

Multi-million-dollar conduct codes of silence affect federal public service and transparency

By [KEN RUBIN](#) |

Published: Monday, 09/21/2015 12:00 am EDT

Last Updated: Monday, 09/21/2015 9:24 am EDT

OTTAWA—In the last decade, open government has suffered further setbacks from record reductions and redactions to tighter information controls. But it's not just the public who loses out without proactive service and disclosures. It's the public employees who have been further silenced, disciplined, or let go who are deeply affected.

The muzzling of federal government scientists was the subject of a February, 2013 University of Victoria Environmental Law Clinic and Democracy Watch complaint to the federal information commissioner. The complaint highlighted how silencing scientists is obstructing the right of the public and media to speak to scientists and get access to their records. Two-and-half years later, Canada's Access to Information Commissioner Suzanne Legault has yet to report her findings.

The Professional Institute of the Public Service of Canada wants new collective bargaining agreements that contain scientific integrity clauses that allow scientists to be able to present their findings without being silenced. Watchdog groups like Evidence for Democracy have joined them in condemning the muzzling of federal scientists.

Whistleblower groups like FAIR and Canadians for Accountability used to do this too, but are no longer that active. When they were, they repeatedly pointed out how weak the 2005 Public Servant Disclosure Protection Act (as coming into force with Treasury Board guidelines in 2007) was, both for helping public employees wanting to report wrongdoings or for those being accused of wrongdoing suffering reprisals. They exposed just how ineffective the troubled redress operations were of the public sector integrity commissioner and why some public employees simply would not go there for help.

What's never been thoroughly examined is the newer 2012 departmental ethics and values conduct codes that were adopted to give departments under the Public Servant Disclosure Protection Act more control in policing public employees conduct. Yet these department-by-department conduct rules based on the Treasury Board directives only add to placing public employees' basic rights in greater jeopardy.

Employees were forcefully asked to agree to their own departmental codes' broad loyalty terms. Regular annual confidential reports were demanded so that management could check out employee assets and activities and political intentions.

This, in turn, led to a whole new set of departmental bureaucratic offices being created at great taxpayer expense staffed by values and ethics code officers. These officers could receive complaints from other sources or search out complaints themselves, including failures to file confidential reports.

With high salaries, ethics officers have offered some public employees training sessions and have engaged in busy work churning out more slides and slogans, reviewing confidential reports and complaints and, on occasion, carried out some investigative work for which many officers have received very little or no real training.

What's troubling are those investigations leading to reviews are more like kangaroo courts. While

union representatives can be involved, the proceedings and results are largely secretive and one-sided. Sometimes, management hires outside consultants to assist management in their investigations.

The investigation “charges,” while some can be warranted and under better rules would still be clear conflicts of interest and are devastating to those under investigation. An employee found “guilty” in contravention and in violation of the codes can be disciplined and/or fired and their reputations and livelihoods destroyed.

Departments’ recent values and ethics codes have at times been the subject of critical media reports. One such news story in 2013 in *The Ottawa Citizen* reported that Statistics Canada’s code-of-conduct rules told employees to wear acceptable clothes to work or else be sent home to change. Employees there were told in the code they better not make comments judged to be offensive on social media or during their personal time.

The current case of Environment Canada scientist, Tony Turner, placed on administrative leave with pay for writing on his own time a satirical ‘*Harperman*’ protest song that he entered in a contest and won this May, has received wide publicity and gone viral on social media with over two million hits already. In late July, Turner was banned from going back to work or talking to other employees or in effect, from going to Parliament Hill to perform his song with others, putting his Charter rights of freedom of expression and assembly aside.

My concern with these departmental conduct codes and the breaches under them is that they are management tools of expected behaviour and leave employees with little or no options for any real due process and can therefore be instruments of intimidation and repression.

This needs to change under a new government as past and current cases so clearly demonstrate. Why should public employees be held to more restrictive and varied standards than politicians or others and be encouraged to report on fellow employees who may be stepping out of line? More legal challenges to this one-sided system can be expected.

The federal values and ethics codes as currently constituted and administered do not help public employees serve Canadians better. Nor do they help provide that “duty to assist” effort so necessary in helping answer access and other information requests.

Public trust is at an all-time low with many wanting to take back and create a new Canada and a new trust.

Ken Rubin has been involved in helping public employees faced with code violations and is reachable at kenrubin.ca

news@hilltimes.com

The Hill Times