

# Act Highlights

## Purposes of the Public Interest Disclosure of Wrongdoing Act (PIDWA) are to:

1. 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**;
2. Protect employees who make those disclosures; and
3. Promote public confidence in the administration of public entities.

## PIDWA applies to:

Employees of the public entities listed below can make a wrongdoing disclosure under the Act and receive reprisal protection for doing so. This includes contract employees.

A former employee who believes they were fired from their job in reprisal for seeking advice about or making a wrongdoing disclosure, cooperating in an investigation under the Act, or for declining to participate in a wrongdoing, can also make a reprisal complaint.

Each of the following public entities is considered a separate and distinct organization, for the purposes of the Act:

- a department, directorate, secretariat or other similar executive agency of the Government of Yukon
- The Legislative Assembly Office
- The Office of the Chief Electoral Officer
- The Office of the Child and Youth Advocate
- Workers' Compensation Health and Safety Board
- Yukon College
- Yukon Development Corporation
- Yukon Energy Corporation
- Yukon Hospital Corporation
- Yukon Housing Corporation
- Yukon Liquor Corporation

## Public Interest Disclosure Commissioner

The Act establishes the office of a Public Interest Disclosure Commissioner (PIDC). Unless another person is appointed according to the process laid out in the Act, the Yukon's Ombudsman is the PIDC.

## Wrongdoing is:

- Breaking a Yukon or federal law;
- Doing something that creates a substantial and specific danger to people or to the environment – or creating that kind of danger by not doing something;
- Gross mismanagement of public funds or assets; or
- Knowingly directing or counselling someone to do any of these things.

An employee who commits a wrongdoing can be disciplined, up to and including dismissal. This is in addition to and apart from any penalty provided for by law.

## Disclosure procedures

A chief executive of a public entity can establish formal procedures to manage disclosures. The Act sets out basic criteria that such procedures must address. The proposed procedures must be provided to the PIDC for review prior to implementation. A copy of the final procedures must be provided to the PIDC.

If such procedures are established, the chief executive must widely communicate them to the organization's employees.

The PIDC's office will have its own procedures for dealing with disclosures received by that office.

## Asking for advice about or making a disclosure

An employee can seek advice about making a disclosure from, and can make a disclosure to: the PIDC, their chief executive, designated officer for their organization (identified in formal disclosure procedures, if established by the chief executive) or their immediate supervisor.

A person receiving a request for advice can require the request to be made in writing.

A disclosure can be about a wrongdoing already committed, or about to be committed.

The Act sets out minimum disclosure information criteria.

## Public disclosure

An employee can make a public disclosure if he/she reasonably believes that time is of the essence to prevent or mitigate an imminent, significant danger to people or the environment, and there is not enough time to make the disclosure through one of the regular channels.

Before going 'public', the employee must contact an appropriate law enforcement agency (e.g., RCMP), and is subject to any direction the agency considers necessary in the public interest.

The employee must subsequently disclose the matter to their immediate supervisor, designated officer (if applicable), or chief executive.

## Information that can be disclosed

Generally, information can be disclosed even if another Yukon law prohibits disclosure (or release) of some or all of the disclosure information, except for:

- Cabinet confidences, except as the *Access to Information and Protection of Privacy Act* permits under section 15(2);
- information protected by solicitor-client privilege; and,
- in the case of a public (i.e. emergency) disclosure, information that is restricted from disclosure under any federal or Yukon law.

If a disclosure involves personal or confidential information, the employee must make reasonable efforts to disclose only the information that is essential to make the disclosure.

## Obligation to report

An employee's obligation under any other Yukon law to disclose, report or give notice on any matter continues to apply even if the employee makes a related wrongdoing disclosure under this Act.

## Disclosure investigation

The PIDC is generally responsible for investigating disclosures received by that office. However, if an affected public entity has established formal internal procedures for dealing with disclosures, the PIDC cannot investigate unless the employee has first made the disclosure according to those internal procedures, and either:

- the employee is dissatisfied with the outcome of the entity's internal investigation; or
- the PIDC is of the view that the internal investigation has taken an unreasonable amount of time, in the circumstances.

An exception to the general rule that restricts the PIDC's ability to investigate applies if the disclosure involves (implicates) a public entity's chief executive or designated officer, or, given the employee's circumstances, the PIDC believes it would not be appropriate for the disclosure to be made or dealt with according to the public entity's disclosure procedures.

The PIDC has discretion to not investigate or to cease investigation of a disclosure on several grounds, detailed in subsection 20(1) of the Act. If the PIDC decides not to investigate or to cease an investigation, the PIDC will notify the employee and others the PIDC previously notified about the disclosure, and provide reasons for the decision.

The PIDC has broad investigative authority. At the conclusion of an investigation, the employee who made the disclosure will be provided such information as the PIDC believes is appropriate.

## Reprisal is:

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

- a disciplinary measure
- demotion
- termination of employment (fired)
- any measure that adversely affects the employee's employment or working conditions, or
- a threat to do any of these things.

## Making a complaint

An employee alleging reprisal can file a written complaint with the PIDC. The Act specifies certain minimum complaint information criteria. Generally, a complaint must be filed within 90 days.

An employee may also have some other process options, such as a grievance procedure under a collective agreement, for bringing forward a reprisal complaint.

The PIDC cannot investigate and must cease to investigate a complaint if the employee is or has engaged in another complaint-related process that is available to them.

The PIDC has discretion to not investigate or to cease an investigation if of the opinion that:

- the subject matter of the complaint has been dealt with or could more appropriately be dealt with, initially or completely, according to a procedure provided for under another Yukon or federal law, a collective agreement, employment agreement or employer policy;
- the complaint was not made in good faith; or
- there is other good reason not to proceed with an investigation.

## Complaint investigation

The PIDC has broad authority to investigate a complaint and can take any steps considered appropriate to try and resolve a complaint.

A proposed settlement on a remedy for a person who filed a complaint with the PIDC must be agreed upon by the affected employee and the person(s) in the affected entity who can implement it, before being deemed a 'settlement'.

At the conclusion of a PIDC investigation, the employee who made the complaint will be provided such information as the PIDC believes is appropriate.

A public entity will have 30 days to respond to the PIDC's findings and recommendations.

## Arbitration

If, following a PIDC investigation into a complaint of reprisal, the PIDC and the affected public entity do not agree either on a finding of reprisal or the remedy to be provided to a person the PIDC considers to have suffered a reprisal, either party can initiate a binding arbitration procedure to resolve the matter. The decisions of an arbitrator are final, although the Act does authorize an arbitrator to later amend his/her award if it is appropriate in the circumstances since making the award or if new information has come to light that merits award reconsideration.

## Annual disclosure and complaint reports

The Act obliges chief executives to make annual reports to their responsible Minister, and if applicable, to the Chair of the public entity's governing board. A copy must be provided to the PIDC.

The PIDC is also required to make Act-related annual reports. These must include information on activities by the PIDC office, as well as the information in the reports received from the various public entities.

## Special reports

The Act authorizes the PIDC to make special reports on any matter within the scope of the PIDC's responsibilities under the Act.

## Public reports

The PIDC's annual reports, and any PIDC special reports, must be provided to the Speaker of the Yukon Legislative Assembly for tabling in the Legislature within 15 days of receiving it, or, if the Assembly is not then sitting, within 15 days after the next sitting begins.

## Offences

It is an offence under the Act to:

- knowingly make a false or misleading statement when seeking advice about or making a disclosure, in making a reprisal complaint, or during an investigation or an arbitration under the Act;
- wilfully obstruct a person in the performance of a function or a duty under the Act;
- destroy, mutilate, falsify, or conceal a document or thing knowing it is likely to be relevant to an investigation or arbitration under the Act; or
- take a reprisal against a person (see 'Reprisal is').

A prosecution for an offence must be commenced within two years of commission of the alleged offence. Successful prosecution could result in a fine of up to \$10,000.

## **Act review**

The Minister responsible for the Act must begin a review of the Act within five years of the Act coming into force. The Minister must also table in the Legislature a progress report by the first anniversary of the day on which the review began, or if the Assembly is not then sitting, within 15 days after the next sitting begins.