
SECTION 21

FRAUD AWARENESS AND REPORTING

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AUTHORITY: *FINANCIAL ADMINISTRATION ACT*

ADMINISTRATION: TREASURY BOARD SECRETARIAT
DEPARTMENT OF JUSTICE AND PUBLIC SAFETY

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(1) PURPOSE

The purpose of this policy is to ensure that all losses of money and all allegations of offenses and illegal acts and other improprieties against Government are reported and investigated and, where substantiated, that appropriate legal and disciplinary action is taken. It is the responsibility of the departmental management to ensure that all employees are made aware of and understand this and their responsibility within this policy.

(2) APPLICATION

The application of this policy is referenced to the schedules of the *Financial Administration Act* (FAA) and applies as follows:

- Schedule “A” - Departments except the Legislative Assembly
- Schedule “B” - Crown corporations
- Schedule “C” - Education Authorities
- Schedule “D” - Commissions

except to the extent that their enabling legislation may incorporate alternate requirements such as Ministerial or Board Authority.

While this policy **does not apply** to the Legislative Assembly or Reporting Entities subject to alternate legislation, **the spirit and intent** of the policy should serve as a **guideline** for these entities in developing their own policies. Reporting entities that develop policies differing from Treasury Board policy require approval of Treasury Board.

(3) DEFINITIONS

For the purpose of this policy and procedure, the following definitions shall apply:

- (a) **“Department(s)”**, for the purpose of this policy, means departments and reporting entities as set out in the Schedules “A”, “B”, “C” and “D” to the *Financial Administration Act*.
- (b) **“Deputy Head”** means the Deputy Minister of a department or the Chief Executive Officer of a reporting entity.
- (c) **“FAA”** means the *Financial Administration Act*.
- (d) **“Fraud”** occurs when a person by deceit, falsehood or other fraudulent means, defrauds the public or any person, whether ascertained or not, of any property, money or valuable security or any service. Fraud comprises all acts, omissions, and concealments designed to deceive others, with the intent of obtaining an advantage, avoiding an obligation or causing a loss to another party, and includes anything calculated to deceive by the suppression of truth or the suggestion of what is false. Other forms of fraud are embezzlement, misappropriation and theft.

Fraud may be closely associated with false pretence which is a representation of a fact either present or past, made by words or otherwise, that is known by the person who makes it to be false and that is made with a fraudulent intent to induce the person to whom it is made to act on it.

Situations where fraud or false pretence may be used include:

- obtaining credit;
- making a false statement in writing;
- payment of money;
- making a loan; or
- making, accepting, discounting or endorsing a bill of exchange, cheque, draft or promissory note.

Fraud includes acts committed internally within Government, as well as externally against Government.

- (e) **“Government”** means the Province of Prince Edward Island.

(4) POLICY

It is Government policy that:

- (a) departments shall establish appropriate financial and administrative procedures and practices that will ensure the safe custody, accounting and control of all public assets for which they are responsible, including assets held in trust by them on behalf of another person;
- (b) the Deputy Attorney General is responsible for reporting alleged offences to the appropriate law enforcement agency where deemed appropriate;
- (c) losses be recovered wherever possible; and,
- (d) where warranted, disciplinary action be taken.

(5) REPORTING PROCEDURES AND REQUIREMENTS

- (a) Government employees are expected to report to their supervisor all suspected or known cases of fraud as soon as the employee becomes aware of an incident, whether it is internal or external. Failure of an employee to report such instances promptly can be considered as employee misconduct and may result in disciplinary action being taken against the employee for failure to report. Employees may also make a voluntary disclosure to the Public Interest Disclosure Commissioner under the *Public Interest Disclosure and Whistleblower Protection Act*.
- (b) Suspected cases of fraud, defalcation, or any offense or other illegal act against the Government, which includes theft, break and enter, mysterious disappearance, and

the like **requiring immediate response**, shall be reported by the Deputy Head **within twenty-four (24) hours**, to the Deputy Attorney General. There may be instances where, depending on the circumstances, someone other than the Deputy Head will report suspected cases of fraud.

- (c) In addition to reporting a suspected case of fraud requiring immediate response in (a) and (b) above, the following shall be reported as soon as reasonably possible and, in all cases, **within two weeks**, to the Deputy Attorney General:
- (i) any loss or incident that has, or may have, Government-wide implications or application; for example, frauds that may also have been perpetrated against other departments or that other departments should be warned about;
 - (ii) incidents that are indicative of a potential or actual weakness in Government-wide policies or controls;
 - (iii) incidents that have been, or are likely to be, raised in the Legislature or reported in the media;
 - (iv) incidents involving senior public officers and public officers involved in law-enforcement or other special positions of trust;
 - (v) any incident that is significant in terms of its magnitude or its extent or pervasiveness;
 - (vi) any other incident that, in the opinion of the Department or Deputy Head, should be brought to the immediate attention of the Deputy Attorney General; and
 - (vii) notwithstanding the above, all other cases of suspected fraud should be reported to the Deputy Attorney General.
- (d) An Incident/Loss Report shall be prepared by the Deputy Head in whose area of responsibility the loss occurred and shall be delivered to the Deputy Attorney General, and shall include:
- (i) a description of the incident including a description of the asset and nature of the loss;
 - (ii) the place where the loss is known or suspected to have occurred;
 - (iii) the Department/Section that has suffered the loss;
 - (iv) the amount of the loss or a reasonable estimate, if not immediately determined;
 - (v) the circumstances which led to the loss;
 - (vi) the measures taken to recover the loss; and
 - (vii) the disciplinary action that has been or will be taken.

(e) Mitigation of Losses:

In the event a department becomes aware of a loss or an occurrence which may give rise to a loss due to fraudulent, criminal or negligent acts, immediate steps should be taken to prevent further loss.

(f) The Deputy Attorney General and the Departments involved shall take every reasonable measure to protect the identity and reputations of both the person reporting an offense or impropriety, and the person against whom the allegation is made, and shall:

(i) take prompt action should an employee complain of harassment as a result of making a legitimate report; and

(ii) take appropriate disciplinary action where a disgruntled or vengeful employee wilfully and maliciously makes an unfounded allegation.

(g) It is a requirement of the entity victimized by a crime to report the loss directly to the Risk Management and Insurance Section of the Treasury Board Secretariat for consideration of coverage under the Self-Insurance and Risk Management Fund Crime policy. Risk Management and Insurance Office will work co-operatively with the Deputy Attorney General.

(h) Correspondence, reports and other documents related to suspected cases of fraud will be maintained in confidential files and will normally contain the following information, where applicable:

(i) the nature of the loss;

(ii) the place where the loss occurred;

(iii) the name and position of the public officer or the name of the person who committed or was alleged to have committed the fraud;

(iv) the account or department that has suffered a loss;

(v) the amount of the actual loss or a reasonable estimate;

(vi) copy of the police report and/or reference number;

(vii) the measures taken to recover the loss, the amount recovered and the probability of further recovery; and

(viii) the action taken in respect of the public officer or person who has committed the fraud, theft, misappropriation or embezzlement, including the extent to which prosecution has been undertaken and, if so, the results of the prosecution.

(6) GUIDELINES

- (a) For the purpose of reporting to the Deputy Attorney General, offences include:
- (i) breach of trust by a public officer and any other offence under Part IV of the *Criminal Code* or the *FAA* or the *Audit Act*;
 - (ii) theft, misappropriation or other fraudulent use of public funds;
 - (iii) false or fraudulent claims for a social benefit, a grant, a contribution, or any other program payment, including refunds and rebates;
 - (iv) conversion of public funds or property to personal use;
 - (v) theft of public property;
 - (vi) willful damage to, or destruction of, public property;
 - (vii) colluding, or otherwise arranging, with a contractor to bill personal goods or services to the Crown;
 - (viii) any fraud or illegality in the contracting process, such as bid-rigging, price-fixing, and deliberate short-shipment or substitution of inferior quality or defective goods.

Note: There does not have to be an actual loss of money or property before an offense is reportable. An attempted fraud should also be reported. Similarly, offenses are still reportable, even if the loss is recovered in full.

- (b) A person may be considered to be accountable for a loss of money without necessarily being the person responsible. For example, the custodian who fails to follow proper procedure and secure the cash may not be the actual person responsible for a loss in terms of being a thief, but might nonetheless still be accountable.
- (c) The charging of a loss against an appropriation is an accounting transaction only and does not relieve a department of any responsibility to attempt to recover the loss or initiate any disciplinary action that might be warranted.
- (d) **Where disciplinary action is to be taken**, proceedings should be initiated promptly, as any undue delay may adversely affect the right to impose discipline. It is not necessary to wait for the results of any criminal investigation or proceedings before starting disciplinary action. The two are independent of each other and may proceed concurrently. Nonetheless, in some cases there may be justifiable grounds for delaying the finalization of disciplinary action or the enforcement of a disciplinary penalty. In all cases in which it appears that disciplinary action may be necessary, consultation with the PEI Public Service Commission should occur prior to any departmental action being taken.

- (e) Measures to protect both informers and alleged offenders include:
 - (i) ensuring that allegations and reports are not scattered throughout the Department, but maintained in a single, confidential personal information bank and that a central confidential file is maintained under the control of the Deputy Attorney General. Notwithstanding the above, essential documents for insurance purposes will be maintained;
 - (ii) ensuring that information is not placed in personnel files, unless it relates directly to a staff relations action, such as a disciplinary measure. Information in personnel files should be purged in accordance with human resource policy;
 - (iii) ensuring that where an allegation against an employee cannot be substantiated:
 - (A) all records of the matter not required for audit are destroyed as soon as permitted by the *Freedom of Information and Protection of Privacy Act*, R.S.P.E.I. 1988, Cap. F-15.01;
 - (B) records required for audit are segregated and access is restricted to that purpose; and
 - (C) any superior (or other person in a position of influence, such as a staffing officer) who had knowledge of the allegation is informed that it could not be substantiated.

except as may be required for a formal investigation, legal proceeding or otherwise prescribed by law, maintaining the confidentiality of informers.

(7) LOSS CONTROL

Limiting employees' access to cash and having clearly communicated inventory/equipment inventory control procedures discourages theft by employees. It is the responsibility of all Departments to have clearly established procedures in which all staff have an awareness of their roles in following these procedures. A failure to comply shall be addressed and corrected with due diligence.

Actions could include any one or all of the following:

- (a) giving special attention to areas of significant risk or exposure, such as:
 - (i) social benefits and other grants and contributions;
 - (ii) all major Crown projects and procurement contracts; and
 - (iii) laptops, cell phones, and high-end communication equipment are particularly attractive to thieves and therefore must be secured in locked areas, where possible.

- (b) reviewing periodically, in conjunction with departmental designates and local police crime prevention advisors or the Protective Operations Branch of the RCMP, as appropriate, the adequacy of the facilities provided for the safeguarding of cash and other negotiable instruments;
- (c) giving particular attention to the following, which have caused losses in the past:
 - (i) petty cash that is not properly secured or, if secured, the key to the filing cabinet padlock is left in a desk drawer or a similarly accessible location, thereby compromising the original security arrangements;
 - (ii) petty cash, money safes, and other security storage facilities, are left unlocked during working hours;
 - (iii) cash is transferred between employees without obtaining proper receipts;
 - (iv) money received is left on a desk or a counter; and
 - (v) having cash on the premises overnight.
- (d) If possible, avoid having cash on the premises overnight and have decals on doors and windows stating this. If cash and valuable equipment must be kept on the premises, the premises should be equipped with an intrusion alarm which will activate even if phone wires are cut.
- (e) ensuring that procedures and administrative arrangements for handling cash receipts and petty cash are such that the person(s) responsible can be held accountable for losses and shortages;
- (f) ensuring that cheques and cheque-writing machines are maintained in a secure place requiring two employees to gain access;
- (g) ensuring that receipts are balanced regularly and that overages and shortages are documented and that slush funds are strictly prohibited. Cash such as “staff funds” are not the property of Government and are not covered by Government insurance policies.
- (h) Losses due to fraud, embezzlement, misappropriation or employee theft may not be of sufficient material value to justify pursuing restitution. Pursuing recovery via the Courts however, can be a deterrent for others and while recovery may not be immediate, default judgments may require criminals to pay when their financial situation improves.

(8) INTERPRETATION

In cases where an interpretation is required, such should be referred to the Secretary to Treasury Board or delegated officer who will make the interpretation or refer the matter to Treasury Board, if a Treasury Board decision is deemed necessary.