

Auditing Whistleblower Programs

How to make a whistleblower policies and procedures **effective**

This material is prepared for individuals within the public sector responsible for implementing policies and procedures to manage and investigate disclosures of wrongdoing under the *Public Interest Disclosure (Whistleblower Protection) Act* (the Act)

This material provides advice on ways to make whistleblower policy and procedures *effective* and is supplemental to specific legislative requirements that must exist within the procedures.

Learn more about the specific legislative requirements, including a procedures checklist, [here](#).

Six Key Elements of an Effective Whistleblower Policy and Procedure:



- ① Have a distinct and simple policy and procedure
- ② Have a clearly defined scope
- ③ Ensure the autonomy of the designated officer
- ④ Ensure procedural fairness
- ⑤ Ensure confidentiality
- ⑥ Have a strong and enforceable policy

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Have a distinct and simple policy and procedure



- The whistleblower policy and procedure should be independent from all other internal procedures (i.e., code of conduct)
- The procedure for making a disclosure should be distinct from any other complaint process
- The designated officer must be the person responsible for **receiving** and **managing** whistleblower complaints and requests for advice. The designated officer can obtain assistance where needed, but must be the decision-maker
- Avoid use of third party reporting systems

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Have a distinct and simple policy and procedure



- The procedures should be easy for employees to find.
- Avoid convoluted procedures. They should be simple enough to motivate the employee to use them.
- The procedures should clearly set out the process to be used for an employee to seek advice and to make a disclosure of wrongdoing, *including the name and contact information for the designated officer.*

*The main objective of a whistleblower policy should be to encourage employees to report wrongdoing **internally**, and to use the established procedures. This is achieved by making the procedures as simple to follow as possible.*



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Have a clearly defined scope



- Clearly define the type of wrongdoing the whistleblower policy applies to -as outlined in section 3 of the *Public Interest Disclosure (Whistleblower Protection) Act*. **Do not** include other forms of misconduct not considered “wrongdoing” in the Act, (e.g., *Code of Conduct and policy violations*).
- Do not use alternate terminology to describe wrongdoing to which the policy applies (e.g., *Unethical activity, improper activity, inappropriate conduct*). The policy and procedure should only apply to wrongdoing as defined in section 3 of the Act.
- Have a process in place with specific criteria to assess whether or not the complaint falls within the jurisdiction of the Act.
- Clearly define the roles and responsibilities of all participants – the whistleblower, witnesses, the employer and the alleged wrongdoer.



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Ensure the autonomy of the designated officer



- The designated officer should have a direct reporting line to the chief officer.
- The designated officer's investigations and decision-making is not subject to review by anyone other than the chief officer.
- The designated officer is free to seek advice from the Commissioner, the chief officer, the organization's legal counsel, or external legal counsel when appropriate.
- The designated officer must be given full authority and unfettered access to all information and records necessary for the investigation (per section 29 of the Act), and be given authority to require employees to participate in an investigation.



4 Ensure procedural fairness



- Ensure participation rights of all parties (*Persons accused of wrongdoing have the right to respond to the allegations and evidence against them*)
- Maintain impartiality (*Investigations must be free of bias*)
- Establish a recusal procedure if the designated officer is in a real or perceived conflict of interest
- Provide legitimate expectations to employees on outcomes and timelines
- Provide the complainant and alleged wrongdoer with a decision and adequate reasons for the decision
- Provide the process of appeal (i.e., the Public Interest Commissioner)



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Ensure confidentiality



Confidentiality is paramount for employees to have confidence in the process. To gain unfettered information, employees need to be able to speak directly with the designated officer and be able to provide information in confidence.

- Ensure confidentiality for employees reporting wrongdoing, witnesses participating in investigations, and persons accused of wrongdoing
- Establish a dedicated email account and record keeping location with restricted access to the designated officer, and those assisting the designated officer



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Ensure confidentiality



- The identify of whistleblowers and witnesses is only disclosed:
 1. To the chief officer by the designated officer when necessary to effectively report on the matter
 2. To the Public Interest Commissioner
 3. When required by law
 4. If the whistleblower publicly reveals their identity

- The identity of the wrongdoer is only disclosed:
 1. To the chief officer by the designated officer when necessary to effectively report on the matter
 2. By the chief officer to others in the organization, or externally, in order to give effect to corrective measures
 3. To the Public Interest Commissioner
 4. When required by law



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Have a strong and enforceable policy



For employees to have confidence in whistleblower policy and procedures, the organization needs to proclaim its importance and commit to its enforcement.

- The policy should highlight the organization's support and commitment to employees who come forward to report wrongdoing in the public interest
- The procedures must include all legislative requirements within section 5 of the Act
- Ensure employees are informed of the whistleblower policy and procedures, and include it as part of the new employee onboarding process



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Have a strong and enforceable policy



- The policy should utilize strong language enforcing the protection of employees who report wrongdoing, and that incidents of reprisal will be reported to the Public Interest Commissioner
- The policy should identify the severe repercussions that may occur for taking a reprisal against an employee including prosecution under the Act, termination of employment, reporting to regulated professional society (where appropriate), and civil recovery of losses to the organization (where appropriate)
- The policy should outline the consequence of obstructing or refusing to participate in an investigation by the designated officer



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Have a strong and enforceable policy



- Where the alleged wrongdoing relates to the chief officer, board of directors/trustees, or is a superior of the designated officer, the disclosure should be referred to the Commissioner
- The policy should outline the designated officer's authority to make recommendations, and the chief officer's authority to apply corrective measures (section 53.1)
- Highlight the organization's willingness and commitment to work collaboratively with the Public Interest Commissioner to identify and remedy wrongdoing



Need some assistance?

Contact the office of the Public Interest Commissioner for assistance on developing and revising whistleblower policies and procedures.

By Phone

Edmonton 780.641.8659

Toll Free 1.855.641.8659

By Email

info@pic.alberta.ca

Or visit the Commissioner's [website](#) for template policies and procedures for all **Public Entities, School Divisions** and **Independent Schools**.