



# Policy on the Time Limit for Making a Complaint of Reprisal

## Application of Subsections 19.1(2) and 19.1(3) of the *Public Servants Disclosure Protection Act*

### 1 Effective Date

1.1 This policy takes effect on October 1<sup>st</sup>, 2015.

### 2 Application

2.1 This policy applies to the Public Sector Integrity Commissioner and to all employees of the Office of the Public Sector Integrity Commissioner of Canada.

### 3 Context

3.1 The Office of the Public Sector Integrity Commissioner of Canada (PSIC) is the only body with the authority under the *Public Servants Disclosure Protection Act* (PSDPA) to receive complaints of reprisal.

Subsection 19.1 (2) of the PSDPA, which pertains to complaints of reprisal, states that: “the complaint must be filed not later than 60 days after the day on which the complainant knew, or in the Commissioner’s opinion ought to have known, that the reprisal was taken”.

The time for filing at subsection 19.1 (2) can be extended “if the Commissioner feels it is appropriate considering the circumstances of the complaint” as outlined at subsection 19.1(3) of the PSDPA.

The underlying principles governing the application of this discretionary authority are the presumption of good faith, the upholding of public trust and integrity of public servants, and the protection of persons who disclose wrongdoing. The Commissioner’s zero tolerance for reprisal

underscores the seriousness of the impact of reprisal on public servants and in the integrity of the public service.

## 4 Definitions

For definitions to be used in the interpretation of this policy refer to Appendix A.

## 5 Policy Statement

### 5.1 Objective

The objectives of this policy are to:

- Establish the standard against which the Commissioner's decision to reject a complaint or extend the time for filing would be reviewed;
- Support the decision-making process within the Office of the Public Sector Integrity Commissioner of Canada by bringing clarity and ensuring consistency in the application of subsections 19.1(2) and 19.1(3) of the *Public Servants Disclosure Protection Act*; and
- Increase transparency around the PSIC decision-making process.

### 5.2 Expected results

The expected results of this policy are:

- The consistent application and documentation of decisions under subsections 19.1(2) and 19.1(3) of the PSDPA;
- Greater efficiencies in the processing of complaints of reprisal filed past the legislated 60 day timeline due to greater clarity and transparency around the decision-making process;
- A fair, clear and transparent decision-making process.

## 6 Policy Requirements

### 6.1 The Commissioner is responsible for:

**6.1.1** Making decisions to grant extensions for complaints of reprisal in accordance with the PSDPA and the criteria set out in this policy;

Considering the circumstances of the complaint and public interest, taking a complainant driven approach in applying the 60 day limit under subsection 19.1(2) of the PSDPA; and

Ensuring that all decisions to grant an extension under subsection 19.1(3) of the PSDPA are documented on file including evidence that the Commissioner has considered the criteria set out in this policy.

**6.1.2 Granting of Extensions:** In making a decision on whether to extend the time for filing a reprisal complaint, the following criteria will be considered including the complainant's stated reasons for the delay:

- The length of time since the reprisal occurred with a more compelling rationale required the longer the delay;
- The physical and mental health of the complainant;
- The personal circumstances of the complainant;
- Whether the last act of reprisal occurred within 60 days of filing the complaint;
- Whether fear of continuing reprisal acted as a deterrent for the complainant in coming forward;
- Complainant's knowledge of the 60 day limit imposed by legislation to submit a complaint of reprisal;
- Whether the complainant was provided with erroneous advice or information by a representative or other official in regard to the time limitation to file a complaint; and
- Any other relevant factors considering the public interest.

## **6.2 The Case Analyst is responsible for:**

**6.2.1** Assessing whether a complaint of reprisal is filed beyond the time to file outlined at subsection 19.1(2) of the PSDPA including whether the complainant provided an explanation for filing outside of the 60 day period on the Reprisal Complaint Form submitted to PSIC;

Completing a preliminary assessment and recommendation based on the information provided and using the template in appendix B.

## **6.3 The Manager is responsible for:**

**6.3.1** Reviewing the draft assessment and recommendation completed by the Case Analyst using the template in appendix B for complaints of reprisal submitted after the legislated 60 day time limit.

# **7 Related policy instruments/publications**

- *Public Servants Disclosure Protection Act*
- *PSIC Intake, Inquiries & Investigations Manual*

# **8 Enquiries**

Enquiries about this policy should be directed to the Office of the Public Sector Integrity Commissioner.

[www.psic-ispic.gc.ca](http://www.psic-ispic.gc.ca)

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# Appendix A - Definitions

For the purpose of this policy, the following definitions apply:

## **Commissioner**

Means the Public Sector Integrity Commissioner appointed under subsection 39(1) of the *Public Servants Disclosure Protection Act*.

## **Complaint**

Means a reprisal complaint filed in a form acceptable to the Public Sector Integrity Commissioner in accordance with section 19.1(1) of the PSDPA.

## **Complainant**

Means the person making the complaint or his/her representative.

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## **Appendix B - Checklist**

The Checklist appears on the following page in template form for PSIC employees to print, complete and add to file.

# Time Limit Extension - Checklist

FILE NUMBER	DEPARTMENT	DATE RECEIVED	ANALYST	DATE OF REPORT
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In accordance with the criteria set out in the Policy on the Time Limit for Making a Complaint of Reprisal and the rationale provided, the following test questions shall be applied in determining whether to grant an extension under section 19.1(3) of the *Public Servants Disclosure Protection Act*. Check all questions.

- Was a rationale provided to substantiate the length of time in filing the reprisal complaint?

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- Has the physical and/or mental health of the complainant contributed to the delay in filing a complaint of reprisal?

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- Do the personal circumstances of the complainant warrant the granting of an extension of time based on compassionate grounds?

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- Did the last act of reprisal occur within 60 days of filing the complaint?

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- Did fear of continuing reprisal act as a deterrent for the complainant in coming forward?

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- Was the complainant aware of the legislated 60 day limit for filing a complaint of reprisal?

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- Was the complainant provided with erroneous advice or information by a representative or other official in regard to the time limitation to file a complaint?

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- Are there any other factors, considering the public interest and including the complainant's rationale that would affect whether or not to grant an extension of time in filing a complaint?

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**Additional Information:**

**Recommendation:**

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Case Analyst's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Reviewed by (Signature): \_\_\_\_\_ Date: \_\_\_\_\_

**Commissioner's Instructions**

- Extension Granted
- Extension not Granted

Commissioner's Signature: \_\_\_\_\_

Date: \_\_\_\_\_