



Policy on the Granting of Funding for Access to Legal Advice Requests

Application of section 25.1 of the *Public Servants Disclosure Protection Act*

1. Effective Date

1.1 This policy takes effect on ----, 2024.

2. Application

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

3. Context

3.1 Section 25.1 of the *Public Servants Disclosure Protection Act* (the “Act”) gives the Commissioner the discretionary authority to approve access to legal advice to persons who qualify up to an amount of \$1,500, or \$3,000 under exceptional circumstances.

The provision of funded legal advice under the Act is intended to assist people who are considering making a disclosure of wrongdoing or a reprisal complaint or those who are involved in a disclosure or a reprisal complaint process to understand their rights and obligations under the Act. People who qualify can choose a lawyer of their choice and the advice they receive is confidential.

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:

- Support the Commissioner's decision-making process by bringing clarity and consistency in the application of section 25.1 of the Act;
- Establish standard criteria for the granting of funding for legal advice; and
- Increase transparency around the decision-making process in relation to funding for legal advice requests.

5.2 Expected Results

The expected results of this policy are:

- The consistent application and documentation of decisions under section 25.1 of the Act;
- Greater efficiency in the processing of requests for legal advice; and
- A fair, clear and transparent decision-making process for the funding of legal advice requests.

6. Policy Requirements

6.1 The Commissioner is responsible for:

6.1.1 Making decisions to grant funding for legal advice in accordance with the Act and the criteria set out in this policy.

6.1.2 Granting of Funding:

In making a decision on whether to provide funding for legal advice, the Commissioner will determine an Applicant's eligibility under paragraphs 25.1(a) to (f) of the Act, with consideration to the following relevant criteria:

- Access to legal advice at no cost to the Applicant; ¹
- Declaration by the Applicant in a form acceptable to the Commissioner that they are not receiving legal advice or legal assistance at no cost to them from any other source;
- The personal circumstances of the Applicant;

¹ See Appendix B – Assessing whether Applicant has access to legal advice at no cost to them (subsection 25.1(2) of the Act).

- Whether the subject-matter of the intended disclosure or provision of information generally meets the definition of wrongdoing under the Act;
- The likelihood of the intended disclosure or provision of information leading to an investigation;
- The degree to which public interest may be affected; and
- The degree to which the Applicant may be adversely affected.

6.1.3 Determining Amount to be Paid:

In determining the amount to be paid, if any, for legal advice and in determining whether there are exceptional circumstances to justify increasing the maximum amount up to \$3,000 under subsection 25.1(6) of the Act, the factors that the Commissioner will consider include:

- The degree to which public interest may be affected by the subject-matter of the disclosure or information provided, taking into account:
 - 1) whether the matter is being investigated;
 - 2) importance of the applicant's participation in the disclosure or investigation; and
 - 3) any other factors relevant to an assessment of public interest.
- The degree to which the Applicant may be adversely affected, taking into account:
 - 1) the degree to which the Applicant is personally required to participate in the disclosure or reprisal complaint process, including through an interview, responding to a preliminary investigation report, participating in a conciliation or in an Application before the Public Servants Disclosure Protection Tribunal;
 - 2) fear or possibility of reprisals in the context of the Applicant's workplace and the Applicant's personal circumstances;
 - 3) possible adverse findings or consequences arising from an investigation under the Act for the Applicant;
 - 4) any health concerns that could affect the Applicant's ability to participate in the investigation or proceedings and where additional assistance from counsel may be required as a result; and
 - 5) any other factors relating to natural justice and procedural fairness.

6.2 The designated employee's responsibilities include:

- Conducting a preliminary review of the request and completing the 5-day checklist;
- As necessary, contacting the Applicant for further information;

- Completing a preliminary assessment and recommendation based on the information provided and preparing a draft decision letter using the templates; and
- Maintaining statistical information as required by the Commissioner's Office.

6.3 The supervising counsel's responsibilities include:

- Reviewing and approving the draft assessment and recommendation and letter completed by the designated employee; and
- Providing general oversight and supervision to the designated employee, including compliance with the 5-day checklist.

6.4 The Delegated Manager's responsibilities include:

- Overall management and accountability for the program, including approving and oversight of contracts with legal services providers in accordance with sections 32 and 34 of the *Financial Administration Act*, statistical reporting and strategic direction.

7. Related Policy Instruments/Publications

- *Public Servants Disclosure Protection Act*
- Support for Legal Advice – Office of the Public Sector Integrity Commissioner (psic-ispc.gc.ca)

8. Enquiries

Enquiries about this policy should be directed to the Office of the Public Sector Integrity Commissioner. www.psic-ispc.gc.ca

Appendix A – Definitions

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

Application

Means a request for funding for legal advice under section 25.1 of the Act made in writing or through other means acceptable to the Commissioner.

Applicant

Means a person who has completed in writing or through other means acceptable to the Commissioner an Application to receive funding for legal advice under any paragraphs 25.1(a) to (f) of the Act and whose Application is considered complete and sufficient for processing.

Commissioner

Means the Public Sector Integrity Commissioner appointed under subsection 39(1) of the *Public Servants Disclosure Protection Act* or the Deputy Commissioner with delegated authorities from the Commissioner under subsection 29.3(1.2) of the Act.

Designated Employee

Means any employee of the Commissioner's Office designated by their respective manager to deal with Applications.

Manager

Means the General Counsel or other manager with required delegated financial authorities.

Supervising Counsel

Means any employee of the Commissioner's Office occupying a position in the LP or LC classifications as part of Legal Services.

Appendix B – Assessing whether Applicant has other access to legal advice at no cost to them (subsection 25.1(2) of the Act)

1) Legal Advice Provided by Unions or Professional Associations

- a) Applicants who are members of a union or other employee association must seek to obtain legal advice from their union or professional association before applying for legal advice under the Act and must declare that they have done so and that their requests were denied.
- b) Applicants who have not asked their union or association for access to legal advice must clearly explain why they have not done so.
- c) For Applicants who have not asked their union or association, the Commissioner may take into consideration the personal circumstances of the Applicants in applying the condition under subsection 25.1(2) of the Act, factors that may be considered include, but are not limited to:
 - protecting confidentiality in the disclosure process;
 - fear of reprisals;
 - actual, perceived or potential conflict of interest between applicants and their union;
 - not causing undue delays in investigations; and
 - natural justice and procedural fairness rights.

2) Legal Advice Provided by the Employer

- a) Applicants are generally not eligible for legal representation under the *Treasury Board Policy on Legal Assistance and Indemnification*.²
- b) All applicants must declare that they are not receiving legal advice or assistance provided by their employer, including under the *Treasury Board Policy on Legal Assistance and Indemnification* if applicable.

² According to the Treasury Board Secretariat, requests for legal assistance under the Policy regarding investigations conducted under the *Public Servants Disclosure Protection Act* would be denied since these are internal investigations which are deemed to be ineligible requests under the Policy. <https://www.canada.ca/en/treasury-board-secretariat/services/values-ethics/code/frequently-asked-questions-policy-legal-assistance-indemnification.html>

3) Other Sources of Legal Advice

- a) Persons applying for access to legal advice under the Act are not expected to have applied for legal aid under a provincial or territorial regime or sought legal advice from other sources, such as non-governmental organizations, universities and legal aid clinics.³
- b) All applicants must declare that they are not receiving legal advice at no cost to them from any other such source.

³ Considering the differences in eligibility and coverage between provincial and territorial legal aid regimes and that public servants may live or work in remote areas where access to legal advice may not be readily available, it is not practical to request employees involved in disclosures and reprisal complaints to seek legal advice from alternate sources.