
Federal whistleblower legislation receives Royal Assent

Bill C-11, the *Public Servants Disclosure Protection Act*, received Royal Assent on November 25, 2005. The Bill, which has been criticized for not going far enough in protecting federal employees who report wrongdoing, will come into force on the order of Cabinet. The Bill applies to much of the federal public service and to a number of federal Crown corporations. As well, it establishes the Office of the Public Sector Integrity Commissioner (Commissioner). The following is a brief outline of some of the Bill's provisions.

“WRONGDOINGS”

The legislation establishes a list of “wrongdoings” that public servants may disclose, including contraventions of federal or provincial statutes, misuse of public funds, “gross mismanagement” in the public sector, any act that creates a substantial danger to the life, health or safety of persons or to the environment, and reprisals against a public servant for making a disclosure under the Act.

DISCLOSURE – INTERNAL AND EXTERNAL

Public servants are permitted to disclose actual or potential wrongdoings to their supervisors or to senior officers designated by senior management to receive disclosures. This is the default disclosure provision. However, where the public servant reasonably believes that it would not be appropriate to make the disclosure internally or where the disclosure has been made internally and the public servant believes that the matter has not been dealt with appropriately, he or she may make the disclosure to the Commissioner. Further, where there is not sufficient time to make the disclosure in the manner prescribed, and where the public servant reasonably believes that the matter involves a serious offence under federal or provincial law, or that there is an imminent risk of danger to life, health or safety or to the environment, the public servant may make the disclosure to the public.

REPRISALS

Reprisals against public servants making disclosures or cooperating with investigations under the Act are prohibited. Complaints regarding reprisals are to be made to the Public Service Staff Relations Board or to the Canada Industrial Relations Board, depending on where the public servant is employed. While the Board's remedies include reinstatement and damages for the employee suffering the reprisal, the Act provides no penalties for those committing reprisals.

COMMISSIONER

The Commissioner is to be appointed by Cabinet after the appointment is approved by resolution of the Senate and the House of Commons. Among the Commissioner's duties is receiving of reports of wrongdoings and establishing whether there are sufficient grounds for further action, conducting investigations into alleged wrongdoings, and making recommendations to senior

executives to correct wrongdoings. As well, the Commissioner is to protect the identity both of persons reporting the wrongdoing and persons alleged to be responsible for the wrongdoing.

In making a report of his or her findings to a senior executive, the Commissioner may request that the executive provide notice of any actions taken to implement the Commissioner's recommendations, or the reasons as to why no action was taken. Where no action has been taken, or where the matter constitutes an imminent risk of danger to life, health, safety or the environment, the Commissioner may report the matter to the responsible Minister. The Commissioner is also to submit an annual report to Parliament and may make special reports in respect of urgent or important matters that the Commissioner believes should not be deferred until the annual report is made.

In Our View

The new legislation has been criticized for giving too much control over the disclosure process to government bureaucrats, for not giving the Commissioner more independence from the government of the day and for giving the Commissioner the power only to make recommendations. In this connection, because these powers are restricted to making recommendations, they may not be reviewable by a court. Further, it should be noted that the only disclosures protected from reprisal are, subject to some exceptions, those made in accordance with the Act. Accordingly, if a public servant makes a disclosure to the Commissioner before using the internal process specified, he or she may not be protected from reprisals.

For more on the issue of whistleblowers, see "[Supreme Court interprets whistleblower provision of Saskatchewan employment standards statute](#)" on our What's New page.

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