

# OFFICE OF THE OMBUDSPERSON PUBLIC INTEREST DISCLOSURE ANNUAL REPORT 2019/2020



**OMBUDSPERSON**  
BRITISH COLUMBIA





May 2020

The Honourable Darryl Plecas  
Speaker of the Legislative Assembly  
Parliament Buildings  
Victoria BC V8V 1X4

Dear Mr. Speaker,

It is my pleasure to present the Office of the Ombudsperson's 2019/2020 *Public Interest Disclosure Act* Annual Report to the Legislative Assembly.

The report covers the period April 1, 2019 to March 31, 2020 including the first four months following the coming into force of the *Public Interest Disclosure Act* on December 1, 2019. The report has been prepared in accordance with section 40 (1) of the *Public Interest Disclosure Act*.

Yours sincerely,

Jay Chalke  
Ombudsperson  
Province of British Columbia



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# FROM THE OMBUDSPERSON



On December 1, 2019 BC's new whistleblower protection law, the *Public Interest Disclosure Act* (PIDA), came into force. It marked an important milestone for both the province and my office. British Columbia joined virtually all other provinces, territories and Canada in adopting a legal framework that is designed to enhance transparency and accountability in the public service. For my office, this new legislation was significant as it marked the first time in our 40-year history that we were assigned a material mandate beyond the *Ombudsperson Act*. As we have done over four decades in all of our complaint-handling and investigative work, we are meeting our new role with the values that define our work – impartiality, rigour, and fairness.

PIDA gives current and former employees of provincial government ministries and independent offices of the legislature the right to disclose serious wrongdoing in their organizations and to be protected from reprisal for doing so. These rights reinforce the key value of integrity in the public sector.

Many of the features of BC's new law are similar to what exist in other provinces. The benefit of bringing this legislation into force later than in other Canadian jurisdictions, is that British Columbia was able to draw on many of the best practices in public interest disclosure from across Canada and abroad. This opportunity to learn from others contributed to BC's legislation as well as procedures developed by public bodies covered by the Act and our office.

As with any new law, implementation involved not only legislative policy development and drafting the new law, but also developing operational policies, practices and procedures. This required a tremendous amount of thought and effort. I am grateful for the collaboration between my office and government as we laid the important foundation to ensure the implementation of PIDA is a success. Our implementation team spent the better part of last year laying this groundwork. We developed our office's investigative approaches, documented protocols with other entities referred to in the law and consulted with other jurisdictions about lessons learned. We engaged with public service executives, staff and stakeholder groups with the goal of raising awareness of PIDA and underscoring how compliance will be put into effect. Encouraging a "speak up" culture in public bodies was another vital part of this work. This strategic approach will continue but this groundwork meant that when the law came into force in December 2019, we had done the work necessary to ensure that we were ready.

PIDA came into force on December 1, 2019, meaning that of the year covered by this inaugural annual report, the Act was in force only for the final four months. PIDA is very much in its infancy. But what this report tells us, is that many employees and former employees are aware the Act is in force and are starting to use it. Nearly 60 matters related to PIDA were brought to us in the four-month period that this report covers. Some were simply questions, others were requests for advice, and some others were disclosures. While it is too early to report on any outcomes of investigative work, it is encouraging that public servants are aware of the Act and are availing themselves of the opportunities provided by it.

As with any new law, implementation issues will likely arise, including matters which can only be addressed by statutory change. While PIDA provides for a review by a legislative committee in 2024, I am encouraged by the interest of the Attorney General in supporting effective implementation through exploring earlier amendments where required. Such early improvements, addressing any implementation issues that arise, will ensure ongoing public confidence in the new law's utility, fairness and value.

As we move forward, it is my hope that the organizational culture in public authorities will embrace PIDA as an important pillar in strengthening the integrity of the public sector. We will continue to work to ensure public interest disclosure is embedded in the public service lexicon, speaking up is encouraged and normalized by public sector organizations, and public sector leaders take concrete action to address investigation outcomes in the event wrongdoing is identified. With these key pieces in place, the shared goal of legislators, government and my office, that PIDA becomes a trusted effective mechanism to improve public administration, will be achieved.

A handwritten signature in black ink, appearing to read 'Jay Chalke', with a stylized, cursive script.

Jay Chalke  
Ombudsperson  
Province of British Columbia

# THE ROLE OF THE OMBUDSPERSON UNDER THE *PUBLIC INTEREST DISCLOSURE ACT*

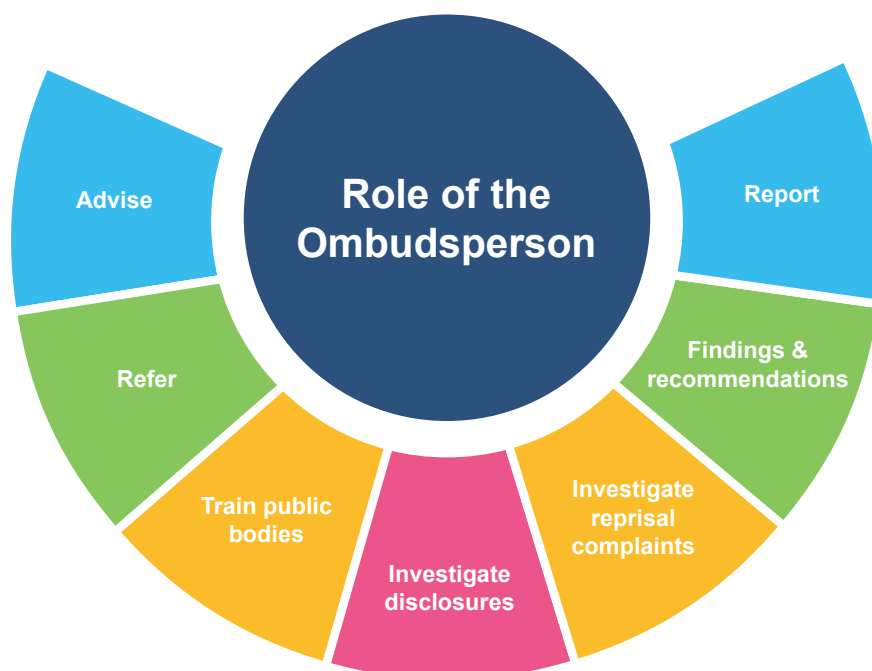
The Ombudsperson is an independent officer of the BC Legislature, established in 1979 with the coming into force of the *Ombudsperson Act*. The Office of the Ombudsperson receives and investigates complaints from members of the public about unfair treatment by provincial and local public sector organizations. Under the *Ombudsperson Act*, the office also conducts systemic investigations into broad concerns within the public sector and issues public reports with recommendations to improve government administration.

On December 1, 2019, the Ombudsperson's mandate materially expanded beyond the *Ombudsperson Act* for the first time in the office's history with the coming into force of BC's new whistleblower protection legislation, the *Public Interest Disclosure Act* (PIDA). The Act provides employees and former employees of public bodies covered by PIDA with a safe conduit for disclosing allegations of wrongdoing in public sector workplaces. Individuals are protected for exercising their rights under PIDA; it is an offence to commit or direct reprisal against employees who ask for advice about making a disclosure, who make a disclosure or who cooperate with a PIDA investigation.

At present, the Act provides protections to over 30,000 current provincial government ministry employees and employees of nine independent offices of the legislature, who report serious wrongdoing in their organizations. Former employees of these organizations may also make disclosures. Government has indicated that over the next five years, it intends to apply the law, by regulation, to a broad range public sector organizations which will potentially encompass more than 300,000 current provincial and local government employees in addition to former employees.

Total operating funds requested for the Ombudsperson's responsibilities under PIDA in 2019/20 were \$1,806,000. These funds were allocated by the Select Standing Committee on Finance and Government Services as part of the Ombudsperson's overall operating budget of \$8,873,000 for the 2019/2020 fiscal year.

## The Ombudsperson's role under PIDA



# KEY ELEMENTS OF THE NEW LAW

As the twelfth jurisdiction in Canada to implement a public interest disclosure law, British Columbia was able to draw from learnings and best practices in other jurisdictions. These lessons informed various aspects of the law including considerations on what constitutes wrongdoing and designing effective reprisal protection provisions.

BC's PIDA legislation incorporates best practices such as:

- A choice model; multiple channels for reporting wrongdoing
- Disclosure at first instance; other reporting mechanisms do not need to be exhausted before wrongdoing is reported under PIDA
- Provisions for confidentiality and anonymity
- Procedural requirements for managing reports of wrongdoing
- No time limits for reporting wrongdoing
- Protection from various forms of reprisal

## PIDA is designed to:

encourage employees to report wrongdoing by protecting those who speak up

ensure that allegations are investigated fairly and effectively

enhance workplace culture by normalizing speaking up

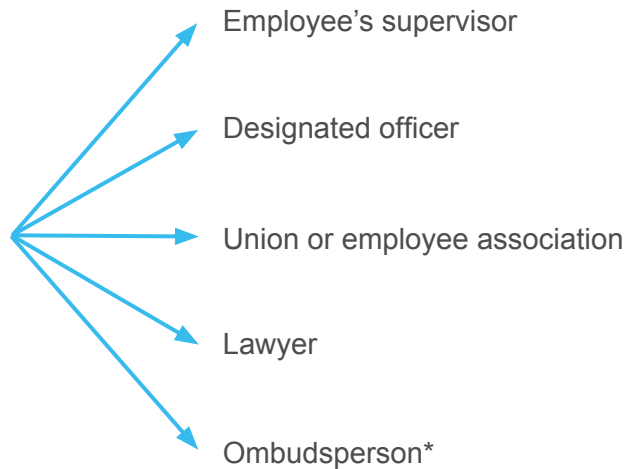
strengthen public sector accountability and transparency

## Under the Act, individuals have options about where to turn for advice and to make a report



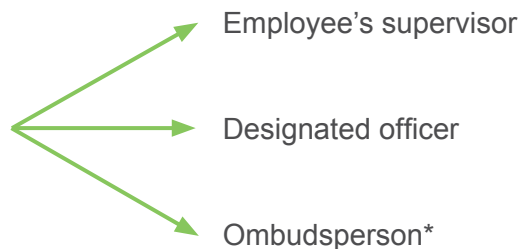
### Advice

There are five options for employees and former employees to seek advice



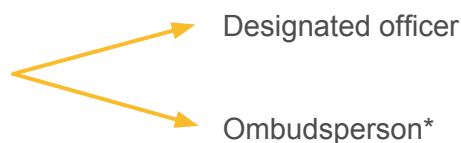
### Disclosures

Employees and former employees can make disclosures of wrongdoing



### Investigations

Disclosures can be investigated internally or externally



### Reprisals

Seeking advice, disclosing wrongdoing and cooperating with an investigation are protected from reprisal



\* denotes matters reported in this report for the period December 1, 2019 to March 31, 2020 at pages 13 and 14

## Facts About PIDA

### What is a wrongdoing?

PIDA defines wrongdoing as:

- a serious act or omission that, if proven, would constitute an offence under BC or Canadian law
- an act or omission that creates a substantial and specific danger to the life, health or safety of persons, or to the environment, other than a danger that is inherent in the performance of an employee's duties or functions
- a serious misuse of public funds or public assets
- gross or systemic mismanagement
- knowingly directing or counselling a person to commit any of the above

### Where can employees make a disclosure of wrongdoing?

There are two clear pathways to report a wrongdoing. It is the employee's choice. Employees may report:

- Internally to their supervisor or designated officer
- Externally to the Ombudsperson

Regardless of the choice made, the law requires that the disclosure of wrongdoing is managed in an expeditious and proportionate manner.

### What is reprisal and Who can make a complaint about it?

A reprisal is any adverse employment action taken against an employee as a result of seeking advice, making a disclosure, or cooperating with an investigation under PIDA. Reprisal can include any measure that affects the employee's employment or work condition, such as a change in work hours, location, reprimand, suspension, layoff or dismissal.

Reprisal in any form is an offence under the Act.

Employees who believe that they have experienced adverse consequences at work because they sought advice, made a disclosure, or cooperated with a PIDA investigation may make a reprisal complaint to the Ombudsperson.

### Who can report allegations of wrongdoing?

Current and former employees of BC government ministries and the independent offices of the legislature can bring their concerns forward under PIDA.

Former employees can come forward if the wrongdoing occurred or was discovered during the course of their employment. Allegations can be brought forward about events that took place before PIDA was in force.

Over the next five years, the application of PIDA is expected to expand to include the broader provincial and local public sector.

### Why is this legislation necessary?

While the BC Public Service recently put in place an ethical framework and has Standards of Conduct that apply to all employees, BC did not have a comprehensive legal framework and external review mechanism in place for employees seeking to disclose wrongdoing or report reprisal. This legislation ensures allegations are thoroughly assessed, investigated if necessary and if substantiated, steps are taken to address wrongdoing and to prevent it from reoccurring.

# BUILDING THE FRAMEWORK

## Preparing for a New Mandate

Taking on new duties under the *Public Interest Disclosure Act* required a period of preparation. We established a small team to focus on implementing our new mandate. The team's work included a broad range of implementation activities including:

- developing a strong understanding and accurate interpretation of the new law
- conducting direct consultations with other Canadian jurisdictions
- reviewing research and best practices guidance documents issued by a number of organizations including Transparency International, a global non-profit organization that advocates for victims of corruption and the Canadian Standards Association, a provider of standards development, testing and certification services
- developing detailed policies and procedures to guide the office's investigative work
- educating public servants and key stakeholders about our office's new role and their new responsibilities under PIDA

## Consultation with other Canadian Public Interest Disclosure Commissioners

As mentioned earlier public interest disclosure laws came into force at the federal level and in 10 other provinces and territories before British Columbia's law was passed. This provided British Columbia with learning opportunities at the legislative, policy and operational levels. Ombudsperson staff consulted broadly with commissioners responsible for public interest disclosure regimes across Canada to learn from their experiences. These consultations were very helpful in establishing internal and external-facing policies and procedures.



# OUTREACH AND ENGAGEMENT

## Connecting, Informing and Working Collaboratively

Our office initiated and took part in a number of presentations and events with provincial government leaders. The objective was to educate public sector leadership about our new responsibilities under PIDA and what they could expect from our office under the Act. The PID team also took part in joint presentations led by the Public Service Agency (PSA). At these joint presentations, the PSA explained PIDA legislation in the context of its wider ethical framework while Ombudsperson staff addressed key aspects of PIDA and the role of the Ombudsperson under this new law.

Our office also held a number of meetings and presentations with non-government stakeholders, which included unions, professional associations, legal organizations and civil society organizations. During these events, Ombudsperson staff discussed PIDA with stakeholder leaders and outlined the Ombudsperson's role and stakeholders' statutory obligations under the Act, such as providing advice and educating their employees about the Act. Educational sessions were also provided for the other independent Offices of the Legislature. The feedback provided by these organizations was invaluable in helping the Ombudsperson to identify issues and to refine informational resources.

Because PIDA allows the Ombudsperson to refer a report of wrongdoing to another Office of the Legislature where it can be more appropriately investigated by that other office, agreements for how such referrals would take place were developed.

We also engaged in discussions with law enforcement. PIDA provides that there may be instances in which our office would need to report an offence to police that relates to a disclosure. Arrangements have been made with law enforcement agencies in BC to enable such disclosures to be made effectively and efficiently.

Finally, in order to further raise awareness of PIDA, our office hosted a one-day conference in Victoria, *Promoting Integrity in the Public Sector* in November. Drawing almost 100 participants, the conference brought together a range of speakers including public interest disclosure staff from other jurisdictions, academics, stakeholders, senior members of the provincial government, the media and some invited whistleblowers from other jurisdictions.

## PIDA Outreach and Engagement by the Numbers

30

presentations to senior public  
service executives

17

presentations to  
non-government stakeholders

14

presentations to public service  
staff led by the Public Service  
Agency

6

presentations to Offices of  
the Legislature

## Ombudsperson convenes PIDA conference “Promoting Integrity in the Public Sector”

***“Better whistleblower outcomes are contingent on understanding whistleblowers and carefully listening to them and developing an ecosystem of trust.”***

– Conference speaker Sandy Boucher, Senior Manager, Fraud and Corruption Investigator, Grant Thornton



***“It is very courageous for governments to put mechanisms in place to allow disclosures to be made and investigated. This is what guarantees honest and ethical public administration in the end.”***

– Conference speaker Hélène Vallières, Deputy Public Protector, Quebec



***“Coming forward was by no means easy. Would I do it again? Yes, without question.”***

– Conference speaker and whistleblower Edgar Schmidt, Former Department of Justice lawyer, Government of Canada



## Supporting Public Organizations

Our office developed a variety of resources to assist public bodies to implement PIDA in their own organizations. Many of these resources have been shared with organizations and are currently available on our website (see Appendix). Available resources include:

- Information sheets for Chief Executives, Designated Officers and Supervisors
- Sample procedures for ministries and offices for managing disclosures
- Tips on confidentiality
- Recognizing wrongdoing
- Ombudsperson process FAQs



# ENQUIRIES, REQUESTS FOR ADVICE, AND DISCLOSURES

FROM DECEMBER 1, 2019 TO MARCH 31, 2020

The *Public Interest Disclosure Act* came into force on December 1, 2019 and as such the following statistics are from December 1, 2019 to March 31, 2020.

The number of new PID matters received by the Ombudsperson over the four-month period indicate that 18 of those matters were general enquiries. Seventeen were requests for advice from employees and former employees currently covered by PIDA.

We received 22 disclosures. Of those, the assessment of 11 disclosures was completed during the 2019-20 reporting period. One disclosure to our office resulted in an investigation. Investigations were not commenced in other matters because the matter did not meet the statutory definition of wrongdoing in PIDA or because the person was not entitled to make a disclosure.

Where we did not investigate a disclosure because the person was not entitled to make a disclosure we invited those individuals to consider whether they wished to make a complaint under the *Ombudsperson Act*. Where the person subsequently did so, those complaints will be included in the statistics reported in the *Ombudsperson Act* annual report.

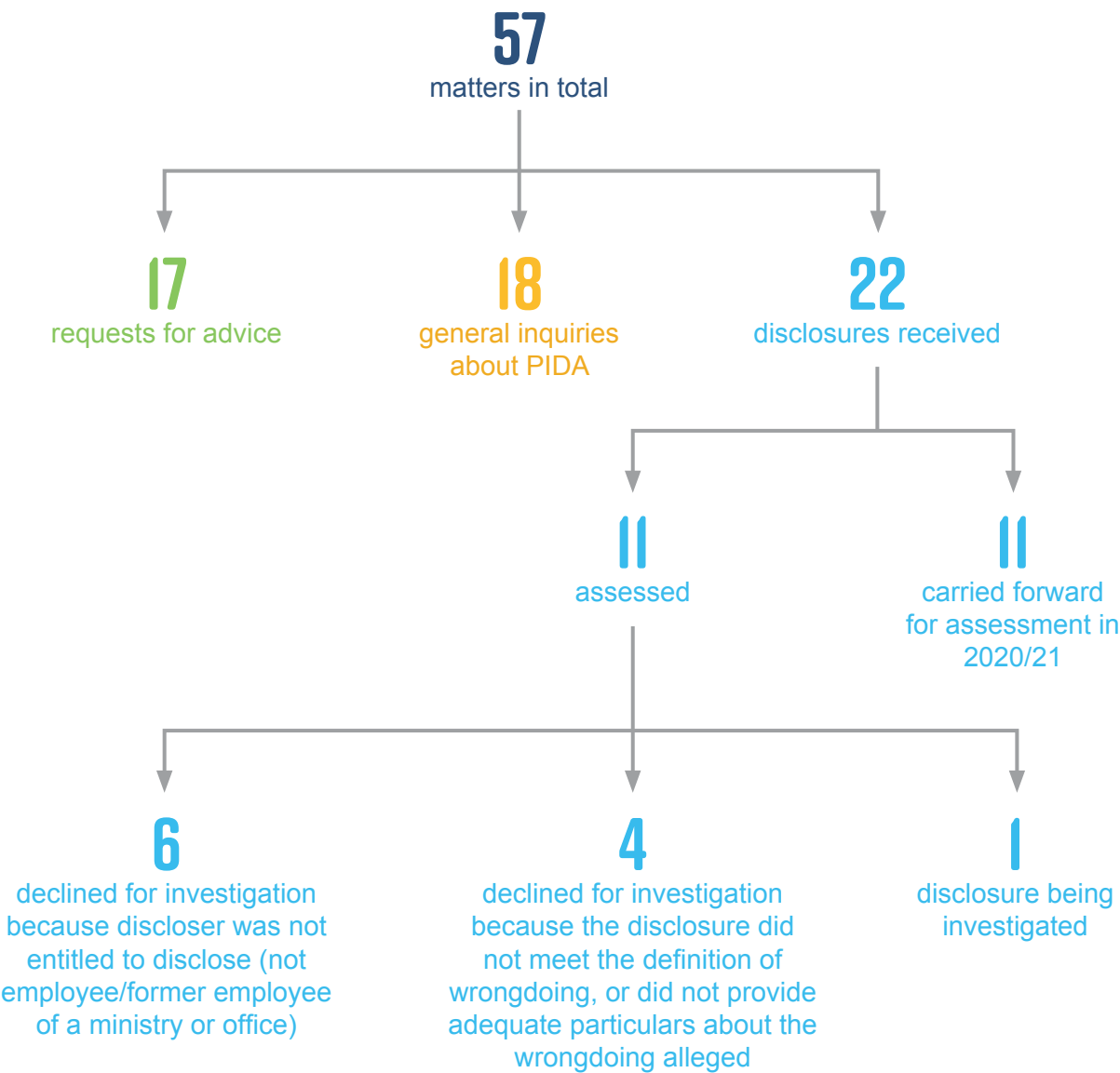
The outcome of the assessment of disclosures that were ongoing at the end of the reporting period will be included in a subsequent annual report.

PIDA is intended to deal with serious matters in the public interest. The legal threshold in PIDA for wrongdoing is high and sometimes allegations or evidence in support of allegations are not sufficient to support an investigation under the Act. For example, all mismanagement is not considered wrongdoing; only “gross or systemic” mismanagement is. More information about what constitutes wrongdoing is available on our website.

PIDA requires the Ombudsperson to report yearly on referrals of disclosures received from designated officers, referrals made to designated officers and reports to law enforcement. Given the short reporting period for this first annual report there are no such referrals or reports in these categories. We will track and report on these items in future years.

PIDA also requires the Ombudsperson to report on recommendations made or implemented or on systemic problems giving rise to wrongdoings. As there are no completed investigations, there are no resulting recommendations to report at this time.

New PID matters received between December 1, 2019 and March 31, 2020



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# RECOGNIZING WRONGDOING

Employees can report concerns about wrongdoing under the *Public Interest Disclosure Act* (PIDA).

Public servants have an important role to play in protecting the public interest by reporting their concerns of wrongdoing. This guide will help you understand if you have identified a possible wrongdoing.

## WHAT IS WRONGDOING?

In broad terms, wrongdoing is any unethical act that diverges significantly from generally accepted behaviour. However, only certain types of wrongdoing qualify under PIDA.

To be considered wrongdoing under PIDA, the conduct must have both of these elements:

- 1 Occur “in or relating to” a ministry or independent office of the legislature; and,
- 2 Meet the criteria for at least one type of wrongdoing as outlined in section 7(1) of PIDA (described below)

## WHAT DOES “IN OR RELATING TO” MEAN?

Under PIDA, wrongdoing can take place directly within a ministry or office<sup>1</sup>. The wrongdoing must be related to a ministry or office.

To be considered “related to” a ministry or office, there must be a **real and substantial connection between the wrongdoing and the ministry or office**.

An assessment of whether there is a real and substantial connection will depend on the specific context and facts.

## TYPES OF WRONGDOING

### A) Offences

PIDA definition: 7(1)(a) *a serious act or omission that, if proven, would constitute an offence under an enactment of British Columbia or Canada;*

- What it means: A serious action or failure to act that is also a crime or an offence.

<sup>1</sup> Under PIDA, “office” means the offices of the Auditor General, the BC Ombudsperson, Chief Electoral Officer, Information and Privacy Commissioner, Merit Commissioner, Police Complaint Commissioner, Representative for Children and Youth, Human Rights Commissioner, and the Registrar appointed under the *Lobbyists Registration Act*.

## B) Danger to people or the environment

PIDA definition: 7(1)(b) *an act or omission that creates a substantial and specific danger to the life, health or safety of persons, or to the environment, other than a danger that is inherent in the performance of an employee's duties or functions;*

- What it means: An action or failure to act that is dangerous to a person's health or safety or to the environment. The danger will be considered substantial if it is serious and likely to result in real harm. The danger will be considered specific if the actual threat can be identified as well as when it is likely to occur.
- Exception: Danger that is a typical part of someone's job.

## C) Misuse of public funds

PIDA definition: 7(1)(c) *a serious misuse of public funds or public assets;*

- What it means: Government money or resources are not being used for their intended purpose, are being wasted, or are used in a way which is not normally expected or required. The misuse must be serious. Serious misuse may include misuse that is recurrent, systemic, deliberate, undertaken by a person at a senior level, or involving a high dollar value.

## D) Mismanagement

PIDA definition: 7(1)(d) *gross or systemic mismanagement;*

- What it means: Gross mismanagement means management of a government resource (example: staff, contract, project) that is highly inappropriate, irresponsible, reckless, deliberate, involving a significant resource, etc. Systemic mismanagement means mismanagement that is broad, longstanding, recurrent or inherent to the organization's culture.

## E) Directing wrongdoing

PIDA definition: 7(1)(e) *knowingly directing or counselling a person to commit a wrongdoing described in paragraphs (a) to (d).*

- What it means: Telling someone else to do one of the acts or omissions listed above in A,B,C or D. It does not matter whether the individual acts on the instructions.

## WHO CAN REPORT WRONGDOING?

You must be a current or former employee of a ministry or office of the legislature to report wrongdoing. You can report wrongdoing that happened in the past, current wrongdoing or wrongdoing that may happen in the future. PIDA does not have any time limits.

## NOT SURE IF SOMETHING IS WRONGDOING?

Speak up! It's better to be safe than sorry.

You can report wrongdoing even if you are not sure that it meets the definition of wrongdoing under PIDA. There is no penalty if your report doesn't qualify as wrongdoing. You are protected from reprisal even if your allegations are not investigated or proven during an investigation.

# TIPS ON CONFIDENTIALITY FOR SUPERVISORS

PIDA has strict confidentiality requirements. As a supervisor, you will have access to sensitive information when employees come to you for advice or to report wrongdoing. This information can only be shared in accordance with section 6 of PIDA.

Tips below are to assist you in determining what information to keep confidential. Your ministry or office may issue its own tips. Seek support about your role from the Designated Officer in your ministry or office.

## WHY THE SECRECY?

Confidentiality is important because it:

Protects the employee from reprisal

Protects the privacy of the alleged wrongdoer during the investigation

Encourages employees to speak up about wrongdoing by creating a safe environment

## WHEN CAN I SHARE PIDA INFORMATION?

If an employee reports wrongdoing to you, you must take that information to your Designated Officer.

## TIPS

- If an employee comes to you for advice, do not share their identity. Only tell the Designated Officer their identity if the employee chooses to report wrongdoing.
- If you need help responding to a request for advice, you can ask your Designated Officer while keeping the employee's identity confidential.
- Typical information sharing practices do not apply to PIDA. Do not share the identity of employees who have reported wrongdoing under PIDA with anyone other than the Designated Officer, not even human resources or your manager.
- Hold conversations related to PIDA in private. Other people should not overhear requests for advice or reports of wrongdoing.
- Keep notes, files, emails and electronic documents secure. Be careful not to leave any confidential information in a shared location.

## ARE THERE ANY EXCEPTIONS TO MY OBLIGATIONS OF CONFIDENTIALITY?

Under PIDA, you can share personal information that is included in a report of wrongdoing for the purposes of the Act. That means you can share the information contained in the disclosure with the Designated Officer, but not anyone else.

You can only share information that could reveal the identity of an employee who seeks advice or reports wrongdoing in the following circumstances:

- If the employee has given you permission in writing;
- For the purposes of PIDA;
- For another lawful purpose, such as to prevent serious risk of harm to people; or
- The personal information has previously been lawfully published.

## MORE INFORMATION

Contact your Designated Officer for more information about your responsibilities under PIDA.

# SUPERVISOR RESPONSIBILITIES UNDER PIDA

Supervisors in a ministry or independent office of the legislature have new responsibilities under the *Public Interest Disclosure Act* (PIDA). Under PIDA, your employees can come to you to report wrongdoing (also called making a disclosure) or request advice. These activities are protected under PIDA. It is an offence to commit reprisal against an employee who reports wrongdoing or seeks advice about reporting wrongdoing.

The guidelines below outline what to do when an employee seeks assistance from you under PIDA. Your ministry or office may have issued its own guidelines. Seek support about your role from the Designated Officer in your ministry or office.

## HANDLING PIDA INTERACTIONS

- Keep the identity of employees who come to you under PIDA confidential.
- Only share the identity of employees who report wrongdoing with your Designated Officer when providing them with the report. Do not share this information with anyone else.
- Hold conversations about PIDA matters in a private area.
- Provide employees with information about the different avenues for reporting wrongdoing.
- Keep files related to PIDA in a secure place.
- Remind employees about the protections under PIDA. If they make a disclosure, their identity is protected to the extent possible and they can file a complaint with the Ombudsperson if they experience reprisal.
- Assure the employee that their concerns will be taken seriously but do not promise that they will be investigated. Wrongdoing reports are assessed against PIDA's criteria to determine whether they will be investigated.
- Do not give your opinion about whether or not an employee's allegations are eligible for investigation under PIDA, but do provide the employee with information about how wrongdoing is defined.
- If you are unsure about what to do, contact your Designated Officer.

## PROCEDURES FOR MANAGING REPORTS OF WRONGDOING FROM EMPLOYEES

- Immediately after receiving a report of wrongdoing from an employee, provide it to the Designated Officer.
- Even if a report is incomplete, provide it to the Designated Officer. The Designated Officer can contact the employee for more information.
- PIDA allows for anonymous reports. Even if you are unsure whether an anonymous report is from an employee, provide it to the Designated Officer.

**Important:** Submit the report to the Designated Officer regardless of whether you think it qualifies as wrongdoing.

## RESPONDING TO REQUESTS FOR ADVICE

- Document requests for advice from employees and maintain a record of your response. Keep these records separate from all employee personnel files.
- Keep the identity of an employee who requests advice confidential, including from the Designated Officer.
- If employees are considering making a disclosure to the media, advise them to familiarize themselves with PIDA's requirements for urgent public disclosures. Employees who go to the media without following appropriate protocols may not be protected by PIDA.
- Where relevant, provide information about what constitutes wrongdoing but do not provide the employee with an analysis about whether or not their allegations may be eligible for investigation under PIDA.
- If you are not sure what to tell an employee, you can ask your Designated Officer for advice while keeping the employee's identity confidential.

## CONFIDENTIALITY

PIDA contains protections for the identity of employees who report wrongdoing or seek advice about reporting wrongdoing. Supervisors should:

Keep the identity of the employee confidential to the extent possible. Take steps to ensure that you do not inadvertently enable the identification of an employee who reported wrongdoing or sought advice.

The identity of the discloser can generally only be shared with the employee's express written consent, or for the purposes of the Act or another lawful purpose.

Supervisors may share the identity of an employee who has made a disclosure with the Designated Officer for the purposes of the Act. However, supervisors generally must not share the identity of employees who ask for advice.

If you are unsure about whether you can share information that you received from an employee under PIDA, contact your Designated Officer for guidance.

# DESIGNATED OFFICER RESPONSIBILITIES UNDER PIDA

PIDA requires the Chief Executives of ministries and the offices of the legislature to designate at least one senior official to be the designated officer for receiving and investigating disclosures. Officials can be designated to receive disclosures OR to investigate disclosures, or both.

## PROVIDE INFORMATION AND ADVICE TO EMPLOYEES AND SUPERVISORS

**Employees** may come to you for advice about making a disclosure. It is important to document this interaction. Seeking advice is protected under PIDA and employees can make a complaint to the Ombudsperson if they experience reprisal because of it.

**Supervisors** may need assistance handling the requests for advice and disclosures they receive from employees. Supervisors should not provide you with identifying details of the employee unless a disclosure has been made. You can provide guidance to supervisors without knowing the identity of the employee who sought advice.

## RECEIVE DISCLOSURES FROM EMPLOYEES AND SUPERVISORS

You may receive disclosures directly from employees or supervisors may provide you with disclosures they have received. Some Designated Officers are also responsible for assessing and possibly investigating disclosures of wrongdoing. PIDA requires disclosures to be in writing. If the employee has difficulty submitting a written disclosure, you can assist them. Keep files related to PIDA in a secure place.

## INVESTIGATIONS

- Follow your organization's internal procedures established under section 9 of PIDA.
- Investigate in a thorough and timely manner.
- Follow the principles of natural justice and procedural fairness. For example, inform the alleged wrongdoer of the allegations against them and give them an opportunity to respond.
- Be impartial. The purpose of a PIDA investigation is to find out what happened and whether wrongdoing occurred or not, rather than to prove a theory.
- If you wish, you can refer the investigation in whole or in part to the Ombudsperson. You can also request assistance from the Ombudsperson.



## MITIGATE REPRISAL RISK

- Observe the confidentiality provisions in PIDA. Keep the identity of the employee who made the disclosure confidential to the maximum extent possible.
- Assess the risk of reprisal to the employee who made the disclosure. Consider the discloser's vulnerability, their relationship with the alleged wrongdoer, the likelihood their identity will be known and whether they have previously raised concerns about the alleged wrongdoing.
- Advise employees not to take any adverse measures against another employee whom they know or suspect has made a disclosure.
- When communicating with the discloser, remind them that they can make a reprisal complaint to the Ombudsperson if necessary.

## CONFIDENTIALITY

PIDA has strict confidentiality provisions. Information can only be shared in accordance with section 6 of PIDA. Designated Officers should follow these principles:

- Keep the identity of the discloser confidential to the extent possible. Take steps to ensure that you do not inadvertently enable the identification of the discloser.
- The identity of the discloser can generally only be shared with the employee's express written consent, or for the purposes of the Act or another lawful purpose.
- If an employee must be revealed as the source of evidence to comply with the principles of natural justice, wherever possible they should not be identified as the discloser.

## BEST PRACTICES FOR CONFIDENTIALITY DURING INVESTIGATIONS

- Interview witnesses discreetly.
- Give the discloser an alias (e.g. Witness C) for all documents that may be used in interviews or in the public sphere.
- Include the discloser in the ordinary interview process, if it would be expected that everyone in the workplace would be interviewed. Do so even if they have already been interviewed.
- Tell witnesses not to discuss their interview or evidence with colleagues.

## REPORTING

At the conclusion of your investigation you must provide a report to your Chief Executive that includes:

- Any finding(s) of wrongdoing
- In cases where wrongdoing was found, the reasons supporting the finding(s)
- Any recommendations to address the finding(s)

You must also provide a summary report to the discloser and other appropriate persons. This may include those who are adversely affected by the report, such as the person alleged to have committed the wrongdoing.

# PUBLIC INTEREST DISCLOSURE ACT: CHECKLIST FOR CHIEF EXECUTIVES

As a Chief Executive of a ministry or office, the *Public Interest Disclosure Act* requires you to take key steps.

## APPOINT A DESIGNATED OFFICER

- ☐ The Chief Executive must appoint at least one senior official to be a Designated Officer to receive and investigate disclosures of wrongdoing
- ☐ Under the Act, the Chief Executive is the Designated Officer if no designation is made

## ESTABLISH AND MAINTAIN INTERNAL PIDA PROCEDURES

Public bodies under PIDA must have internal procedures for receiving, managing and investigating disclosures. PIDA procedures should cover how to:

- ☐ Receive and review disclosures, and set time periods for action to be taken
- ☐ Assess the risk of reprisal against disclosers
- ☐ Ensure the confidentiality of information received and collected
- ☐ Protect the identity of employees who report wrongdoing
- ☐ Appropriately collect and protect personal information
- ☐ Refer the disclosure
- ☐ Investigate other wrongdoings that may be uncovered
- ☐ Provide appropriate parties with notice of decisions and summary reports
- ☐ Report the outcomes of investigations, including any findings of wrongdoing, the reasons supporting the findings and relevant recommendations

## SMALL PUBLIC BODIES

- ☐ Consult with the Ombudsperson to determine whether developing internal procedures would be impractical based on the size of the organization.
- ☐ If, following consultation with the Ombudsperson, the organization elects not to establish PIDA procedures, Chief Executives will consult with the Ombudsperson when disclosures are received.

## EDUCATE EMPLOYEES

Employees must have information about PIDA and how to make a disclosure of wrongdoing. Ensure employees receive training and resources that cover:

- ☐ Basic information about PIDA and what wrongdoing is
- ☐ PIDA's protections: confidentiality and prohibitions on reprisal
- ☐ How to make a disclosure or get advice
- ☐ What they can expect from an investigation as a discloser or a witness
- ☐ How to make a reprisal complaint to the Ombudsperson

## TRAIN SUPERVISORS AND DESIGNATED OFFICERS

Supervisors and Designated Officers must understand their responsibilities when responding to requests for advice from employees and receiving disclosures of wrongdoing.

Ensure they receive training and resources that cover:

- ☐ Confidentiality: PIDA has strict confidentiality provisions and the identity of the person seeking advice or making a disclosure is protected.
- ☐ Security: PIDA files and communications should be kept in a safe place.
- ☐ Documentation: Interactions with disclosers and employees seeking advice should be documented.
- ☐ PIDA processes: Supervisors and Designated Officers must understand how to provide advice to employees, manage disclosures and protect disclosers from reprisal.

Ensure **Designated Officers** receive training and resources that cover:

- ☐ Procedural fairness in investigations: Investigations should be fair, thorough, timely and impartial.
- ☐ Assessment of reprisal risk: The risk of reprisal should be thoroughly assessed and appropriate mitigation strategies applied.

## PUBLISH ANNUAL REPORT

Chief Executives are required to publish annual reports on their activities under PIDA. The reports must include:

- ☐ The number of investigations started, the number of disclosures made about the organization internally and the number of disclosures received by Ombudsperson about the organization to the extent known. In cases where wrongdoing was found, include a description of the wrongdoing, any recommendations made, any corrective action taken or reasons why no action was taken.
- ☐ Reports cannot include the identity of the discloser, alleged wrongdoer or any information that unreasonably invades someone's privacy.

## ENCOURAGE EMPLOYEES TO SPEAK UP

- ☐ Cultivate a culture where employees feel that it is safe to speak up by
  - emphasizing how seriously the organization takes disclosures of wrongdoing, and
  - setting the tone that reprisal will not be tolerated in the organization
- ☐ Emphasize that employees have a choice about where to report wrongdoing, either internally or externally, whichever makes them more comfortable.

# FAQS

## *PUBLIC INTEREST DISCLOSURE ACT:* DISCLOSURES AND REPRISAL COMPLAINTS TO THE OMBUDSPERSON

# FREQUENTLY ASKED QUESTIONS

These Frequently Asked Questions (FAQs) refer to the procedures that apply to disclosures to the Ombudsperson. Check with your government body about their internal PIDA procedures.

These FAQs also refer to procedures that apply to allegations of reprisal.

## ABOUT PIDA

### WHAT IS THE PUBLIC INTEREST DISCLOSURE ACT?

The *Public Interest Disclosure Act* (PIDA) is BC's whistleblower protection legislation for current and former employees of ministries and offices of the legislature. PIDA provides mechanisms for investigating allegations of wrongdoing and where wrongdoing is found, the means to address it. PIDA also provides protection for public sector employees who speak up about serious or systemic wrongdoing within a public body.

### WHAT IS THE ROLE OF THE OFFICE OF THE OMBUDSPERSON UNDER PIDA?

The Office of the Ombudsperson is an independent office of the legislature mandated under the *Public Interest Disclosure Act* to investigate allegations of wrongdoing from public sector employees.

The Ombudsperson also investigates complaints from employees who believe they have been retaliated against for reporting wrongdoing, seeking advice about doing so, or cooperating with an investigation under PIDA.

The Ombudsperson conducts fair and impartial investigations and makes effective recommendations for corrective measures when wrongdoing or reprisal is found.

The Office of the Ombudsperson can also provide advice about PIDA to employees and public bodies.

## PIDA PROTECTIONS

### WHAT PROTECTIONS DOES PIDA PROVIDE FOR EMPLOYEES?

PIDA prohibits reprisal against employees who report wrongdoing, ask for advice about reporting wrongdoing, or cooperate with an investigation. Reprisal can include demotion, disciplinary measures, termination of employment or any measure that adversely affects an employee's employment or working conditions.

PIDA requires that every person involved in receiving, reviewing and investigating disclosures must carry out those functions in an expeditious, fair and proportionate manner as appropriate in the circumstances.

Employees can make a complaint to the Ombudsperson if they experience reprisal.

## WHAT PRIVACY AND CONFIDENTIALITY PROTECTIONS DOES PIDA PROVIDE?

If an employee reports wrongdoing, the Act requires that their personal information and identity will be kept confidential to the extent possible. The Ombudsperson conducts investigations in private and the identity of the person who made the report will not be included in the Ombudsperson's report.

The *Freedom of Information and Protection of Privacy Act* provides that investigative records of the Ombudsperson are exempt from disclosure. This means that members of the public cannot access the office's records that relate to a report of wrongdoing or reprisal complaint through a freedom of information request.

# REPORTING WRONGDOING

## WHAT IS "WRONGDOING"?

Wrongdoing is conduct that occurs in or relating to a ministry, government body or office of the legislature that is:

- a serious act or failure to act that, if proven, would be an offence under the laws of BC or Canada;
- an act or failure to act that creates a substantial and specific danger to the life, health or safety of persons, or to the environment, other than a danger that is inherent in the performance of an employee's duties or functions;
- a serious misuse of public funds or public assets;
- gross or systemic mismanagement; or
- knowingly directing or counselling a person to commit wrongdoing described above.

Not all misconduct is wrongdoing under PIDA. For example, minor or isolated transgressions may not meet the seriousness threshold in the definition of wrongdoing. Furthermore, disagreements about policy or human resource disputes involving purely personal interests are unlikely to qualify as wrongdoing.

If you want to discuss your concerns or learn more about the investigation process, contact our office to speak with an investigator.

## CAN I GET ADVICE BEFORE I DECIDE TO REPORT WRONGDOING?

Yes. You can get advice from your supervisor, your designated officer, a lawyer, your union representative, employee association or the Ombudsperson. Under PIDA, you are protected from reprisal when asking for advice from these parties.

## WHO CAN REPORT WRONGDOING UNDER PIDA?

An employee or former employee of a ministry or office of the legislature can report wrongdoing. Employees can report wrongdoing that has happened in the past, is currently taking place or that they believe is about to happen. An employee can report wrongdoing regardless of whether they are a permanent, temporary, casual, part-time or full-time employee.

Former employees can only report wrongdoing that they discovered, or that occurred, while they were employed.

We may ask you to substantiate that you are an employee or former employee in order to determine that you are eligible to report wrongdoing under the Act.

## I AM A CONTRACTOR. AM I PROTECTED UNDER PIDA?

Contractors are protected from reprisal under the Act. PIDA prohibits persons from cancelling contracts, withholding payment, or refusing to enter into future contracts because a contractor or their employees cooperated with a PIDA investigation.

The Ombudsperson can NOT investigate complaints of reprisal from contractors. Contractors who believe that they have experienced reprisal may wish to seek legal advice.

## CAN I REPORT WRONGDOING THAT HAPPENED A LONG TIME AGO?

Yes. PIDA does not have any time restrictions. However, it may not be possible to investigate wrongdoing that happened a very long time ago if evidence or witnesses are no longer available or there would be no useful purpose in an investigation.

## HOW CAN I REPORT WRONGDOING?

Employees can report wrongdoing:

1. to your supervisor or the Designated Officer in your workplace; OR
2. to the Office of the Ombudsperson.

Employees can choose where to report wrongdoing. Employees do not have to exhaust other options before coming to the Office of the Ombudsperson.

If you want to discuss your concerns or learn more about the Ombudsperson's investigation process, contact our office to speak with an Ombudsperson Officer.

If you want to learn more about your ministry's or office's investigation process, contact the Designated Officer in your workplace.

## CAN I REPORT WRONGDOING TO THE MEDIA?

In most circumstances, PIDA does not cover reports of wrongdoing to the media. However, if an employee believes that there is an imminent, substantial and specific danger to people or the environment, and the employee has consulted with and obtained the consent of the appropriate protection official, an employee can make a public disclosure.

Protection officials are

- the provincial health officer (for a health-related matter);
- Emergency Management BC (for an environmental matter); or
- the police, for any other matter.

PIDA does not authorize employees to report wrongdoings publicly without FIRST obtaining the consent of the appropriate protection official.

## **DO I HAVE TO TALK TO MY SUPERVISOR BEFORE REPORTING WRONGDOING?**

No. Employees can report wrongdoing without first raising their concerns with their supervisor or employer.

## **I TOOK AN OATH WHEN I STARTED WITH THE PUBLIC SERVICE. WHAT HAPPENS IF I BREAK THAT OATH?**

PIDA allows employees to share otherwise confidential information for the purpose of reporting wrongdoing, except information that is protected by solicitor-client privilege or another rule of privilege. Reporting wrongdoing under the Act in good faith is consistent with the employee's oath of employment.

## **CAN I REPORT WRONGDOING ANONYMOUSLY?**

Yes, employees can report wrongdoing anonymously. We may investigate anonymous reports if there is enough information for the allegations of wrongdoing to be properly assessed.

However, we are required to determine if an anonymous report is made by an employee or former employee so we may ask the anonymous reporter to provide certain information so we can determine this.

We encourage employees who fear identifying themselves to contact our office to discuss our investigation process and the protections that the Act provides. That contact may be anonymous if you prefer.

# INVESTIGATIONS INTO WRONGDOING

## WHAT HAPPENS AFTER I REPORT WRONGDOING?

An Ombudsperson Officer will contact you to get more information about your report. Your report will be assessed to determine whether it is eligible for investigation under the Act, and if it is, whether or not an investigation should proceed.

Each issue brought forward to our office will be assessed on its merits to determine if an investigation will be conducted.

You will be notified if we decide to investigate your report. If we decide not to investigate your report, we will provide you with reasons for our decision.

## WHAT HAPPENS AT THE END OF AN INVESTIGATION?

At the end of an investigation, the Ombudsperson will provide a report to the chief executive of the public body. The report will set out the Ombudsperson's findings, including any recommendations for corrective measures. The Ombudsperson will monitor the implementation of any recommendations made.

If the Ombudsperson does not find that wrongdoing took place, the employee who made the report is still protected from reprisal.

The employee who made the report will receive a summary of the outcome of the investigation.

## I AM A WITNESS IN A PIDA CASE. WILL WHAT I SAY AFFECT MY EMPLOYMENT?

PIDA prohibits reprisal against employees who co-operate with a PIDA investigation. If an employee experiences reprisal because they cooperated with an investigation under PIDA, they can make a reprisal complaint to our office.

We conduct our investigations in private, and we will only share information about your identity as necessary to further the investigation.

# CONTACTING THE OMBUDSPERSON

## HOW DO I CONTACT THE OMBUDSPERSON?

As an employee, if you have questions about the Act, the role of our office, or if you need more information about how to make a disclosure you can speak to an Ombudsperson Officer directly by calling our office at 1-800-567-3247, or contacting us via email at [report@bcombudsperson.ca](mailto:report@bcombudsperson.ca).



**SPEAK UP. YOU CAN MAKE A DIFFERENCE.**

This Act is current to May 13, 2020

See the Tables of Legislative Changes for this Act's legislative history, including any changes not in force.

## **PUBLIC INTEREST DISCLOSURE ACT**

**[SBC 2018] CHAPTER 22**

*Assented to May 17, 2018*

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## Part 1 — Interpretation and Application

### Definitions

#### 1 In this Act:

**“chief executive”** means,

- (a) in respect of a ministry, the deputy minister of the ministry,
- (b) in respect of a government body, the head of the government body, and
- (c) in respect of an office, the relevant officer of the Legislature;

**“designated officer”** means a senior official designated under section 10 [*designated officer*] to receive and investigate disclosures under this Act;

**“discloser”** means an employee who makes, or has sought advice in respect of making, a disclosure under this Act;

**“disclosure”** means a disclosure of wrongdoing made by a discloser in accordance with this Act, unless the context otherwise requires;

**“employee”** means

- (a) an employee of a ministry, government body or office, and includes a person appointed under section 15 [*appointment by Lieutenant Governor in Council*] of the *Public Service Act*, or
- (b) a member of a class of persons prescribed by regulation;

**“government body”** means an organization designated by regulation as a government body for the purposes of this Act;

**“head”** means, in respect of a government body, the person designated by regulation as the head of the government body;

**“ministry”** means a ministry of the government;

**“office”** means

- (a) the office of the Auditor General,
- (b) the office of the Chief Electoral Officer,
- (b.1) the office of the Human Rights Commissioner,
- (c) the office of the Information and Privacy Commissioner,
- (d) the office of the merit commissioner,
- (e) the office of the police complaint commissioner,
- (f) the office of the registrar appointed under the *Lobbyists Transparency Act*,
- (g) the office of the Representative for Children and Youth, or
- (h) the office of the Ombudsperson;

**“Ombudsperson”** means the Ombudsperson appointed under the *Ombudsperson Act*;

**“personal information”** has the same meaning as in the *Freedom of Information and Protection of Privacy Act*;

**“police force”** has the same meaning as in section 1.1 (a) to (c) [*police forces in British Columbia*] of the *Police Act*;

**“provincial health officer”** has the same meaning as in the *Public Health Act*;

**“record”** has the same meaning as in the *Freedom of Information and Protection of Privacy Act*;

**“reprisal”** means a measure referred to in section 31 (1) (a) to (e) [*protection of employee from reprisals*];

**“wrongdoing”** means a wrongdoing referred to in section 7 (1) (a) to (e) [*wrongdoings and reporting of offences*].

## Interpretation

- 2** For the purposes of this Act,
- (a) an employee includes
    - (i) a director or an officer, in respect of a government body, and
    - (ii) a former employee, if a wrongdoing occurred or was discovered when the employee was employed by the ministry, government body or office, as applicable, and
  - (b) a provision that applies to the office of the Ombudsperson as an “office” does not limit or affect the Ombudsperson’s authority or obligations under this Act.

## Relationship of Act to other Acts

- 3** (1) If, in respect of a prohibition from disclosing information, a provision of this Act is inconsistent or in conflict with a provision of another enactment, the provision of this Act prevails, in respect of the prohibition from disclosing information,
- (a) unless another Act expressly provides that it, or a provision of it, applies despite this Act, or
  - (b) unless otherwise provided by regulation.
- (2) For certainty, this Act does not affect the protection provided under any other enactment to a person who lawfully discloses information, including under the following:
- (a) the *Child, Family and Community Service Act*;
  - (b) the *E-Health (Personal Health Information Access and Protection of Privacy) Act*;
  - (c) the *Employment Standards Act*;
  - (d) the *Financial Administration Act*;
  - (e) the *Forest and Range Practices Act*;
  - (f) the *Freedom of Information and Protection of Privacy Act*;
  - (g) the *Human Rights Code*;
  - (h) the *Laboratory Services Act*;
  - (i) the *Labour Relations Code*;
  - (j) the *Ombudsperson Act*;
  - (k) the *Pharmaceutical Services Act*;
  - (l) the *Wildfire Act*;
  - (m) the *Workers Compensation Act*.

## Part 2 — Governance

### Division 1 — General

#### Information about Act to be communicated

- 4** Every chief executive must ensure that the following information is made available to the employees of the ministry, government body or office for which the chief executive is responsible:
- (a) information about this Act;
  - (b) information about how to make a disclosure under this Act;
  - (c) any other prescribed information.

### Unauthorized release of information

- 5 (1) This Act does not authorize the release of the following information in a disclosure to the Ombudsperson or in a report made by the Ombudsperson under this Act:
  - (a) information that is protected by solicitor-client privilege;
  - (b) information that is protected by any common law rule of privilege.
- (2) This Act does not authorize the release of the following information in a disclosure to the public under section 16 *[public disclosure if situation is urgent]*:
  - (a) information that is subject to any restriction under an enactment of British Columbia or Canada;
  - (b) information that is protected by solicitor-client privilege;
  - (c) information that is protected by any common law rule of privilege;
  - (d) information that is subject to public interest immunity.
- (3) Information that is subject to public interest immunity may be released
  - (a) in a disclosure to the Ombudsperson, and
  - (b) in a report made under this Act, if the Attorney General confirms that the information may be released.

### Personal information

- 6 (1) For the purposes of making a disclosure or a complaint about a reprisal, a discloser
  - (a) may collect, use and disclose personal information, and
  - (b) must take reasonable precautions to ensure that no more information is collected, used or disclosed than is reasonably necessary to make the disclosure or the complaint about a reprisal.
- (2) A person who is authorized to receive or investigate disclosures or complaints of reprisals under this Act may collect, use and disclose personal information for the purposes of this Act if the personal information
  - (a) is included with a disclosure or a complaint about a reprisal, or
  - (b) is for the purposes of an investigation or a report.
- (3) Despite subsection (2), a person must not disclose personal information about a discloser that
  - (a) is obtained by any person in that person's capacity as an employee,
  - (b) is likely to enable the identification of the discloser as a person who has made a disclosure, and
  - (c) is provided to a person other than the discloser.
- (4) Subsection (3) does not apply if one or more of the following applies:
  - (a) the provision or use of the personal information is for the purposes of this Act;
  - (b) the provision or use of the personal information is in connection with the performance of a function of the Ombudsperson, or to follow up on a recommendation of the Ombudsperson, under this Act;
  - (c) the provision or use of the personal information is in connection with another lawful purpose;
  - (d) the discloser has consented, in writing, to the release or use of the personal information;
  - (e) the personal information has previously been lawfully published.

## Division 2 — Wrongdoings

### Wrongdoings and reporting of offences

- 7** (1) This Act applies to the following wrongdoings in or relating to a ministry, government body or office, including wrongdoings that occurred before the coming into force of this Act:
- (a) a serious act or omission that, if proven, would constitute an offence under an enactment of British Columbia or Canada;
  - (b) an act or omission that creates a substantial and specific danger to the life, health or safety of persons, or to the environment, other than a danger that is inherent in the performance of an employee's duties or functions;
  - (c) a serious misuse of public funds or public assets;
  - (d) gross or systemic mismanagement;
  - (e) knowingly directing or counselling a person to commit a wrongdoing described in paragraphs (a) to (d)
- (2) If a chief executive, a designated officer or, in relation to a disclosure under this Act, the Ombudsperson has reason to believe that an offence has been committed under an enactment of British Columbia or Canada, that person or a delegate may report the alleged offence to a law enforcement agency.

### Consequences of wrongdoing not limited

- 8** (1) This Act is not to be construed as limiting employment consequences that apply to an employee who commits a wrongdoing.
- (2) For certainty, if a discloser's disclosure under this Act relates to the discloser's own conduct in respect of a wrongdoing, the discloser remains liable for the conduct.

## Division 3 — Procedures for Disclosures Within Ministries, Government Bodies and Offices

### Procedures to manage disclosures

- 9** (1) Subject to the regulations, every chief executive must establish procedures to manage disclosures by employees of the ministry, government body or office for which the chief executive is responsible.
- (2) The procedures established under subsection (1) must include procedures in respect of the following:
- (a) assessing risks that reprisals may be taken against disclosers;
  - (b) receiving and reviewing disclosures and, in respect of the disclosures, setting time periods for action to be taken;
  - (c) ensuring the confidentiality of information collected in relation to disclosures and investigations;
  - (d) providing that personal information collected and used
    - (i) is limited to the personal information required for the disclosure process and investigations, and
    - (ii) is protected in accordance with applicable rules or principles for the protection of personal information;
  - (e) protecting the identity of persons involved in the disclosure process, subject to any other Act, in accordance with section 17 *[carrying out investigations]*;
  - (f) referring the subject matter of the disclosure to another appropriate authority if that authority has jurisdiction in respect of the disclosure;
  - (g) investigating disclosures in accordance with section 17 and consistent with the following:
    - (i) section 21 *[notification of employee and designated officer]*;
    - (ii) section 22 *[circumstances for refusing or stopping investigation]*;
    - (iii) section 23 *[circumstances for postponing or suspending investigation]*;

- (h) investigating other wrongdoings that may arise in the course of an investigation of the disclosure;
- (i) reporting the outcomes of investigations, including the following:
  - (i) a finding of wrongdoing, if any;
  - (ii) reasons to support the finding of wrongdoing;
  - (iii) any recommendations to address the finding;
- (j) ensuring that an appropriate summary of the report is provided to disclosers and any other appropriate persons;
- (k) any other procedural matter prescribed by regulation.

#### **Designated officer**

- 10** (1) For the purposes of this Act, every chief executive must designate at least one senior official to be a designated officer to receive and investigate disclosures by employees in the ministry, government body or office for which the chief executive is responsible.
- (2) Section 9 and subsection (1) of this section do not apply to a chief executive who determines, after consultation with the Ombudsperson, that it is not practical to apply those provisions due to the size of the ministry, government body or office for which the chief executive is responsible.
- (3) If no designation is made under subsection (1), the chief executive is the designated officer to receive and investigate disclosures by employees in the ministry, government body or office for which the chief executive is responsible.
- (4) For certainty, a different senior official may be designated under subsection (1) for each of the following:
- (a) the receipt of a disclosure;
  - (b) the investigation of a disclosure.

## **Part 3 — Making Disclosures**

#### **Request for advice**

- 11** (1) An employee who is considering making a disclosure may request advice from
- (a) the employee's union representative or employee association representative, as applicable,
  - (b) a lawyer,
  - (c) the employee's supervisor,
  - (d) a designated officer of the relevant ministry, government body or office in respect of the employee, or
  - (e) the Ombudsperson.
- (2) The supervisor, designated officer or Ombudsperson may require that the request for advice under subsection (1) (c), (d) or (e), as applicable, be in writing.

#### **Making disclosure to supervisor, designated officer or Ombudsperson**

- 12** (1) If a discloser reasonably believes that he or she has information that could show that a wrongdoing has been committed or is about to be committed, the discloser, in good faith, may make a disclosure to any or all of the following:
- (a) subject to subsection (2), the discloser's supervisor;
  - (b) the designated officer of the relevant ministry, government body or office in respect of the discloser;
  - (c) the Ombudsperson.
- (2) The supervisor must provide the disclosure to the designated officer of the relevant ministry, government body or office.

### Disclosures to Auditor General by office of the Ombudsperson employees

- 13** (1) If a discloser is an employee of the office of the Ombudsperson and is seeking advice or making a disclosure regarding the office of the Ombudsperson, the discloser may seek advice from, or make the disclosure to, the Auditor General instead of the Ombudsperson under section 12 (1) (c).
- (2) If a discloser makes a disclosure to the Auditor General under this section, the Auditor General is to carry out the responsibilities of the Ombudsperson under this Act in relation to the discloser and disclosure.
- (3) The Auditor General is to make a report in respect of activities under this section as if the Auditor General were reporting as the Ombudsperson under section 40 [*annual, special and urgent reports — Ombudsperson*].

### Anonymous disclosure

- 14** (1) A disclosure may be made anonymously.
- (2) An anonymous discloser need not be notified under section 19 [*investigations of disclosures within ministries, government bodies or offices*], 21 [*notification of employee and designated officer*] or 24 [*referral of matter*] unless contact information is provided and, if so, notification may be sent at the discretion of a designated officer or the Ombudsperson, as applicable.

### Content of disclosure

- 15** A disclosure made under this Part must be in writing and must include the following information, if known:
- (a) a description of the wrongdoing;
  - (b) the name of the person alleged
    - (i) to have committed the wrongdoing, or
    - (ii) to be about to commit the wrongdoing;
  - (c) the date of the wrongdoing;
  - (d) whether information or conduct that is being disclosed relates to an obligation under another enactment and, if so, a reference to the enactment;
  - (e) whether the wrongdoing has already been disclosed under this Act or another enactment;
  - (f) if paragraph (e) applies, the name of the person to whom the disclosure was made and the response, if any, that has been received.

### Public disclosure if situation is urgent

- 16** (1) In this section, “protection official” means,
- (a) in respect of a health-related matter, the provincial health officer,
  - (b) in respect of an environmental matter, the agency responsible for the *Emergency Program Act*, or
  - (c) in any other case, an appropriate police force.
- (2) If an employee reasonably believes that a matter constitutes an imminent risk of a substantial and specific danger to the life, health or safety of persons, or to the environment, the employee, subject to subsection (4), may make a disclosure to the public if the employee
- (a) consults a relevant protection official before making the disclosure,
  - (b) receives direction from the protection official, and
  - (c) makes the disclosure to the public in accordance with the following:
    - (i) the direction received under paragraph (b);
    - (ii) sections 5 [*unauthorized release of information*] and 6 [*personal information*].

- (3) Immediately after a disclosure is made under subsection (2), the discloser must
  - (a) advise the discloser's supervisor or designated officer about the disclosure to the public, and
  - (b) make the disclosure in accordance with sections 12 [*making disclosure to supervisor, designated officer or Ombudsperson*] and 15 of this Act.
- (4) If the direction from the protection official under subsection (2) (b) is that the employee should not make a public disclosure, the employee must not make the disclosure to the public.

## Part 4 — Investigations

### Division 1 — General

#### Carrying out investigations

- 17 Every person involved in receiving, reviewing and investigating disclosures must carry out those functions in an expeditious, fair and proportionate manner as appropriate in the circumstances.

#### Other investigations

- 18 (1) A designated officer or the Ombudsperson may require that an investigation by a ministry, government body or office, other than an investigation of a disclosure under this Act, be postponed or suspended if, in the absence of evidence to the contrary, there is prima facie evidence that the investigation was undertaken with an intention to compromise an investigation of a disclosure under this Act.
- (2) The powers under this section do not limit the authority of a ministry, government body or office to undertake other investigations.

### Division 2 — Investigations and Reports by Ministries, Government Bodies or Offices Investigations of disclosures within ministries, government bodies or offices

- 19 (1) A designated officer of a ministry, government body or office is responsible for investigating disclosures that the designated officer receives after receiving
  - (a) a disclosure from a discloser under Part 3 [*Making Disclosures*], or
  - (b) a referral from
    - (i) another ministry, government body or office, or
    - (ii) the Ombudsperson.
- (2) A designated officer is to investigate disclosures
  - (a) in accordance with the procedures established under section 9 [*procedures to manage disclosures*], or
  - (b) in consultation with the Ombudsperson, in the case of a ministry, government body or office described in section 10 (2) [*designated officer*].
- (3) Subject to subsection (4), a designated officer may
  - (a) request assistance from the Ombudsperson for an investigation, or part of an investigation, or
  - (b) refer a disclosure, in whole or in part, to the Ombudsperson.
- (4) If a designated officer refers the disclosure to the Ombudsperson under subsection (3) (b), the designated officer must notify the discloser.

### Division 3 — Investigations and Reports by Ombudsperson

#### Investigations by Ombudsperson

**20** The Ombudsperson is responsible for investigating disclosures that he or she receives under this Act.

#### Notification of employee and designated officer

- 21** (1) After receiving a disclosure from a discloser under Part 3 [*Making Disclosures*], the Ombudsperson is to notify the discloser of the decision to
- (a) begin an investigation of the disclosure, or
  - (b) refuse to investigate the disclosure under section 22.
- (2) After making the decision referred to in subsection (1) (a) to begin an investigation of the disclosure, the Ombudsperson is to notify a designated officer of the relevant ministry, government body or office, as applicable, of the decision.
- (3) The Ombudsperson may delay the notification of the designated officer under subsection (2) until an appropriate time if the Ombudsperson considers that the notification may
- (a) compromise an investigation, or
  - (b) expose the discloser to reprisals.
- (4) After beginning an investigation, the Ombudsperson is to notify every person notified under subsections (1) (a) and (2) if an investigation will not be completed by the Ombudsperson, including in the event of circumstances referred to in section 22 (1) and (2).

#### Circumstances for refusing or stopping investigation

- 22** (1) The Ombudsperson must refuse to investigate or must stop investigating a disclosure if the disclosure relates primarily to
- (a) a dispute between an employee and his or her employer respecting the employee's employment,
  - (b) a matter relating to
    - (i) law enforcement by members of a police force, or
    - (ii) conduct of members of a police force,
  - (c) a matter relating to the prosecution of an offence, or
  - (d) the exercise of an adjudicative function of a court, tribunal or other statutory decision maker.
- (2) The Ombudsperson may refuse to investigate or may stop investigating a disclosure if the Ombudsperson believes that
- (a) the disclosure does not provide adequate particulars about the wrongdoing,
  - (b) the disclosure
    - (i) is frivolous or vexatious,
    - (ii) has not been made in good faith,
    - (iii) has not been made by a person entitled to disclose under this Act, or
    - (iv) does not deal with a wrongdoing,
  - (c) the investigation of the disclosure would serve no useful purpose or could not reasonably be conducted because of the length of time that has elapsed between the date when the subject matter of the disclosure arose and the date when the disclosure was made,
  - (d) the disclosure relates solely to a public policy decision,
  - (e) the disclosure relates primarily to a matter that is wholly referred under section 24,
  - (f) the disclosure is being, or has already been, appropriately investigated, including by a designated officer, or
  - (g) a prescribed reason to not investigate or to stop investigating the disclosure applies.

### Circumstances for postponing or suspending investigation

- 23** (1) Subject to section 22 (1), the Ombudsperson may postpone or suspend an investigation if the Ombudsperson
- (a) reports, under section 7 (2) [*wrongdoings and reporting of offences*], an alleged offence identified during the investigation,
  - (b) considers that the investigation may compromise another investigation, or
  - (c) becomes aware that the alleged wrongdoing that is being investigated in respect of the disclosure is also being investigated for the prosecution of an offence.
- (2) The Ombudsperson must notify every person notified under section 21 if an investigation is postponed or suspended under subsection (1) of this section unless the Ombudsperson is advised that the notification would compromise another investigation, including an investigation into an alleged offence.

### Referral of matter

- 24** (1) The Ombudsperson may refer the disclosure if the Ombudsperson considers that the disclosure could more appropriately be investigated, in whole or in part, by
- (a) a designated officer, in accordance with Division 2 [*Investigations and Reports by Ministries, Government Bodies or Offices*] of Part 4 [*Investigations*], or
  - (b) the Auditor General, in respect of matters relating to the office of the Ombudsperson under this Act, where authority is granted to the Auditor General under section 13 [*disclosures to Auditor General by office of the Ombudsperson employees*].
- (2) The Ombudsperson, after consultation with and confirmation by the relevant office, may refer the disclosure if the Ombudsperson considers that the disclosure could more appropriately be investigated, in whole or in part, by an officer of the Legislature, in accordance with the relevant Act that grants authority to the relevant officer in a procedure under that Act, including, if applicable, by the Ombudsperson under the *Ombudsperson Act*.
- (3) The Ombudsperson must notify every person notified under section 21 of this Act if the disclosure is referred under this section.
- (4) If a disclosure is referred under subsection (2), the reprisal protections set out in Part 5 [*Protection From Reprisals*] of this Act continue to apply to the discloser.

### Conducting investigation

- 25** (1) The Ombudsperson has the powers and protections provided for in the *Ombudsperson Act* when conducting an investigation under this Act.
- (2) For the purpose of giving effect to subsection (1), the following sections of the *Ombudsperson Act* apply, with necessary modifications, to the conduct of an investigation by the Ombudsperson under this Act:
- (a) section 9 [*confidentiality*];
  - (b) section 11 (3) [*jurisdiction of Ombudsperson*];
  - (c) section 15 [*power to obtain information*];
  - (d) section 16 [*protection*];
  - (e) section 17 [*opportunity to make representations*];
  - (f) section 18 [*Attorney General may restrict investigative powers*];
  - (g) section 19 (1) [*application of other laws respecting disclosure*];
  - (h) section 20 [*privileged information*];
  - (i) section 27 [*no hearing as of right*];
  - (j) section 28 [*Ombudsperson not subject to review*];
  - (k) section 29 [*proceedings privileged*];
  - (l) section 30 [*delegation of powers*].

### Investigating other wrongdoings

**26** If, during an investigation, the Ombudsperson reasonably believes that another wrongdoing has been committed, the Ombudsperson, subject to sections 7 [*wrongdoings and reporting of offences*], 22 [*circumstances for refusing or stopping investigation*] and 23 [*circumstances for postponing or suspending investigation*], may investigate that wrongdoing in accordance with this Part.

### Ombudsperson's report on investigation

- 27** (1) Upon completing an investigation, the Ombudsperson must prepare a report containing his or her findings, whether or not the Ombudsperson has made a finding of wrongdoing.
- (2) A report under this section must be in writing and contain
- (a) findings of wrongdoing, if any,
  - (b) reasons to support any findings, and
  - (c) any recommendations that the Ombudsperson considers appropriate.
- (3) The Ombudsperson must provide a copy of the report to the chief executive of the relevant ministry, government body or office.
- (4) When the matter being investigated involves the chief executive, the Ombudsperson must also provide a copy of the report,
- (a) in the case of a ministry, to the minister responsible,
  - (b) in the case of a government body, to
    - (i) the chair of the board of directors, or an executive officer or a person occupying a comparable position with respect to the government body, and
    - (ii) the minister responsible, if applicable, or
  - (c) in the case of an office, to the Speaker of the Legislative Assembly.
- (5) The Ombudsperson must provide, in a form that the Ombudsperson considers appropriate, a summary of the report
- (a) to the discloser, and
  - (b) to any person alleged to be responsible for wrongdoing, if practicable.

### Steps to follow up on recommendations

- 28** (1) If the Ombudsperson makes recommendations under section 27 (2) (c), the Ombudsperson may request that the ministry, government body or office notify him or her, within a time period of not less than 30 days, of the steps it has taken or proposes to take to follow up on the recommendations.
- (2) On request, the Ombudsperson may extend the time period for the notification under subsection (1), either before or after the expiry of the period.

### Ombudsperson's report on recommendations or cooperation

- 29** If the Ombudsperson believes that the ministry, government body or office has not appropriately followed up on his or her recommendations, or did not appropriately cooperate with the Ombudsperson's investigation under this Act, the Ombudsperson may make a report on the matter and provide the report,
- (a) in the case of a ministry, to the minister responsible,
  - (b) in the case of a government body,
    - (i) to the chief executive, and
    - (ii) to the minister responsible, if applicable, or
  - (c) in the case of an office, to the Speaker of the Legislative Assembly.

### Special report on investigation, recommendations or cooperation

- 30** (1) If the Ombudsperson has made a report under section 27 or 29 and considers that it is in the public interest for a special report to be made on that section 27 or 29 report, as applicable, under section 40 [*annual, special and urgent reports — Ombudsperson*], the Ombudsperson must, at least 30 days before the Ombudsperson makes the special report, provide the proposed special report, with the proposed date that the special report will be made,
- (a) in the case of a ministry, to a designated officer and the minister responsible,
  - (b) in the case of a government body, to a designated officer and, if applicable, the minister responsible, or
  - (c) in the case of an office, to a designated officer and the relevant officer with respect to the office.
- (2) If a response to the special report is provided to the Ombudsperson at least 15 days before the proposed date that the special report will be made, the Ombudsperson must include the response with the special report.

## Part 5 — Protection From Reprisals

### Protection of employee from reprisals

- 31** (1) A person must not take any of the following measures of reprisal against an employee, or counsel or direct that any of the following measures of reprisal be taken against an employee, by reason that the employee has, in good faith, sought advice about making a disclosure, made a disclosure or cooperated with an investigation under this Act:
- (a) a disciplinary measure;
  - (b) a demotion;
  - (c) a termination of employment;
  - (d) any measure that adversely affects the employee's employment or working conditions;
  - (e) a threat to take any of the measures referred to in paragraphs (a) to (d).
- (2) In a prosecution for an offence against subsection (1), it is not necessary to prove that the employee
- (a) made, may have made or intended to make a disclosure, or
  - (b) cooperated with an investigation.
- (3) A person does not contravene subsection (1) by taking, counselling or directing a measure referred to as a measure of reprisal in paragraphs (a) to (e) of that subsection if
- (a) the person has taken, counselled or directed the measure for the purpose of managing or terminating an employment relationship, and
  - (b) the management or termination of the employment relationship under paragraph (a) of this subsection was not by reason that the employee, in good faith, sought advice about making a disclosure, made a disclosure or cooperated with an investigation under this Act.

### Protection for person contracting with government

- 32** (1) A person acting or purporting to act on behalf of the government, a ministry, a government body or an office must not
- (a) terminate a contract or agreement,
  - (b) withhold a payment that is due and payable under a contract or agreement, or
  - (c) refuse to enter into a subsequent contract or agreement
- by reason that a party to the contract or agreement, or a person employed by a party to the contract or agreement, has, in good faith, cooperated with an investigation under this Act.

- (2) A person does not contravene subsection (1) by taking an action described in paragraphs (a) to (c) of that subsection if
- (a) the person has taken the action for the purpose of managing or terminating a contract or agreement, and
  - (b) the management or termination of the contract or agreement under paragraph (a) of this subsection was not by reason that the party, or a person employed by the party, in good faith, cooperated with an investigation under this Act.

#### **Complaint of reprisal**

- 33** (1) Subject to subsection (2), an employee may make a complaint to the Ombudsperson if the employee alleges that a reprisal has been taken or directed against the employee.
- (2) An employee of the office of the Ombudsperson may make a complaint to the Auditor General if the employee alleges that a reprisal has been taken or directed against the employee.
- (3) If an employee of the office of the Ombudsperson makes a complaint to the Auditor General under subsection (2), the Auditor General is to carry out the responsibilities of the Ombudsperson under this Act in relation to the employee and the complaint.
- (4) The Auditor General is to make a report in respect of activities under this section as if the Auditor General were reporting as the Ombudsperson under section 40 [*annual, special and urgent reports — Ombudsperson*].

#### **Content of complaint of reprisal**

- 34** A complaint under this Part must be in writing and must include the following information, if known:
- (a) a description of the reprisal;
  - (b) the name of the person or persons alleged to be responsible for the reprisal;
  - (c) the date of the reprisal;
  - (d) whether the reprisal has already been reported, or a complaint has been made about the reprisal, under this Act, a collective agreement, a contract or another enactment;
  - (e) if paragraph (d) applies, the name of the person to whom the reprisal has been reported, or the complaint has been made, and the response, if any, that has been received.

#### **Investigation of complaints of reprisal**

- 35** (1) If a complaint is made under section 33, unless the Ombudsperson believes the complaint is frivolous or vexatious, the Ombudsperson must investigate and report with respect to the complaint in the same manner as a disclosure is investigated and reported under Division 3 [*Investigations and Reports by Ombudsperson*] of Part 4 [*Investigations*], except the following sections, which do not apply to the Ombudsperson's investigation under this Part:
- (a) section 22 (1) (a) [*circumstances for refusing or stopping investigation*];
  - (b) section 24 [*referral of matter*].
- (2) For the purposes of deciding whether to commence an investigation of a complaint made under section 33 (1), the description of the facts necessary to establish that a reprisal has been taken or directed against the employee are prima facie proof, in the absence of evidence to the contrary, of the facts stated.
- (3) Subject to subsection (4), the Ombudsperson may make recommendations to address the reprisal in a report on the investigation of a complaint made under section 33 (1) to the relevant ministry, government body or office.
- (4) If the Ombudsperson's recommendations in a report on an investigation relate specifically to individual employment matters in respect of any employee who was subject to a reprisal, the Ombudsperson must consult the employee before making recommendations in a report under subsection (3).

### **Employee remedies not limited**

- 36** This Act is not to be construed as limiting an employee's right to a remedy that may be available to the employee under a collective agreement, a contract or another enactment.

### **Civil remedies not limited**

- 37** This Act is not to be construed as limiting an employee's right to a remedy that the employee may pursue as a civil remedy.

## **Part 6 — Annual Reporting**

### **Annual report about disclosures — ministries, government bodies or offices**

- 38** (1) Each year, a chief executive, or a delegate of the chief executive, must prepare a report on all disclosures of wrongdoing that have been made in that year in respect of the ministry, government body or office for which the chief executive is responsible, including disclosures made to the Ombudsperson, if a designated officer of the relevant ministry, government body or office has been notified about the disclosures or investigations.
- (2) The report under subsection (1) must be made in accordance with the prescribed time period, if any, when the report is to be made and must include the following information:
- (a) the number of disclosures received, including referrals of disclosures, and the number acted on and not acted on;
  - (b) the number of investigations commenced as a result of a disclosure;
  - (c) in the case of an investigation that results in a finding of wrongdoing,
    - (i) a description of the wrongdoing,
    - (ii) any recommendations, including those made by the Ombudsperson, and
    - (iii) any corrective action taken in relation to the wrongdoing or the reasons why no corrective action was taken;
  - (d) any other information prescribed by regulation.
- (3) In the case of a ministry, a report made under this section may include information in respect of more than one ministry.
- (4) In preparing a report under this section, a chief executive, or a delegate of the chief executive, must delete or exclude any material that would
- (a) unreasonably invade a person's privacy,
  - (b) reveal the identity of a discloser, or
  - (c) reveal the identity of an individual who was the subject of an investigation.

### **Public access to annual report of ministries, government bodies or offices**

- 39** (1) Subject to subsection (2), a report prepared under section 38 must be made publicly available on a website maintained by or on behalf of the ministry, government body or office.
- (2) In the case of a ministry, government body or office that does not have a website, the ministry, government body or office must provide the Ombudsperson with the report prepared under section 38, which the Ombudsperson must make publicly available on the Ombudsperson's website.

### **Annual, special and urgent reports — Ombudsperson**

- 40** (1) The Ombudsperson must make an annual report to the Speaker of the Legislative Assembly on the exercise and performance of his or her functions and duties under this Act.

- (2) The report must include
  - (a) the number of general inquiries relating to this Act,
  - (b) the number of disclosures received, including referrals of disclosures, and the number acted on and not acted on,
  - (c) the number of investigations commenced as a result of a disclosure,
  - (d) the number of recommendations the Ombudsperson has made and whether the ministry, government body or office has implemented the recommendations,
  - (e) whether, in the opinion of the Ombudsperson, there are systemic problems that give rise to wrongdoings, and
  - (f) any recommendations for improvement that the Ombudsperson considers appropriate.
- (3) The Speaker must lay the report before the Legislative Assembly as soon as possible.
- (4) If the Ombudsperson considers it to be in the public interest, or in the interest of a person or a ministry, government body or office, the Ombudsperson may do the following:
  - (a) after providing the relevant ministry, government body or office an opportunity to provide a response in accordance with the requirements set out in section 30 [*special report on investigation, recommendations or cooperation*], make a special report to the Legislative Assembly;
  - (b) comment publicly about
    - (i) a matter relating generally to the exercise of the Ombudsperson's duties under this Act, or
    - (ii) an urgent matter, subject to subsection (5), if the Ombudsperson reasonably believes that there is an imminent risk of a substantial and specific danger to the life, health or safety of persons, or to the environment.
- (5) As soon as practicable after making any public comments relating to an urgent matter under subsection (4) (b) (ii), the Ombudsperson must make a special report to the Legislative Assembly in accordance with paragraph (a) of that subsection.
- (6) In preparing a report under this section, the Ombudsperson must delete or exclude any material that would
  - (a) unreasonably invade a person's privacy,
  - (b) reveal the identity of a discloser, or
  - (c) reveal the identity of an individual who was the subject of an investigation.

## Part 7 — General Provisions

### Offences and penalties

- 41** (1) A person must not wilfully do the following:
- (a) make a false statement to, or mislead or attempt to mislead, the Ombudsperson or another person in the performance of the duties, powers or functions of the Ombudsperson or other person under this Act;
  - (b) obstruct the Ombudsperson or another person in the performance of the duties, powers or functions of the Ombudsperson or other person under this Act.
- (2) A person who contravenes subsection (1) commits an offence.
- (3) A person who contravenes the following commits an offence:
- (a) section 6 (3) [*personal information*];
  - (b) section 31 [*protection of employee from reprisals*];
  - (c) section 32 [*protection for person contracting with government*].

- (4) A person who commits an offence under this section is liable on conviction,
  - (a) for a first offence, to a fine of not more than \$25 000, and
  - (b) for a second or subsequent offence, to a fine of not more than \$100 000.

**Protection from liability — information, document or answer**

- 42** (1) Subject to section 8 [*consequences of wrongdoing not limited*], no action lies against a person because the person, voluntarily or otherwise, gives information, produces a document or answers a question if
- (a) the person does so for the purposes of an investigation under this Act, and
  - (b) the information, document or answer is relevant to the investigation,
- unless the person is acting in bad faith.
- (2) Subsection (1) does not apply to proceedings in respect of the following:
- (a) a contempt proceeding brought as a result of a person's giving information, producing a document or answering a question, or the person's failure to do so, including under section 41 (1);
  - (b) unauthorized disclosure of information, including the release of information contrary to section 5 [*unauthorized release of information*].

**Protection in relation to powers, duties or functions**

- 43** No proceedings may be commenced or maintained for anything done or omitted in good faith in the exercise or performance or intended exercise or performance of
- (a) a power, duty or function conferred under this Act, or
  - (b) a power, duty or function on behalf of or under the direction of a person on whom the power, duty or function is conferred under this Act.

**Protection in respect of libel or slander**

- 44** For the purposes of any Act or law respecting libel or slander,
- (a) anything said, all information supplied and all documents and things produced in the course of an investigation under this Act by a ministry, government body or office, or by the Ombudsperson, are privileged to the same extent as if the inquiry or proceeding were a proceeding in a court, and
  - (b) a report made by a ministry, government body or office, or by the Ombudsperson, and a fair and accurate account of the report in a newspaper, periodical publication or broadcast is privileged to the same extent as if the report of the ministry, government body or office, or the Ombudsperson, were the order of a court.

**Contractual duties do not limit disclosure**

- 45** (1) A provision in a contract or agreement is not enforceable to the extent that it would prevent a disclosure, a complaint about a reprisal or cooperation with an investigation under this Act.
- (2) This section applies to any contract or agreement between an employee and employer, including an agreement to refrain from instituting or continuing any proceedings under this Act or any proceedings for breach of contract.

**Other remedies**

- 46** The provisions of this Act are in addition to the provisions of any other enactment or rule of law under which
- (a) a remedy, right of appeal or objection is provided, or
  - (b) a procedure is provided for inquiry into or investigation of a matter,
- and nothing in this Act limits or affects that remedy, right of appeal, objection or procedure.

## Section 5 of *Offence Act*

**47** Section 5 [*general offence*] of the *Offence Act* does not apply to this Act or the regulations.

## Regulations

- 48** (1) The Lieutenant Governor in Council may make regulations referred to in section 41 of the *Interpretation Act*.
- (2) Without limiting subsection (1), the Lieutenant Governor in Council may make regulations for the following purposes and respecting the following matters:
- (a) prescribing a class of persons for the purposes of the definition of “employee” in section 1 [*definitions*];
  - (b) designating an organization as a government body for the purposes of the definition of “government body” in section 1;
  - (c) designating a head of a government body for the purposes of the definition of “head” in section 1;
  - (d) respecting a matter referred to in section 3 (1) [*relationship of Act to other Acts*], including by providing differently for different enactments or provisions of enactments;
  - (e) prescribing information for the purposes of section 4 [*information about Act to be communicated*];
  - (f) prescribing procedural matters for the purposes of section 9 [*procedures to manage disclosures*];
  - (g) prescribing reasons for not investigating disclosures, or for stopping the investigation of disclosures, for the purposes of section 22 [*circumstances for refusing or stopping investigation*];
  - (h) prescribing a time period for reporting and information for the purposes of section 38 [*annual report about disclosures — ministries, government bodies or offices*];
  - (i) defining any word or expression used but not defined in this Act;
  - (j) respecting any other matter for which regulations are contemplated by this Act.

## Rules

- 49** (1) On its own initiative, or on the recommendation of the Lieutenant Governor in Council, the Legislative Assembly may make rules for the guidance of the Ombudsperson in exercising the powers and performing the duties of the office.
- (2) Subject to this Act and any rules made under subsection (1), the Ombudsperson may determine the Ombudsperson’s procedure and the procedure for the members of the Ombudsperson’s staff in exercising the powers conferred and performing the duties imposed by this Act.

## Review of Act

- 50** (1) At least once every 5 years, a special committee of the Legislative Assembly must begin a comprehensive review of this Act and must submit a report respecting this Act to the Legislative Assembly within one year after the date of the appointment of the special committee.
- (2) A report submitted under subsection (1) may include any recommended amendments to this Act or any other Act.
- (3) For the purposes of subsection (1), the first 5-year period begins on the date that this section comes into force.

## Transitional Provision

### Transition — investigation under *Freedom of Information and Protection of Privacy Act*

- 51** (1) If, before the date this Act comes into force, an investigation is underway by the Information and Privacy Commissioner into a matter under section 30.3 [*whistle-blower protection*] of the *Freedom of Information and Protection of Privacy Act*, the Information and Privacy Commissioner may continue the investigation under the *Freedom of Information and Protection of Privacy Act*.
- (2) Despite an investigation that is continued under subsection (1), this Act applies in respect of a discloser, a disclosure or a reprisal provided for under this Act.

### Consequential Amendment

*[NOTE: SEE TABLE OF LEGISLATIVE CHANGES FOR THE STATUS OF SECTION 52.]*

Section(s)	Affected Act
52	<i>Freedom of Information and Protection of Privacy Act</i>

### Commencement

**53** This Act comes into force by regulation of the Lieutenant Governor in Council.

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Current to April 28, 2020

## **PUBLIC INTEREST DISCLOSURE REGULATION**

**B.C. Reg. 251/2019 Deposited November 29, 2019**

Enabling Act: Public Interest Disclosure Act

### *Definition*

1 In this regulation, "Act" means the Public Interest Disclosure Act.

### *Relationship of Act to other enactments - exception*

2 For the purposes of section 3 (1) (b) [relationship of Act to other Acts] of the Act, section 38 of the Witness Security Act prevails.

### *Additional circumstances for refusing or stopping investigation*

3 (1) For the purposes of section 22 (2) (g) [circumstances for refusing or stopping investigation] of the Act, a prescribed reason is that the investigation of the disclosure would serve no useful purpose because the subject matter of the disclosure is being, or has been, appropriately dealt with.

(2) For the purposes of section 22 (2) (g) of the Act, in relation to the investigation of a complaint of reprisal under section 35 of the Act, a prescribed reason is that the subject matter of the complaint of reprisal relates primarily to a matter that is being, or has been, appropriately dealt with under a collective agreement or employment contract.





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