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Your Right. Our Mission.*

# Chart of System Stakeholders Identified in the PSDPA

Public Servants Disclosure Protection Tribunal Canada

February 2012

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The *Public Servants Disclosure Protection Act* (PSDPA) identifies many different stakeholders. These stakeholders are involved in numerous stages of the disclosure process. Here are the stakeholders identified by the PSDPA:

- Chief Executives
- Senior Officers
- Public Sector Integrity Commissioner (PSIC)
- Public Sector Integrity Commissioner Investigators
- Conciliator
- Auditor General of Canada
- Public Servants Disclosure Protection Tribunal
- Chairperson
- Tribunal Registry
- Registrar of the Tribunal
- Parliament (House of Commons & Senate)
- Federal Court
- Federal Court of Appeal
- Treasury Board

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<b>Chief Executives</b>	<p>The chief executive is the deputy head or chief executive officer of any portion of the public sector, or the person who occupies any other similar position, however called, in the public sector. (see ss 2(1) PSDPA)</p> <p>Their mandate varies in accordance with the public sector organization for which they are appointed.</p>	<p>Their mission is to establish an internal procedure to manage disclosures made by public servants working in the portion of the public sector for which they are responsible.</p>	<p>ss 6(1) of the PSDPA requires deputy heads and chief executives of public sector organizations to establish an organizational code of conduct applicable to their specific work environment and mandate.</p> <p>Each chief executive must establish internal procedures to manage disclosures made under the PSDPA by public servants employed in the portion of the public sector for which the chief executive is responsible (ss 10(1)).</p> <p>Each chief executive must designate a senior officer to be responsible for receiving complaints (ss 10(2)).</p> <p>The chief executive must protect the identity of persons involved in the disclosure process, including that of persons making disclosures, witnesses and persons alleged to be responsible for wrongdoings (subpara.11(1)(a)).</p>	<p><b>Definition ss 2(1)</b></p> <p><b>Code of conduct ss 6(1)</b></p> <p><b>Disclosure procedures s 10</b></p> <p><b>Duties of chief executives s 11</b></p>	<p>See the enabling statute of the public sector organization and its definition of chief executive.</p>

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<p><b>Senior Officers</b></p>	<p>The senior officers support the deputy head and chief executive.</p> <p>Senior officers designated to receive disclosures are responsible for the implementation of the PSDPA in their respective organization.</p> <p>For example, senior officers investigate and make recommendations to deputy heads on allegations of wrongdoing in the workplace.</p>	<p>Their mission is to ensure that the organization exemplifies public service values at all levels of their organization.</p>	<p>The chief executive must establish procedures to ensure the confidentiality of information collected in relation to disclosures of wrongdoing and provide public access to information that describes the wrongdoing and that sets out the recommendations, if any (subparas 11(1)(b), (c)(i),(ii)).</p>	<p><b>Role of senior officer ss 10(2)</b></p> <p><b>Responsible for disclosures s 12</b></p>	<p>PSDPA</p>
			<p>The designated senior officer of each public sector organization is responsible for receiving and dealing with disclosures of wrongdoings made by public servants employed in their respective organization (ss 10(2)).</p> <p>They must do this in accordance with the duties and powers of senior officers set out in the code of conduct established by the Treasury Board (ss 10(2)).</p> <p>A public servant may disclose any information that he or she believes could show that a wrongdoing has been committed or is about to be committed, or that a public servant has been asked to commit a wrongdoing.</p> <p>A public servant can make a disclosure to:</p>		

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<p><b>Public Sector Integrity Commissioner (PSIC)</b></p>			<p>a) his or her supervisor;                      b) to the senior officer designated for the purpose by the chief executive of the public sector in which the public servant is employed (s 12).</p>		
	<p>The mandate of the Office of the Public Sector Integrity Commissioner of Canada is to establish a safe, confidential and independent mechanism for public servants or members of the public to disclose potential wrongdoing in the federal public sector.</p> <p>The Office investigates disclosures of alleged wrongdoing and complaints of reprisal. It also protects public servants from reprisal for making such disclosures or cooperating in investigations under the PSDPA.</p>	<p>The Office provides a confidential, independent and effective response to:</p> <ul style="list-style-type: none"> <li>- disclosures of wrongdoing in the federal public sector from public servants or members of the public; and</li> <li>- complaints of reprisal from public servants and former public servants.</li> </ul>	<p>The Office of the Public Sector Integrity Commissioner can directly receive disclosures by public servants (s 13).</p> <p><b>Powers of the Commissioner:</b></p> <p>The Commissioner can extend the time for filing a complaint if he considers that it is appropriate (ss 19.1(3)).</p> <p>The Commissioner may refuse to deal with a complaint for numerous reasons (see s 19.3).</p> <p>The Commissioner may appoint a conciliator (ss 20(2)).</p> <p>The Commissioner must approve or reject the terms of a settlement brought about by a conciliator (s 20.2). If it is approved, the complaint is dismissed.</p> <p>If the Commissioner is of the opinion that an application to the Tribunal is</p>	<p><b>Duty of Commissioner ss 21.6(2) s 22</b></p> <p><b>Filing of orders at the Federal Court s 21.9</b></p> <p><b>Refusal to investigate s 24</b></p> <p><b>Investigations s 26-35</b></p> <p><b>Reports s 36-38</b></p> <p><b>Appointment of Commissioner s 39-39.3</b></p> <p><b>Confidentiality s 43-44</b></p>	<p>PSDPA</p>

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			<p>warranted, the Commissioner applies to the Tribunal for a determination of whether or not a reprisal was taken against the complainant (s 20.4).</p> <p>In a proceeding before the Tribunal, the Commissioner must adopt the position that is in the public interest (ss 21.6(2)).</p> <p>The duties of the Commissioner involve:</p> <ol style="list-style-type: none"> <li>1. Providing information and advice regarding the making of disclosures and the conduct of investigations;</li> <li>2. Receiving, recording and reviewing disclosures of wrongdoings;</li> <li>3. Conducting investigations of disclosures by appointing investigators;</li> <li>4. Ensuring that the right to procedural fairness and natural justice is respected;</li> <li>5. Protecting the identities of persons involved in a disclosure;</li> </ol>	<p><b>Protection of Commissioner s 45-47</b></p> <p><b>Disclosure of information s 48-50</b></p>	

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			<p>6. Establishing procedures for processing disclosures;</p> <p>7. Reviewing the results of investigations and reporting the findings to the person who disclosed wrongdoing and to the chief executive;</p> <p>8. Making recommendations to chief executives concerning the measure to be taken to correct the wrongdoing;</p> <p>9. Receiving, reviewing, investigating and otherwise dealing with complaints made in respect of reprisals.</p> <p>The Commissioner has the right to refuse to deal with a complaint or to investigate (s 24).</p>		
<p><b>Public Sector Integrity Commissioner Investigators</b></p>	<p>Designated by the Commissioner to investigate a complaint.</p>	<p>The investigations into complaints are to be conducted as informally and expeditiously as possible.</p>	<p>When an investigation commences, the investigator must notify the chief executive of the substance of the complaint to which the investigation relates (ss 19.8(1)).</p> <p>Investigators must have access to any facility, assistance, information etc. in the course of their investigation (ss 19.9(1)).</p>	<p><b>Designation of an investigator ss 19.7(1)</b></p> <p><b>Powers and duties of investigators ss 19.7-20</b></p>	<p>PSDPA</p>

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<b>Conciliator</b>			<p>The investigator must submit a report to the Commissioner if he is unable to complete an investigation because of insufficient cooperation (ss 19.9(2)).</p> <p>After the conclusion of an investigation, the investigator must submit a report to the Commissioner (s 20.3).</p>	<b>Submission of final reports 20.3</b>	
	<p>The conciliator's role is to attempt to bring about a settlement of a complaint filed with the Commissioner.</p> <p>Conciliation is an alternative dispute resolution process whereby the parties to a dispute agree to utilize the services of a conciliator, who then meets with the parties separately in an attempt to resolve their differences.</p>	<p>The conciliator's mission is to lower tensions, improve communications, interpret issues, provide technical assistance, and explore potential solutions to bring about a negotiated settlement.</p>	<p>At any time during the course of the investigation into a complaint, the investigator may recommend to the Commissioner that a conciliator be appointed to attempt to bring about a settlement (ss 20(1)).</p> <p>A conciliator appointed to settle the complaint is not a competent or compellable witness at a hearing (ss 21.2(2)).</p>	<p><b>Appointment of a conciliator 20</b></p> <p><b>Conciliator as a witness ss 21.2(2)</b></p>	PSDPA
<b>Auditor General of Canada</b>	The Auditor General of Canada is an Officer of Parliament who audits federal government departments and	The Office of the Auditor General of Canada conducts independent audits and examinations	The Auditor General can receive disclosures of wrongdoing concerning PSIC under the PSDPA (s 14).	<b>Disclosure to the Auditor General 14</b>	PSDPA <i>Auditor General Act, RSC, 1985, c A-17</i>



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<b>Public Servants Disclosure Protection Tribunal</b>	agencies, most Crown corporations, and many other federal organizations, and reports publicly to the House of Commons on matters that the Auditor General believes should be brought to its attention.	that provide objective information, advice and assurance to Parliament. They promote accountability and best practices in government operations.			<i>The Financial Administration Act, RSC, 1985, c F-11</i>
	The Tribunal protects public servants by hearing reprisal complaints referred by the Public Sector Integrity Commissioner. The Tribunal consists of Federal Court judges who have the power to order remedies in favor of complainants and disciplinary actions against persons who have taken the reprisals. The Tribunal can grant remedies in favour of complainants and order disciplinary action against persons who take reprisals.	The Tribunal's mission is to contribute to the enhancement of an ethical culture in the public service through the impartial and timely disposition of cases.	<p>The Tribunal consists of a chairperson and two to six other members to be appointed by the Governor in Council. All members must be judges of the Federal Court or a superior court of a province (s 20.7).</p> <p>There are presently three members. They are all Federal Court appointed judges.</p> <p>The members are appointed for a term of not more than seven years and hold office so long as they remain judges (ss 20.7(2)).</p> <p>The Tribunal may sit at the times and places throughout Canada that it considers necessary for the proper conduct of its business (s 20.9).</p>	<p><b>Application to the Tribunal</b> s 20.4</p> <p><b>Establishment of the Tribunal</b> s 20.7-21.8</p> <p><b>Proceedings</b> s 21</p> <p><b>Assignment of members</b> s 21.1</p> <p><b>Powers of the members</b> s 21.2</p> <p><b><i>In camera</i> hearing</b> s 21.3</p>	PSDPA

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	<p>The Tribunal is not involved in the wrongdoing disclosure process. Public servants can report wrongdoings to their supervisor, the senior officer designated by the chief executive of their organization or the Public Sector Integrity Commissioner.</p> <p>In one of the Tribunal's decisions (2011-PT-02), the following 5 steps were identified in the process before the Tribunal:</p> <ol style="list-style-type: none"> <li>1. The reception of the application by the Tribunal, which is referred to it by the Commissioner.</li> <li>2. The hearing which consists of the</li> </ol>		<p>Proceedings must be conducted as informally and expeditiously as the requirements of natural justice and the rules of procedure allow (ss 21(1)).</p> <p>Every decision of a member or panel is a decision of the Tribunal (s 21.1).</p> <p>The Tribunal must issue written reasons of its decision as soon as possible (ss 21.5(3)).</p> <p>The members or panel may:</p> <ul style="list-style-type: none"> <li>- Summon and enforce the attendance of witnesses;</li> <li>- compel them to give oral or written evidence on oath;</li> <li>- Administer oaths;</li> <li>- Receive and accept any evidence and other information;</li> <li>- Lengthen or shorten any time limit established by the Rules; and</li> <li>- Decide any procedural or evidentiary question (s 21.2).</li> </ul> <p>A hearing can be held <i>in camera</i> at the request of any party who establishes that it is required (s 21.3).</p>	<p><b>Determination of reprisals 21.4</b></p> <p><b>Written reasons ss 21.5(3)</b></p> <p><b>Remedies s 21.7</b></p> <p><b>Order for disciplinary action s 21.8</b></p>	

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	<p>presentation of the evidence forming the basis of the application.</p> <p>3. The Tribunal's determination as to whether or not reprisal has occurred.</p> <p>4. The Tribunal's determination as to remedy (only if applicable).</p> <p>5. The Tribunal's determination as to disciplinary measures (only if applicable).</p>		<p>If the Tribunal concludes that there was reprisal, it can order an appropriate remedy (s 21.7).</p> <p>The Tribunal can also order disciplinary action (s 21.8).</p>		
<b>Chairperson</b>	<p>The Chairperson, while remaining a member of the Federal Court, acts as Chairperson and Tribunal member on an <i>ad hoc</i> basis.</p> <p>The Chairperson's role includes hearing</p>	<p>The Chairperson's mission is to see that the members of the Tribunal conduct proceedings that are informal and expeditious and that the requirements of</p>	<p>The Chairperson is appointed by the Governor in Council (s 20.7).</p> <p>The Chairperson can make rules of procedure governing the practice and procedure before the Tribunal (ss 21(2)).</p> <p>Upon receipt of an application by the Commissioner, the Chairperson must</p>	<p><b>Appointment of Chairperson s 20.7</b></p> <p><b>Rules of procedure ss 21(2)</b></p>	<p>PSDPA</p>

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<b>Tribunal Registry</b>	<p>applications brought before the Tribunal by the Commissioner and assigning other members to hear applications.</p> <p>His responsibilities strictly relate to the judicial functions of the Tribunal.</p>	<p>natural justice and the rules of procedure are respected.</p>	<p>assign a member or a panel of three members to deal with the application (ss 21.1(1)).</p> <p>If a panel of three members has been assigned, the Chairperson must designate one of them to chair the proceedings, but the Chairperson must chair the proceedings if he is the member of the panel (ss 21.1(2)).</p>	<b>Assignment of members s 21.1</b>	
	<p>The Registry of the Tribunal supports all aspects of the Tribunal's work to ensure that the Tribunal can hold hearings. The Registry is also the repository for filing applications and all documents and orders for all applications brought before the Tribunal.</p> <p>The office of the Registry is located in the National Capital Region.</p>	<p>The Registry's mission is to provide effective administration and efficient support to the Tribunal in the exercise of its functions.</p>	<p>The Registry has an office in the National Capital Region (ss 20.8(1)).</p>	<b>Administration s 20.8</b>	PSDPA

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<b>Registrar of the Tribunal</b>	The Registry is considered to be a ministry and must report to Parliament through the Minister of Canadian Heritage.				
	The Registrar is the general administrator of the Tribunal Registry. This role provides the Registrar with powers and responsibilities which come from delegations.	The Registrar's mission is to provide effective administration of the Registry through the delegations it received.	Like other Registry employees, the Registrar is appointed in accordance with the <i>Public Service Employment Act</i> (ss 20.8(2)).	<b>Appointment ss 20.8(2)</b>	PSDPA  <i>Public Service Employment Act</i> , SC 2003, c 22, ss 12, 13  <i>Financial Administration Act</i> , RSC, 1985, c F-11
<b>Parliament (House of Commons &amp; Senate)</b>	Canada's Parliament is responsible for making the laws for our country. The executive branch consists of the Queen, the Prime Minister and Cabinet, and the departments of government. They implement the laws.  The legislative branch makes the laws and the	The House of Commons provides a link between Canadians and their Parliament. Members create laws and help their constituents with problems. Their mission is to work within the structure of Parliament and their parties to	Annual reports, case reports and special reports of the Commissioner are submitted to the speaker of each House of Parliament who each will table the reports in the House over which they preside (ss 38(3.3)).  After it is tabled, every report of the Commissioner stands referred to the Committee of the Senate, the House of Commons or both Houses of Parliament that may be designated or established for the purpose of	<b>Tabling of report ss 38(3.3)</b>  <b>Referral to Committee for review ss 38(4)</b>	<i>Constitution Act, 1982</i> , enacted as Schedule B to the <i>Canada Act, 1982</i> , (UK) 1982 c 11

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	<p>judicial branch — which is not part of Parliament — applies them.</p> <p>The Senate studies, amends and either rejects or approves bills passed by the House of Commons.</p>	<p>make decisions in the interest of Canada</p>	<p>reviewing the Commissioner’s report (ss 38(4)).</p>		
<b>Federal Court</b>	<p>The Federal Court is Canada's national trial court which hears and decides legal disputes arising in the federal domain, including claims against the Government of Canada, civil suits in federally regulated areas and judicial reviews.</p> <p>Judicial reviews are challenges to federal government decisions because an error was made in the decision, or the decision was not fair or reasonable. Judicial reviews before the Federal Court can</p>	<p>It is the objective of the Federal Court to secure the just, most expeditious and least expensive determination of every proceeding based on its merits.</p>	<p>In order to enforce a settlement approved by the Commissioner, an application for an order could be made to the Federal Court by the Commissioner or a party to the settlement (ss 20.2(4)).</p> <p>The Commissioner must, at the request of a party, file a Tribunal order at the Federal Court (ss 21.9(1)).</p> <p>An order of the Tribunal becomes an order of the Federal Court when a certified copy of the order is filed in that court, and it may subsequently be enforced as such (ss 21.9(2)).</p> <p>Judicial reviews before the Federal Court can be warranted for the following situations:</p>	<p><b>Settlement Order ss 20.2(4)</b></p> <p><b>Filing of orders at the Federal Court s 21.9</b></p> <p><b>Judicial review s 51.2</b></p>	<p><i>Federal Courts Act, RSC 1985, c F-7</i></p>

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<b>Federal Court of Appeal</b>	be sought for the Commissioner's report or the dismissal of a complaint.		a) Judicial review of the Commissioner's report;  b) Dismissal of the complaint by the Commissioner.		
	<p>The Federal Court of Appeal is a bilingual itinerant Court, in the sense that it sits and transacts business at any place in Canada.</p> <p>The Federal Court of Appeal has a dual judicial review and appellate jurisdiction.</p>	<p>It is the objective of the Federal Court of Appeal to secure the just, most expeditious and least expensive determination of every proceeding based on its merits.</p>	<p>The Court has the jurisdiction to hear and determine judicial review applications from the federal boards, commissions and tribunals set out in subparas 28(1)(a) to (q) of the <i>Federal Courts Act</i>.</p> <p>Subpara 28(1)(q) of the <i>Federal Courts Act</i> gives jurisdiction to the Federal Court of Appeal to hear judicial reviews of decisions of the Public Servants Disclosure Protection Tribunal established by the <i>Public Servants Disclosure Protection Act</i>.</p>	<p><b>Judicial review of Tribunal decisions FCA para 28(1)(q) of the <i>Federal Courts Act</i>.</b></p> <p>NOTE: for sub para 51.2(c) of the PSDPA, a judicial review of any decision rendered by the Tribunal must be heard by the Federal Court of Appeal.</p>	<p><i>Federal Courts Act</i>, RSC 1985, c F-7</p>
<b>Treasury Board</b>	The Treasury Board is responsible for accountability and ethics, financial, personnel and administrative management, comptrollership, approving regulations	Cultivate the federal public service as a model workplace where professional, skilled workers are trained and motivated to serve Canadians. Build	The PSDPA requires the Treasury Board to establish a code of conduct for the public sector, which will apply to departments and agencies within the public service as well as to other public sector entities such as Crown corporations. This code replaces the Values and Ethics Code for the Public Service.	<b>Code of conduct ss 5(1)</b> The Treasury Board established a <a href="#">code of conduct</a> applicable to the public sector.	The Treasury Board's powers are derived from a number of statutes that provide the framework for government management, namely: <i>Access to</i>

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	<p>and most Orders-in-Council.</p> <p>The Treasury Board of Canada Secretariat supports the President of the Treasury Board in promoting ethical practices in the public sector under the PSDPA.</p>	<p>management frameworks, support pro-active risk management, and empower partners to manage resources and report results. Provide guidance so that resources are soundly managed across government with a focus on results and value for money.</p>			<p><i>Information Act, Auditor General Act, Employment Equity Act, Financial Administration Act, PSDPA</i></p>