



The Integrity Commission of Jamaica

Anti-Corruption and Good Governance Sensitization Workshop Series

**Specially Developed by the Integrity
Commission for the Cabinet of the Government
of Jamaica**

Anti-Corruption and Good Governance Sensitization Workshop Series

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“Protected Disclosures Act - Whistleblowing”

Craig Beresford
Director, Information and Complaints

List of Workshop Modules

- Overview of Jamaica's Anti-Corruption Framework
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- Principles of Good Governance and Integrity in Public Life
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- IC Process - Overview of Corruption Offences in Jamaica
- International Best Practices in Anti-Corruption and Anti-Bribery

Introduction

- The former Commission for the Prevention of Corruption (CPC) was the Designated Authority under the Protected Disclosures Act (PDA), by way of Gazette dated 07th August 2012.
- Following the amalgamation of three (3) legacy Agencies, including the CPC, the Integrity Commission (IC) was established.
- The IC's Organisation Structure, approved by Parliament, included a specific Unit within the Information and Complaints Division to treat with Protected Disclosures; the Complaints and Protected Disclosures Unit.

Introduction

- The IC, out an abundance of caution, wrote to the Minister of Justice in July 2020 (in keeping with the PDA), to make clear that the IC is the Designated Authority under the said Act.
- The Minister responded in August 2020 advising that the matter had been passed to the Attorney General Chambers, for advice.

Definitions

- Improper Conduct means any –
 - (a) Criminal offence;
 - (b) Failure to carry out a legal obligation;
 - (c) Conduct that is likely to result in a miscarriage of justice;
 - (d) Conduct that is likely to threaten the health or safety of a person;
 - (e) Conduct that is likely to threaten or damage the environment;
 - (f) Conduct that shows gross mismanagement, impropriety or misconduct in the carrying out of any activity that involves the use of public funds;
 - (g) Act of reprisal against or victimization of an employee;
 - (h) Conduct that tends to show unfair discrimination on the basis of gender, race, place of origin, social class, colour, religion or political opinion; or
 - (i) Willful concealment of any act described above.

Definitions

- Occupational detriment means any act or omission that results in an employee, in relation to his employment, being–
 - (a) Subject to disciplinary action;
 - (b) Dismissed, suspended, or demoted;
 - (c) Harassed, intimidated or victimized;
 - (d) Refused transfer or promotion;
 - (e) Subject to a term or condition of employment or retirement from employment, that is altered to his disadvantage;
 - (f) Provided with an adverse reference;
 - (g) Denied appointment to any employment, profession or office;
 - (h) Threatened with any of the actions above;
 - (i) Otherwise adversely affected in respect of his employment, profession or office, including employment opportunities and job security.

Definitions

- Prescribed Persons to Whom Disclosure may be made–
 - (a) Auditor-General;
 - (b) Bank of Jamaica;
 - (c) Bureau of Standards;
 - (d) Children's Advocate;
 - (e) Commission for the Prevention of Corruption;
 - (f) Commissioner of Police;
 - (g) Contractor-General;
 - (h) Director of Public Prosecutions;
 - (i) Electoral Commission of Jamaica;
 - (j) Fair Trading Commission;
 - (k) Financial Services Commission;
 - (l) Independent Commission of Investigations;
 - (m) Integrity Commission;
 - (n) Inland Revenue Department;
 - (o) National Environment and Planning Agency;
 - (p) Office of Utilities Regulation;
 - (q) Political Ombudsman; and
 - (r) Public Defender.

Definitions

- Employer means any person who–
 - (a) Employs or has employed another person to carry out work or provide services and who remunerates, or expressly or tacitly undertakes to remunerate, that other person for the work carried out or services provided; or
 - (b) Permits or has permitted another person to assist in any manner in the carrying on or conduct of the business of that person, with out any obligation to provide remuneration or reward to that other person.

Definitions

- Disclosure means–
 - (a) Disclosure of information made by an employee, regarding any conduct of an employer of that employee or another employee of the employer, where the employee has a reasonable belief that the information disclosed shows or tends to show that improper conduct has occurred, is occurring or is likely to occur, and ‘disclose’ shall be construed similarly.

Protected Disclosures Act

- Objects of the Act
- Scope of the Act
- Good faith; public interest requirement
- Procedures for disclosures
- Disclosures Qualifying for Protection
- Certain Procedures for Disclosure
- Immunity from Criminal and Civil Proceedings
- Provisions against Occupational Detriment
- Receiving, Investigating and otherwise Dealing with Disclosures Internally
- Right to refuse; duty to refer
- Provisions for non-disclosure void
- Oversight Functions
- Offences and Penalties
- Obligation for secrecy and confidentiality

Objects of the Act

Section 3

The Objects of the Act are to-

- Facilitate and encourage the making, in a responsible manner, of disclosures of improper conduct, in the public interest;
- Regulate the receiving, investigating or otherwise dealing with disclosures of improper conduct; and
- Protect employees who make specified disclosures from being subjected to occupational detriment.

Scope of the Act

Sections 4(1), 4(2) and 4(3)

- The Act applies to any disclosure made after the appointed day, notwithstanding that the conduct to which the disclosure relates may have occurred before the appointed day.
- A disclosure of information is not a protected disclosure if the employee making the disclosure commits an offence by making it.
- For greater certainty, it is declared that nothing in the Act authorizes the disclosure of information that is protected by legal professional privilege.

Good Faith; Public Interest Requirement

Section 5

- A disclosure shall not qualify for protection under this Act unless it is made in good faith and in the public interest.

Procedures for Disclosures

Section 6(1) and 6(2)

- The Procedures required to be established by any person under the Act for making a disclosure shall be in writing, and shall contain, as a minimum requirement, as far as is practicable, the information specified in the Second Schedule.
- Where a disclosure is made orally, the person receiving the disclosure shall within twenty-four hours after receiving the disclosure, cause the disclosure to be reduced into writing containing the same particulars as a specified in the Second Schedule.

Disclosures Qualifying for Protection

Sections 7, 8, 9, 10 and 11

- Disclosure to an employer;
- Disclosure to a Minister;
- Disclosure to a prescribed person;
- Disclosure to the designated authority; and
- Disclosure to an attorney-at-law.

Certain Procedures for Disclosure

Section 12

- Where an employee seeks to make a disclosure in relation to a matter that would prejudice the national security, defence or international relations of Jamaica, the disclosure shall be made to either the Minister with portfolio responsibility for that subject matter or the Prime Minister or both.
- The Prime Minister and each Minister shall establish and cause to be operated procedures for receiving, investigating or otherwise dealing with disclosures made with respect to matters germane to national security, defence or international relations of Jamaica.

Certain Procedures for Disclosure

Section 13

- Each employer and prescribed person shall establish and operate procedures for receiving, investigating and otherwise dealing with disclosures; Gazette dated 25th April 2014.
- An employee who seeks to make a disclosure shall report same to the employer, Minister or prescribed person, in the first instance.
- The procedures shall identify at least one person (designated officer) to whom disclosures may be made.

Certain Procedures for Disclosure

Section 13

- Designated officers shall be conferred with the requisite authority to receive, take steps to investigate or otherwise deal with any disclosure made.
- Where an employee makes a disclosure, every designated officer shall keep the employee updated on the status of the investigation of the disclosure.
- Each employer shall cause information on the procedures for making disclosure to be circulated among employees of the employer on a regular basis, in order that the employees may be aware of the procedures.

Certain Procedures for Disclosure

Section 14

- Where an employee makes an internal disclosure and steps to deal with the disclosure have not been taken by the employer or the designated officer within thirty days, the employee may make an external disclosure to a prescribed person or the designated authority.

Immunity from Criminal and Civil Proceedings

Sections 15(1) and 15(2)

- This section applies notwithstanding any duty of secrecy or confidentiality or other prohibition of or restriction on the disclosure of information under the enactment, rule of law, contract or practice.
- A person who makes a protected disclosure, or receives, investigates or otherwise deals with a protected disclosure, shall not be liable in any civil or criminal proceeding or to any disciplinary proceeding by reason of having made, received, investigated or otherwise dealt with that disclosure.

Provisions Against Occupational Detriment

Sections 16(1) and 16(2)

- An employee shall not be subjected to any occupational detriment on the basis that the employee seeks to make, has made, or intends to make, a protected disclosure.
- An employee who is dismissed as a consequence of seeking to make, making or intending to make a protected disclosure shall be treated as being unjustifiably dismissed.

Provisions Against Occupational Detriment

Section 17

- Where an employee suffers occupational detriment at or about the same time that he makes a protected disclosure, the occupational detriment shall be presumed to be a consequence of the protected disclosure, unless the employer shows that the act that constitutes the occupational detriment is otherwise justified.

Receiving, Investigating and otherwise Dealing with Disclosures

Section 18

- The Second and Third Schedules of the Act sets out the process and procedures which should be followed by the employees, Ministers or prescribed persons when dealing with protected disclosures.

Right to Refuse; Duty to Refer

Sections 19(1) and 19(2)

- An employer or other person to whom a disclosure is made, acting in good faith, may, refuse to deal with the disclosure, or commence an investigation into any improper conduct alleged in the disclosure; or cease an investigation, in any of the following circumstances—
 - (a) The subject matter of the disclosure or the related investigation has been adequately dealt with, or could more appropriately be dealt with by another person;
 - (b) The subject matter of the disclosure is frivolous or not sufficiently important to warrant an investigation;

Right to Refuse; Duty to Refer

Sections 19(1) and 19(2)

- (a) The circumstances surrounding the subject matter of the disclosure have changed (whether by reason of a change in the circumstances of the employee or the employer, insufficiency of evidence or otherwise) so that it renders the investigation unnecessary.

Right to Refuse; Duty to Refer

Section 19(3)

- Where an employer decides to refuse to carry out an investigation the employer shall provide reasons in writing to the employee within fifteen days of the decision, where -
 - (a) The disclosure has been made to a prescribed person or Minister; and
 - (b) Under the provisions of the Act the prescribed person or Minister is not entitled to investigate the matter disclosed then the prescribed person or Minister to whom the disclosure was made shall forthwith refer the disclosure to such other prescribed person or Minister who, in the opinion of the first mentioned prescribed person or Minister, is so entitled.

Right to Refuse; Duty to Refer

Section 20

- Any provision of an agreement shall be void and of no effect if the provision precludes an employee from making a protected disclosure or purports to require an employee to–
 - (a) Agree to not make a disclosure under this Act during or after his period of employment;
 - (b) Refrain from instituting any proceedings pursuant to the Act; or
 - (c) Withdraw or abandon any disclosure made under this Act, or proceedings instituted pursuant to this Act.

Oversight Functions

Sections 21(1), 21(2) and 21(3)

- The Minister shall, by order, designate an individual or entity as the designated authority for the purposes of this Act.
- The designated authority shall be responsible for monitoring compliance with the Act and the provisions of the Third Schedule.
- In furtherance of its functions, the designated authority shall –
 - (a) publish such procedural guidelines regarding the making, receiving and investigation of disclosures under this act, as it considers appropriate;

Oversight Functions

Section 21(3)

- In furtherance of its functions, the designated authority shall –
 - (a) Provide such assistance as may be practicable to any person who seeks to make a disclosure under this Act or any person who is a designated officer, employer or other person subject to the requirements of this Act.
 - (b) On an ongoing basis, plan, implement and monitor public awareness programmes aimed at informing and educating employees, employers and the general public in Jamaica about the making, in a responsible manner, of protected disclosures and about the procedures for receiving and investigating such disclosures.

Oversight Functions

Section 21(3)

- In furtherance of its functions, the designated authority shall –
 - (a) Review from time to time the procedures required under this Act to be established by any person.
 - (b) Review the implementation and operation of such procedures.
 - (c) Make recommendations to any person arising from any review.
 - (d) Where it considers it appropriate to do so; initiate an investigation, take over an investigation, or authorise a body to undertake in whole or in part an investigation.

Oversight Functions

Sections 21(4), 21(5) and 21(6)

- The designated authority shall, within six months after the end of each year or within such longer period as the Minister may in special circumstances approve, cause to be made and transmitted to the Minister a report dealing generally with the activities of the authority during the preceding year.
- The Minister shall cause a copy of the report to be tabled in the House of Representatives and the Senate.
- The designated authority shall not disclose in a report any information that would directly or indirectly identify any person who has made a disclosure, or a person about whose conduct a disclosure was made.

Offences and Penalties

Section 23(1)

- A person commits an offence if he-
 - (a) Prevents, restrains or restricts any employee from making a protected disclosure;
 - (b) Intimidates any employee who has made or intends to make a protected disclosure;
 - (c) Induces any person by threats, promises or otherwise to contravene the Act;
 - (d) Being an employer – subjects an employee or former employee of that person to occupational detriment as a consequence of the employee or former employee making a protected disclosure and refuses, in bad faith, to receive a disclosure or carry out an investigation in relation to a disclosure.

Offences and Penalties

Sections 23(1) and 23(3)

- A person commits an offence if he-
 - (a) Being an employee, purports to make a disclosure under this Act knowing that it contains a statement that is false or misleading, or reckless as to whether the statement is false or misleading; or
 - (b) Aids, abets, procures or conspires with any other person to contravene this Act
- Is liable upon summary conviction in a Resident Magistrate's Court to a fine not exceeding two million dollars or to imprisonment for a term not exceeding two years or to both such fine and imprisonments; or

Offences and Penalties

Sections 23(3) and 23(2)

- Conviction on indictment in a Circuit Court to a fine or to imprisonment for a term not exceeding five years or to both such fine and imprisonment.
- A person who, without reasonable excuse, fails to comply with a requirement imposed by the designated authority in the lawful exercise of the functions of the authority under this Act, commits an offence and is liable on summary conviction in a Resident Magistrate's Court to a fine not exceeding two hundred and fifty thousand dollars or to imprisonment for a term not exceeding three months.

Obligation for Secrecy and Confidentiality

Section 24(1)

- Every person receiving, investigating or otherwise dealing with a disclosure under this Act shall regard and deal with as secret and confidential -
 - (a) The identity of the employee making the disclosure and any disclosure made; and
 - (b) Any statement given, or document, information or thing provided, to the person in the carrying out of an investigation,
- Except that any statement given, or document, information or thing provided, given in furtherance of an investigation or any legal or disciplinary proceedings shall not be regarded as being inconsistent with the obligation for secrecy and confidentiality. 37

Review of Act by Parliamentary Committee

Sections 27(1), 27(2) and 28

- This Act shall be reviewed, from time to time, by a committee of both Houses of Parliament appointed for that purpose.
- The first such review shall be conducted not later than three years after the appointed day.
- The Act binds the Crown.



Questions and Answers