

Review of the Public Interest Disclosure of Wrongdoing Act

Interim Progress Report

Public Service Commission

March 2022

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Background and context

The Yukon's *Public Interest Disclosure of Wrongdoing Act* ("the Act") was brought into force on June 15, 2015. The Act's purposes are to:

- facilitate the disclosure and investigation of significant and serious matters in or relating to public entities that an employee believes may be unlawful, dangerous to the public or injurious to the public interest,
- protect employees who make those disclosures, and
- promote public confidence in the administration of public entities.

Section 55 of the Act requires that a review commence within five years of its coming into force. As a result of resource challenges and emergent priorities associated with the COVID-19 pandemic and response, it was determined in spring 2020 to conduct the review in two phases to ensure sufficient capacity and ample opportunity for stakeholder participation.

Objectives and focus of the review

Phase one of the review commenced in June, 2020. This phase was a high-level review which explored:

- information related to the number of disclosures of wrongdoing made under the Act, the number of disclosures investigated, the outcome of any disclosure investigations undertaken, and the number of reprisal complaints that may have been made under the Act since it came into force,
- comparable legislation in other Canadian jurisdictions, particularly changes since the Act came into force, and
- international trends and research in whistleblower protection legislation.

Phase one findings

Activity under the Act

An employee considering making a disclosure of wrongdoing may request advice from the Public Interest Disclosure Commissioner (PIDC), their supervisor or chief executive. From 2015 to 2019, the PIDC received 15 requests for advice.

An employee can make a disclosure of wrongdoing to the Public Interest Disclosure Commissioner (PIDC) or internally to their immediate supervisor or chief executive (or to any or all of them simultaneously). From 2015 to 2019, there have been two internal disclosures within public entities that were reported to the PIDC. Over the same period, approximately ten disclosures were made directly to the PIDC.

As of the end of 2019, the PIDC had completed two investigations into three disclosures. The first investigation found two findings of wrongdoing. The second investigation found one finding of wrongdoing.

An employee who believes they have suffered a reprisal because they have in good faith sought advice about making a disclosure, made a disclosure, cooperated in an investigation under the Act, or declined to participate in a wrongdoing, can make a complaint of reprisal directly to the PIDC. From 2015 to 2019, the office of the PIDC reported receiving four complaints of reprisal. As of the end of 2019, no investigations into complaints of reprisal had been completed.

Canadian and international legislation

The past five years have seen several changes in relation to federal, provincial and territorial whistleblower laws, with new laws introduced while other existing laws were amended.

Since 2015, Canadian laws differ or have been amended in areas such as the following.

- **Scope of application** – other jurisdictions have expanded the scope of their legislation to include entities such as contracted service providers and



municipalities. In several jurisdictions, individuals outside the public service may disclose a wrongdoing pertaining to a public entity.

- **Confidentiality and anonymity** – some jurisdictions, such as British Columbia, allow for anonymous disclosures. Amendments have introduced stronger confidentiality protections during investigations, in civil court proceedings, and in publishing of reports.
- **Roles and powers in investigations** – amendments have strengthened or clarified the powers and abilities during investigations of internal designated officers or the external agency responsible for receiving disclosures of wrongdoing.
- **Definition of wrongdoing and reprisal** – some jurisdictions have expanded or clarified the definition of wrongdoing and/or reprisal.
- **Options for making disclosures** – new or amended acts allow employees to opt for either internal disclosure or direct disclosure to the external agency responsible for receiving disclosures of wrongdoing.
- **Provision of legal support** – some jurisdictions facilitate access to legal advice for individuals who make or contemplate making a disclosure, or who believe they have suffered a reprisal for making a disclosure.
- **Prevention of wrongdoing** – Nunavut includes a provision requiring deputy heads and the responsible Minister to encourage the prevention and disclosure of wrongdoing in the public service.

Adoption of national whistleblower protection legislation is a growing international trend. A review of international best practices in whistleblower protection legislation revealed several potential areas for improvements to the Act, including but not limited to removing the requirement that disclosures be made in good faith, revising the categories of wrongdoing, and extending the time frame for employees who believe they have suffered a reprisal to file a complaint.



Next Steps

Phase two of the review will generally consider:

1. whether the purposes of the Act remain valid,
2. whether the legislation, as currently written, is appropriate to meet the Act's purposes,
3. whether the legislation is being administered by public entities in a way that meets the Act's purposes, and
4. whether there are areas for possible legislative or administrative improvement that could further advance the Act's purposes.

Specific areas of focus will include:

- the disclosure of wrongdoing-related awareness, knowledge, experiences and perceptions of employees of public entities,
- the roles, responsibilities and experiences of stakeholders involved in receiving, addressing, investigating and reporting the outcome of disclosures and complaints of reprisal under the Act, and the processes used by these stakeholders,
- whether the model for making disclosures and complaints of reprisal under the Act supports the Act's purposes,
- whether the authorities provided to the Public Interest Disclosure Commissioner in conducting investigations into disclosures and complaints of reprisal support the Act's purposes, and
- whether the scope of the Act should be expanded.

Phase two will involve consultation with a variety of stakeholders and will begin in Spring 2022. It is anticipated that phase two of the review will require 12-18 months to complete.