

This Act is current to February 22, 2023

See the [Tables of Legislative Changes](#) for this Act's legislative history, including any changes not in force.

PUBLIC INTEREST DISCLOSURE ACT

[SBC 2018] CHAPTER 22

Assented to May 17, 2018

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Part 1 — Interpretation and Application

Definitions

1 In this Act:

"advice" means advice that may be requested in respect of making a disclosure or a complaint about a reprisal under this Act;

"chief executive" means,

- (a) in respect of a ministry, the deputy minister of the ministry,
- (b) in respect of a government body, the head of the government body, and
- (c) in respect of an office, the relevant officer of the Legislature;

"designated officer" means a senior official designated under section 10 [*designated officer*] to receive requests for advice and receive and investigate disclosures under this Act;

"discloser" means an employee who requests advice or makes a disclosure or a complaint about a reprisal under this Act;

"disclosure" means a disclosure of wrongdoing made by a discloser in accordance with this Act;

"employee" means

- (a) an employee of a ministry, government body or office, and includes a person appointed under section 15 [*appointment by Lieutenant Governor in Council*] of the [Public Service Act](#), or
- (b) a member of a class of persons prescribed by regulation;

"government body" means an organization designated by regulation as a government body for the purposes of this Act;

"head" means, in respect of a government body, the person designated by regulation as the head of the government body;

"ministry" means a ministry of the government;

"office" means

- (a) the office of the Auditor General,
- (b) the office of the Chief Electoral Officer,
- (b.1) the office of the Human Rights Commissioner,
- (c) the office of the Information and Privacy Commissioner,
- (d) the office of the merit commissioner,
- (e) the office of the police complaint commissioner,
- (f) the office of the registrar appointed under the [Lobbyists Transparency Act](#),
- (g) the office of the Representative for Children and Youth, or
- (h) the office of the Ombudsperson;

"Ombudsperson" means the Ombudsperson appointed under the [Ombudsperson Act](#);

"personal information" has the same meaning as in the [Freedom of Information and Protection of Privacy Act](#);

"**police force**" has the same meaning as in section 1.1 (a) to (c) [*police forces in British Columbia*] of the *Police Act*;

"**provincial health officer**" has the same meaning as in the *Public Health Act*;

"**record**" has the same meaning as in the *Freedom of Information and Protection of Privacy Act*;

"**reprisal**" means a measure referred to in section 31 (1) (a) to (e) [*protection of employee from reprisals*];

"**wrongdoing**" means a wrongdoing referred to in section 7 (1) (a) to (e) [*wrongdoings and reporting of offences*].

Interpretation

2 For the purposes of this Act,

- (a) an employee includes
 - (i) a director or an officer, in respect of a government body, and
 - (ii) a former employee, if a wrongdoing occurred or was discovered when the employee was employed by the ministry, government body or office, as applicable, and
- (b) a provision that applies to the office of the Ombudsperson as an "office" does not limit or affect the Ombudsperson's authority or obligations under this Act.

Relationship of Act to other Acts

3 (1) If, in respect of a prohibition from disclosing information, a provision of this Act is inconsistent or in conflict with a provision of another enactment, the provision of this Act prevails, in respect of the prohibition from disclosing information,

- (a) unless another Act expressly provides that it, or a provision of it, applies despite this Act, or
- (b) unless otherwise provided by regulation.

(2) For certainty, this Act does not affect the protection provided under any other enactment to a person who lawfully discloses information, including under the following:

- (a) the *Child, Family and Community Service Act*;
- (b) the *E-Health (Personal Health Information Access and Protection of Privacy) Act*;
- (c) the *Employment Standards Act*;
- (d) the *Financial Administration Act*;
- (e) the *Forest and Range Practices Act*;
- (f) the *Freedom of Information and Protection of Privacy Act*;
- (g) the *Human Rights Code*;

- (h) the *Laboratory Services Act*;
 - (i) the *Labour Relations Code*;
 - (j) the *Ombudsperson Act*;
 - (k) the *Pharmaceutical Services Act*;
 - (l) the *Wildfire Act*;
 - (m) the *Workers Compensation Act*.
- (3) The following sections of the *Ombudsperson Act* apply, with necessary modifications, to the conduct of an investigation by the Ombudsperson under this Act:
- (a) section 9 [*confidentiality*];
 - (b) section 11 (3) [*jurisdiction of Ombudsperson*];
 - (c) section 15 [*power to obtain information*];
 - (d) section 17 [*opportunity to make representations*];
 - (e) section 18 [*Attorney General may restrict investigative powers*];
 - (f) section 19 (1) [*application of other laws respecting disclosure*];
 - (g) section 20 [*privileged information*];
 - (h) section 27 [*no hearing as of right*].
- (4) The following sections of the *Ombudsperson Act* apply, with necessary modifications, in respect of all of the duties, powers or functions of the Ombudsperson under this Act:
- (a) section 28 [*Ombudsperson not subject to review*];
 - (b) section 30 [*delegation of powers*].

Part 2 — Governance

Division 1 — General

Information about Act to be communicated

- 4 Every chief executive must ensure that the following information is made available to the employees of the ministry, government body or office for which the chief executive is responsible:
- (a) information about this Act;
 - (b) information about how to request advice or make a disclosure or a complaint about a reprisal under this Act;
 - (c) any other prescribed information.

Unauthorized release of information

- 5 (1) This Act does not authorize the release of the following information in a request for advice, a disclosure or a complaint about a reprisal made to the Ombudsperson or in

a report made by the Ombudsperson under this Act:

- (a) information that is protected by solicitor-client privilege;
 - (b) information that is protected by any common law rule of privilege.
- (2) This Act does not authorize the release of the following information in a disclosure to the public under section 16 [*matters involving imminent risk of danger*]:
- (a) information that is subject to any restriction under an enactment of British Columbia or Canada;
 - (b) information that is protected by solicitor-client privilege;
 - (c) information that is protected by any common law rule of privilege;
 - (d) information that is subject to public interest immunity.
- (3) Information that is subject to public interest immunity may be released
- (a) in a request for advice, a disclosure or a complaint about a reprisal made to the Ombudsperson, and
 - (b) in a report made under this Act, if the Attorney General confirms that the information may be released.

Personal information

- 6 (1) For the purposes of requesting advice or making a disclosure or a complaint about a reprisal, a discloser
- (a) may collect, use and disclose personal information, and
 - (b) must take reasonable precautions to ensure that no more information is collected, used or disclosed than is reasonably necessary to request advice or make the disclosure or the complaint about a reprisal.
- (2) Subject to subsection (3), a person who is authorized to receive requests for advice and provide advice or to receive or investigate disclosures or complaints about reprisals under this Act may collect, use and disclose personal information for the purposes of this Act if the personal information
- (a) is included with a request for advice, a disclosure or a complaint about a reprisal, or
 - (b) is for the purposes of an investigation or a report.
- (3) A person who is authorized as described under subsection (2) must not disclose personal information about a discloser to a person other than the discloser if that information is likely to enable the identification of the discloser as a person who has requested advice or made a disclosure or a complaint about a reprisal.
- (4) Subsection (3) does not apply if one or more of the following applies:
- (a) the provision or use of the personal information is for the purposes of this Act;

- (b) the provision or use of the personal information is in connection with the performance of a function of the Ombudsperson, or to follow up on a recommendation of the Ombudsperson, under this Act;
- (c) the provision or use of the personal information is in connection with another lawful purpose;
- (d) the discloser has consented, in writing, to the release or use of the personal information;
- (e) the personal information has previously been lawfully published.

Division 2 — Wrongdoings

Wrongdoings and reporting of offences

- 7** (1) This Act applies to the following wrongdoings in or relating to a ministry, government body or office, including wrongdoings that occurred before the coming into force of this Act:
- (a) a serious act or omission that, if proven, would constitute an offence under an enactment of British Columbia or Canada;
 - (b) an act or omission that creates a substantial and specific danger to the life, health or safety of persons, or to the environment, other than a danger that is inherent in the performance of an employee's duties or functions;
 - (c) a serious misuse of public funds or public assets;
 - (d) gross or systemic mismanagement;
 - (e) knowingly directing or counselling a person to commit a wrongdoing described in paragraphs (a) to (d).
- (2) If a chief executive, a designated officer or, in relation to a request for advice, a disclosure or a complaint about a reprisal under this Act, the Ombudsperson has reason to believe that an offence has been committed under an enactment of British Columbia or Canada, that person or a delegate may report the alleged offence to a law enforcement agency.

Consequences of wrongdoing not limited

- 8** (1) This Act is not to be construed as limiting employment consequences that apply to an employee who commits a wrongdoing.
- (2) For certainty, if a discloser's request for advice, disclosure or complaint about a reprisal under this Act relates to the discloser's own conduct in respect of a wrongdoing, the discloser remains liable for the conduct.

Division 3 — Procedures for Disclosures Within Ministries, Government Bodies and Offices

Procedures

- 9 (1) Subject to the regulations, every chief executive must establish procedures to manage requests for advice and disclosures by employees of the ministry, government body or office for which the chief executive is responsible.
- (2) The procedures established under subsection (1) must include procedures in respect of the following:
- (a) assessing risks that reprisals may be taken against disclosers;
 - (b) receiving and reviewing requests for advice and disclosures and, in respect of the requests for advice and disclosures, setting time periods for action to be taken;
 - (c) ensuring the confidentiality of information collected in relation to requests for advice, disclosures and investigations;
 - (d) providing that personal information collected and used
 - (i) is limited to the personal information required for investigations of disclosures and the process for
 - (A) requests for advice, or
 - (B) disclosures, and
 - (ii) is protected in accordance with applicable rules or principles for the protection of personal information;
 - (e) protecting the identity of persons involved in requests for advice, disclosures and investigations, subject to any other Act;
 - (f) referring the subject matter of the disclosure to another appropriate authority if that authority has jurisdiction in respect of the disclosure;
 - (g) investigating disclosures in accordance with section 17 and consistent with the following:
 - (i) section 21 *[notifications]*;
 - (ii) section 22 *[circumstances for refusing or stopping investigation]*;
 - (iii) section 23 *[circumstances for postponing or suspending investigation]*;
 - (h) investigating other wrongdoings that may arise in the course of an investigation of the disclosure;
 - (i) reporting the outcomes of investigations, including the following:
 - (i) a finding of wrongdoing, if any;
 - (ii) reasons to support the finding of wrongdoing;
 - (iii) any recommendations to address the finding;
 - (j) ensuring that an appropriate summary of the report is provided to disclosers and any other appropriate persons;
 - (k) any other procedural matter prescribed by regulation.

Designated officer

- 10** (1) For the purposes of this Act, every chief executive must designate at least one senior official to be a designated officer to receive requests for advice and receive and investigate disclosures by employees in the ministry, government body or office for which the chief executive is responsible.
- (2) Section 9 and subsection (1) of this section do not apply to a chief executive who determines, after consultation with the Ombudsperson, that it is not practical to apply those provisions due to the size of the ministry, government body or office for which the chief executive is responsible.
- (3) If no designation is made under subsection (1), the chief executive is the designated officer to receive requests for advice and receive and investigate disclosures by employees in the ministry, government body or office for which the chief executive is responsible.
- (4) For certainty, different senior officials may be designated by a chief executive under subsection (1) for
- (a) receiving requests for advice,
 - (b) receiving disclosures, and
 - (c) investigating disclosures.

Part 3 — Making Disclosures

Request for advice

- 11** (1) An employee who is considering making a disclosure may request and receive advice from
- (a) the employee's union representative or employee association representative, as applicable,
 - (b) a lawyer,
 - (c) the employee's supervisor,
 - (d) a designated officer of the relevant ministry, government body or office in respect of the employee, or
 - (e) the Ombudsperson.
- (2) The supervisor, designated officer or Ombudsperson may require that the request for advice under subsection (1) (c), (d) or (e), as applicable, be in writing.

Making disclosure to supervisor, designated officer or Ombudsperson

- 12** (1) If a discloser reasonably believes that he or she has information that could show that a wrongdoing has been committed or is about to be committed, the discloser, in good faith, may make a disclosure to any or all of the following:
- (a) subject to subsection (2), the discloser's supervisor;

(b) the designated officer of the relevant ministry, government body or office in respect of the discloser;

(c) the Ombudsperson.

(2) The supervisor must provide the disclosure to the designated officer of the relevant ministry, government body or office.

Disclosures to Auditor General by office of the Ombudsperson employees

13 (1) A discloser may request and receive advice from, or make a disclosure to, the Auditor General instead of the Ombudsperson if

(a) the discloser is an employee of the office of the Ombudsperson, and

(b) the advice or the disclosure relates to the office of the Ombudsperson.

(2) If a discloser makes a request for advice or a disclosure to the Auditor General under this section, the Auditor General is to carry out the responsibilities of the Ombudsperson under this Act in relation to the discloser and the request for advice or the disclosure.

(3) The Auditor General is to make a report in respect of activities under this section as if the Auditor General were reporting as the Ombudsperson under section 40 [*annual, special or urgent reports and public comments — Ombudsperson*].

Anonymous disclosure

14 (1) A request for advice or a disclosure may be made anonymously.

(2) Subject to subsection (3), an anonymous discloser need not be notified under the following sections:

(a) section 19 [*investigations of disclosures within ministries, government bodies or offices*];

(b) section 21 [*notifications*];

(c) section 23 [*circumstances for postponing or suspending investigation*];

(d) section 24 [*referral of matter*].

(3) If an anonymous discloser provides contact information, notification may be sent to the discloser at the discretion of a designated officer or the Ombudsperson, as applicable.

Content of disclosure

15 A disclosure made under this Part must be in writing and must include the following information, if known:

(a) a description of the wrongdoing;

(b) the name of the person alleged

(i) to have committed the wrongdoing, or

(ii) to be about to commit the wrongdoing;

- (c) the date of the wrongdoing;
- (d) whether information or conduct that is being disclosed relates to an obligation under another enactment and, if so, a reference to the enactment;
- (e) whether the wrongdoing has already been disclosed under this Act or another enactment;
- (f) if paragraph (e) applies, the name of the person to whom the disclosure was made and the response, if any, that has been received.

Matters involving imminent risk of danger

16 (1) In this section, "**protection official**" means,

- (a) in respect of a health-related matter, the provincial health officer,
- (b) in respect of an environmental matter, the agency responsible for the *Emergency Program Act*, or
- (c) in any other case, an appropriate police force.

(2) If an employee reasonably believes that a matter constitutes an imminent risk of a substantial and specific danger to the life, health or safety of persons, or to the environment, the employee, subject to subsection (4), may make a disclosure to the public if the employee

- (a) consults a relevant protection official before making the disclosure,
- (b) receives direction from the protection official, and
- (c) makes the disclosure to the public in accordance with the following:
 - (i) the direction received under paragraph (b);
 - (ii) sections 5 [*unauthorized release of information*] and 6 [*personal information*].

(3) Immediately after a disclosure is made under subsection (2), the discloser must

- (a) advise the discloser's supervisor or designated officer about the disclosure to the public, and
- (b) make the disclosure in accordance with sections 12 [*making disclosure to supervisor, designated officer or Ombudsperson*] and 15 of this Act.

(4) If the direction from the protection official under subsection (2) (b) is that the employee should not make a public disclosure, the employee must not make the disclosure to the public.

(5) If, as a result of receiving information under this Act, a designated officer or the Ombudsperson reasonably believes that a matter constitutes an imminent risk of a substantial and specific danger to the life, health or safety of persons, or to the environment, the designated officer or the Ombudsperson may report the information to a relevant protection official.

- (6) A protection official may communicate with another protection official about disclosures or information provided or any direction given under this section, in respect of an imminent risk, to ensure that the protection officials may exercise their lawful duties, powers and functions in respect of the risk.

Part 4 — Investigations

Division 1 — General

Carrying out investigations

- 17 Every person involved in receiving, reviewing and investigating disclosures must carry out those functions in an expeditious, fair and proportionate manner as appropriate in the circumstances.

Other investigations

- 18 (1) A designated officer or the Ombudsperson may require that an investigation by a ministry, government body or office, other than an investigation of a disclosure under this Act, be postponed or suspended if, in the absence of evidence to the contrary, there is prima facie evidence that the investigation was undertaken with an intention to compromise an investigation of a disclosure under this Act.
- (2) The powers under this section do not limit the authority of a ministry, government body or office to undertake other investigations.

Division 2 — Investigations and Reports by Ministries, Government Bodies or Offices

Investigations of disclosures within ministries, government bodies or offices

- 19 (1) A designated officer of a ministry, government body or office is responsible for investigating disclosures that the designated officer receives after receiving
- (a) a disclosure from a discloser under Part 3 [*Making Disclosures*], or
 - (b) a referral from
 - (i) another ministry, government body or office, or
 - (ii) the Ombudsperson.
- (2) A designated officer is to investigate disclosures
- (a) in accordance with the procedures established under section 9 [*procedures to manage disclosures*], or
 - (b) in consultation with the Ombudsperson, in the case of a ministry, government body or office described in section 10 (2) [*designated officer*].
- (3) Subject to subsection (4), a designated officer may
- (a) request assistance from the Ombudsperson for an investigation, or part of an investigation, or

(b) refer a disclosure, in whole or in part, to the Ombudsperson.

- (4) If a designated officer refers the disclosure to the Ombudsperson under subsection (3) (b), the designated officer must notify the discloser.

Division 3 — Investigations and Reports by Ombudsperson

Investigations by Ombudsperson

- 20** The Ombudsperson is responsible for investigating disclosures that he or she receives under this Act.

Notifications

- 21** (1) After receiving a disclosure from a discloser under Part 3 [*Making Disclosures*], the Ombudsperson is to notify the discloser of the decision to
- (a) begin an investigation of the disclosure, or
 - (b) refuse to investigate the disclosure under section 22.
- (2) After making the decision referred to in subsection (1) (a) to begin an investigation of the disclosure, the Ombudsperson is to notify the chief executive of the relevant ministry, government body or office, as applicable, of the decision.
- (3) The Ombudsperson may delay the notification of the chief executive under subsection (2) until an appropriate time if the Ombudsperson considers that the notification may
- (a) compromise an investigation, or
 - (b) expose the discloser to reprisals.
- (4) After beginning an investigation, the Ombudsperson is to notify every person notified under subsections (1) (a) and (2) if an investigation will not be completed by the Ombudsperson, including in the event of circumstances referred to in section 22 (1) and (2).
- (5) If the Ombudsperson is to notify a person under subsection (2) or (4) and, in respect of the matter being investigated, the chief executive is alleged to be responsible for wrongdoing, the Ombudsperson must not notify the chief executive and instead, subject to subsection (3), must notify the following person, as applicable:
- (a) in the case of a ministry, the minister responsible;
 - (b) in the case of a government body,
 - (i) the chair of the board of directors, or an executive officer or a person occupying a comparable position with respect to the government body, and
 - (ii) the minister responsible, if applicable;
 - (c) in the case of an office, the Speaker of the Legislative Assembly.

Circumstances for refusing or stopping investigation

- 22** (1) The Ombudsperson must refuse to investigate or must stop investigating a disclosure if the disclosure relates primarily to
- (a) a dispute between an employee and his or her employer respecting the employee's employment,
 - (b) a matter relating to
 - (i) law enforcement by members of a police force, or
 - (ii) conduct of members of a police force,
 - (c) a matter relating to the prosecution of an offence, or
 - (d) the exercise of an adjudicative function of a court, tribunal or other statutory decision maker, including a decision, or the processes or deliberations that have led to or may lead to a decision, by the court, tribunal or other statutory decision maker.
- (2) The Ombudsperson may refuse to investigate or may stop investigating a disclosure if the Ombudsperson believes that
- (a) the disclosure does not provide adequate particulars about the wrongdoing,
 - (b) the disclosure
 - (i) is frivolous or vexatious,
 - (ii) has not been made in good faith,
 - (iii) has not been made by a person entitled to disclose under this Act, or
 - (iv) does not deal with a wrongdoing,
 - (c) the investigation of the disclosure would serve no useful purpose or could not reasonably be conducted because of the length of time that has elapsed between the date when the subject matter of the disclosure arose and the date when the disclosure was made,
 - (d) the disclosure relates solely to a public policy decision,
 - (e) the disclosure relates primarily to a matter that is wholly referred under section 24,
 - (f) the disclosure is being, or has already been, appropriately investigated, including by a designated officer, or
 - (g) a prescribed reason to not investigate or to stop investigating the disclosure applies.

Circumstances for postponing or suspending investigation

- 23** (1) Subject to section 22 (1), the Ombudsperson may postpone or suspend an investigation if the Ombudsperson
- (a) reports, under section 7 (2) [*wrongdoings and reporting of offences*], an alleged offence identified during the investigation,
 - (b) considers that the investigation may compromise another investigation, or

(c) becomes aware that the alleged wrongdoing that is being investigated in respect of the disclosure is also being investigated for the prosecution of an offence.

(2) The Ombudsperson must notify every person notified under section 21 if an investigation is postponed or suspended under subsection (1) of this section unless the Ombudsperson is advised that the notification would compromise another investigation, including an investigation into an alleged offence.

Referral of matter

24 (1) The Ombudsperson may refer the disclosure if the Ombudsperson considers that the disclosure could more appropriately be investigated, in whole or in part, by

- (a) a designated officer, in accordance with Division 2 *[Investigations and Reports by Ministries, Government Bodies or Offices]* of Part 4 *[Investigations]*, or
- (b) the Auditor General, in respect of matters relating to the office of the Ombudsperson under this Act, where authority is granted to the Auditor General under section 13 *[disclosures to Auditor General by office of the Ombudsperson employees]*.

(2) The Ombudsperson, after consultation with and confirmation by the relevant office, may refer the disclosure if the Ombudsperson considers that the disclosure could more appropriately be investigated, in whole or in part, by an officer of the Legislature, in accordance with the relevant Act that grants authority to the relevant officer in a procedure under that Act, including, if applicable, by the Ombudsperson under the *Ombudsperson Act*.

(3) The Ombudsperson must notify every person notified under section 21 of this Act if the disclosure is referred under this section.

(4) If a disclosure is referred under subsection (2), the reprisal protections set out in Part 5 *[Protection From Reprisals]* of this Act continue to apply to the discloser.

Repealed

25 [Repealed 2021-11-16.]

Investigating other wrongdoings

26 If, during an investigation, the Ombudsperson reasonably believes that another wrongdoing has been committed, the Ombudsperson, subject to sections 7 *[wrongdoings and reporting of offences]*, 22 *[circumstances for refusing or stopping investigation]* and 23 *[circumstances for postponing or suspending investigation]*, may investigate that wrongdoing in accordance with this Part.

Ombudsperson's report on investigation

27 (1) Upon completing an investigation, the Ombudsperson must prepare a report containing his or her findings, whether or not the Ombudsperson has made a finding of wrongdoing.

- (2) A report under this section must be in writing and contain
 - (a) findings of wrongdoing, if any,
 - (b) reasons to support any findings, and
 - (c) any recommendations that the Ombudsperson considers appropriate.
- (3) The Ombudsperson must provide a copy of the report to the chief executive of the relevant ministry, government body or office.
- (3.1) Despite subsection (3), the Ombudsperson must not provide a copy of the report to the chief executive of the relevant ministry, government body or office if either of the following circumstances apply:
 - (a) the Ombudsperson was prohibited from notifying the chief executive in accordance with section 21 (5) [*notifications*];
 - (b) the report includes a finding that the chief executive was responsible for wrongdoing.
- (4) If a circumstance described in subsection (3.1) applies, the Ombudsperson must provide a copy of the report,
 - (a) in the case of a ministry, to the minister responsible,
 - (b) in the case of a government body, to
 - (i) the chair of the board of directors, or an executive officer or a person occupying a comparable position with respect to the government body, and
 - (ii) the minister responsible, if applicable, or
 - (c) in the case of an office, to the Speaker of the Legislative Assembly.
- (5) The Ombudsperson must provide, in a form that the Ombudsperson considers appropriate, a summary of the report
 - (a) to the discloser, and
 - (b) to any person alleged or found to be responsible for wrongdoing, if practicable.

Steps to follow up on recommendations

- 28** (1) If the Ombudsperson makes recommendations under section 27 (2) (c), the Ombudsperson may request that the ministry, government body or office notify him or her, within a time period of not less than 30 days, of the steps it has taken or proposes to take to follow up on the recommendations.
- (2) On request, the Ombudsperson may extend the time period for the notification under subsection (1), either before or after the expiry of the period.

Ombudsperson's report on recommendations or cooperation

- 29** If the Ombudsperson believes that the ministry, government body or office has not appropriately followed up on his or her recommendations, or did not appropriately

cooperate with the Ombudsperson's investigation under this Act, the Ombudsperson may make a report on the matter and provide the report,

- (a) in the case of a ministry, to the minister responsible,
- (b) in the case of a government body,
 - (i) to the chief executive, and
 - (ii) to the minister responsible, if applicable, or
- (c) in the case of an office, to the Speaker of the Legislative Assembly.

Special report on investigation, recommendations or cooperation

30 (1) If the Ombudsperson has made a report under section 27 or 29 and considers that it is in the public interest for a special report to be made on that section 27 or 29 report, as applicable, under section 40 [*annual, special or urgent reports and public comments — Ombudsperson*], the Ombudsperson must, at least 30 days before the Ombudsperson makes the special report, provide the proposed special report, with the proposed date that the special report will be made,

- (a) in the case of a ministry, to the chief executive and the minister responsible,
- (b) in the case of a government body, to the chief executive and, if applicable, the minister responsible, or
- (c) in the case of an office, to the chief executive.

(2) If a response to the special report is provided to the Ombudsperson at least 15 days before the proposed date that the special report will be made, the Ombudsperson must include the response with the special report.

Part 5 — Protection From Reprisals

Protection of employee from reprisals

31 (1) A person must not take any of the following measures of reprisal against an employee, or counsel or direct that any of the following measures of reprisal be taken against an employee, by reason that the employee has, in good faith, made a request for advice, a disclosure or a complaint about a reprisal or cooperated with an investigation under this Act:

- (a) a disciplinary measure;
- (b) a demotion;
- (c) a termination of employment;
- (d) any measure that adversely affects the employee's employment or working conditions;
- (e) a threat to take any of the measures referred to in paragraphs (a) to (d).

(2) In a prosecution for an offence against subsection (1), it is not necessary to prove that the employee

- (a) made, may have made or intended to make a request for advice, a disclosure or a complaint about a reprisal, or
 - (b) cooperated with an investigation.
- (3) A person does not contravene subsection (1) by taking, counselling or directing a measure referred to as a measure of reprisal in paragraphs (a) to (e) of that subsection if
- (a) the person has taken, counselled or directed the measure for the purpose of managing or terminating an employment relationship, and
 - (b) the management or termination of the employment relationship under paragraph (a) of this subsection was not by reason that the employee, in good faith, made a request for advice, a disclosure or a complaint about a reprisal or cooperated with an investigation under this Act.
- (4) An employee who is considering making a complaint about a reprisal may request and receive advice from
- (a) the employee's union representative or employee association representative, as applicable,
 - (b) a lawyer,
 - (c) the employee's supervisor,
 - (d) a designated officer of the relevant ministry, government body or office in respect of the employee, or
 - (e) the Ombudsperson.
- (5) The supervisor, designated officer or Ombudsperson may require that the request for advice under subsection (4) (c), (d) or (e), as applicable, be in writing.

Protection for person contracting with government

- 32** (1) A person acting or purporting to act on behalf of the government, a ministry, a government body or an office must not
- (a) terminate a contract or agreement,
 - (b) withhold a payment that is due and payable under a contract or agreement, or
 - (c) refuse to enter into a subsequent contract or agreement
- by reason that a party to the contract or agreement, or a person employed by a party to the contract or agreement, has, in good faith, cooperated with an investigation under this Act.
- (2) A person does not contravene subsection (1) by taking an action described in paragraphs (a) to (c) of that subsection if
- (a) the person has taken the action for the purpose of managing or terminating a contract or agreement, and

- (b) the management or termination of the contract or agreement under paragraph (a) of this subsection was not by reason that the party, or a person employed by the party, in good faith, cooperated with an investigation under this Act.

Complaint about reprisal

- 33** (1) Subject to subsection (2), an employee may make a complaint to the Ombudsperson if the employee alleges that a reprisal has been taken or directed against the employee.
- (2) An employee of the office of the Ombudsperson may make a complaint to the Auditor General if the employee alleges that a reprisal has been taken or directed against the employee.
- (3) If an employee of the office of the Ombudsperson makes a complaint to the Auditor General under subsection (2), the Auditor General is to carry out the responsibilities of the Ombudsperson under this Act in relation to the employee and the complaint.
- (4) The Auditor General is to make a report in respect of activities under this section as if the Auditor General were reporting as the Ombudsperson under section 40 [*annual, special or urgent reports and public comments — Ombudsperson*].

Content of complaint about reprisal

- 34** A complaint under this Part must be in writing and must include the following information, if known:
- (a) a description of the reprisal;
 - (b) the name of the person or persons alleged to be responsible for the reprisal;
 - (c) the date of the reprisal;
 - (d) whether the reprisal has already been reported, or a complaint has been made about the reprisal, under this Act, a collective agreement, a contract or another enactment;
 - (e) if paragraph (d) applies, the name of the person to whom the reprisal has been reported, or the complaint has been made, and the response, if any, that has been received.

Investigations of complaints about reprisals

- 35** (1) If a complaint is made under section 33, unless the Ombudsperson believes the complaint is frivolous or vexatious, the Ombudsperson must investigate and report with respect to the complaint in the same manner as a disclosure is investigated and reported under Division 3 [*Investigations and Reports by Ombudsperson*] of Part 4 [*Investigations*] and Part 6 [*Reporting and Public Comments*], except the following sections, which do not apply to the Ombudsperson's investigation under this Part:
- (a) section 22 (1) (a) [*circumstances for refusing or stopping investigation*];
 - (b) section 24 [*referral of matter*].

- (2) For the purposes of deciding whether to commence an investigation of a complaint made under section 33 (1), the description of the facts necessary to establish that a reprisal has been taken or directed against the employee are prima facie proof, in the absence of evidence to the contrary, of the facts stated.
- (3) Subject to subsection (4), the Ombudsperson may make recommendations to address the reprisal in a report on the investigation of a complaint made under section 33 (1) to the relevant ministry, government body or office.
- (4) If the Ombudsperson's recommendations in a report on an investigation relate specifically to individual employment matters in respect of any employee who was subject to a reprisal, the Ombudsperson must consult the employee before making recommendations in a report under subsection (3).

Employee remedies not limited

- 36** This Act is not to be construed as limiting an employee's right to a remedy that may be available to the employee under a collective agreement, a contract or another enactment.

Civil remedies not limited

- 37** This Act is not to be construed as limiting an employee's right to a remedy that the employee may pursue as a civil remedy.

Part 6 — Reporting and Public Comments

Annual report about disclosures — ministries, government bodies or offices

- 38** (1) Each year, a chief executive, or a delegate of the chief executive, must prepare a report on all disclosures of wrongdoing that have been made in that year in respect of the ministry, government body or office for which the chief executive is responsible, including disclosures made to the Ombudsperson, if a designated officer of the relevant ministry, government body or office has been notified about the disclosures or investigations.
- (2) The report under subsection (1) must be made in accordance with the prescribed time period, if any, when the report is to be made and must include the following information:
- (a) the number of disclosures received, including referrals of disclosures, and the number acted on and not acted on;
 - (b) the number of investigations commenced as a result of a disclosure;
 - (c) in the case of an investigation that results in a finding of wrongdoing,
 - (i) a description of the wrongdoing,
 - (ii) any recommendations, including those made by the Ombudsperson, and
 - (iii) any corrective action taken in relation to the wrongdoing or the reasons why no corrective action was taken;

- (d) any other information prescribed by regulation.
- (3) In the case of a ministry, a report made under this section may include information in respect of more than one ministry.
- (4) In preparing a report under this section, a chief executive, or a delegate of the chief executive, must delete or exclude any material that would
 - (a) unreasonably invade a person's privacy,
 - (b) reveal the identity of a discloser, or
 - (c) reveal the identity of an individual who was the subject of an investigation.

Public access to annual report of ministries, government bodies or offices

- 39** (1) Subject to subsection (2), a report prepared under section 38 must be made publicly available on a website maintained by or on behalf of the ministry, government body or office.
- (2) In the case of a ministry, government body or office that does not have a website, the ministry, government body or office must provide the Ombudsperson with the report prepared under section 38, which the Ombudsperson must make publicly available on the Ombudsperson's website.

Annual, special or urgent reports and public comments — Ombudsperson

- 40** (1) The Ombudsperson must make an annual report to the Speaker of the Legislative Assembly on the exercise and performance of his or her functions and duties under this Act.
- (2) The report must include
- (a) the number of general inquiries relating to this Act,
 - (b) the number of disclosures received, including referrals of disclosures, and the number acted on and not acted on,
 - (c) the number of investigations commenced as a result of a disclosure,
 - (d) the number of recommendations the Ombudsperson has made and whether the ministry, government body or office has implemented the recommendations,
 - (e) whether, in the opinion of the Ombudsperson, there are systemic problems that give rise to wrongdoings, and
 - (f) any recommendations for improvement that the Ombudsperson considers appropriate.
- (3) The Speaker must lay the report before the Legislative Assembly as soon as possible.
- (4) If the Ombudsperson considers it to be in the public interest, or in the interest of a person or a ministry, government body or office, the Ombudsperson may do the following:

- (a) after providing the relevant ministry, government body or office an opportunity to provide a response in accordance with the requirements set out in section 30 [*special report on investigation, recommendations or cooperation*], make a special report to the Legislative Assembly;
 - (b) subject to subsections (4.1) and (5), comment publicly about
 - (i) a matter relating generally to the exercise of the Ombudsperson's duties under this Act, or
 - (ii) an urgent matter if the Ombudsperson reasonably believes that there is an imminent risk of a substantial and specific danger to the life, health or safety of persons, or to the environment.
- (4.1) The Ombudsperson must not include the following in any public comments:
- (a) information that is not authorized for release under this Act, in accordance with section 5 [*unauthorized release of information*];
 - (b) material that the Ombudsperson would be required to delete or exclude for the reasons set out in subsection (6) of this section.
- (5) As soon as practicable after making any public comments relating to an urgent matter under subsection (4) (b) (ii), the Ombudsperson must make a special report to the Legislative Assembly in accordance with paragraph (a) of that subsection.
- (6) In preparing a report under this section, the Ombudsperson must delete or exclude any material that would
- (a) unreasonably invade a person's privacy,
 - (b) reveal the identity of a discloser, or
 - (c) reveal the identity of an individual who was the subject of an investigation.

Part 7 — General Provisions

Offences and penalties

- 41** (1) A person must not wilfully do the following:
- (a) make a false statement to, or mislead or attempt to mislead, the Ombudsperson or another person in the performance of the duties, powers or functions of the Ombudsperson or other person under this Act;
 - (b) obstruct the Ombudsperson or another person in the performance of the duties, powers or functions of the Ombudsperson or other person under this Act.
- (2) A person who contravenes subsection (1) commits an offence.
- (3) A person who contravenes the following commits an offence:
- (a) section 6 (3) [*personal information*];
 - (b) section 31 [*protection of employee from reprisals*];

(c) section 32 [*protection for person contracting with government*].

- (4) A person who commits an offence under this section is liable on conviction,
- (a) for a first offence, to a fine of not more than \$25 000, and
 - (b) for a second or subsequent offence, to a fine of not more than \$100 000.
- (5) The time limit for laying an information for an offence under this section is 2 years after the time when the subject matter of the proceeding arose.

Protection from liability — information, document or answer

42 (1) Subject to section 8 [*consequences of wrongdoing not limited*], no action lies against a person because the person, voluntarily or otherwise, gives information, produces a document or answers a question if

- (a) the person does so for the purposes of an investigation under this Act, and
 - (b) the information, document or answer is relevant to the investigation,
- unless the person is acting in bad faith.

(2) Subsection (1) does not apply to proceedings in respect of the following:

- (a) a contempt proceeding brought as a result of a person's giving information, producing a document or answering a question, or the person's failure to do so, including under section 41 (1);
- (b) unauthorized disclosure of information, including the release of information contrary to section 5 [*unauthorized release of information*].

Protection in relation to powers, duties or functions

43 No proceedings may be commenced or maintained for anything done or omitted in good faith in the exercise or performance or intended exercise or performance of

- (a) a power, duty or function conferred under this Act, or
- (b) a power, duty or function on behalf of or under the direction of a person on whom the power, duty or function is conferred under this Act.

Protection in respect of libel or slander

44 For the purposes of any Act or law respecting libel or slander,

- (a) anything said, all information supplied and all documents and things produced in the course of an investigation under this Act by a ministry, government body or office, or by the Ombudsperson, are privileged to the same extent as if the inquiry or proceeding were a proceeding in a court, and
- (b) a report made by a ministry, government body or office, or by the Ombudsperson, and a fair and accurate account of the report in a newspaper, periodical publication or broadcast is privileged to the same extent as if the report of the ministry, government body or office, or the Ombudsperson, were the order of a court.

Contractual duties do not limit disclosure

- 45** (1) A provision in a contract or agreement is not enforceable to the extent that it would prevent a request for advice, a disclosure, a complaint about a reprisal or cooperation with an investigation under this Act.
- (2) This section applies to any contract or agreement between an employee and employer, including an agreement to refrain from instituting or continuing any proceedings under this Act or any proceedings for breach of contract.

Other remedies

- 46** The provisions of this Act are in addition to the provisions of any other enactment or rule of law under which
- (a) a remedy, right of appeal or objection is provided, or
 - (b) a procedure is provided for inquiry into or investigation of a matter,
- and nothing in this Act limits or affects that remedy, right of appeal, objection or procedure.

Section 5 of Offence Act

- 47** Section 5 [*general offence*] of the [Offence Act](#) does not apply to this Act or the regulations.

Regulations

- 48** (1) The Lieutenant Governor in Council may make regulations referred to in section 41 of the [Interpretation Act](#).
- (2) Without limiting subsection (1), the Lieutenant Governor in Council may make regulations for the following purposes and respecting the following matters:
- (a) prescribing a class of persons for the purposes of the definition of "employee" in section 1 [*definitions*];
 - (b) designating an organization as a government body for the purposes of the definition of "government body" in section 1;
 - (c) designating a head of a government body for the purposes of the definition of "head" in section 1;
 - (d) respecting a matter referred to in section 3 (1) [*relationship of Act to other Acts*], including by providing differently for different enactments or provisions of enactments;
 - (e) prescribing information for the purposes of section 4 [*information about Act to be communicated*];
 - (f) prescribing procedural matters for the purposes of section 9 [*procedures to manage disclosures*];
 - (g) prescribing reasons for not conducting an investigation, or for stopping an investigation, for the purposes of section 22 [*circumstances for refusing or stopping investigation*];

- (h) prescribing a time period for reporting and information for the purposes of section 38 [*annual report about disclosures — ministries, government bodies or offices*];
 - (i) defining any word or expression used but not defined in this Act;
 - (j) respecting any other matter for which regulations are contemplated by this Act.
- (3) In making a regulation under this Act, the Lieutenant Governor in Council may make different regulations for
- (a) requests for advice, disclosures or complaints about reprisals, and
 - (b) different government bodies, persons or classes of persons.

Rules

- 49** (1) On its own initiative, or on the recommendation of the Lieutenant Governor in Council, the Legislative Assembly may make rules for the guidance of the Ombudsperson in exercising the powers and performing the duties of the office.
- (2) Subject to this Act and any rules made under subsection (1), the Ombudsperson may determine the Ombudsperson's procedure and the procedure for the members of the Ombudsperson's staff in exercising the powers conferred and performing the duties imposed by this Act.

Review of Act

- 50** (1) At least once every 5 years, a special committee of the Legislative Assembly must begin a comprehensive review of this Act and must submit a report respecting this Act to the Legislative Assembly within one year after the date of the appointment of the special committee.
- (2) A report submitted under subsection (1) may include any recommended amendments to this Act or any other Act.
- (3) For the purposes of subsection (1), the first 5-year period begins on the date that this section comes into force.

Transitional Provision

Transition — investigation under *Freedom of Information and Protection of Privacy Act*

- 51** (1) If, before the date this Act comes into force, an investigation is underway by the Information and Privacy Commissioner into a matter under section 30.3 [*whistle-blower protection*] of the *Freedom of Information and Protection of Privacy Act*, the Information and Privacy Commissioner may continue the investigation under the *Freedom of Information and Protection of Privacy Act*.
- (2) Despite an investigation that is continued under subsection (1), this Act applies in respect of a discloser, a disclosure or a reprisal provided for under this Act.

Consequential Amendment

Editorial Note

Section(s)	Affected Act
52	<i>Freedom of Information and Protection of Privacy Act</i>

Commencement

53 This Act comes into force by regulation of the Lieutenant Governor in Council.

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