



Office of the Public Sector  
Integrity Commissioner  
of Canada

Commissariat à l'intégrité  
du secteur public  
du Canada

# Findings of the Public Sector Integrity Commissioner in the Matter of an Investigation into a Disclosure of Wrongdoing

## Department of National Defence

Case Report  
September 2023

Note: In order not to identify individuals and without discrimination, the masculine form will be used throughout this report.

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Public Sector  
Integrity Commissioner



Commissariat  
à l'intégrité du secteur public

Ottawa, Canada K1P 5Y7

The Honourable Raymonde Gagné, Senator  
Speaker of the Senate  
Senate of Canada  
Ottawa, Ontario K1A 0A4

Dear Speaker:

I have the honour of presenting you with the Office of the Public Sector Integrity Commissioner of Canada's Case Report of Findings in the Matter of an Investigation into a Disclosure of Wrongdoing at the Department of National Defence, which is to be laid before the Senate in accordance with subsection 38(3.3) of the Public Servants Disclosure Protection Act.

This Case Report contains the findings of wrongdoing, the recommendations I made to the Deputy Head, the Deputy Head's written comments and my opinion as to whether the Deputy Head's response to my recommendations is satisfactory.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Joe Friday".

Joe Friday  
Public Sector Integrity Commissioner  
Ottawa, September 2023

Public Sector  
Integrity Commissioner



Commissariat  
à l'intégrité du secteur public

Ottawa, Canada K1P 5Y7

The Honourable Anthony Rota, M.P.  
Speaker of the House of Commons  
House of Commons of Canada  
Ottawa, Ontario K1A 0A6

Dear Speaker:

I have the honour of presenting you with the Office of the Public Sector Integrity Commissioner of Canada's Case Report of Findings in the Matter of an Investigation into a Disclosure of Wrongdoing at the Department of National Defence, which is to be laid before the House of Commons in accordance with subsection 38(3.3) of the Public Servants Disclosure Protection Act.

This Case Report contains the findings of wrongdoing, the recommendations I made to the Deputy Head, the Deputy Head's written comments and my opinion as to whether the Deputy Head's response to my recommendations is satisfactory.

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Joe Friday  
Public Sector Integrity Commissioner  
Ottawa, September 2023

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## Foreword

This Case Report of founded wrongdoing, which is my final report as Commissioner, has been tabled in Parliament as required by the Public Servants Disclosure Protection Act (the Act). The report touches on an important topic for all public servants, the administration of the Act, as it presents the findings of our investigation into the delayed release of information related to founded cases of wrongdoing at the Department of National Defence (DND) and in the Canadian Armed Forces (CAF). Pursuant to the Act, information about founded cases of wrongdoing, investigated within federal organizations, must be promptly provided to the public.

The Act established both an internal and an external disclosure process. Any individual, including a public servant, can make a confidential disclosure of wrongdoing to my Office. In addition, public servants have the option of disclosing wrongdoing to a senior disclosure officer within their organization or to their supervisor. The subject of this report relates to DND's internal disclosures and investigations, as well as the subsequent findings of wrongdoing.

The Act requires that, following a finding of wrongdoing within an organization, the Deputy Head must provide prompt public access to information about the wrongdoing. Following a disclosure, my Office launched an investigation into an allegation that senior managers at DND committed wrongdoing when they did not promptly provide public access to information related to founded cases of wrongdoing in the CAF. A subsequent disclosure alleged that senior managers had not provided disclosers with results related to founded cases of wrongdoing at DND and in the CAF.

This Case Report is a reminder to all deputy heads, and all those officials involved in their organization's internal disclosure process, of their responsibilities under the Act. The whistleblowing regime for the federal public sector can only be effective if wrongdoing is brought to light.

Joe Friday  
Public Sector Integrity Commissioner

The Act was created to provide a confidential whistleblowing mechanism in the federal public sector. The disclosure regime established under this Act is meant not only to identify wrongdoing when it occurs, and to take corrective action to ensure the wrongdoing stops, but also to act as a general deterrent throughout the federal public sector. This is why legislation requires that founded cases of wrongdoing be reported to Parliament. This is a powerful tool of transparency and public accountability.

## Mandate

My Office contributes to strengthening accountability and increases oversight of government operations by:

- providing an independent and confidential process for receiving and investigating disclosures of wrongdoing in, or relating to, the federal public sector, from public servants and members of the public;
- reporting founded cases of wrongdoing to Parliament and making recommendations to chief executives on corrective measures;
- providing a mechanism for handling complaints of reprisal from public servants and former public servants for the purpose of coming to a resolution, including through conciliation and by referring cases to the Public Servants Disclosure Protection Tribunal.

My Office is an independent federal organization created in 2007 pursuant to the Act.

Section 8 of the Act defines wrongdoing as:

- (a) a contravention of any Act of Parliament or of the legislature of a province, or of any regulations made under any such Act, other than a contravention of section 19 of this Act;
- (b) a misuse of public funds or a public asset;
- (c) a gross mismanagement in the public sector;
- (d) an act or omission that creates a substantial and specific danger to the life, health or safety of persons, or to the environment, other than a danger that is inherent in the performance of the duties or functions of a public servant;
- (e) a serious breach of a code of conduct established under section 5 or 6;
- (f) knowingly directing or counselling a person to commit a wrongdoing set out in any of paragraphs (a) to (e).

The purpose of investigations into disclosures is, according to the Act, to bring the existence of wrongdoing to the attention of the organization's Chief Executive and to make recommendations for corrective action.

## The Disclosure

My Office received a disclosure in July 2020, alleging that senior managers did not provide prompt public access to a founded case of wrongdoing in the CAF. As a result, my Office launched an investigation in October 2020, into whether DND committed gross mismanagement, pursuant to paragraph 8(c) of the Act.

In February 2021, my Office received a second disclosure of wrongdoing on a related matter and launched an investigation in April 2021. The discloser alleged that DND had not advised a discloser of the outcome of an internal investigation into the disclosure of wrongdoing that was submitted more than four years ago.

Also, in February 2021, based on information we obtained, my Office expanded our investigation to determine whether DND committed gross mismanagement by failing to promptly make public information about founded cases of wrongdoing at DND and in the CAF. In March 2022, the Deputy Minister of DND and the Clerk of the Privy Council were informed that our investigation was expanded to include the allegation that DND committed a wrongdoing under paragraph 8(a) of the Act, by contravening the Act itself.

## About the Organization

DND supports the CAF who serve on the sea, on land and in the air with the Navy, Army, Air Force and Special Forces to defend Canadians' interests at home and abroad.

### The Commissioner's Jurisdiction over the CAF

The Commissioner does not have jurisdiction over the CAF, as the Act excludes it from the definition of public sector and CAF members are not public servants. However, section 52 of the Act requires that the CAF establish a procedure for the internal disclosure of wrongdoing that must be similar to those set out in the Act. This procedure is the CAF Disclosure Process, which is administered by the Directorate of Special Examinations and Inquiries (DSEI). The Directorate conducts internal investigations into allegations of wrongdoing committed at DND and in the CAF. The DSEI is staffed by DND employees who are public servants under the Act. As such, the Commissioner has the jurisdiction to investigate and make a determination in this case.

### The Internal Disclosure Process at DND and in the CAF

Section 12 of the Act provides that public servants, including those employed at DND, can make a disclosure of wrongdoing to their supervisor or the Senior Departmental Internal Disclosure Officer. As mentioned above, pursuant to section 52 of the Act, the Chief of the Defence Staff has established procedures similar to those set out in the Act for the disclosure of wrongdoing in the CAF.

The DSEI supports the Assistant Deputy Minister (Review Services) [ADM(RS)] in the administration of the internal disclosure procedures and in his capacity as Senior Departmental Internal Disclosure Officer at DND and in the CAF. The DSEI is the team responsible for investigating internal disclosures of wrongdoing and presenting the findings in a report for review by their Director. Should the Director agree with the recommended finding of wrongdoing, official letters are drafted for approval by the ADM(RS). Once the findings are approved, disclosers are informed of the outcome of the internal investigation. Founded cases of wrongdoing are then to be published on the DND website.

## Results of Our Investigation

Our investigation found that:

- DND committed wrongdoing pursuant to paragraph 8(a) of the Act when it contravened paragraph 11(1)(c) of the Act by failing to provide prompt public access to information about founded cases of wrongdoing at DND; and
- DND committed wrongdoing pursuant to paragraph 8(c) of the Act—gross mismanagement—by:
  - Failing to provide prompt public access to information about a founded case of wrongdoing in the CAF; and
  - Failing to advise disclosers of the outcome of investigations into wrongdoing at DND and in the CAF.



## Overview of Our Investigation

Ms. Christine Denis, a Senior Investigator with my Office, led our investigation. She conducted interviews with six individuals and reviewed numerous documents.

In keeping with our obligation to uphold natural justice and procedural fairness, my Office provided Ms. Jody Thomas, former Deputy Minister of DND, and Mr. Bill Matthews, the current Deputy Minister, with an opportunity to respond to the allegations through the provision of our preliminary investigation report for review and comment.

In arriving at my findings, I have given due consideration to all information received throughout the course of our investigation, including the comments in response to our preliminary investigation report.

Given the subject matter of this report, and my Office's stated service standard for completing an investigation in one year, I would like to provide some explanation for why our investigation took as long as it did.

Our initial investigation was launched in October 2020 and the scope was expanded in February 2021. As I have mentioned in my recent annual reports, the first years following the onset of the COVID-19 pandemic had a profound impact on my Office's ability to carry out investigations. Many organizations were delayed in providing key documents to my Office, as employees were not working on site. In addition, in this particular case, a key witness was unable to take part in our investigation for the better part of a year. Once my Office was able to resume our investigation, it was completed as expeditiously as possible. The tabling date of this report falls within the 60-day limit required by the Act.

## Factors Considered in Determining Wrongdoing

For the Commissioner to make a finding that wrongdoing was committed, as defined under section 8 of the Act, the standard of proof that applies is a balance of probabilities. In Canadian law, this standard of proof is generally defined as meaning that one conclusion is more probable than another or, in other words, that there is a greater likelihood of one thing than another.

### **Contravention of an Act**

Paragraph 8(a) of the Act states that "a contravention of any Act of Parliament or of the legislature of a province, or of any regulations made under any such Act" constitutes wrongdoing.

### **Gross Mismanagement**

The factors that my Office considers in making a finding of gross mismanagement under paragraph 8(c) of the Act include, but are not limited to:

- matters of significant importance;
- serious errors that are not debatable among reasonable people;
- more than minor wrongdoing or negligence;

- management action or inaction that creates a substantial risk of significant adverse impact upon the ability of an organization, office or unit to carry out its mandate;
- management action or inaction that poses a serious threat to public confidence in the integrity of the public service, and that does not primarily concern a personal matter, such as individual harassment complaints or individual workplace grievances;
- the deliberate nature of the wrongdoing; and
- the systemic nature of the wrongdoing.

## Summary of Findings

In a founded case of wrongdoing arising from an internal disclosure, the Treasury Board of Canada Secretariat “has determined that information should normally be made public within 60 days from the day on which the chief executive confirms the finding of wrongdoing”.<sup>1</sup> When wrongdoing is found as a result of an internal disclosure made under the CAF Disclosure Process, this process also requires that public access to information be provided. The information on founded cases of wrongdoing at DND and in the CAF is posted on the DND website.

Information obtained during our investigation shows that between 2015 and 2020, DND repeatedly delayed the sharing of information related to founded cases of wrongdoing at DND and in the CAF. Not only were final decisions delayed without justification, even following those delayed decisions, information about the founded cases of wrongdoing was not promptly made public. In fact, this information was only made public following the launch of our investigation.

When our investigation was launched in October 2020, the DND website only displayed information on founded cases of wrongdoing up to fiscal year 2014–15. Our investigation examined founded cases of wrongdoing between 2015, the year that the DND website was last updated at the time, and 2020, the year in which our investigation was launched. During these years, there were three founded cases of wrongdoing at DND and in the CAF. Each of these founded cases was not made public on the DND website<sup>2</sup> until 2021 or 2022, after our investigation was launched.

### Case One

In November 2016, a DND employee made a disclosure of wrongdoing and an internal investigation was launched in December 2016. The discloser followed up on the status of this investigation twice. On April 12, 2019, the discloser emailed the DSEI investigator to express disappointment at not being informed of

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<sup>1</sup> Public Servants Disclosure Protection Act – Information on organizational public reporting obligations  
<https://www.canada.ca/en/treasury-board-secretariat/services/values-ethics/disclosure-protection/public-servants-disclosure-protection-act-information-organizational-public-reporting-obligations.html>

<sup>2</sup> Founded Disclosures of Wrongdoing  
<https://www.canada.ca/en/department-national-defence/corporate/transparency/founded-disclosures.html>

the results of the investigation. The investigator replied on the same day to explain that “the investigation is complete and the report has been submitted for review”, that the “next step [...] is for the ADM(RS) to accept the findings”, and that the investigator could only advise the discloser of the results after this acceptance. The discloser followed up a second time with a letter dated November 18, 2020, requesting an update on the status of the investigation, because the results had still not been provided, four years after submitting the internal disclosure.

According to the November 2020 DSEI investigation report, the allegation of wrongdoing disclosed in November 2016 was founded. The discloser was informed by email of the results of the investigation on May 6, 2022, 18 months after the report was completed. On that same day, information on the findings of this investigation was made publicly accessible on the DND website.

### **Case Two**

Following a disclosure by a CAF member, the DSEI made a finding of wrongdoing in June 2018. The assessment of wrongdoing was signed by the responsible officials in September 2018, and the finding of wrongdoing was approved in October 2018.

On April 24, 2019, the discloser was informed by email that the internal investigation had closed and the allegation of wrongdoing was founded. This was the first time that the discloser was informed, six months after the conclusion of the investigation. Not until January 2020 did officials provide a proposed text for publication on the DND website. Following this, officials attempted on two additional occasions to get final approval of the text for publication on the DND website.

In the end, the discloser received an email on February 15, 2022, informing them of the results of the investigation for the second time. This is also the date on which information about the founded case of wrongdoing was published on the DND website.

The delay between the completion of the investigation and publication of the results was over 43 months. It is not clear that the report would have ever been published if our investigation was not launched. My Office’s investigator found no compelling evidence to suggest this delay was necessary or reasonable.

### **Case Three**

In December 2019, the DSEI made a finding of wrongdoing based on their investigation of an allegation disclosed by a DND employee. The discloser received an email on January 24, 2020, informing them of the results of the investigation.

The information about this founded case of wrongdoing was publicly provided on the DND website on August 4, 2021. It took more than 20 months to receive approval of the findings.

## Timelines of Internal Investigations, their Findings and the Publication of Founded Cases

	CASE ONE	CASE TWO	CASE THREE
Date of DSEI final report	November 2020	June 2018	December 2019
Date the finding of wrongdoing was approved	February 17, 2022	October 31, 2018	June 7, 2021
Date the discloser was informed	May 6, 2022	April 24, 2019, and February 15, 2022	January 24, 2020
Date of public notice	May 6, 2022	February 15, 2022	August 4, 2021
Months elapsed between DSEI report and public notice	Over 18 months	Over 43 months	Over 20 months

### A Pattern of Delays

Throughout the course of our investigation, the evidence demonstrated a pattern in the internal disclosure process at DND and in the CAF. Founded cases of wrongdoing were not being published, and in some cases, disclosers were not being informed of the outcome of internal investigations in a timely manner. Witnesses noted they had many concerns with how cases were being handled, for example:

- In the opinion of a witness, the case was very embarrassing for DND and “it made no sense. The [internal] investigation was done, letters were done, all [management] had to do was sign the assessment. There is no reason why it sat in [that] office”.
- A witness stated that, although he had briefed senior management about a case in July 2021, he had decided to keep the file and not provide it to senior management as he was scared the file would be lost or delayed, which had happened with previous files.
- A witness noted that, in the past, final decisions related to internal investigations of wrongdoing typically took one or two months. In the case of those investigations, delays at the final decision step of the process had exceeded one year.
- A witness noted that files had been provided to management for final decision “never to be seen again”.
- Regarding the process following an internal investigation, a witness noted that “it has been chaos” and there was a lack of clear expectations from senior management.

- A witness noted that despite efforts by the DSEI to follow up, it often took months to get a sense of what was happening on a file and that “there would be another round of questions or a need to brief management over and over again”.
- Two witnesses stated that management delayed release of a case without reason. One of them noted that related documents had to be drafted with new dates approximately seven times, because management seemed unable to make a final decision.
- In an interview with my Office, the former Deputy Minister of DND stated that she did not know what happened that could explain the delay in providing public access to a founded case of wrongdoing. In her opinion, there was no reason not to publish those findings.

Given the evidence uncovered and examined during our investigation, it is clear that there was a breakdown in the management of the internal disclosure process at DND, as well as the CAF Disclosure Process. Regardless of how long those internal investigations may have taken, the issue is that results were delayed for unacceptable periods of time, suggesting a systemic problem with the internal disclosure process at DND and in the CAF, as well as a lack of accountability and responsibility.

The failure to promptly publish information on founded cases of wrongdoing and to inform disclosers of the results of internal investigations is a matter of significant importance, as it resulted in a loss of confidence in the internal disclosure process by the DND employees or CAF members who had made an internal disclosure of wrongdoing. In one case, the loss of confidence was so dire, that someone from the DSEI recommended that a DND employee go to my Office because the situation had become “ridiculous”. In addition, the evidence suggests that the CAF member who made an internal disclosure was considering going to the media if public access to information on that founded case of wrongdoing continued to be delayed.

In particular, over 43 months elapsed between making the finding of wrongdoing and providing public access in Case Two, which concerned an allegation that sentences ordered at court martial proceedings were either not being carried out in a timely fashion or were not being carried out at all. Given the nature of this finding, I find that such a delay results in a significant adverse impact on governmental transparency, oversight and accountability, which are important public interest goals that are supported when prompt public access to information about wrongdoing is provided. In this regard, the delay of publication of founded cases posed a serious threat to public confidence in the integrity of the public service, and of DND and the CAF in particular.

The circumstances surrounding the delays and the length of delays in providing public access to information suggest that the mismanagement of these files was also more than a trivial wrongdoing or minor negligence. Multiple individuals made attempts to move files forward through follow-ups and reminders, and during the period investigated by my Office, none of the founded cases of wrongdoing at DND and in the CAF were made public until after the launch of our investigation. This constitutes a serious error that is not debatable among reasonable people.

The action, or inaction, of DND led to confusion and decreased trust; DND employees and CAF members who make internal disclosures of wrongdoing expect certain actions to be taken based on the Defence Administrative Orders and Directives, as well as the Act, such as prompt public access or being notified of the results of internal investigations. Instead, disclosers were forced to wait for unreasonable periods to learn the outcome of those investigations, and Canadians were not made aware of the wrongdoing in a timely manner.

## Conclusion

The Act was established to maintain and enhance public confidence in the integrity of public servants and confidence in public institutions.<sup>3</sup> To this end, the Act requires that my Office table founded cases of wrongdoing in Parliament within 60 days of making a finding, it also requires that deputy heads of federal organizations promptly make public information about founded cases of wrongdoing. In this particular case, it simply cannot be argued that the release of information was timely. In fact, information about wrongdoing was only released following the launch of our investigation.

The results of our investigation are troubling. Public servants must be able to have confidence in their senior leadership. Making a disclosure of wrongdoing is an extremely difficult and courageous act, and those who make a disclosure have a right to be made aware of actions stemming from their disclosures and to expect that any founded cases will be shared with the public. Unfortunately, in this case, disclosers were left in the dark and had no choice but to raise the alarm again, this time about the very individuals who were meant to shine light on wrongdoing.

On a number of occasions, I have spoken about the need for a culture change in the federal public sector. The results of the most recent Public Service Employee Survey note that only 49% of employees feel they can initiate a formal recourse process without fear of reprisal. This result underscores the need for senior leaders to create environments where whistleblowers feel safe and supported.

In addition to the fear of reprisal, research carried out by my Office demonstrates that public servants believe that there is no point in blowing the whistle, because there will be no consequences for wrongdoers and things will never change. The combination of fear and cynicism is a powerful disincentive to whistleblowers and undermines the goal of the Act, as well as confidence in the federal public sector. By delaying release of the findings of internal investigations, DND contributed to that cynicism and let down their employees, as well as eroding their trust in the very system designed to protect them and to bring wrongdoing to light.

Accordingly, I find that DND committed wrongdoing and that their inaction amounts to a contravention of an Act, pursuant to paragraph 8(a) of the Act, as well as gross mismanagement, pursuant to paragraph 8(c) of the Act.

## The Commissioner's Recommendations and DND's Response

In accordance with paragraph 22(h) of the Public Servants Disclosure Protection Act (the Act), I have made the following recommendations to Mr. Bill Matthews, Deputy Minister of the Department of National Defence (DND), in his capacity as Chief Executive, concerning corrective measures. My Office will be requesting an update of all four recommendations in the next six months to ensure they are properly addressed.

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<sup>3</sup> Public Servants Disclosure Protection Act – Preamble  
<https://laws-lois.justice.gc.ca/eng/acts/p-31.9/page-1.html>

My recommendations and DND's responses are as follows:

### **General response from Bill Matthews, Deputy Minister, Department of National Defence**

The Department of National Defence (DND) accepts the recommendations contained in the Report of the Public Service [sic] Integrity Commissioner and is committed to ensuring employees have confidence in coming forward with a disclosure of wrongdoing.

DND is committed to improving its timelines for closing investigations. Progress has been made through the development of administrative tools to improve notification processes and establishing more focused tracking and reporting of investigations, including to ensure that senior management is made aware well in advance of investigations which may be nearing completion.

DND will be using the findings and recommendations from the Commissioner to guide ongoing efforts and inform broader work on professional conduct as well as improvements to the culture of the Defence Team. DND is grateful for the work of the Public Service [sic] Integrity Commissioner and is committed to working with the Commissioner's Office as recommendations are implemented.

**1. I recommend that DND establish a training or orientation process for all employees involved in the administration of the Act, including senior managers, to ensure they have knowledge of the Act and are committed to its application.**

DND accepts the recommendation and will work with the Treasury Board Secretariat and the Public Sector Integrity Commissioner to ensure senior managers and employees are provided training to effectively apply the Act.

**2. I recommend that DND implement a cyclical audit of the internal disclosure program to verify the number of disclosures, investigations launched and founded cases of wrongdoing, and to ensure that prompt publication of accurate information has occurred.**

DND accepts the recommendation and will implement a cyclical audit of the internal disclosure program to verify the number of disclosures, investigations launched and founded cases of wrongdoing, and to ensure prompt publication of accurate information.

DND will continue to provide an annual report to the Minister on statistics and activities related to the Act as part of its' [sic] response to recommendation number 42 of the Independent External Comprehensive Review conducted by the Honourable Louise Arbour, which was published on May 20, 2022.

**3. I recommend that DND undertake a yearly evaluation of the internal disclosure process at DND and in the CAF, for a minimum of three years, for the purpose of ensuring that the Deputy Minister is satisfied that the program is being effectively managed.**

DND accepts the recommendation and will develop an annual evaluation plan to ensure that the program is being effectively managed.