

2017 Bill 11

Third Session, 29th Legislature, 66 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 11

**PUBLIC INTEREST DISCLOSURE
(WHISTLEBLOWER PROTECTION)
AMENDMENT ACT, 2017**

THE MINISTER RESPONSIBLE FOR DEMOCRATIC RENEWAL

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

BILL 11

2017

PUBLIC INTEREST DISCLOSURE (WHISTLEBLOWER PROTECTION) AMENDMENT ACT, 2017

(Assented to _____, 2017)

HER MAJESTY, by and with the advice and consent of the
Legislative Assembly of Alberta, enacts as follows:

Amends SA 2012 cP-39.5

1 The *Public Interest Disclosure (Whistleblower Protection) Act* is amended by this Act.

2 Section 1 is amended

(a) by repealing clause (a) and substituting the following:

(a) “Board” means the Labour Relations Board;

(a.1) “chief officer” means

(i) the deputy minister of a department,

(ii) the department head of an office, and

(iii) with respect to a public entity, the prescribed individual;

(b) in clause (d)

(i) in subclause (i) by adding “or an office of a member of the Legislative Assembly” after “the Legislative Assembly Office”;

Explanatory Notes

1 Amends chapter P-39.5 of the Statutes of Alberta, 2012.

2 Section 1 presently reads in part:

1 In this Act,

- (a) “chief officer” means the deputy minister of a department, the department head of an office of the Legislature and, with respect to a public entity, the prescribed individual;*
- (c) “department” means a department established under section 2 of the Government Organization Act;*
- (d) “department head” means*
 - (i) the Clerk of the Legislative Assembly with respect to the Legislative Assembly Office,*
 - (ii) the Auditor General with respect to the Office of the Auditor General,*

(ii) by striking out “and” at the end of subclause (vii), adding “and” at the end of subclause (viii) and adding the following after subclause (viii):

- (ix) the Chief of Staff, Office of the Premier with respect to the Premier, the Office of the Premier, a minister or an office of a minister;

(c) by repealing clause (g) and substituting the following:

- (g) “employee” means, as the context requires,
 - (i) an individual employed by a department, a public entity, an office or a prescribed service provider,
 - (ii) an individual who has suffered a reprisal and is no longer employed by a department, a public entity, an office or a prescribed service provider, or
 - (iii) an individual or person or an individual or person within a class of individuals or persons, prescribed in the regulations as an individual or person to be treated as an employee for the purpose of this Act or a provision of this Act;

(d) by adding the following after clause (h):

- (h.1) “office” means, subject to the regulations,
 - (i) an office of the Legislature,
 - (ii) an office of a member of the Legislative Assembly, and includes the member,
 - (iii) the Office of the Premier, and includes the Premier, and
 - (iv) an office of a minister, and includes the minister;

(e) by adding the following after clause (j):

- (j.1) “prescribed service provider” means any individual or any part or all of an organization, body or other person that is determined under the regulations made under section 4.2 to be a prescribed service provider;

- (iii) *the Ombudsman with respect to the Office of the Ombudsman,*
- (iv) *the Chief Electoral Officer with respect to the Office of the Chief Electoral Officer,*
- (v) *the Ethics Commissioner with respect to the Office of the Ethics Commissioner,*
- (vi) *the Information and Privacy Commissioner with respect to the Office of the Information and Privacy Commissioner,*
- (vii) *the Child and Youth Advocate with respect to the Office of the Child and Youth Advocate, and*
- (viii) *the Public Interest Commissioner with respect to the Office of the Public Interest Commissioner;*
- (g) *“employee” means an individual employed by, or an individual who has suffered a reprisal and has been terminated by, a department, a public entity or an office of the Legislature or an individual prescribed in the regulations as an employee;*
- (l) *“reprisal” means measures taken or directed against an employee as described in section 24;*
- (n) *“wrongdoing” means a wrongdoing set out in section 3 and, except in sections 32(2)(c) and 33(1)(f), includes an alleged wrongdoing.*

(f) by repealing clause (l) and substituting the following:

- (l) “reprisal” means a measure taken, directed or counselled contrary to section 24(2) or (3), or a reprisal referred to in section 26(4);

(g) by repealing clause (n) and substituting the following:

- (n) “wrongdoing” means a wrongdoing referred to in section 3 and, except in sections 32(2)(c), 33(1)(d) and (f) and 53.1 or as otherwise provided in the regulations, includes an alleged wrongdoing.

3 Section 2 is amended

(a) by repealing subsection (1) and substituting the following:

Application and purposes of Act

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

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

(1.1) Nothing in this Act permits a member of the Legislative Assembly or a minister, including the Premier, to make a

3 Section 2 presently reads:

2(1) This Act applies to departments, offices of the Legislature and public entities prescribed in the regulations.

(2) The purposes of this Act are

- (a) to facilitate the disclosure and investigation of significant and serious matters in or relating to departments, public entities or offices of the Legislature, that an employee believes may be unlawful, dangerous to the public or injurious to the public interest,*
- (b) to protect employees who make those disclosures,*
- (c) to manage, investigate and make recommendations respecting disclosures of wrongdoings and reprisals,*

disclosure under this Act or a complaint of a reprisal under this Act.

(b) in subsection (2)

(i) in clause (a) by striking out “in or relating to departments, public entities or offices of the Legislature” **and substituting** “in or relating to departments, public entities, offices or prescribed service providers”;

(ii) by adding the following after clause (c):

(c.1) to provide for the determination of appropriate remedies concerning reprisals,

(iii) by repealing clause (d) and substituting the following:

(d) to promote public confidence in the administration of or services provided by departments, public entities, offices and prescribed service providers, and

4 Section 3(1) is amended

(a) by striking out “or offices of the Legislature” **and substituting** “, offices or prescribed service providers”;

(b) by repealing clause (c) and substituting the following:

(c) gross mismanagement, including an act or omission that is deliberate and that shows a reckless or wilful disregard for the proper management of

(i) public funds or a public asset,

(ii) the delivery of a public service, including the management or performance of

(A) a contract or arrangement identified or described in the regulations, including the duties resulting from the contract or arrangement or any funds administered or provided under the contract or arrangement, and

- (d) to promote public confidence in the administration of departments, public entities and offices of the Legislature, and*
- (e) any other purpose prescribed in the regulations.*

4 Section 3 presently reads:

3(1) This Act applies in respect of the following wrongdoings in or relating to departments, public entities or offices of the Legislature or relating to employees:

- (a) a contravention of an Act, a regulation made pursuant to an Act, an Act of the Parliament of Canada or a regulation made pursuant to an Act of the Parliament of Canada;*
- (b) an act or omission that creates
 - (i) a substantial and specific danger to the life, health or safety of individuals other than a danger that is inherent in the performance of the duties or functions of an employee, or*
 - (ii) a substantial and specific danger to the environment;**
- (c) gross mismanagement of public funds or a public asset;*

(B) the duties and powers resulting from an enactment identified or described in the regulations or any funds administered or provided as a result of the enactment,

or

(iii) employees, by a pattern of behaviour or conduct of a systemic nature that indicates a problem in the culture of the organization relating to bullying, harassment or intimidation;

(c) by adding the following after clause (c):

(c.1) a wrongdoing prescribed in the regulations;

(d) in clause (d) by striking out “clauses (a) to (c)” and substituting “clauses (a) to (c.1)”.

5 Section 4 is repealed.

6 The following is added before the heading to Part 2:

**Part 1.1
Members of the
Legislative Assembly
and Their Offices**

Parliamentary privileges and immunities saved

4.1(1) The Commissioner’s exercise of powers and performance of duties under this Act is limited by and must conform to the rights, immunities, privileges and powers of the Legislative Assembly and of members of the Legislative Assembly.

(2) For the purposes of this section, the Commissioner and the Speaker of the Legislative Assembly, on behalf of the Legislative Assembly and its members, may establish a protocol respecting the Commissioner’s exercise of powers and performance of duties under this Act in relation to the

(d) knowingly directing or counselling an individual to commit a wrongdoing mentioned in clauses (a) to (c).

(2) This Act applies only in respect of wrongdoings that occur after the coming into force of this Act.

5 Section 4 presently reads:

4 In addition to, and apart from, any sanction provided for by law, an employee who commits a wrongdoing is subject to appropriate disciplinary action, including termination of employment.

6 The addition of Part 1.1, Offices of MLAs and Part 1.2, Prescribed Service Providers.

Legislative Assembly, members of the Legislative Assembly and the offices of members of the Legislative Assembly.

(3) Only the Speaker of the Legislative Assembly may determine whether a disclosure or a complaint of a reprisal involves a matter or document subject to parliamentary privilege, and therefore cannot be investigated, examined, produced or disclosed.

(4) A determination referred to in subsection (3) is final.

Part 1.2 Prescribed Service Providers

Prescribed service provider regulations

4.2(1) The Lieutenant Governor in Council may, in addition to any applicable regulations made under section 36, make regulations

- (a) respecting the Commissioner's exercise of powers and performance of duties under this Act in relation to prescribed service providers;
- (b) for the purpose of section 1(j.1), determining that any individual or person, any part or all of an organization, body or other person or any class of individuals, persons, organizations or bodies is a prescribed service provider;
- (c) respecting activities that may be considered and activities that may not be considered to constitute a wrongdoing to which this Act applies in relation to prescribed service providers;
- (d) respecting the communication of information about this Act to employees of prescribed service providers;
- (e) respecting requests for advice about making a disclosure in relation to prescribed service providers;
- (f) respecting reprisal measures for the purposes of section 24(3);

- (g) respecting the making of a complaint of a reprisal to the Commissioner under section 25(2);
- (h) respecting measures that the Board may order in relation to a prescribed service provider under section 27.1(3)(f)(viii);
- (i) respecting the reporting and recommendations to which a prescribed service provider may or must be subject under this Act;
- (j) respecting the Commissioner's annual reporting in respect of prescribed service providers;
- (k) exempting prescribed service providers from the application of any provision or part of this Act.

(2) A regulation made under this section may apply to all prescribed service providers, to a class of prescribed service providers or to a part of a prescribed service provider, and there may be different regulations for different classes of prescribed service providers.

7 The heading to Part 2 is repealed and the following is substituted:

**Part 2
Disclosure Procedures
for Departments, Public
Entities and Offices**

8 Section 5 is amended

(a) in subsection (2)

- (i) in clause (c) by striking out** “for referring a disclosure to the Commissioner as soon as reasonably practicable” **and substituting** “, consistent with section 30 and any regulations that apply, for referring a disclosure to the Commissioner”;
- (ii) in clause (f) by striking out** “for reporting an alleged offence if” **and substituting** “, consistent with section

7 The heading to Part 2 presently reads:

*Part 2
Procedure for Disclosures*

8 Section 5 presently reads in part:

5(1) Every chief officer must establish and maintain, in accordance with this Act, written procedures, including time periods, for managing and investigating disclosures by employees for whom the chief officer is responsible.

(2) The procedures established under subsection (1) must include, at a minimum, the following:

30 and any regulations that apply, for referring an alleged offence if”;

(iii) in clause (g) by adding “, consistent with this Act and any regulations that apply,” after “procedures”;

(iv) in clause (h) by adding “, consistent with this Act and any regulations that apply,” after “procedures”;

(b) by repealing subsection (6) and substituting the following:

(6) If the Commissioner determines that no procedures have been established under subsection (1), the Commissioner

(a) must notify the chief officer that procedures must be established, and

(b) may, if the Commissioner considers it appropriate, provide information about the notification and the circumstances leading to the notification in the Commissioner’s annual report for any year during which no procedures are established.

(c) by repealing subsection (8).

- (c) *procedures for referring a disclosure to the Commissioner as soon as reasonably practicable if the designated officer reasonably believes that the matter to which the disclosure relates constitutes an imminent risk of a substantial or specific danger to the life, health or safety of individuals, or to the environment;*
 - (f) *procedures for reporting an alleged offence if, during an investigation of a disclosure, the designated officer has reason to believe that an offence has been committed under an Act or regulation or under an Act or regulation of the Parliament of Canada;*
 - (g) *procedures respecting the confidentiality of information collected in relation to disclosures and investigations, which procedures would apply unless there is an imminent risk of a substantial and specific danger to the life, health or safety of individuals, or to the environment;*
 - (h) *procedures for protecting the identity of individuals involved in the disclosure process, including the employee making the disclosure, individuals alleged to have committed the wrongdoings and witnesses, subject to any other Act or regulation and to the principles of procedural fairness and natural justice;*
- (6) *If the Commissioner determines that no procedures have been established under subsection (1), the Commissioner must*
- (a) *notify the chief officer that procedures must be established, and*
 - (b) *notify the employees for whom the chief officer is responsible that any future disclosures must be made directly to the Commissioner until procedures have been established by the chief officer and are approved by the Commissioner.*
- (8) *Once the procedures are approved by the Commissioner under subsection (7), the Commissioner must notify the chief officer and the employees for whom the chief officer is responsible of the approval and that all future disclosures, other than in the circumstances described in section 10(1)(b) to (i), must be made to the designated officer in accordance with the approved procedures.*

9 Section 6 is amended by striking out “of the Legislature”.

10 Section 8 is amended

- (a) in subsection (1) by striking out “designated officer or chief officer” and substituting “supervisor, designated officer or chief officer”.**
- (b) in subsection (2) by striking out “The designated officer” and substituting “The supervisor, the designated officer”.**

11 Section 9 is repealed and the following is substituted:

Disclosure concerning a department, public entity or office

9 If an employee of a department, public entity or office reasonably believes that the employee has information that could show that a wrongdoing has been committed or is about to be committed, or that could show that the employee has been asked to commit a wrongdoing, the employee may make a disclosure

- (a) to the employee’s designated officer in accordance with the procedures established under section 5, and**
- (b) subject to section 12, to the Commissioner in accordance with section 15.1.**

12 Sections 10 and 11 are repealed.

9 Section 6 presently reads:

6 Each chief officer must ensure that information about this Act and the procedures established under section 5 are widely communicated to the employees of the department, public entity or office of the Legislature for which the chief officer is responsible.

10 Section 8 presently reads:

8(1) An employee who is considering making a disclosure may request information or advice from the employee's designated officer or chief officer or from the Commissioner.

(2) The designated officer, the chief officer or the Commissioner may require a request under subsection (1) to be in writing.

11 Section 9 presently reads:

9(1) Subject to section 10, if an employee reasonably believes that the employee has information that could show that a wrongdoing has been committed or is about to be committed, or that could show that the employee has been asked to commit a wrongdoing, the employee may make a disclosure to the employee's designated officer in accordance with the procedures established under section 5.

(2) At the time an employee makes a disclosure under subsection (1), the employee may also make the disclosure to the Commissioner and advise the Commissioner that the disclosure has been made to the employee's designated officer for the purposes of commencing an investigation in accordance with the procedures established under section 5.

12 Sections 10 and 11 presently read:

10(1) Subject to section 12, an employee may make a disclosure directly to the Commissioner only

(a) if no procedures have been established for the department, public entity or office of the Legislature in which the employee is employed,

- (b) *if the employee has made a disclosure in accordance with the procedures established under section 5 and an investigation in respect of the disclosure has not been completed in accordance with those procedures,*
 - (c) *if the employee has made a disclosure in accordance with the procedures established under section 5 and the matter has not been resolved within the time periods established under those procedures or the Commissioner has determined that those procedures do not meet the criteria set out in section 5(1) and (2),*
 - (d) *if the employee has made a disclosure in accordance with the procedures established under section 5, the investigation under those procedures has been completed, a final decision has been issued in respect of the disclosure and the employee is dissatisfied with the decision,*
 - (e) *if the subject-matter of the disclosure involves the employee's chief officer or the employee's designated officer,*
 - (f) *if the employee reasonably believes that a matter constitutes an imminent risk of a substantial and specific danger to the life, health or safety of individuals, or to the environment, such that there is insufficient time to make a disclosure under section 9,*
 - (g) *if the employee has made a disclosure in accordance with the procedures established under section 5 and is unable to complete the procedures because a reprisal has been taken or directed against the employee,*
 - (h) *if the employee reasonably believes that a reprisal is likely to be taken or directed against the employee if the disclosure is made in accordance with the procedures established under section 5, or*
 - (i) *in the circumstances prescribed in the regulations.*
- (2) *With respect to a disclosure made under the procedures described in section 5(2)(c) or under subsection (1)(f), if in the opinion of the Commissioner there is an imminent risk of a substantial and specific danger to the life, health or safety of individuals, or to the environment, the Commissioner must disclose the matter*

**13 Section 13(d) is amended by striking out “of the
Legislature”.**

- (a) *to an appropriate law enforcement agency,*
- (b) *in the case of a health-related matter, to the Chief Medical Officer of Health appointed under section 13 of the Public Health Act,*
- (c) *to the department, public entity or office of the Legislature responsible for managing, controlling or containing the risk, if any, and*
- (d) *to any person prescribed in the regulations.*

(3) A disclosure may be made to the Commissioner under this section notwithstanding any provision in the procedures established under section 5 that states

- (a) *that the decision of the department, public entity or office of the Legislature is final,*
- (b) *that no appeal lies in respect of the decision of the department, public entity or office of the Legislature, or*
- (c) *that the decision of the department, public entity or office of the Legislature may not be challenged, reviewed, quashed or called into question.*

11 As soon as reasonably practicable after a disclosure is made under section 10(1)(f), the employee must also make a disclosure about the matter to the employee's designated officer.

13 Section 13(d) presently reads:

13 A disclosure must be in writing and must include the following information, if known:

- (d) *whether a disclosure in respect of a wrongdoing has been made pursuant to the procedures established under section 5 by the department, public entity or office of the Legislature and whether a response has been received, and if so, a copy of the response;*

14 Section 15 is repealed.

15 The following is added before the heading to Part 3:

**Part 2.1
Disclosure to
the Commissioner**

Disclosure to the Commissioner

15.1(1) An employee referred to in section 9 may make a disclosure directly to the Commissioner despite Part 2 and any provision in the procedures established under section 5 that states

- (a) that the decision of the department, public entity or office is final,
- (b) that no appeal lies in respect of the decision of the department, public entity or office, or
- (c) that the decision of the department, public entity or office may not be challenged, reviewed, quashed or called into question.

(2) If an employee referred to in section 9 has made a disclosure to the designated officer, the employee may also make a disclosure directly to the Commissioner even if the designated officer has made recommendations or concluded the investigation.

(3) Subject to the regulations, an employee of a prescribed service provider may make a disclosure to the Commissioner if the employee reasonably believes that the employee has information that could show that a wrongdoing has been committed or is about to be committed, or that could show that the employee has been asked to commit a wrongdoing.

14 Section 15 presently reads:

15 A designated officer or a chief officer may collect, directly or indirectly, use and disclose personal information, individually identifying health information and any other information that is considered necessary to manage and investigate disclosures under this Act.

15 The addition of Part 2.1 dealing with Disclosure to the Commissioner.

(4) Subject to the regulations, a disclosure must be in writing and must include the information required under section 13.

(5) Subject to sections 4.1(3) and 30 and the regulations, the Commissioner may, as the Commissioner considers appropriate, proceed under this Part and Part 3 or refer a disclosure relating to a department, public entity or office to a designated officer to be dealt with in accordance with Part 2.

16 Section 16 is amended

(a) **in clause (a) by striking out** “or office of the Legislature” **and substituting** “, office or prescribed service provider”;

(b) **by repealing clause (c) and substituting the following:**

(c) to promote public confidence in the administration of and services provided by departments, public entities, offices and prescribed service providers.

17 Section 17 is amended by striking out “or office of the Legislature” **and substituting** “, office or prescribed service provider”.

18 Section 18 is amended

(a) **in subsection (4) by striking out** “or office of the Legislature” **and substituting** “, office or prescribed service provider”;

(b) **by repealing subsections (5) to (7).**

16 Section 16 presently reads:

16 The purposes of an investigation into a disclosure or a complaint of a reprisal under this Act are

- (a) to bring the wrongdoing or reprisal to the attention of the affected department, public entity or office of the Legislature,*
- (b) to recommend corrective measures that should be taken, and*
- (c) to promote confidence in the administration of departments, public entities and offices of the Legislature.*

17 Section 17 presently reads:

17 When an employee makes a disclosure to the Commissioner, the Commissioner may take any steps the Commissioner considers appropriate to help resolve the matter within the department, public entity or office of the Legislature.

18 Section 18 presently reads in part:

(4) The Commissioner shall not investigate any decision, recommendation, act or omission made or done by any individual in the course of acting as a solicitor or Crown prosecutor in a department, public entity or office of the Legislature.

(5) The Commissioner may in the course of an investigation require any person who, in the Commissioner's opinion, is able to give any information, including personal information, individually identifying health information or financial information, relating to any disclosure being investigated by the Commissioner

19 The following is added after section 18:

Access to information — generally

18.1(1) The Commissioner is at all reasonable times and for any purpose related to the exercise or performance of the

- (a) to give written or oral replies to questions,*
- (b) to produce any books, records, reports, documents or other items, including electronic records and documents, and*
- (c) to provide any other information requested by the Commissioner that may be related to the administration of this Act or the regulations.*

(6) The Commissioner may in the course of an investigation inspect, examine and make copies of or temporarily remove books, records, reports, documents or other items, including electronic records or documents, and records or documents containing personal information, individually identifying health information or financial information, that may be related to the administration of this Act and the regulations.

(7) When the Commissioner removes any books, records, reports, documents or other items, including electronic records or documents and records or documents containing personal information, individually identifying health information or financial information, under subsection (6), the Commissioner

- (a) must give a receipt for them to the person from whom they were taken,*
- (b) may make copies of, take photographs of or otherwise record them,*
- (c) on request, must provide a copy of the books, records, reports or other documents, including electronic records or documents and records or documents containing personal information, individually identifying health information or financial information, to the person from whom they were taken or to a person who is entitled to custody of them, and*
- (d) must return them to the person to whom the receipt was given when they have served the purposes for which they were taken.*

19 Access to information.

Commissioner's powers and duties under this Act entitled to access to the records of, and electronic data processing equipment owned or leased by, a department, public entity, office or prescribed service provider.

(2) Present and former employees must give to the Commissioner any information, records or explanations that the Commissioner considers necessary to enable the Commissioner to exercise or perform the Commissioner's powers and duties under this Act.

(3) The Commissioner, or a person employed or engaged by the Commissioner, may enter or be stationed in the premises of a department, public entity, office or prescribed service provider, and the department, public entity, office or prescribed service provider must provide the necessary accommodation, equipment and materials.

(4) The Commissioner may, in the course of an investigation,

- (a) require any record to be produced to the Commissioner, examine any information in a record, including personal information, individually identifying health information or financial information, and make copies of, take photographs of or otherwise record the information, and
- (b) require any person who, in the Commissioner's opinion, is able to provide any information, including personal information, individually identifying health information or financial information, relating to any disclosure being investigated by the Commissioner
 - (i) to give written or oral replies to questions,
 - (ii) to produce any books, records, reports, documents or other items, including electronic records and documents, and
 - (iii) to provide any other information requested by the Commissioner.

(5) When the Commissioner requires the production of a document, paper or thing under subsection (4), the Commissioner may require it to be produced at a place designated by the Commissioner and may require that it be left

in the Commissioner's possession for the purposes of the Commissioner's investigation.

(6) When the Commissioner requires the production of a document, paper or thing under subsection (4), the Commissioner

- (a) must give a receipt for it to the person from whom it was taken,
- (b) may make copies of, take photographs of or otherwise record it,
- (c) on request, must return or provide a copy of the book, record, report or other document, including an electronic record or document and a record or document containing personal information, individually identifying health information or financial information, to the person from whom it was taken or to a person who is entitled to custody of it, and
- (d) must return the document, paper or thing to the person to whom the receipt was given when it has served the purposes for which it was taken.

20 Section 19 is amended

(a) by adding the following after subsection (1):

(1.1) Before beginning an investigation into a disclosure where the disclosure alleges gross mismanagement in relation to employees, the Commissioner must be satisfied that all applicable mechanisms, including any human resource processes or processes under a collective agreement, to address bullying, harassment or intimidation within the department, public entity, office or prescribed service provider have been used or considered.

(b) in subsection (3) by striking out “or office of the Legislature” and substituting “, office or prescribed service provider”;

(c) by repealing subsection (4) and substituting the following:

20 Section 19 presently reads in part:

(3) If the Commissioner decides not to investigate or to discontinue an investigation, the Commissioner must, in writing, inform the employee who made the disclosure and the affected department, public entity or office of the Legislature

(a) of the Commissioner's decision, and

(b) of the reasons for the decision.

(4) If the Commissioner decides not to investigate a matter because subsection (1)(b) applies, the Commissioner may request the designated officer to report on the status of the investigation within any period of time determined by the Commissioner.

(4) If the Commissioner decides not to investigate a matter because subsection (1)(b) applies, the Commissioner may, within any period of time determined by the Commissioner, request from the designated officer a report on the status of an investigation into the matter concerning a department, public entity or office.

21 Section 20(2) and (3) are repealed.

22 Section 21 is repealed and the following is substituted:

Allegations by others of wrongdoing

21 If the Commissioner receives an allegation of wrongdoing that has been made anonymously or by an individual who is not an employee, the Commissioner may, as the Commissioner considers appropriate, subject to any regulations that apply,

- (a) investigate and report the matter in the same manner as a disclosure,
- (b) while maintaining the anonymity of the individual, forward the matter to the designated officer of the department, public entity or office to which the allegation relates for investigation in accordance with the procedures established under section 5, or
- (c) refuse to investigate or, if an investigation has been initiated, cease the investigation, in the same manner as with respect to a disclosure.

21 Section 20(2) and (3) presently read:

(2) If, during an investigation, the Commissioner has reason to believe that an offence has been committed under an Act or regulation or under an Act or regulation of the Parliament of Canada, the Commissioner must, as soon as reasonably practicable, report the alleged offence to a law enforcement agency and to the Minister of Justice and Solicitor General, and the Commissioner's investigation under this Act is suspended.

(3) The Commissioner may not resume an investigation suspended under subsection (2) until any investigation by a law enforcement agency or charge relating to the alleged offence referred to in subsection (2) has been finally disposed of.

22 Section 21 presently reads:

21 If the Commissioner receives an allegation of wrongdoing that has been made anonymously or by an individual who is not an employee, the Commissioner may choose to investigate the disclosure or may, in the Commissioner's discretion, forward the allegation to the chief officer of the department, public entity or office of the Legislature in respect of which the allegation of wrongdoing is made while maintaining the anonymity of the individual, and the chief officer must manage and investigate the disclosure in accordance with the procedures established under section 5.

23 Section 22 is amended

(a) by repealing subsection (2) and substituting the following:

(2) Subject to section 23, the Commissioner may request that the affected department, public entity, office or prescribed service provider notify the Commissioner, within any reasonable period of time that the Commissioner specifies, of the steps that the department, public entity, office or prescribed service provider has taken or proposes to take to give effect to the Commissioner's recommendations.

(b) by repealing subsection (3) and substituting the following:

(3) The Commissioner must provide a copy of the report referred to in subsection (1)

- (a) to the chief officer and the designated officer of the affected department, public entity or office, or
- (b) to the affected prescribed service provider in accordance with the regulations made under section 4.2(1)(i).

(c) by repealing subsection (5) and substituting the following:

(5) If the Commissioner believes that the department, public entity, office or public service provider has not appropriately followed up on the Commissioner's recommendations, if any, or did not co-operate in the Commissioner's investigation under this Act, the Commissioner may make a report on the matter

- (a) in the case of a department, to the Clerk of the Executive Council,
- (b) in the case of a public entity, to the minister responsible, if any, and to the board of directors or the person designated to act as the head of the public entity, if any,
- (c) in the case of an office of the Legislature or an office of a member of the Legislative Assembly, to the Speaker of the Legislative Assembly, and the Speaker of the Legislative Assembly must lay the report before the

23 Section 22 presently reads:

22(1) On completing an investigation, the Commissioner must prepare a report that sets out

(a) the Commissioner's findings and reasons for those findings, and

(b) any recommendations the Commissioner considers appropriate respecting the disclosure and the wrongdoing.

(2) If the Commissioner makes a recommendation pursuant to subsection (1), the Commissioner may request the affected department, public entity or office of the Legislature to notify the Commissioner, within any reasonable period of time that the Commissioner specifies, of the steps that the department, public entity or office of the Legislature has taken or proposes to take to give effect to the Commissioner's recommendations.

(3) The Commissioner must provide a copy of the report referred to in subsection (1) to the chief officer and the designated officer of the affected department, public entity or office of the Legislature.

(4) The Commissioner must notify the individual who made the disclosure that a report pursuant to this section has been made and provide the individual with any information respecting the report that the Commissioner considers appropriate in the circumstances.

(5) If the Commissioner believes that the department, public entity or office of the Legislature has not appropriately followed up on the Commissioner's recommendations, if any, or did not co-operate in the Commissioner's investigation under this Act, the Commissioner may make a report on the matter

(a) in the case of a department, to the chief officer of Executive Council,

(b) in the case of a public entity, to the minister responsible, if any, and to the board of directors or the person designated to act as the head of the public entity, if any,

(c) in the case of an office of the Legislature, to the Speaker of the Legislative Assembly,

(d) in the case of a minister's office, to the minister,

Legislative Assembly for review, referral to a committee of the Legislative Assembly or other action as the Legislative Assembly considers appropriate,

- (d) subject to clause (f), in the case of a minister's office, to the minister,
- (e) subject to clause (g), in the case of the Office of the Premier, to the Premier,
- (f) in the case of a minister or the Clerk of the Executive Council, to the Premier,
- (g) in the case of the Premier, by tabling a report in the Legislative Assembly, or
- (h) in the case of a prescribed service provider, in accordance with the regulations made under section 4.2(1)(i).

24 Section 23 is repealed and the following is substituted:

If subject-matter involves chief officer or designated officer

23(1) If the subject-matter of an investigation involves the chief officer or the designated officer, the Commissioner must, instead of providing a copy of the report referred to in section 22(1) to the chief officer and the designated officer under section 22(3), provide a copy of the report

- (a) in the case of a department, to the Clerk of the Executive Council,
- (b) in the case of the Office of the Premier or an office of a minister, to the Premier,
- (c) in the case of a public entity, to the minister responsible, if any, and to the board of directors or the person designated to act as the head of the public entity, if any, and
- (d) in the case of an office of the Legislature or an office of a member of the Legislative Assembly, to the Speaker of the Legislative Assembly, and the Speaker of the Legislative Assembly must lay the report before the

- (e) in the case of the Legislative Assembly Office, to the Speaker of the Legislative Assembly,*
- (f) in the case of Executive Council, to the chief officer of Executive Council, or*
- (g) in the case of a minister or the chief officer of Executive Council, to the Premier.*

24 Section 23 presently reads:

23 If the subject-matter of a disclosure that is being investigated involves the chief officer or the designated officer, the Commissioner must, instead of providing a copy of the report referred to in section 22(3) to the chief officer and the designated officer, provide a copy of the report

- (a) in the case of a department, to the chief officer of Executive Council,*
- (b) in the case of a public entity, to the minister responsible, if any, and to the board of directors or the person designated to act as the head of the public entity, if any,*
- (c) in the case of an office of the Legislature, to the Speaker of the Legislative Assembly, or*
- (d) in the case of a minister's office or the chief officer of Executive Council, to the Speaker of the Legislative Assembly.*

Legislative Assembly for review, referral to a committee of the Legislative Assembly or other action as the Legislative Assembly considers appropriate.

(2) The Commissioner may request a person provided with a copy of a report under subsection (1) to notify the Commissioner, within any reasonable period of time that the Commissioner specifies, of the steps that the department, public entity or office proposes to take or has taken to give effect to the Commissioner's recommendations.

(3) If the Commissioner believes that the person has not appropriately followed up on the Commissioner's recommendations, if any, the Commissioner may make a report on the matter

- (a) in the case of the Clerk of the Executive Council, to the Premier,
- (b) in the case of the minister responsible for the public entity, if any, or the board of directors or the person designated to act as the head of the public entity, if any, to the Premier, and
- (c) in the case of the Premier or the Speaker of the Legislative Assembly, by tabling a report in the Legislative Assembly.

25 Section 24 is repealed and the following is substituted:

Reprisal

24(1) This section applies to an employee or a prescribed service provider who has, in good faith,

- (a) requested advice about making a disclosure as described in section 8 or, in the case of an employee of a prescribed service provider, the regulations made under Part 1.2, whether or not the employee made a disclosure,
- (b) made a disclosure under this Act,
- (c) co-operated in an investigation under this Act,
- (d) declined to participate in a wrongdoing, or

25 Section 24 presently reads:

24 No person shall take or direct, or counsel or direct a person to take or direct, any of the following measures against an employee because the employee has, in good faith, sought advice about making a disclosure, made a disclosure, co-operated in an investigation under this Act, declined to participate in a wrongdoing or done anything in accordance with this Act:

- (a) a dismissal, layoff, suspension, demotion or transfer, discontinuation or elimination of a job, change of job location, reduction in wages, change in hours of work or reprimand;*

(e) done anything in accordance with this Act.

(2) No person shall take or direct, or counsel or direct a person to take or direct, any of the following measures against an employee of a department, a public entity, an office of the Legislature, the Office of the Premier, an office of a minister or a prescribed service provider for the reason that the employee took an action referred to in subsection (1):

- (a) a dismissal, layoff, suspension, demotion or transfer, discontinuation or elimination of a job, change of job location, reduction in wages, change in hours of work or reprimand;
- (b) any measure, other than one mentioned in clause (a), that adversely affects the employee's employment or working conditions;
- (c) a threat to take any of the measures mentioned in clause (a) or (b).

(3) Subject to the regulations, no person shall take or direct, or counsel or direct a person to take or direct, any measure prescribed in the regulations against a prescribed service provider for the reason that the prescribed service provider or an employee of the prescribed service provider took an action referred to in subsection (1).

26 Section 25 is repealed and the following is substituted:

Complaints of reprisals

25(1) Subject to subsection (3), an employee may make a written complaint to the Commissioner if the employee alleges that a reprisal has been taken, directed or counselled against the employee contrary to section 24.

(2) A prescribed service provider may make a written complaint to the Commissioner if the prescribed service provider alleges that a reprisal has been taken, directed or counselled against the prescribed service provider contrary to section 24.

(3) An employee of the office of the Public Interest Commissioner, and if the Legislative Assembly appoints the

- (b) any measure, other than one mentioned in clause (a), that adversely affects the employee's employment or working conditions;*
- (c) a threat to take any of the measures mentioned in clause (a) or (b).*

26 Section 25 presently reads:

25(1) Subject to subsection (2), an employee may make a written complaint to the Commissioner if the employee alleges that a reprisal has been taken or directed against the employee.

(2) An employee of the office of the Public Interest Commissioner, and if the Legislative Assembly appoints the Ombudsman as the Commissioner pursuant to section 38(2), an employee of the Office of the Ombudsman, may make a written complaint to the Auditor General if the employee alleges that a reprisal has been taken or directed against the employee.

(3) A complaint under this section must be in the prescribed form.

Ombudsman as the Commissioner pursuant to section 38(2), an employee of the Office of the Ombudsman, may make a written complaint to the Auditor General if the employee alleges that a reprisal has been taken, directed or counselled against the employee.

(4) The Auditor General has, in relation to a complaint referred to in subsection (3), all the responsibilities of the Commissioner under this Act and all of the powers and functions of the Commissioner.

(5) A complaint under this section must be in the prescribed form.

27 Section 26 is repealed and the following is substituted:

Managing and investigating complaints of reprisals

26(1) If a complaint is made to the Commissioner under section 25(1) or (2), the Commissioner must, subject to the regulations, manage and investigate the complaint in the same manner as a disclosure.

(2) If a complaint is made to the Commissioner under section 25(1) with respect to the Board and the Commissioner finds that a reprisal has been taken, directed or counselled contrary to section 24, the Commissioner must determine the appropriate remedy.

(3) Sections 27.1(3) and (4), 27.2 and 27.4 apply, with any necessary modifications, for the purposes of a determination under subsection (2).

(4) A complaint of a reprisal may be made to the Commissioner with respect to the office of a member of the Legislative Assembly and

- (a) section 24(1) and (2) apply for the purpose of determining whether a reprisal has occurred,
- (b) the Commissioner must manage and investigate the complaint in the same manner as a disclosure regarding the office of a member of the Legislative Assembly, and

27 Section 26 presently reads:

26 If a complaint is made to the Commissioner under section 25(1) or to the Auditor General under section 25(2), the Commissioner or the Auditor General, as the case may be, must, subject to the regulations, manage and investigate the complaint in the same manner as a disclosure.

- (c) notwithstanding section 27.1, if the Commissioner finds that a reprisal has been taken, directed or counselled, the Commissioner must prepare and submit to the Speaker of the Legislative Assembly a report that sets out
 - (i) the Commissioner's findings and reasons for those findings, and
 - (ii) the Commissioner's recommendations, if any.

(5) The Speaker of the Legislative Assembly must lay the report referred to in subsection (4)(c) before the Legislative Assembly for review, referral to a committee of the Legislative Assembly or other action as the Legislative Assembly considers appropriate,

(6) Subject to section 30, if the Commissioner, the Auditor General, the Board or the Speaker of the Legislative Assembly, as the case may be, considers that the investigation or referral of a complaint under this Part is duplicative or may result in a double remedy or payment in respect of the complaint or that the complaint or any part of the complaint would more appropriately be dealt with in another proceeding or under any other procedure under any other Act or a collective agreement, that person may

- (a) refer the complaint under this Part to another procedure under any other Act or a collective agreement in respect of the measure alleged to constitute a reprisal,
- (b) defer the investigation of the complaint of a reprisal or the issuing of a report under this Part, or the determination of a remedy, pending the resolution of any court proceeding or any procedure under any other Act or a collective agreement in respect of the measure alleged to constitute a reprisal, and
- (c) discontinue the proceedings under this Part in respect of the complaint following the award of an appropriate remedy or payment in another proceeding or under any other procedure under any other Act or a collective agreement in respect of the measure alleged to constitute a reprisal.

28 Section 27 is amended by striking out “or office of the Legislature” and substituting “, office or prescribed service provider”.

29 The following is added after section 27:

Referral to the Board for remedy

27.1(1) If, on completing an investigation, the Commissioner finds that a reprisal has been taken, directed or counselled contrary to section 24, the Commissioner must, subject to section 26(2) and (4), refer the decision and reasons to the Board for a determination as to the appropriate remedy in accordance with this section.

(2) The chair of the Board may establish

- (a) hearing panels, consisting of either the chair or a vice-chair of the Board, to conduct hearings under this Act, and
- (b) administrative panels, consisting of 3 members from among the members of the Board, to conduct the Board’s business under this Act, including the making of rules and any reconsideration referred to in subsection (3)(g).

(3) The Board may, for the purposes of this Act,

- (a) request and receive any submissions, including supplementary reasons or other information from the Commissioner, that it considers necessary, either itself or through its officers;
- (b) conduct any hearings that it considers necessary;
- (c) make rules
 - (i) of procedure respecting referrals, submissions and hearings,
 - (ii) for the giving of notice and the service of documents, and

28 Section 27 presently reads:

27 No action lies against a department, public entity or office of the Legislature, or an employee of any of them, for making a reasonable human resource management decision in good faith.

29 Referral to the Labour Relations Board for remedy.

- (iii) for any other matters as it considers necessary;
- (d) through its members, officers and other representatives undertake efforts to assist the parties to a proceeding before the Board to settle the matter;
- (e) make or issue any interim orders, decisions, directives or declarations it considers necessary pending the final determination of any matter before the Board;
- (f) make a final determination of any matter before the Board and order one or more of the following measures to be taken by a department, public entity, office, prescribed service provider, employee or person found to have taken, directed or counselled a reprisal contrary to section 24:
 - (i) permit the employee to return to his or her duties;
 - (ii) reinstate the employee or, if the Board considers that reinstatement is not advisable, pay compensation to the employee in lieu of reinstatement;
 - (iii) pay compensation for lost remuneration to the employee in an amount not greater than the remuneration that the Board considers would, but for the reprisal, have been paid to the employee;
 - (iv) pay an amount to the employee equal to any expenses and any other financial losses that the employee has incurred as a direct result of the reprisal, including the employee's legal costs on a solicitor-client basis related to, occasioned by or attributable to the reprisal;
 - (v) rescind any form of discipline or reprimand or cease an activity that constitutes the reprisal;
 - (vi) rectify a situation resulting from the reprisal;
 - (vii) do or refrain from doing anything in order to remedy any consequence of the reprisal;
 - (viii) in the case of a prescribed service provider, take any measures required or authorized by the regulations;

(g) on application, or on the Board's own motion, reconsider any determination, decision, order, interim order, directive or declaration made by it and vary, revoke or affirm the determination, decision, order, interim order, directive or declaration.

(4) Except as provided in subsection (3)(g), an order under subsection (3)(f) is final and binding.

(5) The Board must provide to the Commissioner, in respect of a complaint referred to the Board under section 26,

(a) a notice concerning every matter referred, deferred or discontinued under section 26,

(b) a copy of every order issued under subsection (3)(f),

(c) if no remedy is awarded in respect of a determination under subsection (3)(f), a copy of the Board's reasons for the determination, and

(d) a copy of every order issued under subsection (3)(g) that varies, revokes or affirms a determination or an order issued under subsection (3)(f).

Board powers re evidence

27.2(1) For the purposes of this Act, officers and members of the Board may administer oaths.

(2) Subject to subsection (3), the Board may, by order, summon and enforce the attendance of witnesses and compel them to give oral or written evidence on oath and to produce the documents and things the Board considers requisite to the full investigation and consideration of matters under this Act within its jurisdiction in the same manner as a court of record may in civil cases.

(3) If any person fails to comply with a Board order made under subsection (2), or conducts himself or herself in a manner that may be in contempt of the Board or its proceedings, the Board may apply to the Court of Queen's Bench for an order directing compliance with the Board's order or restraining any conduct found by the Court to be in contempt of the Board or its proceedings.

(4) On an application under subsection (3), the Court may grant any order that, in the opinion of the Court, is necessary to enable the Board to carry out its duties.

(5) The Board

- (a) may accept any oral or written evidence that it, in its discretion, considers proper, whether admissible in a court of law or not, and
- (b) is not bound by the law of evidence applicable to judicial proceedings.

Various issues relating to the Board

27.3(1) For the purposes of sections 27.1 and 27.2,

- (a) Part 4.1 applies to the Board, and
- (b) the Board, its members and officers and persons employed in respect of the Board's activities under this Act have all the immunities of the Commissioner under this Act.

(2) Despite any other Act or law, the Board, its members and officers and persons employed in respect of the Board's activities under this Act are not compellable to give evidence concerning any record or information that is obtained or comes to their knowledge as the result of the exercise of the powers, the performance of the duties or the carrying out of functions pursuant to sections 27.1 and 27.2, or to produce anything containing that record or information, except for the purposes of

- (a) the investigation of a disclosure of wrongdoing or a complaint of a reprisal regarding the Board,
- (b) the prosecution of an offence under this Act, and
- (c) the record of proceedings in the judicial review of a decision of the Board pursuant to this Act.

Orders and enforcement

27.4(1) An order that the Board makes under this Act may be issued on its behalf by the chair or a vice-chair of the Board.

(2) An order purporting to be signed by the chair or a vice-chair on behalf of the Board shall be received in any court as proof, in the absence of evidence to the contrary,

- (a) of the order and its contents, and
- (b) that the persons signing the order were authorized to do so,

without proof of the appointment or signature of the chair or vice-chair.

(3) A copy of an order having endorsed on it a certificate purporting to be signed by an officer of the Board stating that the copy is a true copy shall be received in any court as proof, in the absence of evidence to the contrary, of the order and its contents, without proof of the appointment or signature of the officer.

(4) If any order made by the Board is not complied with, an employee, department, public entity, office, prescribed service provider or other person affected by the order, or the Board on its own initiative, may, after 30 days from the date on which the order is made or reasons are given in respect of it or by the date provided in it for compliance, whichever is the latest date, file a copy of the order with the clerk of the Court of Queen's Bench, and on being filed, the order is enforceable as a judgment or order of the Court.

30 The heading preceding section 28 and sections 28 to 30 are repealed and the following is substituted:

Part 4.1 Collection, Use and Disclosure of Information

Disclosure despite other Acts

28 Subject to this Part, a disclosure or a complaint of a reprisal may be made under this Act despite a provision in another Act or regulation that prohibits or restricts disclosure of the information necessary to make the disclosure or complaint of a reprisal.

30 The heading before section 28 and sections 28 to 30 presently read:

*Part 5
General Matters*

28 Except where this Act or the regulations provide otherwise, this Act prevails to the extent of any inconsistency or conflict with the Freedom of Information and Protection of Privacy Act or the Health Information Act or any other Act or regulation prescribed in the regulations.

29(1) Nothing in this Act authorizes the disclosure of

Where disclosure restrictions continue to apply

28.1(1) Despite section 28, nothing in this Act authorizes the disclosure of

- (a) information or documents that would disclose the deliberations of the Executive Council or a committee of the Executive Council or the proceedings of any of them,
- (b) information or documents that are protected by solicitor-client privilege or litigation privilege, or
- (c) any information, document or matter or any class of information, documents or matters prescribed in the regulations as information, documents or matters that must not be disclosed.

(2) Where a disclosure or a complaint of a reprisal involves personal information, individually identifying health information or confidential information, the employee who makes the disclosure or submits the complaint of a reprisal must take reasonable precautions to ensure that no more information is disclosed than is necessary to make the disclosure or complaint of a reprisal.

Other obligations to report not affected

28.2 Nothing in this Act relating to the making of a disclosure or a complaint of a reprisal is to be construed as affecting an obligation of an employee or a person who makes the disclosure or submits the complaint of a reprisal to disclose, report or otherwise give notice of a matter under another Act or regulation.

Authority to collect, use and disclose information

29(1) A designated officer, a chief officer and the Commissioner may, subject to the regulations, collect, directly or indirectly, use and disclose personal information, individually identifying health information and any other information that is considered necessary to manage and investigate disclosures and complaints of reprisal under this Act.

(2) Nothing in this Act authorizes a chief officer or the Commissioner, in an annual report referred to in section 32 or 33,

- (a) *information or documents that would disclose the deliberations of the Executive Council or a committee of the Executive Council, or the proceedings of any of them,*
 - (b) *information that is protected by solicitor-client privilege,*
 - (c) *in the case of a disclosure under section 10(1)(f),*
 - (i) *information that is subject to any restriction created by or under an Act of the Legislature or of the Parliament of Canada, or*
 - (ii) *any personal information or individually identifying health information,*
- or*
- (d) *any information, document or matter or any class of information, documents or matters prescribed in the regulations.*

(2) Nothing in this Act authorizes a designated officer, a chief officer or the Commissioner to publicly disclose personal information or individually identifying health information unless, in the opinion of the designated officer, the chief officer or the Commissioner, it is necessary to disclose that information in order to carry out his or her duties and functions under this Act.

30 Nothing in this Act relating to the making of a disclosure is to be construed as affecting an employee's obligation under any other Act or regulation to disclose, report or otherwise give notice of any matter.

- (a) to publicly identify an employee who requested advice about making a disclosure, made a disclosure or submitted a complaint of a reprisal,
- (b) to publicly identify an individual referred to in section 21, or
- (c) to publicly disclose individually identifying health information.

(3) Subject to subsection (2), the Commissioner may disclose information, including personal information, if in the Commissioner's opinion the public interest in making the disclosure clearly outweighs the potential harm.

Issues and notice re disclosure of information

29.1(1) Except where this Act or the regulations provide otherwise, this Act prevails to the extent of any inconsistency or conflict with the *Freedom of Information and Protection of Privacy Act* or the *Health Information Act* or any other Act or regulation prescribed in the regulations for the purposes of this section.

(2) If the Commissioner receives individually identifying health information in connection with a disclosure or a complaint of a reprisal, or during an investigation under this Act, the Commissioner must use reasonable efforts to inform the identified individual that the Commissioner received the health information, that the disclosure relates to an investigation under this Act, and that any further disclosure of the individually identifying health information is governed by this Act.

Disclosures involving a possible offence or an imminent risk

30(1) If a chief officer, a designated officer or, during an investigation, the Commissioner has reason to believe that an offence has been committed under an Act or regulation or under an Act or regulation of the Parliament of Canada, that person must, as soon as reasonably practicable, report the alleged offence to a law enforcement agency and to the Minister of Justice and Solicitor General.

(2) With respect to a disclosure made under the procedures described in section 5(2)(c) or a disclosure with respect to a

matter that the chief officer, the designated officer or the Commissioner reasonably believes could constitute an imminent risk of a substantial and specific danger to the life, health or safety of individuals, or to the environment, that person must disclose the matter

- (a) to an appropriate law enforcement agency,
- (b) in the case of a health-related matter, to the Chief Medical Officer of Health appointed under section 13 of the *Public Health Act*,
- (c) to the department, public entity, office or prescribed service provider responsible for managing, controlling or containing the risk, if any, and
- (d) to a person identified in the procedures described in section 5(2)(c) or a person prescribed in the regulations for the purposes of this clause.

(3) The chief officer, designated officer or Commissioner, as the case may be,

- (a) must suspend the investigation of a disclosure or complaint of a reprisal reported under subsection (1) or disclosed under subsection (2)(a),
- (b) may suspend the investigation of any other disclosure or complaint referred to in this section, and
- (c) may resume a suspended investigation only after any charge relating to an alleged offence, or any investigation by a law enforcement agency or the Minister of Justice and Solicitor General, has been finally disposed of.

31 The following is added before section 31:

Part 5 General Matters

31 Heading to Part 5, General Matters moved.

32 Section 32 is repealed and the following is substituted:

Chief officer's annual report

32(1) Every chief officer must prepare a report annually on all disclosures made or referred to the designated officer of the department, public entity or office for which the chief officer is responsible.

(2) The report under subsection (1) must include the following information:

- (a) the number of disclosures received by or referred to the designated officer and the number of disclosures acted on, and the number of disclosures not acted on, by the designated officer;
- (b) the number of investigations commenced by the designated officer;
- (c) in the case of an investigation that results in a finding of wrongdoing, a description of the wrongdoing and
 - (i) any recommendations made or corrective measures taken in relation to the wrongdoing, and
 - (ii) if the department, public entity or office to which the recommendations relate has not taken corrective measures in relation to the wrongdoing, the reasons provided.

(3) The report under subsection (1) must be included in the annual report of the department, public entity or office if the annual report is made publicly available, and if the annual report is not made publicly available, the chief officer must make the report under subsection (1) available to the public on request.

33 Section 33(1) is amended

(a) by adding the following after clause (b):

- (b.1) the number of disclosures referred by the Commissioner to a designated officer for investigation in accordance with Part 2 and the number of investigation outcomes,

32 Section 32 presently reads:

32(1) Every chief officer must prepare a report annually on all disclosures that have been made to the designated officer of the department, public entity or office of the Legislature for which the chief officer is responsible.

(2) The report under subsection (1) must include the following information:

- (a) the number of disclosures received by the designated officer, the number of disclosures acted on and the number of disclosures not acted on by the designated officer;*
- (b) the number of investigations commenced by the designated officer as a result of disclosures;*
- (c) in the case of an investigation that results in a finding of wrongdoing, a description of the wrongdoing and any recommendations made or corrective measures taken in relation to the wrongdoing or the reasons why no corrective measure was taken.*

(3) The report under subsection (1) must be included in the annual report of the department, public entity or office of the Legislature if the annual report is made publicly available, and if the annual report is not made publicly available, the chief officer must make the report under subsection (1) available to the public on request.

33 Section 33 presently reads:

33(1) The Commissioner must report annually to the Legislative Assembly on the exercise and performance of the Commissioner's functions and duties under this Act, setting out

enforcement activities or other follow-up reported concerning those disclosures,

(b) by repealing clause (d) and substituting the following:

(d) in the case of an investigation that results in a finding of wrongdoing, a description of the wrongdoing and any recommendations made,

(d.1) the number of recommendations the Commissioner has made, and

(i) whether the departments, public entities, offices or prescribed service providers to which the recommendations relate have fully implemented the recommendations or taken any corrective measures, and

(ii) if the departments, public entities, offices or prescribed service providers to which the recommendations relate have not fully implemented the recommendations or taken any corrective measures, the reasons provided,

(c) in clause (e) by striking out “the number of complaints of reprisals acted on and the number of complaints of reprisals not acted on by the Commissioner,” **and substituting** “the number of reprisals the Commissioner finds to have been taken, directed or counselled contrary to section 24 and a description of the reprisals”;

(d) by adding the following after clause (e):

(e.1) the number of complaints of reprisals with respect to which the Commissioner finds that no reprisal was taken, directed or counselled,

(e.2) the number of reprisals in or respecting the office of a member of the Legislative Assembly that the Commissioner finds to have been taken, directed or counselled contrary to section 24, a description of the reprisals and any recommendations provided to the Speaker of the Legislative Assembly and the resulting corrective measures taken, if any,

- (a) *the number of general inquiries made to the Commissioner relating to this Act,*
 - (b) *the number of disclosures received by the Commissioner under this Act, the number of disclosures acted on and the number of disclosures not acted on by the Commissioner,*
 - (c) *the number of investigations commenced by the Commissioner under this Act,*
 - (d) *the number of recommendations the Commissioner has made and whether the departments, public entities or offices of the Legislature to which the recommendations relate have complied with the recommendations,*
 - (e) *the number of complaints of reprisals received by the Commissioner under this Act, the number of complaints of reprisals acted on and the number of complaints of reprisals not acted on by the Commissioner,*
 - (f) *whether, in the opinion of the Commissioner, there are any systemic problems that may give rise to or have given rise to wrongdoings, and*
 - (g) *any recommendations for improvement that the Commissioner considers appropriate.*
- (2) *The report under subsection (1) must be given to the Speaker of the Legislative Assembly, who must table a copy of it in the Legislative Assembly within 15 days after receiving it if the Legislative Assembly is then sitting or, if it is not, within 15 days after the start of the next sitting.*
- (3) *Where it is in the public interest to do so, the Commissioner may publish a special report relating to any matter within the scope of the Commissioner's responsibilities under this Act, including a report referring to and commenting on any particular matter investigated by the Commissioner.*

- (e.3) the number of remedial orders made by the Board, a description of each remedy awarded, the number of referrals for which no remedy was awarded and the reasons why no remedy was awarded,
- (e.4) in the case of a prosecution under this Act, a description of the offence and any penalty imposed in relation to the offence,

34 Section 36 is repealed and the following is substituted:

Regulations

36(1) The Lieutenant Governor in Council may make regulations

- (a) designating entities, including entities that receive all or a substantial part of their operating funding from the Government, as public entities for the purposes of this Act and respecting the application of all or any portion of this Act to those public entities;
- (b) respecting, for the purpose of section 1(g)(iii), individuals or persons or classes of individuals or persons to be treated as employees for the purposes of this Act or any portion of this Act;
- (c) prescribing additional wrongdoings for the purposes of section 3(1)(c.1);
- (d) respecting other functions the Commissioner may or must perform;
- (e) prescribing additional purposes of this Act;
- (f) prescribing individuals as chief officers for the purposes of section 1(a.1)(iii);
- (g) respecting gross mismanagement, including regulations identifying or describing
 - (i) public funds, public assets or the delivery of public services to which this Act applies,

34 Section 36 presently reads:

36 The Lieutenant Governor in Council may make regulations

- (a) designating entities, including an entity that receives all or a substantial part of its operating funding from the government, as a public entity for the purposes of this Act and respecting the application of all or any portion of this Act to those public entities;*
- (b) prescribing individuals as employees, including who is a former employee, for the purposes of this Act and the regulations;*
- (c) respecting other functions the Commissioner may or must perform;*
- (d) prescribing additional purposes of this Act;*
- (e) prescribing persons as chief officers for public entities;*
- (f) respecting the procedures to be followed by designated officers and by the Commissioner in managing and investigating disclosures and reporting the outcome of investigations, including setting time periods for action;*
- (g) respecting disclosures to the Commissioner, including when an employee may make a disclosure directly to the Commissioner, and the circumstances and procedure generally for making a disclosure;*
- (h) respecting the procedures for referring a matter that constitutes an imminent risk of a substantial or specific danger to the life, health or safety of individuals or to the environment, including persons to whom the matter may be referred and the time period for referring those matters;*

- (ii) contracts or arrangements to which this Act applies,
or
- (iii) enactments to which this Act applies;
- (h) respecting the procedures to be followed by designated officers and by the Commissioner in managing and investigating disclosures and reporting the outcome of investigations, including setting time limits for corrective measures to be taken;
- (i) respecting disclosures to the Commissioner, including the allegations of wrongdoing referred to in section 21, and the circumstances and procedure for making and receiving a disclosure or an allegation of wrongdoing;
- (j) prescribing other information that may or must be included in a disclosure;
- (k) respecting investigations and any duties, powers, measures, methods or requirements not fully or not sufficiently provided for in Part 1.2 that are considered necessary to ensure that this Act is fully and appropriately implemented;
- (l) respecting, for the purposes of sections 5(2)(c) and 30(2)(d), the procedures for referring a matter that constitutes an imminent risk of a substantial or specific danger to the life, health or safety of individuals or to the environment, including persons to whom the matter may be referred and the time limit for referring those matters;
- (m) prescribing circumstances in which the Commissioner is not required to investigate a disclosure;
- (n) respecting the time limits within which an investigation by the Commissioner must be conducted;
- (o) respecting the reports referred to in section 22(5) or 23(3);
- (p) establishing procedures, including time limits, for receiving, managing and investigating a complaint of a reprisal;

- (i) prescribing other information to be included in a disclosure;*
- (j) prescribing circumstances in which the Commissioner is not required to investigate a disclosure;*
- (k) respecting the time periods within which an investigation by the Commissioner must be conducted;*
- (l) respecting the exemption of any person, class of persons, public entity, information, record or thing from the application of all or any portion this Act;*
- (m) prescribing the form for making complaints respecting reprisals;*
- (n) prescribing the circumstances in which the Commissioner is not required to investigate a complaint respecting a reprisal;*
- (o) prescribing any information, document, matter or classes of information, documents or matters that must not be included in a disclosure under this Act;*
- (p) prescribing Acts or regulations for the purposes of section 28;*
- (q) respecting the collection, use and disclosure of information, including personal information and individually identifying health information, for the purposes of this Act;*
- (r) prescribing Acts or regulations to which this Act applies in whole or in part;*
- (s) respecting any matter that the Minister considers to be unforeseen, not provided for or insufficiently provided for in this Act;*
- (t) defining any word or phrase used but not defined in this Act.*

- (q) respecting the content to be included in a complaint of a reprisal;
- (r) prescribing the form for making a complaint of a reprisal;
- (s) respecting the powers, duties and procedure, including time limits, that apply concerning the determination of appropriate remedies for reprisals;
- (t) prescribing the circumstances in which the Commissioner is not required to investigate a complaint of a reprisal;
- (u) respecting the content to be included in the decisions and reasons referred to in section 27.1;
- (v) prescribing any information, document or matter or classes of information, documents or matters that must not be included in a disclosure under this Act;
- (w) respecting the collection, use and disclosure of information, including personal information, individually identifying health information or confidential information, for the purposes of this Act;
- (x) respecting the confidentiality of information collected concerning disclosures and complaints of reprisal;
- (y) respecting procedures for protecting the identity of individuals involved in a disclosure, a complaint of a reprisal or an investigation, including the employee making the disclosure, individuals alleged to have committed the wrongdoings and witnesses;
- (z) respecting disclosure restrictions concerning any information, document or matter or any class of information, documents or matters for the purposes of section 28.1(1)(c);
- (aa) prescribing Acts or regulations for the purposes of section 29.1(1);
- (bb) prescribing Acts or regulations to which this Act applies in whole or in part;

- (cc) respecting the exemption of any person, class of persons, public entity, office, prescribed service provider, activity, information, record or thing from the application of all or any provision of this Act;
- (dd) respecting the Commissioner's annual report referred to in section 33, including any powers to be exercised or duties to be performed by the Commissioner when there is a change of government;
- (ee) respecting the legal, disciplinary and corrective actions to which a public entity, prescribed service provider, employee, appointee or other person who commits a wrongdoing may or must be subject;
- (ff) respecting any duties, powers, measures, methods or requirements not fully or not sufficiently provided for in this Act that are considered necessary to ensure that this Act is fully and appropriately implemented;
- (gg) defining any word or phrase used but not defined in this Act.

(2) A regulation made under this section may apply to all persons, organizations or bodies or to a class of persons, organizations or bodies to which this Act applies, and there may be different regulations for different classes of such persons, organizations or bodies.

35 The following is added after section 44:

Records management

44.1(1) On the recommendation of the Commissioner, the Standing Committee may make an order

- (a) respecting the management of records in the custody or under the control of the Office of the Public Interest Commissioner, including their creation, handling, control, organization, retention, maintenance, security, preservation, disposition, alienation and destruction and their transfer to the Provincial Archives of Alberta,

35 Records management.

- (b) establishing or governing the establishment of programs for any matter referred to in clause (a),
- (c) defining and classifying records, and
- (d) respecting the records or classes of records to which the order or any provision of it applies.

(2) The *Regulations Act* does not apply to orders made under this section.

(3) The chair of the Standing Committee must lay a copy of each order made under subsection (1) before the Legislative Assembly if it is then sitting or, if it is not, within 15 days after the start of the next sitting.

36 The following is added after section 45:

Delegation by the Commissioner

45.1(1) The Commissioner may delegate to any person employed or engaged by the Commissioner under section 44 any duty, power or function of the Commissioner under this Act except the power to delegate.

(2) A delegation under subsection (1) must be in writing and may contain any conditions or restrictions the Commissioner considers appropriate.

37 Sections 46 and 47 are repealed and the following is substituted:

Offence — false statement

46(1) No person shall, in requesting advice about making a disclosure, in making a disclosure, in making a complaint of a reprisal or during an investigation, knowingly withhold material information or make a false or misleading statement, orally or in writing, to

- (a) a designated officer,
- (b) a chief officer,
- (c) the Commissioner,

36 Delegation by the Commissioner.

37 Sections 46 and 47 presently read:

46(1) No person shall, in seeking advice about making a disclosure, in making a disclosure, or during an investigation, knowingly withhold material information or make a false or misleading statement, orally or in writing, to

(a) a designated officer,

(b) a chief officer,

(c) the Commissioner, or

(d) a person acting on behalf of or under the direction of a designated officer, a chief officer or the Commissioner.

(2) No person shall counsel or direct another person to wilfully, in seeking advice about making a disclosure, in making a disclosure, or during an investigation, knowingly withhold material information or make a false or misleading statement, orally or in writing, to

- (d) the Board, or
- (e) an individual acting on behalf of or under the direction of any person listed in clauses (a) to (d).

(2) No person shall counsel or direct another person to wilfully, in requesting advice about making a disclosure, in making a disclosure, in making a complaint of a reprisal or during an investigation, withhold material information or make a false or misleading statement, orally or in writing, to

- (a) a designated officer,
- (b) a chief officer,
- (c) the Commissioner,
- (d) the Board, or
- (e) an individual acting on behalf of or under the direction of any person listed in clauses (a) to (d).

Offence — obstruction

47 No person shall wilfully obstruct, or counsel or direct a person to wilfully obstruct, a designated officer, a chief officer, the Commissioner, the Board or any individual acting on behalf of or under the direction of a designated officer, a chief officer, the Commissioner or the Board, in the performance of a duty or function under this Act.

38 The following is added after section 51:

Commissioner and others not compellable

51.1 Despite any other Act or law, the Commissioner, employees of the Office of the Public Interest Commissioner and any person engaged by the Office of the Public Interest Commissioner under section 44 are not compellable to give evidence concerning any record or information that is obtained or comes to their knowledge as the result of the exercise of the powers, the performance of the duties or the carrying out of the functions of those persons pursuant to this Act, or to produce anything containing that record or information, except for the purposes of

- (a) *a designated officer,*
- (b) *a chief officer,*
- (c) *the Commissioner, or*
- (d) *a person acting on behalf of or under the direction of a designated officer, a chief officer or the Commissioner.*

47 No person shall wilfully obstruct, or counsel or direct a person to wilfully obstruct, a designated officer, a chief officer or the Commissioner, or any individual acting on behalf of or under the direction of a designated officer, a chief officer or the Commissioner, in the performance of a duty or function under this Act.

38 Commissioner and others not compellable.

- (a) a disclosure under section 12, a complaint of a reprisal submitted to the Auditor General under section 25(3) or a referral to the Board in respect of the Office of the Public Interest Commissioner,
- (b) the prosecution of an offence under this Act, or
- (c) the judicial review of a decision of the Commissioner pursuant to this Act.

39 Section 52 is repealed and the following is substituted:

Proceedings of Commissioner not subject to review

52(1) Subject to subsection (2), no decision, report or proceeding of the Commissioner is invalid for want of form and, except on the ground of lack of jurisdiction, no proceeding or decision of the Commissioner shall be challenged, reviewed, quashed or called into question in any court.

(2) A decision of the Commissioner concerning a reprisal may be questioned or reviewed by way of an application for judicial review seeking an order in the nature of certiorari or mandamus if the application is filed with the Court of Queen's Bench and served on the Commissioner no later than 30 days after the date of the decision, report, proceeding or reasons, whichever is latest.

(3) The Court may, in respect of an application under subsection (2),

- (a) determine the issues to be resolved on the application,
- (b) limit the contents of the return from the Commissioner to those materials necessary for the disposition of those issues, and
- (c) give directions to protect the confidentiality of the matters referred to in Part 4.1.

39 Section 52 presently reads:

52 No proceeding of the Commissioner is invalid for want of form and, except on the ground of lack of jurisdiction, no proceeding or decision of the Commissioner shall be challenged, reviewed, quashed or called into question in any court.

40 The following is added after section 53:

Legal, disciplinary and corrective action

53.1 In addition to, and apart from, any sanction provided for by law,

- (a) an employee who commits a wrongdoing is subject to appropriate disciplinary action, including termination of employment, and
- (b) a public entity, prescribed service provider, employee or other person who commits a wrongdoing is subject to appropriate corrective action.

41 The heading to Part 8 is repealed and the following is substituted:

**Part 8
Transitional Provisions,
Consequential Amendments
and Coming into Force**

42 The following is added after the heading to Part 8:

Transitional

53.2(1) The Lieutenant Governor in Council may make regulations

- (a) respecting the powers and duties to be exercised concerning any disclosure, investigation or complaint of a reprisal commenced but not completed prior to the coming into force of the *Public Interest Disclosure (Whistleblower Protection) Amendment Act, 2017* or any part of that Act;
- (b) to remedy any confusion, difficulty, inconsistency or impossibility resulting from the coming into force of the *Public Interest Disclosure (Whistleblower Protection) Amendment Act, 2017* or any part of that Act.

(2) A regulation made under subsection (1) is repealed on the earliest of

40 Legal, disciplinary and corrective action.

41 The heading to Part 8 presently reads:

*Part 8
Consequential Amendments
and Coming into Force*

42 Transitional provisions.

- (a) the coming into force of an amendment that adds the subject-matter of the regulation to this Act;
 - (b) the coming into force of a regulation that repeals the regulation made under subsection (1);
 - (c) 2 years after the regulation comes into force.
- (3) The repeal of a regulation under subsection (2)(b) or (c) does not affect anything done, decided, recommended, reported or ordered under the authority of the regulation before the repeal of the regulation.

Amends RSA 2000 cF-25

43(1) The *Freedom of Information and Protection of Privacy Act* is amended by this section.

(2) Section 6 is amended by adding the following after subsection (8):

(9) The right of access to a record does not extend to information that would reveal the identity of a person who has requested advice about making a disclosure, made a disclosure or submitted a complaint of a reprisal or whose complaint has been referred to the Labour Relations Board pursuant to the *Public Interest Disclosure (Whistleblower Protection) Act*, but if that information can reasonably be severed from a record, an applicant has a right of access to the remainder of the record.

(10) Subsection (9) does not apply to the person who requested advice about making a disclosure, made the disclosure, submitted the complaint of a reprisal or is the subject of the referral to the Labour Relations Board pursuant to the *Public Interest Disclosure (Whistleblower Protection) Act*.

43 Amends chapter F-25 of the Revised Statutes of Alberta 2000. Section 6 presently reads:

6(1) An applicant has a right of access to any record in the custody or under the control of a public body, including a record containing personal information about the applicant.

(2) The right of access to a record does not extend to information excepted from disclosure under Division 2 of this Part, but if that information can reasonably be severed from a record, an applicant has a right of access to the remainder of the record.

(3) The right of access to a record is subject to the payment of any fee required by the regulations.

(4) The right of access does not extend

(a) to a record created solely for the purpose of briefing a member of the Executive Council in respect of assuming responsibility for a ministry, or

(b) to a record created solely for the purpose of briefing a member of the Executive Council in preparation for a sitting of the Legislative Assembly.

(5) Subsection (4)(a) does not apply to a record described in that clause if 5 years or more has elapsed since the member of the Executive Council was appointed as the member responsible for the ministry.

44 This Act, except sections 34, 35, 36 and 42, comes into force on Proclamation.

(6) Subsection (4)(b) does not apply to a record described in that clause if 5 years or more has elapsed since the beginning of the sitting in respect of which the record was created.

(7) The right of access to a record does not extend to a record relating to an audit by the Chief Internal Auditor of Alberta that is in the custody of the Chief Internal Auditor of Alberta or any person under the administration of the Chief Internal Auditor of Alberta, irrespective of whether the record was created by or for or supplied to the Chief Internal Auditor of Alberta.

(8) Subsection (7) does not apply to a record described in that subsection

(a) if 15 years or more has elapsed since the audit to which the record relates was completed, or

(b) if the audit to which the record relates was discontinued or if no progress has been made on the audit for 15 years or more.

44 Coming into force.

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