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Public Interest Commissioner
of Alberta

Review of the *Public Interest Disclosure (Whistleblower Protection) Act*

Submission of the Public Interest Commissioner to the Standing Committee on Resource Stewardship

October 30, 2025

Public Interest Commissioner

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Executive Summary

The *Public Interest Disclosure (Whistleblower Protection) Act* (the Act) establishes a secure and structured process for individuals to report serious wrongdoing within public institutions that is unlawful, endangers the public, or undermines the public interest. The Act fosters trust in the management of public services by providing oversight of public resources and service delivery. It also protects public service employees who disclose wrongdoing in the public interest and assist in investigations.

The Act came into force in June 2013. It was initially reviewed in 2016 with amendments that came into effect in March 2018. A second review was concluded in June 2021; recommendations were made, but no amendments followed. Over this 12-year period, my office has learned that the Act is effective for investigating wrongdoing; however, it has certain gaps that reduce its success and may leave individuals vulnerable to retaliation.

In 2024, my office conducted a survey of public sector employees. The survey results helped us understand the barriers employees have in reporting wrongdoing – particularly relating to confidentiality and fear of retaliation. My office also provided information and lent expertise to the Centre for Free Expression as it assessed the Act (the CFE Assessment). The extensive research undertaken by the CFE Assessment provided valuable insight into weaknesses of the Act.

No organization is entirely immune to misconduct. The way an organization addresses and manages reports of wrongdoing is critical to fostering employee and public trust. Government departments and other public sector entities can gain significant benefits from robust public interest disclosure legislation, beyond simply identifying and rectifying improper behaviour. Such legislation establishes a formal internal process for employees to report concerns; enables organizations to promptly handle issues internally before they escalate; strengthens public confidence and safeguards organizational reputation by reducing the risk of negative publicity; and helps prevent financial loss and resource strain that may arise from civil litigation. Ultimately, the goal is to develop an effective whistleblower framework that encourages employees to use it.

My recommendations focus on the most critical amendments necessary for the Act's effectiveness. My submission also reflects recommendations made by the Standing Committee

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on Resource Stewardship in its June 2021 report following the last review of the Act (the 2021 Standing Committee Report).

My office and I remain available to assist the Committee, in whatever manner required, as it completes its review of the Act. I appreciate the opportunity to participate in this process and would like to make an oral presentation to the Committee to provide additional information.

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Kevin Brezinski
Public Interest Commissioner

Public Interest Commissioner

Referenced Legislation

Alberta - *Public Interest Disclosure (Whistleblower Protection) Act*, SA 2012, c P-39.5	"The Act"
Alberta - *Public Interest Disclosure (Whistleblower Protection) Regulation*, Alta Reg 71/2013	"The Regulation"
Australia - *Public Interest Disclosure Act 2013*, No. 133	"Australia Act"
British Columbia - *Public Interest Disclosure Act*, SBC 2018, c 22	"BC Act"
Manitoba – *The Public Interest Disclosure (Whistleblower Protection) Act*, CCSM c P217	"Manitoba Act"
Manitoba – *The Public Interest Disclosure (Whistleblower Protection) Regulation*, Man Reg 64/2007	"Manitoba Regulation"
New South Wales, Australia - *Public Interest Disclosures Act 2022*, No. 14	"New South Wales Act"
Nova Scotia - *Public Interest Disclosure of Wrongdoing Act*, SNS 2010, c 42	"Nova Scotia Act"
Nova Scotia - *Public Interest Disclosure Regulation*, NS Reg 323/2011	"Nova Scotia Regulation"
Newfoundland and Labrador - *Public Interest Disclosure Whistleblower Protection Act*, SNL 2014, c P-37.2	"Newfoundland Act"
Nunavut - *Public Service Act*, CSNu, c P-180	"Nunavut Act"
Ontario - *Public Service of Ontario Act*, SO 2006, c 35	"Ontario Act"
Prince Edward Island – *Public Interest Disclosure and Whistleblower Protection Act*, RSPEI 1988, c P-31.01	"PEI Act"
Quebec - *Act to facilitate the disclosure of wrongdoings relating to public bodies*, SQ 2016, c 34	"Quebec Act"
Quebec - *Act respecting protection against reprisals related to the disclosure of wrongdoings*, CQLR c P-33.01	"Quebec (Reprisals) Act"
Saskatchewan - *Public Interest Disclosure Act*, SS 2011, c P-38.1	"Saskatchewan Act"
Yukon - *Public Interest Disclosure of Wrongdoing Act*, SY 2014, c19	"Yukon Act"
Canada - *Public Servants Disclosure Protection Act*, SC 2005, c 46	"Federal Act"

Summary of Recommendations

Strengthening protections

1a. The Act protect all persons who make disclosures of wrongdoing or who cooperate in investigations under the Act from reprisal, including non-employees.

1b. The Act protect all persons *suspected* of making a disclosure of wrongdoing, seeking advice, or cooperating in an investigation under the Act from reprisal.

1c. The Act protect persons from reprisals that include non-employment-related consequences.

1d. The Act protect all persons who make disclosures of wrongdoing or cooperate in an investigation under the Act from civil liability.

Bolstering confidentiality

2a. The Act require all persons to keep confidential, unless required by law or necessary to carry out the purposes of the Act, the identity or any information that may reveal the identity of the person who:

i. made a disclosure of wrongdoing,
ii. is the subject of a disclosure of wrongdoing, and
iii. has participated in an investigation of wrongdoing.

2b. The Act make it an offence, except under specific circumstances, to disclose the identity of a person who:

i. made a disclosure of wrongdoing,
ii. is the subject of a disclosure of wrongdoing, and
iii. has participated in an investigation of wrongdoing.

2c. The Act require that a court take reasonable precautions during its proceedings to limit the disclosure of information that could reasonably be expected to reveal the identity of a person who:

i. made a disclosure of wrongdoing,
ii. is the subject of a disclosure of wrongdoing, and
iii. has participated in an investigation of wrongdoing.

Prohibiting information from being used in other proceedings

3. The Act prohibit information obtained during investigations by the Public Interest Commissioner or a designated officer from being used in other proceedings except in certain circumstances.

Making disclosures despite non-disclosure and confidentiality agreements

4. The Act authorize any person to request advice, make a disclosure of wrongdoing or complaint of reprisal, or cooperate with an investigation under the Act notwithstanding non-disclosure or confidentiality agreements.

Creating a prescribed service provider regulation

5. A prescribed service provider regulation be made under Section 4.2 of the Act that includes continuing care home operators and supportive living accommodation operators licensed under the *Continuing Care Act*.

Annual reporting by public bodies

6. The Act require jurisdictional public entities to report annually to the Public Interest Commissioner on their activities under the Act in a format and manner prescribed by my office.

Subsidiary health corporations

7. The Act include all subsidiary health corporations.

Removing "good faith" requirements

8. The term "good faith" be removed from Sections 1(f), 19(1)(d), and 24(1) of the Act.

Enhancing the Public Interest Commissioner's ability to collect evidence

9a. The Act authorize the Public Interest Commissioner to obtain evidence under oath.

9b. The Act authorize the Public Interest Commissioner to make orders compelling a person to appear or to produce records relevant to an investigation.

Referrals to other legislative officers

10. The Act include a provision for the Public Interest Commissioner to refer matters to other Officers of the Legislature.

1. Strengthening protections

The Act's current protective measures have gaps that deter individuals from reporting wrongdoing and leave them vulnerable to retaliation.

Protection against reprisal is essential to ensure the effectiveness of this Act. In a survey of public service employees conducted by my office in 2024, **95%** of respondents saw protection from retaliation as a major factor for instilling confidence when reporting wrongdoing. If employees do not have confidence in the Act, wrongdoing remains unaddressed and may escalate. Approximately **one in five** survey respondents stated they did not report serious and significant wrongdoing that they observed or experienced in their workplace. Lack of trust in the Act also leads employees to less confidential channels to expose wrongdoing, such as the media.

Recommendation #1a

The Act protect all persons who make disclosures of wrongdoing or who cooperate in investigations under the Act from reprisal, including non-employees.

Current Provisions

Section 24 of the Act protects only employees from reprisal. The Act defines "employee" as an individual currently employed by a jurisdictional public entity, or an individual who was suffered a reprisal and is no longer employed by a public entity.

Rationale for Recommendation

Reprisal protections do not extend to former employees, volunteers, students, contractors, or other witnesses who are not employees. Between October 1, 2020 and September 30, 2025, my office received 74 reports of wrongdoing from individuals who did not fall within the definition of an "employee" under the Act.

Employees are often more willing to report misconduct after leaving their jobs; however, reprisal protections end once they leave their positions. For example, an individual recently contacted my office about reporting a toxic work culture that led them to leave the organization. Because the Act no longer protected them, they ultimately chose not to file a disclosure due to concerns about future reputational harm and loss of job prospects.

Investigations also frequently depend on witnesses and experts who do not work in the public service or other individuals who are not protected under the Act. Without protection, individuals may be hesitant to disclose pertinent information necessary for an investigation. The CFE Assessment also recognized this gap in protection for non-employees as a critical weakness.[1]

The 2011 Standing Committee Report recommended expanding reprisal protection to include former employees who make a disclosure of wrongdoing or seek advice under the Act.

Notable provisions in other jurisdictions

Section 46(1) of the Nunavut Act protects any person who makes a disclosure of wrongdoing or gives evidence or assists in an investigation.

Section 3 of the Quebec (Reprisals) Act protects any person who has made a disclosure, cooperated in an investigation, or exercised a right conferred on them. The section also protects personal relationships and family members of persons who made disclosures.

Recommendation #1b

The Act protect all persons *suspected* of making a disclosure of wrongdoing, seeking advice, or cooperating in an investigation under the Act from reprisal.

Current Provisions

Section 24(1) of the Act protects employees when they seek advice, make a disclosure of wrongdoing, co-operate in an investigation, decline to participate in a wrongdoing, or otherwise do anything in accordance with the Act.

Rationale for Recommendation

The Act does not currently extend reprisal protection for those who are *suspected* of being whistleblowers or witnesses. The protection only applies if an individual undertakes a protected activity listed in section 24.

[1] *Assessment of Alberta's whistleblower protection legislation*. Centre for Free Expression (2025, February 12). Page 10. https://cfe.torontomu.ca/publications/assessment-albertas-whistleblower-protection-legislation

My office has encountered cases where employees were wrongly suspected of making a disclosure of wrongdoing or participating in an investigation. Had retaliatory action been taken against these individuals, there would have been no remedy available under the Act.

The 2011 Standing Committee Report recommended expanding reprisal protections to include employees suspected of making a disclosure of wrongdoing.

Notable provisions in other jurisdictions

The definition of reprisal in the PEI Act includes taking measures against persons *suspected* of making a disclosure or participating in an investigation.

Section 31(2) of the BC Act states that it is not necessary to prove that the employee made, may have made or intended to make a request for advice, a disclosure or a complaint about a reprisal, or cooperated with an investigation, for the purpose of prosecuting a reprisal.

Recommendation #1c

The Act protect persons from reprisals that include non-employment-related consequences.

Current Provisions

Section 24(2) of the Act protects against an action or the threat to take an action that adversely affect an employee's employment or working conditions, including a dismissal, layoff, suspension, demotion or transfer, discontinuation or elimination of a job, change of job location, reduction in wages, change in hours of work, or a reprimand.

Rationale for Recommendation

The Act protects against adverse *employment* actions only, leaving other forms of retaliation unprotected. For example, employees may be blacklisted from future employment opportunities, publicly criticized, denounced on social media, harassed, discredited, or targeted with retaliatory civil suits. Non-employment retaliation and its consequences are significant concerns for employees, factoring in their decision whether

to report a wrongdoing or co-operate in an investigation. The CFE Assessment also viewed this as a weakness of the Act.[2]

Notable provisions in other jurisdictions

Section 38(3) of the Nunavut Act defines "reprisal" to include legal action against a person because they made a disclosure of wrongdoing or assisted in investigating the disclosure.

Section 13 of the Australia Act defines reprisal as "any detriment" caused to a person, including but not limited to employment action.

Section 32 of the New South Wales Act prohibits "detrimental action" against another person for making a protected disclosure. "Detrimental action" includes injury, damage to property or reputation, intimidation, harassment, and other prejudicial treatment.

Recommendation #1d

The Act protect all persons who make disclosures of wrongdoing or cooperate in an investigation under the Act from civil liability.

Current Provisions

Section 51(2) of the Act protects against civil liability in certain circumstances:

> ***Protection of Commissioner and others***
>
> ...
>
> ***(2)*** *Subject to subsection (3), no person is liable to prosecution for an offence against any Act, and no action lies or may be commenced or maintained against a person, by reason of the person's compliance with any requirement of this Act.*
>
> ***(3)*** *Subsections (1) and (2) do not apply to a person referred to in those subsections in relation to anything done or omitted to be done by that person in bad faith.*

[2] *Assessment of Alberta's whistleblower protection legislation*. Centre for Free Expression (2025, February 12). Pages 6,11. https://cfe.torontomu.ca/publications/assessment-albertas-whistleblower-protection-legislation

Rationale for Recommendation

The current provision has two flaws. First, the provision is ambiguous about whether individuals who make voluntary disclosures are protected. The section requires "compliance with any requirement of this Act," but making a disclosure of wrongdoing is not required, and some witnesses volunteer information during investigations.

Second, the protection may be voided by making an allegation of bad faith. The burden is then on the individual to defend themselves by proving that they acted in good faith, which can still require expending significant resources. If civil liability protection is not guaranteed, even those with good intentions may be reluctant to report concerns or assist in investigations.

Fear of civil liability is a concern for individuals who make a disclosure of wrongdoing or participate in an investigation under the Act. This fear can outweigh the desire to report misconduct, compromising the effectiveness of the Act and the ability to adequately investigate. In one recent case, 10 witnesses asked to withdraw from an investigation citing concerns that if their identity became known, the alleged wrongdoer would take civil action against them. In 10 other cases, individuals raised concerns about non-disclosure agreements or the potential for civil action being taken against them for their involvement with activities under the Act.

Notable provisions in other jurisdictions

Section 42 of the BC Act provides protection from liability for persons who give information, voluntarily or otherwise, for the purposes of an investigation. The protections, however, do not apply where a person is acting in bad faith, the giving of information is part of contempt proceedings, or the disclosure provides information that is unauthorized by the Act.

Section 40 of the New South Wales Act provides immunity for persons making a public interest disclosure from civil and criminal liability, including liability for breaching a duty of secrecy or confidentiality. Witnesses also receive immunity when they disclose relevant information during an investigation.

Sections 10 through 12 of the Australia Act provide civil, criminal and administrative immunity to individuals who make a public interest disclosure and restricts the exercise of contractual rights or remedies. The Australia Act further grants individuals who make

disclosures absolute privilege in proceedings for defamation in respect of the public interest disclosure.

2. Bolstering confidentiality

Recommendation #2a

The Act require all persons to keep confidential, unless required by law or necessary to carry out the purposes of the Act, the identity or any information that may reveal the identity of the person who:

a. made a disclosure of wrongdoing,
b. is the subject of a disclosure of wrongdoing, and
c. has participated in an investigation of wrongdoing.

Recommendation #2b

The Act make it an offence, except under specific circumstances, to disclose the identity of a person who:

a. made a disclosure of wrongdoing,
b. is the subject of a disclosure of wrongdoing, and
c. has participated in an investigation of wrongdoing.

Current Provisions

The Act implies confidentiality; however, it is not explicit:

- Sections 5(1)(g) and 5(1)(h) of the Act require public entities to establish internal procedures for maintaining confidentiality of information collected and protecting the identity of the employee making the disclosure, individuals alleged to have committed the wrongdoings, and witnesses.
- The Act is silent on my office's obligation to implement similar procedures. Also, there is no provision that prevents third parties from disclosing the identities of individuals involved in investigations.
- Sections 43(1) and 44(7) of the Act require the Commissioner and employees of the office to take an oath to not disclose information received during an investigation except as permitted by the Act.
- Under section 36(1)(x) of the Act, the Lieutenant Governor in Council may make regulations respecting the confidentiality of information collected concerning

disclosures and complaints of reprisals; however, no such regulation has been made.

Rationale for Recommendations

Confidentiality is a cornerstone of an effective public interest disclosure law.

Firstly, it shields those who report wrongdoing and cooperate in an investigation from retaliation. Protecting the identity of those accused of wrongdoing is equally crucial, as public exposure can cause lasting reputational harm even if allegations are ultimately unfounded.

Secondly, confidentiality encourages individuals to report wrongdoing and participate in investigations. In our survey of public service employees, **90%** of the respondents indicated that confidentiality was a key factor for instilling confidence when reporting wrongdoing. In recent years, individuals have chosen not to make a disclosure of wrongdoing or withdraw from investigations by my office due to concerns about confidentiality. In one case, 10 witnesses asked to withdraw from an investigation citing concerns with confidentiality and fear of the alleged wrongdoer. In another case, a senior executive declined to be interviewed because of reservations about breaches of confidentiality.

Finally, confidentiality preserves the integrity of investigations under the Act. By limiting the exposure of participants' identities, investigations can be conducted without interference or intimidation from those implicated. In the past, our office has encountered instances where alleged wrongdoers attempted to identify the person who made the disclosure.

Intentionally revealing the identity of a person involved in an investigation constitutes a serious breach of public trust and erodes confidence in the Act. Consequently, I recommend including a provision that makes it an offence to disclose these identities in addition to a provision that requires confidentiality throughout the investigation process.

The 2021 Standing Committee Report supported three recommendations to protect confidentiality: a requirement to keep identities confidential, a prohibition on disclosing

information that might reveal identities, and an offence for disclosing identities based on Australian legislation.

Notable Provisions in Other Jurisdictions

Within Canada, legislation in most other jurisdictions contains sections specifically requiring that identities be kept confidential during an investigation:

- Section 22(e) of the Federal Act requires the Public Sector Integrity Commissioner to protect, to the extent possible in accordance with the law, the identity of all persons involved in the disclosure process.
- Section 22(3) of the Manitoba Act requires the person investigating to take reasonable steps to protect the identities of each person involved in the investigation.
- Section 111(b) of the Ontario Act requires every person carrying out functions under the Act to protect the identities of persons involved in disclosures of wrongdoing except where procedural fairness requires that an identity be disclosed.
- Section 10(4) of the Quebec Act requires that procedures include all necessary measures to ensure that the identities of the persons who made a disclosure of wrongdoing or cooperated in an investigation remain confidential.
- Section 11 of the Nova Scotia Regulation prohibits revealing information about the identity of the person who made a disclosure of wrongdoing, the alleged wrongdoer, and persons who provide information related to a disclosure, except as required to administer the Nova Scotia Act and the Regulations.
- Sections 9(7) and 19(4) of the PEI Act require the identities of persons involved in investigations of wrongdoing or a complaint of reprisal to be kept confidential subject to the requirements of natural justice and the proper conduct of an investigation.
- Section 7(2) of the Newfoundland Act requires that the identity of the employee who made a disclosure of wrongdoing be kept confidential to the extent permitted by law and consistent with the need to conduct a proper investigation.
- Section 43(4)(c) of the Nunavut Act requires the identity of the employee who made the disclosure, any person who is the subject of the disclosure, and any witnesses to be protected as far as practicable.

Section 20 of the Australia Act makes it an offence to reveal the identity or identifying information that may reveal the person who made a disclosure of wrongdoing unless the disclosure is made for the purposes of the Act, is required by law, the discloser consents to the use of identifying information, or the identifying information was previously lawfully published.

Recommendation #2c

The Act require that a court take reasonable precautions during its proceedings to limit the disclosure of information that could reasonably be expected to reveal the identity of a person who:

a. **made a disclosure of wrongdoing,**
b. **is the subject of a disclosure of wrongdoing, and**
c. **has participated in an investigation of wrongdoing.**

Current Provision

There is no provision in the Act that speaks to protecting identities during court proceedings.

Rationale for Recommendation

In a recent decision during a judicial review, the Court of King's Bench of Alberta ordered the disclosure of the identities of the person who made a disclosure of wrongdoing and the witnesses involved in an investigation by my office: *Campbell v Alberta (Public Interest Commissioner)*, 2024 ABKB 269.

In the absence of a provision that requires the Court to protect identities, my office must rely on the existing common law test to protect identities when a party seeks judicial review of decisions under the Act.[3] The current law creates a strong presumption in favour of openness and transparency in court proceedings, creating a high bar that is displaced only in exceptional circumstances.[4]

Thus, even if my office can protect identities throughout the investigation process, this protection may be lost once a party files a judicial review. These circumstances

[3] The Supreme Court of Canada set out the test that applies to restricting information during court proceedings in *Sherman Estate v Donovan*, 2021 SCC 25 [*Sherman Estate*].
[4] *Sherman Estate* at para 3.

undermine the effective operation of the Act. As discussed above, confidentiality is key for those making a disclosure of wrongdoing or participating in an investigation. If these protections can be set aside during a judicial review, it harms an individual's belief that the Act will meaningfully protect them and limit the risk of reprisal.

The CFE Assessment also identified this as a significant weakness in the Act, noting that in light of the recent case law "*… any implicated party need only seek a judicial review to break confidentiality.*"[5]

Notable provisions in other jurisdictions

Section 32.1 of the Manitoba Act creates a process to protect the identity of a person who made a disclosure of wrongdoing during civil or administrative proceedings. The section prohibits any person from being compelled to disclose information or produce a record that may reasonably be expected to reveal the identity of the person who made a disclosure. A court may then request to examine a record to determine if it could be reasonably expected to reveal the identity and sever that information from the record. If a court reviews a record under this process, it must take reasonable precautions, such as receiving representations *ex parte*, conducting hearings in private, or examining records in private, to protect the identity.

3. Prohibiting information being used in other proceedings

Recommendation #3

The Act prohibit information obtained during investigations by the Public Interest Commissioner or a designated officer from being used in other proceedings except in certain circumstances.

Current Provision

Under Section 51.1 of the Act, the Public Interest Commissioner, along with his employees and contractors, are not compellable to give evidence or produce anything relating to a record or information obtained as a result of performing their duties under the Act except during:

[5] *Assessment of Alberta's whistleblower protection legislation*. Centre for Free Expression. (2025 February 12). Page 21. https://cfe.torontomu.ca/publications/assessment-albertas-whistleblower-protection-legislation.

- A disclosure or a complaint of reprisal made to the Auditor General under sections 12 and 25(3) of the Act,
- A referral to the Labour Relations Board,
- The prosecution of an offence under the Act, and
- The judicial review of a decision of the Commissioner.

Rationale for Recommendation

The Act does not prevent chief officers, designated officers, or other parties from being compelled to disclose details pertaining to an investigation conducted under the Act during civil or quasi-judicial proceedings. This gap undermines confidentiality protections under the Act because these individuals may be compelled to provide information relating to the identities of those involved in investigations under the Act. As discussed above, confidentiality is central to the effective operation of the Act.

Additionally, individuals are not protected against self-incrimination under the Act. Without the confidence that information obtained during an investigation will not be used in other proceedings, individuals may refuse to participate to avoid providing information that could be detrimental to them.

As a result, I recommend including a provision similar to section 18(7) of the Alberta *Ombudsman Act*, which states:

> *Except on the trial of a person for perjury, no statement made or answer given by that or any other person in the course of an inquiry by or any proceedings before the Ombudsman is admissible in evidence against any person in any court or at any inquiry or in any other proceedings, and no evidence in respect of proceedings before the Ombudsman shall be given against any person.*

In addition to the exception for perjury, I also recommend keeping the exceptions currently found in section 51.1.

Notable provisions in other jurisdictions

Section 128(2) of the Ontario Act and section 49 of the Nunavut Act contain sections similar to section 18(7) of the Alberta *Ombudsman Act*. Section 29.1 of the Quebec Act

contains a similar provision but extends the protection to individuals who are "in charge of ethics and integrity" within an organization.

Section 22 of the PEI Act provides that the Commissioner, the head or deputy head of an organization, or any person acting under their direction is neither competent nor compellable to give evidence in a civil proceeding concerning information that they obtain under the Act nor produce any records created or received in the course of activities under the Act.

4. Making disclosures despite non-disclosure and confidentiality agreements

Recommendation #4

The Act authorize any person to request advice, make a disclosure of wrongdoing or complaint of reprisal, or cooperate with an investigation under the Act notwithstanding non-disclosure or confidentiality agreements.

Current Provision

The Act contains no relevant provisions.

Rationale for Recommendation

Confidentiality and non-disclosure agreements that prohibit employees from reporting wrongdoing and participating in investigations undermine the aims and effectiveness of the Act. Such agreements can be a significant deterrent for individuals considering reporting a wrongdoing or participating in an investigation. Additionally, they create uncertainty about future civil liability for individuals who have come forward with information.

My office has also encountered situations where these agreements were misused or potentially restricted our ability to gather evidence. In one case, we discovered that an organization required individuals to reveal whether they made a public interest disclosure as part of a severance agreement. In another case, senior executives indicated that their organization had non-disclosure agreements for business purposes and required clarification on whether their employees could share information with my office.

Preventing individuals from making a disclosure of wrongdoing or cooperating with an investigation by my office through a private agreement is not in the public interest. Adding a clear statutory provision that makes these agreements non-enforceable for the purposes of the Act encourages individuals to come forward and ensures clarity about legal obligations.

Notable provisions in other jurisdictions

Under section 45 of the BC Act, a contract provision that restricts requests for advice, disclosures, complaints of reprisal, or cooperation with investigations under that Act is not enforceable. This applies to any agreements between employees and employers, even those intended to prevent proceedings under the Act or claims of breach of contract.

Under section 8 of the Quebec Act, a person making a disclosure or cooperating in an audit or investigation may share information about actual or potential wrongdoing, despite any other communication restrictions under law or duty of confidentiality or loyalty toward an employer or client, excluding legal privilege.

5. Creating a prescribed service provider regulation

Recommendation #5

A prescribed service provider regulation be made under Section 4.2 of the Act that includes continuing care home operators and supportive living accommodation operators licensed under the *Continuing Care Act*.

Current Provisions

Amendments in 2018 expanded the application of the Act to include "prescribed service providers":

> ***Definitions***
> *1 In this Act,*
>
> …
>
> *(j.1) "prescribed service provider" means any individual or any part or all of an organization, body or other person that is determined under the regulations made under section 4.2 to be a prescribed service provider;*

Application and purposes of the Act

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

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

Under Section 4.2 of the Act, the Lieutenant Governor in Council may make regulations for the purpose of determining prescribed service providers to which the Act applies. To date, regulations have not been made.

Rationale for Recommendation

My office already has jurisdiction over several entities that provide continuing care; section 2(b) of Schedule 1 to the Regulation includes the CapitalCare Group, Carewest, and Lamont Health Care Centre within our jurisdiction. However, private or non-profit continuing care home operators and supportive living accommodation operators are not covered under the Act. These facilities serve a vulnerable population and receive significant public funding; therefore, they should be included as "public entities" under the Act.

Continuing care home operators and supportive living accommodation operators are licensed under the *Continuing Care Act*:

- Supportive living accommodations operators provide permanent housing for four or more adults and provide those individuals services related to safety, security, or personal welfare. Most supportive living accommodations are privately funded with residents paying a monthly charge based on service agreements; however, some supportive living accommodations are funded through the Ministry of Assisted Living and Social Services. These include group homes and lodges.[6] Group homes may receive health funding for resident care and supports. Management bodies oversee the operation of provincially subsidized lodges, following the eligibility and access criteria set out by the *Alberta Housing Act* and

[6] Group homes and lodges were previously referred to as retirement residences, seniors' residences, independent seniors' living, and assisted living.

its regulations.[7] The management bodies operating lodges may also receive operating grants from the Ministry.

- Continuing care homes include settings formerly referred to as designated supportive living, long-term care, nursing homes, auxiliary hospitals, and hospices, where residents receive 24-hour health and personal care services. Healthcare services within these facilities are publicly funded, and the Ministry of Assisted Living and Social Services may offer supplementary accommodation benefits to residents. In the 2025-2026 fiscal year, the Ministry allocated $178.3 million to the Continuing Care Capital Program to support continuing care spaces.[8]

Notable provisions in other jurisdictions

Section 2 of the Manitoba Regulation designates the following as "government bodies" to which the Manitoba Act applies: 1) organizations that provide support services to adults living with an intellectual disability; and 2) licensed residential care facilities.

Section 2(7.1) of the Quebec Act designates the institutions listed in Schedule II of the *Act respecting the governance of the health and social services system* as public bodies. This includes facilities providing long-term residential care.

6. Annual reporting by public bodies

Recommendation #6

The Act require jurisdictional public entities to report annually to the Public Interest Commissioner on their activities under the Act in a format and manner prescribed by my office.

Current Provision

Section 32 of the Act requires chief officers to report annually on the disclosures of wrongdoing they receive, the number of investigations conducted, and a description of

[7] Alberta Health. (2024). Supportive living accommodations in Alberta: A guide to new continuing care legislation. Government of Alberta. https://open.alberta.ca/dataset/0befe2fe-a2f9-4305-b271-108f4979c72d/resource/792fff02-bacd-4598-a8f4-5bec3c58bf57/download/hlth-supportive-living-accommodations-alberta-guide-2024.pdf

[8] Government of Alberta. (2025). Seniors, Community and Social Services Business Plan 2025–28. Retrieved from https://open.alberta.ca/dataset/07018f4e-1d10-499a-96d0-1d7c869134a0/resource/2438fe5e-dbb4-4c23-9e4a-8bb312e61f52/download/scss-business-plan-2025-28.pdf

the outcome if wrongdoing is found. This information is typically found in the organization's annual report, or it must be made available to the public on request.

Rationale for Recommendation

There is no unified system for collecting and analyzing data that would enable a comprehensive assessment of the use and efficacy of the Act. With roughly 280 public entities subject to the Act, independently reviewing reports from each entity is not feasible, and the scope of information contained in annual reports is limited.

The CFE Assessment also noted that information from departments and agencies subject to the Act was either unavailable, inconsistent, or too dispersed to be useful, and there is no central agency collecting baseline information on the performance or effect of the Act.[9] The CFE Assessment also recommended that the Act require meaningful performance indicators and data collection to support monitoring and evaluation.[10]

My office's survey found that most public service employees lack awareness of the Act: **62%** were unsure or unaware there was an authority that could investigate workplace wrongdoing and reprisal, and only **5%** could identify the Act or my office without prompting. The Act gives the chief officer responsibility for informing staff about the Act, but it is unclear to what extent organizations fulfill this duty. Annual reporting will help determine compliance and whether additional outreach from my office is needed.

7. Subsidiary health corporations

Recommendation #5

The Act include all subsidiary health corporations.

Current Provision

Section 2(1)(b) of Schedule 1 to the Regulation lists subsidiary health corporations to which the Act applies, but does not include all current subsidiary health corporations in Alberta:

[9] *Assessment of Alberta's whistleblower protection legislation.* Centre for Free Expression (2025 February 12). Page 16. https://cfe.torontomu.ca/publications/assessment-albertas-whistleblower-protection-legislation
[10] *Assessment of Alberta's whistleblower protection legislation.* Centre for Free Expression (2025 February 12). Page 8. https://cfe.torontomu.ca/publications/assessment-albertas-whistleblower-protection-legislation

Health sector

2 *The following are designated as public entities in the health sector to which the Act applies:*

(b) *The following subsidiary health corporations under Provincial Health Agencies Act:*

(i) Calgary Laboratory Services Ltd.;
(ii) CapitalCare Group Inc.;
(iii) Carewest;

Rationale for Recommendation

Subsidiary health corporations that change their names, or newly established ones, are excluded from the Act unless specifically listed in the Regulation. For instance, Calgary Laboratory Services Ltd is listed in the Regulation; however, it was replaced by Alberta Public Laboratory Services and later by Alberta Precision Laboratory Services. Because Alberta Precision Laboratory Services is not named in the Regulation, it is not covered by the Act. Likewise, Covenant Care, which is a subsidiary of Covenant Health, is not included in the Regulation.

Including all subsidiary corporations under the Act guarantees equal protection for their employees. Amending the Regulation to cover all subsidiaries also avoids gaps when names change or new corporations are created.

This recommendation was also made in the 2021 Standing Committee Report.

8. Removing "good faith" requirements

Recommendation #6

The term "good faith" be removed from Sections 1(f), 19(1)(d), and 24(1) of the Act.

Current Provision

The Act requires a disclosure of wrongdoing to be made in "good faith":

Definitions

1 *In this Act,*

> ...
> ***(f)*** *"disclosure", except where the context requires otherwise, means a disclosure of wrongdoing made in* ***good faith*** *by an employee in accordance with this Act;*
>
> ...
> ***When investigation not required***
> ***19(1)*** *The Commissioner is not required to investigate a disclosure or, if an investigation has been initiated, may cease the investigation if, in the opinion of the Commissioner,*
>
> ...
> ***(d)*** *the disclosure is frivolous or vexatious, has not been made in* ***good faith*** *or does not deal with wrongdoing, [emphasis added]*

The Act further requires an employee to act in good faith to receive protection from reprisal:

> ***Reprisal***
> ***24(1)*** *This section applies to an employee or a prescribed service provider who has, in* ***good faith****,*
>
> *(a) requested advice about making a disclosure as described in section 8 or, in the case of an employee of a prescribed service provider, the regulations made under Part 1.2, whether or not the employee made a disclosure,*
>
> *(b) made a disclosure under this Act,*
>
> *(c) co-operated in an investigation under this Act,*
>
> *(d) declined to participate in a wrongdoing, or*
>
> *(e) done anything in accordance with this Act. [emphasis added]*

Rationale for Recommendation

The "good faith" test shifts the focus when assessing a disclosure from the facts alleged to the motivation of the individual who made the disclosure. As a result, organizations are not required to investigate disclosures made in bad faith, even if those disclosures report legitimate concerns that warrant investigation. Since its inception, my office evaluates disclosures based on facts, not solely on the employee's motivation, and good faith is presumed unless there is clear evidence of malice.

The "good faith" test also creates uncertainty and receives significant emphasis in internal disclosure policies implemented by public bodies. The terms lack a clear legal definition, which may allow organizations to dismiss complaints based on varying or arbitrary definitions. Further, my office has reviewed internal policies that enable penalizing individuals who make disclosures in bad faith. The Act does not permit employers to penalize an employee for a bad faith disclosure and doing so may result in a reprisal investigation by my office.

The 2011 Standing Committee Report also recommended removing *all* references to "good faith" in the Act. However, I recommend that the reference to "good faith" in section 27 of the Act remain to give effect to that provision.

The Act may also benefit from applying a "reasonable belief" test, which asks whether the reporter honestly or reasonably believed the information disclosed amounted to wrongdoing. This test functions as a threshold for immunity from reprisal and as a shield against sanctions for false or mistaken reports.

Notable provisions in other jurisdictions

Section 10(1) of the Manitoba Act authorizes disclosures where an employee "reasonably believes" that they have information that could show wrongdoing has been committed or is about to be committed.

9. Enhancing evidence collection

Recommendation #7a

The Act authorize the Public Interest Commissioner to obtain evidence under oath or affirmation.

Recommendation #7b

The Act authorize the Public Interest Commissioner to make orders compelling a person to appear or to produce records relevant to an investigation.

Current Provision

Under section 18.1(4) of the Act, the Commissioner may require any record to be produced and require any person to provide information or records to the Commissioner. Additionally, section 18.1(2) of the Act, states that "present and former employees must give the Commissioner any information, records or explanations that the Commissioner considers necessary…to exercise or perform [his] powers and duties under the Act."

Rationale for Recommendations

While the Act grants the Commissioner broad powers to collect information and question individuals, the Act contains no mechanisms to enforce these powers. Without a means to enforce evidence collection, investigations can be less effective when entities delay producing documents or provide incomplete answers to questions posed for witnesses.

Enforcing evidence collection ensures that investigations can be completed in a timely manner. In recent years, our office has seen two investigations with significant delays caused by waiting for entities under investigation to produce documents. Granting the Commissioner the power to order document production provides an additional tool to ensure entities produce evidence in a prompt fashion.

Enforcing evidence collection also improves the integrity and effectiveness of investigations. Empowering the Commissioner to order individuals to appear can address issues with reluctant or uncooperative witnesses who may have key information. Allowing the Commissioner to examine witnesses under oath or affirmation provides an additional mechanism to obtain honest and complete answers.

Notable provisions in other jurisdictions

Section 126(2) of the Ontario Act gives the Integrity Commissioner the power to summon a current or former public servant and examine them under oath or affirmation.

In several jurisdictions, public interest disclosure legislation integrates the powers of a public inquiry commissioner during an investigation under the Act, which includes the power to compel witnesses to appear and produce information and question those witnesses under oath. For example, see section 7 of the PEI Act, section 11.1 of the Quebec Act, and section 22(6) of the Manitoba Act.

In other jurisdictions, public interest disclosure legislation integrates sections of Ombudsman legislation, which allows witnesses to be summoned and examined under oath. For example, see section 3(3) of the BC Act, section 18(3) of the Saskatchewan Act, and section 46(1) of the Yukon Act.

10. Referrals to other legislative officers

Recommendation #10

The Act include a provision for the Public Interest Commissioner to refer matters to other Officers of the Legislature.

Current Provision

The Act does not contain an express provision for disclosures to be referred to another officer of the Legislature.

Rationale for Recommendation

My office regularly receives disclosures that fit more appropriately under the mandate of other legislative officers. For example, concerns about whether government programs are being managed with economy, efficiency, and effectiveness may more appropriately be addressed by the Auditor General. Similarly, concerns regarding conflicts of interest involving public officials may more appropriately be addressed by the Ethics Commissioner.

Including an express provision permitting consultation with other officers of the Legislature on relevant matters, as well as making referrals when appropriate, establishes a clearer and more structured process.

Notable provisions in other jurisdictions:

Section 24(2) of the BC Act contains a provision that allows disclosures, which may be more suitably investigated under the authority of another officer of the Legislature, to be referred to that officer, either in whole or in part. In cases where such referrals occur, protections against reprisal continue to apply.