Toronto Metropolitan University
Centre for Free Expression
at The Creative School

October 31, 2025

Mr. Garth Rowswell
Chair, Standing Committee on Resource Stewardship
503F Legislature Building
10800 - 97 Avenue NW
Edmonton, AB T5K 2B6

Subject: Review of Public Interest Disclosure (Whistleblower Protection) Act

Dear Mr. Rowswell,

I am writing to submit a briefing note and to formally request the opportunity for representatives of our Centre to meet with the Committee as part of its review of the Public Interest Disclosure (Whistleblower Protection) Act.

The Act has been reviewed by our colleague Ian Bron, as part of a three-year project to assess Canada's public sector whistleblower protection laws, looking both at a federal and provincial level. The attached briefing note summarizes his findings. The original report, published in February 2025, can be found on the CFE website here, and the evaluation criteria on which it is based is here.

The Centre's whistleblowing related work is undertaken by a steering committee comprising some of the most highly qualified people in this field, and works closely with other leading experts and NGOs throughout the world. We are uniquely qualified to help the committee understand this complex subject, including the extensive experience of other jurisdictions, and what's required to create an effective system – one that will protect the public and the integrity of Alberta's institutions.

Yours,

[redacted]

David Hutton

[redacted]

Ian Bron

David W. Hutton
Senior Fellow, Centre for Free Expression,
Toronto Metropolitan University

Dr. Ian Bron
Senior Fellow, Centre for Free Expression,
Toronto Metropolitan University

Briefing Note: Review of Alberta's *Public Interest Disclosure (Whistleblower Protection) Act*

TO: Members, Standing Committee on Resource Stewardship

BY: Dr. Ian Bron, Senior Fellow, Centre for Free Expression
David Hutton, Senior Fellow, Centre for Free Expression

October 31, 2025

Introduction

The Toronto Metropolitan University Centre for Free Expression would like to provide the Standing Committee on Resource Development with an expert analysis of Alberta's *Public Interest Disclosure (Whistleblower Protection) Act* (PID(WP)A), identify key strengths and weaknesses, and offer recommendations to strengthen protection for public servants who disclose wrongdoing in the public interest. Both Dr. Bron and Mr. Hutton have many years of experience analyzing whistleblowing laws and policies, and in assisting whistleblowers with their cases. This note is a summary of key points from our assessment of the PID(WP)A, published earlier this year. The full assessment is included, as is the raw analysis upon which it is based.

Summary

Alberta's Public Interest Disclosure (Whistleblower Protection) Act is, on paper, among the most comprehensive of its kind in Canada. However, it remains undermined by critical weaknesses that prevent it from achieving its stated goals. Implementation gaps are significant – awareness among public servants is low, departmental processes are a black box with little or no reporting, and there are few success stories. As a result, confidence in the system is weak and its credibility as a deterrent to wrongdoing or reprisals remains in question.

Context

Whistleblowing plays a critical role in upholding organizational integrity and the public interest. By enabling employees to report wrongdoing safely, it allows governments to detect and correct misconduct early, reduces losses from fraud and mismanagement, and reinforces public confidence in the administration of public funds. Research consistently shows that workers are the most important source of information by which misconduct is detected – but they will only make disclosures if they trust the system to respond fairly and protect them from retaliation. Indeed, the system is built on trust, which requires visible successes and demonstrable protection.

Key principles for an effective whistleblowing system include:

1. Broad application, allowing all workers to report misconduct through a variety of channels, and on matters ranging from unethical conduct and mismanagement to criminal offences. Whether or not the whistleblower is right or not, so long as they have a reasonable belief that their allegations are true, they should be protected. Reasonable belief means that a third party, viewing the same evidence, would also conclude that misconduct had occurred.

2. Protection of the whistleblower is the cornerstone of the system. This protection should be proactive, including measures to prevent reprisals from starting.
3. Should reprisals occur, whistleblowers should have access to the same neutral venues and comprehensive remedies as other litigants in civil courts. That is, they should be made whole, including compensation for future loss of earnings arising from (for example) blacklisting and lost promotion opportunities.
4. Investigations into disclosures should be thorough and competent. Investigators should be able to compel testimony and the production of evidence, and to follow the trail of evidence wherever it leads. Further, they should be independent and free from interference in their work.
5. The system should be subjected to regular review and evaluation. This is facilitated by set outcomes and performance measures, with data collected continuously from all stakeholders. At least every five years the system should be reviewed and improved based on these evaluations.

Some Misconceptions

The Committee should be aware of some misconceptions about whistleblowing and whistleblowers. These include the belief that many whistleblowers are troublemakers out to advance a personal interest. While this does occur, it is extremely rare. Further, this supports the argument for an effective and efficient whistleblowing system, allowing officials to dispense with the matter promptly.

Whistleblowers are also often judged on motive. While motive may occasionally be relevant when the information is false, it should be irrelevant when the information is factual. It is an accepted principle that it is the quality of the information that matters. Further, implicated parties will often attempt to characterize whistleblowers negatively – for example, by describing them as disgruntled or by manufacturing poor performance reviews for previously stellar employees.

A minority of whistleblowers actually suffer reprisal, with studies suggesting between 20 and 40 percent. This suggests that in healthy organizational cultures, whistleblowing is viewed as feedback – or a form of speaking up. But where reprisals do occur, they can be financially, professionally, and psychologically devastating. Resolutions, if they occur, can take years. For this reason, suggestions that whistleblowers hope to benefit from their actions should be viewed with great skepticism.

Current Status

Alberta's PID(WP)A came into force in 2013, with significant amendments in 2018 following a legislative review. A second review in 2021 recommended further reforms which were not acted upon. In 2024 to 2025, the Centre for Free Expression conducted its own review with the assistance of the Public Interest Commissioner. It examines the law on paper, and as it has been implemented.

Alberta's PID(WP)A meets some best-practice standards but fails all five categories of our Evaluation Criteria for Protection of Whistleblowers. Most fundamentally, it prioritizes control over disclosures by channeling them through tightly controlled and confidential avenues. Should the matter not be investigated properly, whistleblowers who take the matter to the public will almost certainly be disciplined and likely terminated. There is almost no proactive protection for whistleblowers. Rather, a recent court ruling (*Campbell v. Alberta (Public Interest*

Commissioner), 2024 ABKB 269) weakened confidentiality protections, the only proactive protection in the Act, by requiring disclosure of whistleblower identities during judicial review.

Although six instances of reprisal have been identified, no whistleblower has been able to take their complaints to the Labour Board. Some evidence suggests that there remains a culture in which implicated officials feel empowered to take action that clearly constitutes reprisal.

In terms of the misconduct disclosed, only about 1% of disclosures to the Commissioner result in a finding of wrongdoing. This suggests that employees are poorly informed about what and how they should report, and that the limitations in the law prevent findings of wrongdoing where misconduct may indeed have occurred. There is evidence of this in early cases. Despite these early missteps, the Public Interest Commissioner has shown increasing diligence and initiative but lacks resources, independence safeguards, and cooperation from some entities.

With respect to departments, agencies and other entities regulated under the Act, there is little evidence available on which to evaluate performance. This is troubling.

Recommendations

The Act should be comprehensively overhauled to conform with best practices. This should put the protection of the whistleblower first. The Act also currently conflates access to a remedy after the fact with proactive protection. This should be revised to prevent reprisals before they occur. The system should be as transparent as possible. Where confidentiality is required, authorized auditors/evaluators could ensure greater integrity in the system.

Failing a complete overhaul, the Centre for Free Expression recommends six targeted amendments:

1. Expand protected disclosure to all workers, including employees, contractors, temporary staff, interns, volunteers, and job applicants,
2. Mandate the proactive protection of workers making disclosures, informed by a risk assessment, with chief officers held accountable for failures,
3. Establish a reliable and effective process for workers to obtain interim relief from reprisals while investigations are ongoing,
4. Establish a standard for proving reprisal that shifts the legal burden of proof to the organization once the worker has established a prima facie case of reprisal,
5. Set high standards for investigations and investigators, including for competence, and
6. Require meaningful performance indicators and data to be gathered to support routine monitoring and the evaluation or audit of the regime every five years.

A full list of potential improvements can be found in the 2025 analysis of the Act by Dr. Bron.

RS-PIDA2025-010

Assessment of Alberta's Whistleblower Protection Legislation

Ian Bron

February 12, 2025

Toronto Metropolitan University
Centre for Free Expression
at The Creative School

About the Author

Dr. Ian Bron is a Senior Fellow at the Centre for Free Expression and an instructor in public administration at Carleton University. He is a graduate of the Royal Military College of Canada (BA (Hons)), the University of Ottawa (BEd, MEd), and Carleton University (PhD). His PhD dissertation compared whistleblowing regimes in the governments of Canada, the United Kingdom, and Australia. A former whistleblower himself, he disclosed misconduct in marine transportation security at Transport Canada in 2006. At that time, he was Chief of Regulatory Affairs. His career has spanned several roles: naval officer, educator, federal government regulator, and program evaluation team leader.

About the Centre for Free Expression

The Centre for Free Expression (CFE) at Toronto Metropolitan University focuses on issues related to freedom of expression and the public's right to know. This includes campus free expression, academic freedom, hate speech, censorship, disinformation, access-to-information, whistleblower protection, anti-SLAPP legislation, corporate and government surveillance, and freedom of the press. The Centre sponsors public educational events, does research, provides advice, and engages in advocacy on these issues. Our work is undertaken in collaboration with academic and community-based organizations across Canada and internationally.

350 Victoria St.
Toronto, ON M5B 2K3
cfe@torontomu.ca
(437) 995-7396

About these Assessments

The assessments of Canadian whistleblowing statutes are based on the CFE's *Evaluation Criteria for Protection of Whistleblowers*, examining both what's on paper in the Act and how it is working in practice. These criteria were developed by CFE senior fellows David Hutton and Ian Bron in consultation with the Government Accountability Project (GAP) and the Whistleblowing International Network (WIN). They are based on GAP's best practice criteria and informed by EU whistleblowing Directive 2019/1937, other standards, and CFE experience. Criteria for the law on paper are intended to assess its potential to meet stated and implied objectives. Data for assessing the effectiveness of the law in practice should demonstrate whether it is actually meeting its objectives. This may come from government reports, cases in legal databases, and media reports.

Assessment of Whistleblowing Provisions
Alberta

***Public Interest Disclosure (Whistleblower Protection) Act*, S.A. 2012, c. P-39.5**

1. Overview

The *Public Interest Disclosure (Whistleblower Protection) Act* (PID(WP)A (AB)) came into force in 2013. It is supported by the *Public Interest Disclosure (Whistleblower Protection) Regulation*, Alta Reg 71/2013. Significant improvements followed a review of the law in 2017. These came into force in 2018 (see the Appendix). Another legislative review took place in 2020-2021, which recommended further changes. None of these have been enacted, however. Despite this, Alberta's PID(WP)A has more best practices than any other major jurisdiction in Canada. Unfortunately, these are overshadowed by "critical weaknesses," shortcomings which experience has shown fatally undermine whistleblowing regimes. Thus, with respect to the law as written, the Act fails all categories of the Centre for Free Expression (CFE) Whistleblowing Initiatives criteria. (See section 4 below for an explanation of the criteria or visit the CFE's *Evaluation Criteria for Protection of Whistleblowers*).

With respect to the performance of the law in practice, available data is limited as only the Public Interest Commissioner consistently reports usage and results; many of the 260 entities covered by the Act do not make this information available. However, a third line of evidence was generously provided by the Office of the Public Interest Commissioner (OPIC), comprising both internal and public records. These were useful in understanding the views and approach of the OPIC and other stakeholders. These are discussed in greater detail in Section 5. In sum, however, the OPIC appears to be enforcing the Act in a manner consistent with its limitations and defending its mandate when necessary. However, there is evidence that some pressures are affecting its ability to do so. It has also assumed a leadership role in awareness and training for senior officials and designated officers within regulated entities. The performance of the regime in departments and agencies is of greater concern: Awareness of the regime is abysmally low and there is no evidence that the law is being effectively enforced or of a culture shift. The absence of evidence is the result of a lack of transparency, which is itself troubling: For whistleblowing systems to be effective they must be trusted, and to be trusted they must be seen to work.

In the category of **freedom to blow the whistle**, the PID(WP)A (AB) has two key strengths: the right to refuse to participate in a wrongdoing and the admissibility of anonymous disclosures. In addition, while the law does not cover the private sector, its coverage of the public sector is one of the broadest in Canada and includes the health and education sectors. There are four critical weaknesses, however: (1) the inclusion of motive via subjective "good faith" reporting requirements, (2) there is no protection for disclosures by contractors and other workers not classified as employees, (3) there is no protection for disclosures made in the course of duties, and (4) there is no mechanism outside of judicial review to escalate disclosures to the public if they are not properly handled by the organization and OPIC. Protected disclosure avenues are

also very limited, excluding the chain of command – an unusual exception given normal employment law precedents.

Under **preventing reprisals**, the PID(WP)A (AB) has one key strength: the OPIC has the same powers to investigate reprisal as they do wrongdoing. The Act has two critical weaknesses, however: (1) organizations have no duty to proactively protect whistleblowers and (2) there is no means to stop reprisals while investigations are conducted (often referred to as interim relief, or injunctive relief when made by a court). Further, while confidentiality is protected this could be strengthened with prohibitions and sanctions for breaches (or attempted breaches). It does protect those seeking advice, witnesses, recipients and investigators of disclosures, but not other individuals who may support the whistleblower. This may be a vulnerability when powerful officials are implicated in wrongdoing.

For **redress for reprisals**, the Act has three key weaknesses: (1) it does not reverse the burden of proof in establishing that detrimental action was in response to a disclosure (actual or suspected), (2) the OPIC acts as a gatekeeper[1] for whistleblowers seeking redress at the Alberta Labour Relations Board (ALRB), and (3) it does not offer a full range of "make whole" remedies (e.g., it omits potential future loss of earnings).

There are three critical weaknesses under **protecting the public interest**: (1) corrective processes lack credibility as they lack transparency (particularly within departments and agencies) and there is no independent authority to order wrongdoing to cease, (2) besides time limits, there are no mandatory standards for investigations, and (3) whistleblowers have no right to rebut evidence from the organization. More positively, the OPIC has the power to compel evidence and can "follow the money" outside the public sector.

Finally, considering **evidence of effectiveness**, there is one critical weaknesses: There are no meaningful performance measurements of the regime and no mandated evaluation of the Act. More positively, there is a requirement that the law be reviewed by the Legislature every five years. The legislative review, however, is not systematic or supported by consistently collected data that could inform policymakers and the public about whether the regime is working effectively or how it could be improved. Notably, the 2017 review resulted in several amendments to the Act, but the government declined to implement any of the recommendations of the 2021 review.

[1] That is, the OPIC investigates and determines whether a claim may be made at the ALRB. The federal Public Sector Integrity Commissioner has a similar role and has made errors when performing this role. Although two whistleblowers were successful in forcing a reconsideration via judicial review, these are time consuming and expensive. While there is no evidence Alberta whistleblowers have had similar experiences, best practice suggests that whistleblowers should be able to choose their own avenue of redress.

2. Key Features of the Act

The following describes aspects of the Act as they are written. They are not to be read as best practices; Part 4 of this assessment provides a detailed list of limitations and shortcomings.

The PID(WP)A (AB) states that its purpose is to:

- Facilitate the disclosure and investigation of significant and serious matters… that are potentially unlawful, dangerous to the public or injurious to the public interest,
- Protect persons who make those disclosures,
- Manage, investigate, and make recommendations relating to disclosures and complaints of reprisal,
- Provide for the determination of remedies after reprisal, and
- Promote public confidence in government (sub-s. 2(2)).

Who may make a protected disclosure (i.e., blow the whistle), and to whom: There are two authorized avenues of disclosure:

- Employees of Alberta government departments, public entities, and offices (as defined in s. 1) may make a disclosure to an officer designated to receive disclosures within their organization. They may also make a disclosure directly to the OPIC (s. 9).
- Employees of a prescribed service provider (as defined in sub-s. 1(j.1)[2]) may make a disclosure to the OPIC (sub-s. 15.1(3)).

Definition of wrongdoing: The following, if relating to a department, public entity, office, or prescribed service provider or relating to employees (as defined in sub-s. 1(g)):

- A contravention of Alberta or Canadian law or regulations,
- An act or omission that creates a substantial and specific danger to the life, health or safety of persons, or to the environment,
- Gross mismanagement of public funds, a public asset, or the delivery of a public service, and
- Counselling or directing an individual to do one of the above (sub-s. 3(1)).

Breaches of codes of conduct, ethical breaches, and violations of professional standards are not included. In addition, miscarriages of justice, abuse of authority, and acts which are legal but undermine the intent of legislation are not explicitly included – but may be captured under gross mismanagement, depending on interpretations by enforcement and adjudicative authorities.

[2] Although the Act refers to the regulations for this definition, the PID(WP) Regulation 71/2013 does not contain one. The development of such definition was recommended in the 2020-2021 legislative review.

Who investigates disclosures: An official designated by the head of a department or agency if the disclosure is made internally (s. 5(2)), or the OPIC if the disclosure is made directly to the OPIC (s. 18). Departmental officials may refer disclosures to the OPIC for investigation in some circumstances (s. 5(2)(c)). See s. 34(1)

To be protected, a disclosure must be: Made in writing to an officer designated to receive disclosures, or the OPIC (s. 9 and sub-s. 15.1(4)). The disclosure must include the information set out in s. 13.

Who is protected: Current or former employees of Alberta government ministries and bodies who have, "in good faith," sought advice, made a disclosure, cooperated in an investigation, or done anything in accordance with the Act. Contractors have limited protection if cooperating with an investigation (ss. 24-25). Complaints of reprisal must be made to the OPIC using the form in the PID(WP) Regulation 71/2023.

Definition of reprisal: Actions taken or counseled in response to a request for advice, a disclosure, or cooperation with an investigation under the Act, including:

- Dismissal, layoff, suspension, demotion or transfer, discontinuation, or elimination of a job, change of a job location, reduction in wages, change in hours of work or reprimand,
- Any measure adversely affecting an employee's employment or working conditions, and
- A threat to take one of the above actions (sub-s. 24(2)).

The Act does not explicitly describe informal adverse actions as a form or reprisal (e.g., ostracizing, micromanagement, being set up for failure), although the OPIC has indicated that these actions would be considered a reprisal as they affect an employee's working conditions. It also does not include reprisals that fall outside the workplace (e.g., blacklisting, legal threats sent to the employee's home, being denounced to media, social media attacks, social isolation of the whistleblower and their family within the community). Further, protection is undermined by the requirement for "good faith" in disclosures. This introduces the whistleblower's motive as a criterion, which is impossible to prove and irrelevant to the value of the information provided in the disclosure. It should be replaced in all instances by "reasonable belief."[3]

Who investigates reprisal: The OPIC investigates and refers the matter to the ALRB if it concludes that a reprisal has been taken, directed or counselled. The ALRB then conducts hearings and administrative panels. It may also facilitate a mediated settlement (s. 26).

[3] Reasonable belief may be determined using two criteria: whether the person making a disclosure subjectively believed they were reporting a wrongdoing, and whether an objective third person (i.e., not involved in any way in the dispute) would reach the same conclusion from similar facts and circumstances. Evidence of the subjective belief may still be required. Neither is a perfect concept, but given U.S. experience with the concept of good faith, reasonable belief is now the preferred term.

What body offers a remedy: The ALRB makes the final determination on remedies, where it deems it appropriate, in accordance with s. 27.1.

3. Suggested Improvements

As with other Canadian jurisdictions, the PID(WP)A (AB) could be improved by a shift in its approach and with some targeted amendments to the Act.

Broadly, it would benefit by placing greater emphasis on more proactive protection for whistleblowers. Confidentiality is currently the only such protection at present, but it is only protective if wrongdoers cannot otherwise surmise the identity of the whistleblower. Further, there should be sanctions for either violating a whistleblower's confidentiality or attempting to identify them. Effective protection should also prevent reprisals from starting. Failing this, it should prevent the whistleblower being worn down to the point that they abandon their disclosure. It would also minimize professional, social, and psychological harms. Such measures are best identified by a risk assessment and may include, for example, separating the whistleblower from individuals implicated in the disclosure of wrongdoing (or vice-versa) and providing legal, social, and psychological support and advice.

In addition, this legislation implicitly equates redress with protection. However, experience in other jurisdictions has shown that the process of obtaining redress takes years, if it comes at all. Reprisals and their psychological and financial effects may continue unchecked during this time. This undermines the logic of the law, which is that protection (and redress) will encourage employees to report wrongdoing. Under these circumstances, few observers will trust the system enough to use it even if the whistleblower eventually succeeds.

In addition, the PID(WP)A (AB) appears designed to channel disclosures through controlled avenues and gives more rights to organizations than to whistleblowers. While such avenues can be critical in ensuring proper procedures are followed, they may also prevent legitimate concerns from being raised or properly investigated. This may happen because certain classes of workers are not protected, authorities are forced to abandon investigations, whistleblowers are unable to rebut false evidence from implicated parties, or through restrictive interpretations of subjective terms in law (e.g., gross mismanagement). The PID(WP)A (AB) regime would benefit by allowing more flexibility for workers in making disclosures and broadening definitions of wrongdoing and reprisal. Examples of more comprehensive definitions of wrongdoing and reprisal can be found in *Ireland's Protected Disclosures Act 2014*, *ISO 37002: Whistleblowing Management Systems*, and the *EU Directive 1937/2019*.

Furthermore, disclosures made to the OPIC are not subject to freedom of information requests, and those made within departments have many exemptions which can be applied. This is especially true where the statutory threshold of wrongdoing is not determined to have been reached, which may prevent errors and misconduct from reaching the awareness of legislators or the public. While it is understood that confidentiality must be maintained when wrongdoing is not found, more comprehensive reporting requirements and regular audits and evaluations would mitigate this problem.

Six specific suggestions for improvements are to:

1. Expand protected disclosure to all workers, including employees, contractors, temporary staff, interns, volunteers, and job applicants,
2. Mandate the proactive protection of workers making disclosures, informed by a risk assessment, with chief officers held accountable for failures,
3. Establish a reliable and effective process for workers to obtain interim relief from reprisals while investigations are ongoing,
4. Establish a standard for proving reprisal that shifts the legal burden of proof to the organization once the worker has established a prima facie case of reprisal,
5. Set high standards for investigations and investigators, including for competence, and
6. Require meaningful performance indicators and data to be gathered to support routine monitoring and the evaluation or audit of the regime every five years.

4. Detailed Assessment Explanation and Scores

The following are brief explanations of the five categories of the CFE's *Evaluation Criteria for Protection of Whistleblowers*, the concept of "critical weaknesses," and how categories are scored.

- **Freedom to blow the whistle**: How free workers are to raise a concern about anything that may threaten the public interest, without barriers, hazards, or uncertainties
- **Preventing reprisals**: Whether the law prevents reprisals, ensures investigations into reprisal will be timely and competent, and has consequences for those responsible.
- **Redress for reprisals**: Whether whistleblowers can obtain complete remedies in a timely manner.
- **Protecting the public interest**: Whether disclosures are investigated in a competent and timely manner, appropriate and timely corrective action is taken, and appropriate information on findings and action is available to all parties and the public.
- **Evidence of effectiveness**: This assesses whether evidence on the effectiveness of the whistleblowing regime is collected and made readily available, and whether it undergoes improvement based on that information.

Critical weaknesses: Critical weaknesses are those which international experience has shown will render a whistleblowing law ineffective even when oversight officials are exercising their full powers. For example, U.S. experience has shown that success rates in obtaining a remedy are about ten times higher when the burden of proof for reprisals is reversed (i.e., the employer must prove that detrimental action is *not* related to whistleblowing). Even then, the odds of success are below 33% (Devine, 2016).

The overall score is the **lower** of design and implementation scores since poor implementation nullifies good design (and vice versa).

Category assessed	Evaluation of Design (what's on paper)	Evaluation of Implementation (how it works in practice)	Score
Freedom to blow the whistle, etc.	• Fully meets the purpose of the category • There are no critical shortcomings	• There is substantial evidence that it is working well in practice	5 4
	• Although there are some shortcomings, generally meets the purpose of the category • There are no critical shortcomings	• There is evidence to demonstrate that is generally working in practice	2-3
	• Does not meet the purpose of the category • There are one or more critical shortcomings	• There is inadequate evidence or usage to demonstrate that it is working in practice	1 0

Assessment Table: *Public Interest Disclosure (Whistleblower Protection) Act* (AB)

Category	Design	Implementation	Score
1. Freedom to blow the whistle	***Strengths in the law:*** ✓ Employees are protected if they refuse orders to commit a wrongdoing ✓ It protects confidentiality in disclosures ✓ It allows for anonymous disclosures and from the public to be accepted and investigated ***Weaknesses in the law:*** × It contains subjective terms (e.g., substantial and specific danger, gross mismanagement) which may be interpreted by implicated officials × It does not protect disclosures of matters that may be legal but are unethical or otherwise improper (e.g., violations of a code of conduct) × The definition of reprisal is limited to formal discipline in the employment context × It includes subjective and overly broad reasons to dismiss a complaint or end an investigation, such as any "valid reason" × Disclosure avenues are very limited (i.e., just to designated officers and the OPIC) × Informal disclosures to other bodies are not protected × It does not protect emergency disclosures to the public × It has no ban on gag orders or non-disclosure agreements × It contains no equivalent whistleblower protections for policing matters ***Critical weaknesses that fatally undermine the law:*** ! It does not cover contractors, temp staff, job applicants, and others not considered full employees ! It includes a "good faith" requirement, which introduces motive as a qualifier (should be "reasonable belief") ! Disclosures made in course of duties are not covered (e.g., role-related or simply mentioning to colleagues that something may be illegal) ! It has no mechanism to escalate the disclosure if officials refuse to investigate, conduct an improper investigation, or fail to keep the whistleblower informed in a reasonable time	***Strengths in practice:*** ✓ Use of regime appears to have increased in recent years, suggesting greater awareness and confidence ✓ The expansion in the scope of the law has led to the reporting, investigations, and correction of systemic harassment and other types of wrongdoing in new areas ***Weaknesses in practice:*** × Three cases cited in OPIC annual reports were rejected because they were code of conduct breaches (i.e., not withing definition of wrongdoing) × There is no secure portal for ongoing communication with anonymous disclosers × Restrictions on disclosures and complaints have resulted in some cases being rejected; e.g., a 2017 reprisal complaint was rejected because disclosure not clear enough × Subjective terms have been interpreted ways that favour those in authority (e.g., gross mismanagement; see Sub-section 5.3 below).	0

Category	Design	Implementation	Score
2. Preventing reprisals	***Strengths in the law:*** ✓ It offers protection to those seeking advice ✓ It protects employees who provide supporting evidence for the disclosure ✓ It protects recipients of disclosures ✓ Reprisal is an offence with penalties (though it is unclear whether it can be enforced) ✓ The OPIC has the same power to investigate reprisal as for wrongdoing ✓ Whistleblowers have up to two years to make a complaint, with time standards for investigations set in regulation, and the OPIC vets the whistleblowing procedures of organizations to ensure compliance ***Weaknesses in the law:*** × It does not explicitly protect against informal reprisal, such as unconventional harassment (e.g., ostracizing and blacklisting), and excludes reprisals outside the workplace × It does not protect colleagues or family from spillover retaliation × Attempts to breach confidentiality are not an offence ***Critical weaknesses that fatally undermine the law:*** ! Organizations have no duty to protect and assist public servants before, during, or after whistleblowing (e.g., no standards, no training, no social or legal support, no prohibition of efforts to identify whistleblower, no separation of whistleblower from those making reprisal) ! No timely interim or injunctive relief is available for those suffering reprisal; must wait until matter is before the ALRB	***Strengths in practice:*** ✓ The OPIC consistently advises that seeking advice, even when disclosure does not fall under the authority of OPIC, can offer protection from reprisal ✓ The OPIC has indicated that it will protect any disclosure whether or not the subject falls withing the definition of wrongdoing ✓ The OPIC has indicated that it includes informal reprisals in its definition of reprisal ***Weaknesses in practice:*** × While there is evidence that the OPIC is making efforts to educate designated officers and senior officials, there is no evidence that departments and agencies are educating employees, managers or executives on the Act and its use × Confidentiality protections have failed in court (see Sub-section 5.4)	1

Category	Design	Implementation	Score
3. Redress for reprisals	***Strengths in the law:*** ✓ It allows compensation for legal fees as a remedy ***Weaknesses in the law:*** × It does not include an alternative dispute resolution process outside ALRB × It does not offer whistleblowers the option to transfer to an alternative and equivalent position ***Critical weaknesses that fatally undermine the law:*** ! There is no reverse onus provision: When adjudicated, the whistleblower has the burden of proof to establish that detrimental action/reprisal is due mainly to disclosure ! The OPIC acts as gatekeeper to ALRB and its decisions are not appealable (although judicial review may be possible); there is no recourse to courts or another independent body ! Remedies may not make the whistleblower whole as they are backwards looking and do not consider potential future loss of earnings, or punitive and aggravated damages	***Strengths in practice:*** ✓ One multi-complainant case has been referred to ALRB ✓ Available evidence suggests that OPIC intervenes early when reprisal is suspected, cautioning implicated agencies on their responsibilities ***Weaknesses in practice:*** × Errors by whistleblowers, arising from limitations in the law, may have derailed several complaints of reprisal × The OPIC does not require that an adverse action be mainly or solely due to a disclosure when assessing whether to refer a case to the ALRB. Unfortunately, if a reprisal case is adjudicated, Canadian case law has determined that the reprisal be mainly or solely due to the disclosure[4]	0

[4] See *Agnaou v. Canada (Public Prosecution Service),* 2022 FCA 140 (CanLII), paras 61 -70, at https://canlii.ca/t/k56fk.

Category	Design	Implementation	Score
4. Protecting the public interest	***Strengths in the law:*** ✓ The OPIC can compel evidence from both the private and public sector ***Weaknesses in the law:*** × The OPIC does not have the power to initiate investigations on its own initiative unless wrongdoing is found during another investigation × It does not mandate appropriate transparency as departments, agencies, and the OPIC are not required to make reports on investigations available to the public; only general data in annual reports is required × Courts (or other authorities) do not have the power to order a halt to wrongdoing or require specific action × Law does not cover private or non-profit sectors × The appointment process for the OPIC is not truly independent as selection process and committee are controlled by government ***Critical weaknesses that fatally undermine the law:*** ! It does not mandate an effective and robust corrective process, especially at departmental/agency levels: No standards have been set for timely or competent investigations, investigations can be conducted "informally," and the OPIC has no power to order wrongdoing to cease (though recommendations can be escalated to Legislature) ! The whistleblower has no right in law to contribute to the process (e.g., offer expert advice, rebut opposing evidence, comment on the final report before publication)	***Strengths in practice:*** × The OPIC has consistently made reports public and provided contextual information even when wrongdoing has not been found × Case reports suggest that systemic harassment and mismanagement of employees is taken seriously ***Weaknesses in practice:*** × Case outcomes are only available from the OPIC; similar records from departments and agencies could not be found × Review of cases in records and annual reports suggests some reluctance to make a finding of definitive wrongdoing in some circumstances (see Sub-section 5.3 and OPIC *Annual report 2019-20* p. 20 for examples)	1

Category	Design	Implementation	Score
5. Evidence of effectiveness	***Strengths in the law:*** ✓ It must be reviewed by the Legislature every five years ***Weaknesses in the law:*** × There is no requirement to provide evidence that training or awareness activities are conducted or effective × There is no requirement to conduct periodic evaluations of the Act and its implementation × Annual reports must include information on whether recommendations were implemented, but this is not rigorously monitored over time ***Critical weaknesses that fatally undermine the law:*** ! There are no mandated outcomes, performance measures, or indicators for the regime, such as baseline levels of observed wrongdoing, awareness, trust, user satisfaction, process times and backlogs, or short and long-term outcomes for whistleblowers	***Strengths in practice:*** ✓ The OPIC annual reports highlight noteworthy cases and illustrate the importance of following procedures, as well as the utility of informal resolution (which minimizes disruption and possibility of hardened positions and reprisal) ✓ Two reviews have been held; the first resulted in significant improvements to the Act ✓ The OPIC has been conducting information sessions for designated officers for several years ***Weaknesses in practice:*** × The recommendations of the second review have been ignored by the government × The frequency of erroneous disclosures suggests general lack of awareness and training × Data from departments and agencies is too dispersed to be useful × There is no tracking of data on trust, perceived wrongdoing, etc. in public service surveys	1

5. Detailed Assessment of PID(WP)A (AB) Implementation

The purpose of this section of the report is to summarize the qualitative analysis of the implementation of the PID(WP)A (AB). Much of this information was provided by the Office of the Public Interest Commissioner (OPIC) or is publicly available online. This analysis is important as all laws, whether well written or not, must be interpreted and enforced by officials. As U.S. experience has shown, the manner in which officials interpret and enforce whistleblowing laws may range from anemic to forceful. Where enforcement is anemic, it may undermine the intent of the laws, deceive and expose whistleblowers to reprisals, and harm the public interest. In contrast, enthusiastic officials may follow best practice even when it is not enshrined in law. For example, several provincial officials from different jurisdictions have said they would investigate anonymous disclosures despite no obligation to do so (provided enough information is given). This highlights the discretion such officials have – for good or ill.

Public sector whistleblowing laws in Canada, including Alberta, bring into force regimes which are designed to provide safe avenues of disclosure to workers – with the opportunity for redress if a reprisal does occur – and to ensure the timely investigation and correction of wrongdoing. These regimes rely on trust: Workers who are not confident that their concerns will be properly addressed or who believe they will suffer a reprisal are less likely to make a disclosure. In addition, besides facilitating the detection, investigation and correction of wrongdoing, these laws implicitly seek to deter wrongdoing and reprisal.

This section is divided into six sub-sections, including the approach, evidence considered, and limitations of this review (5.1), the analysis of internal OPIC procedures, policies, and guidance, (5.2), the analysis of publicly available cases which have been processed by the OPIC (5.3), recent legal developments (5.4), evident perspectives and misconceptions revealed in the materials (5.5), and a summary of the findings (5.6).

5.1 Approach, Evidence Considered, and Limitations

While Section 4 assessed the wording of the PID(WP)A (AB) against a best practice standard developed by the CFE, this section assesses the implementation of the regime. To do so, it included a review of open sources, records provided by the OPIC, and transcripts of public hearings held by the Legislature's Standing Committee on Resource Stewardship. The author reviewed approximately 90 internal documents provided by the OPIC. This included job descriptions, procedures, presentations and communications materials, and various analyses. Publicly available material included investigations reports, business plans, annual reports by OPIC, and the results of a recent survey on awareness of the regime, comprising about 30 documents.[5] Media sources were also used to better understand the context of some cases,

[5] Annual reports from Government of Alberta departments and agencies were also reviewed to determine whether (and how much) reporting was taking place on activities under the PID(WP)A (AB). This aspect of the analysis was not completed as it became evident that reporting was inconsistent, with many organizations not reporting at all – particularly smaller agencies.

and legal decisions in several cases were closely examined. Materials from the 2017 and 2021 legislative reviews included transcripts of committee meetings, submissions by stakeholders and experts, and analysis by the OPIC. Excluding international reports and studies (with which the author was already familiar), this amounted to almost 50 documents.

In sum, the review is informed by the review of about 200 records and 2000 pages of material. The OPIC was also kind enough to provide clarification on issues where the author was uncertain, and to identify errors.

Using evidence from the records above, the analysis considered whether the implementation of the Act is consistent with its explicit and implicit objectives, whether the implementation is consistent with the best practice functioning of a whistleblowing regime, and whether the regime has been implemented and enforced to the degree it could be. It also examined official and unofficial perspectives revealed by the evidence.

With respect to the limitations of this review, information from departments and agencies covered by the Act was unavailable, inconsistent, or too scattered to be of any utility. Baseline information on the performance or effect of the whistleblowing regime is not collected by central agencies of the Government of Alberta. For example, the last public service survey completed in 2018 did not include any questions directly or indirectly relevant to ethics or the reporting of misconduct.[6] This lack of evidence from departments and agencies is unfortunate as existing research indicates that workers will overwhelmingly first attempt to report misconduct through internal channels within their organizations (e.g., Dozo et al., 2018, p. 17; Miceli & Near, 1992, p. 8; Public Concern at Work & University of Greenwich, 2013, p. 13; Rothschild & Miethe, 1999).[7] More specifically, the Australian *Whistling While They Work* project found that supervisors were the first recipient 65% of the time (Donkin et al., 2008, p. 88), an avenue which is not protected under PID(WP)A (AB). Further, oversight bodies such as the OPIC are specialist organizations and expected to conduct more professional and impartial investigations than internal organizational mechanisms.[8] Thus, the findings in this report apply

[6] See *2018 employee engagement summary reports* at https://open.alberta.ca/publications/2018-employee-engagement-summary-reports.

[7] Closer to home, annual reports on the Government of Canada's whistleblowing regime show that more than twice as many disclosures are made at the departmental level (approximately 4300 from 2007 to 2024) than to the Integrity Commissioner (approximately 1950 from 2007 to 2024).

[8] This has not been studied extensively, although the author has found some evidence that external authorities such as the OPIC do conduct more professional and impartial investigations than internal departmental procedures, where a bias for greater informality and direct pressure from senior management are more prevalent (Bron, 2022). The Australian *Whistling While They Work* project found that internal investigations within implicated organizations are conducted by poorly trained staff. Unfortunately, external agencies would often refer investigations back to implicated agencies due to a lack of resources (Annakin, 2011; Mitchell, 2008; Roberts, 2008). The B.C. Health scandal also provides a stark example of how badly astray unprofessional investigations can go, with tragic consequences (Allingham, 2015; British Columbia. Legislative Assembly. Office of the Ombudsperson of British Columbia, 2017).

primarily to a relatively small subset of disclosures and attitudes within the Government of Alberta. Departmental and agency processes are likely to be inferior to those of the OPIC.

5.2 Analysis of OPIC Procedures, Policies, and Guidance

The OPIC provides resources for government officials and whistleblowers considering or attempting to navigate the requirements of the regime.[9] In addition, it has a well-developed set of procedures and policies in place. Much of this material is sound and appropriate, increasing the likelihood that investigations and findings will be robust and consistent with the principles of natural justice. For example, to ensure confidentiality, the OPIC has a variety of tools and processes to ensure the security of information (e.g., digital vaults) while at the same time ensuring that evidence is easily found by authorized personnel (e.g., consistent file naming and metadata protocols).

With respect to qualifications, job descriptions for investigators at the OPIC stipulate experience and expert knowledge in investigation techniques and related legal principles (such as natural justice). It is unclear whether the same standards are required in departments and agencies, but the OPIC provides training and guidance to designated officers on a regular basis. Guidance on report writing is well set out, noting that methods and evidence should be described and that findings should be consistent with evidence. It also contains a clear warning about premature judgements and bias. Designated officers are advised to direct systematic issues to the OPIC, as well as issues which may involve organizational conflicts of interest. This is important, as departmental designated/senior officers in other jurisdictions have complained of interference in their work – sometimes to the point of directing them to reach a finding of no wrongdoing.[10]

The OPIC has also cautioned departments and agencies about deviations in internal policies and mechanisms which are inconsistent with the Act. For example, at least one agency employed hotlines to receive disclosures.[11] This can cause harm to disclosures as such hotlines are not a protected avenue. In addition, advice may not be available via a hotline.

However, some shortcomings were also identified. The OPIC offers templates for organizational whistleblowing policies (which are required under s. 5 of the Act). However, no mention is made of implementing and monitoring recommendations and corrective action arising from investigations. The templates would also benefit from an introductory text setting out the

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[9] See *Publications* at https://yourvoiceprotected.ca/publications/.

[10] The author of this report has received two credible personal communications to this effect in the course of his work and has been made aware of similar concerns. Governments are encouraged to explore this further.

[11] See p. 18 of the *2021-22 Annual Report* of the OPIC at http://surl.li/jybszv and *Use of Third Party Whistleblower Hotlines for Public Interest Disclosures* at https://yourvoiceprotected.ca/use-of-third-party-whistleblower-hotlines-for-public-interest-disclosures/. This advice, however, contrasts with earlier praise for the use of hotlines; see pp. 16-17 of the OPIC's *Annual Report 2017-18* at https://tinyurl.com/5n73754b. A reprisal complaint may have caused a reanalysis and change in perspective.

intent and broad applicability of the disclosure regime. This could include, for example, strongly worded cautions on wrongdoing and prohibitions on adverse action against any parties in an investigation, be they the whistleblower, witness, investigator, or a party implicated in the disclosure. Examples of types of prohibited adverse action and actions to actively protect disclosers from reprisal could be provided as a guide (e.g., risk assessments, offering the possibility of transfer). Training and awareness activities are also not mentioned. Such training may reduce frivolous or otherwise non-jurisdictional disclosures and serve as a guide to more effective reporting. Further, research has shown that training reduces the likelihood that a disclosure will be mismanaged or that reprisal occurs (Mazerolle & Brown, 2008).

At the operational level, forms used for triaging disclosures of wrongdoing and complaints of reprisal appear – at least superficially – to favour rejecting those disclosures and complaints. While it is understood that resource limitations make it difficult for officials to probe every case in depth, and that many reports will fall outside the scope of the Act, caution is advised. For example, advice on reasons an investigation may not be required appears to imply an obligation to decline to investigate. If these forms are offered to designated officers for their use, more complete guidance and greater clarity is advised: Designated officers (and other personnel with a role in the regime) may not understand that matters which initially appear minor may be part of a greater wrongdoing. Further, whistleblowers may be inarticulate and have difficulty separating reprisal (or other personal issues) from the disclosure they are attempting to make.[12] For example, a personal dispute between a supervisor and a worker may arise from concerns the worker has expressed or may be the proverbial “tip of the iceberg.”

In addition, whistleblowing recipients are required under s. 30 of the Act to refer suspected contraventions of law to the police and suspend their own inquiries and investigations into the matter.[13] Investigations may be re-started after a prosecution or once the police and Crown prosecutors have finally disposed of the matter. While it is reasonable for officials to avoid interference with police investigations, the CFE is concerned that the resulting delay will lead to the matter being dropped entirely (perhaps due to the staleness of the issue, or if wrongdoers have left). If so, the wrongdoer may escape accountability entirely. The Government of Alberta should consider ways to minimize this risk and should also ensure that whistleblowers remain fully protected in the interim.

5.3 Analysis of Cases

Based on annual reports up to 2024, the OPIC received 549 reports in which the reporters believed they were making protected disclosures under the Act. Many of these were deemed to be outside of the jurisdiction of the Act. There were 69 investigations conducted, with six

[12] The Australian Whistling While They Work project found that many cases combined a disclosure with personal grievances (Brown et al., 2008).

[13] See page 6 of *Managing and Assessing Public Interest Disclosures: Guidance for Designated Officer*s at https://yourvoiceprotected.ca/wp-content/uploads/2024/06/Managing-and-Assessing-Public-Interest-Disclosures.pdf.

findings of wrongdoing reported. Without access to the details of the cases, it is difficult to assess whether investigations were thorough or the findings consistent with the evidence. Attempts to determine whether categories of disclosures (e.g., systemic harassment vs. gross mismanagement) are treated differently were similarly unsuccessful. However, a review based on OPIC reports suggests that when findings are made, they usually appear consistent with the Act. Two early cases, however, deserve closer examination.

1. Case file PIC-14-02130 was reported in 2016 and remains a high-profile case.[14] The province's Chief Medical Officer (CMO) alleged the gross-mismanagement of public funds and a contravention of the *Fatality Inquiries Act* related to a procurement process. It implicated senior public servants. The final report describes what appears to be contract-fixing and cartel-like behaviour – but then determines that the conduct did not rise to the level of wrongdoing under the Act. Further, the CMO was not renewed in her role, triggering lawsuits that were later abandoned amidst allegations of intimidation (Johnston, 2022). This was determined to not be a reprisal because a formal disclosure was made after the decision not to renew the CMO's contract. There was also evidence that the CMO's performance assessment was downgraded (after previous excellent reviews) and that complaints had been solicited against her. To an outside observer, this case appears to meet the definition of gross mismanagement and reprisal, finer points of law notwithstanding. The findings are unlikely to have improved confidence in the Act or in the integrity of the Alberta Public Service. Further, the case underscores the importance of extending whistleblower protections to personnel before they have made a formal disclosure. It is naïve to believe that every person implicated in wrongdoing will wait for a formal disclosure before launching reprisals.

2. Case file PIC-15-01640 was also reported in 2016 and arose from a disclosure alleging improper disposal of records following the 2015 provincial election. This election resulted in the first change of government in decades. There were allegations that the outgoing government was indiscriminately destroying records, with accompanying insinuations that evidence of misconduct was being eliminated. It was thus a politically charged disclosure. The investigation concluded that, while records management and disposal practices were clearly flawed and that records were improperly destroyed, the conduct did not rise to the level of wrongdoing. Again, to an outside observer, this appears to be gross mismanagement. Proper records management may appear alternately mundane or esoteric, but it is an important responsibility of chief officers, vital to the proper functioning of government, and essential to the retention of institutional memory. Mismanagement of records also impairs the public's right to access government information, considered a quasi-constitutional right in Canada.

[14] The report can be found at https://yourvoiceprotected.ca/wp-content/uploads/2016/06/PIC-14-02130-Report-to-Chief-Officer.pdf.

Both cases appear to be a missed opportunity at an early point in the Act's history to demonstrate that senior executives are accountable for the operation of their organizations – and to deter potential future misconduct.

There have been more findings of wrongdoing since these cases, particularly since the addition of systemic harassment ("gross mismanagement of employees"). This is a positive development, as harassment has a negative effect on the operation of any organization and is one of the most common tools used in reprisals. It is also used to suppress dissent within organizations.

Another positive case, PIC-20-00108, was reported in 2023 This exposed serious lapses in medical standards of care for individuals incarcerated at the Edmonton Remand Centre. It also, however, raises questions about the functioning of whistleblowing mechanisms within Alberta Health Services – Correctional Health. Employees should have been able to address these problems internally, which could have corrected them sooner (and possibly prevented two deaths) and prevented the matter from becoming a public issue. The OPIC made recommendations that are consistent with detecting errors and mismanagement, but it is unclear whether these included advice regarding the protection of whistleblowers.

There were also 107 complaints of reprisal received by the OPIC. Of these, 33 appear to have been investigated, with five complaints being referred to the ALRB[15] and one resolved informally. Again, without access to details of complaints and the evidence obtained, it is impossible to come to firm conclusions about whether the cases were properly handled. Case summaries do, however, shed some light. Most decisions appear sound and consistent with the PID(WP)A (AB). In several cases, even after determining that a compliant was out of its jurisdiction, the OPIC nonetheless cautioned and advised the implicated organizations. Many complaints were deemed outside the jurisdiction of the Act, including reports by individuals outside the public service, the reporting of incidents which are better characterized as personal grievances or disputes, and some cases which suggest mental illness (not unusual in such offices).

In several cases the alleged reprisal occurred or started before the official disclosure. While it is not unknown for employees to attempt to exploit whistleblower protections to forestall legitimate employment actions, this would be unlikely to achieve for long the results the employee seeks. A more troubling possibility is that an employee made an informal disclosure, outside legally sanctioned avenues, which triggered reprisals. The employee may then have belatedly attempted to make a formal disclosure. This would be unsuccessful under the PID(WP)A (AB). For this reason, the CFE strongly advises protecting more avenues and methods of disclosure (e.g., to supervisors and colleagues, to audit personnel, or to another official within government). Similarly, the complaints reviewed suggested that legal protection should be extended to contractors and police agencies, that informal reprisals (e.g., blacklisting) should

[15] These all arose from a single case and were investigated together. See the OPIC 2023-24 Annual report, page 10 for details (https://tinyurl.com/4h7r2pua).

be explicitly forbidden, and that risk assessments and more proactive protections after a disclosure would allay fears by employees considering disclosing a wrongdoing.

5.4 Recent Legal Developments

Of great concern are recent developments in the courts. In 2023, an individual found to have committed a wrongdoing by the OPIC made a request for judicial review to the Court of King's Bench of Alberta. The individual also sought to learn the names of the disclosers and witnesses, which the OPIC sought to prevent – as this would negate the confidentiality provisions of the PID(WP)A (AB). The decision made in May 2024 supported the individual found to have committed a wrongdoing.[16] This requires that the Commissioner reveal to the individual the names of all parties involved, potentially exposing them to direct or indirect reprisal. Rather than compromise the confidentiality of disclosers and witnesses, the OPIC withdrew its findings.

It is beyond the scope of this report to comment on all the points in law made in the decision, but two of precedents on which Justice Friesen relied pertain to cases that differ in significant ways from whistleblowing. This reflects the paucity of case law under whistleblowing legislation in Canada. Unfortunately, along with an earlier case at the federal level (*Desjardins v. Canada*),[17] the decision has created precedent undermining confidentiality protections in every Canadian whistleblowing law. Indeed, in the absence of an immediate and concrete threat of reprisal, any implicated party need now only seek a judicial review to break confidentiality.

This decision also illustrates two fundamental difficulties in enforcing whistleblowing regimes in Canada: First, that confidentiality alone is insufficient to protect disclosers and witnesses, and must be supplemented by more proactive, mandatory protections, and second, that uninformed Canadian jurors are inclined to treat whistleblowing cases as ordinary employment disputes. They are not; organizations will mobilize against a whistleblower in ways they will not for ordinary grievances. For this reason, advocates favour specialist training for adjudicators handling whistleblowing cases. This is mandatory in Serbia (a leading jurisdiction in the field of whistleblower protection) under Article 25 of its *Law on the Protection of Whistleblowers* and appears to have contributed to successes under that law.

5.5 Evident Perspectives and Misconceptions

The material studied also suggests some biases and misconceptions which should be addressed. At the legislative level, some Members of the Legislative Assembly (MLAs) appear to distrust whistleblowers and whistleblowing, with one MLA comparing whistleblowing to the establishment of a nanny state. This implicitly equates whistleblowing with informing in a police

[16] See Campbell v. Alberta (Public Interest Commissioner), 2024 AB.K.B. 269 (CanLII). https://canlii.ca/t/k4jdc

[17] See Desjardins v. Canada (Attorney General), 2020 F.C.A. 123 (CanLII). https://canlii.ca/t/jbrrs

state.[18] This and other attitudes heard at legislative committee sessions question the motives and trivialize the risks whistleblowers take for the public good. Such negative attitudes may indicate a lack of understanding of whistleblowing – or concern that the speaker's own practices might not stand up to close scrutiny. It is well established in the literature on whistleblowing that reprisals can be life-altering events with devastating financial, social, emotional, and health effects (e.g., Lennane, 1993).

Regarding recommendations for legislative changes, the previous Commissioner opposed the protection of verbal and informal disclosures. The Commissioner instead suggested that whistleblowers should be more committed to their disclosures before deserving protection. As noted earlier, this ignores the reality that reprisals may begin before a formal disclosure is made. It is hoped that the law will be revised to address this issue.

In addition, there appears to be some skepticism about interim relief for whistleblowers, which is intended to stop any reprisals while an investigation is ongoing. It is possible that a malicious employee masquerading as a whistleblower could attempt to use interim relief to stave off legitimate employment action; indeed, the OPIC indicates that it has encountered such instances. The CFE has never encountered a verified example of this before, but for the employee in question the approach is high risk and will only delay the inevitable. Thus, it seems counterproductive to deny active protection to genuine whistleblowers based on concerns about bad actors.

Awareness about the regime is also very low. A 2024 survey conducted by the OPIC found that nearly two-thirds of public sector employees were unaware of its office, with only 5% able to name it, and more than half were unaware or unsure about how to report wrongdoing within their own organizations. Under the Act, the responsibility for both awareness in the regime lies on the shoulders of chief officers. The Act and the Regulations, however, set no standards for awareness or training. Such training would improve the quality of disclosures and increase the likelihood that they are properly handled.

The reported willingness to disclose serious wrongdoing was also low, with one in three employees indicating that they would remain silent. Given that actual reporting is typically lower than such stated intentions, this is troubling and suggests a failure by chief officers and central agencies in the Government of Alberta to encourage a speak-up culture.

More positively, the OPIC appears to have a realistic view of the limitations of the PID(WP)A (AB) and is actively advocating improvements. These are articulated in several documents, most notably in its 2020 submission to the Legislature's Standing Committee on Resource

[18] The difference is an important one: In police states such as apartheid-era South Africa, informants work with the state authorities to enforce highly unjust laws and to punish political activity intended to end state abuses. Whistleblowers do the opposite by reporting crimes and misconduct that would otherwise cost lives and waste government resources. This protects the public interest.

Stewardship.[19] This review does not address all the 22 recommendations that were made individually – most are sound additions – but should be supplemented by the recommendations in Section 3 of this report and by implementing all best practices. In addition (as noted above), recommendation 14, which requests the discretion to decline to investigate a matter already being investigated by a law enforcement agency or before a court (see s. 19 of the Act), should be accompanied by a clear policy on the resumption of investigations. It is important that cases which do not rise to criminal levels of wrongdoing, or the levels of proof required in such cases, are still dealt with at the administrative level.

The OPIC is also appropriately skeptical of stakeholder entreaties that they not be covered or that their own internal disclosure mechanisms are a robust substitute for the Act, and is concerned about the use of non-disclosure agreements by organizations to "buy their way out of their responsibilities under the Act using public funds."[20] There were also concerns expressed about delays and a lack of cooperation from departments and agencies subject to the Act, which would impact the OPIC's ability to perform its duties without time-consuming and expensive legal action. The CFE is concerned that efforts to prevent such obstructionism may lead the OPIC to adopt a more conciliatory tone than appropriate in some circumstances. For example, while the sentiment in its publication *Sharing a Common Goal*[21] is admirable, the OPIC's concerns about delays suggest that it has already encountered instances in which the leadership of implicated organizations have not acted in good faith. Such recalcitrance could be addressed via a prosecution under ss. 47-48 of the Act, but the author is unaware of any such enforcement action in any jurisdiction in Canada. Further, it is unclear under what conditions the Solicitor General of Alberta would support any such prosecution. A scheme of administrative monetary penalties may be more appropriate.

There also appears to have been a positive evolution in thinking about the requirement that disclosures be made in good faith to be protected. Best practice advises replacing all references to good faith with the term "reasonable belief." The difference is subtle, but important. It is frequently difficult or impossible to ascertain the motive of another person, and even where there is apparently a malicious motive, the information in the disclosure may still be accurate and valuable to protect the public interest. If such a change is made, amendments to guidance materials will be required.[22]

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[19] See *Review of the Public Interest Disclosure (Whistleblower Protection) Act: Submission of Alberta's Public Interest Commissioner to the Standing Committee on Resource Stewardship* at https://tinyurl.com/3sduznrn.

[20] See Severance Agreements – The Commissioner Recommends Improvement at https://yourvoiceprotected.ca/severance-agreements-the-commissioner-recommends-improvement/.

[21] See https://yourvoiceprotected.ca/sharing-a-common-goal/.

[22] For example, *A Brief Guide to Good Whistleblowing and Bad Faith* at https://yourvoiceprotected.ca/a-brief-guide-to-good-whistleblowing-and-bad-faith/.

5.6 Summary of the Findings

As noted above, the findings in this section are apply only to disclosures and attitudes in the OPIC and expressed in legislative committee hearings. However, given that the OPIC (as with similar offices worldwide) is the subject matter expert within government, and that witnesses in legislative committees are likely making carefully crafted and approved talking points, it is possible they represent a best-case scenario. The implementation of the PID(WP)A (AB) within regulated departments and agencies is a black box and may range from exemplary to hostile: actively undermining the intent of the Act. Commendably, in the apparent absence of interest by the government the OPIC has assumed a leadership role in educating officials.[23]

At the operational level, it is impossible to conclude definitively whether all disclosures are being properly triaged, all investigations are sound, all conclusions are consistent with evidence, or all implicated officials being appropriately held to account; this would require a case-level review that is outside the scope of this review (and the Act). Two early cases suggest an early reluctance by OPIC to implicate senior officials, but this is not as evident in later reported cases.[24] Overall, there is evidence that the OPIC is attempting to enforce the Act rigorously, sometimes implementing best practice even when not required by law, while retaining the cooperation of the leadership of entities it must investigate – not to mention political actors who may not wish to probe problems too deeply for fear of electoral consequences. It is not clear how successfully OPIC can achieve or maintain this balance, given the levers held by organizations (obstruction and delay) and by the government (resource allocations to the OPIC). This underlines the importance of the independence of the OPIC from any such levers, and its need for strong powers.

The OPIC, in any event, can only implement the law it is given. This law remains deficient, with no evidence that current legislators intend to improve it. No recommendations from the previous review were acted on. Committee hearings suggest that there remains a suspicion of whistleblowers and of whistleblowing, with an unstated and unsupported belief that some employees are prepared to make false claims to the press or elsewhere.

The absence of any evidence or reports from regulated entities is much more troubling. This makes it impossible to determine whether the Act is being properly implemented at the local level, or whether there has been any shift in culture. The lack of transparency is counterproductive, preventing greater awareness of the Act and its benefits to management. Additionally, given available statistics on the ratio of internal versus external disclosures, there are likely hundreds of unreported disclosures every year. Even if just a small percentage would

[23] In the Government of Canada, this Office of the Chief Human Resources Officer at the Treasury Board Secretariat has an important role in this respect. The Public Service Commission of Australia has a similar function, especially with respect to Code of Conduct violations. A similar office in the Government of Alberta could be considered.

[24] One could, however, make the argument that when systemic misconduct is found there should be consequences for senior executives overseeing the units, divisions, etc. – even when not directly implicated.

be substantiated, this would represent a significant lack of transparency, denying Albertans information they need to make informed voting decisions.

6. Selected Alberta Law and Cases

Campbell v. Alberta (Public Interest Commissioner), 2024 ABKB 269 (CanLII). https://canlii.ca/t/k4jdc

Desjardins v. Canada (Attorney General), 2020 F.C.A. 123 (CanLII). https://canlii.ca/t/jbrrs

Eksteen v. University of Calgary, 2019 A.B.Q.B. 881 (CanLII). https://canlii.ca/t/j3hxv

Employment Standards Code R.S.A. 2000 , c. E-9. https://tinyurl.com/28ht78pr

Labour Relations Code, R.S.A. 2000, c. L-1. https://tinyurl.com/86kj82ku

Ombudsman Act, R.S.A. 2000, c. O-8. https://tinyurl.com/585azr3u

Public Interest Disclosure (Whistleblower Protection) Act, S.A. 2012, c P-39.5. https://tinyurl.com/4kj39etj

Public Interest Disclosure (Whistleblower Protection) Regulation, Alta Reg 71/2013. https://tinyurl.com/mr46ep8r

7. Standards and Models Laws Used in the Assessment

Bron, I., & Hutton, D. (2022). *Evaluation criteria for protection of whistleblowers: A guide for legislation and policy*. https://tinyurl.com/ru24ra9u

Canadian Standards Association. (2016). EXP01-16 Whistleblowing systems - A guide. CSA Group.

Devine, T. (2016). Government Accountability Project international best practices for whistleblowing policies. https://tinyurl.com/y3kmvzad

European Union. (2019). Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law. https://tinyurl.com/55pynujz

Hutchison, C. (2020). *Whistleblowers not protected: How the law abandons those who speak up in the public interest in Alberta*. http://surl.li/sotlm

Ireland. Protected Disclosures Act 2014 (Ir.). https://tinyurl.com/4r7jp2x3

ISO. (2021). *ISO 37002: Whistleblowing management systems*. https://www.iso.org/standard/65035.html

Public Interest Commissioner of Alberta. (2016). *A report of the Public Interest Commissioner in the matter of disclosures of wrongdoing and a complaint of reprisal under the Public Interest Disclosure (Whistleblower Protection) Act*. https://tinyurl.com/5ccacfca

Serbia. Law on the Protection of Whistleblowers, 2014 (Serb.). https://tinyurl.com/y89vp47w

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8. Academic Sources

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