

# Act Overview

**This 10-Part Act:**

- provides a mechanism for employees of Act-encompassed entities to legally disclose matters they believe may be unlawful, dangerous, or injurious to the public interest;
- offers reprisal protection to employees who: seek advice about or make a wrongdoing disclosure; co-operate in an investigation under the Act; or decline to participate in a wrongdoing;
- sets out various offences under the Act, including reprisal, and some possible consequences for employees who commit wrongdoing or reprisal; and
- sets out the reporting obligations of Act-encompassed entities and the Public Interest Disclosure Commissioner, and the means by which the public will be informed of activities under the Act.

The Public Interest Disclosure Commissioner (PIDC) is a new office established by the Act. The PIDC is responsible for investigating wrongdoing disclosures and complaints of reprisal received by that office. Unless another person is appointed according to the process set out in the Act, the Ombudsman will serve as PIDC.

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## Part 1: Interpretation

This Part establishes that the purposes of the Act 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.

It also defines key terms used in the Act.

A Schedule to the Act details all the organizations falling within the scope of the Act. The chief executive of each 'public entity' has Act-defined responsibilities. Employees of each 'public entity' can make a wrongdoing disclosure and receive reprisal protection under the Act.

## Part 2: Wrongdoings

This Part sets out the wrongdoings to which the Act applies:

- 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.

It also sets out that an employee who commits a wrongdoing is subject to appropriate discipline, up to and including dismissal. This is in addition to and apart from any penalty provided for by law.

## Part 3: Disclosure of Wrongdoing

Part 3 is comprised of 5 Divisions.

### Division 1 – Procedures for Disclosures:

- permits chief executives of the organizations (public entities) encompassed by the legislation to establish formal procedures to manage disclosures, and sets out the minimum content criteria that such procedures must address;
- requires proposed new or amended procedures to be reviewed by the Public Interest Disclosure Commissioner (PIDC) before they're implemented, and a copy of the final procedures to be provided to the PIDC; and
- requires chief executives to ensure wide information communication to their employees about the Act, and if applicable, the disclosure procedures put into place by the chief executive.

### Division 2 – Making a Disclosure:

- enables employees to seek advice about making a disclosure from their immediate supervisor, chief executive, designated officer for their organization (identified in formal disclosure procedures, if established by the chief executive), or the PIDC. Employees can also make a written disclosure to any of

these persons. A disclosure can be about an (alleged) wrongdoing that has already been committed, or one the employee believes is about to be committed. Section 11(1) sets out minimum disclosure information criteria;

- requires the PIDC to notify the applicable chief executive of a received disclosure that relates to the chief executive's organization. If the disclosure alleges wrongdoing by the chief executive, notice must also be given to the responsible Minister, and if applicable, the chair of the entity's governing board;
- enables a chief executive to refer an employee's disclosure to another public entity, if he/she believes it would be better dealt with by the other organization. If the matter is referred, the chief executive must notify the disclosing employee of the referral made;
- authorizes the PIDC, following receipt of a disclosure, to take any steps considered appropriate to help resolve the matter within the affected public entity;
- enables an employee to make a public disclosure of wrongdoing 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 (i.e. in writing, to their immediate supervisor, designated officer (if applicable), chief executive, or the PIDC). Before going 'public', an employee must contact an appropriate law enforcement agency, 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.

### **Division 3 – Information that may be disclosed:**

- generally authorizes employees to disclose information under this Act 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;
- obliges employees to make reasonable efforts to disclose only the information that is essential to make the disclosure, if it involves personal or confidential information.
- establishes that 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.

### **Division 4 – Investigation of Wrongdoings:**

- establishes that the purpose of a wrongdoing investigation by the PIDC is to:
  - ensure an affected organization knows about the allegation;
  - recommend corrective actions that should be taken; and
  - uphold the public interest in having any such matters appropriately addressed.
- establishes that 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 (as outlined in Division 1), 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;
  - grants the PIDC discretion to not investigate or to cease investigation of a disclosure if he/she believes that:
    - a procedure under another federal or Yukon law, collective agreement or employment agreement or policy could adequately deal with the matter, in whole or part;
    - the disclosure is frivolous or vexatious, was not made in good faith, or the subject matter is not serious enough to warrant PIDC investigation;
    - there is little to no value in pursuing the matter because too much time has passed;
    - the disclosure relates to a matter that results from a balanced and informed decision-making process on a public policy or operational issue;
    - insufficient disclosure information has been received to warrant or proceed with an investigation;or
    - there is some other good reason not to proceed with an investigation.
  - obliges the PIDC to give notice to a person who made a disclosure and others the PIDC previously notified about the same disclosure, if he/she decides not to investigate. The notice must give reasons for the decision;
  - authorizes the PIDC to investigate other suspected wrongdoings uncovered in the course of investigating an initial disclosure;
  - obliges the PIDC to give an affected public entity a reasonable opportunity to review and comment on the PIDC’s draft investigation findings report, before finalizing it.

#### **Division 5 – Investigation Report related to a Disclosure:**

- Obliges the PIDC to prepare a report after completing a disclosure investigation. It must include findings, and may include recommendations. A copy of the full report must be provided to the chief executive of the affected organization, and others the PIDC previously notified about the disclosure. The PIDC must also give report information to the person who made the disclosure, but only such information as the PIDC thinks is appropriate.
- Establishes the PIDC’s authority to:
  - request from an affected public entity information on the measures taken or that will be taken by the organization to deal with any report recommendations made by the PIDC; and

- make a report to the responsible Minister, and chair of a governing board (if applicable), if the PIDC believes the affected organization has not followed up on his/her recommendations, or did not cooperate in the investigation.

## **Part 4: Protection from Reprisal**

This Part is comprised of 5 Divisions.

### **Division 1 – Prohibition on Reprisal:**

- prohibits reprisal or directing that someone else reprise 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.

### **Division 2 – Making a Complaint:**

- enables an employee alleging reprisal against them to file a complaint with the PIDC. A complainant has 90 calendar days to file their complaint with the PIDC. However, the PIDC has discretion to accept a later complaint, depending on the employee's circumstances;
- obliges the PIDC to notify the affected entity's chief executive of the complaint. If the chief executive is alleged to have committed the reprisal, then notice must also be given to the responsible Minister, and the chair of the governing board, if applicable;
- establishes that existence of a procedure to make a complaint of reprisal under this Part does not disentitle and is not intended to disentitle an employee from commencing a procedure under another Yukon or federal Act, a collective agreement, an employment agreement or policy of the affected public entity;
- requires a complaint of reprisal to be made in writing, and sets out minimum information criteria.

### **Division 3 – Investigation of Complaint of Reprisal**

- establishes the PIDC's general responsibility for investigating complaints;
- precludes the PIDC from investigating, and obliges the PIDC to cease an investigation, if the employee is or has engaged in another complaint-related process available to them under Yukon or federal law, a collective agreement, employment agreement or policy of the public entity;
- grants the PIDC discretion to not investigate or to cease an investigation if the PIDC believes that:
  - a procedure in other Yukon or federal law, a collective agreement or employment agreement or policy of the affected public entity can adequately deal with the matter, in whole or part;
  - the complaint was not made in good faith; or
  - there is other good reason not to proceed with an investigation;
- obliges the PIDC to give notice to a person who filed a complaint and others the PIDC previously notified about the same disclosure, if he/she decides not to investigate. The notice must give reasons for the decision;
- authorizes the PIDC to take any steps considered appropriate to try and resolve the complaint;

- establishes that a proposed settlement on a remedy for a person who filed a reprisal complaint must be agreed upon by the affected employee as well as the person(s) in the affected entity who can implement the remedy, before being deemed a 'settlement';
- obliges the PIDC to give an affected public entity a reasonable opportunity to review and comment on the PIDC's draft investigation findings report, before finalizing it.

#### **Division 4 – Investigation Report related to a Complaint of Reprisal:**

- obliges the PIDC to prepare a report after completing a complaint investigation. It must include findings and reasons for findings, and may include recommendations. A copy of the full report must be provided to the chief executive of the affected public entity, and others the PIDC previously notified about the complaint. A copy of the report must be provided to the chief executive, and, if the chief executive was implicated in the complaint, to the responsible Minister, and if applicable, the chair of a governing board. The PIDC must also provide the complainant with such report information as the PIDC thinks is appropriate;
- authorizes the PIDC to make a report to the responsible Minister, and chair of a governing board (if applicable), if the PIDC believes the affected public entity did not co-operate in the investigation;
- obliges an affected public entity, within 30 days of receiving the PIDC's final investigation report, to respond in writing with its decision on whether it will follow any report recommendations. A copy of the response must be provided to the responsible Minister, and chair of a governing board (if applicable);
- obliges an entity who agrees to the recommendations to take action to implement them as quickly as possible;
- establishes that a public entity that does not provide the required response within the 30 days, is deemed to have decided not to follow the PIDC's recommendations.

#### **Division 5 – Arbitration:**

- enables an affected public entity or the PIDC to refer to arbitration either a finding of reprisal or the remedy to be provided to a person considered to have suffered a reprisal;
- enables the entity or the PIDC to give written notice (to the other party) proposing an arbitrator and requesting agreement on same, if they are unable to come to prior agreement on an arbitrator;
- enables the entity or the PIDC to refer the arbitrator-selection matter for Supreme Court judicial decision, if the parties cannot come to an agreement within 7 days of service of the above notice;
- authorizes a Supreme Court judge to make an order dealing with costs (except for arbitrator fees and expenses)
- sets out grounds for ineligibility to act as an arbitrator under the Act;
- empowers an arbitrator to set the arbitration procedures, with an obligation to give the PIDC, the affected employee, the alleged repriser(s), and the affected entity opportunity to present evidence and make submissions;
- establishes the powers of the arbitrator;
- obliges an arbitrator to make an arbitral award, containing a summary of the representations made to him/her, the award, and the reasons for the award;

- sets out the range of remedies that could be awarded by the arbitrator;
- establishes that an arbitral award is binding on all affected parties and the arbitrator’s authority to determine the effective date of any award;
- obliges an affected public entity to act as soon as reasonable possible to give effect to an arbitral award;
- empowers the arbitrator to amend, alter or vary a provision of an arbitral award, following application by any of the parties who presented evidence or made submissions under the arbitration process, if he/she believes it is appropriate in the circumstances since making the award or if new information has come to light that merits award reconsideration;
- establishes that the arbitrator’s fees and expenses are to be equally shared by the PIDC and the affected public entity.

## Part 5: Reports

- obliges chief executives to prepare annual reports to the responsible Minister, and chair of the governing board (if applicable), on wrongdoing disclosures received internally or complaints of reprisal received by the entity;
- sets out the minimum reporting criteria, including, where a finding of wrongdoing or reprisal was made, a description of same and any corrective actions taken, or reasons why no corrective action was taken;
- obliges a copy of the report to be provided to the PIDC;
- obliges the PIDC to prepare an annual report (similar to that required of public entities) on disclosure and complaints related activity by that office, with some additional reporting criteria and some optional reporting items;
- requires inclusion in the PIDC’s report annual report information received from public entities;
- authorizes the PIDC to make special reports;
- requires the PIDC’s annual and special reports to be provided to the Speaker for tabling in the Yukon Legislative Assembly within 15 days of receipt or, if the Assembly is not then sitting, within 15 days after the next sitting begins.

## Part 6: Public Interest Disclosure Commissioner (PIDC)

- establishes the office of the PIDC, who shall be the Ombudsman, unless another person is appointed according to the process laid out in this Part;
- deals with the particulars of supply, payment and accounting of monies for applicable staff and expenses;
- establishes various provisions of the Ombudsman Act that will apply, with any necessary changes, should a person other than the Ombudsman be appointed to the office of PIDC;
- in relation to a wrongdoing disclosure or reprisal complaint investigation, grants the PIDC the powers of a board of inquiry under the Public Inquiries Act, and establishes the provisions of the Ombudsman Act that will apply to the conduct of any such investigations, with any necessary changes;
- obliges the PIDC to conduct investigations as informally and expeditiously as possible, and to ensure the right to natural justice and procedural fairness of all individuals involved in an investigation is respected;

- enables the Legislative Assembly or any of its committees to refer a matter to the PIDC for investigation and report, and requires the PIDC, subject to any special direction, to investigate the matter, with discretion to the PIDC to report back as he/she deems fit.

## Part 7: Offences and Penalties

- prohibits and makes it an offence to:
  - knowingly make a false or misleading statement when seeking advice about a disclosure, making a disclosure or complaint of reprisal, or during an investigation or an arbitration;
  - wilfully obstruct another person in their performance of a function or duty under this Act;
  - destroy, alter, falsify, or conceal a document or thing, or direct or counsel anyone else to do such, knowing that the document or thing is likely to be relevant to an investigation under the Act;
- makes reprisal an offence;
- establishes that on summary conviction, a maximum \$10,000 fine could be levied against an offender;
- sets a two-year time limit to initiate prosecution of an offence.

## Part 8: Miscellaneous

- authorizes a public entity to collect and use personal information for the purposes of the Act;
- authorizes a person or public entity to disclose information to the PIDC or to a public entity if it's salient to an investigation under the Act;
- protects from liability a supervisor, designated officer, chief executive, the PIDC, and an arbitrator, and any person acting on their behalf or direction, for doing or not doing something in good faith, in relation to their performance of a function or duty under or exercise of a power under the Act;
- requires a Ministerial-scoped Act review to be initiated within five years of the Act coming into force, and for Ministerial tabling in the Yukon Legislative Assembly of a review progress report on or before the first anniversary of the date when the review started, or if the Assembly is not then sitting, within 15 days after the next Session begins.

## Part 9: Regulations

This Part sets out regulation-making powers under the Act.

## Part 10: Commencement

This Part enables the Act or any provision of it to come into force when the Commissioner in Executive Council decides.