

**Square Peg in a Round Hole?
Three Case Studies into Institutional Factors Affecting
Public Service Whistleblowing Regimes in the
United Kingdom, Canada, and Australia**

by

Ian Bron

A thesis submitted to the Faculty of Graduate and Post Doctoral Affairs in partial
fulfillment of the requirements for the degree of

Doctor of Philosophy

in

Public Policy

Carleton University
Ottawa, Ontario

© 2022
Ian Bron

Abstract

Whistleblowing is an important prosocial activity, one which facilitates the early detection and correction of misconduct and deters future misconduct. Recognizing this, many governments have signalled its legitimation by enacting legal protections for public sector whistleblowers, including in the Westminster governments of the United Kingdom, Canada, and Australia. The success of whistleblowing regimes in these jurisdictions is contested, however, as mismanaged programs and retaliation against whistleblowers continue to make headlines. This presents a conundrum. Previous studies have established that if failures accumulate and visible successes are few, employees will lose trust in the regime and use it less, if at all. This would constitute a public policy failure and undermine the implicit long-term goal of improved governance.

Departing from previous research approaches, this dissertation uses historical and rational choice institutional theory to test the hypothesis that whistleblowing regimes are born of crisis, but the extent to which they are effectively implemented is dependent on ongoing bureaucratic and political support. This support is contingent upon the regime being consistent with existing institutional arrangements and incentives. When it is not, dysfunctional responses to whistleblowing will continue.

Three case studies are presented in order of regime enactment, with the United Kingdom in 1998, Canada in 2005, and Australia in 2013. Process tracing was used to examine three embedded units of analysis: pre-regime institutional development, whistleblowing regime implementation, and the factors effecting regime performance.

The findings partially confirm the hypothesis. The whistleblowing regimes followed a similar pattern, but there were two triggers for whistleblowing legislation – punctuated equilibrium after a crisis, or isomorphism to boost legitimacy, driven by political exigencies. Support is fleeting, moreover, as political actors quickly shift their attention to different priorities. Administrative actors adopt several strategies to resist the regimes, including shaping them to be less threatening, unenthusiastic enforcement, and continued reprisals. Although the regimes do conform to Westminster conventions and norms, these have been eroded as political actors have intruded into administration and taken control of incentives. These favour responsiveness to political direction and the suppression of bad news, undermining the intent and performance of the whistleblowing regimes.

Acknowledgments

First, I would like to thank the faculty in the School of Public Policy and Administration. Top of this list, of course, is my supervisor, Rob Shepherd, who was instrumental in connecting me with the Ottawa community, followed by committee members Phil Ryan, and Susan Phillips, and my external reviewers, Vince Kazmierski and Ian Stedman. Your advice and feedback were invaluable. I would also like to thank Saul Schwartz for his guidance.

Thanks also to the Performance and Planning Exchange, who kindly assisted me in my travels. In addition, I owe a debt of gratitude to all participants in this dissertation. Without your wisdom, insight, honesty, openness, and generosity, it would not have been possible.

There were also many colleagues, friends, and fellow travellers who assisted me along the way. This includes Paul Thomas, Sean Holman, Ian Foxley, David Lewis, Mary Inman, Georgina Halford-Hall, Lawrence Davies, Brian Martin, AJ Brown, Caroline Hunt-Matthes, and many more.

Finally, I would like to thank my family for their support during the three long years, mid-pandemic, in which the hardest work of this dissertation took shape. I apologize to my children for the lost hours and days and promise to make it up to you. Thanks particularly to my wife, Takayi Chibanda, and her unfailing optimism, energy, and understanding.

Table of Contents

Abstract	ii
Acknowledgments	iii
Table of Contents	iv
List of Tables	viii
List of Figures	x
List of Appendices	xi
List of Abbreviations	xii
Preface	xiii
Chapter 1: Introduction	1
1.1 Background, Importance, and Performance of Whistleblowing Regimes ..	2
1.1.1 Precursors to Westminster Whistleblowing Regimes	3
1.1.2 The Implementation of Whistleblowing Regimes.....	6
1.1.3 The Contested Nature of Whistleblowing Outcomes	7
1.1.4 The Consequences of Unchecked Wrongdoing and Reprisal	9
1.1.5 Possible Explanations for Regime Performance	10
1.1.6 The Role of Institutions.....	12
1.2 Research Questions and Methods.....	16
1.3 Outline of this Dissertation	19
Chapter 2: Westminster and Whistleblowing: The State of the Research	23
2.1 Literature Selection	24
2.1.1 Westminster Institutions	24
2.1.2 Whistleblowing Research	25
2.2 Westminster Government Accountability Institutions	27
2.2.1 Accountability Arrangements in Westminster Governments.....	27
2.2.2 Conduct and Accountability in Westminster Civil Services	31
2.2.3 The Rise of Neoliberal Ideologies	32
2.2.4 Reforms of the Late 20 th Century	34
2.2.5 Summary.....	37
2.3 Existing Whistleblowing Research Relevant to Institutional Theory	37
2.3.1 Norms, Climate, and Culture on Whistleblowing	38
2.3.2 Structure and Leadership	40
2.3.3 Whistleblowing in Westminster Institutions.....	43
2.3.4 Theoretical and Legal Foundations of Whistleblowing Law.....	45
2.3.5 Best Practices and Alternatives to Whistleblowing Law	50
2.3.6 Summary.....	52
2.4 Chapter Summary.....	52
Chapter 3: Methodology	55
3.1 Theoretical Approach: Historical and Rational Choice Institutionalism	56
3.1.1 Insights from Historical and Rational Choice Institutionalism	56
3.1.2 A Dual Approach to the Study of Whistleblowing Regimes	58
3.1.3 Summary.....	62

3.2 Type of Research	62
3.2.1 Rationale and Description of Case Study Methods	62
3.2.2 Model Development	64
3.2.3 Summary.....	70
3.3 Data Collection	70
3.3.1 Literature and Other Records.....	70
3.3.2 Expert Interviews.....	71
3.3.3 Whistleblower Interviews.....	74
3.3.4 Summary.....	77
3.4 Analysis	77
3.4.1 Process Tracing	77
3.4.2 Interview Coding	80
3.4.3 Assessing the Performance of Whistleblowing Regimes.....	82
3.4.4 Summary.....	85
3.5 Chapter Summary.....	85
Chapter 4: Whistleblowing in the U.K. Civil Service.....	88
4.1 Evolution of the U.K. Whistleblowing Regime	89
4.1.1 Loyalty, Disclosure, and Accountability in Early Whitehall.....	89
4.1.2 Regulating Behaviour in the Whitehall Civil Service	91
4.1.3 The Emergence of Legal Protections and Rights for Whistleblowing	92
4.1.4 The Drive for Responsiveness and the Rise of Whistleblowing	94
4.1.5 Action and Reaction in Whitehall Scandals in the 1980s and 1990s	95
4.1.6 Punctuated Equilibrium and the <i>Public Interest Disclosure Act</i> 1998	97
4.1.7 Summary.....	98
4.2 Nature and Performance of the U.K. Civil Service Whistleblowing Regime	99
4.2.1 Avenues of Disclosure Under the Whitehall Whistleblowing Regime.....	100
4.2.2 Logic of the Whitehall Whistleblowing Regime	102
4.2.3 Evidence of Regime Effectiveness	104
4.2.4 Summary.....	109
4.3 Institutional Factors Affecting Whistleblowing in Whitehall.....	110
4.3.1 Internal Disclosures.....	110
4.3.2 Quasi-Internal Disclosures	113
4.3.3 External Disclosures.....	115
4.3.4 Factors Pertaining to All Disclosures in Whitehall	117
4.3.5 Summary.....	121
4.4 Conclusion	122

Chapter 5: Whistleblowing in the Canadian Public Service	125
5.1 Evolution of the Government of Canada Whistleblowing Regime	126
5.1.1 Traditional Loyalty, Disclosure, and Accountability	126
5.1.2 Regulating Behaviour in the Canadian Public Service	128
5.1.3 The Emergence of Legal Protections and Rights for Whistleblowing	129
5.1.4 The Drive for Responsiveness and the Rise of Whistleblowing	131
5.1.5 Action and Reaction after Public Service Scandals in the 1980s and 1990s	132
5.1.6 Punctuated Equilibrium and the <i>Public Servants Disclosure Protection Act</i>	134
5.1.7 Summary	136
5.2 Nature and Performance of Canada's Public Service Disclosure Regime	137
5.2.1 Avenues of Disclosure in the Canadian Public Service	137
5.2.2 Logic of the Canadian Public Service Whistleblowing Regime	139
5.2.3 Evidence of Regime Effectiveness	141
5.2.4 Summary	146
5.3 Institutional Factors Affecting Whistleblowing in the Canadian Public Service	146
5.3.1 Internal Disclosures	147
5.3.2 Quasi-internal Disclosures	149
5.3.3 External Disclosures	152
5.3.4 Factors Pertaining to All Disclosures	155
5.3.5 Summary	159
5.4 Conclusion	159
Chapter 6: Whistleblowing in the Australian Public Service	162
6.1 Evolution of the Australian Public Service Whistleblowing Regime	163
6.1.1 Traditional Loyalty, Disclosure, and Accountability	163
6.1.2 Regulating Behaviour in the Australian Public Service	164
6.1.3 Increasing Responsiveness and Transparency in the Australian Public Service	165
6.1.4 The Rise of Whistleblowing	166
6.1.5 State Corruption Commissions and Whistleblowing Laws	167
6.1.6 The Emergence of Legal Protections and Rights for Whistleblowing	169
6.1.7 The <i>Public Service Act 1999</i> (Cth)	171
6.1.8 Belated Isomorphism: The <i>Public Interest Disclosure Act</i> (Cth)	172
6.1.9 Summary	174
6.2 Nature and Performance of Australia's Public Service Whistleblowing Regime	174
6.2.1 Avenues of Disclosure in the Australian Public Service	175
6.2.2 Logic of the Australian Public Service Whistleblowing Regime	178
6.2.3 Evidence of Regime Effectiveness	180

6.2.4 Summary.....	185
6.3 Institutional Factors Affecting Whistleblowing in the Australian Public Service	185
6.3.1 Internal Disclosures.....	186
6.3.2 Quasi-internal Disclosures	188
6.3.3 External Disclosures.....	190
6.3.4 Factors Pertaining to All Disclosures.....	193
6.3.5 Summary.....	197
6.4 Conclusion	197
Chapter 7: Discussion and Conclusions	200
7.1 Summary of Findings	201
7.1.1 Patterns of Pre-Regime Development.....	201
7.1.2 The Logic and Performance of Whistleblowing Regimes	203
7.1.3 Factors Affecting Westminster Whistleblowing Regimes.....	211
7.2 Discussion	222
7.2.1 Methodology.....	222
7.2.2 Preconditions for Whistleblowing Legislation	223
7.2.3 Regime Assumptions and Risks.....	224
7.2.4 Factors Affecting Whistleblowing Regimes	227
7.3 Future Study	229
7.4 Conclusion	230
References	233

List of Tables

Table 3.1: Historical and Rational Choice Institutionalism and Whistleblowing ..	60
Table 3.2: Outcome Matrix for Whistleblowing Disclosures	67
Table 3.3: Indicators of Interest for Each Unit of Analysis	67
Table 3.4: Hypothesized Relationship Between Westminster Institutions and Whistleblowing	69
Table 3.5: Interview Participants by Type and Jurisdiction	72
Table 3.6: Process Tracing Methods	78
Table 3.7: Most Significant Codes After Interviews	81
Table 4.1: Logic of U.K. Civil Service Whistleblowing Regime	103
Table 4.2: Assumptions and Risks of U.K. Civil Service Whistleblowing Regime	104
Table 4.3: Factors Affecting Internal Disclosures in the U.K. Civil Service	113
Table 4.4: Factors Affecting Quasi-Internal Disclosures in the U.K. Civil Service	115
Table 4.5: Factors Affecting External Disclosures in the U.K. Civil Service	117
Table 4.6: Factors Affecting Disclosures in the U.K. Civil Service	121
Table 5.1: Logic of Canada's Public Service Whistleblowing Regime	140
Table 5.2: Assumptions and Risks of Canada's Public Service Whistleblowing Regime.....	141
Table 5.3: Disclosures and Complaints under the PSDPA, 2007-2020	142
Table 5.4: Factors Affecting Internal Disclosures in the Canadian Public Service	149
Table 5.5: Factors Affecting Quasi-Internal Disclosures in the Canadian Public Service	152
Table 5.6: Factors Affecting External Disclosures in the Canadian Public Service	155
Table 5.7: Factors Affecting Disclosures in the Canadian Public Service.....	159
Table 6.1: Logic of Australia's Public Service Whistleblowing Regime	179

Table 6.2: Assumptions and Risks of Australia’s Public Service Whistleblowing Regime.....	180
Table 6.3: Commonwealth Disclosures and Complaints, 2015-2020	181
Table 6.4: Factors Affecting Internal Disclosures in the Australian Public Service	188
Table 6.5: Factors Affecting Quasi-Internal Disclosures in the Australian Public Service	190
Table 6.6: Factors Affecting External Disclosures in the Australian Public Service	193
Table 6.7: Factors Affecting Disclosures in the Australian Public Service	197
Table 7.1: Milestones in Whistleblowing Regime Development	202
Table 7.2: Generic Regime Logic	204
Table 7.3: Key Elements of Whistleblowing Regimes.....	205
Table 7.4: Evidence on Whistleblowing Regimes.....	208
Table 7.5: Effect of Institutional Environment	212
Table 7.6: Assessment of Westminster Factors on Whistleblowing.....	214
Table 7.7: Organizational Factors.....	217
Table 7.8: Other Issues Arising from Research	219
Table 7.9: Factors Driving Public Sector Whistleblowing Regime Development	224
Table 7.10: Assumptions and Risks in Whistleblowing Regimes.....	225
Table A1.1: Stated Purpose of Whistleblowing Laws	303
Table A2.1: Theorized Relationships between Westminster Institutions, WGI Good Governance Criteria, and Predicted Relationship with Whistleblowing	305
Table A3.1: Matrix of Questions and Data Sources	310
Table A5.1: Whistleblowing Case Indicators	317

List of Figures

Figure 3.1: Simplified Model Predicting Reprisal	65
Figure 3.2: Simplified WWTW II Whistleblowing Response Model	65
Figure 3.3: Dissertation Whistleblowing Response Model	66
Figure 4.1: Formal U.K. Civil Service Whistleblowing Avenues	102
Figure 5.1: Canadian Public Service Disclosure Avenues	138
Figure 6.1: Formal APS Whistleblowing Avenues	176
Figure A8.1: Generic Whistleblowing Regime Logic Model	329

List of Appendices

Appendix 1: Stated Purposes of Case Country Whistleblowing Regimes	303
Appendix 2: Theorized Relationships Between Governance, Westminster Institutions, and Whistleblowing Regimes	304
Appendix 3: Data Sources	310
Appendix 4: Interview Questions	314
Appendix 5: Whistleblowing Case Indicators	317
Appendix 6: Sample Recruitment Letter	318
Appendix 7: Themes and Codes from Interviews	320
Appendix 8: Generic Whistleblowing Regime Logic Model.....	329

List of Abbreviations

APS	Australian Public Service
ANAO	Australian National Audit Office
APSC	Australian Public Service Commissioner
ASIO	Australian Security Intelligence Organisation
Cth	Commonwealth of Australia
C&AG	Comptroller and Auditor General (UK)
PM&C	Department of the Prime Minister and Cabinet (Australia)
FCA	<i>False Claims Act</i> (United States)
FOI	Freedom of information (sometimes <i>access to information</i>)
GAP	Government Accountability Project (U.S. whistleblowing NGO)
GCHQ	Government Communications Headquarters (UK)
IGIS	Inspector-General of Intelligence and Security (Australia)
MP	Member of Parliament
OAG	Office of the Auditor General of Canada
OHSA	<i>Occupational Health and Safety Act</i> (United States)
PCO	Privy Council Office (Canada)
PMO	Prime Minister's Office (Canada)
PIDA (UK)	<i>Public Interest Disclosure Act 1998</i> (UK)
PID Act (Cth)	<i>Public Interest Disclosure Act 2013</i> (Cth) (Australia)
PS Act (Cth)	<i>Public Service Act 1999</i> (Cth) (Australia)
PSIC	Public Sector Integrity Commissioner (Canada)
PSDPA	<i>Public Servants Disclosure Protection Act, 2005</i> (Canada)
SCC	Supreme Court of Canada
TBS	Treasury Board of Canada Secretariat
UKET/UEAT	Employment Tribunal / Employment Appeal Tribunal (UK)
WWTW	Whistling While They Work (research project in Australia)

Preface

I should state from the outset, in the interest of transparency, that my interest in whistleblowing comes from personal experience. The experience was exhausting, life changing, and, ultimately, failed to change anything in the organization in which I worked.

My story begins in the Canadian Armed Forces, where I was a naval officer until the force reduction plan in the early 1990s. I spent a few years travelling and teaching in Europe before returning to Canada in 2000. After a brief stint at the National Library and Archives, I ended up at Transport Canada. After the 9/11 attacks, Transport Canada had to move quickly to develop marine transportation security regulations. We met the goal, and along the way I was promoted to Chief of my unit. Once in charge, however, I became aware of what I viewed as misconduct on the part of my superiors. This included favouritism in the treatment of some employees, accepting gifts from industry lobbyists, and a failure to enforce the regulations. A colleague and I reported this to internal authorities, but no action was taken. I then escalated the issue to external authorities in late 2006.

The strength of the reaction was a surprise. I later learned that senior management meetings were convened to develop a response to my disclosure and continued for the better part of a week. Two reprisal strategies were chosen: an attempt to revoke my security clearance and solicited harassment complaints against me. The complainants were the parties implicated in my disclosure. The first approach failed due to a diligent security official who refused to cooperate. The second was more successful, with investigations taking several years. Throughout the process, I was never allowed to see the full allegations against me. In addition, I learned that a trusted colleague had been acting as an agent provocateur by pushing me to report matters while at the same time denying their validity to management.

As difficult as the situation was, I was intrigued by the response. First, the coordinators of the reprisal acted with a boldness that suggested either confidence in the propriety of their actions or a sense of impunity. Aside from the security official, nobody appeared to question or resist their actions. Second, even individuals not in any way involved or implicated in the matter appeared ready to take sides and assist in the reprisals. Others chose to leave the organization or remain silent.

Along the way I became acquainted with other whistleblowers. Many had similar experiences, including a feeling that they were the ones who had transgressed – not the wrongdoers. To better understand my own experience, and to make some sense of the profound setback to my career (and, ultimately, marriage), I began to educate myself on the phenomenon of whistleblowing. I also began to

assist other whistleblowers in association with advocacy groups – one which I helped co-found. Several years after I blew the whistle, I started the PhD program at Carleton. This dissertation is built on research in which I took a critical, evidence-based approach to the work.

Once clear of the coursework and comprehensive exams, I chose institutional theory because of what appeared to be an instinctive response on the part of my antagonists – they seemed sure their actions were appropriate even when breaking obvious rules. For example, one director general served as adjudicator in a grievance in which they were a respondent. In this setting, it seemed that the unspoken rules were the ones that really mattered. Using Canada as one case study was an obvious choice. The other case countries, the United Kingdom and Australia, were selected to serve as comparators most like Canada in terms of culture and governance. The goal was to isolate institutional variables.

The dissertation experience has been an enlightening one. While I obviously have common ground with the whistleblowers I interviewed, I have also become more aware of the cumulative costs associated with their struggles. I can understand the need for vindication and some sort of positive closure, but, sadly, this is very uncommon. Many whistleblowers are not celebrated until decades later, when their antagonists have been exposed, retired, or died.¹ On the other hand, many officials I spoke to were sincere, and not objectively malicious. Some appeared genuine allies of whistleblowers, but simply unable to do more. All were human, with all that implies.

I hope this dissertation helps policymakers design systems that better serve whistleblowers and the public interest. I also hope to be able to continue this work, in one form or another.

¹ In Canada, this includes Dr. Peter Bryce. Chief medical officer in the federal Department of Indian Affairs, Bryce produced a damning report on the conditions in residential schools in 1907. His report was suppressed and he was forced into retirement; he published it himself in 1922. Bryce's grave in Ottawa's Beechwood Cemetery is now visited with flowers left in thanks (Deachman, 2015). The Peter Bryce Prize for Whistleblowing is also awarded annually by the Centre for Free Expression Whistleblowing Initiative to worthy Canadian whistleblowers (<https://cfe.ryerson.ca/key-resources/awards/peter-bryce-prize-whistleblowing>).

Chapter 1 Introduction

Whistleblowing in the public sector is an important activity, one which can alert governments to wrongdoing. It allows for early detection and correction of misconduct, maintaining public trust in government institutions, and deterring potential future misconduct. Despite this, it took many years for whistleblowing to be accepted and legitimated. The first country to enact a law specifically designed to protect public sector whistleblowers was the United States. The 1978 *Civil Service Reform Act* was passed after several high-profile whistleblowing cases scandalized the public. These included the Pentagon Papers, by which Daniel Ellsberg exposed the futility of the Vietnam war, and Watergate, in which Mark Felt was a secret informant for journalists Bob Woodward and Carl Bernstein.

Although these cases were situated in the United States, they captured international attention. The *Civil Service Reform Act* was emulated by many U.S. states, with other countries eventually following suit. Several Australian states implemented whistleblower protections for public sector employees in the early 1990s. The Commonwealth government was slower, enacting the *Public Interest Disclosure Act* (PID Act [Cth]) in 2013. In Canada, the pattern was reversed, as the *Public Servants Disclosure Protection Act* (PSDPA) was passed in 2005, with most provinces implementing similar statutes afterward. The United Kingdom enacted the *Public Interest Disclosure Act* (PIDA [UK]) in 1998. Its law applies to all sectors – public, private, and non-profit.

While often enacted with some fanfare and promises of improved public sector integrity, the effect of these laws is contested. In part, this is due to a lack of explicit outcomes and performance frameworks by which to assess the regimes. Data that is collected is largely superficial, with the details of individual cases usually omitted. Cases that reach the media typically have the worst outcomes, with the whistleblower suffering reprisal and the wrongdoing unaddressed. In contrast, identifying successful whistleblowers is difficult. In those cases, an employee might view themselves as simply doing their jobs in raising the issue, which was painlessly resolved.

This paucity of evidence makes assessments difficult and leaves performance contested. To justify their assessments, whistleblowing experts frequently point to defects in law and issues in organizational culture. Governments, on the other hand, argue there is little wrongdoing to report. It is clear, however, that public scandals and maladministration persist in jurisdictions with whistleblowing laws, with associated reprisals against whistleblowers. The explanation for organizational responses to whistleblowing can defy simple explanation. Indeed, hostile reactions have been compared to immune responses to a foreign body

(Alford, 2001; Martin, 1997), occurring even when the wrongdoing appears obvious and reprisal pointless.

Previous research has used sociological and psychological theories to study the predictors of whistleblowing or reprisal. However, the role of institutions, which comprise systems of rules, norms, routines, processes, and incentives, has not been studied. From a public policy perspective, understanding institutional influences may improve whistleblowing regime design. This dissertation attempts to advance the understanding of how public sector whistleblowing regimes interact with, and are being affected by, older institutional arrangements and conventions in Westminster democracies. It focusses on the national public sector of three countries: the United Kingdom, Canada, and Australia. The remainder of this introductory chapter will briefly survey the background and importance of whistleblowing regimes in the Westminster context, set out the research questions, and describe the structure of this dissertation.

1.1 Background, Importance, and Performance of Whistleblowing Regimes

This section examines how evolving perspectives and recurring scandals helped trigger legislated whistleblower protections in Westminster governments, surveys possible explanations for continued poor whistleblowing outcomes, explains why those outcomes matter, and explores why institutional influences may be the key to a puzzle: Why do governments continue to tolerate suboptimal results in their whistleblowing regimes?

For the purposes of this dissertation, the definition of whistleblowing is consistent with the broad academic consensus: “the disclosure by organization members (former or current) of illegal, immoral or illegitimate practices under the control of their employers, to persons or organizations that may be able to effect action” (Near & Miceli, 1985, p. 4). Wrongdoing includes non-trivial actions, processes, or omissions, but excludes acts that are accidental. Mismanagement, though, is included. Whistleblowing will be considered to have occurred when a current or former organizational insider discloses wrongdoing to any authority with the power to investigate, correct, or publicize the wrongdoing. Whistleblowing includes disclosure through both internal and external channels.²

² Two related concepts include “bell-ringing” and leaking. Bell-ringing refers to disclosures of wrongdoing by outsiders (e.g., a client) and leaking is the unauthorized dissemination of confidential documents – often to the media or opposition. Leaking does not have to reveal wrongdoing; it could simply expose a policy disagreement (Fasterling & Lewis, 2014; Lewis, Brown, et al., 2014; A. Savage, 2016).

1.1.1 Precursors to Westminster Whistleblowing Regimes

Traditional Westminster systems comprise institutions that can trace their origins to the United Kingdom in the mid 18th century. Most main features of the government that emerged were adopted by colonial governments. These include a parliament composed of an upper and lower house, with the executive primarily represented by members of the lower house. In Australia and Canada, the upper house is the Senate, and in the United Kingdom the House of Lords. The lower house is the House of Commons in Canada and the United Kingdom and the House of Representatives in Australia. The executive, centred in cabinet, cannot be formed without the confidence (support) of the lower house. Because of this, the executive is usually formed by the party with the most seats in the lower house, although coalitions and other cooperative arrangements are possible when no party obtains majority. For this reason, Westminster governments have unified executive and legislative branches.

The administration of Westminster governments is conducted by the civil service (public service in Australia and Canada; the terms will be used interchangeably). They are organized into departments and other agencies. Departments are headed by ministers or secretaries of state (the term minister will be used for both) who transmit the directions and policy preferences through the administrative chain of command. The linchpin is the permanent administrative head of the department or agency. In the United Kingdom, these are permanent secretaries, in Canada, deputy ministers, and in Australia they are now referred to as either agency heads or departmental secretaries. While they are public servants, permanent heads are typically viewed as having a foot in both the political and administrative realms, communicating in both directions. By traditional convention, other actors fall into either the political or administrative realm, with norms against boundary crossing.

The separation of administrative and political spheres is part of the Westminster convention on the role of the civil service. In response to concerns about competence and nepotism in the United Kingdom's government in the early to mid-19th century, reforms were introduced to ensure that public servants were hired and promoted on merit, facilitating the development of experience and expertise. Under the conventions that evolved from these first steps, civil servants exchange some political rights, such as the freedom to criticize government policies and decisions, for security of tenure and a reasonable pension. They may provide honest and frank advice without fear of sanction, but it must be confidential. Once a decision is made, they must loyally implement the policies of the government of the day without regard for their own preferences. This public service bargain became a cornerstone of Westminster government. It is sometimes referred to as the Schafferian bargain (Hood & Lodge, 2006; Schaffer, 1973) but has been explored by numerous authors, including Parris

(1969), Kernaghan (1978), Savoie (2003), and Rhodes et al. (2009). Kernaghan (2014) provides a succinct list of its conditions.

In addition, Westminster governments have several mechanisms for the detection and correction of error and misconduct, as well as for holding officials to account. Those at the political level are based on parliamentary oversight of the executive. The confidence convention is one aspect related to accountability, with governments losing such votes required to resign. Ministerial responsibility for the performance of their departments is another, again with the expectation that they resign in the event of a significant error. Parliament also has other means of providing oversight of the executive and administration, such as committees and independent officers. These typically have the power to summon witnesses and call for testimony. In addition, most Westminster democracies have an auditor general with the power to examine financial and some administrative matters. Upper houses also play a role, with their own committees. At the administrative level, accountability rests with the permanent head, who may delegate responsibilities for detecting error and misconduct to internal officials, such as audit.

These arrangements and the traditional public service bargain have not remained static. After a lengthy period of stability in the mid 20th century, concerns arose about the size, cost, competence, and effectiveness of the civil service in several Westminster countries, including the United Kingdom, Canada, and Australia. In addition, there were concerns that the civil service was not sufficiently responsive to the public or to political direction. These concerns dovetailed with the rise of neoliberal ideologies, which views the civil service as agents with their own preferences and interests. Each of the case countries had a key inquiry which triggered a wave of reforms, resulting in changes to government structures, the adoption of business management practices, and a turn to alternate sources of advice outside the civil service, such as political advisers and think tanks.

These reforms were not uniformly implemented and did not necessarily have the desired effects – in some cases creating opportunities for corruption due to the disruption of traditional accountability (Bron, 2022 forthcoming; Vaughn, 2012, p. 88). Whistleblowing regimes came late in these reforms. Many were triggered by scandal, with examples including the 1987 Queensland Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct (the Fitzgerald Inquiry). Colin Dillon, an Indigenous Australian police officer, testified at the inquiry and has been declared a “whistleblower of national significance” (Whistleblowers Australia & Whistleblowers Action Group Queensland, n.d.). In Canada, arguably the most consequential whistleblower in the past 50 years is Allan Cutler, who exposed the corrupt use of federal funds intended for the promotion of national unity. This scandal, which came to be known as Adscam or the Sponsorship Scandal, triggered a royal commission. It also contributed to the fall of the Liberal government in 2005 (CBC News, 2006; Ellis & Woolstencroft,

2006). In the United Kingdom, there was an accumulation of private and public sector failures. These included the sinking of the ferry MS *Herald of Free Enterprise* in 1987, which despite warnings sailed with bow doors open and sank, killing 188 people (United Kingdom. Department for Transport, 1988), as well as the saga of Dr. Richard Bolsin, who reported infant cardiac surgery mortality rates of over 30 percent at the Bristol Royal Infirmary. He first worked internally to improve procedures and then publicly blew the whistle in the 1990s (Kennedy, 2001). High profile whistleblowers also emerged in other jurisdictions.

These cases and others helped shift public attitudes about whistleblowers. When the term was popularized by Ralph Nader in the 1970s, whistleblowing was widely considered a synonym for criminal informing – snitching, dobbing, or ratting, for example – despite benefits to the public interest. Many considered it to be a harmful act of disloyalty:

Some of the enemies of business now encourage an employee to be disloyal to the enterprise. They want to create suspicion and disharmony and pry into the proprietary interests of the business. However this is labelled – industrial espionage, whistleblowing or professional responsibility – it is another tactic for spreading disunity and creating conflict. (James Roche, former CEO of General Motors, 1971, cited in Walters, 1975, p. 27)

This hostility was not limited to the private sector. In Canada, Laframboise (1991) characterized many public service whistleblowers as “vile wretches.” A retired senior public servant, he reasoned that disclosure of a wrongdoing which was not “abhorrent to peer group values” (p. 74) was illegitimate; the actual illegality or impropriety of the wrongdoing was secondary. He argued that potential public service whistleblowers needed to better understand the importance of loyalty and the subordination of public servants to elected officials. This characterization has largely yielded to one that is more positive and better tied to the public interest, not in-group values (Brown, Vandekerckhove, et al., 2014; Martin, 2014; R. Moberly, 2012; Vaughn, 2012).

Academic perspectives also evolved as ethical arguments for whistleblowing were developed and refined (Vandekerckhove, 2006), to an extent disarming arguments that it is disloyal. Dozier and Miceli (1985) were the first to characterize it as prosocial, beneficial to the broader public but also to the whistleblower personally (e.g., through personal vindication). Other reasoning may be utilitarian in nature: Whistleblowing is now advocated as an important part of ethics frameworks, risk management, and good governance, as well as a tool to fight corruption and fraud, enhance efficiency, and as a means to regain some social control over large, complex organizations (Callahan et al., 2002; Lewis et al., 2004; Pascoe & Welsh, 2011; Vandekerckhove et al., 2016; Vandekerckhove, Brown, et al., 2014, p. 299). Other lines of reasoning are based on principles such as accountability, free speech, and democratic rights (cf.

Vandekerckhove, 2006, Chapter 3; Vaughn, 2012, Chapter 15). Thus, whistleblowing in Westminster governments has emerged in an environment shaped by traditional conventions and historical forces which have not always been friendly to employee dissent, but which gradually gained acceptance as an antidote to misconduct and mismanagement.

1.1.2 The Implementation of Whistleblowing Regimes

It took some time for whistleblower protection to be accepted as a policy option. One intermediate step was increased transparency via freedom of information legislation. The United States was the first Anglo-American democracy to pass such a law in 1967, followed by the Commonwealth of Australia in 1982, the Canadian federal government in 1983, and the United Kingdom in 2000. Codes of conduct and ethics were another intermediate step. The United Kingdom implemented the Civil Service Code in 1996, Canada the *Values and Ethics Code for the Public Sector* in 2003, and Australia the Australian Public Sector (APS) Code of Conduct in 1999. These were intended to promote self-regulation and ethical conduct by public servants, and either require or recommend the reporting of misconduct.

Ultimately, however, dedicated public sector whistleblowing laws were passed in response to shifting attitudes and public pressure in the wake of avoidable scandals and disasters. The regimes of Canada and Australia rely on the protection of whistleblowers to promote disclosure of misconduct. They also require the establishment of procedures, processes, and offices for receiving and investigating those disclosures. They apply only to the public sector, and only to the actions of administrative actors – not political decisions or policies. The United Kingdom differs, with PIDA (UK) creating an avenue for whistleblowers to seek redress via employment tribunals. There is no requirement for the establishment of disclosure processes, but workers in all sectors are theoretically protected if they make disclosures using sanctioned avenues.

What these regimes have in common is that they are overlaid on traditional Westminster accountability structures. In addition, they effectively delegate the detection and reporting of wrongdoing and error to individual civil servants. Yet while legal protections signal that whistleblowing is a legitimate activity to the public and civil servants, they will not be effective if they are not enforced. Further, enforcement depends on the cooperation and endorsement of existing actors within Westminster. If a regime fails to meet expectations, it – like other reforms – may breed cynicism, mistrust, or neglect (cf. Diefenbach, 2009; Pollitt, 1993; Schwartz, 2004). Worse, when whistleblowing is mandatory, civil servants may find themselves in a bind: facing reprisal for speaking up or held accountable for failing to do so (Daugareilh, 2008). This suggests that the regimes must not only be successful in addressing misconduct to encourage use, they must also be *seen* to be effective. But success, especially with a charged

and contentious concept such as whistleblowing, can be a contested concept. In the absence of agreed-upon objectives, measures of performance, and meaningful data, the conclusions of different actors may be dependent on divergent perspective and goals.

1.1.3 The Contested Nature of Whistleblowing Outcomes

Despite the legitimization of whistleblowing by governments, the success of public sector whistleblowing regimes remains contested. Whistleblowing advocates range from skeptical to scathing in their assessments (e.g., D. Hutton, 2012; Martin, 2020; United Kingdom. All Party Parliamentary Group Whistleblowing, 2019), while governments paint a much rosier picture. For example, an OECD (2016a) review praised the implementation of the PSDPA. It was based solely on Canadian government input.

How to determine success, though, is not a settled matter. While the regimes require the publication of basic data on usage and case findings, and scholars have reviewed laws against (continually evolving) best practices, this is not enough. It is also important to understand whether, for example, whistleblowers face long-term negative consequences and whether there is appropriate redress. This, in turn, could inform discussions about improvements, such as support and awards for whistleblowers. Broader goals of the regime should also be examined.

Disputes on performance arise in part from the failure to articulate and foster broad-based agreement on expected outcomes and performance measures at the time the regimes were developed. Whistleblowing statutes frequently have objectives written into them, either in a preamble or within the body of the law itself. The three most common objectives are facilitating investigation, correcting wrongdoing, and protecting the whistleblower. Deterrence is often implied (see Appendix 1 for the purposes of whistleblowing legislation). Supporting communications, guides, policies, and regulations may include intermediate and long-term outcomes, such as maintaining public confidence in government.

These objectives are not always clear or consistent. For example, Canada's PSDPA states that it balances freedom of expression with the duty of loyalty to the employer. The necessity and subtleties of this balance are not clearly explained, and interpretation is in the hands of potentially implicated institutional incumbents. Australia and the United Kingdom give similar mixed signals with prohibitions against the unauthorized disclosure of government information. This is not theoretical; whistleblowers exposing obvious wrongdoing have been prosecuted in both countries.

Given government praise of their own regimes, some scholars and advocates argue they are developed with unstated objectives, such as channeling whistleblowing through internal mechanisms and preventing misconduct from

reaching the public (D. Hutton, 2017; Martin, 2003; McEvoy, 2016). This would be consistent with Edelman's (1964) work on symbolic politics, which might cast whistleblowing legislation as a political response to organizational failure, scandal, or crisis, signalling conformance with societal norms and contributing to the impression of decisive action (Callahan & Dworkin, 2000; Lewis et al., 2004; Pittroff, 2014).

Thus, to understand how the regimes are performing, one must first understand the logic behind the regimes, identify performance indicators and measures, and track the data over time. This has not been done in any of the case study countries. Indeed, only Canada developed a logic model and performance framework – but they were abandoned soon afterward.

Examining performance against expected outcomes is an objective of this dissertation, but for the purposes of introducing the concept and to guide this study, working definitions can be established. At the individual case level, the effectiveness and success of whistleblowing regimes are determined by whether disclosures are facilitated, wrongdoing is investigated and corrected, and whether reprisals are prevented or remedied. Overall regime effectiveness is determined by whether the regime appears to be trusted enough by public servants that it is routinely used and wrongdoing is deterred. More broadly, it is hoped that the regime will enhance the integrity of the public service, increase public confidence in government, and improve governance. Thus, success at the whistleblower case level is tied to regime success as a failure to appropriately handle disclosures and protect whistleblowers will reduce use, leave wrongdoing unaddressed, and give comfort to those considering misconduct. This undermines the efficacy of the regime, and may lead to more external whistleblowing (Annakin, 2011, p. 166; Ethics Resource Center, 2010; Skivenes & Trygstad, 2010). Presumably, this is not in the interests of senior administrators or political actors. It is also unlikely to contribute to improved integrity or good public governance.³

There is evidence from a variety of sources that critics have a point about the intent and performance of public sector whistleblowing regimes. This includes government communications, annual reports, adjudication records, individual whistleblowing cases, and surveys. The quality and availability of sources of evidence varies between and within jurisdictions. For example, awards for civil servants proceeding to the Employment Tribunal (UKET) under PIDA (UK) are impossible to determine due to a lack of detail in the data and the confidential

³ Notably, existing research establishes that nearly all whistleblowers first try internal avenues before resorting to an external disclosure (Donkin et al., 2008; Miceli et al., 2008; Miceli & Near, 1992; Wortley et al., 2008).

nature of mediated settlements. Annual reports in all jurisdictions provide minimal information, focussing primarily on numbers of disclosures, investigations, and findings of wrongdoing. Some provide depersonalized case summaries.

Use of whistleblowing regimes in all case countries remains quite low, with Australia reporting the highest number of disclosures relative to the size of the APS – about 0.5% of employees in any given year. Given that 4.4% had observed corruption, a narrow subset of wrongdoing, this figure appears low (Australia. Australian Public Service Commission [APSC], 2014, p. 237, 2019, p. 61). Many disclosures are rejected in Canada and Australia, but where investigations are conducted less than 14% result in a finding of wrongdoing in Canada, and 20% in Australia. There is too little data from the United Kingdom to make a reliable assessment.

Considering redress after reprisal, average awards at the UKET have fallen from about £17,000 in 2011 (Wolfe et al., 2016, p. 5) to £11,000 in 2019-20 – with about 5 percent achieving success at a hearing (United Kingdom. Ministry of Justice, 2020). While this may appear encouraging, legal costs can be higher. Perhaps because of this, over 40 percent of claims have been settled via mediation. Neither Canada nor Australia has records of whistleblowers obtaining redress through adjudication, though it is evident that several cases have been settled at mediation. Perhaps worse, there is no evidence of sanctions against those making reprisals.

1.1.4 The Consequences of Unchecked Wrongdoing and Reprisal

Given that the two strongest deterrents to speaking up on wrongdoing are the belief that nothing will be done with the disclosure and the fear of reprisal (Mesmer-Magnus & Viswesvaran, 2005; Rehg et al., 2008), visible failures to act in the spirit of the whistleblowing regime will undermine trust. This may, in turn, facilitate ongoing wrongdoing and signal the acceptance of reprisal.

Considering the most visible cases, the evidence on the current regimes is not encouraging. In the United Kingdom, scientist and weapons expert Dr. David Kelly was identified as the source of newspaper reports that said intelligence analysis of weapons of mass destruction had been “sexed up” to justify the 2003 invasion of Iraq (B. Hutton, 2004, p. 3). He raised his concerns internally but was ignored. While it is speculative, it is possible that the United Kingdom would have stayed out of the conflict if he had been heeded or the information shared with parliamentarians (Dubnick & O’Kelly, 2005). Kelly committed suicide in 2003. In Queensland, Pam Swepson complained of gross mismanagement in a federally funded program to control invasive fire ants in 2002. She tried several avenues but was dismissed in 2004. The fire ant infestation has spread from 40,000 hectares to over 600,000 hectares (Kerr, 2020; Wonder, 2019). In Canada, diplomat Richard Colvin disclosed the release of detainees by Canadian soldiers

to local Afghan officials. Up to a third of these detainees were subsequently tortured. His internal reports were ignored. When his concerns became public, his motives and character were attacked in the House of Commons, he was ostracized at work, attempts were made to suppress his testimony, and hints made that his career progression was over (R. Shepherd, 2017).

The consequences can also take time to manifest. For example, seven years after a public disclosure on inadequate safety and security enforcement at Canada's Ministry of Transport (B. Campbell, 2015), a train carrying oil through the town of Lac-Mégantic, Quebec derailed. The resulting explosion and fire killed 47 people and destroyed the town centre. Subsequent reports blamed poor regulatory enforcement (Transportation Safety Board of Canada, 2014). Valiquette-l'Hureaux (2016) found that Transport Canada was locked in a culture of organizational narcissism, in which dissent was suppressed and the preservation of reputation was prioritized over public safety. Less tragically, but still telling, the 2015 Phoenix automated pay system debacle in Canada's federal government was enabled by systematically evading scrutiny and suppressing dissent (Canada. Office of the Auditor General, 2018; Goss Gilroy Inc., 2017).

Further, even years after whistleblowing regimes have been established, the methods of reprisal follow the same pattern. An abbreviated list includes involuntary transfer, changes in work responsibilities, threats, termination, legal action, and blacklisting (S. Devine & Devine, 2010; T. Devine, 1997; J. Lennane, 1996; Rehg et al., 2008). Attacks appear to be coordinated at the organizational level. The effects on whistleblowers can be profound, affecting relationships, mental health, and leading to long-term chronic unemployment and financial hardship (e.g., Greaves & McGlone, 2012; K. J. Lennane, 1993; Rehg et al., 2008). Alford (2001) suggests the goal is to remove the whistleblower to the margins of society, with the process complete when "a fifty-five-year-old engineer delivers pizza to pay the rent on a two-room walkup" (p. 131). This is ironic and tragic, suggesting that honest whistleblowers are less respected and less protected than criminal informants used by the police (Borrie & Dehn, 2001).

1.1.5 Possible Explanations for Regime Performance

One answer to the puzzle of why governments tolerate poorly performing whistleblowing regimes may seem obvious. Officials may be implicated in the misconduct and seek to protect themselves, particularly when the wrongdoing is serious or ongoing. Even where officials are not directly implicated, serious misconduct may suggest incompetence or mismanagement. This includes scenarios in which the organization has come to depend on the wrongdoing (Callahan et al., 2002; Mesmer-Magnus & Viswesvaran, 2005; Miceli et al., 1999). Powerful actors may thus have an incentive to suppress whistleblowing and cover up wrongdoing and may not consider broader consequences.

In addition to this explanation, some critics (e.g., T. Devine, 2016; D. Hutton, 2017) argue that defects can be traced to poorly designed laws. Under this premise, gaps in law can be exploited to silence unwelcome dissent, frequently with the assistance of the courts and administrative law agencies (S. Devine & Devine, 2010; Vaughn, 2012, pp. 202–204). This can leave whistleblowers worse off than under existing employment law (McMullen, 2010; Vaughn, 2012). Others, however, have noted that all whistleblowing laws fail to meet expectations and that any effort to find a perfect law is futile, particularly in regions in which democratic institutions are less robust (De Maria, 2005; Martin, 2003).

Yet neither poor law nor implicated management provides a full explanation. First, although some have had more success than others, no law has fully met the expectations or needs of its proponents. There is frequently a logic behind administrative and judicial decisions which suggest other influences. Rulings in the United States have tended to favour employers in whistleblower cases, showing the influence of the at-will labour regime⁴ (Vaughn, 2012, p. 144). In Canada, McEvoy (2016) concludes that courts have consistently interpreted whistleblowing in a manner consistent with the “up the ladder” principle for raising complaints established in employment law. Studying Norway, Skivenes and Trygstad (2010) suggest that strong labour protections limit reprisal.

Second, not all of those who retaliate against whistleblowers are implicated in the wrongdoing. Indeed, there may be no direct blame to any individual and still a cover-up and reprisal may occur. For example, Canadian whistleblower Joanna Gualtieri reported that millions of dollars were being wasted on overseas accommodations for Canadian government officials. The practice was common, but little was personally gained. Further, the officials to whom she reported the problem could conceivably have benefitted by eliminating the waste at a time of government belt-tightening. Despite this, Gualtieri faced protracted reprisals that continued for over 15 years (Voices-Voix, 2012). In Australia, government officials suppressed the investigation of widespread sexual abuse allegations against Catholic priests (Australia. Royal Commission into Institutional Responses to Child Sexual Abuse, 2017; Fox, 2019).

Third, organizational members sometimes appear to react to whistleblowers in ways that appear instinctive. This can happen even when the organization acknowledges the wrongdoing or when the wrongdoing is so obvious that it cannot be disputed – as in the reaction to the NASA engineer who testified about the flawed launch decision that resulted in the *Challenger* space shuttle explosion. Although the facts and consequences were not in dispute, and steps

⁴ At-will labour regimes assume that the employer-employee contract may be ended by either party without notice or cause, provided it is not for a prohibited reason (e.g., gender, disability, or race discrimination).

taken to prevent a recurrence, Roger Boisjoly was ostracized and ultimately resigned (Romzek & Dubnick, 1987).

In sum, there appear to be influences on the effectiveness of whistleblowing regimes which cannot be fully explained using theories based on purely individual factors. Rather, there are strong suggestions of other contributing factors. A broader perspective may be helpful, allowing a consideration of the influence of dominant norms, conventions, structures, processes, and incentives. Institutional theory offers such a lens.

1.1.6 The Role of Institutions

This section will briefly review previous approaches to the study of whistleblowing and describe institutional theory and its associated methodologies. The most influential authors in academic literature on whistleblowing are Miceli and Near, who have consistently used sociological or psychological theory to examine actor-level influences. Power theory figures prominently, including the streams of minority influence, resource dependence, and bases of social power. In these frameworks, employees are affected by a range of personal and situational characteristics when deciding whether to blow the whistle, or how to respond to it. The whistleblower's power and social influence and mutual dependence between the organization and the whistleblower play an important role (Miceli et al., 2008, pp. 38, 102). This approach has been adopted by others, such as Hopman and Leeuwan (2009), Loyens and Maesschalck (2014), and Uys (2000).

There have also been informative meta-analyses and larger studies (e.g., Brown, 2008, 2018; Mesmer-Magnus & Viswesvaran, 2005; Miceli et al., 2008; Smith & Brown, 2008; Wortley et al., 2008). These have identified factors which are correlated with whistleblowing, such as longer tenure, job satisfaction and performance, a positive organizational climate, supervisor support, and closeness of the employee to the wrongdoing or wrongdoer (i.e., how immediately they are impacted).⁵ Where the organization depends on the wrongdoing, external whistleblowing is more likely, and failing to act on initial disclosures appears to prompt further investigation and disclosure by the whistleblower (Smith & Brown, 2008). Threat of reprisal was not found to be correlated with whistleblowing. Reprisal against whistleblowers is more likely when whistleblowing is external and the wrongdoing is serious and repeated.

From organizational theory, value congruence between whistleblower and organization has been used to predict reprisal (Mesmer-Magnus & Viswesvaran, 2005; Miceli & Near, 1994), and justice theory used to study whistleblowing

⁵ Notably, no compelling evidence of a whistleblower personality "type" has been identified (Rothschild, 2013, p. 890).

intention and employee satisfaction (e.g., Near, Dworkin, & Miceli, 1993; Deborah Lynn Seifert, 2006). Economic theories have also been used. For example, gift theory has been used to study the effects of financial incentives on internal whistleblowing (Stikeleather, 2016). Similarly, game theory has been used to model optimal awards for employers to offer whistleblowers (e.g., Franke, Moser, & Simons, 2017; Makowsky & Wang, 2018).

Legal scholars have also scrutinized whistleblowing regimes. Some compare the provisions of legislation between jurisdictions or against best practices (e.g., Brown, 2013; Dworkin & Brown, 2013; Fasterling, 2014). Advocates in NGOs also conduct such reviews, such as David Hutton's (2017) assessment of Canada's PSDPA, Devine's (1988) examination of U.S. laws, and the Feinstein et al. (2021) survey of international law. The enforcement of whistleblowing regimes is frequently criticized as not being independent, courts as too sympathetic to employers, and burdens of proof for whistleblower too high (cf. T. Devine, 2004; Miceli et al., 2008; Vaughn, 2012). The effects of the legal environment affecting employment, rights, institutional accountability, and open government have also been studied (Dworkin & Brown, 2013; Skivenes & Trygstad, 2010; Vandekerckhove, Uys, et al., 2014; Vaughn, 2012). This has facilitated the development and evolution of best practices – for example, by the Government Accountability Project (GAP), a U.S. whistleblower support NGO, and the European Union (cf. T. Devine, 2016; European Union, 2019).

The above approaches have contributed to the development of increasingly sophisticated models intended to map the constellation of factors influencing decisions to blow the whistle and the resulting organizational responses, notably by Miceli et al. (2008, Chapter 4) and as part of the Australian Whistling While They Work project (Dozo et al., 2018). These models incorporate personal, situational, and organizational characteristics. Included are attitudes towards whistleblowing, the power of different actors, dependence on the wrongdoing, and ethical culture. Overall, methodologies to date have been largely inductive, identifying evidence and attempting theory development, the identification of causal mechanisms, and the testing of preliminary theoretical models. Researchers have noted that there is a complex web of influences on the effectiveness of whistleblowing, such as norms that dictate “how things are really done” in an organization (quote by Berry, 2004; see also Keenan, 1995; Mesmer-Magnus & Viswesvaran, 2005; Rothwell & Baldwin, 2007; Vandekerckhove, Brown, et al., 2014).

The implications of research to date are that policymakers and organizational leadership must consider a range of factors when designing and implementing whistleblowing regimes. These have not been fully explored, as noted by Vandekerckhove, Brown, et al. (2014) in the *International Handbook on Whistleblowing Research*:

By understanding the factors that influence managerial responsiveness in this way, it will be possible for organizations and regulators alike to identify what is going wrong and right with institutions' [organizational] efforts to manage whistleblowing more effectively, and use it for the advantages that most managers (contrary to some assumptions) appear to recognize. (Vandekerckhove, Brown, et al., 2014, pp. 324–325).

This observation reflects an organizational perspective, however. Whistleblowing regimes are not created in a vacuum. Rather, they are designed in the context of a legal and institutional landscape that may shape the choice of mechanisms used. For example, agents of parliament are used in a variety of oversight roles in Westminster systems, while the United States created agencies that report to the executive branch. Further, such regimes must be interpreted and enforced by actors in the organizational and institutional framework upon which they are imposed. In the worst case, powerful incumbents may see a new whistleblowing institution as a threat and seek to undermine it during design. They may also simply fail to properly support and enforce it, leaving it to wither. To date, why the actors in these pre-existing institutions comply or resist with the stated goals of the whistleblowing regime has only been hypothesized. Given the potential consequences for public policy, the public interest, and whistleblowers, this deserves exploration – and institutional theory offers a useful lens.

Institutional theory has several streams, two of which are of interest to this dissertation: historical institutionalism and rational choice institutionalism. Historical institutionalism defines institutions as norms, routines, and conventions that evolve over time, and treats individual agency as subordinate to institutions. Rational choice institutionalism, on the other hand, defines institutions as formal and informal rules and incentives. It assumes that utility maximizing behaviour dominates as actors pursue their best interests within the “rules of the game” to the extent possible, including taking advantage of opportunities to push boundaries where ambiguity exists or enforcement is weak.⁶ In both streams, institutions are presumed to constrain behaviour, affect choices, and shape preferences, and both rely on enforcement. That is, non-compliance must have consequences or the institution will be eroded – or disappear. Similarly, benefits may accrue from compliance. Thus, depending on the perspective, institutions may arise from history and custom or be a consciously designed set of rules, but incentives (be they via sanctions or benefits) matter. Rational choice institutionalism is simply more explicit in its assumptions about those incentives.

⁶ Whichever definition of institutions is used, it should be noted that they are not necessarily concrete entities such as corporations or government departments. Further, the relevant norms, conventions, and rules need not be explicit; indeed, unspoken norms and rules may be the most important and hardest to address because they are not consciously recognized (Berry, 2004; Schein, 2004).

Both perspectives offer useful insights for the study of whistleblowing regimes. For example, whistleblowing in a Westminster government takes place in the context of democratic institutions that evolved over centuries. This includes constitutional conventions, which are not set out in law but are as important as law, serving a role in constraining the legal powers of the head of state, the behaviour of actors in government, and the processes of the government and democracy (Galligan, 2015; Heard, 2012).

Rational choice institutionalism, on the other hand, facilitates consideration of how actors respond to the incentives in a consciously designed whistleblowing regime – one designed to achieve public policy objectives. These may vary, but typically include the reduction or prevention of misconduct. The protection of whistleblowers is a means to achieve that objective. However, the legal basis of these Westminster regimes is not yet firmly established, with case law continuing to evolve as courts attempt to reconcile traditional employment law principles with the principles behind the new regimes – such as freedoms of expression. Canada and Australia have codified constitutions, while Britain does not, relying instead upon accumulated statutes and common law. This adds an additional layer of complexity and ambiguity.

Whistleblowers are thus constrained by conventions and structures which dictate they should be neutral, loyal, and essentially invisible. On the other hand, they are citizens whose voice has been recognized in law as important actors in detecting and correcting wrongdoing. The fact that whistleblowing regime implementation has been uneven (and, to many observers, unsatisfactory) in some jurisdictions suggests that there may be resistance or friction between the older, established Westminster institutions and the new whistleblowing institution. This may create dangers for whistleblowers if powerful, entrenched actors believe that the new institution is a threat or otherwise illegitimate. At present, however, most whistleblowing regimes have never been fully evaluated, leaving performance contested. Indeed, most lack a basic logic model, performance indicators, or meaningful evidence.

Put succinctly, researchers now understand that “The law is important, but the law cannot do it alone” (Merit Systems Protection Board, 2011, p. 28). Evidence suggests that the response to whistleblowing is based on a complex set of factors. What has been hinted at in earlier research, but not fully explored, is whether institutional factors play a role in shaping such perceptions and how individuals choose (or feel compelled) to act. Using historical and rational choice institutionalism enables this kind of exploration and allows the development of hypotheses and propositions on whistleblowing regimes, such as:

- Actors responsible for implementing a new whistleblowing regime will have internalized the norms and conventions of older institutional

arrangements; if these institutional arrangements conflict then resistance to the new regime can be expected to arise.

- The effectiveness of whistleblowing regimes in Westminster governments is dependent on / influenced by incentives structures for senior administrative actors, and who controls those incentives.
- Where incentives are not in place or do not sufficiently support the whistleblowing regime (e.g., through lack of enforcement, poor design, or not strong enough to counteract existing incentives), the regime will not achieve its objectives.⁷

The questions that arise from these propositions are set out below.

Institutional research methods are also useful in exploring ambiguous contexts as they use a combination of inductive and deductive reasoning, either starting with evidence and proceeding to theory development, or starting with theory and collecting evidence to improve or reject the theoretical model. The process from either perspective is iterative, requiring reflection and adjustment (Beach & Pedersen, 2016; George & Bennett, 2005). This is appropriate at the current stage of theory development for responses to whistleblowing, in which causal mechanisms are still incompletely understood.

1.2 Research Questions and Methods

This section sets out the hypothesis and research questions, and then summarize the theoretical approach and methodology. The hypothesis in this thesis is that public sector whistleblowing regimes have been born out of scandal and crises of legitimacy, but the extent to which they are effectively implemented is dependent on ongoing bureaucratic and political support. This support is contingent upon the whistleblowing regime being consistent with existing institutional arrangements and incentives. Where these conditions do not exist, dysfunctional responses to whistleblowing will continue, to the detriment of all institutional actors and the public interest.

⁷ It should be noted, however, that while incentives matter, they are not the only consideration and do not necessarily dominate. Whistleblowers, for example, decide to speak when it may harm their own interests, and organizational leaders may engage in reprisal when a rational assessment of the circumstances would suggest correcting the problem leads to better long-term outcomes. Rather, incentives and enforcement provide support or undermine the norms and conventions in question. This is explored further in chapters 2 and 3.

As such, the questions addressed in this dissertation examine the regimes of the case countries by moving from the past to the present. They are:

1. What institutional factors appear to have:
 - a. motivated political and administrative actors to implement whistleblowing regimes?
 - b. guided the design of the regimes?
 - c. influenced the reception and implementation of the regimes?
2. How do these regimes operate and what evidence is there on expected outcomes (including stated vs. unstated), use, and effectiveness?
3. Do the regimes appear consistent with local Westminster institutions, considering conventions, norms, processes, structures, rules, and incentives? How?

These questions attempt to identify the institutional factors which may have influenced the design of the regimes, what stated and unstated objectives and assumptions may have been built in, and the risks to the implicit logic of the regimes. Further, they attempt to identify friction points between whistleblowing regimes and the institutional environment into which they have been imposed.

A case study approach using process tracing was adopted. Case study methods are frequently used in whistleblowing and institutional research and have also been advocated by scholars in governance (e.g., Rhodes, 1997) because they enable the examination (and sometimes comparison) of the many idiosyncratic elements that characterize the subjects of interest in these fields.⁸ Process tracing uses evidence from a range of sources to examine social phenomena and political action across time, combining iterative and deductive processes to analyze evidence, adjust theory, and then return to evidence – an approach common in historical institutionalism (George & Bennett, 2005; Steinmo, 2008). This enables the triangulation of evidence and facilitates greater consistency in linking micro- and macro-level behaviours (George & Bennett, 2005, p. 141). This is consistent with the goal of this dissertation, which is to build toward a better explanatory model of whistleblower regime outcomes, using Westminster governments as the contextual background.

Cases were selected using proxy measures to identify candidate countries with similar governments and governance to narrow the range of institutional influences that might be at play. Canada was preferred based on personal

⁸ Whistleblowing cases, for example, can take place in the public, non-profit, or private sector, may be accepted or stigmatized in the dominant culture, involve anything from financial to safety matters, and involve any combination of actors and circumstances.

interest. This made other Westminster governments with public sector whistleblowing laws the starting point. Other national polity characteristics were also considered, including democracy and the rule of law, the quality of governance, and national culture. Measures included World Governance Indicator (WGI, Kaufmann et al., 2010) ratings, Transparency International's Global Corruption Perceptions Index, and Hofstede's (1984) cultural indices. Australia was most closely aligned with Canada across a range of measures, with the United Kingdom also very similar but lacking a codified constitution and being a unified polity (i.e., no provinces or states). The cases are presented in order of regime enactment, with the United Kingdom first in 1998, followed by Canada in 2005, and Australia in 2013.

The dissertation was developed in several phases. First, a survey of literature on Westminster government institutions and accountability mechanisms was conducted, along with a review of whistleblowing literature, focusing on legal regimes. This facilitated the development of hypothetical relationships between criteria for good governance, Westminster government institutions, and whistleblowing regimes in the case countries. Westminster government institutions evolved to address democratic legitimacy and administrative effectiveness. The arrangements and conventions that arose were influenced by scholars of bureaucracy and public administration such as Max Weber (1921/2013a, 1921/2013b) and Woodrow Wilson (1889/2009). Nonetheless, they are consistent with modern definitions of good governance.

Governance as a theory treats the public service as one actor among others in policy formulation and service delivery (Rhodes, 2007). Criteria for good public sector governance have been developed by different international NGOs, including the OECD, the Council of Europe, and the World Bank. The WGI, favoured by the World Bank has six broad categories of governance, of which five are relevant to whistleblowing in public administration: control of corruption, effectiveness, rule of law, regulatory quality, and voice and accountability.

The hypothesized relationships between good governance, Westminster institutional arrangements, and whistleblowing are described in the chapter on methodology and are also set out in Appendix 2. To summarize, parliamentary conventions set the expectations on the behaviour of different actors, such as how and when to express dissent or raise concerns, and who is responsible for error and misconduct. Some structures, such as parliamentary committees and officers of parliament, provide oversight of administration, which is linked to effectiveness and regulatory quality. Administrative structures typical to Westminster governments, such as departmentalization and hierarchies, contribute to effectiveness, accountability, and regulatory quality (e.g., through specialization and subject matter expertise).

The Schafferian bargain that guides the behaviour of public servants is primarily designed to improve competence (especially via the merit principle and tenure) and the quality of decision-making (via frank and fearless advice), both of which contribute to government effectiveness and accountability. Responsiveness through loyal implementation may also contribute to effectiveness, but perhaps more meaningfully contributes to democratic accountability as public servants implement the policies of the democratically elected government. The separation of political and administrative spheres establishes a chain of accountability (with administrators subordinate) and, in theory, prevents illegitimate use of the public service for political ends. Changes to these institutions in the past 50 years have had impacts on accountability structures and incentives, however.

Data collection followed the literature review. Data was collected from a diversity of sources, such as legislation and accompanying policies and guidance, government communications, available data on whistleblowing regime use and outcomes, cases drawn from legal databases and media reports, and interviews with 46 government officials, oversight officials, advocates, and scholars, as well as 17 whistleblowers with experience in the case country regimes. There were three primary units of analysis: first, the historical development of the regimes, second, the nature and performance of the regimes that emerged, and third, an assessment of consistency of the whistleblowing regimes with surrounding institutional rules, conventions, processes, norms, and incentives. Whistleblowing avenues were differentiated by whether they are internal to the organization, internal to government but outside the implicated organization (e.g., to an oversight authority such as an ombudsperson), and those made externally to the public. This classification emerged organically, with statutes, government communications, and interviews revealing that each was regarded differently.⁹

1.3 Outline of this Dissertation

Chapter 2 of this dissertation examines the literature on Westminster systems, institutional effects on whistleblowing regimes, and frameworks for whistleblowing legislation. It describes the historical roots and nature of Westminster government, which has its roots in the United Kingdom but has been adopted with variations by former colonies such as Canada and Australia.

⁹ This dissertation is informed by the distinction between responsibility, accountability, and answerability in Westminster governments (e.g., Caiden, 1988; Canada. Canadian Centre for Management Development. Task Force on Public Service Values and Ethics (Tait Report), 1996; Canada. Treasury Board Secretariat, 2005; Corbett, 2006; Dubnick & O'Kelly, 2005). Notwithstanding this debate, the distinctions are not central to the dissertation. Rather, all are treated as obligations owed by one actor (or actors) to another to rectify matters or accept blame. Their point of interest is whether whistleblowing regimes interfere or interact with these obligations.

In addition, there are common themes in the reforms of the late 20th century as neoliberal ideologies spread through Anglo-American governments. These reforms were adopted with different degrees of enthusiasm. It then examines relevant whistleblowing research, in which there have been clues about the role of institutional environments. These can be found in literature on norms and organizational climate, organizational structures and processes, and incentives. Studies also suggest the importance of the institutional environment, such as employment law and human rights. The chapter concludes by reviewing several models of whistleblowing legislation. In one model, such laws may follow one of three approaches. First, they may be anti-retaliation (or protections-based), in which disclosure is promoted by offering protection against reprisal. Second, they may be structural, requiring organizations to have processes and officials designated to receive and investigate disclosures of wrongdoing. Third, they may rely on rewards and bounties (incentives) to promote whistleblowing.

Chapter 3 describes the theoretical framework for this dissertation and sets out the methodology, including a description of the model being tested and a working definition of regime success – an issue that remains contested and has only been assessed in an ad-hoc, piecemeal fashion. Two streams of institutionalism are used to examine the emergence of whistleblowing law for the public service, with historical institutionalism more useful to explore the emergence and evolution of Westminster conventions and norms on dissent and the reporting of misconduct. Notably, neoliberal reforms were justified in part by concerns that public servants were self-serving. The resulting reforms affected traditional Westminster governments to different degrees. Rational choice institutionalism facilitates the study of incentives – both existing and those introduced by the whistleblowing regime – that might shape how the regimes were received by institutional incumbents. The methodology used in this research began with the selection of the case countries, all of which have with Westminster governments. These were selected to minimize cultural and other differences. There are three in-case units of analysis: first, the historical precursors of the whistleblowing regime, second, the nature of the whistleblowing regime adopted and an assessment of available evidence on use and performance, and third, the factors relevant that appear to influence regime implementation success or failure.

Chapter 4 examines the evolution of whistleblowing regimes in the United Kingdom's Whitehall government and the institutional environment in which they were implemented. It provides evidence that the United Kingdom has, to a greater degree than Canada and Australia, maintained key aspects of its public service bargain. However, there have been changes which have put it under strain. The regime that emerged is composed of the Civil Service Code, which was developed in the 1990s to bolster public service conventions and guide administrative conduct, and PIDA (UK), which applies to all sectors of the economy – not just the public sector, as in Canada and Australia. The resulting

regime is a fractured one, with different definitions of wrongdoing and avenues of disclosure. In addition, while it has no explicit logic and has never been evaluated, there is enough evidence to make tentative conclusions about its intended functioning and goals. The resulting logic model facilitates an assessment of the performance of the regime, although evidence is sparse and, for some implicit objectives, nonexistent. Finally, the chapter examines the evidence on institutional barriers to different types of disclosure – inside to the organization (internal), those made to a Whitehall government authority (quasi-internal), those made to the public (external, often to the press), and those which are common to all types of disclosure.

Chapter 5 examines the evolution of the federal government whistleblowing regime in Canada and the institutional environment in which it was implemented. The senior public service is somewhat more politicized than the U.K. civil service as reforms have more closely tied the career progression of public servants to their ministers and the governing party. A common law protection for whistleblowing emerged in the 1980s under a precedent that balanced the freedom of expression with employee common law duties of loyalty and confidentiality. Whistleblowing legislation was resisted until 2005, however, when a trio of scandals fatally undermined the legitimacy of the government of the day. The most critical was the Sponsorship Scandal, an advertising campaign involving kickbacks to the governing Liberal Party of Canada. At the national level, whistleblower protection is limited to the federal public service. The provinces also have public sector whistleblowing statutes. The regime that emerged promotes disclosure up the hierarchy, leaving correction of wrongdoing in the hands of deputy ministers, and balances the duty of loyalty with free speech rights. A logic model and performance framework were developed, and, although soon abandoned, do provide a framework for a preliminary assessment of the regime's objectives. Finally, the chapter examines the evidence on institutional barriers to different types of disclosure – inside to the organization (internal), those made to a Whitehall government authority (quasi-internal), those made to the public (external, often to the press), and those which are common to all types of disclosure.

Chapter 6 examines the evolution of the whistleblowing regime in the Australian Commonwealth government and the institutional environment in which it was implemented. The APS public service bargain has undergone a significant evolution, particularly at the most senior levels. Unlike Canada, the states implemented whistleblower protections first, prompted by scandals and corruption, starting with South Australia in 1993. The *Public Service Act 1999* (PS Act [Cth]) introduced whistleblowing at the federal level, but this was limited to violations of the APS Code of Conduct. The Commonwealth government waited until 2013 to enact the more comprehensive PID Act (Cth). The regime that emerged is a hybrid of the U.K. and Canadian regime. There are two

processes for disclosures – one for Code of Conduct breaches, and one for PID Act (Cth) disclosures. As with the United Kingdom, it has no explicit logic model but there is enough evidence to make tentative conclusions about its intended functioning and goals. Finally, the chapter examines the evidence on institutional barriers to different types of disclosure – inside to the organization (internal), those made to a Whitehall government authority (quasi-internal), those made to the public (external, often to the press), and those which are common to all types of disclosure.

Chapter 7 summarizes and compares the findings for each unit of analysis in the case countries and considers the implications for the design and evaluation of whistleblowing regimes. The evidence suggests that each of the case study countries enacted whistleblowing legislation after a similar series of neoliberal reforms designed to increase efficiency and administrative responsiveness to political direction. The trigger for each appears to be a quest for legitimacy after a scandal, or to bolster legitimacy by emulating similar jurisdictions. Further, it examines the common logic of the regimes, which appear to have been created with unclear and contested outcomes and largely meaningless performance indicators. The design of the regimes in Canada and Australia was consistent with local Westminster conventions, norms, and structures, while the United Kingdom implemented a regime that applies to all sectors. The implications of this are discussed. The analysis suggests that there is a complex web of influences on the whistleblowing regimes in all the case countries. Some are due to the interaction of institutions central to Westminster governments. Others, which might be expected to support employee voice (at least internally) have been eroded. It concludes that the hypothesis is partially supported.

Chapter 2

Westminster and Whistleblowing: The State of the Research

This dissertation uses institutional theory to bring two fields together: whistleblowing research and the study of Westminster systems of government. These have been examined separately but not together, although some studies have considered or been conducted within institutional contexts. With the benefit of several decades of experience with whistleblowing statutes, scholars and whistleblowing advocates are now examining different legal approaches and developing best practices for whistleblowing regimes. This reflects a shift in the questions being asked, from “who blows the whistle, and why?” (e.g., Miceli et al., 1991) and “what predicts reprisal?” (e.g., Near & Miceli, 1986) to “what systems approach works best?” (e.g., Dworkin & Brown, 2013). In answering the latter, it is helpful to also understand what does *not* work, and why.

In the current context, the starting point for understanding what works and what doesn't begins with Westminster institutions. Westminster government emerged in the United Kingdom in the 18th and 19th centuries, with the public service bargain maturing in the mid-20th century. Authors have studied this bargain and Westminster accountability processes, but none have studied how whistleblowing by public servants – especially at the working level – affects the bargain or Westminster governance arrangements. This chapter provides a review of relevant literature on Westminster government and whistleblowing. This is intended to provide context on the institutional environment in the case countries, and to survey the findings of whistleblowing research informed by, or relevant to, institutional theory.

The first section describes the criteria by which the literature was selected. This includes literature on Westminster government, with a focus on the detection of error and misconduct and how responsible parties are held to account, and literature relevant to institutional effects on whistleblowing regimes. The second section examines research on whistleblowing under Westminster institutions. The traditional public service bargain relied on the merit principle to support competence, used semi-formal processes to address misconduct, and attempted to keep political and administrative spheres separate. Political actors have traditionally been governed by democratic accountability and parliamentary mechanisms such as auditors general and public accounts committees. The third section examines the literature relevant to institutional effects on whistleblowing. While there has been little research informed by institutional theory into organizational and individual responses to whistleblowing, there are suggestions of institutional influences. Witnesses of wrongdoing appear to be reading the environment when deciding whether to blow the whistle; respondents, who may be as important as whistleblowers themselves, do much the same thing when deciding how to act. Laws set the formal rules in institutions. In the case of whistleblowing, there are three legislative approaches: whistleblower protections,

requirements for safe whistleblowing avenues, and financial incentives for whistleblowing. The premises and efficacy of these are explored.

2.1 Literature Selection

To determine which literature was relevant to this dissertation, three steps were required. First, a survey of the major works on Westminster institutions was conducted to develop a better awareness of factors relevant to whistleblowing regimes. Second, a survey of whistleblowing literature identified common themes that pertain to organizational and institutional responses to whistleblowing. Third, legal approaches to whistleblowing were examined.

2.1.1 Westminster Institutions

The review of Westminster accountability regimes first focussed on literature describing the baseline Westminster arrangements – that is, the institution as it existed from what is generally accepted as its foundation to what is sometimes termed the “golden age” in the mid-20th century (C. Campbell & Wilson, 1995; Savoie, 2008; Weller & Haddon, 2016). It then examined the reforms that occurred from the late 1970s, which were guided by neoliberal theory, and surveyed literature on changes to accountability arrangements and the Westminster public service bargain.

Research on Westminster institutions dates from the late 19th century, when the U.K. constitution was stable enough that it could be described by Bagehot (1867) and Dicey (1915) in terms that are familiar to the modern reader. Authors on the topic have multiplied, with specialists in different jurisdictions and aspects of Westminster. As this dissertation is informed by historical and rational choice institutional theory, of interest were the traditional structures, rules, processes, norms, and conventions which formed the basis of accountability relationships and quality control within government. In addition, evidence was sought for enforcement mechanisms and other incentives used to induce compliance with Westminster institutional norms and the law. This was not extensive, as early Westminster scholars focus on the formal arrangements and key political conventions in Westminster governments. Civil servants are largely treated as extensions of ministers. For example, *Constitutional Bureaucracy* (Parris, 1969) reads more as an ethnography of the civil service, not a study of its place in Westminster accountability.

Parris was, in part, responding to contemporary criticisms of the civil service. These were about to trigger waves of reform. It was in this period that literature relevant to this dissertation began to proliferate, with authors such as Kernaghan (e.g., 1974, 1978) addressing codes of ethics and responsibilities, Campbell and Wilson (1995) studying the effects of recent changes to Whitehall governance, and Hood and Lodge (2006) categorizing public service bargains. More recently,

authors have worked to situate Westminster institutions in the international context, such as Lijphart's (2012) comparison of government forms and their relative performance. Overall, this facilitated an understanding of the initiatives undertaken by governments to better deter, detect, and correct misconduct and maladministration.

2.1.2 Whistleblowing Research

There is a growing body of multidisciplinary research into whistleblowing. As this dissertation is interested in institutional effects on whistleblowing regimes, this review focuses on conventions and norms, culture and climate, structure, leadership, and formal rules set out by actors responsible for oversight of these regimes. There is little research into whistleblowing in Westminster contexts, although government inquiries, studies, and other papers provide a source of evidence of the changes in Westminster regimes, sometimes highlighting misconduct that was allowed to fester.

The first published material on whistleblowing dates from the early 1970s, with Nader, Petkas, and Miller's *Whistle-blowing* (1972). This volume included a series of prominent whistleblowing cases and was intended to describe and legitimize what was considered a relatively new, and still much contested, form of organizational dissent. Hirschman frames this dissent as voice in *Exit, Voice and Loyalty* (1970). Hirschman was addressing responses to declining performance in firms and other organizations (such as political parties). Voice, he argues, is an attempt by an organizational or institutional insider to correct "declining performance," a term that has been generalized to any deviance from legitimate organizational goals. He did not limit the concept to insider actions.

Published studies and examinations of whistleblowing steadily increased in the intervening decades, from an average of one or two publications in academic journals in the 1970s to about 10 per year in the 2000s (Vandekerckhove, 2006, p. 12). The most influential authors in academic literature on whistleblowing are Miceli and Near, who began publishing in 1980s on the characteristics of whistleblowers and predictors of whistleblowing (e.g., Dozier & Miceli, 1985; Miceli et al., 2008; Miceli & Near, 1984, 1988, 1990, 2005; Near & Miceli, 1985). By the 2010s, several meta-analyses had established that the propensity to blow the whistle was not correlated with personal variables such as age, gender, or experience, but rather situational characteristics – primarily the seriousness and frequency of the wrongdoing, whether the wrongdoing is accepted in the organization, and support for whistleblowing (Mesmer-Magnus & Viswesvaran, 2005; Miceli et al., 2008; Near & Miceli, 1996).

There was also a stream of literature on the ethics of whistleblowing. Many early arguments emphasized organizational health, loyalty to the organization, professional respect in the workplace (Bok, 1980; Jos, 1991; Walters, 1975).

Others expressed concerns that “the efficiency and flexibility of personal administration could be threatened by the creation of legal rights to dissent and legalized review systems” (Westin, 1981, p. 135). Dozier and Miceli (1985) were among the first scholars to redefine whistleblowing as prosocial and not truly altruistic as it also benefits the whistleblower. By the early 2000s most scholars accepted that the whistleblower’s motive was irrelevant (e.g., Brown & Donkin, 2008, pp. 9–10; Lewis, 2008), a view that has been bolstered by major scandals and failures. This perspective removes the need for purity on the part of the whistleblower – a standard usually impossible to meet. Changing public attitudes also forced organizational leaders to signal compliance with society’s norms (Vandekerckhove, 2006, pp. 16–17 provides an overview of this shift). Further, there was a growing awareness that some organizations had become too complex and specialized (e.g., finance and medicine) for regulators to effectively detect misconduct (Miethe, 1999, pp. 34–36).

Despite the recognition that organizations were the problem, authors continued to advise potential whistleblowers to do a kind of moral calculus before speaking up. The factors they were expected to consider included the severity of the wrongdoing, the effects on the organization, colleagues and his or her family, professional obligations, the quality and quantity of evidence, and their own motives (Jensen, 1987; Velasquez, 1988; Vinten, 2000). The emphasis has changed over time, with greater weight given to preventing the harm of wrongdoing than narrow conceptions of personal loyalty and duty to the employer (Dozier & Miceli, 1985; Near & Miceli, 1985; Vandekerckhove, 2006).

As the complexity of situational factors became evident, research into organizational responses – primarily predictors of reprisal – increased. Notable works include Robert Jackall’s *Moral Mazes* (2010), which described the inner life of corporations and the futility of dissent within them, and C. Fred Alford’s *Whistleblowers: Broken Lives and Organizational Power* (2001), which characterized whistleblowers as a foreign body inside organizations, triggering an immune-like response. These books emphasized the status of whistleblowers as transgressors of organizational norms, particularly within hierarchical structures. Other organization-level research followed, primarily into reprisals (e.g., Near & Miceli, 2008; Rehg, 1999; Soeken & Soeken, 1987).

By the 2000s, with whistleblowing laws proliferating and practical experience accumulating, detailed examination of legislative frameworks accelerated (Vandekerckhove & Lewis, 2012). Authors used court decisions and records from oversight agencies to examine effectiveness (e.g., R. E. Moberly, 2006), compared different legal approaches (e.g., Lewis et al., 2004), and, more recently, began identifying best practices (e.g., Bron & Hutton, 2022; Brown, 2013; T. Devine, 2016). Several authors began to categorize the theoretical and legal foundations of whistleblowing law (e.g., Fasterling, 2014; R. E. Moberly, 2006; Vaughn, 2012). In sum, research has evolved from an examination of

personal and agentic characteristics to a study of legal frameworks, and is now beginning to explore how organizational and institutional contexts are affecting how (or whether) people blow the whistle and how others respond to the whistleblowing. This dissertation takes this trend a step further by analyzing how institutional contexts can affect legal whistleblowing regimes.

2.2 Westminster Government Accountability Institutions

Westminster institutions have been well-studied since the 19th century, including their structure, rules, and conventions. Relevant to this dissertation are those mechanisms and conventions which pertain to detecting and correcting error and misconduct and holding officials to account. To better understand why whistleblowing regimes have emerged, this section will review the traditional means of detecting error and misconduct, holding officials to account, and managing the behaviour of Westminster actors, as well as the changes to these arrangements in recent decades. In addition, this review forms a first step in theory development in this dissertation, facilitating the identification of potential factors affecting whistleblowing regimes in Westminster civil services.

2.2.1 Accountability Arrangements in Westminster Governments

All Westminster governments have their roots in the United Kingdom. As former colonies, Australia and Canada share U.K. traditions, although geography, culture, history, and the preferences of their constitutional framers contributed to a gradual divergence. At the heart of the Westminster system of government, though, are three essential institutions shared by the case countries: representative government, parliamentary responsible government, and the rule of law (Dicey, 1915; Heard, 2005). Other core conventions remain the same, suggesting their importance to good governance and democratic legitimacy. This includes most accountability mechanisms and the roots of the civil service.

Westminster parliaments are highly oppositional in both physical form and process, with government and opposition confronting each other across an aisle (Nethercote, 2015, p. 115). Electoral systems favour the formation of governments in which one party obtains a majority even with the support of fewer than 50% of voters (Lijphart, 2012). Thus, the governing party or coalition usually controls both the legislature and executive.

The prime minister is the nexus of these arrangements, controlling many levers of power – including appointments. They thus have the means to reward loyalty, conformance, and competence (Brock & Shepherd, 2022; Savoie, 1999, p. 72). This has led to concerns about “presidentialization.” Under this hypothesis, prime ministers have increased their power at the expense of cabinet and parliament. In the United Kingdom, authors note the trend from Thatcher to Blair (e.g., C. Campbell & Wilson, 1995, Chapter 3; Foley, 2000; Rhodes et al., 2009, Chapter

4), with Lord Hailsham describing Westminster democracy as an elective dictatorship (Brenton, 2015).¹⁰ The trend may be overstated – prime ministers have always had more power than U.S. presidents, as they usually control both the legislature and the executive.

Errors and misconduct may be exposed in several ways, including as a pointed question during parliamentary question periods. These are sometimes characterized as farce, propaganda, and blood sport (Drinkwater, 2015, p. 33; C. Saunders, 2011), featuring loaded questions (Nethercote, 2015; Savoie, 2008) and prepared scripts which may or may not provide a cogent answer (Rhodes et al., 2009, pp. 144–146). With television coverage now ubiquitous, governments are also performing to the voting public – so must be aware of the public mood (Hood, 2000; A. King, 2009). Due to the majoritarian nature of most Westminster governments, parliamentary “gotcha” moments may not present an immediate threat. Still, scandals may lead to byelection losses and can cost a government its majority (Lijphart, 2012).

Another venue for accountability and error detection is in parliamentary committee. All three case study countries have committees of the lower house, committees of the upper house, and joint committees. Perhaps most important of these are public accounts committees, which are supported by auditors general – who are themselves independent agents of parliament. The role of public accounts committees and auditors general was traditionally centred on ensuring fiscal probity, but all have since expanded their roles to include value for money, compliance, performance management and other audits – some of which may be more properly termed evaluations. These may implicate policymakers and attract Parliamentary and media attention (Nethercote, 2003, p. 107; Savoie, 2008, pp. 167–168; P. Thomas, 2010, pp. 117–118). Committees have the power to summon witnesses, compel the production of evidence, and call witnesses.

In the United Kingdom, the Public Accounts Committee dates from 1861 and has been supported by the Comptroller & Auditor General and the National Audit Office or their predecessor offices. It has a reputation for rigour (Savoie, 2008), with Peter Hennessy referring to it as the “queen of select committees” (United Kingdom. House of Commons Public Accounts Committee, 2020). By convention, it is chaired by a member of the opposition (May, 2019, para. 38.65). Canada’s Public Accounts Committee was established in 1867 and has the role of scrutinizing the overall performance of government. It is also chaired by the opposition (Canada. House of Commons, 2021). It is supported by the Office of the Auditor General of Canada. The Joint Committee of Public Accounts and Audit is the Australian public accounts committee. Members are drawn from both

¹⁰ *The Friendly Dictatorship* (Simpson, 2001) explores this in the Canadian context.

the Senate and House of Representatives. There is no convention that it be chaired by a member of the opposition; the chair at the time of writing is a member of the government. As it sets the priorities of the Australian National Audit Office (ANAO, headed by the Auditor-General), it has considerable power to inquire into government matters. Public servants may be summoned to give evidence to any of these committees.

Upper houses appear limited in their ability to hold governments to account as the government does not rely on them for confidence. In the United Kingdom and Canada, they lack democratic legitimacy as most members of the House of Lords and all Canadian senators are appointed on the recommendation of the government (Hazell, 2015). The Australian Senate is an exception as it is elected using proportional representation (Sharman, 2015). Some authors suggest this improves parliamentary democracy by offering a counterbalance to the House of Representatives and facilitating consensus building (cf. Bach, 2003; Sharman, 2015; B. Stone, 2002).

In terms of personal political accountability, ministerial responsibility is a core convention in Westminster governments. This convention requires that ministers maintain the confidence of parliament and that errors within their departments are theirs to answer for. If the error or wrongdoing is significant, the convention implies that the minister resigns. Scholars agree, however, that ministers usually resign only for personal errors, with enforcement in the hands of the prime minister or premier – not parliament.

Ministers and top civil servants have been accused of using the principle of ministerial responsibility to avoid all accountability– with politicians pointing the finger at the civil service and civil service leaders hiding behind ministerial responsibility (C. Campbell & Wilson, 1995, Chapter 7; Heard, 2014; Paun & Barlow, 2013; Rhodes et al., 2009, p. 164; P. Thomas, 2010; Woodhouse, 2004). For example, Alan Clark admitted to “being economical with the truth” to Parliament while he was U.K. Minister for Trade in the 1980s. The issue was serious: Equipment intended for the manufacture of weapons was misrepresented as ordinary machinery to evade a ban on the sale of weapons to Iraq. He did not resign (Butler, 1996). In Canada, Fisheries Minister John Fraser personally intervened to approve the sale of rancid tuna in 1985. He falsely claimed that tests proved the tuna was safe, and was forced to resign by Prime Minister Brian Mulroney (Malcolmson & Myers, 2003, p. 113). In Australia, Deputy Prime Minister and Treasurer Jim Cairns attempted to secure loans through a Middle Eastern businessman instead of the Loan Council – the appropriate avenue – and had committed to paying a commission to a businessman for facilitating the process. Prime Minister Gough Whitlam forced Cairns to resign in 1975 (Dowding et al., 2012).

Finally, with respect to enforcing the rule of law and holding governments and individuals to account for misconduct, the courts play a role. Courts in the United Kingdom have historically been “constitutionally inert” (A. King, 2009, p. 116) as they cannot strike down statutes (C. Campbell & Wilson, 1995; Jennings, 1961). They may strike down secondary legislation, such as regulations passed by order-in-council, and have been used to challenge actions by Cabinet. They may also protect rights, the most relevant of which to whistleblowing is freedom of expression (or speech). These are codified in the *Human Rights Act 1998*. There are limitations, as national security matters are exempt and free expression rights must be balanced with an employee’s duty of loyalty to their employer (Lewis, Devine, et al., 2014, p. 351; Vickers, 1996).

In contrast, Canada’s Constitution Acts give Canadian courts considerable power to overturn legislation and enforce rights and freedoms. They have also played a role in interpreting conventions, including in decisions leading to the patriation of the constitution (see *Reference Re Resolution to amend the Constitution*, 1981). This has led to some accusations of inappropriate judicial activism (Savoie, 2015, pp. 74-86). The *Canadian Charter of Rights and Freedoms* (s. 2) guarantees freedom of conscience and religion, thought, belief, opinion and expression, peaceful assembly, and association.

Australia falls between the two. The High Court is the court of original jurisdiction for national and constitutional matters. It does not have the same powers to enforce individual rights, instead being limited to *reading down* (limiting) overly broad statutory provisions that offend constitutional freedoms. That said, the Australian *Constitution* does not protect rights relevant to whistleblowing, except trial by jury for criminal offences (s. 80). There is common law protection for fundamental rights and, to a degree, freedom of expression (French, 2009). Regarding speech, the High Court has ruled that there is an implied freedom of *political* expression. The landmark cases of relevance to whistleblowing are examined in the case study chapters.

The judiciary is considered independent in all case countries, although the appointment processes have been criticized in Canada (e.g., Brock & Shepherd, 2022; Hausegger et al., 2013) and Australia (e.g., G. Williams & Davis, 2003) as being insufficiently independent of the executive, leading to concerns about ideological loyalty bias (Leslie et al., 2021; Weiden, 2011). The United Kingdom amended its appointment process in 2006 to increase impartiality and diversity in the *Constitutional Reform Act 2005*, which created an independent Judicial Appointments Commission. The impact of the Commission remains a point of debate (cf. Horne, 2010; van Zyl Smit, 2017). In sum, political accountability processes in traditional Westminster governments exist at both political and administrative levels, but except for the courts, these are mainly based on convention.

2.2.2 Conduct and Accountability in Westminster Civil Services

A permanent, neutral, and professional civil service is a cornerstone of Westminster governance (Rhodes et al., 2009). It was not always so: Prior to the Northcote-Trevelyan *Report on the Organisation of the Permanent Civil Service* (Northcote & Trevelyan, 1854), the civil service was known for nepotism, “indolence,” and ineptitude. The report laid the groundwork for the modern U.K. (and Westminster) civil service. To better serve ministers and facilitate improved decision-making, the Northcote-Trevelyan report recommended hiring on merit, with a system of examinations administered by an independent Central Board of Examiners. Pay and promotion would also be standardized. While it took until after the First World War to adopt all recommendations, the proposed examination board was constituted in the U.K. Civil Service Commission in 1855. Both Australia and Canada emulated this commission, albeit with differences in mandates and divergence over time. This was also the starting point for the development of the Westminster traditional, Schafferian public service bargain.

Hood and Lodge (2006) classify the Schafferian bargain as serial-loyalist, in which politicians are transitory principals and permanent public servants act as their agents. The Westminster civil service is also frequently described as following Weber’s (1921/2013) model of rational, impersonal bureaucracy (e.g., C. Campbell & Wilson, 1995, pp. 19–21; Savoie, 2008, pp. 4–7), although it emerged well before Weber’s work. Both Westminster government and Weber’s bureaucracy presume a separation of administration and politics, as did Woodrow Wilson (1887/2009). They are also characterized by departmentalization, hierarchy, and tenured civil servants selected and promoted on merit (Bourgault, 2006; Sossin, 2005). There are some subtle differences, however. For example, while Weberian bureaucracy is intended to increase efficiency and facilitate consistent treatment of citizens, the Westminster civil service exists to serve the minister and government of the day. In addition, while Weber’s bureaucracy is staffed by technical specialists, the senior Westminster civil service has traditionally been occupied by generalists (C. Campbell & Wilson, 1995, p. 21; Parris, 1969, p. 159). Of more importance than technical expertise, the reasoning goes, is that officials are professionals in Whitehall government, with socialization via exposure, mentoring, and accumulated experience, combined with training and literature that reinforces norms (C. Campbell & Wilson, 1995, pp. 15–16; Rhodes et al., 2009, p. 159).

This bargain remains a point of reference in studies of Westminster government public services and is viewed as important to the democratic legitimacy of administrative action. The convention extends to testimony given in committee, at which civil servants should not comment on the merits of policies, programs, or decisions, instead giving only factual answers. This is articulated in the U.K. Osmotherly rules (United Kingdom. Cabinet Office, 2005), Canada’s *Notes on the Responsibilities of Public Servants in Relation to Parliamentary Committees*

(Canada. Privy Council Office [PCO], 1990), and *Australian Government Guidelines for Official Witnesses before Parliamentary Committees and Related Matters* (Australia. Department of the Prime Minister and Cabinet [PM&C], 2015).

2.2.3 The Rise of Neoliberal Ideologies

The Schafferian bargain is evolving. The activities and authorities of civil servants are increasingly codified in all three jurisdictions (Russell, 2015) and ministerial responsibilities are increasingly delegated to departmental secretaries (Savoie, 2006). In addition, ministers are more willing to criticize their own officials, and, at the same time, politicize administration for political advantage (Aucoin, 2012; Chapman, 1988; Rhodes et al., 2009, Chapter 6). This trend reflects a change in the way civil servants were viewed in the 1960s and 1970s, when neoliberal ideologies began to gain ascendance.

By the 1980s, these ideologies were informing the rhetoric, policies, and decisions of politicians in all the case countries. Several waves of reform followed which overlapped and, to a degree, intermingled, including managerialism and new public management. This was followed by a turn to state-centric and integrated governance in the 2000s, which maintains some of the principles of previous neoliberal approaches while reversing others (cf. Edwards et al., 2012; Evans et al., 2015; Halligan, 2013; Pollitt & Bouckaert, 2011). Davis and Rhodes (2000), referring to Australia, characterize this cycle as “from hierarchies to contracts and back again.” Awareness of the shift to neoliberal ideologies, the motives of those driving the shift, and the reforms that followed is important to understanding the change in relationships between political and administrative actors, in how working-level civil servants view their roles, and accountability processes. These have been studied, with most authors focussing on the effects on government effectiveness, accountability, and ethics. What is less well studied is the effect on the detection and correction of wrongdoing, and how principal-agent perspectives may have contributed towards the development of whistleblowing regimes.

For the purposes of this dissertation, neoliberalism refers to the ideas associated with the Chicago school of economics, some aspects of the Austrian School, and the later Washington Consensus. These promote fiscal discipline, efficiency, market forces over government intervention (with an associated deregulation of industry), contracting out public services, privatization of state-owned enterprises, and the introduction of private sector philosophies and practices to government (e.g., internal competition, a focus on better service to customers, and incentives for performance).

Public choice is an important associated concept. Olson (1965) and Buchanan and Tullock (1974) established this school of thought, which focuses on collective decision making. Niskanen (1971) joined Buchanan and Tullock in expanding this

school of thought into bureaucracy. They largely dismiss the idea of civil servants as publicly minded, instead arguing that civil servants pursue their own interests. This is a manifestation of the principal-agent problem, in which principals (e.g., political actors) must rely upon agents (e.g., civil servants) to implement their preferred policies and decisions. As Weber (1921/2013, pp. 990–998) observed in the bureaucratic context, agents usually have superior knowledge and experience in the relevant domain. They may thus be in a position to substitute their own preferences (adverse selection) by limiting options, passive resistance, or simply failing to implement policies (Hood & Lodge, 2006; see also A. King, 2009; Rhodes et al., 2009, Chapter 6; Strøm et al., 2003). This may be compounded in a chain of principal-agent relationships as exist in Westminster democracies, starting with voters, then elected officials, political staff and appointees, senior public servants, and the working level.

The ideological change was triggered by several phenomena. At the political and economic level, there were concerns about the rapid expansion of civil services in all three countries. This postwar expansion was common as Western governments established the welfare state and took a more active role in the economy and society (Granatstein & Morgan, 1987, p. 96). Staff numbers tended to peak in the mid-1970s, at the same time as the oil crisis and stagflation. This perceived crisis in the economy and public finances undermined the logic of Keynesian economics, leading many governments to seek new solutions (Dryzek, 1996; Hall, 2005; Wildavsky, 1978). Curtailing public spending was an obvious target, dovetailing with waning trust in government's ability to solve complex, "wicked problems" (Rittel & Webber, 1973). Further, politicians on both sides of the political spectrum grew concerned about the power of civil servants and began to view them as an obstacle to the implementation of their policies. Senior civil servants came to be viewed as schemers, reflected in the diaries of former U.K. minister Richard Crossman (1975), who accused the civil service of undermining political agendas. It was also brought to television in the comedy *Yes Minister*, in which a savvy permanent secretary routinely outwits (and sometimes saves) his minister. The program was watched by both politicians and civil servants and continues to have influence in Westminster civil services. Savoie (2008, p. 59) argues that it distorted reality and, as a side effect, helped turn perception into reality.

Each of the case study countries held a key inquiry or commission informed by this ideology. Canada was first with the Royal Commission on Government Organization, headed by businessman J. Grant Glassco. The United Kingdom followed with the 1968 report of the Committee on the Civil Service, chaired by Lord Fulton. In Australia, Dr. H.C. Coombs, an economist and public servant, led the Royal Commission on Australian Government Administration. All recommended the sharing of more information with the public, the adoption of managerial techniques such as performance management, greater autonomy for

managers and specialists, and decentralization of staffing to departments. The Fulton committee also attacked the generalist tradition of the civil service and recommended better training to promote professionalism.

To different degrees, all made recommendations on conduct and discipline. The Glassco Commission argued that supervision and authority structures should be “regulated by their own self-imposed codes of professional conduct” while also advocating sound staffing, assessment, and supervision practices (Canada. PCO, 1962, pp. 273–274, 277). The Fulton Committee suggested that civil service permanence contributed to complacency (United Kingdom. House of Commons Committee on the Civil Service, 1968, p. 48). The Coombs Commission recommended against the establishment of a code of conduct but did recommend ethics training and an established procedure for obtaining guidance about “ethical problems arising in their relationships with ministers.” It also proposed a Commonwealth Ombudsman for receiving and investigating complaints about misconduct by any person (Australia. Royal Commission on Australian Government Administration, 1976, pp. 25, 224). The emergence of these neoliberal ideologies and the reports of these commissions triggered a series of reforms in each of the case countries.

2.2.4 Reforms of the Late 20th Century

Guided by the recommendations in these reports and motivated by more aggressive media attention, governments soon launched a series of reforms. This happened through overlapping reform initiatives which contained some of the same prescriptions – with some persisting and others later being abandoned or reversed. Although delineation and characterization of the phases differ between authors, there is general agreement that the effects changed the public service in some fundamental ways, that many fell short of expectations, and that there were unanticipated effects on conduct and accountability (cf. Halligan, 2013; Juillet & Rasmussen, 2008; Pollitt & Bouckaert, 2011; Savoie, 2008).

In the United Kingdom, where such reforms were initiated by Conservative Prime Minister Margaret Thatcher and continued by her successor, John Major, the structural effects on the civil service were significant: By 1997 almost three quarters of the Home civil service had been outsourced or moved to devolved agencies (James, 2003). Australia’s public service lost 121,000 staff in 1975 as postal and telecommunication services were transferred out of traditional departments (Commonwealth Secretariat, 2004, p. 36), and privatisation was pursued to a degree second only to New Zealand in relative terms (Nethercote, 2003, p. 128). In Canada, Brian Mulroney tried and failed to rein in spending, leaving a problem of skyrocketing debt for incoming Prime Minister Jean Chrétien. Chrétien’s “Program Review” devolved costs to the provinces, downsized the public sector by 45,000 positions, and eliminated or restructured dozens of government boards (Evans et al., 2015; Gow, 2004).

Several authors have examined the effects of outsourcing and devolution (e.g., Jain, 2017; Kernaghan & Langford, 2014, p. 231; Moe, 2001; Peters, 2006; 2010). In sum, they conclude that the use of outsourcing and non-traditional organizational forms disrupted traditional accountability structures. First, they place many employees outside the Westminster hierarchy and its chain of responsibilities. Second, the use of outsourcing introduced opportunities for corruption, both because of the lack of transparency and difficulties monitoring activities outside Westminster integrity and accountability institutions. Third, many of the personnel conducting the work were not subject to government codes of conduct and did not subscribe to the values and ethics of civil servants.

The latter point is important to whistleblowing. As Kernaghan and Langford (2014, Chapter 7) observe, private sector actors are more likely to subscribe to values such as efficiency, innovation, risk-taking, and performance to objectives. Public service values, on the other hand, favour neutrality, accountability, integrity, effectiveness, responsiveness, and representativeness. Enforcing these by contract would require a level of effort that may obviate the expected benefits – assuming, as Kernaghan and Langford note, that there is no intention to subvert scrutiny in the first place.

Performance to objectives, program evaluation, and performance pay spread in each case country. Given that political actors now have ultimate authority in setting objectives and granting these incentives, this ties the success of senior administrators to the priorities of the government of the day. Canada has had a form of performance pay since the 1960s, which evolved into the Performance Management Program for Executives in 1998 (OECD, 2005). Australia first began evaluating performance in 1984 under the Financial Management Improvement Program, although evaluation and performance appraisal received low priority until 1990, when plans began for pilot projects. Performance pay between 1992 and 1996 was highly centralized and limited to the senior executive service and senior officers, but later expanded to other levels and remains in widespread use (Australia. Australian Public Service Commission, 2021). Similar initiatives were implemented in the United Kingdom by Prime Minister John Major as part of the 1991 Citizen's Charter (Clark, 1993; Mullen, 2006; Paun & Barlow, 2013).

Several authors criticize these measures. While performance to objectives, results frameworks, and similar tools can be used to set goals and signal the executive's priorities, they must be based on factors within the control of administrators and in some way measurable. The same can be said of program evaluation, which can provide valuable information to the executive and enhance accountability (cf. Aucoin, 2005; Dobell, 2003; Mayne, 2003; Savoie, 2013, Chapter 7). However, there are concerns that evaluations have focused on process and outputs rather than relevance and broader policy goals (R. P. Shepherd, 2012). Further, Muller-Clemm and Barnes (1997) and Segsworth

(2005) argue that departmental control of evaluations has made them self-serving as both ministers and civil servants have incentives to appear error-free in their respective domains. Thomas (2010; 2007) suggests that poor evaluation practice is the result of meaningless indicators, poor data and a lack of qualified evaluators; this was supported by the findings of Canada's Auditor General in an inquiry into program evaluation (Canada. Office of the Auditor General, 2009). Similar arguments could be made of organizational and individual performance measurement schemes, with some authors suggesting that there is little evidence that financial incentives have improved performance, that targets are meaningless (and perhaps unmeasurable, in the case of public goods), and that all such efforts invite gaming (Hood & Lodge, 2006; Hunt, 2019; Ketelaar et al., 2007; Savoie, 2008, pp. 89–91).

Political control of administrative appointments has also steadily increased, albeit to different degrees, with the United Kingdom retaining the most impartial process and Australia the least (Edwards, 2006; Edwards et al., 2012; Matheson et al., 2007). Although it varies in each country, prime ministers can approve or influence appointments to a variety of positions from ministers to permanent heads of departments to ambassadorships. For example, Canada has a history of patronage which persists in over 2000 Governor-in-Council appointments, which include, among others, heads of government agencies, ombudspersons, and members of quasi-judicial tribunals (Canada. PCO, 2021). Top public service executives serve at the pleasure of government.

Political actors also began to seek advice outside the civil service through the greater use of think tanks, increased use of political advisors, and public consultations (C. Campbell & Wilson, 1995, pp. 66–69; Rhodes et al., 2009, pp. 93–95, 176–179; Savoie, 2003, Chapter 6). The use of political advisors is greatest in Canada (over 600), least in the United Kingdom (about 100), with Australia now near 450 (Ng, 2017; Pickering, 2019).

Finally, in addition to these ideological changes, social changes were manifesting. King argues that the 1960s marked the start of popular movements challenging social hierarchies and demanding greater public participation in politics. He characterized this as: "...the romantic revolt of the 1960s, with its decline in social deference and its increasingly vociferous and fashionable demands for democracy, justice, the right to consultation, responsiveness and transparency" (A. King, 2009, p. 120). This decline in deference has influenced the civil service, with those delivering programs directly to citizens more likely to see the public as the client, not the minister, as the traditional bargain would have it (Lodge & Rogers, 2006). Related to this, media coverage is more aggressive and scandals now play out in public view (Savoie, 2008, pp. 68, 157, 291,331; Woodhouse, 2004). The potential for a "gotcha" news story emerging and snowballing into a public relations crisis encourages media management and blame avoidance (P. G. Thomas, 2006).

As numerous authors have noted (e.g., C. Campbell & Wilson, 1995; Halligan, 2013; Hood, 2000; Hood & Lodge, 2006; Savoie, 2003) these changes have affected the traditional bargain. For example, there are concerns that senior civil servants will suppress bad news and hence prevent potentially crucial information from reaching decision-makers. That is, they will not provide frank and fearless advice (Grube & Howard, 2016; Keating, 2003; Podger, 2007; Savoie, 2003). Others now argue that public servants have become “promiscuously partisan” (Aucoin, 1995; Lindquist & Rasmussen, 2012) or “ultra responsive” (Rhodes et al., 2009, p. 38), attempting to anticipate ministerial preferences and interests. There may also be effects on long-term planning as short-term media management takes priority (Australia. PM&C, 2019).

Overall, there are concerns that the civil service has become politicized (R. P. Shepherd et al., 2016) with professional advancement less dependent on being able to critique or analyze policy and more on being “enthusiastic implementers of government policies” (C. Campbell & Wilson, 1995, p. 296). This leads to civil servants being drawn into the political realm, moving beyond providing information on programs to actively advocating for them (Savoie, 2008, p. 143). Despite perceived shortcomings of reforms, many have persisted – along with attitudes that drove them. For example, the U.K. *Civil Service Reform Plan* (United Kingdom. Cabinet Office, 2012) describes the civil service as rigid and unresponsive, with poor leadership, and suggests a greater focus on outcomes – precisely the same themes in the Fulton Committee report. In Australia, a 2019 report by businessman David Thodey came to similar conclusions, describing the public service as “ill prepared” (Australia. PM&C, 2019).

2.2.5 Summary

This section surveyed and summarized the literature on Westminster accountability mechanisms, the public service bargain, and changes to Westminster governments in the late 20th century. Traditional political accountability relied on democratic and parliamentary processes, such as committees, auditors general, and ministerial responsibility. Conduct in the civil service was guided by convention, the merit principle, and top-down, semi-formal disciplinary processes. There is a consensus that neoliberal reforms since the 1970s have negatively affected accountability and resulted in an erosion of public service values. There are also concerns that the quality of governance under these new arrangements has suffered, with public servants now *too* responsive, suppressing honest and frank advice.

2.3 Existing Whistleblowing Research Relevant to Institutional Theory

Whistleblowing research to date has established that whistleblowing is a complex phenomenon, with studies examining actor-level decision-making, situational characteristics, and organizational processes. There is much less research on

institutional contexts in which whistleblowing regimes are embedded. Some relevant evidence does exist, however. Existing studies have already explored the importance of norms and culture, organizational climate, leadership, and structure. In addition, a few studies have been conducted on institutional interactions, such as employment and whistleblowing regimes. Accumulating experience has also facilitated the evaluation of different legal regimes, as well as the identification of best practices. This section examines relevant research into organizational and institutional factors that may affect whistleblowing regimes, briefly reviews research on whistleblowing in the case countries, surveys current whistleblowing legal models, and identifies some best practices and standards.

2.3.1 Norms, Climate, and Culture on Whistleblowing

Researchers into whistleblowing have consistently argued that simply having rules to deal with disclosure and protect whistleblowers is not enough to guarantee optimal outcomes. Rather, there appear to be a constellation of factors which affect both the propensity to blow the whistle – and corresponding organizational responses. At the highest level, there have been several studies correlating national culture and the propensity to blow the whistle. These studies frequently use Hofstede's measures of national culture (1984; see also The Hofstede Centre, 2016). Weak correlations have been found with uncertainty avoidance (a measure of society's comfort with uncertainty and ambiguity), power distance (a measure of how society accepts/expect that power is distributed unequally), and individualism (contrasted with collectivism). These findings are disputed, with Vandekerckhove, Uys, et al. (2014) arguing that organizational factors are more significant. Nonetheless, there are suggestions that some cultures with a history of repression may conflate whistleblowing with informing to state authorities (Uys, 2008). De Maria (2005) makes a compelling argument against efforts to legalize whistleblowing in countries with high levels of corruption and low regard for the rule of law. As he found in his research in Australia, whistleblowing can have life-changing consequences even in countries with robust legal traditions (De Maria, 1994; see also De Maria & Jan, 1994).

Coming to similar findings from a different theoretical lens, Katz and Lenglet (2010) use legal, economic, historical, philosophical, and sociological perspectives in a study of resistance to whistleblowing in French firms. Given a national taboo based on historical experience,¹¹ they conclude that social norms are more important than organizational costs in predicting responses to whistleblowing in French companies. Using the work of philosopher and social theorist Michel Foucault and philosopher and gender theorist Judith Butler, Kenny (2019) studies whistleblowing in the global financial sector. She notes the "deep and insidious ways" (p. 212) that institutions can shape self-perception and

¹¹ Especially the Dreyfus Affair and Vichy France's collaboration with Nazi occupiers.

behaviour. In the financial sector, whistleblowers not only challenge prevailing norms but also run counter to financial incentives to bend or break rules. Sadly, she notes, the suffering of whistleblowers who expose wrongdoing appears to conform to broader societal expectations that whistleblowers become martyrs. She argues that this explains the failure of the *Public Interest Disclosure Act 1998* (PIDA [UK]) to produce real changes in outcomes for whistleblowers. While these studies may not differentiate between organizational norms, climate and culture, they lend some credence to arguments that whistleblowers are so alien to some organizations that they need to be removed not just from the organization but, if possible, to the margins of society (cf. Alford, 2001; T. M. Devine & Aplin, 1988, p. 226).

Institutional theory has been used by Skivenes and Trygstad (2010, 2016) to explain outcomes of whistleblowing in Norway, where reprisal rates are lower than in British or U.S. studies. Power theory could not fully explain the difference in whistleblowing outcomes, so they hypothesize that differences in free speech norms and labour relations may play a role. As Norway has a social corporatist employment regime with high unionization, this may help level the playing field between employees and management. A later comparison with the United Kingdom came to a similar conclusion (Lewis & Trygstad, 2009).

At the organizational level, several studies of whistleblowing in nursing found that perceptions of a hostile climate negatively affected likelihood of whistleblowing, with respondents pointing to improvements in organizational climate as a remedy (Jackson et al., 2010, 2014; L. Moore & McAuliffe, 2010). Spence (2005), in a dissertation which compared utilitarian, principled and egotistical ethical climates, found that while utilitarian and principled climates did not predict whistleblowing, egotism was negatively correlated. Kaptein (2011), in a broad survey of the U.S. working population, also found a negative correlation with unethical organizational climate and likelihood to blow the whistle.

Other research, however, suggests that whistleblowers may sometimes perceive obstacles to whistleblowing (such as a hostile work environment) as a legitimization of their concerns, strengthening their intention to blow the whistle (Mesmer-Magnus & Viswesvaran, 2005; Ponnu et al., 2008). On the other hand, when perceptions of organizational norms and justice are positive, internal whistleblowing is more common (Miceli & Near, 1985; Deborah L. Seifert et al., 2010; Deborah Lynn Seifert, 2006; Sims & Keenan, 1998; Victor et al., 1993). Further, it is well established that employees take cues from their environment to determine whether norms or climate favour speaking truth to power. If they do not, witnesses may opt to blow the whistle externally (cf. Greenberger et al., 1987; Henik, 2008, 2015; Kaptein, 2011; Paul & Townsend, 1996; Rothschild, 2013; Rothschild & Miethe, 1999; Trevino & Victor, 1992). Similarly, if whistleblowers attempt to speak up internally and then face reprisal, they may opt to make an external disclosure (Annakin, 2011; Rehg et al., 2008). This may

have the effect of creating the very reputational damage organizations seek to avoid, as well as regulatory action (K. J. Lennane, 1993; Rothschild, 2013). With respect to outcomes, Rothschild (2013) compared whistleblowing outcomes in the public, private and non-profit sectors. She found that while public sector employees had better perceptions of the climates in which they work, reprisals were as likely as in other sectors.

In another study, Feldman and Lobel (2007) used a combination of behavioural and new governance theory to examine the “symbiotic” relationship between individuals and organizations with respect “decentralized enforcement” (whistleblowing) in Israel and the United States. They found that when wrongdoing is entrenched in the organization, whistleblowing is less likely to lead to corrective action. Contrariwise, effective internal compliance systems and a climate that supports employee voice has a positive effect. They conclude that serious wrongdoing is more likely to be reported externally, and that social norms may be more important than formal rules.

Finally, based on prosocial organizational behaviour and power theory, Miceli and Near developed models predicting whistleblowing and reprisal based on characteristics of the whistleblower, the situation, and the organization (Miceli et al., 2008; cf. Miceli & Near, 1992). These models consider characteristics of the whistleblower and the work situation, the characteristics of the wrongdoing, and characteristics of the group as variables of interest in the extent of reprisal. Phase 2 of the Whistling While They Work (WWTW) project used a similar model to examine whistleblowing effectiveness in correcting wrongdoing (Dozo et al., 2018). While it was not based on theory, it incorporates the whistleblower’s situation and characteristics, management’s situation and characteristics, and organizational characteristics. The outcomes of interest are whether the organization acts on the disclosure and improves performance, effects on the work climate, and impacts on the whistleblower. In sum, research to date has found that norms, climate, and culture in organizations do have effects on how whistleblowing is received, with models now being constructed.

2.3.2 Structure and Leadership

Organizational structures have also been linked to whistleblowing responses. The literature suggests that actors in bureaucracies react negatively to whistleblowing for three reasons – first, disclosures may be a threat to hierarchical authority structures, second, they may violate norms, and third, bureaucracies are resistant to change. Weinstein (1979), in her ground-breaking work, notes that dissenters break with “business as usual” (p. 61) by violating norms, some of which (like secrecy) are unstated. They also violate the chain of command and may bring the organization into public disrepute, as well as challenging the competence and status of leaders: “The mere act of 'speaking truth to power' is a combative act because the official who receives the message

and is responsible for the organization's proper function is implicitly being accused of dereliction of duty" (p. 59). Since bureaucracies are essentially authoritarian systems, she argues, top management will use their connections and authority to debunk "opponentist" claims (pp. 77-8). The wrongdoing is beside the point.

Other authors have supported the link between hierarchies and poor whistleblowing outcomes. While evidence on organizational structure as a predictor of whistleblowing is mixed or weak (Mesmer-Magnus & Viswesvaran, 2005; Miceli et al., 2008; Miceli & Near, 1992), it does appear that reprisal is more likely when top management perceives whistleblowers as a threat to the organization's authority structure (G. King, 1999; Miceli & Near, 2002; Uys, 2010). The WWTW research studied organizational context and management practices and found that reprisal from top management was more likely in large organizations, while reprisal from coworkers was more likely in units smaller than 20 people (Brown & Olsen, 2008b). Co-worker retaliation in smaller units may be due to stronger group affiliation and group loyalty.

With respect to organizational change, whistleblowing is typically considered an attempt to bring about positive change within the organization by correcting mismanagement or misconduct (Near & Miceli, 1996; Weinstein, 1979). This could set a whistleblower on a collision course with leadership, who may be concerned about maintaining control and autonomy of their organization (Perry, 1993). This can compound organizational failure, particularly if there is a threat-rigidity response. Threat-rigidity theory hypothesizes that some organizations "freeze" in response to threats such as public exposure of wrongdoing. Threat-rigidity can lead to increased centralization of power, pressures for more uniformity in thinking, a retreat to core activities, and responses which have worked with past threats. Unfortunately, these strategies may be maladaptive with a new threat (Staw et al., 1981). Perry (1993) uses threat-rigidity theory to analyze the likely effects of the U.S. *Whistleblower Protection Act* (1989), which was intended to close gaps in the *Civil Service Reform Act* (1978). He argues that the new law was not likely to change the dynamics of whistleblowing in the U.S. federal government (cf. Jos, 1991; Miceli & Near, 1992).

Valiquette l'Heureux (2016) concluded this effect occurred in Transport Canada's response to the Lac-Mégantic rail disaster in Quebec, Canada. Transport Canada's oversight of rail safety relied, in theory, on organizational self-regulation. Whistleblowers were to play a key role. In practice, though, employees of the Montreal, Maine and Atlantic Railway and inspectors at Transport Canada were either ignored or penalized when expressing concerns. The railway ceased operations after the disaster, but Transport Canada reverted to existing patterns of behavior, denied wrongdoing, suppressed information, and focussed on reputation control. Organizational leadership escaped almost

entirely unscathed, except for Minister Denis Lebel, who was shuffled from his position (B. Campbell, 2015).

When confronted with failures as serious as this, many organizations and institutions will adopt the practices, rules, and approaches of others – perhaps an organization considered an exemplar – to establish or reinforce legitimacy. DiMaggio and Powell (1983) refer to this as isomorphism and posit that it can be the result of coercion by authorities (such as direction by political actors to administrators), as a response to uncertainty (mimetic isomorphism), or normatively – as when an occupation seeks professionalization through standards and practices. In the case of whistleblowing, Pittroff examined organizational policies from two theoretical perspectives: first, legitimacy theory (2014), and second, institutional isomorphism and path dependence (2016). In the first, based on a survey of 87 German companies, she concludes that some organizations emulate others in implementing whistleblowing systems that favour external reporting primarily to gain legitimacy and signal conformance with societal norms and rules, which is important to ensure survival of the institution (for example, after a scandal or crisis). Effectiveness of the whistleblowing system is not necessarily desired by those in authority. The second study concludes that mandating and implementing a new whistleblowing institution that is at odds with the surrounding institutional landscape will lead to cosmetic compliance (Pittroff, 2014). Similarly, Pillay, Reddy and Morgan (2017) conclude that compliance with whistleblowing procedures may be compromised if institutional norms are opposed to whistleblowing.

Another common theme in this whistleblowing literature is the importance of leadership in the whistleblowing process – not so much in whistleblowing intentions, where the correlation is weak (e.g., Mesmer-Magnus & Viswesvaran, 2005), but rather in the outcomes (e.g., Caillier, 2015; Gundlach et al., 2003; Jos et al., 1989; Peeples et al., 2009). These studies have shown that leadership plays a role in organizational responses to whistleblowing by setting the ethical climate and providing support to employees who make disclosures. The two concepts closely linked, as effective ethical codes reduce wrongdoing, increase whistleblowing, and enhance the ethical climate of organizations (Bhal & Dadhich, 2011; Ethics Resource Center, 2013). Similarly, ethical climates are correlated with higher job satisfaction (Koh & Boo, 2001; Valentine & Fleischman, 2008), which in turn has been found to predict greater managerial support for whistleblowers (Mazerolle & Brown, 2008). Supporting this finding, Caillier (2015), in a survey of 1100 workers in government agencies in the United States, found that transformational leadership had a “direct, positive impact on whistleblowing attitudes, as well as an indirect one through organizational commitment” (p. 458). Transformational leaders articulate a clear vision, encourage challenges to the status quo, inspire innovation and learning, and act as role models. Thus,

leaders who fail to foster an ethical climate may increase the likelihood of inaction and reprisal, which increases likelihood of external disclosure.

Of relevance to whistleblowing regime design, Vandekerckhove, Brown, et al. (2014) suggest that managers may receive the same treatment as whistleblowers when supporting whistleblowers. They argue that managers need be prepared to take “hearer action” (by addressing the subject of the disclosure) and “protector action” (by defending the whistleblower from reprisal). Using data from the WWTW research, they note that training in the handling of whistleblowers is important to outcomes. Other evidence suggests that when disclosures are handled competently and professionally, internal disclosure is more likely (Masser & Brown, 1996; Mazerolle & Brown, 2008). The principal researchers in the WWTW project advocate legal and organizational procedural changes, such as better training for managers and support for whistleblowers (Brown & Wheeler, 2008). Thus, organizational structure and leadership also appear to be relevant to institutional responses to whistleblowing.

2.3.3 Whistleblowing in Westminster Institutions

With respect to empirical research on the role or appropriateness of whistleblowing in Westminster government, there are few studies relevant to the institutions of the case study countries. The largest such study to date was the WWTW project, Phase 1 of which involved an unprecedented collaboration between academics, advocacy groups, and government officials – including oversight agencies such as the offices of commissioners and ombudspersons (Brown, 2008, p. xiii). Using surveys and interviews, responses were received from 118 agencies and over 8000 public servants (Griffith University, 2016). While rates of reprisal were found to be low (22%), the findings suggested that workplaces in which wrongdoing is normalized can create a vicious cycle of fear and intimidation, which reduces the likelihood of the wrongdoing being corrected and increases the chances of reprisal (Brown & Olsen, 2008a; Mazerolle & Cassematis, 2010). Further, while the existence of procedures in public sector organizations helped in the correction of wrongdoing, it was not enough to improve outcomes for whistleblowers. The authors recommend better training of managers to improve attitudes, awareness, and responses to disclosures. They also advocate a risk assessment for reprisal when a whistleblower comes forward (Brown & Olsen, 2008a; Dworkin & Brown, 2013; P. Roberts, 2008). This was implemented in the *Public Interest Disclosure Act 2013* (PID Act [Cth]).¹²

¹² The study has been criticized by activists, however, for omitting whistleblowers who had left or been forced out of the public service – that is, the most serious cases (McMahon et al., 2015; Swepson et al., 2015).

In her dissertation, Annakin (2011) uses WWTW data and finds that oversight agencies such as ombudspersons and crime and corruption commissions frequently refer disclosures back to the implicated entities. This has consequences: Employees consider it a betrayal, while management interprets the persistence of whistleblowers as evidence of their “unreasonableness” (p. 194). She attributes the failure of these oversight agencies to conflicting priorities, resource constraints, inadequacy of investigative procedures, problems with relationships with line departments, and mandate overlap between different oversight agencies (such as ombudspersons and corruption commissions).

In Canada, Shepherd (2017) analyzes three prominent whistleblowing cases. In each case, departments denied wrongdoing and made reprisals, while at the same time attempting to withhold facts of the cases from the public (e.g., by delaying or attempting to evade requests under the *Access to Information Act*). The whistleblowers were characterized as disloyal and their motives questioned, while senior administrative and political actors attempted to preserve their personal reputations. Forward (2017) conducted a case study of Health Canada whistleblower Michèle Brill-Edwards, who exposed the suppression of adverse effects in medications by Health Canada, and concludes that reprisals were the result of organizational climate, possibly exacerbated by deregulation.

In the United Kingdom, there have been a number of studies conducted by the whistleblowing charity, Protect (previously Public Concern at Work), parliamentary committees, and the All Party Parliamentary Group Whistleblowing. As PIDA (UK) covers most workers in all sectors, however, their findings do not focus on Westminster. Savage, in his 2012 dissertation and 2016 book, examines U.K. civil service whistleblowing. The factors he considers are freedom of speech rights, the role of the media (and the protection of sources), secrecy and information control, FOI law, and national security and intelligence exemptions. He concludes that there remain gaps in executive accountability within Westminster institutions and argues that PIDA (UK) is an inadequate backstop as it does not require investigation and cannot overcome secrecy rules and norms (A. Savage, 2016; A. C. Savage, 2012).

Vaughn (1981), a legal scholar who has followed whistleblowing law for 40 years, uses the language of institutional theory when comparing the U.S. *Civil Service Reform Act* whistleblower protections with British resistance to such statutory protections. He maps out the assumptions behind the approaches and suggests that attitudes in the British government at the time were founded on the permanence of the British civil service, ministerial responsibility, civil service anonymity, confidentiality of advice to ministers, and loyalty to the minister (and to a degree, the ministry) – in other words, core Westminster conventions. These conventions, he argues, are enforced by discipline, political sanctions, and informal sanctions. In such an environment, a whistleblower is committing “a politically hostile act” (p. 380) that is inconsistent with the role of a civil servant.

He concludes that the British approach was naïve and anti-democratic because it denied information to the voting public.

Finally, inquiries following significant scandals and failures serve as case studies. This includes the inquiry into the Sponsorship Scandal in Canada, the Fitzgerald Inquiry into police corruption in Australia, and the Hutton Inquiry into the suicide of whistleblower Dr. David Kelly in the United Kingdom. The triggering incidents and inquiries will be discussed in more detail in Chapters 4 to 6. These commissions have consistently found that powerful institutional incumbents were obstacles to early identification and correction of the wrongdoing, and, in many cases, were implicated. As a result, they recommended avenues for disclosure outside the chain of command.

2.3.4 Theoretical and Legal Foundations of Whistleblowing Law

There are three main foundations for whistleblower rights and protections in law in Anglo-American jurisdictions. The first originated in common law as exceptions of a duty of confidentiality and loyalty to the employer. Free speech rights are also significant. Where statutory protections have been enacted, they may be based on several approaches.

Legal protections for whistleblowers did exist before whistleblowing statutes were enacted. Some common law jurisdictions had established tort protections for free speech in the work environment, or more general rights against unfair dismissal. In the United States, case law starting in the 1950s created an exception to at-will discharge of an employee if the reason for the discharge was speech on an issue of public interest (Vaughn, 2012, p. 5). In all cases, common law protections were primarily for unfair dismissal; subtler or disguised reprisals are more difficult to prove. The literature on the efficacy of these laws is not extensive, though. Moberly (R. Moberly, 2010; R. E. Moberly, 2008) found that protection in the United States was inconsistent. D. Lewis, Devine, et al. (2014) argue that this is due to treatment of whistleblowing as an ordinary employment dispute and the politicization of the government oversight agencies.

D. Lewis (2008) concludes that U.K. common law protection was only effective (and even then uncertain) when an employee reported a violation of law to the appropriate regulatory authority, with considerations of motive harming whistleblower interests. Research in Norway concluded that strong employment rights can protect whistleblowers (Skivenes & Trygstad, 2010); a comparative study found that the United Kingdom lags in this respect (Lewis & Trygstad, 2009). In Canada, McEvoy (2016) finds that pre-regime case law favoured an “up the ladder” approach which required employees to exhaust internal avenues before an external disclosure. In Australia, De Maria (2006) argues that even where protections exist, organizations simply have more resources to fight protracted legal battles. Across jurisdictions, there is a consensus that remedies

through tort have been inconsistent and litigation costs high, creating a barrier to access to justice (Lewis, Devine, et al., 2014; Vaughn, 2012).

Other authors note that robust free speech rights or freedoms can protect whistleblowers (Fasterling, 2014; Fasterling & Lewis, 2014). Even when enshrined in a constitution, however, efficacy can be undermined by employment law. This was the case in the United States, in which the Supreme Court denied redress to an internal whistleblower in *Garcetti v. Ceballos* (2006). This decision argued that First Amendment rights do not extend to public employees speaking as part of their official duties. The implication was that it was safer to make public disclosure than an internal one.

It was the failure of common law to protect whistleblowers that provided the impetus for whistleblowing statutes. These laws have been categorized in different ways. The primary categories favoured by authors are protections-based (or anti-retaliation), structural, and incentives (Miceli et al., 2008, Chapter 6; R. E. Moberly, 2006). Elements of all three can be present in the same law. Dworkin and Brown (2013) propose a similar analytic framework: anti-retaliation/organizational justice, reward/bounty, structural/institutional, and public/media. Vaughn (2012, Chapter 15) develops a more complex model, situating whistleblowing law in a matrix that incorporates employment rights, human rights, open government and market regulation. Open government and market regulation prioritize information, assuming that the public has a right to know how their government functions and that markets work best when investors have appropriate evidence on which to make decisions. Vaughn's perspectives dovetail with Vandekerckhove's (2006, Chapter 3) legitimations of whistleblowing policies, including human rights, corporate/organizational social responsibility, responsibility-accountability, integrity, efficiency, and loyalty to the legitimate goals of the organization (i.e., not to individuals). This dissertation classifies whistleblowing regimes based on the simpler, three-part framework, while using Vaughn's perspectives to identify characteristics and assumptions.

Anti-retaliation whistleblower laws are based on the premise that protecting employees from reprisal will encourage others to disclose wrongdoing. This allows for the wrongdoing to be corrected more quickly and with less damage to the organization. It also deters future wrongdoing (Callahan & Dworkin, 2000; Dworkin & Brown, 2013; R. E. Moberly, 2006). When applied in the public sector, the reasoning may be based on free expression rights or on the principle of open government, and to a lesser degree, market-regulation. Under anti-retaliation laws the offense of reprisal may be civil, criminal, or both (Brown, 2006; Lewis, 2001; Lewis, Devine, et al., 2014; Spencer & Spencer, 2014). Protection may be the responsibility of the organization, with redress via an adjudicator such as a labour/employment board, a commissioner or ombudsperson, or the courts. Employees may be required to follow procedural requirements or risk losing protections; these are typically strictest for public disclosures (Annakin, 2011;

OECD, 2012; UNODC, 2015). U.K., Canadian, Australian, and public sector whistleblowing laws are all anti-retaliation laws (Ashton, 2015; Lewis, 2010).

Laws based on protections for whistleblowers have proliferated in both the private and public sectors despite growing criticism (Callahan & Dworkin, 2000). For example, there is a consensus that PIDA (UK) has failed to protect whistleblowers (cf. Ashton, 2015; Gobert & Punch, 2000; Hobby, 2010; Lewis, 2010), with similarly bleak assessments of Canada's PSDPA (cf. Feinstein et al., 2021; D. Hutton, 2012; Martin-Bariteau & Newman, 2018; McEvoy, 2016). No cases have ever been successfully prosecuted against those making reprisals under Australian anti-retaliation laws (Brown, Meyer, et al., 2014), while others declare such laws an "almost total failure" (Dworkin & Brown, 2013, p. 690). Reasons for poor performance have been blamed on a number of factors: poor drafting of the laws (e.g., T. M. Devine & Aplin, 1988; D. Hutton, 2017), inadequacies or capture of the regulator or oversight authority (e.g., Annakin, 2011; Oliveto, 2019), a lack of awareness and training for employees (P. Roberts, 2008), the difficulty of law in overcoming established norms (e.g., Kenny, 2019; Miceli et al., 2008; Yeoh, 2014), and judicial and adjudicative interpretations (R. Moberly, 2012; Vaughn, 2012).

Considering regulators and whistleblowing oversight, these offices may lack the resources and expertise to properly investigate disclosures and complaints of reprisal (Annakin, 2011; Dworkin, 2010; Vaughn, 2012). They may also lack independence if appointments and resources are controlled by the executive (Lewis, Devine, et al., 2014). Adjudicators and the courts should be neutral but may draw on legal precedents favouring the employer. Worse, they may simply ignore the letter and spirit of the law (Dworkin & Brown, 2013; R. Moberly, 2012; Vaughn, 2012). Where reprisal is a criminal offence, the standards of proof may also be too high (Smith & Brown, 2008; Spencer & Spencer, 2014). Further, Dworkin (2007, p. 1768) argues that criminal sanctions are unlikely to deter management already engaged in wrongdoing. This has led some to argue that all such laws and policies are designed to fail, being passed as political posturing, "cosmetic compliance," or legitimacy seeking (T. Devine, 2004; Krawiec, 2003; Martin, 2010; R. E. Moberly, 2008; Pittroff, 2016), or are intended to direct complaints into safe channels which then turn out to be a dead end (De Maria, 1995; T. Devine, 2004; T. M. Devine & Aplin, 1986; Martin, 1999).

Whistleblowing laws with a structural element require organizations to develop mechanisms for receiving and investigating disclosures of wrongdoing. The premise is that disclosure will be encouraged by providing a known, safe avenue for disclosure, allowing the organization to detect and correct wrongdoing without the interference of implicated parties within the organization (Dworkin & Brown, 2013; R. E. Moberly, 2006). Many anti-retaliation and incentives regimes include a structural element, such as Canada's PSDPA and Australia's PID Act (Cth). PIDA (UK) has no such requirements, but penalties for reprisal may be higher if

the organization has no internal processes for whistleblowing (Lewis et al., 2004; Mannion et al., 2018; Vickers, 2000).

Evidence for structural law shows limited success. As noted above, the Australian WWTW project leaders recommend better training and awareness. The poor performance of structural laws may also be because implicated officials are interfering with disclosures (R. E. Moberly, 2006) or because senior management is not committed to the regime (Pittroff, 2014). Additionally, where whistleblowers are persistent, Annakin (2011, p. 195) argues that organizational leaders may interpret this as evidence of unreasonableness. Where these arguments or imputations are made before an adjudicator, they may succeed. D. Lewis (2008, 2010) found that employment tribunal processes and decisions under PIDA (U.K.) still favour employers. As a remedy, he suggests that an authority be established to assist employees considering or after blowing the whistle. Others also support this; since 2019, three bills have been tabled in Parliament. Each includes a commissioner or similar authority with a mandate to assist whistleblowers (Protect, 2020).

Bounty and reward systems take a different approach, offering explicit incentives to whistleblowers in the legislation. This assumes that whistleblowers perform a cost-benefit analysis before they speak up and that a large financial incentive will tip the balance of a personal decision towards disclosure. This is consistent with the prosocial organizational behaviour model (Miceli et al., 2008, p. 38), and prioritizes information over motive and loyalty (Bucy, 2003; Faunce et al., 2014; Vaughn, 2012). Bounties are typically 5-30% of any amount recovered from the offending organization, depending on the regime and the circumstances of the case. This offsets costs to whistleblowers, who may lose their jobs, be blacklisted in their industry, lose promotion opportunities, or incur heavy legal and other financial, emotional, and health costs (Franke et al., 2010; Kesselheim et al., 2010; Stephan, 2014).

The first bounty law, the U.S. *False Claims Act* (FCA), was passed during the Civil War to address frauds against the Union government, such as the sale of contaminated food, defective weapons, and lame horses (U.S. Department of Justice, 2018). It is a *qui tam*¹³ law, empowering individuals (“relators”) to sue organizations on behalf of the government to recover losses that arise from false claims (fraud). Relators may obtain between 15-30% of the recoveries. Other reward programs operate differently. A claimant makes a report to the relevant agency, the agency investigates, levies a penalty, and awards the claimant with a portion of the funds recovered. Programs in this category include the Internal

¹³ This is a shortening of “*qui tam pro domino rege quam pro se ipso in hac parte sequitur*,” meaning “[he] who sues in this matter for the king as well as for himself” (Lewis et al., 2004).

Revenue Service and Securities and Exchange Commission whistleblower programs, implemented in 2006 and 2010 respectively. Emulating this, the Ontario Securities Commission Whistleblower Program was implemented in 2015, and the Canada Revenue Agency Offshore Tax Informant Program was implemented in 2014. They usually also contain prohibitions against reprisal (Dworkin & Brown, 2013; Vaughn, 2012, p. 125).

Most assessments of incentives-based regimes are positive, primarily based on the success of U.S. laws. For example, prior to improvements to the FCA in 1986, claims were rare. Since then, over \$60 billion has been recovered, with relators receiving \$7.4 billion (U.S. Department of Justice, 2019). The IRS Whistleblower Program has made \$1.4 billion in recoveries and paid over \$312 million. In Canada, the Ontario Securities Commission whistleblower program paid \$7.5 million to three whistleblowers, while the Offshore Tax Informant Program had entered into 38 contracts with informants by 2019 (Balakrishnan, 2019). It has awarded less than C\$1 million on about C\$19 million collected.

Evidence against the use of bounty programs is sparse but does exist. Broderick (2007) found an increase in frivolous claims under the FCA and posits that many frauds would have been detected by regulators without relators – except in specialized fields, such as medicine. Despite apparent successes, some authors have argued that reward schemes may not be appropriate (or welcome) in jurisdictions with different legal traditions, employment laws, and cultural norms regarding the propriety of rewards for whistleblowing (Callahan & Dworkin, 1992; De Maria, 2005; Dworkin & Brown, 2013). Vaughn (2012, Chapter 331) notes that a common objection to bounties is that they encourage behaviour that may disrupt operations, create an atmosphere of mistrust, and deny the organization an opportunity to correct a problem quickly and quietly. Others note that they may be abused by individuals with less than noble intentions (P. G. Thomas, 2006; Tickner, 2015; Transparency International, 2018).

Despite these concerns, the consensus is that incentives-based laws are a cost-effective, democratic, and decentralized enforcement mechanism that gives society a measure of control over large organizations, and provides compensation for direct and indirect costs of whistleblowing (Callahan & Dworkin, 1992; Dworkin & Brown, 2013; Faunce et al., 2014; Kohn, 2011; Miceli & Near, 1992; Vaughn, 2012). It should be noted, though, that all such laws currently apply only to the private sector.

Notably, deterrence is an important (and sometimes implicit) goal of whistleblowing law. The most substantial work on deterrence has been in the context of optimal levels of detection and penalties for crime. This work can be traced back to Bentham (1781/2000), though Becker's (1968) study of optimal penalties is frequently cited as the modern starting point. In criminal contexts, it is hypothesized that deterrence is based on two factors: probability of detection and

size or seriousness of the sanction. That is to say, when a fine is low or enforcement lax, wrongdoing is not deterred. Costs of enforcement are also relevant (Garoupa, 2001; Polinsky & Shavell, 1984, 2001); whistleblowers can reduce these by providing insider knowledge of offenses and reduce the need for external monitoring. Studying tax offences, Wilde (2017), Amir et al. (2018), and Johannesen and Stolper (2017) find that the mere existence of whistleblowing regimes can have a deterrence effect. However, this effect can erode if the regime is perceived as ineffective. This suggests that actors considering illegitimate action regularly read the environment and adjust their strategies accordingly. More positively, greater awareness of whistleblowing avenues and regimes appears to promote disclosure (Goel & Nelson, 2013).

In sum, common law had some effect on whistleblowing outcomes, but has been superseded by statutory protections and bounty initiatives. Of these, only bounty programs attract consistent praise for shielding whistleblowers from the full effects of reprisal and in deterring misconduct.

2.3.5 Best Practices and Alternatives to Whistleblowing Law

There have been numerous efforts to develop best practices and model laws to serve as a guideline for nations seeking to implement or revise protections for whistleblowers and encourage whistleblowing. This is important as such laws have sometimes been copied from other jurisdictions without consideration of institutional, legal, cultural, and other differences (De Maria, 2006; Luxford, 2017). This isomorphism may present a problem in developing countries, in which institutions of transparency, accountability, and the rule of law may be tenuous (Brown, 2013; Chêne, 2009; De Maria, 2005, 2006). Some recent examples include GAP's *International Best Practices* (T. Devine, 2016), Transparency International's (2020) *Assessing Whistleblowing Legislation*, the Centre for Free Expression Whistleblowing Initiative's *Evaluation Criteria for Protection of Whistleblowers: A Guide for Legislation and Policy* (Bron & Hutton, 2022), and the Blueprint for Free Speech *Getting Whistleblower Protection Right* (Colvin et al., 2020), among others.

Laws (or model laws) that have been cited as encompassing the best practices include the Organization of American States *Model Law* (Organization of American States, 2013), Serbia's 2014 *Law on the Protection of Whistleblowers*, and Ireland's *Protected Disclosures Act* (2014). The EU Directive 2019/1937, which contains most best practices, sets minimum standards for whistleblowing laws in member states (European Union, 2019). While some of the principles may be universal, best practices cannot account for culture and organizational norms, the surrounding legal (and policy) framework, conventions, or competing incentives – in other words, the institutional environment, which may guide the decisions of actors who receive and respond to disclosures.

There are also other international conventions which set out requirements and recommendations for witness protection, such as the UN Convention Against Corruption (UNODC, 2004, 2015). There have been efforts to consolidate these lessons (e.g., Banisar, 2011; Luxford, 2017). It is not within the scope of this dissertation to comprehensively assess these best practices, but common overarching principles include strong free speech rights, broad coverage of the law, broad definitions of wrongdoing and reprisal, independent mechanisms for disclosure that include robust investigation and correction of wrongdoing, provisions to protect confidentiality and allow anonymous disclosures, and reliable protection for whistleblowers and their supporters.

Most best practices recommend unlimited “make whole” remedies which do not simply cover material losses but return the whistleblower to the condition they would have enjoyed were it not for retaliation. Where this is not possible, compensation should cover past, current and future losses (Cavico, 2003; T. Devine, 2016; Transparency International, 2013). All best practices assume the rule of law is intact (De Maria, 2005; Latimer & Brown, 2008; Luxford, 2017).

Further, whistleblowers should have multiple avenues available for disclosure in the event that one is ineffective or dangerous (P. Roberts et al., 2011; Vandekerckhove, 2010) – or, as found in the WWTW research, employees simply are unaware of some avenues (P. Roberts, 2008). Since internal disclosure recipients may be in a conflict of interest or subject to management pressures, at least one external avenue is usually proposed. The tiered approach was adopted in PIDA (UK) and South Africa’s *Protected Disclosures Act* of 2000. This approach allows whistleblowers to escalate disclosures from internal avenues to a regulator or other authority, and, finally, to the public (Vandekerckhove, 2006). This approach has the merit of putting both implicated officials and regulators on notice that their failure to act may have consequences, but as yet there is little evidence that it improves outcomes (Lewis, 2010).

Many regimes employ an external ombudsperson, integrity commissioner, or similar offices as a designated recipient of disclosures and complaints, usually with the authority and powers to compel evidence and testimony. This has been recommended by many researchers and advocates (e.g., T. Devine, 2016; Kaptein, 2002; Kernaghan, 2006; Near et al., 1993; Paul & Townsend, 1996; P. Thomas, 2017). Annakin’s (2011) findings and concerns with these authorities have already been articulated, with Nielsen (2013) coming to the same conclusions. As an example, the first such agency was the U.S. Office of the Special Counsel. Its record ranges from mediocre to abysmal, with effectiveness apparently determined by who is appointed as special counsel, resources of the office, and the competence of investigators (T. Devine, 1997; Vaughn, 2012).

In addition, there are arguments that a right of civil action be retained, even where redress mechanisms have been established, as they may offer a neutral

venue for whistleblowers when other avenues are captured or otherwise ineffective (T. Devine, 2016; Latimer & Brown, 2008). Others suggest the expansion of remedies under tort to include punitive and aggravated damages (Lewis et al., 2004). Tort action is available under several whistleblowing laws, such as Ireland's *Protected Disclosures Act* (2014), British Columbia's *Public Interest Disclosures Act* (2019) and several Australian jurisdictions. Overall, however, best practices continue to evolve as experience grows and unintended consequences are recognized.

2.3.6 Summary

Although there has been little research informed by institutional theory into organizational and individual responses to whistleblowing, there are signs of institutional influences. Both witnesses of wrongdoing and whistleblowing recipients appear to read the environment when deciding how to act. There is also evidence that actors are influenced by what they understand to be appropriate behaviour, considering norms, rules, and the effectiveness of existing processes in protecting whistleblowers and correcting wrongdoing. Within Westminster governments, conventions associated with the public service bargain have been identified as relevant but have not been directly linked to reprisals. Other studies have focussed on whistleblowing law. Most are based on the premise that protecting whistleblowers and providing sanctioned avenues for disclosure will promote internal disclosure, allowing organizations to address the wrongdoing early. Outcomes remain contested, with a consensus that improvements and new approaches are required if they are to achieve expected outcomes. Only bounty and reward schemes attract consistent praise. However, experience is growing and best practices are being identified.

2.4 Chapter Summary

This chapter covered two fields. First, it surveyed the major literature on Westminster institutions, with a focus on mechanisms to detect and correct misconduct and error and hold wrongdoers to account. Second, it examined whistleblowing literature relevant to institutional effects on whistleblowing regimes, including what has been learned about existing legal frameworks.

Westminster governments have been studied since they emerged in the 19th century. Of primary interest to this dissertation are the mechanisms for accountability and the detection and correction of administrative and political error and misconduct. The effectiveness of these is unclear but may be hampered by the majoritarian nature of most Westminster governments. This gives governing parties control of most committees and the resources of officers of parliament. Ministers are no longer considered responsible for administrative error, something the U.K. accounting officer concept mitigates.

The role of the civil service is also important, with numerous authors having examined the conventions which should guide its use and behaviour. The public service bargain is a practical one, facilitating honest and open advice, enabling the development and transmission of experience, and fostering trust between administrative and political actors regardless of affiliation. Accumulating reforms informed by neoliberal ideology have changed the bargain, however, with political actors more suspicious of the motives of their administrators and seeking more enthusiastic responsiveness. Ideas from the private sector were seen as a way to cut costs, boost effectiveness and efficiency, and improve service to citizens. There is a consensus that responsiveness has greatly increased while accountability has suffered. In addition, both political and administrative actors appear to be responding to increased media scrutiny by suppressing bad news. In this environment, whistleblowing provides a solution which conforms to principal-agent perspectives.

Whistleblowing research has historically used psychological and sociological theories to study predictors of whistleblowing and reprisal, with more recent work studying whistleblowing in organizational contexts. Findings suggest that both whistleblowers and the recipients of disclosures assess a range of personal, situational, and environmental factors before acting. Norms, organizational climate, and institutional culture have begun to be studied, with some authors recognizing that whistleblowers may be viewed as transgressors of unwritten rules, providing a justification for reprisal.

The evidence on existing civil service legal regimes suggests that the performance of anti-retaliation and structural laws has not met the expectations of whistleblowing advocates or scholars. Judicial and administrative decisions have hamstrung some laws, oversight agencies appear to lack capacity and are not trusted, and, ultimately, many whistleblowers continue to face life-altering reprisals. Laws based on bounties are much touted, with high recoveries and compensation for whistleblowers. However, they may not be suited to the civil service; alternative incentives may be more appropriate. More positively, growing experience has allowed the comparison of different legal regimes and their performance. In sum, findings suggest that laws may be important in framing whistleblowing regimes, but they are not enough to overcome entrenched institutional norms and conventions.

This dissertation hopes to fill an overlapping gap in the literature on Westminster accountability and whistleblowing using institutional theory. Studies of Westminster accountability have neglected the role of working-level civil servants in raising the alarm on misconduct, instead focussing on powerful actors and political accountability processes, with some targeting areas such as program evaluation and committees. Whistleblowing literature has favoured actor-level explanations, with a recent turn to system-level issues. The intersection of the two fields is a complex environment with multiple interacting factors, affecting

individual understandings of appropriate action – some of which may work at cross purposes. The next chapter will set out the theoretical approach and methods that were used in this dissertation.

Chapter 3

Methodology

Whistleblowing is a complex phenomenon, with research still in Kuhn's (1962/2012) pre-paradigm stage of scientific development. While predictors of whistleblowing and retaliation have been studied since the 1980s, research on responses to whistleblowing to date has used power theories, implicating a range of situational, individual, organizational, and institutional factors. Data collection methods used to study whistleblowing have been large-scale surveys, scenario-based experiments, and case studies. Research is evolving, however, increasingly embracing different theoretical perspectives and methods to examine the broader environment in which whistleblowing occurs. This chapter describes the theoretical approach and methodology of this dissertation.

The first section describes the theoretical approach. Historical and rational choice institutionalism offer a theoretical lens with which to understand how these actors' preferences and understandings of appropriateness may be shaped by different rules, existing structures and processes, internalized norms, and incentives. The two types of institutionalism have been used together in the past to better understand how institutions evolved and why new institutions may not be enforced if they conflict with existing norms and incentives. This is relevant to whistleblowing regimes in Westminster governments, which have long-standing conventions and norms but have been subjected to waves of reform since the 1970s. In this context, whistleblowing regimes may be part of the reforms, or as a response to unintended effects arising from those reforms.

The second section provides a description and rationale for the case study and process tracing methods used. Case studies have been used to explore the dynamics of whistleblowing and the experiences of whistleblowers. The focus has been on whistleblower characteristics, organizational variables, or both, such as Alford's (2001) study of the clash between one's moral responsibilities and organizational demands for loyalty. Process tracing, on the other hand, has emerged as a valuable approach to identifying causal mechanisms – that is, the interaction of variables – in qualitative research. It can be used deductively, by testing theory against evidence, or inductively, by developing theory from evidence (George & Bennett, 2005). This dissertation combines the two, with a preliminary theory being tested – but open to other evidence as it emerges.

The third section describes the data collection process. A catholic approach to data collection was necessary to understand the regimes, their expected outcomes, and what factors in the Westminster context were most important. Sources of evidence included explicit rules (laws and regulations), policies, communications, legal records, media stories, and interviews with experts and whistleblowers. These were used to triangulate the evidence using process tracing methods.

The fourth section describes data analysis. Analytical and narrative process tracing was used to examine the pre-whistleblowing regime period and to identify the factors influencing the performance of the regimes since. For the pre-regime period, the analysis used a narrative approach, telling the story of each country's move toward statutory whistleblower protections and identifying key events. This facilitated a cross-case analysis in the final chapter. For the post-enactment period, analytical process tracing was used to identify and test a constellation of factors that appear to affect whistleblowing regimes in the Westminster governments of interest. The final section also describes the interview coding process and the assessment of regime performance.

3.1 Theoretical Approach: Historical and Rational Choice Institutionalism

This section describes how historical and rational choice institutionalism can be used to study whistleblowing regimes in Westminster governments. While sociological and psychological theories have dominated whistleblowing research, focussing on actor-level influences, evidence suggests whistleblowers and other organizational members are influenced by their environments, with incentives also playing a role. To examine these, this dissertation draws insights from historical and rational choice institutionalism. While having the same roots, they have their own definitions, assumptions about agency, and views on change.

3.1.1 Insights from Historical and Rational Choice Institutionalism

Historical institutionalists draw from the premise that history matters: choices have lasting effects and constrain future developments. Hall and Taylor (1996) define them as “formal and informal procedures, routines, norms and conventions embedded in the organizational structure of the polity or political economy” (p. 938). Institutions provide “moral and cognitive templates for interpretation and action. The individual is seen as an entity deeply embedded in a world of institutions... not only do institutions provide strategically useful information, they also affect the very identities, self-images and preferences of the actors” (Hall & Taylor, 1996, p. 939).

Institutions are formed at a critical juncture, such as a crisis in which older institutions have failed. March and Olsen refer to the choices made at these points as policy martingales (March & Olsen, 1984, p. 745); this is now known as path dependency (Pierson, 2000). Once established, change is theorized to occur in different ways. Abrupt changes have been explained using the concept of “punctuated equilibrium” (Krasner, 1984), in which a novel problem produces a rapid institutional change. For more gradual change, Streeck and Thelen (2005) propose several mechanisms: displacement, in which existing rules are gradually replaced; layering, in which new rules are imposed on top of older rules; drift, in which rules change to suit the environment; and conversion, in which existing rules are used in new ways. They also allow for a fifth mode of change –

exhaustion, in which an institution has outlived its usefulness and dies. Once change occurs, a new period of stability follows.

The analytical questions asked typically pertain to how institutions reached a given state, particularly with respect to policy choices. Its inductive methodology has been cited as a strength, allowing the development of “working models of rationality and actor preferences not through abstract assumptions but through careful empirical observation” (Selznick, 1996, p. 8). Methodologically, it relies on qualitative and quantitative sources, such as government records, statistics, and interviews. The comparative approach is often used to identify commonalities which suggest causal links between initial states, inputs, and outcomes.

Rational choice institutionalism, on the other hand, begins with the premise that personal agency matters. Actors are assumed to have relatively stable preferences and are expected to maximize their own utility. They understand that they can achieve their goals most effectively through institutions because institutions provide information and make the actions of other actors more predictable, mitigating uncertainties. In addition, there are costs in failing to conform (Hall & Taylor, 1996, p. 12; Knight & Sened, 1995, p. 11; Levi, 2009; Peters, 2012, p. 49). Knowledge of the rules is typically tacit and enforcement can be formal or informal. If well understood and accepted, conformity becomes customary (Hodgson, 2006; North, 1990, p. 36).

Institutions are assumed to be consciously designed to solve common problems (Knight & Sened, 1995; Peters, 2012, p. 65) or to arise spontaneously as an equilibrium between the preferences of all actors (Levi, 2009, p. 128). Thereafter, they are stable for as long as there is broad agreement and enforcement (Shepsle, 2006, p. 26). There is no reason to assume that any state of affairs is optimal or efficient, however (Lowndes & Roberts, 2013, p. 39). Change, when it occurs, may arise from a conscious effort to address the failure of an existing institution (Peters, 2012, p. 63) or because actors begin to violate older rules without incurring significant sanctions or costs (North, 1995, p. 16). Path dependence limits the direction and degree of change (Levi, 2009, p. 121; North, 1995). Further, North (1990) argues that some informal constraints have “survival tenacity” (p. 91) and can remain in place even when formal rules are altered. This is also referred to as the sticky norms problem (e.g., Jones, 2001; Kahan, 2000).

The questions this approach seeks to answer is how collective rationality can lead to irrational collective outcomes – the classic case being the tragedy of the commons (Knight, 1995; Reich, 2000, p. 506). It provides a model for the examination and understanding of individual choices within institutions, connecting the institution and the actor (Jones, 2001, p. x; Peters, 2012, p. 69). Methods vary depending on the stream of inquiry. This dissertation is interested in actors’ objectives, interests, incentives, and enforcement mechanisms. These

are important because powerful actors may not be passive, choosing instead to resist or reshape whistleblowing regimes to suit their preferences.

Despite these differences, historical and rational choice institutionalism have several things in common. First, both view institutions as in some way a stable feature of the society and/or polity, affecting and constraining individual behaviour. Second, enforcement is essential; unsanctioned deviance will undermine the institution, rendering it unstable, and may lead to its exhaustion – or, in the case of whistleblowing, prevent its establishment. Enforcement may be formal, such as prosecution under law, or informal, such as social exclusion, but must be effective. Similarly, there must be benefits to compliance (Peters, 2012). These are explicitly characterized as positive and negative incentives in rational choice institutionalism but are more ambiguous in historical institutionalism. Inversely, rational choice institutionalism is more ambiguous on the importance of historical, established norms which guide the interpretation of new rules by institutional incumbents. Thus, there is some utility in using both approaches.

3.1.2 A Dual Approach to the Study of Whistleblowing Regimes

As noted in the literature review, the existing literature on whistleblowing suggests institutional influences both in the design and implementation stages. Scandals may create a “window of opportunity” (Cortell & Peterson, 1999) for policy entrepreneurs (Kingdon, 1995) to introduce a new whistleblowing regime. Policymakers in each case country chose the anti-retaliation legislative model, which is based on the premise that protection encourages disclosure. Structural elements were added where traditional avenues for reporting misconduct were believed to have had failed. This approach implicitly links the actions and decisions of individuals to the institutions in which they work by acknowledging that employees are actors who consider consequences (incentives) before speaking up. This is consistent with the prosocial organizational behaviour model used to predict whistleblowing (Miceli et al., 2008, pp. 37–43).

The regimes, however, must be developed and enforced by incumbents socialized under older institutional arrangements. They may not agree with the need for a whistleblowing regime or perceive it as a threat. From the rational choice perspective, this introduces a principal-agent problem: “If... legislators are to get the performance they want from the agency [department], they must solve the ‘principal’s problem’ by designing an efficient structure that is acceptable to the bureaucrats” (T. M. Moe, 2005, p. 220). Where they do not, powerful actors may use their influence to reshape the new regime.

Thus, failing to consider the institutional environment may lead to flawed regime design, leaving wrongdoing uncorrected and whistleblowers facing reprisal. This would constitute a public policy failure, given the stated objectives of enabling legislation. Lowndes and Roberts provide a succinct description of the hazards:

First, actors tend to be drawn to changes to formal rules and structures as quick fixes and tend only to pay lip service to the importance of changing interconnected practices and stories. Second, institutional designers often underestimate the strength of the opposition which can be mobilized around the existing institutional configuration and the defensive potentials offered by the density of interconnections between institutional modes. Third, once designed, institutions will wither away if they are not constantly and effectively maintained. (Lowndes & Roberts, 2013, p. 171)

They argue that many “root and branch” efforts to design new institutions are doomed to fail because of the complexity of the existing institutional environment. It is better, they suggest, to make incremental changes (Lowndes & Roberts, 2013, p. 186). Kahan (2000) notes this effect in the law enforcement context, although he links it to sticky social norms that are better adjusted with “gentle nudges” rather than “hard shoves.”

Once in place, enforcement of the new institutions through sanctions for deviance (or rewards for compliance) becomes critical to whether they constrain actors. Rules are typically ambiguous and require interpretation (Lowndes & Roberts, 2013, p. 80). This is true in both historical and rational choice theory. Actors will make interpretations based on a range of factors. These may include norms, structures, and logics of appropriateness, or, from the rational choice perspective, variables in the bureaucrat's utility function, such as “salary, perquisites of the office, public reputation, power, patronage, ease of managing the bureau, and ease of making changes” (Niskanen, 1968, pp. 293–294).

Further, formal rules can change while leaving informal constraints intact (North, 1990, p. 91). Where the two conflict, change produced by whistleblowing laws could be minimal, or worse: deliberately misleading, suggesting security where there is none. Further, enforcement remains in the hands of institutional incumbents, who, if they act in a manner consistent with rational choice theory (e.g., Levi, 1997, p. 26; Stone, 2012, p. 346), may be considered repeat players (unlike most whistleblowers). This allows them to apply lessons from one case to another and suffer some losses for strategic advantage. The losers in such a scenario would be whistleblowers – and the public interest.

In this vein, some authors have a cynical view of whistleblowing regimes, considering most symbolic at best (cf. Martin, 2000, 2009; Martin & Rifkin, 2004; Pittroff, 2014). These assessments, however, are based on circumstantial evidence, typically using poor outcomes for whistleblowers as justification; a more thorough analysis of institutional factors has not been attempted. Despite differences, developments in both theory and methods have shown that it is possible to use both historical and rational choice institutionalism to take advantage of the strengths of each. For example, Lowndes and Roberts (2013) argue that historical institutionalism's reaction against agency has been too

strong and that there is a need for “bringing the actor back in” (p. 45). From the opposite perspective, rational choice theorists Katznelson and Weingast (2005) admit that “settings” may affect preferences over time (p. 3).

Rational choice institutional analysis can also use a historical lens to provide context and generate explanations for preferences that lead to inefficient equilibria. Both acknowledge path dependency, albeit with different reasoning. Further, rational choice institutionalists start with individuals and ask where institutions come from, while historical institutionalists start with institutions and ask how they influence behaviour (Zysman, 1994, cited in Thelen, 1999, pp. 378–379). Together, they consider exogenous and endogenous factors including national legal and political institutions, organizational practices, routines, norms, and incentives.

Table 3.1 sets out theoretical differences between historical and rational choice institutionalism and a rationale for using both to study whistleblowing.

Table 3.1: *Historical and Rational Choice Institutionalism and Whistleblowing*

	Historical Institutionalism	Rational Choice Institutionalism	Whistleblowing Regimes
Time horizons	From distant past to present	From recent past to immediate future	New institution being laid upon much older ones
Definition of institution	Formal and informal procedures, routines, norms, and conventions	Formal and informal rules of the game	Formal rules laid upon web of older rules, procedures, routines, etc.
Views on agency	Minimal; preferences shaped by institutions	Central; actors seek to maximize utility within rules	Incumbent agents have preferences and may be able to shape rules and interpretation of rules
Theoretical focus	Institutional and historical context for, and shaping of, agency	Institutions create stability and constrain worst excesses of agency	Whistleblowing regimes attempt to correct abuses of agency within older institutions
Theoretical assumptions	Actors use combinations of cultural cues and logic of appropriateness	Actors calculate best way to maximize utility within institution	Actors expected to conform to rules and find a way to integrate them with existing ones
Key objects of study	National polity and power elites	Individual choices and outcomes; sometimes organizations	Decisions of actors on how to respond to whistleblowing
Views on change	Change as context specific, formative moments (“punctuated equilibrium”) and path dependence	Change willed by actors; design via bargaining or exchange to establish equilibrium, or evolution; rational adjustment	Push for change arises from scandals and public expectations; consciously designed; agents may have different or conflicting objectives

(Adapted in part from Lowndes & Roberts, 2013, pp. 32–33)

The use of both historical and rational choice institutionalisms has precedents. North (1990), one of the architects of rational choice institutionalism, began to embrace “a non-functionalist, more historical view of institutions” (Pierson, 2000, p. 131) by tracing the historical emergence of different institutional arrangements that affect economic development. This work inspired others to combine rational choice models with “an intimate knowledge of history” (Levi, 2009, p. 119) to understand why certain equilibria were reached. The same occurred from the opposite direction. Levi (1997), studying conscription, and Greif (2006), studying medieval trade, used historical analysis, but employed “models and arguments... derived from assumptions about individuals making reasoned and interconnected choices” (Levi, 2009, p. 120). Thelen (1999) calls these researchers methodological border crossers and cites the Bates et al. (1998) development of analytical narratives, which attempts to incorporate elements of deduction and induction to draw broader generalizations from historical institutionalist analysis. Levi (2009), too, advocates “methodologically pluralistic” research, combining fieldwork, archival research, quantitative analysis, and surveys to consider the role of culture, norms, mental models, and other ideational and cognitive factors influencing institutional and regime change.

In addition, some research into resistance to *organizational* change has links with resistance to *institutional* change. Kusmierek (2001) critiques approaches that focus on working-level employees as the source of resistance to change in educational institutions, instead arguing for an examination of systems-level issues. This involves engaging all members of the organization in the planning and implementation of the change, and ensuring leadership creates confidence in the process. Molinsky (1999) uses institutionalist arguments to conclude that many change efforts are doomed by the same factors that drive them: The institutions are already damaged, with existing leadership entrenched and fearful of the effects of change. This leads to inflated rhetoric while the status quo is reinforced. Agócs (1997), studying attempts to introduce affirmative action into organizations, also uses institutionalist language in describing resistance to change. Further, she describes forms of resistance that parallel reactions to whistleblowing (denial, inaction, and reprisal) with one strategy being agreement to change – followed by subversion once it is implemented.

Of note, norms, climate, and culture are terms which are frequently used interchangeably in whistleblowing literature but have different meanings in organizational theory. This dissertation will be consistent with Schein’s (2004) definitions, in which he breaks culture down into artifacts, espoused values, and basic shared understandings (norms). Change is usually slow. Climate, on the other hand, is based on more superficial factors such as incentives, leadership, organizational arrangements, and situations. They can change quickly. Although the distinction is sometimes subtle, as a rule, this dissertation will treat Westminster institutions as having an overarching culture, with organizations

having climate. While a simplification, this distinction is useful to discriminate between Westminster institutional variables and organizational practices. With respect to institutional definitions, it appears that norms and conventions form the heart of Westminster culture. Norms are more difficult to ascribe to either climate or culture, however, as they may guide assumptions of both “how things are done in Westminster government” and “how things are done in this organization.” These may conflict; of interest to this dissertation is how and when.

3.1.3 Summary

Whistleblowing literature suggests that current theories do not provide a full explanation of why whistleblowing regimes face resistance and have contested outcomes. The logic of historical institutionalism suggests that answers might be found in the history of the institutions into which whistleblowing regimes are embedded, which are dominated by powerful incumbents who have been socialized by older conventions, norms, processes, and structures. Rational choice institutional theory offers another perspective: that incentives in the older institutions may subvert whistleblowing regimes if the regimes are not thoughtfully designed. A combination offers an opportunity to learn more about how both history and agency play a role in whistleblowing regimes.

3.2 Type of Research

This dissertation hopes to fill a gap in existing whistleblowing research and theory by using case studies with process tracing to identify previously unexplored causal mechanisms affecting outcomes in Westminster government whistleblowing regimes. The approach is consistent with “building block” research into complex social phenomena, with a goal of theory testing and development (Beach & Pedersen, 2016; George & Bennett, 2005; Yin, 2009). It is also consistent with recommendations for research into organizational responses (Vandekerckhove, Brown, et al., 2014, pp. 323–324) and dovetails with larger projects such as the Australian Whistling While They Work (WWTW) research project. There are three cases: the United Kingdom, Canada, and Australia. This section provides a rationale for the case study approach and describe the models informing the lines of inquiry.

3.2.1 Rationale and Description of Case Study Methods

Theory development on causal mechanisms in whistleblowing regimes is still in the early stages, with some attempts to build relationships between recurring empirical regularities (“theory-I” in Collier, 2011). The goal of this dissertation is to contribute to these attempts, building toward a better explanatory model of whistleblower regime outcomes (“theory-II” in Collier, 2011) with Westminster governments as the contextual background. While this limits generalization to other systems of government and the private sector, it hopes to provide insight

into potential causal mechanisms. It is also consistent with Collier's (2011) and Waltz's (2010) description of levels of prior knowledge that inform new studies, with conceptual frameworks and the identification of recurring empirical regularities as building blocks toward theory development.

Taken with the paucity of research on institutional factors on responses to whistleblowing, the case study approach offers advantages. First, it allows the analysis of complex social and historical phenomena (Beach & Pedersen, 2016; George & Bennett, 2005; Yin, 2009). In the current context, it allows the examination of what appear to be wide-ranging institutional variables which either directly affect whistleblowing regime outcomes or form part of causal mechanisms. Second, it facilitates nuanced findings. Without a fuller understanding of the constellation of variables within these regimes, it is premature to make claims about necessary or sufficient conditions for outcomes; to do so invites speculation about unidentified causes (Beach & Pedersen, 2016).

Canada was selected based on personal interest, while other cases were selected to be as similar as possible to eliminate variables such as governance, democracy, national culture, and rule of law (Beach & Pedersen, 2016; Berg-Schlosser & De Meur, 2009; George & Bennett, 2005). Limiting the study to Westminster governments was the first step taken. Data included the World Bank World Governance Indicator (WGI) ranking and Transparency International's Global Corruption Perceptions Index (CPI), the most broadly used measures of this kind (UNDP, 2008, p. 5). The WGI is a composite of six measures: voice and accountability, political stability and absence of violence, government effectiveness, regulatory quality, rule of law, and control of corruption (World Bank, 2010). The CPI is based on expert opinions concerning the country being rated (Transparency International, 2016). These measures were closely correlated, although not identical. Other sources included Global Integrity reports (Global Integrity, 2016), the list of parties to the OECD anti-corruption Convention (OECD, 2016b), and a report examining whistleblowing laws in G20 nations (Brown, Wolfe, et al., 2014). Several of Hofstede's (1984) cultural indices were used to compare culture, including power distance, uncertainty avoidance, and individualism-collectivism. The analysis identified Canada, Australia, and the United Kingdom as very similar.

The cases were then divided into three units of analysis: pre-regime institutional development, the nature and performance of the whistleblowing regime, and an examination of institutional factors affecting the whistleblowing regime. This facilitated greater consistency in linking macro- and micro-level behaviours (George & Bennett, 2005, p. 141). Key questions were developed corresponding to pre-regime developments and regime implementation. Whistleblower experiences were included to validate or refute evidence from officials and official records. These questions were linked to the relevant dissertation questions and data sought. Sources included official records, whistleblower case records (e.g.,

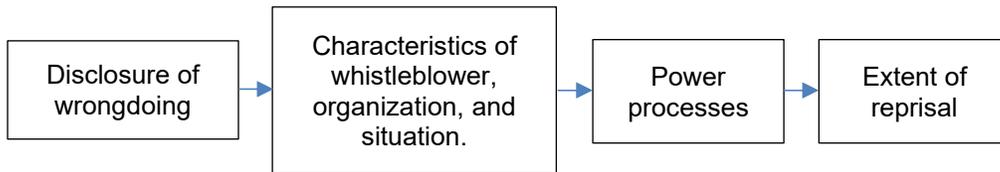
court records and media reports), and interviews. This was compiled into a matrix which can be seen in Appendix 3. Detail on data sources is provided below.

The case studies had three overlapping phases. First, background research was conducted into local Westminster government arrangements, conventions, and norms, focussing on the detection of misconduct and accountability. This helped identify patterns prior to whistleblowing regime development, key stakeholders and experts in Westminster government and whistleblowing (e.g., whistleblowers and advocates), the strategic interests and constraints of different actors, and the preliminary thematic codes for analysis (Levi, 1997). Second, the historical practices, current approaches, and evidence of the effectiveness of local whistleblower regimes were studied. Evidence varied between case countries, but included legal records, evidence from parliamentary committees, media reports of prominent cases, and assessments by expert stakeholders. Third, interviews were held with different stakeholders in each country. This included experts in Westminster governments and in whistleblowing. Participants included academics, advocates, and current and former public servants – including those with a role in the whistleblowing regime. Whistleblowers were also interviewed.

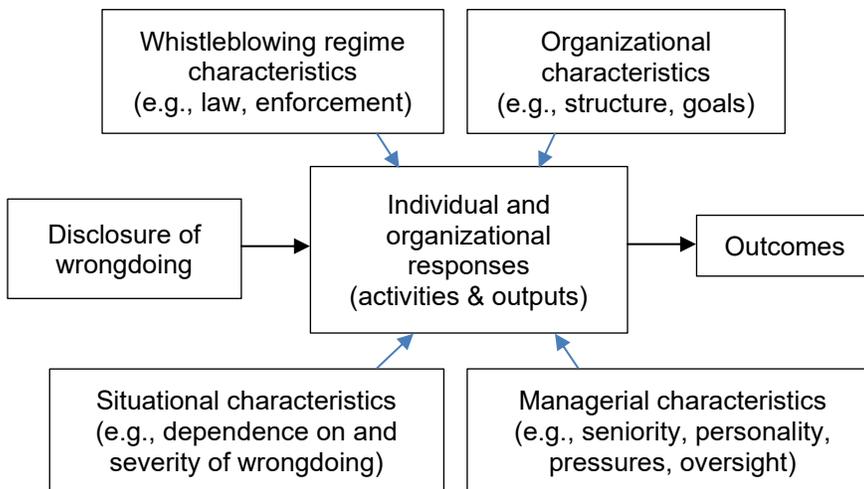
With respect to analysis, several authors argue that process tracing is an appropriate method when attempting to unpack causal mechanisms (Beach & Pedersen, 2016; George & Bennett, 2005, p. 63; Loyens & Maesschalck, 2014). Process tracing uses evidence from a range of sources to examine social phenomena and political action over time. It attempts to establish causal chains and mechanisms, with the simplest linking A as a cause of B, with B leading to C, and so on. It can be used deductively or inductively; this dissertation combines both to test a preliminary theory being tested but remaining open to other evidence. As described in the Analysis section, this can lead to a proliferation of variables which require multiple lines of evidence to verify and situate in theory. The literature suggests four tests of effect: straw in the wind tests contribute to or weaken theory, hoop tests suggest a necessary condition for an outcome predicted by theory, smoking gun tests either confirm or weaken a theory, and doubly decisive tests confirm or entirely refute a theory (Collier, 2011). In sum, process tracing has three advantages: First, it helps move past observation to understanding causality, second, it is useful in looking past favoured explanations, and third, it shows where data may be missing (Checkel, 2006).

3.2.2 Model Development

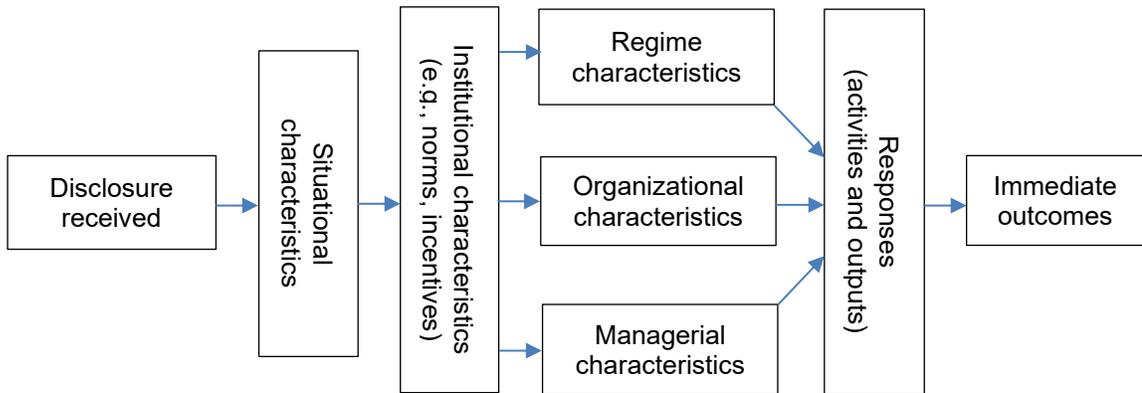
The current state of knowledge on the causal mechanisms in whistleblowing regime outcomes is still in the early stages of theory development, with attempts to build relationships between recurring empirical regularities (“theory-I” in Collier, 2011). The most mature and recognized model is that of Miceli et al. (2008). Figure 3.1 offers a simplification.

Figure 3.1: Simplified Model Predicting Reprisal

Dozo et al.'s (2018) model is more complex, containing a wide range of factors relevant to whistleblowing intentions, organizational responses, and outcomes. Figure 3.2 presents a simplification and reformulation.

Figure 3.2: Simplified WWTW II Whistleblowing Response Model

Dozo, et al. (2018) include a wider range of variables and outcomes, while Miceli et al. (2008) have a more parsimonious model of a theorized causal mechanism. Neither includes outcomes with respect to the wrongdoing that was disclosed. This is an important omission as there is a chain of logic – much of it implicit – which link the legislative and administrative framework of whistleblowing regimes to outcomes. Mandated activities (such as investigations) lead to outputs (such as findings of wrongdoing), upon which short-term outcomes (such as correction of the wrongdoing) depend. These are, tied to longer-term outcomes (such as trust, deterrence, and enhanced public sector integrity). In addition, whistleblowing regimes are usually part of broader ethics and accountability frameworks in which the ultimate goals are expected to be improved governance. Thus, if one aspect of the regime is deficient in design or implementation, the logic behind the regime fails. While previous models have captured some factors, this dissertation argues that they remain incomplete and that institutional factors may provide a missing link. Accordingly, this dissertation uses a modified version of Dozo et al. (2018), as depicted in Figure 3.3, to model the responses of whistleblowing recipients.

Figure 3.3: Dissertation Whistleblowing Response Model

Under this model, the first consideration of recipients is likely to be whether the situation is serious or whether they are implicated. Assuming that it is and that they are not, they will either consciously or unconsciously assess the institutional environment, considering conventions, norms, and incentives. Indeed, the assessment may merely be an instinctive understanding of appropriate action, such as a belief that it is not the place of a working-level public servant to question a decision by the minister and that the disclosure should be ignored. The belief that a disclosure is inappropriate may not be enough to suppress it, but it could shape how it is transmitted to others. Regime, organizational, and managerial characteristics will also play a role, either magnifying or mitigating institutional effects. For example, strict procedural requirements may force actors to complete an investigation. Actors can still resist, however, by performing a biased or incompetent investigation. As per Miceli et al. (2008), power relationships may also affect decisions on action if, for instance, the organization depends on the whistleblower's expertise. The result may still be suppression of the disclosure, but the whistleblower may escape reprisal.

With respect to outcomes, those immediately relevant to individual whistleblowers are whether the wrongdoing was resolved and whether they suffered reprisal for speaking up. Connecting this to regime performance, previous research has established that a) observers of wrongdoing are deterred from speaking up by the belief they will face reprisal and that the wrongdoing will remain uncorrected (Mesmer-Magnus & Viswesvaran, 2005; Miceli et al., 2008; Near & Miceli, 1996), and b) that if potential whistleblowers do not trust the whistleblowing regime, they will either remain silent or disclose the matter externally to the public (Annakin, 2011; Ethics Resource Center, 2012; P. Roberts et al., 2011; Deborah L. Seifert et al., 2014). Thus, if there is failure at the individual whistleblower case level, whistleblowers will lose trust and not use the regime. Wrongdoers will also not be deterred. Table 3.2 shows this relationship.

Table 3.2: Outcome Matrix for Whistleblowing Disclosures

	Wrongdoing corrected	Wrongdoing not corrected
Reprisal prevented/compensated	Regime reinforced	Regime weakened
Unrestrained reprisal	Regime weakened	Regime weakened

This is a simplification, as there are degrees of reprisal and wrongdoing may be only partially corrected – or corrected and then re-emerge later. In this dissertation, immediate outcomes are considered positive if reprisal is prevented, stopped, or compensated, and the wrongdoing corrected in a timely manner. “Timely” is necessarily subjective as whistleblowing cases are idiosyncratic: complex cases take more time. In cases where a disclosure is made in error – that is, the whistleblower has a reasonable belief that a wrongdoing has occurred but is simply wrong – “wrongdoing corrected” can be replaced with “disclosure is investigated competently and in a timely manner, with results and reasons communicated to all parties.” Informed by these definitions, a preliminary list of indicators was developed. They are listed in Table 3.3. below.

Table 3.3: Indicators of Interest for Each Unit of Analysis

1. Pre-Regime Arrangements
<ul style="list-style-type: none"> • Nature and effectiveness of pre-regime accountability mechanisms • Conventions and norms of the public service in detecting and correcting misconduct • Conventions and norms on voice and dissent in public service • Triggers or patterns preceding whistleblowing regime implementation
2a. Nature of the Regime
<ul style="list-style-type: none"> • Focus of the regime (e.g., process vs. outputs, whistleblowers vs. organizational leaders) • Whose interests most likely to be protected • Complexity and ease of use of the regime • Implicit and explicit goals and logic of the regime
2b. Regime Performance
<ul style="list-style-type: none"> • Components of regime in place (e.g., nominated officers, tribunals) • Existence and effectiveness of awareness and training • Levels of use, investigations, and findings • Fairness and competency of investigations • Frequency and consistency in correcting wrongdoing / protecting whistleblowers • Consequences for wrongdoers • Ease of access to redress mechanisms / adequacy of redress after reprisal • Levels of trust in regime and effects on deterrence of wrongdoing • Effects on governance (e.g., improved decision-making) • Satisfaction of different stakeholders with regime
3. Factors Affecting Whistleblowing Regime
<ul style="list-style-type: none"> • Consistency of regime with institutional conventions, norms, incentives, etc. • Effects of conventions, norms, and institutional environment on disclosures • Effects of incentives on disclosures

Consistent with debates on the nature of whistleblowing (notably Jubb, 1999; Miceli et al., 2014) and findings that correlate external whistleblowing with more comprehensive reprisal (Dworkin & Baucus, 1998; Mesmer-Magnus & Viswesvaran, 2005; Near & Miceli, 1996; Rehg, 1999), this dissertation began by discriminating between internal and external whistleblowing. Quasi-internal (i.e., outside the organization but still within government) disclosures were later added based on evidence that they were resented by institutional actors, yet generally accepted by those same actors.

Several Westminster institutional characteristics expected to support internal whistleblowing – that is, keeping problems in-house – include the adversarial nature of parliaments, parliamentary oversight (e.g., via committees), the convention on ministerial responsibility, and the political-administration divide. These increase the risk of a disclosure being politicized should it become public. Some conventions embedded in the public service bargain, such as tenure, frank and fearless advice, and confidentiality should also support internal disclosure as they assist ministers in their responsibilities to prevent misconduct and minimize error. The convention that civil servants implement the policies of the government of the day may discourage whistleblowing of any kind, especially if the wrongdoing is strongly advocated by a governing party.

Table 3.4 lists hypothesized relationships of internal and external whistleblowing with Westminster institutions. Appendix 2 contains a fuller list derived from the literature. These also served as preliminary codes for interview analysis.

Table 3.4: *Hypothesized Relationship Between Westminster Institutions and Whistleblowing*

Factor Type	Factor Sub-type	Effect on Internal Whistleblowing	Effect on External Whistleblowing
Westminster structure	Rigid hierarchy with few veto points	Neutral	Undermines
	Power concentrated in hands of PM / central agencies	Undermines	Undermines
	Departmental structures / specialization	Unclear	Unclear
	Parliamentary oversight of executive via committees and officers of parliament	Supports	Undermines
	Highly oppositional parliament	Undermines	Undermines
Westminster process	Accounting officer concept for administrative head	Supports	Undermines
	Effective internal mechanisms for detecting error and holding officials to account (e.g., audit, evaluation)	Supports	Unclear
	Means for administrative head to resist unethical/illegal instruction from minister	Supports	Undermines
Westminster convention	Ministerial responsibility / loyalty owed to minister, not public	Supports	Undermines
	Political-administration separation with administrative head as linchpin	Supports	Neutral
	Civil service appointed on merit	Supports	Neutral
	Civil service security of tenure	Supports	Neutral
	Civil servants may speak truth to power	Supports	Neutral
	Civil servants expected to loyally implement policies of government	Undermines	Undermines
	Confidentiality of advice	Neutral	Undermines
Institutional environment	Strong labour protections / unions	Supports	Supports
	Strong free speech rights	Supports	Supports
	Secrecy and national security law/policy	Supports	Undermines

These hypothesized relationships served as a starting point and were assessed based on lines of evidence, the number of case countries in which the effect was observed, and the apparent immediacy and strength of the effect. For example, hierarchical norms on dissent were observed in all countries, in whistleblowing cases, legal records, government policy documents, and interviews as having an immediate negative effect on outcomes for whistleblowers. The effect was assessed as strong for external disclosure and weak for internal disclosure. In contrast, the merit principle in the staffing of public service positions was identified in interviews, in statutes, government policies, and in the literature, but was not consistently identified as an immediate cause of reprisal or cover-up in whistleblowing cases. Rather, those making or directing reprisals ranged from internationally recognized scientists to generalist administrators of varying levels

of competence. Thus, the effect was assessed as weak, with excessive responsiveness as a mediating or moderating variable (this relationship being as yet unclear). This is consistent with process tracing methods, described below.

3.2.3 Summary

This section described the case study approach being used to study whistleblowing regimes in the United Kingdom, Australia, and Canada. There are three in-case units of analysis: the history leading to the regime, the nature of the regime chosen and evidence of effectiveness, and an assessment of institutional factors affecting the regime after implementation. The model being tested assumes that actors will have internalized the norms and conventions of the institutional environment, may consider incentives, and that these will shape their responses to whistleblowing. Further, individual whistleblowing cases are expected to affect the regime by either increasing or decreasing trust, use, and deterrence. Process tracing is used to connect disparate lines of evidence, building on existing models of responses to whistleblowing.

3.3 Data Collection

This section describes the data collection strategy and process. Cases were selected to be alike enough to isolate institutional variables of interest. Data was collected from literature on whistleblowing regimes in question, records, media reports, expert interviews, whistleblower interviews, whistleblower case records, and media reports, where available.

3.3.1 Literature and Other Records

There were two phases of review of literature and records. The first identified intersections between literature on whistleblowing and Westminster systems, facilitating the development of preliminary codes for analysis. It also enabled a preliminary review of whistleblowing regimes. The second phase focussed on local Westminster governments and whistleblowing regimes. This supported an understanding of the history and structure of Westminster governments, how they have evolved toward the point at which whistleblower protection could become enshrined in law, and which aspects of Westminster government appeared most relevant to a whistleblowing regime. It became apparent that conventions play a dominant role, including frank and honest advice, confidentiality, loyal implementation of government policies, and ministerial responsibility. These conventions were tagged as baseline thematic codes.

The literature review suggested sources that would illuminate the development and implementation of whistleblowing laws in the United Kingdom, Australia, and Canada. While each regime developed at a different pace and in a different manner, there were similarities: a trend towards greater transparency in

government, the introduction of neoliberal ideas into political theory and public administration practice, and a series of scandals and crises that resulted in public outrage and calls for reform. These trends, ideas, and scandals frequently culminated in inquiries, reports or white papers, such as the Ontario Law Reform Commission *Report on Political Activity, Public Comment, and Disclosure by Crown Employees* (1986) and the Fitzgerald Inquiry in Queensland (1989).

In addition, whistleblowing regimes appear to have been resisted until a tipping point was reached. In Canada, the most obvious trigger was the Sponsorship Scandal, which was the subject of the Gomery Inquiry (Canada. Commission of Inquiry into the Sponsorship Program and Advertising Activities, 2005c). In Queensland, the findings of the Fitzgerald Inquiry into police corruption provided a similar impetus. The review of whistleblowing laws suggests that once one jurisdiction passed whistleblower protection legislation, other national and regional jurisdictions followed. What was not initially clear was whether the laws were developed in an isomorphic fashion, how those regimes were structured, and how their performance would be measured – if at all. As the regimes are relatively new, cabinet materials are still not accessible since they are exempted from freedom of information laws. This made interviews with experts essential.

Legislation, supporting documents, government communications, and media releases at the time (where available) offered insight into the explicit, publicly stated purposes and justifications of the laws. Whistleblowing laws contain linkages with other legislation such as for privacy, health and safety, or employment protections. They also establish boundaries of authority with respect to other oversight mechanisms, such as anti-corruption commissions and auditors general. Guidance material produced by central agencies were useful in understanding procedures and duties for employees. Most of these records were available online; where they were not, freedom of information requests were filed with relevant agencies. A failure to respond was treated as an absence of data for the item in question. For example, a request for logic models and performance frameworks received no response from most jurisdictions.

For data on the operation of whistleblowing regimes, several sources were used, including annual reports, media reporting into whistleblowing disclosures, judicial or adjudicative decisions, and other special reports such as evaluation studies. The availability and quality of such reports was not uniform. In addition, where available, third-party assessments on the laws or on specific whistleblowing cases were used.

3.3.2 Expert Interviews

The use of experts in social science research is well established, as they offer valuable insights that may not be available in official records (Beach & Pedersen, 2016; Checkel, 2006; Yin, 2009). This dissertation sought insight in three areas:

the events and decisions made prior to implementation of the whistleblowing regimes, the details of implementation of the whistleblowing regimes, and whether and how whistleblowing is appropriate in Westminster governments.

Expert participants were selected using snowball sampling from four groups that might be able to offer insight into the development and implementation of whistleblowing regimes in the case countries. This included current or former executives in the relevant public services, officials with a role in the whistleblowing process (e.g., ombudspersons, commissioners, and departmental officials designated to receive disclosures), academics with knowledge either on whistleblowing or Westminster government (preferably both), advocates, and union representatives. These perspectives offered a balance between theoretical and practical aspects of regime development and implementation. There was overlap as some academics had also had practical experience in public administration or advising whistleblowers. Expert interviews were held between November 2018 and June 2020, with supplementary interviews in October 2021. Of 105 potential participants, 46 agreed to be interviewed. Table 3.5 provides a list; note that the number exceeds 46 because several participants had expertise or experience in more than one category.

Table 3.5: *Interview Participants by Type and Jurisdiction*

Type of Participant	#	Canada	Australia	UK	International
Advocates/Union	19	5	4	6	4
Designated Recipients	10	6	2	2	
Public Service	8	5	1	2	
Academics	9	6	2	1	2
Westminster Specialists	3				3
Other (e.g., MP/private sector)	3	2	1		
Whistleblowers	21	15	5	1	1

Participants were first approached by email, either directly or by introduction. The interviews took approximately an hour and were semi-structured in order to allow the participants to focus on the aspects of most significance to them and to facilitate unguarded communication; this also enhanced the reliability of the evidence they provided (C. Roberts, 1996, p. 165). Questions were targeted to the specific regime. The questions fit into two categories: how whistleblowing fits into Westminster institutions (or their perceptions of it) and what they believed a whistleblowing regime should look like, in terms of processes, sanctions, and outcomes. Appendix 4 shows the interview questions.

Academic experts were most aware of the developments in theory and practice in whistleblowing regimes, while advocates had a better awareness of the details of the implementation of whistleblowing protections within their jurisdictions. Participants playing a role in the whistleblowing regime, such as commissioners

and ombudspersons, were also aware of the issues of implementation. These officials appear to straddle the boundary between organizational leadership and whistleblowers. They have several potentially conflicting imperatives as they may be mandated to investigate the wrongdoing of the organizational and institutional leadership that appointed them. They are also tasked with protecting the whistleblowers who approach them and either directly or indirectly report to parliament on the effectiveness of their own efforts. This special position underlines the importance of recipients of whistleblowing as the second most important actor in the whistleblowing process, after the whistleblower (Miceli et al., 2008; R. Moberly, 2014).

Due to confidentiality requirements, interviews with whistleblowing recipients had to be conducted at a level of abstraction that excluded identifying information. In addition, personal information on all participants was secured in a password protected drive and in a locked cabinet, with codes assigned in place of names. All expert interviews but three were recorded with the consent of the participants using an audio recorder, telephone recording app, or computer app. Notes were also taken as a backup, which proved necessary when audio recordings were corrupted in two instances. Recordings were stored on a hard drive that was kept in a locked cabinet when not in use. No copies were kept on remote servers and all recordings were destroyed once transcription was completed. Digital copies of transcripts were password protected and physical copies of transcripts and rough notes secured in a locked cabinet.

Overall, the use of different perspectives improved the dissertation by providing a balance of viewpoints, biases, and assessments of regime efficacy and goals. The semi-structured approach was valuable with public servants, some of whom were initially guarded in their answers. Some appeared to tailor their responses as would be predicted by social desirability bias, giving answers that would reflect well on them, but most relaxed during the interview and appeared to give responses that appeared candid. Several public service participants told stories relating their experiences dealing with challenges, dissent, or whistleblowing. These related to beliefs about how problems within their institutions should be reported and handled, revealed beliefs about whistleblowing, or noted other pressures. Senior officials favoured “good news” stories and appeared sensitive to the fact that institutional norms might not conform with broader public norms. Advocates favoured stories with poor outcomes and could be unsympathetic (or unaware) of institutional pressures, norms, and contexts within which senior public officials operate.

Interviews were either held in person or remotely, using an app or device chosen by the participant. In-person interviews were preferred, as they enable greater interaction and facilitate the reading of body language between interviewer and participant (Remenyi, 2011). This, in turn, facilitated trust-building, which proved valuable in obtaining later assistance and clarification. The second option was

using an app to communicate remotely with video, such as Skype, FaceTime, WhatsApp, or Zoom. This became a necessity during the COVID-19 pandemic. The third option, telephone, was worst as it resulted in inferior audio, distorted accents, and precluded non-verbal communication. Fortunately, only four expert interviews were conducted by telephone.

3.3.3 Whistleblower Interviews

Whistleblowers were important to this dissertation in two ways. First, their whistleblowing experiences were useful in corroborating or refuting other narratives. Second, some had become advocates and were well informed on their local whistleblowing regimes. If their regime expertise was more relevant to the dissertation – or if they preferred not to speak to their own cases – they were treated as experts. Two interviews with different questions were conducted for those with valuable information in both categories. Whistleblowing cases were analyzed to identify personal characteristics, the nature of the wrongdoing, situational characteristics, responses to the disclosure, and institutional implications of the case. Appendix 4 provides a full list of questions, while Appendix 5 lists indicators for whistleblowing cases.

As with experts, whistleblower participants were recruited using networks and a snowball sampling process. However, obtaining participants outside Canada proved challenging. Research into whistleblowing to date has relied on survey methods, experiments based on scenarios, or case studies. In surveys whistleblower participants are typically part of a large sample of (for example) civil servants, military personnel, or accountants. These surveys strive to measure observed rates of wrongdoing, disclosure, and responses in the broader group. Experiments are frequently limited by the participants available to the researchers, such as university students and professional peers (e.g., in accounting), and may not actively solicit whistleblowers. Case studies have been conducted at both the regime and individual whistleblowing case levels.

There are three difficulties in recruiting whistleblowers in research. Many successful whistleblowers do not consider themselves as such – the issue is quickly corrected, and no reprisal is felt, leading them to believe they were “just doing their jobs” (Kenny et al., 2018). Even whistleblowers who do suffer reprisal may be reluctant to identify, perhaps due to the stigma attached to the label (Fotaki et al., 2015; Heumann et al., 2016; Kenny, 2019). Additionally, the cases that are more visible are those which have a negative outcome, resulting in court action or press coverage. These cases tend to have the most extreme outcomes. Further, if court or adjudicative action is resolved through mediation or arbitration, non-disclosure agreements are common (Ballan, 2017; T. Devine, 2016; Fasterling, 2014). In other words, whistleblowers tend to be either highly visible or invisible, with many of the most interesting cases in the latter category.

As a result, researchers wishing to identify whistleblower cases must use any tools available to recruit participants. Researchers in the past have recruited whistleblowers via advocacy groups, common contacts, and via whistleblowing and research networks. De Maria (1994) and De Maria and Jan (1994) used a combination of networking and advertisements to obtain a sample of 102 whistleblowers. Alford (2001) sat in on whistleblower groups and developed connections with journalists, ultimately resulting in whistleblowers approaching him or being referred. Key in these efforts was the establishment of trust: whistleblowers are vulnerable to reprisal and, in many cases, feel that authorities have betrayed them (Annakin, 2011; Lewis, 2011).

The author of this dissertation, a former whistleblower, developed similar connections via support and advice groups such as Canadians for Accountability (now Anti-corruption and Accountability Canada), the Centre for Free Expression Whistleblowing Initiative at Toronto Metropolitan University, and Whistleblowing Canada. As a result, accessing Canadian whistleblowers was relatively easy, with 14 agreeing to participate, including one in which the outcome was the wrongdoing corrected and the whistleblower escaping reprisal. Access to Australian and British whistleblowers was much more difficult. It took several efforts to obtain three Australian whistleblowers. The assistance of Australian whistleblowing networks such as Whistleblowers Australia and the Whistleblowers Action Group Queensland was crucial in this respect. Several others expressed interest but failed to respond to follow-up inquiries or fell outside the scope of the dissertation (e.g., not public service, whistleblowing occurred too long ago); more could potentially have been obtained had there not been time constraints. All Australian whistleblower participants were already on the public record and no longer vulnerable to reprisals. With respect to the United Kingdom, repeated efforts over a year to reach out through networks such as the International Whistleblowing Research Network, WhistleblowersUK, and Protect (previously Public Concern at Work) proved fruitless, although two union officials served, to a degree, as proxies. To increase interest, a small payment equivalent to CA\$35 was offered to all whistleblower participants. The effect appears negligible, with trust due to shared experiences appearing more important.

It is unclear why recruiting U.K. and Australian whistleblowers was so difficult, though findings in this dissertation suggest four reasons: fear of reprisal in the civil service, confidentiality requirements between NGOs and clients, the author being an unknown quantity, and other pressures on NGOs which relegated the author's request to the bottom of the pile. In addition, some whistleblowers declined to participate because they either felt their issue was no longer relevant or because they were concerned about non-disclosure agreements or reprisals. NGOs staffed by experts and former whistleblowers, and lawyers with experience in whistleblowing. In addition, case data was gleaned from reports, the media, and court records. Ultimately, of the 17 participants, 16 resulted in reprisal, with

varying degrees of success in correcting the wrongdoing. Interviews were held between April and July 2020.

Potential participants were first approached by secure, encrypted email (Proton Mail), either directly or by introduction. Appendix 6 contains a sample of the recruitment letter sent to potential whistleblower and expert participants. The email made clear the scope of the questions and the measures being taken to protect their identities, including suggestions to use secure email platforms and videoconferencing apps.

Interview questions were different than those of experts for two reasons: first, most whistleblowers are not experts in the operations of Westminster governments, being rather experts in the field in which they worked (e.g., scientists and lawyers). Second, whistleblower experiences were intended to validate or refute official narratives and other interviews. Accordingly, they were asked to tell their “stories” in the way they preferred. Unlike expert interviews, in which participants told stories incidental to the questions, whistleblower stories were the central part of the interviews. Key elements were their lived experiences and ex post sense-making. This sense-making arises from an effort to find new meaning after the traumatic experience of being cast out of organizations and professions to which they had previously attached their loyalty and sense of self (Kenny, 2019; Kenny et al., 2018). Whistleblower interviews helped facilitate a deeper understanding of how individuals who speak up can fall afoul of unspoken institutional norms while believing they are complying with a duty, as well as the pitfalls of official channels. Whistleblowers were then asked follow-up questions about responses within their organizations – such as support from others, their perceptions of organizational culture, and patterns of reprisal. Several questions focussed on personal assessments of organizational leadership, how they perceived the whistleblowing regime to be working, what they perceived as the desired outcomes of the whistleblowing regime, and suggested improvements. The full list of questions can be seen in Appendix 4.

While all participants appeared to respond as honestly and completely as possible, publicly available documents were used to validate and supplement whistleblower interview responses where possible. These included judicial and adjudicative decisions, media reports, and previous case analysis. The availability of supporting data varied from nothing, in the case of three whistleblowers, to several volumes of reports by commissions of inquiry. Unlike expert interviews, no in-person interviews were possible due to the COVID-19 pandemic. Three interviews were conducted by telephone, and the rest by Skype, WhatsApp, and Zoom.

All but three whistleblower interviews were recorded with the consent of the participants using a device such as an audio recorder, telephone recording app, or computer app. Notes were also taken as a backup. Recordings were stored on

a hard drive that was kept in a locked cabinet when not in use. They were transcribed by hand and reviewed for accuracy; participants were asked for clarification where there was ambiguity. No copies were kept on remote servers and all recordings were destroyed once transcription was completed. Digital copies were password protected and physical copies of consent forms, transcripts, and rough notes secured in a locked cabinet. If there was any possibility that third parties might ascertain the identity of a whistleblower by context, the information was edited or excluded from the dissertation. Several whistleblowers were on the public record already, but their information was also treated as confidential.

3.3.4 Summary

This section described the case selection process for countries, participant identification and recruitment, and the data collection process. The cases were selected because they were alike in terms of governance, levels of corruption, and culture, to better isolate institutional influences of interest. Documentary data from literature, websites and FOI requests provided baseline data on the structure of government and whistleblowing regimes. Interviews with experts filled in gaps in records and provided data on unstated norms, beliefs, and practices. Whistleblower cases provided a third line of evidence, helping identify where the implicit theory of whistleblowing regimes plays out in practice.

3.4 Analysis

This section includes the process tracing methods used, and describes interview coding, and logic model development. The approach used a multiple case design with embedded units of analysis within the country cases. The method for within-case analysis was process tracing. Interviews were analyzed using thematic coding, and, to a lesser degree, story analysis. Across all units of analysis, inductive logic was used to understand motivations, goals, and beliefs of major actors, while deductive logic was used to determine whether the causal mechanisms match the theoretical model. The intent was to triangulate evidence on “the logic of the situation, the logic of dispositional traits, and the logic of subsequent actions” (C. Roberts, 1996, p. 183). Process tracing allowed for the identification of a wide range of variables, which could then be narrowed to focus on those of relevance to Westminster whistleblowing regimes. The use of whistleblowing cases contributed to the validation and refinements of process tracing. It also facilitated understanding of the logic of whistleblowing regimes.

3.4.1 Process Tracing

The type of process tracing used was a combination of George and Bennett’s (2005, pp. 210–211) detailed narrative and analytical approaches (referred to as narrative and analytical colligation in C. Roberts, 1996), and the approaches

described by Checkel (2006) in his study of the socializing power of European institutions. In the current context, traditional Westminster arrangements were the starting point, with a chain of events (“A”) leading to a whistleblowing regime (“B”). The regime then becomes the starting point for other activities and interventions (“C”) leading to outcomes – correction of wrongdoing, enhanced integrity, and so on (“D”). Thus, after establishing the ground state for each case’s Westminster accountability arrangements, the analysis first mapped the patterns of events leading to regime enactment. This was relatively straightforward as they were linear and regular across cases. The next task was assessing the nature and performance of the regimes, to better understand their nature and whether they are, in fact, what governments promised at the time of implementation. If they are not, then the point of interest becomes what factors contribute to the suboptimal outcome. Table 3.6 lists the methods used to identify the events, influences, and factors in the pre-regime period, and those after the regimes were implemented.

Table 3.6: Process Tracing Methods

Process	How Key Factors Identified	How Validated
Emergence of whistleblowing regime	<ul style="list-style-type: none"> • Literature review for preliminary assessment • Interviews • Government and NGO studies and records 	<ul style="list-style-type: none"> • Assessment closeness of participant to events • Consistency across cases • Triangulation of evidence
Implementation and operation of whistleblowing regime	<ul style="list-style-type: none"> • Candidates identified from literature • Interview coding • Factors narrowed using weight of evidence • Validation 	<ul style="list-style-type: none"> • Different lines of questioning • Balancing of perspectives • Subjective assessment of reliability of participants (e.g., apparent bias, motives, level of expertise) • Corroborating government or legal records • Whistleblower case analysis (i.e., does real-world experience support or undermine the candidate factor?) • Frequency with which factor was identified • Triangulation of evidence

This approach established the institutional context with associated potential points of friction in the period before regime enactment. There were some practical limitations that constrained the analysis of the initial development of national and state or provincial regimes. This included access to original decision-makers at the most senior levels: Many are quite elderly or have since passed away and may not have been able to speak openly in any event.

The second level of analysis was regime implementation and operation. Of interest were the structure of the new whistleblowing regimes, the implicit and explicit logic of the whistleblowing regimes, identification of the key actors and their goals, motivations, attitudes, and reactions to the regime. Data from

relevant government documents and expert interviews was used to develop a draft logic model for a generic whistleblowing regime. Expert participants expressed views about how whistleblowing in their government should work, either with suggestions for improvements or through stories of their own experiences. For example, it became evident that one version of whistleblowing that was favoured by several former public servants was more consistent with pre-regime whistleblowing, in which there were no dedicated disclosure avenues.

The evidence was also assessed through an institutional lens. Institutional theory suggests that once the regimes were fully operationalized, incumbent actors – who could be making disclosures of wrongdoing, receiving them, or implicated by them – could be expected to begin acting according to their preferences, and/or in accordance with logics of appropriate action. Behaviour would be reinforced or discouraged by incentives, some of which may conflict. Interviews were crucial as those preferences are not fully discoverable through official documentation (which may be aspirational or symbolic) and because some incentives are more obvious than others. Interview coding provided insights, which was supplemented by an examination of government records and communications. Whistleblower cases were treated as tests of whistleblowing regime effectiveness and compared with the narratives of other participants and government communications. They were also helpful in identifying assumptions and risks in regime implementation, as well as institutional factors at play. To do this, analytic process tracing was used to identify the features of their experiences. This was done by asking whistleblowers to tell their stories in the manner they wished, then breaking the cases down into key elements and in the sequence in which they occurred. The elements were grouped by characteristics of the whistleblower, type of wrongdoing, situational characteristics, responses to the disclosures, and a preliminary assessment of institutional implications of the cases. These correspond to the indicators in Appendix 5.

Stories provided another source of evidence. Stories, such as those told around the (allegorical) water cooler, are typically short and one-dimensional. Nonetheless, they contain meaning, revealing the beliefs and values of the storyteller, may serve to transmit culture between organizational members, and are useful in understanding problems that are both ambiguous and important (M. S. Feldman et al., 2004; Maynard-Moody & Kelly, 1993; Weick, 1987). Stories have been used to analyze whistleblowing in the U.S. civil service: Maynard-Moody and Kelly (1993) used stories to examine the political-administration divide, identifying political meddling, conflicts, cooperation, and whistleblowing. Kenny (2019) used a similar approach, starting her book with “a whistleblowing fairy tale.” Senior government officials who participated in this dissertation sometimes told stories which conveyed meaning, such as how wrongdoing should be disclosed. These stories were buttressed by opinions expressed elsewhere in the interviews, such as the characterization of wrongdoing as a

policy dispute. In contrast, some advocates interpreted worst case whistleblower outcomes as evidence of malice on the part of senior officials. Where possible, the implicit meaning of these stories was identified and coded.

Finally, while process tracing facilitated the identification of new causal factors in whistleblowing and theory-building, it was not without limitations or trade-offs. As noted by Checkel (2006), theories that emerge from inductive processes may not be parsimonious, sometimes trending towards “kitchen sink” arguments in which nothing is excluded. This is mitigated in this dissertation as the approach is primarily deductive, starting from a template of variables which were then confirmed, eliminated, or left open to further study. Nonetheless, it is true that preliminary analysis produced an extensive list of other variables. Some of these have already been well studied, such as predictors of reprisal. These were not explored in depth. Others were tested for reliability, with some standing out by weight and reliability of evidence. In addition, with three case studies and three units of analysis, it was necessary to limit the depth of inquiry when testing variables. For example, judicial rulings were a valuable source of evidence, but an exploration of court transcripts could not be done within a reasonable time. Regularities across cases were used to mitigate this, acting as another test.

In addition, proxy measures are common in process tracing. In this dissertation, several were required – for trust in the whistleblowing regime, for example – some of which were closer to the variable in question than others. The approach used to mitigate this was to identify the proxy measure with an assessment of its validity and weigh its value in process tracing tests. For example, confidence in disclosure processes was treated as very close to trust in the regime and weighted accordingly. Confidence in harassment procedures is not as close, so had less weight. An assessment of participant bias was also important. This was achieved by making an overall assessment of interview content, considering the interests of the participants and by identifying unguarded moments within the interview – moments in which participants were relaxed and deviated from early positions. More generally, multiple lines of evidence with a balance of perspectives were crucial to identifying the most important variables. It remains possible – likely, even – that there are other variables at play which were not identified as significant. These, it is hoped, can be pursued in future studies.

3.4.2 Interview Coding

This dissertation is exploratory, hypothesizing that institutional variables are interacting with other variables to affect the expected outcomes of whistleblowing regimes in Westminster countries. The review of whistleblowing and Westminster literature produced a preliminary list of 27 codes (Table 3.4 provides highlights). Still, while Westminster conventions and structural arrangements were strong a priori candidates, remaining open to other variables was an objective of this dissertation – even at the potential cost of eliminating Westminster variables.

Accordingly, coding was iterative, adjusted as the interviews progressed, with consolidation and simplification occurring after all expert interviews had been coded. This is consistent with the advice of Hsieh and Shannon (2005) and Williams and Moser (2019). Expert interviews were grouped by case country unless participants were speaking to all regimes or on the matter of whistleblowing in general. Whistleblower interviews were grouped by country, and, where possible, coded in the same way as expert interviews. This produced considerably fewer coded passages than expert interviews; the primary focus of whistleblower interviews was their own cases, not the functioning of the regimes. Appendix 2 provides a full list of preliminary codes, while Appendix 7 provides a list of codes derived from interviews. Table 3.6 lists the most significant.

Table 3.7: Most Significant Codes After Interviews

Westminster Institutions
<ul style="list-style-type: none"> • Hierarchy and associated norms • Senior officials' means to resist political direction • Public service bargain: loyalty to minister / merit principle / frank and honest advice / confidentiality of advice • Political involvement in administration / control of incentives • Norms on dissent
Incentives
<ul style="list-style-type: none"> • Incentives to suppress disclosures and make reprisals (e.g., performance pay, career progression, electoral prospects) • Consequences for misconduct (or lack of)
Institutional Environment
<ul style="list-style-type: none"> • Labour protections (employment law, union support, judicial interpretations) • National security and secrecy laws or policies
Organizational Climate
<ul style="list-style-type: none"> • Secrecy and loyalty norms • Leadership competence, ethics, and pressures • Prevalent negative attitudes on whistleblowing
Situational Characteristics
<ul style="list-style-type: none"> • Wrongdoing is serious, systemic, or normalized • Independence, bias, and competence in investigations • Oversight independence and performance
Whistleblowing Regime Implementation
<ul style="list-style-type: none"> • Trigger and motive behind regime development • Independence, bias, and competence in investigations • Oversight independence and performance

Interviews were analyzed and coded shortly after they were conducted. First, they were transcribed and reviewed for accuracy, which facilitated an overview of the participant's perspective and what they considered most important. They were then coded using NVivo software. Finally, the codes were validated and

consolidated by reading the texts captured under each code. Cognizant of problems of “indiscriminate pluralism” in process tracing (C. Roberts, 1996), in which the scope of variables contributing to causality are potentially infinite, this dissertation used a pragmatic approach, attempting to thread the needle between minimalism, which might oversimplify, and totalism.

Codes with low rates of regularity were not rejected out of hand but weighted on the level of insight and the reliability of the source. As different participants had different experiences and all appeared sincere, this underlined the importance of a diversity of perspectives. To control for social desirability bias, this dissertation placed more weight in unguarded expressions, which usually emerged as interviews progressed and participants felt more comfortable. However, even obvious misconceptions and anodyne official communications provided valuable evidence – not, perhaps, of the functioning of the regime, but of the beliefs, intentions, and motives of the actors involved.

Finally, some sources were more useful than others: Snowball sampling led to some interviews with participants who could not speak to public service whistleblowing. However, they were included because they were considered important by other participants. For example, personnel at a private sector company were included because a former public servant considered their model to be an ideal one. Overall, Beach and Pedersen’s (2016) approach to assess the probability that evidence was accurate using “additive properties” of evidence, considering the knowledge of source, how many steps the source was removed from actual evidence, and possible motives for distorting content. Triangulation also helped determine overall reliability.

3.4.3 Assessing the Performance of Whistleblowing Regimes

The performance of whistleblowing regimes is contested. This goes beyond interpretations of evidence, as stakeholders have divergent views on the objectives of the whistleblowing regime, exacerbated by the fact that they have been developed with minimal – if any – attention to theories of change, logic models, or performance frameworks.

There are also methodological issues. Moberly (2012), who has followed U.S. law for decades, notes that it takes years for the effects of whistleblowing law to be felt. In addition, data reported under these regimes is superficial, with annual reports including only raw numbers on queries, disclosures, complaints of reprisal, and investigations. Some cases are reported in minimal detail, but numbers are insignificant and the quality of the findings and recommendations generally cannot be validated unless they are appealed to a court or tribunal. The U.K. regime has no reporting requirement at all. Further, baseline data with which to assess performance over time is very rare, having only been collected in U.S. Merit Systems Protection Board surveys and the Australian WWTW studies.

However, the U.S. surveys have only collected this data three times and Australian governments have not followed up with further comparable surveys. In this environment, it is unsurprising that different actors make divergent claims on the achievement of regime goals.

Authors have defined whistleblowing success in different terms. Near and Miceli (1995) defined effectiveness in whistleblowing as “the extent to which the questionable or wrongful practice (or omission) is terminated at least partly because of whistle-blowing and within a reasonable time frame” (p. 681). Dworkin and Baucus (1998) suggested success comes “if the organization launched an investigation into the whistleblower’s allegations—on their own initiative or required by a government agency, or if the organization took steps to change policies, procedures, or eliminate wrongdoing” (p. 1289). Elliston et al. (1985) argued that assessments of whistleblowing should consider whether whistleblowers achieve what they had in mind or whether others heeded their warnings. Perry (1993) included several measures of effectiveness, such as an organization’s ability to arrest declining performance by acting appropriately on whistleblower claims, and the organization’s ability to maintain control of solutions to the problems exposed by the whistleblower – rather than have them imposed by external authorities. Providing broader criteria, Apaza and Chang (2011) define effective whistleblowing as meeting four criteria: an investigation is launched, the organization takes steps to change policies or procedures, the organization terminates the wrongdoing within a reasonable time frame, and there is no retaliation against whistleblowers.

In business ethics literature, on the other hand, whistleblowing is often rationalized in broader utilitarian terms. Early detection of wrongdoing allows quick correction, reduces losses, prevents reputational damage, reduces the chances of regulatory interference, and may prevent the failure of the firm – as occurred in Enron and WorldCom (e.g., Callahan et al., 2002). Studying public sector ethics and disclosure regimes, scholars have justified whistleblowing regimes as supporting ethical decision-making and codes of conduct (e.g., Carson, 2006; Kernaghan, 2006). Paul Thomas, in an unpublished 2011 presentation, listed whistleblowing regime goals as the prevention, reduction and correction of serious wrongdoing, the provision of support for whistleblowers, cultural change, increased efficiency and effectiveness, strengthened ethics, treating all parties with due process and fairness, and greater transparency and public trust. As he notes, however, these multiple (and sometimes conflicting) goals are characterized by shared responsibility and blurred accountability, with media observers tending to see whistleblowing oversight officials as saviours (or villains) without a full understanding of the complex political and administrative environments in which they must work.

Thus, there are wide range of potential measures of regime success, ranging from the outcome of individual whistleblower cases to systemic (and institutional)

outcomes. This suggests that evaluation tools may be helpful. Evaluation specialists use different terms for immediate, medium, and long-term objectives. For the purposes of this research, the pipeline logic model (Funnell & Rogers, 2011) will be used, with inputs leading to activities, leading to outputs, leading to immediate outcomes, which in turn contribute to intermediate and long-term/ultimate outcomes. This is consistent with Treasury Board of Canada practices (Canada. Canada Centre of Excellence in Evaluation, 2010).

The literature review revealed that nearly all case country national and state, provincial, and territorial whistleblowing laws have explicit purposes. The three most common were to facilitate or encourage disclosure, to protect disclosers, and to facilitate investigation. In addition, some include implicit objectives, such as deterrence of wrongdoing, and long-term objectives, such as enhanced public trust in government. That said, from an evaluation perspective, the most common purposes stated in legislation are not outcomes. Rather, they are inputs or activities into whistleblowing case resolution. This is an important distinction, as policies and programs are usually implemented as part of a larger strategy to address a particular problem, be it homelessness, climate change, or declining trust in public institutions.

At the time of writing, only two jurisdictions have or are developing logic models and performance measurement frameworks: Ontario and the government of Canada. Even so, Canada's PSDPA logic model contains conceptual errors, categorizing investigations as activity, output, *and* outcome, and conflates reporting and awareness activities with implementation. It does not identify risks or assumptions and appears to have been abandoned in 2008. Across all cases in this dissertation there is little evidence of a robust evaluation of any whistleblowing regime. To the extent they have paid any attention at all, legislators and policymakers have relied on periodic legislative reviews, numbers of disclosures and investigations in annual reports, and occasional case reports. This paucity of evidence gives critics a basis on which to argue that an unstated goal is to manage or channel whistleblowing through internal mechanisms and prevent misconduct from becoming public knowledge (e.g., D. Hutton, 2017; Martin, 2003; McEvoy, 2016).

Finally, Stone (2012) identifies several hazards in diagnosing policy failures that are relevant to this dissertation. Perhaps foremost among these, any assessment of a whistleblowing regime is likely to be conducted under the authority of officials whose own performance might be judged. A variety of strategies can be used to muddy the waters on both performance measurement and determining causality, such as blaming bad apples, arguing that the harm was part of a calculated risk, or that complexity itself is the root of the problem. These narratives are intended to bolster legitimacy and to elicit public support – or, in the case of a government facing scandal or disaster, to minimize public outrage. For example, government of Canada input into an OECD report on whistleblowing regimes states that the

PSDPA provides protection for whistleblowers “throughout the disclosure process” (OECD, 2016a) in the absence of any supporting evidence and brushes over a damning report by the Office of the Auditor General. This report resulted in the early retirement of the Public Sector Integrity Commissioner, Christiane Ouimet, in 2010 (Bryden, 2011; Canada. Office of the Auditor General, 2010). Commissioners and ombudspersons implementing and overseeing the regimes may have a similar motive in casting their own performance in a favorable light. Advocates, on the other hand, can exert influence via the public sphere, calling into question the motives, methods, and conclusions of evaluations. Further, they may seek to bolster support for “their” issues by casting them as more serious. Winning the narrative battle, Stone observes, has implications for different actors, challenging or supporting existing hierarchies.

Thus, any evaluation of whistleblowing regimes begs the questions of “Success against what standard and to what degree?” and “Using what indicators and data?” These will be explored in greater detail in this dissertation. Drawing from the language in whistleblowing statutes and the literature, however, it is possible to develop a simple logic that will serve as a starting point in the cases. Succinctly, whistleblowing law (input) leads to investigation of disclosed wrongdoing and complaints of reprisal, with reports and recommendations (activities), leading to correction of wrongdoing and protection of the whistleblower (outputs). This contributes to increased trust in the regime and deterrence of wrongdoing (immediate outcome), contributing to increased use of regime and enhanced integrity (intermediate outcomes), contributing to improved governance (ultimate outcome).

3.4.4 Summary

This section described the methods used to analyze data collected during the dissertation work. The primary analytical tool was process tracing, which is an appropriate case-study method when examining complex causal mechanisms in political processes and social phenomena – whistleblowing being a combination of both. Process tracing drew on a diversity of records, interviews, and whistleblowing cases to understand the evolution of dedicated whistleblower protection in the public sector, how such regimes were implemented and operationalized, and how different actors reacted to the regime. Further, as the performance of whistleblowing regimes is contested, a logic model based on the literature and whistleblowing statutes serves as a starting point.

3.5 Chapter Summary

This chapter began with an explanation of the theoretical models informing this dissertation, historical and rational choice institutionalism. These strands of institutional theory connect actors with their environments, providing them with rules norms, structures, processes, and incentives which help shape their

preferences and decisions. Historical institutionalism facilitates a better understanding of how whistleblowing regimes emerge, while rational choice institutionalism provides insights on why whistleblowing may or may not be accepted by incumbents of older Westminster institutions.

Second, this chapter described the case methods being used in this dissertation. Case studies are frequently used in whistleblowing research, both in individual cases of whistleblowing and at the level of organizations and national regimes. Three cases, the United Kingdom, Canada, and Australia were studied in succession. Country cases were selected in a manner that would minimize other variables, such as the type of government, quality of national governance, and national culture. Process tracing was selected as the methodological tool for the in-case units of analysis: the history of regime development, the nature and performance of the whistleblowing regimes enacted, and the factors that appear to affect the implementation of the regimes.

The model guiding the dissertation is based on Dozo et al. (2018), with the addition of institutional influences on recipients of whistleblowing disclosures. In this model, Westminster institutions shape the interpretations actors make about appropriate action after the whistle has been blown in their organization. This begins even before whistleblowing regimes are established, as different actors seek to shape the new rules and incentives to their own perceived advantage – or according to norms and conventions which they have internalized. Once the regimes have been established, new incentives may not be sufficient to override older incentives. This may be compounded by other variables, such as the quality of leadership, organizational climate, organizational processes, and other factors in the broader environment. Further, rational choice institutionalism suggests that there will be a period of flux as actors attempt to understand how (or whether) new whistleblowing institutions will be enforced, with some actors attempting to push boundaries for personal advantage.

Third, this chapter described data collection. Data was collected in three phases, which to a degree overlapped: literature and documentation review on Westminster government and whistleblowing regimes, an examination of the regimes in each country, and interviews. Data sources includes laws and the policies guiding their application, government communications, official reports, media coverage, and case data from legal databases. Interview participants were selected from literature or using snowball sampling. With expert participants, this was relatively straightforward, ultimately including a balance of perspectives and expertise. Whistleblower participants were harder to identify outside Canada.

Fourth, this chapter described the analysis undertaken. Process tracing used a range of data to identify and test potential causal mechanisms for both the pre-regime period and after enactment. A draft logic model, based on the literature and explicit objectives in whistleblowing statutes, served as a template in

assessing regime performance. This model, in turn, was used to hypothesize potential interactions between Westminster institutions and whistleblowing regimes. Interviews were iteratively coded to identify regularities, compared with other data sources, and used to refine the proposed causal mechanisms.

The next chapter will describe the first case, the United Kingdom. While all case countries have governments based on the Westminster model, there are some distinct features to the U.K. case. Unlike Canada and Australia, it adopted a whistleblowing regime which applies to all sectors, not just the civil service. This was imposed via a private member's bill and appears to have been resisted by senior civil servants since its inception. They prefer less formal disclosures using internal civil service processes. This creates a regime that is disjointed, with different components offering different avenues and protections.

Chapter 4

Whistleblowing in the U.K. Civil Service

The civil service whistleblowing regime in the United Kingdom is the result of history, conflicting and unclear objectives, and incentives. Measures to manage conduct and accountability in Whitehall have existed since the 19th century, but reforms intended to promote civil service responsiveness and efficiency eroded their effectiveness. These reforms coincided with an increase in public scandals and disasters, bringing the ethics and integrity of government into question. The resulting pressure for higher ethical standards dovetailed with the growing awareness and popularity of whistleblowing legislation, already implemented in the United States and some Australian states. The formalization of the Civil Service Code in 1996 and the enactment of the *Public Interest Disclosure Act* (PIDA [UK]) in 1998 created a piecemeal civil service regime.

This chapter is divided into three sections. The first section describes traditional avenues for dissent and reporting error and misconduct, then traces the events leading to the implementation of whistleblowing protections. There is a pattern, repeated across all cases, in which existing Whitehall accountability mechanisms were tested, common law precedents set, and ethics codes formalized. Only after these failed were political actors willing to implement whistleblowing regimes. As the worst disasters were outside government, PIDA (UK) was implemented to cover all sectors: public, private, and non-profit.

The second section explores the resulting civil service whistleblowing regime, its implied logic, and available evidence of effectiveness. PIDA (UK) and the Civil Service Code were not designed to work together, and have different purposes, processes, and degrees of protection. While the resulting regime has no explicit logic, one can be inferred, with associated assumptions and risks, available data is sparse or superficial. Using this as a guide in assessment, the evidence suggests the regime is not achieving hoped-for outcomes.

The third section examines the factors that appear relevant to the outcomes of whistleblower cases and the regime as a whole. Whitehall institutional conventions on the role of the civil service favour internal disclosures, while national security laws make an offense of unauthorized disclosures. Prevailing norms remain hostile to disclosures outside the chain of command and especially outside the organization, reinforced by incentives that reward responsiveness and the suppression of bad news.

The chapter concludes that the whistleblowing regime that emerged from PIDA (UK) was a response to failures across sectors, not just the civil service, and that it has faced sustained opposition from incumbent senior administrative actors. This is in part due to the incompatibility of aspects of PIDA (UK) with Whitehall conventions and norms, but also arises from new incentives and the distortion or

abandonment of aspects of the traditional bargain, such as the encroachment of political actors into the administrative sphere.

4.1 Evolution of the U.K. Whistleblowing Regime

This section describes the events and decisions preceding the implementation of a whistleblower regime in the U.K. civil service. These are broken into overlapping stages, starting with the stable institutional arrangements for maintaining competence and enforcing norms within the traditional Whitehall civil service. Subsequent stages include pressures to increase the transparency and responsiveness of the civil service, legal decisions creating a public interest exception to the common law duty of confidentiality and loyalty to the employer, policy efforts to curb leaks and whistleblowing in the 1980s, and, when this failed, the development of a formal code of conduct for the civil service in the 1990s. These stages occurred against a backdrop of increasingly embarrassing scandals and tragic disasters. This created the conditions for the incoming Labour government to overcome resistance to whistleblowing legislation.

4.1.1 Loyalty, Disclosure, and Accountability in Early Whitehall

The traditional U.K. civil service emerged between the mid-19th and mid-20th centuries. Initial efforts at the regulation of administrative competence and conduct arose from the recommendations of the 1854 Northcote-Trevelyan Report. By eliminating nepotism and establishing a well-regulated merit system, reformers of the late 19th century hoped to minimize mismanagement. It was also hoped that ethical conduct could be induced by hiring young men of “good moral character” (Northcote & Trevelyan, 1854, p. 7). The authors emphasized the importance of employing individuals with the abilities, self-discipline, and experience to ensure “the proper discharge of the functions of government” (p. 2). It also noted the hazards of “jobbing” (abuse of position for personal benefit; conflict of interest) endemic in previous arrangements (p. 9).

These arrangements were entrenched by the mid-20th century, a period in which civil servants were considered an extension of their ministers, serving them professionally, loyally, and discreetly. Despite this, there was a separation of spheres, with ministers responsible to Parliament and administrative actors accountable to ministers. The merit system operated under the oversight of the Civil Service Commission, with the behaviour of civil servants regulated via semi-formal internal civil service processes. They were expected to work honestly and diligently while cultivating good habits (United Kingdom. Treasury, 1949, pp. 10–13). The merit principle remains relatively robust in comparison to the other case countries, notwithstanding the cultural bias inherent in an examination system that has historically favoured Oxbridge candidates (Carr, 1999; Lodge & Rogers, 2006) Permanent secretaries are selected by prime ministers from a list developed by an independent committee (Rhodes et al., 2009, pp. 171–172) and

remain the least politicized appointments for permanent heads of departments among the three case countries (Matheson et al., 2007).

In accordance with the conventions of ministerial responsibility and loyal implementation, civil servants were expected to comply with directions from the minister. These were received by the permanent secretary and transmitted down the hierarchy. If error or misconduct occurred, it was expected that this would be reported up the chain of command, with the minister holding ultimate responsibility. This arrangement was not without caveats. Even in the 19th century, it was understood that ministers may not be responsible for administrative error. The “accounting officer” principle was first formalized in 1872 (J. Harris, 2013). Unique among the case countries, this principle makes permanent secretaries personally accountable to Parliament for the functioning of their departments. To support this, they can request ministerial direction to challenge decisions and policies that may contravene law, constitutional convention, or are otherwise potentially illegitimate. Responses from the minister are in writing and are shared with the Public Accounts Committee. This constitutes a warning to ministers and has the effect of absolving a permanent secretary of accountability for the matter in question (A. King, 2009; Lodge & Rogers, 2006). Ministerial directions were not made public prior to 1990, but the Institute for Government (2021) provides details of 89 directions between 1990 and 2021. Most (57) pertained to value for money concerns, but a significant number (34) concerned propriety, regularity, or feasibility.

Once the minister has decided, however, permanent secretaries have few choices. They may comply, comply while protesting, refuse to comply, seek transfer, or resign. Barker and Wilson (1997), in a survey of senior civil servants, found that many participants preferred to offer just enough resistance to gain time for Cabinet and Cabinet Office officials to grasp the hazards of what was being proposed. As a participant (P1.30) noted, it can be effective to run an issue into a dead end, perhaps saving ministers from themselves when it is a “stupid idea.” None would flatly refuse to comply, however, and leaking to anyone outside the civil service was strongly rejected by all. The risk in providing too much resistance is being seen as difficult, with career consequences (see also Carr, 1999, p. 11). Resignation in protest has been used sporadically by officials for many decades (Weisband & Franck, 1975), but even if officials do resign, they remained constrained by the Official Secrets Acts (1911, 1920, 1989), s. 2 of which make disclosing unauthorized information an offense.

Options for other civil servants were more limited. One avenue of dissent or disclosure that appears to be accepted is “referring the matter” (Barker & Wilson, 1997, p. 233). For example, a civil servant observing misconduct might call an official at Cabinet Office or in another department to brief them informally. The expectation was that the matter would then be escalated to a more senior official

– perhaps in a central agency such as Cabinet Office – with the authority to order the wrongdoing to cease without the necessity of airing dirty laundry in public. However, once a decision is made, even at the administrative level, this becomes the formal position of the department and dissent must end. A participant (P1.20) noted that this remains the norm. Further, the document *Departmental Evidence and Response to Select Committees*, known as the Osmotherly rules, limits civil servants to answering factual questions on behalf of the minister; they may not comment on the merits of policy (United Kingdom. Cabinet Office, 2005).

4.1.2 Regulating Behaviour in the Whitehall Civil Service

Although the implementation of the Northcote-Trevelyan Report's recommendations established the merit system, concerns about the probity and reliability of civil servants remained. These came to a head in the 1920s when several civil servants, engaged in speculation in foreign currency and sustaining losses exceeding £18,000 (£1.1 million in 2020). As the officials occupied senior positions in the Foreign Office, rumours circulated of corruption and a Soviet kompromat. An inquiry led by Sir Warren Fisher absolved the officials of the most serious allegations, but the report made it clear that the absence of specific rules forbidding an improper activity did not make it permissible:

The Service exacts from itself a higher standard because it recognises that the State is entitled to demand that its servants shall not only be honest in fact, but beyond the reach of suspicion of dishonesty... A Civil Servant is not to subordinate his duty to his private interests; but neither is he to put himself in a position where his duty and his interests conflict. (Fisher et al., 1928, p. 21, para. 57)

Included in the report were Treasury circulars disseminated in 1923, 1924 and 1927. The first dealt with bankruptcy and insolvency on the part of civil servants, which was recognized as presenting a motive for impropriety, the second with conflicts of interest, and the third with outside employment.

These circulars were an exception to a semi-formal approach to conduct, illustrated in handbooks for new civil servants. These included information about terms of employment, described expected standards of conduct, and covered the topics in the Fisher Report. Expectations extended to personal life. The handbooks forbade reporting concerns outside the chain of command and warned that attempting to influence or seek favour from a minister or MP would be treated as a disciplinary matter. They also warned against premature judgements: "Don't begin to criticize until you have learned the reasons behind the existing method of doing things, and don't assume that every existing method is just 'red tape'" (United Kingdom. Treasury, 1949, p. 13). Finally, civil servants were cautioned not to breach the Official Secrets Acts of 1911 and 1920. Carr

(1999) suggests this approach was effective because of the soundness of the merit-based recruitment system.

The informal approach may also have persisted due to the successes of the civil service during the Second World War and reconstruction. However, this period was not entirely without scandal. Sir Thomas Dugdale, Minister for Agriculture, resigned over the Crichel Down Affair in the 1950s. This involved property forcefully purchased by government for military use during the Second World War and which the previous owner wanted to repurchase. Although Dugdale denied involvement in the decisions and blamed civil servants for the decision, later analysis determined that he had interfered in the administrative decision and had attempted to interfere in subsequent inquiries (Woodhouse, 2004).

4.1.3 The Emergence of Legal Protections and Rights for Whistleblowing

The first whistleblower protections arose from concerns about care in mental health hospitals in 1967 (Mannion et al., 2018). Initial efforts were limited. The *Health and Safety at Work Act 1974* required employees to inform their employers of health and safety risks but provided no protection for those who did so (Vickers, 1996). The position of Parliamentary Commissioner for Administration was created in response to the Crichel Down affair, with the role of Health Services Commissioner added in 1993 to create the Parliamentary and Health Service Ombudsman. The Ombudsman does not handle whistleblowing complaints, however, only investigating complaints from the public (for the National Health Service) or parliamentarians (for other departments). The Ombudsman explained that requiring an MP's support to advance a complaint was the product of paternalistic attitudes of the day.

The whole climate of citizen redress has completely transformed since 1967. The deference is gone, citizen expectations have increased, service delivery is seen to be absolutely fundamental to being an effective public servant. Those things did not exist in 1967. (Parliamentary and Health Service Ombudsman, interview, June 17, 2019)

Common law, which traditionally imposed on employees a duty of loyalty and confidentiality to their employers, also changed. As a baseline, the oft-cited case of *Gartside v. Outram* (1856) established that no employer could oblige an employee to remain silent when witnessing a crime or fraud.¹⁴ This referred only to crime and fraud, however, leaving other disclosures unprotected. *Weld-*

¹⁴ *Gartside v. Outram* (1856) involved a business owner who was falsifying "sales notes" to deceive customers and ordered his employee to remain silent. The court found that an employer could not silence an employee reporting an "iniquity."

Blundell v. Stephens (1920)¹⁵ created a balance between the public interest and the duty of confidentiality, requiring a “higher” duty for the breach of the latter. *Initial v. Putterill* (1967, 1968),¹⁶ disagreed with the limitations set by both *Gartside* and *Weld-Blundell* and expanded the definition of iniquity to include a broader range of “misdeeds” affecting the public interest. It also created a protection from tort for employees disclosing wrongdoing. *Sybron Corp v. Rochem* (1983)¹⁷ went a step further, establishing that managers were obliged to disclose the wrongdoing of subordinates. In effect, this created a duty to blow the whistle internally. Subsequent cases reinforced the requirement for a nexus between external disclosure and the public interest (Pizer, 1994, p. 74). In *Lion Laboratories v. Evans* (1985), the court prevented an injunction against the publication of internal memoranda that questioned the accuracy of breathalysers used by the police. Key to this decision, it argued that publication need not demonstrate a concrete wrongdoing but that the public interest must be advanced by preventing harm. This was reinforced by *Re a Company’s Application* (1989), in which it was ruled that a financial services company could not stop an employee from disclosing wrongdoing to a regulator (Gobert & Punch, 2000; Lewis, 1995, 2001; Mannion et al., 2018).

By the 1990s it was established that confidentiality could be breached if there was a public interest in preventing harm and if the information was transmitted to an appropriate recipient, such as the police, a relevant regulatory authority, or the individual who had been harmed. Disclosures to the public could only be justified if the harm was directed at the whole community or if the regulatory authority had an illegitimate interest in suppressing the information. The requirement that the discloser have a reasonable belief in the truth of the information was also confirmed (Lewis, 2001; Lewis & Trygstad, 2009; Pizer, 1994).

Free expression rights were also reinforced. The U.K. *Human Rights Act 1998* incorporated most of the provisions of the European Convention on Human Rights

¹⁵ In *Weld-Blundell v. Stephens* (1920), Weld-Blundell gave his agent, Stephens, a letter containing defamatory statements about a third party. Stephens dropped the letter accidentally, and it came into the hands of the third party. Weld-Blundell then attempted to sue Stephens for damages arising from the exposure of the statements, but failed.

¹⁶ *Initial v. Putterill* (1967, 1968) pitted a laundry company against a former employee who leaked documents showing price fixing to the *Daily Mail* newspaper. Initial Service sued but failed as the cartel was an illegal one.

¹⁷ In *Sybron Corp v. Rochem* (1983), employees of Rochem were engaged in a conspiracy to commit fraud. After it was discovered, the senior manager who was overseeing the scheme lost his pension. He argued that he had been a loyal employee and under no obligation to disclose his own misconduct. The court agreed but ruled that he was still obliged to disclose the misconduct of subordinates or colleagues.

(ECHR; Council of Europe, 1950), article 10 of which guarantees freedom of expression. Crucially, article 13, which requires an effective remedy for violations of ECHR rights, was *not* incorporated. These rights, moreover, are limited where there are national security or policing considerations. What falls into these categories is interpreted by governments, a fact decried by numerous advocates and scholars (cf. Lewis, Devine, et al., 2014, p. 351; A. Savage, 2016; Vickers, 1996).

4.1.4 The Drive for Responsiveness and the Rise of Whistleblowing

The Fulton Committee report of the civil service reflected growing suspicion of the civil service, identifying accountability and misconduct as issues. It repeatedly calls for increased management accountability and criticizes Parliament – including the Public Accounts Committee – as ineffective (United Kingdom. House of Commons Committee on the Civil Service, 1968, pp. 92–93). Much is insinuated: It did not identify any acts of wrongdoing, instead noting that fewer than 25 senior civil servants had been terminated in each of the past four years and commenting that “We find it hard to believe that these figures should not have been higher” (p. 43, para. 123). It also prescribes various measures to increase responsiveness, takes offense at Whitehall secrecy, and calls for greater opportunities for public participation in policymaking (pp. 91-92).

Efforts to increase responsiveness were embraced by the Thatcher government. Opportunities for information liberalization, on the other hand, were met with “selective inattention” and “containment and isolation” by the civil service (Worthy, 2007, pp. 100–101). The first freedom of information laws only affected local governments (e.g., *Local Government (Access to Information) Act 1985*). Using Kingdon’s multiple streams framework, and in particular the concept of ideal conditions for policy entrepreneurs to advance innovative policies, Worthy argues that the window of opportunity for an FOI law affecting Whitehall was not open until Labour won the 1997 election. Even then, powerful political and administrative actors soon realized the impact that the proposed bill would have, exempted cabinet advice and deliberations, and delayed full implementation of the *Freedom of Information Act 2000* until 2005 (Worthy, 2007).

This resistance may have been a feature of Westminster culture and a reflection of the convention of confidential advice. It may also have been due to the sudden surge in public cases of whistleblowing and misconduct. Public whistleblowing cases were rare prior to 1970, with most misconduct uncovered by journalists and victims of the misconduct. A notable exception was Major Sir Brian Urquhart, later Under-Secretary of the United Nations, who attempted to raise the alarm on the defective Operation Market Garden battle plan in World War Two and was forced out of his position as a result. This was brought to public attention in the book *A Bridge Too Far* (Ryan, 1974) and the subsequent film of the same name (Attenborough & Levine, 1977). In the 1970s, another soldier, Captain Frederick

Holroyd, blew the whistle on collaboration between the British Army Intelligence Corps and Ulster paramilitaries, including in bombings and assassinations. This was the subject of a belated inquiry, which reported in 2003. Holroyd's allegations were substantiated (Ireland. Houses of the Oireachtas. Joint Committee on Justice Equality Defence and Women's Rights, 2003).

4.1.5 Action and Reaction in Whitehall Scandals in the 1980s and 1990s

Whistleblowing cases from within the civil service continued to proliferate in the 1980s. The reaction of senior Whitehall actors at this point was one of hostility, using the Official Secrets Acts to reinforce confidentiality and loyalty conventions. For example, Sara Tisdall leaked documents on plans to station U.S. missiles in the United Kingdom in 1981. She was prosecuted under the *Official Secrets Act 1911* and sentenced to six months in prison (Carr, 1999; Worthy, 2007). In 1984, analyst Clive Ponting leaked to an opposition MP that the government had lied to Parliament about the circumstances of the sinking of the Argentinian light cruiser *ARA General Belgrano* during the Falklands War. Ponting had violated a Whitehall norm, in which dissent must stop once a decision has been made:

I knew his boss at the ministry who just simply said "[Ponting] told us what was going on," and they explained what I just explained, that the Minister's decision is final in this matter... Basically, piss off. And he refused to piss off so they sacked him. (P1.20)

Cabinet Secretary Sir Robert Armstrong also made it clear that Ponting's actions were illegitimate, and that the principle of ministerial responsibility continued to apply. In a memorandum to civil servants, he emphasized that the public interest is defined by ministers, who are the proper object of a civil servant's loyalty (United Kingdom. House of Commons. Prime Minister, 1985). It was republished in 1996 (United Kingdom. Cabinet Office, 1996). Like Tisdall, Ponting was prosecuted. The jury acquitted him against the instructions of the presiding judge, primarily on the basis that his disclosure was in the public interest.

Partly in response to the Ponting decision, the *Official Secrets Act* was amended to remove the s. 2 public interest defence (Carr, 1999; United Kingdom. House of Commons Public Administration Select Committee, 2009).¹⁸ This was controversial, even in the governing Party. Conservative MP Richard Shepherd tabled the *Protection of Official Information Bill 1988*, intended to decriminalize the publication of information not likely to "cause serious injury to the interests of the nation or endanger the safety of a British citizen" (United Kingdom. House of

¹⁸ Also motivating the government were Peter Wright's memoirs of his career in MI5 in *Spycatcher* (1987). This book exposed the ethics of the organization and described many intelligence-gathering techniques and technologies. The British government attempted to suppress it, but the efforts instead boosted sales.

Commons, 1988, col. 564). This was rejected by the government as premature, with concerns about abuse overblown (col. 583-584). The new *Official Secrets Act 1989* did, however, require that harm be demonstrated in the prosecution of unauthorized disclosures (unless they involved national security or intelligence). This risks a public airing of the facts, and may be the reason why prosecutions under the *Official Secrets Act 1989* are uncommon (A. Savage, 2021).

The sale of Westland Helicopters led to more political controversy in 1985 and 1986. In this scandal, a dispute over the sale of the helicopter manufacturer overflowed from Cabinet when documents were leaked. Secretary of State Michael Heseltine resigned in protest of attempts to steer the sale to Sikorsky Helicopters, and Leon Brittan, Secretary of State for Trade and Industry, resigned for the leak (Woodhouse, 2004). Whistleblower protection was limited to local authorities, incorporated into the *Local Government Finance Act 1988* and the *Local Government and Housing Act 1989*.

Accounts of misconduct continued to surface after Thatcher was replaced by John Major. One was the “cash for questions affair” of the early 1990s, in which a lobbyist named Ian Greer bribed MPs to ask questions in Parliament (Bartlett, 1998; Doig, 1996). The cash for questions affair was exposed in a legal case, revealing that some ministers were also employed as lobbyists for private corporations. Also in the early 1990s, Minister for Trade Alan Clark admitted to “being economical with the truth” to Parliament about the sale of machinery to Iraq by omitting that it was intended for the manufacture of weapons (there was an international ban). This became known as the Arms to Iraq Affair. He did not resign, contributing to growing public dissatisfaction with Major’s government (Butler, 1996), then in its second ministry.

Major convened the Committee on Standards in Public Life to respond to concerns that Parliamentary ethics were in decline in 1994, with Lord Nolan chairing. The *First Report* recommended that staff should be able to make complaints (including anonymously) outside the chain of command (United Kingdom. Committee on Standards in Public Life, 1995, p. 5). It also noted that some traditional processes and accountability mechanisms had been disrupted by the Next Steps program, which devolved many services to arms-length agencies (p.6; see also Panchamia & Thomas, 2014). The second and third reports recommended that local governments institute codes of practice on whistleblowing (United Kingdom. Committee on Standards in Public Life, 1996, p. 22, 1997, pp. 48–49). While these recommendations were the first of their kind for the civil service, Major was criticized for failing to allow the committee to investigate party financing (Vinten, 2003).

The Nolan Committee reports contributed to the formalization of the Civil Service Code in 1996, later enshrined in ss. 5-9 in the *Constitutional Reform and Governance Act 2010* – which also formalized the merit principle (ss. 10-14) and

other formal codes of conduct. It is principles-based, identifying integrity, honesty, objectivity, and impartiality as core values of the civil service.¹⁹ The language in the Code is consistent with traditional conceptions of the traditional public service bargain²⁰ and with previous approaches relying on personal judgment to regulate behaviour. These are expressed in statements such as, “You must... carry out your fiduciary obligations responsibly.” Concerns that had previously been emphasized, such as financial probity in personal life, are no longer explicit. Violations of the Civil Service Code can result in a range of disciplinary sanctions, up to termination.

4.1.6 Punctuated Equilibrium and the Public Interest Disclosure Act 1998

A series of disastrous failures were key to shifting public attitudes and creating momentum for broad, cross-sectoral whistleblower protection. This momentum was fed in part by activists, who were reacting to scandals. Several were in the public sector – particularly the National Health Service. Others took place in the private sector. These include the capsizing of the MV *Herald of Free Enterprise* off Zeebrugge in 1987 (killing 193 people), the 1993 Lyme Bay tragedy (killing four children), the Clapham Junction Rail Crash in 1998 (killing 35), and the Piper Alpha oil platform explosion in 1988 (killing 167). In each of these cases, employees had attempted to raise concerns but had been ignored or suffered reprisals (Lewis, Brown, et al., 2014; Vinten, 2000). The sinking of the *Herald of Free Enterprise* was particularly egregious, as the concerns of the crew had been ignored by shore management for years. The subsequent inquiry concluded that “from top to bottom the body corporate was infected with the disease of sloppiness” (United Kingdom. Department for Transport, 1988, p. 14, para. 14.1). In the case of the Piper Alpha explosion, the subsequent inquiry also found that inspections by the Department of Energy were “superficial to the point of being of little use” (Cullen, 1990, p. 3, para. 1.15) and that safety management systems that were supposed to be in place were not being properly implemented.

In the health sector, Graham Pink, a nurse, raised concerns between 1989 and 1993 about deficient care for elderly patients. Although the validity of some of his concerns have been raised, he became a champion for whistleblowing rights after he was dismissed (Mannion et al., 2018; Vinten & Gavin, 2005). Also in the

¹⁹ This includes the Diplomatic Service Code (United Kingdom. Cabinet Office, 2010), Code of Conduct for Special Advisers (United Kingdom. Cabinet Office, 2015b), and Civil Service Management Code (Management Code; United Kingdom. Cabinet Office, 2016). Special advisers are exempted from political impartiality. See also the Civil Service Commission *Recruitment Principles* (2018).

²⁰ The current perspective on the traditional bargain is described in the Cabinet Manual (United Kingdom. Cabinet Office, 2011).

National Health Service, Dr. Stephen Bolsin noticed very high rates of infant mortality during heart surgery at the Bristol Royal Infirmary in the late 1980s. He first worked internally to improve procedures and then publicly blew the whistle (Kennedy, 2001). Largely through his efforts, infant cardiac surgery mortality rates fell from over 30% in 1994 to under 5% (Aylin et al., 2004). Blacklisting forced him to move to Australia. Less tragic, but still devastating to affected individuals, were the collapse of the Bank of Credit and Commerce International in 1991 after an investigation uncovered fraud estimated at £2 billion over 19 years (Myers, 2004)²¹ and Robert Maxwell's pillaging of newspaper pension funds in the late 1980s.²² Harry Templeton, a printer and shop steward, attempted to raise the alarm but was forced from his job. He did not work in the industry again (Greenslade, 1992; Templeton, 2004).

These disasters, scandals, and failures mobilized activists and contributed to the creation of the charity Public Concern at Work (now called Protect) in 1993, which was staffed with lawyers providing advice to whistleblowers. It immediately began advocating for statutory protections (Calland & Dehn, 2004; Myers, 2004; Protect, 2018). Public Concern at Work and the Campaign for Freedom of Information worked with Labour MP Tony Wright to introduce the *Whistleblowers Protection Bill* in early 1995. It did not pass but was followed later in the year by the *Public Interest Disclosure Bill*, introduced by Labour MP Don Touhig. It also failed. Success finally came after the Labour Party victory in 1997. The revised *Public Interest Disclosure Act 1998* was enacted on July 2, 1998, adding Part IVA to the *Employment Rights Act 1996*. Again, it was a private members bill, this time introduced by MP Richard Shepherd (noted earlier) and found support in the Minister of State for Competitiveness, Ian McCartney. It applies to England, Wales, and Scotland. In Northern Ireland, the nearly identical *Public Interest Disclosure (Northern Ireland) Order 1998* was enacted 19 days later.

4.1.7 Summary

This section traced the evolution of voice, dissent, and accountability in Whitehall from the foundation of the modern civil service to the point at which statutory protections for whistleblowers were enacted. The merit principle, established norms, and traditional accountability mechanisms had maintained civil service competence and conduct for many decades. Aspects of this traditional bargain

²¹ The Bank of Credit and Commerce International was infiltrated by a U.S. Customs agent. The Bank was actively soliciting funds from criminal organizations and engaged in fraud and manipulation to hide this and other criminal activity.

²² Maxwell owned Mirror Group Newspapers, which came under increasing pressure from lenders due to losses. To prevent bankruptcy, he stole hundreds of millions of pounds from workers' pension funds. This was not discovered until his death, which occurred under suspicious circumstances in late 1991.

came under pressure in the 1970s, however. Civil servants began to exercise greater voice as political actors increasingly rearranged and intervened in administration, disrupting accountability. This evolution is consistent with institutional layering and drift, in which new rules are imposed over old ones and old rules change to suit the environment (Streeck & Thelen, 2005). Ultimately, this led to punctuated equilibrium (Krasner, 1984) as public outrage at misconduct and avoidable loss of life created the opportunity to implement a new institutional arrangement. Ironically, while political actors and their policies were at the centre of many transgressions, the most substantial efforts to control behaviour were directed at civil servants. The passage of PIDA (UK) was an exception, likely because it was motivated by misconduct outside Whitehall.

4.2 Nature and Performance of the U.K. Civil Service Whistleblowing Regime

This section will examine the Whitehall whistleblowing regime that emerged after the Civil Service Code and PIDA (UK) were implemented, considering how it functions, its logic, and evidence of success. As described in previous chapters, whistleblowing regimes are based on a chain of logic. In protections and structural models, this is as follows: First, whistleblowers are an important source of information about misconduct, and they need to be protected to prevent their disclosures being suppressed. Second, safe and effective avenues of disclosure will protect the whistleblower and ensure the wrongdoing is properly addressed. Key to this are competent investigations that lead to corrective action, protection for workers considering or who have blown the whistle (and their allies), and, when the system fails to provide protection, a neutral and competent avenue to obtain redress. Third, workers will gain trust in the regime and use it more often. This requires some transparency in the process and in outcomes achieved. Fourth, this will in turn deter wrongdoing, normalize speaking up about concerns, and enhance the ethics and integrity of the civil service. This will, ultimately, contribute to good governance as policies and decisions improve and public trust in institutions is enhanced. As few legal regimes are perfect, an evergreen process of evaluation and improvements is important.

In the U.K. case, the marriage of the Civil Service Code and PIDA (UK) creates a regime that does not have an explicit logic behind it, has multiple and confusing avenues of disclosure, promises protection and redress but ultimately leaves whistleblowers to defend their own rights, and has not been internally evaluated since its inception. Indeed, senior Whitehall actors appear to have largely ignored PIDA (UK) for its first decade. The evidence that is available is scattered, frequently superficial, and lacks context. Several identifiable shortcomings, moreover, illuminate the risks inherent in the regime.

4.2.1 Avenues of Disclosure Under the Whitehall Whistleblowing Regime

There are two separate mechanisms civil servants can use to raise concerns. The Civil Service Code is intended as a guide to appropriate conduct, using a principles-based approach. If civil servants should observe what they believe to be misconduct, they are encouraged to make a disclosure to their line manager, or to a nominated officer. If that should fail to satisfy them, they may report the matter to the Civil Service Commission (United Kingdom. Cabinet Office, 2015a, "Rights and responsibilities"). The Code has no statutory time limits for disclosures, although the Commission indicates it expects them to be made within 12 months (United Kingdom. Civil Service Commission, 2017). If still unsatisfied after this process, civil servants are left with one choice: "If the matter cannot be resolved using the procedures set out above, and you feel you cannot carry out the instructions you have been given, you will have to resign from the Civil Service" (United Kingdom. Cabinet Office, 2015a). The Management Code adds the requirement that government departments and agencies create internal avenues for disclosure (frequently termed Code complaints).

Departments and agencies must establish clearly defined formal procedures for handling complaints. While many complaints will be raised through the management line, there should also be a nominated official or officials who can be approached in confidence in the first instance... Departments and agencies should ensure that staff feel confident to voice complaints, and are not penalised for raising concerns in accordance with the procedures. Clear guidance on the procedures should be available to all staff. (United Kingdom. Cabinet Office, 2016, para. 12.1.3)

Although not articulated, if a civil service whistleblower suffers reprisal, they may seek a remedy through a grievance process. This is controlled by the relevant permanent secretary (United Kingdom. Cabinet Office, 2016); under the *Trade Union and Labour Relations (Consolidation) Act 1992* these processes should meet Advisory Conciliation and Arbitration Service standards (see United Kingdom. Advisory Conciliation and Arbitration Service [ACAS], 2015). If the grievance process fails to satisfy the whistleblower, an application can be made to the Employment Tribunal (UKET) under the *Employment Rights Act 1996*, s. 47B, s. 48(1A), s. 103A, or s. 105(6A). They must first inform ACAS, however, which will offer mediation. If still unsatisfied after a hearing at the UKET, the claimant can ask the Tribunal to reconsider. Appeals on points of law and of perverse decisions may be made to the Employment Appeal Tribunal (UKEAT), the Court of Appeal and the Supreme Court.

In contrast to Civil Service Code processes, PIDA (UK) applies to all U.K. workers. It amended the *Employment Rights Act 1996*, adding a new Part IVA

with sections 43A to 43L and other amendments.²³ It is a protections-based law, designed to offer whistleblowers a means of redress if they suffer detriment for speaking out. It does not require that organizations create whistleblowing procedures, but awards may be higher if they do not (*Employment Rights Act 1996*; s. 123s. & 47B[1D]). To qualify for protection, workers²⁴ must make a “qualifying disclosure” of public interest information which they reasonably believe tends to show that one of the following has happened, is happening, or is likely to happen: a criminal offence, a failure to comply with a legal obligation, a miscarriage of justice, endangerment of health and safety, damage to the environment, or concealment of any of the preceding (s. 43B). It does not cover maladministration or wrongdoings which may be legal but unethical.

PIDA (UK) allows whistleblowers to escalate disclosures if their concerns are ignored, or if internal disclosure will lead to reprisal and destruction of evidence. Notwithstanding this, disclosures should normally be made first to the employer or the appropriate “responsible person.”²⁵ Second, if the employer has not dealt with a disclosure, it can be made to a prescribed person (sometimes referred to as regulators; s. 43F).²⁶ The third level is external and is available if previous levels of disclosure have failed or there is a clear risk in using them. External disclosures must not be made for personal gain and must also be justifiable in proportionality and in who receives it (s. 43G). In the case of an exceptionally serious failure, a disclosure may be made to the media or to the police (s. 43H). Disclosures may also be made to a legal adviser when seeking advice (s. 43D). Workers in government bodies may make a disclosure to a minister of the Crown (s. 43E). Relevant to the civil service, s. 193 and s. 43B(3) exclude the security services and violations of the *Official Secrets Act 1989*. Workers may seek redress from reprisal at the UKET under s. 48(1A), s. 103A, or s. 105(6A), depending on the detriment. Under s. 48(3) and s. 111(2), the time limit to file is three months less a day after the last detrimental action. (A legal practitioner noted extensions are very difficult to obtain [P1.36].) Interim relief in the event of termination or redundancy is available, but the time limit is just seven days

²³ Note that section numbers used below, although frequently identical to the original PIDA (UK), refer to the *Employment Rights Act 1996* and reflect amendments made after 1998.

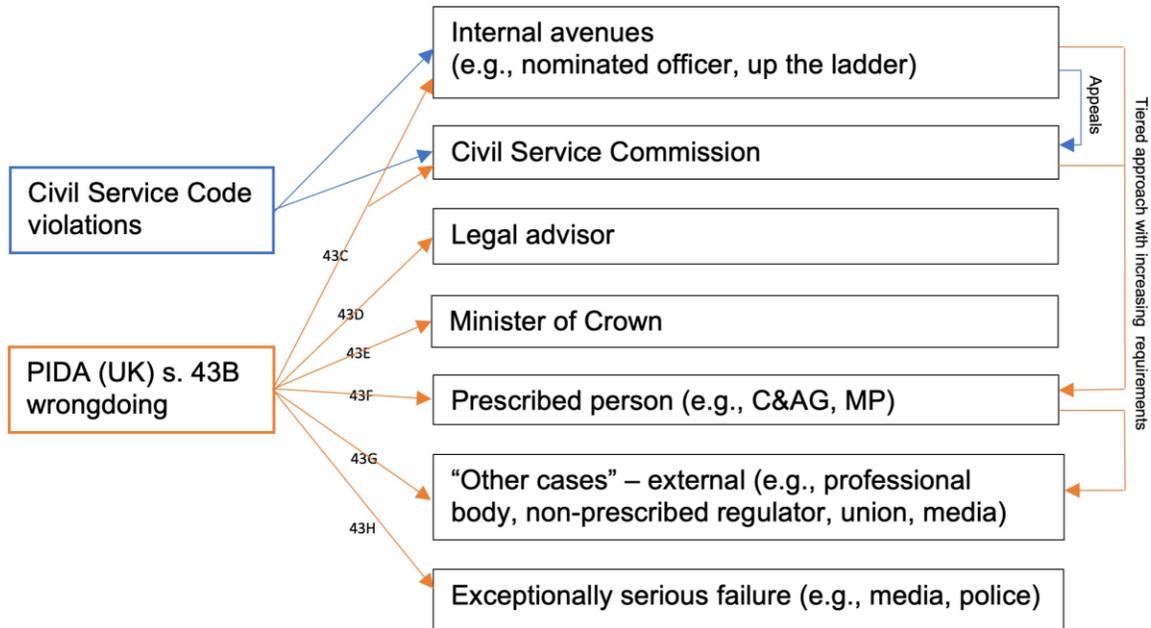
²⁴ Workers include full-time, part time, and term staff, contractors, trainees, and similar personnel (s. 43K).

²⁵ For example, a civil servant could disclose wrongdoing to the management of a firm contracted to provide services for government.

²⁶ The list of prescribed persons is in the *Public Interest Disclosure (Prescribed Persons) Order 2014*, as amended by the *Public Interest Disclosure (Prescribed Persons) Order 2019*.

(s. 128). Figure 4.1 shows the formal, protected avenues of disclosure arising from these two instruments. Numbers refer to the *Employment Rights Act, 1996*.

Figure 4.1: Formal U.K. Civil Service Whistleblowing Avenues



Thus, the Civil Service Code sanctions disclosures up the ladder while offering the Civil Service Commission as an alternative recipient. PIDA (UK) includes these in its definition of internal disclosures, but also allows disclosure to a much wider set of recipients. Guidance on which avenue is more appropriate is either confusing or actively dissuades the use of the PIDA (UK). For example:

Effectively any information that could be protected by PIDA could be the subject of a Civil Service Code complaint. The Code goes wider than PIDA: there are many things that could be raised under the Code that would not be protected by PIDA. (United Kingdom. Civil Service Commission, 2017, p. 3, see section 4)

Despite this claim, a Civil Service Commission spokesperson (interview, June 25, 2019) indicated that the Commission will not investigate disclosures that fall more precisely under PIDA (UK); this was reported to be three out of ten cases. Internal guidance to civil servants is similar, with some implying that PIDA (UK) disclosures only apply to threats to national security, legal violations, and other serious offences (United Kingdom. Scottish Government, 2018, Annex D)

4.2.2 Logic of the Whitehall Whistleblowing Regime

The U.K. whistleblowing regime was not developed with a logic model or performance framework, or, indeed, any explicit outcomes. This is, in part, due to the different mechanisms involved. The Civil Service Code was intended to

induce ethical behaviour consistent with civil service conventions, with disclosures of wrongdoing integrated into normal departmental processes. PIDA (UK) was imposed by Parliament as an avenue of redress without any evident consideration of how it would affect the civil service. Despite this, it is possible to infer the logic of the regime. Tables 4.1 and 4.2 offer a summary.

Table 4.1: Logic of U.K. Civil Service Whistleblowing Regime

Logic of regime with respect to wrongdoing	Logic of regime with respect to reprisal
Permanent secretaries establish procedures for investigating disclosures and protecting whistleblowers under the Civil Service Management Code (United Kingdom. Cabinet Office, 2016, s. 12.1.3). ↓	
Civil servant makes disclosure to an authorized recipient as set out in the Civil Service Code (“Rights and responsibilities”) <p style="text-align: center;">↓</p> Investigations determine whether there is wrongdoing and, if conducted by the Civil Service Commission, recommendations of corrective action may be made (United Kingdom. Civil Service Commission, 2010a, 2010b). <p style="text-align: center;">↓</p> Any wrongdoing found is corrected (implied in the Civil Service Code, 2015).	Civil servant makes complaint via grievance process and/or applies for remedy via the UKET. <p style="text-align: center;">↓</p> Permanent head may order a remedy in accordance with established procedures, if not, normal grievance process determines whether there has been reprisal and provides a remedy as appropriate. <p style="text-align: center;">↓</p> UKET may order interim relief (<i>Employment Rights Act 1996</i> , ss. 128[1][b] & s. 129[1]). Alternately, case proceeds to mediation and then the UKET, where a remedy may be assessed. <p style="text-align: center;">↓</p> If the implicated organization does not have a functioning disclosure process, awards may be higher. (<i>Employment Rights Act 1996</i>).
<p style="text-align: center;">↓</p> Effective processes provide civil servants with the confidence to raise concerns (United Kingdom. Civil Service Commission, 2010a) – that is, trust and usage are linked, an a speak-up culture is enhanced <p style="text-align: center;">↓</p> Deterrence is not identified, but implied <p style="text-align: center;">↓</p> “...good government and... the achievement of the highest possible standards in all that the Civil Service” which “helps the Civil Service to gain and retain the respect of ministers, Parliament, the public and its customers” (United Kingdom. Cabinet Office, 2015a, “Civil Service values”)	

As noted above, awards may be adjusted at the UKET based on circumstances, such as the whistleblower acting in bad faith or the organization having taken all reasonable steps to prevent harm. This is intended to promote the development of such processes (Lewis et al., 2004; Mannion et al., 2018; Vickers, 2000).

This logic contains assumptions and risks. More were identified in the field work of this dissertation, but Table 4.2 below summarizes those immediately evident:

Table 4.2: Assumptions and Risks of U.K. Civil Service Whistleblowing Regime

Assumptions	Risks
<ul style="list-style-type: none"> • Relevant functions are appropriately staffed and financed • Employees know process, rights, and responsibilities • Investigations are timely and fair to all parties • Compensation after reprisal is both accessible and proportionate to harm suffered • Process is transparent enough that all staff understand consequences 	<ul style="list-style-type: none"> • Oversight of Civil Service Commission does not extend to vetting procedures • Leadership fails to properly implement, provide training for, or enforce regime • Staff may make error in process of disclosure, voiding protection • Departmental processes almost entirely opaque • No requirement for correction of wrongdoing under PIDA (UK) • No requirement in Code to provide a remedy for reprisal; just orders establishment of processes • No measurement of effectiveness or process to improve regime where defects are found

4.2.3 Evidence of Regime Effectiveness

This tentative logic model provides a basis on which to assess the performance of the Whitehall disclosure regime. Unfortunately, the process is complicated by a lack of meaningful data and the anecdotal nature of much evidence.

Notwithstanding this, this subsection will describe the available evidence for each stage in the regime's logic, or observe the lack of evidence, including for the establishment of procedures, use of regime, number and quality of investigations into wrongdoing, findings of wrongdoing, corrective action taken, number and outcomes of reprisal complaints, remedies obtained, apparent trust in the regime, and impacts on levels of wrongdoing and governance. It will then briefly summarize other efforts to evaluate the regime and what can be concluded about the regime's outcomes.

Beginning with the establishment of procedures, training, and awareness, the evidence establishes that departmental processes exist, but no standards against which those processes are measured. Procedures are typically not published online, though they may be obtained through the *Freedom of Information Act 2000*. Examples include the Office of National Statistics *Whistleblowing and Raising a Concern Procedure for Civil Servants* (United Kingdom. Office for National Statistics, 2016) and the Scottish Government *Raising a Concern under the Civil Service Code and Whistleblowing Policy* (United Kingdom. Scottish Government, 2018). These procedures vary in complexity but focus on the management of whistleblowers and risks to the department. Awareness of the Civil Service Code among civil servants has risen from 75% in 2009 to 93% in 2020 (United Kingdom. Cabinet Office, 2021). A report by the Public Accounts Committee concluded that most departmental

whistleblowing policies were robust, but that implementation was poor and whistleblowers unsupported (United Kingdom. House of Commons Public Accounts Committee, 2014).

With respect to usage of the Civil Service Code disclosure process, departments were not required to submit data until 2015. Cabinet Office reports that between 2015 and 2019 the number of concerns raised inside departments rose from 224 to 421 annually (response to FOI request, March 19, 2021). Annual reports indicate that between fiscal years 2013-14 and 2019-20, the Civil Service Commission received 367 appeals under the Civil Service Code. Of these, 229 were out of jurisdiction, 110 were referred back to the department, 17 were investigated, and 8 resulted in findings that the Code had been breached. Appeals are increasing year over year, from about 20 in 2013/14 to nearly 97 in 2019/20. This ratio implies just 0.12% of public servants made what they believe to be a valid disclosure or appeal in 2019-20, with 2.2% of appeals being determined as well-founded.

There is no data on whether investigation into civil service disclosures resulted in corrective action, although the Civil Service Commission reports on appeals. It provides no details on cases that are deemed out of scope, but investigation reports demonstrate some rigour. They confirm wrongdoing in half of investigated cases, summarizing the allegations, the methodology of the investigation, a summary of the evidence, findings, and recommendations, as well as other relevant considerations.

Departmental investigations are not reported on, but two cases have emerged from HM Revenue and Customs. In the first, Osita Mba made allegations of favouritism toward large firms, disclosing that the agency had waived £10 million in late tax interest for Goldman Sachs in 2011. His disclosures were made to the C&AG, Public Accounts Committee, and Treasury Committee. HM Revenue and Customs used its authority under the *Regulation of Investigatory Powers Act 2000* to search the phone records of Mba and his wife. He was also suspended. The matter was settled while it was being heard at the UKET, giving Mba three years' salary and a pension (Protect, 2018, p. 10; Syal, 2013). A participant with first-hand knowledge of HM Revenue and Customs processes (P1.37) provided support to Mba's claims, suggesting political pressure was being applied to signal that the Labour Party was "business friendly."

In the second case, Sally Lenton objected to the mitigation of a fine levied against a large firm that had created fraudulent post-dated contracts to obtain tax credits. Her internal disclosures were met with increasing hostility by her managers, including informal reprisals such as being "cut out of the loop" (*X v Commissioners for HM Revenue and Customs*, 2018, para. 66; she was anonymous in the first hearing). The internal official investigating her complaints failed to interview her (*X*, para. 80), submitting his report about three months

after her disclosure and one day after her inquiry into the delay. Given the 90-day time limit on applications to the UKET, this sabotaged her efforts to obtain a remedy (*Ms S Lenton v. Commissioners for HM Revenue and Customs*, 2020). The Civil Service Commission declined to investigate. These cases appear to support arguments that investigations focus on individual wrongdoing, not systemic flaws – “the easy stuff” (P1.21, P1.36).

There is no evidence of corrective action following a disclosure and finding of wrongdoing. This is likely attributable to the informality of internal investigations and the confidential nature of the disclosure process.

With respect to redress, there is no evidence that grievances are effective. Again, this is likely attributable to the confidential nature of the process. Evidence from civil service surveys on harassment complaints may be a proxy; this data has been tracked since 2016. Evidence suggests that while harassment is rising, only half of employees feel comfortable reporting it. Only 15% felt that appropriate action was taken to stop the harassment, with half reporting reprisals (United Kingdom. Cabinet Office, 2021). Ultimately, however, all roads to a remedy lead to the UKET. Unfortunately, data from the Ministry of Justice does not discriminate between private and public sector claims and covers over 30 million workers (of which civil servants constitute 1.5%). A search of UKET decisions between 2015 and 2021 revealed 14 decisions that pertained to the central government, two that related to the Scottish government, and one involving a temporary worker at a central government agency. Only one was an unqualified success; two others were partial successes. Considering all sectors, Myers (2004) reported that there were 1200 claims made at the UKET in the first three years of PIDA (UK) operation. Of these, 152 proceeded to a hearing. Ministry of Justice data shows 2200 applications in 2018-19 (United Kingdom. Ministry of Justice, 2020).²⁷

In terms of outcomes, Myers (2004) reported an early success rate of 46% and an average award of £107,117. A later assessment estimated the median award as £17,422, with cases taking about 20 months to be resolved (Wolfe et al., 2016, p. 5). Troublingly, the report also assessed 50 cases and found that “many whistleblowers who seem to be in the position to win their cases and receive adequate compensation have had their actions and motives questioned by UKET judges” (p. 29). Typical legal costs ranged from £8,000 to £25,000 (p. 31). D. Lewis (2008, 2010) concluded that UKET decisions were favouring employers, with success rates half that of all unfair dismissal cases. The All Party Parliamentary Group (APPG) Whistleblowing assessed UKET decisions and

²⁷ Numbers had increased to over 2500 per year in 2013-14, but fell when fees were introduced. These fees were dropped in 2017 as they were ruled an unlawful barrier to access to the UKET.

found that just 12% succeeded at tribunal, with cases taking increasingly long times to reach adjudication (United Kingdom. APPG Whistleblowing, 2019). Reviewing UKET cases from 2018, the Government Accountability Project found that 14% of whistleblowers succeeded. Most failed on the merits (Feinstein et al., 2021). A review of Ministry of Justice data between 2013-14 and 2019-2020 produces slightly different findings,²⁸ indicating that 28% of PIDA (UK) reprisal complaints settled using ACAS mediation, 25% were withdrawn, and 33% were dismissed for different reasons. Of cases heard in full, 20% succeeded (United Kingdom. Ministry of Justice, 2020).

These findings, which demonstrate the hurdles, costs, time, and effort of taking a case to the UKET, were supported by participants and this dissertation's more current review of cases. A review of 59 PIDA (UK) UKET decisions between 2019 and 2021 found 13 successes and four cases where the protected disclosure remedy was rejected but unfair dismissal substantiated. The average remedy for detriment after a protected disclosure was about £31,000. Two cases added costs of over £20,000. Six cases were rejected as too late, and in two cases the claimants were ordered to pay costs of £4000 and £5000 (United Kingdom. Ministry of Justice, 2020).²⁹ One participant (P1.21) described UKET whistleblower awards as "pitifully low," while another (P1.36) observed that high costs and low benefits are the prime motive for mediated agreements. These constitute two-thirds of cases (United Kingdom. Department of Trade and Industry, cited in Wolfe et al., 2016, p. 77).

For reasons of cost, many applicants are self-represented. As noted above, legal representation can cost tens of thousands of pounds unless there is a damages-based agreement / contingency fee (United Kingdom. All Party Parliamentary Group Whistleblowing, 2019; Wolfe et al., 2016; P1.36). Self-represented claimants achieve success at a rate less than half that of litigants with legal counsel (United Kingdom. APPG Whistleblowing, 2020, p. 11). Participants suggested reasons for this, such as employers abusing the process by failing to disclose documents, over-redaction, and attempts to dismiss claims for spurious reasons (P1.36). Increasingly restrictive judicial interpretations were also cited as a factor, reducing flexibility on time limits, and introducing higher burdens of proof (e.g., the public interest test and balancing of interests; P1.05, P1.34, P1.36).

Despite what appear to be bleak outcomes for whistleblowers, trust in the regime may be rising – as measured using proxy data from civil service surveys. Between 2009 and 2020, employees expressing confidence in "challenging the

²⁸ This may reflect the time frames or methodology used.

²⁹ The decline in awards is consistent with falling claims for unfair dismissal. In 2017/18, the average award for unfair dismissal was about £15,000, while in 2019/20 it was closer to £11,000 (United Kingdom. Ministry of Justice, 2020).

way things are done” rose from 39% to 54%; 69% of staff felt safe raising concerns about inappropriate conduct in 2020. Awareness of the Civil Service Code has risen from 75% in 2009 to 93% in 2020, and 77% expressed confidence that a complaint under the Code would be properly investigated (United Kingdom. Cabinet Office, 2021). The validity of this data is disputed by a participant who noted that in a 2017 information session on whistleblowing, only three of 47 departmental representatives knew their own policy (P1.21, supported by P1.24).

Whether these figures represent reality, however, was recently brought into question. Home Office Permanent Secretary Sir Philip Rutnam alleged that he was harassed by Secretary of State Priti Patel in 2020. He initiated legal action and obtained a settlement of £340,000 (Boyd, 2020; Haddon, 2020; Syal, 2021). This raises the hackles of whistleblowing advocates: “You know, he’s probably the second most senior civil servant we have. He should be the one making sure that it’s been done properly... And yet he went straight to 43G [of PIDA (UK)] and making a disclosure in the press” (P1.21) instead of using internal civil service processes. A union official (P1.40) noted that the case had sent shockwaves through the senior civil service.

It is difficult to determine whether wrongdoing is being deterred, as there is no baseline data on observed wrongdoing within the civil service. Several participants noted that there are no fines or criminal charges for reprisal (P1.21, P1.36, P1.40). This not only allows the wrongdoing to continue but creates opportunities for different forms of wrongdoing. A participant observed, “If you do something but you haven’t lost your job over it, well, you’re more cautious next time” (P1.36).

With respect to longer-term outcomes, there is little evidence that can link the regime with governance. Cases that have reached public attention suggest that the enactment of PIDA (UK) did not lead to an immediate change in Whitehall. Following the 2003 invasion of Iraq, Ministry of Defence biological warfare expert Dr. David Kelly was accused of leaking papers that showed claims that Iraq possessed weapons of mass destruction were “sexed up.” His identity as the suspected leaker was confirmed by the government (he denied some allegations), leading to intense public scrutiny, political attacks, and a summons to two parliamentary committees. He committed suicide before charges could be laid and shortly after appearing before the Foreign Affairs Select Committee. This triggered an inquiry headed by Baron (Brian) Hutton, who concluded that the government had not acted improperly. Instead, he blamed the BBC for failing to verify its story before publication (B. Hutton, 2004). In 2008, MP Damian Green’s office was searched by the police following leaks by Home Office employee Christopher Galley. Despite the mundane nature of the leaks – some pertaining to recent immigrants obtaining security jobs, for example – the government argued that the leak threatened national security and hence deserved

prosecution under the *Official Secrets Act*. Galley was fired, but charges were not pursued after a report called the reaction “disproportionate” (S. Wright, 2009).

More generally, observers attribute the mixed performance of the regime to its complexity, inconsistent messaging, and opaque processes. This was the assessment of the Public Accounts Committee in 2014, which also identified the lack of support for whistleblowers (United Kingdom. House of Commons Public Accounts Committee, 2014). Another assessment by the NGO Blueprint for Free Speech made similar findings in 2016. It conducted an analysis of the law against best standards and gave it a failing grade. It also reviewed 50 cases and found numerous decisions in which irrelevant evidence (e.g., of motive) was used against whistleblowers, perverting the intent of the law (Wolfe et al., 2016). The Parliamentary and Health Service Ombudsman noted that while professional and competent, the various components of the administrative law system are not “joined up” (interview, June 17, 2019). One participant (P1.36) characterized PIDA (UK) as “fundamentally flawed,” while another (P1.21) argued that “It doesn't work in Westminster because it doesn't work anywhere else.”

The mixed and inconclusive evidence does suggest that several assumptions behind the regime are flawed and that some risks do exist. First, investigations in departments are not consistently timely and fair, suggesting the need for standards and a move away from informal processes. Second, protection and redress are secondary objectives of the regime, being neither easily accessible nor offering adequate compensation. Third, errors in use of the regime have deprived whistleblowers of redress, suggesting the need for more flexibility and better training. Fourth, processes are opaque, with almost no visible successes – deterring even a permanent secretary from their use. In sum, the evidence available suggests that the regime has increased in use and trust over time, but that this is not based on other observable evidence. There is no data to establish whether wrongdoing is being deterred or that governance has improved. Despite this, there is a consensus that PIDA (UK) remains better than previous common law protections (Lewis, 2010; McMullen, 2010).

4.2.4 Summary

This section examined the disclosure regime that emerged with the implementation of the Civil Service Code and enactment of PIDA (UK). While PIDA (UK) is a protections-based law that applies to all sectors, the Civil Service Code and associated policies require that departments establish procedures for handling disclosures pertaining to breaches of the Civil Service Code – many of which are fundamental to the public service bargain. These overlapping mechanisms create diverse avenues of disclosure, with many that are protected under PIDA (UK) being nonetheless unsanctioned by the Civil Service Code. Despite this complexity and a lack of clear guidance, it is possible to construct a tentative logic for the regime. Positively, survey data suggests that trust and use

of the regime is gradually increasing. Unfortunately, other evidence undermines this finding. Looking both up and down the chain of logic, there is no compelling evidence that it has improved outcomes for whistleblowers or governance. It is impossible to know how many whistleblowing cases go well, but those that are visible have exposed defective investigations and specious reasoning by senior officials, accompanied with a stubborn defence even when the wrongdoing and reprisal are obvious. In addition, whistleblowers may have to juggle grievances and claims at the UKET, enduring lengthy delays – during which they may be unemployed or suffering other reprisals. Wrongdoers, on the other hand, appear able to rely on support from peers and can mobilize the resources of government in their own defence. Logically, this should undermine trust. Further, a lack of transparency and any effort to assess the performance of the regime may forever hide misconduct and frustrate Parliament's accountability role.

4.3 Institutional Factors Affecting Whistleblowing in Whitehall

This section will examine the factors that emerged as most significant in the response to different types of disclosure – internal, quasi-internal, and external – as well as those which affect all disclosures. For the purposes of this dissertation, categories of disclosure are internal to the organization (i.e., up the ladder via supervisors or senior officers), quasi-internal if they are external to the organization but Whitehall (e.g., the Civil Service Commission and some prescribed persons), or external (e.g., legal advisers, some prescribed persons, media, unions). Prescribed persons can be either quasi-internal or external, depending on whether they remain confidential or whether they might initiate an independent investigation. For example, quasi-internal disclosures include the Civil Aviation Authority, the Personal Investment Authority, and the Financial Conduct Authority. MPs, C&AG (which reports to the Public Accounts Committee), and local authorities are treated as external. This distinction is made because interviews, government communications, and prominent cases suggest that as matters become more public, organizational leaders lose control of messaging and the whistleblowing process, the potential for politicization of the disclosure increases, independent investigations may be triggered, and, consequently, the hostility of institutional actors increases. Some reasons for this are rooted in the conventions and associated norms of Whitehall government, some in the erosion of traditional arrangements in Whitehall, and some in the institutional environment – interactions with employment law and built-in incentives, for example.

4.3.1 Internal Disclosures

Internal disclosures include those made to supervisors and up the chain of command, to nominated officers within departments, or to a third party sanctioned by an official procedure of the employer. In theory, this is consistent with Whitehall conventions on ministerial responsibility, the accounting officer

concept, and the role of the civil service. Internal disclosures alert the chain of command to misconduct, ultimately reaching the minister. Corrective action can then be taken. As internal disclosures are formally sanctioned, they can also be considered the loyal implementation of the government's policies. It is also a form of confidential, honest, and frank advice. The public interest is served: Early corrective action prevents further harm, and the protection of whistleblowers should create a climate in which civil servants can speak up about all concerns. Ultimately, by reducing opportunities for corruption and other forms of misconduct, governance should be improved.

Law, policy, and official communications to civil servants reinforce these messages and signal the legitimacy of internal disclosure. The disclosure of wrongdoing inside departments is protected under both the Civil Service Code and PIDA (UK). It does not fall afoul of the *Official Secrets Act 1989*, provided that any evidence is gathered legally. Indeed, it may be required under the *Constitutional Reform and Governance Act 2010*, s.7(4), which requires civil servants to conduct their duties with honesty and integrity. If a permanent secretary opts to employ a third-party whistleblowing service, this should also be protected. This was confirmed in *Brothers of Charity Services Merseyside v. Eledy-Cole* (2002).³⁰

However, there are caveats that arise from an examination of the regime's logic. A key assumption behind the endorsement of internal disclosures is that disclosures will be competently investigated and otherwise dealt with honestly. The establishment of "clearly mandated formal procedures" for complaints of misconduct is mandated in the Civil Service Management Code, including protection of the whistleblower (United Kingdom. Cabinet Office, 2016, s. 12.1.3) and under ACAS guidelines (United Kingdom. ACAS, 2015). Notably, there are no standards for investigations and the word "review" is used instead. Further, investigators are not independent as they are appointed and directed by departmental leadership. Lacking a reporting requirement, it is impossible for the whistleblower, their peers, or the public to know whether the matter was properly dealt with unless the matter is appealed to the Civil Service Commission, another authority, exposed via an UKET claim, or otherwise made public. The Civil Service Code, however, makes it explicit that civil servants must resign if they cannot reconcile themselves with the response to their concerns and reminds them that they remain bound by the *Official Secrets Act 1989*. Should a

³⁰ This case involved a worker at a charity hostel for disadvantaged persons in Liverpool. Eledy-Cole was fired after making a disclosure about fellow employees viewing pornography and using drugs. He had made the disclosure via an employee assistance program hotline. The employer attempted to argue that the disclosure was to a third party. The UKETAT rejected this on the basis that the employer had contracted the hotline service as a form of disclosure recipient.

whistleblower suffer reprisal, they must again appeal to departmental leadership; grievance processes are also set by the permanent secretary. Alternately, they may make an application at the UKET.

Defects in this logic have been exposed in prominent cases. In the *X/Lenton*, discussed above, internal procedures were clearly deficient and appear abusive. The reason Lenton was denied a remedy was due to time limits, not the merits of the case, in conditions that appear engineered. This suggests that whistleblowers should seek remedies as soon as possible, although the case demonstrates how quickly positions can harden when an adversarial process commences. In another case, Claire Gilham, a judge, made internal disclosures about cuts in resources and the impacts on courtroom security and the workload of district judges. She alleged a range of formal and informal reprisals including bullying and a failure to offer appropriate accommodation for her disability. She was denied remedy at the UKET and UKEAT in 2016 and 2017 on the basis that she was not considered a worker under PIDA (UK). It was not until the case reached the Supreme Court in 2019 that she was successful and the matter referred back to the UKET (*Gilham (Appellant) v. Ministry of Justice (Respondent)*, 2019). The decision was viewed as a success by advocates (e.g., Protect, 2018, p. 11), but illustrates the determination and resources necessary to obtain a remedy.

It is unclear why government officials would seek to undermine the legitimacy of internal disclosure processes by contesting cases for the reasons seen in *Gilham* and *X/Lenton*. Personal liability offers a partial explanation, but the specious nature of the government's reasoning and the persistence of appeals suggests approval by higher authorities, perhaps intended to send a message to other workers or to wear down persistent whistleblowers. This would align with Annakin's (2011, p. 194) findings that Australian departmental officials interpret the persistence of whistleblowers as evidence of their "unreasonableness" and may also be related to norms about appropriate behaviour in hierarchies – deference to authority in particular. This is not unique to Whitehall but is an integral part of traditional Westminster government arrangements. These norms may also be why informal disclosures within networks are accepted by institutional incumbents as a preferred method of raising the alarm (Barker & Wilson, 1997). Unfortunately for whistleblowers, this route offers no protections under the Civil Service Code or PIDA (UK), or any guarantee of an investigation. Rather, success is likely dependent on trust between the officials communicating and the influence of the recipient, in line with power theories (Miceli et al., 2008).

Thus, while institutional barriers are lowest for internal disclosures, which should serve the public interest in facilitating the quick correction of wrongdoing, this is not necessarily reflected in all cases – particularly those reaching the public. Table 4.3 identifies the factors affecting internal disclosure outcomes.

Table 4.3: Factors Affecting Internal Disclosures in the U.K. Civil Service

Internal disclosure	
<p>Supporting:</p> <ul style="list-style-type: none"> - Consistent with conventions on confidentiality, frank and honest advice, loyalty to minister, loyal implementation - Approved under the Code and PIDA (UK); does not violate <i>Official Secrets Act 1989</i> - Consistent with Whitehall accountability arrangements if appropriate action is taken - Reprisal likely to be viewed as illegitimate at the UKET if made on “reasonable belief” basis 	<p>Undermining:</p> <ul style="list-style-type: none"> - Unclear whether it can overcome political interference and ultra-responsiveness - May violate hierarchical norms, depending on recipient of disclosure - Nominated officers and internal investigations not truly independent - Independently assessed remedy only available via PIDA (UK) - Failure to act appropriately on disclosures may frustrate accountability

4.3.2 Quasi-Internal Disclosures

Quasi-internal disclosures are those which leave the organization but remain within Whitehall institutions, such as the Civil Service Commission. These avenues involve some loss of control over process and outcomes by organizational leadership but maintain confidentiality. In most circumstances, disclosures under both the Code and PIDA (UK) must first be made internally. The matter can only be escalated when internal processes have failed or appear compromised. As they are formally sanctioned, they can also be considered the loyal implementation of the government’s policies. They also remain consistent with Whitehall conventions on ministerial responsibility, although accounting officers (permanent secretaries) may feel deprived of the opportunity to correct a problem within their department if the disclosure is not first made internally. Such disclosures are more likely to become public, as the Civil Service Commission publishes investigation reports, as may other prescribed persons, violating the confidentiality convention and loyalty norms. Still, they serve the public interest by providing a backstop to departmental processes and facilitating corrective action. Thus, they may improve governance by drawing attention to defects in administrative leadership and accountability processes.

Law, policy, and official communications provide mixed messages on quasi-internal disclosures. Disclosures to the Civil Service Commission are sanctioned by both the Civil Service Code and PIDA (UK), s. 43C(2), and are immune from prosecution under the *Official Secrets Act, 1989*. However, not all such disclosures are similarly protected, as disclosures to prescribed persons entirely outside Whitehall government risk being labelled an unauthorized disclosure. Furthermore, a Civil Service Commission spokesperson (interview, June 25, 2019) noted that they can assist in investigating disclosures of wrongdoing under the Code, but not disclosures under PIDA (UK). However, its guide to civil servants declares that almost any wrongdoing under PIDA (UK) would be a wrongdoing under the Code (United Kingdom. Civil Service Commission, 2010b, p. 3). Given the principles-based nature of the Code, this is true – but

undermines arguments that PIDA (UK) disclosures could not be investigated by the Commission. Departmental policies, on the other hand, attempt to define the scope of PIDA (UK) to offences in law, national security matters, and serious dangers to health and the environment. Most other wrongdoing, in this framing, falls under the Code and its internal avenues of disclosure (e.g.; United Kingdom. Scottish Government, 2018, Annex D). Other than links to the official list of prescribed persons, there is no guidance. This leaves whistleblowers facing institutional intransigence with a stark choice: abandon a disclosure or make it externally. As explained below, this is even more emphatically discouraged.

This confused and lukewarm guidance is unfortunate, as quasi-internal recipients have more independence in their investigations than internal departmental processes. The Civil Service Commission has an established investigation process that appears to have some rigour. Investigations confirm wrongdoing in half of investigated cases, with reports including allegations, methodology, a summary of the evidence, findings, and recommendations, as well as other relevant considerations. The Commission appears sensitive to civil service norms as it has promulgated guidance that it will not name whistleblowers or the implicated department. They also indicate a preference for cooperation with department (Civil Service Commission spokesperson, interview, 25 June, 2019; United Kingdom. Civil Service Commission, 2010a, p. 16). A review of investigation reports established that the first claim is partly untrue. For example:

We find that both Person A and Person B are in breach of the Code in relation to the first allegations [safety concerns in a supplier's contract] made against them both. DfID [Department for International Development] did not believe there was a Code breach here because there was no intent. The Commission takes a different view. We believe that for both this is a clear breach of the duty of objectivity. Intent may have a place in any decision on sanctions but not on a decision on a breach of the Code. (United Kingdom. Civil Service Commission, 2020b)

Quasi-internal recipients remain vulnerable to some forms of government influence, however. For example, Civil Service Commissioners are selected by the government after a superficial consultation with opposition parties (*Constitutional Reform and Governance Act 2010*, s.2) and support staff at the Commission are seconded from Cabinet Office (United Kingdom. Civil Service Commission, 2020a, p. 46). Governments can also exert pressure on some of these offices via control of financial and other resources. An interview with a spokesperson confirmed that only three staff members were assigned to Civil Service Code issues, and that partly because of this it refers most cases back to implicated departments.

The Civil Service Commission has only published eight reports. The *X/Lenton* case is revealing in this respect. Court records establish that the Commission

argued that it could not investigate the core of Lenton's disclosure (favourable treatment of an offending firm), instead being limited to Code violations. Lenton revised her disclosure, but the Commission then argued that it lacked the expertise required to properly investigate. Instead, the matter was returned to HM Revenue and Customs, the same agency which had effectively sabotaged her initial disclosure and hope of remedy (X, paras. 92-93).

Despite this, if faced with intransigence, the Parliamentary and Health Service Ombudsman (interview, June 17, 2019) observed that oversight authorities still have leverage – even in the absence of order-making powers. First, matters may be escalated to Cabinet Office, and second, a public report may be issued. This increases the likelihood of reputational damage to implicated officials.

In sum, quasi-internal disclosures are lawful, largely consistent with Whitehall conventions, and appear to increase the prospect of corrective action. However, they may violate some norms. Table 4.4 lists the main factors found to affect outcomes.

Table 4.4: *Factors Affecting Quasi-Internal Disclosures in the U.K. Civil Service*

Quasi-internal disclosure	
<p>Supporting:</p> <ul style="list-style-type: none"> - Largely consistent with conventions on confidentiality, frank and honest advice, loyalty to minister, loyal implementation - Approved under Code and PIDA (UK) - Serves as a backstop should internal processes fail - Threat of escalation and damage to reputation should encourage compliance - PIDA's prescribed persons provide alternate avenues for investigation of wrongdoing 	<p>Undermining:</p> <ul style="list-style-type: none"> - May violate hierarchical norms - Civil Service Commission has resource constraints and weak powers to compel evidence and testimony - Civil Service Commission likely to refer disclosure back to department; has no power to compel corrective action - Lack of clarity on use of prescribed persons; some may be treated as external

4.3.3 External Disclosures

External disclosures include all those which leave organizations and the influence of Westminster institutions. Thus, except for disclosures made to lawyers while obtaining advice, they have a high risk of producing outcomes not in the control of powerful Westminster actors. Since they are not confidential and do not constitute loyal implementation, they appear to be a violation of Whitehall conventions on the role of the civil service. They may also deny ministers and senior civil servants the opportunity to correct misconduct without interference if made without first raising the matter internally. These interpretations are based on a narrow reading of the concept that excludes the public interest and the possibility that ministers themselves may be implicated, though. Further, an argument can be made that Parliament should be informed of policies which are legal but lead to harm when implemented. Previous research also suggests that

external disclosures are more likely to lead to corrective action, perhaps triggering inquiries by the C&AG and Public Accounts Committee. Notably, disclosures to MPs are protected but one interviewee (P1.20) noted that it would likely be interpreted as politicizing the matter, violating conventions separating politics and administration.

Official guidance and policies have consistently discouraged external whistleblowing. The Civil Service Code reinforces the Armstrong's memorandum with warnings to civil servants considering an external disclose: if unsatisfied with internal processes, resign. If you resign, remain silent or face potential prosecution. Cabinet Office guidance and codes, such as the Cabinet Manual (United Kingdom. Cabinet Office, 2011), the Civil Service Code, and the Civil Service Management Code all emphasise internal disclosures in both tone and content. The *Official Secrets Act 1989* also has a powerful symbolic effect:

Crown servants are required to 'sign' the Official Secrets Acts, despite all persons being subject to the provisions, regardless of whether they sign or not. The categories of information protected by the 1989 Act are broad, and the way that they are used to assess damage bears little resemblance to the levels of security classification attached to official information. (A. Savage, 2021)

Three participants criticize the *Official Secrets Act* for criminalizing the unauthorized disclosure of all official information, not just secrets (P1.05, P1.21, P1.24). Notably, the U.K. government is considering amendments to the Act to increase penalties and remove the requirement to demonstrate harm, but which extend its application to journalists who publish unauthorized material. Lashmar (2021) condemns this development on the basis of past abuses, one of which involved the illegitimate arrest of two journalists in Northern Ireland in 2019.

It may also be that norms within hierarchies are being violated. These affect any disclosure that leaves the chain of command, but a study of U.K. whistleblowers singled out the public sector as particularly hazardous: It was the only sector in which outcomes for whistleblowers consistently worsened the longer they persisted (Public Concern at Work & University of Greenwich, 2013). This undermines the logic of the regime as external disclosures are almost always made after internal disclosures have failed (Donkin et al., 2008; R. Moberly, 2014, p. 276). External whistleblowing is thus an indicator of regime failure, even implicating officials who may not have participated in the wrongdoing but should have acted earlier. The *Mba* and *X/Lenton* cases both demonstrate that when this happens, positions can harden and reprisals worsen.

Thus, there appear be to substantial barriers to the acceptance of external whistleblowing in the U.K. civil service. Despite legally sanctioned avenues, it is interpreted as a violation of civil service conventions and any misstep will invite

prosecution under the *Official Secrets Act 1989*. This creates a disincentive to external disclosure, possibly at the expense of the public interest.

Table 4.5: Factors Affecting External Disclosures in the U.K. Civil Service

External disclosure	
<p>Supporting:</p> <ul style="list-style-type: none"> - Threat of use and reputational damage should provide an incentive to establish effective internal systems - More likely to lead to corrective action due to public exposure - May trigger intervention of other accountability mechanisms 	<p>Undermining:</p> <ul style="list-style-type: none"> - Invites prosecution under the <i>Official Secrets Act 1989</i> - Not confidential and likely to be seen as disloyal to minister - Violates hierarchical norms - Disclosures to prescribed persons and to public must meet higher standards - Incentives favour suppression of disclosure and reprisal against whistleblowers

4.3.4 Factors Pertaining to All Disclosures in Whitehall

There are several factors that appear to apply to all avenues of whistleblowing in Whitehall. First, there remains a climate that is hostile to whistleblowing, based in part on misconceptions. In addition, Whitehall's rigid hierarchy, combined with the intrusion of political actors into administration and their control of incentives, may be undermining the logic and outcomes of the regime. Of concern for the public may be the effects of devolution, which has put some services outside Whitehall and its accountability mechanisms. The employment regime and free speech rights, although they should support whistleblowing, appear neutral in their effects.

With respect to prevailing climate, government communications signal ambivalence on whistleblowing. While the *First report of the Committee on Standards in Public Life* dealt extensively with the need for whistleblowing avenues, and later reports expanded this concept to local government, the Committee has not returned to the subject. Tellingly, a guide for private sector whistleblowing systems has been promulgated by the Department for Business Innovation and Trade (2015) for the private sector. It dwarfs similar guidance for civil service leaders in both length and detail (cf. United Kingdom. Cabinet Office, 2016, Chapter 4).

Some norms appear rooted in ignorance. For example, two participants (P1.19, P1.30) noted the prevailing belief that only external disclosure is whistleblowing. This misconception may contribute to an entrenched stigma that remains in the civil service despite shifting public attitudes (P1.05, P1.19, P1.21, P1.34). Reports by the Committee on Standards in Public Life (2005), Public Administration Select Committee (2009), and the Public Accounts Committee (United Kingdom. House of Commons Public Accounts Committee, 2014) each provide anecdotal evidence of this barrier. Persistence exacerbates matters. As

one participant observed, "To object once is obligatory. Twice, if necessary, is desirable. Three times is suicidal." (P1.30)

There is some awareness of this problem, as the Civil Service Commission initiated a campaign to reframe internal disclosure as "speaking up or raising a concern" (Civil Service Commission spokesperson, interview, June 25, 2019). This is noted in some departmental annual reports (e.g., United Kingdom. Department for Transport, 2019, p. 118). But while the civil service is publicly attempting to encourage a speak-up climate, participants noted that unless leadership actively models and rewards the behaviours, employees are unlikely to feel safe (P1.05, P1.19, P1.21, P1.33). Some organizations clearly fail in this respect. For example, a union official noted that their management were routinely scanning emails with an algorithm to identify "certain kinds of communications" such as potential disclosures (P1.37). Mba's case is an extreme manifestation of this, with his wife also targeted.

The organizational climate and prevailing norms associated with Whitehall's traditional bargain also affect what is considered misconduct. Consistent with guidance under the Civil Service Code, there was broad agreement among experts that disclosing policy decisions as wrongdoing was not legitimate and constituted a breach of the traditional bargain (P1.05, P1.19, P1.20, P1.30, P1.35). However, PIDA (UK) applies to any wrongdoing that "has been committed, is being committed or is likely to be committed" (s. 43B). An unethical or unspoken policy may encourage wrongdoing or lead directly to harm, as in the Mba case, but the Code offers no avenue to escalate concerns. This can be used to blunt disclosures by characterizing a wrongdoing as a policy dispute (P1.21).

In addition, hierarchies and the norms that accompany them appear to be distorting conventions. Regarding loyalty to the minister, the logic is as follows: The minister is the primary object of loyalty, but permanent secretaries interpret and transmit the policy preferences and decisions of the minister to their subordinates, who do the same down the ladder. In this interpretation, each level claims the legitimacy of ministerial responsibility and the right to loyalty from subordinates. This framing allows any disclosure outside the chain of command to be characterized as disloyal and justifying reprisal (P1.20, P1.24, P1.33). Taken another step, the dispute can be used to exclude whistleblowers even when they succeed at the UKET on the basis that it represents a breakdown in the relationship between employer and employee. In one case, civil servant David Owen disclosed that senior officials at Treasury had secretly altered a minister's policy – an example of adverse selection in principle-agent theory, and ironic given that Owen was attempting to respect the convention of loyal implementation. When the UKET ordered Owen's reinstatement, citing deficient internal procedures, the department refused to rehire him. This resulted in an award of £142,000 at the UKET. Total costs to government were over £500,000 (Syal, 2014).

There may also be a disconnect between senior levels and working levels. One participant who had conducted an ethnographic study of senior civil servants argued that executive ranks are dominated by policy specialists with little connection to citizens or their needs: “The top brass, they’re very smart, very bright, very good at working with their politicians [but] have no idea what it is like to work in the front office. Most couldn’t remember the last time they went into the front office” (P1.20). Whitehall also appears to carry with it the burden of class culture to a greater degree than other Westminster governments. At the political level, one participant noted that many long-standing politicians are not used to being challenged, and can fall back on status, “...like Lord _____, who can be awfully stuffy. One day, you’ll say hello to him. The next day, he almost tells you to call him Your Lordship” (P1.21).

Political actors also appear to play a role. Notably, special advisers have increased in both number and influence. While they are now expected to comply with the 2015 Special Adviser’s Code, which instructs them to only convey the minister’s “views, instructions and priorities” (United Kingdom. Cabinet Office, 2015b, p. 2), enforcement is ultimately in the hands of the prime minister. This creates an opportunity for political pressure on civil servants to implement policies in a manner that contradicts public positions. For example, the favoritism in tax treatment exposed by Lenton and Mba was alleged as originating at political levels. Implementation was facilitated by excessive administrative responsiveness.

Political actors who commit a wrongdoing appear particularly difficult to stop. A union official (P1.40) argued that working level civil servants can do little to check such misconduct. One of the worst examples involved years of bullying, sexual harassment, discrimination, and racism allegations made against MPs. The Speaker of the House, John Bercow, had at least ten such complaints made by parliamentary staffers (P1.40). Human resources personnel were unable or unwilling to act. This left many victims isolated, in fear, suffering from psychological harms, and their careers derailed. Investigations led nowhere until an inquiry was conducted by Dame Laura Cox (2018). Party politics appears to have played a role as well, as abusers were either condemned or supported based on, in one case, support for Brexit (P1.40).

Incentives are also structured to favour suppression of disclosures. Reputation appears linked to career progression, with whistleblowing representing a threat (P1.19, P1.21, P1.34). This contributes to a climate of blame avoidance and denialism, captured by one participant in a few words: “We don’t have problems. It’s the other guy who has the problems” (P1.21; supported by P1.20, P1.33, P1.34, P1.36). Per one participant, this fear of consequences may trigger “knee jerk” organizational responses (P1.19). Where reprisal happens, much is in the control of permanent secretaries whose own leadership may be questioned. But while dismissal is the most severe reprisal, with associated loss of the secure

income and pension (P1.21, P1.24, P1.34), other reprisals can also be effective. For example, Kay Sheldon, a board member at the Care Quality Commission, faced a psychiatric evaluation after voicing concerns. Other reprisals cited were threats of legal action, ostracizing, bullying, manufactured poor performance on annual evaluations, missed promotions, and blacklisting.

Neither the U.K. employment regime nor free expression rights appear to have improved outcomes for the civil service whistleblowing regime. A whistleblowing expert (P1.05) suggested unions could help balance the power of the parties, but union officials argue that this is not happening. Rather, they argue that senior departmental officials are undermining unions to eliminate supports for dissenters and whistleblowers (P1.37, P1.40), with human resources personnel accused of assisting in reprisals (P1.21). An advocate criticized unions, citing the practice of negotiation between management and union officials over the outcomes of different cases – with successes and losses traded, and whistleblowers usually being the sacrificed parties (P1.21). In addition, while the UKET offers a neutral avenue of redress, whistleblowing cases may be treated like ordinary employment disputes, attempting to balance interests of confidentiality and loyalty to the employer with the public interest (P1.05, P1.21, P1.34). This may trivialize the wrongdoing. A participant (P1.21) also noted that no judge has ever referred a wrongdoing exposed at the UKET to the Criminal Prosecution Service.

Further, UKET processes are costly and time consuming. A labour lawyer noted “Probably about... 70%-75% of the cases settle because the legal cost... far outweighs any possible award that the claimant could achieve” (P1.36). One advocate cited a case in which a string of lawyers was brought in for an organization’s defence – an effort that still resulted in a win for the whistleblower (P1.33). Another observed, “I arguably funded my own persecution, because I’m a taxpayer” (P1.21). Cases now take an average of two years to reach a resolution (United Kingdom. APPG Whistleblowing, 2019). While Civil Service Commission processes do not have financial costs associated with them (unless a whistleblower retains legal counsel on their own initiative), advocates noted that the process is also a long one, with reprisals potentially ongoing (P1.21, P1.35, P1.37, P1.40). In sum, union officials, advocates, and labour lawyers argue that financial cost-benefit analyses do not favour whistleblowing. The best outcome, one suggested, is a “negotiated exit” (P1.40). These typically include a non-disclosure agreement, preventing the matter from reaching the public.

The *Human Rights Act 1998* has also been ineffective. While passed to obviate the need for applications under the ECHR, it does not offer remedies for whistleblowers. One analysis concluded that U.K. courts and the UKET “have not been willing to recognise free speech provisions” (Mannion et al., 2018, p. 59). However, as one participant (P1.05) noted, the United Kingdom also may have to conform with EU Directive 2019/1937 on whistleblowing protection if it wishes to

be given equivalence and have free trade after Brexit. Other commitments do not appear to affect U.K. whistleblowing case law.

Finally, a relevant structural factor is the proliferation of arm’s length agencies and outsourcing service delivery to the private sector. The Code and PIDA (UK) still apply in executive agencies, although union representatives reported that their members were sometimes confused about processes in these cases (P1.37, P1.40). In the case of outsourcing, only PIDA (UK) applies. It was suggested that this was by design, with contract enforcement procedures replacing whistleblowing procedures (P1.20). This problem was identified by the Public Accounts Committee, which recommended the protections be extended to outsourced services. The government refused to do so (United Kingdom. Treasury, 2014, p. 5, para. 6.1). To illustrate consequences, a participant (P1.20) cited an “absolutely horrendous decision” denying a pensioner their benefits, which were distributed through a contracted service provider. Nobody was held responsible, and the appeals process took a year. This view on the vulnerability of outsourced and privatized workers is supported by *Royal Mail Group Ltd v. Jhuti* (2019). Jhuti alleged that Royal Mail, which was government-owned until 2013, had offered illegal incentives to clients. She was fired by her manager on the basis of a poor work assessment, a common reprisal tactic (Wolfe et al., 2016, p. 83). Jhuti’s case reached the Supreme Court, which dismissed Royal Mail efforts to obscure the real reason for her termination.

Table 4.6: Factors Affecting Disclosures in the U.K. Civil Service

All disclosures	
<p>Supporting</p> <ul style="list-style-type: none"> - Use of the UKET provides a neutral avenue of redress - Tiered process under PIDA (UK) may force culture change 	<p>Undermining</p> <ul style="list-style-type: none"> - Loyalty convention has been distorted to personal loyalty - Prevailing beliefs and norms still hostile - Persistence viewed as unreasonableness - Incentives favouring responsiveness to political actors also support cover-up and reprisal - Senior officials control incentives and organizational processes (including grievances and HR) - The UKET process is expensive and uncertain, with very short time limits - Outsourcing puts much wrongdoing outside Whitehall processes

4.3.5 Summary

This section analyzed the factors that appear to affect whistleblowing in the U.K. civil service, considering the traditional bargain, ministerial responsibility, processes and structures within Whitehall, and norms and organizational climate. Internal avenues of disclosure are consistent with Whitehall conventions, are favoured by powerful institutional actors, and are consistent with employment law. This does not guarantee success, however, necessitating an avenue of

appeal. Quasi-internal disclosures are reluctantly accepted, violating some organizational norms but remaining largely consistent with convention due to the confidentiality of processes. At this point, whistleblowers are expected to cease their efforts. External avenues, though legal under PIDA (UK) and justified in some circumstances by case law, are treated as a prima facie violation of conventions on impartiality and confidentiality, and risk prosecution under the *Official Secrets Act*. At all levels of disclosure, whistleblowers must consider whether they are violating hierarchical norms, whether their persistence will be interpreted as unreasonableness, and whether the misconduct they have observed is the result of excessive responsiveness to political actors – who are increasingly crossing the boundary into administration. Related to the latter, incentives now favour responsiveness and the suppression of bad news.

4.4 Conclusion

This chapter examined the institutional context of Whitehall's whistleblowing regime, focussing first on the events and movements leading to the Civil Service Code and PIDA (UK), then the structure, logic, and performance of the regime, and finally, the factors that appear to affect the achievement of outcomes. The analysis showed that the events and cultural changes contributed to changing attitudes on dissent and whistleblowing. The regime that emerged was a product of this history, with multiple and confusing avenues for disclosure and lacking a clear logic. Combined with a failure to collect relevant data or conduct a comprehensive evaluation of the regime, this has led to mixed results.

Considering history, early Whitehall did not have a formal disclosure or discipline process, instead relying on the merit principle, norms, and semi-formal disciplinary procedures governing individual behaviour. This was disrupted by increased scepticism of the civil service and desire to pursue ideological goals without resistance. Responsiveness increased but misconduct continued, with some originating in the political sphere and being facilitated by civil servants. The response of senior civil servants to increased internal dissent in the face of this real or perceived misconduct was to strengthen guidance on conventions on the role of the civil service and threaten prosecution of unauthorized disclosures. Attempting to wish away misconduct and scandal in this manner failed to achieve any improvements, leading to the Nolan Commission and the formalization of the Civil Service Code. The worst disasters were in the private sector, however, leading to legislation that would apply to all U.K. workers. It does not appear that the government considered the implications of PIDA (UK) on the civil service.

As a result of this history, the U.K. civil service whistleblowing regime is a patchwork that lacks an overarching logic and offers multiple avenues and processes to make a protected disclosure. The Civil Service Code focusses on individual misconduct, attempting to honour the traditional service bargain. Protection of whistleblowers appears to be an afterthought. PIDA (UK), on the

other hand, does not require investigation or correction of wrongdoing, only offering a remedy after reprisal has occurred. Despite a lack of evaluation, there is evidence that the regime is slowly accomplishing its immediate outcomes as more civil servants appear willing to trust the regime and respect their managers. Why this is so is not entirely clear: There is no baseline data that suggests that any route of disclosure reduces the incidence of wrongdoing or deters reprisal. Rather, anecdotal evidence through public and adjudicated cases suggests that all types of disclosure carry risks, with persistence treated as unreasonableness. Further, the absence of a trusted internal avenue for redress effectively forces whistleblowers to use PIDA (UK) as a last resort. This does not appear consistent with the implied goals of the disclosure regime. Given that the regime remains essentially unchanged after 20 years, this suggests there may be unstated goals that are being met. Two such may have been legitimacy-seeking and channeling of disclosures into safe avenues controlled by management.

The final section of the chapter examined the evidence on factors affecting disclosure using these different avenues. This evidence suggests that while all types for disclosure are covered by statute, internal avenues are strongly favoured by powerful institutional incumbents, who treat external disclosure as a hostile (and possibly political) act. Unfortunately, this perspective ignores the incentives built into Whitehall, in which a “gotcha” news story can cripple a government and senior civil servants are accordingly rewarded for keeping bad news out of the public eye. Further, there is a theme in communications, policy, and the structure of the civil service which suggests expectations that civil servants limit their exercise of frank and fearless advice. When they do not, they risk being perceived as the problem. Combined with a willingness to prosecute unauthorized disclosures, instructing civil servants to resign in the event they are not satisfied with Code processes may be confused with an implied threat.

These mixed messages – offering avenues of disclosure which are limited in effectiveness or hamstrung in some manner, while at the same time creating substantial threats to those making disclosures – again suggest mixed motives (or naiveté) on the part of policymakers. This does not mean that efforts were entirely insincere, or that the regime is entirely ineffective. PIDA (UK) and subsequent amendments would not have passed without the support of successive prime ministers. Civil Service Code disclosures have led to findings of wrongdoing and PIDA (UK) has compensated whistleblowers. In addition, there may be many successful cases which never reach the light of day. This suggests that increased transparency, better training and awareness, and an ongoing cycle of evaluation would be beneficial.

While all case countries have governments based on the Westminster model, there are some distinct features to the U.K. case. Unlike Canada and Australia, it lacks a codified constitution, and it is not a federation with provincial or state governments. This has had implications for the development of its whistleblower

regime, which was implemented without strict requirements or rigid formal procedures. The other case countries – Canada in particular – adopted a more structured approach that is consistent with their codified constitutions. In Canada, this resulted in a relatively straightforward regime that attempts to balance a constitutional freedom of expression with the common law duty of loyalty. It has an explicit logic but lacks a means to escalate concerns. These and other factors will be considered next for Canada, which enacted public sector whistleblower protections in 2005.

Chapter 5

Whistleblowing in the Canadian Public Service

Canada's public sector whistleblowing regime has been shaped by the country's history as colony of the United Kingdom, its codified constitution, case law, and incentives which have emerged from efforts to increase administrative responsiveness to political direction. While measures to manage conduct and accountability have existed for over a century, successive Canadian governments have favoured greater central control and the use of officers of parliament following crisis points. After an accumulation of government scandals, culminating in the Sponsorship Scandal, this was again the approach: The enactment of the *Public Servants Disclosure Protection Act (PSDPA)* in 2005 mandated departmental processes and created the office of the Public Sector Integrity Commissioner (PSIC), promising protection and safe avenues of disclosure to public servants who wished to report misconduct.

This chapter is divided into three sections. The first presents a description of traditional avenues for dissent and reporting error and misconduct, then traces the events leading to the implementation of formal whistleblowing protections. Particularly significant were the *Canadian Charter of Rights and Freedoms* (the *Charter*) and subsequent case law, as well as the nature of the scandals prior to the PSDPA. These were almost exclusively within the public sector.

The second section describes the public service whistleblowing regime, its implied logic, and available evidence of effectiveness. The *Charter* and subsequent case law established a balance between freedom of expression and a duty of loyalty to the employer which was incorporated into government policy and the PSDPA. The PSDPA created structures which channel disclosures of wrongdoing and complaints of reprisal into avenues that remain solidly within the control of Canadian Westminster institutions. While a logic model and performance framework for the regime were initially developed, they were quickly abandoned. Published data on the regime is superficial, but a survey of available evidence does not suggest that hoped-for outcomes are being achieved.

In the third section, factors that appear relevant to the outcomes of whistleblower cases and the regime are examined. Internal disclosure is favoured, although the PSIC provides an avenue of appeal that is reluctantly accepted by senior administrative actors. Prevailing norms remain hostile to whistleblowing outside the chain of command, some Westminster conventions appear to have become distorted, and political actors are increasingly involved in public administration – including, crucially, the control of incentives.

The chapter concludes that Canadian policymakers focused on public sector whistleblower protection. Senior administrative and political actors have neither embraced the regime nor effectively monitored its performance. As it is aligned

with Canadian Westminster conventions, this suggests that it is meeting the expected outcomes of those actors – outcomes that may not be consistent with public pronouncements or the public interest.

5.1 Evolution of the Government of Canada Whistleblowing Regime

This section describes the events and decisions preceding the implementation of the whistleblower regime in the Canadian public service. These are broken into overlapping stages, starting with the stable institutional arrangements for maintaining competence and enforcing norms within the public service. Subsequent stages include freedom of information legislation, pressures to increase the responsiveness of the public service, the incorporation of rights and freedoms into the constitution, legal decisions creating a public interest exception to the common law duty of confidentiality and loyalty to the employer, the development of a formal code of conduct for the public service, and attempts at an administrative whistleblowing mechanism. These stages occurred against a backdrop of increasingly embarrassing government scandals. This created the conditions for the Liberal government to endorse whistleblowing legislation, and for the incoming Conservative government to bring it into force.

5.1.1 Traditional Loyalty, Disclosure, and Accountability

Concerns about the competence of government arose in the middle of the 19th century, well before Confederation. The provinces of Upper Canada and Lower Canada had a history of patronage in which local elites controlled appointments and could direct policy and public funds largely free of oversight. These practices were condemned in the *Report on the affairs of British North America* (Lambton, 1839). An *Act for improving the organization and increasing the efficiency of the Civil Service of Canada* (1857) was passed in the pre-Confederation United Province of Canada, drawing on the Northcote-Trevelyan report. Section 25 of the *Canada Civil Service Act*, 1868, established a Civil Service Board, and the *Canada Civil Service Act*, 1882, created the Board of Civil Service Examiners. Concerns about patronage and the interference of “selfish, ignorant and short-sighted politicians” (Juillet & Rasmussen, 2008, p. 37) in administration continued into the early 20th century, leading to the creation of the Canadian Civil Service Commission in the *Civil Service Amendment Act*, 1908. It was not until the 1918 *Civil Service Act*, though, that the merit principle was firmly entrenched and the politics-administration divide accepted as a norm (Savoie, 2003, p. 28).

The public service bargain that emerged during the middle decades of the 20th century was consistent with that of the U.K. civil service and aligned with Weber’s (1921/2013) model of rational, impersonal bureaucracy (Kernaghan, 1978; Savoie, 2003). The Civil Service Commissioner, an independent officer of Parliament, became the Public Service Commissioner under the *Public Service Employment Act*, 1967, albeit with significantly diluted powers.

There are several mechanisms in Canada's government intended to detect error and misconduct and to hold political and administrative actors to account. Parliament is the key check on executive power, but, in general, scholars consider it unequal to the challenge of holding the executive to account (Good, 2014, p. 227; Savoie, 2003, p. 237, 2008, pp. 293–303; P. Thomas, 2010). The Public Accounts Committee, although almost as old as that of the United Kingdom, does not have the same reputation. It is assisted by the Office of the Auditor General (OAG), which operates with considerable independence in its investigations. Besides the OAG, there are now nine officers of Parliament, including the Information Commissioner, the Privacy Commissioner, the Conflict of Interest and Ethics Commissioner (Ethics Commissioner), the Commissioner of Lobbying, the Parliamentary Budget Officer, and the PSIC.

Canadian permanent administrative heads (deputy ministers) have traditionally been accountable only to their ministers – not Parliament, as in the United Kingdom. The accounting officer concept was introduced in ss. 16.3-16.4 of the *Financial Administration Act* (1985), but this was not the U.K. accounting officer. Rather, the amendments make it clear this is within the scope of traditional ministerial responsibility. This affects a deputy minister's ability to challenge ministerial decisions. Where a deputy minister cannot agree with their minister, they are directed to seek written guidance from Treasury Board Secretariat (TBS), setting out the issue in writing in a "clear and balanced manner," providing a copy to the Minister (Canada. Privy Council Office, 2015, p. 44). The guidance is confidential.

Participants describe the process more clearly: If confronted with an instruction that could lead to civil or criminal liability or is clearly unethical, protest. If necessary, request the order in writing. This is forwarded to central agencies as well as the minister. A former senior public servant argued that this will usually work. If not, officials should be prepared to resign in protest if the matter is serious. Otherwise, the public service must comply with the direction (personal communication, Mel Cappe, February 26, 2019; P1.14). A failure to do so is essentially a firing offence. This can lead to perverse consequences. For example, Dr. Peter Bryce, chief medical officer in the federal Department of Indian Affairs, produced a report on the conditions in residential schools in 1907. Indigenous children were forced to attend these schools. Bryce learned that 25% of children in schools he surveyed had died, but his report was suppressed and he was forced into retirement. He published it himself in 1922 (Bryce, 1907; Lux, 2018). The recent discovery of the remains of hundreds of Indigenous children in unmarked graves at former residential schools have focussed attention on his efforts and the reprisals he endured (Hay et al., 2020; Rodrigez, 2021). More recently, Linda Keen, president of the Canadian Nuclear Safety Commission, was fired in 2008. She had refused to allow the continued production of medical isotopes at the Chalk River nuclear reactor facility due to safety concerns (CBC

News, 2008). Resignation in protest also occurs: Chief Statisticians Munir Sheikh (in 2010) and Wayne Smith (in 2016) both cited policy disputes as the reason for their resignations (Canadian Press, 2016).

Options for more junior public servants to raise concerns were traditionally more limited. Public servants were expected to report up the chain of command. Informal methods of raising the alarm were also possible and remain a favoured approach. Senior public servants described scenarios in which employees spoke to them off the record, which was then transmitted to more senior officials (P1.14, P1.22). This screening of complaints or disclosures applies only to clear wrongdoing, however, as there is a prevailing belief that working level employees lack the awareness of a broader constellation of factors to comment on many policies or decisions (P1.14, P1.22, P1.44). In the event no action is taken, junior public servants might have no formally sanctioned avenues of appeal. This led some to leak to the media and MPs. One example was Bob Thompson, an analyst posted in Chile in 1973, who leaked secret cables from the Canadian embassy to an opposition MP. These showed that the Canadian ambassador was being dishonest about the brutality of the Pinochet regime. Public indignation forced the Canadian government to change its position and accept Chilean refugees (CJFE, 2013). Thompson (2013) describes a situation many whistleblowers face: “As a junior foreign-aid bureaucrat working for the Canadian International Development Agency, I felt I had no power to influence government decisions.” Thompson lost his job and never returned to the public service.

5.1.2 Regulating Behaviour in the Canadian Public Service

Following the establishment of the merit system, directions on the department of public servants were gradually formalized in policy and law. The first efforts concentrated on conflicts of interest and partisan activities (Kernaghan, 2007). An early example was Order in Council PC 360 of 1920, which addressed moonlighting and partisan activities. The *Public Servants Conflict of Interest Guidelines* and the *Standard of Conduct for Public Service Employees* were implemented in 1973, followed by conflict of interest codes for public office holders and for public servants in 1985. Senior public servants in the early 1970s were also concerned by leaks to the media (e.g., Robertson, 1972).

Other types of unacceptable behaviour – which might be legal but unethical, for example – were regulated by departmental officials. There were some calls for a formal code of conduct (e.g., Kernaghan, 1974, 1978), but this had to wait until the early 2000s. The *Framework for the Management of Compliance* (Canada. TBS, 2009) sets out the current sanctions for administrative misconduct. Sanctions are based on a range of factors, including intent, harm, personal benefit, and the public interest. Notwithstanding this, government policy and communications have consistently emphasized the importance of the traditional Westminster bargain between the political executive and the public service,

especially the duty of loyalty. This can be seen in *Responsibility in the Constitution* (Canada. PCO, 1977), *Guide Book for Heads of Agencies: Operations, Structures and Responsibilities in the Federal Government* (Canada. PCO, 1999), *Governing Responsibly: A Guide for Ministers and Ministers of State* (Canada. PCO, 2003), *Meeting the Expectations of Canadians: Review of the Responsibilities and Accountabilities of Ministers and Senior Officials* (Canada. TBS, 2005), *Duty of Loyalty* (Canada. TBS, 2011a), *Open and Accountable Government* (Canada. PCO, 2015), and *Guidance for Deputy Ministers* (Canada. PCO, 2017).

With respect to confidentiality and secrecy, s. 21 of the *Criminal Code* prohibits the unauthorized release of public information for personal gain. Further, the *Security of Information Act* (1985)³¹ prohibits the communication or mishandling of a range of confidential and secret information. It has not been used against a public servant since 2001 (Friedman, 2015).³² Instead, federal public service whistleblowers in Canada are more likely to be accused of violating the TBS (2019a) *Policy on Government Security* (K. L. Saunders & Thibault, 2008). Breaching this policy may result in the revocation of a security clearance, which usually renders a public servant unemployable.

5.1.3 The Emergence of Legal Protections and Rights for Whistleblowing

Canadian common law has traditionally supported a duty of loyalty to the employer; this was especially true of public servants, who traded political rights for tenure. This changed as collective bargaining between public service associations and the government was established in 1961, reflecting changing views of public servants – less as extensions of the minister, and more as citizens with an institutional role (Juillet & Rasmussen, 2008, p. 99). Political rights for public servants were expanded with the *Public Service Employment Act*, 1967, and were entrenched when the *Charter* was enshrined in the *Constitution Act*, 1982. The *Charter* soon featured in a case relevant to whistleblowers. Neil Fraser, a minor civil servant, was dismissed for publicly protesting the implementation of the metric system. He appealed, based on his s. 2(b) *Charter* rights for “freedom of thought, belief, opinion and expression.” This Supreme Court of Canada (SCC) rejected this argument:

As a general rule, federal public servants should be loyal to their employer, the Government of Canada. The loyalty owed is to the Government of Canada, not the political party in power at any one time. A public servant need not vote for the

³¹ Previously titled the *Official Secrets Act*, 1939; modelled on the U.K. *Official Secrets Act 1911*.

³² A survey of cases on CanLII, a legal database, uncovered only one case since 2015 – a naval officer engaged in espionage.

governing party. Nor need he or she publicly espouse its policies. And indeed, in some circumstances a public servant may actively and publicly express opposition to the policies of a government. This would be appropriate if, for example, the Government were engaged in illegal acts, or if its policies jeopardized the life, health or safety of the public servant or others, or if the public servant's criticism had no impact on his or her ability to perform effectively the duties of a public servant or on the public perception of that ability. (*Fraser v. P.S.S.R.B.*, 1985)

The three criteria – illegality, threats to life, health and safety, and when the criticism has no impact on the employee's work – created the basis for balancing freedom of expression with duties to the employer (Cohen-Lyons & Morley, 2012; McEvoy, 2016). These rights were further clarified and extended to permit limited political activity in *Osborne v. Canada* (1991).³³ They have since been integrated into official guidance on the role of the public service (e.g., Canada. TBS, 2011a).

Several scholars have argued that subsequent court decisions have weakened the common law whistleblower defence (e.g. McEvoy, 2016, p. 61; Sossin, 2005, p. 27). For example, three veterinary scientists in the federal Ministry of Health – Dr. Shiv Chopra, Dr. Margaret Haydon, and Dr. Gerald Lambert – refused to approve the use of bovine growth hormone (rBGH) and the antibiotic enrofloxacin (marketed as Baytril), which cause animals to grow faster and increase milk production. They argued that enrofloxacin was known to contribute to antibacterial resistance, that rBGH had been found to cause adverse health effects in cows, and that the manufacturers failed to provide sufficient evidence on effects on people consuming the meat and milk of cows receiving the drugs. They were called to testify to the Senate Standing Committee on Agriculture and Forestry and later made comments on public television. Their testimony resulted in disciplinary action. Six participants cited this case, with a former senior public servant strongly asserting the right of ministers to overrule the scientists (P1.22, P1.28, P1.29, P1.32, P1.38, P2.01). In *Haydon v. Canada* (2001), the Federal Court ruled that the scientists had met the requirements of the *Fraser* test and overturned the discipline. However, when the scientists spoke up again, commenting publicly about a ban on Brazilian beef imports, they were fired for insubordination. This time, in *Haydon v. Canada* (2005), the court ruled that internal mechanisms had not been exhausted and that the scientists had not verified the facts.

Reinforcing *Haydon* (2005), *Read v. Canada* (2005) involved Cpl. Robert Read, an RCMP investigator who publicly disclosed high-level interference in his

³³ *Osborne v. Canada* (1991) involved public servants who wished to engage in political activity, a right still denied in law. The SCC determined that a blanket prohibition was a violation of the *Charter* freedoms of expression and association and could only be justified if it impaired their ability to perform their duties in an impartial manner.

investigation into corruption in Canada's Hong Kong consulate in the 1990s. The court rejected Read's argument that he was a whistleblower on the basis that he did not have enough evidence to support an external disclosure, and that he had violated his duty of loyalty. Significantly, the common law defense has not been available to federal public servants since 2003 as the *Federal Public Service Labour Relations Act* (2003, s. 236) denies any right of action outside normal grievance processes. This was tested and upheld in *Bron v. Canada* (2010).³⁴

Numerous other statutes have included provisions for whistleblower protection. At the federal level, this includes the *Canada Labour Code* and *Personal Information Protection and Electronic Documents Act*, 2000. Provincial acts have similar provisions – for example, pertaining to long term care or workplace health and safety. These provisions typically require employees to report up the chain of command, rely on a regulator for enforcement, and require the employee to pursue a remedy at a labour board (McEvoy, 2016).

In addition, the *Criminal Code* was amended in 2004 to include s. 425.1, which prohibits reprisals against employees who report or intend to report a crime to “a person whose duties include the enforcement of federal or provincial law.” This was intended to address insider trading in capital markets, but applies to all employers (McEvoy, 2016). It provides no mechanism for whistleblowers to seek a remedy, however, and a review of the CanLII legal database reveals that it has not been used in any prosecutions to date (see also McEvoy, 2016). It has, however, been used to deny protection to a whistleblower: In *Anderson v. IMTT-Québec* (2013),³⁵ the Federal Court of Appeal ruled that the provision does not protect employees who make “reckless complaints” without first attempting to use internal mechanisms.

5.1.4 The Drive for Responsiveness and the Rise of Whistleblowing

The emergence of constitutional, statutory, and common law protections for whistleblowers must be considered in the political context of the late 20th century and associated changes to the traditional bargain. While the *Public Service Employment Act*, 1967 gave public servants new rights, it also undermined the merit principle by limiting or eliminating many powers of the Civil/Public Service

³⁴ Bron disclosed mismanagement in the regulation of marine transportation security at Transport Canada in 2006. He attempted to sue those making reprisals for damages.

³⁵ Anderson managed health and safety issues at IMTT's terminal at the Port of Quebec. Anderson was an employee with a history of raising safety concerns that alienated his superiors. They intended to dismiss him, but before they could he disclosed concerns about the installation of a light standard to a professional association. He was fired for disloyalty and performance issues. Despite what appears a clear nexus between whistleblowing behaviours and termination, his appeals were dismissed.

Commission. This attack on the Commission and the merit principle was sustained over coming decades: The Lambert Commission and D'Avignon Special Committee on Personnel Management and the Merit Principle (both in 1979) respectively recommended greater central control and that the merit principle be balanced with equity, responsiveness, efficiency and effectiveness (Kernaghan, 2007). Revisions to the *Public Service Employment Act*, 1967 introduced appointment on a "standard of competence as the Commission may establish, rather than as measured against the competence of other persons" (s.10) in 1992. The *Public Service Employment Act*, 2003 then redefined merit as an absolute minimum rather than relative to other candidates applying for the job. The needs of the organization were prioritized (s. 30[2]). In other words, candidates no longer need to be the best candidate for the post being advertised – they simply need to meet minimum standards, opening the door for other selection criteria such as "best fit" for the job. Juillet and Rasmussen (2008, p. 115) argue that this facilitates nepotism and prejudices "the character and values associated with being a responsible public servant."

In addition, governments were increasingly being embarrassed by scandals (Kernaghan, 1974, 1978). Bob Thompson's case is discussed above; another whistleblower, Walter Rudnicki, was fired in 1973 for sharing a document that revealed the Canadian government was undermining a negotiation process with Indigenous groups. He won a civil suit, but soon found himself blacklisted as a left-wing revolutionary. His case contributed to the movement for greater public access to government information (Linden, 2018; Zvonik, 2010). The RCMP was also caught spying on political figures, break-ins targeting Quebec nationalists, setting fires, and even bombings. This triggered a series of inquiries (Palango, 2008). One effect of these scandals was pressure for increased government transparency. This bore fruit when the *Access to Information Act* came into force in 1983. It was initially hailed as a model, but has since become a subject of criticism, with scholars arguing that it has led to public servants avoiding a written record (A. Roberts, 2006; Savoie, 2003, pp. 49–52), delays for requests extending to years (Lim, 2021), and being more effective in preventing information being disseminated (Kernaghan & Langford, 2014, p. 167). While it has been amended to include more agencies and to make the destruction of records an offence, it remains largely unchanged.

5.1.5 Action and Reaction after Public Service Scandals in the 1980s and 1990s

Scandals that unfolded in the 1980s and 1990s maintained public attention on the issue of whistleblowing. These mostly involved the public sector. In one prominent 1985 case, dubbed "Tunagate," Fisheries Minister John Fraser overruled his inspectors to authorize the sale of rancid tuna. The justification was the preservation of 400 canning plant workers. Fraser was found to have lied about tests of the tuna and was removed by Prime Minister Brian Mulroney

(Malcolmson & Myers, 2003, p. 113). New legislation in 1986 removed the minister's authority to overrule inspectors (Canadian Press, 1986; M. Harris, 1985; LILTRIS4, 2017). In another case, Minister of Defence Robert Coates took secret NATO documents into a German strip club. Responding to internal disclosures, Clerk Gordon Osbaldeston initiated an investigation which ultimately led to Coates' resignation (Miller, 1985). After leaving politics, Mulroney was himself accused of accepting brown envelopes full of cash for promoting the purchase of Airbus passenger planes for Air Canada (Canada. Commission of Inquiry into Certain Allegations Respecting Business and Financial Dealings Between Karlheinz Schreiber and the Right Honourable Brian Mulroney, 2010).

Jean Chrétien led the Liberal Party to electoral victory in 1993 on a platform that included the promise of ethics reforms (Liberal Party of Canada, 1993). Chrétien promptly created a task force chaired by John Tait to study ethics in the federal public service. The Tait Report followed a much more comprehensive report by the Ontario Law Reform Commission, which examined political activity and disclosure by Crown public servants (Ontario. Ontario Law Reform Commission, 1986). Both examine the tug-of-war between loyalty to the employer and loyalty to the public good, employees' rights to free speech, the potential damage of malicious and unfounded whistleblowing, and concerns about the effects of whistleblowing on constitutional conventions. While the Ontario Law Reform Commission proposed a formal whistleblowing mechanism reporting to the legislature (pp. 332-352), the Tait Report was more cautious. It supported internal whistleblowing to approved authorities but considered external whistleblowing to be inconsistent with Canadian government conventions. It favoured a values and ethics approach to induce better behaviour and decision-making (Canada. Canadian Centre for Management Development. Task Force on Public Service Values and Ethics, 1996). Kernaghan, who helped draft the Tait Report, has also advocated for codes of ethics for decades (Kernaghan, 1974, 1978, 1997, 2007; Kernaghan & Langford, 2014).

The Chrétien government accepted the Tait Report but was not yet prepared to accept formal whistleblower protections. "Vile wretches and public heroes: the ethics of whistleblowing in government" (Laframboise, 1991) captures the sentiment of the time, emphasizing loyalty and the subordination of public servants to elected officials. Laframboise, a retired senior bureaucrat, described Canadian government wrongdoers as "scamps" and associated whistleblowers with "compulsive morality," noting that they are "difficult people" who "have little regard for the oath of secrecy." Chrétien ordered the development of codes of conduct for public servants. This was an unhurried process: The *Values and Ethics Code for the Public Service* (PS Ethics Code) was promulgated in 2003.

The 2003 PS Ethics Code included four public service values: "democratic," "professional," "ethical," and "people." At 43 pages, it set out responsibilities for TBS, ministers, deputy ministers, and other employees. Public servants

observing wrongdoing were instructed to make a disclosure in accordance with the TBS *Policy on the Internal Disclosure of Information Concerning Wrongdoing in the Workplace* (2001), which offered three avenues: to a supervisor (i.e., up the ladder), a senior departmental officer designated to receive and investigate disclosures, or the Public Service Integrity Officer (the PSIC's predecessor). Consistent with traditional Westminster concerns, it concentrated on conflicts of interest and the acceptance of gifts. The PS Ethics Code was amended in 2011 to reflect the implementation of the PSDPA and the creation of the Ethics Commissioner (for Parliament) and the PSIC (for the public service). The newer and shorter Code has five values: "respect for democracy," "respect for people," "integrity," "stewardship," and "excellence" (Canada. TBS, 2011b). Both codes imply that the public interest is defined or expressed through elected officials:

The democratic mission of the Public Service is to assist Ministers, under law, to serve the public. (TBS, 2003, p. 6)

Federal public servants have a fundamental role to play in serving Canadians, their communities and the public interest under the direction of the elected government and in accordance with the law. (TBS, 2011b, p. 2)

Audit and evaluation were enhanced. Audit has long been integrated into departmental functions, with a formal requirement for program evaluation dating from 1977 (Segsworth, 2005; R. P. Shepherd, 2016). The policy on evaluation has changed several times since then, with the policy at the time of writing dating from 2016. While program evaluation can provide valuable information to the executive and enhance accountability (cf. Aucoin, 2005; Dobell, 2003; Mayne, 2003), concerns have been periodically expressed that it has focussed on process and outputs, rather than relevance and broader policy goals (R. P. Shepherd, 2012). Further, some argue that departmental control of evaluations has made them self-serving as both ministers and deputy ministers have incentives to appear error-free in their respective domains (Muller-Clemm & Barnes, 1997; Segsworth, 2005). Thomas suggests that poor evaluation practice is the result of meaningless indicators, poor data, and a lack of qualified evaluators (P. Thomas, 2010; P. G. Thomas, 2007); this was supported by the findings of the OAG in its inquiry into program evaluation (Canada. OAG, 2009). As Shepherd (2016) notes, it may also speak to the difficulties of speaking truth to power in political and bureaucratic settings.

5.1.6 Punctuated Equilibrium and the Public Servants Disclosure Protection Act

In the early 2000s, three major scandals created a tipping point. First, the HRDC (Human Resources and Development Canada) fiasco in 2000 involved the alleged loss of \$1 billion in funds intended for use in training programs. This was ultimately resolved as an accounting error. Second, the 2003 Radwanski Affair

involved the abuse of personal expenses by the Privacy Commissioner. This was leaked to Parliamentary committee and resulted in Radwanski's resignation and criminal charges. He was acquitted in 2009, but his chief of staff was convicted of a breach of trust.

By far the most important, though, was the Sponsorship Scandal. On October 30, 1995, the Province of Quebec held a referendum on independence from Canada, which was narrowly defeated by 50.2%. In response to the close call, the federal government sponsored an advertising campaign in Quebec to promote national unity. It ran from 1996 to 2004, when it was revealed that some contracts required little or no work and that funds were being donated back to the governing Liberal Party. The director general heading the program, Chuck Guité, operated outside the usual chain of command, reporting directly first to Jean Pelletier, chief of staff to Prime Minister Jean Chrétien, and later to Minister of Public Works and Government Services Alfonso Gagliano. One employee, Allan Cutler, refused to comply and raised concerns internally. In reprisal, he was demoted, isolated, and moved to a new position. He had, however, kept records.

After a damning report by the OAG (2003b, 2003a), the Commission of Inquiry into the Sponsorship Program and Advertising Activities was convened. The Commission was headed by Justice John Gomery and heard from almost 200 witnesses (including Cutler). It included a forensic audit and solicited input from Canadian scholars on public administration and Westminster governance. Multiple and cascading failures were identified, implicating senior public servants, politicians, and political staff at the Prime Minister's Office (PMO). Gomery blamed unrestrained political interference in administrative processes and the lack of whistleblower protection as key contributing factors. He also accused both politicians and senior public servants of using the ambiguities of the convention of ministerial responsibility to avoid accountability (Canada. Commission of Inquiry into the Sponsorship Program and Advertising Activities, 2005b, 2005c, 2005a). Gagliano was fired on the orders of Prime Minister Paul Martin (Azzi, 2014) and the RCMP charged several individuals, including Guité, who was sentenced to 42 months in prison (The Globe and Mail, 2006). Cutler, the whistleblower, retired early with a reduced pension.

As part of early damage control efforts, the Liberal government created the office of the Public Sector Integrity Officer in November 2001. This was not an officer of Parliament, however, but an administrative position reporting to TBS. The first Integrity Officer, Edward W. Keyserlingk, was critical of his own mandate, as were civil society groups, unions, and opposing political parties (Saunders & Thibault, 2010, p. 148). The primary concerns were that the office lacked independence and that it would not be able to overcome public service norms:

An example is the laudable but somewhat facile maxim, "speak truth to power." The problem is, "power" is not always prepared to hear the truth, even less

prepared to act upon it, and unhappy with the one who spoke it. In such cases, speaking the truth can be a career limiting activity. There is a corresponding duty on the part of managers, executives and Deputy Ministers to listen to the truth, act upon it when indicated, and commend those who speak it – not subject them to reprisal. (Canada. Public Service Integrity Officer, 2003, p. 34)

Responding to continued public pressure resulting from the unfolding testimony in the Gomery Inquiry, the government formed the Working Group on the Disclosure of Wrong-doing in 2003. Whistleblowing legislation was drafted in 2004 but was immediately criticized as having many of the same flaws as the internal disclosure policy and for ignoring the recommendations of the Working Group. After the 2004 election, it was revised and the PSDPA received Royal Assent in November 2005. A subsequent election in 2006 resulted in a Conservative Party victory; the new government introduced more amendments to address criticisms and the PSDPA came into force in April 2007.

Besides creating the office of the PSIC, the government also created the Ethics Commissioner in 2006. The Ethics Commissioner provides oversight and enforcement of the *Conflict of Interest Act* and the *Conflict of Interest Code for Members of the House of Commons* for public office holders. This includes members of federal boards, commissions and tribunals, ministerial staff, ministers, parliamentary secretaries, MPs, deputy ministers, and heads of Crown corporations. Ministerial staff are also required to comply with the Ethical and Political Activity Guidelines for Public Office Holders and Code of Conduct for Ministerial Exempt Staff (Canada. PCO, 2015, Annexes A and I). With respect to directing public servants, ministers and their staff are instructed to be “vigilant” in observing “appropriate parameters of interaction,” and to direct communications through deputy ministers offices (Canada. PCO, 2015, p. 47).

5.1.7 Summary

This section traced the evolution of voice, dissent, and accountability in the Canadian public service from its foundation to the point at which statutory protections for whistleblowers were enacted. The merit principle, established norms, and traditional accountability mechanisms had maintained public service competence and conduct for many decades. Aspects of this traditional bargain came under pressure in the 1960s and 1970s, however. Public servants gained political rights and freedoms and began to exercise them, exposing misconduct. Senior political and administrative actors resisted whistleblowing, first implementing measures to bolster transparency and ethics. As in the United Kingdom, this institutional layering and drift (Streeck & Thelen, 2005) was followed by punctuated equilibrium (Krasner, 1984) – specifically, public outrage at political misconduct facilitated by administrative compliance in the Sponsorship Scandal. The result was the PSDPA and the *Conflict of Interest Act*, intended to address misconduct at administrative and political levels, respectively.

5.2 Nature and Performance of Canada's Public Service Disclosure Regime

This section will examine the Canadian public service whistleblowing regime that was created with the enactment of the PSDPA, considering how it functions, its logic, and evidence of success. As described in previous chapters, whistleblowing regimes are based on a chain of logic. In protections and structural models, this is as follows: First, whistleblowers are an important source of information about misconduct, and they need to be protected to prevent their disclosures being suppressed. Second, safe and effective avenues of disclosure will protect the whistleblower and ensure the wrongdoing is properly addressed. Key to this are competent investigations that lead to corrective action, protection for workers considering or who have blown the whistle (and their allies), and, when the system fails to provide protection, a neutral and competent avenue to obtain redress. Third, workers will trust in the regime and use it. This requires transparency in the process and in outcomes achieved. Fourth, this will deter wrongdoing, normalize speaking up about concerns, and enhance ethics and integrity in the public service. Ultimately, contributes to good governance as policies and decisions improve and public trust in institutions is enhanced.

As few legal regimes are perfect, an ongoing process of evaluation and improvement is important. In Canada's case, a logic model for the PSDPA was developed but was later abandoned. It has three primary avenues of disclosure and offers a mechanism for redress. The law has been reviewed once, but the regime suffered a major blow to its credibility when the first Integrity Commissioner was found to have made a reprisal against an employee of her own. Other evidence is scattered, frequently superficial, and lacks context. Several identifiable shortcomings, moreover, illuminate the risks inherent in the regime.

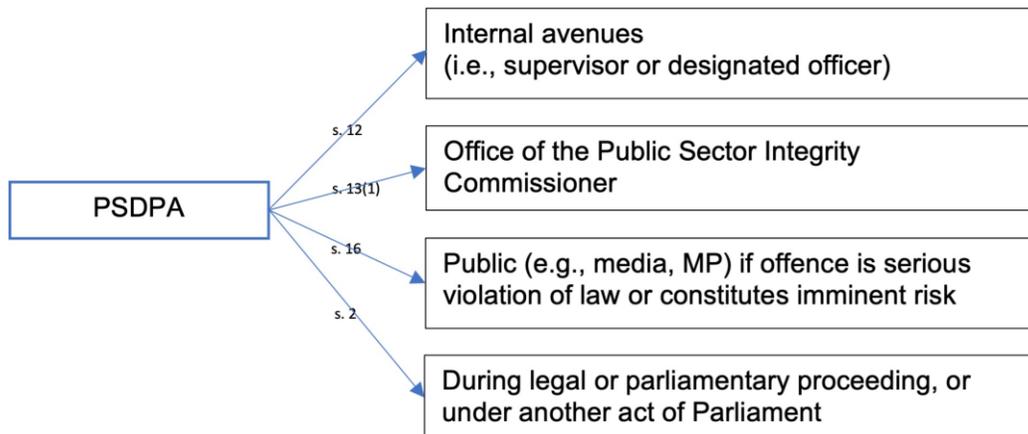
5.2.1 Avenues of Disclosure in the Canadian Public Service

In comparison with PIDA (UK), the PSDPA is a complex law but establishes relatively straightforward avenues of disclosure and a single avenue for redress. As such, it is a protections and structural whistleblowing law. It applies to federal public sector organizations listed in Schedules I-V of the *Financial Administration Act* and Schedule 1 of the PSDPA. Disclosable wrongdoing is defined as a violation of a federal or provincial statute or regulation, gross mismanagement, misuse of public funds or assets, acts or omissions creating a substantial and specific danger to human life, health or safety (other than those inherent to the employee's work), a serious breach of a TBS or departmental/agency code of conduct, and knowingly directing a person to commit a wrongdoing (s. 8).

A public servant with a reasonable belief they have observed wrongdoing may make a disclosure in one of five ways: to a supervisor, to a departmental senior

official designated to receive disclosures, to the PSIC, in the course of a legal or parliamentary proceeding (e.g., committee hearing) or, in serious and urgent cases, to the public (e.g., to the media or an MP; s. 2, ss. 12-13, & s. 16.1). Under the s. 2 definition of protected disclosures, disclosures under other acts of Parliament are included. For example, s. 147 of the *Canada Labour Code*, and ss. 16(4) and 96(4) of the *Canadian Environmental Protection Act*, 1999, prohibit reprisals for disclosures on matters in their jurisdiction. There is no requirement to first make the disclosure internally. Disclosures must be in writing and contain enough detail to substantiate reasonable belief that a wrongdoing has been committed, is about to be committed, or has been ordered by a superior (ss. 11-13). Figure 5.1 shows these avenues; numbers refer to sections of the PSDPA.

Figure 5.1: *Canadian Public Service Disclosure Avenues*



If the disclosure is made within the department, any investigation undertaken would be according to the procedures set by the head of the agency (s. 10[1]). There are no explicit standards for these investigations. Findings of wrongdoing must be reported publicly and to TBS, with recommendations and details on corrective action taken (s. 11[1][c]). If the PSIC receives the disclosure, which must be in writing, it conducts an initial assessment. Should the PSIC determine that an investigation is warranted, it must inform the head of the implicated department (s. 27). The PSIC's office may also initiate an investigation if wrongdoing is discovered while engaged in another investigation (s. 31[1]) – for example, if they find systemic harassment while investigating fraud.

The Commissioner must submit findings of wrongdoing in a report to Parliament (s. 38[3.1]) and must report annually on recommendations made in case reports and whether they were followed (s. 38). There is no obligation to report on disclosures not investigated or deemed to be unfounded. Consistent with Westminster conventions, corrective action is the responsibility of the executive and senior administrative leadership; the Commissioner has no order-making

powers and can only escalate the matter to the relevant minister or board (ss. 36-37).

Reprisal is defined as disciplinary measures such as suspension, demotion, and termination, but also measures that adversely affect a public servant's employment or working conditions and threats of any of these actions (s. 2, definitions). Protection from reprisal takes two forms: First, confidentiality is mandated in s. 11(1)(b), s. 20(4), s. 22(f), and ss. 43-44. Second, reprisal is prohibited (s. 19) and an offence (s. 42.3).

Exempted organizations such as the RCMP must establish their own internal procedures (s. 52). Any public servant who believes they have suffered a reprisal because of a disclosure may make a written complaint to the PSIC within 60 days of becoming aware of the reprisal (or should have become aware, in the PSIC's opinion; s. 19.1[2]). The PSIC's office conducts a preliminary assessment, and, if warranted, an investigation. If it concludes that there was reprisal, the Commissioner refers the case to the PSDP Tribunal (s. 20.4). The Tribunal is intended to be an informal venue (s. 21[1]) but has the same powers as a superior court of record (s. 21.2[1]). Decisions are made on the balance of probabilities. The PSDP Tribunal can order a remedy for the reprisal, including reinstatement, financial compensation, and pain and suffering, up to \$10,000 (s. 21.7). It may also order disciplinary action against those making reprisals (s. 21.8). If unsatisfied with the ruling, whistleblowers may seek judicial review at Federal Court (s. 51.2). Conciliation is also available (s. 20[1]).

5.2.2 Logic of the Canadian Public Service Whistleblowing Regime

A logic model and performance framework were developed after the regime came into force in 2008 (Canada. TBS, response to *Access to Information Act* request, October 16, 2020). The logic model is flawed, confusing activities, outputs, and outcomes. For example, investigations are included as activity, output, and outcome. Activities and outputs also conflate those for the establishment of the regime with those of a fully implemented regime.

The performance and evaluation framework is more complete and coherent, including evaluation questions, indicators, and data sources. It has not been used (Canada. TBS, response to *Access to Information Act* request, undated [2021]). Despite these defects, it is possible to construct the logic of the regime from these documents, the PSDPA itself, the PS Ethics Code, and other communications. Tables 5.1 and 5.2 offer a summary.

Table 5.1: Logic of Canada’s Public Service Whistleblowing Regime

Logic of regime with respect to wrongdoing	Logic of regime with respect to reprisal
Deputy ministers establish codes of conduct (PSDPA, s. 6) and procedures for handling disclosures and protecting confidentiality of whistleblower (PSDPA, ss. 10-11) PSDPA makes reprisal an offence (s. 19 & s. 42.3) ↓	
Public servant makes disclosure to an authorized recipient (PSDPA, ss. 11-13); decision made whether to investigate (PSDPA, s. 10 & s. 24[1]) ↓ Investigations determine whether there is wrongdoing and a report with recommendations or corrective action is made (PSDPA, ss. 26-35; s. 38[3.1]) ↓ Any wrongdoing found is corrected (implied in PSDPA, ss. 36-38 and PS Ethics Code, p. 6, s. 5.1).	Civil servant makes complaint to the PSIC (PSDPA, ss. 19.1-19.2); the PSIC decides whether to conduct inquiry into complaint (PSDPA, ss. 19.3-19.4) ↓ If the PSIC opts to investigate, does so and decides whether to suspend the reprisal action (s. 19.6), offer mediation (PSDPA, ss. 20[1]-20.2), refer the complaint to the PSDP Tribunal (ss. 20.4-20.6), or dismiss the complaint (PSDPA, s. 20.6) ↓ If complaint proceeds to the PSDP Tribunal, hearing is held and decision made on remedy ↓ Reprisal is stopped and whistleblower compensated for harm; those making reprisals disciplined (PSDPA, ss. 21.7-21.8)
↓ Effective processes provide public servants with the confidence to raise concerns (implied in PS Ethics Code, expected behaviour 2 – Respect for People) ³⁶ ↓ “...strengthen the ethical culture of the public sector” (PS Ethics Code, p. 3 & expected behaviour 3 - Integrity) ↓ Maintenance of public service norms and conventions with role of public service (PS Ethics Code, expected behaviours 1, 4, & 5 – Respect for Democracy, Stewardship, & Excellence) “...to maintain and enhance public confidence in the integrity of public servants” (PSDPA, Preamble)	

If at any point a relevant departmental official or the PSIC opts to stop investigating or take further action on a complaint or disclosure, the process stops. If a disclosure cannot be investigated because it is not a disclosable wrongdoing, this may make a complaint of reprisal impossible if it is made in bad faith. This logic contains assumptions and risks. More were identified in the field work of this dissertation, but Table 5.2 below summarizes those immediately evident:

³⁶ Reinforced in TBS annual reports by the Chief Human Resources Officer promoting an environment where employees feel safe to make disclosures. See, for example, the 2020-2021 Annual Report on the Public Servants Disclosure Protection Act (Canada. TBS, 2021, p. 4)

Table 5.2: Assumptions and Risks of Canada's Public Service Whistleblowing Regime

Assumptions	Risks
<ul style="list-style-type: none"> • Relevant functions are appropriately staffed and financed • Employees know process, rights, and responsibilities • Investigations are timely and fair to all parties • Compensation after reprisal is both accessible and proportionate to harm suffered • Process is transparent enough that all staff understand consequences 	<ul style="list-style-type: none"> • Inadequate review and assessment of departmental and the PSIC's processes • Leadership fails to properly implement, provide training for, or enforce regime • Staff may make error in process of disclosure, voiding protection • Departmental processes almost entirely opaque • Wrongdoing originates at political level or involves outside actors • No evaluation of regime effectiveness or process of improvement

5.2.3 Evidence of Regime Effectiveness

This subsection will describe the available evidence for each stage in the regime's logic, or observe the lack of evidence, including for the establishment of procedures, use of regime, number and quality of investigations into wrongdoing, findings of wrongdoing, corrective action taken, number and outcomes of reprisal complaints, remedies obtained, apparent trust in the regime, and impacts on levels of wrongdoing and governance. It will then briefly summarize other efforts to evaluate the regime and what can be concluded about the regime's outcomes.

Beginning with the establishment of procedures, training and awareness, the PS Ethics Code and reports from the Office of the Chief Human Resources Officer (OCHRO) at TBS (e.g., Canada. Treasury Board Secretariat, 2021a) provide evidence that departmental processes exist and that senior officials have been designated to receive disclosures in most departments and agencies of sufficient size as to make this possible. Those that are too small may designate the PSIC as the authorized senior officer. The OCHRO is the office with the mandate of coordinating training and awareness of the regime – and for the PS Ethics Code. The OCHRO describes its education and awareness activities in its annual reports and assists deputy ministers and senior officers where necessary. Deputy ministers and senior officers have a role as well, with new employees briefed on the regime during orientation sessions and other awareness-raising activities ongoing. The PSIC's office also conducts outreach activities, as described in its annual reports (e.g., Canada. PSIC, 2021, p. 9).

Whether these activities are successful is another question: Evidence from public service surveys does suggest there is a problem in awareness and understanding as knowledge of avenues to raise ethical concerns was 71% in 2014 and 73% in 2020 (Canada. TBS, 2015, 2021a). This leaves a significant gap. Two participants (P2.05, P2.12) indicated that they had never heard of the

PSDPA prior to blowing the whistle. A study of communication of the PSDPA determined that awareness efforts varied widely, with little to no evidence of effectiveness, poor coordination, and found that whistleblowing training was combined with other workplace training (Fazah et al., 2016). There is resistance to outreach efforts by the PSIC, as one senior public servant expressed frustration at what was interpreted as an effort to solicit disclosures (P1.44).

Data from PSIC and OCHRO annual reports between 2007 and 2020 indicate that an average of 323 disclosures and 31 complaints of reprisal per year from about 300,000 public servants covered by the PSDPA since its coming into force. This admittedly imprecise ratio implies 1.4% of public servants have made what they believe to be a protected disclosure over 13 years – 0.11% per year. This data is summarized in Table 5.3.

Table 5.3: *Disclosures and Complaints under the PSDPA, 2007-2020*

Activities	Disclosures of wrongdoing to the PSIC	Disclosures of wrongdoing in departments	Complaints of reprisal to the PSIC
Disclosures/complaints	1215	2985	405
Investigations	170	893	123
Findings of wrongdoing or reprisal	17	130	7
Disclosures/complaints investigated	14.0%	29.9%	30.4%
Investigations resulting in findings of wrongdoing / referral to the PSDP Tribunal	10.0%	14.6%	5.7%
Overall % disclosures/complaints founded	1.4%	3.6%	1.7%

Source: PSIC annual reports and TBS annual reports on the PSDPA

This reporting, however, lacks context – for example, levels of disclosure versus observed wrongdoing. The closest proxy is the public service annual survey, which includes questions on ethics and harassment. In 2020, 11% of employees reported being victims of harassment and 73% agreed that their leadership was setting an example in ethical behaviour. In 2014, these figures were 19% and 62%, respectively (Canada. TBS, 2015, 2021a).

The PSIC's office and OCHRO also provide case summaries with qualitative evidence on the nature of wrongdoing and the outcomes of investigations. Departmental reporting is patchy and inconsistent, but gradually improving; OCHRO reporting on departmental findings only commenced in 2017. These comprise 23 cases, with an online search identifying 33 more. The PSIC has reported 17 cases of wrongdoing since 2012. Where enough detail was provided, these were categorized as either serious/not serious or systemic/individual

wrongdoing.³⁷ Investigations at departmental levels almost always involved individual misconduct (19/23) with 15 involving relatively minor matters. The PSIC's reports are much more comprehensive and were much more likely to identify systemic problems (5/17). Most were also of a relatively minor nature. Positively, significant efforts have been made to identify and stigmatize harassment. Corrective action was taken in all reported cases, though in some cases wrongdoers escaped sanctions by resigning or retiring. The average time between a disclosure and the issuance of a report was 18 months for the PSIC's cases. Departmental reports lacked sufficient information to make a similar determination but appears to be about 2 years in recent reports.

While these figures are not high, they are a marked improvement from the start of the regime. By 2010 it became clear that few cases had been investigated and no findings made. Worse still, the first Integrity Commissioner, Christiane Ouimet, was the subject of a complaint of reprisal against an employee she (incorrectly) believed had made a disclosure in which she was implicated. The OAG investigated and concluded that Ouimet had violated her own mandate (Canada. OAG, 2010, paras. 35-36). Ouimet resigned when offered a severance package of over \$500,000 (Bryden, 2011). Her pension was unaffected. Once she had been removed, a paper review of 221 case files found 70 with serious flaws in handling and analysis. These were reopened (Deloitte & Touche LLP, 2011). The new commissioner, Mario Dion, performed better but was later the subject of complaints for gross mismanagement in two cases (Canada. OAG, 2014).

Considering protection and redress for whistleblowers, only seven cases have been referred to the PSDP Tribunal. Six were settled before any hearing, with three relating to the same instance of wrongdoing (Canada. PSIC, n.d.). Two were heard at Tribunal on the merits: *Dunn v. Canada (Attorney General)* (2017)³⁸ and *Agnaou and Public Prosecution Service of Canada et al.* (2019).³⁹

³⁷ Though all wrongdoing could reasonably be considered serious by those affected, seriousness was determined by whether the wrongdoing appeared to affect more than a few individuals or might be a threat to physical health or safety, while a problem would be considered systemic if it appeared accepted as normal practice in the organization.

³⁸ Chantal Dunn, a public servant at Indigenous and Northern Affairs Canada, disclosed nepotism in staffing. She alleged she was passed over for a promotion and ostracized in reprisal. The PSDP Tribunal did not find a compelling nexus between the disclosure and the alleged reprisal. The court found several faults in the PSDP Tribunal decision, including excessive formality, but declined to make a judicial review.

³⁹ Yacine Agnaou was a Crown prosecutor at the Public Prosecutions Service of Canada who wished to initiate legal proceedings against a company but was prevented from doing so by his management. He persisted and alleged that he was subjected to reprisals including an attempt to subject him to a mental health examination, constructive dismissal, and interference in his attempts to find another position.

Both failed. It is worth noting, however, that an appeal was made in the *Dunn* case, and that the court found enough at fault in the PSDP Tribunal process and decision that it should not be considered precedent (*Dunn v. Canada (Attorney General)*, 2018). Indeed, the Federal Court and the Federal Court of Appeal have three times ordered the PSIC to reconsider decisions not to forward complaints of reprisal to the PSDP Tribunal: *El-Helou v. Courts Administration Service* (2012),⁴⁰ *Agnaou v. Canada* (2016), and *Agnaou v. Canada* (2017). In the *Agnaou* cases, the courts ruled that the PSIC's interpretations of how a disclosure should be made were too restrictive and that there was a lack of procedural fairness in the PSIC's investigation. In *El-Helou*, the issue hung on whether the whistleblower needed to explicitly state they were making a protected disclosure and under which section of the PSDPA. The court decided no "magic words" (a commonly used phrase in whistleblowing litigation) were necessary and that senior public servants should be able to discern when an employee was disclosing a wrongdoing by context and subject. Whistleblowers and advocates also expressed concern that wrongdoers were able to retire or resign without penalty and that organizational leaders did not take advantage of the opportunity to build trust in the regime by publicizing the cases more broadly. Of the 14 participant cases, wrongdoers were fully purged in only one case. Four others saw some wrongdoers penalized, while in the remaining nine cases all wrongdoers appear to have escaped any negative consequence.

Both public service survey data and whistleblower participants suggest low but improving levels of trust in the regime. The 2014 TBS survey found that just 40% of employees felt they could initiate a formal recourse process (e.g., grievance or complaint), rising to 49% in 2020 (Canada. TBS, 2015, 2021a). Whistleblower participants felt the whistleblowing regime had failed within their organizations, at the PSIC's office, and at the PSDP Tribunal. One participant (P1.28) stated they had seen counsel for the PSIC offering help to counsel for the government. What was offered was not clear, but it did raise concerns that the PSIC was taking an adversarial role against whistleblowers. This lack of trust was not helped by the inauspicious start to the regime under Ouimet.

Perhaps just as telling in demonstrating trust (and its link with use) are instances in which whistleblowing did not occur. For example, the Phoenix pay system was plagued by difficulties but was neither audited while in development nor properly tested prior to implementation. A cascade of subsequent errors and failures had cost at least \$2.6 billion by 2019 (Sun Media, 2019) and continues to have effects at the time of writing. This debacle was cited by seven participants as an

⁴⁰ Charbel El-Helou was an executive employed in the Courts Administration Service who made two disclosures (details of the wrongdoing are not available in case files). He alleged reprisals that included soliciting complaints, reassignment of duties, and the withholding of a security clearance until he left the organization in 2010.

example of mismanagement which was allowed to fester because public servants were reluctant to speak up (P1.01, P1.03, P1.08, P1.15, P1.18, P1.29, P1.38), with one citing public servants approaching them to express concerns – but too afraid to go on record. Two external reviews established that there was a culture which discouraged the raising of concerns (Goss Gilroy Inc., 2017; Canada. OAG, 2018). It is unclear whether there were attempts at formal disclosure, but, if so, their concerns were not addressed.

It is difficult to determine whether wrongdoing is being deterred, as there is no baseline data on observed wrongdoing within the public service. Considering the public interest and good governance, the evidence suggests the regime is better at addressing individual misconduct than systemic or serious wrongdoing.

More generally, most assessments of the regime have focussed on defects in the PSDPA. Parliament, which is nominally responsible for oversight, largely ignored the new institution in its first years (D. Hutton, 2017). The mandated legislative review was conducted by the House of Commons Standing Committee on Operations and Estimates in 2017, five years late. It included input from many experts, whistleblowers, and officials and made a number of recommendations (Canada. House of Commons Standing Committee on Government Operations and Estimates, 2017). None were implemented.

The PSIC also conducted an evaluation of their own operations based primarily on “internal perspectives” (Goss Gilroy Inc., 2020, p. 2). It notes the limits the legislative framework places on the work of the PSIC, staff turnover and corporate memory, difficulties in case management, and challenges meeting service standards. The report implies that delays are created by a lack of cooperation by departments implicated in disclosures. This is consistent with attitudes of some senior public service participants (P1.14, P1.22, P1.44), who described the PSDPA as just one more obligation.

Other reviews have been conducted by scholars and advocates. David Hutton (2017), an advocate working with the Toronto Metropolitan University Centre for Free Expression Whistleblowing Initiative, condemns the PSDPA as not only useless, but deceptive. GAP and the International Bar Association placed Canada at the bottom of a field of 37 countries in both regulatory quality and enforcement (Feinstein et al., 2021). Similarly, several Canadian authors argue that Canadian whistleblower statutes fail to meet best practice in key areas (Boydell, 2018; Kim, 2015; St-Martin, 2014) and that the “Canadian legal framework appears uncertain, unclear and deficient” (Martin-Bariteau & Newman, 2018, p. 7). McEvoy (2016), using an employment law perspective, finds the PSDPA consistent with existing employment law in promoting disclosure “up the ladder.” He also states that Canadian laws “serve to manage rather than facilitate a disclosure of wrongdoing by governments and government employees” (p. 69).

An OECD report was more positive, but was based solely on government input (OECD, 2016a, pp. 149–160).

The mixed and inconclusive evidence suggests that several assumptions behind the regime are flawed and that some risks do exist. First, investigations in departments appear to lack rigour, suggesting the need for standards and a move away from informal processes. Second, even allowing for mediated settlements, protection and redress appear to be inadequate to inspire confidence. Third, errors in use of the regime have deprived whistleblowers of redress, suggesting the need for more flexibility and better training. In sum, the evidence available suggests that the implementation of the regime has improved, favours correcting individual and less serious wrongdoing over more serious matters and has set the bar too high for whistleblowers to obtain redress.

5.2.4 Summary

This section examined the disclosure regime that emerged with the implementation of the PSDPA. The regime is both protections and structurally based, designed to encourage the disclosure of wrongdoing by providing safe avenues to do so and by creating a mechanism through which redress for reprisal can be obtained. The regime creates three avenues of disclosure: internal to the organization, quasi-internal to the PSIC, or to the public. It is not tiered, but whistleblowers must meet the appropriate criteria to obtain protection. While a logic model and performance framework were developed for the regime, they were abandoned. Notwithstanding this, assessments by parliamentary committee, scholars, and advocates have been negative. Available evidence suggests that the PSIC has exposed some wrongdoing but that the regime has not directly protected whistleblowers. Both use and trust in the regime appear low, and the avoidable Phoenix debacle suggest that the public interest is not being served as well as it could be.

5.3 Institutional Factors Affecting Whistleblowing in the Canadian Public Service

This section examines the factors that emerged as most significant in the response to different types of disclosure – internal, quasi-internal, and external – as well as those which affect all disclosures. For the purposes of this dissertation, categories of disclosure are internal to the organization (i.e., up the ladder via supervisors or senior officers), quasi-internal if they are external to the organization but within the federal government (e.g., the PSIC), or external (e.g., the opposition MPs, media, unions). This distinction is made because interviews, government communications, and prominent cases suggest that as matters become more public, organizational leaders lose control of messaging and the whistleblowing process, the potential for politicization of the disclosure increases, independent investigations may be triggered, and, consequently, the hostility of

institutional actors increases. Some reasons for this are rooted in the conventions and associated norms of Canadian government, some in the erosion of traditional arrangements in the public service, and some in the institutional environment.

5.3.1 Internal Disclosures

The PSDPA protects disclosures to supervisors or designated senior officers, provided they are made in the correct format and on defined wrongdoing. This approach is theoretically consistent with conventions on ministerial responsibility, the Canadian version of the accounting officer, and the role of the public service. Internal disclosures alert the chain of command to misconduct, and corrective action can be taken. This assists ministers in the execution of their responsibilities. As it is formally sanctioned, it can also be considered the loyal implementation of the government's policies. It is a means to provide a form of honest and frank advice while maintaining confidentiality. The public interest is served: Early corrective action prevents further harm, and the protection of whistleblowers should create a climate in which public servants can speak up about all concerns. Ultimately, by reducing opportunities for corruption and other forms of misconduct governance should be improved. There are, however, limitations on both the avenues of disclosure and the nature of wrongdoings that can be disclosed that are not entirely consistent with conventions on the public service. For example, it is not clear why the PSDPA does not explicitly protect disclosures made to other departmental officials, such as audit, evaluation, or human resources, all of which have a role in detecting error and misconduct and should be empowered to provide honest information and advice to ministers.

Notwithstanding these limitations, governments have signalled that internal disclosure is consistent with the role of public servants in law and policy. This can be seen in numerous documents, such as the Tait Report, a TBS treatment on the duty of loyalty (Canada. TBS, 2011a), and the most current ministerial manual (Canada. PCO, 2015). Further, the 2011 PS Ethics Code stipulates that public servants should respect the "rule of law" while loyally carrying out their duties, provide decision makers with "all the information, analysis and advice they need, always striving to be open, candid and impartial," treat "every person" with respect and fairness, and maintain workplaces free of harassment. It also calls for integrity and good stewardship of public resources, and striving to continually improve policies, programs, and services. Finally, it reminds public servants of the PSDPA's internal disclosure avenues (Canada. TBS, 2011b).

Supporting this, three senior public servant participants expressed a clear preference for disclosures up the chain of command (P1.13, P1.14, P1.22), sometimes citing its importance to the individual accountability of public servants. These and twelve other participants also referred to "speaking truth to power," apparent shorthand for the convention of providing honest and candid advice

under Westminster convention (P1.01, P1.03, P1.15, P1.16, P1.18, P1.20, P1.23, P1.27, P1.29, P1.30, P1.38, P1.39). This should support internal disclosure, but several participants argued that the convention had weakened or was no longer welcomed (P1.01, P1.13, P1.16, P1.18, P1.23, P1.39). Two blamed the practices of Prime Minister Stephen Harper (P1.01, P1.39), while others noted the use of incentives (e.g., promotion, performance pay) to suppress or moderate the transmission of bad news up the ladder (P1.16, P1.23). Similarly, three whistleblower participants (P2.01, P2.02, P2.13) cited a weak speak-up culture within their organizations as a factor in their cases. Additionally, the only successful whistleblowing case identified in this dissertation (P2.12) was handled internally and confidentially.

Internal disclosures are also consistent with the *Security of Information Act*, government security policy, and common law (e.g., *Fraser*, 1985; *Haydon*, 2001). Civil remedies for reprisal were eliminated in s.236 of *Public Service Labour Relations Act*, 2003, though, leaving grievance procedures (which are controlled by management) and the PSDPA as the only avenues for protection. As noted earlier, this was tested in the *Bron* case (2010, Statement of Claim).

An examination of the PSDPA, cases, and interviews suggest threats to logic of the regime. First, the PSDPA undermines fairness by favouring input from departments over that of whistleblowers, who (in contrast to departmental officials) have no rights to further input following the disclosure. Secondly, the emphasis on informality in departmental processes has led to concerns being dismissed and to deficient investigations. Third, senior officers are appointed by deputy ministers, and are not truly independent of senior leadership. This was apparent in the *Bron* case, in which a grievance initiated by the whistleblower and their colleagues was adjudicated by one of the implicated parties. The grievance was dismissed. Fourth, assumptions about whether the regime can transmit accurate information to senior officials may be flawed. One expert participant, supported by others, conceded the difficulty in penetrating the “clay layer” of middle management. This may distort or prevent disclosures from reaching senior management (P1.44; supported by P1.25, P1.30, P1.38). Whistleblowing participants provided more evidence, alleging that wrongdoers exploited personal relationships with peers to blunt the allegations or discredit the disclosure (P2.01, P2.03, P2.06, P2.07, P2.10). In contrast, the successful whistleblowing case (P2.12) was championed by a leader who ignored efforts to dismiss the matter. Fifth, even where such barriers do not exist, management may be overwhelmed by other priorities and prefer to let sleeping dogs lie. As a whistleblower noted: “The deputy minister, I think, decided ‘It would be so much easier if I didn’t have to tell [the minister] about a whole lot of things’” (P1.02).

In the wrong circumstances, then, keeping an internal disclosure alive can be a struggle. One participating whistleblower supported the use of internal avenues but noted that they had to apply “constant pressure” to counteract the influence

of wrongdoers (P2.01). This whistleblower and others (P2.03, P2.07, P2.09, P2.17) suffered reprisal despite using internal processes. Two later made disclosures outside the organization after internal avenues failed, two others resigned after years of efforts within authorized internal avenues, and a fifth retired early after being vindicated. Of those who did not attempt internal avenues, it was either because they had received insufficient training in the regime and were unaware of its operation (P2.04, P2.05) or did not trust it to protect them (P2.10). Another (P2.06) had no opportunity: they were summarily fired for reporting a crime in the course of their duties. The *El-Helou* (2012), *Dunn* (2017; 2018), and *Agnaou* (2015; 2016; 2017; 2019) cases also involved internal disclosures that were not properly dealt with. Even the successful case (P2.12) was a close thing as middle managers attempted to bury the disclosure.

Thus, while institutional barriers are lowest for internal disclosures, which should serve the public interest in facilitating the quick correction of wrongdoing, this is not necessarily reflected in all cases. Law and policy point public servants to internal processes, but these processes have risks and flawed assumptions that have manifested in whistleblowing cases. Table 5.4 identifies the key factors affecting internal disclosure outcomes.

Table 5.4: Factors Affecting Internal Disclosures in the Canadian Public Service

Internal disclosure	
<p>Supporting:</p> <ul style="list-style-type: none"> - Consistent with conventions on confidentiality, frank and honest advice, loyalty to minister, loyal implementation - Sanctioned under PSDPA and PS Ethics Code; does not violate <i>Security of Information Act</i> or government security policy - Consistent with other statutes and case law but changes in law makes courts inaccessible - Consistent with Canadian government accountability arrangements <i>if</i> appropriate action is taken 	<p>Undermining:</p> <ul style="list-style-type: none"> - Conventions on open and frank advice appear to have weakened - Middle management levels may interfere with or distort disclosure - Senior officers and internal investigations not truly independent - Independently assessed remedy only available via the PSDP Tribunal - May violate dominant norms, depending on recipient of disclosure - Failure to act appropriately on disclosures may frustrate accountability

5.3.2 Quasi-internal Disclosures

Quasi-internal disclosures are those which leave the organization but remain within Canadian federal government institutions. The primary quasi-internal recipients of disclosures that are identified in the PSDPA are the PSIC and the OAG, with the OAG only receiving disclosures implicating the PSIC. These avenues involve some loss of control over process and outcomes by organizational leadership but maintain confidentiality. They also provide an alternate avenue for disclosure when internal mechanisms fail or are not trusted. Ministers have an opportunity to respond and take corrective action before

reports are published, blunting potential public criticism for all but the most serious wrongdoing. Disclosures to the PSIC are exempt from the *Access to Information Act*, greatly reducing the likelihood of the full details of any disclosure or investigation becoming public. Still, where wrongdoing is found, the matter does become public and may implicate the ethics or competence of organizational leadership. Considering law, disclosures to quasi-internal recipients are sanctioned by both the PSDPA and the PS Ethics Code and would not be considered unauthorized under Canada's *Security of Information Act*.

Only two expert participants (P1.08, P1.22) questioned the PSIC's role in receiving and investigating disclosures, arguing that it contributes to an "adversarial environment" and shifted accountability from managers. Eight other participants (P1.07, P1.14, P1.15, P1.16, P1.17, P1.29, P1.39, P1.44) disagreed, arguing that the PSIC and other agents of Parliament play an important role in monitoring the performance of the public service, supporting MPs in holding governments to account, and acting as a final course of appeal. Whether parliamentarians appreciate the importance of an effective and independent whistleblowing avenue was also debated.

It is in the views on the performance of the PSIC that defects in the logic of this component of the disclosure regime begin to appear. Nearly all those interviewed expressed negative opinions, but from different perspectives: Some officials cited other priorities and suggested that the Act was simply one more component of increasingly onerous accountability requirements (P1.03, P1.05, P1.08, P1.31, P1.44) and argued that the PSIC was soliciting disclosures instead of passively receiving them (P1.44). They also preferred informal networks to raise the alarm on error and misconduct, either within the organization or to central agencies.

Others were more likely to criticize the office for its refusal to investigate disclosures and complaints which appeared to have merit. The balance of evidence supports this view. Seven whistleblower participants approached the PSIC with their disclosures (P2.01, P2.02, P2.03, P2.06, P2.08, P2.09, P2.17); none resulted in a finding of wrongdoing. Two participants noted that the PSIC is generally aligned with the executive, one citing a "heads up" telephone call from the PSIC to the TBS and the other an offer of advice from a PSIC lawyer to a government lawyer about two cases (P1.01, P1.28). A whistleblower (P2.02) noted that even where wrongdoing is found, the PSIC has no order-making powers. The *El-Helou* (2012), *Dunn* (2017; 2018), and *Agnaou* (2015; 2016; 2017; 2019) cases all centred on the PSIC's role with respect to access to the PSDP Tribunal, and the OAG has found that all three Integrity Commissioners to date committed a wrongdoing by mishandling disclosures (OAG, 2014). In one case (P2.06), a remedy was obtained not through the PSDP Tribunal but via the Canadian Human Rights Commission. Two experts (P1.01, P1.23) suggested that the PSIC's gatekeeper role be removed.

These divergent views and decisions illustrate the balance the PSIC must find between enforcement of a new regime and actors with different expectations. Powerful institutional actors prefer a regime that makes few demands and presents no threat to their authority or reputation. Advocates and whistleblowers expect an expansive interpretation of the law and visible results, with consequences for wrongdoers. The Office of the PSIC, on the other hand, is constrained by resources and must rely on the cooperation of deputy ministers to facilitate its work.⁴¹ This cooperation is least likely when a wrongdoing is systemic, serious, or implicates political actors – who can control the resources of the organization and determine the person appointed as Commissioner. While Parliament should provide oversight, its attention is inconsistent and superficial (P1.01, P1.07). The first Commissioner was endorsed by all parties and no MPs commented on her record until the OAG report in 2010 (D. Hutton, 2017). Further, four whistleblower participants (P2.01, P2.02, P2.03, P2.04) contacted parliamentarians but did not find it helpful.

There also appear to be structural problems with the regime. Knowledge of avenues to report is low, and a proliferation of officers of Parliament and other disclosure processes may be leading to confusion (P1.25). This is not improving, as Bill C-11, *An Act to enact the Consumer Privacy Protection Act and the Personal Information and Data Protection Tribunal Act and to make consequential and related amendments to other Acts* (2020) will give the Privacy Commissioner a role similar to the PSIC for privacy violations. While superficially offering greater choice, if these other authorities lack an understanding or expertise in whistleblowing the results may be harmful. Two whistleblowing recipients (P1.25, P1.31) suggested a “one door” approach in which all concerns would be received by one office and then directed to an appropriate authority.

In sum, while they are broadly lawful and largely consistent with Canada’s Westminster conventions, quasi-internal disclosures appear to lack the trust of all actors. Parliament, for its part, mostly neglects the regime, while there are concerns that the PSIC prioritizes its relationship with the executive over its role serving Parliament and whistleblowers. Table 5.3 identifies the factors identified as affecting internal disclosure outcomes.

⁴¹ Although PSIC has strong powers under the *Inquiries Act* to compel testimony and the production of documents and evidence about wrongdoing (PSDPA, s. 29[1]), it has weaker powers for reprisal complaints and may have to abandon an inquiry if cooperation is withheld (PSDPA, s. 19.9).

Table 5.5: Factors Affecting Quasi-Internal Disclosures in the Canadian Public Service

Quasi-internal disclosure	
<p>Supporting:</p> <ul style="list-style-type: none"> - Largely consistent with conventions on confidentiality, loyalty to minister, loyal implementation - Approved under the PSDPA; does not violate <i>Security of Information Act</i> or government security policy - The PSIC appears reluctantly accepted as a backstop for internal processes - The PSIC is an independent officer of Parliament - The PSDP Tribunal offers independent adjudication 	<p>Undermining:</p> <ul style="list-style-type: none"> - May violate norms; institutional actors remain hostile - Lacks the trust of whistleblowers and advocates - The PSIC has resource constraints and depends on departmental cooperation - The PSIC controls access to the PSDP Tribunal - The PSIC has no power to compel corrective action or to recommend redress for reprisal - Parliamentary oversight is weak

5.3.3 External Disclosures

For the purposes of this dissertation, external disclosures are those which leave organizations and move fully outside the control of the administrative and political executive. Thus, they have a higher risk of the matter reaching the public and leading to an outcome not desired by powerful federal government actors. Using this definition, external disclosures may also include disclosures made during parliamentary proceedings, such as at committee, or when giving legal testimony. Since they are not confidential and do not constitute loyal implementation, they appear to be a violation of conventions on the role of the public service. Several Canadian constitutional scholars and former senior public servants were unambiguous in assessing external disclosure as illegitimate (P1.08, P1.14, P1.22). Two emphasized the loyalty to the minister. Three others (P1.13, P1.28, P1.38) cited loyalty to the organization.

This was qualified by a recognition of the limits of the bargain, however, and the possibility of its distortion. A former senior public servant suggested that confidentiality may be stronger in Canada than in other case countries, constraining whistleblowing (P1.14). As two other participants (P1.07, P1.13) noted, confidentiality can be perverted into secrecy, which should not be tolerated as it prevents public awareness of wrongdoing and mismanagement. It also facilitates reprisal (see also Aldrich & Moran, 2019; Brown, Vandekerckhove, et al., 2014; S. Devine & Devine, 2010; Sagar, 2013; A. Savage, 2016). Secrecy was also cited as a factor in facilitating the fraud in the Sponsorship Scandal (Canada. Commission of Inquiry into the Sponsorship Program and Advertising Activities, 2005a). Seven whistleblower participants (P2.02, P2.04, P2.05, P2.07, P2.11, P2.13, P2.17) faced similar conditions, with some escalating to violations of the *Access to Information Act*. Two others

(P2.06, P2.09) involved misconduct that was successfully kept secret, enabling its repetition.

In a public case, Service Canada employee Sylvie Therrien leaked records to the media that showed the government had introduced a secret quota for department investigators to remove benefits from employment insurance recipients – and offered a bonus to managers and executives whose staff met these quotas (Bourgault-Côté & Buzzetti, 2013; Canadian Press, 2013). This created an incentive to reject claimants, sometimes on spurious grounds, who would then have to make an appeal.⁴² While the media coverage did force a change in policy, Therrien was identified as the leaker, her security clearance revoked and her employment terminated (R. Shepherd, 2017; Vincent, 2013). She continues to seek redress at the time of writing.

Considering law, external disclosures are sanctioned under very limited circumstances. Governments have not prosecuted any whistleblower under the *Security of Information Act*, preferring to allege a breach of government security policy and revoke a security clearance. Therrien's case is one example; another is that of Luc Pomerleau. Pomerleau passed a document to his union showing that the Canadian Food Inspection Agency was planning to reduce the number of inspectors in 2008. Although he argued that the document was not marked secret and was freely available in the organization's intranet, his security clearance was revoked. A few months later, a listeriosis outbreak at a Maple Leaf Meats plant killed 22 people.

As discussed above, the SCC made it clear in *Fraser* (1985) that whistleblowing must be reasoned and proportionate. This was clarified in *Haydon* (2005) and *Read v. Canada* (2005), which established that internal avenues must first be attempted and that there must be strong evidence to support an external disclosure. *Merk v. International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 771* (2005)⁴³ appeared to loosen these restrictions in allowing a disclosure to a broader range of "lawful authorities," not just the police, but *Anderson v. IMTT-Québec Inc.* (2013) – citing *Anderson* – found that disclosure to a professional association in the first instance was not

⁴² The appeals process had also been recently changed, creating a backlog that reached 11,000 cases (G. Galloway, 2014; Goodman, 2014).

⁴³ Linda Merk was an employee of Saskatchewan Local 771 of the International Union of Iron Workers who disclosed financial misconduct by her supervisors. Local officials failed to act, so she raised it to parent union officials. She was fired as a result. It took four years and four levels of appeal before the SCC ruled that the parent union could be considered a lawful authority.

reasonable, rejecting arguments that Anderson had found internal avenues ineffective in the past (para. 7).

One whistleblowing case in this dissertation (P2.06) involved a matter that was both a potential imminent threat to human life and a serious crime (and which later was detected by authorities), while seven others involved prima facie violations of law or regulation (P2.01, P2.02, P2.03, P2.04, P2.07, P2.12, P2.17). Only one chose to disclose the matter publicly, and only one escaped reprisal (not the external discloser).

These cases underline the risk that interpreting proportionality is initially in the hands of the implicated organization and that litigation is time-consuming and uncertain in outcome. This is a threat to the logic of the regime as it may be a deterrent to disclosure.

A safer external avenue of external disclosure suggested by other cases may be to maneuver disclosures through parliamentary processes and legal proceedings. This was successfully employed by two whistleblowers to limit reprisals and induce corrective action. In the first, diplomat Richard Colvin blew the whistle on the practice of transferring Afghan prisoners and detainees to Afghan police officials. Many of these detainees were ordinary citizens but were nonetheless tortured – a violation of the Geneva Convention. Through his own efforts, Colvin was invited to testify at the Military Police Complaints Commission and later at parliamentary committee. This was opposed by the government, which attempted to shut down the commission and prevent him speaking by using provisions in the *Canada Evidence Act*. When this failed, it prorogued Parliament to delay the proceedings. Despite personal attacks and threats in Parliament, the practice was corrected and he retained his position (R. Shepherd, 2017). In another case, a Justice Canada lawyer, Edgar Schmidt, took the government to court over its failure to provide Parliament with proper constitutional assessments of proposed legislation. He was immediately suspended without pay, angering the presiding Federal Court judge (Curry, 2013; R. Shepherd, 2017). Policies at Justice Canada were amended to be consistent with prevailing practice.

Thus, there are substantial barriers to the acceptance of external whistleblowing in the Canadian public service. Despite legally sanctioned avenues, none appear to be safe from reprisal. Notably, while whistleblowers and advocates view external disclosure as necessary to overcome potential organizational and institutional resistance and to induce corrective action, senior public servants disagree, interpreting the act as a violation of the traditional bargain. As others observe, however, aspects of the bargain may have been distorted. Table 5.6 summarizes the relevant factors found in external disclosures.

Table 5.6: Factors Affecting External Disclosures in the Canadian Public Service

External Disclosure	
<p>Supporting:</p> <ul style="list-style-type: none"> - More likely to lead to corrective action due to public exposure - Disclosure through parliamentary and legal proceedings may limit reprisal 	<p>Undermining:</p> <ul style="list-style-type: none"> - Violates dominant norms and conventions on loyalty to minister in federal government - Likely to be treated as a political act and to trigger administrative action under government security policy - Most such disclosures not consistent with legal precedents; changes to public service law makes courts inaccessible

5.3.4 Factors Pertaining to All Disclosures

There are several factors that appear to apply to all avenues of whistleblowing in Canada's public service. First, there remains a climate that is hostile to whistleblowing, based in part on misconceptions on whistleblowing and in part on interpretations of the public service bargain (Bourgault, 2011; Hood & Lodge, 2006; Schaffer, 1973). In addition, the government of Canada's particularly steep hierarchy and centralization of power, combined with the intrusion of political actors into administration and their control of incentives, may be undermining the logic and outcomes of the regime. What is more, the erosion of the merit principle may be enabling this encroachment. The Canadian employment regime and free expression rights, although they should support whistleblowing, appear neutral in their effects.

Canadian governments remain ambivalent on whistleblowing, frequently using the language of the public service bargain as justification. For example, the PSDPA explicitly calls for a balancing of the duty of loyalty in its preamble. Further, the policy document *Duty of Loyalty* (Canada. TBS, 2011a) links public service impartiality with the public interest and emphasizes the need for public servants to be cautious and responsible in their disclosures, a sentiment echoed in the PS Ethics Code (Canada. TBS, 2011b, p. 7). There was a consensus among Canadian expert participants that the convention of loyal implementation requires that individual public servants accept that decisions do not necessarily take place at their level, and they may need to accept these decisions once made (P1.03, P1.14, P1.22, P1.38, P1.39). This was not to suggest that a public servant should obey unquestioningly. Some drew the line at illegality, some cited harmful but still legal policies, while others referred to breaches of convention, such as lying to Parliament. Two participants had more nuanced views, arguing that loyalty should not be to the minister but to the law and the "integrity of the governance structures of the state" (P1.08, P2.02).

Considering norms, there appears to be a lingering hostility to whistleblowers which is linked to a belief that they are a threat. Four participants spoke to the resistance of the senior public service to the implementation of the PSDPA from first-hand experience (P1.03, P1.08, P1.13, P1.23). Troublingly, an oversight

official described being approached on the street and called a traitor (P1.32). This was also evident in interviews, in which former senior public servants suggested that whistleblowers could be self-serving and disruptive (P1.22, P1.25, P1.31, P1.44). This hostility also appears linked to a belief that disclosure must be external to be whistleblowing. Several whistleblower participants also noted that certain subjects were not spoken about in their organizations (P2.01, P2.02, P2.03, P2.05, P2.12). This was often phrased as a weak speak-up culture.

It is also clear that any whistleblowing that leaves the chain of command risks violating hierarchical norms. Nineteen participants made mention of this (P1.01, P1.03, P1.04, P1.07, P1.11, P1.13, P1.14, P1.15, P1.22, P1.27, P1.29, P1.30, P1.31, P1.38, P1.44, P2.05, P2.06, P2.07, P2.11). Three senior former public servants argued that hierarchical structures are important to accountability and the responsibility of public servants to clean up their own messes, a view consistent with Westminster conventions and Weberian bureaucracy (P1.14, P1.22, P1.44). Others described a distortion of the loyalty convention in which loyalty is owed to immediate superiors. Where this perspective dominates, sidestepping “strata” induces “visceral” (P1.01) reactions. Another subtle effect may be the discounting of expert advice that comes from lower in the hierarchy, in which, for example, scientists and other working level staff don’t have “the bigger picture” (P1.22).

The apparent hostility can also be linked to training and incentives. Training and awareness are the responsibility of TBS (specifically, the OCHRO) and deputy ministers. Nearly all expert participants spoke to the importance of leadership in promoting the appropriate use of the regime, with 19 noting the importance of modelling and encouraging openness, ethics, and competence. Predictably, outcomes are worse where these are deficient. Five (P1.01, P1.13, P1.15, P1.29, P1.38) identified unqualified or out of touch leadership as a factor in the mishandling of disclosures. Unethical leadership was also cited (P1.03, P1.06, P1.13, P1.23, P1.39). This was consistent with the evidence of whistleblower participants, four of whom described at least one person above them as a narcissist (P2.04, P2.05, P2.06, P2.07). Publicly available information at least partially supports this description in three cases.

Incentives also play a role in supporting norms that are hostile to whistleblowing. Three emerged above others in this dissertation: career advancement, performance pay, and job security. The control of appointments and performance pay gives many ways to reward loyalty and competence at the highest levels (Brock & Shepherd, 2022; Savoie, 1999, p. 72). Regarding advancement, prime ministers control the appointment of ministers, ambassadorships, seats on parliamentary committees, and heads of departments and agencies. Participants argue this power is used to install unthreatening, compliant, and ultra-responsive officials (P1.01, P1.13, P1.23, P2.02, P2.08). Deputy ministers, in turn, control departmental processes under Canada’s delegated staffing regime. More

generally, as many participants observed career advancement is dependent on maintaining a reputation for competence and responsiveness, which would be damaged by a serious disclosure of wrongdoing (P1.17, P1.18, P1.19, P1.31, P1.44, P2.06, P2.17). Maintaining organizational reputation and keeping ministers “out of trouble” were also cited (P1.28). One whistleblower participant (P2.02) was warned: “You want this promotion, you ought to dial back the concerns.” They delayed their disclosure.

Performance pay, which includes “at-risk” pay and bonuses, can be similarly manipulated; the Therrien case illustrates this phenomenon at its worst. The criteria vary, but meeting standards and obtaining performance pay depend, in theory, upon competence in their respective domains and complying with all relevant obligations in their performance agreements. Not receiving performance pay at senior levels is exceptional – only 4% of deputy ministers received none in 2017-18 (Canada. TBS, 2019b). Thus, it is reasonable for a senior public servant to conclude that not receiving performance pay is punishment. Where competence is not in question, responsiveness may be. This was the case for one former public servant (P1.15) who reported that they had lost theirs for deviating from a preferred narrative in official communications.

At lower levels, incentives can take other forms, such as work from home privileges (pre-COVID), tickets to events, training, and travel. This can be used to induce silence or to draw others into the wrongdoing (P2.04, P2.05, P2.12, P2.13). The most cited incentive, however, was job security (P1.01, P1.06, P1.14, P1.1, P1.16, P1.28, P1.39, P2.01, P2.02, P2.03, P2.04, P2.09). There is a prevailing belief that management will “find a way” to get rid of a whistleblower – or a manager who supports the whistleblower.

The effects of incentives can be perverse if the wrongdoing has been normalized: whistleblowing becomes the wrongdoing, not the illegitimate practice. This was the case with veterinary drug approvals at Health Canada (Chopra, 2009) and Edgar Schmidt’s disclosures on unconstitutional legislation (MacDonell, 2013). They may also lead leadership to suppress bad news and project an image of error-free administration. This was cited by eight expert participants (P1.03, P1.06, P1.07, P1.08, P1.11, P1.13, P1.27, P1.31). Whistleblowers cited managers preferring not to know anything about possible error or wrongdoing to preserve plausible deniability and avoid opening a can of worms (P2.03, P2.11, P2.12). Worse, scapegoating may be a danger, with one whistleblower participant describing an employee who committed suicide after being blamed for misconduct for which they were not fully responsible (P2.11).

Political influence in administration is another factor correlated with negative reactions to whistleblowing. The proliferation of political staff has been observed by several authors, frequently “...reaching down the hierarchy, often in an informal manner, to interact with public servants and influence administrative

action” (Kernaghan & Langford, 2014, p. 112; see also Savoie, 2003, 2008). A blurring of lines between politics and administration was cited by nine expert participants (P1.03, P1.08, P1.11, P1.13, P1.15, P1.20, P1.23, P1.29, P1.30, P1.38, P1.38) and analysis suggests this may have occurred in six of the Canadian whistleblowing participants’ cases (P2.02, P2.05, P2.07, P2.08, P2.11, P2.13). The recruitment of public servants for political photo-ops has been commented on in the media (e.g., Canadian Press, 2012). Participants spoke of “aggressive control over messaging” (P1.08) and the misrepresentation of scientific findings (P1.29, P1.38).

Recent cases implicating political actors include Therrien, Schmidt, and Minister of Justice Jody Wilson-Raybould. Analogous to the *Agnaou* case, Wilson-Raybould refused to defer the prosecution of the company SNC-Lavalin on charges of bribery despite pressure from the PMO and PCO and was subsequently shuffled from her position. She resigned in protest, triggering a public scandal (Tasker, 2019; Zimonjic, 2019). An advocate (P1.23) argued PCO Clerk Michael Wernick’s committee testimony on the Wilson-Raybould affair demonstrated the effect of partisan control of public servant appointments, in which defending the government overrides the law and the public interest. In this environment, honest and frank advice from public servants that contradicts the governing party’s preferred narrative may be regarded as political speech. This, in turn, suggests an erosion of trust and the conventions of the traditional bargain. Related to this, six participants cited the concentration of power in the hands of the prime minister and the PMO (P1.01, P1.03, P1.04, P1.13, P1.23, P2.08).

Finally, as noted above, the PSDP Tribunal has not offered redress to any whistleblower. The Tribunal was intended to offer an informal redress mechanism to balance the *Charter* freedom of expression with the common law duty of loyalty along the lines of U.K. employment tribunals. In practice, no whistleblower has obtained a full and comprehensive remedy. Departmental human resources personnel, nominally providing a neutral avenue for dispute resolution, were singled out by participants as facilitating reprisal at the order of senior management (P1.01, P1.19, P2.06). Union representation may help but is not consistent. Bron was abandoned by his union and Therrien, who is represented by a union, has yet to achieve success. Schmidt and two whistleblower participants (P2.07, P2.09) were able to negotiate relatively graceful exits with union support, while Pomerleau was hired by his union. No matter what process is used, redress typically takes years.

Table 5.7: Factors Affecting Disclosures in the Canadian Public Service

All disclosures	
<p>Supporting</p> <ul style="list-style-type: none"> - The PSDP should offer an independent avenue of redress 	<p>Undermining</p> <ul style="list-style-type: none"> - Conventions on frank advice and loyalty have been distorted - Prevailing beliefs and norms still hostile - Senior officials control incentives and organizational processes (including grievances and HR) - Incentives support silence, cover-up, and reprisal - Political actors appear to drive some responses - Record in obtaining redress undermines trust in regime

5.3.5 Summary

This section analyzed the factors that appear to affect whistleblowing in the Canadian public service, considering the conventions, norms, law, processes and structural factors, and incentives. Internal avenues of disclosure are consistent with public service conventions, are favoured by powerful institutional actors, and are consistent with the PSDPA, security policy, and common law. This does not guarantee success, however, making the PSIC an essential element of the regime. Quasi-internal disclosures to the PSIC are accepted but are regarded with suspicion as they violate some organizational norms. The PSIC also has constraints that limit its effectiveness and Parliamentary oversight is weak. External disclosures are nominally accepted in extreme circumstances, but in practice are likely to result in formal reprisal. For all disclosures, the distortion of conventions, political encroachment on administration, incentives favouring the suppression of bad news, parliamentary indifference, and poor law appear to be significant hurdles to greater regime efficacy. Based on prominent cases such as the Phoenix pay scandal, this is affecting governance, and hence the public interest.

5.4 Conclusion

This chapter examined the institutional context of Canada's federal government whistleblowing regime, focussing first on the events and movements leading to the enactment of the PSDPA, then the structure, logic, and performance of the regime, and finally, the factors that appear to affect the achievement of outcomes. The analysis showed that the events and cultural changes contributed to changing attitudes on dissent and whistleblowing. The regime that emerged was a product of this history, consistent with conventions on the role of the public service but shaped by flawed assumptions and a failure to refine its logic or monitor performance. This has led to mixed results.

With respect to history, the traditional public service bargain relied on the merit principle and semi-formal disciplinary processes to enforce behavioural norms. Trust and a separation between political and administrative spheres began to

erode in the 1960s, in part due to ideology and in part due to scandals. This led to changes to the bargain: The merit principle was undermined and incentives introduced to improve performance and responsiveness. Confidentiality was also loosened via the *Access to Information Act*. Rights for public servants expanded with the introduction of the Charter, with the *Fraser* case establishing a common law basis for protecting whistleblowing. Misconduct continued, however, with the chief actors sometimes politicians or their appointed staff, their actions facilitated by public servants. The *Code of Values and Ethics for the Public Service* was introduced in 2003, but it was too late to diffuse the Sponsorship Scandal. As the Liberal government teetered, the PSDPA was passed in 2005, coming into force in early 2007.

The regime that was created under the PSDPA has both protections and structural elements and is based on the logic that providing protected safe avenues for disclosure will encourage whistleblowing and deter wrongdoing. In theory, the regime has straightforward avenues of disclosure and offers an avenue of redress via the PSDP Tribunal. The logic, though defective and abandoned since 2008, is also easy to reconstruct and understand. The regime has been subjected to one legislative review, which recommended minor changes that were ignored by the government. A fuller assessment is difficult due to a lack of reliable or meaningful indicators and data. Nonetheless, there is evidence available in PSIC and OCHRA statistics, case reports, and public cases, among other sources. This reluctance to properly evaluate or improve the regime suggests the government is satisfied with the current regime. Considering the stated and implied objectives of the regime, however, it has yet to earn the trust of public servants at any level. Use remains low and is static, perhaps also reflecting low awareness. As the Phoenix pay system debacle and recent whistleblowing cases demonstrate, it does not appear to have significantly changed the culture of the public service or greatly improved governance.

The final section of the chapter examined the evidence on factors affecting disclosure using different avenues. There is a pattern: As disclosures become more public, they are more likely to be viewed as a violation of public service neutrality, confidentiality, and loyalty to the minister. However, these conventions have been distorted as political actors have increasingly intervened in public administration and adjusted incentives to induce responsiveness. While internal avenues are safest for whistleblowers, they still face hurdles and do not guarantee that a wrongdoing will be properly investigated or corrected. Quasi-internal disclosures to the PSIC are reluctantly accepted by senior officials but the PSIC itself is regarded with suspicion by public servants at all levels. Its work appears to be hampered by efforts to diffuse this hostility, resource constraints, a narrow reading of the legislation, and limits to its powers. External disclosures, on the other hand, appear most effective at prompting corrective action. This comes at great risk to the whistleblower, as it violates norms and conventions in

the public service and can only be done under the strictest of criteria. Overall, the whistleblowing regime is undermined by several broken links in the chain of logic: Senior officials have yet to fully embrace the regime, conventions which support disclosure have become distorted, and incentives favour the appearance of error-free administration. Incentives are strongest at the highest levels, where ambitious public servants and political actors have little room for error. Deputy ministers no longer serve just their ministers but are also accountable to central agencies, and, by extension, the prime minister. This appears to be the result of the pursuit of greater administrative responsiveness by political actors, who are willing to abandon aspects of the public service bargain to escape blame for misconduct – and punish public servants who they perceive as obstacles.

In sum, the history of the PSDPA suggests that its passage was consistent with symbolic action by political actors as described by Edelman (Edelman, 1964) or Hood, Rothstein and Baldwin's (2001) theory of regime development under pressure, or Hood's (2010) model of blame avoidance. The insistence by senior actors that the regime is working well, along with repeated admonitions on the duty of loyalty, create mixed messages for public servants. This could be changed with an adjustment of incentives, regime enhancements, better training and awareness, leadership commitment to the objectives of the PSDPA, and an ongoing cycle of evaluation and improvement. In several ways, Canada's regime parallels that of Australia, which also resisted dedicated whistleblowing legislation, focussed on the public sector, and adopted a similar structure. In others, Australia's regime resembles the U.K. regime, with multiple avenues and processes for disclosures. The next chapter will examine Australia's regime, which was enacted in 2013.

Chapter 6

Whistleblowing in the Australian Public Service

The Australian Public Service (APS) whistleblowing regime is the result of history, flawed logic and unclear objectives, and incentives. Measures to manage conduct and accountability in APS have existed since it was established in 1902, but reforms intended to promote civil service responsiveness and efficiency eroded their effectiveness. These reforms coincided with an increase in public sector scandals and disasters, bringing the ethics and integrity of government into question. The Commonwealth government codified the APS Values and Code of Conduct in 1999 then, under pressure, passed the *Public Interest Disclosure Act 2013* (PID Act [Cth]). This created a piecemeal whistleblowing regime with two broad categories of wrongdoing: one for reporting APS Code of Conduct breaches and another for other misconduct under the PID Act (Cth).

This chapter is divided into three sections. The first presents a description of traditional avenues for dissent and reporting error and misconduct, then traces the events leading to the implementation of formal whistleblowing provisions. Public pressure triggered action first at state levels, starting with corruption commissions. Whistleblowing laws followed. The Commonwealth government was much slower, first incorporating a short section prohibiting reprisal in the *Public Service Act 1999* (PS Act [Cth]). Sustained pressure and efforts by academics, advocates, and independent parliamentarians bore fruit in 2013.

The second section describes the APS whistleblowing regime, its implied logic, and available evidence of effectiveness. Even though both apply to the APS, there has been little effort to integrate the two mechanisms. The logic of the regime can be inferred, but it has not undergone a comprehensive evaluation. This has led to competing claims on its performance. Available evidence suggests that it is not achieving hoped-for outcomes. This may be because of the lack of visible positive results, defective processes, and high-profile cases highlighting reprisal against sympathetic whistleblowers.

Factors that appear relevant to whistleblower and regime outcomes are examined in the third section. APS norms and conventions clearly favour internal avenues to report misconduct, while a willingness to use national security laws constitutes a strong deterrent to external disclosure. Senior institutional actors have also signalled this in communications, rules, and action. This is consistent with conventions on the role of the public service.

The chapter concludes that the APS whistleblowing regime was reluctantly accepted by political actors and has faced sustained opposition from incumbent senior administrative actors. Overall, there remains a stigma to whistleblowing. The encroachment of political actors into the administrative sphere appears to be at the centre of a web of conventions, norms, and incentives, as they have

effectively tied the career prospects of senior public servants to responsiveness to political direction and the appearance of error-free administration.

6.1 Evolution of the Australian Public Service Whistleblowing Regime

This section describes the events and decisions preceding the implementation of a whistleblower regime in the APS. These occurred in a different order than in the United Kingdom and Canada: Stable institutional arrangements for maintaining competence and enforcing norms within the traditional APS were disrupted, awareness of whistleblowing came earlier, there was widespread use of corruption commissions, whistleblowing case law came very late, and the states enacted whistleblowing laws first. Like the United Kingdom, the Commonwealth government codified its APS Code of Conduct in the late 1990s, including a provision to protect whistleblowers disclosing breaches of the Code. However, it was not until 2013 that the PID Act (Cth) was finally passed.

6.1.1 Traditional Loyalty, Disclosure, and Accountability

The public service bargain that emerged during the middle decades of the 20th century was consistent with that of the United Kingdom and Canada. There were several mechanisms in the Commonwealth government intended to detect error and misconduct and to hold political and administrative actors to account. They include committees, conventions, legal obligations, and the judiciary. The Joint Committee of Public Accounts and Audit is the Australian public accounts committee. Unlike the United Kingdom and Canada, there is no convention that it be chaired by a member of the opposition; the chair at the time of writing is a member of the government. It sets priorities for the Australian National Audit Office (ANAO). The ANAO is headed by the Auditor-General, previously housed in the Department of the Prime Minister and Cabinet (PM&C). It was made an independent officer of Parliament under the *Auditor-General Act 1997*.

Departmental secretaries – also termed agency heads in legislation and other communications – are accountable to their ministers and responsible for the functioning of the department. Australian departmental secretaries serve a limited challenge role, but convention and practice has placed this firmly within ministerial responsibility. This has remained stable over time. The *Public Service Act 1922* required compliance with legitimate instructions. The Coombs Commission recommended adopting the U.K. accounting officer model, but this was rejected by the government. Further, the Commission noted that there was no clear, consistent, or rational policy to resolve disputes between a departmental secretary and a minister (Australia. Royal Commission on Australian Government Administration, 1976, pp. 87–88). In areas of simple policy disagreements, its advice was that “...where there are differences of view within the department, we consider the best course is for practices to be adopted whereby the minister becomes aware of those differences” (p. 65).

Prime Minister John Howard's 1996 guidance on ministerial responsibility was consistent with this approach. He instructed ministers to listen to advice but advised that they do not have to accept it. Public servants, on the other hand, were directed not "to press their advice beyond the point where their ministers have indicated that the advice, having been fully considered, is not the favoured approach" (Australia. PM&C, 1996, p. 13). Current advice is minimal but is consistent with the informal networks approach suggested by participants and policy in Canada and the United Kingdom. *Supporting Ministers – Upholding the Values* (Australia. Australian Public Service Commission [APSC], 2005, Chapter 2) suggests that intractable disputes between ministers and their departmental secretaries should be rare and advises that:

An Agency Head might consult with colleagues such as the Secretary of the Department of the Prime Minister and Cabinet or the Public Service Commissioner and, depending on the issue, the Secretary of the Attorney-General's Department. If still concerned, the Agency Head can raise the issue with the Prime Minister. The Minister should always be kept informed. (Australia. Australian Public Service Commission [APSC], 2005, Chapter 2, para 7)

Finally, public servants may be summoned to give evidence to the Joint Committee of Public Accounts and Audit and other committees. If so, they are bound by convention to provide information but not to comment on the merits of policies. Further, the McMullan principle prevents political advisers from being summoned as they are considered contractors of the minister (Finlay, 2016; Killey, 2014, pp. 125–128). This convention has been challenged, but successive governments have maintained its validity. It is enshrined in *Odger's Australian Senate Practice* (Australia. PM&C, 1996, p. 13; Odgers & Rowland, 2016).

6.1.2 Regulating Behaviour in the Australian Public Service

Regulation of the conduct of the APS was established in law by the *Commonwealth Public Service Act 1902*, which created a public service along the lines of the U.K. model. Hiring and promotion were based on merit, with a Public Service Commissioner and associated inspection staff to provide oversight. Offences included "wilful disobedience or disregard of any lawful order," "being negligent or careless in the discharge of duties," "being inefficient or incompetent and such inefficiency or incompetency appears to arise from causes within his own control," "using intoxicating beverages to excess," and "any disgraceful or improper conduct" (s. 46). Public servants were also prohibited from holding other employment. Punishments ranged from reprimand to dismissal; more serious offences required a board of inquiry.

The *Commonwealth Public Service Act 1922* replaced the Public Service Commissioner with the Public Service Board. This had three commissioners and was charged with protecting the merit principle and promoting efficiency and

economy in the public service. Disciplinary offenses remained largely the same as under the 1902 Act, although violation of oaths and strikes were added. It also cautioned officers who were insolvent to apply to the courts for a discharge. This was intended to establish that the insolvency was not the result of fraud or a conflict of interest. Later, regulation 30 of the *Public Service Regulations 1935* required public servants to report misconduct – in effect, creating a duty to blow the whistle. Misconduct was dealt with through departmental processes, with the Board serving as an appeal mechanism.

At the working level, concerns have traditionally been referred up the ladder. The Coombs Commission *Report* was skeptical of this approach as it meant the organization would be investigating itself. For ethical concerns, it made weak proposals that “action be taken to stimulate open discussion of ethical problems facing officials at various levels” (Australia. Royal Commission on Australian Government Administration, 1976, para. 413). It did not advise the development of codes of conduct as “a consistent and uniform ethos among so large and diverse a group is improbable” (p. 24). For more clear-cut wrongdoing, it recommended that the Commonwealth Ombudsman be the authorized recipient of such disclosures (pp. 224-225). The Commonwealth Ombudsman was established under the *Ombudsman Act 1976* (Cth) to receive public complaints. The Ombudsman’s current mandate is to investigate administrative actions by Commonwealth agencies, executive agencies, and prescribed authorities. Since 2013, it has been charged with monitoring and oversight of the PID Act (Cth).

With respect to confidentiality and secrecy, public servants were subject to Part VI to Part VII of the *Crimes Act 1914*. This prohibited the unauthorized communication or publication of government information. It also included several other offences, such as theft or fraud involving government property, falsifying or destroying records, corruption (e.g., bribes), and impersonating or obstructing a Commonwealth official. The provisions on secrecy were ultimately replaced by Part 5.6 (Secrecy of Information) and ss. 121-123.5 of the *Criminal Code Act 1995* (Criminal Code [Cth]), which were added in January 2019. In addition, the *Australian Security Intelligence Organisation Act 1979* (ASIO Act [Cth]) was amended in 2014. Section 35P created an offence for disclosing “special intelligence operation information.” Section 42 of the *Australian Border Force Act 2015* (Cth) creates an offence for the disclosure of official information by any “entrusted person.” (Newhouse & Barns, 2015).

6.1.3 Increasing Responsiveness and Transparency in the Australian Public Service

The findings of the Coombs Commission reflect a period in which the APS was viewed with increased scepticism. One recommendation to come to fruition soon afterward was the *Freedom of Information Act 1982* (Cth). The reasoning behind the Act was simple: the electorate must be able to judge the performance of

government to make informed choices. Where limits are set, these must be founded in the convention on frank and fearless advice (and discussion) within government (Stewart, 2015, p. 96). Subsequent reviews of the *Freedom of Information Act* (Cth) have characterized it as failing in both respects, serving as an impediment to policy-making and its exemptions making much information inaccessible – particularly if the body is an external service provider (Stewart, 2015). Changes were introduced in 2010 to broaden its applicability, eliminate fees, and give more powers to the Information Commissioner, but exemptions continue to rise (Australia. ANAO, 2017). Thus, while governments are considerably more open than when it was first introduced, impediments remain.

Structural changes were also made to the APS. Besides the outsourcing and privatization of services, one stands out: the erosion of public service tenure. The *Public Service Reform Act 1984* (Cth) ended the permanence of departmental secretaries. Then, in 1993, the government introduced fixed term contracts – initially for five-year terms, but now more commonly three (Podger, 2007). The Senior Executive Service was also created. The *Merit Protection (Australian Government Employees) Act 1984* (Cth) established the Merit Protection and Review Agency for employees to appeal appointment decisions. The Public Service Board was then replaced by a new Public Service Commission (APSC) in 1987, but with reduced powers. These reforms culminated in the 1999 PS Act (Cth), which replaced the 1922 Act in its entirety. It completed the devolution of staffing to government agencies, introduced a broader range of reasons for termination (s. 29), and gave the prime minister the power to terminate a departmental secretary (s. 59). Merit as a principle was retained, however, with the Merit Protection Commissioner replacing the Merit Protection and Review Agency. The APSC was assigned responsibility for the administration of the PS Act (Cth). Both commissioners are housed in PM&C but can only be removed if both houses of Parliament make the request.

6.1.4 The Rise of Whistleblowing

Despite a reputation for having a culture that celebrates mateship and dislikes dobbing (informing) Australia has a long history of whistleblowing. These whistleblowers reported entrenched corruption, frequently within police agencies. Their revelations triggered inquiries, led to the formation of new corruption commissions, and, ultimately, galvanized support for statutory whistleblower protections. The first statutes were enacted in the states of New South Wales, South Australia, and Queensland.

One of the first whistleblowers to capture the public imagination, Bill Toomer, blew the whistle on negligence in the fumigation of cargo vessels arriving in Fremantle, Western Australia in the 1970s. He was targeted for removal and was forced to organize his own defence. He spoke publicly about his ordeal at the Promotions Appeals Committee in 1979, an Administrative Appeals Tribunal in

1991, and at Senate committee hearings (e.g., Australia. Senate Select Committee on Unresolved Whistleblower Cases, 1995). Despite evidence and findings in his favour, no independent inquiry was ever conducted. However, his case remains a point of reference in discussions on whistleblower protection (e.g., Whistleblowers Action Group Queensland & Whistleblowers Australia, 2018). He was forced to retire early and was unable to obtain compensation for the material and emotional costs he suffered (Potter, 2008).

Colin Dillon, the first Indigenous Australian to join a major police force, was a key witness at an inquiry into police corruption in Queensland. The inquiry itself was triggered by a series of media reports on police involvement in prostitution and gambling. The commission was headed by G.E. (Tony) Fitzgerald, a judge (Queensland. Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct, 1989). Facilitated by protections offered to whistleblowers (Annakin, 2011, p. 70), the inquiry recommended independent disclosure avenues for the police, a statutory code of ethics for elected and appointed officials, and an anti-corruption commission (pp. 133–134). It resulted the resignation of Premier Joh Bjelke-Petersen and, soon after, the defeat of the governing National Party. Three former ministers and the police commissioner were jailed (Tiffen, 1999, p. 104).

Kevin Lindeberg was a union official who was fired after protesting the destruction of records needed for a civil suit in 1990. The records pertained to an inquiry into the abuse of Indigenous children at a state youth detention facility, with Lindeberg representing an official accused of ignoring the abuse. The destruction had been ordered by the newly elected Queensland Labor government cabinet and was carried out by the state archivist, a prima facie contravention of s. 129 of the *Criminal Code 1899* (Qld). This became known as the Heiner Affair.⁴⁴ Primarily due to his own persistence, the issue remained the subject of inquiries and media coverage for three decades, as well as becoming a case of concern to international archivists (e.g., Norldand, 2010). Notably, the House of Representatives Standing Committee on Legal and Constitutional Affairs (2004) supported his allegations. Despite this, he was never reinstated or compensated for the reprisals and harm he suffered (T. Moore, 2021; Whistleblowers Action Group Queensland & Whistleblowers Australia, 2018).

6.1.5 State Corruption Commissions and Whistleblowing Laws

Australian governments have adopted different strategies when confronted with scandals such as these. The first has been the frequent use of inquiries and royal commissions. These sometimes serve to diffuse criticisms (see Tiffen, 1999 for a

⁴⁴ Lindeberg continues to maintain a website with descriptions, timelines, and source material at <https://www.heineraffair.info/main.html>.

summary), but other times – as in the Fitzgerald Inquiry – uncover deeply entrenched corruption. The second has been the adoption of corruption commissions at state levels. These commissions have evolved over time, with responsibilities for investigating organized crime, police corruption, and other public sector corruption, misconduct, and maladministration. Some address corruption entirely within the public sector, while others may also investigate private persons attempting to corrupt government officials. They have significant powers to conduct covert investigations, compel the production of evidence and testimony, and to enter premises. They accept whistleblowing disclosures, and it is an offence to threaten or take retaliatory action against complainants and witnesses in all regimes, but obtaining a remedy usually requires civil action. Data from the Whistling While they Work (WWTW) research suggests these commissions place a higher priority on investigation than they do on protecting witnesses and whistleblowers, which has affected trust (Annakin, 2011).

The Commonwealth has resisted establishing a commission along the lines of those employed in states. The closest comparator is the Australian Commission for Law Enforcement Integrity, which has a mandate to prevent, detect, and investigate corruption in the Australian Federal Police (AFP), the Department of Home Affairs, the Australian Criminal Intelligence Commission, and the Australian Taxation Office, among other agencies. It prioritizes serious or systemic corruption. A National Integrity Commission addressing broader public sector corruption appears close to realization at the time of writing, however: A Senate committee report in 2017 was met with a government promise and draft legislation made available for comment in 2020 (Australia. Attorney-General's Department, 2021; Australia. Senate Select Committee into the Establishment of a National Integrity Commission, 2017).

Whistleblowing legislation also first emerged in states - specifically Queensland, South Australia, and New South Wales, with other states and territories lagging. This appears correlated to the severity of scandals that came to public attention at state levels, though many also involved the private sector and Commonwealth actors. The Fitzgerald Inquiry was the most prominent. The Queensland government subsequently enacted the *Whistleblowers (Interim Protection) and Miscellaneous Amendments Act 1990* (Qld). In 1991, the newly elected Labor Party committed to improving ethics and implementing whistleblower protection, culminating in the *Public Sector Ethics Act 1994* (Qld) and *Whistleblowers Protection Act 1994* (Qld). This has since been replaced by the *Public Interest Disclosure Act 2010* (Qld).

South Australia was also concerned about police and other government officials' involvement in organized crime, leading to an investigation by the National Crime Authority into bribery and corruption involving the police, illegal gambling, drugs, and murder (Australia. Joint Committee on the National Crime Authority, 1991, p. 25). This led to the *Whistleblowers Protection Act 1993* (SA). It was subjected to

much scrutiny, with De Maria (1995, p. 272) criticizing it as a “miserably conceived instrument.” It was reviewed by the government in 2014 and replaced in 2019 by the *Public Interest Disclosure Act 2018* (SA).

In New South Wales, the 1977 assassination of anti-drugs activist Donald Mackay triggered two commissions. These found numerous errors in police procedure and concluded that some police officers may have been corrupt – even in units previously thought to be clean (New South Wales. Royal Commission into the New South Wales Police Service, 1997, p. 49). On the promise of reform, the Labor Party won the 1988 state election. The *Independent Commission Against Corruption Act 1988* (NSW) provided a mechanism for investigating corruption but failed to satisfy three independent members of the Legislative Council. These MPs were needed to support the government after a close election in 1991 and demanded an inquiry into police corruption. The resulting Royal Commission into the New South Wales Police Service exposed widespread corruption and a pedophile ring which was assisted by police officers. Dozens of police officers accepted qualified immunity to testify, and the police commissioner resigned (Annakin, 2011, p. 84). Another demand by the independents was for whistleblowing legislation. The *Protected Disclosures Act 1994* (NSW) came into force in 1995.

6.1.6 The Emergence of Legal Protections and Rights for Whistleblowing

The Commonwealth government did not immediately emulate state governments, however, leaving APS whistleblowers dependent on constitutional freedoms and employment law decisions. The Australian *Constitution* gives limited freedoms for free speech, only offering protection against government interference in *political* communication. This is considered fundamental to the proper functioning of a responsible and representative government.

With respect to employment law, all Australian employees owe a duty of loyalty and fidelity to their employers. Key case law decisions did not come until the 1990s, and have been mutable depending on case characteristics and the evolving perspectives of the courts (C. Saunders, 2011, Chapter 3). Three that are particularly relevant to whistleblowing are *Ballina Shire Council v. Ringland* (1994),⁴⁵ *Lange v. Australian Broadcasting Corporation* (1997),⁴⁶ and *McCloy v.*

⁴⁵ William Ringland publicly accused Ballina Shire Council of releasing waste into the ocean at night due to defects in the waste management plant. The council was only able to obtain \$800 for “injurious falsehood”; a dissenting judge argued that even this was defamation in disguise.

⁴⁶ David Lange was Prime Minister of New Zealand. He sued the Australian Broadcasting Corporation after it ran a story describing his government as under the

New South Wales (2015).⁴⁷ All pertained to defamation law, which have been used in Australia to attack, silence, and intimidate media outlets, critics, and whistleblowers (Tiffen, 1999, pp. 216–222). In the first, the court ruled that Ballina Shire Council could not sue a critic because it was not a natural person and could not suffer damages from such criticism. This decision extends to all public bodies. *Lange* expanded the qualified privilege defence in defamation law. The court ruled that such laws could not create a blanket restriction on free communication about government or political matters. Further, where a law does restrict communication, it must be reasonable and consistent with the maintenance of representative and responsible government. Reasonableness is determined by the speaker or publisher’s sincere belief in the truth of the matter, efforts to determine accuracy, and whether they sought a response from the subject of the story. *McCloy* refined this test, requiring that any restriction be “reasonably appropriate and adapted to the objective” (para. 560). In these decisions, the High Court balanced the public interest with the rights of individuals and organizations to be free of accusations “actuated by malice” (Australia. Australian Government Solicitor, 1997).

This common law freedom does not extend to public servants critical of the government, however. Instead, case law on public sector whistleblowing since 2000 has favoured the traditional public service bargain. Two key decisions are *Bennett v. President, Human Rights and Equal Opportunity Commission* (2003) and *Comcare v. Banerji* (2019). In the first, Peter Bennett, an employee of the Australian Customs Service and the President of the Customs Officers Association, spoke out about staffing cuts in 1998 – despite an explicit instruction not to do so. Disciplinary action and reprisal were taken against him, which he appealed. Because he was speaking in his capacity as a union official and was divulging information already available to the public, the High Court read down (limited) the *Public Service Regulations 1999* (PS Regulations [Cth]) as being an overly broad (Holland & Prince, 2004). The government responded to *Bennett* by introducing regulation 2.1(3). This prohibits the unauthorized disclosure of government information “if it is reasonably foreseeable that the disclosure could be prejudicial to the effective working of government.” This was used in the *Comcare* case, in which a public servant employed by the Department of Immigration and Citizenship was caught tweeting criticisms of the department under the name LeLegale in 2012. The department fired her. She then sought

influence of big business, alleging that it depicted him as incompetent and corrupt. The High Court accepted qualified privilege as a defence and dismissed his claim.

⁴⁷ Jeff McCloy is a property developer in Newcastle who was investigated by the New South Wales Independent Commission Against Corruption for illegal political contributions. He attempted to overturn state law banning donations from property developers, but the court ruled that the restriction was consistent with maintaining representative and responsible government.

workers compensation based on psychological harm arising from reprisal. When the matter reached the High Court, the majority applied the *Lange/McCloy* test to determine that the departments actions were consistent with the PS Act (Cth) – and that Banerji’s criticism was inconsistent with an impartial public service, even when made anonymously (Karp, 2019; Mattson, 2019; J. Wilson, 2018).

Numerous statutes also include provisions for whistleblower protection that may cover public sector whistleblowers, depending on the nature of the disclosure. The *Treasury Laws Amendment (Enhancing Whistleblower Protections) Act 2019* (Cth) amended the *Corporations Act 2001* (Cth) and the *Taxation Administration Act 1953* (Cth) include whistleblower protections. The *Work Health and Safety Act 2011* (Cth), the *Aged Care Act 1997* (Cth), and various similar Commonwealth and state acts have similar provisions. For more serious offences, there are protections for witnesses available through the *Crimes Act 2014*. Part III, Division 3, ss. 36A-40 prohibit actions that impede the investigation and prosecution of crimes, including witness intimidation, use of violence, other intentional harms intended to punish witnesses, corruption of witnesses through benefits gifts or offers (or promises thereof), deceiving witnesses, destroying evidence, or otherwise preventing witnesses from attending court.

6.1.7 The Public Service Act 1999 (Cth)

The Commonwealth government was not without its own scandals, though less serious. The 1993-1994 “sports rorts” affair⁴⁸ implicated Labor Sports Minister Ros Kelly in funnelling grants to marginal seats to improve the electoral chances of the Labor Party. She then lied to Parliament about her involvement. Under pressure, she resigned (Brenton, 2012, p. 144; Drinkwater, 2015, p. 47). This and other scandals contributed to calls for whistleblower protections. Federal reports calling for such legislation include the Gibbs *Final Report* (1991), the Senate Select Committee on Public Interest Whistleblowing report *In the Public Interest* (1994), the Senate Select Committee on Unresolved Whistleblower Cases report *The Public Interest Revisited* (1995), and the Ombudsman’s report *Professional Reporting and Internal Witness Protection in the Australian Federal Police - a review of practices and procedures* (1997). It was not until the PS Act (Cth), however, that any protection for whistleblowing in the Commonwealth public sector was enacted.

The PS Act (Cth) was an effort to update the operation of the APS and establish standards of conduct consistent with modern conceptions of the public service bargain. It reaffirms a commitment to the merit principle (s. 10A) and codifies the APS Values (s. 10) and Code of Conduct (s. 13). There are five values:

⁴⁸ A “rort” is an Australian term for manipulating government programs to gain an unfair advantage; it is often used to refer to abuse of a government program.

commitment to service that is “professional, objective, innovative and efficient,” ethical, respectful, accountable, and impartial. The Code of Conduct has 13 provisions which can be divided into four themes: service quality, conformance with the law, aspects of the traditional bargain, and general good behaviour provisions. The service theme requires APS employees to act with honesty and integrity, care and diligence, and respect and courtesy. In the second theme, they must act in accordance with Australian law, avoid conflicts of interest, use Commonwealth resources “in a proper manner and for a proper purpose,” and not use information obtained in their employment for personal benefit or to cause harm. There are also clauses supporting the public service bargain, such as the requirement to comply with “any lawful and reasonable direction” made by a person with the appropriate authority, maintaining confidentiality in dealings with ministers or ministerial staff, and not providing false or misleading information in the course of their duties. Agency heads, overseen by the APSC, are mandated to promote and assess implementation of the APS Values, employment principles, and the Code of Conduct (PS Act [Cth], s. 12, s. 15 & s. 41[2][f]).

The APSC Directions support the PS Act (Cth), explaining the conventions of accountability within the doctrine of ministerial responsibility (direction 16), impartiality, “frank, honest, timely” advice based on evidence, and loyal implementation (direction 17). It also stipulates responsiveness to ministers (direction 13[j]), “having the courage to address difficult issues” (direction 14[c]), merit-based recruitment and promotion (Part 3), and performance management (Part 4, Division 2).

In its original version, the PS Act (Cth) also included a whistleblowing provision (s. 16). This was very limited, applying only to breaches of APS Code of Conduct. The sum of its protections is contained in a single phrase: “A person performing functions in or for an Agency must not victimise, or discriminate against, an APS employee because the APS employee has reported breaches (or alleged breaches).” These disclosures could only be made to agency heads (or their delegates), the Merit Protection Commissioner, and the APSC. It contained no associated sanctions, procedures, or mitigation for reprisal. Section 16 was replaced by the PID Act (Cth) in 2013.

6.1.8 *Belated Isomorphism: The Public Interest Disclosure Act (Cth)*

If the PS Act (Cth) was intended as a push toward more ethical behaviour, it does not appear to have succeeded. In one Commonwealth scandal, the Australian Wheat Board was found to have paid kickbacks to Iraqi officials between 1999 and 2003 under the oil-for-wheat scandal. This implicated Minister of Foreign Affairs Alexander Downer (Marr & Wilkinson, 2006). Then, in 2003, Lieutenant Colonel (retired) Andrew Wilkie blew the whistle on false evidence used to justify the invasion of Iraq. He escaped reprisal as he had already resigned from the Office of National Assessments (Martin, 2005; Wilkie, 2004).

Allan Kessing was less fortunate. A customs officer, he was charged for leaking a report on deficient security practices at Sydney International Airport in 2005. These practices had facilitated the smuggling of drugs. He denied the charges but was convicted of breaching s. 70 of the *Crimes Act* in 2007 (Attard, 2009; Merritt, 2012).

A scandal that implicated political actors was the “children overboard” affair. This was a 2001 incident in which a vessel carrying asylum seekers sank after being intercepted by the frigate HMAS *Adelaide*. Seeking political advantage prior to an election, the government falsely claimed that asylum seekers had thrown children into the ocean to be rescued. In the subsequent inquiry, political staff were prevented from testifying by the McMullan principle. Despite this, the minister and political staff were found to have used “a combination of denial, obfuscation, and misleading statements” to the media, senior officials and the public (Australia. Senate Select Committee on a Certain Maritime Incident, 2002, p. 119, paras. 6.63-6.64).

These scandals took place during the premiership of John Howard. Kevin Rudd, leading Labor to victory in 2007, campaigned on a promise to introduce whistleblower legislation for the Commonwealth government. Soon after, the House of Representatives Standing Committee on Legal and Constitutional Affairs produced its report, *Whistleblower Protection: A Comprehensive Scheme for the Commonwealth Public Sector* (2009). It concluded that existing whistleblowing provisions in the PS Act (Cth) were inadequate and that a comprehensive regime for whistleblowing in the public sector was needed (Australia. House of Representatives Standing Committee on Legal and Constitutional Affairs, 2009). The Rudd government accepted most of the recommendations but rejected coverage of political staff (Australia. House of Representatives Standing Committee on Legal and Constitutional Affairs, 2010).

There were also efforts originating outside government. While whistleblowers and advocacy groups have consistently pushed for increased protections, the WWTW research took an educative and participatory approach by recruiting government officials at the territorial, state, and federal levels. While its results have been contested as unrepresentative of the worst cases, government participants spoke highly of it (P1.26, P1.42, P1.46). Based on this input, it is likely that the results allayed at least some of the fears of many institutional incumbents.

Notwithstanding this, it still took several years before concrete action was taken. Impatient, independent MP Andrew Wilkie (the Iraq invasion whistleblower) introduced the *Public Interest Disclosure (Protection of Whistleblowers) Bill 2012* in consultation with WWTW project leader AJ Brown. His concerns were well founded: past governments had sidetracked many efforts, including the *Whistleblowers Protection Bill 1991* (introduced by Greens Party Senator Jo Vallentine), the *Whistleblowers Protection Bill 1993* (Greens Party Senator

Christabel Chamarette), the *Public Interest Disclosure Bill 2001* (Australian Democrats Party Senator Andrew Murray), *Public Interest Disclosure (Protection of Whistleblowers) Bill 2002* (Senator Murray), and the *Public Interest Disclosure Bill 2007* (Senator Murray). All lapsed due to lack of government support. Wilkie's bill, however, came at the right moment – just before the 2013 election. Soon after his bill was introduced, the government tabled its own bill. The House of Representatives Standing Committee on Social Policy and Legal Affairs (2013) compared the two and concluded the government bill was preferable.

6.1.9 Summary

This section traced the evolution of accountability, dissent, and disclosure in the Australian public service from its foundation to the point at which statutory protections for whistleblowers were enacted. The merit principle, established norms, and traditional accountability mechanisms had maintained public service competence and conduct for many decades, but came under pressure in the 1980s and 1990s. Due to scandals, whistleblowing entered popular discourse sooner than the United Kingdom. Initial efforts to address public sector misconduct took place at state levels, first using corruption commissions, and then whistleblowing statutes. The Commonwealth government was slower, first codifying the APS Code of Conduct with a weak prohibition against reprisal for whistleblowing, then, 14 years later, adopting a dedicated whistleblowing law. In this series of events – and unlike Canada – punctuated equilibrium came first at state levels, with the Commonwealth government later emulating their legislation to meet electoral promises and bolster legitimacy. This is consistent with isomorphism (Boxenbaum & Jonsson, 2012; DiMaggio & Powell, 1983).

6.2 Nature and Performance of Australia's Public Service Whistleblowing Regime

This section will examine the Commonwealth whistleblowing regime under the PID Act (Cth) and the PS Act (Cth). It will consider how the regime functions, its logic, and evidence of success. In protections and structural models, the logic of whistleblowing regimes is as follows: First, whistleblowers are an important source of information about misconduct, and they need to be protected to prevent their disclosures being suppressed. Second, safe and effective avenues of disclosure will protect the whistleblower and ensure the wrongdoing is properly addressed. This requires competent investigations that lead to corrective action, protection for workers considering or who have blown the whistle (and their allies), and, when the system fails to provide protection, a neutral and competent avenue to obtain redress. Third, workers will gain trust in the regime and use it more often. This requires transparency in the process and in outcomes achieved. Fourth, this will deter wrongdoing, normalize speaking up, and enhance the ethics and integrity of the public service. This will, ultimately, contribute to good governance. An evergreen process of evaluation and improvements is important.

In Australia's case, the PID Act (Cth) replaced the PS Act (Cth) whistleblowing provision when it came into force in 2014, but a separate process for disclosing breaches of the APS Code of Conduct has persisted. This creates a regime without explicit logic, has multiple and confusing avenues of disclosure, promises protection and redress but ultimately leaves whistleblowers to defend their own rights, and has not been internally evaluated since its inception. The evidence that is available is scattered, frequently superficial, and lacks context. Several identifiable shortcomings, moreover, illuminate the risks inherent in the regime.

6.2.1 Avenues of Disclosure in the Australian Public Service

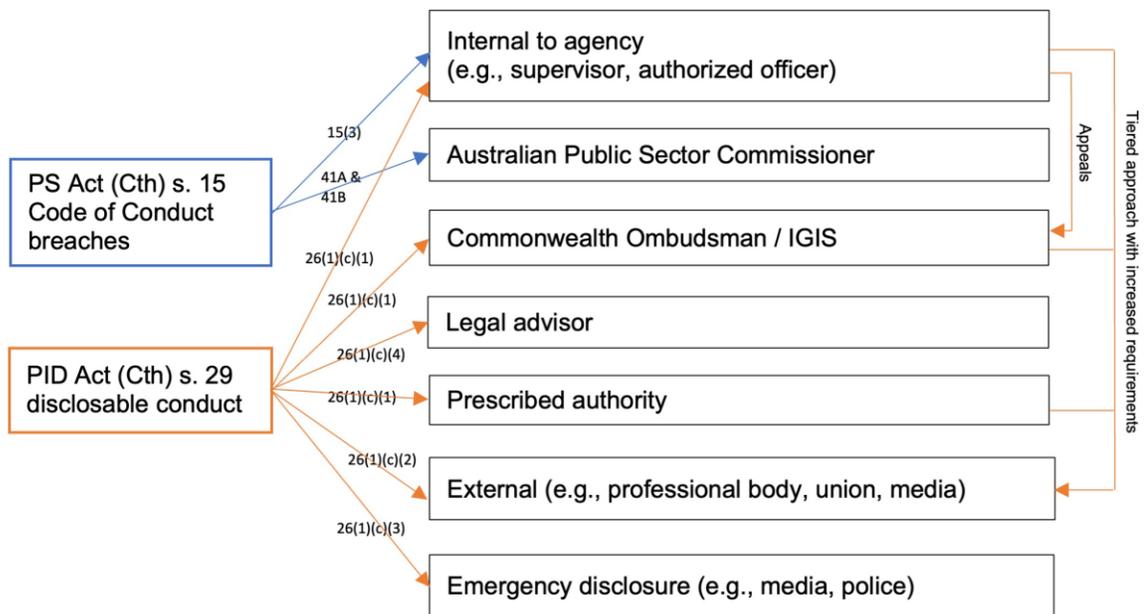
There are two mechanisms by which an APS employee can disclose misconduct: via the PS Act (Cth) for violations of the APS Code of Conduct, and via the PID Act (Cth) for a broader range of wrongdoing. The acts apply to Commonwealth departments, executive agencies, and prescribed authorities as defined in s.8 and s. 71 of the PID Act (Cth) and s. 7 and s. 65 of the PS Act (Cth). Most APS Code of Conduct provisions deal with ethical and lawful conduct, varieties of conflict of interest, and the public service bargain (such as confidentiality and impartiality). Where APS employees observe violations of the Code, they are now obliged to disclose misconduct by s. 15(2A)(b) and direction 14(f) of the APSC Directions. This is also communicated in para. 4.1 of *Handling Misconduct: A Human Resource Manager's Guide* (Australia. APSC, 2018b, p. 29) and para. 9.1 of the *APS Values and Code of Conduct in Practice* (Australia. APSC, 2017).

Under ss. 15(3)-(8) of the PS Act (Cth), disclosures of Code breaches must be made under procedures set by the agency head. This may include the same officials authorized to receive PID Act (Cth) breaches, but this is not stipulated. For example, the *Human Resources Manager's Guide* suggests a broad list of potential recipients that includes authorized officers under the PID Act (Cth), but also several others (Australia. APSC, 2018b, p. 30, para. 4.2.3). Disclosure can be made directly to the APSC, but unless the disclosure implicates an agency head, the whistleblower would either be referred back to their department or would be encouraged to make a PID (APSC spokesperson, response to *Freedom of Information Act* [Cth] request, October 8, 2021). When an agency head or statutory office holder is implicated, the disclosure should be made to the APSC (PS Act [Cth], s. 41(2)(p); PS Regulations [Cth], regulation 6.1A).

The PID Act (Cth), on the other hand, applies to a broader range of wrongdoing, described in Part 2 as "disclosable conduct" (wrongdoing). This includes contraventions of law, perversion of justice, corruption, maladministration, abuse of the public trust, misrepresentation of scientific research, wastage of public money or property, or dangers to health, safety, or the environment (s. 29). Code of Conduct violations are included, but not disagreements on government policy, court and tribunal decisions, or intelligence agency operations (ss. 31-32).

As set out in s. 26 of the PID Act (Cth), if a public official⁴⁹ or contracted service provider (ss. 69 & 30) observes what they reasonably believe is a wrongdoing they may make a “public interest disclosure” (PID) orally or in writing to a supervisor, the department “authorized officer,” the Commonwealth Ombudsman or Inspector-General Intelligence and Security (IGIS),⁵⁰ or to an investigative authority under the *Public Interest Disclosure Rules 2019* (Cth). They do not have to identify themselves or declare that they are making a PID (s. 28). If the matter is not adequately dealt with internally, it may be disclosed externally – provided the information disclosed is limited to what is necessary, does not include intelligence information, and is in the public interest (see s. 26(3) for the criteria). Employees can make emergency disclosures to the media, police, or others if there is a substantial and imminent danger to health, safety, or the environment. Disclosures may be made while obtaining legal advice, provided the lawyer has the appropriate security clearance (s. 26). Figure 6.1 shows the avenues of disclosure available under the PS Act (Cth) and PID Act (Cth).

Figure 6.1: Formal APS Whistleblowing Avenues



How disclosures are handled depends on the process under which they were made. Section 15 of the PS Act (Cth) obliges agency heads to develop procedures for the investigation of APS Code of Conduct breaches, subject to

⁴⁹ Notably, authorized officers may designate any person a public official – even a member of the public (s. 70).

⁵⁰ The IGIS serves the same role as the Ombudsman for intelligence agencies; for brevity, references to the Ombudsman include the IGIS unless otherwise stated.

review by the APSC. Part 5 of the APSC Directions sets standards for the handling of suspected Code breaches, such as procedural fairness. A written record must be maintained, including the suspected breach, findings, sanctions, and reasons given to the employee (direction 47). The process is to be “carried out with as little formality and as much expedition as a proper consideration of the matter allows” (direction 46).

Similarly, s. 59 of the PID Act (Cth) requires “principal officers” (i.e., agency heads / departmental secretaries) to develop procedures for handling PIDs. Once a disclosure has been received, the authorized officer must allocate it to a relevant and competent official or agency for investigation, ensuring there is no conflict of interest (PID Act [Cth], s. 43). The whistleblower, agency head, and Ombudsman must be informed of the allocation (s. 44). Investigations must be completed within 90 days of being allocated (s. 52[1]) and must be conducted in accordance with the *Public Interest Disclosure Standard 2013* and other relevant standards (s. 53). If the investigation is not undertaken or is stopped, the Ombudsman must be informed (s. 50A). Upon completion, the agency head must report the findings and actions taken in writing (s. 51). The agency head can request the assistance of the Ombudsman (s. 62).

Disclosures may also be made directly to the Ombudsman. The Ombudsman may require the disclosure be made first to the implicated agency and may also dismiss disclosures determined to be frivolous or vexatious. They may also refer the matter for investigation to another agency, such as the APSC, the Law Enforcement Integrity Commissioner, the AFP Commissioner, the Information Commissioner, the Australian Criminal Intelligence Commission, and other authorities. Before commencing an investigation, the Ombudsman may conduct a preliminary inquiry and must inform the relevant agency head. The Ombudsman has the powers of a Federal Court and can compel production of evidence and testimony and has the authority to enter most Commonwealth premises (*Ombudsman Act 1976* [Cth], s. 11A). After completing the investigation, the minister must be consulted before final opinions are formed.

Redress for reprisal after a disclosure also depends on the process used. The PS Act (Cth) does not define the term, but if a public servant believes they have suffered reprisal, they are advised that they may make another complaint under the Code or a disclosure under the PID Act (Cth). They may also make a complaint to the Merit Protection Commissioner, as they could for a range of employment-related issues. Further, public servants have the right to seek a review and remedy of any detriment to the Fair Work Commission under the *Fair Work Act 2009* (Cth). If they do so, however, s. 5.23(3) stipulates they cannot obtain a review by the Merit Protection Commissioner. The PID Act (Cth) defines detriment (reprisal) in s. 13(2) as dismissal, “injury of an employee in his or her employment,” altering employment to their detriment, discriminatory treatment, or threats to take these actions. Protection comes in several forms. First, there are

provisions requiring the identity of the discloser be protected, the violation of which is an offence (s. 20). Second, the discloser is immune from civil, criminal, or administrative liability for the PID – but not any wrongdoing in which they may have participated (s. 10). Third, reprisals are an offence (s. 19). Fourth, s. 59(1)(a) requires the agency head to perform a reprisal risk assessment and take steps to mitigate those risks, if necessary.

If a reprisal occurs, the discloser may complain to the agency head, and if that fails to satisfy the discloser, to the Ombudsman. The Ombudsman may not investigate if the complainant has already taken the matter to a court or another body, or if it determines these would be better avenues of redress (*Ombudsman Act 1976* [Cth], s. 6). A whistleblower may also seek a remedy via the Federal Court, Federal Circuit Court, or the Fair Work Commission. The courts have the power to order compensation, that the reprisal cease, that the employer apologize, that the whistleblower be reinstated, or a combination of these (ss. 14-17). Section 14(3) makes individuals and the organization jointly and severally liable. The Fair Work Commission can only order reinstatement or a small sum in lieu (up to AU\$ 79,250 at time of writing) – not damages. Only one avenue can be used at a time, but if one fails the other may be attempted. As Fair Work Commission applications must be made within 21 days and civil actions have six years, logic suggests the Commission is the best place to start.

6.2.2 Logic of the Australian Public Service Whistleblowing Regime

The APS whistleblowing regime was not developed with any logic model or performance framework, nor does it currently have one (Commonwealth Ombudsman spokesperson, personal communication, May 19, 2020). This is complicated by the existence of two statutes. However, both include objectives and are supported by communications and policies. This enables development of a logic model for the regime. Tables 6.1 and 6.2 offer a summary.

Table 6.1: Logic of Australia’s Public Service Whistleblowing Regime

Logic of regime with respect to wrongdoing	Logic of regime with respect to reprisal
Departmental secretaries / agency heads establish procedures for handling disclosures (PS Act [Cth], s. 15; PID Act [Cth], s. 59) PID Act (Cth) prohibits reprisal and makes it an offence (Part 2, s. 19) ↓	
“...to ensure that disclosures by public officials are properly investigated and dealt with” (PID Act [Cth], s.6)	“...to ensure that public officials who make public interest disclosures are supported and are protected from adverse consequences relating to the disclosures” (PID Act [Cth], s.6)
Disclosure made to authorized recipient under PS Act (Cth) s. 15 procedures and APSC Directions, Part 5, or to authorized recipient under PID Act (Cth) s. 26 with decision whether to investigate made under Part 3 or <i>Ombudsman Act 1976</i> (Cth) ss. 5A-8 ↓ Authorized recipient conducts investigation as per APSC Directions, Part 5, PID Standard [Cth], or <i>Ombudsman Act 1976</i> [Cth], ss. 5As-8 ↓ If there is wrongdoing, makes record of reasons and sanctions, recommendations, and corrective actions, as appropriate (APSC Directions, Part 5, PID Act [Cth], Part 3, Division 2; PID Standard [Cth], or <i>Ombudsman Act 1976</i> [Cth], s. 8 & s. 15) ↓ Wrongdoing found is corrected (implied in APS Code of Conduct; see also PS Act [Cth], s. 15, and PID Act [Cth], s. 59).	Complaint of reprisal to agency head or Commonwealth Ombudsman; if so, process same as for wrongdoing or Application to Federal Court, Federal Circuit Court, or Fair Work Commission (PID Act [Cth], Part 2); ↓ If complaint proceeds to courts or Fair Work Commission, mediation or hearing is held ↓ Remedy obtained and reprisal stopped, as appropriate (PID Act [Cth], Part 2)
↓ “...to encourage and facilitate the making of public interest disclosures by public officials” (PID Act [Cth], s.6; deterrence not stated but may be implied) ↓ “...to promote the integrity and accountability of the Commonwealth public sector” (PID Act [Cth], s. 6) Maintenance of public service norms and conventions with role of public service (APS Values and Code of Conduct) ↓ “...an apolitical public service that is efficient and effective in serving the Government, the Parliament and the Australian public” (PS Act [Cth], s. 3)	

As can be seen, the interaction between the two acts creates a complex regime in which whistleblowers must make decisions on process. In addition, recipients may also decide that an alternative process is better suited to the disclosure. In general, processes under the PS Act (Cth) are informal and less transparent than those under the PID Act (Cth), with those under the *Ombudsman Act 1976* (Cth)

the most formal. The Ombudsman cannot compel action, but may escalate matters to PM&C. This complexity is one risk in the regime; others are set out in Table 6.2.

Table 6.2: Assumptions and Risks of Australia's Public Service Whistleblowing Regime

Assumptions	Risks
<ul style="list-style-type: none"> • Relevant functions are appropriately staffed and financed • Employees know process, rights, and responsibilities • Investigations are timely and fair to all parties • Compensation after reprisal is both accessible and proportionate to harm suffered • Process is transparent enough that all staff understand consequences 	<ul style="list-style-type: none"> • Complexity of regime may be confusing to whistleblowers • Less rigorous departmental processes may prejudice whistleblower and public interest • Leadership fails to properly implement, provide training for, or enforce regime • Staff may make error in process of disclosure, voiding protection • No evaluation of regime effectiveness or process of improvement

6.2.3 Evidence of Regime Effectiveness

This subsection will describe the available evidence for each stage in the regime's logic, or observe the lack of evidence, including for the establishment of procedures, use of regime, number and quality of investigations into wrongdoing, findings of wrongdoing, corrective action taken, number and outcomes of reprisal complaints, remedies obtained, apparent trust in the regime, and impacts on levels of wrongdoing and governance. It will then briefly summarize other efforts to evaluate the regime and what can be concluded about the regime's outcomes.

There is evidence that procedures, training, and awareness activities have been established for disclosures under both the PS Act (Cth) and PID Act (Cth). Some departments, such as the Department of Foreign Affairs and Trade (DFAT), combine PS Act (Cth) and PID Act (Cth) disclosure processes in a single manual (Australia. DFAT, 2019), while PM&C has separate procedures for each (Australia. PM&C, 2017, 2018a). Neither provides clear guidance to employees on how to choose which process to use. Further, although DFAT uses the same recipients, the list is buried in Chapter 11 of the *Ethics, Integrity and Professional Standards Policy Manual* (Australia. DFAT, 2019). Further, despite comprehensive guides by the Commonwealth Ombudsman (e.g., *Agency Guide to the Public Interest Disclosure Act 2013*, 2016a) and the ASPC (2018b), there is little consistency between agencies. No guidance is given for the disclosure of more serious or systemic issues, which are the most likely to invite reprisal (Mesmer-Magnus & Viswesvaran, 2005; Miceli et al., 2008).

There is also guidance available from the APSC and Commonwealth Ombudsman, such as *Speaking Up About Wrongdoing: A Guide to Making a*

Disclosure Under the Public Interest Disclosure Act 2013 (Australia. Commonwealth Ombudsman, 2013). Again, neither clarifies which process to use, although the *APS Values and Code of Conduct in Practice* (Australia. APSC, 2017) advises disclosure within the agency first, including criminal behaviour (s. 9.3.1). It also advises that disclosures which are “misconceived, without substance, or vexatious” may be treated as misconduct (s. 9.3.5). Advice may be obtained from the Ombudsman, APSC, other officials, or a lawyer, which are protected under s. 13(1)(b) and s. 26(1)(c), item 4 of the PID Act (Cth). There is minimal evidence available for the effectiveness of procedures and awareness activities, although the 2019 APSC *State of the Service* report indicated that 83% of employees felt confident that they knew where to make a disclosure, up from 70% in 2015 (Australia. Australian Public Service Commission, 2019b, p. 62).

Usage data reported by the APSC and the Ombudsman is not consistent, varying from year to year for both agencies. Table 6.3 shows a summary.

Table 6.3: *Commonwealth Disclosures and Complaints, 2015-2020*

Activities	PIDs in agencies	PIDs to Ombudsman/IGIS	Code of Conduct breaches reported by whistleblowers
Disclosures	3863	322	972
In scope	2131	151	NA
Investigations	1586	42	
Findings of wrongdoing	382	1	NA
Disclosures investigated (%)	41.1%	13.0%	NA
Overall disclosures founded (%)	9.9%	0.3%	NA

Source: APSC *State of the Service* and Commonwealth Ombudsman annual reports

Considering the APS has about 150,500 employees (Australia. APSC, 2020b, p. 166), this suggests that fewer than 0.5% of public servants make a disclosure of some sort each year. With respect to APS Code of Conduct breaches, APSC reports provide data on types of misconduct reported, investigated, and breaches found, but do not correlate this with the source of the information leading to investigation. Nonetheless, APSC figures suggest that 54% of all Code of Conduct investigations are the result of a report to an ethics or Code of Conduct official, a fraud prevention unit, a hotline, an advice or counselling unit, or under the PID Act (Cth). All of these are whistleblowing.

Disclosures under the PID Act (Cth) rose steadily from 2015-2016 to 2018-2019, increasing from 712 to 855 – a 26% increase (Australia. Commonwealth

Ombudsman, 2016b, p. 75, 2019, p. 39).⁵¹ These were screened, with 73% deemed in scope in 2016 and 58% in 2019. About 45% were then fully investigated. This relatively high level of acceptance suggests APS employees better understand the process or that the barrier for acceptance is lower than in (for example) Canada. The increase in use may be due to either increased trust or increased observed wrongdoing. Evidence suggests the latter, as 2.4% of respondents to the WWTW survey reported observing corruption in the form of bribes and kickbacks (Brown et al., 2008, pp. 28, 31).⁵² *State of the Service* reports found that 2.6% of employees had observed corruption, but by 2019 this had risen to 4.4% (Australia. APSC, 2014, p. 237, 2019b, p. 61).

Considering outcomes, *State of the Service* data from 2017 and 2020 indicates that an average of 82% of Code of Conduct investigations result in the finding of a breach. The most common breaches were a failure to behave in a way that upholds APS Values and APS Employment Principles (28.4%). Breaches that might be considered a violation of the public service bargain – confidentiality and loyal implementation – made up less than 11% of investigations (Australia. APSC, 2018c, 2019b, 2020b). Disclosures under the PID Act (Cth) are less likely to succeed, but much higher than in Canada or the United Kingdom: Almost 20% of departmental investigations result in a finding of wrongdoing. The Commonwealth Ombudsman redirects about half of the disclosures it receives to the implicated agency without investigation. Of all PIDs found to be wrongdoing, 42% were determined to be conduct that may result in disciplinary action (likely Code of Conduct breaches), 19% maladministration, and 21% violations of law (Australia. Commonwealth Ombudsman, 2018, 2019, 2020).

Narratives in annual reports suggest deficiencies in departmental processes. For example, in one Merit Protection Commissioner report, the subject of an investigation said that refuting the allegations was interpreted as intransigence and a lack of regret, which was used to justify a more severe sanction (Australia. APSC, 2018a, p. 111). In another, the department applied a subjective standard that favoured one employee over another without justification (Australia. APSC,

⁵¹ Data in 2015, the first year of reporting, does not provide information on allegations besides those considered PIDs. Disclosures fell in 2020 (716), possibly due to working arrangements during the COVID pandemic (Australia. Commonwealth Ombudsman, 2015, p. 67, 2020, p. 25).

⁵² Researchers also found that employees had observed incompetent or negligent decision-making (27.7%), misuse of Commonwealth resources (27%), waste of funds (17.5%), misuse of official position or confidential information (10.1%), and reprisal against whistleblowers (3.9%; Brown et al., 2008, pp. 28, 31). These cannot be mapped against the APS Code of Conduct and PID Act (Cth), but the findings appear consistent with *State of the Service* reports. Both suggest that very few APS employees report the misconduct they observe.

2019a, p. 128). The Commonwealth Ombudsman also receives complaints about the handling of PIDs by APS agencies. Between 2015 and 2020, it investigated 146 such complaints. It reported defects in 12 cases, but gaps in data suggest the true figure is higher.

Outcomes for whistleblowers are difficult to determine as there is no data on whether whistleblowers suffer reprisal after making a disclosure of a breach of the Code of Conduct. Further complicating matters, it is possible – perhaps likely – that some reported breaches of the Code are complaints of reprisal. As some participants (P1.26, P1.45, P2.16) noted, Code investigations may also be directed at whistleblowers as a form of reprisal. Data on complaints of reprisal under the PID Act (Cth) is also incomplete. Between 2016 and 2020, agencies and departments reported receiving 69 complaints, with six being substantiated. The Ombudsman also received four in the same period – but did not report any substantiated complaints. As with PS Act (Cth) disclosures, complaints of reprisal can also be made as PIDs or reports of Code of Conduct breaches.

With respect to adjudication and mediation, Fair Work Commission annual reports do not identify applications by APS employees. A survey of AustLII identified 185 cases between 2013 and 2021 that cited the APS Code of Conduct; all pertained to disciplinary action taken against individuals determined to have breached the Code. Several were found to be deficient. For example, in *Tony Stephens v. Department of Communication and the Arts* (2019), the applicant claimed he felt forced to resign due to an investigation into his conduct. While the adjudicator found defects, they were not able to reinstate him.⁵³ Others illustrate the dangers of self-representation, such as *Clement v. Australian Bureau of Statistics* (2016), which involved a 25-year-old disclosure,⁵⁴ and *Hutchinson v. Comcare (No. 4)* (2019), in which an public servant made a range of serious and unsubstantiated allegations.⁵⁵

⁵³ Stephens was an executive who was being investigated for an unnamed Code of Conduct breach. He argued that the investigation had lacked procedural fairness and that he had only resigned because the department was threatening to fire him. The Fair Work Commission adjudicator agreed that termination would have been inappropriate but denied a remedy because he had voluntarily resigned without first pursuing other remedies.

⁵⁴ Kristine Clement was a former public servant who claimed to have made a protected disclosure about security defects in 1991. She had been pursuing allegations of reprisal since 1994. The Fair Work Commission dismissed her case, primarily because the disclosure had occurred more than 20 years before the PID Act (Cth) came into force.

⁵⁵ The allegations made by Karen Hutchinson included (among others) efforts to deny her a disability pension and induce her to harm herself, conflicts of interest, and efforts to

Trust in the regime, a key predictor of use, appears low. While APS employees were confident they understood how to raise a concern, this does not necessarily translate into action. For example, the 2019 *State of the Service* report (Australia. APSC, 2019b, p. 62) found that two-thirds of employees who observed corruption did not make a disclosure because they believed no action would be taken, that managers accepted the misconduct, that their careers would be negatively affected, or they feared reprisal.

It is unclear whether the APS disclosure regime is deterring misconduct or reprisal. As noted above, employees report observing more corruption since 2013. However, this is only one type of misconduct; it is impossible to determine whether other kinds of misconduct have increased or decreased. Similarly, there is little evidence of impact on integrity and governance. The closest proxy is perceptions of the integrity of colleagues (89%), supervisors (92%), and the Senior Executive Service (83%). These have remained stable over time (Australia. APSC, 2019b, p. 55).

There have been three notable reviews of the PID Act (Cth). A legislative review, required by s. 82A of the PID Act (Cth), took place in 2016. The reviewer, Philip Moss, made several conclusions: first, that few whistleblowers felt they had been protected or their allegations properly investigated, second, that the Act had been difficult to apply, third, that interactions with the PS Act (Cth) and national security and secrecy legislation made the regime too complex, fourth, that the definitions of wrongdoing were too broad, and fifth, that the legalistic approach was undermining the speak-up culture the regime hoped to foster. It made a series of recommendations, including increasing transparency and giving the Ombudsman greater authority to review departmental processes. The government did not respond until 2020, agreeing with all recommendations except two: adopting a principles-based approach and monitoring user satisfaction (Australia. Attorney-General's Department, 2020b). It has not acted on any recommendations yet, however, and several were met with promises to improve training and awareness. One reason for the delayed government response to the Moss report may have been a review by the Joint Committee on Corporations and Financial Services (2017), which was exploring whistleblowing legislation for the private sector. This review agreed with Moss's findings. For their part, oversight officials appear aware of the limitations of their authorities and the regime but note the learning and acculturation process (P1.26, P1.42). Employment contracts may have assisted in this respect, one (P1.26) noted, as they made compliance a condition.

delay and suppress her disclosures. The court could not find a nexus between any of the accusations or any concrete reprisal and found much of her claim incomprehensible.

External assessments of the regime have been mixed. Feinstein, Devine, and Pender (2021) rated the law as meeting 16 of GAP's 20 best practices. Advocates and whistleblowers, on the other hand, have a cynical view of the regime, with two describing it as creating false hope (P1.02, P2.14), another arguing that it was not designed to address systemic wrongdoing (P1.41), and a fourth describing it as "window dressing" (P1.43). Several noted that its goal is to drag out investigations until public attention moves on (P1.02, P2.14, P2.16). Participants noted that the criminalization of reprisal had not worked: there have been no successful prosecutions, with the most likely reason being the level of proof required (P1.02, P1.19, P1.26). An advocate and whistleblower (P1.45) stated that a key flaw is the assumption that agencies are well-intentioned towards whistleblowers, and argued that the Ombudsman's practice of referring disclosures back to agencies leads to reprisal and erodes trust. Despite this, they argued that change has been positive when viewed over decades.

6.2.4 Summary

This section examined the whistleblowing regime that evolved under the PS Act (Cth) and the PID Act (Cth). The regime is both protections and structurally based, designed to encourage the disclosure of wrongdoing by providing safe avenues to do so. The regime creates three types of disclosure: internal to the organization, quasi-internal to the Commonwealth Ombudsman, or to the public. The overlapping statutes create a confusing regime with different avenues and processes offering different levels of protection. Despite this complexity and a lack of clear guidance, it is possible to construct a tentative logic for the regime. No compelling evidence found that the regime has improved outcomes for whistleblowers or governance. While the APS Code of Conduct process is more likely to result in a finding of wrongdoing than PIDs, it appears that this mechanism is primarily a tool for discipline, not uncovering wrongdoing or protecting whistleblowers. Similarly, while some legal assessments of the PID Act (Cth) have been positive, trust appears low, perhaps due to deficiencies in investigations within departments, the Commonwealth Ombudsman's practice of referring disclosures back to implicated agencies, and a lack of visible successes.

6.3 Institutional Factors Affecting Whistleblowing in the Australian Public Service

This section will examine the factors that emerged as most significant in the response to different types of disclosure – internal, quasi-internal, and external – as well as those which affect all disclosures. For the purposes of this dissertation, categories of disclosure are internal to the organization (i.e., up the ladder via supervisors or senior officers), quasi-internal if they are external to the organization but within the federal government (e.g., the Commonwealth Ombudsman), or external (e.g., professional associations, media, unions). While

internal disclosures under the PID Act (Cth) include those made to the Commonwealth Ombudsman, the IGIS, and the Australian Securities and Investments Commission, these are treated as quasi-internal avenues in this dissertation. The only quasi-internal avenue for reporting APS Code of Conduct breaches is the APSC, and only if the disclosure pertains to an agency head. This distinction is made because interviews, government communications, and prominent cases suggest that as matters become more public, organizational leaders lose control of messaging, the potential for politicization of the disclosure increases, independent investigations may be triggered, and, consequently, the hostility of institutional actors increases. Some reasons for this are rooted in the conventions and associated norms of the Commonwealth government, some in the erosion of traditional arrangements in the public service, and some in the institutional environment.

6.3.1 Internal Disclosures

The whistleblowing regime created under the PS Act (Cth) and PID Act (Cth) protects disclosures to supervisors or authorized officers inside departments, provided they are made in the correct format and on defined wrongdoing. This approach is theoretically consistent with conventions on ministerial responsibility and the role of the APS. Internal disclosures alert the chain of command to misconduct, and corrective action can be taken. This assists ministers in the execution of their responsibilities. As it is formally sanctioned, it can also be considered the loyal implementation of the government's policies. It is a means to provide a form of honest and frank advice while maintaining confidentiality. The public interest is served: Early corrective action prevents further harm, and the protection of whistleblowers should create a climate in which public servants can speak up about all concerns. Ultimately, by reducing opportunities for corruption and other forms of misconduct governance should be improved.

Consistent with this, the Commonwealth government has clearly signalled that it wishes public servants to respect a modern version of the public service bargain – one which includes political impartiality, loyal implementation, and confidentiality – but which is also highly responsive to political direction. At the highest level, the PS Act (Cth) APS Values and Code of Conduct identify aspects of the bargain, supported by the APSC Directions. Additionally, s. 31 of the PID Act (Cth) stipulates that policy and decisions by a minister are not disclosable. Positively, obligations are reciprocal, as both acts require that agency heads educate employees, establish investigation procedures, and protect whistleblowers. At the policy level, ministers are advised not to induce public servants into wrongdoing in the *Statement of Ministerial Standards* (Australia. PM&C, 2018, p. 6).

Both acts also favour internal disclosure: External disclosure is not possible under the PS Act (Cth) and the PID Act (Cth) requires that internal disclosure first

be attempted before an external disclosure. Section 9 of the *APS Values and Code of Conduct in Practice* (Australia. APSC, 2017) advises reporting Code of Conduct breaches with the agency first, including criminal behaviour (para. 9.3.1). DFAT instructs its employees that "...it is important that reports of alleged misconduct in the department are made discreetly and directed **only** to authorised persons" (emphasis in original), citing the need for procedural fairness, protection of the whistleblower, and preventing unauthorised disclosure (Australia. Department of Foreign Affairs and Trade, 2019, Chapter 11, para. 11.1.2). The Ombudsman takes a similar stance on its website:

It is best to make a disclosure with the relevant Australian Government agency. If you believe that it is not appropriate for an agency to handle a disclosure, we can receive the PID. Where we do accept a PID, we will work with the discloser and the agency to give that matter back to the agency for investigation. Generally, we will only investigate a disclosure under the PID Act [Cth] if we assess the relevant Australian Government agency cannot handle the matter, or there is a conflict of interest, confidentiality or reprisal issue the agency cannot manage. (Australia. Commonwealth Ombudsman, n.d.)

The reasoning for using internal avenues is utilitarian, with Ombudsman citing quick investigation and correction of the problem (Australia. Commonwealth Ombudsman, 2016a, p. 10). Notably, the Ombudsman's sent 83% of disclosures back to departments or to the ASPC in 2019-2020.

In practice, however, ambiguities emerge. As noted above, departmental procedures are vague on where it would be appropriate to make a Code of Conduct disclosure or a PID. Substandard procedures – or training – were cited by one whistleblowing participant (P2.14) who described the internal processes in their case as "chaotic," with supervisors and executives more interested in avoiding personal responsibility than dealing with misconduct. Their efforts to prompt a full investigation met with increasing hostility until they were constructively dismissed two years later. Subsequent reports confirm that the program continues to fail to meet its objectives. In another public case, Richard Boyle, an Australian Taxation Office debt collection officer, publicly disclosed in 2017 that officers had been instructed to aggressively pursue the tax debts of small businesses, but not large businesses. He first disclosed the matter internally. When a Senate committee asked about the investigation, the acting Inspector-General of Taxation attempted a public interest immunity claim – arguing that it would undermine the agency's anonymous complaints system (Australia. Senate Economics Legislation Committee, 2020, p. 1, para. 1.4). The committee rejected this and ordered the production of relevant records, ultimately concluding that the investigation had been superficial (Khadem, 2020). Despite lobbying by whistleblowing and human rights activists, the public prosecutor has not dropped the charges against him (Knaus, 2021).

The preference for internal processes may also be linked to a bias for informal investigations, with fewer obligations for reporting. Commonwealth and *State of the Service* annual reports show that the informal approach has repeatedly led to complaints of bias in investigations (e.g., Australia. APSC, 2019a, p. 128, 2020a, p. 162) and a lack of procedural fairness (e.g., Australia. APSC, 2015, pp. 118–119, 2018a, p. 111). Similar defects were found in *Tony Stephens v. Department of Communication and the Arts* (2019).

Thus, while internal disclosures are encouraged and face the lowest institutional barriers, the disclosure regime is complex. Whistleblowers making errors may see their disclosures lead nowhere – or, worse, suffer reprisal. A whistleblower participant argued that this undermines confidence in the regime, with potential whistleblowers likely to conclude that following official processes will lead to reprisal (P2.16). This may prejudice the public interest and undermine the regime’s logic.

Table 6.4: *Factors Affecting Internal Disclosures in the Australian Public Service*

Internal disclosure	
<p>Supporting:</p> <ul style="list-style-type: none"> - Consistent with conventions on confidentiality, frank and honest advice, loyalty to minister, loyal implementation - Approved under the PID Act (Cth) and PS Act (Cth); does not violate <i>Criminal Code</i> (Cth) or other security laws - Consistent with APS Code of Conduct and government messaging - Consistent with case law - Consistent with Australian government accountability arrangements <i>if</i> appropriate action is taken 	<p>Undermining:</p> <ul style="list-style-type: none"> - Limited internal recipients; disclosure to wrong person may void protections - Informal processes may sacrifice fairness and rigour for expediency - Authorized recipients and internal investigations not truly independent - Independently assessed remedy only available via Fair Work Commission or court - May violate dominant norms, depending on recipient of disclosure - Failure to act appropriately on disclosures may frustrate accountability

6.3.2 Quasi-internal Disclosures

Quasi-internal disclosures are those which leave the organization but remain within Commonwealth institutions. These avenues involve some loss of control over process and outcomes by organizational leadership but maintain confidentiality. They respect ministerial spheres of authority, with (for example) the Ombudsman only intervening when departmental processes fail. Additionally, as a participant noted (P1.20), political actors should know if there is administrative misconduct. If that requires jumping levels of the hierarchy, public servants should do so. Unfounded allegations are not reported, and where wrongdoing is found, ministers have an opportunity to respond and take corrective action before reports are published. This helps blunt potential public criticism for all but the most serious wrongdoing. But such revelations are

unlikely: While departments are required to report PIDs to the Commonwealth Ombudsman, outcomes of investigations are reported in the vaguest terms. Indeed, it is frequently difficult to identify the nature of the wrongdoing (beyond the category), and case summaries indicate only whether there was disciplinary action, administrative action, or an internal process or policy change. Unless the conduct is otherwise disclosed or becomes a subject of litigation, other details remain within government.

Considering law, quasi-internal disclosures acts are sanctioned under the PID Act (Cth), and in some circumstances in the PS Act (Cth). They would also not be considered unauthorized under the Criminal Code (Cth), the ASIO Act (Cth), or the *Australian Border Force Act 2015* (Cth), each of which exempts disclosures to the Ombudsman or the IGIS. The manual *APS Values and Code of Conduct in Practice* also confirms this is an officially sanctioned practice (Australia. APSC, 2017, p. 66, para. 9.3.2).

Policy may not be aligned with norms, however. An integrity oversight official with more than 25 years of experience (P1.26) noted that while quasi-internal disclosures remain within APS institutions, leadership may still be concerned about the loss of control when an external agency intervenes. There is also a stigma to whistleblower persistence. This is evident in *Managing Unreasonable Persistence* (Australia. Commonwealth Ombudsman, 2021). “Unreasonable,” in this context, is defined as raising the issue multiple times and an unwillingness to accept “final decisions.” As a participant (P1.45) noted, this can be sound policy if a whistleblower is truly irrational – as appears the case in the *Clement* and *Hutchison* cases. More frequently, the participant noted, whistleblowers are legitimately angry or frustrated. This is superficial and best dealt with by allowing the whistleblower to “get it out.” If the whistleblower is discounted for a normal human reaction, they argued, it risks missing cases in which proper processes have not been followed. It is in these cases that persistence is most needed. Further, if persistence is used to label a disclosure as vexatious, disciplinary action may follow (Australia. APSC, 2017, para. 9.3.5). A Commonwealth Ombudsman spokesperson (interview, May 19, 2020) was aware of this issue, characterizing it as the result of a collapse in trust, with whistleblowers “traumatized by the process and everything that has gone on.” As a result, some whistleblowers abandon their efforts.

In addition, the greater rigour applied by the quasi-internal agencies such as the Ombudsman, APSC, and Merit Protection Commissioner should lead to improved outcomes when internal processes fail. The evidence suggests that this is the case, but that the instances in which departmental findings are overturned are rare. The Commonwealth Ombudsman has found deficiencies in departmental processes at least 22 times (some years have no reporting of this data) while the Merit Protection Commissioner has overturned departmental findings 65 times between 2016 and 2020. This represents less than 1.5% of

investigations. It should be noted, however, that the APSC and Merit Protection Commissioner only address appeals of discipline. They do not reopen disclosures, instead referring them back to the implicated agency or to the Ombudsman. Similarly, the Ombudsman will refer cases back to departments without investigating if it believes the department is better placed to conduct the investigation (e.g., Australia. Commonwealth Ombudsman, 2015, p. 83). These may be due to resource limitations; two advocates indicated that oversight agencies in Australia can only examine a small percentage of reports (P1.43, P1.45). Finally, the Ombudsman may only make recommendations; it has no power to order corrective action or to reverse a reprisal.

In sum, quasi-internal disclosures are lawful, largely consistent with APS conventions, and serve as a quality control mechanism. Trust, however, is undermined by the practice of returning disclosures to implicated agencies, and escalating disclosures appears to be counter to dominant APS norms. This, in turn, may turn what should be an appeal mechanism on its head, justifying reprisal.

Table 6.5: *Factors Affecting Quasi-Internal Disclosures in the Australian Public Service*

Quasi-internal disclosure	
<p>Supporting:</p> <ul style="list-style-type: none"> - Largely consistent with conventions on confidentiality, loyalty to minister, loyal implementation - Approved under the PID Act (Cth); does not violate <i>Criminal Code</i> (Cth) or other security laws - Commonwealth Ombudsman appears accepted as a backstop for internal processes - Commonwealth Ombudsman is an independent officer of Parliament 	<p>Undermining:</p> <ul style="list-style-type: none"> - May violate norms; persistence interpreted as unreasonableness - Resource constraints - Has no power to compel corrective action or to offer redress for reprisal - Parliamentary oversight is weak - Record of returning disclosures to agencies undermines trust

6.3.3 External Disclosures

External disclosures include all those which leave organizations and the influence of APS institutions. As articulated in s. 26(1)(c) items 2 and 3, external and emergency disclosures may be made under very limited conditions. While APS conventions on responsiveness, loyalty, loyal implementation, and confidentiality appear to dictate against internal disclosures, an Australian constitutional expert (P1.30) disagreed. The participant argued that external disclosure is consistent with ministerial responsibility and with Parliament's oversight role in circumstances in which internal mechanisms have failed to address misconduct.

Notwithstanding expert assessments on conventions, external disclosure – emergency or not – is not consistent with APS norms. This is reinforced by

communications and potential legal sanctions. The PID Act (Cth) stipulates that external disclosure can only be made if the whistleblower believes on reasonable grounds that the process or outcome of an internal (or quasi-internal) investigation was inadequate. The conditions for determining reasonable grounds are very restrictive. It must be in the public interest, considering such factors as the nature and seriousness of the wrongdoing, whether the disclosure might also cause harm to security or international relations, and “the principle that disclosures... should be properly investigated and dealt with.” The latter point is significant, as departmental secretaries are not obliged to investigate external disclosures. Emergency disclosures are permitted only when there is an urgent threat to life, health, or the environment.

In both external and emergency disclosures, the context will be assessed by (potentially implicated) government officials after the fact. In one case, the government exploited a loophole in the PID Act (Cth). A parliamentary security guard made an internal disclosure, and when that had not been acted upon after 90 days, made an external disclosure to an MP. This was intercepted and the guard was suspended. The Federal Court judge hearing the whistleblower’s application for an injunction described the Act as “technical, obtuse and intractable,” but denied the injunction. The reason was that the Act stipulates that external disclosure is only permitted 90 days after an internal disclosure has been *allocated* for investigation – not after the disclosure has been made (Inman, 2019). In this case, the department’s authorized officer had neglected to allocate the disclosure.

Security legislation was also changed following the passage of the PID Act (Cth). As noted in the first section of this chapter, the ASIO Act (Cth) was amended in 2014, the *Australian Border Force Act 2015* (Cth) a year later, and the Criminal Code (Cth) in 2019. These introduce new obligations, some of which have created controversy. For example, critics have argued that the ASIO Act (Cth) uses a definition of “special intelligence operation” that is circular, subjective, and overly broad, and that there is immunity from liability for offences during intelligence operations. There is no public interest defence (Ireland-Piper & Crowe, 2018, p. 346). In addition, s. 42 of the *Australian Border Force Act 2015* (Cth) creates an offence for the disclosure of official information by any “entrusted person” – including public servants, caseworkers, teachers, and medical personnel who deal with refugees and immigrants (Newhouse & Barns, 2015). The Criminal Code (Cth) creates an offence for anyone who receives and retransmits an unauthorized disclosure. While there is a defence when the information is transmitted “by persons engaged in the reporting of news” (s. 122.5[6]), the onus is explicitly upon the accused to establish that the exemption applies. Each of the offences may be punished by incarceration from three to seven years.

Besides sending a warning signal to potential whistleblowers, this has led to overreach. For example, the AFP raided the home of journalist Annika Smethurst in 2019 to search for evidence of an unauthorized disclosure.⁵⁶ The High Court found the warrant invalid on numerous grounds (*Smethurst v. Commissioner of Police*, 2020). A 2019 raid on ABC offices also led to the threat of prosecution against Dan Oakes, who, with Sam Clark, had run a story on war crimes by Australian troops in Afghanistan (A. Galloway, 2020; Oakes & Clark, 2017). The material had been leaked by David McBride, an Afghan war veteran and lawyer. McBride, who has maintained that his internal disclosures were ignored, was charged with the theft of classified documents. The charges against the journalists were dropped in 2020, with the AFP citing the public interest. McBride still faces charges despite national and international criticism and a Senate committee recommendation (Australia. Senate Standing Committees on Environment and Communications, 2021; Chatterjee, 2021; Johnson, 2020; Kampmark, 2020).

These cases led to widespread outrage and promises by the Commonwealth government that no journalist would be charged without the consent of the Attorney-General (Ananian-Welsh, 2020; Karp, 2020). As the McBride and “Witness K” cases demonstrate, however, this does not extend to military or intelligence officials. Witness K was an experienced intelligence official who anonymously revealed that the Australian government had bugged the offices of the impoverished East Timorese government during negotiations on oil and gas rights between the two countries. This caused a national and international furor, with the International Court of Justice ordering Australia to cease the spying (Allard, 2014; Bryne, 2021). This ultimately led to a renegotiation on fairer terms (Reuters Staff, 2019). The Australian government, however, aggressively pursued not just the whistleblower but their lawyer, Bernard Collaery, arguing that he conspired with Witness K. Witness K negotiated a three-month suspended sentence, while Collaery’s case continues at the time of writing. The case has been condemned as intended to intimidate potential whistleblowers and their lawyers (Ackland, 2020; Brown, 2019; Knaus, 2019).

Thus, despite being included in the PID Act (Cth) and theoretically serving as a backstop to internal and quasi-internal disclosures, external disclosure is at odds with national security law, some conventions, and several norms. The outrage in the Oakes and Smethurst cases, moreover, suggests these may be at odds with public norms, with the government only relenting in aggressive prosecutions *after* public outrage manifests. This supports the concerns expressed by some

⁵⁶ Smethurst had published a story providing evidence that the Australian government was debating the expansion of the powers of the Australian Signals Directorate, an intelligence agency, to allow the surveillance of Australian citizen’s communications and bank records. (Ananian-Welsh, 2020; BBC News, 2019; Karp, 2020).

participants (e.g., P1.02, P1.20) about politicization of processes. It also highlights two flaws in the logic of the regime: first, that officials whose integrity, competence, or reputation might be in question will not abuse the process, and second, that providing a sanctioned external avenue of disclosure will encourage organizational leaders to deal with disclosures internally.

Table 6.6: *Factors Affecting External Disclosures in the Australian Public Service*

External Disclosure	
<p>Supporting:</p> <ul style="list-style-type: none"> - More likely to attract public attention - Supports Parliament's oversight by providing information when other processes fail 	<p>Undermining:</p> <ul style="list-style-type: none"> - Conditions too restrictive to offer reliable protection - Aggressive enforcement of security and secrecy laws - Violates dominant norms and conventions on loyalty, impartiality, and confidentiality - Not consistent with common law precedents

6.3.4 Factors Pertaining to All Disclosures

There are several factors which appear to apply to all avenues of whistleblowing in the APS that were identified by participants, in official records, and in case law. These include a connected web of institutional norms, organizational climate, incentives, and the encroachment of political actors into administration. These factors may not be uniform through the APS, with some organizations performing better than others.

With respect to institutional norms and organizational climate, a Commonwealth Ombudsman spokesperson (interview, May 19, 2020) contended that the public sector had gone through a learning process, had acclimatized to the regime, and that the PID Act (Cth) has normalized whistleblowing. They additionally characterized the situation as a tipping point in which agencies are beginning to see whistleblowing as beneficial. This view was not shared by all participants. Rather, advocates argued that the organizational climate remains hostile to whistleblowing. A major barrier identified by participants was the persistent effects of hierarchical norms (P1.02, P1.19, P1.20, P1.26, P1.30, P1.41, P2.15, P2.16). The participants also argued that many senior officials view whistleblowing as an immediate threat that must be suppressed. This may be related to a norm within the public services of all case countries – that dissent may be expressed, but at certain point, a departmental view is formed, and further dissent becomes insubordination. An Australian constitutional expert explained they would expect APS employees to abide by the decision of the department. “In other words, this is not personal views. These are institutional views” (P1.30). Thus, once again, some hostility may be related to a belief that whistleblowers are being unreasonably persistent after the organization has reached a conclusion. An integrity official noted the potentially pernicious effects of this belief, with officials apparently blind to the illegitimacy of their reprisals:

It really didn't dawn on them that what they're doing is blatantly detrimental, it was reprisal. Now, I expect senior public officials appointed on their intelligence in a competitive environment, that when they're trying to take detrimental action they are reasonably competent hiding it. And it's our job to find it. When it's blatant, no attempt to hide, absolutely blatant, fingerprints all over it, you've got to sit down and think, what is happening here? (P1.26)

Organizational loyalty also appears to be a motivator. In this case, the wrongdoing may be beside the point – if the organization's reputation is under attack, the whistleblower becomes the enemy (P1.26). This is consistent with previous studies (Kenny et al., 2018; Zhuang, 2002).

Further, hostility can be magnified in organizations vulnerable to threat-rigidity effect (Staw et al., 1981). In these organizations, the response to threats is to retreat into traditional behaviours, which may be maladaptive. They are also characterized by blame avoidance, scapegoating, and an inability to learn from failures, cited by three participants (P1.20, P1.26, P2.14). In the effort to suppress bad news, even supporters of the whistleblower may become targets of reprisal. Peter Bennett, the Customs officer whose case is discussed above, described attempting to dissuade peer support for this reason. His fears were realized (P. Bennett, interview, June 16, 2020). This effect will be worse in organizations in which the wrongdoing is systemic, normalized, or the leadership is simply overwhelmed. This may be a problem in the APS, with *State of the Service* surveys suggesting that fewer than 50% of agencies have a learning culture (Australia. APSC, 2018c, p. 40, 2019b, p. 40).

Further, the APSC Directions also suggest – perhaps unintentionally – the dangers in providing honest and open counsel where it is not welcome. It notes that APS employees must have the courage to “address difficult issues” (s. 14[c]). Why such courage would be required is not explained, but it is consistent with participant comments on the hazards of raising bad news in a hierarchy and about people with which one might have to continue to work (P1.20; P1.30). This is inconsistent with the Westminster convention on frank advice and with whistleblowing best practices – which advise a culture of open dialogue (e.g., Canadian Standards Association, 2016; Sossin, 2005; Vandekerckhove et al., 2016).

Norms, in turn, appear linked to incentives favouring reprisal and cover-up. The two incentives most prominent in this case study were performance pay and career prospects. Performance standards and measurement are required under the *Public Governance, Performance and Accountability Act 2013*, overseen by agency heads and with departmental annual performance statements reviewed by the ANAO. These are used to assess whether performance pay is awarded. Three former senior officials have publicly called for the abandonment of performance management due to “perverse effects” such as suppressing honest

advice, gaming, and, ultimately, the politicisation of the APS (Hunt, 2019; Keating, 2003; Podger, 2007). A whistleblower implied that the large salaries paid to top public servants, while justified as compensation for short contracts and job insecurity, were actually intended as a quid pro quo for keeping scandals from reaching the public (P2.16). The terms of career progression have also been affected by changes in the employment status of senior APS officials. The use of short-term contracts has been criticized as leading to “capricious” dismissals of agency heads (cf. Keating, 2003, p. 95; Podger, 2007). In such an environment, maintaining a reputation for competence and responsiveness are crucial to advancement and job security (P1.19, P1.26, P1.45, P2.16). This may result in “ass-covering” with whistleblowers as “collateral damage” (P1.26). One particularly toxic manifestation cited was the voluntary participation of unimplicated actors (“sycophants”) in reprisal to garner favour. Those who refused were thereafter shunned (P1.43).

Political reputation may be more important, however. It is intuitively obvious that governing parties would be hostile to disclosures implicating political actions and policies, particularly as an election draws closer. It is unclear how pervasive this is, but political pressure was evident in Bennett’s case and with whistleblower participants (P2.14, P2.15, P2.16). One noted that it was “politically unacceptable” to suggest that a program was being mismanaged and failing to meet objectives. They described a pattern of behaviour: first, interference in a program that offered political benefit, second, public servants giving politicians the answers they want to support continuation, and third, a “cover-up of the inevitable consequences” (P2.14). Another cited interference in the course of justice by senior members of the government (P2.15), while a third told of senior officials having a dinner with a key figure in the cover-up of serious sexual crimes against minors (P2.16). To these could be added the Witness K and Boyle cases, both of which implicated elected officials (Ferguson et al., 2018). Political influence in administration may have become easier as political advisers have increased in number and influence. An advocate noted that where they once respected the line between politics and administration, ministerial advisers will now be looking over a public servant’s shoulder as they write a report (P1.45). The participant linked this trend to freedom of information legislation, which could lead to the exposure of advice which contradicted political narratives. They also argued that the PID Act (Cth) was symbolic, with political actors seeking a quick and unthreatening solution. Thereafter, they shifted focus to new threats (supported by P1.46).

Not all political effects are negative, however: Inquiries and parliamentary committees regularly review whistleblowing cases and legislation, with learning evident over time. For example, the *Treasury Laws Amendment (Enhancing Whistleblower Protections) Act 2019* (Cth) was praised as an improvement over the PID Act (Cth), much as it was an improvement over previous protections

(e.g., Feinstein et al., 2021; Orton-Jones, 2020). This is not perfect, as some inquiries have been used to whitewash wrongdoing (P1.02, P2.15, P2.16; see also Martin, 2005), and House of Representatives committees are usually controlled by government. Nevertheless, this engagement appears to have contributed to incremental improvements over time. As participants noted, future efforts may focus on the creation of an independent national body with the authority to protect whistleblowers (P1.19, P1.26, P1.41, P1.43, P1.45, P2.14, P2.15).⁵⁷

Finally, there was little evidence that the employment regime affects whistleblowing outcomes. The extension of private sector worker rights to APS employees should have benefits: For example, the *Fair Work Act 2009* (Cth) treats disclosures as a workplace right (s. 340) and expressly forbids the termination of an employee for “the filing of a complaint, or participation in proceedings” related to other complaints – such as whistleblowing disclosures (s. 772[1][e]). Enterprise agreements may also provide an avenue of recourse. A survey of 14 departments in the Commonwealth government confirmed that all use the same text for dispute resolution (e.g., Australia. Attorney-General’s Department, 2020a, clauses 6.02-6.03). The agreements require attempting to resolve the dispute internally first, then approaching the Fair Work Commission for mediation and conciliation, and then arbitration.

There is no evidence that the courts, the Fair Work Commission, or enterprise agreements have been used successfully to obtain redress, however, and court processes are lengthy and expensive. As the Fair Work Commission and enterprise agreement processes will be confidential and may involve non-disclosure agreements, positive outcomes for whistleblowers may not be visible. This is unfortunate, as this does not encourage trust in the regime and may be used to hide misconduct; best practice in whistleblowing law recommends the banning of non-disclosure agreements for this reason. Overall, the outcomes for whistleblowers forced to seek a remedy using employment protections appear to depend on several factors: first, the degree of union support, which can be variable, second, whether the agency makes an error in its investigation or other actions, and third, the ease with which an employee can be dismissed (P1.43). Table 6.7 lists the factors identified as affecting APS disclosures

⁵⁷ The Whistleblowers Action Group Queensland (2019) uses the term “sword and shield,” with corruption commissions as sword and a protective authority as the shield.

Table 6.7: Factors Affecting Disclosures in the Australian Public Service

All disclosures	
<p>Supporting:</p> <ul style="list-style-type: none"> - Fair Work Commission and courts offer independent avenue for redress after reprisal - Sustained efforts by different groups and committees have maintained pressure for improvements 	<p>Undermining:</p> <ul style="list-style-type: none"> - Whistleblowing still seen as a violation of norms on loyalty and behaviour in hierarchies - Incentives support silence, cover-up, and reprisal; serious and systemic issues most vulnerable - Political actors appear to be interfering in administrative processes and affecting incentives - Fair Work Commission and courts are uncertain in results; court processes are lengthy and expensive

6.3.5 Summary

This section analyzed the factors that appear to affect whistleblowing in the APS, considering the conventions, norms, law, processes and structural factors, and incentives. The evidence suggests that internal avenues are legitimate and face the lowest institutional barriers. It is difficult to assess the degree to which these avenues succeed as they are opaque. Quasi-internal disclosures to the Commonwealth Ombudsman are likely to be returned to implicated agencies, increasing the risk of reprisal. Combined with its messaging on unreasonable persistence and a record of accepting departmental narratives, this has undermined its credibility as an appeal mechanism. External disclosures are nominally accepted in extreme circumstances, but in practice are in danger of prosecution under secrecy laws. Distortion of conventions, norms hostile to dissent, organizational rigidity, incentives favouring the suppression of bad news, and political encroachment on administration appear to be significant hurdles to greater regime efficacy. Based on prominent cases such as Witness K and Richard Boyle, it does not appear that the regime has significantly changed the calculus of powerful institutional actors.

6.4 Conclusion

This chapter examined the institutional context of whistleblowing in the Australian Commonwealth government, focussing first on the events and efforts leading to the enactment of public sector whistleblower protections under the PS Act (Cth) and the PID Act (Cth), then the structure, logic, and performance of the regime, and finally, the factors that appear to affect the achievement of outcomes. The analysis showed that Australians responded to public sector crises first by implementing corruption commissions and whistleblower legislation at state levels, with the Commonwealth government acting much later. The regime that evolved under the two statutes is consistent with modern APS conventions but is hobbled by flaws in its logic and institutional resistance. This has led to mixed results.

With respect to history, the traditional APS public service bargain relied on the merit principle and semi-formal disciplinary processes to enforce behavioural norms. Following changes designed to improve APS performance and responsiveness in the 1980s and 1990s, the fates of senior public servants have become closely linked to the fortunes of political actors – with performance pay as carrot and short-term contracts as stick. This undermined the traditional bargain. At the same time, whistleblowing gained national attention through high-profile scandals and inquiries. As the worst were in states, they were the first to act. Lacking a catalyzing scandal or disaster, the Commonwealth government first attempted to address concerns about misconduct and accountability in government with freedom of information legislation and by codifying the APS Code of Conduct in 1999. The Code addresses less serious wrongdoing and breaches in the public service bargain. It took until 2013 for an accumulation of scandals, advocacy, and education – and a draft bill by an independent MP – to motivate the Commonwealth to enact the PID Act (Cth).

The regime that was created under the PS Act (Cth) and PID Act (Cth) has both protections and structural elements. The two acts overlap, with disclosures possible under either. Processes and protection differ, however, with the PID Act (Cth) being more robust – but also less likely to be promoted in practice. Instead, communications and policy favour internal disclosure and informal investigations. Neither act was developed with an explicit theory of change or logic model, although the PID Act (Cth) does set out objectives and mandates the reporting of some data on disclosures and investigations. The PID Act (Cth) has been reviewed once, soon after it was implemented, with findings suggesting that it had not protected whistleblowers and contains defects. Available evidence does suggest that informal processes used in Code breach investigations appear more vulnerable to bias, incompetence, and abuse, and that the Commonwealth Ombudsman is unable to fulfil its potential as an appeal or quality control mechanism. Trust in the regime may have improved, but it is unclear why: Outcomes for whistleblowers do not appear to have significantly improved. A lack of baseline or contextual data makes the assessment of broader outcomes such as deterrence and governance difficult. Prominent cases, however, suggest the regime has not greatly improved governance.

The final section of the chapter examined the evidence on factors affecting disclosure using different avenues. Disclosures within departments are clearly favoured by both processes and incentives. This is consistent with Westminster conventions on ministerial responsibility, loyalty, loyal implementation, and confidentiality advice. Quasi-internal disclosures to the Commonwealth Ombudsman are so limited that the office can be said to serve more as a quality control mechanism, rather than as an avenue for disclosure. External disclosure is actively discouraged and has been aggressively prosecuted under national

security and secrecy provisions in law. In general, any whistleblower who is persistent in escalating their disclosures faces increasing risks of formal reprisal.

Notwithstanding this, whether the current regime is consistent with other core Westminster conventions is questionable. Two that may be suffering are frank advice and parliamentary oversight of the executive. Many scandals have involved political actors – notably ministerial advisers, who exist outside any meaningful accountability framework and who increasingly cross the political-administrative boundary. Political actors are now willing to blame public servants for errors and have also taken control of incentives with the introduction of contracts and performance pay, leading some to conclude that the senior public service has become politicized. Whether or not this is true, it does appear to put senior public servants in a difficult position: to stand up to an illegitimate instruction and face possible career consequences, or to comply and be made a scapegoat if the misconduct is exposed. Working level APS employees are not better off, as they are required to report misconduct using a regime they may not trust.

In summary, the evidence suggests that the designers of the regime and successive executive and administrative leaders intend that the regime promote the disclosure of wrongdoing, but for it to be strictly constrained within the APS. Unlike Canada, the Commonwealth government was not a first mover, instead following a path more consistent with DiMaggio and Powell's (1983) isomorphism. Like Canada, however, there also appears to be some symbolism (Edelman, 1964) in the enactment of the PID Act (Cth). Assessing effectiveness is difficult, given the lack of a formal logic model, performance indicators, or contextual data, but it appears that the regime is not producing the kind of outcomes that would inspire public servants to risk their careers. This undermines the implicit logic of the regime, with high-profile whistleblowing cases exposing a gap between the norms of senior officials and the public. Further, the nature of the scandals suggest that governance has not significantly improved. Besides amendments to legislation, the weight of the evidence suggests that removing some control of incentives from the hands of political actors would be salutary.

Chapter 7

Discussion and Conclusions

This dissertation proposed a hypothesis in three parts: first, that public sector whistleblowing regimes have been borne out of scandal and crises of legitimacy; second, that the extent to which they are effectively implemented is dependent on ongoing bureaucratic and political support; and third, that if the whistleblowing regime is not consistent with existing institutional arrangements and incentives, dysfunctional responses to whistleblowing complaints will continue to the detriment of all institutional actors and the public interest.

The country cases were divided into three units of analysis to match these thesis propositions, including the history of the pre-regime period, the nature and performance of the regimes, and the institutional factors affecting the implementation of the regimes. Using process tracing methods and considering evidence from governmental records, legal records, whistleblowing cases, and interviews, the findings in the three cases confirm this 3-part hypothesis with caveats.

This chapter summarizes the similarities and differences of the regimes for each unit of analysis, discusses the importance of the findings and their implications, sets out some suggestions for further research, and offers conclusions. The cases are not identical in all their features, but there are enough points of comparison to consider them as mutually reinforcing. Canada and Australia are the most alike, with the U.K. regime serving as a useful contrast.

For the first unit of analysis, the evolution of whistleblowing regimes, each case was preceded by scandals which triggered a legitimacy crisis for government. The effect varied, however, with different degrees of punctuated equilibrium (Krasner, 1984) and coercive or mimetic isomorphism (DiMaggio & Powell, 1983) driving regime creation.

The second unit of analysis, regime function and logic, also showed strong similarities. Governments implemented regimes that require the establishment of safe disclosure avenues and offer protection or redress from reprisal. To different degrees, all attempt to conform to Westminster conventions on the role of the public service. All regimes are predicated on the same logic, relying on demonstrated effectiveness to promote trust – and hence use – and deter wrongdoing. Unfortunately, there is little evidence of success in meeting the objectives of any of the regimes, due to a reluctance to identify performance objectives or indicators, or to conduct an evaluation.

Findings of the third unit of analysis, factors affecting whistleblowing regimes, were that internal avenues of disclosure are favoured, with external disclosure very likely to lead to reprisal. In addition, the intrusion of political actors into

administration is affecting all disclosures. Incentives in all countries are now largely controlled by political actors, with the effect of distorting conventions and norms. These are at odds with the implicit objectives of the regimes, contributing to unenthusiastic implementation.

7.1 Summary of Findings

This section summarizes the findings of the case studies in each unit of analysis. It first examines the patterns that preceded the enactment and implementation of whistleblower regimes. These were very similar. It then consolidates the implicit logic behind the whistleblowing regimes in each case country, their key components, and the evidence of their success in meeting expected outcomes. Finally, it reviews the most significant institutional factors identified in this dissertation, differentiating between internal, quasi-internal, and external avenues of disclosure. It concludes by summarizing organizational and situational factors.

7.1.1 Patterns of Pre-Regime Development

All case countries established a form of Westminster government with stable conventions on ministerial responsibility and the role of the public service by the mid-20th century. Public servants were appointed on merit and were assured tenure so long as they conformed to rules, norms, and conventions, and performed their duties competently. This Schafferian public bargain between political and administrative actors was intended to ensure public service competence, neutrality, and accountability. Although top public servants had some degree of independence, working-level civil servants were expected to follow instructions transmitted through the hierarchy, with behaviour governed by semi-formal processes within departments. Oversight of these processes was the responsibility of the U.K. Civil Service Commission, the Canadian Civil/Public Service Commission, and the Australian Public Service Board.

These arrangements shifted after the 1960s, when neoliberal theory reframed public servants as self-interested agents seeking to maximize their own utility. This was followed by a sequence of developments and reforms, some of which were pertinent to transparency, whistleblowing, and dissent. The pattern was not identical in each case country, with the United Kingdom ultimately developing a regime least like the others. Table 7.1 provides milestones in each case country.

Table 7.1: Milestones in Whistleblowing Regime Development

Milestone	United Kingdom	Canada	Australia
Inquiry or Commission on public service	1968	1962	1976
Common law protections	1967-1980s	1985-2000s	1990s
Free speech rights/freedoms	1998	1982	1900
Freedom of information law	2000	1983	1982
Introduction of corruption commissions	NA	NA	1988-2000s
Formal code of conduct/ethics	1996	2003	1999
Preliminary whistleblower protection	NA	2001	1999
Comprehensive statutory protections	1998	2005	2013

Neoliberal reforms were intended to increase the responsiveness of the public sector to citizens and politicians, increase efficiency, improve service delivery to citizens, and democratize policymaking, with an overarching goal of improving governance. Common approaches included reducing the size of government through devolution and outsourcing, the use of performance management, and the introduction of incentives (especially performance pay) for administrative actors. Senior public service appointments were also increasingly politicized (Aucoin, 2006). The effect was greatest in Australia, where departmental secretaries are now appointed on a contractual basis and their careers tied to the fortunes and preferences of political actors. Whitehall's public service bargain remains the most traditional, but its government has devolved many functions. Canada's public service saw less devolution, but its structure is the most centralized. Top appointments are effectively controlled by the prime minister.

In the face of continued scandals, powerful actors sought new solutions. These included codes of conduct, values, and ethics – all intended to induce better conduct and reinforce the traditional public service bargain. This, unfortunately, ignored the fact that scandals and disasters frequently originated with political actors or governing party policy preferences. In any event, they were either too little or too late to prevent further scandals or to satisfy the electorate.

By the 1990s, whistleblowing protections had entered political debate. Senior administrative actors were resistant, evidently favouring traditional perspectives on the role of the public service, hierarchical norms, and efforts to demonstrate responsiveness to politicians. Political actors supported whistleblower protection while in opposition, but less so once they controlled the executive. Efforts to bolster legitimacy in the eyes of the electorate provided the final impetus to pass a whistleblowing statute. This might be after a scandal, when the public is coming to the conclusion that the party is no longer fit to govern, or when a newly elected government wishes to establish its credibility and integrity. This occurred most dramatically in Canada following the Sponsorship Scandal. The children overboard incident in Australia was viewed in a similar light, although it was not

enough to threaten the government's hold on power. Scandals implicating political actors in the United Kingdom were arguably less significant, with the most serious misconduct implicating the private sector.

Thus, for Canada, punctuated equilibrium is the most satisfying explanation for its decision to pass the *Public Interest Disclosure Protection Act* (PSDPA), 2005, with institutional incumbents having no remaining options to restore their legitimacy in the eyes of the public. It was too late, however, with implementation ultimately coming under a new Conservative government. Provincial governments later implemented similar statutes. In the United Kingdom, the new Labour government found an easy solution in a private member's bill which became the *Public Interest Disclosure Act 1998* (PIDA [UK]) – one which it then attempted to ignore within Whitehall. The Australian experience mirrored the Canadian one: Crises triggered legislation at state levels in the early 1990s, while Commonwealth actors enacted the *Public Interest Disclosure Act 2013* (PID Act [Cth]) to reinforce credibility prior to an election. In all cases, there was some of isomorphism, adopting solutions from other national or international jurisdictions.

7.1.2 The Logic and Performance of Whistleblowing Regimes

Despite structural differences, each public sector whistleblowing regime is based on the same core assumptions – that developing safe avenues for the disclosure of wrongdoing and offering some level of protection will encourage whistleblowing, which will deter wrongdoing. The evidence suggests, however, that the regimes are not meeting promised outcomes. Regime logic and evidence on performance is examined below

7.1.2.1 Regime Logic

The implied logic of all regimes is relatively straightforward: By establishing safe avenues of disclosure and prohibiting reprisal, public servants are expected to be encouraged to report wrongdoing or error. The alleged wrongdoing is then investigated and corrected (if necessary). If reprisal occurs, redress mechanisms will make whistleblowers whole. This builds trust with public servants, which contributes to a speak-up culture, while sanctions are expected to deter wrongdoing and reprisal. Ultimately, this contributes to improved decision-making and integrity, better governance, and increased public confidence in the design and delivery of public policies and programs.

The logic is most obvious in Canada, which developed a model and performance framework. The disjointed nature of the U.K. and Australian regimes results in more complex models, which are also more vulnerable to risk – most immediately to whistleblowers, who may use the wrong process and find themselves without protection. Table 7.2 provides a basic cross-regime logic model; Appendix 8 offers a full model.

Table 7.2: Generic Regime Logic

Element	Wrongdoing	Reprisal
Inputs	Whistleblowing law passed: Creates agency and/or designates officials for oversight and coordination, defines wrongdoing, defines and forbids reprisal, sets terms and conditions of mandate, administrative processes, reporting and investigations processes, support and redress for whistleblowers, etc. ↓	
	Whistleblowing oversight established (e.g., commissioner, ombudsman, delegated officer in agencies) ↓	
Activities	Training, awareness, and advice provided to senior leadership, managers, potential recipients of disclosures, and employees about rights, roles, and responsibilities in disclosure process ↓	
	Public servants who observe wrongdoing disclose through authorized channels ↓ Authorized officials assess and/or investigate disclosure ↓ Findings of wrongdoing communicated to leadership ↓	Whistleblower files complaint of reprisal to appropriate authority ↓ Authorized officials assess complaint and refer to adjudication if found valid or Whistleblower proceeds directly to adjudicative authority, which hears case and makes decision ↓
Output	Wrongdoing corrected or prevented ↓	Reprisal prevented, arrested, or compensated ↓
Immediate Outcomes	Staff trust that disclosure will lead to corrective action Wrongdoing deterred ↓	Demonstrated effectiveness in protection enhances confidence in whistleblowing regime ↓
Intermediate Outcomes	Speak-up culture enhanced / Whistleblowing regime use normalized Enhanced integrity and early detection/correction of error ↓	
Long-term Outcomes	Better governance: reduced corruption and increased effectiveness, rule of law, regulatory quality, and voice and accountability Public confidence and trust in public sector are protected	

The evidence in this dissertation, however, suggests that there are some unstated objectives of the regimes which have little to do with correcting wrongdoing or improved governance. For example, the circumstances imply that political actors were motivated by a desire to diffuse crises of legitimacy. Once action to implement whistleblowing regimes was initiated, senior political and administrative actors in Canada and Australia intervened to weaken the legislation. Participants close to the processes suggested this was to make the acts less threatening to incumbent actors and to channel disclosures through safe and controlled processes. This minimizes the potential for public exposure of wrongdoing. External disclosure is so risky as to be essentially deterred.

Thus, the regimes appear at least partly symbolic, consistent with assessments by some advocates and scholars (cf. T. Devine, 2004; Krawiec, 2003; Martin, 2010; R. E. Moberly, 2008). From this perspective, directing administrators to implement whistleblower protections is the product of a desire by political actors for a quick solution that appears robust and is accepted by peer jurisdictions; long-term effectiveness is not important. This is consistent with the DiMaggio and Powell's (1983) coercive isomorphism and the findings of Pittroff (2014) and Pillay et al. (2017). Symbolism is not necessarily mutually exclusive to effectiveness, however, making a full understanding of regime characteristics and performance important.

7.1.2.2 Whistleblowing Regime Features

Despite similar logic and assumptions behind the regimes, they were operationalized differently. Despite this, the principles remain the same. Key elements are listed in Table 7.3 below, with a description below.

Table 7.3: Key Elements of Whistleblowing Regimes

Element	United Kingdom	Canada	Australia
Enacting legislation	<ul style="list-style-type: none"> • PIDA (UK) • <i>Constitutional Reform and Governance Act 2010</i> 	<ul style="list-style-type: none"> • PSDPA 	<ul style="list-style-type: none"> • PS Act (Cth) • PID Act (Cth)
Oversight by	<ul style="list-style-type: none"> • Civil Service Commission for Code breaches • None for PIDA (UK) 	<ul style="list-style-type: none"> • PSIC • TBS 	<ul style="list-style-type: none"> • APSC for Code breaches • Commonwealth Ombudsman for PID Act (Cth)
Protected disclosure avenues	<ol style="list-style-type: none"> 1. Supervisor 2. Nominated officer 3. Civil Service Commission 4. Prescribed persons 5. External avenues 6. Legal adviser 	<ol style="list-style-type: none"> 1. Supervisor 2. Designated officer 3. PSIC 4. Under another act 5. To public 6. Legal/parliamentary proceeding 	<ol style="list-style-type: none"> 1. Supervisor 2. Authorized officer 3. Commonwealth Ombudsman 4. Prescribed authority 5. External / emergency 6. Legal adviser
Who investigates wrongdoing?	<ul style="list-style-type: none"> • Department/agency • Civil Service Commission • Some prescribed persons 	<ul style="list-style-type: none"> • Department/agency • PSIC 	<ul style="list-style-type: none"> • Department/agency • Commonwealth Ombudsman • Prescribed authority
Protections via	<ul style="list-style-type: none"> • Department/agency 	<ul style="list-style-type: none"> • Department/agency • PSIC 	<ul style="list-style-type: none"> • Department/agency
Redress via	<ul style="list-style-type: none"> • Employment Tribunal 	<ul style="list-style-type: none"> • PSIC • PSDP Tribunal 	<ul style="list-style-type: none"> • Fair Work Commission • Courts

Enacting legislation and oversight. These form the cornerstones of the regimes. They vary in complexity. Canada has one statute, the PSDPA, which includes breaches of the *Values and Ethics Code for the Public Sector* (Canada).

Treasury Board Secretariat, 2011b). The Public Sector Integrity Commissioner (PSIC) reports to Parliament and is a de facto appeal mechanism, while the TBS oversees training, awareness, and implementation of both the Code and the PSDPA. Australia has one set of procedures for disclosing breaches of the Australian Public Service (APS) Code of Conduct and another for a broader range of wrongdoing. The Australian Public Service Commission (APSC) provides oversight of the Code process, while the Commonwealth Ombudsman does so for the PID Act (Cth).

The U.K. regime is the most complex, with one set of requirements for the establishment and use of disclosures pertaining to breaches of the Civil Service Code, and an entirely unrelated whistleblowing law – PIDA (UK) – that has no structural requirements but adjusts awards if safe avenues for disclosure do not exist. Further, PIDA (UK) has a broader definition of wrongdoing but no oversight authority. In the U.K. and Australian cases, guidance on which procedure to use is unclear, although there is a bias toward less formal code processes. These are also less transparent. This increases risks to whistleblowers, who may lose protection if using the wrong disclosure avenue.

Protected disclosure avenues and investigating authorities. Effective avenues of disclosure ensure that wrongdoing can be identified, investigated, and corrected quickly. Alternative avenues are also important if one recipient fails to act or does not act properly. All regimes incorporate a formalization of Westminster internal disclosure processes (i.e., up the chain of command), an independent avenue for disclosure, and very limited rights to make an external disclosure. PIDA (UK) has the lowest barriers for escalating disclosures to another recipient, while the PSDPA allows disclosure directly to the PSIC without first making an internal disclosure. The PID Act (Cth) falls between the two, allowing public servants to approach the Ombudsman in the first instance and setting out strict criteria for public disclosures. In practice, the PSIC and the Commonwealth Ombudsman routinely refer the disclosure back to the implicated department. This increases risk of reprisal and damages trust in the regime.

Protections and redress for whistleblowers. Effective protections for whistleblowers help prevent the suppression of disclosures and build trust in the regime. As no protection can be perfect, an accessible and effective avenue of redress for reprisal is also crucial. Canada has the most self-contained regime arrangements for whistleblower protection and redress for reprisal. Proactive protection takes the form of confidentiality requirements. Complaints of reprisal may only be made to the PSIC, which is expected to conduct an inquiry to verify that there is a prima facie case of reprisal before applying to have the matter heard at the Public Servants Disclosure Protection Tribunal (PSDP Tribunal). Whistleblowers in the United Kingdom have two options: to rely on internal grievance processes controlled by management or to take the case to Employment Tribunal (UKET). Australian protections appear the strongest,

promising confidentiality but also requiring a risk assessment for reprisal. If this fails or is too late, whistleblowers can file a new disclosure of wrongdoing or make a complaint to the Ombudsman. The Ombudsman has no power to order a remedy, though, and can only make recommendations. If a department declines, redress must come from the Fair Work Commission or the courts.

Each approach has its theoretical costs and benefits. In Canada, whistleblowers may be assisted by the PSIC in corroborating their case but must appeal to Federal Court if the PSIC declines to refer the case to the PSDP Tribunal. Nobody has obtained redress at the Tribunal. The United Kingdom and Australia, on the other hand, leave whistleblowers to prepare their own cases – but both allow appeals and do not require passing any initial test.

In sum, Canadian and Australian public service whistleblowing regimes were designed to conform to local Westminster conventions. For example, disclosures are channeled through internal avenues controlled by powerful incumbents, maintaining confidentiality. In addition, officers of parliament are used as an avenue of appeal and for oversight, and the authorities of permanent administrative heads and ministers are respected. Notably, both put more emphasis on the rights of organizations than they do on those of whistleblowers.

The U.K. civil service, on the other hand, implemented an internal civil service regime, with PIDA (UK) imposed on top of that. Despite this, its regime operates in effectively the same manner as the Australian regime, with disclosures through internal avenues favoured. Further, all regimes balance the duty of loyalty with free speech rights and appear designed to constrain dissent and prevent information on wrongdoing reaching the public in an uncontrolled manner. Disclosures deemed out of scope disappear entirely, with external whistleblowing likely to be treated as a violation of secrecy laws and policies.

7.1.2.3 Evidence of Success

Once these regimes were in place, however, no effort was made to conduct a full evaluation. There were legislative reviews on Canada's PSDPA in 2017 and Australia's PID Act (Cth) in 2015; these did identify defects but were not comprehensive. These reviews focussed on legal provisions, sometimes with reference to best practices, and could not explore deeper causes for perceived shortcomings in enforcement. This dissertation attempted to do so using available data from annual reports, other government records, legal databases, cases in the media, and whistleblower interviews. Using regime logic as a guide, the evidence on regime inputs (e.g., policies and procedures), activities (e.g., investigations and reporting), outputs (correction of the wrongdoing and protection of / compensation for whistleblowers), and immediate outcomes (i.e., deterrence of wrongdoing and promotion of disclosure) was assessed. Evidence

for intermediate and long-term outcomes was too sparse to draw firm conclusions. Table 7.4 shows highlights of the available evidence for each case.

Table 7.4: Evidence on Whistleblowing Regimes

Evidence	United Kingdom	Canada	Australia
Clear policies and procedures in place?	For Code of Conduct only	Yes	Yes, but unclear on different processes
Training and awareness activities?	Yes, but awareness of PIDA (UK) still low	Yes, but may not be effective	Yes, but effectiveness is unclear
Number of disclosures	Low but increasing	Low but increasing	Intermediate and gradually increasing
Investigations conducted/completed	Very low; much data unavailable	About 25% of disclosures	About 45% of disclosures
Corrective action	Little data	About 14% of investigations	About 20% of investigations
Whistleblowers protected?	No evidence	No evidence	No evidence
Redress for reprisal?	Yes; numbers unclear but compensation low	Below 2% of complaints founded	Unclear, but founded complaints low (below 10%)
Trust in regime?	About 70%	Low	Low
Deterrence effects?	No evidence	Little evidence	Little evidence
Enhanced integrity in public service?	No evidence	Little evidence	Little evidence
Improved governance?	No evidence	Little evidence	Little evidence

The aspects of the regimes that appear most deficient are clarity of policies, training and awareness, investigations, whistleblower protection, and addressing serious or systemic wrongdoing. These are discussed below.

Clear policies, training, and awareness. These are linked as all affect the ability of public servants to navigate the disclosure process while retaining protection. All case countries have codes of conduct and have promulgated disclosure procedures. In theory, these should prevent wrongdoing and support disclosure. However, while each case country has an ethics code, no country was able to demonstrate its effectiveness in improving ethics or deterring wrongdoing. In addition, whistleblowers have had difficulty navigating complex processes for reporting breaches and lost protection as a result. This implicates training and awareness processes, with some whistleblowers completely unaware of appropriate avenues. As the responsibility for training and awareness currently resides with permanent departmental heads and oversight agencies, this makes whistleblowers the victims of a deficiency not of their own making. Training also appears lacking for departmental recipients and adjudicators of complaints of reprisal (e.g., judges). Second, departmental investigations appear vulnerable to bias and faulty findings.

Departmental investigations. Robust and credible investigations are critical to the achievement of regime goals – specifically the correction of wrongdoing. In addition, defective or biased investigations will damage trust, and hence use of the regime. They may also promote external disclosure, to the detriment of all actors. Unfortunately, a consistent feature of departmental investigations across case countries was that internal investigations were prone to bias and a lack of independence. When combined with an informal approach to investigations, this undermined the effectiveness of internal disclosures. Whistleblowers confronted with deficient internal processes then face a difficult choice – escalating the disclosure or letting the matter drop. In the latter case, the wrongdoing is likely to remain unaddressed, undermining the logic of the regime and any hoped-for improved governance.

Oversight investigations. The independence of commission and ombudsman staff in the case countries did have a positive effect on their work in comparison to departmental processes, with investigations conducted with greater rigour than those at the departmental level. This makes the offices useful as an appeal mechanism and to deter bias in departmental investigations. There remain hazards, however, as whistleblowers frequently find their cases being sent back to their (implicated) departments or taking years to conclude. One reason cited for this was resource constraints in these offices – both the United Kingdom’s Civil Service Commission and Australia’s Commonwealth Ombudsman have multiple roles, with only a few personnel dedicated to handling disclosures.

Ironically, commission and ombudsman staff were viewed as biased by stakeholders from both sides – senior public servants and advocates/whistleblowers. Canada’s PSIC, furthermore, has faced resistance from departments in its investigations. The lack of cooperation may be because implicated agencies want to avoid consequences of wrongdoing, but senior public servants also appear to view the office as an interloper, unnecessarily disrupting operations in their already demanding portfolios. This contributes to delays and undermines trust in the regime.

Corrective action. None of the regimes provide enough information on the nature and outcome of wrongdoing to make confident conclusions that the wrongdoing has been appropriately addressed. Departments are the worst offenders, consistently stripping case summaries of so much context that it is difficult to tell what the wrongdoing was or how it was corrected. Implicated parties are rarely identified. This harms the public interest and undermines the role of parliament in its oversight of administration. In almost all whistleblowing cases surveyed, the wrongdoing was not convincingly corrected, nor wrongdoers sanctioned. Where it was, the correction usually occurred after the matter became public. Further, participants noted that it is not uncommon for wrongdoing to re-emerge later, when scrutiny has passed. In addition,

whistleblowing regimes appear better at addressing individual misconduct than serious or systemic misconduct. This will be discussed further below.

Whistleblower protection and redress. Effective whistleblower protection is another cornerstone of the regimes; establishing processes that are unreliable in practice will breed cynicism and encourage anonymous or external disclosure. Crucially, whistleblowers do not appear to be consistently protected from reprisal or compensated when it occurs across case countries. Rather, the regimes each favoured the interests of organizations and powerful actors over whistleblowers. Australia attempts to address this with risk assessments, but a more definitive positive obligation to protect whistleblowers may be beneficial. Confidentiality of the whistleblower's identity could not be guaranteed, and allegations of leaks did surface. This was exacerbated by the length of investigations, during which formal or informal reprisals might continue. Following the investigation report, Canadian whistleblowers must then wait for another investigation, while Australian and U.K. whistleblowers must navigate tribunals and the courts. These are expensive, time consuming, and uncertain.

Redress for reprisal. Independent adjudication is superior to internal conflict resolution processes, primarily because they are neutral and because implicated agencies prefer not to air dirty laundry in public. Even so, it is apparent that many adjudicators remain unfamiliar with the implications of power imbalances between whistleblowers and organizations. Thus, outcomes may be better than those obtained through grievance processes but are still not optimal. In addition, it was common for adjudicators to refer to other sub-fields of employment law, where awards are capped and the public interest is balanced with the duty of loyalty to the employer. This is contrary to the intent of these regimes. The result is that awards tend to be insufficient, if they come at all. This makes important that whistleblowers be able to appeal decisions, or for alternative avenues of redress to exist.

As a result of these and other defects, the evidence suggests that the regimes fail to achieve their objectives at several points. Use remains low, obvious misconduct has been defended by authorities, and whistleblowers are unlikely to obtain a remedy in proportion to the harm they suffer. Unsurprisingly, this has led to distrust in the whistleblowing regimes' capabilities to support whistleblowers through all stages. Further, there is no evidence of a significant deterrence effect, greater integrity, or improved governance.

Indeed, the most telling evidence may be the lack of evidence on the effectiveness of the regime. There is no data on observed levels of wrongdoing over time, user satisfaction, whether wrongdoing is corrected and stays corrected, whether whistleblowers suffer reprisal or obtain redress, trust in the regime, whether organizational climate improves after a disclosure, or whether organizational governance improves – among other potentially valuable

indicators. Rather, governments have only collected superficial data on queries, disclosures and investigations conducted. None of the regimes has been subjected to a comprehensive evaluation despite calls by advocates. Given that all three countries require the evaluation of major programs, the persistent failure to do so for whistleblowing regimes suggests three possibilities: first, that policymakers do not see the regime as a priority once the initial crisis subsides; second, that they believe it is achieving their objectives; or third, that they prefer not to do so because it would require defining expected outcomes that might reveal shortcomings.

The evidence supports the first two possibilities, lending credence to assertions that the laws were passed to address an immediate political crisis. When the crisis passed, priorities shifted, and performance of the regime became largely irrelevant. This stance is counterproductive. A comprehensive evaluation may yield results that are embarrassing in the short term but addressing defects could improve outcomes and lead to better governance. As previous research has shown, well-functioning disclosure regimes promote internal disclosure, avoiding public scandal (Masser & Brown, 1996; Mazerolle & Brown, 2008). Further, whistleblowing literature (Smith, 2014) suggests that most disclosures are quickly and successfully resolved. By failing to conduct evaluations, political and administrative actors may be depriving themselves of a “good news” story. Even if such a good news story does not emerge, both their interests and those of the public would be served by recognizing emerging threats.

7.1.3 Factors Affecting Westminster Whistleblowing Regimes

Why the regimes are failing to achieve hoped-for outcomes appears to have causes dating from the point of enactment of laws. Institutional designers do not appear to have fully appreciated the institutional environment upon which they were imposed. Alternately, these countries intentionally designed the regimes to be ineffective at achieving stated goals. Compounding this, they were not designed (to the extent the term applies) with a clear understanding of what they were intended to accomplish or any means with which to track performance against those stated goals. This has already been discussed but may have contributed to shortcomings in legislation and regime design that emerged as significant in this dissertation.

7.1.3.1 The Institutional Environment

Starting at the highest level, policymakers appear to have been aware of some aspects of the institutional environment that would affect regime operation. Where they were, these were addressed in the enabling legislation – usually in support of constitutional conventions. Where they were not, as in employment rights, effects were mixed. Table 7.5 provides the primary factors identified.

Table 7.5: Effect of Institutional Environment

Factor	Cross-case Assessment
1. Strong labour protections / unions	<ul style="list-style-type: none"> • Variable; when not present undermines all disclosures
2. Strong free expression rights	<ul style="list-style-type: none"> • No effect on any disclosure
3. Secrecy and national security law/policy	<ul style="list-style-type: none"> • Favours internal and quasi-internal disclosures • Undermines external disclosures

The effects of employment regimes and free speech rights on whistleblowing have been explored by Lewis and Trygstad (2009), Vaughn (2012, Chapter 9), D. Lewis, Devine, et al. (2014), Skivenes and Trygstad (2017), Lewis and Vandekerckhove (2018), and others. In general, these authors concluded that strong employment regimes improve outcomes for whistleblowers because reprisal is more difficult and likely to draw external attention. This dissertation found that the employment and free expression rights differed in the case countries, but a review of whistleblowing cases found that they did not appear to have any significant effect on outcomes for the whistleblowers. Rather, positive effects appeared to be cancelled out by negative effects. For example, union representation improved outcomes for whistleblowers in the cases examined, as did access to independent adjudication.

Negatively, employment law principles are frequently applied to whistleblowing cases. In addition, all regimes work best when whistleblowers are represented by counsel, making them both time-consuming and expensive. Compensation is elusive or inadequate to redress the harm suffered. Canadian whistleblowers appear to fare worst, primarily due to the PSDP Tribunal's monopoly on these cases, with the PSIC acting as gatekeeper. Non-disclosure agreements are also pernicious, shrouding public interest wrongdoing in secrecy. The UKET process, while imperfect and needing improvement, appears superior to both Australian and Canadian arrangements.

With respect to freedom of expression, theories of whistleblowing law suggest this as a foundation of statutory protection, and, when strong enough, can enhance whistleblowing laws. However, this dissertation found that these rights, even when enshrined in a constitution, are still balanced against the common law duty of loyalty to an employer. This is consistent across cases.

National security and secrecy laws have also been studied (Ireland-Piper & Crowe, 2018; A. Savage, 2021; A. C. Savage, 2012; Vaughn, 2012, Chapter 12). Authors are typically critical of the use of secrecy and national security laws to prevent disclosures of wrongdoing reaching the public. The findings of this dissertation support those criticisms. Indeed, secrecy and national security laws in the United Kingdom and Australia were amended in response to whistleblowing. Both countries criminalize unauthorized disclosures, with

Australian enforcement being the more aggressive. Canada relies on an administrative tool: Violating government security policy deprives employees of their security clearance, and hence employment, without bringing the matter to the courts. These laws and policies make external disclosure risky, as interpretation of the appropriateness of the disclosure is in the hands of government officials.

7.1.3.2 Institutional Factors

Structures, processes, and conventions which are central to Westminster government institutions and relevant to whistleblowing should, theoretically, support internal and quasi-internal disclosure, and undermine external disclosure. However, this dissertation found that while powerful actors frequently refer to traditional Westminster arrangements, they no longer reflect current practices. Table 7.6 lists the effects of the Westminster institutional factors that were examined. A description of the most important factors follows.

Table 7.6: Assessment of Westminster Factors on Whistleblowing

	Factor	Generalized Cross-Case Assessment of Effects on Disclosure Processes
Westminster Structures	1. Rigid hierarchy with few veto points	<ul style="list-style-type: none"> Weakly undermines internal disclosure Undermines quasi-internal disclosure Strongly undermines external disclosure
	2. Power concentrated in hands of PM / central agencies	<ul style="list-style-type: none"> Weakly undermines all disclosures
	3. Departmental organization / outsourcing	<ul style="list-style-type: none"> Outsourcing moves wrongdoing outside regime
	4. Parliamentary oversight of executive via committees and officers of parliament	<ul style="list-style-type: none"> Where present, weakly positive for all disclosures
	5. Highly oppositional parliament	<ul style="list-style-type: none"> No effect on internal or quasi-internal disclosures observed Undermines external disclosure
Westminster Processes	6. Accounting officer concept for administrative head	<ul style="list-style-type: none"> No effect observed
	7. Effective internal mechanisms for detecting error and holding officials to account (e.g., audit, evaluation)	<ul style="list-style-type: none"> No effects observed; may support internal disclosure
	8. Means for administrative head to resist unethical / illegal instruction from minister	<ul style="list-style-type: none"> Where present, weakly positive for all disclosures
Westminster Conventions	9. Ministerial responsibility / Loyalty owed to minister, not public	<ul style="list-style-type: none"> Supports internal and quasi-internal disclosure Undermines external disclosure
	10. Erosion of political-administration separation with administrative head as linchpin	<ul style="list-style-type: none"> Undermines all disclosures
	11. Erosion of merit principle	<ul style="list-style-type: none"> Weakly undermines all disclosures
	12. Erosion of tenure, especially at top levels	<ul style="list-style-type: none"> Undermines all disclosures
	13. Civil servants may speak truth to power	<ul style="list-style-type: none"> Supports internal and quasi-internal disclosure No effect for external disclosure
	14. Civil servants expected to loyally implement policies of government of the day	<ul style="list-style-type: none"> Supports internal and quasi-internal disclosure Undermines external disclosure
	15. Confidentiality of advice	<ul style="list-style-type: none"> Supports internal and quasi-internal disclosure Undermines external disclosure
Incentives	16. Political control of incentives / mechanisms for applying pressure on senior civil servants (e.g., performance pay, perks, control of appointments)	<ul style="list-style-type: none"> Undermines all disclosures

Hierarchies. The effects of hierarchies, which are built into Westminster public services, were negative across cases. This is consistent with previous findings, which suggest whistleblowers are perceived as a threat to power structures (e.g., G. King, 1999; Miceli & Near, 2002; Uys, 2010). Observed norms associated with hierarchies included expectations of personal loyalty, deference to authority, and the belief that dissent be restrained. While hierarchies were touted as providing clear accountabilities, whistleblower cases suggest they create a barrier to the transmission of bad news. Persistence by whistleblowers may be interpreted as insubordination or disloyalty, justifying reprisal.

The accounting officer concept and ministerial direction. While it was expected that permanent administrative heads acting as accounting officers would prefer to resolve problems internally, no effect was observed in the United Kingdom – the only country with such an arrangement. The existence of the ministerial direction mechanism in Whitehall, however, does appear to check some illegitimate policies and decisions, suggesting that it contributes to enhanced public sector integrity and improved governance. It is unclear, however, whether this mechanism would still be used if U.K. permanent secretaries were as easily removed as their Australian counterparts.

Ministerial responsibility and the Schafferian public service bargain.

Perhaps most importantly, aspects of the traditional public service bargain have eroded or been discarded. As noted in the introductory chapter, civil servants exchange some political rights, such as the freedom to criticize government policies and decisions, for appointment on merit and security of tenure. Under this bargain, public servants should be able to provide honest and frank advice without fear of sanction, but it must be confidential. Once a decision is made, they must loyally implement the policies of the government of the day without regard for their own preferences. This bargain was struck to improve governance. The affected aspects are described below.

Ministerial responsibility and loyal implementation. The convention on ministerial responsibility was linked to the loyalty of public servants to their ministers, not the public. In the case of whistleblowing, internal and quasi-internal disclosures can be framed as loyal because the disclosure remains largely confidential, with the minister able to fulfill their responsibility to correct wrongdoing. External disclosures are not supported by these conventions and are hence more likely to be treated as deviance; they almost always result in reprisal. In the Canadian and U.K. civil services, loyalty to minister and employer is emphasized in communications and policy while the Australian government refers to responsibility to the public. In all countries, though, whistleblowing cases suggest norms still favour loyalty to ministers. In practice, political actors in all cases increasingly blame administrators for error and misconduct.

Confidentiality of advice. The confidentiality convention, intended to promote frank discussion, has also changed to become a de facto secrecy norm. This is likely due to incentives and hierarchical norms, which favour unquestioning responsiveness and the suppression of bad news. Confidentiality can be constructive, as disclosures that remain within the control of the executive and Westminster institutions are at lower risk of allegations of disloyalty (and hence reprisal). Where this convention has evolved into a secrecy norm, however, risks to whistleblowers increase – any information on wrongdoing reaching the public is treated as a breach of norms. This can frustrate accountability and harm the public interest by suppressing potential disclosures. Canadian participants were most likely to cite this as a factor, but both Australia and the United Kingdom have gone further to reshape law and policy in ways that make unauthorized disclosures – external whistleblowing – an offense.

Frank advice. As a result of the evolution of confidentiality into secrecy, the frank speech convention is suppressed. Weinstein (1979, p. 59) was one of the first scholars to suggest that frank comment on misconduct can sound like an accusation of a dereliction of duty – even to unimplicated actors. This may be why powerful actors in all case countries appear to favour a "speak once, then shut up" approach for working-level public servants. They also favour traditional dissent through networks, but this is neither truly open nor frank. External disclosures were be regarded as particularly egregious, with reprisal rationalized by accusations of disloyalty to the minister.

The separation of politics and administration. The traditional barrier between politics and administration – while admittedly never perfect – is increasingly porous. Political actors were reported as routinely entering the administrative sphere with the expectation that administrative heads would then provide support and justification in the event error or misconduct was exposed. Moreover, political policy preferences and directions were implicated in whistleblowing cases that were examined in this dissertation, with administrative actors facilitating. The effect is most dramatic in Canada and Australia, with the Sponsorship Scandal as the most extreme example. The effect is weakest in the United Kingdom, although it also appears to be worsening there.

Political control of incentives and the erosion of the merit principle. Linked to the separation of politics and administration, political actors have taken control of two key incentives: senior administrative appointments and performance pay. In theory, this has the merit of facilitating the rewarding of responsiveness and competence. In practice, however, it appears to provide a means to suppress bad news to maintain an image of error-free administration. These are important to maintain personal reputation, as found in Shepherd (2017), and organizational reputation (cf. K. J. Lennane, 1993; Rothschild, 2013). From this perspective, whistleblowing becomes a threat to both administrative and political actors. Thus, the erosion of the merit principle appears to have had negative effects on

whistleblowing regimes. Australia is worst in this respect, with departmental secretaries now working to short contracts and dismissed easily if performance is not to political expectations. This is one aspect of the encroachment of political actors into administration, as it gives them the levers with which to reward and punish behaviours. The effects are most immediate at top levels but are then transmitted down the hierarchy. Further, the merit principle may have previously prevented errors but is increasingly replaced by a preference for responsiveness and “team players.” Participants noted that this can lead to third parties joining in reprisals.

7.1.3.3 Organizational Factors

Many factors that were identified were not institutional in nature. Some are both institutional and organizational, being neither intrinsic to Westminster government nor simply localized to organizations within Westminster governments. Table 7.7 below lists these, with a description below.

Table 7.7: Organizational Factors

Factor	Generalized Cross-Case Assessment of Effects on Disclosure Processes
1. Secrecy norms	<ul style="list-style-type: none"> • Weakly negative for internal disclosure • Negative for quasi-internal disclosure • Very negative for external disclosure
x. Leadership selection and promotion favouring responsiveness to political direction	<ul style="list-style-type: none"> • Folded into "political control of incentives"
2. Strong speak up climate	<ul style="list-style-type: none"> • Should support internal disclosures; not observed
3. Personal loyalty norms	<ul style="list-style-type: none"> • Undermines all disclosures

Secrecy. Confidentiality conventions in Westminster governments have evolved into secrecy norms to different degrees, with the effect greatest in Canada. The over-classification of records is a common tactic; in this process documents which should pose little threat to national security or to the confidentiality convention are marked as secret or above to frustrate requests under freedom of information laws. Advocates argue this is done to prevent potential embarrassment from defective decisions and policies. The practice increases risks to whistleblowers by making unauthorized disclosure an offence.

Speak up climate. Many participants referred to speak up climates as valuable in normalizing dissent and the open identification of problems within organizations. This should also prevent the need for external disclosure as matters are quickly addressed without conflict. It was not observed in any of the whistleblowing cases studied; even the one case with a positive outcome featured an organization with a climate favouring a very cautious approach to

raising issues. Further study may reveal whether this factor is contingent on leadership or institutional norms and conventions.

Loyalty norms. The convention on loyalty to the minister has evolved toward a personal loyalty norm. Not restricted to Westminster contexts, expectations of personal loyalty are a common feature of hierarchies. As described by participants loyalty to the minister has been appropriated by actors lower in the hierarchy. This occurs when each actor in the chain of command claims to be transmitting the preferences of the minister. The effect was noted in all cases, with many whistleblowers accused of disloyalty.

7.1.3.4 Other Issues Arising from the Research

A range of other issues were also identified, several of which had been identified as candidates prior to the field work. Others emerged organically from interviews, whistleblowing case analysis, and the examination of other records. Table 7.8 provides a list. Some, such as regime implementation issues, have already been discussed. Others are intuitively obvious, with assessments provided for informational purposes. The most significant are examined in Table 7.8 below.

Table 7.8: Other Issues Arising from Research

	Factor	Generalized Cross-Case Assessment of Effects on Disclosure Processes
Regime Implementation	1. Clear ethics code/code of conduct and procedures for reporting violations, with training	<ul style="list-style-type: none"> Exists but no significant effect observed
	2. Unclear procedures and avenues for disclosing wrongdoing	<ul style="list-style-type: none"> Undermines all disclosures
	3. Departmental investigations	<ul style="list-style-type: none"> Informality, bias, and lack of independence undermine internal disclosures
	4. Oversight independence	<ul style="list-style-type: none"> Supports internal and quasi-internal disclosure No effect for external disclosures
	5. Oversight investigations	<ul style="list-style-type: none"> Weakly supportive of internal disclosure Neutral for quasi-internal disclosures No effect for external disclosures
	6. Resource constraints	<ul style="list-style-type: none"> Undermines all disclosures
	7. Investigations by other agencies empowered to do so	<ul style="list-style-type: none"> Where they are conducted, they may support disclosures
	8. Do processes encourage correction of misconduct and reprisal?	<ul style="list-style-type: none"> Lack of transparency and power to stop wrongdoing may undermine accountability
Situational/Issue Characteristics	9. Unethical leadership	<ul style="list-style-type: none"> Undermines all disclosures
	10. Incompetent leadership	<ul style="list-style-type: none"> Undermines all disclosures
	11. Leadership distracted by multiple demands	<ul style="list-style-type: none"> Weakly undermines all disclosures
	12. Prevalent negative attitudes on whistleblowing	<ul style="list-style-type: none"> Undermines all disclosures
	13. Reflects badly on / implicates senior civil servants	<ul style="list-style-type: none"> Undermines all disclosures
	14. Reflects badly on / implicates elected officials	<ul style="list-style-type: none"> Undermines all disclosures
	15. Acceptance or dependence on wrongdoing / wrongdoing is serious or systemic	<ul style="list-style-type: none"> Regime is better at addressing individual wrongdoing; performs poorly with systemic or very serious misconduct

Regime implementation. While it was not the intention of this dissertation to compare legislation with international best practices, it became evident that certain aspects of the regime implementation could not be separated from law. For example, Australian and U.K. processes are unclear due to two parallel processes in place, with the Commonwealth Ombudsman and Civil Service Commission also lacking sufficient resources. This results in many cases being returned to implicated agencies, where officials are likely to view the whistleblower's persistence as unreasonable and possibly disloyal. In Canada, departments appear to resist some investigations by the PSIC's office. This

creates delays and increases the likelihood that the allegation will fall through the cracks as investigators change. There were also allegations that the Ombudsman and the PSIC cooperate with departments in suppressing disclosures, which was linked to appointment processes that favour the selection of leadership considered “safe hands” by institutional incumbents.

Note that the list of regime issues is a small subset of recommendations that can be found in most best practice guides for whistleblowing legislation.⁵⁸ Several participants noted that some of these defects are rooted in a reluctance by policymakers to meaningfully engage whistleblowers, advocates, and academic experts when drafting policy and legislation. The isomorphism evident in whistleblowing laws also played a role, with the Australian PID Act (Cth) and Canadian PSDPA still carrying many of the conceptual roots of the 1978 U.S. *Civil Service Reform Act* (see Vaughn, 2012, pp. 96–105 for a review of common features). This includes both the overarching protections and structural approach as well as specific aspects, such as definitions of wrongdoing. The exception, PIDA (UK), was not designed for the civil service.

Situational characteristics. Situational issues are those pertinent to the local environment, such as acceptance or dependence of the organization (or organizational members) on the wrongdoing, quality of leadership, and other demands. These are not organizational issues because they may change as personnel or circumstances change. Although interesting, leadership ethics and quality could not be studied but was nonetheless identified by participants and in numerous whistleblowing cases. One situational characteristic that emerged was the attitudes of senior officials, some of whom described whistleblowers as troublemakers. This is based in part on ignorance of whistleblowing – believing that it is always external, for example – but also appears rooted in the pressures and demands faced by senior public servants. In this context, a persistent whistleblower reporting a matter not perceived as serious becomes a problem employee, disrupting operations. This can be made worse if the disclosure is filtered through implicated parties, depriving senior officials of information on the wrongdoing and its potential consequences. Moreover, in whistleblowing cases

⁵⁸ Recent best practice guides include the EU Directive 2019/1937 (European Union, 2019), GAP's *International Best Practices* (T. Devine, 2016), Transparency International's (2020) *Assessing Whistleblowing Legislation*, the Centre for Free Expression Whistleblowing Initiative's *Evaluation Criteria for Protection of Whistleblowers: A Guide for Legislation and Policy* (Bron & Hutton, 2022), and the Blueprint for Free Speech *Whistleblower Protection Compliance Tool* (2020) and *Getting Whistleblower Protection Right* (Colvin et al., 2020), and the Organization of American States (2013) *Draft Model Law*, among others. The Irish *Protected Disclosures Act* (2014) and Serbian *Law on the Protection of Whistleblowers* (2014) have also been cited as models.

examined in this dissertation, hostility arose from the fact that senior leadership felt itself implicated in failing to detect or correct the wrongdoing earlier. Positions quickly hardened, making resolution more difficult.

Issue characteristics. Issue characteristics are specific to the alleged wrongdoing, such as severity and whether powerful actors are implicated. As noted in the literature review, wrongdoing involving or accepted by powerful actors leads to less support for whistleblowers and is correlated with reprisal (Callahan et al., 2002; Mesmer-Magnus & Viswesvaran, 2005; Miceli et al., 1999). This was observed in most whistleblowing cases. Further, all three regimes also appear better at addressing individual and isolated wrongdoing than they are with serious or systemic wrongdoing. This is consistent with previous research as serious wrongdoing invites external scrutiny, a loss of control, and can prove an existential threat to the organization itself (e.g., Y. Feldman & Lobel, 2007; Miceli et al., 2008, p. 76). Examples include favouritism in tax treatment and captured regulatory oversight of transportation safety. These forms of wrongdoing may implicate several layers of the hierarchy and the policies of political actors. While the effects are most obvious at the level of outputs (correction of wrongdoing), problems begin when disclosures are made. Such disclosures are more likely to be treated as matters of policy, and senior actors are more likely to be taken at their word when denying wrongdoing. This is consistent with models using power theory (Miceli et al., 2008).

This is related to organizational dependence on wrongdoing, such as when firms provide substandard products to governments to maintain profits. While profit considerations are not relevant in the government context, there were parallels. For example, there were cases in which wrongdoing had become accepted as a shortcut around normal bureaucratic processes, and others in which program outcomes could not be achieved without “bending the rules.” Examples include pharmaceutical approvals and environmental oversight. Indeed, some wrongdoers were celebrated and promoted for their successes in this respect. This need not involve regulatory capture but is conceptually close. Consistent with the literature (e.g., Brown & Olsen, 2008a; Mazerolle & Cassematis, 2010), whistleblowing cases where this was observed resulted in outcomes that included reprisal and required public attention to trigger corrective action.

In sum, although the detailed elements of the regimes differ between case countries, they have similar origins, operate similarly, and face some of the same challenges and pressures. Public sector whistleblowing regimes have their roots in a distrust of the public service dating from the 1960s and 1970s, yet were triggered by misconduct that frequently involved political actors or public policies. It is ironic that the regimes that emerged excluded political policies or decisions. Adopting a protections-based and structural approach in Australia and Canada did not lead to better outcomes than PIDA (UK), which only offers a source of redress. The explanation appears to be that several Westminster conventions

favour silence while others treat external disclosure as a violation of the public service bargain. This is compounded by hierarchical norms, which are very strong in Westminster governments. In addition, political actors are now in control of many incentives and so have the tools with which to encourage or direct the suppression of a disclosure that may damage their interests. The implications of these findings are discussed below.

7.2 Discussion

This section discusses the importance of the approach and findings. This dissertation attempts to extend previous findings and answer the call for new approaches. It does so by examining the development and implementation of public sector whistleblowing regimes from the point at which they were introduced into public discourse to the current day in the United Kingdom, Canada, and Australia. This facilitated the identification of preconditions for whistleblowing legislation, development of a preliminary logic model and relevant indicators for the measurement of performance, and an understanding of a web of institutional factors that might affect the success or failure of public sector whistleblowing regimes.

7.2.1 Methodology

One goal of this dissertation was to move away from existing approaches to whistleblowing research, which have favoured actor-level influences to include institutional analysis. Previous research has not explored the evolution, goals, logic, or institutional influences on regime enforcement. There have also been no efforts to assess the effectiveness of whistleblowing laws and policies in meeting the full range of their objectives – in part because these objectives are not fully articulated. Instead, there have been narrow efforts that focus on specific aspects of performance – for example, perceived wrongdoing over time, whistleblower experiences, or rates of success and failure in the courts. Efforts at developing models against which regime performance can be measured have begun, notably in the Whistling While They Work (WWTW) project (Dozo et al., 2018). The *International Handbook on Whistleblowing Research* (Brown, Lewis, et al., 2014) consolidated much of this previous research; in it, authors speak to the need for a greater focus on institutional approaches (i.e., Brown, Meyer, et al., 2014; Vandekerckhove, Brown, et al., 2014). Loyens and Maesschalck (2014) suggest the use of process tracing methods.

As noted in the Methodology chapter, this approach was not without challenges. The web of effects, idiosyncratic nature of whistleblowing cases, and divergent perspectives of stakeholders led to a proliferation of potential variables. Managing these was accomplished by first establishing a theory with potential causal factors, and then remaining open to other variables as they emerged. That is, combining deductive and inductive approaches. Future studies may

choose to adopt an inductive process from the outset, but if so, may benefit from limiting the scope of the inquiry to an individual case or specific aspects of multiple cases. Researchers should be aware of the trade-off between granularity and scope and design the inquiry accordingly.

In addition, a diversity of perspectives was important to providing a balanced view of the regimes and their functioning. This is true of individual whistleblowing cases as well. In this dissertation, there were clear differences between what was considered wrongdoing, the appropriate level of dissent, and the role of individual public servants in protecting the public interest. Government officials with senior leadership roles were more likely to be hostile to whistleblowing, emphasize the broader context of their work, and favour the traditional public service bargain. Oversight officials presented a generally positive view of their regimes and enforcement, and though they appeared honest about the challenges they faced, some could be interpreted as self-serving. Nonetheless, the evidence suggests that the challenges they face are real – including the hostility from both senior public servants and advocates. Whistleblowers and advocates were most critical of the regimes and least forgiving of perceived defects in enforcement. They were also likely to attribute poor oversight performance to malice rather than the limitations of the regimes, error, socialization, or other institutional constraints.

Whistleblower participants were decisive in untangling some of these biases. These cases were most likely to demonstrate less obvious shortcomings in internal whistleblowing processes, such as a bureaucratic tendency to avoid disruption, laziness, and the pressure on whistleblowers to accept inadequate settlements. Overall, the evidence suggests that the truth lies closer to the perspective of advocates and whistleblowers, but that the regimes have had a slowly positive effect over time.

7.2.2 Preconditions for Whistleblowing Legislation

The patterns prior to regime implementation suggest several conditions that lead or contribute to the enactment of whistleblowing laws in the case countries. This appears to occur through punctuated equilibrium (i.e., in response to crisis), isomorphism – or both. For jurisdictions that act first to implement whistleblower protections within national polities, it appears some preconditions may be necessary to overcome the resistance of powerful institutional actors, while others contribute to momentum. These are listed in Table 7.9.

Table 7.9: Factors Driving Public Sector Whistleblowing Regime Development

Not necessary, but consequential	Contributes	Necessary?
Public perception that public sector lacks integrity	Failure of previous efforts to induce better conduct, including codes of conduct	Serious scandals implicating political or administrative actors
Support from senior administrative actors	Development of case law supporting whistleblowing	Government vulnerable to defeat (e.g., before election or in minority) or To establish credibility after an election
Free speech rights	A government seeking to bolster legitimacy	Political support

In each case, political actors appear to have been the driving force, overriding administrative reluctance. The primary goal of whistleblowing legislation appears to have been to establish or restore the governing party's legitimacy in the eyes of the electorate at a key juncture – typically when competence and integrity have become central issues in the public mind and just before or after an election. In Australia, this happened before an election, while in Canada and the United Kingdom an outgoing party initiated the effort and the incoming party completed it. Once the perceived solution is found, political actors turn their attention to other priorities. Administrative actors, on the other hand, appear more inclined to view whistleblowing as a risk. This leads to efforts to shape legislation to be less threatening. Where this is not possible, administrative actors can take advantage of longer tenure to undermine the regime through unenthusiastic or negligent enforcement. This is a tentative finding, however. Further study of a wider range of cases may be useful to validate, refute, or offer more nuance to this assessment. Such a pre-regime study may also be helpful in identifying more pre-conditions for whistleblowing regimes.

Drawing from the U.K. and Australian experiences, a lesson for political actors and advocates may be that having a solution on hand – a garbage can solution (Cohen et al., 1972) – at a moment of crisis may increase the likelihood of whistleblowing legislation being passed or improved. Administrative actors, for their part, should also be prepared to defend their own interests: The fact that Canada's PSDPA and Australia's PID Act (Cth) primarily target administrative misconduct exposes them to the threat of being held accountable for defective policies and decisions made by political actors. This is compounded by the lack of a means to challenge these decisions and policies in Canada and Australia.

7.2.3 Regime Assumptions and Risks

With respect to the functioning of the case country regimes, this dissertation identified assumptions that appeared consistent across cases, with associated risks. These have implications for future regime design and improvement.

Broadly, all the regimes contain pitfalls for whistleblowers, all favour the interests of organizations and leadership over those of the whistleblower, and all effectively balance the public interest with the duty of loyalty to the minister. They are also consistent (though to different degrees) with traditional Westminster conventions on the role of the public service. However, they do not account for distortions of those conventions or new incentives that have been introduced. More specific assumptions and risks are listed in Table 7.10. They are also integrated into the comprehensive logic model in Appendix 8.

Table 7.10: Assumptions and Risks in Whistleblowing Regimes

Assumptions Identified	Associated Risks
<ul style="list-style-type: none"> • Independent oversight 	<ul style="list-style-type: none"> • Unthreatening or compliant oversight staff • Executive retains control of resources
<ul style="list-style-type: none"> • Administrative leadership commitment to implement the regime 	<ul style="list-style-type: none"> • Pressures for responsiveness • Pressures for error-free administration • Political control of incentives • Climate is hostile to whistleblowing
<ul style="list-style-type: none"> • Political actors remain committed 	<ul style="list-style-type: none"> • Political involvement in wrongdoing • Other priorities take precedence
<ul style="list-style-type: none"> • Staff trust regime enough to use it 	<ul style="list-style-type: none"> • Few visibly positive results • Suppression of employee voice • Excessive secrecy
<ul style="list-style-type: none"> • Clear procedures 	<ul style="list-style-type: none"> • Complex or disjointed processes
<ul style="list-style-type: none"> • Adequate training and awareness 	<ul style="list-style-type: none"> • Lack of leadership commitment
<ul style="list-style-type: none"> • Internal investigations timely, competent, and fair 	<ul style="list-style-type: none"> • Informality in departmental investigations • No meaningful standards for investigations
<ul style="list-style-type: none"> • Oversight investigations timely, competent, and fair 	<ul style="list-style-type: none"> • Investigators biased or not independent • Lack of resources • Administrative resistance • No meaningful standards for investigations
<ul style="list-style-type: none"> • Leadership committed to correcting wrongdoing 	<ul style="list-style-type: none"> • Organization depends on or has normalized the wrongdoing • No follow-up to ensure wrongdoing remains corrected
<ul style="list-style-type: none"> • Protection / compensation for reprisal is adequate 	<ul style="list-style-type: none"> • No responsibility to proactively protect whistleblowers • Whistleblowing treated as an ordinary employment dispute
<ul style="list-style-type: none"> • Adjudicators understand whistleblowing 	<ul style="list-style-type: none"> • Reliance on ordinary employment law mechanisms • Insufficient training for adjudicators
<ul style="list-style-type: none"> • Process is transparent enough that all actors know consequences 	<ul style="list-style-type: none"> • Excessive secrecy

A common assumption that was not met was leadership commitment to the regime. Political actors in the government appear to quickly focus elsewhere after the regime is implemented, with opposition politicians more likely to retain an interest. Administrative actors are, to different degrees, unenthusiastic implementers and enforcers of the regime in all case countries. This is evident in procedures, guidance, and awareness: They exist, but are frequently incorporated into other training and are not entirely clear. Commitment to enforcement also appears weak. While the country cases lack enough evidence to make sweeping conclusions on efficacy, individual whistleblowing cases show that the regimes were not effective where the wrongdoing had been normalized or was the result of political direction. Contrariwise, procedures were sometimes changed to accommodate the wrongdoing. In Canada, this occurred in the veterinary drug approvals process. Whistleblowers also noted that organizations could revert to misconduct after some time had passed.

The preference for informality and internal investigations, coupled with a lack of standards for investigations, was another consistent risk across cases. Those standards that did exist were superficial, typically including ambiguous – and easily extended – timeframes and stipulations for fairness and natural justice. Reporting requirements could add some implicit standards, such as describing methods or evidence. No credentials or training were required for investigators. Internal investigators may be drawn from departmental staff, sometimes leading to bias or otherwise flawed findings.

Oversight agencies are also hobbled by a lack of resources and administrative resistance. These can delay investigations by months or years, and lead to many disclosures being returned to implicated agencies. This increases the likelihood of defective investigations and reprisal. This, in turn, undermines trust in the regime.

Finally, a lack of transparency, associated with secrecy, emerged as a key risk to all regimes. Transparency serves many purposes. First, it allows whistleblowers to track the progress of the investigation and contribute after the initial disclosure, building trust. Second, it makes the consequences of wrongdoing and reprisal clear to all actors. Third, it provides potential whistleblowers with guidance on how to make a disclosure and avoid pitfalls, which should boost confidence in the process. Fourth, it contributes to administrative accountability and ministerial responsibility. Fifth, it assists parliament in its role of monitoring the executive. Finally, attempts to suppress information cause more damage when wrongdoing finally becomes public. All regimes are deficient in this respect, with departmental investigation reports usually devoid of information on the seriousness of the matter or the consequences for implicated actors.

7.2.4 Factors Affecting Whistleblowing Regimes

The findings of this dissertation are generally consistent with previous research. For example, they support the importance of training and clear procedures in outcomes for whistleblowers, a key conclusion of the first phase of the Whistling WWTW research project (P. Roberts, 2008). Other factors, such as ethical leadership and organizational climate were also identified in the second phase of the WWTW project (Brown et al., 2019). Further, as suggested by Vandekerckhove, Brown, et al. (2014), individual perceptions and subjective norms are relevant to whistleblowing outcomes. Similarly, Pillay et al. (2017) conclude that norms opposed to whistleblowing will undermine whistleblowing procedures, Pittroff (2014) found that whistleblowing regimes at odds with the institutional environment will lead to cosmetic compliance, and Yeoh (2014) and Kenny (2019) noted the difficulty of law in overcoming established norms.

This study extends existing knowledge by linking the actions and reactions of individuals to the institutions in which they work through several causal mechanisms. Supporting the hypothesis of this dissertation, the dissonance between whistleblowing regimes and Westminster conventions, norms, processes, structures, and incentives appears to have been met with a range of responses by powerful institutional actors. The most dominant include neglect, unenthusiastic implementation, and sabotage – the latter most evident in the rewriting of security and secrecy laws and policies, with the aggressive prosecution of external whistleblowers. This is unfortunate as external disclosure avenues also contribute to the effectiveness of the regimes.

This dissonance has two sources. First, although some Westminster conventions should support a whistleblowing regime, they do not do so because of the erosion of the public service bargain. The key elements appear to be the encroachment of political actors into administration and changes to incentives and tenure. Second, other aspects of Westminster government may always have been hostile to whistleblowing and dissent from working-level bureaucrats, such as hierarchies, the loyal implementation convention, and confidentiality of advice. Notably, when justifying restrictions on whistleblowing, senior officials in all case countries refer to traditional Westminster conventions. These may not be consistent with beliefs of the public on the role of public servants.

The more consequential of the sources is the erosion of the public service bargain. This bargain was established because of concerns about the competence of the early civil service. Theoretically, the merit principle, security of tenure, frank but confidential advice, loyal implementation, and the surrender of some political rights provided political actors with neutral and reasonably effective civil servants. Civil servants were then expected to implement the policies of the government of the day. The arrangement was never perfect but may have avoided the worst abuses of authority that are possible in majoritarian

government systems. By eroding tenure – in some cases abolishing it – and taking control of incentives, political actors can induce behaviour that suits their goals. At the worst, this includes complicity in wrongdoing, cover-up, and reprisal against whistleblowers. More subtly, it can suppress the expression of dissent or concerns as employees seek to demonstrate responsiveness. The Canadian Phoenix pay system scandal provides the best example of this. Further, by prioritizing responsiveness, the merit principle has been eroded. This is difficult to measure, but numerous whistleblowing cases featured officials unable or unwilling to perform their duties as required by law or policy yet still valued for getting things done. Political actors have made monitoring responsiveness and directing action without administrative checks and balances easier by gradually integrating political advisers into administration.

The effect of these changes is most obvious at senior levels of the public service, but is transmitted down the hierarchy. Just as political actors control incentives for top public servants, senior public servants control staffing and incentives for subordinate staff. This gives them the power to appoint accommodating departmental staff (including nominated/authorized disclosure recipients) and promote behaviours they favour. Additionally, language which emphasizes public service conventions – such as loyalty and confidentiality – is being used as a justification for reprisal against whistleblowers. This ignores the fact that public servants should be able to speak frankly and fearlessly and should not be expected to act in ways which are illegal or may cause harm to the public. Even when political actors might wish to know of misconduct, the information may be undermined, misrepresented, or not reach them at all.

Under these conditions, denial, cover-up, and reprisal become much more likely. As Miceli et al. (2008, p. 125) observe, these are not effective strategies to avoid embarrassment: Determined whistleblowers will make the matter public, viewing reprisal as further evidence supporting their concerns. Defensive and reactive postures also contribute to threat-rigidity effect. When this happens, dysfunctional responses are reinforced and nothing is learned (Perry, 1993; Staw et al., 1981). This can be seen in the Lac-Mégantic rail disaster in Canada (Valiquette l'Heureux, 2016), several cases of medical malpractice in the U.K. National Health Service, and Australia's spying on East Timor.

Considering wrongdoing covered by the regimes, it also appears that the regimes exclude a significant source of misconduct. Some of the most egregious wrongdoing has its origin in political policy or direction, such as the Canadian Sponsorship Scandal. Yet all the statutes exclude matters that arise from “a balanced and informed decision-making process on a public policy issue” (PSDPA, s. 24[1][e]), or words to that effect. In practice, this has left much misconduct disputed or outside the framework of the regimes. Examples include the abuse of employment insurance investigations to cut costs in Canada, unfair tax treatment in HM Revenue and Customs, and the children overboard incident

in Australia. Public servants should not have to wait until deaths or fiscal misery to accumulate to make a protected disclosure, and unelected political advisers should have accountability for their actions.

7.3 Future Study

The number of potential variables and interactions suggest that the findings of this dissertation should be considered a starting point for future research. Some examples follow. First, for those studying Westminster systems, the findings of this dissertation suggests that the traditional public service bargain is no longer robust – that it is a chair missing at least one leg – to the detriment of good governance and the public interest. There have been studies on ministerial responsibility (e.g., Franks, 1997; Woodhouse, 2004); a study of the full range of components of the Schafferian bargain may illustrate whether it can still be considered in place, how it affects the quality of advice, the handling of dissenting views, and governance.

Second, the U.K. accounting officer principle and accompanying right to request written direction appear to have benefits in whistleblowing regimes, mainly by giving permanent administrative heads a means to challenge a potentially defective policy or decision. If true, this may prevent the need for some whistleblowing. This was proposed in Canada after the Sponsorship Scandal (e.g., Sossin, 2006) but it was not implemented. Further study on how many whistleblowing cases originate due to defective policy design or implementation may shed some light, perhaps comparing similar cases in other jurisdictions. Related to this, it would be useful to conduct a broader study of whistleblowing cases to determine how many are rooted in political interference in administration. This may enlighten where gaps exist in whistleblowing law. Analytic process tracing would be a useful approach. This could inform improvements to relevant regimes.

Third, the control of incentives featured prominently in this dissertation. A study of a larger number of whistleblowing cases may shed light on how and the degree to which these influence individual whistleblower outcomes. This dissertation used analytical process tracing in whistleblower cases, but qualitative content analysis would also be a productive method if cases with both positive and negative outcomes could be included. The case characteristics of interest could include performance pay, career considerations, and the local context, such as control of training and perks.

Fourth, while potentially challenging, it would be a valuable exercise to review whistleblowing cases which have been processed by departments and oversight agencies (such as that of the PSIC). The goal of this review would be to identify points of friction contributing to delays and flawed findings, or, on the other hand, best practices that lead to timely and sound findings. A similar review has been

conducted in Canada following the forced retirement of the first Integrity Commissioner.

Fifth, there appears to be little agreement on the objectives of whistleblowing regimes and how they fit into integrity programs. A study into perspectives on how whistleblower programs should work and what the ideal outcomes should be may facilitate the development of theories of change, logic models, and performance indicators. This, in turn, would enable performance measurement of the regime. While this is likely to be an exercise characterized by strong opinions between different stakeholder groups, the current antagonism between some groups is unproductive. Dialogue, while difficult, could serve as both a learning experience and help build consensus. The approach in the WWTW research project could serve as a foundation to build upon. This could be divided into different phases to uncover biases, unquestioned assumptions and beliefs, preferred outcomes, and undetected obstacles. For example, a study using scenarios might be useful in examining understandings of what constitutes public interest wrongdoing, perhaps comparing the perspectives of the public, working-level public servants, and senior public servants.

Finally, other research could fill the gaps in the evaluation of whistleblowing regimes. None of the case countries implemented their regimes with knowledge of baseline levels of wrongdoing or organizational climate. This has been done via the WWTW research and U.S. Merit Systems Protection Board surveys. No jurisdiction tracks this data over time, instead substituting vague measures such as confidence in the ethics of superiors and perceived safety of other disclosure avenues (such as for harassment). A more comprehensive set of indicators would assist in evaluating regime success over time and may, moreover, have the benefit of identifying positive whistleblowing cases. This group is understudied. Monitoring perceived wrongdoing would likely require the support of senior public servants, who may be fearful of embarrassing results. The WWTW project, however, demonstrated that it is feasible and that it can have positive effects on the perceptions of whistleblowing.

7.4 Conclusion

The hypothesis forwarded in this thesis was that public sector whistleblowing regimes have been born out of scandal and crises of legitimacy, but the extent to which they are effectively implemented is dependent on ongoing bureaucratic and political support. This support is contingent upon the whistleblowing regime being consistent with existing institutional arrangements and incentives. Where these conditions do not exist, dysfunctional responses to whistleblowing will continue, to the detriment of all institutional actors and the public interest.

The first part of the hypothesis – that whistleblower regimes are borne of crisis – is partially supported. The whistleblowing regimes followed a similar pattern, but

a public sector crisis was not necessarily the trigger for legislation. In the U.K. case, the crises and scandals of most importance took place outside Whitehall. Some scandals did involve public sector actors, which, combined with neoliberal concerns about self-interested civil servants, contributed to the establishment of the Civil Service Code and avenues for disclosing breaches. PIDA (UK) was designed to address wrongdoing in all sectors, with Whitehall actors either unaware or dismissive of the implications in the civil service. In contrast, Canada's PSDPA was born of a crisis in the public service. Some provinces had scandals, but not on the scale of the Sponsorship Scandal, yet nonetheless adopted whistleblower legislation. Mirroring this, Australian states were first to have serious crises of legitimacy. The Commonwealth government adopted whistleblowing legislation much later, and less to restore legitimacy than to bolster it before an election. This suggests that there are two triggers to whistleblowing legislation – punctuated equilibrium after a crisis, or isomorphism to boost legitimacy. Further, the target of the legislation will be the sector in which legitimacy is challenged. In all cases, legislation appears more likely when governments are in some way vulnerable. This can be a minority government, before an impending election, or to fulfill an election promise and establish credibility. Political actors favour quick, contained solutions, while administrative actors are concerned about long-term implications to operations and their authority.

On the second part of the hypothesis, effective implementation does appear dependent on political and administrative support. Political support is fleeting, however, as political actors quickly shift their attention to different priorities. Interest in monitoring the regime may occasionally surface, such as after a new scandal, with opposition members most likely to advocate for improvements. Once in power, governing party actors neglect their regimes – despite evidence they are failing. Worse, they appear to support legislation and policies which penalize unauthorized disclosure to the public. Unsupportive administrative actors, on the other hand, appear to adopt several strategies. First, they resist such regimes before they are implemented, drawing on the language of the public service bargain as justification. Second, when possible, they attempt to design the regimes to conform to existing institutional arrangements. These channel disclosures through safe and controlled avenues and favour powerful organizations and actors over whistleblowers, and sometimes the public interest. Third, they resist after enactment with unenthusiastic implementation, affecting awareness, training, staffing, investigations, and the consequences for whistleblowers, wrongdoers, and the public interest. Fourth, they actively undermine the intent of the legislation when they aggressively attack whistleblowers who speak publicly, sending a signal to potential whistleblowers about consequences.

Regarding consistency with institutional arrangements, it appears that the Australian and Canadian regimes were designed to conform to local conventions and norms. Some of these should support safe internal and quasi-internal disclosure, but the evidence suggests that they remain uncertain and unlikely to arrest serious or systemic wrongdoing. However, the drafters may have been either unaware or uninterested in the institutional drift that has taken place in local Westminster conventions. The same can be said of the institutional environment (primarily related to the employment regime) and dominant norms within governments. Perhaps most significantly, external whistleblowing is strongly opposed and consistently punished. This is likely because such disclosures violate both theoretical and real institutional conventions and norms. Indeed, the language used in reprisals frequently refers to these conventions. Thus, the hypothesis is supported since internal disclosures can be controlled and constrained, quasi-internal disclosures are accepted where reputation and control are not threatened, and external disclosures cannot – and likely never will be – fully accepted.

The barriers to effectiveness can be addressed in several ways and using different legal approaches. Eliminating or reducing barriers to effectiveness will require a sincere effort to evaluate the regimes to identify shortcomings, informed by a full understanding of regime goals, institutional context, and best practices in whistleblowing regimes. Again, despite being the source of much misconduct, political actors will have to drive the initiative. This suggests that advocates should cultivate relationships with trusted politicians, develop models, and have solutions ready for moments in which the policy window opens.

References

- Ackland, R. (2020, April 10). The court case Australians are not allowed to know about: how national security is being used to bully citizens. *The Guardian*. <https://www.theguardian.com/commentisfree/2020/apr/11/the-court-case-australians-are-not-allowed-to-know-about-how-national-security-is-being-used-to-bully-citizens>
- Aged Care Act 1997 (Austl.). <https://www.legislation.gov.au/Details/C2021C00344>
- Agnaou and Public Prosecution Service of Canada et. al., 2019 PSDPT 3 (CanLII). <https://www.canlii.org/en/ca/psdpt/doc/2019/2019psdpt3/2019psdpt3.html>
- Agnaou v. Canada (Attorney General), 2015 FCA 29 (CanLII), [2016] 1 FCR 322. <https://www.canlii.org/en/ca/fca/doc/2015/2015fca29/2015fca29.html>
- Agnaou v. Canada (Attorney General), 2015 FCA 30 (CanLII). <https://www.canlii.org/en/ca/fca/doc/2015/2015fca30/2015fca30.html>
- Agnaou v. Canada (Attorney General), 2017 FC 338. <https://www.canlii.org/en/ca/fct/doc/2017/2017fc338/2017fc338.html>
- Agócs, C. (1997). Institutionalized resistance to organizational change: Denial, inaction and repression. *Journal of Business Ethics*, 16(9), 917–931.
- Aldrich, R. J., & Moran, C. R. (2019). 'Delayed disclosure': National security, whistle-blowers and the nature of secrecy. *Political Studies*, 67(2), 291–306. <https://doi.org/10.1177/0032321718764990>
- Alford, C. F. (2001). *Whistleblowers: Broken lives and organizational power*. Cornell University Press.
- Allard, T. (2014, March 4). Australia ordered to cease spying on East Timor by International Court of Justice. *Sydney Morning Herald*. <https://www.smh.com.au/politics/federal/australia-ordered-to-cease-spying-on-east-timor-by-international-court-of-justice-20140304-hvfya.html>
- Amir, E., Lazar, A., & Levi, S. (2018). The deterrent effect of whistleblowing on tax collections. *European Accounting Review*, 27(5), 939–954. <https://doi.org/10.1080/09638180.2018.1517606>
- An Act for improving the organization and increasing the efficiency of the Civil Service of Canada. (1857). In *Statutes of the Province of Canada passed in the Twentieth Year of the Reign of Queen Victoria and in the Third Session*

- of the Fifth Parliament of Canada* (pp. 72–81). Stewart Derbishire & George Desbarats.
<https://heinonline.org/HOL/P?h=hein.ssl/sscan0288&i=72&a=Y2FybGV0b24uY2E>
- Ananian-Welsh, R. (2020, May 22). Explainer: what did the High Court find in the Annika Smethurst v AFP case? *The Conversation*.
<https://theconversation.com/explainer-what-did-the-high-court-find-in-the-annika-smethurst-v-afp-case-136176>
- Anderson v. IMTT-Québec Inc., 2013 FCA 90 (Canlii).
<https://www.canlii.org/en/ca/fca/doc/2013/2013fca90/2013fca90.html>
- Annakin, L. (2011). *In the public interest or out of desperation? The experience of Australian whistleblowers reporting to accountability agencies* [University of Sydney]. <http://ses.library.usyd.edu.au/handle/2123/7904>
- Apaza, C. R., & Chang, Y. (2011). What makes whistleblowing effective. *Public Integrity*, 13(2), 113–130. <https://doi.org/10.2753/PIN1099-9922130202>
- Ashton, J. (2015). 15 years of whistleblowing protection under the Public Interest Disclosure Act 1998: Are we still shooting the messenger? *Industrial Law Journal*, 44(1), 29–52. <https://doi.org/10.1093/indlaw/dwu029>
- Attard, M. (2009, April 3). *Allan Kessing*. Australian Broadcasting Corporation.
<https://www.abc.net.au/local/stories/2009/04/03/2534187.htm>
- Attenborough, R., & Levine, J. E. (1977). *A bridge too far*. United Artists.
- Aucoin, P. (1995). *The new public management in Canada in comparative perspective*. IRPP.
- Aucoin, P. (2005). *Decision-making in government: The role of program evaluation*. <https://www.tbs-sct.gc.ca/cee/tools-outils/aucoin-eng.asp#sec2-1>
- Aucoin, P. (2006). The staffing and evaluation of Canadian deputy ministers in comparative Westminster Perspective: A proposal for reform. In *Restoring accountability: Research studies* (Vol. 1, pp. 297–336). Public Works and Government Services Canada.
<https://publications.gc.ca/site/eng/287362/publication.html>
- Aucoin, P. (2012). New political governance in Westminster systems: Impartial public administration and management performance at risk. *Governance*, 25(2), 177–199.
- Australia. Attorney-General's Department. (1991). *Review of Commonwealth*

criminal law: Final report.

https://parlinfo.aph.gov.au/parlInfo/download/publications/taledpapers/HST/P04814_1990-92/upload_pdf/4814_1990-92.pdf

Australia. Attorney-General's Department. (2020a). *Attorney-General's Department enterprise agreement 2019.*

https://www.ags.gov.au/sites/default/files/2020-09/AGD-Enterprise-Agreement-2019_0.PDF

Australia. Attorney-General's Department. (2020b). *Australian Government response to the Review of the Public Interest Disclosure Act 2013 by Mr Philip Moss AM.* <https://www.ag.gov.au/about-us/publications/government-response-review-public-interest-disclosure-act-2013>

Australia. Attorney-General's Department. (2021). *Commonwealth Integrity Commission consultation draft.*

<https://www.ag.gov.au/integrity/consultations/commonwealth-integrity-commission-consultation-draft>

Australia. Australian Government Solicitor. (1997). *Free speech and defamation* (No. 40; Legal Briefing). <https://www.ags.gov.au/publications/legal-briefing/br40.htm>

Australia. Australian National Audit Office. (2017). *Administration of the Freedom of Information Act* (8 2017-18; ANAO Report).

https://www.anao.gov.au/sites/default/files/ANAO_Report_2017-2018_8.pdf

Australia. Australian Public Service Commission. (2005). *Supporting ministers - Upholding the values.* <https://legacy.apsc.gov.au/supporting-ministers-upholding-values>

Australia. Australian Public Service Commission. (2014). *State of the service report 2013-14.* <https://legacy.apsc.gov.au/sites/default/files/sosr-2013-14-web.pdf>

Australia. Australian Public Service Commission. (2015). *Australian Public Service Commissioner annual report 2014-15, incorporating the annual report of the Merit Protection Commissioner.*

https://legacy.apsc.gov.au/sites/default/files/final_australian_public_service_commissioner_annual_report_2014-15.pdf

Australia. Australian Public Service Commission. (2017). *APS Values and Code of Conduct in practice.* <https://www.apsc.gov.au/publication/aps-values-and-code-conduct-practice>

- Australia. Australian Public Service Commission. (2018a). *Australian Public Service Commissioner annual report 2017-18, incorporating the annual report of the Merit Protection Commissioner*.
https://legacy.apsc.gov.au/sites/default/files/apsc_annual_report_2017-18_web2.pdf
- Australia. Australian Public Service Commission. (2018b). *Handling misconduct: A human resource manager's guide*.
<https://www.apsc.gov.au/publication/handling-misconduct-human-resource-managers-guide>
- Australia. Australian Public Service Commission. (2018c). *State of the service report 2017-18*. <https://apo.org.au/sites/default/files/resource-files/2015-11/apo-nid60438.pdf>
- Australia. Australian Public Service Commission. (2019a). *Australian Public Service Commissioner annual report 2018-19, incorporating the annual report of the Merit Protection Commissioner*.
https://www.apsc.gov.au/sites/default/files/2021-06/apsc_annual_report_2018-19_0.pdf
- Australia. Australian Public Service Commission. (2019b). *State of the service report 2018–19*. https://www.apsc.gov.au/sites/default/files/2021-02/aps_state_of_the_service_report_2019-20_0.pdf
- Australia. Australian Public Service Commission. (2020a). *Australian Public Service Commissioner annual report 2019 –20, incorporating the annual report of the Merit Protection Commissioner*.
https://www.apsc.gov.au/sites/default/files/2021-06/annual_report_2019-20.pdf
- Australia. Australian Public Service Commission. (2020b). *State of the service report 2019-20*. https://www.apsc.gov.au/sites/default/files/2021-02/aps_state_of_the_service_report_2019-20_0.pdf
- Australia. Australian Public Service Commission. (2021). *Performance bonus review: Interim report*. <https://www.apsc.gov.au/sites/default/files/2021-03/Interim Report - Senior Executive Performance Bonus Review.pdf>
- Australia. Commonwealth Ombudsman. (n.d.). *Information for disclosers*. Retrieved September 16, 2021, from <https://www.ombudsman.gov.au/Our-responsibilities/making-a-disclosure/information-for-disclosers>
- Australia. Commonwealth Ombudsman. (1997). *Professional reporting and internal witness protection in the Australian Federal Police - a review of*

practices and procedures. moz-extension://8bd5c092-21da-1a46-ad62-ba09f2002c88/enhanced-reader.html?openApp&pdf=https%3A%2F%2Fwww.ombudsman.gov.au%2F__data%2Fassets%2Fpdf_file%2F0012%2F26220%2Finvestigation_1997_01.pdf

Australia. Commonwealth Ombudsman. (2013). *Speaking up about wrongdoing: A guide to making a disclosure under the Public Interest Disclosure Act 2013*.

https://www.ombudsman.gov.au/__data/assets/pdf_file/0014/29030/speaking_up_about_wrongdoing.pdf

Australia. Commonwealth Ombudsman. (2015). *Annual report 2014-15*.

https://www.ombudsman.gov.au/__data/assets/pdf_file/0020/36533/commonwealth_ombudsman_annual_report_1415.pdf

Australia. Commonwealth Ombudsman. (2016a). *Agency guide to the Public Interest Disclosure Act 2013*.

https://www.ombudsman.gov.au/__data/assets/pdf_file/0020/37415/Agency_Guide_to_the_PID_Act_Version_2.pdf

Australia. Commonwealth Ombudsman. (2016b). *Annual report 2015-16*.

https://www.ombudsman.gov.au/__data/assets/pdf_file/0022/41584/ombudsman-annual-report15-16.pdf

Australia. Commonwealth Ombudsman. (2018). *Annual report 2017-18*.

https://www.ombudsman.gov.au/__data/assets/pdf_file/0031/89383/Commonwealth_Ombudsman_AnnualReport_2017-18.pdf

Australia. Commonwealth Ombudsman. (2019). *Annual report 2018-19*.

https://www.ombudsman.gov.au/__data/assets/pdf_file/0026/107891/Commonwealth-Ombudsman-Annual-Report-2018-19.pdf

Australia. Commonwealth Ombudsman. (2020). *Annual report 2019-20*.

https://www.ombudsman.gov.au/__data/assets/pdf_file/0009/112032/Commonwealth-Ombudsman-2019-20-Annual-Report.pdf

Australia. Commonwealth Ombudsman. (2021). *Managing unreasonable persistence*.

https://www.ombudsman.gov.au/__data/assets/pdf_file/0020/112466/Commonwealth-Ombudsman-Insights-Managing-Unreasonable-Persistence.pdf

Australia. Department of Foreign Affairs and Trade. (2019). *Ethics, integrity and professional standards policy manual*. <https://www.dfat.gov.au/about-us/publications/corporate/ethics-integrity-and-professional-standards-policy->

manual

- Australia. Department of the Prime Minister and Cabinet. (1996). *A guide on key elements of ministerial responsibility*.
<https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id:%22media/pressrel/NEV20%22>
- Australia. Department of the Prime Minister and Cabinet. (2015). *Government guidelines for official witnesses before Parliamentary committees and related matters*. Department of the Prime Minister and Cabinet.
<https://www.pmc.gov.au/resource-centre/government/government-guidelines-official-witnesses-parliamentary-committees-and-related-matters-february-2015>
- Australia. Department of the Prime Minister and Cabinet. (2017). *Procedures for determining breaches of the APS Code of Conduct and deciding sanctions*.
<https://pmc.gov.au/resource-centre/government/procedures-determining-breaches-aps-code-conduct-and-imposition-sanctions>
- Australia. Department of the Prime Minister and Cabinet. (2018a). *Public Interest Disclosure Procedures*. <https://pmc.gov.au/resource-centre/government/public-interest-disclosure-procedure>
- Australia. Department of the Prime Minister and Cabinet. (2018b). *Statement of ministerial standards*.
<https://www.pmc.gov.au/sites/default/files/publications/statement-ministerial-standards.pdf>
- Australia. Department of the Prime Minister and Cabinet. (2019). *Our public service our future - Independent review of the Australian Public Service*.
<https://pmc.gov.au/sites/default/files/publications/independent-review-aps.pdf>
- Australia. House of Representatives Standing Committee on Legal and Constitutional Affairs. (2004). *Inquiry into crime in the community: Victims, offenders, and fear of crime* (Vol. 2).
https://www.aph.gov.au/parliamentary_business/committees/house_of_representatives_committees?url=laca/crimeinthecommunity/report.htm
- Australia. House of Representatives Standing Committee on Legal and Constitutional Affairs. (2009). *Whistleblower protection: A comprehensive scheme for the Commonwealth public sector*.
<https://apo.org.au/sites/default/files/resource-files/2009-02/apo-nid3143.pdf>
- Australia. House of Representatives Standing Committee on Legal and

- Constitutional Affairs. (2010). *Whistleblower protection: A comprehensive scheme for the Commonwealth public sector: Government response*.
https://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=laca/whistleblowing/report/governmentresponse.pdf
- Australia. House of Representatives Standing Committee on Social Policy and Legal Affairs. (2013). *Advisory report: Public Interest Disclosure (Whistleblower Protection) Bill 2012 / Public Interest Disclosure (Whistleblower Protection) (Consequential Amendments) Bill 2012 / Public Interest Disclosure Bill 2013*.
https://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=spla/bill_2013_public_interest_disclosure/report.htm
- Australia. Joint Committee on Corporations and Financial Services. (2017). *Whistleblower Protections* (Issue September).
- Australia. Joint Committee on the National Crime Authority. (1991). *Who is to guard the guards? An evaluation of the National Crime Authority*.
https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Former_Committees/acc/completed_inquiries/pre1996/guards/report/index
- Australia. Royal Commission into Institutional Responses to Child Sexual Abuse. (2017). *Final report*. <https://www.childabuseroyalcommission.gov.au/final-report>
- Australia. Royal Commission on Australian Government Administration. (1976). *Report*. Australian Government Publishing Service.
<https://apo.org.au/sites/default/files/resource-files/1976-08/apo-nid34221.pdf>
- Australia. Senate Economics Legislation Committee. (2020). *Performance of the Inspector-General of Taxation*.
https://parlinfo.aph.gov.au/parlInfo/download/committees/reportsen/024347/toc_pdf/PerformanceoftheInspector-GeneralofTaxation.pdf;fileType=application%2Fpdf
- Australia. Senate Select Committee into the Establishment of a National Integrity Commission. (2017). *Report*. Senate Printing Unit.
https://www.aph.gov.au/select_integritycommission
- Australia. Senate Select Committee on a Certain Maritime Incident. (2002). *Select Committee on a Certain Maritime Incident report*.
https://www.aph.gov.au/binaries/senate/committee/maritime_incident_ctte/report/report.pdf

- Australia. Senate Select Committee on Public Interest Whistleblowing. (1994). *In the public interest*.
https://www.aph.gov.au/binaries/senate/committee/history/uwb_ctte/pi/report.pdf
- Australia. Senate Select Committee on Unresolved Whistleblower Cases. (1995). *The public interest revisited*. Senate Printing Unit.
https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Significant_Reports/uwbctte/pir/index
- Australia. Senate Standing Committees on Environment and Communications. (2021). *Inquiry into press freedom: Report*.
https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Environment_and_Communications/PressFreedom/Report
- Australian Border Force Act 2015.
<https://www.legislation.gov.au/Details/C2017C00354>
- Australian Security Intelligence Organisation Act 1979.
<https://www.legislation.gov.au/Details/C2019C00240%0Ahttps://www.asio.gov.au/index.html>
- Aylin, P., Bottle, A., Jarman, B., & Elliott, P. (2004). Paediatric cardiac surgical mortality in England after Bristol: Descriptive analysis of hospital episode statistics 1991-2002. *BMJ (Clinical Research Ed.)*, 329(7470), 825–830.
<https://doi.org/10.1136/bmj.329.7470.825>
- Azzi, S. (2014). *Commission of inquiry into the sponsorship program and advertising activities*. The Canadian Encyclopedia.
<https://www.thecanadianencyclopedia.ca/en/article/sponsorship-program-and-advertising-activities-gomery-inquiry-commission-of-inquiry-into>
- Bach, S. (2003). *Platypus and Parliament: The Australian Senate in theory and practice*. The Department of the Senate. https://www.aph.gov.au/-/media/05_About_Parliament/52_Sen/524_Research_and_education/Platypus/report.pdf?la=en&hash=36C2113FC56B11562B0FF3CC92A876D404CC5CFF
- Bagehot, W. (1867). *The English Constitution*. Chapman and Hall.
<https://babel.hathitrust.org/cgi/pt?id=nyp.33433081652806&view=1up&seq=7>
- Balakrishnan, A. (2019). *Rewards rise for informants blowing whistle on offshore federal tax non-compliance*. Canadian Lawyer.
<https://www.canadianlawyermag.com/practice-areas/tax/rewards-rise-for->

informants-blowing-whistle-on-offshore-federal-tax-non-compliance/303592

- Ballan, E. J. (2017). Protecting whistleblowing (and not just whistleblowers). *Michigan Law Review*, 116(3), 475–500.
<https://heinonline.org/HOL/P?h=hein.journals/mlr116&i=505&a=Y2FybGV0b24uY2E>
- Ballina Shire Council v. Ringland (1994) 33 NSWLR 680 (Austl.).
<https://www.caselaw.nsw.gov.au/decision/549f9ac83004262463b14b7c>
- Banisar, D. (2011). Whistleblowing: International standards and developments. In I. Sandoval (Ed.), *Corruption and Transparency: Debating the Frontiers between State, Market, and Society* (pp. 1–115). World Bank, Institute for Social Research, UNAM.
http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1753180
- Barker, A., & Wilson, G. K. (1997). Whitehall's disobedient servants? Senior officials' potential resistance to ministers in British government departments. *British Journal of Political Science*, 27(2), 223–246.
<https://doi.org/10.1017/S0007123497000124>
- Bartlett, D. M. C. (1998). Corruption and lying in a parliamentary democracy: British politics at the end of the twentieth century. *Crime, Law, and Social Change*, 30(3), 205–235. <https://doi.org/10.1023/A:1008338011176>
- Bates, R. H., Greif, A., Levi, M., & Rosenthal, J.-L. (1998). *Analytic narratives*. Princeton University Press.
- BBC News. (2019, June 4). Australian journalist's home raided over spying report. *BBC News*. <https://www.bbc.com/news/world-australia-48511217>
- Beach, D., & Pedersen, R. B. (2016). Causal case study methods. In *Causal Case Study Methods*. University of Michigan Press.
- Becker, G. S. (1968). Crime and punishment: An economic approach. *Journal of Political Economy*, 76(2), 169–217.
<https://doi.org/10.1002/9780470752135.ch25>
- Bentham, J. (2000). *An introduction to the principles of morals and legislation*. Batoche Books.
<https://socialsciences.mcmaster.ca/econ/ugcm/3il3/bentham/morals.pdf>
- Berg-Schlosser, D., & De Meur, G. (2009). Comparative research design: Case and variable selection. In B. Rihoux & C. C. Ragin (Eds.), *Configurational comparative methods: qualitative comparative analysis (QCA) and related techniques* (pp. 19–32). SAGE Publications Inc.

- Berry, B. (2004). Organizational culture: A framework and strategies for facilitating employee whistleblowing. *Employee Responsibilities and Rights Journal*, 16(1), 1–11. <https://doi.org/10.1023/B:ERRJ.0000017516.40437.b1>
- Bhal, K. T., & Dadhich, A. (2011). Impact of ethical leadership and leader-member exchange on whistle blowing: The moderating impact of the moral intensity of the issue. *Journal of Business Ethics*, 103(3), 485–496. <https://doi.org/10.1007/s10551-011-0876-z>
- Blueprint for Free Speech. (2020). *Whistleblower protection compliance tool*. <https://tool.blueprintforfreespeech.net/>
- Bob Thompson. (2013, December 13). Blowing the whistle on Chile's 1973 brutality. *National Post*. <https://nationalpost.com/opinion/bob-thomson-blowing-the-whistle-on-chiles-1973-brutality>
- Bok, S. (1980). Whistle-blowing and professional responsibilities. In S. Callahan & S. Bok (Eds.), *Ethics teaching in higher education* (pp. 277–295). Plenum Press.
- Borrie, G., & Dehn, G. (2001). *Whistleblowing: The new perspective*. <http://iacconference.org.s3-website-eu-west-1.amazonaws.com/documents/cs60a.pdf>
- Bourgault-Côté, G., & Buzzetti, H. (2013, February 25). Assurance-emploi - Quotas : Finley a menti. *Le Devoir*. <http://www.ledevoir.com/politique/canada/371788/quotas-finley-a-menti>
- Bourgault, J. (2006). The deputy minister's role in the Government of Canada: His responsibility and his accountability. In *Restoring accountability: Research studies* (Vol. 1, pp. 253–296). Public Works and Government Services Canada. <https://publications.gc.ca/site/eng/287362/publication.html>
- Bourgault, J. (2011). Canada's senior public service and the typology of bargains: From the hierarchy of senior civil servants to a community of "controlled" entrepreneurs. *Public Policy and Administration*, 26(2), 253–275. <https://doi.org/10.1177/0952076710391517>
- Boxenbaum, E., & Jonsson, S. (2012). Isomorphism, diffusion and decoupling. *The SAGE Handbook of Organizational Institutionalism*, November 2015, 78–98. <https://doi.org/10.4135/9781849200387.n3>
- Boyd, M. (2020, February 29). Home Office boss in Priti Patel "bullying" row quits after "vicious campaign against him." *Mirror Online*. <https://www.mirror.co.uk/news/politics/breaking-philip-rutnam-priti-patel->

21602525

- Boydell, C. A. (2018). *Best practices in whistleblower legislation: An analysis of federal and provincial legislation relevant to disclosures of wrongdoing in British Columbia*. https://fipa.bc.ca/wordpress/wp-content/uploads/2018/11/FIPA_Whistleblower_Paper_web.pdf
- Brenton, S. (2012). Ministers and scandals. In K. Dowding & C. Lewis (Eds.), *Ministerial careers and accountability in the Australian Commonwealth government* (pp. 153–176). ANU E Press. <http://doi.org/10.22459/MCAACG.09.2012>
- Brenton, S. (2015). Minority and multi-party government. In B. Galligan & S. Brenton (Eds.), *Constitutional conventions in Westminster systems: Controversies, changes and challenges* (pp. 116–136). Cambridge University Press.
- Brock, K. L., & Shepherd, R. P. (2022). The Trudeau government and GIC appointments in Canada (in press). *International Journal of Public Sector Management*. <https://www.ippapublicpolicy.org/file/paper/5d1161f63c14b.pdf>
- Broderick, C. O. (2007). Qui tam provisions and the public interest: An empirical analysis. *Columbia Law Review*, 107(4), 949–1001. <http://www.jstor.org/stable/40041725>
- Bron, I. (2022). Institutional barriers to whistleblower protection: The Canadian experience (in press). In C. Grasso (Ed.), *Whistleblowers: Voices of justice*. Springer International.
- Bron, I., & Hutton, D. (2022). *Evaluation criteria for protection of whistleblowers: A guide for legislation and policy*. [https://cfe.ryerson.ca/sites/default/files/Evaluation Criteria for Whistleblowing Legislation v5.pdf](https://cfe.ryerson.ca/sites/default/files/Evaluation%20Criteria%20for%20Whistleblowing%20Legislation%20v5.pdf)
- Bron v. Canada (Attorney General), 2010 ONCA 71 (CanLII). Retrieved December 16, 2019, from <https://www.canlii.org/en/on/onca/doc/2010/2010onca71/2010onca71.html>
- Brothers of Charity Services Merseyside v. Eeady-Cole [2002] UKEAT 0661_00_2401 (24 January 2002) (U.K.). http://www.bailii.org/uk/cases/UKEAT/2002/0661_00_2401.html
- Brown, A. J. (2006). *Public interest disclosure legislation in Australia: Towards the next generation*. <https://www.whistleblowing.com.au/information/documents/ajb-pidla1006->

fullreport-final.pdf

- Brown, A. J. (Ed.). (2008). *Whistleblowing in the Australian public sector: Enhancing the theory and practice of internal witness management in public sector organisations*. ANU E-Press. <http://doi.org/10.22459/WAPS.09/2008>
- Brown, A. J. (2013). Towards “ideal” whistleblowing legislation? Some lessons from recent Australian experience. *E-Journal of International and Comparative Labour Studies*, 2(3), 4–32.
http://ejcls.adapt.it/index.php/ejcls_adapt/issue/view/12
- Brown, A. J. (Ed.). (2018). *Whistleblowing: New rules, new policies, new vision (work-in-progress research from the Whistling While they Work 2 project)*. Griffith University. <http://www.whistlingwhiletheywork.edu.au/wp-content/uploads/2018/11/Whistleblowing.-New-Rules-New-Policies-New-Vision.-Working-Papers-Final-13.11.18.pdf>
- Brown, A. J. (2019, August 12). *From Richard Boyle and Witness K to media raids: It's time whistleblowers had better protection*. The Conversation. <https://theconversation.com/from-richard-boyle-and-witness-k-to-media-raids-its-time-whistleblowers-had-better-protection-121555>
- Brown, A. J., & Donkin, M. (2008). Introduction. In A. J. Brown (Ed.), *Whistleblowing in the Australian public sector: Enhancing the theory and practice of internal witness management in public sector organisations* (pp. 1–22). ANU E-Press. <http://doi.org/10.22459/WAPS.09/2008>
- Brown, A. J., Lawrence, S., Olsen, J., Rosemann, L., Hall, K., Tsahuridu, E., Wheeler, C., Macaulay, M., Smith, R., & Brough, P. (2019). *Clean as a whistle: A five step guide to better whistleblowing policy and practice in business and government*. <https://doi.org/10.1093/nq/s4-l.11.256-a>
- Brown, A. J., Lewis, D., Moberly, R., & Vandekerckhove, W. (Eds.). (2014). *International handbook on whistleblowing research*. Edward Elgar Publishing.
- Brown, A. J., Mazurski, E., & Olsen, J. (2008). The incidence and significance of whistleblowing. In A. J. Brown (Ed.), *Whistleblowing in the Australian public sector: Enhancing the theory and practice of internal witness management in public sector organisations* (pp. 25–52). ANU E-Press.
<http://doi.org/10.22459/WAPS.09/2008>
- Brown, A. J., Meyer, D. P., Wheeler, C., & Zuckerman, J. (2014). Whistleblower support in practice: Towards an integrated research model. In A. J. Brown, D. Lewis, R. Moberly, & W. Vandekerckhove (Eds.), *International handbook*

- on whistleblowing research* (pp. 457–494). Edward Elgar Publishing.
- Brown, A. J., & Olsen, J. (2008a). Internal witness support: The unmet challenge. In A. J. Brown (Ed.), *Whistleblowing in the Australian public sector: Enhancing the theory and practice of internal witness management in public sector organisations*. ANU E-Press. <http://doi.org/10.22459/WAPS.09/2008>
- Brown, A. J., & Olsen, J. (2008b). Whistleblower mistreatment: Identifying the risks. In A. J. Brown (Ed.), *Whistleblowing in the Australian public sector: Enhancing the theory and practice of internal witness management in public sector organisations* (pp. 137–161). ANU E-Press. <http://doi.org/10.22459/WAPS.09/2008>
- Brown, A. J., Vandekerckhove, W., & Dreyfus, S. (2014). The relationship between transparency, whistleblowing, and public trust. In P. Ala'i & R. G. Vaughn (Eds.), *Research handbook on transparency* (pp. 30–58). Edward Elgar.
- Brown, A. J., & Wheeler, C. (2008). Project findings: An agenda for action. In A. J. Brown (Ed.), *Whistleblowing in the Australian public sector: Enhancing the theory and practice of internal witness management in public sector organisations* (pp. 289–312). ANU E-Press. <http://doi.org/10.22459/WAPS.09/2008>
- Brown, A. J., Wolfe, S., Worth, M., & Dreyfus, S. (2014). *Whistleblower protection rules in G20 countries: The next action plan* (Issue July). Transparency International Australia. <https://news.griffith.edu.au/wp-content/uploads/2014/06/Whistleblower-Protection-Rules-in-G20-Countries-Action-Plan-June-2014.pdf>
- Bryce, P. H. (1907). *Report on the Indian Schools of Manitoba and the North-West Territories*. <http://peel.library.ualberta.ca/bibliography/3024.html>
- Bryden, J. (2011, March 4). Integrity commissioner Christiane Ouimet got \$500K payout. *Toronto Star*. https://www.thestar.com/news/canada/2011/03/04/integrity_commissioner_christiane_ouimet_got_500k_payout.html
- Bryne, E. (2021, July 3). Court documents shed new light on man behind moniker “Witness K” and how he met lawyer Bernard Collaery. *ABC News*. <https://www.abc.net.au/news/2021-07-04/court-document-witness-k-bernard-collaery-cleared-public-release/100263168>
- Buchanan, J. M., & Tullock, G. (1974). *The calculus of consent: Logical foundations of constitutional democracy*. University of Michigan Press.

- Bucy, P. H. (2003). Information as a commodity in the regulatory world. *Houston Law Review*, 39(4), 905–978.
http://www.houstonlawreview.org/archive/downloads/39-4_pdf/Bucy.pdf
- Butler, D. (1996). *Ministerial accountability: Lessons of the Scott report*.
https://www.aph.gov.au/About_Parliament/Senate/Powers_practice_n_procedures/pops/~link.aspx?_id=8C1E033E16B64FC2A2CC44A9D078EF02&_z=z
- Caiden, G. E. (1988). The problem of ensuring the public accountability of public officials. In J. G. Jabbara & O. P. Dwivedi (Eds.), *Public service accountability: A comparative perspective* (pp. 17–38). Kumerian.
- Caillier, J. G. (2015). Transformational leadership and whistle-blowing attitudes: Is this relationship mediated by organizational commitment and public service motivation? *American Review of Public Administration*, 45(4), 458–475.
- Callahan, E. S., & Dworkin, T. M. (1992). Do good and get rich: Financial incentives for whistleblowing and the False Claims Act. *Villanova Law Review*, 37(2), 273–336. <http://digitalcommons.law.villanova.edu/vlr>
- Callahan, E. S., & Dworkin, T. M. (2000). The state of whistleblower protection. *American Business Law Journal*, 38(1), 99–175.
<https://doi.org/10.1111/j.1744-1714.2000.tb00286.x>
- Callahan, E. S., Dworkin, T. M., Fort, T. L., & Schipani, C. A. (2002). Integrating trends in whistleblowing and corporate governance: Promoting organizational effectiveness, societal responsibility, and employee empowerment. *American Business Law Journal*, 40(1), 177–215.
<https://doi.org/10.1111/j.1744-1714.2002.tb00913.x>
- Calland, R., & Dehn, G. (2004). Whistleblowing around the world: The state of the art. In R. Calland & G. Dehn (Eds.), *Whistleblowing around the world: Law, culture and practice* (pp. 2–20). ODAC & PCaW.
- Campbell, B. (2015). *Lac-Mégantic loose ends and unanswered questions* (Issue January). Canadian Centre for Policy Alternatives.
<https://www.policyalternatives.ca/publications/reports/willful-blindness>
- Campbell, C., & Wilson, G. (1995). *The end of Whitehall: Death of a paradigm?* Blackwell.
- Canada. Canada Centre of Excellence in Evaluation. (2010). *Supporting effective evaluations: A guide to developing performance measurement strategies*.

<https://www.canada.ca/en/treasury-board-secretariat/services/audit-evaluation/centre-excellence-evaluation/guide-developing-performance-measurement-strategies.html>

Canada. Canadian Centre for Management Development. Task Force on Public Service Values and Ethics. (1996). *A strong foundation: Report of the task force on public service values and ethics*. Canadian Centre for Management Development. <http://publications.gc.ca/collections/Collection/SC94-72-1996E.pdf>

Canada. Commission of Inquiry into Certain Allegations Respecting Business and Financial Dealings Between Karlheinz Schreiber and the Right Honourable Brian Mulroney. (2010). *Report* (Vol. 1). Public Works and Government Services Canada. <https://publications.gc.ca/site/eng/9.693369/publication.html>

Canada. Commission of Inquiry into the Sponsorship Program and Advertising Activities. (2005a). *Who is responsible: Fact finding report* (Vol. 2). Public Works and Government Services Canada. <https://publications.gc.ca/site/eng/9.687893/publication.html>

Canada. Commission of Inquiry into the Sponsorship Program and Advertising Activities. (2005b). *Who is responsible: Forensic audit*. Public Works and Government Services Canada. <https://publications.gc.ca/site/eng/9.687891/publication.html>

Canada. Commission of Inquiry into the Sponsorship Program and Advertising Activities. (2005c). *Who is responsible? Summary*. Public Works and Government Services Canada. <https://publications.gc.ca/site/eng/9.687888/publication.html>

Canada. House of Commons. (2021). *Standing Orders of the House of Commons*. Public Works and Government Services Canada Publishing and Depository Services. <https://www.ourcommons.ca/About/StandingOrders/Index-e.htm>

Canada. House of Commons Standing Committee on Government Operations and Estimates. (2017). *Strengthening the protection of the public interest within the Public Servants Disclosure Protection Act: Report of the Standing Committee on Government Operations and Estimates*. 42nd Parliament, 1st Session. Report 9. <http://www.ourcommons.ca/Content/Committee/421/OGGO/Reports/RP9055222/oggorp09/oggorp09-e.pdf>

Canada. Office of the Auditor General. (2003a). Chapter 3: The Sponsorship

- Program. In *2003 November report of the Auditor General of Canada to the House of Commons: Government-wide audit of sponsorship, advertising, and public opinion research*. Office of the Auditor General.
https://publications.gc.ca/collections/collection_2012/bvg-oag/FA1-2003-2-10b-eng.pdf
- Canada. Office of the Auditor General. (2003b). Chapter 4: Advertising activities. In *2003 November report of the Auditor General of Canada to the House of Commons: Government-wide audit of sponsorship, advertising, and public opinion research*. Office of the Auditor General.
https://publications.gc.ca/collections/collection_2012/bvg-oag/FA1-2003-2-10c-eng.pdf
- Canada. Office of the Auditor General. (2009). Chapter 1: Evaluating the effectiveness of programs. In *2009 fall report of the Auditor General of Canada to the House of Commons*. Office of the Auditor General.
<https://publications.gc.ca/site/eng/9.574258/publication.html>
- Canada. Office of the Auditor General. (2010). *The Public Sector Integrity Commissioner of Canada*. Office of the Auditor General.
https://publications.gc.ca/collections/collection_2011/bvg-oag/FA3-66-2010-eng.pdf
- Canada. Office of the Auditor General. (2014). *2014 April Report of the Auditor General of Canada under the Public Servants Disclosure Protection Act*. Office of the Auditor General. https://www.oag-bvg.gc.ca/internet/English/parl_oag_201404_e_39215.html
- Canada. Office of the Auditor General. (2018). Report 1 - Building and implementing the Phoenix pay system. In *2018 spring Reports of the Auditor General of Canada to the Parliament of Canada*. Office of the Auditor General. <https://publications.gc.ca/site/eng/9.855364/publication.html>
- Canada. Office of the Public Sector Integrity Commissioner. (n.d.). *Referrals to the Tribunal*. Retrieved June 3, 2021, from <https://psic-ispc.gc.ca/index.php/en/referrals-tribunal>
- Canada. Office of the Public Sector Integrity Commissioner. (2021). *2020–21 annual report*. https://psic-ispc.gc.ca/sites/default/files/2021-06/2020-21_annual_report_-_web_en.pdf
- Canada. Privy Council Office. (1962). *Report*. Queen's Printer.
<https://publications.gc.ca/site/eng/471934/publication.html>
- Canada. Privy Council Office. (1977). *Responsibility in the Constitution*.

<https://www.canada.ca/en/privy-council/services/publications/responsibility-constitution.html>

Canada. Privy Council Office. (1990, December). *Notes on the responsibilities of public servants in relation to Parliamentary committees*.
<https://www.canada.ca/en/privy-council/services/publications/notes-responsibilities-public-servants-relation-parliamentary-committees.html>

Canada. Privy Council Office. (1999). *Guide book for heads of agencies: Operations, structures and responsibilities in the federal government*.
<https://www.canada.ca/en/privy-council/services/publications/guide-book-heads-agencies-operations-structures-responsibilities-federal-government.html>

Canada. Privy Council Office. (2003). *Governing responsibly: A guide for ministers and ministers of state*.
<http://publications.gc.ca/collections/Collection/CP22-73-2003E.pdf>

Canada. Privy Council Office. (2015). *Open and accountable government*.
<http://pm.gc.ca/eng/news/2015/11/27/open-and-accountable-government>

Canada. Privy Council Office. (2017). *Guidance for deputy ministers*.
<https://www.canada.ca/en/privy-council/services/publications/guidance-deputy-ministers.html>

Canada. Privy Council Office. (2021). *Governor in Council appointments: Frequently asked questions*. Governor in Council Appointments.
<https://www.canada.ca/en/privy-council/programs/appointments/governor-council-appointments/frequently-asked-questions.html>

Canada. Public Service Integrity Officer. (2003). *2002-2003 annual report to Parliament*. Public Works and Government Services Canada.
<https://publications.gc.ca/site/eng/342533/publication.html>

Canada. Treasury Board Secretariat. (2001). *Policy on the internal disclosure of information concerning wrongdoing in the workplace*. https://www.tbs-sct.gc.ca/pubs_pol/hrpubs/tb_851/idicww-diicaftpr-eng.asp?format=print

Canada. Treasury Board Secretariat. (2003). *Values and ethics code for the public service*. Treasury Board of Canada Secretariat. <https://doi.org/BT22-89/2012E-PDF>

Canada. Treasury Board Secretariat. (2005). *Meeting the expectations of Canadians: Review of the responsibilities and accountabilities of ministers and senior officials*. <https://www.tbs-sct.gc.ca/report/rev-exa/ar-er-eng.pdf>

- Canada. Treasury Board Secretariat. (2009). *Framework for the management of compliance*. <https://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=17151>
- Canada. Treasury Board Secretariat. (2011a). *Duty of loyalty*. <https://www.canada.ca/en/treasury-board-secretariat/services/values-ethics/code/duty-loyalty.html>
- Canada. Treasury Board Secretariat. (2011b). *Values and ethics code for the public sector*. Treasury Board of Canada Secretariat. <https://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=25049>
- Canada. Treasury Board Secretariat. (2015). 2014 public service employee survey. In *Canada.ca*. <https://www.canada.ca/en/treasury-board-secretariat/services/innovation/public-service-employee-survey/2014-public-service-employee-survey.html>
- Canada. Treasury Board Secretariat. (2019a). *Policy on government security*. <https://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=16578>
- Canada. Treasury Board Secretariat. (2019b). *Results of the performance management program for executives (EXPMP) for 2017-2018*. Canada.Ca. <https://www.canada.ca/en/treasury-board-secretariat/services/performance-talent-management/performance-management-program-executives/results-performance-management-program-executives-2017-2018.html>
- Canada. Treasury Board Secretariat. (2021a). *2020-2021 annual report on the Public Servants Disclosure Protection Act*. https://publications.gc.ca/collections/collection_2021/sct-tbs/BT1-18-2021-eng.pdf
- Canada. Treasury Board Secretariat. (2021b). 2020 public service employee survey. *Canada.Ca*. <https://www.canada.ca/en/treasury-board-secretariat/services/innovation/public-service-employee-survey/2020.html>
- Canadian Press. (1986, March 4). Federal ministers to be stopped from overruling food inspectors: FIN Edition. *Toronto Star*, A10.
- Canadian Press. (2012, June 5). *Fake Sun TV citizenship ceremony explanations in dispute*. CBC News. <https://www.cbc.ca/news/politics/fake-sun-tv-citizenship-ceremony-explanations-in-dispute-1.1194696>
- Canadian Press. (2013, February 25). Tories set “targets,” not quotas for EI fraud. *CBC News*. <http://www.cbc.ca/news/politics/tories-set-targets-not-quotas-for-ei-fraud-1.1330294>
- Canadian Press. (2016, September 16). Head of Statistics Canada resigns, cites

- loss of independence. *IPolitics*. <https://ipolitics.ca/2016/09/16/head-of-statistics-canada-resigns-cites-loss-of-independence/>
- Canadian Standards Association. (2016). *EXP01-16 Whistleblowing systems - A guide*. CSA Group.
- Carr, F. (1999). The public service ethos: Decline and renewal? *Public Policy and Administration*, 14(4), 1–16. <https://doi.org/10.1177/095207679901400401>
- Carson, J. (2006). The need for whistleblowing legislation in Canada: A critical defence defining whistleblowing. *Canadian Political Science Association Conference*.
- Cavico, F. J. (2003). Private sector whistleblowing and the employment-at-will doctrine: A comparative legal, ethical, and pragmatic analysis. *South Texas Law Review*, 45(3), 543–646. <https://heinonline.org/HOL/P?h=hein.journals/stexlr45&i=555&a=Y2FybGV0b24uY2E>
- CBC News. (2006). *Indepth: Federal sponsorship scandal*. CBC News Online. <https://www.cbc.ca/news2/background/groupaction/>
- CBC News. (2008, January 16). *Nuclear safety watchdog head fired for “lack of leadership”: minister*. CBC News Online. <https://www.cbc.ca/news/canada/nuclear-safety-watchdog-head-fired-for-lack-of-leadership-minister-1.748815>
- Chapman, R. A. (1988). *Ethics in the British civil service*. Routledge.
- Chatterjee, S. (2021, February 1). *Why Australia Should Drop Charges Against David McBride | LSE Human Rights*. LSE Human Rights. <https://blogs.lse.ac.uk/humanrights/2021/02/01/why-australia-should-drop-charges-against-david-mcbride-for-whistleblowing-afghan-war-crimes/>
- Checkel, J. T. (2006). Tracing causal mechanisms. *International Studies Review*, 8(2), 362–370. https://doi.org/10.1111/j.1468-2486.2006.00598_2.x
- Chêne, M. (2009). *Good practice in whistleblowing protection legislation*. <http://www.u4.no/publications/good-practice-in-whistleblowing-protection-legislation-wpl/>
- Chopra, S. (2009). *Corrupt to the core: Memoirs of a Health Canada whistleblower*. KOS Publishing Inc.
- CJFE. (2013). *Bob Thompson (Canada)*. https://www.cjfe.org/bob_thomson_canada

- Clark, D. (1993). *Open government*.
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/271975/2290.pdf
- Clement v. Australian Bureau of Statistics [2016] FCA 948.
<http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FCA/2016/948.html>
- Cohen-Lyons, J., & Morley, H. (2012). Whistleblowing in the public sector: A balance of rights and interests. *Public Sector Digest*, 16–18.
https://hicksmorley.com/wp-content/uploads/2016/04/Whistleblowing_in_the_public_sector_031912.pdf
- Collier, D. (2011). Understanding process tracing. *Political Science and Politics*, 44(04), 823–830. <https://doi.org/10.1017/S1049096511001429>
- Colvin, N., Galizzi, B., & Nad, V. (2020). *Getting whistleblower protection right: A practical guide to transposing the EU Directive*.
https://static1.squarespace.com/static/5e249291de6f0056c7b1099b/t/5f1edd63bfed80442edfb3d/1595858431000/BP_WHISTLEBLOWER_DIRECTIVE_REPORT_DIGITAL_PRINT_27JULY2020.pdf
- Comcare v. Banerji [2019] HCA 23 (Austl.). <http://www6.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/HCA/2019/23.html>
- Commonwealth Public Service Act 1902 (Austl.).
<https://www.legislation.gov.au/Details/C1902A00005>
- Commonwealth Public Service Act 1922 (Austl.).
<https://www.legislation.gov.au/Details/C1922A00021>
- Constitution Act, 1982, Schedule B to the Canada Act 1982 (U.K.), 1982, c. 11, (1982). <https://laws-lois.justice.gc.ca/eng/const/index.html>
- Constitutional Reform and Governance Act 2010 (U.K.).
<https://www.legislation.gov.uk/ukpga/2010/25>
- Corbett, S. (2006). Ministerial responsibility and the Financial Administration Act: The constitutional obligation to account for government spending. In *Restoring accountability: Research studies* (Vol. 3, pp. 231–295). Public Works and Government Services Canada.
<https://publications.gc.ca/site/eng/9.688115/publication.html>
- Corporations Act 2001 (Austl.).
<https://www.legislation.gov.au/Details/C2019C00216>
- Cortell, A. P., & Peterson, S. (1999). *Altered states: Explaining domestic*

- institutional change. *British Journal of Political Science*, 29(1), 177–203.
<https://doi.org/10.1017/S0007123499000083>
- Council of Europe. (1950). *European Convention on Human Rights*. Council of Europe. https://www.echr.coe.int/documents/convention_eng.pdf
- Cox, L. (2018). *The bullying and harassment of House of Commons staff: Independent inquiry report* (Issue October).
<https://www.cloisters.com/images/Bullying-Harassment-HOC-Staff-Oct-2018.pdf>
- Crimes Act 1914 (Austl.). <https://www.legislation.gov.au/Details/C2022C00059>
- Criminal Code, R.S.C. 1985, c. C-46 (Can.). <https://laws-lois.justice.gc.ca/eng/acts/c-46/index.html>
- Criminal Code Act 1995 (Austl.).
<https://www.legislation.gov.au/Details/C2021C00183>
- Crossman, R. H. S. (1975). *The diaries of a cabinet minister*. Hamilton.
- Cullen, D. (1990). *The public inquiry into the Piper Alpha disaster* (Vol. 1). HM Stationery Office. <https://www.hse.gov.uk/offshore/piper-alpha-disaster-public-inquiry.htm>
- Curry, B. (2013, January 16). Judge raps Justice officials for treatment of whistleblower. *The Globe and Mail*.
<https://www.theglobeandmail.com/news/politics/judge-raps-justice-officials-for-treatment-of-whistle-blower/article7394559/?cmpid=rss1>
- Daugareilh, I. (2008). Employee participation, ethics and corporate social responsibility. *Transfer*, 14(1), 93–110.
<https://doi.org/10.1177/102425890801400109>
- Davis, G., & Rhodes, R. A. W. (2000). From hierarchy to contracts and back again: Reforming the Australian Public Service. In M. Keating, J. Wanna, & P. M. Weller (Eds.), *Institutions on the edge? Capacity for governance*. Allen & Unwin.
- De Maria, W. (1994). *Unshielding the shadow culture: Queensland whistleblower study*. University of Queensland, Dept. of Social Work and Social Policy.
<https://whistleblowersqld.com.au/wp-content/uploads/2017/11/2.-Shadow-Culture-Apr-1994.pdf>
- De Maria, W. (1995). Whistleblowing. *Alternative Law Journal*, 20(6), 270–281.
<https://heinonline.org/HOL/P?h=hein.journals/alterlj20&i=282&a=Y2FybGV0>

b24uY2E

- De Maria, W. (2005). Whistleblower protection: Is Africa ready? *Public Administration and Development*, 25(3), 217–226.
<https://doi.org/10.1002/pad.343>
- De Maria, W. (2006). Common law - common mistakes? Protecting whistleblowers in Australia, New Zealand, South Africa and the United Kingdom. *The International Journal of Public Sector Management*, 19(7), 643–658. <https://doi.org/10.1108/09513550610704671>
- De Maria, W., & Jan, C. (1994). *Wounded workers*.
http://whistleblowersqld.com.au/wp-content/uploads/2017/06/3.-Wounded-Workers-Oct-1994_WR.pdf
- Deachman, B. (2015, August 14). Beechwood ceremony to honour medical officer's tenacity. *Ottawa Citizen*. <https://ottawacitizen.com/news/local-news/beechwood-ceremony-to-honour-medical-officers-tenacity>
- Devine, S., & Devine, T. (2010). *Whistleblower witch hunts: The smokescreen syndrome*. <http://whistleblower.org/sites/default/files/WWHfinal-1.pdf>
- Devine, T. (1997). *The whistleblower's survival guide: Courage without martyrdom*. Fund for Constitutional Government.
<http://whistleblower.org/reports-publications>
- Devine, T. (2004). Whistleblowing in the United States: The gap between vision and lessons learned. In R. Callan & G. Dehn (Eds.), *Whistleblowing around the world: Law, culture and practice* (pp. 74–100). ODAC.
- Devine, T. (2016). *International best practices for whistleblower policies*. Government Accountability Project. <https://whistleblower.org/international-best-practices-for-whistleblower-policies/>
- Devine, T. M., & Aplin, D. G. (1986). Abuse of authority: The Office of the Special Counsel and whistleblower protection. *Antioch Law Journal*, 4(5), 5–71.
<https://heinonline.org/HOL/P?h=hein.journals/antioch4&i=13&a=Y2FybGV0b24uY2E>
- Devine, T. M., & Aplin, D. G. (1988). Whistleblower protection - The gap between law and reality. *Howard Law Journal*, 31(2), 223–239.
<https://heinonline.org/HOL/P?h=hein.journals/howlj31&i=233&a=Y2FybGV0b24uY2E>
- Dicey, A. V. (1915). *Introduction to the study of the law of the Constitution* (8th ed.). Macmillan and Co.

- Diefenbach, T. (2009). New public management in public sector organizations: The dark sides of managerialistic “enlightenment.” *Public Administration*, 87(4), 892–909. <https://doi.org/10.1111/j.1467-9299.2009.01766.x>
- DiMaggio, P. J., & Powell, W. W. (1983). The iron cage revisited: Institutional isomorphism and collective rationality in organizational fields. *American Sociological Review*, 48(2), 147–160. <https://doi.org/10.2307/2095101>
- Dobell, A. R. (2003). *The role of government and the government’s role in evaluating government: Insider information and outsider beliefs*. Panel on the Role of Government, University of Victoria. <http://hdl.handle.net/1828/6880>
- Doig, A. (1996). From Lynskey to Nolan: The corruption of British politics and public service? *Journal of Law and Society*, 23(1), 36–56. <https://doi.org/10.2307/1410466>
- Donkin, M., Smith, R., & Brown, A. J. (2008). How do officials report? Internal and external whistleblowing. In A. J. Brown (Ed.), *Whistleblowing in the Australian public sector: Enhancing the theory and practice of internal witness management in public sector organisations* (pp. 83–106). ANU E-Press. <http://doi.org/10.22459/WAPS.09/2008>
- Dowding, K., Lewis, C., & Packer, A. (2012). The pattern of forced exits from the ministry. In K. Dowding & C. Lewis (Eds.), *Ministerial careers and accountability in the Australian Commonwealth government* (pp. 115–134). ANU E Press. <https://press.anu.edu.au/publications/series/anzsog/ministerial-careers-and-accountability-australian-commonwealth-government>
- Dozier, J. B., & Miceli, M. P. (1985). Potential predictors of whistle-blowing: A prosocial behavior perspective. *Academy of Management Review*, 10(4), 823–836. <https://doi.org/10.2307/258050>
- Dozo, N., Brown, A. J., & Lawrence, S. A. (2018). Whistleblowing in public and private organisations: Types, incidence, variations. In A. J. Brown (Ed.), *Whistleblowing: New rules, new policies, new vision (Work-in-progress results from the Whistling While They Work 2 project)* (pp. 1–26). Griffith University. <http://www.whistlingwhiletheywork.edu.au/wp-content/uploads/2018/11/Whistleblowing.-New-Rules-New-Policies-New-Vision.-Working-Papers-Final-13.11.18.pdf>
- Drinkwater, D. (2015). Parliamentary scrutiny of the Australian Public Service. In J. Wanna, E. A. Lindquist, & P. Marshall (Eds.), *New accountabilities, new challenges* (pp. 29–77). ANU Press.

<https://press.anu.edu.au/publications/series/anzsog/new-accountabilities-new-challenges>

- Dryzek, J. S. (1996). Political inclusion and the dynamics of democratization. *American Political Science Review*, 90(3), 475–487. <https://doi.org/10.2307/2082603>
- Dubnick, M., & O’Kelly, C. (2005). Accountability through thick and thin: Moral agency in public service. In H. G. Frederickson & R. K. Ghere (Eds.), *Ethics in Public Management* (pp. 139–162). M.E. Sharpe.
- Dunn v. Canada (Attorney General), 2018 FCA 210 (CanLII). <https://www.canlii.org/en/ca/fca/doc/2018/2018fca210/2018fca210.html>
- Dunn v. Indigenous and Northern Affairs Canada and Lecompte, 2017 PSDPT 3 (CanLII). <https://www.canlii.org/en/ca/psdpt/doc/2017/2017psdpt3/2017psdpt3.html>
- Dworkin, T. M. (2007). SOX and whistleblowing. *Michigan Law Review*, 105(8), 1757–1780. <https://michiganlawreview.org/journal/sox-and-whistleblowing/>
- Dworkin, T. M. (2010). US whistleblowing: a decade of progress? In Lewis (Ed.), *A global approach to public interest disclosure: What can we learn from existing whistleblowing legislation and research?* (pp. 36–55). Edward Elgar Publishing.
- Dworkin, T. M., & Baucus, M. S. (1998). Internal vs. external whistleblowers: A comparison of whistleblowing processes. *Journal of Business Ethics*, 17(12), 1281–1298. <https://doi.org/10.1023/A:1005916210589>
- Dworkin, T. M., & Brown, A. J. (2013). The money or the media? Lessons from contrasting developments in US and Australian whistleblowing laws. *Seattle Journal of Social Justice*, 11(2), 653–713. <https://digitalcommons.law.seattleu.edu/cgi/viewcontent.cgi?article=1656&context=sjsj>
- Edelman, M. (1964). *The symbolic uses of politics*. University of Illinois Press.
- Edwards, M. (2006). *Appointments to public sector boards in Australia: A comparative assessment* (No. 3; Issues Paper Series).
- Edwards, M., Halligan, J., & Horrigan, B. (2012). *Public sector governance in Australia*. ANU E Press.
- El-Helou v. Courts Administration Service, 2012 FC 1111 (CanLII). <https://www.canlii.org/en/ca/fct/doc/2012/2012fc1111/2012fc1111.html>

- Ellis, F., & Woolstencroft, P. (2006). A change of government, not a change of country. In J. H. Pammett & C. Dornan (Eds.), *The Canadian federal election of 2006* (pp. 58–92). Dundurn Press.
- Elliston, F. A. (1985). *Whistleblowing research: Methodological and moral issues*. Praeger.
- Ethics Resource Center. (2010). *Blowing the whistle on workplace misconduct*. <http://erc.webair.com/whistleblower>
- Ethics Resource Center. (2012). *Inside the mind of a whistleblower: A supplemental report of the 2011 National business ethics survey*. <http://www.corporatecomplianceinsights.com/wp-content/uploads/2012/05/inside-the-mind-of-a-whistleblower-NBES.pdf>
- Ethics Resource Center. (2013). *National business ethics survey of the U.S. workforce*. <http://www.ethics.org/nbes/>
- European Union. (2019). *Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law*. <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32019L1937>
- Evans, B., Sapeha, H., & Spender, A. (2015). Comparison of implementation of NPM style public sector reform in Canada and Australia. *International Conference on Public Policy*. <https://www.ippapublicpolicy.org/file/paper/1433954668.pdf>
- Fasterling, B. (2014). Whistleblower protection: A comparative law perspective. In A. J. Brown, D. Lewis, R. Moberly, & W. Vandekerckhove (Eds.), *International handbook on whistleblowing research* (pp. 331–349). Edward Elgar.
- Fasterling, B., & Lewis, D. (2014). Leaks, legislation and freedom of speech: How can the law effectively promote public-interest whistleblowing? *International Labour Review*, 153(1), 71–92. <https://doi.org/10.1111/j.1564-913X.2014.00197.x>
- Faunce, T., Crow, K., Nikolic, T., & Morgan, F. M. (2014). Because they have evidence: Globalizing financial incentives. In A. J. Brown, D. Lewis, R. Moberly, & W. Vandekerckhove (Eds.), *International handbook on whistleblowing research* (pp. 381–404). Edward Elgar.
- Fazah, R., Ramroop, V. R., & Shaw-Wood, E. (2016). *Evaluation of the Communication on the Federal Public Servants Disclosure System in*

Canada.

- Federal Public Sector Labour Relations Act, S.C. 2003, c. 22, s. 2 (Can.), (2003).
<https://laws-lois.justice.gc.ca/eng/acts/p-33.3/>
- Feinstein, S., Devine, T., Pender, K., Allen, C., Nawa, R., & Shepard, M. (2021). *Are whistleblowing laws working? A global study of whistleblower protection litigation*. <https://www.ibanet.org/MediaHandler?id=49c9b08d-4328-4797-a2f7-1e0a71d0da55>
- Feldman, M. S., Sköldberg, K., Brown, R. N., & Horner, D. (2004). Making sense of stories: A rhetorical approach to narrative analysis. In *Journal of Public Administration Research and Theory*. <https://doi.org/10.1093/jopart/muh010>
- Feldman, Y., & Lobel, O. (2007). Behavioral versus institutional antecedents of decentralized enforcement in organizations: An experimental approach. In *Legal Studies Research Paper Series* (No. 07–126).
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1031853
- Ferguson, A., Robinson, L., & Carter, L. (2018, April 9). Whistleblower exposes ATO “cash grab” targeting small businesses. *ABC News*.
<https://www.abc.net.au/news/2018-04-09/whistleblower-exposes-ato-cash-grab-targeting-small-businesses/9633140?nw=0>
- Financial Administration Act, R.S.C., 1985, c. F-11 (Can.). <https://laws-lois.justice.gc.ca/eng/acts/F-11/>
- Finlay, L. (2016). The McMullan principle: Ministerial advisors and Parliamentary committees. *University of Tasmania Law Review*, 35(1), 69–94.
<http://www.austlii.edu.au/au/journals/UTasLawRw/2016/5.html>
- Fisher, W., Ramsay, M., & Gwyer, M. L. (1928). *Report of the board of enquiry appointed by the Prime Minister to investigate certain statements affecting civil servants*. HM Stationary Office.
- Foley, M. (2000). *The British presidency: Tony Blair and the politics of public leadership*. Manchester University Press.
- Forward, P. (2017). *A qualitative case study of whistleblowing and Health Canada’s drug approval process* [Carleton University].
<https://curve.carleton.ca/55116fc0-3210-4ae4-9bf4-1e242483df94>
- Fotaki, M., Kenny, K., & Scriver, S. (2015). Whistleblowing and mental health: A new weapon for retaliation? In W. Vandekerchove & W. Vandekerchove (Eds.), *Developments in whistleblowing research*. International Whistleblowing Research Network.

- Fox, P. (2019). *Walking towards thunder*. Hachette Australia.
- Franke, B., Moser, H., & Simons, D. (2010). A carrot without a stick - The effect of monetary rewards on corporate whistleblowing. *SSRN Electronic Journal*. <https://doi.org/10.2139/ssrn.2822313>
- Franks, C. E. S. (1997). Not anonymous: Ministerial responsibility and the British accounting officers. *Canadian Public Administration*, 40(4), 626–652. <https://doi.org/10.1111/j.1754-7121.1997.tb02178.x>
- Fraser v. P.S.S.R.B., 1985 CanLII 14 (SCC), [1985] 2 SCR 455. <https://www.canlii.org/en/ca/scc/doc/1985/1985canlii14/1985canlii14.html>
- Freedom of Information Act 1982 (Cth). <https://www.legislation.gov.au/Details/C2018C00016>
- French, R. S. (2009). *The common law and the protection of human rights*. <https://www.hcourt.gov.au/assets/publications/speeches/current-justices/frenchcj/frenchcj4sep09.pdf>
- Friedman, M. (2015). Eric Snowden: Hero or traitor? Considering the implications for Canadian national security and whistleblower law. *Dalhousie Journal of Legal Studies*, 24, 1–24. <https://digitalcommons.schulichlaw.dal.ca/djls/vol24/iss1/1/>
- Funnell, S. C., & Rogers, P. J. (2011). *Purposeful program theory: Effective use of theories of change and logic models* (1st ed.). Jossey-Bass.
- Galligan, B. (2015). Executive conventions. In B. Galligan & S. Brenton (Eds.), *Constitutional conventions in Westminster systems: Controversies, changes and challenges* (pp. 51–71). Cambridge University Press.
- Galloway, A. (2020, October 15). ABC journalist won't be charged by AFP over "Afghan Files" stories. *Sydney Morning Herald*. <https://www.smh.com.au/politics/federal/police-won-t-charge-abc-journalist-over-afghan-files-stories-20201015-p565gc.html>
- Galloway, G. (2014, November 27). More tribunal members hired for backlog of 11,000 social security appeals - The Globe and Mail. *The Globe and Mail*. <https://www.theglobeandmail.com/news/politics/more-tribunal-members-hired-for-backlog-of-11000-social-security-appeals/article21816120/>
- Garcetti v. Ceballos, 547 U.S. 410, (2006). <https://supreme.justia.com/cases/federal/us/547/410/>
- Garoupa, N. (2001). Optimal magnitude and probability of fines. *European*

- Economic Review*, 45(9), 1765–1771. [https://doi.org/10.1016/S0014-2921\(00\)00084-2](https://doi.org/10.1016/S0014-2921(00)00084-2)
- Gartside v. Outram [1856] 26 LJ Ch 113.
- George, A. L., & Bennett, A. (2005). *Case studies and theory development in the social sciences*. MIT Press. <https://doi.org/10.1017/S0022381607080231>
- Gilham (Appellant) v. Ministry of Justice (Respondent) [2019] UKSC 44 (16 October 2019). <https://www.bailii.org/uk/cases/UKSC/2019/44.pdf>
- Global Integrity. (2016). *Global Integrity report*. Global Integrity Report. <http://www.globalintegrity.org/research/reports/>
- Gobert, J., & Punch, M. (2000). Whistleblowers, the public interest, and the Public Interest Disclosure Act 1998. *Modern Law Review*, 63(1), 25–54. <https://doi.org/10.1111/1468-2230.00249>
- Goel, R. K., & Nelson, M. A. (2013). Effectiveness of whistleblower laws in combating corruption. In *BOFIT Discussion Papers* (No. 9; BOFIT Discussion Papers, Issue 9). <https://doi.org/10.2139/ssrn.2268429>
- Good, D. A. (2014). *The politics of public money* (2nd ed.). University of Toronto Press.
- Goodman, L.-A. (2014, August 27). Most claimants lose EI appeals; dismissal rate remains high in new system. *IPolitics*. <https://ipolitics.ca/2014/08/27/most-claimants-lose-ei-appeals-dismissal-rate-remains-high-in-new-system/>
- Goss Gilroy Inc. (2017). *Lessons learned from the transformation of pay administration initiative*. <https://www.canada.ca/en/treasury-board-secretariat/corporate/reports/lessons-learned-transformation-pay-administration-initiative.html>
- Goss Gilroy Inc. (2020). *Evaluation of the PSIC disclosure and reprisal management program: Final report*. https://www.psic-ispc.gc.ca/sites/default/files/2020-05/evaluation_of_the_disclosure_and_reprisal_management_program_en.pdf
- Gow, J. I. (2004). *A Canadian model of public administration?* Canada School of Public Service. <https://publications.gc.ca/collections/Collection/SC94-108-2004E.pdf>
- Granatstein, J. L., & Morgan, N. (1987). *Implosion: An analysis of the growth of*

- the federal public Service in Canada (1945-1985). In *Canadian Public Policy* (Vol. 13, Issue 1). Institute for Research on Public Policy = L'Institut de recherches politiques. <https://doi.org/10.2307/3550567>
- Greaves, R., & McGlone, J. K. (2012). The health consequences of speaking out. *Social Medicine*, 6(4), 259–263. https://www.academia.edu/24564130/The_Health_Consequences_of_Speaking_Out?auto=download
- Greenberger, D. B., Miceli, M. P., & Cohen, D. J. (1987). Oppositionists and group norms: The reciprocal influence of whistle-blowers and co-workers. *Journal of Business Ethics*, 6(7), 527–542. <https://doi.org/10.1007/BF00383744>
- Greenslade, R. (1992). *Maxwell's fall*. Simon and Schuster Ltd.
- Greif, A. (2006). *Institutions and the path to the modern economy: Lessons from medieval trade*. Cambridge University Press.
- Griffith University. (2016). *Whistling While They Work I*. <https://www.griffith.edu.au/business-government/centre-governance-public-policy/research-programs/public-integrity-and-anti-corruption/whistleblowing/whistling-while-they-work-i>
- Grube, D. C., & Howard, C. (2016). Promiscuously partisan? Public service impartiality and responsiveness in Westminster Systems. *Governance: An International Journal of Policy, Administration, and Institutions*, 29(4), 517–533. <https://doi.org/10.1111/gove.12224>
- Gundlach, M. J., Douglas, S. C., & Martinko, M. J. (2003). The decision to blow the whistle: A social information processing framework. *Academy of Management Review*, 28(1), 107–123. <https://doi.org/10.2307/30040692>
- Haddon, C. (2020, March 1). Why Philip Rutnam's row with Priti Patel shocked Whitehall. *The Guardian*. <https://www.theguardian.com/commentisfree/2020/mar/01/sir-philip-rutnam-priti-patel>
- Hall, P. A. (2005). Preference formation as a political process: The case of monetary union in Europe. In I. Katznelson & B. R. Weingast (Eds.), *Preferences And Situations: Points of Intersection Between Historical And Rational Choice Institutionalism* (pp. 129–160). Russell Sage Foundation.
- Hall, P. A., & Taylor, R. C. R. (1996). Political science and the three new institutionalisms. *Political Studies*, 44(5), 936–957.

<https://doi.org/10.1111/j.1467-9248.1996.tb00343.x>

Halligan, J. (2013). Reform of public sector governance in Australia. *Towards a Comprehensive Reform of Public Governance*.

https://www.bportugal.pt/sites/default/files/anexos/halligan_paper_5.pdf

Harris, J. (2013). Following the pound: The accounting officer in central government. *Institute for Government*.

<https://www.instituteforgovernment.org.uk/publications/following-pound>

Harris, M. (1985, September 21). Tuna released before testing was complete , document says. *The Globe and Mail*, 1.

Hausegger, L., Riddell, T., & Hennigar, M. (2013). Does patronage matter? Connecting influences on judicial appointments with judicial decision making. *Canadian Journal of Political Science*, 46(3), 665–690.

<https://doi.org/10.1017/S0008423913000681>

Hay, T., Blackstock, C., & Kirlew, M. (2020). Dr. Peter Bryce (1853-1932): Whistleblower on residential schools. *Canadian Medical Association Journal*, 192(9), E223–E224. <https://doi.org/10.1503/cmaj.190862>

Haydon v. Canada, 2000 CanLII 16081 (FC), [2001] 2 FC 82. Retrieved December 16, 2019, from <http://canlii.ca/t/433m>

Haydon v. Canada (Treasury Board), 2004 FC 749 (CanLII), [2005] 1 FCR 511. Retrieved December 16, 2019, from <http://canlii.ca/t/1h7rf>

Hazell, R. (2015). The United Kingdom. In B. Galligan & S. Brenton (Eds.), *Constitutional conventions in Westminster systems: Controversies, changes and challenges* (pp. 173–188). Cambridge University Press.

Heard, A. (2005). Constitutional conventions and parliament. *Canadian Parliamentary Review*, 28(2), 19–22.

<http://www.revparl.ca/english/issue.asp?param=168&art=1143>

Heard, A. (2012). Constitutional conventions: The heart of the living constitution. *Journal of Parliamentary and Political Law*, 6(January), 319–338.

https://www.researchgate.net/publication/260290297_Constitutional_Conventions_The_Heart_of_the_Living_Constitution_2012_6_Journal_of_Parliamentary_and_Political_Law_319-338

Heard, A. (2014). *Canadian constitutional conventions: The marriage of law and politics* (2nd ed.). Oxford University Press.

Henik, E. (2008). Mad as hell or scared stiff? the effects of value conflict and

- emotions on potential whistle-blowers. *Journal of Business Ethics*, 80(1), 111–119. <https://doi.org/10.1007/s10551-007-9441-1>
- Henik, E. (2015). Understanding whistle-blowing: A set-theoretic approach. *Journal of Business Research*, 68(2), 442–450. <https://doi.org/10.1016/j.jbusres.2014.06.004>
- Heumann, M., Friedes, A., Redlawsk, D., Cassak, L., & Kesari, A. (2016). Public perceptions of whistleblowing. *Public Integrity*, 18(1), 6–24. <https://doi.org/10.1080/10999922.2015.1093397>
- Hirschman, A. O. (1970). *Exit, voice, and loyalty: Responses to decline in firms, organizations, and states*. Harvard University Press. https://doi.org/10.1007/978-3-531-90400-9_48
- Hobby, C. (2010). *Public interest whistleblowing: Twelve years of the Public Interest Disclosure Act 1998*. Institute of Employment Studies.
- Hodgson, G. M. (2006). What are institutions? *Journal of Economic Issues*, XL(1), 1–25. <https://doi.org/10.1080/00213624.2006.11506879>
- Hofstede, G. (1984). *Culture's consequences: International differences in work-related values*. Sage Publications.
- Holland, I., & Prince, P. (2004). *Public servants speaking publicly: The Bennett case* (31 2003-04; Research Note). https://parlinfo.aph.gov.au/parlInfo/download/library/prspub/Q0NB6/upload_binary/q0nb68.pdf;fileType=application%2Fpdf#search=%22library/prspub/Q0NB6%22
- Hood, C. (2000). Relationships between ministers/politicians and public servants: Public service bargains old and new. In B. G. Peters & D. J. Savoie (Eds.), *Governance in the twenty-first century: Revitalizing the public service* (pp. 178–201). McGill-Queens University Press.
- Hood, C. (2010). *The blame game: Spin, bureaucracy, and self-preservation in government*. Princeton University Press. <https://doi.org/10.1515/9781400836819>
- Hood, C., & Lodge, M. (2006). *The politics of public service bargains: Reward, competency, loyalty - and blame*. Oxford University Press.
- Hood, C., Rothstein, H., & Baldwin, R. (2001). *The government of risk: Understanding risk regulation regimes*. Oxford University Press.
- Hopman, P., & Leeuwen, E. van. (2009). Who do we inform? The role of status

- and target in intergroup whistle-blowing. *Group Processes & Intergroup Relations*, 12(5), 605–618. <https://doi.org/10.1177/1368430209337472>
- Horne, A. (2010). *The changing constitution: A case for judicial confirmation hearings?* (No. 1; Paper, Issue 1). <http://www.studyofparliament.org.uk/spg-paper-1.pdf>
- Hsieh, H.-F., & Shannon, S. E. (2005). Three approaches to qualitative content analysis. *Qualitative Health Research*, 15(9), 1277–1288. <https://doi.org/10.1177/1049732305276687>
- Hunt, M. (2019, April 10). Former Australian departmental chief calls for an end to performance pay. *Global Government Forum*. <https://www.globalgovernmentforum.com/former-australian-departmental-chief-calls-for-an-end-to-performance-pay/>
- Hutchinson v. Comcare (No 4) [2019] FCA 1133 (Austl.). <http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FCA/2019/1133.html>
- Hutton, B. (2004). *Report of the inquiry into the circumstances surrounding the death of Dr David Kelly C.M.G.* (HC 247). The Stationery Office. <http://webarchive.nationalarchives.gov.uk/20090128222051/http://www.the-hutton-inquiry.org.uk/content/report/index.htm>
- Hutton, D. (2012). *What's wrong with Canada's federal whistleblower legislation*. https://cfe.ryerson.ca/sites/default/files/whats_wrong_with_the_psdpa_0.pdf
- Hutton, D. (2017). *What's wrong with Canada's federal whistleblowing system*. <https://cfe.ryerson.ca/key-resources/cfe-publications/what's-wrong-canada's-federal-whistleblower-legislation>
- Independent Commission Against Corruption Act 1988 (Austl. N.S.W.). <https://legislation.nsw.gov.au/view/html/inforce/current/act-1988-035>
- Initial Services Ltd v. Putterill [1967] EWCA Civ J0628-4 (28 June 1967). <https://vlex.co.uk/vid/initial-services-ltd-v-792812297>
- Initial Services Ltd v. Putterill [1968] 1 Q.B. 396.
- Inman, M. (2019, June 12). *Australia's whistleblower laws are "impenetrable", Federal Court judge says*. ABC News. <https://www.abc.net.au/news/2019-06-12/whistleblower-laws-are-impenetrable,-federal-court-judge-says/11200678>
- Institute for Government. (2021). *Ministerial directions*. <https://www.instituteforgovernment.org.uk>

- Ireland-Piper, D., & Crowe, J. (2018). Whistleblowing, national security and the constitutional freedom of political communication. *Federal Law Review*, 46(3), 341–365. <https://doi.org/10.1177/0067205X1804600301>
- Ireland. Houses of the Oireachtas. Joint Committee on Justice Equality Defence and Women's Rights. (2003). *Interim Report on the Report of the Independent Commission of Inquiry into the Dublin and Monaghan Bombings*. https://www.gov.ie/en/organisation/department-of-the-taoiseach/?referrer=http://www.taoiseach.gov.ie/eng/Work_Of_The_Department/Economic_International_Northern_Ireland/Northern_Ireland/Northern_Ireland_Publications/InterimDubMon.pdf
- Jackall, R. (2010). *Moral mazes: The world of corporate managers (twentieth anniversary edition)*. Oxford University Press.
- Jackson, D., Hickman, L. D., Hutchinson, M., Andrew, S., Smith, J., Potgieter, I., Cleary, M., & Peters, K. (2014). Whistleblowing: An integrative literature review of data-based studies involving nurses. *Contemporary Nurse*, 48(2), 240–252. <https://doi.org/10.1080/10376178.2014.11081946>
- Jackson, D., Peters, K., Andrew, S., Edenborough, M., Halcomb, E., Luck, L., Salamonson, Y., & Wilkes, L. (2010). Understanding whistleblowing: Qualitative insights from nurse whistleblowers. *Journal of Advanced Nursing*, 66(10), 2194–2201. <https://doi.org/10.1111/j.1365-2648.2010.05365.x>
- Jain, A. K. (2017). Fighting corruption: contemporary measures in Canada. *Canadian Foreign Policy Journal*, 23(1), 93–116. <https://doi.org/10.1080/11926422.2016.1270846>
- James, O. (2003). *The executive agency revolution in Whitehall: Public interest versus bureau-shaping perspectives*. Palgrave Macmillan.
- Jennings, I. (1961). *The British constitution* (4th ed.). University Press.
- Jensen, J. V. (1987). Ethical tension points in whistleblowing. *Journal of Business Ethics*, 6(4), 321–328. <https://doi.org/10.1007/BF00382941>
- Johannesen, N., & Stolper, T. (2017). The Deterrence Effect of Whistleblowing: An Event Study of Leaked Customer Information from Banks in Tax Havens. In *Policy File* (No. 6784; CESifo Working Paper). CESifo Group. <https://www.proquest.com/docview/2033756164?pq-origsite=primo&accountid=9894>
- Johnson, P. (2020, June 22). Nick Xenophon attacks Government over Afghan Files whistleblower David McBride on Q+A. *ABC News*.

<https://www.abc.net.au/news/2020-06-23/nick-xenophon-afghan-files-david-mcbride-witness-j-whistleblower/12382154>

Jones, B. D. (2001). *Politics and the architecture of choice*. University of Chicago Press.

Jos, P. H. (1991). The nature and limits of the whistleblower's contribution to administrative responsibility. *American Review of Public Administration*, 21(June), 105–118. <https://doi.org/10.1177/027507409102100202>

Jos, P. H., Tompkins, M. E., & Hays, S. W. (1989). In praise of difficult people: A portrait of the committed whistleblower. *Public Administration Review*, 49(6), 552–561. <https://doi.org/10.2307/976577>

Jubb, P. B. (1999). Whistleblowing: A restrictive definition and interpretation. *Journal of Business Ethics*, 21, 77–94. <https://doi.org/10.1023/A:1005922701763>

Juillet, L., & Rasmussen, K. (2008). *Defending a contested ideal: Merit and the Public Service Commission, 1908–2008*. University of Ottawa Press. <https://press.uottawa.ca/defending-a-contested-ideal.html>

Kahan, D. M. (2000). Gentle nudges vs. hard shoves: Solving the sticky norms problem. *University of Chicago Law Review*, 67(3), 607–646. <https://doi.org/10.2307/1600336>

Kampmark, B. (2020, December 3). *The David McBride Case: Whistleblowing, Afghanistan and Australian War Crimes*. International Policy Digest. <https://intpolicydigest.org/the-david-mcbride-case-whistleblowing-afghanistan-and-australian-war-crimes/>

Kaptein, M. (2002). Guidelines for the development of an ethics safety net. In *Journal of Business Ethics* (Vol. 41, Issue 3, pp. 217–234). <https://doi.org/10.1023/A:1021221211283>

Kaptein, M. (2011). From inaction to external whistleblowing: The influence of the ethical culture of organizations on employee responses to observed wrongdoing. *Journal of Business Ethics*, 98(3), 513–530. <https://doi.org/10.1007/s10551-010-0591-1>

Karp, P. (2019, July 8). High court rules public servants can be sacked for political social media posts. *The Guardian*. <https://www.theguardian.com/australia-news/2019/aug/07/high-court-rules-public-servants-can-be-sacked-for-political-social-media-posts>

Karp, P. (2020, May 27). AFP rules out charges against News Corp journalist

- Annika Smethurst after raid. *The Guardian*.
<https://www.theguardian.com/media/2020/may/27/afp-rules-out-charges-against-news-corp-journalist-annika-smethurst-after-raid>
- Katz, G., & Lenglet, M. (2010). Whistleblowing in French corporations: Anatomy of a national taboo. *Philosophy of Management*, 9(1), 103–122.
<https://doi.org/10.5840/pom20109120>
- Katznelson, I., & Weingast, B. R. (2005). *Preferences and situations: Points of intersections between historical and rational choice institutionalism* (I. Katznelson & B. R. Weingast (Eds.)). Russell Sage Foundation.
- Kaufmann, D., Kraay, A., & Mastruzzi, M. (2010). *The Worldwide Governance Indicators: Methodology and analytical issues* (No. 5430; Policy Research Working Paper). <https://doi.org/10.1017/S1876404511200046>
- Keating, M. (2003). In the wake of “A Certain Maritime Incident”: Ministerial advisers, departments and accountability. *Australian Journal of Public Administration*, 62(3), 92–97. <https://doi.org/10.1046/j.1467-8500.2003.00341.x>
- Keenan, J. P. (1995). Whistleblowing and the first-level manager: Determinants of feeling obliged to blow the whistle. *Journal of Social Behaviour and Personality*, 10(3), 571–584.
<https://proxy.library.carleton.ca/login?qurl=https%3A%2F%2Fwww.proquest.com%2Fscholarly-journals%2Fwhistleblowing-first-level-manager-determinants%2Fdocview%2F1292307034%2Fse-2%3Faccountid%3D9894>
- Kennedy, I. (2001). *The report of the public inquiry into children’s heart surgery at the Bristol Royal Infirmary 1984-1995: Learning from Bristol*.
http://webarchive.nationalarchives.gov.uk/20130107105354/http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/@dh/@en/documents/digitalasset/dh_4059479.pdf%5Cnhttp://scholar.google.com/scholar?hl=en&btnG=Search&q=intitle:Learning+from+Bristol#1
- Kenny, K. (2019). *Whistleblowing: Toward a new theory*. Harvard University Press.
- Kenny, K., Fotaki, M., & Vandekerckhove, W. (2018). Whistleblower subjectivities: Organization and passionate attachment. *Organization Studies*, 1–21. <https://doi.org/10.1177/0170840618814558>
- Kernaghan, K. (1974). Codes of ethics and administrative responsibility. *Canadian Public Administration*, 17(4), 527–541.
<https://doi.org/10.1111/j.1754-7121.1974.tb01679.x>

- Kernaghan, K. (1978). Changing concepts of power and responsibility in the Canadian public service. *Canadian Public Administration*, 21(3), 389–406. <https://doi.org/10.1111/j.1754-7121.1978.tb01773.x>
- Kernaghan, K. (1997). Shaking the foundation: New versus traditional public service values. In M. Charih & A. Daniels (Eds.), *New public management and public administration in Canada* (pp. 47–68). IPAC.
- Kernaghan, K. (2006). Encouraging “rightdoing” and discouraging wrongdoing: A public service charter and disclosure legislation. In *Restoring accountability: Research studies* (Vol. 2, pp. 73–114). Public Works and Government Services Canada. <https://publications.gc.ca/site/eng/287371/publication.html>
- Kernaghan, K. (2007). A special calling: Values, ethics and professional public service. In *Canada.ca*. Public Service Human Resources Management Agency of Canada. <http://www.tbs-sct.gc.ca/rp/scv-eng.pdf>
- Kernaghan, K. (2014). East Block and Westminster: Conventions, values, and public service. In C. Dunn (Ed.), *The handbook of Canadian public administration* (2nd ed., pp. 289–304). Oxford University Press.
- Kernaghan, K., & Langford, J. (2014). *The responsible public servant* (2nd ed.). IPAC.
- Kerr, J. (2020, September 3). ‘Dud’ \$ 411m fire ant war fails to make it to Logan after three years. *Courier Mail*. <https://www.couriermail.com.au/questnews/logan/dud-411m-fire-ant-war-fails-to-make-it-to-logan-after-three-years/news-story/16b8184e8294b006afd2e147e6efba03>
- Kesselheim, A. S., Studdert, D. M., & Mello, M. M. (2010). Whistleblowers’ experience in major fraud litigation against pharmaceutical companies. *New England Journal of Medicine*, 362(19), 1832–1839. <https://doi.org/10.1056/NEJMSr0912039>
- Ketelaar, A., Manning, N., & Turkisch, E. (2007). Performance-based arrangements for senior civil servants OECD and other country experiences. In *OECD Working Papers on Public Governance*. <https://doi.org/10.1787/160726630750>
- Khadem, N. (2020, June 18). ATO did a “superficial” investigation into whistleblower Richard Boyle’s public interest disclosure, Parliament told. *ABC News*. <https://www.abc.net.au/news/2020-06-18/ato-whistleblower-richard-boyle-senator-rex-patrick-parliament/12365136>

- Killey, I. (2014). *Constitutional conventions in Australia: An introduction to the unwritten rules of Australia's constitutions*. Anthem Press.
- Kim, D. (2015). *Transparency International Canada: Report on Whistleblower Protections in Canada*. http://www.transparencycanada.ca/wp-content/uploads/2015/06/TI-Canada_Whistleblower-Report_Final1.pdf
- King, A. (2009). *The British Constitution*. Oxford University Press.
- King, G. (1999). The implications of an organization's structure on whistleblowing. *Journal of Business Ethics*, 20(4), 315–326. <https://doi.org/10.1023/A:1006028417000>
- Kingdon, J. W. (1995). *Agendas, alternatives, and public policies* (2nd ed.). HarperCollins College Publishers.
- Knaus, C. (2019, August 9). Witness K and the “outrageous” spy scandal that failed to shame Australia. *The Guardian*. <https://www.theguardian.com/australia-news/2019/aug/10/witness-k-and-the-outrageous-spy-scandal-that-failed-to-shame-australia>
- Knaus, C. (2021, April 29). Prosecutors refuse to drop case against tax office whistleblower Richard Boyle. *The Guardian*. <https://www.theguardian.com/australia-news/2021/apr/29/prosecutors-refuse-to-drop-case-against-tax-office-whistleblower-richard-boyle>
- Knight, J. (1995). Models, interpretations, and theories: Constructing explanations of institutional emergence and change. In J. Knight & I. Sened (Eds.), *Explaining Social Institutions* (pp. 95–120). University of Michigan Press.
- Knight, J., & Sened, I. (1995). Introduction. In J. Knight & I. Sened (Eds.), *Explaining Social Institutions* (pp. 1–13). University of Michigan Press.
- Koh, H. C., & Boo, E. H. Y. (2001). The link between organizational ethics and job satisfaction: A study of managers in Singapore. *Journal of Business Ethics*, 29(4), 309–324. <https://doi.org/10.1023/A:1010741519818>
- Kohn, S. M. (2011). *The whistleblower's handbook*. Lyons Press.
- Krasner, S. D. (1984). Approaches to the state: Alternative conceptions and historical dynamics. *Comparative Politics*, 16(2), 223–246.
- Krawiec, K. D. (2003). Cosmetic compliance and the failure of negotiated governance. *Washington University Law Quarterly*, 81(2), 487–544.

- Kuhn, T. S. (1996). *The structure of scientific revolutions* (3rd ed.). University of Chicago Press.
- Kusmierek, K. N. (2001). *Understanding and addressing resistance to organizational change* (Occasional Papers on Institutional Change and Transformation in Higher Education). <http://www-personal.umich.edu/~marvp/facultynetwork/whitepapers/kusmierekresistance.html>
- Laframboise, H. L. (1991). Vile wretches and public heroes: The ethics of whistleblowing in government. *Canadian Public Administration*, 34(1), 73–77. <https://doi.org/10.1111/j.1754-7121.1991.tb01438.x>
- Lambton, J. G. (1839). *Report on the affairs of British North America*. Morning Courier. <https://www.canadiana.ca/view/oocihm.32413/1?r=0&s=1>
- Lange v Australian Broadcasting Corporation (“Political Free Speech case”) [1997] HCA 25; (1997) 189 CLR 520; (1997) 145 ALR 96; 1997 71 ALJR 818 (Austl.). <http://www6.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/HCA/1997/25.html>
- Lashmar, P. (2021, July 27). Official Secrets Act: UK government has a long history of suppressing journalism to hide its misdeeds. *The Conversation*. <https://theconversation.com/official-secrets-act-uk-government-has-a-long-history-of-suppressing-journalism-to-hide-its-misdeeds-164893>
- Latimer, P., & Brown, A. J. (2008). Whistleblower laws: International best practice. *University of New South Wales Law Journal*, 31(3), 766–794. <https://heinonline.org/HOL/P?h=hein.journals/swales31&i=776&a=Y2FybGV0b24uY2E>
- Law on the Protection of Whistleblowers, 2014. <http://www.parlament.gov.rs/upload/archive/files/lat/pdf/zakoni/2014/3140-14LAT.pdf>
- Lennane, J. (1996). What happens to whistleblowers, and why. In K. Woldering (Ed.), *Classics in social medicine* (pp. 51–63). Thomas Nelson. http://www.bmartin.cc/dissent/documents/Lennane_what2.pdf
- Lennane, K. J. (1993). “Whistleblowing”: A health issue. *BMJ*, 307(6905), 667–670. <https://doi.org/10.1136/bmj.307.6905.667>
- Leslie, P., Robinson, Z., & Smyth, R. (2021). Personal or political patronage: Judicial appointments and justice loyalty in the High Court of Australia. *SSRN Electronic Journal*.

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3819419

- Levi, M. (2009). Reconsiderations of rational choice in comparative and historical analysis. In M. I. Lichbach & Alan S. Zuckerman (Eds.), *Comparative politics: Rationality, culture, and structure* (pp. 117–133).
- Levi, M. (1997). A model, a method, and a map: Rational choice in comparative and historical analysis. In M. I. Lichbach & A. S. Zuckerman (Eds.), *Comparative politics: Rationality, culture, and structure* (pp. 19–41). Cambridge University Press.
- Lewis, D. (1995). Whistleblowers and job security. *Modern Law Review*, 58(2), 208–221. <https://doi.org/10.1111/j.1468-2230.1995.tb02004.x>
- Lewis, D. (2001). Whistleblowing at work: On what principles should legislation be based? *Industrial Law Journal*, 30(2), 169–193. <https://doi.org/10.1093/ilj/30.2.169>
- Lewis, D. (2008). Ten years of public interest disclosure legislation in the UK: Are whistleblowers adequately protected? *Journal of Business Ethics*, 82(2), 497–507. <https://doi.org/10.1007/s10551-008-9899-5>
- Lewis, D. (2010). Ten years of Public Interest Disclosure Act 1998 claims: What can we learn from the statistics and recent research? In *Industrial Law Journal* (Vol. 39, Issue 3, pp. 325–328). <https://doi.org/10.1093/inclaw/dwq018>
- Lewis, D. (2011). Whistleblowing in a changing legal climate: Is it time to revisit our approach to trust and loyalty at the workplace? *Business Ethics: A European Review*, 20(1), 71–87. <https://doi.org/10.1111/j.1467-8608.2010.01609.x>
- Lewis, D., Brown, A. J., & Moberly, R. (2014). Whistleblowing, its importance and the state of research. In A. J. Brown, D. Lewis, R. Moberly, & W. Vandekerckhove (Eds.), *International handbook on whistleblowing research* (pp. 1–34). Edward Elgar.
- Lewis, D., Callahan, E. S., & Dworkin, T. M. (2004). Whistleblowing: Australian, UK and US approaches to disclosure in the public interest. *Virginia Journal of International Law*, 44(3), 879–912. <https://heinonline.org/HOL/P?h=hein.journals/vajint44&i=889&a=Y2FybGV0b24uY2E>
- Lewis, D., Devine, T., & Harpur, P. (2014). The key to protection: Civil and employment law remedies. In A. J. Brown, D. Lewis, R. Moberly, & W.

- Vandekerckhove (Eds.), *International handbook on whistleblowing research* (pp. 350–380). Edward Elgar.
- Lewis, D., & Trygstad, S. (2009). Protecting whistleblowers in Norway and the UK: A case of mix and match? *International Journal of Law and Management*, 51(6), 374–388. <https://doi.org/10.1108/17542430911005918>
- Lewis, D., & Vandekerckhove, W. (2018). Trade unions and the whistleblowing process in the UK: An opportunity for strategic expansion? *Journal of Business Ethics*, 148(4), 835-. <https://doi.org/10.1007/s10551-016-3015-z>
- Liberal Party of Canada. (1993). *Liberal Party of Canada Red Book*. https://web.archive.org/web/19961109135653/http://www.liberal.ca/english/policy/red_book/red_index.html
- Lijphart, A. (2012). *Patterns of democracy: Government forms and performance in thirty-six countries* (2nd ed.). Yale. <https://doi.org/10.1007/s12286-008-0014-1>
- LILTRIS4. (2017, April 7). *Tunagate: An abuse of political power*. Crimes of the Powerful. <https://crimesofpower.wordpress.com/2017/04/07/tunagate-an-abuse-of-political-power/>
- Lim, J. (2021, May 14). *Over 4,000 access-to-information complaints still backlogged - iPolitics*. IPolitics. <https://ipolitics.ca/2021/05/14/over-4000-access-to-information-complaints-still-backlogged/>
- Linden, A. (2018). The advocate's archive: Walter Rudnicki and the fight for Indigenous rights in Canada, 1955–2010. *Archivaria*, 85. <https://archivaria.ca/index.php/archivaria/article/view/13630>
- Lindquist, E., & Rasmussen, K. (2012). Deputy ministers and new political governance: From neutral competence to promiscuous partisans to a new balance? In H. Bakvis & M. D. Jarvis (Eds.), *From New Public Management to New Political Governance* (pp. 179–203). McGill-Queen's University Press.
- Lion Laboratories Ltd v. Evans and Others [1985] QB 526. <https://www.ucpi.org.uk/wp-content/uploads/2018/03/Lion-Laboratories-Ltd.-v-Evans-1985-Q.B.-526-CA.pdf>
- Lodge, G., & Rogers, B. (2006). *Whitehall's black box: Accountability and performance in the senior civil service*. https://www.ippr.org/files/images/media/files/publication/2011/05/Whitehalls_black_box_full_1530.pdf

- Lowndes, V., & Roberts, M. (2013). *Why institutions matter: The new institutionalism in political science*. Palgrave Macmillan.
- Loyens, K., & Maesschalck, J. (2014). Whistleblowing and power. In A. J. Brown, D. Lewis, R. Moberly, & W. Vandekerckhove (Eds.), *International handbook on whistleblowing research* (pp. 154–173). Edward Elgar.
- Lux, M. K. (2018). Bryce, Peter Henderson. In *Dictionary of Canadian biography* (vol. 16). University of Toronto/Université Laval. http://www.biographi.ca/en/bio/bryce_peter_henderson_16E.html
- Luxford, V. (2017). Whistleblower protections. In G. Ferguson (Ed.), *Global corruption: Law, theory and practice* (2nd ed., pp. 12-1-12–42). University of Victoria. <http://icclr.law.ubc.ca/global-corruption-law-theory-and-practice>
- MacDonell, R. (2013). The whistleblower. *CBA National, Nov-Dec*. <https://www.nationalmagazine.ca/en-ca/articles/law/ethics/2013/the-whistleblower>
- Malcolmson, P., & Myers, R. (2003). *The Canadian regime* (2nd ed.). Broadview Press.
- Mannion, R., Blenkinsopp, J., Powell, M., McHale, J., Millar, R., Snowden, N., & Davies, H. (2018). Understanding the knowledge gaps in whistleblowing and speaking up in health care: Narrative reviews of the research literature and formal inquiries, a legal analysis and stakeholder interviews. *Health Services and Delivery Research, 6*(30), 1–190. <https://doi.org/10.3310/hsdr06300>
- March, J. G., & Olsen, J. P. (1984). The new institutionalism: Organizational factors in political life. *American Political Science Review, 78*(3), 734–749.
- Marr, D., & Wilkinson, M. (2006, April 15). *Deceit by the truckload*. The Sydney Morning Herald. <https://www.smh.com.au/national/deceit-by-the-truckload-20060415-gdndam.html?page=fullpage#contentSwap1>
- Martin-Bariteau, F., & Newman, V. (2018). *Whistleblowing in Canada: A knowledge synthesis report*. https://papers.ssrn.com/sol3/Papers.cfm?abstract_id=3111851
- Martin, B. (1997). Corporate culture: Poison for whistleblowers. *The Whistle, March*, 1–2. <https://www.uow.edu.au/~bmartin/pubs/97whistle03.html>
- Martin, B. (1999). *The whistleblower's handbook: How to be an effective resister*. Envirobook. <https://www.uow.edu.au/~bmartin/pubs/99wh.html>
- Martin, B. (2000). Myths of whistleblowing. *D!Ssent, 4*(Summer 2000/2001), 55–

56. <https://www.bmartin.cc/pubs/00dissent.pdf>
- Martin, B. (2003). Illusions of whistleblower protection. *UTS Law Review*, 5, 119–130. <https://www.bmartin.cc/pubs/03utslr.pdf>
- Martin, B. (2005). Bucking the system: Andrew Wilkie and the difficult task of the whistleblower. *Faculty of Law, Humanities and the Arts - Papers*, 1092. <https://ro.uow.edu.au/lhapapers/1092>
- Martin, B. (2009). Corruption, outrage and whistleblowing. In R. J. Burke & C. L. Cooper (Eds.), *Research companion to corruption in organizations* (pp. 206–216). Edward Elgar.
- Martin, B. (2010, December 6). False hope for whistleblowers. *On Line Opinion*. <https://www.bmartin.cc/pubs/10onlineopinion.html>
- Martin, B. (2014). Research that whistleblowers want - and what they need. In A. J. Brown, D. Lewis, R. Moberly, & W. Vandekerckhove (Eds.), *International handbook on whistleblowing research* (pp. 497–521). Edward Elgar.
- Martin, B. (2020). *Official channels*. Irene Publishing. <https://www.bmartin.cc/pubs/20oc/index.html>
- Martin, B., & Rifkin, W. (2004). The dynamics of employee dissent: Whistleblowers and organizational jiu-jitsu. *Public Organization Review*, 4(3), 221–238. <https://www.uow.edu.au/~bmartin/pubs/04por.html>
- Masser, B., & Brown, R. (1996). “When would you do it?” An investigation into the effects of retaliation, seriousness of malpractice and occupation on willingness to blow the whistle. *Journal of Community and Applied Social Psychology*, 6(2), 127–130. [https://doi.org/10.1002/\(SICI\)1099-1298\(199605\)6:2<127::AID-CASP360>3.0.CO;2-T](https://doi.org/10.1002/(SICI)1099-1298(199605)6:2<127::AID-CASP360>3.0.CO;2-T)
- Matheson, A., Weber, B., Manning, N., & Arnould, E. (2007). *Study on the political involvement in senior staffing and on the delineation of responsibilities between ministers and senior civil servants* (No. 6; OECD Working Papers on Public Governance). https://www.oecd-ilibrary.org/governance/study-on-the-political-involvement-in-senior-staffing-and-on-the-delineation-of-responsibilities-between-ministers-and-senior-civil-servants_136274825752
- Mattson, J. (2019, March 18). *Tweet, tweet: a High Court case on social media*. Bartier Perry Lawyers. <https://www.bartier.com.au/insights/articles/tweet-tweet-a-high-court-case-on-social-media/>
- May, T. E. (2019). *Erskine May: A treatise on the law, privileges, proceedings*

- and usage of parliament* (D. Natzler & M. Hutton (Eds.); 25th ed.).
<https://erskinemay.parliament.uk>
- Maynard-Moody, S., & Kelly, M. (1993). Stories public managers tell about elected officials: Making sense of the public-administration dichotomy. In *Public Management: The State of the Art*. Jossey-Bass.
- Mayne, J. (2003). Results-based governance: Collaborating for outcomes. In A. Gray, B. Jenkins, F. Leeuw, & J. Mayne (Eds.), *Collaboration in public services: The challenge for evaluation* (pp. 155–178). Transaction Publishers.
- Mazerolle, P., & Brown, A. J. (2008). Support for whistleblowing among managers: Exploring job satisfaction and awareness of obligations. In A. J. Brown (Ed.), *Whistleblowing in the Australian public sector: Enhancing the theory and practice of internal witness management in public sector organisations* (pp. 165–180). ANU E-Press.
<http://doi.org/10.22459/WAPS.09/2008>
- Mazerolle, P., & Cassematis, P. (2010). “Whistle while you work”: Lessons to be learned from the pan-Australian research. In D. B. Lewis (Ed.), *A global approach to public interest disclosure: What can we learn from existing whistleblowing legislation and research?* (pp. 128–158). Edward Elgar Publishing.
- McCloy v. New South Wales [2015] HCA 34 (Austl.).
<http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/HCA/2015/34.html>
- McEvoy, J. P. (2016). The legal response to whistleblowing in Canada: Managing disclosures by the “up the ladder” principle. In G. Thüsing & G. Forst (Eds.), *Whistleblowing - a comparative study* (pp. 33–72). Springer.
- McMahon, G., Mazerolle, P., & Swepson, P. (2015). *Debating the Whistle While they Work study Part I*. <http://whistleblowersqld.com.au/wp-content/uploads/2017/06/7.-Mazerolle-McMahon-2015.pdf>
- McMullen, J. (2010). Ten years of employment protection for whistleblowers in the UK: a view from the Employment Appeal Tribunal. In D. B. Lewis (Ed.), *A global approach to public interest disclosure: what can we learn from existing whistleblowing legislation and research?* (pp. 7–14). Edward Elgar Publishing.
- Merit Protection (Australian Government Employees) Act 1984.
<https://www.legislation.gov.au/Series/C2004A02929>

- Merit Systems Protection Board. (2011). *Blowing the whistle: Barriers to federal employees making disclosures*. US Government Printing Office.
<http://www.mspb.gov/netsearch/viewdocs.aspx?docnumber=662503&version=664475>
- Merritt, C. (2012, November 9). No ALP pardon for Kessing in whistleblower case. *The Australian*. <https://advance-lexis-com.proxy.library.carleton.ca/api/document?collection=news&id=urn:contentItem:570R-F5H1-JD3N-5181-00000-00&context=1516831>
- Mesmer-Magnus, J. R., & Viswesvaran, C. (2005). Whistleblowing in organizations: An examination of correlates of whistleblowing intentions, actions, and retaliation. *Journal of Business Ethics, 62*(3), 277–297.
<https://doi.org/10.1007/s10551-005-0849-1>
- Miceli, M. P., Dreyfus, S., & Near, J. P. (2014). Outsider “whistleblowers”: Conceptualizing and distinguishing “bell-ringing” behavior. In *International handbook on whistleblowing research* (pp. 71–94). Edward Elgar.
- Miceli, M. P., & Near, J. P. (1984). The relationships among beliefs, organizational position, and whistle-blowing status: A discriminant analysis. *Academy of Management Journal, 27*(4), 687–705.
<https://doi.org/10.2307/255873>
- Miceli, M. P., & Near, J. P. (1985). Characteristics of organizational climate and perceived wrongdoing associated with whistle-blowing decisions. *Personnel Psychology, 38*(3), 525–544. <https://doi.org/10.1111/j.1744-6570.1985.tb00558.x>
- Miceli, M. P., & Near, J. P. (1988). Individual and situational correlates of whistleblowing. *Personnel Psychology, 41*(2), 267–282.
- Miceli, M. P., & Near, J. P. (1990). *Is there a whistleblowing personality? Personal variables that may be associated with whistleblowing* (WPS 90-19).
- Miceli, M. P., & Near, J. P. (1992). *Blowing the whistle: The organizational and legal implications for companies and employees*. Lexington Books.
- Miceli, M. P., & Near, J. P. (2002). What makes whistle-blowers effective? Three field studies. *Human Relations, 55*(4), 455–479.
<https://doi.org/10.1177/0018726702055004463>
- Miceli, M. P., & Near, J. P. (2005). Standing up or standing by: What predicts blowing the whistle on organizational wrongdoing? In J. J. Martocchio (Ed.), *Research in personnel and human resources management* (Vol. 24, pp. 95–

136). Emerald Group Publishing Limited.

Miceli, M. P., Near, J. P., & Dworkin, T. M. (2008). *Whistle-blowing in organizations*. Routledge.

Miceli, M. P., Near, J. P., & Schwenk, C. R. (1991). Who blows the whistle and why? *Industrial and Labor Relations Review*, 45(1), 113.
<https://doi.org/10.2307/2524705>

Miceli, M. P., Rehg, M., Near, J. P., & Ryan, K. C. (1999). Can laws protect whistle-blowers? Results of a naturally occurring field experiment. *Work and Occupations*, 26(1), 129–151.
<https://doi.org/10.1177/0730888499026001007>

Miethe, T. D. (1999). *Whistleblowing at work: Tough choices in exposing fraud, waste, and abuse on the job*. Westview Press.

Miller, R. (1985). The downfall of a minister. *Maclean's (Toronto)*, 98, 32–36.
<https://archive.macleans.ca/article/1985/2/25/the-downfall-of-a-minister>

Moberly, R. (2010). The Supreme Court's antiretaliation principle. *Case Western Reserve Law Review*, 61(2), 375–452.
<https://heinonline.org/HOL/P?h=hein.journals/cwrlrv61&i=379&a=Y2FybGV0b24uY2E>

Moberly, R. (2012). Sarbanes-Oxley's whistleblower provisions: Ten years later. *South Carolina Law Review*, 64(1), 1–54.
<https://doi.org/10.1525/sp.2007.54.1.23>

Moberly, R. (2014). "To persons or organizations that may be able to effect action": Whistleblowing recipients. In A. J. Brown, D. Lewis, R. Moberly, & W. Vandekerckhove (Eds.), *International handbook on whistleblowing research* (pp. 273–297). Edward Elgar.

Moberly, R. E. (2006). Sarbanes-Oxley's structural model to encourage corporate whistleblowers. *Brigham Young University Law Review*, 5, 1107–1180.
<https://digitalcommons.law.byu.edu/lawreview/vol2006/iss5/1/>

Moberly, R. E. (2008). Protecting whistleblowers by contract. *University of Colorado Law Review*, 79(4), 975–1043.
<http://digitalcommons.unl.edu/lawfacpub>

Moe, R. C. (2001). The emerging federal quasi government: Issues of management and accountability. *Public Administration Review*, 61(3), 290–312. <https://doi.org/10.1111/0033-3352.00031>

- Molinsky, A. L. (1999). Sanding down the edges: Paradoxical impediments to organizational change. *The Journal of Applied Behavioral Science*, 35(1), 8–24. <https://doi.org/10.1177/0021886399351002>
- Moore, L., & McAuliffe, E. (2010). Is inadequate response to whistleblowing perpetuating a culture of silence in hospitals? *Clinical Governance: An International Journal*, 15(3), 166–178. <https://doi.org/10.1108/14777271011063805>
- Moore, T. (2021, January 1). Goss cabinet knew it destroyed documents wanted for court case. *Brisbane Times*. <https://www.brisbanetimes.com.au/politics/queensland/goss-cabinet-knew-it-destroyed-documents-wanted-for-court-case-20201230-p56qw9.html>
- Ms S Lenton v. Commissioners for HM Revenue and Customs [2020] UKET 3325436/2017 (11 June 2020). <https://www.gov.uk/employment-tribunal-decisions/x-v-commissioners-for-hm-revenue-and-customs-3325436-2017>
- Mullen, J. (2006). John Major's Citizens Charter - fifteen years later. In R. Espiet-Kilty & T. Whitton (Eds.), *Citoyens ou Consommateur ? Les mutations rhétoriques et politiques au Royaume-Uni*. Presses Université Blaise Pascal. https://www.academia.edu/852747/_PDF_full_text_John_Majors_Citizens_Charter_Fifteen_years_later
- Muller-Clemm, W. J., & Barnes, M. P. (1997). A historical perspective on federal program evaluation in Canada. *Canadian Journal of Program Evaluation*, 12(1), 47. <https://evaluationcanada.ca/system/files/cjpe-entries/12-1-047.pdf>
- Myers, A. (2004). Whistleblowing - The UK experience. In R. Calland & G. Dehn (Eds.), *Whistleblowing around the world: Law, culture and practice* (pp. 101–118). ODAC & PCaW.
- Nader, R., Petkas, P. J., & Blackwell, K. (Eds.). (1972). *Whistle Blowing*. Bantam.
- Near, J. P., Dworkin, T. M., & Miceli, M. P. (1993). Explaining the whistle-blowing process: Suggestions from power theory and justice. *Organization Science*, 4(3), 393–411. <https://doi.org/10.1287/orsc.4.3.393>
- Near, J. P., & Miceli, M. P. (1985). Organizational dissidence: The case of whistle-blowing. *Journal of Business Ethics*, 4(1), 1–16. <https://doi.org/10.1007/BF00382668>
- Near, J. P., & Miceli, M. P. (1986). Retaliation against whistle blowers: Predictors and effects. *Journal of Applied Psychology*, 71(1), 137–145. <https://doi.org/10.1037/0021-9010.71.1.137>

- Near, J. P., & Miceli, M. P. (1995). Effective whistle-blowing. *Academy of Management Review*, 20(3), 679. <https://doi.org/10.2307/258791>
- Near, J. P., & Miceli, M. P. (1996). Whistle-blowing: Myth and reality. *Journal of Management*, 22(3), 507–526. [https://doi.org/10.1016/S0149-2063\(96\)90034-3](https://doi.org/10.1016/S0149-2063(96)90034-3)
- Near, J. P., & Miceli, M. P. (2008). Wrongdoing, whistle-blowing, and retaliation in the U.S. government: What have researchers learned from the Merit Systems Protection Board (MSPB) survey results? *Review of Public Personnel Administration*, 28(3), 263–281. <https://doi.org/10.1177/0734371X08319153>
- Nethercote, J. R. (2003). *The Australian experience of public sector reform*. Australian Public Service Commission. <https://doi.org/10.4324/9781315036021>
- Nethercote, J. R. (2015). Parliament. In B. Galligan & S. Brenton (Eds.), *Constitutional conventions in Westminster systems: Controversies, changes and challenges* (pp. 137–156). Cambridge University Press.
- New South Wales. Royal Commission into the New South Wales Police Service. (1997). *Final Report - Volume 1: Corruption*. <https://web.archive.org/web/20090912064817/http://www.pic.nsw.gov.au/Report.aspx?ReportId=100>
- Newhouse, G., & Barns, G. (2015). New laws criminalise recording of information and whistleblowing. *Alternative Law Journal*, 40(3), 150–152. <https://doi.org/10.1177/1037969X1504000301>
- Ng, Y. (2017). *Between law and convention: Ministerial advisers in the Australian system of responsible government* (Senate Occasional Lecture Series, Issue July). https://www.aph.gov.au/About_Parliament/Senate/Powers_practice_n_procedures/pops/Papers_on_Parliament_68/Between_Law_and_Convention_Ministerial_Advisers_in_the_Australian_System_of_Responsible_Government
- Nielsen, R. P. (2013). Whistle-blowing methods for navigating within and helping reform regulatory institutions. *Journal of Business Ethics*, 112(3), 385–395. <https://doi.org/10.1007/s10551-012-1247-0>
- Niskanen, W. A. (1968). The peculiar economics of bureaucracy. *American Economic Review*, 58(2), 293–305. <http://www.jstor.org/stable/1831817>
- Niskanen, W. A. (1971). *Bureaucracy and representative government*. Aldine

Atherton.

- Norldand, J. (2010). *Human rights and archives: Lessons from the Heiner Affair* [University of Manitoba].
[https://mspace.lib.umanitoba.ca/bitstream/handle/1993/3971/Thesis\(Final\).pdf](https://mspace.lib.umanitoba.ca/bitstream/handle/1993/3971/Thesis(Final).pdf)
- North, D. C. (1990). *Institutions, institutional change, and economic performance*. Cambridge University Press.
- North, D. C. (1995). Five propositions about institutional change. In J. Knight & I. Sened (Eds.), *Explaining Social Institutions* (pp. 15–26). University of Michigan Press.
- Northcote, S. H., & Trevelyan, C. E. (1854). *Report on the organisation of the permanent civil service*. Her Majesty's Stationery Office.
- Oakes, D., & Clark, S. (2017, July 10). *The Afghan Files: Defence leak exposes deadly secrets of Australia's special forces*. ABC News.
<https://www.abc.net.au/news/2017-07-11/killings-of-unarmed-afghans-by-australian-special-forces/8466642?pfmredir=sm&nw=0>
- Odgers, J. R., & Rowland, J. (2016). *Odgers' Australian Senate practice* (R. Laing (Ed.); 14th ed.). CanPrint Communications Pty Ltd.
https://www.aph.gov.au/About_Parliament/Senate/Powers_practice_n_procedures/Odgers_Australian_Senate_Practice
- OECD. (2005). *Performance-related pay policies for government employees*.
https://read.oecd-ilibrary.org/governance/performance-related-pay-policies-for-government-employees_9789264007550-en#page1
- OECD. (2012). *Protection of whistleblowers: Study on whistleblower protection frameworks, compendium of best practices and guiding principles for legislation*. <http://www.oecd.org/g20/topics/anti-corruption/48972967.pdf>
- OECD. (2016a). *Committing to effective whistleblower protection*. OECD Publishing. <http://www.oecd.org/corporate/committing-to-effective-whistleblower-protection-9789264252639-en.htm>
- OECD. (2016b). *OECD convention on combating bribery of foreign public officials in international business transactions*.
<http://www.oecd.org/corruption/oecdantibriberyconvention.htm>
- Oliveto, A. M. (2019). Regulatory capture and whistleblowers in air law. *Issues in Aviation Law and Policy*, 19(1), 51–80. <https://doi.org/10.1007/BF02622256>

- Olson, M. (1965). *The logic of collective action: Public goods and the theory of groups*. Harvard University Press.
- Ombudsman Act 1976 (Austl.).
<https://www.legislation.gov.au/Details/C2020C00043>
- Ontario. Ontario Law Reform Commission. (1986). *Report on political activity, public comment, and disclosure by Crown employees*. Ministry of the Attorney General. <https://archive.org/details/reportonpolitica00onta>
- Organization of American States. (2013). *Draft model law to facilitate and encourage the reporting of acts of corruption and to protect whistleblowers and witnesses*.
- Orton-Jones, C. (2020, August 12). *Australia's whistleblowing legislation: One year on*. Raconteur. <https://www.raconteur.net/business-strategy/australia-whistleblowing-legislation-one-year-on/>
- Osborne v. Canada (Treasury Board), 1991 CanLII 60 (SCC), [1991] 2 SCR 69.
<https://www.canlii.org/en/ca/scc/doc/1991/1991canlii60/1991canlii60.html>
- Palango, P. (2008). *Dispersing the fog: Inside the secret world of Ottawa and the RCMP*. Key Porter Books.
- Panchamia, N., & Thomas, P. (2014). *The Next Steps initiative*.
[https://www.instituteforgovernment.org.uk/sites/default/files/case study next steps.pdf](https://www.instituteforgovernment.org.uk/sites/default/files/case%20study%20next%20steps.pdf)
- Parris, H. (1969). *Constitutional bureaucracy: The development of British central administration since the eighteenth century*. Allen & Unwin.
- Pascoe, J., & Welsh, M. (2011). Whistleblowing, ethics and corporate culture: Theory and practice in Australia. *Common Law World Review*, 40(2), 144–173. <https://doi.org/10.1350/clwr.2011.40.2.0213>
- Paul, R. J., & Townsend, J. B. (1996). Don't kill the messenger! Whistle-blowing in America - A review with recommendations. *Employee Responsibilities and Rights Journal*, 9(2), 149–161.
- Paun, A., & Barlow, P. (2013). *Civil service accountability to Parliament*.
[https://www.instituteforgovernment.org.uk/sites/default/files/publications/civil service accountability to parliament.pdf](https://www.instituteforgovernment.org.uk/sites/default/files/publications/civil%20service%20accountability%20to%20parliament.pdf)
- Peeples, D. K., Stokes, P., & Wingfield, S. S. (2009). When the whistle is blown: Legal defenses and practical guidelines for managing reports of organizational misconduct. *Business and Society*, 48(4), 467–488.

<https://doi.org/10.1177/0007650308326668>

- Perry, J. L. (1993). Whistleblowing, organizational performance, and organizational control. In H. G. Frederickson (Ed.), *Ethics and public administration* (pp. 79–99). Routledge.
- Peters, B. G. (2006). Public accountability of autonomous public organizations. In *Restoring accountability: Research studies* (Vol. 3, pp. 297–336). Public Works and Government Services Canada.
<https://publications.gc.ca/site/eng/9.688115/publication.html>
- Peters, B. G. (2012). *Institutional theory in political science: The new institutionalism* (3rd ed.). The Continuum International Publishing Group.
- Pickering, H. (2019, October 17). *Canada's next government should assess why we have so many political advisers*. The Conversation.
<https://theconversation.com/canadas-next-government-should-assess-why-we-have-so-many-political-advisers-123501>
- Pierson, P. (2000). Increasing returns, path dependence, and the study of politics. *American Political Science Review*, 94(2), 251–267.
<https://doi.org/10.2307/2586011>
- Pillay, S., Reddy, P. S. S., & Morgan, D. (2017). Institutional isomorphism and whistle-blowing intentions in public sector institutions. *Public Management Review*, 19(4), 423–442. <https://doi.org/10.1080/14719037.2016.1178322>
- Pittroff, E. (2014). Whistle-blowing systems and legitimacy theory: A study of the motivation to implement whistle-blowing systems in German organizations. *Journal of Business Ethics*, 124(3), 399–412.
<https://doi.org/10.1007/s10551-013-1880-2>
- Pittroff, E. (2016). Whistle-blowing regulation in different corporate governance systems: An analysis of the regulation approaches from the view of path dependence theory. *Journal of Management and Governance*, 20(4).
<https://doi.org/10.1007/s10997-015-9311-7>
- Pizer, J. (1994). The public interest exception to the breach of confidence action: Are the lights about to change? *Monash University Law Review*, 20(1), 67–109.
<https://heinonline.org/HOL/P?h=hein.journals/monash20&i=73&a=Y2FybGV0b24uY2E>
- Podger, A. (2007). What really happens: Department secretary appointments, contracts and performance pay in the Australian Public Service. *Australian*

- Journal of Public Administration*, 66(2), 131–147.
<https://doi.org/10.1111/j.1467-8500.2007.00524.x>
- Polinsky, A. M., & Shavell, S. (1984). The optimal use of fines and imprisonment. *Journal of Public Economics*, 24(1), 89–99. [https://doi.org/10.1016/0047-2727\(84\)90006-9](https://doi.org/10.1016/0047-2727(84)90006-9)
- Polinsky, A. M., & Shavell, S. (2001). Corruption and optimal law enforcement. *Journal of Public Economics*, 81(1), 1–24.
<https://doi.org/10.2139/ssrn.292254>
- Pollitt, C. (1993). *Managerialism and the public services: Cuts or cultural change in the 1990s?* (2nd ed.). Blackwell Business.
- Pollitt, C., & Bouckaert, G. (2011). *Public management reform: A comparative analysis – new public management, governance, and the neo-weberian state* (3rd ed.). Oxford Press.
- Ponnu, C. H., Naidu, K., & Zamri, W. (2008). Determinants of whistleblowing. *International Review of Business Research Papers*, 4(1), 276–298.
- Potter, K. (2008). *The “Toomer Affair” and authority’s culture of loyalty*.
https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwiRu9ec3arzAhWQMikFHe65CEsQFnoECA0QAQ&url=https%3A%2F%2Fwww.aph.gov.au%2Fparliamentary_business%2Fcommittees%2Fhouse_of_representatives_committees%3Furl%3Dlaca%2Fwhilst
- Protect. (2018). *Highlights from our anniversary month*. <https://public-concern-at-work.s3.eu-west-1.amazonaws.com/wp-content/uploads/images/2018/12/17113822/Protect-25th-anniversary-report.pdf>
- Protect. (2020, August 27). *Unpacked: The 3 bids to transform whistleblowing law PIDA*. <https://protect-advice.org.uk/unpacked-the-3-bids-to-transform-whistleblowing-law-pida/#content>
- Protected Disclosures Act 1994 (Austl. N.S.W.).
<https://www.legislation.nsw.gov.au/acts/1994-92.pdf>
- Protected Disclosures Act 2014 (Ir.).
<https://www.irishstatutebook.ie/eli/2014/act/14/enacted/en/index.html>
- Public Concern at Work, & University of Greenwich. (2013). *Whistleblowing: The inside story*. https://gala.gre.ac.uk/id/eprint/10296/1/Whistleblowing_-_the_inside_story_FINAL.pdf

- Public Interest Disclosure (Whistleblower Protection) Bill 2012 (Austl.)*.
https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=r4913
- Public Interest Disclosure Act 2010 (Austl. Queensl.).
<https://www.legislation.qld.gov.au/view/html/inforce/current/act-2010-038>
- Public Interest Disclosure Act 2018 (Austl. Queensl.).
https://www.legislation.sa.gov.au/legislation/lz/c/a/public_interest_disclosure_act_2018/current/2018.26.auth.pdf
- Public Sector Ethics Act 1994 (Austl. Queensl.).
<https://www.legislation.qld.gov.au/view/pdf/inforce/current/act-1994-067>
- Public Service Reform Act 1984 (Austl.).
<https://www.legislation.gov.au/Details/C2004A02927>
- Public Service Regulations 1935 (Austl.).
<https://www.legislation.gov.au/Details/C2004H02972>
- Queensland. Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct. (1989). *Report of a commission of inquiry pursuant to orders in council*. Commonwealth Government Printer.
<https://www.ccc.qld.gov.au/sites/default/files/Docs/Publications/CCC/The-Fitzgerald-Inquiry-Report-1989.pdf>
- Re a Company's Application [1989] Ch 477 (1 February 1989).
- Read v. Canada (Attorney General), 2005 FC 798 (CanLII).
<https://www.canlii.org/en/ca/fct/doc/2005/2005fc798/2005fc798.html>
- Rehg, M. T. (1999). *An examination of the retaliation process against whistleblowers: A study of federal government employees*. ProQuest Dissertations Publishing.
- Rehg, M. T., Miceli, M. P., Near, J. P., & Van Scotter, J. R. (2008). Antecedents and outcomes of retaliation against whistleblowers: Gender differences and power relationships. *Organization Science*, 19(2), 221–240.
<https://doi.org/10.1287/orsc.1070.0310>
- Reich, S. (2000). The four faces of institutionalism: Public policy and a pluralistic perspective. *Governance: An International Journal of Policy and Administration*, 13(4), 501.
- Remenyi, D. (2011). *Field methods for academic research: Interviews, focus groups and questionnaires*. Ridgeway Press.

- Reuters Staff. (2019, July 29). Australia ratifies maritime boundaries with East Timor. *Reuters*. <https://www.reuters.com/article/us-australia-timor-treaty-idUSKCN1U00Y8>
- Rhodes, R. A. W. (1997). *Understanding governance: Policy networks, governance, reflexivity and accountability*. Open University Press.
- Rhodes, R. A. W. (2007). Understanding governance: Ten years on. *Organization Studies*, 28(8), 1243–1264. <https://doi.org/10.1177/0170840607076586>
- Rhodes, R. A. W., Wanna, J., & Weller, P. (2009). *Comparing Westminster*. Oxford University Press.
- Rittel, H. W. J., & Webber, M. M. (1973). Dilemmas in a general theory of planning. *Policy Sciences*, 4(2), 155–169. <https://doi.org/10.1007/BF01405730>
- Roberts, A. (2006). Two challenges in administration of the Access to Information Act. In *Restoring accountability: Research studies* (Vol. 2, pp. 115–162). Public Works and Government Services Canada. <https://publications.gc.ca/site/eng/287371/publication.html>
- Roberts, C. (1996). *The logic of historical explanation*. Pennsylvania State University Press.
- Roberts, P. (2008). Evaluating agency responses: Comprehensiveness and the impact of whistleblowing procedures. In A. J. Brown (Ed.), *Whistleblowing in the Australian public sector: Enhancing the theory and practice of internal witness management in public sector organisations* (pp. 233–260). ANU E-Press. <http://doi.org/10.22459/WAPS.09/2008>
- Roberts, P., Olsen, J., & Brown, A. J. (2011). *Whistling while they work: A good-practice guide for managing internal reporting of wrongdoing in public sector organisations*. <http://press.anu.edu.au/wp-content/uploads/2011/10/whole2.pdf>
- Robertson, G. (1972). Official responsibility, private conscience, and public information. *Transactions of the Royal Society of Canada*, IV(X), 149–162.
- Rodriguez, J. (2021, June 9). *This doctor tried to raise alarms about residential schools 100 years ago but was ignored*. CTV News. <https://www.ctvnews.ca/canada/this-doctor-tried-to-raise-alarms-about-residential-schools-100-years-ago-but-was-ignored-1.5462902>
- Romzek, B. S., & Dubnick, M. J. (1987). Accountability in the public sector:

- Lessons from the Challenger tragedy. *Public Administration Review*, 47(3), 227–238. <https://doi.org/10.2307/975901>
- Rothschild, J. (2013). The fate of whistleblowers in nonprofit organizations. *Nonprofit and Voluntary Sector Quarterly*, 42(5), 886–901. <https://doi.org/10.1177/0899764012472400>
- Rothschild, J., & Miethe, T. D. (1999). Whistle-blower disclosures and management retaliation: The battle to control information about organization corruption. *Work and Occupations*, 26(1), 107–128. <https://doi.org/10.1177/0730888499026001006>
- Rothwell, G. R., & Baldwin, J. N. (2007). Ethical climate theory, whistle-blowing, and the code of silence in police agencies in the state of Georgia. *Journal of Business Ethics*, 70(4), 341–361.
- Royal Mail Group Ltd (Respondent) v. Jhuti (Appellant) [2019] UKSC 55 (U.K.). <https://www.bailii.org/cgi-bin/format.cgi?doc=/uk/cases/UKSC/2019/55.html>
- Russell, P. H. (2015). Codifying conventions. In B. Galligan & S. Brenton (Eds.), *Constitutional conventions in Westminster systems: Controversies, changes and challenges* (pp. 233–248). Cambridge University Press.
- Ryan, C. (1974). *A bridge too far*. Simon and Schuster.
- Sagar, R. (2013). *Secrets and leaks: The dilemma of state secrecy*. Princeton University Press.
- Saunders, C. (2011). *The constitution of Australia: A contextual analysis*. Hart Publishing.
- Saunders, K. L., & Thibault, J. (2008). Whistleblowing in Canada: A new framework of analysis. *Canadian Political Science Association Conference*. <https://www.cpsa-acsp.ca/papers-2008/Saunders.pdf>
- Savage, A. (2016). *Leaks, whistleblowing and the public interest*. Edward Elgar Publishing. <https://play.google.com/books/reader?id=bWnPDAQAQBAJ&pg=GBS.PA277.w.1.0.158>
- Savage, A. (2021, August 21). Modernising the United Kingdom's official secrecy laws: Not at the expense of freedom of expression. *Verfassungsblog on Matters Constitutional*. <https://verfassungsblog.de/uk-off-secrecy-law/>
- Savage, A. C. (2012). *Crown servants and unauthorised disclosures: Whistleblowing, executive accountability and the public interest* [Durham

- University]. <http://etheses.dur.ac.uk/3640/>
- Savoie, D. J. (1999). *Governing from the centre*. University of Toronto Press.
- Savoie, D. J. (2003). *Breaking the bargain: Public servants, ministers and Parliament*. University of Toronto Press.
- Savoie, D. J. (2006). The Canadian public service has a personality. *Canadian Public Administration*, 49(3), 261–281.
- Savoie, D. J. (2008). *Court government and the collapse of accountability in Canada and the United Kingdom*. University of Toronto Press.
- Savoie, D. J. (2013). *Whatever happened to the music teacher? How government decides and why*. MQUP.
- Schaffer, B. B. (1973). *The administrative factor: Papers in organization, politics and development*. Routledge.
- Schein, E. H. (2004). *Organizational culture and leadership* (3rd ed.). Jossey-Bass.
- Schwartz, M. S. (2004). Effective corporate codes of ethics: Perceptions of code users. *Journal of Business Ethics*, 55(4), 321–341.
<https://doi.org/10.1007/s10551-004-2169-2>
- Security of Information Act, R.S.C. 1985, c. O-5 (Can.). <https://laws-lois.justice.gc.ca/eng/acts/o-5/>
- Segsworth, R. V. (2005). Program evaluation in the government of Canada: Plus ça change... *Canadian Journal of Program Evaluation*, 20(3), 175.
<https://evaluationcanada.ca/program-evaluation-government-canada-plus-ca-change>
- Seifert, Deborah L., Stammerjohan, W. W., & Martin, R. B. (2014). Trust, organizational justice, and whistleblowing: A research note. *Behavioral Research in Accounting*, 26(1). <https://doi.org/10.2308/bria-50587>
- Seifert, Deborah L., Sweeney, J. T., Joireman, J., & Thornton, J. M. (2010). The influence of organizational justice on accountant whistleblowing. *Accounting, Organizations and Society*, 35(7), 707–717.
<https://doi.org/10.1016/j.aos.2010.09.002>
- Seifert, Deborah Lynn. (2006). *The influence of organizational justice on the perceived likelihood of whistle-blowing* [Washington State University]. http://www.dissertations.wsu.edu/Dissertations/Fall2006/d_seifert_120806.p

df

- Selznick, P. (1996). Institutionalism “old” and “new.” *Administrative Science Quarterly*, 41(2), 270. <https://doi.org/10.2307/2393719>
- Sharman, C. (2015). Upper houses. In B. Galligan & S. Brenton (Eds.), *Constitutional conventions in Westminster systems: Controversies, changes and challenges* (pp. 157–172). Cambridge University Press.
- Shepherd, R. (2017). Whistle-blowing and ethical practice. In I. Greene & D. P. Shugarman (Eds.), *Honest politics now*. James Lorimer & Company Ltd.
- Shepherd, R. P. (2012). In search of a balanced Canadian federal evaluation function: Getting to relevance. *Canadian Journal of Program Evaluation*, 26(2), 1–45. <https://evaluationcanada.ca/system/files/cjpe-entries/26-2-001.pdf>
- Shepherd, R. P. (2016). The program evaluation function: Uncertain governance and effects. In T. R. Klassen, D. Cepiku, & T. J. Lah (Eds.), *Handbook of global public policy and administration*. Routledge.
- Shepherd, R. P., Stoney, C., & Turnbull, L. (2016). The changing roles of politicians and public servants. In T. R. Klassen, D. Cepiku, & T. J. Lah (Eds.), *The Routledge handbook of global public policy and administration*. Routledge.
- Shepsle, K. A. (2006). Rational choice institutionalism. In R. A. W. Rhodes, S. A. Binder, & B. A. Rockman (Eds.), *The Oxford handbook of political institutions* (pp. 23–38). Oxford University Press.
- Simpson, J. (2001). *The friendly dictatorship*. McClelland & Stewart.
- Sims, R. L., & Keenan, J. P. (1998). Predictors of external whistleblowing: Organizational and intrapersonal variables. *Journal of Business Ethics*, 17(4), 411–421. <https://doi.org/10.1023/A:1005763807868>
- Skivenes, M., & Trygstad, S. (2017). Explaining whistle blowing processes in the Norwegian labour market: Between individual power resources and institutional arrangements. *Economic and Industrial Democracy*, 38(1), 119–143. <https://doi.org/10.1177/0143831X14559783>
- Skivenes, M., & Trygstad, S. C. (2010). When whistle-blowing works: The Norwegian case. *Human Relations*, 63(7), 1071–1097. <https://doi.org/10.1177/0018726709353954>
- Skivenes, M., & Trygstad, S. C. (2016). Whistleblowing in local government: An

- empirical study of contact patterns and whistleblowing in 20 Norwegian municipalities. *Scandinavian Political Studies*. <https://doi.org/10.1111/1467-9477.12066>
- Smethurst v. Commissioner of Police [2020] HCA 14 (Austl.).
<http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/HCA/2020/14.html>
- Smith, R. (2014). Whistleblowers and suffering. In A. J. Brown, D. Lewis, R. Moberly, & W. Vandekerckhove (Eds.), *International handbook on whistleblowing research* (pp. 230–249). Edward Elgar.
- Smith, R., & Brown, A. J. (2008). The good, the bad and the ugly: Whistleblowing outcomes. In A. J. Brown (Ed.), *Whistleblowing in the Australian public sector: Enhancing the theory and practice of internal witness management in public sector organisations* (pp. 109–135). ANU E-Press.
<http://doi.org/10.22459/WAPS.09/2008>
- Soeken, K. L., & Soeken, D. R. (1987). *A survey of whistleblowers: Their stressors and coping strategies*. <http://www.whistleblower-net.de/pdf/Soeken.pdf>
- Sossin, L. (2005). Speaking truth to power? The search for bureaucratic independence in Canada. *University of Toronto Law Journal*, 55(1), 1–59.
<https://doi.org/10.1353/tlj.2005.0004>
- Sossin, L. (2006). Defining boundaries: The constitutional argument for bureaucratic independence and its implication for the accountability of the public service. In *Restoring accountability: Research studies* (Vol. 2, pp. 25–72). Public Works and Government Services Canada.
<https://publications.gc.ca/site/eng/287371/publication.html>
- Spence, P. C. (2005). *Whistle-blowing and climate: A multi-level study*. Wayne State University.
- Spencer, M., & Spencer, J. (2014). When it all goes bad: Criminal remedies. In A. J. Brown, D. Lewis, R. Moberly, & W. Vandekerckhove (Eds.), *International handbook on whistleblowing research* (pp. 405–429). Edward Elgar.
- St-Martin, F. (2014). *Measuring the effectiveness of Canadian whistleblowing law*. International Anti-corruption Academy.
- Staw, B. M., Sandelands, L. E., Dutton, J. E., Lance, E., & Dutton, E. (1981). Threat-rigidity effects in organizational behavior: A multilevel analysis. *Administrative Science Quarterly*, 26(4), 501–524.
<https://doi.org/10.2307/2392337>

- Steinmo, S. (2008). What is historical institutionalism? In D. Della Porta & M. Keating (Eds.), *Approaches and methodologies in the social sciences: a pluralist perspective* (pp. 118–138). Cambridge University Press.
- Stephan, A. (2014). Is the Korean innovation of individual informant rewards a viable cartel detection tool? In *SSRN Electronic Journal* (No. 14–3; CCP Working Paper). <https://doi.org/10.2139/ssrn.2405933>
- Stewart, D. (2015). Assessing Access to Information in Australia: The impact of freedom of information laws on the scrutiny and operation of the Commonwealth government. In J. Wanna, E. A. Lindquist, & P. Marshall (Eds.), *New accountabilities, new challenges* (pp. 79–158). ANU Press. <https://doi.org/10.22459/nanc.04.2015.04>
- Stone, B. (2002). Bicameralism and democracy: The transformation of Australian state upper houses. *Australian Journal of Political Science*, 37(2), 267–281. <https://doi.org/10.1080/10361140220148142>
- Stone, D. (2012). *Policy paradox: The art of political decision making* (3rd ed.). W.W. Norton & Company.
- Streeck, W., & Thelen, K. (2005). Introduction: Institutional change in advanced political economies. In W. Streeck & K. Thelen (Eds.), *Beyond continuity: Institutional change in advanced political economies* (pp. 1–39). Oxford University Press.
- Strøm, K., Müller, W. C., & Bergman, T. (2003). *Delegation and accountability in parliamentary democracies*. Oxford University Press. <https://doi.org/10.1093/019829784X.001.0001>
- Sun Media. (2019, December 4). Costs for Phoenix Pay System failure approaching \$3 billion | Toronto Sun. *Toronto Sun*. <https://torontosun.com/news/national/costs-for-phoenix-pay-system-failure-approaching-3-billion>
- Swepson, P., Brown, A. J., & McMahon, G. (2015). *Debating the Whistle While they Work study Part II*. http://whistleblowersqld.com.au/wp-content/uploads/2017/06/6.-Swepson-Brown-2015_WR.pdf
- Syal, R. (2013, May 29). How HMRC treated its Goldman Sachs tax deal whistleblower as a criminal. *The Guardian*. <https://www.theguardian.com/politics/2013/apr/29/hmrc-goldman-sachs-tax-osita-mba>
- Syal, R. (2014, September 28). Treasury ordered to pay £142,000 to

- 'whistleblower' former civil servant | Public services policy | The Guardian. *The Guardian*. <https://www.theguardian.com/society/2014/sep/28/treasury-ordered-pay-whistleblower-civil-servant-david-owen>
- Syal, R. (2021, March 4). Priti Patel reaches £340,000 settlement with ex-Home Office chief Philip Rutnam. *The Guardian*. <https://www.theguardian.com/politics/2021/mar/04/priti-patel-reaches-six-figure-settlement-with-ex-home-office-chief-philip-rutnam>
- Sybron Corp v. Rochem [1983] EWCA Civ J0223-3 (23 February 1983). <https://vlex.co.uk/vid/sybron-corporation-v-rochem-793553109>
- Tasker, J. P. (2019, March 6). "I made no threats": Key moments from the Privy Council clerk's testimony on the SNC-Lavalin affair. CBC News. <https://www.cbc.ca/news/politics/michael-wernick-key-updates-snc-lavalin-1.5045461>
- Taxation Administration Act 1953 (Austl.). <https://www.legislation.gov.au/Details/C2022C00057>
- Templeton, H. (2004). Blowing the whistle on a newspaper magnate. In R. Calland & G. Dehn (Eds.), *Whistleblowing around the world: Law, culture and practice* (pp. 30–41).
- The Globe and Mail. (2006, June 19). Guité sentenced to 3 1/2 years in prison. *The Globe and Mail*. <https://www.theglobeandmail.com/news/national/guite-sentenced-to-3-years-in-prison/article25677509/>
- The Hofstede Centre. (2016). *National culture*. <https://www.geert-hofstede.com/national-culture.html>
- Thelen, K. (1999). Historical institutionalism in comparative politics. *Annual Review of Political Science*, 2(1), 369–404. <https://doi.org/10.1146/annurev.polisci.2.1.369>
- Thomas, P. (2010). Parliament and the public service. In C. Dunn (Ed.), *The handbook of Canadian public administration* (2nd ed., pp. 106–130). Oxford University Press.
- Thomas, P. (2017, February 28). Less whistleblowing and more "rightdoing." *Winnipeg Free Press*. <https://www.winnipegfreepress.com/opinion/analysis/less-whistleblowing-and-more-rightdoing-414937044.html>
- Thomas, P. G. (2006). Paying too much for your whistle? *Optimum*, 36(2). <http://optimumonline.ca/print.phtml?&id=257>

- Thomas, P. G. (2007). Why is performance-based accountability so popular in theory and difficult in practice? *World Summit on Public Governance: Improving the Performance of the Public Sector*.
https://www.researchgate.net/profile/Paul_Thomas49/publication/242737927_Why_Is_Performance-Based_Accountability_So_Popular_in_Theory_and_Difficult_in_Practice_Paper_presented_to_the_World_Summit_on_Public_Governance_Improving_the_Performance_of_the_Publi
- Tickner, P. (2015). *Fraud and corruption in public services*. Gower Publishing Limited.
- Tiffen, R. (1999). *Scandals: Media, politics & corruption in contemporary Australia*. UNSW Press.
- Tony Stephens v. Department of Communication and the Arts [2019] FWC 6399 (Austl.). <http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FWC/2019/6399.html>
- Transparency International. (2013). *Whistleblowing in Europe: Legal protections for whistleblowers in the EU*.
http://www.transparency.org/whatwedo/publication/whistleblowing_in_europe_legal_protections_for_whistleblowers_in_the_eu
- Transparency International. (2016). *Corruption perceptions index*.
<http://www.transparency.org/research/cpi/overview>
- Transparency International. (2018). Whistleblower reward programmes. In *Transparency International* (Issue September).
<https://knowledgehub.transparency.org/helpdesk/financial-incentives-for-whistleblowers>
- Transparency International. (2020). *Assessing whistleblowing legislation*. Transparency International.
https://images.transparencycdn.org/images/2020_Toolkit_AssessingWhistleblowingLegislation_EN.pdf
- Transportation Safety Board of Canada. (2014). *Railway investigation report R13D0054*. <http://www.tsb.gc.ca/eng/rapports-reports/rail/2013/r13d0054/r13d0054.pdf>
- Treasury Laws Amendment (Enhancing Whistleblower Protections) Act 2019 (Austl.). <https://www.legislation.gov.au/Details/C2019A00010>
- Trevino, L. K., & Victor, B. (1992). Peer reporting of unethical behavior: A social

- context perspective. *Academy of Management Journal*, 35(1), 38–64.
<https://doi.org/10.2307/256472>
- U.S. Department of Justice. (2019). *Fraud statistics - overview*.
<https://www.justice.gov/opa/press-release/file/1233201/download>
- UNDP. (2008). *A user's guide to measuring corruption*.
<http://www.undp.org/content/undp/en/home/librarypage/democratic-governance/anti-corruption/a-users-guide-to-measuring-corruption.html>
- United Kingdom. Advisory Conciliation and Arbitration Service. (2015). *Code of practice on disciplinary and grievance procedures*.
<http://www.acas.org.uk/media/pdf/f/m/Acas-Code-of-Practice-1-on-disciplinary-and-grievance-procedures.pdf>
- United Kingdom. All Party Parliamentary Group Whistleblowing. (2019). *Whistleblowing: The personal cost of doing the right thing and the cost to society of ignoring it*.
https://docs.wixstatic.com/ugd/88d04c_80c76b31304a4bb29b16b6c1690ff6ad.pdf
- United Kingdom. All Party Parliamentary Group Whistleblowing. (2020). *Making whistleblowing work for society*. https://a02f9c2f-03a1-4206-859b-06ff2b21dd81.filesusr.com/ugd/88d04c_56b3ca80a07e4f5e8ace79e0488a24ef.pdf
- United Kingdom. Cabinet Office. (1996). *The duties and responsibilities of civil servants in relation to ministers*.
https://www.civilservant.org.uk/library/1996_Armstrong_Memorandum.pdf
- United Kingdom. Cabinet Office. (2005). *Departmental evidence and response to select committees*.
https://www.civilservant.org.uk/library/2005_Osmotherly_Rules.pdf
- United Kingdom. Cabinet Office. (2010). *DSR 1: Diplomatic Service Code*.
<https://www.gov.uk/government/publications/diplomatic-and-home-service-regulations>
- United Kingdom. Cabinet Office. (2011). *The Cabinet Manual: A guide to laws, conventions and rules on the operation of government*. Cabinet Office.
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/60641/cabinet-manual.pdf
- United Kingdom. Cabinet Office. (2012). *The civil service reform plan*.
<https://assets.publishing.service.gov.uk/government/uploads/system/uploads>

/attachment_data/file/305148/Civil-Service-Reform-Plan-final.pdf

- United Kingdom. Cabinet Office. (2015a). *Civil Service Code*.
<https://www.gov.uk/government/publications/civil-service-code/the-civil-service-code>
- United Kingdom. Cabinet Office. (2015b). *Code of Conduct for Special Advisers*.
https://www.civilservant.org.uk/library/2015_spads_code.pdf
- United Kingdom. Cabinet Office. (2016). *Civil Service Management Code*.
<https://www.gov.uk/government/publications/civil-servants-terms-and-conditions>
- United Kingdom. Cabinet Office. (2021). *Civil service people survey 2009 to 2020: Median benchmark scores*.
<https://www.gov.uk/government/publications/civil-service-people-survey-2020-results>
- United Kingdom. Civil Service Commission. (2010a). *The Civil Service Code: A guide for departments subject to a complaint to the Civil Service Commission*. Civil Service Commission (UK).
<https://civilservicecommission.independent.gov.uk/wp-content/uploads/2013/07/CodeGuideforDepartmentsApril2013.pdf>
- United Kingdom. Civil Service Commission. (2010b). *The Civil Service Code: A guide to bringing a complaint to the Civil Service Commission*. Civil Service Commission. <https://civilservicecommission.independent.gov.uk/wp-content/uploads/2019/07/Guide-to-bringing-a-complaint-to-the-Commissioners-Civil-Service-Code-March-20121.pdf>
- United Kingdom. Civil Service Commission. (2017). *The Civil Service Code: A guide for civil servants bringing an appeal to the Civil Service Commission*.
https://civilservicecommission.independent.gov.uk/wp-content/uploads/2019/03/03c_The-Civil-Service-Code-A-Guide-for-civil-servants-bringing-an-appeal-to-the-Civil-Service-Commission.pdf
- United Kingdom. Civil Service Commission. (2018). *Recruitment principles*.
https://civilservicecommission.independent.gov.uk/wp-content/uploads/2019/03/02a_RECRUITMENT-PRINCIPLES-April-2018-FINAL-.pdf
- United Kingdom. Civil Service Commission. (2020a). *Annual report and accounts 2019-20*. <https://doi.org/10.1179/pma.2011.45.2.466>
- United Kingdom. Civil Service Commission. (2020b). *Civil Service Code*

complaint to the Civil Service Commission: Findings of the investigation (ref: 1514). <https://civilservicecommission.independent.gov.uk/wp-content/uploads/2020/11/1514-Decision-Notice-.pdf>

United Kingdom. Committee on Standards in Public Life. (1995). *First report of the Committee on Standards in Public Life* (Cm 2850-1, Vol. 1). https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/336919/1stInquiryReport.pdf

United Kingdom. Committee on Standards in Public Life. (1996). *Second report of the Committee on Standards in Public Life* (Cm Unknown). <https://www.gov.uk/government/publications/local-public-spending-bodies>

United Kingdom. Committee on Standards in Public Life. (1997). *Third report of the Committee on Standards in Public Life: Standards of conduct in local government in England, Scotland and Wales*. <https://www.gov.uk/government/publications/standards-of-conduct-of-local-government-in-england-scotland-and-wales>

United Kingdom. Committee on Standards in Public Life. (2005). *Tenth report of the Committee on Standards in Public Life: Getting the balance right - Implementing standards of conduct in public life* (Cm 6407). <https://www.gov.uk/government/publications/tenth-report-of-the-committee-on-standards-in-public-life>

United Kingdom. Department for Business Innovation and Skills. (2015). *Whistleblowing: Guidance for employers and code of practice*. Department for Business Innovation and Skills. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/415175/bis-15-200-whistleblowing-guidance-for-employers-and-code-of-practice.pdf

United Kingdom. Department for Transport. (1988). *MV Herald of Free Enterprise: Formal investigation* (No. 8074; Report of Court). HM Stationery Office. https://assets.publishing.service.gov.uk/media/54c1704ce5274a15b6000025/FormalInvestigation_HeraldofFreeEnterprise-MSA1894.pdf

United Kingdom. Department for Transport. (2019). *Annual report and accounts 2018-19* (HC 2392). <https://doi.org/10.4324/9781315148441-10>

United Kingdom. House of Commons. Prime Minister. (1985, February 26). The duties and responsibilities of civil servants in relation to ministers. *Hansard*. <https://api.parliament.uk/historic-hansard/written-answers/1985/feb/26/civil-servants>

- United Kingdom. House of Commons. (1988, January 15). Protection of Official Information Bill. *Hansard*. <https://hansard.parliament.uk/commons/1988-01-15/debates/71f2ab61-7c63-4ccf-b2a7-c2bd3da63abb/ProtectionOfOfficialInformationBill>
- United Kingdom. House of Commons Committee on the Civil Service. (1968). *The civil service: Report of the committee 1966-1968* (Vol. 1). HM Stationery Office.
- United Kingdom. House of Commons Public Accounts Committee. (2014). *Whistleblowing* (HC 593). <https://publications.parliament.uk/pa/cm201415/cmselect/cmpublicacc/593/593.pdf>
- United Kingdom. House of Commons Public Accounts Committee. (2020). *Holding government to account: 150 years of the Committee of Public Accounts*. https://doi.org/10.1007/978-981-15-3599-4_7
- United Kingdom. House of Commons Public Administration Select Committee. (2009). *Leaks and whistleblowing in Whitehall* (HC 83, Issue August).
- United Kingdom. Ministry of Justice. (2020). *Tribunal statistics quarterly: Main tables*. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/942757/Main_Tables_Q2_2020_21.ods
- United Kingdom. Office for National Statistics. (2016). *Whistleblowing and raising a concern procedure for civil servants*. Office for National Statistics. <https://www.ons.gov.uk/file?uri=/aboutus/transparencyandgovernance/freedomofinformationfoi/handlingofwhistleblowingconcerns/whistleblowingprocedure.pdf>
- United Kingdom. Scottish Government. (2018). *Raising a Concern under the Civil Service Code and Whistleblowing Policy*. https://www.gov.scot/binaries/content/documents/govscot/publications/foi-eir-release/2018/05/foi-18-01168/documents/raising_a_concern_under_the_civil_service_code_and_whistleblowing_policy-pdf/raising_a_concern_under_the_civil_service_code_and_whistleblowing_policy-pdf
- United Kingdom. Treasury. (1949). *A handbook for the new civil servant* (3rd ed.). HM Stationery Office.
- United Kingdom. Treasury. (2014). *Treasury Minutes: Government responses on the Ninth; the Sixteenth and Seventeenth; and the Nineteenth to the*

- Twentieth reports from the Committee of Public Accounts: Session 2014-15; and progress on Government Cash Management* (Cm 8988).
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/388719/45502_Cm_8988_Accessible.pdf
- UNODC. (2004). *United Nations Convention Against Corruption*.
https://www.unodc.org/unodc/corruption/tools_and_publications/UN-convention-against-corruption.html
- UNODC. (2015). *Resource guide on good practices in the protection of reporting persons*. https://www.unodc.org/documents/corruption/Publications/2015/15-04741_Person_Guide_eBook.pdf
- Uys, T. (2000). The politicisation of whistleblowers: A case study. *Business Ethics: A European Review*, 9(4), 259–267.
- Uys, T. (2008). Rational loyalty and whistleblowing: The South African context. *Current Sociology*, 56(6), 904–921.
<https://doi.org/10.1177/0011392108095345>
- Uys, T. (2010). Speaking truth to power: The whistleblower as organizational citizen in South Africa. In D. B. Lewis (Ed.), *A global approach to public interest disclosure: What can we learn from existing whistleblowing legislation and research?* (pp. 109–127). Edward Elgar Publishing.
- Valentine, S., & Fleischman, G. (2008). Ethics programs, perceived corporate social responsibility and job satisfaction. *Journal of Business Ethics*, 77(2), 159–172. <https://doi.org/10.1007/s10551-006-9306-z>
- Valiquette l'Heureux, A. (2016). *La tragédie de Lac-Mégantic et l'atrophie de la vigilance dans le secteur public* [École nationale d'administration publique]. https://www.researchgate.net/publication/309852569_La_tragedie_de_Lac-Megantic_et_l%27atrophie_de_la_vigilance_dans_le_secteur_public
- van Zyl Smit, J. (2017). All Change? Judicial Appointments in England and Wales since the Constitutional Reform Act 2005. In H. Corder & J. van Zyl Smit (Eds.), *Securing judicial independence: The role of commissions in selecting judges in the Commonwealth* (pp. 39–84). SiberInk.
https://www.biicl.org/documents/1834_corder_and_smit_-_securing_judicial_independence.pdf?showdocument=1
- Vandekerckhove, W. (2006). *Whistleblowing and organizational social responsibility: A global assessment*. Ashgate Publishing Company.
- Vandekerckhove, W. (2010). European whistleblower protection: Tiers or tears?

- In D. B. Lewis (Ed.), *A global approach to public interest disclosure: What can we learn from existing whistleblowing legislation and research?* (pp. 15–35). Edward Elgar Publishing.
- Vandekerckhove, W., Brown, A. J., & Tsahuridu, E. (2014). Managerial responsiveness to whistleblowing: Expanding the research horizon. In A. J. Brown, D. Lewis, R. Moberly, & W. Vandekerckhove (Eds.), *International handbook on whistleblowing research* (pp. 298–327). Edward Elgar.
- Vandekerckhove, W., Kenny, K., Fotaki, M., & Humantito, I. (2016). *Effective speak-up arrangements for whistle-blowers: A multi-case study on the role of responsiveness, trust and culture*.
https://www.accaglobal.com/content/dam/ACCA_Global/Research/ACCA-ESRC_Effective_Speak-Up_Arrangements_for_Whistle-Blowers.pdf
- Vandekerckhove, W., & Lewis, D. (2012). The content of whistleblowing procedures: A critical review of recent official guidelines. *Journal of Business Ethics*, 108(2), 253–264.
- Vandekerckhove, W., Uys, T., Rehg, M. T., & Brown, A. J. (2014). Understandings of whistleblowing: Dilemmas of social culture. In A. J. Brown, D. Lewis, R. Moberly, & W. Vandekerckhove (Eds.), *International handbook on whistleblowing research* (pp. 37–70). Edward Elgar.
- Vaughn, R. G. (1981). The role of statutory regulation of public service ethics in Great Britain and the United States. *Hastings International and Comparative Law Review*, 4(2), 341–398.
<https://heinonline.org/HOL/P?h=hein.journals/hasint4&i=357&a=Y2FybGV0b24uY2E>
- Vaughn, R. G. (2012). *The successes and failures of whistleblower laws*. Edward Elgar.
- Velasquez, M. G. (1988). *Business ethics: Concepts and cases* (2nd ed.). Prentice-Hall.
- Vickers, L. (1996). *Whistleblowing at Work: The Legal Implications for Employees of Making Disclosures of Confidential Information*. Oxford Brookes University.
- Vickers, L. (2000). Whistling in the wind? The Public Interest Disclosure Act 1998. *Legal Studies (Society of Legal Scholars)*, 20(3), 428–444.
<https://doi.org/10.1111/j.1748-121X.2000.tb00152.x>
- Victor, B., Trevino, L. K., & Shapiro, D. L. (1993). Peer reporting of unethical

- behavior: The influence of justice evaluations and social context factors. *Journal of Business Ethics*, 12(4), 253–263.
- Vincent, D. (2013, October 24). EI fraud investigator axed for leaking “quota” details. *Toronto Star*.
http://www.thestar.com/news/canada/2013/10/24/ei_fraud_investigator_axed_for_leaking_quota_details.html
- Vinten, G. (2000). Whistleblowing towards quality. *The TQM Magazine*, 12(3), 166–171. <https://doi.org/10.1108/09544780010320223>
- Vinten, G. (2003). Whistleblowing: the UK experience. Part 1. *Management Decision*, 41(9), 935–943. <https://doi.org/10.1108/00251740310495063>
- Vinten, G., & Gavin, T. A. (2005). Whistleblowing on health, welfare and safety: the UK experience. *The Journal of the Royal Society for the Promotion of Health*, 125(1), 23–29. <https://doi.org/10.1177/146642400512500111>
- Voices-Voix. (2012). *Joanna Gualtieri*. Voices-Voix. <http://voices-voix.ca/en/facts/profile/joanna-gualtieri>
- Walters, K. D. (1975). Your employees’ right to blow the whistle. *Harvard Business Review*, 53(4), 26–34, 161–162.
<https://doi.org/10.5815/ijigsp.2012.01.06>
- Waltz, K. N. (Kenneth N. (2010). *Theory of international politics*. Waveland Press.
- Weber, M. (2013a). *Economy and society* (G. Roth & C. Wittich (Eds.); E. Fischhoff, H. Gerth, A. M. Henderson, F. Kogegar, C. W. Mills, T. Parsons, M. Rheinstein, G. Roth, E. Shils, & C. Wittich (Trans.); Vol. 1). University of California Press.
- Weber, M. (2013b). *Economy and society* (G. Roth & C. Wittich (Eds.); E. Fischhoff, H. Gerth, A. M. Henderson, F. Kogegar, C. W. Mills, T. Parsons, M. Rheinstein, G. Roth, E. Shils, & C. Wittich (Trans.); Vol. 2). University of California Press.
- Weick, K. E. (1987). Organizational Culture as a Source of High Reliability. *California Management Review*, 29(2), 112–127.
<https://doi.org/10.2307/41165243>
- Weiden, D. L. (2011). Judicial politicization, ideology, and activism at the High Courts of the United States, Canada, and Australia. *Political Research Quarterly*, 64(2), 335–347. <https://doi.org/10.1177/1065912909352775>

- Weinstein, D. (1979). *Bureaucratic opposition: Challenging abuses at the workplace*. Pergamon Press.
- Weisband, E., & Franck, T. A. (1975). *Resignation in protest: Political and ethical choices between loyalty to team and loyalty to conscience in American political life*. Grossman Publishers.
- Weld-Blundell v. Stephens [1920] UKHL 646 (13 May 1920).
<https://www.bailii.org/uk/cases/UKHL/1920/58SLR0646.pdf>
- Weller, P., & Haddon, C. (2016). Westminster traditions: Continuity and change. *Governance*, 29(4), 483–498. <https://doi.org/10.1111/gove.12226>
- Westin, A. F. (1981). *Whistle blowing: Loyalty and dissent in the corporation*. McGraw-Hill.
- Whistleblowers Action Group Queensland. (2019). *Public contribution to the establishment of a Commonwealth integrity commissioner*.
<https://www.ag.gov.au/Consultations/Documents/commonwealth-integrity-commission/Whistleblowers-action-group-QLD-inc.pdf>
- Whistleblowers Action Group Queensland, & Whistleblowers Australia. (2018). *Whistleblower cases of national significance*. Whistleblowers Australia.
<https://whistleblowersqld.com.au/index.php/whistleblower-cases-of-national-significance/>
- Whistleblowers Australia, & Whistleblowers Action Group Queensland. (n.d.). *Whistleblower cases of national significance*. Whistleblowers Australia. Retrieved July 26, 2021, from
https://www.bmartin.cc/dissent/contacts/au_wba/wbns.html
- Whistleblowers Protection Act 1993 (S. Austl.).
<https://www.legislation.sa.gov.au/LZ/C/A/WHISTLEBLOWERS PROTECTION ACT 1993.aspx>
- Whistleblowers Protection Act 1994 (Austl. Queensl.).
<https://www.legislation.qld.gov.au/view/pdf/inforce/2002-05-03/act-1994-068>
- Wildavsky, A. (1978). A budget for all seasons? Why the traditional budget lasts. *Public Administration Review*, 38(6), 501–509.
<https://doi.org/10.2307/976027>
- Wilde, J. H. (2017). The deterrent effect of employee whistleblowing on firms' financial misreporting and tax aggressiveness. *The Accounting Review*, 92(5), 247–280. <https://doi.org/10.2308/accr-51661>

- Wilkie, A. (2004). *Axis of deceit: The story of the intelligence officer who risked all to tell the truth about WMD and Iraq*. Black Inc.
- Williams, G., & Davis, R. (2003). Reform of the judicial appointments process: Gender and the bench of the High Court of Australia. *Melbourne University Law Review*, 27(3), 819–863.
https://law.unimelb.edu.au/__data/assets/pdf_file/0006/1708134/27_3_8.pdf
- Williams, M., & Moser, T. (2019). The art of coding and thematic exploration in qualitative research. *International Management Review*, 15(1), 45–55.
- Wilson, J. (2018, July 20). Lelegale's speech case: The snowball that will start an avalanche? *The Mandarin*. <https://www.themandarin.com.au/96071-banerji-and-comcare-compensation-the-snowball-that-will-start-an-avalanche/>
- Wilson, W. (1887). The Study of Administration. *Political Science Quarterly*, 2(2), 197–222. <https://doi.org/10.2307/2139277>
- Wolfe, S., Worth, M., & Dreyfus, S. (2016). *Protecting whistleblowers in the UK: A new blueprint*.
<https://static1.squarespace.com/static/5e249291de6f0056c7b1099b/t/5ea06f8d801be771a29d32e/1587572764935/Report-Protecting-Whistleblowers-In-The-UK.pdf>
- Wonder, B. (2019). *Consultancy report for the steering committee for the national red imported fire ant eradication program: Efficiency and effectiveness review of the national red imported fire ant eradication program*.
<https://www.awe.gov.au/sites/default/files/documents/national-red-imported-fire-ant-eradication-program-efficiency-and-effectiveness-review-.pdf>
- Woodhouse, D. (2004). UK ministerial responsibility in 2002: The tale of two resignations. *Public Administration*, 82(1), 1–19.
<https://doi.org/10.1111/j.0033-3298.2004.00380.x>
- Work Health and Safety Act 2011 (Austl.).
<https://www.legislation.gov.au/Details/C2021C00474>
- World Bank. (2010). *Worldwide Governance Indicators (WGI)*. Data Catalog.
<https://datacatalog.worldbank.org/dataset/worldwide-governance-indicators>
- Worthy, B. J. (2007). *The Freedom of Information Act 2000: A case study* [University of Manchester]. <https://doi.org/10.1017/cbo9780511844904.006>
- Wortley, R., Cassematis, P., & Donkin, M. (2008). Who blows the whistle, who doesn't and why? In A. J. Brown (Ed.), *Whistleblowing in the Australian public sector: Enhancing the theory and practice of internal witness*

- management in public sector organisations* (pp. 53–82). ANU E-Press.
- Wright, P. (1987). *Spycatcher: The candid autobiography of a senior intelligence officer*. Viking.
- Wright, S. (2009, October 12). Damian Green leaks arrest “not proportionate”, report finds. *Daily Mail Online*. <https://www.dailymail.co.uk/news/article-1219581/Damian-Green-leaks-arrest-proportionate-report-finds.html>
- X v. Commissioners for HM Revenue and Customs [2018] UKET 3325436/2017 (23 November 2018). <https://www.gov.uk/employment-tribunal-decisions/x-v-commissioners-for-hm-revenue-and-customs-3325436-2017>
- Yeoh, P. (2014). Whistleblowing: motivations, corporate self-regulation, and the law. *International Journal of Law and Management*, 56(6), 459–474. <https://doi.org/10.1108/IJLMA-06-2013-0027>
- Yin, R. K. (2009). *Case study research: Design and methods* (4th ed.). Sage Publications.
- Zhuang, J. (2002). *Whistle-blowing and peer reporting: A cross-cultural comparison of Canadians and Chinese*. University of Lethbridge.
- Zimonjic, P. (2019, December 18). *After year of political turmoil, SNC-Lavalin gets most of what it wanted in plea deal*. CBC News. <https://www.cbc.ca/news/politics/trudeau-wilson-raybould-snc-lavalin-1.5401353>
- Zussman, D. (2010). Alternative service delivery in Canada. In C. Dunn (Ed.), *The handbook of Canadian public administration* (pp. 250–267). Oxford University Press.
- Zvonik, V. (2010). *Walter Rudnicki: An Inventory of his papers at the University of Manitoba Archives and Special Collections*. https://umanitoba.ca/libraries/units/archives/collections/complete_holdings/e/ad/html/rudnicki_w_2010_1.shtml#tag_bioghist

Appendix 1: Stated Purposes of Case Country Whistleblowing Regimes

Table A1.1: Stated Purpose of Whistleblowing Laws

Jurisdiction	Purposes of Acts
England, Scotland, and Wales	<p><i>Public Interest Disclosure Act 1998</i> (amends <i>Employment Rights Act 1996</i>) Preamble: An Act to protect individuals who make certain disclosures of information in the public interest; to allow such individuals to bring action in respect of victimisation; and for connected purposes.</p>
Northern Ireland	<p><i>Public Interest Disclosure (Northern Ireland) Order 1998 No. 1763 (N.I. 17)</i> (amends <i>Employment Rights (Northern Ireland) Order 1996</i>) Explanatory Note: This Order amends the Employment Rights (Northern Ireland) Order 1996 to protect workers who disclose certain kinds of information from being dismissed or penalised as a result of the disclosure.</p>
Commonwealth Government	<p><i>Public Interest Disclosure Act 2013 (Cth)</i>, s. 6 Objects The objects of this Act are</p> <ul style="list-style-type: none"> (a) to promote the integrity and accountability of the Commonwealth public sector; and (b) to encourage and facilitate the making of public interest disclosures by public officials; and (c) to ensure that public officials who make public interest disclosures are supported and are protected from adverse consequences relating to the disclosures; and (d) to ensure that disclosures by public officials are properly investigated and dealt with.
Canada	<p><i>Public Servants Disclosure Protection Act</i>, S.C. 2005, c. 46 An Act to establish a procedure for the disclosure of wrongdoings in the public sector, including the protection of persons who disclose the wrongdoings Preamble Recognizing that the federal public administration is an important national institution and is part of the essential framework of Canadian parliamentary democracy;</p> <ul style="list-style-type: none"> it is in the public interest to maintain and enhance public confidence in the integrity of public servants; confidence in public institutions can be enhanced by establishing effective procedures for the disclosure of wrongdoings and for protecting public servants who disclose wrongdoings, and by establishing a code of conduct for the public sector; public servants owe a duty of loyalty to their employer and enjoy the right to freedom of expression as guaranteed by the Canadian Charter of Rights and Freedoms and that this Act strives to achieve an appropriate balance between those two important principles; <p>the Government of Canada commits to establishing a Charter of Values of Public Service setting out the values that should guide public servants in their work and professional conduct</p>

Appendix 2: Theorized Relationships Between Governance, Westminster Institutions, and Whistleblowing Regimes

WGI Definitions:

Governance: Governance consists of the traditions and institutions by which authority in a country is exercised. This includes the process by which governments are selected, monitored, and replaced; the capacity of the government to effectively formulate and implement sound policies; and the respect of citizens and the state for the institutions that govern economic and social interactions among them.

(Source: The Worldwide Governance Indicators (WGI) project, <http://info.worldbank.org/governance/wgi/>)

Control of corruption (CC): Control of corruption captures perceptions of the extent to which public power is exercised for private gain, including both petty and grand forms of corruption, as well as "capture" of the state by elites and private interests

Government effectiveness (GE): Government effectiveness captures perceptions of the quality of public services, the quality of the civil service and the degree of its independence from political pressures, the quality of policy formulation and implementation, and the credibility of the government's commitment to such policies

Rule of law (RL): Rule of law captures perceptions of the extent to which agents have confidence in and abide by the rules of society, and in particular the quality of contract enforcement, property rights, the police, and the courts, as well as the likelihood of crime and violence

Regulatory quality (RQ): Regulatory quality captures perceptions of the ability of the government to formulate and implement sound policies and regulations that permit and promote private sector development

Voice and accountability (VA): Voice and accountability captures perceptions of the extent to which a country's citizens are able to participate in selecting their government, as well as freedom of expression, freedom of association, and a free media.

Table A2.1: *Theorized Relationships between Westminster Institutions, WGI Good Governance Criteria, and Predicted Relationship with Whistleblowing*

Factor Type	Factor Sub-type	CC	GE	RL	RQ	VA	Rationale	Internal Whistleblowing	External Whistleblowing
Westminster structure	Rigid hierarchy with few veto points		✓				As in Weberian model, hierarchies create a clear chain of command, which is efficient. It may enhance accountability within organizations, but only if the organizational leadership is ethical and organization is not dependent on wrongdoing	Neutral	Undermines
	Power concentrated in hands of PM / central agencies		✓				As with hierarchies, centralized decision making may be more efficient. However, effectiveness in non-priority areas may suffer due to lack of autonomy and guidance. Further, stakes for failure and error may be higher	Undermines	Undermines
	Departmental structures / specialization		✓		✓		Departmentalization, as in Weberian bureaucracy, facilitates professional specialization, improving effectiveness and regulatory quality	Unclear	Unclear
	Parliamentary oversight of executive via committees and officers of parliament		✓		✓	✓	Committees provide some oversight of administrative activities and review legislation, often in manner which can inform public awareness. Independent officers of parliament can speak freely about matters ranging from efficiency and effectiveness to misconduct	Supports	Undermines
	Highly oppositional parliament	✓	✓	✓	✓	✓	Linked to ministerial responsibility, parliaments are intended to provide oversight and hold governments to account for maladministration and other misconduct	Undermines	Undermines

Factor Type	Factor Sub-type	CC	GE	RL	RQ	VA	Rationale	Internal Whistleblowing	External Whistleblowing
Westminster process	Accounting officer concept for administrative head	✓	✓	✓			Under this practice, permanent administrative heads are accountable for the performance of their departments, so have an incentive to ensure that they function effectively and without misconduct	Supports	Undermines
	Effective internal mechanisms for detecting error and holding officials to account (e.g., audit, evaluation)	✓	✓	✓			Effective internal procedures facilitate the quick detection and correction of misconduct and otherwise defective processes, enhancing overall effectiveness	Supports	Unclear
	Means for administrative head to resist unethical / illegal instruction from minister	✓	✓	✓	✓		Permanent administrative heads with means to resist unethical or illegal instructions may prevent implementation of harmful policies or decisions (e.g., UK requests for written direction)	Supports	Undermines
Westminster convention	Ministerial responsibility / loyalty owed to minister, not public	✓	✓	✓	✓	✓	Under this convention, ministers are publicly accountable to parliament for errors and misconduct, and thus have an incentive to ensure their departments are effective and free of wrongdoing	Supports	Undermines
	Political-administration separation with administrative head as linchpin	✓	✓		✓		The separation of spheres minimizes undue and inappropriate political influence on the implementation of policies and programs, which may contribute to regulatory capture, corruption, and inefficiencies, hampering overall effectiveness	Supports	Neutral
	Civil service appointed on merit		✓		✓		As part of the traditional bargain, this is intended to uphold competence and the development of experience, which supports government effectiveness and the quality of government regulation	Supports	Neutral

Factor Type	Factor Sub-type	CC	GE	RL	RQ	VA	Rationale	Internal Whistleblowing	External Whistleblowing
	Civil service security of tenure		✓				As part of the traditional bargain, this is intended to facilitate honest and frank advice without fear of dismissal, on the premise that it improves decision-making and error/potential wrongdoing detection and thus contributes to overall government effectiveness	Supports	Neutral
	Civil servants may speak truth to power	✓	✓	✓	✓		As part of the traditional bargain, this is intended to facilitate honest and frank advice without fear of dismissal, on the premise that it improves decision-making and error/potential wrongdoing detection and thus contributes to overall government effectiveness	Supports	Neutral
	Civil servants expected to loyally implement policies of government of the day		✓			✓	Once advice has been given, public servants are expected to implement legitimate policies of the government of the day, which represents the wishes of the public as expressed via the ballot. A failure to do so would undermine democratic legitimacy and contribute to ineffectiveness as diverse perspectives would have to be accommodated and resistance overcome	Undermines	Undermines
	Confidentiality of advice		✓				The premise behind the confidentiality convention is that it encourages free exchange of ideas, leading to better decision-making and better effectiveness overall	Neutral	Undermines
Institutional environment	Strong labour protections / unions						NA: Part of national institutional environment, effects on Westminster are primarily incidental and not by design	Supports	Supports

Factor Type	Factor Sub-type	CC	GE	RL	RQ	VA	Rationale	Internal Whistleblowing	External Whistleblowing
	Strong free speech rights					✓	Free speech rights, when extended to public servants, treat public servants as citizens and stakeholders in government policy and decision making, and when adequately protected, facilitate communication of misconduct to the public	Supports	Supports
	Secrecy and national security law/policy		✓		✓		While not always appropriate, secrecy facilitates communication and good decision making on sensitive subjects, such as during treaty negotiations, while national security laws protect national institutions	Supports	Undermines
Process	Clear procedures and avenues to safely make disclosures	✓	✓	✓			Clear procedures facilitate disclosure, investigation and early correction of maladministration and other wrongdoing, contributing to overall government effectiveness	Supports	Undermines
Climate / Incentives	Leadership selection and promotion favouring responsiveness to political direction					✓	As with loyal implementation, the rationale for this has been ensuring that the will of the public, as expressed in the democratic process, is carried out without bureaucratic obstruction. However, it may lead to "hyper-responsiveness" in which illegitimate direction is not challenged	Undermines	Undermines
Incentives	Political control of mechanisms for applying pressure on senior civil servants (e.g., performance pay, perks, control of appointments)					✓	This gives political actors the means with which to induce responsiveness, with associated implications	Undermines	Undermines

Factor Type	Factor Sub-type	CC	GE	RL	RQ	VA	Rationale	Internal Whistleblowing	External Whistleblowing
Climate / Norms	Strong speak up climate	✓	✓	✓	✓		Related to the convention for speaking truth to power, although within the organizational context.	Supports	Supports
	Acceptance or dependence on wrongdoing						NA: Not a measure designed to improve any feature of governance	Undermines	Undermines
Climate / Leadership	Ethical leadership	✓	✓	✓	✓		Ethical leadership facilitates detection and correction of misconduct and sets the example for organizational practices and learning, leading to improved overall effectiveness	Supports	Depends on seriousness of issue
Climate / Process	Clear ethics code and procedures for reporting violations, with training	✓	✓	✓	✓		A clear code and procedures signal appropriate behaviour and provide a mechanism for detection. This facilitates detection and correction of misconduct and sets the example for organizational practices and learning, leading to improved overall effectiveness	Supports	Depends on seriousness of issue
Issue characteristics	Reflects badly on / implicates senior civil servants						NA: Not a built-in feature	Undermines	Undermines
	Reflects badly on / implicates elected officials						NA: Not a built-in feature	Undermines	Undermines

Appendix 3: Data Sources

Table A3.1: Matrix of Questions and Data Sources

Unit of analysis	Key questions	Dissertation question relevance	Data sought	Literature	Documents	Whistleblower case records	Expert interviews	Whistleblower interviews	Analysis and description
Development of Westminster whistleblowing regime	What were Westminster institutions prior to whistleblowing regime introduction?	1	Possible key junctures and path dependence at case level; pre-regime arrangements, norms, and incentives; Westminster institutions likely to affect whistleblowing	x	x		x		Process tracing, linear narrative timeline with key elements identified; cross case comparison
	How was wrongdoing voiced and identified prior to the whistleblowing regime?	1, 2, 3	Baseline point of reference for regime performance; pre-regime norms and incentives; identification of key actors, views and preferences of different actors	x	x		x		Process tracing to develop logic model
	What events preceded the development of the whistleblowing regime?	1, 3	Possible key junctures and path dependence; conditions necessary for regime development	x	x		x		Process tracing, linear narrative timeline with key elements identified; cross case comparison
	Who were the key actors (or groups of actors) in regime development and what	1, 3	Identification of key actors, views and preferences of different actors	x	x		x		Process tracing leading to descriptive narrative

Unit of analysis	Key questions	Dissertation question relevance	Data sought	Literature	Documents	Whistleblower case records	Expert interviews	Whistleblower interviews	Analysis and description
	were their motives, goals, etc.?								
Whistleblowing regime implementation and operation	What are the key features of the whistleblowing law?	1, 3	Legal approach to law; explicit and implicit goals of the law	x	x		x		Process tracing leading to descriptive narrative; cross case-comparison
	Who are the regulators/oversight authorities and what are their powers, independence, etc.?	1, 3	Role of key actors and how they fit into government institutions; change in institutional structures and processes	x	x		x		Process tracing leading to descriptive narrative; cross case-comparison
	Did the new regime change existing incentives, and if so, how?	1, 3	Identify incentives; potential conflicting incentives	x	x	x	x		Process tracing leading to descriptive narrative and logic model development; cross case-comparison
	How have different actors reacted to the new regime?	1, 2, 3	Views and preferences of different actors; norms	x	x	x	x	x	Process tracing leading to logic model development (especially risks and assumptions)
	How well has the regime has performed, based on available evidence?	1, 2, 3	Views and preferences of different actors; norms; evidence of effectiveness	x	x	x	x	x	Process tracing leading to logic model development (especially risks and assumptions)
	What are perceived shortcomings and how would different actors	1, 2, 3				x	x	x	x

Unit of analysis	Key questions	Dissertation question relevance	Data sought	Literature	Documents	Whistleblower case records	Expert interviews	Whistleblower interviews	Analysis and description
	improve the whistleblowing regime?								
	Are there points of interaction between different institutions and the new whistleblowing regime?	1, 3	Variables in institutional environment; potential causal mechanisms	x	x	x	x	x	Process tracing leading to logic model development (especially risks and assumptions); theory of change development
	Has whistleblowing regime affected the performance of government?	1, 2, 3	Evidence of effectiveness		x	x	x	x	
	How could the performance of the regime be measured?	2	Explicit and implicit outcomes, indicators, and data sources; views, preferences, and assumptions about performance from different actors	x	x	x	x	x	Process tracing leading to logic model development (especially risks and assumptions); theory of change development

Unit of analysis	Key questions	Dissertation question relevance	Data sought	Literature	Documents	Whistleblower case records	Expert interviews	Whistleblower interviews	Analysis and description
Whistleblower experiences	What is the experience of whistleblowers in the regime?	1, 2, 3	Reaction of different actors to whistleblowing; key aspects of whistleblower cases; strengths and weaknesses in regime; evidence on incentives, norms, and processes; other variables not related to whistleblowing regime	x	x	x	x	x	Process tracing used to identify key aspects of case, leading to validation/refinement of logic model and development of theory of change
	Does the experience of whistleblowers appear to have changed as a result of the regime?	1, 2, 3	Evidence of effectiveness; interaction of different variables in causal mechanisms	x	x	x	x	x	Process tracing used to identify key aspects of case, leading to validation/refinement of logic model and development of theory of change

Appendix 4: Interview Questions

Expert Interview Questions

1. How does whistleblowing (considering both internal and external) fit into the Westminster system as you understand it?
 - a. Regarding the development of the whistleblowing regime in your country:
 - i. What problems do you think the drafters of these laws were trying to solve?
 - ii. Do you think the stated goals were sincere?
 - iii. Did other stakeholders oppose or seek to undermine the efforts?
 - b. Did the introduction of whistleblowing systems and protections reinforce, weaken or otherwise affect other Westminster institutions? Which, and how? Has there been a push/pull between these institutions?
 - c. Where whistleblowing has clashed with norms, procedures, or structures of older institutions, how do you believe incumbent officials have responded? For example, have they enforced the new rules, do they continue to rely on older processes and norms, or is there confusion?
 - d. Do you believe the new whistleblowing regime created effective new incentives for senior public servants to act ethically and enforce the new whistleblowing regime (e.g., by protecting whistleblowers and responding appropriately to reports of wrongdoing)? What about mid- and working-level public servants?
 - e. What other incentives are relevant to the responses of government officials - both to enforce / conform to the new whistleblowing regime, or to defy or undermine it?
 - f. Are there characteristics or factors of government / organizations that can be separated from Westminster institutions that might also be important? (e.g., *departmental structures, special agencies, hiring and evaluation processes, culture*)
2. What do you believe a whistleblowing regime should look like in the (or your) Westminster system?
 - a. To begin with, do you believe that a whistleblowing regime/institution has a place in the Westminster system, or can you envision a better or more appropriate method for wrongdoing to be identified and addressed? Please explain.
 - b. Is there a process which whistleblowers should follow, and if so, what do you think it should look like in the Westminster context? If yes, can you think of exceptions to this process?

- c. What is the institutional environment that needs to be in place for a whistleblowing institution to take root in a Westminster democracy? Are these in place in the U.K./Canada?
 - d. What incentives, or types of incentives, do you believe would increase the chances that a whistleblowing system would perform optimally in a Westminster government? (*e.g., rewards for whistleblowers, conditions in executive performance agreements, severe punishments for those making reprisals*)
 - e. As a follow-up to the previous two questions, can you think of "red flags," or obvious impediments, in an institution (or organization) which might suggest to you that a whistleblowing system would fail or face significant resistance?
 - f. What are the expected outcomes of ideal whistleblowing? (*Consider internal vs. external whistleblowing*)
 - g. How do you think the success of a whistleblowing institution could (or should) be measured?
 - h. Are there any other incentives or institutional factors you think would help improve chances of success of a whistleblowing institution?
3. Advice for Phase 2 of my research
 - a. Can you think of possible whistleblowing cases which would be relevant to my research? (*Outline criteria, such as being in public service, desire for cases with positive outcome.*)

Whistleblower Interview Questions

1. Please describe your case, in your own words, starting with the inciting incident of wrongdoing and finishing where you feel it came to an end.
Probing questions:
 - a. Before you disclosed wrongdoing, did you feel you would be safe reporting the wrongdoing? Why or why not?
 - b. Were you aware of the sanctioned reporting avenues?
 - i. Did you receive any training or were there any awareness materials or resources?
 - c. What reporting avenues did you try?
 - d. Did you have any help, advice, or support along the way?
 - e. What was the immediate reaction to the disclosure? (*e.g., of the recipient, of peers, and of management*)
 - f. Did the nature of the response change over time? (*e.g., get more or less hostile*)
 - i. What do you think caused the change (if any)?
 - g. Did you face reprisal? (consider both formal and informal)
 - i. Who do you think ordered/triggered/initiated the reprisal?
 - ii. Who participated in the reprisal?

- h. Did anyone else face reprisal? (e.g., colleagues, the recipient of your initial disclosure, family, or friends)
 - i. What justifications (official and unofficial) were given for the reprisals, if any?
 - j. Was the wrongdoing you reported properly investigated?
 - i. Were you allowed to participate, contribute, or respond in any form?
 - k. Was the wrongdoing addressed? If so, how?
 - i. Are you satisfied with the response?
 - l. Did you ever receive any vindication?
 - m. Were you ever compensated for the reprisals?
 - n. What happened to the people responsible for the wrongdoing?
2. How would you describe your work environment before you blew the whistle?
 - a. What were the major work pressures?
 - b. How would you describe the culture of the organization with respect to
 - i. Speaking truth to power and other dissent
 - ii. Who is considered the client?
 - iii. Public service ethic
 - c. How would you describe your work environment now (if you know)?
3. How would you describe the management of your (former) organization?
 - a. On what basis did it appear that leaders were selected, promoted, and otherwise rewarded?
 - b. Was there a performance pay scheme in place?
4. Do you think the introduction of whistleblowing systems and protections have had any effect on how whistleblowers are treated in the public service? Why do you think this?
5. What changes, if any, do you think need to be made to make a whistleblowing regime work better in your government? (*consider changes in incentives, structures, laws, leadership, training, etc.*)
 - a. Has the whistleblowing regime improved since your case emerged? In what ways?
 - b. How would you advise an employee to raise concerns (if at all)?
6. What do you think should be the outcomes of a whistleblowing regime, and how should its success be measured?
7. What are the red flags in organizations that would alert you that whistleblowing is dangerous?

Appendix 5: Whistleblowing Case Indicators

Table A5.1: *Whistleblowing Case Indicators*

Personal characteristics
<ul style="list-style-type: none"> • Status of whistleblower • Education • Assessment of whistleblower
Type of wrongdoing
<ul style="list-style-type: none"> • Wrongdoing disclosed • Individual or organizational deviance • Estimated level of potential harm • Immediacy of risk • Wrongdoing normalized? • Wrongdoing incentivized? • Political actors implicated in wrongdoing? • Other potential wrongdoing in case
Situational characteristics
<ul style="list-style-type: none"> • Did the whistleblower seek advice? From whom? • Did the whistleblower appear to have a strategy? • Who provided support to the whistleblower? • Number of time whistle blown • Internal disclosure? • Quasi-internal disclosure? • External disclosure • Size of the organization • Leadership characteristics (as reported)
Response to disclosures
<ul style="list-style-type: none"> • General nature of response • Was there reprisal? • Nature of reprisal • What was the long-term outcome for the whistleblower? • Was there an investigation and was it fair and competent? • If oversight agency was involved, what was their role? • Was the wrongdoing corrected? • Were there consequences for wrongdoers? • Role of human resources personnel • Length of time from start to finish (if finished)
Institutional implications
<ul style="list-style-type: none"> • Westminster issues raised • Aspects of response consistent/inconsistent with Westminster • Other factors in case

Appendix 6: Sample Recruitment Letter

Title: A study into institutional factors on the reporting of wrongdoing and the protection of those who report wrongdoing (whistleblowers) in Westminster governments

Date of ethics clearance: June 15, 2018

Ethics clearance for the collection of data expires: June 30, 2022

Ethics protocol clearance number: 108876

Dear _____,

My name is Ian Bron and I am a Doctoral student in the School of Public Policy and Administration (SPPA) at Carleton University in Ottawa, Canada. I am working on a research project under the supervision of Prof. Robert Shepherd, Prof. Phil Ryan, and Prof. Susan Phillips.

I am writing to you today to invite you to participate in a study on legislated public sector whistleblower protections and incentives. This study aims to determine why laws, policies and programs designed to protect those who report wrongdoing (frequently called whistleblowers) and promote the reporting of wrongdoing in the public service frequently fail to do so.

Your participation in this study would involve a 60-minute interview that will take place by telephone or using a videoconferencing app of your choosing. With your consent, interviews will be audio-recorded. Once the recording has been transcribed, the audio-recording will be destroyed.

As this project will involve a survey and possibly an interview in which you will be asked about your employment and your experiences reporting wrongdoing, there are some potential risks to you if your statements are critical of your employer. This risk will be minimized by keeping your identity anonymous, providing no attribution of comments made by you or other whistleblowers, and stripping out any information that could be used to identify you. You are allowed to request that certain responses not be included in the final project.

In addition, if you are bound by a confidentiality/non-disclosure agreement, you should not participate in this research. If you feel that the confidentiality agreement does not exclude your participation, you may still wish to consult legal counsel and/or a trusted advisor before participating in this research. I will not ask you to give me any information in violation of any agreements or promises you may have made. If you feel any concern about whether you would be violating an agreement, you can decline to participate or indicate that you cannot answer a specific question.

You will have the right to end your participation in the study at any time, for any reason, up until December 31, 2020. If you choose to withdraw, all the information you have provided will be destroyed.

As a gesture of thanks for your participation, I would like to offer you gift certificate of \$35. Alternately, I could make a donation to the charity of your choice.

All electronic research data will be encrypted, password protected, and saved on Carleton University servers. Any hard copies of data (including any handwritten notes) will be kept in a locked cabinet. Research data will only be accessible by the researcher and the research supervisor.

This ethics protocol for this project was reviewed by the Carleton University Research Ethics Board, which provided clearance to carry out the research. If you have any ethical concerns with the study, please contact Dr. Andy Adler, Chair, Carleton University Research Ethics Board-B (by phone at 613-520-2600 ext. 4085 or via email at ethics@carleton.ca).

If you would like to participate in this research project, or have any questions or concerns, please contact me at 613-296-5080 or ian.bron@carleton.ca. You may also contact my supervisor, Prof. Robert Shepherd at 613-520-2600 x 2257 or RobertP.Shepherd@carleton.ca.

Sincerely,

Ian Bron

Appendix 7: Themes and Codes from Interviews

Note that initial codes mirrored those in the Appendix 2, Theorized Relationships Between Governance, Westminster Institutions, and Whistleblowing Regimes.

Themes and Codes

Primary Themes and Codes

Theme: Westminster Institutions.

1. Westminster structure/processes
 - Hierarchy
 - Concentration of power at centre
 - Departmental organization
 - Parliament's oversight of executive
 - Confrontational political system
 - Senior officials' means to resist political direction
2. Westminster conventions
 - Ministerial or Cabinet responsibility
 - Public service bargain:
 - Loyalty to minister (not public or public interest)
 - Professional public service appointed/promoted on merit
 - Security of tenure
 - Frank and honest advice / speaking truth to power
 - Loyal implementation
 - Excessive responsiveness
 - Confidentiality of advice
3. Political involvement in administration
4. Norms on dissent or whistleblowing in traditional Westminster

Theme: Incentives.

5. Incentives to suppress wrongdoing and make reprisals
 - Career prospects
 - Job security (and concerns about pensions)
 - Perks and performance pay
 - Electoral prospects
6. Consequences for misconduct or reprisal
 - Blame or accountability avoidance
 - Administration must appear 100% error free
 - Keep problems in-house

Theme: Institutional Environment.

7. Labour protections
 - Employment law
 - Union involvement
 - Judicial interpretations
8. Freedom of expression
9. Miscellaneous interaction issues

Theme: Organizational Climate.

10. Secrecy norms
11. Speak-up climate / norms on voice
12. Loyalty norms
13. Leadership:
 - Competence
 - Ethics
 - Pressures/demands

Theme: Individual Characteristics.

14. Personal beliefs, attitudes, and perceptions
 - Negative views of whistleblowing and whistleblowers
 - Only certain issues and routes of reporting are legitimate
 - Trivialization of wrongdoing
 - Misconceptions about whistleblowing
 - Perceptions on level of wrongdoing in public service

Theme: Situational Characteristics.

15. Issue reflects badly on or implicates senior administrative officials
16. Issue reflects badly on or implicates political actors
17. Type of wrongdoing
 - Serious/systemic/frequent vs. minor/individual deviance/infrequent
 - Organizational dependence on wrongdoing

Theme: Whistleblowing Regime Implementation.

18. Design of regime
 - Intent of law/regime
 - Consultation and consensus (during design)
 - Trigger (for development)
 - Miscellaneous design issues

19. Unclear procedures and avenues for disclosure / training and awareness
20. Regime effectiveness
 - Independence, bias, and competence in departmental investigations
 - Oversight independence
 - Oversight appointments process
 - Oversight resources
 - Oversight performance
 - Independence, bias, and competence in oversight investigations
 - Assessments of oversight performance (competence and diligence)

Other Themes Identified

Theme: Performance measurement.

21. Miscellaneous identified best practices / shortcomings in law
 - Expected outcomes
 - Suggested indicators

Theme: Incentives for/against Whistleblowing.

22. Incentives against whistleblowing
 - Lack of trust in whistleblowing system
 - Reprisal
 - Resource imbalance (between whistleblower and organization)
 - Time, financial and emotional costs of process (if things go badly)
23. Incentives for whistleblowing
 - Professional or ethical obligations
 - Rewards, bounties, qui tam
 - Support or guidance (in whistleblowing process)
 - Trust in protections

Coding Explanations

When examining codes under different themes, the relationship with whistleblowing regimes was the primary consideration. Westminster institution conventions and structures formed a starting point, but all potential variables were considered in order to understand causal mechanisms as well as possible. Data collected under themes and codes may support or undermine whistleblowing regimes.

Theme: Westminster Institutions

This theme captures the theorized Westminster institutions and their components which may be part of causal mechanisms shaping the outcomes of whistleblowing regimes. Consistent with institutional theory, they are expected to interact with other variables and institutions, sometimes in a feedback mechanism. For example, governments may implement incentives structures which undermine Westminster conventions. Several Westminster institutional codes are associated with the public service bargain between administrative and political actors, while others pertain to structures and processes – in particular, those consistent with Weberian bureaucracies, which form the basis of Westminster public service.

Hierarchy. Hierarchies are built into Westminster governments, with norms that promote personal loyalty, deference to authority, and expectations that dissent be restrained. They should provide clear accountabilities, but participants suggest they create a barrier to transmission of bad news upward. Whenever it was explicitly or implicitly mentioned, it was coded as such.

Concentration of power at centre. Identifies data in which the concentration of power at the top (e.g., Prime Minister's Office and central agencies) is cited as a factor in responses to reports of misconduct. This code is linked to the code control of resources.

Departmental organization. Where participants noted the effects of departmental organization, it was coded as such. Some references were to outsourcing and devolution, which puts some government functions outside Westminster whistleblowing regimes.

Parliamentary oversight of executive. This code identifies data in which the role of Parliament in oversight of the government and the whistleblowing authority was mentioned. The role could be a positive or negative one.

Confrontational political system. Highly oppositional parliaments appear relevant as they increase the likelihood of a disclosure becoming politicized once it is in the public domain. This is linked to political considerations about the implications of a wrongdoing being revealed to the public.

Ministerial responsibility. This code includes data stating or implying that the convention ministerial responsibility plays a role in whistleblowing responses. The reference was usually indirect. It is linked to the convention on loyalty to the minister as it allows internal and quasi-internal disclosures to be framed as being loyal to the minister (as they remain largely confidential), with the minister then responsible for correcting the error.

Public service bargain. References to the Schafferian bargain were parsed into the categories below.

- **Loyalty to the minister.** This code identifies data which reference the Westminster convention that public servants owe a duty of loyalty to the minister (as opposed to the public). The minister is assumed to be interpreting the public interest.
- **Professional public service appointed/promoted on merit.** This code identifies data in which reference was made to the merit principle, and whether it was in place anymore. Most references were negative, implying senior managers were unqualified or hired due to connections.
- **Security of tenure.** Public servants under the public service bargain should have tenure, but references by participants sometimes noted the ease with which personnel could be removed by motivated political or administrative actors. In addition, participants noted that downsizing could be used to get rid of whistleblowers.
- **Frank and honest advice / speaking truth to power.** This code identifies data on the convention that public servants should be able to express dissenting views without fear of reprisal. It is linked to confidentiality of advice, as such dissent should be private, as well as loyal implementation (i.e., once a decision is made, it should be implemented). Some participants noted that persistence in giving contrary advice was viewed as unreasonable.
- **Loyal implementation.** Identifies data referring to the convention that public servants serve all governments, regardless of party or affiliation, with equal diligence. Several participants noted the distortion of this conventions toward over-responsiveness, in which officials attempt to anticipate political preferences, implement questionable policies without question, or actively participate in misconduct.
- **Confidentiality of advice.** This includes data that cites the necessity for advice to the minister, and certain other deliberations, to be confidential in order that opinions and ideas may be shared freely. Not to be confused with secrecy, which may frustrate legitimate scrutiny. Confidentiality, however, may evolve into secrecy and is sometimes conflated with it.

Political involvement in administration. This code identifies data relevant to the Westminster convention separating, albeit imperfectly, political and administrative roles. Participants noted the increasing intrusion of political staff into administrative work.

Norms on dissent or whistleblowing in traditional Westminster systems.

This code does not reference a formal Westminster convention but is included here because several interviewees and other sources indicated that there were existing mechanisms for raising concerns about misconduct or maladministration within traditional Westminster systems.

Theme: Incentives

Incentives appear to be most important to ambitious actors. They can take positive or negative forms, consistent with institutional theory.

Incentives to suppress wrongdoing and make reprisals. References to damage to reputation because of whistleblowing were repeated by several participants. These narratives linked reputation to whether they would obtain performance pay and to career progression. Whistleblowers, dissenters, and uncooperative officials were reported as being denied these, while those cooperating in reprisal were described as being rewarded. Concerns about losing employment (and associated pensions) were also cited. Political reputation was also important in winning elections.

Consequences for misconduct or reprisal. References to consequences were usually on the fact that wrongdoers rarely, if ever, suffer consequences for their actions. This would undermine deterrence effects expected from the regime.

Theme: Institutional Environment

This code captures several possible interactions with other laws or institutions in the environment of the whistleblowing regime. These include judicial and adjudication interpretations of cases, which have been identified in whistleblowing literature as frequently undermining the intent of whistleblowing laws. Also relevant are employment protections, either in law or through strong unions, and freedom of expression.

Labour protections. Labour protections include comments on union efficacy, support from unions in individual cases, the role unions could play in screening disclosures, the effects of employment law in protecting whistleblowers, and how ordinary employment law affects whistleblowing cases before the courts or tribunals.

Freedom of expression. Freedom of expression is protected in the cases to different degrees. Where this was mentioned in the context of whistleblowing, it was coded as such. References were usually aspirational (i.e., it should be protective) or neutral (i.e., it does not change outcomes).

Miscellaneous interaction issues. This includes other institutional interactions, such as with freedom of information law, privacy law, and other human rights issues (e.g., discrimination).

Theme: Organizational Climate

This theme captures variables associated with organizations. Although organizations in Westminster governments tend to have common characteristics (such as departmental structures modelled on Weberian bureaucracy), there are some organizational characteristics which are not integral to Westminster systems. These are described below.

Secrecy norms. As noted above, confidentiality norms can become corrupted into secrecy norms. This code attempts to capture when this appears to happen at the organizational level. In most cases, references to secrecy were as a distortion of the Westminster convention. Sometimes, secrecy was referred to as useful in hiding wrongdoing from superiors.

Speak-up climate / norms on voice. Several participants identified speak-up culture/climate as a remedy for defects in the whistleblowing regime. In this interpretation, organizations in which employees feel free to speak openly about problems do not need to be as concerned about whistleblowing because it is no longer a risky activity – it has been normalized. It is this use to which the code refers. It is linked to leadership, as participants expected them to foster it.

Loyalty norms. This code identifies narrative in which participants speak to local norms on loyalty, which could conflict with Westminster norms, such as personal loyalty overriding loyalty to the minister.

Leadership. This code covers leadership factors that exist within organizations that promote or dissuade types of behavior that would be friendly or hostile to whistleblowing or employee dissent. In addition, leaders may support or undermine Westminster conventions by example or direction. Variables within this code include competence, commitment to ethics, and pressures/demands.

- **Competence.** Numerous participants identified a lack of competence as a factor behind hostility to whistleblowing. For example, leaders might be “out of their depth,” not have the technical expertise to make a decision, or simply lack management skills appropriate to the position. On the other hand, competent leaders are associated with constructive responses to whistleblowing.
- **Ethics.** As whistleblowing literature suggests, ethical leaders are unlikely to tolerate misconduct and more likely to take corrective action. Several

participants identified unethical leadership as being behind wrongdoing or reprisal.

- **Pressures and demands.** This code includes goals and pressures faced by leaders, including workload and how error and failure are treated, and whether organizational members are expected to anticipate the needs of leadership (i.e., responsiveness).

Theme: Individual Characteristics

This theme attempts to capture codes reflecting the personal attitudes and beliefs of actors responding to disclosure in the public service, whether expressed by participants as their own or ascribed to them by others.

Personal beliefs, attitudes, and perceptions. This code includes beliefs about what should and should not be considered wrongdoing or whistleblowing, perceptions on levels of wrongdoing in public service, how serious participants believe a particular act of wrongdoing is, and potential misconceptions about whistleblowing and whistleblowers.

Theme: Situational Characteristics

This theme is intended to capture variables about the whistleblowing situation in whistleblower cases.

Issue reflects badly on / implicates senior administrative officials. As participants noted, if the wrongdoing implicates powerful actors, reprisal and cover-up are more likely. This could be because of direct involvement in the wrongdoing or because they failed to detect or correct the wrongdoing.

Issue reflects badly on / implicates political actors. Several participants and cases noted misconduct which originated in political direction or policy. Political actors would then mobilize administrative actors in their own defence or in defence of the policy, with whistleblowers frequently facing reprisal.

Type of wrongdoing. This code includes variable such as how serious the wrongdoing is, which has been identified in the literature as a predictor of retaliation against whistleblowers. Serious wrongdoing may implicate leadership either directly or indirectly. Alternatively, frequent wrongdoing may suggest that the practice is systemic, has become normalized, or that the organization has become dependent on it.

Theme: Whistleblowing Regime Implementation

This theme captures the design, implementation, and operation of the whistleblowing regime. It includes factors such as the origin of the regime and the

motives of policymakers at the time, awareness of and training in the use of the regime, and the effectiveness of officials responsible for the activities of the regime (such as commissioners, ombudspersons, and departmental designated officers).

Regime design. This code is intended to capture evidence pertaining to how the regime was designed, with a focus on the legal approach (e.g., anti-retaliation, structural), emphasis in the legislation (e.g., which actors' rights are better protected), whether advocates or subject matter experts were consulted, stated and unstated objectives of the legislation and regime, and motives of policymakers.

Unclear procedures and avenues for disclosure / training and awareness.

As suggested by the literature, training and awareness of the whistleblowing regime is correlated with better outcomes for whistleblowers. Associated with this concept, participants noted that procedures could be unnecessarily complex and formal, creating risks for whistleblowers. In contrast, suggestions for a "one door" approach, in which simplicity in reporting avenues is optimized, was associated with better outcomes.

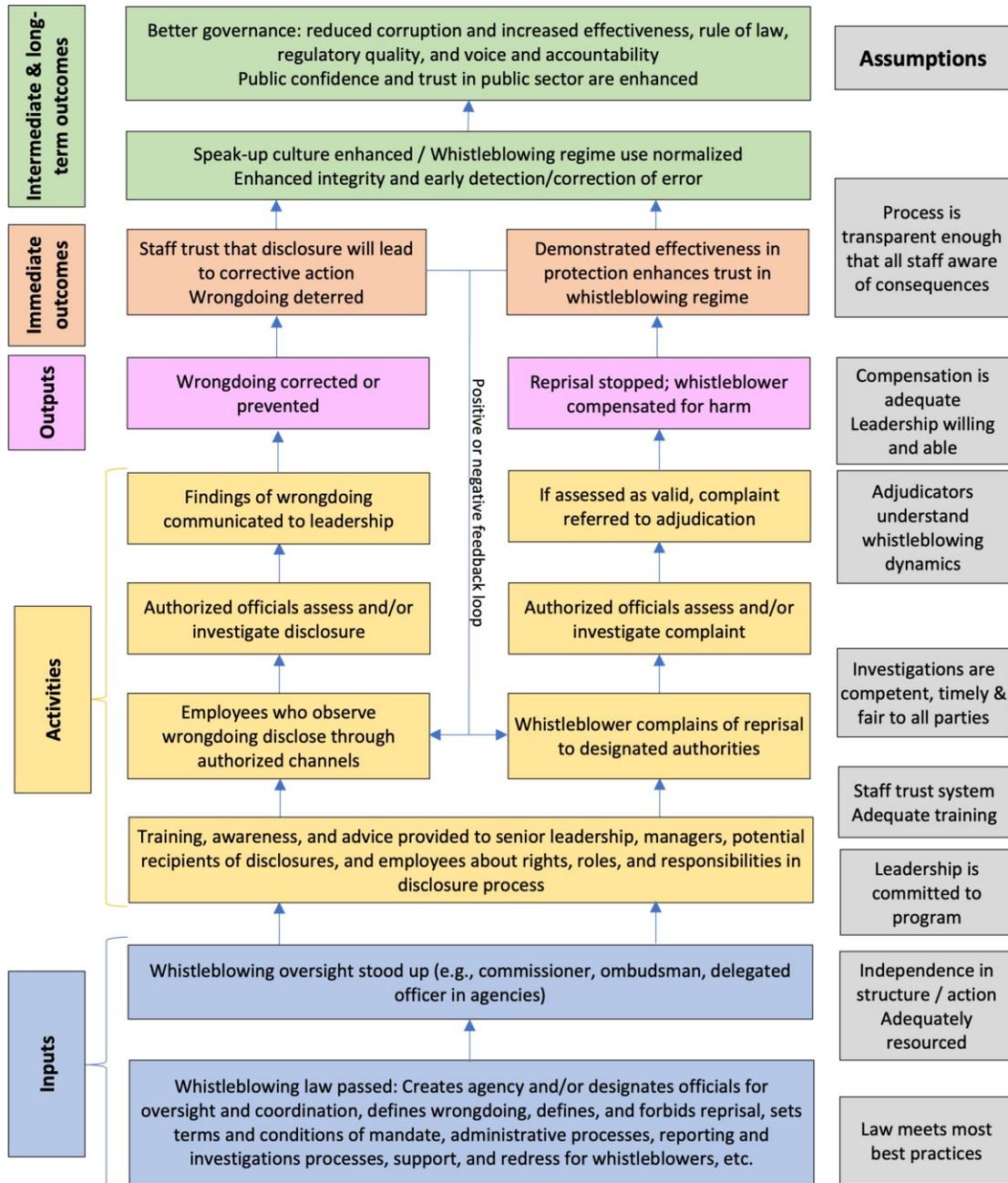
Regime effectiveness. This code captures data on the performance of the regime from the perspective of different actors. Of interest to participants appeared to be independence, bias, and competence in investigations by departmental and oversight officials. In addition, participants were concerned that the oversight agency should be independent. This included considerations such as the appointment process, staffing at working levels, and control of resources.

Other Themes Identified

Other themes were identified and coded. First, participants referred to best practices and regime shortcomings. These provided a list of potential regime improvements and suggestions of indicators for performance measurement. They also helped identify risks to the regime. Second, many participants noted incentives for and against whistleblowing – from the perspective of public servants. These themes and associated codes were not developed as they are not central to the dissertation.

Appendix 8: Generic Whistleblowing Regime Logic Model

Figure A8.1: *Generic Whistleblowing Regime Logic Model*



Potential risks to program: Pressures for error-free administration; political pressures for responsiveness; leadership implicated in wrongdoing; wrongdoing normalized; leadership sees disclosure as a threat to reputation and authority; lack of training and awareness in process; excessive secrecy; suppression of employee voice; oversight officials chosen as “safe pair of hands”; negative attitudes towards whistleblowing; perversion of loyalty norms towards personal loyalty; outsourced work not covered; training and awareness is poor