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**Submission to the Review by the  
Standing Committee on Government Operations and Estimates  
of the *Public Sector Disclosure Protection Act*  
(March 21, 2017)**

While the Standing Committee on Government Operations and Estimates (OGGO Committee) is reviewing only the *Public Sector Disclosure Protection Act (PSDPA)*, there is a more systemic problem – the lack of effective whistleblower protection for both the public sector and the private sector, across Canada. So while the recommendations set out below all apply to loopholes and flaws in the *PSDPA* and its enforcement, Democracy Watch, joined by the almost 21,000 Canadian voters who have signed the attached petition, call on the OGGO Committee to recommend that the government not only close the loopholes and flaws in the *PSDPA* and its enforcement but also strengthen all the whistleblower protection laws and enforcement systems, including by establishing a central whistleblower protection office to assist anyone who wants to blow the whistle on government or business wrongdoing.

This submission does not detail the many past problems with the *PSDPA* and its enforcement – those problems have been well-documented. Committee members can see many more details about these past problems through the news releases on Democracy Watch’s website at: <http://democracywatch.ca/news/?campaign=6360> and also through this Democracy Watch news release (on Democracy Watch’s archive website): <http://www.dwatch.ca/camp/RelsJan2312.html>.

All of the following 17 changes are needed to to strengthen whistleblower protection laws and enforcement systems to ensure everyone who blows the whistle on

abuse, waste and law-breaking in government and business is fully and effectively protected. If the OGGO Committee does not recommend in its report that the government make these changes, it will be ignoring loopholes and flaws that mean whistleblowers will remain unprotected when they report wrongdoing:

1. all whistleblowers must be effectively protected from retaliation, including politicians, political staff, government employees, suppliers and contractors, and members of the public, and in business all executives, employees, suppliers, contractors, customers and members of the public;
2. whistleblowers must be allowed, in all cases, to file their complaint directly with an integrity commissioner or similar enforcement agency;
3. everyone who witnesses or receives evidence of wrongdoing by anyone in politics, government or business must be required to report it to an integrity commissioner or similar enforcement agency (with the commissioner strictly and strongly required to keep their identity secret, and people allowed to submit evidence anonymously);
4. all whistleblowers must receive funding to pay for complete legal advice (or a specialized, fully independent, publicly funded legal clinic should be established to provide this advice for free to all whistleblowers);
5. any person nominated and chosen to be the integrity commissioner or similar whistleblower protection commissioner must be required to have legal experience and a strong record of enforcing whistleblower protection, ethics rules or similar accountability laws;
6. the process for choosing an integrity commissioner or similar commissioner must be overseen by an independent committee of individuals from outside government and politics whose members are chosen by all political parties represented in the legislature, and the committee must conduct a public, merit-based search for candidates, and submit a short list to Cabinet from which the commissioner must be chosen (matching the best-practice appointment process for Ontario's provincial judges);

7. the integrity commissioner or similar commissioner 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 try to get re-appointed by Cabinet for another term);
8. the integrity commissioner or similar commissioner must be clearly designated as the trainer (including by issuing interpretation bulletins), investigator and enforcer of all government 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 whistleblower complaints about violations of these policies, and the same powers must be given to an overall enforcement agency to protect business whistleblowers in every jurisdiction;
9. when the 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 frame the commissioner must be required to investigate the complaint;
10. 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);
11. the integrity commissioner or similar commissioner must be given the power to order chief executives/heads of government departments and businesses to take corrective action, and chief executives/heads must be required to report to the commissioner on corrective actions taken;
12. the integrity commissioner or similar 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;
13. the minimum fine for retaliating against a whistleblower must be \$50,000, with a maximum range of fines from \$100,000 to \$200,000 for government officials,

- and 40% of total annual salary for business executives, and loss of any severance payment, and partial clawback of any pension payments;
14. the identity of anyone in politics, government or business found guilty of wrongdoing must be made public in all cases;
  15. government whistleblowers whose allegations are proven must receive an immediate payment of at least one year's salary from the government general revenue fund (and for business whistleblowers a payment from the business) so that they can, if they want, seek another job if the whistleblowing process has left them completely alienated from all their co-workers (and they should also be given priority in switching jobs in the government or business);
  16. whistleblowers must be allowed to appeal to court for a review of any ruling by the integrity commissioner or similar commissioner or whistleblower protection enforcement entity, and;
  17. at least every 3 years (and immediately at the federal level), it must be required that an independent audit of the entire whistleblower protection system be conducted by the Auditor General or other independent body.