



December 15, 2022

Via Electronic Mail - mona.fortier@parl.gc.ca

Honorable Mona Fortier, PC, MP,
House of Commons
Ottawa, Ontario,
Canada
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Dear Minister Fortier:

I am writing regarding the recently announced Task Force to review the *Public Servants Disclosure Protection Act (PSDPA)*.

Unfortunately, we at Whistleblowing Canada cannot, in good conscience, support this Task Force as it is constructed.

We were hoping we could be supportive, as at first glance, it seemed the federal government and your office were finally fulfilling your statutory obligations under the PSDPA by establishing an *independent* review of the Act – even if 10 years too late. A review is critical as this act was known to be flawed and unworkable from before it was implemented in 2007 as noted by Justice Gomery in his 2005 report on the Sponsorship Scandal and others.

As proud Canadians, it was difficult to watch our leaders from successive governments disobey a statutory obligation to conduct a review within 5 years with impunity. This resulted in harm for public servants, who, a recent study shows, work in a culture of fear. Expressed concerns fell on deaf ears. Disobeying a statutory obligation is an indictable offence under the Criminal Code of Canada, section 126, for which ordinary Canadians are liable to imprisonment for a term not exceeding two years. It seems politicians are an exception.

We can agree that an *independent* review as prescribed by the PSDPA is necessary at this time, as the 2017 unanimous Parliamentary Committee Report No. 9 recommending amendments is now out of date. There is much new knowledge about properly drafting and implementing laws and disclosure mechanisms since then.

Here are the problems from our perspective as interested, knowledgeable citizens dedicated to advancing knowledge on whistleblowing:

1. There is no one on the Task Force with “lived experience” as a whistleblower – a shocking omission.
2. The independence and expertise of the Task Force is seriously lacking for the following reasons:
 - I. Of the nine members of the Task Force, four or almost 50% are former bureaucrats including the co-chairs. As Integrity Commissioners and Ombuds or Disclosure Officers they have presided



over dysfunctional systems or worked in organizations inimical to whistleblowing and whistleblowers with no experience whatsoever when it comes to “best practices”. Also, their unconscious or actual biases will be to defend their offices and bureaucracies. They cannot be viewed as “independent”.

- II. Of the three Academics, there is an apparent dearth of expertise in the field of whistleblowing. A literature search does not reveal any publications they have authored on whistleblowing. This is not to criticize the professors but rather to question their appointment to a Task Force on a topic they do not appear to have demonstrated any particular interest in.
- III. Only two members of the Task force – one from the Professional Institute of the Public Service of Canada (PIPSC) and another from the Association of Canadian Financial Officers (ACFO) – come anywhere near to being able to understand the enormity of the task at hand – which is not only to fix a broken law but to fix resistant, dysfunctional cultures.
- IV. There is no one on the Task Force with expertise regarding the neuroscience research which demonstrates that the harassment and bullying suffered by whistleblowers causes physical damage to the brain, visible on brain scans. Current high-profile examples of such abuse are in Sports and Education. Negligence in this regard could lead to legal liability in the face of this recent evidence of now visible physical and psychological harm to individuals. There are growing calls by experts for this harm to be dealt with by governments as an urgent Public Health issue requiring legislation so that people can have access to the treatment they need.

Research and experience have shown that laws alone will not change cultures unless they are crafted and implemented by committed, sincere leaders – both political and bureaucratic/organizational – who are actively leading the culture change not only by what they say but by what they do.

The establishment of a Task Force lacking the required expertise challenges its legitimacy, credibility and the sincerity of the government’s intent.

We call on you to correct these omissions in the best interest of everyone.

Yours sincerely,

Pamela

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Attachment: Appendix 1. List of qualified experts on whistleblowing legislation, culture, disclosure mechanisms, physical brain damage



APPENDIX 1

Individuals with Expertise in the Whistleblowing Field

- Nadia Smaili, PhD, Prof. in Accounting Sciences, UQAM. Her fields of research mainly concern governance, the fight against fraud and wrongdoing, and ethics, University of Quebec at Montreal.
- Joanna Gualtieri, Lawyer, whistleblower, the first to assess the PSDPA in Canada in 2004 and warn Parliament about its deficiencies.
- Ian Bron, PhD, Instructor, Carleton University, School of Public Administration. PhD dissertation - *Square Peg in a Round Hole? Three Case Studies into Institutional Factors Affecting Public Service Whistleblowing Regimes in the United Kingdom, Canada, and Australia*. Former Federal Public Servant and whistleblower.
- Florian Martin-Bariteau, PhD, Associate Professor of Law and Technology Director, University of Ottawa Centre for Law, Technology and Society, Author of 2018 study with Veronique Newman - *"Whistleblowing in Canada: A Knowledge Synthesis Report"*
- Carroll Boydell, PhD, teaches in Criminology Department, Kwantlen Polytechnic University, Surrey, B.C.. Author of *Best Practices in Whistleblower Legislation: An Analysis of Federal and Provincial Legislation Relevant to Disclosures of Wrongdoing in British Columbia*.
- Jennifer Fraser, PhD, Author of *The Bullied Brain: Heal Your Scars and Restore Your Health*. Whistleblower. Expert on the physical damage to the brain from reprisals.
- Vicki Poirier, Chartered Professional Accountant (CPA) and expert in Forensic Accounting (CPA-IFA, CFF). President, the Quantum Group and Alias – reporting mechanism, a third-party reporting service. Ms. Poirier has been involved in processing hundreds of complaints, from managing their reception and supporting the authors of the complaints, to coordinating their treatment, analyzing their admissibility and investigating them in-depth.