

APPLICATION OF SAFE DISCLOSURE MEMORANDUM OF AGREEMENT (MOA) BETWEEN THE GOVERNMENT OF THE NORTHWEST TERRITORIES AND THE UNION OF NORTHERN WORKERS.

INTRODUCTION

This document provides guidelines on the application of the Safe Disclosure MOA. The MOA only applies to employees of the GNWT who are also members of the UNW.

GUIDELINES

- Anonymous complaints do not fall within the scope of the MOA.
- A disclosure made to the media is not within the scope of the MOA.
- When an employee elects to make a disclosure under this process, they are expected to participate in all steps of this process
- Employees who participate in the disclosure process in good faith will be protected from reprisal.
- A safe disclosure process is not an indemnity against responsibility for having committed wrongdoing and employees may still be subject to appropriate discipline.
- Consistent with the rules of natural justice and procedural fairness, care must be taken at all times to protect the identity of the employee making a disclosure, any witnesses and the alleged wrongdoer. This does not preclude advising the wrongdoer of the name of the person who made the disclosure, the nature of the disclosure, including relevant information as necessary.

DEFINITIONS

For the purposes of the MOA the following definitions apply:

Department means a division of the Public Service continued or established by statute or designated as a department by the Commissioner in the Executive Council, on the recommendation of the Premier and includes boards and agencies of the Government of the Northwest Territories. It does not include the NWT Power Corporation.

Deputy Head means a) in relation to a department, the Deputy Minister of that department and b) in relation to any other portion of the public service, the Chief

Executive Officer of that portion, or if there is no Chief Executive Officer, such person as the Minister may designate as Deputy Head.

Disclosure means a written report of a wrongdoing or potential wrongdoing made in good faith by an employee pursuant to the MOA.

Reprisal means any of the following measures taken against an employee because the employee has, in good faith, sought advice about making a disclosure, made a disclosure, co-operated in an investigation under the MOA or declined to participate in the wrongdoing:

- a) dismissal, lay-off, suspension, demotion or transfer, change of job location, reduction in wages, change in hours of work or reprimand;
- b) any measure, other than the one mentioned in (a), that adversely affects the employee's employment or working conditions;
- c) threat to take any of the measures above.

Safe Disclosure Coordinator (SDC) means a person designated by the Employer to:

- a) provide advice on processes and interpretation of the MOA to employees;
- b) receive a disclosure of wrongdoing;
- c) provide process guidance and assistance to Supervisors and Deputy Heads who receive disclosures; and
- d) assess a disclosure to make a determination if the disclosure warrants further investigation and if so, determine the most appropriate investigating body to perform the investigation, which could include the SDC.

Safe Disclosure Panel (the Panel) is a two person panel made up of one member appointed by the Employer and one member appointed by the Union of Northern Workers. The party appointing a member may revoke that appointment at any time and a new panel member will be appointed within 30 working days of the revocation.

Urgent Situation means a situation when there is:

- a) clearly demonstrable immediate and irreversible consequences;
- b) imminent danger to health and safety of employees, clients or the environment;
- c) clearly demonstrable significant complications resulting from delay; and
- d) clearly demonstrable benefits from an early intervention.

Wrongdoing includes any of the following (including alleged wrongdoings):

- a) an illegal act;
- b) gross mismanagement of money or a public asset;
- c) a substantial and significant danger to health, safety and/or the environment; and
- d) counselling or directing any of the above.

RIGHTS OF EMPLOYEE MAKING A DISCLOSURE

An employee making a disclosure has the right to:

- a) be assisted and represented by a union representative during any proceeding under the MOA;
- b) no reprisal for filing the report;
- c) if a disclosure is not investigated, the right to receive the reason(s) in writing;
- d) if an investigation is undertaken, to be advised of the outcome of the investigation and the appeal process if applicable;
- e) be informed in writing if an investigation is undertaken but not completed within 120 working days
- f) if an employee has made a disclosure under any other legislation, rule or regulation of a professional association and advises the Employer in a timely fashion, they will receive the same protection against reprisal as if the disclosure had been made under the MOA; and

RIGHTS OF EMPLOYEE ACCUSED OF A WRONGDOING

An employee accused of wrongdoing under the MOA has the right to:

- a) be assisted and represented by a union representative during any proceeding under the MOA;
- b) be given an opportunity to respond to the disclosure;
- c) be informed of the outcome of the investigation, unless prohibited by law.

PROCESS

Reporting a Wrongdoing

1. An Employee can choose from three (3) and sometimes a fourth entry point to disclose a wrongdoing:
 - a) Direct Supervisor;
 - b) Deputy Head;
 - c) SDC; and
 - d) Safe Disclosure Panel (Panel), under certain conditions listed later in this document.
2. The disclosure must be made in writing, or if done verbally the person/panel receiving the complaint must record the complaint on "Form A" as attached.

Direct Supervisor or Deputy Head Acceptance of Disclosures

3. The written disclosure must be date stamped on the date it was received.
4. Upon receipt, an assessment must be made to determine if the disclosure is urgent. If it is urgent, then there is a specific process that must be followed.

Urgent Situations

- *Take the steps necessary to stop the wrongdoing from occurring*
- *Issue any warnings that may be necessary and appropriate*
- *Once the urgent situation is alleviated, go back and acknowledge receipt of the disclosure and advise of the steps taken*

5. Within two (2) working days, the Supervisor or Deputy Head (whichever of the two took receipt of the disclosure) must acknowledge in writing receipt of the disclosure to the employee making it.
6. If the reported wrongdoing cannot be resolved in the usual and ordinary course of business by the supervisor it shall be promptly referred to the SDC.
7. If the reported wrongdoing cannot be resolved in the usual and ordinary course of business, the Deputy Head has the right to direct an immediate internal investigation or refer it to the SDC.
8. When a disclosure can be resolved at the supervisor or Deputy Head level without an investigation, the written disclosure and resolution of facts must be forwarded to the SDC for safe-keeping and record-keeping purposes.
9. When forwarding a Safe Disclosure file to the SDC it must be hand delivered in a sealed envelope clearly marked 'Safe Disclosure – Confidential to be opened by SDC only'. If this is not possible because of logistics, then it must be sent by electronic mail in a PDF format and clearly labelled 'Safe Disclosure – Confidential to be opened by SDC only'. To maintain confidentiality, information received and sent by electronic mail must be automatically printed and the electronic file deleted. The electronic file must not be forwarded or responded to using the "reply" option.
10. No copies shall be retained by the Supervisor or Deputy Head.

SDC Acceptance of Disclosures

11. Whether receiving the complaint directly from an employee or from a supervisor or Deputy Head, the SDC must date stamp receipt of such.
12. The supervisor, Deputy Head or SDC must within five working days:
 - a) conduct a preliminary assessment of the disclosure to determine if further information is needed;

- b) assess the complaint to consider if there are any existing internal mechanisms, protocols or processes to resolve the matter within the department, board or agency;
 - c) if (b) does not apply: assess the complaint to determine the most appropriate governing body, policy or third party to investigate the reported wrongdoing;
 - d) contact the most appropriate investigative body and forward the disclosure the same way as referenced in Article nine; and
 - e) notify the employee, making the disclosure, of the name of the person or professional body the wrongdoing report has been sent to for further action.
13. If the disclosure relates to a Deputy Head, Assistant Deputy Head, Associate Deputy Head or a person who directly reports to that Deputy Head, then refer the disclosure immediately to the Panel.

Panel Acceptance of a Disclosure

14. Reports of wrongdoing may be made by an employee directly to the panel only under the following circumstances:
- a) if an employee made a disclosure to the Supervisor, Deputy Head or SDC and an investigation has not been completed in accordance with the relevant procedures;
 - b) if an employee made a disclosure in accordance with the appropriate procedures and the matter has not been resolved within the established time periods;
 - c) if the disclosure subject matter involves the employee's Deputy Head;
 - d) if the employee making the disclosure reasonably believes the matter constitutes an urgent matter, as defined on page two (2) of this document;
 - e) if the employee makes a disclosure to a Supervisor, Deputy Head or SDC and reprisal occurs; or
 - f) if the employee reasonably believes that a reprisal is likely if he/she makes a disclosure to a Supervisor, Deputy Head or SDC.
15. Wrongdoings reported to the Panel can be handled in any manner it sees appropriate, including, but not limited, to mediation and investigation.

Investigating a Disclosure

16. An investigation under the MOA shall be conducted as informally as possible, in relation to the situation.
17. If the alleged wrongdoing is investigated, the person doing the investigation shall prepare a report that sets out whether or not there has been a wrongdoing as contemplated by the MOA, the findings made and the reasons for those findings.

18. Investigations done under the MOA shall be conducted as soon as is practicable and shall be completed within 120 working days after the matter has been referred to investigation.
19. Where the investigation cannot be completed within the 120 working days, a one-time only extension of 45 working days may be invoked. However, in these instances the final disclosure report shall identify why the 120 working days could not be met. When the timeline cannot be met, then the person making the disclosure has to be advised that the deadline has not been complied with and that the deadline has been extended.

When the Panel is not required to Investigate

20. An investigation by the Panel is not required in the following circumstances:
 - a) the subject matter of the disclosure could more appropriately be dealt with according to a procedure under legislation, regulation, or policy;
 - b) the disclosed subject matter is already under investigation;
 - c) the disclosure related to a matter that could more appropriately be dealt with in accordance with the Collective Agreement or other employment agreement;
 - d) the disclosure is frivolous or vexatious, has not been made in good faith or does not deal with a wrongdoing as defined in the MOA;
 - e) the disclosure relates to a decision, action or matter that is based on public or financial policy or a directive of such;
 - f) the disclosure does not provide adequate particulars about the wrongdoing to permit the conduct of a fair and effective investigation.

Powers of the Panel, Deputy Head or SDC regarding an Investigation

21. During the course of an investigation the Panel, SDC or Deputy Head may:
 - a) require any employee to give information relating to any disclosure being investigated;
 - b) require any employee during the course of an investigation to give written or oral replies to questions;
 - c) may remove data, documents, or items for the purpose of making copies or for further inspection from any office. Any copying or further inspection must be done in a timely fashion and returned promptly to the person from whom they were taken.
22. The Panel also has the power to investigate another wrongdoing if during the course of one investigation they believe another wrongdoing has been committed.

APPEALING A FINDING

23. An employee who is dissatisfied by a finding made by the SDC, or Deputy Head may appeal to the Panel within 30 days of receiving the decision.
24. An employee may not appeal a decision made by the Panel.

RESOLUTION OF A DECISION

Panel's Final Decision

25. In reaching any final decisions the Panel should strive to achieve such unanimously.
26. Where the Panel cannot come to a unanimous decision on the final outcome of a disclosure, the deadlock shall be resolved by:
 - a) each panel member will submit their proposed findings and conclusions to a retired judge to be evaluated.
 - b) any costs associated with the services of the retired judge shall be borne by the Employing department of the alleged wrongdoer;
 - c) if necessary, the retired judge shall meet with and discuss the proposed findings and conclusions with the Panel;
 - d) if after discussions with the retired judge, the Panel is still not able to come to a unanimous decision, then the retired judge shall provide the Panel with his/her evaluation of their proposed findings and conclusions and provide recommendations to resolve the deadlock; and
 - e) the Panel shall adopt the evaluation and recommendations.

Findings

27. In addition to notifying both parties of the outcome, where an investigation concludes that there has been a wrongdoing, the findings and reasons shall be made available to the public, parties to the MOA and other employees.

FILE MAINTENANCE

28. Each SDC will maintain a separate, confidential file for each disclosure received whether from an employee directly or forwarded by a Supervisor or Deputy Head.
29. The Panel will also maintain separate confidential files for each disclosure they receive.
30. Disclosure files must be treated as strictly confidential and maintained in a secure location and manner.

31. All written information obtained as a result of the receipt of a disclosure, review of the disclosure, or the investigation of the disclosure must be included in the disclosure file. All pertinent information obtained verbally must be documented in writing, dated and signed by the person receiving the information and kept in the disclosure file.

32. Only the applicable SDC or the Panel have access to their specific files.

ANNUAL REPORTING

33. The Panel shall provide jointly an annual report to the Minister responsible for the *Public Service Act* and the President of the Union of Northern Workers.

34. In order to compile this report the Panel will request statistical data from each SDC.

35. The type of information being reported on will include, but not limited to:

- a) nature of wrongdoings resolved;
- b) number of disclosures received;
- c) number of disclosures not acted on;
- d) whether the Panel received, or did not receive, all the information and explanations required;
- e) whether the disclosures were founded or unfounded;
- f) whether or not there were any disclosures of reprisal; and
- g) whether the disclosures of reprisal were founded or unfounded.

DUTY TO REPORT

36. Nothing in the MOA keeps an employee from his/her obligation to report under other legislation or an employee's professional association.

SAFETY FROM REPRISAL

37. If an employee believes they are being reprimed against they can make a complaint to the Panel using "Form B" as attached.

38. The panel takes reprisals seriously and will act upon them according to the MOA. The MOA provides the Panel the ability to correct the consequences of reprisal.

FREQUENTLY ASKED QUESTIONS

Does the MOA apply to all employees?

Only bargaining unit employees (UNW members) can make a disclosure.

I am an excluded employee – can a disclosure be made against me?

Yes and you will be provided the right to have a person with you at all meetings you are asked to attend. This person, however, is only there for support. You will have all other rights of any employee whom a disclosure has been made about.

Can I report a wrongdoing to any government SDC or Deputy Head or does it have to be the one in my employing department, board or agency?

You may disclose to any SDC or Deputy Head.

As a unionized employee, who can I contact if I have questions about the MOA or the process?

You may contact a SDC or your UNW representative.

As a SDC or Deputy Head who can I contact if I have questions about the MOA or the process?

You may contact the Director of Corporate Human Resources.

What are the repercussions for the employee who has been found to have committed a wrongdoing?

It will be dependent upon the nature of the wrongdoing and the relevant facts.

If I am not a UNW bargaining unit member how can I make a disclosure of wrongdoing?

As an employee of the public service you can report a wrongdoing to your immediate supervisor. Should you not feel comfortable reporting to your immediate supervisor, you may direct the complaint to the appropriate enforcement authority (e.g. RCMP, Comptroller General, Internal Audit Bureau, WSCC, Environmental Protection, Chief Public Health Officer, etc.)