

Yukon Public Service Commission
submission to the
Select Committee on Whistle-blower Protection
August 26, 2009

This submission to the Yukon Legislature Select Committee on Whistle-blower protection is prepared by the Yukon Public Service Commission on behalf of the Yukon government as employer.

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Yukon Public Service Commission submission to the Select Committee on Whistle-blower Protection

1.0 INTRODUCTION

Whistle-blower protection can be seen as having two parts – the disclosure and the protection. To enable disclosure of wrongdoing legislation would need to include the definition and establishment of methods and conditions for disclosure. Protection would need to be assured and enforced by deterring reprisal and providing an avenue for complaint.

Appended to this paper are two documents prepared previously by the Public Service Commission which may be helpful to the committee in its review of this submission. Appendix 1 is a cross-jurisdictional summary of whistle-blower protections and Appendix II is a summary of existing wrongdoing disclosure provisions already in force in policy (that applies to Yukon government employees) and in legislation.

1.1 What is whistle-blowing?

Public servants sign an Oath of Office and Secrecy as their affirmation that they will not disclose information of which they become aware because of their position and that they will never use this information for personal advantage.

Employees also have a duty of loyalty in common law. The public service is expected to provide professional and full advice for their ministers and they must be loyal in their implementation of (lawful) decisions made and the direction they receive. They must serve impartially regardless of their personal opinions.

Employees who disclose confidential information in violation of their oath or other provision are subject to discipline up to and including dismissal. Whistle blowing legislation provides an exception to these restrictions, describing the types of disclosure that can be made in the public interest, mechanisms for reporting and protection from reprisals against the individual.

1.2 What is whistle-blower protection?

Whistle-blower protection is based on the principle that there is an underlying public interest in the disclosure of misconduct by an employee. This principle comes into tension with other established and well accepted underpinnings of the employer-employee relationship, specifically the duty of loyalty and confidentiality.

There are constraints on public service employee disclosures to ensure that the public service overall is perceived as impartial and effective. These constraints include obligations which limit disclosure of or comment on matters or activities which are proposed or being undertaken.

Whistle-blower protection legislation is about allowing a breach of the duties of loyalty and confidentiality, and violation of related rules, for the greater public good. The legislation must address what matters make a breach permissible, under what circumstances the breach should be made, including to whom, and what protections are afforded to an employee who makes such an allowable breach.

The protection offered to employees by whistle-blower legislation is two fold – protection from reprisal and remediation if reprisal occurs.

It is important that employees who make allowable disclosures are protected from reprisals while employees who otherwise violate their duties of loyalty and confidentiality remain subject to established discipline processes.

2.0 RESPONSE TO SELECT COMMITTEE MANDATE AND RECOMMENDATIONS BY THE PUBLIC SERVICE COMMISSION

The mandate of the Select Committee on Whistle-blower Protection includes nine central issues to be addressed by the legislation. This paper addresses these issues as they are presented in the mandate. They are:

1. whether all public institutions and private organizations performing “public” functions will be covered;
2. whether only employees or others – unions, advocacy groups, the media, citizens – can use the legislation;
3. what types of wrongdoing will be covered;
4. whether the same office will conduct investigation, mediation and the protection of whistle-blowers;
5. whether employees will have to exhaust departmental procedures before approaching the whistle-blower protection office;
6. how retaliation against whistle-blowers will be defined and how long protection will exist;
7. whether there will be a reverse onus on the employer to demonstrate that adverse decisions on a whistle-blowing employee were not a reprisal;
8. what remedies for employees judged to be adversely affected will be specified in the legislation; and
9. what sorts of consequences there will be for employees who engage in reckless or malicious accusations of wrongdoing and for managers who engage in reprisal against employees who act in good faith.

2.1 Select Committee Mandate issue #1

(1) WHETHER ALL PUBLIC INSTITUTIONS AND PRIVATE ORGANIZATIONS PERFORMING “PUBLIC” FUNCTIONS WILL BE COVERED

There are no Canadian examples of legislation that extend beyond a government’s own jurisdiction. In this context, the Public Service Commission’s input to the Select Committee focuses on the Yukon government. We are not in a position to provide input as to coverage of other organizations other than to note that disclosure processes might need to vary.

In Yukon there are laws which cover all employees in the public and private sectors (e.g. *Occupational Health & Safety Act*), just the public service (e.g. *Public Service Act* and *Education Act*) or just the private sector (e.g. *Employment Standards Act*). It is theoretically possible for whistle-blower protection legislation to take any of these approaches with regard to whom the legislation applies.

RECOMMENDATION:

The Public Service Commission recommends that legislation apply to Government of Yukon departments and crown corporations.

2.2 Select Committee Mandate issue #2

(2) WHETHER ONLY EMPLOYEES OR OTHERS – UNIONS, ADVOCACY GROUPS, THE MEDIA, CITIZENS – CAN USE THIS LEGISLATION

It is common for whistle-blower protection to focus on protecting employees complaining of wrongdoing by their employer or their colleagues.

The Public Service Commission as employer suggests that in Yukon the appropriate coverage would be for “persons employed under the *Public Service Act* or the *Education Act*” to include all those generally considered to be Yukon government employees.

If whistle-blowing protection within the context of the Yukon government is about when it is permissible to violate established policies on employee loyalty and confidentiality then it is implicit that it is protection for employees against reprisals.

The protection provided by this legislation would be against workplace reprisals and so it is difficult to understand how other groups or individuals identified in the Select Committee mandate (unions, advocacy groups, media, and citizens) might require the protection afforded by the legislation. The nature of reprisals which might face any of these non-

employee groups seems vague or they are already prohibited by other authorities such as collective agreements, contracting regulations, etc.

That said, the federal government, Manitoba and British Columbia allow disclosures from the public. They are handled through an external designate (Integrity Commissioner or Ombudsman). The federal government's, Ontario's and Manitoba's legislation dealing with whistleblowing also apply to former employees.

Further, the federal government, Manitoba and British Columbia also include specific provisions to protect private sector (non-government) employees and contractors from reprisal if they provide information respecting wrongdoing (i.e. they would be protected from reprisal from the government and from their own employer).

Note: The Yukon's *Ombudsman Act* provides mechanisms for public complaints about decisions or actions of a public body.

RECOMMENDATION:

The Public Service Commission does not have a recommendation on what approach would be best in Yukon but some options are:

1. to allow members of the public to make complaints to a specified authority under the act);
2. to allow former employees to make complaints through specified channels;
3. to include former employees but exclude the public; and/or
4. to allow non Yukon government employees / contractors to disclose and provide them with reprisal protections.

2.3 Select Committee Mandate issue #3

(3) WHAT TYPES OF WRONGDOING WILL BE COVERED

Whistle-blowing is generally understood to refer to the disclosure of a significant wrongdoing. It does not include matters which are only seen as "wrong" from a partisan or personal point of view. It is not an avenue to allow employees to publicize confidential information or advice with which they simply disagree.

Definitions of the types of wrongdoing are fairly standard across Canadian jurisdictions where whistle-blowing laws emphasize that the issue must be significant and serious. Among others, key categories covered are violation of law, danger to the health or safety of persons or the environment, and gross mismanagement including misuse of funds or assets.

It is fundamental to whistleblowing legislation that employees know which of the matters that they may be concerned about warrant whistleblowing and that the employer has direction on what disclosures may or may not be legitimately subject to discipline related to the duties of confidentiality and loyalty. Employees also need to have a clear understanding of what internal redress systems are available to them.

RECOMMENDATION:

The Public Service Commission recommends that the “types” of wrongdoing that may be specified in Yukon legislation be in keeping with legislation in other jurisdictions and with existing Yukon legislation, policy and regulation, including matters such as:

1. contravention of an Act of Parliament or of this Legislature or regulations;
2. gross mismanagement of public funds or assets;
3. an act or omission that creates substantial and specific danger to the life, health or safety of persons or to the environment; and
4. knowingly directing or counseling a person to commit an act of wrongdoing.

The Public Service Commission also recommends that disclosures that will not be protected in legislation also be delineated. Exceptions to disclosures could include information that would disclose deliberations of Cabinet, information protected by solicitor-client privilege and information for which disclosure is prohibited under another act or regulation.

The Public Service Commission further recommends that there be a provision for exceptional events where there is reasonable belief that public disclosure is necessary to prevent imminent and serious danger to life, health or safety of a person and when there is not sufficient time to make a disclosure through established processes. This kind of disclosure would be made to the specific public agency that could best address the imminent danger.

2.4 Select Committee Mandate issue #4

(4) WHETHER THE SAME OFFICE WILL CONDUCT AN INVESTIGATION, MEDIATION AND THE PROTECTION OF WHISTLE-BLOWERS

In other jurisdictions, the same person conducting the investigation may or may not mediate a disclosure but when it comes to investigating a complaint of reprisal, they all direct that the complaint go to an external agency/process (i.e. the Public Sector Integrity Commissioner in the federal government, to the Ombudsman as is done in British Columbia or to an independent labour relations board as is done in New Brunswick –

specifically called the Labour and Employment Board and in Ontario – specifically called the Ontario Labour Relations Board).

RECOMMENDATION:

The Public Service Commission recommends that complaints of reprisal be directed to an external designated body.

2.5 Select Committee Mandate issue #5

(5) WHETHER EMPLOYEES WILL HAVE TO EXHAUST DEPARTMENTAL PROCEDURES BEFORE APPROACHING THE WHISTLE-BLOWER PROTECTION OFFICE

None of the six Canadian jurisdictions with whistle-blower protection requires employees to exhaust internal procedures, however in the vetting process, the external body will look at whether internal processes could have been explored or are being duplicated.

A defined process for whistleblowing makes it clear what manner of disclosure is protected and what remains prohibited. A common perception is that whistleblowing is any disclosure of a wrongdoing, including disclosure to the media, advocacy groups, opposition parties, etc. but in fact protected whistle-blowing in all other Canadian jurisdictions is only for disclosures made through an established process to specific authorities. While this approach is generally supported by the Public Service Commission, it is recognized that the disclosure process should not be so narrow as to water down the potential of the legislation and make it so tricky to disclose correctly that employees do not take the risk. Provisions in other jurisdictions address this balance (Appendix I).

The Public Service Commission envisions a three prong approach where employees would be protected if they disclose a legitimate wrongdoing through department channels, to a central authority within the organization or to a specific external body. (For example, the federal *Public Service Disclosure Protection Act* which obligates disclosure in certain circumstances provides procedures for reporting and investigating and establishes a Public Sector Integrity Commissioner to whom public servants would report in certain circumstances and who is responsible for protecting whistle-blowers.)

The three options are not a tier or steps and employees would not be bound to exhaust one before the other; rather, employees could choose whichever route they prefer for their situation and the wrongdoing they are disclosing. They may change routes at any time but they cannot pursue routes simultaneously.

Because the nature of wrongdoing disclosed may vary considerably, as may the position and circumstances of the employee who wishes to whistleblow and be protected, it is possible to envision scenarios where a disclosure route within a department is likely the most efficient and effective, but also to speculate about scenarios where the employee might feel the whole department or senior management is complicit in the wrongdoing and therefore wishes to go to a central authority, or perhaps lacks confidence that the whistle will be heard unless it is blown to an authority entirely outside the organization.

In all options there is an emphasis on disclosure to an authority with the power to do something about the wrongdoing. This does not include the media or other groups mentioned above.

RECOMMENDATION:

The Public Service Commission recommends that employees be given three routes for disclosure (i.e. through department channels, to a central authority – corporate or departmental – within the organization, or to a specified external body) and that internal processes need not be exhausted before going to an external body – but that duplication of process not be permitted.

2.6 Select Committee Mandate issue #6

(6) HOW RETALIATION AGAINST WHISTLE-BLOWERS WILL BE DEFINED AND HOW LONG PROTECTION WILL EXIST

The range of reprisal or retaliation from which a whistle-blower needs to be protected includes discipline, demotion, termination, adverse change to working conditions (e.g. shift changes, relocation of offices, decreases in administrative support or benefits) and any other spiteful or vindictive actions. Unjustified consequences are already prohibited at common law and by various employment policies and collective agreements, including particularly the harassment policy provision against abuse of authority. The unique aspect of whistle-blower protection is that it offers protection from consequences which, without this protection, might be undertaken (e.g. reprimand or suspension for a breach of confidentiality).

Retaliation could be defined in legislation as actions or threats of actions which adversely affect the employee and which are atypical for the employment or working conditions of the employee. Current Yukon policies and laws contain some language which may be useful in describing the consequences the whistle-blower protection legislation needs to address (see Appendix II).

It is reasonable to require that employees who feel they have suffered harm as the result of whistle-blowing make their complaint within a specific time of the reprisal occurring. (The Yukon Human Rights Act specifies that a complaint must be made within six months of the alleged contravention. The Workplace Harassment Prevention and Resolution Policy – Yukon government General Administration Manual 3 – states that a complaint made under the policy must be filed within six months of the alleged harassment having occurred.)

There is no direct reference to the length of time an employee has to complain in other jurisdictions.

RECOMMENDATION:

The Public Service Commission recommends that retaliation be defined in a manner consistent with other jurisdictions and that there be a time limit on when an employee may complain about retaliation.

2.7 Select Committee Mandate issue #7

(7) WHETHER THERE WILL BE A REVERSE ONUS ON THE EMPLOYER TO DEMONSTRATE THE ADVERSE DECISIONS ON A WHISTLE BLOWING EMPLOYEE WERE NOT A REPRISAL

In general labour relations practice, the person complaining about retaliation bears the onus of establishing the prima facie case of differential treatment.

If successful, the onus shifts to the respondent (employer) to show that the actions taken were reasonable (i.e. for the employer to demonstrate that the action would have been undertaken regardless of the whistleblowing). If the action is legitimate discipline or change in working conditions, the employer bears the onus of justifying the action.

RECOMMENDATION:

The Public Service Commission recommends placing the burden of proof of reprisal on the complainant.

2.8 Select Committee Mandate issue #8

(8) WHAT REMEDIES FOR EMPLOYEES JUDGED TO BE ADVERSELY AFFECTED WILL BE SPECIFIED IN THE LEGISLATION

Approaches to remedies for employees judged to be adversely affected vary in Canadian jurisdictions. Some state that adjudicators or other body hearing the employee's complaint may determine remedies as appropriate.

The Public Service Commission does not support payment or compensation to employees who are wronged but rather believes the focus should be on repair of the harm within the work environment. It should be recognized that although payment for punitive or aggravated damages may be a remedy in Yukon human rights complaints and as a result of arbitration, workplace remedies to restore a positive environment are equally as important in rebuilding a respectful work place. Compensation is a remedy only in the federal whistle-blower process.

RECOMMENDATION:

The Public Service Commission recommends that remedies for reprisal against legitimate whistleblowing be consistent with those established for other wrongful discipline or abuse of authority situations. This includes reinstatement or repair of the employee's working situation and possible discipline of the persons who took the reprisal. Appeal provisions would be to an external body.

2.9 Select Committee Mandate issue #9

(9) WHAT SORTS OF CONSEQUENCES WILL THERE BE FOR EMPLOYEES WHO ENGAGE IN RECKLESS OR MALICIOUS ACCUSATIONS OF WRONGDOING AND FOR MANAGERS WHO ENGAGE IN REPRISAL AGAINST EMPLOYEES WHO ACT IN GOOD FAITH.

With respect to punishment for reprisal other jurisdictions use a general statement that says that employees "may be subject to discipline up to and including dismissal".

Although approaches vary, in most cases, investigators can throw out vexatious complaints through a vetting process and make recommendations for discipline in cases of bad faith disclosures.

RECOMMENDATION:

With regard to malicious accusations, the Public Service Commission recommends that if the complaint is determined to be frivolous or trivial then it may be dismissed. If the complaint is vexatious, known by the whistle-blower to be untrue and made in bad faith, then the complainant may be subject to discipline up to and including dismissal.

With regard to reprisals against employees who act in good faith, the Public Service Commission recommends that there be provisions for discipline up to and including dismissal against the person who commits the reprisal.

(These provisions are in accordance with what currently applies for other workplace negative practices such as harassment in the Yukon government.)

3.0 OTHER COMMENTS

The Select Committee indicated it would be interested in receiving comments from the Public Service Commission beyond response to the specific issues in the committee's mandate. In accordance with that request the Public Service Commission would like to raise the matter of education and communication.

The Public Service Commission suggests that it is very important that there be a strong education component accompanying implementation of whistle-blower protection so that employees understand when and how it may be used. This is a highly complex matter and other Canadian jurisdictions with protections specify a requirement to communicate with employees and to educate them on the processes and other details related to whistle-blowing. The Public Service Commission has significant experience in developing and delivering the sort of education and training which may be required.

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4.0 Appendices

1. Whistle-blower cross-jurisdictional research summary
2. Wrongdoing disclosure addressed in other legislation / policies

Cross-jurisdictional Research Summary

Based on the most recent cross-jurisdictional survey conducted by PPC branch, the following jurisdictions have introduced whistle-blower protection laws, all within the past five years. Four¹ are in the form of stand-alone legislation, while two are outlined in their respective *Public Service Acts*.

- **Government of Canada** – *Public Servants Disclosure Protection Act*, 2005
- **Nova Scotia** – *Public Service Act Regulations: Civil Service Disclosure of Wrongdoing Regulations*, 2004
- **New Brunswick** – *Public Interest Disclosure Act*, 2007
- **Ontario** – *Public Service of Ontario Act: Part VI Disclosing and Investigating Wrongdoing*
- **Manitoba** – *The Public Disclosure (Whistle-blower Protection) Act*, 2006
- **BC** – private members *Bill M233: Whistle-blowers Protection Act*, 2007 (through First Reading only)

Comparing specific provisions

1) Application

Legislative provisions in each jurisdiction relates solely to wrongdoing within the public service – government ministries/departments and corporations.

2) Who may disclose wrongdoing

Each act enables public sector (i.e. government) employees to make disclosures of wrongdoing. The Federal Government, Ontario and Manitoba laws also apply to former employees.

The Federal Government, Manitoba and British Columbia also allow disclosures from the public to be made to the Commissioner/ Ombudsman.

3) Definitions of wrongdoing

While wording varies slightly, each of the six jurisdictions define wrongdoing as:

- a) a contravention of an Act of Parliament or of provincial legislature or regulations;
- b) gross mismanagement of public funds or asset; and
- c) an act or omission that creates substantial and specific danger to the life, health or safety of persons or to the environment.

All, with the exception of Nova Scotia include:

- d) knowingly directing or counseling a person to commit wrongdoing

Nova Scotia alone includes

- e) taking of a reprisal against an employee

The federal government also includes:

- f) a serious breach of the Code of Conduct

4) Disclosure Processes

In five of the six jurisdictions, Deputy Ministers and/or the Public Service Commission (Ontario) are responsible for developing departmental disclosure processes and for designating a department

¹ BC legislation not yet assented to

Appendix I - Whistle-blower Cross-jurisdictional Research Summary

person (Designated Officer, Senior Officer etc) responsible for receiving disclosures of wrongdoing. Where none is appointed, the DM acts in this capacity.

Each of the six jurisdictions provides employees with three disclosure options:

- a) to their supervisor
- b) to the designated department person or Deputy Minister, or
- c) to an external body

External bodies

In Nova Scotia and New Brunswick, disclosures can be made to the Conflict of Interest Commissioner; the Federal government and Ontario direct disclosures to the Integrity Commissioner and Manitoba and BC, to the Office of the Ombudsman.

Each Act contains provisions guiding external bodies on the vetting of disclosures for relevance, timeliness, frivolous or vexatious nature, etc. (It's assumed that vetting criteria are outlined in departmental procedures on disclosure.)

When public disclosure may be permissible

Five jurisdictions, with the exception of Ontario, include provisions that allow for public disclosure when there is a reasonable belief that it is necessary to prevent imminent and serious danger to life, health or safety of a person and or/ the environment, and where there is insufficient time to use official disclosure procedures.

With the exception of the federal legislation which doesn't specify, all others are clear that public disclosure means only to the appropriate law enforcement agency or medical health officer and only where the agency has directed further public disclosure is necessary.

What can't be disclosed under the Act

Each of the six jurisdictions specify that there are certain types of information that can never be disclosed including advice to Cabinet (Executive Council) and information subject to solicitor-client privilege.

5) Investigations

Investigations in each jurisdiction are the responsibility of either the designated official, deputy minister or external body, depending on who receives the disclosure.

6) Protection from Reprisals

Each Act specifically grants employees protection from reprisal as a result of a disclosure of wrongdoing made in good faith. The federal government, Manitoba and BC also include specific provisions protecting private sector (non-government) employees and contractors from reprisal if they provide information respecting wrongdoing.

Complaints process

Within the federal government, complaints of reprisal are made to the Public Sector Integrity Officer directly. The PSIO investigates, and may appoint a conciliator. Where no agreement is reached, the complaint is then referred to the Public Servants Disclosure Protection Tribunal. Depending on the Tribunal's finding, remedies may be ordered.

Appendix I - Whistle-blower Cross-jurisdictional Research Summary

The Nova Scotia definition of wrongdoing actually includes reprisal; however no reprisal complaint processes are outlined in the legislation.

New Brunswick, Ontario, Manitoba and BC legislation directs complaints to the provincial Labour Relations Board and/or Public Service Grievance Board.

Remedies may be granted by the Tribunals/Boards as they deem appropriate.

NOTE: The Ontario legislation is the only one to make specific reference to Burden of Proof in complaints of reprisal. Under the Ontario Act, burden of proof is stated to rest with the employer.

7) Consequences for findings of wrongdoing

Four jurisdictions (Federal, Nova Scotia, New Brunswick and Manitoba) make specific reference to the consequences of wrongdoing. While language varies, they generally state that in addition to and apart from any penalty provided by law, employees will be subject to discipline up to and including dismissal.

Ontario and BC legislation do not reference consequences directly.

8) Confidentiality

The federal government, Nova Scotia and New Brunswick make specific references to maintaining confidentiality of individuals involved in the disclosure process including those who disclose, witnesses and persons alleged to be responsible.

Appendix II – Wrongdoing disclosure addressed in other legislation / policies

Laws of general application

Employment Standards Act

These provisions cover employees except those of the Yukon government. Section 74 provides for reporting violations of the Act in confidence and section 108 protects against reprisal for disclosing.

A person who... discharges or threatens to discharge or otherwise discriminates against a person because that person has testified or is about to testify in any proceeding had or taken under this Act, or has given any information to the director, an employment standards officer, or the board regarding the wages, hours of work, annual vacation, or conditions of employment of any employee commits an offence and is liable ... to a fine not exceeding \$10,000.

Environment Act

Section 20 protects against reprisal for disclosing despite any duty of confidentiality on the employee.

No employer shall dismiss or threaten to dismiss, discipline, impose any penalty on, or commence or prosecute any legal action against, intimidate, or coerce an employee because the employee, for the purpose of protecting the natural environment, or the public trust in relation to the natural environment, from material impairment,

Protection is through a court process with offenders liable to a fine up to \$25,000 and/or 90 days in jail and prohibition against retaliation including reinstatement or payment of lost wages and benefits.

Occupational Health and Safety Act

Section 18 protects employees from reprisal for compliance and specifies remedies when reprisal occurs.

No employer or trade union or person acting on behalf of an employer or trade union shall dismiss or threaten to dismiss a worker; discipline or suspend or threaten to discipline or suspend a worker; impose any penalty on a worker; intimidate or coerce or attempt to intimidate or coerce a worker or a member of the worker's family; or take any discriminatory action against an employee because the worker has acted in compliance with this act....

If an employer is convicted by a court of any of the above actions, the employer can be ordered to cease the action and reinstate the worker to their former employment under the same terms and conditions under which they were formerly employed. The employer may also be ordered to pay the worker any wages the worker was deprived of and remove any reprimand or other reference to the matter in the employer's or trade union's records on the worker's conduct.

Ombudsman Act

Legislation does not specifically protect a complainant from retaliation for disclosing an alleged wrongdoing to the ombudsman but a complainant's identity can be kept confidential. An employee could make a follow-up complaint if retaliation was alleged. The Ombudsman can recommend action, including repair or compensation.

Yukon Human Rights Act:

Section 30 of the Act protects against reprisal for human rights complaints or for providing information under the act:

It is an offence for a person to retaliate or threaten to retaliate against any other person on the ground that the other person has done or proposes to do anything this Act permits or obliges them to do.

Protection is through the court system with offender liable on summary conviction to a fine up to \$2,000

Additional provisions for employees in the Yukon public service

Public Service Act

Section 202 of the Act states that

An employee who, at the request of the commission, is assisting the commission with respect to an investigation of a matter...may not be penalized for giving the assistance requested...

Protection is through the grievance process, the Public Service Commissioner, independent adjudication and ultimately the courts

Grievance processes within the Yukon government

The **Collective Agreement** between the Yukon government and the Public Service Alliance of Canada (PSAC - Yukon Employees Union (YEU)) has a process for employees to grieve unjust discipline or reprisal. Section 28 states that:

No person who is employed in the public service shall seek by intimidation, by threat of dismissal or by any other kind of threat to cause an employee to abandon his/her grievance or refrain from exercising his/her right to present a grievance as provided in the Collective Agreement.

The YTA Collective Agreement states that an employee or group of employees may present a grievance under Section 63 of the **Education Staff Relations Act** and in the manner prescribed in this Article. YTA may present a grievance in accordance with Article 68 of the **Education Staff Relations Act***. In both cases, independent adjudication is the final and binding phase of the grievance process.

Excluded and managerial and confidential employees may grieve unjust discipline under section 77 of the **Public Service Staff Relations Act: 77**. Excluded employees may also file grievances under the **Managerial and Confidential Employees Policy**.

Yukon government policies

Under the Yukon government **Workplace Harassment Prevention and Resolution Policy** (General Administration Manual policy 3.47) findings of fact and decisions on harassment within the public service are made. Harassment can include abuse of authority and threats of reprisal upon making a harassment complaint. Section 2.4.2 of the policy stipulates:

Respondents are responsible for refraining from threatening or retaliating in response to being accused of harassment.

Offenders may be subject to discipline.

Other provisions related to disclosure of wrongdoing but that do not address protection

The **Internal Audit Services and Activities Policy** (General Administration Manual policy 1.13) covers *investigations to assess the validity of allegations of fraud, negligence, impropriety or wrongdoing*. It does not reference protection for those who make the auditors aware of wrongdoing.

Section of the Yukon **Access to Information and Protection of Privacy Act** requires a public body to disclose information that would reveal a serious environmental, health, or safety hazard to the public.

Despite any other provision of this Act, a public body must disclose information to the public or an affected group of people if the public body has reasonable grounds to believe that the information would reveal the existence of a serious environmental, health, or safety hazard to the public or group of people.

Once information is disclosed to the requesting body it is effectively in the public domain.