

Assessment of Canada's Legislation Protecting Public Sector Whistleblowers

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About the Centre for Free Expression

The Centre for Free Expression (CFE) at Toronto Metropolitan University focuses on issues related to freedom of expression and the public's right to know. This includes campus free expression, academic freedom, hate speech, censorship, disinformation, access-to-information, whistleblower protection, anti-SLAPP legislation, corporate and government surveillance, and freedom of the press. The Centre sponsors public educational events, does research, provides advice, and engages in advocacy on these issues. Our work is undertaken in collaboration with academic and community-based organizations across Canada and internationally.

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About these Assessments

The assessments of Canadian whistleblowing statutes are based on the CFE's *Evaluation Criteria for Protection of Whistleblowers*, examining both what's on paper in the Act and how it is working in practice. These criteria were developed by CFE senior fellows David Hutton and Ian Bron in consultation with the Government Accountability Project (GAP) and the Whistleblowing International Network (WIN). They are based on Transparency International and GAP best practice criteria, and informed by EU whistleblowing Directive 2019/1937, as well as CFE experience. Criteria for the law on paper are intended to assess its potential to meet stated and implied objectives. Data for assessing the effectiveness of the law in practice should demonstrate whether it is actually meeting its objectives. This may come from government reports, cases in legal databases, and media reports.

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Assessment of Whistleblowing Provisions
Government of Canada

***Public Servants Disclosure Protection Act*, S.C. 2005, c. 46**

1. Overview

The *Public Servants Disclosure Protection Act* (PSDPA) came into force in 2007. It is supported by the *Public Servants Disclosure Protection Tribunal Rules of Procedure*, SOR/2011-170 2013. The PSDPA includes three main requirements. First, it mandated that department and agency heads develop safe avenues for federal public servants to make disclosures of wrongdoing (whistleblowing). Second, it created the Office of the Public Sector Integrity Commissioner (OPSIC) as an Agent of Parliament.[1] Third, it created an obligation that departments and the Treasury Board of Canada Secretariat develop codes of conduct; violations of these are deemed wrongdoing. The *Values and Ethics Code for the Public Sector* was published in 2012. Fourth, it created the Public Servants Disclosure Protection Tribunal (PSDP Tribunal) to hear cases of reprisal.

There are three sources of authority under the Act. The Public Sector Integrity Commissioner is an officer of Parliament whose primary duties include receiving and investigating disclosures of wrongdoing and receiving and investigating complaints of reprisal. The Office of the Public Sector Integrity Commissioner (OPSIC) must report annually on disclosures and complaints. The Office of the Chief Human Resources Officer (OCHRO) in the Treasury Board Secretariat is responsible for the *Values and Ethics Code for the Public Sector*. It is also responsible for disseminating information about the Act and reporting annually on department and agency disclosures. Chief executives of departments and agencies are responsible for their own codes of conduct and the establishment of procedures for receiving and investigating disclosures of wrongdoing. They provide information on these activities to the OCHRO.

Despite a review by the House of Commons Standing Committee on Government Operations and Estimates (2017) and a private member's bill in 2022, both of which made numerous recommendations for improvement, the PSDPA remains essentially unchanged since 2007. As written, it fails all five categories of the Centre for Free Expression (CFE) Whistleblowing Initiatives Evaluation Criteria for the Protection of Whistleblowers.

In the first category, **Freedom to blow the whistle**, the PSDPA has five critical weaknesses: (1) the inclusion of motive via subjective "good faith"[2] reporting requirements, (2) there is no

[1] In Canada, an Agent of Parliament is an independent, non-partisan official who reports directly to Parliament rather than the government. Importantly, they are not members of the bureaucracy but above it, intended to hold the government accountable through oversight of administration, spending, and compliance with laws.

[2] See "Who is protected" in Section 2 for an explanation of good faith and its preferred alternative, "reasonable belief."

protection for disclosures made in the course of duties, (3) there is limited or no protection for disclosures by contractors and other workers not classified as employees, (4) there is no right for workers to refuse to commit a wrongdoing, and (5) there are no mechanisms to escalate disclosures to the public if they are not properly handled by the organization and the OPSIC. Further, while the Act does allow for confidential disclosures, there is no obligation to investigate anonymous disclosures – even when sufficient information is provided. More positively, it does allow public whistleblowing for very serious wrongdoing and when there is a threat to human life and safety, or to the environment. It also mandates that federal police and national security agencies establish their own equivalent procedures.

Under the second category, **Preventing reprisals**, the PSDPA has three critical weaknesses: (1) there is no obligation for organizations to proactively protect whistleblowers, (2) Commissioners do not have the same powers to investigate reprisals that they do for investigating wrongdoing, and (3) there is no means to stop reprisals while investigations are conducted (often referred to as interim relief, or injunctive relief when made by a court). Further, while confidentiality is theoretically protected, recent court challenges have exposed vulnerabilities.[3] Confidentiality could also be strengthened with prohibitions and sanctions for breaches (or attempted breaches). It does protect those seeking advice and witnesses but does not protect recipients or investigators of disclosures, or other individuals who may support the whistleblower. This may be a vulnerability when powerful officials are implicated in wrongdoing.

In the third category, **Redress for reprisals**, the Act has three key weaknesses: (1) it does not reverse the burden of proof in establishing that detrimental action was in response to a disclosure (actual or suspected), (2) the OPSIC acts as a gatekeeper[4] for whistleblowers seeking redress at the PSDP Tribunal, and (3) it does not offer a full range of "make whole" remedies (e.g., it omits potential future loss of earnings). Also, in its almost 20-year history to date the PSDP Tribunal has not provided a remedy to any whistleblower.

There are two critical weaknesses under the fourth category, **Protecting the public interest**: (1) corrective processes lack credibility because there are no mandatory standards for investigations, and because whistleblowers have no right to rebut evidence from implicated officials (while chief executives from those agencies do have this right), and (2) the Commissioner must cease investigating evidence that is from outside the public sector, making it impossible to investigate wrongdoing by public servants when there is any private sector involvement. More positively, the Commissioner can, when investigating allegations of wrongdoing, compel public servants to provide evidence.

[3] See sub-section 5.5 (Adjudicative Decisions) of this report for details of these cases.

[4] That is, the OPSIC investigates and determines whether a claim may be made at the PSDP Tribunal.

Finally, considering the fifth category, **Evidence of effectiveness**, there are two critical weaknesses: (1) there are no meaningful performance measurements of the regime and (2) there is no mandated review of the Act by Parliament – except after the first five years of the Act coming into force (i.e., 2012). This absence of review makes it impossible for policymakers or the public to know whether the regime is functioning properly or how it could be improved. Notably, the recommendations of the 2017 legislative review by the Standing Committee on Government Operations and Estimates were ignored. It is unclear whether this review was the mandated review as the government launched an administrative review in 2022, with a target date to report in 2024. At the time of writing, this report has not yet been published.

With respect to implementation, the Act has been troubled from the outset. The first Integrity Commissioner produced no results and violated the PSDPA herself by making a reprisal against an employee (Canada. Office of the Auditor General, 2010). Subsequent Commissioners performed somewhat better, but the OPSIC's history of opposing whistleblowers in the courts did little to increase trust in the regime. This has resulted in low use and few findings of serious, systemic misconduct – despite several instances of such erupting into public view. The results from departmental integrity officials suggest a lack of independence on their part and uneven public reporting of misconduct. Additionally, OPSIC reports suggest systemic problems in several departments and agencies – problems which internal officials have not been able to correct.

As described in sub-section 5.5, Adjudicative Decisions, the interpretation and enforcement of the Act by the PSDP Tribunal and the courts have also disadvantaged whistleblowers. Confidentiality, the sole explicit protection for whistleblowers and witnesses, has been successfully challenged and undermined in two court cases. Recent decisions have also tightened disclosure requirements and set a standard for proving reprisal that is likely to be insurmountable to future whistleblowers. Overall, despite some early modest successes by whistleblowers, the PSDP Tribunal and the courts appear hostile to whistleblowers, and do not appear to understand the dynamics of whistleblowing and the reprisals that typically follow. Accordingly, it is not surprising that no whistleblower has been awarded any remedy by the Tribunal or courts in the 18 years since the Act came into force.

2. Key Features of the Act

The following describes aspects of the Act as they are written. They are not to be read as best practices; Part 4 of this assessment provides a detailed list of limitations and shortcomings.

The PSDPA states that its purpose is to:

- maintain and enhance public confidence in the integrity of public servants,
- establish effective procedures for the disclosure of wrongdoings and for protecting public servants who disclose wrongdoings,
- establish a code of conduct for the public sector, and
- balance the duty of loyalty to the employer with rights to free expression under the *Canadian Charter of Rights and Freedoms* (Preamble to the Act).

Who may make a protected disclosure (i.e., blow the whistle), and to whom: A public servant (as defined in sub-s. 2(1)) may make a disclosure to:

- their supervisor or to a designated senior officer in their department or agency (s. 12),
- the OPSIC (s. 13), or
- the public (e.g., media) when there is an imminent threat to health, safety, or the environment, or when there is a serious offence of a federal or provincial law (s. 16).

Disclosures to the public may only be made when there is insufficient time for an internal disclosure.

Definition of wrongdoing: The following constitute a wrongdoing, if relating to the public sector (as defined in sub-s. 2(1)):

- A contravention of federal or provincial law or regulations,
- A misuse of public funds or a public asset,
- 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 public servant,
- A serious breach of a code of conduct, and
- Knowingly directing or counselling a person to commit a wrongdoing (s. 8).

Notably, the development of the *Values and Ethics Code for the Public Sector* was delayed for five years after the implementation of the PSDPA. This made it impossible to investigate many ethical breaches in that period since these would not fall within the definition of wrongdoing. Miscarriages of justice, abuse of authority, and acts which are legal but undermine the intent of legislation are not explicitly included – but may be captured under gross mismanagement, depending on interpretations by enforcement and adjudicative authorities.

Who investigates disclosures: An official designated by the head of a department or agency if the disclosure is made internally (s. 10), or the OPSIC if the disclosure is made directly to the OPSIC (ss. 26-35). Notably, these officials may not investigate misconduct if the evidence is outside the public sector.

To be protected, a disclosure must be: Made in writing to a supervisor, a senior officer designated to receive disclosures, or the OPSIC (ss. 12-18). Disclosures are also protected if they are made:

- 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 (sub-s. 2(1)).

This limited list of recipients for disclosures puts those reporting misconduct in other ways and to other individuals at risk of reprisal. For example, disclosures to a colleague or another agency (perhaps with an oversight role) are not protected. The requirements for specific formats in

disclosures can also expose workers to pre-emptive reprisal; it is not unknown for wrongdoers to target employees who have expressed curiosity or made informal comments about misconduct. Such employees would not be protected under the PSDPA. So-called "magic words" such as "I am making a protected disclosure" should also not be required.

Who is protected: Current or former public servants in federal government departments and other bodies who have, with reasonable belief and in good faith (sub-s. 2(1)) sought advice, made a disclosure, or cooperated in an investigation. Some private sector employees are also protected (see s. 42.1), and contractors have some protections against the cancellation of contracts under s. 42.2.

The good faith requirement introduces the whistleblower's motive as a criterion and has been interpreted as requiring whistleblowers to have purely altruistic motives when making a disclosure. This is unrealistic,[5] subjective, impossible to prove, and irrelevant to the value of the information provided in the disclosure. It should be replaced by "reasonable belief." Reasonable belief may be determined using two criteria: whether the person making a disclosure subjectively believed they were reporting a wrongdoing, and whether an objective third person (i.e., not involved in any way in the dispute) would reach the same conclusion from similar facts and circumstances.[6]

Reprisals may also be directed at supporters, friends, colleagues, and family members of whistleblowers; protections should be extended to them as well. Finally, for greater clarity, recipients and investigators of disclosures should be explicitly included as a protected group, since they may be targeted for taking up the whistleblower's case.

Definition of reprisal: Actions taken or counseled in response to a request for advice, a disclosure, or cooperation with an investigation under the Act, including:

- A disciplinary measure,
- A demotion,
- A termination,
- Any measure adversely affecting an employee's employment or working conditions, and
- A threat to take one of the above actions (sub-s. 2(1)).

The Act does not explicitly capture informal reprisal (e.g., ostracizing, micromanagement, being set up for failure) or measures that fall outside the workplace (e.g., blacklisting, legal threats

[5] Whistleblowers may have complex motives for speaking up, including vindication and resentment against wrongdoers making reprisals, some of which may evolve in response to reprisals. Considering these as disqualifying would also treat whistleblowers more harshly than criminal informants, who are protected despite obvious self-serving motives.

[6] Evidence of the subjective belief may still be required. Neither is a perfect concept but given U.S. experience with the concept of good faith, reasonable belief is now the preferred term.

sent to the employee's home, being denounced to media, social media attacks, malicious rumours and social isolation of the whistleblower and their family within the community).

Who investigates reprisal: The OPSIC conducts a preliminary investigation and, if it concludes that a reprisal likely occurred, refers the matter to the PSDP Tribunal. The Tribunal then conducts hearings. The Commissioner may recommend conciliation (ss. 20-20.1).

Given that the OPSIC lacks the powers to compel evidence and testimony in reprisal complaints, and the lack of standards for investigators and investigations, the gatekeeper role of the Commissioner is inappropriate. Even when whistleblowers have gained access to the Tribunal, this has come with significant delays. This could be corrected by allowing individuals to apply directly to the Tribunal, giving the OPSIC greater powers when investigating reprisal, or allowing civil suits to obtain redress.

What body offers a remedy: The PSDP Tribunal makes the final determination on remedies, where it deems it appropriate, in accordance with s. 21.7. Decisions of the PSDP Tribunal can be brought to the Federal Court of Appeal for judicial review.

3. Suggested Improvements

To achieve its stated objectives, the PSDPA needs a significant shift in its priorities and some targeted amendments to the Act. Broadly, it needs to place much greater emphasis on more proactive protection for whistleblowers. Confidentiality is currently the only such protection at present, but it is only effective if wrongdoers cannot otherwise surmise the identity of the whistleblower. Further, there should be sanctions for either violating a whistleblower's confidentiality or attempting to identify them. Effective protection should also prevent reprisals from starting, and failing this, it should halt and reverse these quickly to prevent the whistleblower being worn down to the point that they abandon their disclosure. This would also minimize professional, social, and psychological harms. Such protective measures are best identified by a risk assessment and may include, for example, separating the whistleblower from individuals implicated in the disclosure of wrongdoing (or vice-versa) and providing legal, social, and psychological support and advice.

In addition, this legislation implicitly equates redress with protection. However, experience in other jurisdictions has shown that the process of obtaining redress usually takes years, if it comes at all, and extracts a heavy toll on the whistleblower. Reprisals and their psychological and financial effects typically continue unchecked during this time. This undermines the logic of the law, which is that protection (and redress) will encourage employees to report wrongdoing. Even if the whistleblower eventually succeeds, the personal cost – in terms of harms to career, finances, friendships, family and mental health— is typically punitive and is often intended to provide a deterrent to others who might consider blowing the whistle.

Overall, the design of the PSDPA channels disclosures through controlled avenues and gives more rights to organizations and alleged wrongdoers than to whistleblowers. While formal avenues can be critical in ensuring proper procedures are followed, when badly designed they

may also prevent legitimate concerns from being raised or properly investigated. This may happen because certain classes of workers are not protected, authorities are forced to abandon investigations, whistleblowers are unable to rebut false evidence from implicated parties, or through restrictive interpretations of subjective terms in law (e.g., gross mismanagement). The PSDPA regime would benefit by allowing more flexibility for workers in making disclosures and broadening definitions of wrongdoing and reprisal. Examples of more comprehensive definitions of wrongdoing and reprisal can be found in *Ireland's Protected Disclosures Act 2014*, *ISO 37002: Whistleblowing Management Systems*, and the *EU Directive 1937/2019*.

Furthermore, disclosures made to the OPSIC are not subject to freedom of information requests, and those made within departments have many exemptions which can be applied. This is especially true where the statutory threshold of wrongdoing is not determined to have been reached, which may prevent errors and misconduct from reaching the awareness of legislators or the public. While it is understood that confidentiality must be maintained when wrongdoing is not found, more comprehensive reporting requirements and regular audits and evaluations would mitigate this problem.

Six specific suggestions for improvements are to:

1. Expand protected disclosure to all workers, including employees, contractors, temporary staff, interns, volunteers, and job applicants,
2. Mandate the proactive protection of workers making disclosures, informed by a risk assessment, with chief officers held accountable for failures,
3. Establish a reliable, timely and effective process for workers to obtain interim relief from reprisals while investigations are ongoing,
4. Establish a standard for proving reprisal that shifts the legal burden of proof to the organization once the worker has established a prima facie case of reprisal,
5. Set well-defined high standards for investigations and investigators, including for competence, and
6. Require meaningful performance indicators and data to be gathered to support routine monitoring and the evaluation or audit of the regime every five years.

4. Detailed Assessment Explanation and Scores

The following are brief explanations of the five categories of the CFE's *Evaluation Criteria for Protection of Whistleblowers*, the concept of "critical weaknesses," and how categories are scored.

1. **Freedom to blow the whistle**: How free workers are to raise a concern about anything that may threaten the public interest, without barriers, hazards, or uncertainties.
2. **Preventing reprisals**: Whether the law prevents reprisals, ensures investigations into reprisal will be timely and competent, and has consequences for those responsible.
3. **Redress for reprisals**: Whether whistleblowers can obtain complete remedies in a timely manner.
4. **Protecting the public interest**: Whether disclosures are investigated in a competent and timely manner, appropriate and timely corrective action is taken, and appropriate information on findings and action is available to all parties and the public.
5. **Evidence of effectiveness**: This assesses whether evidence on the effectiveness of the whistleblowing regime is collected and made readily available, and whether it undergoes improvement based on that information.

Critical weaknesses: Critical weaknesses are those which international experience has shown will render a whistleblowing law ineffective even when oversight officials are exercising their full powers. For example, U.S. experience has shown that success rates in obtaining a remedy are about ten times higher when the burden of proof for reprisals is reversed (i.e., the employer must prove that detrimental action is *not* related to whistleblowing). Even then, the odds of success are below 33 percent (Devine, 2016).

The overall score is the **lower** of design and implementation scores since poor implementation nullifies good design (and vice versa).

Category assessed	Evaluation of Design (what's on paper)	Evaluation of Implementation (how it works in practice)	Score
1. Freedom to blow the whistle, etc.	• Fully meets the purpose of the category • There are no critical shortcomings	• There is substantial evidence that it is working well in practice	5 4
	• Although there are some shortcomings, generally meets the purpose of the category • There are no critical shortcomings	• There is evidence to demonstrate that is generally working in practice	2-3
	• Does not meet the purpose of the category • There are one or more critical shortcomings	• There is inadequate evidence or usage to demonstrate that it is working in practice	1 0

Table 1: Assessment of the Public Servants Disclosure Protection Act

Category	Design	Implementation	Score
1. Freedom to blow the whistle	***Strengths in the law:*** ✓ It includes code of conduct violations as a form of wrongdoing ✓ It allows for anonymous disclosures and from the public to be accepted and investigated ✓ Disclosures to the public are protected in cases of imminent danger to life, health or safety of persons, or to the environment, or if a serious crime has been committed ✓ The Act requires that national security and policing agencies have internal disclosure systems that are equivalent to the rest of the public sector ***Weaknesses in the law:*** × It contains subjective terms (e.g., substantial and specific danger, gross mismanagement) which may be interpreted to their advantage by implicated officials × The definition of reprisal is limited to formal discipline in the employment context × Employees are not protected if they refuse orders to commit a wrongdoing × It includes subjective and overly broad reasons to dismiss a complaint or end an investigation, such as any "valid reason" × Informal disclosures to other bodies are not protected × It does not mandate a mechanism or protection for anonymous disclosures × It does not protect emergency disclosures to the public × It has no ban on gag orders or non-disclosure agreements × It contains no equivalent whistleblower protections for policing matters ***Critical weaknesses that fatally undermine the law:*** ! It does not cover contractors, temp staff, job applicants, and others not considered full employees ! It includes a "good faith" requirement, which introduces motive as a qualifier (should be "reasonable belief") ! Disclosures made in course of duties are not covered (e.g., role-related or simply mentioning to colleagues that something may be illegal)	***Strengths in practice:*** ✓ Use of regime appears to have increased in recent years, suggesting greater awareness and confidence ✓ The expansion in the scope of the law has led to the reporting, investigation, and correction of systemic harassment and other types of wrongdoing in new areas ***Weaknesses in practice:*** × In two litigated cases, complaints of reprisal have been rejected because formal disclosure came after reprisals began × In three litigated cases, complaints were rejected because they went through the wrong process or did not use language that was specific enough × Restrictions on disclosures and complaints have resulted in some cases being rejected; e.g., a 2017 reprisal complaint was rejected because disclosure was not clear enough	0

Category	Design	Implementation	Score
	! It has no mechanism to escalate the disclosure if officials refuse to investigate, conduct an improper investigation, or fail to keep the whistleblower informed in a reasonable time		
2. Preventing reprisals	***Strengths in the law:*** ✓ It offers protection to those seeking advice ✓ It protects employees who provide supporting evidence for the disclosure ✓ Reprisal is an offence with penalties ✓ It protects confidentiality in disclosures ***Weaknesses in the law:*** × There is very limited legal advice available on request from the OPSIC (maximum $3000), which the OPSIC can also deny × The OPSIC does not have the same power to investigate reprisal as for wrongdoing, such as the ability to compel the production of evidence, which undermines its role as gatekeeper to the PSDP Tribunal × It does not offer anyone protection against informal reprisal, such as unconventional harassment (e.g., ostracizing and blacklisting) × It does not protect recipients of disclosures × It does not protect colleagues or family from spillover retaliation × Whistleblowers have only 60 days to make a complaint of reprisal × Attempts to breach confidentiality are not an offence ***Critical weaknesses that fatally undermine the law:*** ! Organizations have no duty to protect and assist public servants before, during, or after whistleblowing (e.g., no standards, no training, no social or legal support, no prohibition of efforts to identify whistleblower, no separation of whistleblower from those making reprisal) ! There is no timely interim or injunctive relief is available for those suffering reprisal – although paradoxically there is injunctive relief those who may have made reprisals against whistleblowers	***Strengths in practice:*** ✓ None ***Weaknesses in practice:*** × No person making a reprisal appears to have faced formal discipline (except in cases where harassment itself is the disclosed wrongdoing) × While there is evidence that the OPSIC is making efforts to educate designated officers and senior officials, there is no evidence that departments and agencies are educating employees, managers or executives on the Act and its use × Confidentiality protections have failed in court (see Sub-section 5.4)	0

Category	Design	Implementation	Score
3. Redress for reprisals	***Strengths in the law:*** ✓ It allows compensation for legal fees as a remedy ✓ The OPSIC can recommend mediation, and costs are covered ***Weaknesses in the law:*** × Compensation for legal fees is only available via the PSDP Tribunal, other than the limited grant noted in point 2 above × The selection of mediators is controlled by the OPSIC × The OPSIC acts as gatekeeper to the PSDP Tribunal despite weak powers of investigation × It does not offer whistleblowers the option to transfer to an alternative and equivalent position ***Critical weaknesses that fatally undermine the law:*** ! There is no reverse onus provision: When adjudicated, the whistleblower has the burden of proof to establish that detrimental action/reprisal is due mainly to disclosure ! Remedies may not make the whistleblower whole as they are backwards looking and do not consider potential future loss of earnings, or punitive and aggravated damages	***Strengths in practice:*** ✓ Mediation processes appear to be accepted and frequently used ***Weaknesses in practice:*** × The OPSIC repeatedly attempted to deny access to the PSDP Tribunal (see Sub-section 5.5, Adjudicative Decisions) × No whistleblower has been awarded a remedy by the PSDP Tribunal × Recent court decisions have entrenched outdated burdens of proof × In 8 litigated cases, complaints were rejected because the connection between disclosure and reprisal was considered not established × In 15 litigated cases of reprisal, the “reasonableness” standard for judicial review has been used to deny judicial review	0

Category	Design	Implementation	Score
4. Protecting the public interest	***Strengths in the law:*** ✓ The OPSIC and department and agency heads are required to report on findings of wrongdoing and publish annual reports ***Weaknesses in the law:*** × The Act does not cover the private or non-profit sectors × The OPSIC does not have the power to initiate investigations without a disclosure (i.e., on its own) unless wrongdoing is found during another investigation × Courts (or other authorities) do not have the power to order a halt to wrongdoing or require specific action × The appointment process for the OPSIC is not truly independent as selection process and committee are controlled by government ***Critical weaknesses that fatally undermine the law:*** ! It does not mandate an effective and robust corrective process, especially at departmental/agency levels: No standards have been set for timely or competent investigations, investigations can be conducted "informally," and the OPSIC has no power to order wrongdoing to cease (though recommendations can be escalated to the Legislature) ! The whistleblower has no right in law to contribute to the process (e.g., offer expert advice, rebut opposing evidence, comment on the final report before publication) ! The OPSIC cannot follow the trail of evidence if it leads outside the public sector, and must abandon its investigation	***Strengths in practice:*** ✓ Reporting of findings by the OPSIC is excellent, and generally good at the departmental level (with some exceptions) ✓ Case reports suggest that systemic harassment and mismanagement of employees is taken seriously ***Weaknesses in practice:*** × Cases of founded wrongdoing are consistently less serious than wrongdoing exposed in other ways (such as by the media) × Major incidences such as the Lac Mégantic derailment and explosion and Phoenix pay system scandal were either not disclosed or investigated × Courts have deferred to the OPSIC in even where concerns about quality of investigations have arisen (4 cases) × Courts have treated some violations of law as policy disputes	0

Category	Design	Implementation	Score
5. Evidence of effectiveness	***Strengths in the law:*** ✓ None ***Weaknesses in the law:*** × There is no requirement to provide evidence that training or awareness activities are conducted or effective × There is no requirement to conduct periodic evaluations of the Act and its implementation × Annual reports must include information on whether recommendations were implemented, but this is not rigorously monitored over time ***Critical weaknesses that fatally undermine the law:*** ! There are no mandated outcomes, performance measures, or indicators for the regime, such as baseline levels of observed wrongdoing, awareness, trust, user satisfaction, process times and backlogs, or short and long-term outcomes for whistleblowers	***Strengths in practice:*** ✓ The OPSIC and OCHRO provide an overview of general performance via annual reports ✓ The OPSIC regularly conducts studies to improve its processes and determine where obstacles may lie ***Weaknesses in practice:*** × A performance framework developed in 2008 was abandoned without ever being used × The recommendations of the 2017 review were ignored by the government, and more recent efforts at review and reform appear to be stalled or abandoned × The frequency of erroneous disclosures suggests general lack of awareness and training × There is no tracking of data on trust, perceived wrongdoing, etc. in established public service surveys	0

5. Detailed Assessment of PSDPA Implementation

The PSDPA brought into force a regime with the explicit stated intent of providing safe avenues of disclosure to workers, with the opportunity for redress if a reprisal does occur, and to ensure the timely investigation and correction of wrongdoing. If leaders want workers to use the regime, though, they must convince them that it can be trusted. To achieve that, the written law is not enough – they must see it working in practice. All laws, whether well written or not, must be interpreted and enforced by officials. Where enforcement is anemic, it may undermine the intent of the laws, deceive and expose whistleblowers to reprisals, and harm the public interest. In contrast, enthusiastic officials may follow best practice even when it is not enshrined in law. For example, officials from several Canadian jurisdictions have said they would investigate anonymous disclosures despite no obligation to do so (provided enough information is given). This highlights the discretion such officials have – for good or ill.

The purpose of this section of the report is to analyze evidence on the performance of the PSDPA in practice. It is divided into seven parts, including the approach, evidence considered, and limitations of this review (5.1), a brief history of the PSDPA and the OPSIC (5.2), evidence on the use of, and trust in, PSDPA disclosure and reprisal reporting avenues (5.3), an analysis of publicly available disclosures of wrongdoing and complaints of reprisal (5.4), a review of adjudicative findings on cases litigated under the PSDPA (5.5), other findings on the PSDPA (5.6), and a summary of the findings (5.7).

5.1 Approach, Evidence Considered, and Limitations

While Section 4 assessed the wording of the PSDPA against a best practice standard developed by the CFE, this section assesses the implementation of the regime. It is necessarily limited to publicly accessible records in the OPSIC and departments. This limitation is primarily due to confidentiality provisions in the Act, but also to the absence of any requirement to collect data on the performance of the regime.

The author reviewed all annual reports published by the OPSIC and the OCHRO, investigation reports by the OPSIC, policy documents, public service surveys, cases which have been litigated, and previous studies of the PSDPA. Media sources were also used to better understand the context of some cases. This amounted to more than 160 documents.

Using evidence from the records above, the analysis considered whether the implementation of the Act by officials and the courts is consistent with its stated and implicit objectives, whether the implementation is consistent with the best practice functioning of a whistleblowing regime, and whether the law has been implemented and enforced to the degree it could be.

5.2 A brief history of the PSDPA and the OPSIC

Prior to the implementation of the PSDPA, Canada had no stand-alone whistleblower protection laws – just some provisions in other laws, such as privacy and health and safety laws. In addition, there were common-law protections for whistleblowing. Under common law

protections, employees were bound by a duty of loyalty to their employer. This could only be violated in instances where the employer was breaking the law.

In 1985, the Supreme Court of Canada ruled on the case of Neil Fraser, a minor bureaucrat who had spoken out publicly on his opposition to Canada's introduction of the metric system. The court determined that public servants could speak out publicly in instances of illegality, threats to life, health and safety, and when the criticism has no impact on the employee's work.[7] This created the basis for balancing freedom of expression with duties to the employer (McEvoy, 2016). These rights were extended to permit limited political activity in 1991.[8] Then, in 2005, they were qualified by a requirement that whistleblowers make their disclosures proportionate to the severity of the misconduct being reported.[9] These continue to be the guiding principles for whistleblowing in the private sector.

In the public sector, however, a trio of scandals in the early 2000s prompted the development of the PSDPA.[10] Responding to public pressure, the government formed the Working Group on the Disclosure of Wrong-doing in 2003. Whistleblowing legislation was drafted in 2004 but was immediately criticized for ignoring the recommendations of the Working Group. After the 2004 election, it was revised and the PSDPA received Royal Assent in November 2005 but did not come into force. A subsequent election in 2006 resulted in a Conservative Party victory; the new government introduced a set of amendments claimed to fulfill the promises made regarding whistleblowing law during the election campaign. The Senate introduced 16 amendments intended to correct shortcomings in the PSDPA identified by NGOs, but these were all rejected. The final version of the PSDPA came into force in April 2007.

After the Act came into force, the OPSIC recorded no findings of wrongdoing or reprisals for three years in its annual reports. This lack of results is likely due in part to the delay in the publication of the *Values and Ethics Code for the Public Sector*, without which no allegations of unethical conduct were able to be considered by OPSIC. However, leadership and competence at the OPSIC also appear to have been crucial factors. In 2010, the first Integrity Commissioner, Christiane Ouimet, was the subject of complaints by her own staff. One employee alleged reprisal arising from the Commissioner's mistaken belief that the employee had made a disclosure of wrongdoing against her. The Office of the Auditor General of Canada investigated

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[7] *Fraser v. P.S.S.R.B.,* 1985 CanLII 14 (SCC), [1985] 2 SCR 455. https://canlii.ca/t/1ftzn

[8] *Osborne v. Canada (Treasury Board),* 1991 CanLII 60 (SCC), [1991] 2 SCR 69. https://canlii.ca/t/1fslg

[9] For example, it might be inappropriate for an employee to immediately approach the media for a minor, isolated incident. See *Haydon v. Canada (Treasury Board) (F.C.A)*, 2005 FCA 249 (CanLII), [2006] 2 FCR 3. https://canlii.ca/t/1l470

[10] The most important of these was the Sponsorship Scandal. For a full summary of the events leading up to the development of the PSDPA, read chapter 5 of *Square Peg in a Round Hole? Three Case Studies into Institutional Factors Affecting Public Service Whistleblowing Regimes in the United Kingdom, Canada, and Australia*, available at https://doi.org/10.22215/etd/2022-15155.

and concluded that Ouimet had violated her own mandate (Canada. Office of the Auditor General, 2010, paras 35-36) including closing many files without any analysis. A parliamentary committee requested a re-examination of all 221 case files, and a subsequent paper review of these found 70 with serious flaws in handling and/or analysis. These were reopened (Deloitte & Touche LLP, 2011).

Departmental processes were little better during this period, with only 20 cases of founded wrongdoing across all reporting departments and agencies by April 2010. At the time, the PSDPA applied to about 283,000 public servants (Canada. Treasury Board Secretariat, 2025b). As the Appendix B shows, these results improved somewhat following Ouimet's retirement.

It should be noted that despite the passage of the PSDPA, traditional attitudes towards employee voice remain in place as a matter of law and policy. This is evident in the Preamble to the PSDPA, which explicitly balances freedom of expression and loyalty to the employer (i.e., the government), and in the 2011 policy document, *Duty of Loyalty*. This policy references the *Fraser* case and cautions public servants (among other things) to be sure of their facts, attempt to resolve matters internally first, and ensure disclosures are appropriate in form, content, and public exposure. This is consistent with the role of an employee in a Westminster government. It is also sound advice for any employee considering a disclosure. However, the policy does not address the dangers of making a disclosure in an organization where misconduct has become normalized or in which there has been a history of reprisal. Nor does it address appropriate action if authorities fail to deal with a disclosure appropriately. It also sidesteps the legal argument that the *Duty of Loyalty* is towards the crown, and not towards individual leaders or managers who may or may not be engaged in wrongdoing themselves, and who regardless may be opposed to allegations being raised or investigated.

5.3 Evidence on Use and Trust in the PSDPA

The logic behind the operation of the PSDPA is relatively simple: by providing safe avenues to disclose wrongdoing, policymakers intend to encourage public servants to report wrongdoing they have observed. If operating effectively, this triggers investigations and correction of the wrongdoing – while at the same time protecting the whistleblower. Others, seeing this, will feel comfortable raising any concerns they have. This may also deter misconduct. Ultimately, it is hoped that this leads to greater organizational integrity and increase public confidence in the government. Appendix A provides a simple logic model based on the relevant sections of the PSDPA.

For this reason, the level of use of a whistleblowing regime is a key indicator of its effectiveness. Low levels of use suggest low trust, which suggests that workers are not convinced that wrongdoing will be corrected or that they will be protected. Under the PSDPA, this data is collected and published annually by the OPSIC and the OCHRO. Appendices B and C provide the numbers of disclosures and complaints of wrongdoing, investigations completed, findings of wrongdoing or reprisal, and charts showing trend lines.

From the date the PSDPA came into force until March 31, 2025, 2301 disclosures were made to the OPSIC. At the departmental level, 3774 were made up to March 31, 2024 (departmental reporting for 2025 is not yet available at the time of writing). This averages about 338 disclosures accepted per year for a workforce averaging just over 400,000 (i.e., less than one in a thousand employees). During the same period, 624 complaints of reprisal were received by the OPSIC, with a further 89 being received in fiscal year 2024-2025.

Trends for both disclosures of wrongdoing and complaints of reprisal show more reporting over time. For disclosures, the increase appears to be entirely driven by reporting to the OPSIC, with recent changes particularly dramatic – more than doubling over two years to 348 in fiscal year 2024–2025. In contrast, reporting within departments has remained flat, even though the number of federal employees covered by the Act grew by roughly one-third between 2015 and 2024.[11] Although employee counts are only approximate, this suggests that the average per-person use of whistleblowing channels in departments has fallen by nearly 25 percent. There may be several explanations for this, including greater awareness or trust in the OPSIC (relative to departmental mechanisms).

Overall, however, disclosures and complaints still appear low. Although there are no data on observed levels of wrongdoing, proxy evidence is available through public service employee surveys. The most recent survey finds that 15 percent of employees do not believe their leadership promotes an ethical workplace, and 20 percent did not believe their senior leaders were ethical. Indeed, 28 percent had little or no confidence in the leadership of their department or agency (Canada. Treasury Board Secretariat, 2025a). Given that fewer than one in a thousand employees makes a disclosure each year, these figures suggest that employees observe a great deal more unethical conduct and wrongdoing than they report.[12]

There is also real-world evidence that the PSDPA disclosure regime has failed to capture serious misconduct. Disclosures about unsafe operating conditions and poor regulatory oversight at Transport Canada and in the Montreal, Maine and Atlantic Railway were ignored prior to the 2013 Lac Mégantic train derailment. As a consequence, 47 people died, a town was destroyed, and hundreds of millions of dollars have been spent in compensation and rebuilding (Campbell, 2018; Montgomery, 2014; Valiquette l'Heureux, 2016).

Then, in 2015, the new Phoenix pay system was launched without proper testing and with no fallback contingency plans. It immediately malfunctioned, producing hundreds of thousands of errors that required manual correction. A subsequent report found that insiders had been

[11] This includes employees in the core federal public service, separate agencies, and crown corporations. This study estimates 350,000 such employees in 2015 and 460,000 employees in 2025.

[12] The CFE recommends that the Treasury Board Secretariat include questions pertaining to observed wrongdoing in future public service surveys. This would allow them to identify potential patterns of misconduct in different departments and agencies, and to determine whether integrity measures (including the PSDPA) are having an effect.

aware of the risks but were either ignored or too afraid to raise concerns (Goss Gilroy Inc., 2017). The core problems remain unresolved in 2025. Mitigation costs have exceeded $3.5 billion and thousands of public servants have suffered financial hardship (Morrison, 2024). To our knowledge the OPSIC received at least one disclosure from a whistleblower, in 2013, regarding the management of this project. It was not investigated.

It is thus perhaps unsurprising that the recent public service survey found that 30 percent of employees fear reprisal when using any reporting mechanism (Canada. Treasury Board Secretariat, 2025a). This is not new. A 2011 study found skepticism about whistleblowing avenues, with one participant stating, "Show me that these stories have happy endings. Show me the [whistleblower] who got a promotion and the wrongdoer who lost his job" (Phoenix SPI, 2011, p. 26). Later, a 2015 study commissioned by the OPSIC found that public servants had a "fear of lack of support, fear of loss of anonymity, fear of reprisals, fear of taking on hierarchy/power, fear of the effect of reporting on the work climate, and fear of repercussions in terms of possible career development" (Phoenix SPI, 2015, p. ii). These concerns were repeated in a similar 2022 study, with about half of participants indicating that they were not aware of the OPSIC, and most having low or limited awareness of disclosure avenues (Phoenix SPI, 2022, p. 23). With respect to improving trust, participants suggested that there were not enough success stories to build confidence in the regime, and that the lack of consequences for wrongdoers was a concern.

More generally, the record of early Integrity Commissioners was not one which appeared supportive of whistleblowers. Besides the misconduct of the first Commissioner, her replacement, Mario Dion, was also found to have committed a wrongdoing – gross mismanagement in the handling of a disclosure of wrongdoing and a reprisal case (Canada. Office of the Auditor General, 2014). This, along with efforts to deny complainants access to the PSDP Tribunal (see 5.5 below), could not have boosted confidence in public servants that they would be protected should they speak up about wrongdoing.

Considering this evidence, it appears that trust and awareness of the PSDPA remains low and that this is inhibiting use. The most compelling means of improving awareness and trust in this regime would be to provide evidence of effectiveness, by reporting and correcting some truly serious, systemic wrongdoing, and by providing some whistleblowers with compensation for the reprisals they have suffered.

5.4 Results on Disclosures of Wrongdoing and Complaints of Wrongdoing

Another consideration in effectiveness is whether the regime is treating disclosures of wrongdoing and complaints of wrongdoing appropriately at the administrative level. That is, are disclosures of misconduct and complaints of reprisal being investigated, are findings consistent with the evidence, and is corrective action taken (i.e., by stopping the misconduct, holding wrongdoers accountable, and mediating or referring reprisal complaints to the PSDP Tribunal)?

While there have been over 5000 disclosures of wrongdoing and over 700 complaints of reprisal, data on the nature of most of these disclosures and complaints is not available, and

nor are the reasons for dismissing them.[13] Only when they are fully investigated are those reasons reported. Since this is a small proportion of total disclosures, it is not possible to know whether these triage processes are working effectively to support the public interest. This limits any conclusions this report can make on departmental and OPSIC processes to those in Table 2, which shows the results of disclosures and complaints of reprisal since 2007. As departments treat disclosures differently than the OPSIC, the results are not directly comparable.

Table 2: Results of Disclosures and Complaints of Wrongdoing 2007-2025

	OPSIC	Departments
Percent of disclosures of wrongdoing investigated	9.8%	30.1%
Percent of investigations resulting in a finding of wrongdoing	9.8%	18.8%
Percent of disclosures resulting in a finding of wrongdoing	1.0%	5.6%
Percent of complaints of reprisal investigated	26.5%	
Percent of investigations resulting in a finding of reprisal	6.9%	
Percent of all complaints resulting in a finding of reprisal	1.8%	

Annual reports suggest that many disclosures fall outside the scope of the PSDPA or may be better investigated by another authority. This suggests that many public servants are not fully aware of how to make disclosures, to whom, and about what. This is the responsibility of Treasury Board and chief executives at departments and agencies. An alternative is that the OPSIC may be referring cases for investigation by other authorities, such as the police or a regulatory oversight body. Reporting processes in such cases would vary, with no guarantee that any investigation would be conducted at all.

Recent reports suggest that over half of disclosures received by departments and agencies involve a serious breach of a code of conduct,[14] with gross mismanagement the second most likely form of misconduct (20 percent or less). The OPSIC does not report this information annually, but an analysis was conducted on the 20 reports of founded wrongdoing published by the OPSIC to date. This assessed each case for the type of wrongdoing discosed and the outcome. The results can be seen in Table 3.

[13] Early reporting by departments and agencies was inconsistent. Later, reporting improved but reports were not broken down by type of misconduct reported.

[14] It should be noted that for the first five years after the PSDPA came into force, there could be no such findings. This was because the Treasury Board Secretariat delayed publication of the *Values and Ethics Code for the Public Sector* until April 2012. In the interim, violations of the existing codes of conduct were not considered legitimate grounds for disclosures.

Table 3: OPSIC Investigation Reports

Wrongdoing under the PSDPA	Disclosures Investigated	Disclosures Founded	Percent Founded
8(a) a contravention of any Act of Parliament or of the legislature of a province, or of any regulations made under any such Act	11	7	63.6%
8(b) a misuse of public funds or a public asset	4	2	50.0%
8(c) a gross mismanagement in the public sector	18	15	83.3%
8(d) an act or omission that creates a substantial and specific danger to the life, health or safety of persons, or to the environment	11	4	36.4%
8(e) a serious breach of a code of conduct	13	10	76.9%
8(f) knowingly directing or counselling a person to commit a wrongdoing set out in any of paragraphs (a) to (e)	3	0	0.0%
Systemic harassment	11	8	72.7%

Systemic harassment is not a specific form of wrongdoing under the PSDPA, but has been more frequently investigated as a form of gross mismanagement (8/11 cases) since Joe Friday, the third Commissioner, took office in 2015. This is a positive development, as systemic harassment affects the functioning of workplaces and is the primary form of reprisal against whistleblowers. It is also used as a control mechanism by ineffective managers (who may also be wrongdoers), for suppressing any form of dissent including whistleblowing.

Investigations appear to proceed slowly as reports were published on average over 21 months after the disclosure was made. This is significant, as reprisals against whistleblowers may be continuing during this period, with their financial and emotional resources diminishing. Reports by the OPSIC do not contain a great deal of detail, but are clear, cogent and reflect the seriousness of the misconduct that has been found. They are more thorough than the departmental reports that were reviewed (although a full survey of departmental processes was outside the scope of this assessment).

Initially, OPSIC reports did not often identify a lack of oversight by senior management as part of the problem. When Friday became Commissioner, this changed to 8 of 11 cases noting this problem. Wrongdoers are identified in about 50 percent of reports, usually when the misconduct is individual and not systemic. These trends are positive, increasing accountability and addressing early criticisms by whistleblower rights advocates.

The most serious incident of misconduct took place at the Correctional Service of Canada (CSC). This involved mass insubordination, intimidation, harassment, and neglect of duty, as well as attempts to harm Regional Health officials by CSC personnel at the Archambault Institution in Quebec (Canada. Office of the Public Sector Integrity Commissioner, 2020). In general, however, incidents were limited in scope and severity and pale in comparison with the Phoenix pay scandal and the tragic Lac Mégantic train derailment.

Unfortunately, the lack of transparency in the PSDPA makes an examination of many cases impossible. In cases for which wrongdoing is found to have occurred, the OPSIC reports them publicly. There are no such reports for cases in which a disclosure is dismissed. There has been no review of cases beyond the paper review conducted by Deloitte and Touche in 2010 and 2011 following the first Commissioner's (likely forced) retirement[15] – nor is there a mechanism by which to compel one, except possibly by an order of Parliament. Further, public servants are bound by confidentiality provisions – particularly after making a disclosure – and the *Access to Information Act* does not apply to investigations under the PSDPA.

Indeed, the only case with enough publicly available details to draw conclusions on competence and process is that of Don Garrett. Garrett's contracting firm was hired in 2008 by Public Works and Government Services Canada (PWGSC) to replace plumbing at Kent Institution (a federal prison in Agassiz, B.C.). PWGSC was aware that asbestos would be encountered during the work but did not inform Garrett. Consequently, he, his workers, guards, and inmates were exposed to asbestos. When Garrett submitted a disclosure of wrongdoing to the OPSIC, it was rejected after delays totalling two years. An analysis by David Hutton (2014) concluded that the investigation was improperly conducted, with important witnesses not interviewed, and that the OPSIC concealed a vital piece of evidence from Garrett until the final decision. Garrett has been seeking redress for over 15 years, his company bankrupted in the process. It is only because Garrett is not a public servant, and thus not subject to secrecy or confidentiality requirements that prevent public servants from speaking publicly, that we know of this case. His case is before the Supreme Court of British Columbia at the time of writing.[16]

With respect to complaints of reprisal, there have been 713 up to March 31, 2025. The OPSIC has referred 13 to the PSDP Tribunal. Of the eleven that are publicly available at the time of writing, seven were referred under s. 20.4(1)(a) of the PSDPA, which only allows the Tribunal to consider a remedy for reprisal and thus shields the wrongdoer(s) from any examination or sanction by the Tribunal. Four were referred under s. 20.4(1)(b) of the Act, which also allows the Tribunal to decide on penalties for individuals making reprisals. Only two have been heard on the merits (with two more still ongoing). The rest have been settled in mediation.

Reprisal cases are more likely to be mediated than to be adjudicated at the PSDP Tribunal (28 to date). This suggests that when the evidence of reprisal is strong, implicated parties will settle rather than risk a hearing before the Tribunal. Unfortunately, CFE communications with whistleblowers suggest that few have been satisfied with the outcomes of mediation. Rather, they have reported that they had to settle because their resources were exhausted. Thus, the settlements may not represent full compensation for the harms whistleblowers have suffered.

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[15] See Section 5.2 above for more detail.

[16] A description of Garrett's case, with media reports, can be found at https://cfe.torontomu.ca/lists/prominent-canadian-whistleblowers.

What is more, the confidential nature of such settlements means that they cannot contribute to public perceptions of the success of the regime, and hence trust in it.

The early years of the regime were also characterized by legal conflicts between disclosers and the OPSIC. This took two forms: first, attempts by whistleblowers to obtain judicial review of OPSIC decisions not to investigate a disclosed wrongdoing and, second, attempts at judicial review of decisions not to refer a reprisal complaint to the PSDP Tribunal. This is described in more detail below, but whistleblowers were only successful in the second set of challenges.

Finally, one factor that may affect the outcomes of disclosures and complaints of reprisal is the resources available to the Commissioner. There is evidence that the OPSIC has struggled with workloads in the past, exacerbated by staff turnover, and it has attempted to mitigate this through work process reviews (Goss Gilroy Inc., 2020). The recent doubling of cases has increased these pressures. While the latest business plan shows an increase in funding (about 20 percent), this is unlikely to be enough to meet the challenge (Canada. Office of the Public Sector Integrity Commissioner, 2025).

5.5 Adjudicative Decisions

The study also surveyed the CanLII legal database for cases which have been litigated or adjudicated under the PSDPA. This included 78 cases (see Appendix D for the list).

Overall, decisions have not favoured whistleblowers. As Table 5 shows, attempts at judicial review of OPSIC's decisions not to investigate wrongdoing have uniformly failed, while judicial reviews on reprisal complaints have been more successful.

Table 4: Case Types and Outcomes

Case Type	Outcome			Total
	Whistleblower Positive	Neutral[17]	Whistleblower Negative	
Procedural issue	5	7	4	16
Review of OPSIC decision not to investigate disclosure	0	1	13	14
Review of decision on reprisal	9	4	24	37
Implicated "wrongdoer" seeks to intervene	4	6	3	13
Other[18]	1	0	0	1

Three main parties have contested the decisions of the regime: Charbel El-Helou, Yacine Agnaou, and Sylvie Therrien.

In the first case, El-Helou blew the whistle on suspicious internal contracts in the Courts Administration Service and faced threats and accusations of harassment afterward. His complaints of reprisal were reviewed by the OPSIC, but only one was referred to the PSDP Tribunal. El-Helou sought to overturn this decision. The PSDP Tribunal confirmed that it would not hear complaints unless referred by the OPSIC,[19] while the Federal Court supported El-Helou when it determined that the OPSIC investigation had been defective. The Federal Court's criticism was strongly worded, describing the investigation as a "clear breach of the common law duty of procedural fairness" (*El-Helou v. Courts Administration Service*, 2012 FC 1111, para. 78), "not sufficiently thorough" (para. 93), and as missing "obviously crucial evidence" (para. 95).[20] His case was settled in mediation; from initial filing to final decision, the process appears to have taken about two years.

In the second case, Agnaou blew the whistle on interference with prosecutorial independence when he was at the Public Prosecution Service of Canada (PPSC). He alleged harassment and ultimately accepted a deal which removed him from the PPSC. He later regretted this decision and attempted to oblige the OPSIC to investigate his disclosure and refer his complaint of

[17] "Neutral" indicates a qualitative assessment that the decision neither advances whistleblower rights nor harms them. In the case of applications for judicial review, which are usually binary (i.e., leave is either granted or not), a decision may be neutral if the application is deemed too early in the process, a claimant is clearly not a whistleblower, the decision grants a portion of the request but rejects others, or the particular motion deals with an administrative aspect of a larger case.

[18] In this case, Transport Canada unsuccessfully attempted to prevent the OPSIC from investigating wrongdoing (*Canada (Attorney General) v. Canada (Public Sector Integrity Commissioner)*, 2016 FC 886 (CanLII), [2017] 2 FCR 165. https://canlii.ca/t/gssn2).

[19] *El-Helou v. Courts Administration Service*, 2011 PSDPT 1 (CanLII). https://canlii.ca/t/h5h4d

[20] *El-Helou v. Courts Administration Service*, 2012 FC 1111 (CanLII). https://canlii.ca/t/ft221

reprisal to the PSDP Tribunal. His attempts to force an investigation failed as the courts deferred to the OPSIC's decisions under the "reasonableness" standard.[21] The reasonableness standard sets the conditions under which a court may overrule the decision of an administrative law authority – in this case, the OPSIC.[22]

Agnaou's efforts to obtain a remedy were more successful, but also ultimately resulted in failure. A 2015 decision concluded that an employee should not have to refer to the PSDPA when making a disclosure for it to be accepted as such.[23] It was only required that the language clearly refer to a specific wrongdoing. This, the court concluded, was indeed the case in two emails Agnaou had sent. After initially resisting, the OPSIC ultimately referred his complaint to the PSDP Tribunal. Agnaou was unsuccessful. The decision identifies disputes between Agnaou and the Tribunal itself on the issues of conflict of interest by one Tribunal member, the calling of witnesses, and the production of evidence by the PPSC.[24] The tone suggests frustration on the part of the Tribunal.

Agnaou appealed the Tribunal's decision to the Federal Court of Appeal. This also failed in 2022, with the panel of judges effectively reversing the 2015 decision. It did so by setting a new standard for disclosures, one which requires a clear reference to the PSDPA. These "magic words," as they are sometimes called, would require a phrase such as "I am making a protected disclosure." This is discouraged by best practices as whistleblowers are frequently not aware at this early stage that they are making disclosures, but should still be protected. The decision also required that whistleblowers prove that a reprisal was mainly the result of a disclosure. This is counter to best practice, as it creates an almost impossible standard for a whistleblower to meet. It invites organizations and malicious actors to fabricate reasons for dismissal or other reprisals. In contrast, reversing the burden of proof so that the employer must prove there is no connection between reprisal and disclosure has greatly improved the chances of success for whistleblowers in the United States (Devine, 2016). Finally, the decision also appears to reject early treatments of whistleblowing as a matter similar to discrimination complaints under human rights law.[25] Treating whistleblower claims as a human rights issue would have reversed burdens of proof and granted some constitutional protections to whistleblowers.

The tone of the 2022 decision also suggests some irritation with Agnaou. The reasons for this are not clear, but as in the Tribunal hearings, the adjudicators may have been frustrated with

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[21] *Agnaou v. Canada (Attorney General),* 2015 FCA 30 (CanLII). https://canlii.ca/t/gk0rp

[22] Prior to 2019, the key guiding case for the reasonableness standard was *Dunsmuir v. New Brunswick*, 2008 SCC 9 (CanLII), [2008] 1 SCR 190 (available at https://canlii.ca/t/1vxsm). After 2019, it was *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 (CanLII), [2019] 4 SCR 653 (available at https://canlii.ca/t/j46kb).

[23] *Agnaou v. Canada (Attorney General),* 2015 FCA 29 (CanLII), [2016] 1 FCR 322. https://canlii.ca/t/gm783

[24] *Agnaou and Public Prosecution Service of Canada et. al.,* 2019 PSDPT 3 (CanLII). https://canlii.ca/t/j4zxq

[25] *Agnaou v. Canada (Criminal Prosecution Services),* 2022 FCA 140 (CanLII). https://canlii.ca/t/jr5nm

Agnaou's persistence and challenges to their authority. Notwithstanding this, the CFE views the 2022 decision as regressive and likely to harm whistleblower rights in the future. Unfortunately, the Supreme Court declined to hear an appeal. Indeed, the Supreme Court has not heard a whistleblowing case since 2005.[26] From initial litigation to final decision, Agnaou's case took over nine years.

In the third case, Therrien was an employment insurance fraud investigator at Service Canada who leaked records to the media. These showed that the government had introduced a secret quota for investigators to remove benefits from employment insurance recipients – and offered a bonus to managers and executives whose staff met these quotas (Bourgault-Côté & Buzzetti, 2013; Canadian Press, 2013). This created an incentive to reject claimants, sometimes on spurious grounds, who would then have to make an appeal.[27] While the media coverage did force a change in policy, Therrien was identified as the leaker, her security clearance revoked, and her employment terminated. She made a disclosure to the OPSIC, which declined to investigate the disclosure or her complaint of reprisal. She was successful in a judicial review of this reprisal decision,[28] which (along with *Agnaou* 2015 FCA 29) established that the OPSIC must refer cases to the PSDP Tribunal when there is a prima facie connection between a disclosure and adverse action. This is because the OPSIC does not have full investigative powers for complaints of reprisal, and because establishing definitive proof is the responsibility of the Tribunal – not the OPSIC.

Despite this decision, and for no apparent reason, the OPSIC deferred investigating her complaints of reprisal until a Public Sector Labour Relations and Employment Board decision was completed. This inexplicably took several years, and was unsuccessful.[29] Ultimately, the OPSIC rejected Therrien's complaint, characterizing it as a policy dispute and not protected because she had not made the disclosure to the press without first attempting internal avenues. Her case also took over nine years to reach its conclusion.

Two other cases deserve mention. In the first, Chantal Dunn was an employee at Indigenous and Northern Affairs Canada. She alleged that a manager misused public funds and resources for personal purposes, harassed employees, and created a toxic work environment. The reprisals she complained of included being sidelined from duties, professional isolation, and manufactured poor performance reviews. In a lengthy decision, the PSDP Tribunal rejected

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[26] *Merk v. International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 771,* 2005 SCC 70 (CanLII), [2005] 3 SCR 425. https://canlii.ca/t/1m1zp

[27] The appeals process had also been recently changed, creating a backlog that reached 11,000 cases (Galloway, 2014; Goodman, 2014).

[28] Therrien v. Canada (Attorney General), 2017 FCA 14 (CanLII). https://canlii.ca/t/gx0rz

[29] Therrien v. Deputy Head (Department of Employment and Social Development), 2019 FPSLREB 82 (CanLII). https://canlii.ca/t/j2wg4

Dunn's complaints, finding her not credible. Further, in this decision, it appears that the OPSIC was not a neutral party, but was opposed to Dunn's position.[30] Dunn then appealed to the Federal Court of Appeal. The Court, referring to the high bar of the reasonableness standard, declined to reverse the decision of the Tribunal. However, it did express concerns about the competence of the decision and indicated that it should not be considered a precedent.[31] Notably, this decision cannot be found on the PSDP Tribunal website – only in CanLII.

In another decision, Alexandru-Ioan Burlacu alleged that a member of the Immigration Review Board violated the *Immigration Review Board Act* by detaining and removing from Canada an individual who was believed to have obtained citizenship illegally. This was done before formal processes were completed (thereby denying an opportunity for a full defence by the individual) Further, travel documents were delayed for permanent residents wishing to return to Canada. This was done on the basis that the individuals in question had outstanding matters before the Immigration Appeal Division. This, Burlacu argued, was also contrary to the law.

Burlacu sought to reverse the OPSIC's decision not to investigate this as a wrongdoing. The OPSIC argued that the illegality reported by the whistleblower was, in fact, a policy disagreement on the application of the law. The court supported this decision in a lengthy judgment which appeared to constitute an effort to interpret the intentions of Parliament at the time the law was drafted.[32] This form of misconduct – skirting administrative law procedures – has also been observed by the CFE in cases involving the approval of medications, pesticides, and laws.[33] It is the CFE's position that the OPSIC and the court introduced an inappropriate degree of subjectivity to the s. 8(a) definition of wrongdoing (which does not make any reference to the severity of an illegal action). This appears an act of deference to institutional actors and interests.

A final stream of litigation involves legal efforts by individuals found to have committed wrongdoing. These have either attempted to reverse decisions by the OPSIC or have sought to expose the names of whistleblowers and witnesses who cooperated in investigations. The efforts to overturn findings have failed. In two cases, however, confidentiality has been

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[30] Dunn v. Indigenous and Northern Affairs Canada and Lecompte, 2017 PSDPT 3 (CanLII). https://canlii.ca/t/h6hrm

[31] Dunn v. Canada (Attorney General), 2018 FCA 210 (CanLII). https://canlii.ca/t/hw7mg

[32] *Burlacu v. Canada (Attorney General),* 2022 FCA 10 (CanLII). https://canlii.ca/t/jltt5

[33] One prominent example involved Health Canada scientists Shiv Chopra, Margaret Haydon, and Gérard Lambert. Among other things, they objected to the circumventing of the normal veterinary drug approvals processes. This was done to have drugs of questionable long-term safety approved. This is described in Chopra's book, *Corrupt to the Core* (2009), with their concerns supported by the court in *Haydon v. Canada (T.D.)*, 2000 CanLII 16081 (FC), [2001] 2 FC 82 (https://canlii.ca/t/433m). Edgar Schmidt made similar objections to laws being presented to Parliament without a proper assessment of constitutional risks. While he lost his case, the court did not disagree with his reasoning (*Schmidt v. Canada (Attorney General)*, 2018 FCA 55 (CanLII), [2019] 2 FCR 376. https://canlii.ca/t/hr59w).

stripped from whistleblowers and witnesses.[34] These decisions were made on the basis of open court principles and procedural justice. While there is some logic in this reasoning, the assertion in these cases that the danger to witnesses must be concrete and immediate ignores the history of delayed and subtle reprisals in whistleblowing cases. It also undermines the logic of the PSDPA regime, and is likely to lead to fewer disclosures and more reluctance to provide evidence supporting whistleblower claims. As confidentiality is the only active protection for whistleblowers at present, this loophole should be addressed.[35]

Overall, adjudicators and the courts have not been receptive to whistleblower efforts. They have declined to overrule the OPSIC on decisions involving refusals to investigate. While they have forced referrals to the PSDP Tribunal, this has not resulted in any successes when cases have been heard on the merits. That is, no case that has been litigated has resulted in compensation for reprisal. Where compensation has occurred, it has been through mediation. Two efforts to have cases heard by the Supreme Court of Canada (Agnaou and Dunn) have also failed.

Finally, it is evident that many Canadian jurors do not understand the dynamics of whistleblowing and the subsequent reprisals. As such, they are inclined to treat whistleblowing cases as ordinary employment disputes. They are not; organizations will mobilize against a whistleblower in ways they will not for ordinary grievances. For this reason, advocates favour specialist training for adjudicators handling whistleblowing cases. This is mandatory in Serbia (a leading jurisdiction in the field of whistleblower protection) under Article 25 of its *Law on the Protection of Whistleblowers* and this provision appears to have contributed to successes under that law, for example by routinely and promptly providing injunctive relief to halt and reverse reprisals against whistleblowers.

5.6 Other Findings on the PSDPA

The PSDPA has been reviewed by other bodies. As mentioned previously, a review was conducted by the House of Commons Standing Committee on Operations and Estimates (OGGO) in 2017, at the request of the government. It included input from many experts, whistleblowers, and officials. The final report made 40 recommendations and sub-recommendations (Canada. Parliament. House of Commons. Standing Committee on Government Operations and Estimates, 2017). This report will not address those recommendations, except to say that all are sound. Unfortunately, that report was ignored by the government.

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[34] See *McCarthy v. Canada (Attorney General)*, 2020 FC 1100 (https://canlii.ca/t/jbvcv) and *Desjardins v. Canada (Attorney General)*, 2020 FCA 123 (https://canlii.ca/t/jbrrs).

[35] Notably, a similar decision was made in Alberta in 2024; see Campbell v. Alberta (Public Interest Commissioner), 2024 ABKB 269 (https://canlii.ca/t/k4jdc).

International and Canadian studies have also found defects in the PSDPA. Most prominently, the International Bar Association and U.S. Government Accountability Project placed Canada at the bottom of a field of 37 countries in both regulatory quality and enforcement (Feinstein et al., 2021). Several Canadian authors also argued that Canadian whistleblower statutes fail to meet best practice in key areas (Boydell, 2018; Kim, 2015; St-Martin, 2014) and that the "Canadian legal framework appears uncertain, unclear and deficient" (Martin-Bariteau & Newman, 2018, p. 7). McEvoy (2016), using an employment law perspective, finds the PSDPA consistent with existing employment law in promoting disclosure "up the ladder." He also states that Canadian laws "serve to manage rather than facilitate a disclosure of wrongdoing by governments and government employees" (p. 69).

Finally, Bron (2022) studied leadership beliefs and attitudes affecting whistleblowing in Canadian government by obtaining one-on-one interviews of various senior participants in whistleblowing situations. Within government, the interviewees included an Integrity Commissioner, other former agents of Parliament, two former Clerks of the Privy Council (the top federal bureaucrat), and other senior officials – such as assistant deputy ministers. From outside government, members of non-governmental organizations and whistleblowers were interviewed on their observations and experiences. The following observations emerged from these interviews, supported by policy analysis and whistleblowing case reviews.

The study found that while internal disclosures and frank advice are generally consistent with older, traditional government conventions and norms, and so nominally tolerated, these come with qualifications. For example, dissent must be limited in scope and persistence, with junior bureaucrats expected to defer to senior officials. Employees are expected to demonstrate loyalty to management (which may include obeying unethical orders), internal investigators lack independence and are vulnerable to reprisal, and findings of wrongdoing can easily be minimized or suppressed.

Senior bureaucrats expressed views that suggest a prevailing perception of the Integrity Commissioner as at best an interloper in their spheres of authority, and at worst as a "traitor."[36] There is persuasive evidence that senior departmental officials have both actively and passively undermined the OPSIC, apparently inducing Integrity Commissioners to act in a conciliatory manner. This deference may also be because Commissioners have traditionally viewed deputy ministers as peers or, in some cases, superiors. Such actions and perspectives appear inappropriate for an Agent of Parliament with an investigative role and are unlikely to be effective in securing cooperation, especially where wrongdoing is systemic and serious.

Disclosures made directly to the public attract the worst reprisals, no matter what the circumstances. For example, Richard Colvin, reporting Geneva Convention violations by the Canadian military in Afghanistan, was subpoenaed to provide testimony to parliamentary committee and the Military Police Complaints Commission, while Edgar Schmidt used legal

[36] This term was, in fact, directed at an Integrity Commissioner (Bron, 2022, pp. 155–156).

avenues to challenge the failure of his own department (Justice Canada) to properly brief Parliament about the constitutionality of proposed laws.[37] These avenues should have been protected, but both whistleblowers faced immediate reprisals. Both had expressed concerns internally, with no action taken beyond warnings not to pursue the matters further.

These examples illustrate the point that disclosures that have been made public have consistently been treated by senior officials as not just norm violations but hostile political acts. In response, politicians and bureaucrats have personally attacked the reputations and character of such whistleblowers in the press, on government websites, and in Parliament. Senior bureaucrats have compelling reasons for complying with political direction in making such attacks, and in suppressing bad news from surfacing, because politicians now control the promotion, posting, and bonuses of senior bureaucrats. Indeed, one senior official reported being denied an annual bonus for failing to be sufficiently compliant with a directive to unethically suppress bad news.

5.7 Efforts at Review

There have been some efforts in Parliament and by the government to address the shortcomings. In 2022, the CFE provided the Standing Committee on Government Operations and Estimates with an assessment of proposed changes to the PSDPA.[38] Those changes had been championed by the Bloc Quebecois as a private members bill (Bill C-290, 2023). Unusually, Bill C-290[39] had support across all parties. The changes, while not perfect, would have substantially improved the PSDPA. The Bill appears to have died following the 2025 federal election.

In addition, a government review of the PSDPA was launched in November 2022. This was led by an Advisory Task Force, with a final report promised at the end of 2024. Treasury Board has been silent regarding the status of the 2017 OGGO review of the PSDPA, since this was believed at the time to be the legislatively required 5-year review. As of July 2025, no report has been published. No reasons have been provided.[40]

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[37] *Schmidt v. Canada (Attorney General),* 2018 FCA 55 (CanLII), [2019] 2 FCR 376. https://canlii.ca/t/hr59w.

[38] Available at https://cfe.torontomu.ca/policy-submissions/cfe-submission-house-commons-standing-committee-government-operations-and.

[39] *Bill C-290, An Act to amend the Public Servants Disclosure Protection Act, 1st Session, 44th Parliament*, (2022), available at http://surl.li/dkriib.

[40] See https://www.canada.ca/en/treasury-board-secretariat/topics/values-ethics/disclosure-protection/review-public-servants-disclosure-protection-act.html for updates and further information.

5.8 Summary of the Findings on Implementation

In addition to the defects of the law as it is written, this qualitative assessment of the PSDPA finds that the operational effectiveness of the whistleblowing regime in the Government of Canada is also hampered by two overarching factors: a lack of awareness by many public servants of the whistleblowing regime and, for those who are aware of it, a lack of trust that it will protect whistleblowers or adequately address serious and systemic wrongdoing. The reasons for the first are unclear, as no data is collected on training nor awareness activities or their effectiveness. Despite this, the effects are evident in studies conducted by the OPSIC, the high rate of disclosure dismissals, and in the errors made by several prominent whistleblowers. Since these activities are assigned to the Treasury Board Secretariat and agency heads, accountability must accordingly fall on those bodies and officials.

With respect to trust, the regime faced several controversies and produced few results in its early years. Part of this is the result of political and bureaucratic inertia or intransigence, as demonstrated by slow departmental implementation and the five-year delay in establishing a code of conduct.

With respect to the processes and outputs of the OPSIC and departmental integrity officials, it is impossible to determine whether all disclosures were (or are) being properly triaged, all investigations sound, all conclusions consistent with evidence, or all implicated officials appropriately held to account. This would require a case-level review, something that is currently not possible. Several cases that are publicly visible have clearly been mishandled, and early findings suggest a reluctance by the OPSIC to implicate senior officials. This is less evident in more recent cases. Poor leadership in the first few years may be responsible, but there is also evidence that the OPSIC has encountered obstacles in its investigations, leading to delays. This could be related to resistance by departmental executives or to resource limitations.

The implementation of the PSDPA within departments and agencies remains a black box, but falling rates of disclosure suggest that the regime is failing at this level. While performance may vary between departments and agencies, it is troubling that officials at Transport Canada felt it a good use of public resources to challenge the authority of the OPSIC in court. This, along with evidence that some senior public servants regard the regime as a distraction and the OPSIC as an interloper, suggests that resistance to the PSDPA persists among senior public servants.

Adjudication has also not favoured whistleblowers. Despite some early successes, the PSDP Tribunal, Federal Court, and Federal Court of Appeal have consistently favoured the OPSIC's decisions not to investigate wrongdoing and the PSDP Tribunal's decisions to dismiss complaints of reprisal. Standards of proof for whistleblowers are very high, with the reasonableness standard a major obstacle to judicial review. Persistence by whistleblowers appears to be treated as unreasonableness rather than principled commitment to the public interest, and where there is ambiguity, the courts have generally shown a subtle but prevalent deference to the position of the government over that of the whistleblower. Indeed, it appears in some cases that adjudicators began with predetermined conclusions and then constructed supporting reasoning. This phenomenon has also been observed in the U.S. context by legal

scholar Robert Vaughn (2012, p. 204). Further, confidentiality provisions are now vulnerable to any challenge in an open court. This greatly weakens the only proactive protection for whistleblowers.

5.9 Conclusions

The PSDPA appears to be designed and enforced in ways that reinforce the power and control of senior officials, to the detriment of a properly functioning whistleblower system. Where disclosures take place within a department or agency, the process is vulnerable to influence and interference by senior officials from the moment the disclosure is made to the release of the final report. Even where wrongdoing is found, the misconduct may be reframed to minimize its scope or severity. The OPSIC process is likewise susceptible to interference. This can take a variety of forms: appointing an unqualified or pliable Commissioner, subtly integrating them into the community of deputy ministers, limiting financial resources, employing delaying tactics, or withholding cooperation in investigations. Again, even when wrongdoing is established, implicated officials may exert pressure to soften the final report.

In both cases, whistleblowers are protected only by flimsy and toothless confidentiality provisions. If identified as the discloser, they may face ongoing reprisals while inquiries stall – often for years. Redress mechanisms have yielded about two dozen negotiated settlements, each bound by non-disclosure agreements. For all other complainants, there has been no remedy.

The public interest also suffers. Because the regime lacks transparency and has never been subjected to sustained evaluation, Canadians and their parliamentarians have no way of knowing whether it is succeeding or failing or how it might be improved. Nor is there any way to learn of misconduct that is reported but dismissed, unless it erupts into the public realm. By then, the opportunity to strengthen confidence in the public service has been lost. Where misconduct has less dramatic consequences, it may fester for years, producing cumulative and undetected harms.

Consequently, the PSDPA appears better at addressing minor misconduct, usually involving one or a few individuals, than at confronting serious, systemic wrongdoing. Protecting whistleblowers is not a priority. This undermines the logic of the regime, which depends on trust. While the damage to trust in the OPSIC inflicted in the regime's early years appears to be slowly dissipating, the same cannot be said for departmental avenues of disclosure. For the law to become truly effective, defects in the law must be corrected, resources to the OPSIC increased, enforcement more rigorous, adjudicators trained, and more success stories made publicly visible. Most fundamentally, the protection of the whistleblower must become the central priority. This would both deter wrongdoing and build trust, which are essential to the regime's credibility.

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8. Annual Reports

- Annual reports by the OPSIC may be found at https://psic-ispc.gc.ca/en/corporate-publications.
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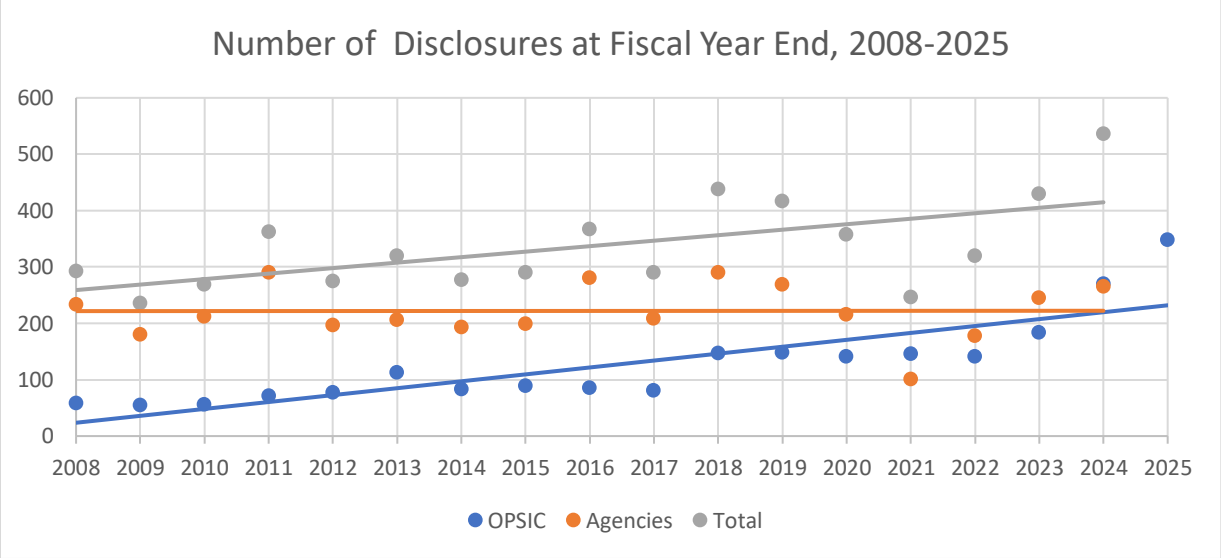
Appendix A: The Logic of Canada's Public Service Whistleblowing Regime

Logic of regime with respect to wrongdoing	Logic of regime with respect to reprisal
Deputy ministers establish codes of conduct (PSDPA, s. 6) and procedures for handling disclosures and protecting confidentiality of whistleblower (PSDPA, ss. 10-11) PSDPA makes reprisal an offence (s. 19 & s. 42.3) ↓	
Public servant makes disclosure to an authorized recipient (PSDPA, ss. 11-13); decision made whether to investigate (PSDPA, s. 10 & s. 24[1]) ↓ Investigations determine whether there is wrongdoing and a report with recommendations or corrective action is made (PSDPA, ss. 26-35; s. 38[3.1]) ↓ Any wrongdoing found is corrected (implied in PSDPA, ss. 36-38 and PS Ethics Code, p. 6, s. 5.1).	Civil servant makes complaint to the PSIC (PSDPA, ss. 19.1-19.2); the PSIC decides whether to conduct inquiry into complaint (PSDPA, ss. 19.3-19.4) ↓ If the PSIC opts to investigate, does so and decides whether to suspend the reprisal action (s. 19.6), offer mediation (PSDPA, ss. 20[1]-20.2), refer the complaint to the PSDP Tribunal (ss. 20.4-20.6), or dismiss the complaint (PSDPA, s. 20.6) ↓ If complaint proceeds to the PSDP Tribunal, hearing is held and decision made on remedy ↓ Reprisal is stopped and whistleblower compensated for harm; those making reprisals disciplined (PSDPA, ss. 21.7-21.8)
↓ Effective processes provide public servants with the confidence to raise concerns (implied in PS Ethics Code, expected behaviour 2 – Respect for People)[41] ↓ "…strengthen the ethical culture of the public sector" (PS Ethics Code, p. 3 & expected behaviour 3 - Integrity) ↓ Maintenance of public service norms and conventions with role of public service (PS Ethics Code, expected behaviours 1, 4, & 5 – Respect for Democracy, Stewardship, & Excellence) "…to maintain and enhance public confidence in the integrity of public servants" (PSDPA, Preamble)	

[41] Reinforced in Treasury Board Secretariat annual reports by the Chief Human Resources Officer promoting an environment where employees feel safe to make disclosures. See, for example, the *2020-2021 Annual Report on the Public Servants Disclosure Protection Act* (Canada. Treasury Board Secretariat, 2021).

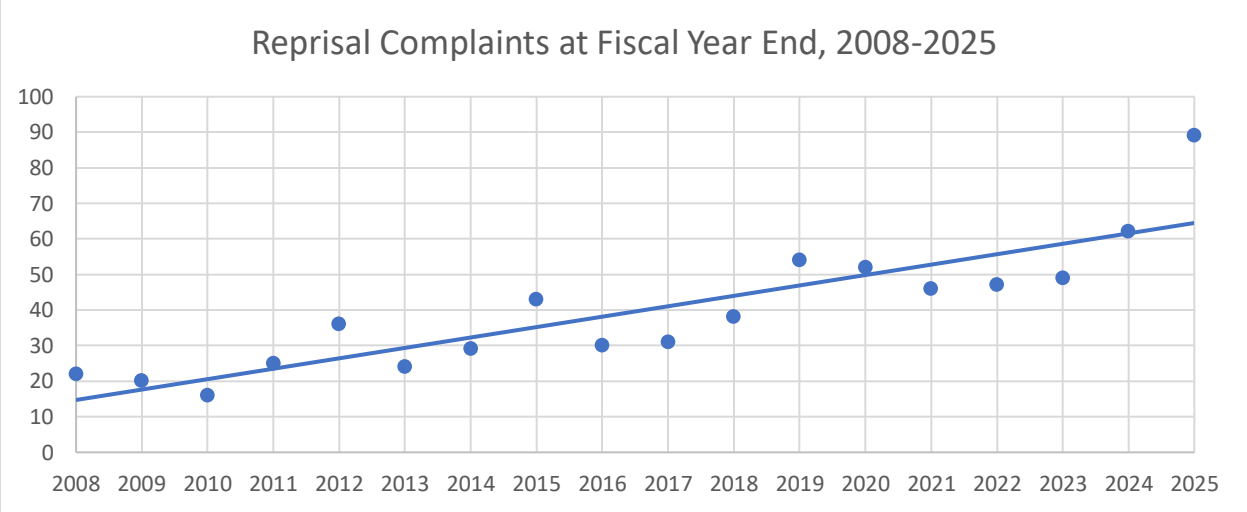
Appendix B: Disclosures of Wrongdoing and Results

	OPSIC			Departmental Processes		
Year	**Disclosures**	**Investigations**	**Founded Wrongdoing**	**Disclosures**	**Investigations**	**Founded Wrongdoing**
2007-2008	59	3	0	234	87	7
2008-2009	55	2	0	181	60	6
2009-2010	56	4	0	213	75	7
2010-2011	72	16	0	291	111	9
2011-2012	78	27	0	197	78	24
2012-2013	113	21	4	207	74	18
2013-2014	84	13	5	194	39	17
2014-2015	90	4	2	200	78	13
2015-2016	86	17	1	281	56	7
2016-2017	81	22	2	209	61	10
2017-2018	147	15	3	291	71	16
2018-2019	148	15	0	269	59	7
2019-2020	142	11	1	216	38	3
2020-2021	146	8	0	101	63	12
2021-2022	142	8	0	178	85	5
2022-2023	184	9	1	246	50	21
2023-2024	270	19	2	266	51	31
2024-2025	348	11	1	NA	NA	NA
Totals	**2301**	**225**	**22**	**3774**	**1136**	**213**



Appendix C: Complaints of Reprisal and Results

Year	Reprisal Complaints	Reprisal Investigations Completed	Referrals to PSDP Tribunal	Mediated
2007-2008	22	2	0	0
2008-2009	20	1	0	0
2009-2010	16	2	0	0
2010-2011	25	9	0	0
2011-2012	36	23	2	0
2012-2013	24	13	1	0
2013-2014	29	8	0	0
2014-2015	43	4	3	1
2015-2016	30	13	1	3
2016-2017	31	14	0	2
2017-2018	38	9	1	6
2018-2019	54	5	0	3
2019-2020	52	10	0	4
2020-2021	46	19	0	0
2021-2022	47	5	0	1
2022-2023	49	9	1	1
2023-2024	62	17	2	1
2024-2025	89	26	2	6
Totals	**713**	**189**	**13**	**28**



Appendix D: Cases Litigated Under the PSDPA (CanLII)

Decision Date	Case Name	Issue Litigated
2009-02-11	Detorakis v. Canada (Attorney General), 2009 FC 144 (CanLII)	Disclosure
2009-04-16	Bron v. Attorney General of Canada, Gerry Frappier, Joanne St-Onge, Laureen Kinney and Marc Grégoire 2007-CV-39303	Reprisal
2010-01-13	Detorakis v. Canada (Attorney General), 2010 FC 39 (CanLII)	Disclosure
2010-01-29	Bron v. Canada (Attorney General), 2010 ONCA 71 (CanLII)	Reprisal
2010-03-05	Collins v. Canada, 2010 FC 254 (CanLII)	Reprisal
2011-06-10	El-Helou v. Courts Administration Service, 2011 PSDPT 8 (CanLII)	Procedural issue
2011-06-10	El-Helou v. Courts Administration Service, 2011 PSDPT 7 (CanLII)	Procedural issue
2011-06-10	El-Helou v. Courts Administration Service, 2011 PSDPT 6 (CanLII)	Procedural issue
2011-06-10	El-Helou v. Courts Administration Service, 2011 PSDPT 5 (CanLII)	Procedural issue
2011-08-23	El-Helou v. Courts Administration Service, 2011 PSDPT 11 (CanLII)	Procedural issue
2011-08-23	El-Helou v. Courts Administration Service, 2011 PSDPT 9 (CanLII)	Procedural issue
2011-08-23	El-Helou v. Courts Administration Service, 2011 PSDPT 10 (CanLII)	Procedural issue
2011-10-06	El-Helou v. Courts Administration Service, 2011 PSDPT 1 (CanLII)	Procedural issue
2011-10-14	Clout v. Government of Canada, 2011 ONSC 6082 (CanLII)	Reprisal
2011-10-19	El-Helou v. Courts Administration Service, 2011 PSDPT 2 (CanLII)	Reprisal
2011-11-10	Wayne Roberts v. Atomic Energy Canada Limited, 2011 PSDPT 12 (CanLII)	Procedural issue
2011-11-25	El-Helou v. Courts Administration Service, 2011 PSDPT 3 (CanLII)	Reprisal
2011-12-20	El-Helou v. Courts Administration Service, 2011 PSDPT 4 (CanLII)	Procedural issue
2012-01-05	Hughes v. Department of Human Resources and Skills Development, 2012 PSLRB 2 (CanLII)	Reprisal
2012-02-08	El-Helou v. Courts Administration Service, 2012 PSDPT 1 (CanLII)	Procedural issue
2012-06-18	Agnaou v. the Deputy Minister of Justice, 2012 PSST 16 (CanLII)	Reprisal
2012-09-21	El-Helou v. Courts Administration Service, 2012 FC 1111 (CanLII)	Reprisal
2013-03-22	Hassard v. Treasury Board (Correctional Service of Canada), 2013 PSLRB 29	Accused seeks review
2013-06-05	Lessard-Gauvin c. Canada (Procureur général), 2013 CAF 147 (CanLII)	Procedural issue
2013-11-07	Cousineau-Mahoney v. Public Sector Integrity Commissioner, 2013 FC 1128 (CanLII)	Accused seeks review
2014-01-27	Agnaou v. Canada (Attorney General), 2014 FC 86 (CanLII).	Disclosure
2014-01-27	Agnaou v. Canada (Attorney General), 2014 FC 87 (CanLII)	Reprisal
2014-03-19	Hassard v. Treasury Board (Correctional Service of Canada), 2014 PSLRB 32 (CanLII)	Accused seeks review
2014-04-03	Marchand v. Public Sector Integrity Commissioner, 2014 FC 329 (CanLII)	Accused seeks review

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2014-05-14	Agnaou v. Canada (Attorney General), 2014 FCA 128 (CanLII)	Disclosure
2014-09-05	Agnaou v. Canada (Attorney General), 2014 FC 850 (CanLII)	Reprisal
2014-10-10	Blue Water Bridge Canada, 2014 PSDPT 6 (CanLII)	Reprisal
2015-02-02	Agnaou v. Canada (Attorney General), 2015 FCA 29 (CanLII), [2016] 1 FCR 322	Disclosure
2015-02-02	Agnaou v. Canada (Attorney General), 2015 FCA 30 (CanLII)	Reprisal
2015-04-22	Agnaou v. Canada (Attorney General), 2015 FC 523 (CanLII)	Reprisal
2015-04-24	Gupta v. Canada (Attorney General), 2015 FC 535 (CanLII)	Reprisal
2015-05-29	El-Helou v. Canada (Courts Administration Service), 2015 FC 685 (CanLII)	Reprisal
2015-08-11	Swarath v. Canada (Attorney General), 2015 FC 963 (CanLII)	Disclosure
2015-12-09	Therrien v. Canada (Attorney General), 2015 FC 1351 (CanLII)	Reprisal
2015-12-18	Agnaou v. Canada (Attorney General), 2015 FCA 294 (CanLII).	Reprisal
2016-02-11	Gupta v. Canada (Attorney General), 2016 FCA 50 (CanLII)	Reprisal
2016-05-05	Hassard v. Deputy Head (Correctional Service of Canada), 2016 PSLREB 39 (CanLII)	Accused seeks review
2016-07-29	Canada (Attorney General) v. Canada (Public Sector Integrity Commissioner), 2016 FC 886 (CanLII), [2017] 2 FCR 165	Other
2016-11-10	El-Helou v. Canada (Courts Administration Service), 2016 FCA 273 (CanLII)	Reprisal
2016-12-29	Gupta v. Canada (Attorney General), 2016 FC 1416 (CanLII)	Reprisal
2017-01-17	Therrien v. Canada (Attorney General), 2017 FCA 14 (CanLII)	Reprisal
2017-03-31	Agnaou v. Canada (Attorney General), 2017 FC 338	Reprisal
2017-09-21	Desjardins v. Canada (Attorney General), 2017 FC 847 (CanLII)	Accused seeks review
2017-10-03	Dunn v. Indigenous and Northern Affairs Canada and Lecompte, 2017 PSDPT 3 (CanLII)	Reprisal
2017-10-24	Gupta v. Canada (Attorney General), 2017 FCA 211 (CanLII)	Reprisal
2017-12-01	Wilson v. Atomic Energy of Canada Limited, 2017 CanLII 81327 (CA LA)	Reprisal
2017-12-15	Biles v. Canada (Attorney General), 2017 FC 1159 (CanLII)	Reprisal
2018-09-20	Desjardins v. Canada (Attorney General), 2018 FC 938 (CanLII)	Accused seeks review
2018-11-13	Agnaou v. Public Prosecution Service of Canada et. al., 2018 PSDPT 2 (CanLII)	Procedural issue
2018-11-15	Dunn v. Canada (Attorney General), 2018 FCA 210 (CanLII)	Reprisal
2019-02-21	Agnaou c. Service des poursuites pénales du Canada et. al., 2019 TPFD 1 (CanLII)	Procedural issue
2019-05-06	Agnaou v. Public Prosecution Service of Canada et. al., 2019 PSDPT 2 (CanLII)	Procedural issue
2019-07-18	Gordillo v. Canada (Attorney General), 2019 FC 950 (CanLII)	Disclosure
2019-08-23	Therrien v. Deputy Head (Department of Employment and Social Development), 2019 FPSLREB 82 (CanLII)	Reprisal

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2019-09-24	Burlacu v. Canada (Attorney General), 2019 FC 1215 (CanLII),	Disclosure
2019-10-22	Agnaou v. Canada (Attorney General), 2019 FCA 264 (CanLII)	Reprisal
2019-11-13	Agnaou and Public Prosecution Service of Canada et. al., 2019 PSDPT 3 (CanLII)	Reprisal
2020-07-17	Desjardins v. Canada (Attorney General), 2020 FCA 123 (CanLII)	Accused seeks review
2020-09-02	McCarthy v. Canada (Attorney General), 2020 FC 930 (CanLII)	Accused seeks review
2020-11-16	Gordillo v. Canada (Attorney General), 2020 FCA 198 (CanLII)	Procedural issue
2020-11-30	McCarthy v. Canada (Attorney General), 2020 FC 1100 (CanLII)	Accused seeks review
2021-07-05	Doucette v. Canada (Attorney General), 2021 FC 704 (CanLII)	Accused seeks review
2022-01-19	Burlacu v. Canada (Attorney General), 2022 FCA 10 (CanLII)	Disclosure
2022-02-09	Gordillo v. Canada (Attorney General), 2022 FCA 23 (CanLII)	Disclosure
2022-07-29	Agnaou v. Canada (Criminal Prosecution Services), 2022 FCA 140 (CanLII)	Reprisal
2022-08-08	Burlacu v. Canada (Attorney General), 2022 FC 1177 (CanLII)	Reprisal
2023-05-11	Yacine Agnaou v. Public Prosecution Service of Canada, et al., 2023 CanLII 39586 (SCC)	Reprisal
2024-01-24	Sganos v. Treasury Board, 2024 FPSLREB 11 (CanLII)	Procedural issue
2024-05-28	Utano v. Canada (Public Safety), 2024 FC 805 (CanLII)	Accused seeks review
2024-09-11	Bernatchez c. Canada (Procureur général), 2024 CF 1426 (CanLII)	Accused seeks review
2024-10-25	Mancabo c. Canada (Procureur général), 2024 CF 1699 (CanLII)	Disclosure
2025-02-07	Dempsey v. Canada (Attorney General), 2025 FC 245 (CanLII)	Disclosure
2025-02-20	Mancabo c. Canada (Procureur général), 2025 CF 341 (CanLII)	Disclosure
2025-04-15	Busby v. Canada (Attorney General), 2025 FC 695 (CanLII)	Disclosure