



1 Nicholas St., Suite 1510, P.O. Box 821, Stn. B, Ottawa K1P 5P9  
Tel: 613-241-5179 Fax: 613-241-4758  
Email: [info@democracywatch.ca](mailto:info@democracywatch.ca) Internet: <http://democracywatch.ca>

The Right Honourable Stephen Harper  
Office of the Prime Minister  
80 Wellington Street  
Ottawa, ON K1A 0A2  
Email: [pm@pm.gc.ca](mailto:pm@pm.gc.ca)

**RE: CSIS, CSE and Canadian Forces need to be required to have a code of conduct for their employees, and *Public Servants Disclosure Protection Act (PSDPA)* needs to be extended to cover their employees, and strengthened overall**

March 16, 2015

Dear Prime Minister Harper:

Currently, the *Public Servants Disclosure Protection Act (PSDPA)* exempts the Canadian Security Intelligence Service (CSIS), Canadian Security Establishment (CSE) and the Canadian Forces from the requirement to have an employee code of conduct, and does not protect people who work at these institutions if they blow the whistle on wrongdoing. In contrast, the Security Intelligence Review Committee (SIRC) is required to have a code of conduct and people who work there are covered by the whistleblower protection law.

Codes of conduct and independent, effective whistleblower protection are essential to prevent abuses of power and it is extremely dangerous that Canada's spy agencies and military are not required to have these key accountability measures.

Public servants who are protected by the *PSDPA* are only allowed to report wrongdoing to the Public Sector Integrity Commissioner – they are not protected by the *PSDPA* if they report wrongdoing to the media or the public. And they are only allowed to report wrongdoing, not to disclose any information that is protected from disclosure as a matter of national security.

If the employees of SIRC who are involved in reviewing information about CSIS and CSE activities can report wrongdoing to the Commissioner, there is no justifiable reason to exclude employees of CSIS, CSE and the Canadian Forces from protection of the *PSDPA*.

Democracy Watch's position is, as most experts have concluded, that proposed Bill C-51 is [unconstitutional in its current form](#) because it increases the police powers of CSIS in overly vague ways that include actions that violate *Charter* rights. However, even if the federal government's Bill C-51 does not become law, the code of conduct and whistleblower protection measures are essential to help ensure the ethics and accountability of Canada's spy agencies and military.

The exemptions from these measures are buried in the [Public Servants Disclosure Protection Act \(PSDPA\)](#), as follows:

- [section 6](#) seems to require the chief executive of every federal "public sector" government institution to establish a code of conduct that at least matches the requirements in the Treasury Board's [Values and Ethics Code for the Public Sector](#);
- but the [section 2 definition](#) of "public sector" explicitly says CSIS, CSE and the Canadian Forces are not included in the public sector;
- then [section 52 and 53](#) say CSIS, CSE and the Canadian Forces must have internal disclosure of wrongdoing processes, but people who use those processes can't complain to the independent Public Sector Integrity Commissioner because they are not covered by the *PSDPA*.

Democracy Watch also calls on the federal Cabinet to, finally, undertake the illegally overdue review of the *PSDPA* and to strengthen it. Under [section 54](#) of the *PSDPA*, Treasury Board minister Tony Clement was supposed to have had an independent review of the *PSDPA* completed by now. The *PSDPA* should be strengthened as follows:

1. all whistleblowers must be effectively protected from retaliation, including politicians, political staff, Cabinet appointees, all public servants, government suppliers and contractors, and members of the public;
2. whistleblowers must be allowed, in all cases, to file their complaint directly with the Public Sector Integrity Commissioner;
3. everyone who witnesses or receives evidence of wrongdoing by anyone in politics or government must be required to report it to the Public Sector Integrity Commissioner (with the Commissioner strictly and strongly required to keep their identity secret, and people allowed to submit evidence anonymously);
4. the identity of anyone in government or politics found guilty of wrongdoing must be made public in all cases;
5. the Public Sector Integrity Commissioner must be clearly designated as the trainer (including by issuing interpretation bulletins), investigator and enforcer of all Treasury Board manual or equivalent policies (other than the policies enforced by the Auditor General) and must be required to conduct training sessions, conduct regular random audits of compliance and to investigate complaints about violations of these policies;

6. when the Public Sector Integrity Commissioner refers a whistleblower complaint about the violation of another law, regulation or policy for which a designated investigative and enforcement agency exists, the Commissioner must be required to ensure that the agency investigates the complaint within 90 days, and if an investigation does not begin within this time period the Commissioner must be required to investigate the complaint;
7. the law must require employers to prove that no retaliation against a whistleblower has taken place (as opposed to requiring the whistleblower to prove that retaliation has occurred);
8. the Public Sector Integrity Commissioner must be given the power to order chief executives/heads of departments to take corrective action, and chief executives/heads must be required to report to the Commissioner on corrective actions taken;
9. the Public Sector Integrity Commissioner must be given the power to penalize any chief executive/head with a fine, suspension or firing if the chief executive does not comply with the commissioner's order, or if anyone retaliates against a whistleblower or does not maintain a system that complies with the law;
10. the minimum fine for taking a reprisal against a whistleblower must be increased to \$50,000, with a maximum range of fines from \$100,000 to \$200,000;
11. whistleblowers must receive adequate funding for legal advice;
12. whistleblowers must receive compensation from the government general revenue fund adequate to seek another job (at least 6 months salary) if they want to (for example, if the whistleblowing process leaves them completely alienated from all their co-workers) and/or priority in switching jobs in the federal public service;
13. any person nominated and chosen to be the Public Sector Integrity Commissioner must be required to have legal experience enforcing ethics rules or laws to ensure proper enforcement of whistleblower protection measures, and must not be eligible for a renewal of their fixed term in office (to ensure that the Commissioner does not act as a lapdog to Cabinet to try to get re-appointed for a second term), and;
14. at least every 3 years, it must be required that an independent audit (by the Auditor General or other independent body) of the entire whistleblower protection system be conducted.

We look forward to hearing back from you very soon about these much-needed changes.

Sincerely,  
Duff Conacher, Co-founder of Democracy Watch