

Protected Disclosures Act, 2011

INTEGRITY COMMISSION
DESIGNATED AUTHORITY

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Contents to be Covered

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History

- ❑ The former Commission for the Prevention of Corruption (CPC) was the Designated Authority.
- ❑ Following the amalgamation of three (3) legacy Agencies, including the CPC and the Contractor General, the Integrity Commission was established as the Designated Authority.
- ❑ In accordance with the Jamaica Gazette dated January 25, 2021, the Integrity Commission was named by the Minister of Justice as the Designated Authority with respect to the Protected Disclosures Act, 2011.



Objects of the Act

- ❑ Encourage employees to make specified disclosures of improper conduct in the public interest.
- ❑ Regulate the receiving, investigating or otherwise dealing with disclosures of improper conduct.
- ❑ To protect employees who make specified disclosures from being subjected to occupational detriment; and for related matters.

Section 2:

“employee” means—

- (a) any person who—
 - (i) works or has worked for another person; and
 - (ii) receives, received, or is entitled to receive, any remuneration for work done;
- (b) any person who in any manner assists or has assisted in the carrying on or conduct of the business of an employer, without any entitlement to receive remuneration or reward; or
- (c) any person who is, or was, engaged or contracted under a contract for services to do work for another person, or any agent of the person;

What Distinguishes this Legislation from other Whistleblowing Policies

Protected Disclosures Act

- ❑ Focuses primarily on employee and employers;
- ❑ Protects against occupational detriment;
- ❑ Employees must identify themselves in order to receive protection from occupational detriment. *You can not protect who you do not know.*

Other Whistleblowing Legislations

- ❑ Facilitates a wider population including civilians, private and public sectors being able to report on matters of corruption, improper conduct, impropriety and irregularity;
- ❑ Employees may make disclosures against any other entity [*complaints can be made to the Integrity Commission under the Integrity Commission Act, 2017*].
- ❑ Employees may choose to remain anonymous.

Other Whistleblowing Laws-Public Interest Disclosure Act, (1998),
EU Whistleblowing Law.

What is a Disclosure?

Section 2 states:

Disclosure is the information given by an **employee**, regarding any conduct of an **employer** of that employee or another employee of that 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.

Section 5 states:

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

Improper Conduct

Section 2

“improper conduct” means any—

- (a) criminal offence;
- (b) failure to carry out a legal obligation;  e.g. breach of contract
- (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.g. precautionary measures not put in place in light of the pandemic
- (e) conduct that is likely to threaten or damage the environment;  e.g. fish kill in Rio Cobre
- (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) wilful concealment of any act described in paragraphs (a) to (h);

Occupational Detriment

Section 2 states:

“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) transferred against his will;
- (e) refused transfer or promotion;
- (f) subject to a term or condition of employment or retirement from employment, that is altered to his disadvantage;
- (g) provided with an adverse reference;
- (h) denied appointment to any employment, profession or office;
- (i) threatened with any of the actions specified in paragraphs (a) to (h); or
- (j) otherwise adversely affected in respect of his employment, profession or office, including employment opportunities and job security;

Section 17 states:

Presumption
of occupa-
tional
detriment
resulting
from
disclosure.

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.

Protected Disclosure means a disclosure made by an employee to-

Sections 7, 8, 9, 10 & 11

- ❑ Employer (Designated Officers)
- ❑ Prescribed Person (matters unique to the entity)
- ❑ Designated Authority
- ❑ Minister with Portfolio for subject matter or Prime Minister (matters of international relations, defence, security) and
- ❑ Attorney-at-Law (in the process of obtaining legal advice)



Designated Officer

- Arrange for disclosures to be made privately;
- Put disclosures received orally in writing within 24 hours of its receipt;
- Ensure the identity of the person who makes the disclosure is kept confidential;
- Recommend referral of disclosures;
- Give an update to the person who makes the disclosure within thirty (30) days and in intervals of thirty days;
- Submit monthly reports to the Designated Authority.

Section (13) (3) (4) states:

13.—(1) Each employer and prescribed person shall establish and operate procedures for receiving, investigating and otherwise dealing with disclosures.

Procedures for making disclosures internally.

(2) Subject to section 10, an employee who seeks to make a disclosure shall utilize the procedure in section 7, 8 or 9 in the first instance.

(3) The procedures shall identify at least one person (in this Act referred to as a designated officer) to whom disclosures may be made.

(4) Designated officers shall be conferred with the requisite authority to receive, take steps to investigate or otherwise deal with any disclosure made.



Training of Designated Officers

The Integrity Commission has partnered with the Management Institute for National Development (MIND) to deliver a robust training to the Designated Officers.



Protected Disclosure can be made to-

- ❑ Employer (Designated Officers)
- ❑ **Prescribed Person (matters unique to the entity)**
- ❑ Designated Authority
- ❑ Minister with Portfolio for subject matter or Prime Minister (matters of international security, defence, security) and
- ❑ Attorney-at-Law (in the process of obtaining legal advice)

Prescribed Persons –

entities whom disclosures may be made to once it falls within the areas of responsibility of the entity.

1. Auditor-General  **Conduct that shows gross misconduct, impropriety or misconduct in the carrying out of any activity that involves the use of public funds**
2. Bank of Jamaica  **Financial Fraud**
3. Bureau of Standards
4. Children's Advocate  **Improper conduct within the children's homes**
5. Commissioner of Police  **Criminal offence**
6. Director of Public Prosecutions
7. Electoral Commission of Jamaica
8. Fair Trading Commission
9. Financial Services Commission  **Financial Fraud**

Prescribed Persons

- 10. Independent Commission of Investigations → Security forces related matters
- 11. Integrity Commission
- 12. Tax Administration Jamaica
- 13. National Environment and Planning Agency → Conduct that is likely to threaten or damage the environment
- 14. Office of Utilities Regulation
- 15. Political Ombudsman → Victimised based political opinion
- 16. Public Defender

Protected Disclosure can be made to-

- ❑ Employer (Designated Officers)
- ❑ Prescribed Person (matters unique to the entity)
- ❑ **Designated Authority**
- ❑ Minister with Portfolio for subject matter or Prime Minister (matters of international security, defence, security) and
- ❑ Attorney-at-Law (in the process of obtaining legal advice)

Designated Authority

An employee can make a disclosure under the following circumstances:

1. The employee believes he would be subjected to occupational detriment if the disclosure is made to the employer;
2. There is no prescribed person in relation to the relevant improper conduct;
3. The employee has reason to believe that it is likely that evidence will be concealed; and
4. No action was taken by the employer or the prescribed entity within 30 days with respect to the disclosure made by the employee.

Functions of the Designated Authority

1. To monitor compliance with the Protected Disclosures Act;
2. Publish procedural guidelines regarding the making, receiving and investigation of disclosures under this Act;
3. Provide assistance as may be practicable to –
 - a. Any person who seeks to make a disclosure under this Act.
 - b. Any person who is a designated officer, employer or other person subject to the requirements of this Act.
3. Plan, implement and monitor public awareness programmes about the making of protected disclosures;
4. Review procedures under this Act; and
5. Review the implementation and operation of the procedures and make recommendations.

Protected Disclosure can be made to-

- Employer (Designated Officers)
- Prescribed Person (matters unique to the entity)
- Designated Authority
- Minister with Portfolio for subject matter or Prime Minister (matters of international relations, defence, security) and**
- Attorney-at-Law (in the process of obtaining legal advice)

Disclosures of National Security/Defence/International Relations

A disclosure can be made to a Minister if the employer of the person making the disclosure was appointed under a law by the Minister or is a public body whose members were appointed by the Minister.

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 to both.

Referring Disclosures

Disclosures may be referred when:

- The subject matter disclosed may be best dealt with by a prescribed person or the designated authority.
- The entity does not have the capacity or resources to investigate a particular matter.
- The disclosure involves a matter of national security, defence or international relations.

To help the employee select the appropriate prescribed person to deal with the disclosure, the designated officer must advise the employee of all the prescribed persons.

N.B. Where there is no prescribed person in relation to the improper conduct, the employee may make the disclosure to the designated authority in accordance with Section 10 of the Act.

Refusing Disclosures

An employer or other person to whom a disclosure is made in accordance with this Act, acting in good faith, may:

- a. refuse to deal with the disclosure, or commence an investigation into any improper conduct alleged in the disclosure; or
- b. cease an investigation.

Under the following circumstance:

1. The disclosure was adequately dealt with or could be more appropriately dealt with by another person;
2. The matter is frivolous or not sufficiently important to warrant an investigation;
3. The circumstances surrounding the subject matter have changed.

Where an employer decides to refuse to carry out an investigation the employer shall provide reasons in writing to the employee within **15 days** of the decision.

Immunity

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 in accordance with the Act.

Confidentiality

Every person receiving, investigating or otherwise dealing with a disclosure under the Act shall regard and deal with the disclosure as secret and confidential. Do not disclose:

- ❑ The identity of the employee making the disclosure and any disclosure made;
- ❑ Any statement given, 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.

Confidentiality

A person who contravenes, commits an offence and is liable upon summary conviction in a Resident Magistrate's court to a fine not exceeding

\$2, 000, 000.00 or to imprisonment for a term not exceeding 2 years or to both such fine and imprisonment.

Offences and Penalties

A person commits an offence if he-

- a) Prevents, restrains 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;

Offences and Penalties

- d) Being an employer- subjects an employee 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.
- e) Being an employee-makes a disclosure under this Act knowing that it is false or misleading.
- f) Aids, abets, procures or conspires with any other person to contravene this Act.

Offences and Penalties

A person who commits an offence is liable upon:

- a. summary conviction in a Resident Magistrate's court to a fine not exceeding \$2, 000, 000.00 or to imprisonment for a term not exceeding 2 years or to both such fine and imprisonment or

- b. 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

Offences and Penalties

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 **\$250,000** or to **imprisonment for a term not exceeding three months.**

THANK YOU FOR PARTICIPATING

WHISTLEBLOWING AT WORK

