



## **Preliminary Observations on the proposed Federal Accountability Act to provide real protection for whistleblowers**

The Federal Accountability Act, as outlined in the Conservative Platform, includes strengthening the legislation to provide protection for employees who disclose wrongdoing in good faith or whistleblowing.

The Professional Institute, a national union of 50,000 professionals and scientists, has, for over fifteen years, advocated the need for effective whistleblower protection legislation. Our key concern has always been full protection for our members who denounce wrongdoing. Needless to say that after all the recent scandals, this legislation is long overdue. The Institute has made its position known publicly on its Web site, before the media and in parliamentary committees during reviews of Bills S-13, C-25 and C-11.

The Institute was pleased that Parliament unanimously adopted Bill C-11. The passage of this bill means that parliamentarians and stakeholders can work together to ensure effective measures are put in place in a legislative framework. In various news releases, the Institute praised the work of Members of Parliament in bringing and adopting amendments to the legislation. The Institute also praised the determination of Senator Noel Kinsella in advancing legislation to protect whistleblowers.

With regards to Bill C-11, the Professional Institute recognizes that it was best to pass a reasonably good bill rather than wait for perfect legislation. The five-year review included in the *Public Servants Disclosure Protection Act* will allow stakeholders to review the implementation of the legislation and analyse its effectiveness.

The Institute is concerned however about the proclamation of Bill C-11. As long as this bill is not proclaimed, it will not be in force and public service employees who disclose wrongdoing will get no protection. An effective whistleblowing regime will permit employees who witness wrongdoing to make disclosures in good faith without fear of reprisal.

We offer below a preliminary look at the amendments proposed in the Accountability Plan but first, the bill must be proclaimed. We would not want the Federal Accountability Act to be used as an excuse not to pass whistleblower legislation and provide public service employees with the protection they need now. We expect the disclosure process to be an integral part of the practice of good governance; it is no longer a question for debate.



Federal Accountability Act	PIPSC Historical Position (as stated in testimony before the Standing Committee on Government Operations and Estimates, December 2004)
Give the Public Service Integrity Commissioner the power to enforce compliance with the Act	The Office responsible for investigating wrongdoing must have the power to fully and independently pursue allegations of wrongdoing and order corrections.
Ensure that all Canadians who report government wrongdoing are protected, not just public servants	PIPSC's first concern is establishing protections for our members.
Remove the government's ability to exempt Crown corporations and other bodies from the Act	In order to serve the purpose of the legislation, to protect the public interest and public service employees who disclose wrongdoing, exemptions to the provisions of this Act should be made on the basis of the nature of the information to be disclosed, not the organization concerned.
Require the prompt public disclosure of information revealed by whistleblowers, except where national security or the security of individuals is affected	PIPSC's position has always been that all people concerned with the disclosure are entitled to a fair process and natural justice. The five-year provision currently in Bill C-11 is not necessary.
Ensure that whistleblowers have access to the courts and that they are provided with adequate legal counsel	<p>The role of public service employee bargaining agents must be fully entrenched in the legislation from the disclosure of wrongdoing, through reporting, investigation, correction and protection from reprisal.</p> <p>This amendment raises questions on the role of the Public Service Labour Relations Board hearing complaints of reprisal. The meaning of this issue with respect to our members will need to be clarified.</p>
Establish monetary rewards for whistleblowers who expose wrongdoing or save taxpayers dollars	<p>In its testimony before the Standing Committee on Government Operations and Estimates, December 2004, PIPSC said that it was not advocating a reward mechanism. However, the Institute said the Public Sector Integrity Commission could have the authority to provide relief for pain and suffering, as is the case with the Canadian Human Rights Commission.</p> <p>In 2004, PIPSC conducted focus group discussions as part of its survey of members on values and ethics. Participants indicated that they wanted a work environment with values and ethics in its culture. They do not want rewards but immediate recognition by their team that the work was well done and the right decisions were made.</p>



## THE GOMERY REPORT, PHASE 2

On pages 186 and 187 of the Summary volume of the second part of the report of the Gomery Commission, Justice Gomery suggests improvements to Bill C-11. Following the report, Prime Minister Harper indicated he would be adopting the report's recommendation. However, the suggested amendments to Bill C-11 are not listed as official "recommendations". Below are listed some key issues and PIPSC public position on each.

**1) The definition of the class of persons authorized to make a disclosure under the Act ("public servants") should be broadened to include anyone who is carrying out work on behalf of Government;**

How does this relate to issues 2 (application of the legislation) and 3 (members of the public disclosing wrongdoing) in the Accountability Act?

**4) In the event that a whistleblower makes a formal complaint alleging a reprisal, the burden of proof should be on the employer to show that the actions taken were not a reprisal;**

"The Institute recommends that Section 16 be amended to include a stipulation that for a period of five years following a disclosure, any negative actions taken or threatened against an employee who has acted to disclose wrongdoing shall be presumed to be a reprisal unless the employer is able to prove otherwise. (PIPSC presentation to the Standing Committee on Government Operations and Estimates on Bill C-25 May, 2004 p.5)

The Institute made a similar recommendation in its presentation on Bill S-13 in 2000.

PIPSC  
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