

Public Interest Disclosure Investigations

Key considerations for Designated Officers
investigating disclosures of wrongdoing under the
Public Interest Disclosure (Whistleblower Protection) Act



**PUBLIC INTEREST
COMMISSIONER**



Key Considerations Overview:

1. Have a distinct role and process
2. Avoid conflicts of interest
3. Maintain confidentiality
4. Plan the investigation
5. Distinguish wrong vs. “wrongdoing”
6. Ensure procedural fairness
7. Apply meaningful corrective measures

Key Consideration: *The role of the designated officer and process of investigation are distinct*

- When managing disclosures of wrongdoing (disclosures), the role of the designated officer changes from their regular position and duties to that of the designated officer.
- Investigations under PIDA should be separate from any other internal process.
- The designated officer's reporting line is direct to the Chief Officer when managing and investigating disclosures.
- Designated officers must have autonomy and make decisions free of influence.

Designated officers have a distinct legislative mandate similar to the Public Interest Commissioner. They are responsible for managing and investigating serious and significant wrongdoing in the public interest.

Key Consideration: *Avoid conflicts of interest*

→ Avoid *real* or *perceived* conflict of interest:

- *Designated officer has been involved in the matter*
- *Designated officer is subordinate to the alleged wrongdoer*
- *Designated officer is related to alleged wrongdoer or there may be a perceived relationship between the designated officer and the alleged wrongdoer that extends past work colleagues*

→ An employee will not have confidence in process if they perceive a conflict exists. Outcome will likely be challenged.

→ Where a real or perceived conflict exists, seek advice from the Commissioner.

Key Consideration: *Maintain confidentiality*

- The Act requires an organization's whistleblower policy include procedures for protecting the identity of:
 - *The whistleblower*
 - *Witnesses*
 - *Alleged wrongdoer*
- Confidentiality is necessary not only to protect the whistleblower and those employees who assist the investigation, but to protect the alleged wrongdoer from unnecessary harm or damage to their reputation.
- Limit persons in the know to only those necessary for the purpose of the investigation (designated officer discretion)
- Disclosing the identity of a whistleblower, witness, or wrongdoing necessary:
 - *To ensure procedural fairness and natural justice*
 - *Where required by law*
 - *Where necessary to give effect to corrective measures*

Key Consideration: *Plan the investigation*

- **Consider the nature of the matter and determine the expertise and resources required. This may include:**
 - Deploying internal resources
 - Retaining subject-matter experts
 - Seeking assistance from the Commissioner's office

- **Develop an investigation plan**
 - Define the issue of investigation
 - Determine the scope of work
 - Plan investigation process, evidence required, and persons to be interviewed

Designated officers are not expected to have the expertise to investigate all types of matters brought to them. The expectation is they manage the investigation of the disclosure as they see fit.

Key Consideration: *Distinguish wrong vs. wrongdoing*

- “**Wrongdoing**” is specifically defined in the Act. Wrongs are other concerns identified during the investigation that do not rise to the level of wrongdoing.
- Designated officers are not precluded from addressing other wrongs discovered during an investigation; however, a finding of “wrongdoing” must conform to the definition within the Act.
- Only the Commissioner may investigate reprisal complaints under the Act.

Wrongdoing	Wrong
→ <i>Contraventions of law</i>	→ <i>Contraventions of policy</i>
→ <i>Acts or omissions creating a danger to life, health or safety of individuals or the environment</i>	→ <i>Contraventions of codes of conduct</i>
→ <i>Gross mismanagement of public fund, public assets or the delivery of a public service</i>	→ <i>Individual instances of bullying, harassment or intimidation</i>
→ <i>Gross mismanagement of employees</i>	→ <i>Poor management decisions</i>

Key Consideration: *Ensure procedural fairness*

- **Right to have the matter reviewed impartially and free from bias**
 - If designated officer feels they are unable to review the matter impartially, it is incumbent on them to recuse themselves.

- **Right to respond to the allegations and the evidence supporting the findings**
 - This does not include identifying the whistleblower or witnesses.
 - Designated officers have discretion on process. Responses may be received orally (interview) or in writing.
 - **Recommendation:** Allow persons potentially impacted by a decision to review and respond to preliminary findings.

*Investigations conducted under the Public Interest Disclosure (Whistleblower Protection) Act must be conducted in accordance with the principals of **procedural fairness** and **natural justice***

Key Consideration: *Ensure procedural fairness*

→ **Right to a decision and reasons**

- Designated officers should document their decisions and reasons. This includes the decision whether to investigate a disclosure and findings following an investigation as to whether wrongdoing has occurred.
- Decisions and reasons for the decision must be provided to the complainant and alleged wrongdoer(s).
- Complainants have the right of appeal to the Public Interest Commissioner.

→ **Right to have matter addressed without undue delay**

- Disclosures under the Act are serious matters of public interest and should be given preference.
- Obtain additional resources (internal, external) if needed.
- Keep parties informed and provide reasonable expectations.

Key Consideration: *Apply meaningful corrective measures*

- An investigation finds wrongdoing – corrective measures fix it.
- Designated officers recommend corrective measures. Chief officers are responsible for applying them.
- Corrective measures must be meaningful:
 - Do they resolve the wrongdoing?
 - Do they prevent future occurrences?
 - Do they recover losses or damages to employees or the employer?
 - Do they instill employee confidence?
 - Do they instill public confidence?



Need some assistance?

Contact the office of the Public Interest Commissioner for advice or assistance on managing and investigating public interest disclosures.

By Phone

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By Email

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Visit the Commissioner's website for additional information and resources at www.yourvoiceprotected.ca.