

Annual Report

2015-2016

Ethics Officer for the Nunavut Public Service

Jeffrey Schnoor, Q.C.

Ethics Officer

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It is my honour to submit the first Annual Report of the Ethics Officer for the Nunavut Public Service, for the period from January 5, 2015 to March 31, 2016.

Appointment and Role

The role of the Ethics Officer, in a nutshell, is to receive and investigate allegations of wrongdoing in the Nunavut public service. Where wrongdoing is found, he or she makes recommendations to address the wrongdoing. The Ethics Officer provides a confidential method for employees in the Nunavut public service to disclose wrongdoing that comes to their attention and provides assurance to them – and to all Nunavummiut – that those disclosures will be investigated and addressed promptly, fairly and effectively.

The Ethics Officer operates under Part 6 of the *Public Service Act*, which came into force on April 1, 2015. I had the honour of being appointed as the first Ethics Officer on January 5, 2015 for a five-year term.

In late March of 2015, a number of activities took place to prepare for the coming into force of the legislation:

- I was introduced in the Legislative Assembly of Nunavut.
- I met with the Minister of Finance, the Hon. Keith Peterson, his senior officials and with his Department's human resources staff.
- Information about the Ethics Officer and how to disclose wrongdoing was placed in the pay envelopes of all employees in the Nunavut public service.
- I was interviewed by print, radio and television media in Iqaluit.

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During the time leading up to the coming into force of the legislation, I also set up an informative website, a toll-free telephone line and a toll-free fax line.

As will become apparent later in this report, the efforts to publicize the new legislation and to make public servants aware that the Ethics Officer is available to assist them were very successful. I have handled many requests for information and a significant number of disclosures of alleged wrongdoing. I recommend that similar efforts be made on a periodic basis to ensure that the availability of the Ethics

Officer and the process for the disclosure of wrongdoing remain top-of-mind for employees of the Government of Nunavut.

How to Disclose Wrongdoing

Wrongdoing is defined in the *Public Service Act*. It means 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 of 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.

The *Public Service Act* sets out the process that employees must follow if they wish to disclose possible wrongdoing. They must first make reasonable efforts to report it to appropriate authorities in the public service. This can include:

- Their senior manager
- Their Deputy Minister or deputy head
- The Deputy Minister of Finance
- Any other Deputy Minister who they think is appropriate

They can report the 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 wrongdoing, they don't think that the authorities in the public service have taken reasonable steps to investigate and correct it, they may then report it to the Ethics Officer. At this point, the Ethics Officer will begin an investigation, 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
- Refer the matter to other appropriate authorities.

The Ethics Officer has broad powers to investigate and collect evidence. This includes 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

For More Information:
<http://www.gov.nu.ca/finance/information/ethics-officer>

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 requested by the Ethics Officer. Failure to do so is an offence with a fine of up to \$5,000.

Protection from Reprisal

It is against the law to penalize a person for making a disclosure of wrongdoing and there can be a fine of up to \$10,000. This is called an act of reprisal and includes any action, threat or attempt to suspend, demote, dismiss, discharge, expel, intimidate, coerce, evict, terminate a contract to which the person is a party without 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 way that he or she would investigate a disclosure of wrongdoing.

If the Ethics Officer concludes the complaint of reprisal 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 or damage suffered by the person who complained.

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.

Investigations

As noted above, employees must make an internal disclosure of wrongdoing before they can make the disclosure to the Ethics Officer. I receive notification that they have made that internal disclosure but have no jurisdiction to investigate until they make a disclosure to me, after at least 30 days have elapsed. During 2015-16, I received notification of three internal disclosures that did not proceed to a disclosure to the Ethics Officer.

During 2015-16, I received 11 disclosures of wrongdoing. The following chart sets out the outcome of each of these disclosures.

Wrongdoing found	1
Wrongdoing not found	5
Investigation currently suspended	1
Investigation ongoing	1
Matter referred to another authority	1
Declined to investigate	2
TOTAL	11

A summary of each of the investigations that I undertook and completed is set out in Appendix "A".

The following table shows the Departments about which disclosures of wrongdoing were made. It includes the three internal disclosures that have not to date proceeded to a disclosure to the Ethics Officer.

Health	3		Finance	1
Environment	3		Economic Development and Transportation	1
Education	3		Justice	1
Family Services	2			

Two complaints of reprisal were made. In both cases, I concluded that the allegations were not proven. Summaries of those investigations are set out in Appendix “B”.

Advice

The Ethics Officer is available to provide advice to employees who are considering making a disclosure of wrongdoing. During 2015-16, I received 51 requests for advice. Not surprisingly, a substantial number were received around the time the legislation came into force. The following charts show how many requests were received during each month:

March 2015	5		October 2015	4
April 2015	15		November 2015	1
May 2015	5		December 2015	4
June 2015	1		January 2016	4
July 2015	5		February 2016	1
August 2015	2		March 2016	0
September 2015	4			



Protocol with the Speaker

Section 43(5.1) of the *Public Service Act* requires that the Ethics Officer and the Speaker of the Legislative Assembly enter into a Protocol to govern the exercise of the Ethics Officer’s investigative powers as they relate to the Legislative Assembly. The purpose of the Protocol is to ensure that any investigations by the Ethics Officer recognize the privileges and traditions of the Assembly. I am pleased to advise that a protocol was entered into, effective April 1, 2015.

National Public Interest Disclosure Group

As Ethics Officer, I have become a member of the National Public Interest Disclosure Group, which brings together officers across Canada with responsibility for public service ethics and whistleblowing. The Group meets annually and I was fortunate to attend for the first time in September 2015. The meeting was extremely useful, providing a forum for education and sharing experiences. I would like to express my appreciation for the warm welcome that I received.

Conclusion

I would like to conclude by expressing my gratitude for the support that I have received from the senior staff in the Department of Finance. It has been invaluable in the smooth launch of my office.

Confidence in the fair, efficient and ethical operation of the public service is essential for all who work within it and for all Nunavummiut. I am pleased to be able to contribute to building that confidence.

Respectfully submitted,

Jeffrey Schnoor, Q.C.
Ethics Officer

Appendix A

Case Summaries: Disclosures of Possible Wrongdoing

In order to protect the identity of individuals, all persons making disclosures of possible wrongdoing will be referred to with feminine pronouns and all persons who are the subject of the disclosures will be referred to with masculine pronouns.

Wrongdoing Found

1. Sexual Harassment

Employee “A” alleged that she had been sexually harassed by employee “B” over a period of at least seven years. The sexual harassment took the form of leering, wolf-whistles and, on at least one occasion, inappropriate touching. “A” was taking steps to avoid being alone with “B”, for fear that his conduct would escalate.

The Ethics Officer interviewed “A” and “B” at their workplace. He also interviewed in person three other individuals who work in the same office and interviewed by telephone two other individuals who work or worked in the same office. He reviewed relevant documentation provided by the Government of Nunavut.

The Ethics Officer found “A” to be honest and credible in her depiction of events. The other witnesses were also candid and credible and generally supported “A”’s allegations. Although “B” denied most of the alleged incidents, he was evasive and inconsistent in his depiction of events. Significantly though, “B” admitted to one instance of sexual harassment of “A” early in the seven-year period. The Ethics Officer also found evidence of several other employees complaining in the past about similar behaviour by “B”. The Ethics Officer concluded that, in all the circumstances, including “B”’s admission of one instance of sexual harassment, his clear knowledge that his conduct was unwelcome and was sexual harassment, the long duration of his conduct and his lack of remorse, this was a serious breach of the Code of Values and Ethics and therefore constituted wrongdoing.

In determining his recommendations to address the finding of wrongdoing, the Ethics Officer considered a number of factors, including the duration of the sexual harassment, its impact on “A” and others in the workplace, “B”’s continued denials and lack of remorse and “B”’s considerable disciplinary record. The Ethics Officer also expressed concern that the sexual harassment could continue for such a long period of time with very little apparently being done about it, despite there being several complaints over the years from at least four employees. The Ethics Officer therefore made the following recommendations:

- a) That “B” be dismissed from his position with the Nunavut public service.
- b) That the Government of Nunavut pay “A” compensation in the amount of \$3,000.00.

- c) That the Government of Nunavut take steps to ensure that all managers fully understand their obligations to respond proactively to complaints made about sexual harassment in the workplace.
- d) That the Government of Nunavut take steps to ensure that all employees understand that they can and should complain about sexual harassment in their workplace, even if it is directed at someone else, and that managers understand that they should act on such complaints, whether or not they come from the person at whom the sexual harassment is directed.

Section 45(5) of the Act requires that, when the report of the Ethics Officer includes recommendations, the relevant Ministers must respond in writing within 21 days indicating what actions would be taken in response to the recommendations. In this case, the relevant Ministers advised that they accepted and would be implementing all of the recommendations.

Wrongdoing Not Found

2. Harassment and Bullying

Employee “C” alleged that she had been harassed and bullied by her supervisor’s supervisor (“D”) and gave numerous examples of situations in which she believed that she had been treated inappropriately. In addition to reviewing substantial documentation, the Ethics Officer interviewed “C”, her supervisor, her supervisor’s supervisor (“D”), a co-worker who had been identified by both “C” and “D” as a person with relevant information, and two other individuals.

The Ethics Officer reviewed each of the incidents identified by “C”, both individually and as a course of conduct, and concluded that they did not support the allegations of harassment and bullying. Instead, the Ethics Officer concluded that “C” was refusing to accept that “D” had any authority over her, since “D” was not her immediate supervisor. Although it was preferable for the supervision of “C” to be done by her immediate supervisor, this did not detract from the authority of “D” to provide direction to “C”. The incidents identified by “C” did not constitute harassment, bullying or disrespect and generally involved the appropriate exercise of managerial responsibilities.

Accordingly, the Ethics Officer concluded that the conduct complained of did not amount to harassment or bullying; therefore, a serious breach of the Code of Values and Ethics amounting to wrongdoing was not proven.

3. Harassment

Employee “E” alleged that that she was being excluded from all of the major responsibilities of her position and attributed that to harassment. “E”’s supervisors acknowledged that she was being excluded from the major responsibilities of her position but stated that this was the result of concerns about her performance. They noted previous disciplinary action related to inappropriate conduct and provided substantiation through the observations that others had

made of “E”’s work during a period of performance management. They also provided evidence indicating that “E” had been advised on several occasions about the concerns about performance and the reasons for the withdrawal of her responsibilities.

The Ethics Officer determined that there was no wrongdoing. The actions taken by management were based on a fair assessment of “E”’s performance and were based on her supervisors’ reasonable assessment of the best interests of clients.

4. Sharing Confidential Information and Harassment

Employee “F” alleged that confidential information about the progress and outcome of two job competitions was inappropriately shared between her supervisor and his supervisor. In one of the two cases, “F”’s recollection of the facts was weak, her supervisor denied the allegation and the information that was allegedly shared was in fact common knowledge. In the second case, a limited amount of information was shared that was not unreasonable in the circumstances; despite the suggestion made by “F”, the information shared with “F”’s supervisor did not indicate that he had an “inside track” on the job in question. The Ethics Officer determined that there had not been a serious breach of the Code of Values and Ethics and there was therefore no wrongdoing.

Employee “F” also alleged that her supervisor had been rude and condescending on one occasion and, on another occasion, had suggested that she had acted in a sexually inappropriate manner while on the job. It was apparent from the Ethics Officer’s investigation that “F” did not like her supervisor or have confidence in his abilities. In the first case, while the conversation between “F” and her supervisor may have been heated and involved a difference of opinion, it did not amount to harassment. In the second case, “F”’s supervisor had asked a question to determine if “F” had followed departmental policy and was not implying anything sexual. Accordingly, the Ethics Officer determined (in a separate report) that there had been no wrongdoing.

5. Harassment

Employee “G” alleged that she had been harassed by her supervisor (“H”) and two others. The Ethics Officer determined that the allegations against the other two, even if proven, did not fall within any of the categories set out in the definition of wrongdoing in the *Public Service Act* and therefore advised that he would not be investigating those allegations.

“G” alleged that her supervisor had created a hostile and abusive work environment in the hope that she would voluntarily resign or could be dismissed. Although she spoke of false accusations and intimidation, she chose to focus her disclosure on a single incident in which she said that “H”, in an email to “H”’s supervisors, had contradicted a statement made by “G”, thereby implying that “G” had lied.

The Ethics Officer found, on a balance of probabilities, that it was not proven that the disputed email had in fact been sent. Even if it had been sent, “H” could have reasonably believed that the email was accurate and, in any event, the fact of sending the email was not conduct

sufficient to be a serious breach of the Code of Values and Ethics. Furthermore, “H”’s supervisors stated that the email had had no effect on their opinion of “G”. The Ethics Officer therefore determined that there had not been wrongdoing.

6. Favouritism or Bias in the Awarding of a Contract

Information came to the attention of several employees that suggested that the evaluation of proposals received pursuant to a Request for Proposals had shown bias and pre-determined favouritism.

The Ethics Officer examined the substantial documentation relating to the development of the Request for Proposals and the evaluation and selection of the successful proponents. He interviewed two employees who had made disclosures, as well as the four members of the evaluation committee. He concluded that, while some of the documentation was poorly worded and did give rise to the concerns that the employees had expressed, there was in fact no bias or favouritism and therefore no wrongdoing. Taken in their full context, the poor wording nonetheless reflected a fair and good faith consideration of all of the proposals. Furthermore, none of the members of the evaluation committee had any personal, private or pecuniary interest in any of the proponents.

The Ethics Officer did note that the Request for Proposals, though in keeping with GN’s Contracting Regulations, appeared to contravene a provision of the GN’s Contracting Procedures Manual. However, this was by inadvertence. None of the members of the evaluation committee were aware of the contravention; if they had known, the department’s deputy minister would have waived it, as the Manual permits. The Ethics Officer agreed that it would have been appropriate, indeed advisable, to waive the contravention. He therefore concluded that the technical breach of the Manual did not rise to the level of wrongdoing.

Appendix B

Case Summaries: Alleged Reprisals

In order to protect the identity of individuals, all persons alleging reprisal will be referred to with feminine pronouns and all persons who are the subject of the allegation will be referred to with masculine pronouns.

Reprisal Not Found

1. Change of Duties and Discipline Proceedings Begun

Employee “C” alleged that, as a result of making a disclosure of wrongdoing, she was excluded from some of her normal duties, a new job requirement was imposed on her and disciplinary proceedings were begun against her.

It was acknowledged that the actions alleged by employee “C” were all true. The issue was whether they had occurred “because of making a disclosure of wrongdoing”. The Ethics Officer concluded that most of the actions complained of by “C” in fact had occurred before she had made her disclosure of wrongdoing; therefore, they could not be reprisals. However, even if this were not the case, the Ethics Officer concluded that the actions were legitimate exercises of management discretion, based on a reasonably held view of the requirements of the position, and were not taken as a reprisal. The evidence also indicated that “C” had in fact freely consented to at least one of the changes to her normal duties. The Ethics Officer also concluded that, while the outcome could not be predicted, there was a reasonable basis for bringing the disciplinary proceedings and they were not motivated by reprisal for the disclosure of wrongdoing.

2. Permission Refused

Employee “F” alleged that her supervisor had refused to grant her permission to undertake a particular work-related activity. The Ethics Officer found that the explanation offered by “F”'s supervisor that he had made his decision based on operational considerations to be reasonable. The Ethics Officer also accepted his assertion that, at the time of refusing “F”'s request, he was unaware that “F” had made a disclosure of wrongdoing under s. 40 of the *Public Service Act*. The Ethics Officer therefore concluded that there had not been reprisal.