



Province of Alberta

# **PUBLIC INTEREST DISCLOSURE (WHISTLEBLOWER PROTECTION) ACT**

Statutes of Alberta, 2012  
Chapter P-39.5

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Office Consolidation

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### Note

All persons making use of this consolidation are reminded that it has no legislative sanction, that amendments have been embodied for convenience of reference only. The official Statutes and Regulations should be consulted for all purposes of interpreting and applying the law.

### 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.

	<b>Alta. Reg.</b>	<i>Amendments</i>
<b>Public Interest Disclosure (Whistleblower Protection)</b>		
Public Interest Disclosure (Whistleblower Protection) .....	71/2013	15/2018
Public Interest Disclosure (Whistleblower Protection)		
Transitional .....	16/2018	

**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) “Board” means the Labour Relations Board;
- (a.1) “chief officer” means
  - (i) the deputy minister of a department,
  - (ii) the department head of an office, and
  - (iii) 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 or an office of a member of the Legislative Assembly,
  - (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,
  - (viii) the Public Interest Commissioner with respect to the Office of the Public Interest Commissioner, and

- (ix) the Chief of Staff, Office of the Premier with respect to the Premier, the Office of the Premier, a minister or an office of a minister;
- (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, as the context requires,
  - (i) an individual employed by a department, a public entity, an office or a prescribed service provider,
  - (ii) an individual who has suffered a reprisal and is no longer employed by a department, a public entity, an office or a prescribed service provider, or
  - (iii) an individual or person or an individual or person within a class of individuals or persons, prescribed in the regulations as an individual or person to be treated as an employee for the purpose of this Act or a provision of this Act;
- (h) “individually identifying health information” means individually identifying health information within the meaning of the *Health Information Act*;
- (h.1) “office” means, subject to the regulations,
  - (i) an office of the Legislature,
  - (ii) an office of a member of the Legislative Assembly, and includes the member,
  - (iii) the Office of the Premier, and includes the Premier, and
  - (iv) an office of a minister, and includes the minister;
- (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*;
- (j.1) “prescribed service provider” means any individual or any part or all of an organization, body or other person that is determined under the regulations made under section 4.2 to be a prescribed service provider;
- (k) “public entity” means any agency, board, commission, Crown corporation or other entity designated as a public entity in the regulations;
- (l) “reprisal” means a measure taken, directed or counselled contrary to section 24(2) or (3), or a reprisal referred to in section 26(4);
- (m) “Standing Committee” means the Standing Committee on Legislative Offices;
- (n) “wrongdoing” means a wrongdoing referred to in section 3 and, except in sections 32(2)(c), 33(1)(d) and (f) and 53.1 or as otherwise provided in the regulations, includes an alleged wrongdoing.

2012 cP-39.5 s1;2017 c11 s2

#### **Application and purposes of Act**

**2(1)** Subject to the regulations, this Act applies to the following:

- (a) departments;
- (b) offices;
- (c) public entities;
- (d) prescribed service providers.

**(1.1)** Nothing in this Act permits a member of the Legislative Assembly or a minister, including the Premier, to make a disclosure under this Act or a complaint of a reprisal under this Act.



- (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, offices or prescribed service providers, 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,
  - (c.1) to provide for the determination of appropriate remedies concerning reprisals,
  - (d) to promote public confidence in the administration of or services provided by departments, public entities, offices and prescribed service providers, and
  - (e) any other purpose prescribed in the regulations.

2012 cP-39.5 s2;2017 c11 s3

## **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, offices or prescribed service providers 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, including an act or omission that is deliberate and that shows a reckless or wilful disregard for the proper management of
  - (i) public funds or a public asset,

- (ii) the delivery of a public service, including the management or performance of
  - (A) a contract or arrangement identified or described in the regulations, including the duties resulting from the contract or arrangement or any funds administered or provided under the contract or arrangement, and
  - (B) the duties and powers resulting from an enactment identified or described in the regulations or any funds administered or provided as a result of the enactment,

or

- (iii) employees, by a pattern of behaviour or conduct of a systemic nature that indicates a problem in the culture of the organization relating to bullying, harassment or intimidation;
- (c.1) a wrongdoing prescribed in the regulations;
- (d) knowingly directing or counselling an individual to commit a wrongdoing mentioned in clauses (a) to (c.1).

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

2012 cP-39.5 s3;2017 c11 s4

**4** Repealed 2017 c11 s5.

## **Part 1.1 Members of the Legislative Assembly and Their Offices**

### **Parliamentary privileges and immunities saved**

**4.1(1)** The Commissioner's exercise of powers and performance of duties under this Act is limited by and must conform to the rights, immunities, privileges and powers of the Legislative Assembly and of members of the Legislative Assembly.

**(2)** For the purposes of this section, the Commissioner and the Speaker of the Legislative Assembly, on behalf of the Legislative Assembly and its members, may establish a protocol respecting the Commissioner's exercise of powers and performance of duties under this Act in relation to the Legislative Assembly, members of

the Legislative Assembly and the offices of members of the Legislative Assembly.

(3) Only the Speaker of the Legislative Assembly may determine whether a disclosure or a complaint of a reprisal involves a matter or document subject to parliamentary privilege, and therefore cannot be investigated, examined, produced or disclosed.

(4) A determination referred to in subsection (3) is final.

2017 c11 s6

## Part 1.2 Prescribed Service Providers

### Prescribed service provider regulations

**4.2(1)** The Lieutenant Governor in Council may, in addition to any applicable regulations made under section 36, make regulations

- (a) respecting the Commissioner's exercise of powers and performance of duties under this Act in relation to prescribed service providers;
- (b) for the purpose of section 1(j.1), determining that any individual or person, any part or all of an organization, body or other person or any class of individuals, persons, organizations or bodies is a prescribed service provider;
- (c) respecting activities that may be considered and activities that may not be considered to constitute a wrongdoing to which this Act applies in relation to prescribed service providers;
- (d) respecting the communication of information about this Act to employees of prescribed service providers;
- (e) respecting requests for advice about making a disclosure in relation to prescribed service providers;
- (f) respecting reprisal measures for the purposes of section 24(3);
- (g) respecting the making of a complaint of a reprisal to the Commissioner under section 25(2);
- (h) respecting measures that the Board may order in relation to a prescribed service provider under section 27.1(3)(f)(viii);
- (i) respecting the reporting and recommendations to which a prescribed service provider may or must be subject under this Act;

- (j) respecting the Commissioner's annual reporting in respect of prescribed service providers;
- (k) exempting prescribed service providers from the application of any provision or part of this Act.

(2) A regulation made under this section may apply to all prescribed service providers, to a class of prescribed service providers or to a part of a prescribed service provider, and there may be different regulations for different classes of prescribed service providers.

2017 c11 s6

## **Part 2 Disclosure Procedures for Departments, Public Entities and Offices**

### **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, consistent with section 30 and any regulations that apply, for referring a disclosure to the Commissioner 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, consistent with section 30 and any regulations that apply, for referring 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, consistent with this Act and any regulations that apply, 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, consistent with this Act and any regulations that apply, 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

- (a) must notify the chief officer that procedures must be established, and
- (b) may, if the Commissioner considers it appropriate, provide information about the notification and the circumstances leading to the notification in the Commissioner's annual report for any year during which no procedures are established.

**(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)** Repealed 2017 c11 s8.

**(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.

2012 cP-39.5 s5;2017 c11 s8

#### **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 for which the chief officer is responsible.

2012 cP-39.5 s6;2017 c11 s9

#### **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 supervisor, designated officer or chief officer or from the Commissioner.

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

2012 cP-39.5 s8;2017 c11 s10

**Disclosure concerning a department, public entity or office**

9 If an employee of a department, public entity or office 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

- (a) to the employee's designated officer in accordance with the procedures established under section 5, and
- (b) subject to section 12, to the Commissioner in accordance with section 15.1.

2012 cP-39.5 s9;2017 c11 s11

10 and 11 Repealed 2017 c11 s12.

**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 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.

2012 cP-39.5 s13;2017 c11 s13

#### **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.

**15** Repealed 2017 c11 s14.

## **Part 2.1 Disclosure to the Commissioner**

#### **Disclosure to the Commissioner**

**15.1(1)** An employee referred to in section 9 may make a disclosure directly to the Commissioner despite Part 2 and any provision in the procedures established under section 5 that states

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



- (b) that no appeal lies in respect of the decision of the department, public entity or office, or
- (c) that the decision of the department, public entity or office may not be challenged, reviewed, quashed or called into question.

(2) If an employee referred to in section 9 has made a disclosure to the designated officer, the employee may also make a disclosure directly to the Commissioner even if the designated officer has made recommendations or concluded the investigation.

(3) Subject to the regulations, an employee of a prescribed service provider may make a disclosure to the Commissioner if the 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.

(4) Subject to the regulations, a disclosure must be in writing and must include the information required under section 13.

(5) Subject to sections 4.1(3) and 30 and the regulations, the Commissioner may, as the Commissioner considers appropriate, proceed under this Part and Part 3 or refer a disclosure relating to a department, public entity or office to a designated officer to be dealt with in accordance with Part 2.

2017 c11 s15

### **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, office or prescribed service provider,
- (b) to recommend corrective measures that should be taken, and
- (c) to promote public confidence in the administration of and services provided by departments, public entities, offices and prescribed service providers.

2012 cP-39.5 s16;2017 c11 s16

#### **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, office or prescribed service provider.

2012 cP-39.5 s17;2017 c11 s17

#### **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, office or prescribed service provider.

**(5) to (7)** Repealed 2017 c11 s18.

2012 cP-39.5 s18;2017 c11 s18

#### **Access to information — generally**

**18.1(1)** The Commissioner is at all reasonable times and for any purpose related to the exercise or performance of the Commissioner's powers and duties under this Act entitled to access to the records of, and electronic data processing equipment owned or leased by, a department, public entity, office or prescribed service provider.

**(2)** Present and former employees must give to the Commissioner any information, records or explanations that the Commissioner considers necessary to enable the Commissioner to exercise or perform the Commissioner's powers and duties under this Act.

**(3)** The Commissioner, or a person employed or engaged by the Commissioner, may enter or be stationed in the premises of a department, public entity, office or prescribed service provider, and the department, public entity, office or prescribed service provider must provide the necessary accommodation, equipment and materials.

**(4)** The Commissioner may, in the course of an investigation,

- (a) require any record to be produced to the Commissioner, examine any information in a record, including personal information, individually identifying health information or

financial information, and make copies of, take photographs of or otherwise record the information, and

- (b) require any person who, in the Commissioner's opinion, is able to provide any information, including personal information, individually identifying health information or financial information, relating to any disclosure being investigated by the Commissioner
  - (i) to give written or oral replies to questions,
  - (ii) to produce any books, records, reports, documents or other items, including electronic records and documents, and
  - (iii) to provide any other information requested by the Commissioner.

**(5)** When the Commissioner requires the production of a document, paper or thing under subsection (4), the Commissioner may require it to be produced at a place designated by the Commissioner and may require that it be left in the Commissioner's possession for the purposes of the Commissioner's investigation.

**(6)** When the Commissioner requires the production of a document, paper or thing under subsection (4), the Commissioner

- (a) must give a receipt for it to the person from whom it was taken,
- (b) may make copies of, take photographs of or otherwise record it,
- (c) on request, must return or provide a copy of the book, record, report or other document, including an electronic record or document and a record or document containing personal information, individually identifying health information or financial information, to the person from whom it was taken or to a person who is entitled to custody of it, and
- (d) must return the document, paper or thing to the person to whom the receipt was given when it has served the purposes for which it was 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.

**(1.1)** Before beginning an investigation into a disclosure where the disclosure alleges gross mismanagement in relation to employees, the Commissioner must be satisfied that all applicable mechanisms, including any human resource processes or processes under a collective agreement, to address bullying, harassment or intimidation within the department, public entity, office or prescribed service provider have been used or considered.

**(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, office or prescribed service provider

- (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, within any period of time determined by the Commissioner, request from the designated officer a report on the status of an investigation into the matter concerning a department, public entity or office.

2012 cP-39.5 s19;2017 c11 s20

#### **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)** and **(3)** Repealed 2017 c11 s21.

2012 cP-39.5 s20;2017 c11 s21

#### **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, as the Commissioner considers appropriate, subject to any regulations that apply,

- (a) investigate and report the matter in the same manner as a disclosure,
- (b) while maintaining the anonymity of the individual, forward the matter to the designated officer of the department, public entity or office to which the allegation relates for investigation in accordance with the procedures established under section 5, or
- (c) refuse to investigate or, if an investigation has been initiated, cease the investigation, in the same manner as with respect to a disclosure.

2012 cP-39.5 s21;2017 c11 s22

#### **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)** Subject to section 23, the Commissioner may request that the affected department, public entity, office or prescribed service provider notify the Commissioner, within any reasonable period of time that the Commissioner specifies, of the steps that the department, public entity, office or prescribed service provider 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)

(a) to the chief officer and the designated officer of the affected department, public entity or office, or

(b) to the affected prescribed service provider in accordance with the regulations made under section 4.2(1)(i).

**(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, office or public service provider 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 Clerk of the 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 or an office of a member of the Legislative Assembly, to the Speaker of the Legislative Assembly, and the Speaker of the Legislative Assembly must lay the report before the Legislative Assembly for review, referral to a committee of the Legislative Assembly or other action as the Legislative Assembly considers appropriate,

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

- (e) subject to clause (g), in the case of the Office of the Premier, to the Premier,
- (f) in the case of a minister or the Clerk of the Executive Council, to the Premier,
- (g) in the case of the Premier, by tabling a report in the Legislative Assembly, or
- (h) in the case of a prescribed service provider, in accordance with the regulations made under section 4.2(1)(i).

2012 cP-39.5 s22;2017 c11 s23

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

**23(1)** If the subject-matter of an investigation involves the chief officer or the designated officer, the Commissioner must, instead of providing a copy of the report referred to in section 22(1) to the chief officer and the designated officer under section 22(3), provide a copy of the report

- (a) in the case of a department, to the Clerk of the Executive Council,
- (b) in the case of the Office of the Premier or an office of a minister, to the Premier,
- (c) 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, and
- (d) in the case of an office of the Legislature or an office of a member of the Legislative Assembly, to the Speaker of the Legislative Assembly, and the Speaker of the Legislative Assembly must lay the report before the Legislative Assembly for review, referral to a committee of the Legislative Assembly or other action as the Legislative Assembly considers appropriate.

**(2)** The Commissioner may request a person provided with a copy of a report under subsection (1) to notify the Commissioner, within any reasonable period of time that the Commissioner specifies, of the steps that the department, public entity or office proposes to take or has taken to give effect to the Commissioner's recommendations.

**(3)** If the Commissioner believes that the person has not appropriately followed up on the Commissioner's recommendations, if any, the Commissioner may make a report on the matter

- (a) in the case of the Clerk of the Executive Council, to the Premier,
  - (b) in the case of the minister responsible for the public entity, if any, or the board of directors or the person designated to act as the head of the public entity, if any, to the Premier, and
  - (c) in the case of the Premier or the Speaker of the Legislative Assembly, by tabling a report in the Legislative Assembly.
- 2012 cP-39.5 s23;2017 c11 s24

## **Part 4 Reprisals**

### **Reprisal**

**24(1)** This section applies to an employee or a prescribed service provider who has, in good faith,

- (a) requested advice about making a disclosure as described in section 8 or, in the case of an employee of a prescribed service provider, the regulations made under Part 1.2, whether or not the employee made a disclosure,
- (b) made a disclosure under this Act,
- (c) co-operated in an investigation under this Act,
- (d) declined to participate in a wrongdoing, or
- (e) done anything in accordance with this Act.

**(2)** No person shall take or direct, or counsel or direct a person to take or direct, any of the following measures against an employee of a department, a public entity, an office of the Legislature, the Office of the Premier, an office of a minister or a prescribed service provider for the reason that the employee took an action referred to in subsection (1):

- (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).



(3) Subject to the regulations, no person shall take or direct, or counsel or direct a person to take or direct, any measure prescribed in the regulations against a prescribed service provider for the reason that the prescribed service provider or an employee of the prescribed service provider took an action referred to in subsection (1).

2012 cP-39.5 s24;2017 c11 s25

#### **Complaints of reprisals**

**25(1)** Subject to subsection (3), an employee may make a written complaint to the Commissioner if the employee alleges that a reprisal has been taken, directed or counselled against the employee contrary to section 24.

(2) A prescribed service provider may make a written complaint to the Commissioner if the prescribed service provider alleges that a reprisal has been taken, directed or counselled against the prescribed service provider contrary to section 24.

(3) 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, directed or counselled against the employee.

(4) The Auditor General has, in relation to a complaint referred to in subsection (3), all the responsibilities of the Commissioner under this Act and all of the powers and functions of the Commissioner.

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

2012 cP-39.5 s25;2017 c11 s26

#### **Managing and investigating complaints of reprisals**

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

(2) If a complaint is made to the Commissioner under section 25(1) with respect to the Board and the Commissioner finds that a reprisal has been taken, directed or counselled contrary to section 24, the Commissioner must determine the appropriate remedy.

(3) Sections 27.1(3) and (4), 27.2 and 27.4 apply, with any necessary modifications, for the purposes of a determination under subsection (2).

**(4)** A complaint of a reprisal may be made to the Commissioner with respect to the office of a member of the Legislative Assembly and

- (a) section 24(1) and (2) apply for the purpose of determining whether a reprisal has occurred,
- (b) the Commissioner must manage and investigate the complaint in the same manner as a disclosure regarding the office of a member of the Legislative Assembly, and
- (c) notwithstanding section 27.1, if the Commissioner finds that a reprisal has been taken, directed or counselled, the Commissioner must prepare and submit to the Speaker of the Legislative Assembly a report that sets out
  - (i) the Commissioner's findings and reasons for those findings, and
  - (ii) the Commissioner's recommendations, if any.

**(5)** The Speaker of the Legislative Assembly must lay the report referred to in subsection (4)(c) before the Legislative Assembly, if it is then sitting, or if it is not then sitting, within 15 days after the commencement of the next sitting, for review, referral to a committee of the Legislative Assembly or other action as the Legislative Assembly considers appropriate.

**(6)** Subject to section 30, if the Commissioner, the Auditor General, the Board or the Speaker of the Legislative Assembly, as the case may be, considers that the investigation or referral of a complaint under this Part is duplicative or may result in a double remedy or payment in respect of the complaint or that the complaint or any part of the complaint would more appropriately be dealt with in another proceeding or under any other procedure under any other Act or a collective agreement, that person may

- (a) refer the complaint under this Part to another procedure under any other Act or a collective agreement in respect of the measure alleged to constitute a reprisal,
- (b) defer the investigation of the complaint of a reprisal or the issuing of a report under this Part, or the determination of a remedy, pending the resolution of any court proceeding or any procedure under any other Act or a collective agreement in respect of the measure alleged to constitute a reprisal, and
- (c) discontinue the proceedings under this Part in respect of the complaint following the award of an appropriate remedy or payment in another proceeding or under any other procedure

under any other Act or a collective agreement in respect of the measure alleged to constitute a reprisal.

2012 cP-39.5 s26;2017 c11 s27

**Reasonable human resource management decisions**

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

2012 cP-39.5 s27;2017 c11 s28

**Referral to the Board for remedy**

**27.1(1)** If, on completing an investigation, the Commissioner finds that a reprisal has been taken, directed or counselled contrary to section 24, the Commissioner must, subject to section 26(2) and (4), refer the decision and reasons to the Board for a determination as to the appropriate remedy in accordance with this section.

**(2)** The chair of the Board may establish

- (a) hearing panels, consisting of either the chair or a vice-chair of the Board, to conduct hearings under this Act, and
- (b) administrative panels, consisting of 3 members from among the members of the Board, to conduct the Board's business under this Act, including the making of rules and any reconsideration referred to in subsection (3)(g).

**(3)** The Board may, for the purposes of this Act,

- (a) request and receive any submissions, including supplementary reasons or other information from the Commissioner, that it considers necessary, either itself or through its officers;
- (b) conduct any hearings that it considers necessary;
- (c) make rules
  - (i) of procedure respecting referrals, submissions and hearings,
  - (ii) for the giving of notice and the service of documents, and
  - (iii) for any other matters as it considers necessary;
- (d) through its members, officers and other representatives undertake efforts to assist the parties to a proceeding before the Board to settle the matter;

- (e) make or issue any interim orders, decisions, directives or declarations it considers necessary pending the final determination of any matter before the Board;
  - (f) make a final determination of any matter before the Board and order one or more of the following measures to be taken by a department, public entity, office, prescribed service provider, employee or person found to have taken, directed or counselled a reprisal contrary to section 24:
    - (i) permit the employee to return to his or her duties;
    - (ii) reinstate the employee or, if the Board considers that reinstatement is not advisable, pay compensation to the employee in lieu of reinstatement;
    - (iii) pay compensation for lost remuneration to the employee in an amount not greater than the remuneration that the Board considers would, but for the reprisal, have been paid to the employee;
    - (iv) pay an amount to the employee equal to any expenses and any other financial losses that the employee has incurred as a direct result of the reprisal, including the employee's legal costs on a solicitor-client basis related to, occasioned by or attributable to the reprisal;
    - (v) rescind any form of discipline or reprimand or cease an activity that constitutes the reprisal;
    - (vi) rectify a situation resulting from the reprisal;
    - (vii) do or refrain from doing anything in order to remedy any consequence of the reprisal;
    - (viii) in the case of a prescribed service provider, take any measures required or authorized by the regulations;
  - (g) on application, or on the Board's own motion, reconsider any determination, decision, order, interim order, directive or declaration made by it and vary, revoke or affirm the determination, decision, order, interim order, directive or declaration.
- (4)** Except as provided in subsection (3)(g), an order under subsection (3)(f) is final and binding.
- (5)** The Board must provide to the Commissioner, in respect of a complaint referred to the Board under section 26,

- (a) a notice concerning every matter referred, deferred or discontinued under section 26,
- (b) a copy of every order issued under subsection (3)(f),
- (c) if no remedy is awarded in respect of a determination under subsection (3)(f), a copy of the Board's reasons for the determination, and
- (d) a copy of every order issued under subsection (3)(g) that varies, revokes or affirms a determination or an order issued under subsection (3)(f).

2017 c11 s29

#### **Board powers re evidence**

**27.2(1)** For the purposes of this Act, officers and members of the Board may administer oaths.

**(2)** Subject to subsection (3), the Board may, by order, summon and enforce the attendance of witnesses and compel them to give oral or written evidence on oath and to produce the documents and things the Board considers requisite to the full investigation and consideration of matters under this Act within its jurisdiction in the same manner as a court of record may in civil cases.

**(3)** If any person fails to comply with a Board order made under subsection (2), or conducts himself or herself in a manner that may be in contempt of the Board or its proceedings, the Board may apply to the Court of Queen's Bench for an order directing compliance with the Board's order or restraining any conduct found by the Court to be in contempt of the Board or its proceedings.

**(4)** On an application under subsection (3), the Court may grant any order that, in the opinion of the Court, is necessary to enable the Board to carry out its duties.

**(5)** The Board

- (a) may accept any oral or written evidence that it, in its discretion, considers proper, whether admissible in a court of law or not, and
- (b) is not bound by the law of evidence applicable to judicial proceedings.

2017 c11 s29

#### **Various issues relating to the Board**

**27.3(1)** For the purposes of sections 27.1 and 27.2,

- (a) Part 4.1 applies to the Board, and
- (b) the Board, its members and officers and persons employed in respect of the Board's activities under this Act have all the immunities of the Commissioner under this Act.

**(2)** Despite any other Act or law, the Board, its members and officers and persons employed in respect of the Board's activities under this Act are not compellable to give evidence concerning any record or information that is obtained or comes to their knowledge as the result of the exercise of the powers, the performance of the duties or the carrying out of functions pursuant to sections 27.1 and 27.2, or to produce anything containing that record or information, except for the purposes of

- (a) the investigation of a disclosure of wrongdoing or a complaint of a reprisal regarding the Board,
- (b) the prosecution of an offence under this Act, and
- (c) the record of proceedings in the judicial review of a decision of the Board pursuant to this Act.

2017 c11 s29

#### **Orders and enforcement**

**27.4(1)** An order that the Board makes under this Act may be issued on its behalf by the chair or a vice-chair of the Board.

**(2)** An order purporting to be signed by the chair or a vice-chair on behalf of the Board shall be received in any court as proof, in the absence of evidence to the contrary,

- (a) of the order and its contents, and
- (b) that the persons signing the order were authorized to do so,

without proof of the appointment or signature of the chair or vice-chair.

**(3)** A copy of an order having endorsed on it a certificate purporting to be signed by an officer of the Board stating that the copy is a true copy shall be received in any court as proof, in the absence of evidence to the contrary, of the order and its contents, without proof of the appointment or signature of the officer.

**(4)** If any order made by the Board is not complied with, an employee, department, public entity, office, prescribed service provider or other person affected by the order, or the Board on its own initiative, may, after 30 days from the date on which the order is made or reasons are given in respect of it or by the date provided

in it for compliance, whichever is the latest date, file a copy of the order with the clerk of the Court of Queen's Bench, and on being filed, the order is enforceable as a judgment or order of the Court.

2017 c11 s29

## **Part 4.1 Collection, Use and Disclosure of Information**

### **Disclosure despite other Acts**

**28** Subject to this Part, a disclosure or a complaint of a reprisal may be made under this Act despite a provision in another Act or regulation that prohibits or restricts disclosure of the information necessary to make the disclosure or complaint of a reprisal.

2017 c11 s30

### **Where disclosure restrictions continue to apply**

**28.1(1)** Despite section 28, 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 or documents that are protected by solicitor-client privilege or litigation privilege, or
- (c) any information, document or matter or any class of information, documents or matters prescribed in the regulations as information, documents or matters that must not be disclosed.

**(2)** Where a disclosure or a complaint of a reprisal involves personal information, individually identifying health information or confidential information, the employee who makes the disclosure or submits the complaint of a reprisal must take reasonable precautions to ensure that no more information is disclosed than is necessary to make the disclosure or complaint of a reprisal.

2017 c11 s30

### **Other obligations to report not affected**

**28.2** Nothing in this Act relating to the making of a disclosure or a complaint of a reprisal is to be construed as affecting an obligation of an employee or a person who makes the disclosure or submits the complaint of a reprisal to disclose, report or otherwise give notice of a matter under another Act or regulation.

2017 c11 s30

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

**29(1)** A designated officer, a chief officer and the Commissioner may, subject to the regulations, 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 and complaints of reprisal under this Act.

**(2)** Nothing in this Act authorizes a chief officer or the Commissioner, in an annual report referred to in section 32 or 33,

- (a) to publicly identify an employee who requested advice about making a disclosure, made a disclosure or submitted a complaint of a reprisal,
- (b) to publicly identify an individual referred to in section 21, or
- (c) to publicly disclose individually identifying health information.

**(3)** Subject to subsection (2), the Commissioner may disclose information, including personal information, if in the Commissioner's opinion the public interest in making the disclosure clearly outweighs the potential harm.

2017 c11 s30

**Issues and notice re disclosure of information**

**29.1(1)** 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 for the purposes of this section.

**(2)** If the Commissioner receives individually identifying health information in connection with a disclosure or a complaint of a reprisal, or during an investigation under this Act, the Commissioner must use reasonable efforts to inform the identified individual that the Commissioner received the health information, that the disclosure relates to an investigation under this Act, and that any further disclosure of the individually identifying health information is governed by this Act.

2017 c11 s30

**Disclosures involving a possible offence or an imminent risk**

**30(1)** If a chief officer, a designated officer or, 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, that person must, as soon as reasonably practicable, report the alleged offence to a law



enforcement agency and to the Minister of Justice and Solicitor General.

**(2)** With respect to a disclosure made under the procedures described in section 5(2)(c) or a disclosure with respect to a matter that the chief officer, the designated officer or the Commissioner reasonably believes could constitute an imminent risk of a substantial and specific danger to the life, health or safety of individuals, or to the environment, that person 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, office or prescribed service provider responsible for managing, controlling or containing the risk, if any, and
- (d) to a person identified in the procedures described in section 5(2)(c) or a person prescribed in the regulations for the purposes of this clause.

**(3)** The chief officer, designated officer or Commissioner, as the case may be,

- (a) must suspend the investigation of a disclosure or complaint of a reprisal reported under subsection (1) or disclosed under subsection (2)(a),
- (b) may suspend the investigation of any other disclosure or complaint referred to in this section, and
- (c) may resume a suspended investigation only after any charge relating to an alleged offence, or any investigation by a law enforcement agency or the Minister of Justice and Solicitor General, has been finally disposed of.

2017 c11 s30

## **Part 5 General Matters**

### **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 made or referred to the designated officer of the department, public entity or office 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 or referred to the designated officer and 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;
- (c) in the case of an investigation that results in a finding of wrongdoing, a description of the wrongdoing and
  - (i) any recommendations made or corrective measures taken in relation to the wrongdoing, and
  - (ii) if the department, public entity or office to which the recommendations relate has not taken corrective measures in relation to the wrongdoing, the reasons provided.

(3) The report under subsection (1) must be included in the annual report of the department, public entity or office 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.

2012 cP-39.5 s32;2017 c11 s32

#### **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,
- (b.1) the number of disclosures referred by the Commissioner to a designated officer for investigation in accordance with Part 2 and the number of investigation outcomes, enforcement activities or other follow-up reported concerning those disclosures,
- (c) the number of investigations commenced by the Commissioner under this Act,
- (d) in the case of an investigation that results in a finding of wrongdoing, a description of the wrongdoing and any recommendations made,
- (d.1) the number of recommendations the Commissioner has made, and
  - (i) whether the departments, public entities, offices or prescribed service providers to which the recommendations relate have fully implemented the recommendations or taken any corrective measures, and
  - (ii) if the departments, public entities, offices or prescribed service providers to which the recommendations relate have not fully implemented the recommendations or taken any corrective measures, the reasons provided,
- (e) the number of complaints of reprisals received by the Commissioner under this Act, the number of reprisals the Commissioner finds to have been taken, directed or counselled contrary to section 24 and a description of the reprisals,
- (e.1) the number of complaints of reprisals with respect to which the Commissioner finds that no reprisal was taken, directed or counselled,
- (e.2) the number of reprisals in or respecting the office of a member of the Legislative Assembly that the Commissioner finds to have been taken, directed or counselled contrary to section 24, a description of the reprisals and any recommendations provided to the Speaker of the Legislative Assembly and the resulting corrective measures taken, if any,

- (e.3) the number of remedial orders made by the Board, a description of each remedy awarded, the number of referrals for which no remedy was awarded and the reasons why no remedy was awarded,
- (e.4) in the case of a prosecution under this Act, a description of the offence and any penalty imposed in relation to the offence,
- (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.

2012 cP-39.5 s33;2017 c11 s33

#### **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(1)** The Lieutenant Governor in Council may make regulations

- (a) designating entities, including entities that receive all or a substantial part of their operating funding from the Government, as public entities for the purposes of this Act and respecting the application of all or any portion of this Act to those public entities;
- (b) respecting, for the purpose of section 1(g)(iii), individuals or persons or classes of individuals or persons to be treated as employees for the purposes of this Act or any portion of this Act;
- (c) prescribing additional wrongdoings for the purposes of section 3(1)(c.1);
- (d) respecting other functions the Commissioner may or must perform;
- (e) prescribing additional purposes of this Act;
- (f) prescribing individuals as chief officers for the purposes of section 1(a.1)(iii);
- (g) respecting gross mismanagement, including regulations identifying or describing

- (i) public funds, public assets or the delivery of public services to which this Act applies,
- (ii) contracts or arrangements to which this Act applies, or
- (iii) enactments to which this Act applies;
- (h) 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 limits for corrective measures to be taken;
- (i) respecting disclosures to the Commissioner, including the allegations of wrongdoing referred to in section 21, and the circumstances and procedure for making and receiving a disclosure or an allegation of wrongdoing;
- (j) prescribing other information that may or must be included in a disclosure;
- (k) respecting investigations and any duties, powers, measures, methods or requirements not fully or not sufficiently provided for in Part 1.2 that are considered necessary to ensure that this Act is fully and appropriately implemented;
- (l) respecting, for the purposes of sections 5(2)(c) and 30(2)(d), 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 limit for referring those matters;
- (m) prescribing circumstances in which the Commissioner is not required to investigate a disclosure;
- (n) respecting the time limits within which an investigation by the Commissioner must be conducted;
- (o) respecting the reports referred to in section 22(5) or 23(3);
- (p) establishing procedures, including time limits, for receiving, managing and investigating a complaint of a reprisal;
- (q) respecting the content to be included in a complaint of a reprisal;
- (r) prescribing the form for making a complaint of a reprisal;

- (s) respecting the powers, duties and procedure, including time limits, that apply concerning the determination of appropriate remedies for reprisals;
- (t) prescribing the circumstances in which the Commissioner is not required to investigate a complaint of a reprisal;
- (u) respecting the content to be included in the decisions and reasons referred to in section 27.1;
- (v) prescribing any information, document or matter or classes of information, documents or matters that must not be included in a disclosure under this Act;
- (w) respecting the collection, use and disclosure of information, including personal information, individually identifying health information or confidential information, for the purposes of this Act;
- (x) respecting the confidentiality of information collected concerning disclosures and complaints of reprisal;
- (y) respecting procedures for protecting the identity of individuals involved in a disclosure, a complaint of a reprisal or an investigation, including the employee making the disclosure, individuals alleged to have committed the wrongdoings and witnesses;
- (z) respecting disclosure restrictions concerning any information, document or matter or any class of information, documents or matters for the purposes of section 28.1(1)(c);
- (aa) prescribing Acts or regulations for the purposes of section 29.1(1);
- (bb) prescribing Acts or regulations to which this Act applies in whole or in part;
- (cc) respecting the exemption of any person, class of persons, public entity, office, prescribed service provider, activity, information, record or thing from the application of all or any provision of this Act;
- (dd) respecting the Commissioner's annual report referred to in section 33, including any powers to be exercised or duties to be performed by the Commissioner when there is a change of government;



- (ee) respecting the legal, disciplinary and corrective actions to which a public entity, prescribed service provider, employee, appointee or other person who commits a wrongdoing may or must be subject;
- (ff) respecting any duties, powers, measures, methods or requirements not fully or not sufficiently provided for in this Act that are considered necessary to ensure that this Act is fully and appropriately implemented;
- (gg) defining any word or phrase used but not defined in this Act.

(2) A regulation made under this section may apply to all persons, organizations or bodies or to a class of persons, organizations or bodies to which this Act applies, and there may be different regulations for different classes of such persons, organizations or bodies.

2012 cP-39.5 s36;2017 c11 s34

#### **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

#### **Records management**

**44.1(1)** On the recommendation of the Commissioner, the Standing Committee may make an order

- (a) respecting the management of records in the custody or under the control of the Office of the Public Interest Commissioner, including their creation, handling, control, organization, retention, maintenance, security, preservation, disposition, alienation and destruction and their transfer to the Provincial Archives of Alberta,
- (b) establishing or governing the establishment of programs for any matter referred to in clause (a),
- (c) defining and classifying records, and

(d) respecting the records or classes of records to which the order or any provision of it applies.

(2) The *Regulations Act* does not apply to orders made under this section.

(3) The chair of the Standing Committee must lay a copy of each order made under subsection (1) before the Legislative Assembly if it is then sitting or, if it is not, within 15 days after the start of the next sitting.

2017 c11 s35

#### **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.

#### **Delegation by the Commissioner**

**45.1(1)** The Commissioner may delegate to any person employed or engaged by the Commissioner under section 44 any duty, power or function of the Commissioner under this Act except the power to delegate.

(2) A delegation under subsection (1) must be in writing and may contain any conditions or restrictions the Commissioner considers appropriate.

2017 c11 s36

## **Part 7 Offences and Penalties**

#### **Offence — false statement**

**46(1)** No person shall, in requesting advice about making a disclosure, in making a disclosure, in making a complaint of a reprisal 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,

- (d) the Board, or
- (e) an individual acting on behalf of or under the direction of any person listed in clauses (a) to (d).

**(2)** No person shall counsel or direct another person to wilfully, in requesting advice about making a disclosure, in making a disclosure, in making a complaint of a reprisal or during an investigation, 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,
- (d) the Board, or
- (e) an individual acting on behalf of or under the direction of any person listed in clauses (a) to (d).

2012 cP-39.5 s46;2017 c11 s37

**Offence — obstruction**

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

2012 cP-39.5 s47;2017 c11 s37

**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.

**Commissioner and others not compellable**

**51.1** Despite any other Act or law, the Commissioner, employees of the Office of the Public Interest Commissioner and any person engaged by the Office of the Public Interest Commissioner under section 44 are not compellable to give evidence concerning any record or information that is obtained or comes to their knowledge as the result of the exercise of the powers, the performance of the duties or the carrying out of the functions of those persons pursuant to this Act, or to produce anything containing that record or information, except for the purposes of

- (a) a disclosure under section 12, a complaint of a reprisal submitted to the Auditor General under section 25(3) or a referral to the Board in respect of the Office of the Public Interest Commissioner,
- (b) the prosecution of an offence under this Act, or
- (c) the judicial review of a decision of the Commissioner pursuant to this Act.

2017 c11 s38

**Proceedings of Commissioner not subject to review**

**52(1)** Subject to subsection (2), no decision, report or 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.

**(2)** A decision of the Commissioner concerning a reprisal may be questioned or reviewed by way of an application for judicial review seeking an order in the nature of certiorari or mandamus if the application is filed with the Court of Queen’s Bench and served on the Commissioner no later than 30 days after the date of the decision, report, proceeding or reasons, whichever is latest.

**(3)** The Court may, in respect of an application under subsection (2),

- (a) determine the issues to be resolved on the application,
- (b) limit the contents of the return from the Commissioner to those materials necessary for the disposition of those issues, and
- (c) give directions to protect the confidentiality of the matters referred to in Part 4.1.

2012 cP-39.5 s52;2017 c11 s39

**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.

**Legal, disciplinary and corrective action**

**53.1** In addition to, and apart from, any sanction provided for by law,



- (a) an employee who commits a wrongdoing is subject to appropriate disciplinary action, including termination of employment, and
- (b) a public entity, prescribed service provider, employee or other person who commits a wrongdoing is subject to appropriate corrective action.

2017 c11 s40

## **Part 8 Transitional Provisions, Consequential Amendments and Coming into Force**

### **Transitional**

**53.2(1)** The Lieutenant Governor in Council may make regulations

- (a) respecting the powers and duties to be exercised concerning any disclosure, investigation or complaint of a reprisal commenced but not completed prior to the coming into force of the *Public Interest Disclosure (Whistleblower Protection) Amendment Act, 2017* or any part of that Act;
- (b) to remedy any confusion, difficulty, inconsistency or impossibility resulting from the coming into force of the *Public Interest Disclosure (Whistleblower Protection) Amendment Act, 2017* or any part of that Act.

**(2)** A regulation made under subsection (1) is repealed on the earliest of

- (a) the coming into force of an amendment that adds the subject-matter of the regulation to this Act;
- (b) the coming into force of a regulation that repeals the regulation made under subsection (1);
- (c) 2 years after the regulation comes into force.

**(3)** The repeal of a regulation under subsection (2)(b) or (c) does not affect anything done, decided, recommended, reported or ordered under the authority of the regulation before the repeal of the regulation.

2017 c11 s42

**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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