

2022-2023 ANNUAL REPORT
(April 1, 2022 – March 31, 2023)

Ethics Officer for the Nunavut Public Service

Sandra MacKenzie
Deputy Ethics Officer
November 2022 – May 2023

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INTRODUCTION

As the former Deputy Ethics Officer, it is my honour to submit the eighth Annual Report of the Ethics Officer for the Nunavut Public Service, for the period of April 1, 2022 to March 31, 2023. I am submitting this report based on information gathered by myself as former Deputy Ethics Officer and Jeffrey Schnoor Q.C., former Ethics Officer.

In this annual report I will:

- Provide an overview of the role of the Ethics Officer;
- Provide information regarding who has filled the role of Ethics Officer during this 2022 – 2023 reporting year;
- Provide an overview of what constitutes wrongdoing and how to make a disclosure;
- Describe the protections from reprisal that the *Public Service Act* gives to public servants who make a disclosure of wrongdoing; and
- Provide statistics for the 2022 – 2023 reporting year.

OVERVIEW

Role of the Ethics Officer

The Ethics Officer operates under Part 6 of the *Public Service Act* (“**the Act**”), which came into force on April 1, 2015.

The Ethics Officer’s role is to receive and investigate allegations of wrongdoing in the Nunavut public service. Where wrongdoing is found, the Ethics Officer makes recommendations to address the wrongdoing. The Ethics Officer provides a safe method for employees in the Nunavut public service to disclose wrongdoing that comes to their attention.

Fulfillment of the Role of Ethics Officer in 2022-2023

During the April 1, 2022 to March 31, 2023 reporting year, two individuals held the role of Ethics Officer.

Jeffrey Schnoor, Q.C., held the role of Ethics Officer for the first several months of the 2022-2023 fiscal year. He held this position until approximately mid-November 2022, when the role was assumed by Sheila MacPherson.

On May 8, 2023, Sheila MacPherson was appointed as a judge of the Supreme Court of the Northwest Territories. As a result, she was required to resign from the position as Ethics Officer for Nunavut. I was working with Sheila MacPherson as the Deputy Ethics Officer between mid-November 2022 and May 2023.

What Constitutes Wrongdoing

According to s.38(1) of the *Act*, wrongdoing is defined as any of the following conduct by an employee acting in his or her public service capacity:

- (a) contravention of an Act of the Legislative Assembly, the Parliament of Canada or the legislature of a province or territory, or of a regulation made under any such Act;
- (b) failure to comply with applicable directives made by the Minister, the Minister responsible for the *Financial Administration Act*, or the Financial Management Board with respect to management of the public service or public assets for which the employee is responsible;
- (c) misuse of public funds or public property;
- (d) gross mismanagement of public property or resources for which the employee is responsible, including an act or omission showing a reckless or willful disregard for the proper management of public property or resources;
- (e) harassment or verbal or physical abuse of any person other than an employee or violation of the human or contractual rights of any person providing services to or receiving services or information about services of any kind from a department or public body;
- (f) an act or omission that creates a substantial and specific danger to the life, health or safety of persons, to public or private property, or to the natural

environment, other than a danger that is inherent in the performance of the duties or functions of an employee;

- (g) a serious breach of the Code of Values and Ethics;
- (h) any act or reprisal against an employee or other person;
- (i) a request, direction or encouragement by a supervisor or senior manager to an employee or by an employee to any other person to commit a wrongdoing set out above.

How to Disclose Wrongdoing

Section 40(1) of the *Act* sets out the process that employees must follow if they wish to disclose possible wrongdoing. Before making a disclosure, an employee must first make reasonable efforts to report it to the appropriate authorities in the public service. This can include:

- their senior manager;
- their Deputy Minister or deputy head;
- the Deputy Minister of Human Resources; and
- any other Deputy Minister who they think is appropriate.

As outlined in Section 40(5) of the *Act*, an employee can report wrongdoing to any other person if they have reasonable grounds to believe that doing so is necessary to prevent imminent danger to the life, health, or safety of a person or imminent danger to property or the environment.

If, after 30 days of reporting, the employee does not believe authorities in the public service have taken reasonable steps to investigate and correct the report, the employee may then report to the Ethics Officer. The Ethics Officer will then investigate usually after making some preliminary inquiries to confirm that the allegations, if proven, would amount to wrongdoing. Alternatively, the Ethics Officer may:

- attempt to resolve the matter informally;
- refer the matter to alternative dispute resolution;

- after making preliminary inquiries, decide that an investigation is not necessary or appropriate and therefore decline to investigate; or
- refer the matter to other appropriate authorities.

The Ethics Officer has broad powers to investigate and collect evidence that includes, however is not limited to, the power to summon witnesses and require them to give evidence, and the power to require documents to be produced. The Ethics Officer may, in the course of an investigation enter any premises occupied by a department or public body. The Ethics Officer decides whether an investigation will be done in private or in public. A deputy head must cooperate and ensure that his or her employees cooperate in an investigation by the Ethics Officer. Failure to do so is an offence with a fine up to \$10,000. An employee must provide information required by the Ethics Officer. Failure to do so is an offence with a fine of up to \$5,000.

Protection from Reprisal

The *Act* states that no employee is subject to any reprisal or retaliation for making a disclosure. An act of reprisal against a person includes:

“any action, threat or attempt to suspend, demote, dismiss, discharge, expel, intimidate, coerce, evict, terminate a contract to which a person is a party without a cause, commence legal action against, impose a pecuniary or other penalty on or otherwise discriminate against the person because of a disclosure of wrongdoing by that person or because the person assists in the investigation of a disclosure made by another person.”

Employees may file a complaint directly with the Ethics Officer if they believe that they are the subject of an act of reprisal; there is no requirement that an internal disclosure of the alleged reprisal be made first. The Ethics Officer must then investigate the complaint in the same manner that he or she would investigate a disclosure of wrongdoing.

If the Ethics Officer concludes that the reprisal complaint is valid, appropriate disciplinary action must be taken against the person who committed the act of reprisal and other action recommended by the Ethics Officer may be taken to deal with any loss of damage suffered by the person who complained. There can be a fine of up to \$10,000.00 for acts of reprisal.

Where other actions recommended by the Ethics Officer are not taken, the relevant deputy head and Minister must provide an explanation to the Ethics Officer and must describe what other action, if any, will be taken in response to the recommendations.

More information regarding the role of the Ethics Officer can be found on the Government of Nunavut's website:

<https://www.gov.nu.ca/human-resources/information/ethics-officer>

2022-2023 STATISTICS

Disclosures

As noted above, employees must first make an internal disclosure of wrongdoing before they can make a disclosure to the Ethics Officer. Departmental officials are to notify the Ethics Officer of these internal disclosures, but the Ethics Officer has no jurisdiction to investigate until the disclosure is made to the Ethics Officer, after at least 30 days have elapsed since the internal disclosure.

Statistics from Jeffrey Schooner Q.C., April 2022-November 2022

There were seven disclosures to the Ethics Officer, including four that were carried forward from the previous year.

Wrongdoing was not found in two of the disclosures.

The Ethics Officer declined to investigate three of the disclosures because they did not meet a *prima facie* threshold and the investigation of two disclosures was

suspended because they were being investigated by third parties.

Statistics from Sheila MacPherson and Sandra MacKenzie, November 2022-March 2023

There was one disclosure of wrongdoing pursuant to section 40(2) of the Act. There were seven requests for advice under s.39(3) of the Act.

Of the seven requests for advice, three were from non-GN employees, and therefore their concerns were outside the jurisdiction of the Ethics Officer.

One request was made by an employee who provided a significant number of documents to the Ethics Officer, but the concerns raised related to allegations of inappropriate conduct in the workplace that would not, if true, amount to the level of wrongdoing. As a result, these concerns would not be within the jurisdiction of the Ethics Officer.

One request was made to the Ethics Office regarding the process for making a disclosure, and confidential advice was provided, but a disclosure was not made by the employee pursuant to section 40(2) of the Act.

In two instances, after the initial requests for advice, the employees did not reply to requests from the Ethics Officer for further information.

The disclosure of wrongdoing was referred to investigation by a third party because of its complexity early in the 2023-2024 fiscal year. Information regarding this report and any recommendations arising from this report should be included in the 2023-2024 annual report.

Reports of Investigations

In the 2022-2023 reporting year, the Ethics Officer received a third party investigation report. The disclosure that led to the investigation comprised allegations of mismanagement of public property or resources related to a government project. As well, allegations were made of breaches of the GN's Code of Values.

The Ethics Officer was contacted to provide their recommendations based on the findings of the report. Due to a conflict of interest, however, the Ethics Officer recommended that the Government of Nunavut consider appointing a Special Ethics Officer under s.78(1) of the *Act* to act in the place of the Ethics Officer with respect to providing recommendations.

The recommendation to appoint a Special Ethics Officer was submitted to the Government of Nunavut after the close of this reporting year, as such, any further information regarding this report should be included in the 2023-2024 annual report.

The Ethics Officer was also provided with a second arms-length investigation report. The report made findings with respect to allegations made by an employee that a certain GN Department was not complying with relevant procurement policies. The Ethics Officer did not provide recommendations given the findings of the investigation report.

Responses to Ministers

During the 2022-2023 reporting year, the Ethics Officer did not provide any summaries of responses to Ministers or recommendations.

CONCLUSION

As former Deputy Ethics Officer, I would like to thank the senior staff in the Government of Nunavut's Department of Human Resources for their assistance in supporting the Ethics Officers in carrying out their mandate.

Respectfully submitted by,

A handwritten signature in blue ink that reads "S MacKenzie". The signature is written in a cursive style with a large initial 'S'.

Sandra MacKenzie
Deputy Ethics Officer,
November 2022-May 2023

Date: October 3, 2023