating information is key to the parties' meaningful engagement in the process. Even an unfavourable decision has a better chance of being accepted if the parties understand the process, they have the opportunity to be heard, and the eventual decision is clearly explained. Effective communication of the process itself, including its purpose, the basis for decisions, and the procedural protections afforded to parties is critical.

ADM(RS) primarily communicates information about the whistleblowing complaint process through the organization's public-facing internet page and its departmental intranet page on the Defence Wide Area Network (DWAN or the Defence Network).

While the DG Corporate Integrity's primary focus in recent months has been on internal structural reconfiguration, the organization's outside-facing website has also received a partial overhaul.

As part of this overhaul, ADM(RS) has recognized that not all departmental employees have consistent access to the department's intranet. Some employees work in positions that do not make frequent use of computers, while others work in remote parts of the country where access to the Defence Network is inconsistent. Accordingly, the DG Corporate Integrity has aimed to make the same information available on both its intranet and public-facing sites.

Information concerning the DND's whistleblowing process is easy to locate on both ADM(RS)' intranet and public-facing webpages. Users can quickly access information about the process by clicking on one of five clearly visible links on the landing page. From here, they are provided with a succinct description of the process' purpose, factors to consider before filing a complaint, a list of other mechanisms that may be more suitable, information on how to file a complaint, and a description of what to expect after the complaint has been filed. All of this information is presented with a clear distinction between DND and CAF whistleblowing processes and is supported by visual aids. Relevant contact information is easy to find, both for filing complaints and seeking additional guidance. (Finding 5)

Finding 5

The DND's intranet and public-facing webpages for its whistleblowing process are easy to locate, clearly laid out, easily navigable, and provide DND employees with necessary information and resources.

In addition to providing information online, the DG Ethics and Investigations also provides periodic updates and interviews to the Maple Leaf, an online source of information and DND-CAF related stories for members of the Defence Community.³⁷ The goal of this engagement is to increase awareness of the whistleblowing process.

The DG Corporate Integrity also coordinates with other organizations within the Department to ensure that issues that might constitute wrongdoing under the *PSDPA* are directed to the right place. Within ADM(RS), this includes providing briefings and quarterly presentations to the Department's internal ethics division.

Effective administration

In large government organizations, internal administrators may be faced with a regular and ongoing influx of complaint files. The ability of administrators to efficiently screen complaints, administer processes, and provide timely resolution is crucial to ensuring that workplace issues do not compound and that the integrity of the public service is preserved.

From the 2012-2013 fiscal year to present, the DG Corporate Integrity's organization has received approximately 138 inquiries related to the *PSDPA* and 180 formal whistleblowing complaints. Of these, approximately 74 complaints proceeded to a formal investigation.³⁸

Based on the data provided for review, the length of a whistleblowing investigation ranges from around 73 to 466 days, with an average completion time of approximately 286 days.

While the Department's current policy framework reflects the *PSDPA*'s broad requirement for an "expeditious" investigation process, it does not provide timeframes or any measures to address lengthy or untimely delays (See Finding 3). According to ADM(RS)' annual reports to Treasury Board, the primary reasons behind delays in investigations were:

- waiting for responses from complainants and witnesses
- obtaining information from subject matter experts
- the complexity of individual cases
- temporary pauses to await the conclusion of other recourse mechanisms
- personnel shortfalls for screening complaints

³⁷ Canada, Department of National Defence, The Maple Leaf, About the Maple Leaf (Ottawa: Department of National Defence, 2023) online: <<https://www.canada.ca/en/department-national-defence/maple-leaf/about.html>>.

³⁸ Statistics provided June 2023.

In 2023, the Public Sector Integrity Commissioner published a report for its investigation into several whistleblowing complaints it received regarding the administration of whistleblowing complaints within the DND. The Commissioner found that the ADM(RS) had not been meeting its statutory requirements to publish founded cases of wrongdoing online and to inform parties of the outcome of its investigations.³⁹ In one case, 43 months had elapsed between the conclusion of an investigation and the publication of the findings.⁴⁰ The cause of these delays were found to be the result of a breakdown in the management of whistleblowing complaints, along with a lack of internal accountability and responsibility.⁴¹

As of the time of writing, the DIID is in the process of identifying and incorporating new service standards and best practices with the goal of establishing shorter timelines.⁴² Some improvements have already taken effect. Notably, since the 2022-2023 fiscal year, the average time for screening whistleblower complaints has improved, generally surpassing the IDO's 90-day service standard by over 15 days.⁴³

In addition to issues pertaining to timelines, administrators involved in the whistleblowing process must also occasionally contend with frivolous or vexatious complaints. Under the *PSDPA*, organizations have the right to refuse to deal with a disclosure if the matter could be better addressed under another mechanism, is not sufficiently important, or if the disclosure was not made in good faith.⁴⁴ This is made clear to potential disclosers in the text of the formal whistleblowing complaint form.⁴⁵

If an administrator identifies a complaint as frivolous or vexatious, no investigation will proceed. This decision is documented on the associated working file along with a written rationale for the determination.⁴⁶ It is currently unclear from existing policy documentation and internal procedure how this determination is typically made.

Even when complaints are made in good faith, administrators and investigators within ADM(RS) often face disruptions resulting from unreasonable complainant conduct. In some cases, complainants may refuse to accept findings or decisions, leading to lengthy and unproductive interactions. In others, complainants may overwhelm investigators' offices with unnecessary phone calls, e-mails, and printed materials, resulting in significant administrative burden.⁴⁷

In all instances of difficult complainant behaviour, the *Investigation Procedures Manual* emphasizes the responsibility of investigators and administrators to remain calm, show respect, demonstrate impartiality, and act professionally.⁴⁸

39 Public Sector Integrity Commissioner, Findings of the Public Sector Integrity Commissioner in the Matter of an Investigation into a Disclosure of Wrongdoing – Department of National Defence (Report) (Ottawa: Public Sector Integrity Commissioner, 2023) at p 3.

40 Ibid at p 7.

41 Ibid at p 9.

42 DSEI Strategic Plan, supra note 17; and DID Strategic Plan, supra note 26.

43 IDO Intake Data Report, supra note 36.

44 PSDPA, supra note 2, ss 2(1), 24(1).

45 Canada, Department of National Defence, Assistant Deputy Minister (Review Services), Disclosure of Wrongdoing Form - DND 4862-E (06-2022) CLF 2.0 (Ottawa: Department of National Defence, 2022) [Whistleblowing complaint form].

46 Investigation Procedures Manual, supra note 15 at 7.

47 Ibid.

48 Ibid.

Use of contractors

The federal government frequently uses the services of external contractors for short-term projects or where specific expertise is required. Where the services of contractors are engaged, it is crucial that they be provided with clear instructions, emphasizing adherence to procedure and procedural fairness. Quality control measures should be in place to ensure that requirements are met and that processes are carried out consistently. In all cases, the decision-maker has ultimate accountability.

As of present, ADM(RS) does not have externally contracted resources dedicated to the delivery of the internal disclosure process. However, resources can be contracted on an as needed basis.⁴⁹

Under normal circumstances, whistleblowing investigations are conducted by trained investigators within the DIID. Nonetheless, the DIID may engage external contractors in the following situations:

- internal investigators are unavailable due to an unusually high workload, absences, or other exceptional circumstances
- the nature of the complaint necessitates a gender-balanced investigation team and internal resources are not available
- the investigation relates to a complaint involving the Ombudsman's office⁵⁰

The DG Corporate Integrity indicated that information relating to the use of contractors has not been effectively tracked in the past. Due to a seven-year internal retention period for certain financial records and possibly poor record keeping, the earliest information available relating to external contractors was for an investigation commenced on 30 October 2017.

Since that time, ADM(RS) has used external contractors for eight investigations costing between \$4,800 and \$55,324.80. Based on the information provided, ADM(RS) has spent approximately \$267,317.40 on external contractors since 2017, with the average cost per investigation being around \$26,731.74.

When an external investigator is contracted, a senior investigator from within the DIID is assigned to act as a liaison to ensure compliance with the *PSDPA* and departmental policy. The DIID recognizes that not all investigators possess a high degree of familiarity with the process and endeavour to fill any gaps in knowledge through frequent communication, guidance, and monitoring.

⁴⁹ Information provided in writing by the Director General, Ethics and Investigations, Department of National Defence on 27 May 2023.

⁵⁰ DAOD 7024-1, *supra* note 6, s 4.10. In this situation, ADM(RS) is required under policy to contract an external investigator.

Use of multiple mechanisms

Parties are often uncertain what the appropriate mechanism is to address their concerns. Where possible, decision-makers and administrators should ensure that parties address their concerns through the correct or appropriate channel.

In accordance with the *PSDPA*, the ADM(RS) can refuse to deal with a whistleblowing complaint or commence a formal investigation if the subject-matter of the complaint has already been adequately dealt with or could be more adequately dealt with through another mechanism.⁵¹

For this reason, ADM(RS)'s complaint form asks complainants to indicate whether they have taken any other steps or engaged other mechanisms to address the issue in question. This includes whether the complainant has engaged:

- management
- the Integrated Conflict and Complaint Management
- alternate dispute resolution (ADR)
- the harassment complaint process
- the Police / MP / CFNIS
- the Ombudsman
- Labour Relations
- their Union
- the Human Rights complaint process⁵²

The form then asks that the complainant provide additional details, including a description of the outcome for any mechanism engaged, the timeline of events, and a point of contact if applicable.⁵³

Once the IDO receives the complaint, they will screen it and determine if another mechanism would be more appropriate to deal with the issues raised. If so, the complainant is advised directly to communicate with that other mechanism.⁵⁴

The possibility of addressing complaints through more appropriate mechanisms is also communicated to potential parties on the DG Corporate Integrity's intranet and public-facing webpages. While descriptions are not provided for the potential available processes, hyperlinks are included allowing users to access more information for each.

51 *PSDPA*, supra note 2, s 24(1).

52 Whistleblowing complaint form, supra note 45.

53 *Ibid.*

54 Internal Disclosure Procedures Manual, supra note 16 at 12.

Findings and recommendations

Finding 1

The DND's policy framework for whistleblowing is compliant with applicable legislation, regulation, and Treasury Board policy.

Finding 2

The DND's policy framework for whistleblowing does not presently identify an alternate decision-maker in the event that a complaint is filed within the ADM(RS)' reporting chain, creating a potential risk for breaches of procedural fairness.

Recommendation: The DND review its policy framework for whistleblowing to identify an alternate decision-maker in the event that a complaint is filed within the ADM(RS)'s reporting chain.

Finding 3

The DND's policy framework for whistleblowing does not identify measures or mitigating strategies to address lengthy or untimely delays in the administration of the process.

Recommendation: The DND review its policy framework for whistleblowing to clearly identify measures or mitigating strategies to address lengthy or untimely delays in the administration of the process.

Finding 4

The DND's internal case-management and quality assurance practices for whistleblowing have been ineffective, resulting in inconsistent and inaccurate data entry. This has compromised internal reporting and has necessitated a manual cleanup of files.

Recommendation: The DND continue the manual cleanup of its files and review its case management procedures and practices for whistleblowing to ensure logical and consistent data collection and capture. As part of this review, we recommend that the DND identify dedicated resources for quality assurance and the maintenance of case-management tools.

Finding 5

The DND's intranet and public-facing webpages for its whistleblowing process are easy to locate, clearly laid out, easily navigable, and provide DND employees with necessary information and resources.

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