Province of Alberta

# PUBLIC INTEREST DISCLOSURE (WHISTLEBLOWER PROTECTION) ACT

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Chapter P-39.5

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Alberta Queen's Printer
7th Floor, Park Plaza
10611 - 98 Avenue
Edmonton, AB T5K 2P7
Phone: 780-427-4952
Fax: 780-452-0668

E-mail: qp@gov.ab.ca
Shop on-line at www.qp.alberta.ca

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## Note

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## Regulations

The following is a list of the regulations made under the *Public Interest Disclosure (Whistleblower Protection) Act* that are filed as Alberta Regulations under the Regulations Act

**Public Interest Disclosure (Whistleblower Protection)** **Alta. Reg.** *Amendments*

Public Interest Disclosure (Whistleblower Protection) .....71/2013

# PUBLIC INTEREST DISCLOSURE (WHISTLEBLOWER PROTECTION) ACT

Chapter P-39.5

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HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Alberta, enacts as follows:

### Definitions

**1** In this Act,

(a) "chief officer" means the deputy minister of a department, the department head of an office of the Legislature and, with respect to a public entity, the prescribed individual;

(b) "Commissioner" means the Public Interest Commissioner appointed under section 38;

(c) "department" means a department established under section 2 of the *Government Organization Act*;

(d) "department head" means

(i) the Clerk of the Legislative Assembly with respect to the Legislative Assembly Office,

(ii) the Auditor General with respect to the Office of the Auditor General,

(iii) the Ombudsman with respect to the Office of the Ombudsman,

(iv) the Chief Electoral Officer with respect to the Office of the Chief Electoral Officer,

(v) the Ethics Commissioner with respect to the Office of the Ethics Commissioner,

(vi) the Information and Privacy Commissioner with respect to the Office of the Information and Privacy Commissioner,

(vii) the Child and Youth Advocate with respect to the Office of the Child and Youth Advocate, and

(viii) the Public Interest Commissioner with respect to the Office of the Public Interest Commissioner;

(e) "designated officer" means the senior official designated by each chief officer to manage and investigate disclosures under this Act;

(f) "disclosure", except where the context requires otherwise, means a disclosure of wrongdoing made in good faith by an employee in accordance with this Act;

(g) "employee" means an individual employed by, or an individual who has suffered a reprisal and has been terminated by, a department, a public entity or an office of the Legislature or an individual prescribed in the regulations as an employee;

(h) "individually identifying health information" means individually identifying health information within the meaning of the *Health Information Act*;

(i) "office of the Legislature" means

(i) the Legislative Assembly Office,

(ii) the Office of the Auditor General,

(iii) the Office of the Ombudsman,

(iv) the Office of the Chief Electoral Officer,

(v) the Office of the Ethics Commissioner,

(vi) the Office of the Information and Privacy Commissioner,

(vii) the Office of the Child and Youth Advocate, and

(viii) the Office of the Public Interest Commissioner;

(j) "personal information" means personal information as defined in the *Freedom of Information and Protection of Privacy Act*;

(k) "public entity" means any agency, board, commission, Crown corporation or other entity designated as a public entity in the regulations;

(l) "reprisal" means measures taken or directed against an employee as described in section 24;

(m) "Standing Committee" means the Standing Committee on Legislative Offices;

(n) "wrongdoing" means a wrongdoing set out in section 3 and, except in sections 32(2)(c) and 33(1)(f), includes an alleged wrongdoing.

**Application and purposes of Act**

**2(1)** This Act applies to departments, offices of the Legislature and public entities prescribed in the regulations.

**(2)** The purposes of this Act are

(a) to facilitate the disclosure and investigation of significant and serious matters in or relating to departments, public entities or offices of the Legislature, that an employee believes may be unlawful, dangerous to the public or injurious to the public interest,

(b) to protect employees who make those disclosures,

(c) to manage, investigate and make recommendations respecting disclosures of wrongdoings and reprisals,

(d) to promote public confidence in the administration of departments, public entities and offices of the Legislature, and

(e) any other purpose prescribed in the regulations.

## Part 1
## Wrongdoings

**Wrongdoings to which this Act applies**

**3(1)** This Act applies in respect of the following wrongdoings in or relating to departments, public entities or offices of the Legislature or relating to employees:

(a) a contravention of an Act, a regulation made pursuant to an Act, an Act of the Parliament of Canada or a regulation made pursuant to an Act of the Parliament of Canada;

(b) an act or omission that creates

(i) a substantial and specific danger to the life, health or safety of individuals other than a danger that is inherent

in the performance of the duties or functions of an employee, or

(ii) a substantial and specific danger to the environment;

(c) gross mismanagement of public funds or a public asset;

(d) knowingly directing or counselling an individual to commit a wrongdoing mentioned in clauses (a) to (c).

**(2)** This Act applies only in respect of wrongdoings that occur after the coming into force of this Act.

**Disciplinary action**

**4** In addition to, and apart from, any sanction provided for by law, an employee who commits a wrongdoing is subject to appropriate disciplinary action, including termination of employment.

## Part 2
## Procedure for Disclosures

**Procedures to manage and investigate disclosures**

**5(1)** Every chief officer must establish and maintain, in accordance with this Act, written procedures, including time periods, for managing and investigating disclosures by employees for whom the chief officer is responsible.

**(2)** The procedures established under subsection (1) must include, at a minimum, the following:

(a) procedures for receiving and reviewing disclosures, including setting time periods for making recommendations to the department, public entity or office of the Legislature respecting any corrective measures that should be taken;

(b) procedures for referring a disclosure to another department, public entity or office of the Legislature if the disclosure would more appropriately be dealt with there;

(c) procedures for referring a disclosure to the Commissioner as soon as reasonably practicable if the designated officer reasonably believes that the matter to which the disclosure relates constitutes an imminent risk of a substantial or specific danger to the life, health or safety of individuals, or to the environment;

(d) procedures for reviewing and investigating disclosures in accordance with the principles of procedural fairness and natural justice;

(e) procedures for investigating other wrongdoings if, during the investigation of a disclosure, the designated officer has reason to believe that another wrongdoing has been committed or may be committed;

(f) procedures for reporting an alleged offence if, during an investigation of a disclosure, the designated officer has reason to believe that an offence has been committed under an Act or regulation or under an Act or regulation of the Parliament of Canada;

(g) procedures respecting the confidentiality of information collected in relation to disclosures and investigations, which procedures would apply unless there is an imminent risk of a substantial and specific danger to the life, health or safety of individuals, or to the environment;

(h) procedures for protecting the identity of individuals involved in the disclosure process, including the employee making the disclosure, individuals alleged to have committed the wrongdoings and witnesses, subject to any other Act or regulation and to the principles of procedural fairness and natural justice;

(i) procedures for reporting the outcomes of investigations of disclosures;

(j) procedures for enforcement and follow-up of any disciplinary action or corrective measures taken or directed pursuant to this Act;

(k) procedures respecting any other matter specified in the regulations.

**(3)** The Commissioner may request the chief officer to provide a copy of the procedures established under subsection (1) to the Commissioner.

**(4)** The Commissioner may review the procedures, including time periods, established by the chief officer under subsection (1) to ensure there is compliance with this Act and the regulations.

**(5)** If the Commissioner determines that the procedures that have been established under subsection (1) do not meet the criteria set out in subsections (1) and (2), the Commissioner must notify the chief officer and the employees for whom the chief officer is

responsible that the procedures are unsatisfactory and that any future disclosures must be made directly to the Commissioner until new procedures are established by the chief officer and are approved by the Commissioner.

**(6)** If the Commissioner determines that no procedures have been established under subsection (1), the Commissioner must

(a) notify the chief officer that procedures must be established, and

(b) notify the employees for whom the chief officer is responsible that any future disclosures must be made directly to the Commissioner until procedures have been established by the chief officer and are approved by the Commissioner.

**(7)** Any procedures required to be established by the chief officer pursuant to subsection (5) or (6) must be submitted for review and approval by the Commissioner.

**(8)** Once the procedures are approved by the Commissioner under subsection (7), the Commissioner must notify the chief officer and the employees for whom the chief officer is responsible of the approval and that all future disclosures, other than in the circumstances described in section 10(1)(b) to (i), must be made to the designated officer in accordance with the approved procedures.

**(9)** A chief officer may submit the procedures required to be established under this section to the Commissioner at any time for review to ensure there is compliance with this Act and the regulations.

### Information about Act to be communicated

**6** Each chief officer must ensure that information about this Act and the procedures established under section 5 are widely communicated to the employees of the department, public entity or office of the Legislature for which the chief officer is responsible.

### Designated officer

**7(1)** A chief officer may designate a senior official to be the designated officer for the purposes of managing and investigating disclosures.

**(2)** If no designation is made under subsection (1), the chief officer is the designated officer for the purposes of this Act.

**Request for advice**

**8(1)** An employee who is considering making a disclosure may request information or advice from the employee's designated officer or chief officer or from the Commissioner.

**(2)** The designated officer, the chief officer or the Commissioner may require a request under subsection (1) to be in writing.

**Disclosure by employee to designated officer**

**9(1)** Subject to section 10, if an employee reasonably believes that the employee has information that could show that a wrongdoing has been committed or is about to be committed, or that could show that the employee has been asked to commit a wrongdoing, the employee may make a disclosure to the employee's designated officer in accordance with the procedures established under section 5.

**(2)** At the time an employee makes a disclosure under subsection (1), the employee may also make the disclosure to the Commissioner and advise the Commissioner that the disclosure has been made to the employee's designated officer for the purposes of commencing an investigation in accordance with the procedures established under section 5.

**Disclosure to Commissioner**

**10(1)** Subject to section 12, an employee may make a disclosure directly to the Commissioner only

(a) if no procedures have been established for the department, public entity or office of the Legislature in which the employee is employed,

(b) if the employee has made a disclosure in accordance with the procedures established under section 5 and an investigation in respect of the disclosure has not been completed in accordance with those procedures,

(c) if the employee has made a disclosure in accordance with the procedures established under section 5 and the matter has not been resolved within the time periods established under those procedures or the Commissioner has determined that those procedures do not meet the criteria set out in section 5(1) and (2),

(d) if the employee has made a disclosure in accordance with the procedures established under section 5, the investigation under those procedures has been completed, a final decision

has been issued in respect of the disclosure and the employee is dissatisfied with the decision,

(e) if the subject-matter of the disclosure involves the employee's chief officer or the employee's designated officer,

(f) if the employee reasonably believes that a matter constitutes an imminent risk of a substantial and specific danger to the life, health or safety of individuals, or to the environment, such that there is insufficient time to make a disclosure under section 9,

(g) if the employee has made a disclosure in accordance with the procedures established under section 5 and is unable to complete the procedures because a reprisal has been taken or directed against the employee,

(h) if the employee reasonably believes that a reprisal is likely to be taken or directed against the employee if the disclosure is made in accordance with the procedures established under section 5, or

(i) in the circumstances prescribed in the regulations.

**(2)** With respect to a disclosure made under the procedures described in section 5(2)(c) or under subsection (1)(f), if in the opinion of the Commissioner there is an imminent risk of a substantial and specific danger to the life, health or safety of individuals, or to the environment, the Commissioner must disclose the matter

(a) to an appropriate law enforcement agency,

(b) in the case of a health-related matter, to the Chief Medical Officer of Health appointed under section 13 of the *Public Health Act*,

(c) to the department, public entity or office of the Legislature responsible for managing, controlling or containing the risk, if any, and

(d) to any person prescribed in the regulations.

**(3)** A disclosure may be made to the Commissioner under this section notwithstanding any provision in the procedures established under section 5 that states

(a) that the decision of the department, public entity or office of the Legislature is final,

(b) that no appeal lies in respect of the decision of the department, public entity or office of the Legislature, or

(c) that the decision of the department, public entity or office of the Legislature may not be challenged, reviewed, quashed or called into question.

**Disclosure to designated officer**

**11** As soon as reasonably practicable after a disclosure is made under section 10(1)(f), the employee must also make a disclosure about the matter to the employee's designated officer.

**Disclosure to Auditor General re Commissioner or Ombudsman**

**12(1)** If an employee of the Office of the Public Interest Commissioner is seeking advice or making a disclosure regarding that Office, the advice may be sought from, or the disclosure made to, the Auditor General.

**(2)** If the Legislative Assembly appoints the Ombudsman as the Commissioner pursuant to section 38(2) and an employee of the Office of the Ombudsman or of the Office of the Public Interest Commissioner is seeking advice or making a disclosure regarding the Office of the Ombudsman, the advice may be sought from, or the disclosure made to, the Auditor General.

**(3)** If a disclosure is made under subsection (1) or (2), the Auditor General

(a) must carry out the responsibilities of the Commissioner under this Act, and

(b) has all of the powers and functions of the Commissioner in relation to that disclosure under this Act.

**Contents of disclosure**

**13** A disclosure must be in writing and must include the following information, if known:

(a) a description of the wrongdoing;

(b) the name of the individual or individuals alleged

(i) to have committed the wrongdoing, or

(ii) to be about to commit the wrongdoing;

(c) the date of the wrongdoing;

(d) whether a disclosure in respect of a wrongdoing has been made pursuant to the procedures established under section 5 by the department, public entity or office of the Legislature and whether a response has been received, and if so, a copy of the response;

(e) any additional information that the designated officer or Commissioner may reasonably require in order to investigate the matters set out in the disclosure;

(f) any other information prescribed in the regulations.

**Consultation re disclosure**

**14(1)** A designated officer may consult with the chief officer regarding the management and investigation of a disclosure.

**(2)** A designated officer may request advice from the Commissioner with respect to the management and investigation of a disclosure.

**(3)** The Commissioner may require a request for advice to be in writing.

**Authority to collect, use and disclose information**

**15** A designated officer or a chief officer may collect, directly or indirectly, use and disclose personal information, individually identifying health information and any other information that is considered necessary to manage and investigate disclosures under this Act.

## Part 3
## Investigations by the Commissioner

**Purposes of investigation**

**16** The purposes of an investigation into a disclosure or a complaint of a reprisal under this Act are

(a) to bring the wrongdoing or reprisal to the attention of the affected department, public entity or office of the Legislature,

(b) to recommend corrective measures that should be taken, and

(c) to promote confidence in the administration of departments, public entities and offices of the Legislature.

**Commissioner to facilitate resolution**

**17** When an employee makes a disclosure to the Commissioner, the Commissioner may take any steps the Commissioner considers appropriate to help resolve the matter within the department, public entity or office of the Legislature.

**Investigation by Commissioner**

**18(1)** Subject to subsection (4), the Commissioner is responsible for investigating disclosures that the Commissioner receives under this Act.

**(2)** An investigation is to be conducted as informally as possible and within the time periods set out in the regulations, if any.

**(3)** The Commissioner must ensure that the right to procedural fairness and natural justice in an investigation is respected, including in respect of individuals making disclosures, individuals alleged to have committed a wrongdoing and witnesses.

**(4)** The Commissioner shall not investigate any decision, recommendation, act or omission made or done by any individual in the course of acting as a solicitor or Crown prosecutor in a department, public entity or office of the Legislature.

**(5)** The Commissioner may in the course of an investigation require any person who, in the Commissioner's opinion, is able to give any information, including personal information, individually identifying health information or financial information, relating to any disclosure being investigated by the Commissioner

(a) to give written or oral replies to questions,

(b) to produce any books, records, reports, documents or other items, including electronic records and documents, and

(c) to provide any other information requested by the Commissioner that may be related to the administration of this Act or the regulations.

**(6)** The Commissioner may in the course of an investigation inspect, examine and make copies of or temporarily remove books, records, reports, documents or other items, including electronic records or documents, and records or documents containing personal information, individually identifying health information or financial information, that may be related to the administration of this Act and the regulations.

**(7)** When the Commissioner removes any books, records, reports, documents or other items, including electronic records or

documents and records or documents containing personal information, individually identifying health information or financial information, under subsection (6), the Commissioner

(a) must give a receipt for them to the person from whom they were taken,

(b) may make copies of, take photographs of or otherwise record them,

(c) on request, must provide a copy of the books, records, reports or other documents, including electronic records or documents and records or documents containing personal information, individually identifying health information or financial information, to the person from whom they were taken or to a person who is entitled to custody of them, and

(d) must return them to the person to whom the receipt was given when they have served the purposes for which they were taken.

**When investigation not required**

**19(1)** The Commissioner is not required to investigate a disclosure or, if an investigation has been initiated, may cease the investigation if, in the opinion of the Commissioner,

(a) the subject-matter of the disclosure could more appropriately be dealt with, initially or completely, according to a procedure provided for under this or another Act or a regulation,

(b) the subject-matter of the disclosure is being investigated in accordance with procedures established under section 5,

(c) the disclosure relates to a matter that could more appropriately be dealt with according to the procedures under a collective agreement or employment agreement,

(d) the disclosure is frivolous or vexatious, has not been made in good faith or does not deal with a wrongdoing,

(e) the disclosure relates to a decision, action or matter that results from a balanced and informed decision-making process on a public policy or operational issue,

(f) the disclosure does not provide adequate particulars about the wrongdoing as required by section 13 to permit the conduct of a fair and effective investigation, or

(g) there is another valid reason for not investigating the disclosure.

**(2)** The Commissioner is not required to investigate a disclosure or, if an investigation has been initiated, may discontinue the investigation

(a) if more than 2 years has passed since the date that the wrongdoing was discovered;

(b) in any other circumstances prescribed in the regulations.

**(3)** If the Commissioner decides not to investigate or to discontinue an investigation, the Commissioner must, in writing, inform the employee who made the disclosure and the affected department, public entity or office of the Legislature

(a) of the Commissioner's decision, and

(b) of the reasons for the decision.

**(4)** If the Commissioner decides not to investigate a matter because subsection (1)(b) applies, the Commissioner may request the designated officer to report on the status of the investigation within any period of time determined by the Commissioner.

**Investigating other wrongdoings**

**20(1)** Subject to subsection (2), if, during an investigation, the Commissioner has reason to believe that another wrongdoing has been committed or may have been committed, the Commissioner may investigate that wrongdoing in accordance with this Act.

**(2)** If, during an investigation, the Commissioner has reason to believe that an offence has been committed under an Act or regulation or under an Act or regulation of the Parliament of Canada, the Commissioner must, as soon as reasonably practicable, report the alleged offence to a law enforcement agency and to the Minister of Justice and Solicitor General, and the Commissioner's investigation under this Act is suspended.

**(3)** The Commissioner may not resume an investigation suspended under subsection (2) until any investigation by a law enforcement agency or charge relating to the alleged offence referred to in subsection (2) has been finally disposed of.

**Allegations by others of wrongdoing**

**21** If the Commissioner receives an allegation of wrongdoing that has been made anonymously or by an individual who is not an

employee, the Commissioner may choose to investigate the disclosure or may, in the Commissioner's discretion, forward the allegation to the chief officer of the department, public entity or office of the Legislature in respect of which the allegation of wrongdoing is made while maintaining the anonymity of the individual, and the chief officer must manage and investigate the disclosure in accordance with the procedures established under section 5.

**Commissioner's report re investigation**

**22(1)** On completing an investigation, the Commissioner must prepare a report that sets out

(a) the Commissioner's findings and reasons for those findings, and

(b) any recommendations the Commissioner considers appropriate respecting the disclosure and the wrongdoing.

**(2)** If the Commissioner makes a recommendation pursuant to subsection (1), the Commissioner may request the affected department, public entity or office of the Legislature to notify the Commissioner, within any reasonable period of time that the Commissioner specifies, of the steps that the department, public entity or office of the Legislature has taken or proposes to take to give effect to the Commissioner's recommendations.

**(3)** The Commissioner must provide a copy of the report referred to in subsection (1) to the chief officer and the designated officer of the affected department, public entity or office of the Legislature.

**(4)** The Commissioner must notify the individual who made the disclosure that a report pursuant to this section has been made and provide the individual with any information respecting the report that the Commissioner considers appropriate in the circumstances.

**(5)** If the Commissioner believes that the department, public entity or office of the Legislature has not appropriately followed up on the Commissioner's recommendations, if any, or did not co-operate in the Commissioner's investigation under this Act, the Commissioner may make a report on the matter

(a) in the case of a department, to the chief officer of Executive Council,

(b) in the case of a public entity, to the minister responsible, if any, and to the board of directors or the person designated to act as the head of the public entity, if any,

(c) in the case of an office of the Legislature, to the Speaker of the Legislative Assembly,

(d) in the case of a minister's office, to the minister,

(e) in the case of the Legislative Assembly Office, to the Speaker of the Legislative Assembly,

(f) in the case of Executive Council, to the chief officer of Executive Council, or

(g) in the case of a minister or the chief officer of Executive Council, to the Premier.

**If subject-matter involves chief officer or designated officer**

**23** If the subject-matter of a disclosure that is being investigated involves the chief officer or the designated officer, the Commissioner must, instead of providing a copy of the report referred to in section 22(3) to the chief officer and the designated officer, provide a copy of the report

(a) in the case of a department, to the chief officer of Executive Council,

(b) in the case of a public entity, to the minister responsible, if any, and to the board of directors or the person designated to act as the head of the public entity, if any,

(c) in the case of an office of the Legislature, to the Speaker of the Legislative Assembly, or

(d) in the case of a minister's office or the chief officer of Executive Council, to the Speaker of the Legislative Assembly.

## Part 4
## Reprisals

**Reprisal**

**24** No person shall take or direct, or counsel or direct a person to take or direct, any of the following measures against an employee because the employee has, in good faith, sought advice about making a disclosure, made a disclosure, co-operated in an investigation under this Act, declined to participate in a wrongdoing or done anything in accordance with this Act:

(a) a dismissal, layoff, suspension, demotion or transfer, discontinuation or elimination of a job, change of job

location, reduction in wages, change in hours of work or reprimand;

(b) any measure, other than one mentioned in clause (a), that adversely affects the employee's employment or working conditions;

(c) a threat to take any of the measures mentioned in clause (a) or (b).

**Complaints of reprisals**

**25(1)** Subject to subsection (2), an employee may make a written complaint to the Commissioner if the employee alleges that a reprisal has been taken or directed against the employee.

**(2)** An employee of the office of the Public Interest Commissioner, and if the Legislative Assembly appoints the Ombudsman as the Commissioner pursuant to section 38(2), an employee of the Office of the Ombudsman, may make a written complaint to the Auditor General if the employee alleges that a reprisal has been taken or directed against the employee.

**(3)** A complaint under this section must be in the prescribed form.

**Managing and investigating complaints of reprisals**

**26** If a complaint is made to the Commissioner under section 25(1) or to the Auditor General under section 25(2), the Commissioner or the Auditor General, as the case may be, must, subject to the regulations, manage and investigate the complaint in the same manner as a disclosure.

**Reasonable human resource management decisions**

**27** No action lies against a department, public entity or office of the Legislature, or an employee of any of them, for making a reasonable human resource management decision in good faith.

## Part 5
## General Matters

**Conflict**

**28** Except where this Act or the regulations provide otherwise, this Act prevails to the extent of any inconsistency or conflict with the *Freedom of Information and Protection of Privacy Act* or the *Health Information Act* or any other Act or regulation prescribed in the regulations.

**Limits on disclosure**

**29(1)** Nothing in this Act authorizes the disclosure of

(a) information or documents that would disclose the deliberations of the Executive Council or a committee of the Executive Council, or the proceedings of any of them,

(b) information that is protected by solicitor-client privilege,

(c) in the case of a disclosure under section 10(1)(f),

(i) information that is subject to any restriction created by or under an Act of the Legislature or of the Parliament of Canada, or

(ii) any personal information or individually identifying health information,

or

(d) any information, document or matter or any class of information, documents or matters prescribed in the regulations.

**(2)** Nothing in this Act authorizes a designated officer, a chief officer or the Commissioner to publicly disclose personal information or individually identifying health information unless, in the opinion of the designated officer, the chief officer or the Commissioner, it is necessary to disclose that information in order to carry out his or her duties and functions under this Act.

**Other obligations to report not affected**

**30** Nothing in this Act relating to the making of a disclosure is to be construed as affecting an employee's obligation under any other Act or regulation to disclose, report or otherwise give notice of any matter.

**Exemption**

**31(1)** The Commissioner may, in accordance with the regulations, exempt any person, class of persons, public entity, information, record or thing from the application of all or any portion of this Act or the regulations.

**(2)** The Commissioner may impose any terms and conditions the Commissioner considers appropriate on any exemption provided for under subsection (1).

**(3)** The Commissioner must provide reasons for giving an exemption under this section and must ensure the exemption, including any terms or conditions imposed, and the reasons for giving the exemption are made publicly available.

**Chief officer's annual report**

**32(1)** Every chief officer must prepare a report annually on all disclosures that have been made to the designated officer of the department, public entity or office of the Legislature for which the chief officer is responsible.

**(2)** The report under subsection (1) must include the following information:

(a) the number of disclosures received by the designated officer, the number of disclosures acted on and the number of disclosures not acted on by the designated officer;

(b) the number of investigations commenced by the designated officer as a result of disclosures;

(c) in the case of an investigation that results in a finding of wrongdoing, a description of the wrongdoing and any recommendations made or corrective measures taken in relation to the wrongdoing or the reasons why no corrective measure was taken.

**(3)** The report under subsection (1) must be included in the annual report of the department, public entity or office of the Legislature if the annual report is made publicly available, and if the annual report is not made publicly available, the chief officer must make the report under subsection (1) available to the public on request.

**Commissioner's annual report**

**33(1)** The Commissioner must report annually to the Legislative Assembly on the exercise and performance of the Commissioner's functions and duties under this Act, setting out

(a) the number of general inquiries made to the Commissioner relating to this Act,

(b) the number of disclosures received by the Commissioner under this Act, the number of disclosures acted on and the number of disclosures not acted on by the Commissioner,

(c) the number of investigations commenced by the Commissioner under this Act,

(d) the number of recommendations the Commissioner has made and whether the departments, public entities or offices of the Legislature to which the recommendations relate have complied with the recommendations,

(e) the number of complaints of reprisals received by the Commissioner under this Act, the number of complaints of reprisals acted on and the number of complaints of reprisals not acted on by the Commissioner,

(f) whether, in the opinion of the Commissioner, there are any systemic problems that may give rise to or have given rise to wrongdoings, and

(g) any recommendations for improvement that the Commissioner considers appropriate.

**(2)** The report under subsection (1) must be given to the Speaker of the Legislative Assembly, who must table a copy of it in the Legislative Assembly within 15 days after receiving it if the Legislative Assembly is then sitting or, if it is not, within 15 days after the start of the next sitting.

**(3)** Where it is in the public interest to do so, the Commissioner may publish a special report relating to any matter within the scope of the Commissioner's responsibilities under this Act, including a report referring to and commenting on any particular matter investigated by the Commissioner.

**Reports at request of committee or the Lieutenant Governor in Council**

**34(1)** A committee of the Legislative Assembly may, at any time, refer to the Commissioner for investigation and report any petition or matter that is before the committee for consideration that may relate to a wrongdoing to which this Act applies.

**(2)** The Commissioner must

(a) subject to any special directions of the committee, investigate the petition or matter referred to the Commissioner insofar as it is within the scope of the Commissioner's responsibilities pursuant to this Act, and

(b) make any report to the committee that the Commissioner thinks fit.

**(3)** The Lieutenant Governor in Council may, at any time, refer to the Commissioner for investigation and report any matter that is

within the scope of the Commissioner's responsibilities pursuant to this Act.

**(4)** The Commissioner must

(a) subject to any special directions of the Lieutenant Governor in Council, investigate the matter referred to the Commissioner insofar as it is within the scope of the Commissioner's responsibilities pursuant to this Act, and

(b) make any report to the Lieutenant Governor in Council that the Commissioner thinks fit.

**Financing of operations**

**35(1)** The Commissioner must submit to the Standing Committee in respect of each fiscal year an estimate of the public money that will be required to be provided by the Legislature to defray the several charges and expenses of the Office of the Public Interest Commissioner in that fiscal year.

**(2)** The Standing Committee must review each estimate submitted pursuant to subsection (1), and on the completion of the review, the chair of the Standing Committee must transmit the estimate to the President of Treasury Board and Minister of Finance for presentation to the Legislative Assembly.

**(3)** If at any time that the Legislative Assembly is not in session the Standing Committee, or if there is no Standing Committee, the President of Treasury Board and Minister of Finance,

(a) reports that the Commissioner has certified that, in the public interest, an expenditure of public money is urgently required in respect of any matter pertaining to the Office of the Public Interest Commissioner, and

(b) reports that either

(i) there is no supply vote under which an expenditure with respect to that matter may be made, or

(ii) there is a supply vote under which an expenditure with respect to that matter may be made but the authority available under the supply vote is insufficient,

the Lieutenant Governor in Council may order a special warrant to be prepared to be signed by the Lieutenant Governor authorizing the expenditure of the amount estimated to be required.

**(4)** For the purposes of subsection (3), when the Legislative Assembly is adjourned for a period of more than 14 days, the Assembly is deemed not to be in session during the period of the adjournment.

**(5)** When a special warrant is prepared and signed under subsection (3) on the basis of a report referred to in subsection (3)(b)(i), the authority to spend the amount of money specified in the special warrant for the purpose specified in the special warrant is deemed to be a supply vote for the purposes of the *Financial Administration Act* for the fiscal year in which the special warrant is signed.

**(6)** When a special warrant is prepared and signed under subsection (3) on the basis of a report referred to in subsection (3)(b)(ii), the authority to spend the amount of money specified in the special warrant is, for the purposes of the *Financial Administration Act*, added to and deemed to be part of the supply vote to which the report relates.

**(7)** When a special warrant has been prepared and signed pursuant to this section, the amounts authorized by it are deemed to be included in, and not to be in addition to, the amounts authorized by the Act, not being an Act for interim supply, enacted next after it for granting to Her Majesty sums of money to defray certain expenditures of the Public Service of Alberta.

**Regulations**

**36** The Lieutenant Governor in Council may make regulations

(a) designating entities, including an entity that receives all or a substantial part of its operating funding from the government, as a public entity for the purposes of this Act and respecting the application of all or any portion of this Act to those public entities;

(b) prescribing individuals as employees, including who is a former employee, for the purposes of this Act and the regulations;

(c) respecting other functions the Commissioner may or must perform;

(d) prescribing additional purposes of this Act;

(e) prescribing persons as chief officers for public entities;

(f) respecting the procedures to be followed by designated officers and by the Commissioner in managing and

investigating disclosures and reporting the outcome of investigations, including setting time periods for action;

(g) respecting disclosures to the Commissioner, including when an employee may make a disclosure directly to the Commissioner, and the circumstances and procedure generally for making a disclosure;

(h) respecting the procedures for referring a matter that constitutes an imminent risk of a substantial or specific danger to the life, health or safety of individuals or to the environment, including persons to whom the matter may be referred and the time period for referring those matters;

(i) prescribing other information to be included in a disclosure;

(j) prescribing circumstances in which the Commissioner is not required to investigate a disclosure;

(k) respecting the time periods within which an investigation by the Commissioner must be conducted;

(l) respecting the exemption of any person, class of persons, public entity, information, record or thing from the application of all or any portion this Act;

(m) prescribing the form for making complaints respecting reprisals;

(n) prescribing the circumstances in which the Commissioner is not required to investigate a complaint respecting a reprisal;

(o) prescribing any information, document, matter or classes of information, documents or matters that must not be included in a disclosure under this Act;

(p) prescribing Acts or regulations for the purposes of section 28;

(q) respecting the collection, use and disclosure of information, including personal information and individually identifying health information, for the purposes of this Act;

(r) prescribing Acts or regulations to which this Act applies in whole or in part;

(s) respecting any matter that the Minister considers to be unforeseen, not provided for or insufficiently provided for in this Act;

(t) defining any word or phrase used but not defined in this Act.

**Review of Act**

**37** Within 2 years after this Act comes into force and every 5 years after that, a special committee established by the Legislative Assembly must begin a comprehensive review of this Act and must submit to the Legislative Assembly, within one year after beginning the review, a report that includes any amendments recommended by the committee.

## Part 6
## Office of the Public Interest Commissioner

**Appointment of Public Interest Commissioner**

**38(1)** Subject to subsections (2) and (5), the Lieutenant Governor in Council, on the recommendation of the Legislative Assembly, must appoint a Public Interest Commissioner to carry out the duties and functions set out in this Act.

**(2)** Notwithstanding section 3(1) of the *Ombudsman Act*, the Legislative Assembly may, by resolution, appoint the Ombudsman as the Commissioner.

**(3)** The Commissioner is an officer of the Legislature.

**(4)** The Commissioner may not be a member of the Legislative Assembly.

**(5)** For the purposes of appointing the first Commissioner, if the Legislative Assembly is not sitting, the Lieutenant Governor in Council on the recommendation of the Standing Committee may appoint a Commissioner, and unless the office sooner becomes vacant, the individual appointed holds office until the appointment is confirmed by the Legislative Assembly or a successor in appointed under subsection (1) or (2).

**Term of office**

**39(1)** Except as provided for in section 40, the Commissioner holds office for a term not exceeding 5 years.

**(2)** An individual holding office as Commissioner continues to hold office after the expiry of that individual's term of office until that individual is reappointed, a successor is appointed or a period of 6 months has expired, whichever occurs first.

**(3)** An individual is eligible for reappointment as Commissioner.

**Resignation, removal or suspension of Commissioner**

**40(1)** The Commissioner may resign at any time by notifying the Speaker of the Legislative Assembly or, if there is no Speaker or the Speaker is absent from Alberta, by notifying the Clerk of the Legislative Assembly.

**(2)** The Lieutenant Governor in Council must remove the Commissioner from office or suspend the Commissioner for cause or incapacity on the recommendation of the Legislative Assembly.

**(3)** If the Legislative Assembly is not sitting, the Lieutenant Governor in Council may suspend the Commissioner for cause or incapacity on the recommendation of the Standing Committee.

**Acting Commissioner**

**41(1)** The Lieutenant Governor in Council, on the recommendation of the Standing Committee, may appoint an acting Commissioner if

(a) the office of Commissioner is or becomes vacant when the Legislative Assembly is not sitting,

(b) the Commissioner is suspended when the Legislative Assembly is not sitting, or

(c) the Commissioner is removed from office or suspended or the office of the Commissioner becomes vacant when the Legislative Assembly is sitting, but no recommendation to appoint the Commissioner is made by the Assembly under section 38 before the end of the sitting.

**(2)** The Lieutenant Governor in Council may appoint an acting Commissioner if the Commissioner is temporarily absent because of illness or for another reason.

**(3)** An acting Commissioner holds office until

(a) an individual is appointed as Commissioner under section 38(1) or (2),

(b) the suspension of the Commissioner ends, or

(c) the Commissioner returns to office after a temporary absence.

**Remuneration**

**42** The Commissioner must be remunerated as determined by the Standing Committee, and the Standing Committee must review that remuneration at least once a year.

**Oath**

**43(1)** The Commissioner must, before beginning the duties and functions of office, take an oath to faithfully and impartially perform the duties and functions of the office and not to disclose any information received by the Office of the Public Interest Commissioner under this Act except as provided in this Act.

**(2)** The oath must be administered by the Speaker of the Legislative Assembly or the Clerk of the Legislative Assembly.

**Office of the Public Interest Commissioner**

**44(1)** There may be a part of the public service of Alberta called the Office of the Public Interest Commissioner consisting of the Commissioner and the individuals employed pursuant to the *Public Service Act* that are necessary to assist the Commissioner in carrying out the Commissioner's duties and functions under this or any other Act or regulation.

**(2)** The Commissioner may engage the services of any persons necessary to assist the Commissioner in carrying out the Commissioner's duties and functions.

**(3)** On the recommendation of the Commissioner, the Standing Committee may order that

(a) any regulation, order or directive made under the *Financial Administration Act*,

(b) any regulation, order, directive, rule, procedure, direction, allocation, designation or other decision under the *Public Service Act*, or

(c) any regulation, order, determination, direction or other decision under the *Public Sector Compensation Transparency Act,*

does not apply to, or is varied in respect of, the Office of the Public Interest Commissioner or any particular employee or class of employees in that Office.

**(4)** An order made under subsection (3)(a) operates despite section 2 of the *Financial Administration Act*.

**(4.1)** An order made under subsection (3)(c) in relation to a regulation, order, determination, direction or other decision under the *Public Sector Compensation Transparency Act* operates notwithstanding that Act.

**(5)** The *Regulations Act* does not apply to orders made under subsection (3).

**(6)** The chair of the Standing Committee must lay a copy of each order made under subsection (3) before the Legislative Assembly if it is then sitting or, if it is not, within 15 days after the start of the next sitting.

**(7)** Every individual employed or engaged under subsection (1) or (2) must, before beginning to perform duties or functions under this Act, take an oath, to be administered by the Commissioner, not to disclose any information received by that individual under this Act except as provided in this Act.

2012 cP-39.5 s44;2015 cP-40.5 s24

**Functions of the Commissioner**

**45** The functions of the Commissioner are

(a) to carry out the purposes of this Act set out in section 2,

(b) to review and investigate disclosures and complaints of reprisals made under this Act, and

(c) to perform any other functions that are set out in this Act or the regulations.

## Part 7
## Offences and Penalties

**Offence – false statement**

**46(1)** No person shall, in seeking advice about making a disclosure, in making a disclosure, or during an investigation, knowingly withhold material information or make a false or misleading statement, orally or in writing, to

(a) a designated officer,

(b) a chief officer,

(c) the Commissioner, or

(d) a person acting on behalf of or under the direction of a designated officer, a chief officer or the Commissioner.

**(2)** No person shall counsel or direct another person to wilfully, in seeking advice about making a disclosure, in making a disclosure, or during an investigation, knowingly withhold material information or make a false or misleading statement, orally or in writing, to

(a) a designated officer,

(b) a chief officer,

(c) the Commissioner, or

(d) a person acting on behalf of or under the direction of a designated officer, a chief officer or the Commissioner.

**Offence – obstruction**

**47** No person shall wilfully obstruct, or counsel or direct a person to wilfully obstruct, a designated officer, a chief officer or the Commissioner, or any individual acting on behalf of or under the direction of a designated officer, a chief officer or the Commissioner, in the performance of a duty or function under this Act.

**Offence – destruction, falsification, concealment**

**48** No person shall, knowing that a document or thing is likely to be relevant to an investigation under this Act,

(a) destroy, mutilate or alter the document or thing,

(b) falsify the document or make a false document or thing,

(c) conceal the document or thing, or

(d) direct, counsel or in any manner cause a person to do anything mentioned in clauses (a) to (c).

**Offence and penalty**

**49** Any person who contravenes section 24, 46, 47 or 48 is guilty of an offence and liable

(a) for a first offence, to a fine of not more than $25 000, and

(b) for a 2nd or subsequent offence, to a fine of not more than $100 000.

**Limitation on prosecution**

**50** A prosecution under this Act may not be commenced later than 2 years after the day the alleged offence was committed.

**Protection of Commissioner and others**

**51(1)** Subject to subsection (3), no action lies or may be commenced or maintained against

(a) a designated officer,

(b) a chief officer,

(c) the Commissioner, or

(d) any person employed or engaged for services and acting on behalf of or under the direction of a designated officer, a chief officer or the Commissioner,

in respect of anything done or omitted to be done in the exercise or intended exercise of any power under this Act or in the performance or intended performance of any duty or function under this Act.

**(2)** Subject to subsection (3), no person is liable to prosecution for an offence against any Act, and no action lies or may be commenced or maintained against a person, by reason of the person's compliance with any requirement of this Act.

**(3)** Subsections (1) and (2) do not apply to a person referred to in those subsections in relation to anything done or omitted to be done by that person in bad faith.

**Proceedings of Commissioner not subject to review**

**52** No proceeding of the Commissioner is invalid for want of form and, except on the ground of lack of jurisdiction, no proceeding or decision of the Commissioner shall be challenged, reviewed, quashed or called into question in any court.

**Act to provide additional remedies**

**53** The provisions of this Act are in addition to the provisions of any other Act or rule of law pursuant to which any remedy, right of appeal or objection is provided for any individual, or any procedure is provided for inquiry into or investigation of any matter, and nothing in this Act limits or affects any such remedy, right of appeal, objection or procedure.

## Part 8
## Consequential Amendments and Coming into Force

**54** to **62** *(These sections make consequential amendments to other Acts. The amendments have been incorporated into those Acts.)*

**Coming into force**

**63** This Act comes into force on Proclamation.

*(NOTE: Section 1 and Part 6 (sections 38 to 45) proclaimed in force April 24, 2013. Section 2 and Parts 1 to 5, 7 and 8 (sections 3 to 37 and 46 to 63) proclaimed in force June 1, 2013.)*

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