

---

# The Public Service Integrity Officer

---

by Edward Keyserlingk

*On November 30, 2001 Treasury Board adopted a policy "On the Internal Disclosure of Information Concerning Wrongdoing in the Workplace". The objective of this policy is to allow public servants to bring forward information concerning wrongdoing and to ensure that they are treated fairly and are protected from reprisals when they do so in a matter consistent with the policy. In support of this policy a position known as the Public Service Integrity Officer was created. This article outlines the mandate and operation of the office.*

Public officials serve the Government and the public interest by providing professional and neutral advice in a manner that is consistent with certain ethical standards and values. Accordingly, when an employee has reasonable grounds to believe that another person has violated these standards he or she should be able to disclose this information through a clearly defined processes and with confidence that he or she will be treated fairly and protected from reprisals.

The mandate of the Public Service Integrity Officer is to act as a neutral entity on matters of internal disclosure of wrongdoing. In particular, I assist employees who believe that their issue cannot be disclosed within their own department; or who raised their disclosure issue(s) in good faith through the departmental mechanisms but believe that the disclosure was not appropriately addressed.

The specific responsibilities of the Public Service Integrity Officer are outlined in Treasury Board Policy. They are:

- to provide advice to employees who are considering making a disclosure;
- to receive, record and review the disclosures of wrongdoing received from departmental employees and/or the requests for review submitted from departmental employees;

- to establish if there are sufficient grounds for further action and review;
- to ensure that procedures are in place to manage instances of wrongdoing that require immediate or urgent action;
- to initiate investigation when required, to review the results of investigations and to prepare reports, and to make recommendations to deputy heads on how to address or correct the disclosure;
- in some special cases or in cases when the departmental responses are not adequate or timely, to make a report of findings to the Clerk of the Privy Council in his role as head of the Public Service;
- to establish adequate procedures to ensure that the protection of the information and the treatment of the files are in accordance with the *Privacy Act* and the *Access to Information Act*;
- to protect from reprisal employees who disclose information concerning wrongdoing in good faith;
- to monitor the type and disposition of cases brought to the attention of the Public Service Integrity Officer; and
- to prepare an annual report to the President of the Privy Council on his or her activities for tabling in Parliament.

I think it is important to state at the outset that in keeping with our legal tradition of innocent until proven guilty, allegations remain just that until they have been investigated and wrongdoing has been determined by an impartial examination of the facts. Sometimes complaints or allegations are not substantiated and turn out to be little more than a grudge or a personality conflict between two individuals. But there have been occasions, and in a huge organization like the public service of Canada, it is not imprudent to believe there will be other oc-

---

*Edward Keyserlingk has graduate degrees in religion and law. From 1989 to 1998 He was Chair of the Clinical Ethics Committee at the Montreal General Hospital. He was the Clinical Ethicist at that hospital from 1987 to 2000. He was appointed Public Service Integrity Officer in 2001. This is a revised version of a presentation given to the Library of Parliament seminar on October 11, 2002.*

---

casions, where the public interest has been badly served by decisions and actions of public servants and our task is to make sure that when such incidents occur those persons who speak out against the actions are taken seriously and are not punished for their actions.

We are authorised to look into four specific kinds of wrong doing. These are:

1. breaking of any law or regulation
2. misuse of government funds or property
3. gross mismanagement
4. threats to health or the environment

Each of these raises some interesting challenges regarding definition and scope. For example "gross mismanagement" is not defined anywhere in law. Not everyone will agree that an instance is gross. So we had to establish some criteria. We can ask what kind of harm was inflicted and on how many? Was it a public interest issue or did it involve only one individual. Is the problem endemic? Has it gone unaddressed for a long time. Has the problem developed to a point where a whole department could be limited in its capacity to produce what it is expected to produce. Is morale affected to the point where it is incapable of working as a team. Those are some of the factors that go into our determination of whether wrongdoing constitutes gross mismanagement.

### **The Question of Independence**

---

The office is meant to be independent and for obvious reasons must appear to be so, otherwise we would have no credibility. This presents some interesting challenges as we are created by policy rather than by statute. The perception of an employee could be that we are an arm of Treasury Board which is the employer therefore how could we be independent? I recognised this from the start and before taking the position I had long discussion with Treasury Board people as to whether the office will be able to function independently. Can we take cases that we want and deal with them as we want? Can we develop our own procedures, dispose of complaints as we wish, make recommendations we feel are warranted and have our recommendations be taken seriously? In my discussions with officials and indeed with the President of Treasury Board I received assurances that there would be no interference from anyone at any time at any level.

Still there are some limitations that derive from our status as a creature of policy rather than legislation. We do not have subpoena powers. We do not have a tribunal whereby we make a ruling and then make it stick according to some established form of legislation.

### **How the Office Operates**

---

We have seven people in our office including three investigators, a director and two support staff. That seems to be enough for the moment. At any one time we have about 60 cases but some do not require full investigation as they are resolved at an early stage. More than 2/3 of cases come from outside Ottawa and that is a trend which may require more staff resources. Not all public servants are eligible to bring their complaints to us. Only those employees listed in Part 1, Schedule 1 of the *Public Service Staff Relations Act*. That includes about half the Public Service but does not cover employees of Crown Corporations or certain other institutions including Parliament.

When public servants bring allegations to us, they must be made in good faith. If we find an allegation is more in the nature of a gripe, about a staffing issue for example, we may suggest there are other, more appropriate, avenues to address these problems. In fact we spend a lot of time determining whether an allegation belongs in our office or is better dealt with in another forum. We do not want to compete or overlap with the work of the Human Rights Commission, the Auditor General, public service unions, departmental co-ordinators for harassment, human resources or staff relations or with any other organisation that can potentially deal with a grievance if we believe that forum can handle it better. However, in some cases, particularly if a long delay can be expected in hearing a complaint by one of these organisations, we will become involved and try to expedite the matter. Our goal, for a full investigation, is to resolve it within six months. That includes our report to the Deputy Minister as to our findings and the reasons for them along with a recommendation as to what we would like to see happen. Of course the outcome will depend on the strength of our evidence and the thoroughness of the investigation. The recommendations we are making must be reasonable in the circumstances.

Our report is not necessarily the end of the matter. Unions can still get involved. Lawyers can get involved. If I am unhappy with the outcome of what we have recommended, I can go to the Clerk of the Privy Council and ask him to intervene with the Deputy Minister concerned and see if he will accept my recommendations. So far I have not had to go that far in any investigation.

My report to Parliament is done through the President of the Privy Council rather than President of Treasury Board. The report can be subject to parliamentary and committee questioning. The first such report will not likely be made until we have been in operation for at least a year which will take us to April or May 2003.

---

## Confidentiality

---

Confidentiality is central to the work of my office and we assure complainants that we will provide them with as much confidentiality as we can. We cannot give absolute assurances. If you are willing to come forward with an allegation you have to expect that your identity might be discovered in the course of an investigation simply because when you ask for records it may become apparent who is making the allegation. We make sure people understand this and we also give assurances that during the course of an investigation we will not be forced to cough up any confidential information.

We also remind people that the alleged wrong doer has a right to due process and at some point that might involve knowing who is making the accusation so he or she can defend himself properly. One way to try to balance the rights is to ask the complainant if we have permission to proceed through the various steps of the investigation. If the complainant is unhappy that his identity might become known we can decide not to proceed. On the other hand if the issue they are complaining about is of such serious public interest even though they do not want to proceed we might decide we have to proceed. It could be an issue where there is enormous public risk to health or the environment and we are not entitled to simply withdraw to preserve someone's identity. Thus there is no easy answer to the issue of confidentiality but it is always a concern for us.

Sometimes information will come to us anonymously. That is not our favourite way to proceed since we cannot question the person making the allegation to get more details. While we do not encourage anonymity we will follow up on such complaints.

Another responsibility we have is to protect people from job reprisals linked to their allegation of wrongdoing. Unions in particular have told us they are very worried about job reprisals for whistleblowers. At the moment we have very little track record in this regard but this is an important part of our mandate.

Sometimes it is not hard to identify job reprisals as it is linked closely in time to the allegation of wrongdoing. But employers could be more subtle and wait until the dismissal or reprimand is less obviously linked to the allegation. They could also make the case that there are other arguable grounds for the reprisal such as competence. There is quite a bit of literature about this in the corporate world and some criteria can be developed to assist us in making a judgement. We do monitor what happens to people after they come to us. An individual can come back to us at any point and make a credible allegation that they suffered some reprisal because of their actions in coming to us.

---

## Some Thoughts For the Longer Term

---

The creation of a Public Service Integrity Office is a good first step in the evolution of our public service but in my view it cannot be the last step. Certain other things have to happen if we are to make any real progress in stopping wrong doing. The government and here I mean section heads, directors and Deputy Ministers have to encourage the reporting of wrongdoing as an important civic responsibility. They have to make it clear that unreported wrongdoing impedes delivery of services. It increases scepticism. It complicates other things we are doing. After all the public service is about the delivery of services and the public is paying for those services. This will not, in my view, require a policy change. It simply means taking seriously what leadership is about and what good organisations are about and what public service is about.

It follows that allegations of wrong doing should be rewarded. I am not talking about monetary reward but recognition that this is a meritorious act and recognized in the way we recognize other meritorious acts — letter of recommendations, criteria for promotion, and so on. These two actions will go some way to insuring that whistle blowing is something that is not limited to kooks or dissidents as is sometimes claimed.

I think there is also a structural problem that may need to be addressed. What is the point of going to the Deputy Minister or Assistant Deputy Minister or director if the person is not around or has only been around for a short time. Wrongdoing is ideally best addressed at the department level by going to one's own superior. That can be sometimes much more effective than going outside. But what if people are not prepared to listen or are not accessible. As has been observed by other the fact is many public service managers do not stay in office long enough to become familiar with the problems in their departments. It has been calculated that it takes at least three years to become familiar with a major department and the career path in many departments is much shorter. It is not unusual to find three managers in the space of two or three years. All of them may be competent but none have been there long enough to get a grip on issues and staff members. The most competent ones move the fastest. But the cost is to those left behind.

My final concern is a perceived lack of equal standards between different levels of government. Civil servants work under fairly strict ethical standards but if they perceive that others do not have to face the same standards they may become cynical and begin to ask why they should continue to follow their standards.