

Review of Public Interest Disclosure of Wrongdoing Act

Discussion Paper

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Public Service Commission

Overview

The Public Service Commission is conducting a review of the [Public Interest Disclosure of Wrongdoing Act](#) and is seeking feedback from stakeholders on potential improvements to the legislation.

This discussion paper includes:

1. an outline of background information and progress to date in reviewing the Act,
2. identification of key policy issues related to the Act, based on feedback from stakeholders, observations from comparable legislation in other Canadian jurisdictions, and other international best practices, and
3. questions for your consideration based on the policy issues identified. You may wish to answer some or all questions as they relate to your experience and your organization.

Background

The Act supports employees of public entities in coming forward if they reasonably believe that a serious wrongdoing has occurred or is about to occur in their workplace. The Act is intended to deal with significant and serious matters that an employee believes may be unlawful, dangerous to the public, or injurious to the public interest. The Act is not intended to deal with routine operational matters, individual grievances, or workplace conflicts. These issues are more appropriately dealt with by existing workplace policies.

As set out by the Schedule in the Act, public entities that the Act applies to are:

- Government of Yukon departments, directorates, secretariats, or other similar executive agencies,
- Workers' Safety and Compensation Board, Yukon Development Corporation, Yukon Energy Corporation, Yukon Hospital Corporation, Yukon Housing Corporation, and Yukon Liquor Corporation, and
- other specified public entities, which are Yukon University, the Legislative Assembly Office, Office of the Child and Youth Advocate, and Office of the Chief Electoral Officer.

Employees can make a disclosure or seek advice about making a disclosure of wrongdoing through the Public Interest Disclosure Commissioner (PIDC), their chief executive, or their immediate supervisor.



Under the Act, it is prohibited for someone to take a reprisal against an employee who in good faith sought advice about or made a disclosure, co-operated in an investigation under the Act, or declined to participate in a wrongdoing.

The Act was brought into force on June 15, 2015. The Act's purposes are to:

- facilitate the disclosure and investigation of significant and serious matters in or relating to public entities that an employee believes may be unlawful, dangerous to the public or injurious to the public interest,
- protect employees who make those disclosures, and
- promote public confidence in the administration of public entities.

Section 55 of the Act requires that a review commence within five years of the Act coming into force. The Public Service Commission began this review in spring 2020 and has approached the review in two phases to ensure sufficient capacity and ample opportunity for stakeholder participation.

In April 2022, the Minister responsible for the Public Service Commission tabled [Review of the Public Interest Disclosure of Wrongdoing Act Interim Progress Report](#), outlining the findings of phase one, in the Yukon Legislative Assembly.

Phase two of the review began in fall 2022. Phase two involves two components:

- a survey of employees of public entities covered by the Act, which was completed in November 2022, and
- a formal request for feedback from public entities covered by the Act and other stakeholders.

Areas of interest for feedback

This discussion paper is part of phase two and is intended to support your organization in providing feedback on your experiences with the Act and potential improvements. The paper explores key areas of interest:

- 1.0 Whether the scope of the Act should be expanded.
- 2.0 Whether the model for making disclosures and complaints of reprisal under the Act supports the Act's purposes.

- 3.0 The disclosure of wrongdoing-related awareness, knowledge, experiences, and perceptions of employees of public entities.
- 4.0 The roles, responsibilities and experiences of stakeholders involved in receiving, addressing, investigating, and reporting the outcome of disclosures and complaints of reprisal under the Act, and the processes used by these stakeholders.
- 5.0 Whether the authorities provided to the PIDC in conducting investigations into disclosures and complaints of reprisal support the Act's purposes.

For each of the areas outlined above, this paper includes a brief description of the current status or practice under the Act; considerations from other jurisdictions, employee feedback, or other sources; and questions for your organization.

1.0 Scope of the Act

Whether the scope of the Act should be expanded.

1.1 Expand the employee definition

The Act defines employee as, an individual employed by, or an individual who has suffered a reprisal and has been terminated by, a public entity and includes a contract employee.

Employees of public entities can make, or seek advice about making, a disclosure of wrongdoing, and be protected from reprisal for doing so. A former employee who believes their employment was terminated in reprisal for engaging in disclosure-related activities while employed by a public entity is also eligible to make a reprisal complaint under the Act.

Expand the employee definition to include volunteers.

- The Centre for Free Expression indicates that whistleblower legislation could include volunteers or even clients.¹
- Volunteers that are under the supervision of a public entity could be included. This could include, for example, volunteers in long-term care homes and hospitals; firefighters overseen by the Fire Marshal's Office; and emergency medical services volunteers.

¹ The Centre for Free Expression. Toronto Metropolitan University. (2022). [Evaluation Criteria for Protection of Whistleblowers A guide for legislation and policy.](#)

- It could also include members of a board or committee that is overseen by a public entity.
- Ireland's *Protected Disclosures Act* applies to volunteers and board members who report concerns about wrongdoing in the course of their work.²

Discussion Question:

- 1.1 Should the Act be more exhaustive in including other groups besides employees that can make a disclosure of wrongdoing or seek advice about a disclosure? If so, who?

1.2 Expand the public entities schedule

As mentioned above and set out by the Schedule in the Act, public entities that the Act applies to are:

- Government of Yukon departments, directorates, secretariats, or other similar executive agencies,
- Workers' Safety and Compensation Board, Yukon Development Corporation, Yukon Energy Corporation, Yukon Hospital Corporation, Yukon Housing Corporation, and Yukon Liquor Corporation, and
- other specified public entities, which are Yukon University, the Legislative Assembly Office, Office of the Child and Youth Advocate, and Office of the Chief Electoral Officer.

Expand the public entities Schedule to include other entities, such as not-for-profits and municipalities.

- Manitoba's *Public Interest Disclosure (Whistleblower Protection) Act* and regulation includes publicly licensed childcare facilities and childcare centres, designated bodies that receive at least 50 percent of their funding from government, and municipalities identified by regulation.³

Discussion Question:

- 1.2 Should the Act be expanded to cover more organizations under the public entities Schedule?

² Government of Ireland. (2023). [Protected Disclosures Act: Information for Employers](#).

³ Government of Manitoba. (2007). [Public Interest Disclosure \(Whistleblower Protection\) Regulation](#).

2.0 Making disclosures and complaints of reprisal

Whether the model for making disclosures and complaints of reprisal under the Act supports the Act's purposes.

2.1 Anonymous disclosures

The Act does not allow for anonymous disclosures. The Act contains a general requirement for the PIDC and those employed by the PIDC to maintain confidentiality in respect of all matters that come to their knowledge in the performance of duties under the Act. The Act also requires any disclosure procedures established by a chief executive to include procedures for protecting the identity of individuals involved in the disclosure process.

Allow anonymous disclosures and requests for advice.

- Alberta's *Public Interest Disclosure (Whistleblower Protection) Act* allows for anonymous disclosures to the commissioner.⁴
- British Columbia's *Public Interest Disclosure Act* allows for anonymous disclosures and for advice to be sought anonymously.⁵

Discussion Question:

- 2.1 Should the Act allow people to disclose wrongdoings or seek advice about making a disclosure anonymously?

2.2 Expand reprisal protections

The Act defines reprisal as any of the following measures taken against an employee because the employee has in good faith sought advice about making a disclosure, made a disclosure, cooperated in an investigation under the Act or declined to participate in a wrongdoing:

- disciplinary measure,
 - a demotion,
 - termination of employment,
 - any measure that adversely affects the employee's employment or working conditions,
- or

⁴ Government of Alberta. (2012). [Public Interest Disclosure \(Whistleblower Protection\) Act](#).

⁵ Government of British Columbia. (2018). [Public Interest Disclosure Act](#).

- a threat to take any of the measures referred to in paragraphs (a) to (d).

The Act also sets out that a person must not take reprisal against an employee or direct that one be taken against an employee because the employee, has in good faith,

- sought advice about making a disclosure from a supervisor, a designated officer or the PIDC,
- made a disclosure,
- co-operated in an investigation under the Act, or
- declined to participate in a wrongdoing.

Expand reprisal protections to prevent harassment to those who assist or have a professional or family relationship to an employee that in good faith sought advice about making a disclosure, made a disclosure, cooperated in an investigation under the Act or declined to participate in a wrongdoing.

- The Centre for Free Expression indicates that this could include:
 - an employee's immediate family such as a spouse and dependents, and
 - friends and colleagues perceived as allies of the whistleblower.⁶

Discussion Question:

2.2 Should the Act give expanded reprisal protections?

2.3 Expand time limits for reprisal protection

The Act requires an employee who has suffered a reprisal to file a complaint within 90 days after the day which the employee knew the reprisal was taken.

Expand time limits for reprisal protection.

- Prince Edward Island's *Public Interest Disclosure and Whistleblower Protection Act* allows for year long period for reprisal complaints.⁷

Discussion Question:

2.3 Should the Act expand time limits for reprisal protection?

⁶ The Centre for Free Expression. Toronto Metropolitan University. (2022). [Evaluation Criteria for Protection of Whistleblowers A guide for legislation and policy.](#)

⁷ Government of Prince Edward Island. (2021). [Public Interest Disclosure and Whistleblower Protection Act.](#)

3.0 Awareness, knowledge, and perceptions

The roles, responsibilities and experiences of stakeholders involved in receiving, addressing, investigating, and reporting the outcome of disclosures and complaints of reprisal under the Act, and the processes used by these stakeholders.

3.1 Expand communication and education

The Act requires chief executives to ensure that information about the Act and any disclosure procedures (if they have been established by a public entity) are widely communicated to the employees of the public entity. A chief executive is the head of a public entity as set out by the public entities Schedule. The Act does not require any mandatory training.

Expand communication and education to require chief executives to communicate information about the Act on an annual basis and/or require mandatory training.

- Manitoba's *Public Interest Disclosure (Whistleblower Protection) Act* was amended in 2018 to require chief executives to communicate to employees about the Act on an annual basis.⁸
- The Centre for Free Expression indicates that training and awareness are important in the protection and assistance of an individual making a disclosure.⁹
- A mandatory training approach could resemble similar approaches that are applicable to the Yukon government such as Workplace Hazardous Materials Information System (WHMIS) or Access to Information and Protection of Privacy (ATIPP) training.

Discussion Questions:

- 3.1.1 Should chief executives be required to communicate information about the Act on an annual basis?
- 3.1.2 Should mandatory training be required?

⁸ Government of Manitoba. (2018). [Recent Amendments to The Public Interest Disclosure \(Whistleblower Protection\) Act](#).

⁹ The Centre for Free Expression. Toronto Metropolitan University. (2022). [Evaluation Criteria for Protection of Whistleblowers A guide for legislation and policy](#).

4.0 Roles, responsibilities and experiences of stakeholders

The roles, responsibilities and experiences of stakeholders involved in receiving, addressing, investigating, and reporting the outcome of disclosures and complaints of reprisal under the Act, and the processes used by these stakeholders.

4.1 Chief executive roles and responsibilities in establishing procedures

The Act allows for a chief executive of a public entity to establish procedures specific to that public entity that the chief executive is responsible for. These procedures pertain to:

- the designation of a senior official to be the designated officer to receive and deal with disclosures by employees of the public entity,
- investigating disclosures that ensure the right to natural justice and procedural fairness,
- procedures for respecting the confidentiality of information,
- procedures for protecting the identity of individuals involved in the disclosure process, and
- for reporting outcomes.

If a chief executive establishes their own procedures in the responsible public entity, the chief executive must provide a copy of the proposed procedures or the proposed amendments to the PIDC for comment prior to establishing the procedures or amending them. In comparison, the PIDC's procedures for the above listed points stem from the [Ombudsman Act](#) and the Act itself. The public entity's procedures may not be as robust as compared to the PIDC. If an employee of a public entity with its own established procedures is unsatisfied with the public entities' outcome of an investigation, the PIDC may investigate. Most public entities have not established their own procedures to date.

In 2019, [Guidelines to Disclosing Wrongdoing](#) under the Act were established for the Yukon government to help supervisors and chief executives be aware of their respective roles and responsibilities when receiving a disclosure of wrongdoing or a request for advice about making a disclosure of wrongdoing. These guidelines apply to all Yukon government employees hired under the *Public Service Act* or the *Education Act*, but are not procedures as described in the Act.

Establish common procedures across public entities as related to the above points, through legislation, regulation, or a directive. Common procedures could apply only to Yukon government departments or to all public entities.

- Ontario's Disclosure of Wrongdoing Directive sets out internal disclosures processes as related to:
 - receiving disclosures,
 - addressing disclosures,
 - reporting to the discloser/alleged wrongdoer, and
 - responsibilities of those involved.¹⁰
- Similar to Ontario, Nova Scotia's Public Interest Disclosure of Wrongdoing Regulations sets out internal disclosures procedures as related to:
 - assessment of disclosure by designated officer,
 - investigation of disclosure by a designated officer, and
 - information to be provided to employee and alleged wrongdoer.¹¹

Discussion Questions:

4.1.1 Should a common set of procedures for all Yukon government departments be established?

4.1.2 Should a common set of procedures for all public entities be established?

4.2 Timelines for the assessment and investigation of a disclosure

The Act does not prescribe timelines for the assessment and investigation of a disclosure.

Prescribe timelines for the assessment and investigation of a disclosure. This could apply to only internal procedures as established by a chief executive, or to the PIDC or to both.

- Nova Scotia's Public Interest Disclosure of Wrongdoing Regulations prescribes timelines for the assessment and investigation of a disclosure.

¹⁰ Government of Ontario. (2015). [Disclosure of Wrongdoing Directive](#).

¹¹ Government of Nova Scotia. (2011). [Public Interest Disclosure of Wrongdoing Regulations](#).

- A designated officer is required to determine if a disclosure meets specific thresholds of being a disclosure no longer than the 20th working day of receiving the disclosure.
- A designated officer is required to complete the investigation no later than the 60th working day after the investigation began, unless both the employee who made the disclosure and the designated officer agree to extend the deadline.¹²
- Similar to Nova Scotia, Alberta's Public Interest Disclosure (Whistleblower Protection) Regulation prescribes timelines.
 - A disclosure of wrongdoing must be acknowledged not more than 5 business days from the date which it was received.
 - Not more than 20 days from the date which the disclosure was received, a decision whether to investigate must be made.
 - An investigation must be concluded not more than 120 business days from the date the disclosure was received.
- A deputy head and the public interest commissioner may extend timelines.¹³

Discussion Question:

- 4.2 Should timelines for assessing and investigating a disclosure be prescribed?

4.3 Reporting, performance measures and evaluation

The Act requires annual reporting from both a chief executive and the PIDC.

A chief executive reports on:

- number of disclosures received, acted on and not acted on,
- number of complaints of reprisal received, acted on and not acted on, and
- number of investigations, description of any wrongdoings or reprisals should it have occurred and any corrective action.

¹² Government of Nova Scotia. (2011). [Public Interest Disclosure of Wrongdoing Regulations](#).

¹³ Government of Alberta. (2013). [Public Interest Disclosure \(Whistleblower Protection\) Regulation](#).

The PIDC reports on:

- number of general inquires,
- number of disclosures received, acted on and not acted on,
- number of complaints of reprisal received, acted on and not acted on,
- number of investigations commenced,
- number of recommendations made by the PIDC and if the public entity has complied,
- number and description of matters referred to arbitration,
- systematic issues that the PIDC believes may give rise to wrongdoings, and
- recommendations for improvement the PIDC considers appropriate.

The Act requires a review after five years of the Act coming into force. The review after five years is not a regularly occurring review.

Establish additional reporting requirements and/or performance measures system, and periodic evaluations or reviews.

- The Centre for Free Expression indicates that a performance measurement system could measure the effectiveness of a whistleblowing regime by measuring but not exclusive to:
 - awareness and trust,
 - user satisfaction with procedures or processes, and
 - processing times and backlogs of disclosures.¹⁴
- British Columbia's *Public Interest Disclosure Act* requires periodic reviews every five years.¹⁵

Discussion Questions:

4.3.1 Should the Act require additional reporting?

4.3.2 Should the Act require periodic evaluation and/or reviews?

¹⁴ The Centre for Free Expression. Toronto Metropolitan University. (2022). [Evaluation Criteria for Protection of Whistleblowers A guide for legislation and policy.](#)

¹⁵ Government of British Columbia. (2018). [Public Interest Disclosure Act](#)

5.0 Authorities provided to the PIDC

Whether the authorities provided to the PIDC in conducting investigations into disclosures and complaints of reprisal support the Act's purposes.

5.1 Review and approve internal procedures

As stated above, if a chief executive establishes their own procedures in the responsible public entity, the chief executive must provide a copy of the proposed procedures or the proposed amendments to the PIDC for comment prior to establishing the procedures. This may not be necessary if common procedures across public entities are established and utilized.

Expand the PIDC's authority to include the ability to review and approve internal procedures established by a public entity.

- Alberta's *Public Interest Disclosure (Whistleblower Protection) Act* allows the Commissioner to review and approve any procedures established by a chief officer that do not meet minimum statutory requirements to manage and investigate disclosures.¹⁶

Discussion Question:

- 5.1 Should the PIDC be able to review and approve public entities' internal procedures?

5.2 Authorities provided for investigation

Concerns have been identified in relation to the PIDC's authorities in conducting investigations into disclosures and complaints of reprisal. Such authorities may or may not fulfill the Act's purpose.

The PIDC's authorities stem from several provisions of the [Ombudsman Act](#). These provisions are:

- section 10 (Confidentiality),
- paragraph 12(1)(b) and subsection 12(3) (Jurisdiction of Ombudsman),
- section 16 (Power to obtain information),
- section 18 (Executive Council proceedings),

¹⁶ Government of Alberta. (2012). [Public Interest Disclosure \(Whistleblower Protection\) Act](#).

- subsection 19(1) (Application of other laws respecting disclosure),
- section 20 (Privileged information),
- section 21 (Witness and information expenses),
- section 27 (No hearing as of right),
- section 28 (Ombudsman not subject to review),
- section 29 (Proceedings privileged), and
- section 30 (Delegation of powers).

Establish separate and distinct authorities for wrongdoing and reprisal investigations. Such authorities would be adapted to support the Act's purpose as a separate regime that differs from the Ombudsman Act.

- Many jurisdictions across Canada rely on ombud legislation for investigative authorities.

Discussion Questions:

5.2.1 Should the Act contain separate and distinct authorities for the PIDC?

5.2.2 What could separate and distinct authorities look like?

Conclusion

The Public Service Commission values the time that you and your organization have taken to examine this discussion paper and provide important feedback on potential improvements to the Act. Information and feedback collected from this process will be used to formulate recommendations for improving the Act. If you have feedback on any other elements of the Act that are not noted in this discussion paper, please feel free to indicate so in your response.