

**PUBLIC INTEREST
COMMISSIONER**



**YOUR VOICE
PROTECTED**

**ANNUAL
REPORT
2018-19**

PROMOTING
CONFIDENCE IN THE
ADMINISTRATION
OF THE
PUBLIC SERVICE





**PUBLIC INTEREST
COMMISSIONER**

October 2019

The Honourable Nathan Cooper
Speaker of the Legislative Assembly
352 Legislature Building
10800 - 97 Avenue NW
Edmonton, AB T5K 2B6

Dear Speaker Cooper:

The Public Interest Commissioner's office is pleased to present its 6th Annual Report to you and through you, to the Legislative Assembly.

The Report has been prepared in accordance with section 33(1) of the *Public Interest Disclosure (Whistleblower Protection) Act* and covers the activities of the Public Interest Commissioner's office for the period April 1, 2018 through March 31, 2019.

Respectfully,

Marianne Ryan
Public Interest Commissioner
/lja



MISSION

The Public Interest Commissioner fosters a culture that:

- ▶ Encourages the reporting of wrongdoings;
- ▶ Provides fair, independent and impartial investigations;
- ▶ Protects employees from reprisals.

VISION

A public sector wherein wrongdoings are confidently reported without fear of reprisal, and effective and appropriate management responses are undertaken.

VALUES

Integrity

Respect

Accountability

Independence



TABLE OF CONTENTS

1	Message from the Public Interest Commissioner
3	Giving Whistleblowers a Voice
5	Organization Chart
6	2018-19 by the Numbers
10	Business Plan Results for the 2018-19 Fiscal Year
14	Informally Resolving Significant Matters in the Public Interest
15	A Brief Guide to Good Whistleblowing and Bad Faith
17	Severance Agreements – the Commissioner Recommends Improvement
18	Case Examples
21	Financial Statements

MESSAGE FROM THE PUBLIC INTEREST COMMISSIONER



The *Public Interest Disclosure (Whistleblower Protection) Act* (the Act) was established in June 2013 to create a safe avenue for Alberta's public sector employees to speak out about wrongdoing or to make complaints of reprisal. To ensure this objective continues to be met and the individuals who speak out continue to be protected, the Alberta government reviewed the Act in its fifth year. Subsequent to this review, amendments to the Act took effect March 1, 2018, expanding the jurisdiction of our office and strengthening protections for whistleblowers. In our 2017-18 annual report our office reported on the amendments and how we had prepared for change. We described our work to promote public confidence through collaborative investigations and education strategies for chief and designated officers, who are responsible for the administration of the Act within public sector organizations.

Changes to the Act also required us to develop new ways of doing things internally. In 2018-19, effectively our first year of implementation, we saw significant growth in the number of complaints received by the office, including a 66% increase over the prior year in the number of complaints alleging wrongdoing or reprisal. It has been a busy time and I am pleased to present more about our activities by way of the office's 2018-19 annual report. Here we deliver on the mandatory reporting requirement outlined in section 33(1) of the Act but also share stories and statistics describing our role, how we performed on our business plans and real case examples from our case logs. Readers may also take interest in an article on severance agreements where I make a specific recommendation for improvement.



Worthy of highlighting, our staff takes pride in service excellence and goes above and beyond to ensure whistleblowers are taken seriously and help is provided. Upon receipt, all complaints undergo an assessment process to determine whether the circumstances of the complaint meet the criteria provided for disclosures of wrongdoing and reprisal in the Act. If the alleged wrongdoing or reprisal does not meet the definitions set forth in the Act or we determine the issue would be more appropriately dealt with under other policy or legislation, we will provide that advice. Similarly, we provide members of the organizations with which we work advice on whistleblower protection programs and policies. I commend my staff for their dedication, agility and commitment this year and to ensuring fair public interest investigations are rooted in the principles of natural justice.

As I reflect on the office's performance this last fiscal year, I am encouraged to see more whistleblowers willing to disclose serious and significant matters that they believe to be unlawful, dangerous to the public or injurious to the public interest. Taking action when wrongdoing occurs in the public sector is the right thing to do but it is not always easy. When wrongdoing occurs it may not be clear cut or only partial evidence may be available. Compounding the issue may be a difficult work environment where constructive feedback is undervalued and even discouraged.

The Public Interest Commissioner's office is the resource for public sector employees who believe wrongdoing is occurring in their organization, and we know the disclosure process works. For those courageous individuals who believe they have experienced wrongdoing or reprisal and want to receive the confidentiality and protection provisions of the Act, contact us. Your voice is protected.

Marianne Ryan

Public Interest Commissioner



GIVING WHISTLEBLOWERS A VOICE

Who We Are

The Public Interest Commissioner's office is an independent office of the Alberta Legislative Assembly, responsible for investigating allegations of wrongdoing in the public service and complaints of reprisal made under the *Public Interest Disclosure (Whistleblower Protection) Act*, (the Act).

The Public Interest Commissioner is also Alberta's Ombudsman, whose office responds to complaints of unfair treatment by authorities and organizations identified in the *Ombudsman Act*. The Ombudsman, along with the Deputy, direct three investigative teams in providing oversight to ensure fair treatment through independent investigations, recommendations and education for all Albertans.

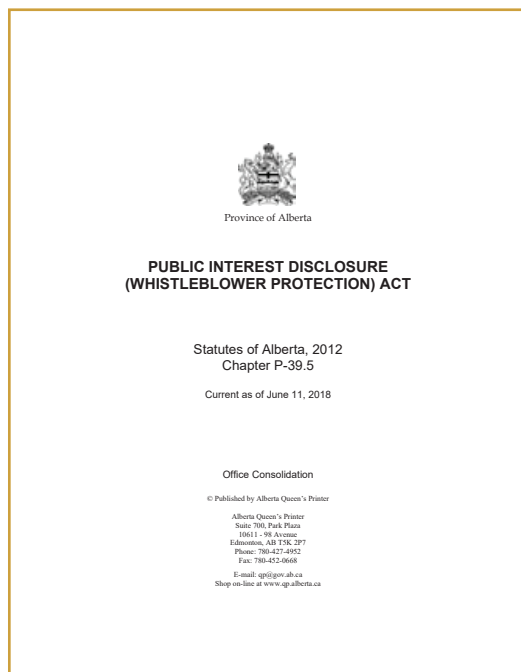
The two offices maintain separate investigative operations but do share corporate services and executive management.

About the Act

An effective public service depends on the commitment of everyone who works in it to maintain the highest possible standards of honesty, openness and accountability. As such, the benefit of the whistleblower is not only recognized, it is valued. The Act creates an avenue for public servants to speak out about wrongdoings in a protected forum. Reporting a wrongdoing is a good thing where both the employee and management share the common goal of remedying wrongdoing.

The Act applies to provincial government departments, offices of the Legislature, Members of the Legislative Assembly and their offices, Ministers and their offices, the Premier and his/her office, organizations in the health and education sectors, and public entities. Public entities include agencies, boards, commissions, provincial corporations, or other entities designated by the *Public Interest Disclosure (Whistleblower Protection) Regulations*. In its current form, the Act *does not apply* to employees in the private sector (excluding accredited private schools that receive public funding).

The purposes of the Act are multifaceted. They include the requirement to facilitate the disclosure and investigation of significant and serious matters that a public sector employee believes may be unlawful, dangerous or injurious to the public interest. Hand in hand with this are the provisions in the Act protecting employees who make disclosures. A critical component of the creation and existence of the Act is to promote the public's confidence in the administration of departments, Legislative offices and public entities within Alberta.





How We Can Help

The Public Interest Commissioner's office was formed in June 2013 to advance and promote the Act and its requirements. The Commissioner's responsibility is to advocate for a culture within the public sector that encourages employees and management to report wrongdoings in their workplace. All resulting disclosures are investigated in a fair and impartial way and if any wrongdoings are discovered to have occurred, the Commissioner will make strong and effective recommendations for corrective measures and protect employees from reprisals.

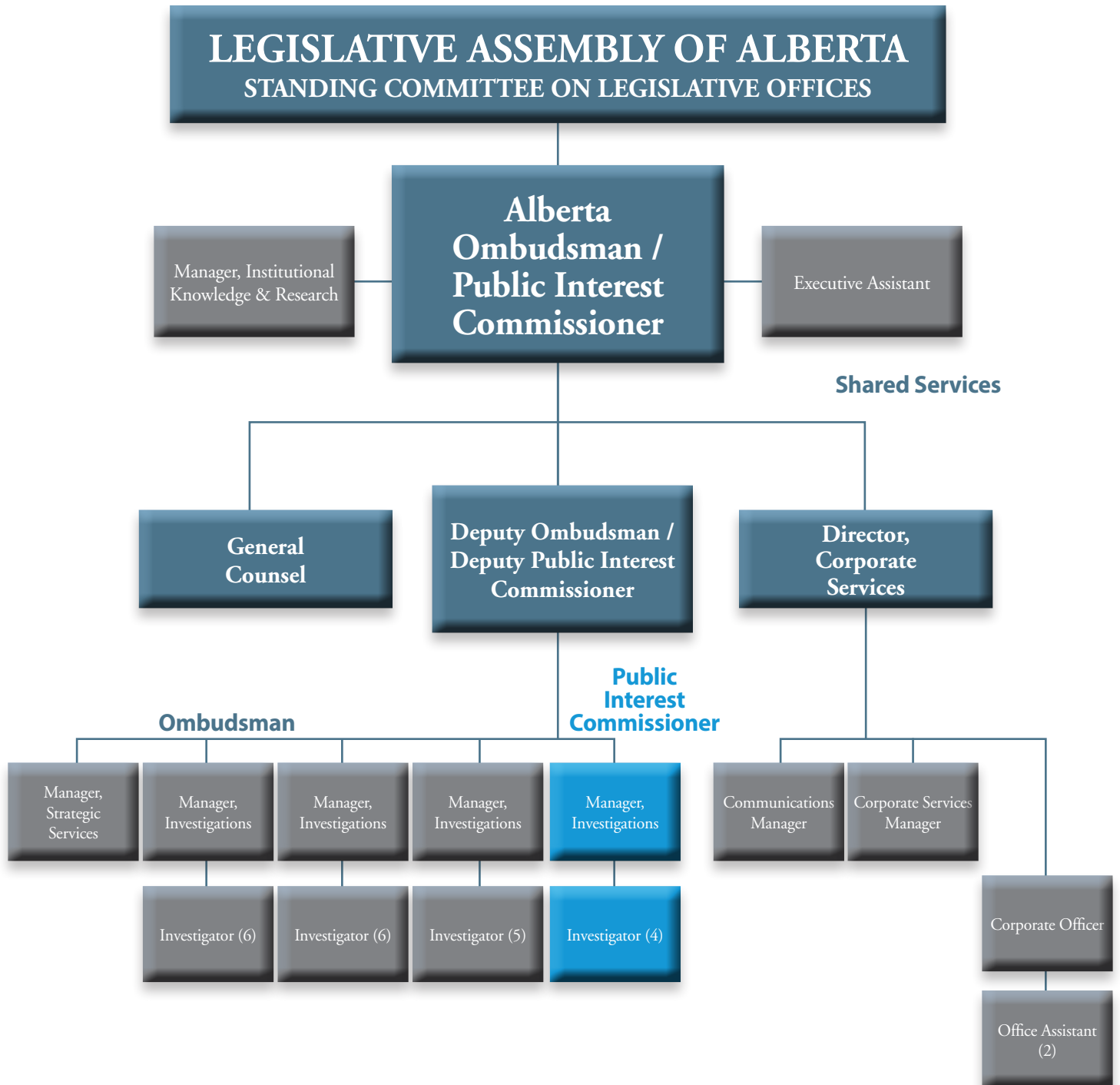
A key component to the effective execution of whistleblower legislation is the role of chief officer. This is the deputy minister, the department head and in the case of a public entity, the individual prescribed the position. The Act identifies the chief officer as responsible for widely communicating information about the Act within their

organization. Setting the tone for a positive workplace environment where whistleblowing is embraced can be challenging. Our office can assist public entities in their work to develop whistleblower protection policies, by supporting the education of employees and by providing advice to designated officers during investigations.

The Public Interest Commissioner's office is the resource for public sector employees who believe wrongdoing is occurring in their organization, and want to receive the confidentiality and protection provisions of the *Public Interest Disclosure (Whistleblower Protection) Act*. We encourage public sector employees who are unsure if their issue is considered a wrongdoing under the Act, to contact our office and speak with one of our investigators.

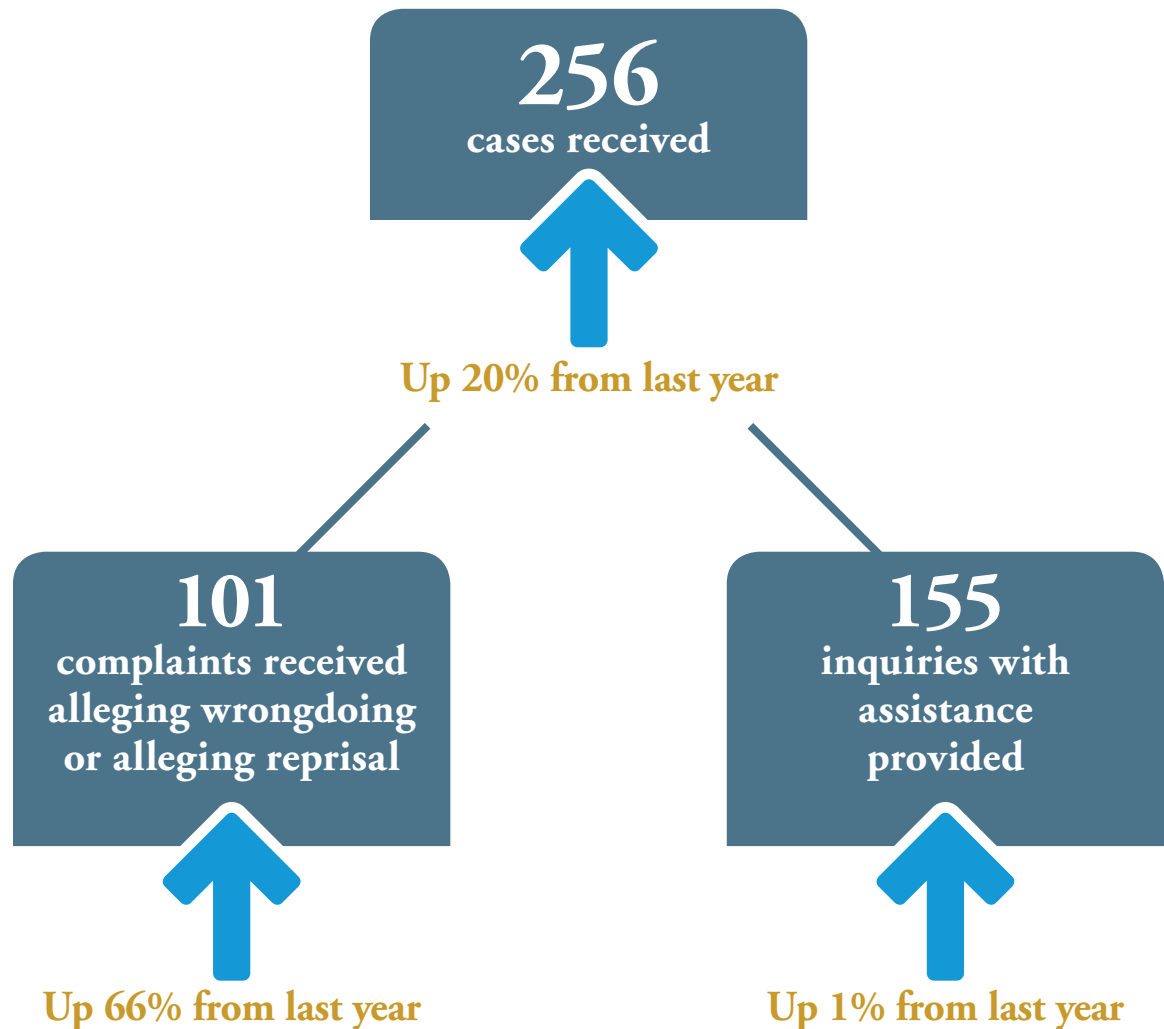


Panellist at the Forum for Chairs of Public Agencies hosted by the Public Service Commission





2018-19 BY THE NUMBERS



Upon receipt, all complaints undergo an assessment process to determine whether the Commissioner may or may not investigate. In order to investigate, the circumstances of the complaint must meet the criteria provided for disclosures of wrongdoing and reprisal in the *Public Interest Disclosure (Whistleblower) Protection Act* (the Act).

If the alleged wrongdoing or reprisal does not meet the definitions set forth in the Act or we determine the issue would be more appropriately dealt with under another policy or legislation, we will provide that advice. We work to help the complainant understand their position so they may make an informed decision, going forward.



CASES BY SECTOR



Government Ministries

69



Non-Jurisdictional

68



Education Sector

41



Agencies, Boards &
Commissions

29



Health
Sector

24



Post-Secondary
Institutions

11



Offices of the Legislature

11



Members of the
Legislative Assembly

3

Total
256



2018-19 BY THE NUMBERS

The following information meets the mandatory reporting requirement for 2018-19 as per the *Public Interest Disclosure (Whistleblower Protection) Act* (the Act).

Exemption, section 31(3)	
The Commissioner must provide reasons for giving an exemption under this section and must ensure the exemption, including any terms or conditions imposed, and the reasons for the exemption are made publicly available.	No exemption requests received
Commissioner's annual report, section 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	
(a) the number of general inquiries made to the Commissioner relating to this Act,	155
(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,	82 16 66
(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, enforcement activities or other follow-up reported concerning those disclosures,	0 0 0 0
(c) the number of investigations commenced by the Commissioner under the Act,	6
(d) in the case of an investigation that results in a finding of wrongdoing, a description of the wrongdoing and any recommendations made,	No cases finding wrongdoing
(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	No wrongdoing found so no recommendations made
(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,	No wrongdoing found so no recommendations made



(e) the number of complaints of reprisals received by the Commissioner under this Act, the number of reprisals the Commissioner finds to have been taken, directed or counselled contrary to section 24 and a description of the reprisals,	19 0
(e.1) the number of complaints of reprisals with respect to which the Commissioner finds that no reprisal was taken, directed or counselled,	18*
(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,	0
(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,	0
(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,	No prosecution under this Act so no description and no penalty provided
(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	No systemic problems identified
(g) any recommendations for improvement that the Commissioner considers appropriate.	Yes, one recommendation for improvement is included on page 17 of this report

*At the conclusion of the fiscal year, one case received as a complaint alleging reprisal remained under investigation.



BUSINESS PLAN RESULTS FOR THE 2018-19 FISCAL YEAR

At the Public Interest Commissioner's office, we do our utmost to set forward a strong business plan and establish clear, measureable targets for the upcoming fiscal year. This roadmap of short and long-term goals draws a direct line to the mission of our office and the core values that guide our daily actions. For the 2018-19 fiscal year, we identified three strategic outcomes and the specific performance targets necessary across all areas of the business.

At the time of this report's release, the March 2018 legislative amendments to the Act will be over a year old. Changes expanded the Commissioner's jurisdiction and strengthened protections for

whistleblowers in Alberta. This required chief and designated officers to update their internal whistleblower protection policies and programs. Many have taken advantage of our subject-matter expertise in the process. Overall, we have been pleased to see proactive steps taken and signs that the cultural tone around whistleblowing in public sector workplaces is improving.

Our 2018-19 performance results reflect the action steps we have taken to continue the momentum for positive change. Here are the outcomes, how well we fared to our performance targets and a look ahead as we plan for the future.

Outcome One: All public sector employees recognize the office of the Public Interest Commissioner as an avenue for reporting wrongdoing in the public service, and are aware of the protections afforded to them under the Act.

Outcome Two: Government departments, public entities¹, offices², and prescribed service providers³ are aware of the legislative amendments and take steps to ensure its internal whistleblower protection policies conform to the amended legislation.

Outcome Three: The office of the Public Interest Commissioner remains consistent in service improvements.

1 For the purpose of this business plan, the term "public entities" refers to departments, agencies, boards, commissions, health sector organizations, education sector organizations, and other entities to which the *Public Interest Disclosure (Whistleblower Protection) Act* applies.

2 The Act defines "office" as including offices of the Legislature, an office of a member of the Legislative Assembly including the member, Office of the Premier, including the Premier and the office of a minister including the minister.

3 "Prescribed service providers" refers to any individual or any part or all of an organization, body or other person that is determined under the regulation to be a prescribed service provider. To date, changes to define prescribed service providers have not been made in the regulation.



Performance Measures, Targets and Results

Performance Measures	Target 2018-19	Actual 2018-19
Increase in contact with our office by 5% per year through general inquiries, complaints and other requests	224	256
Increase in website visits by 2% per year	20,808	27,389
Provide presentations and information sessions as part of an outreach and awareness strategy	15	8
Percentage of jurisdictional public entities contacted to provide advice and guidance on legislative amendments	70%	95%
Percentage of jurisdictional public entities that advise procedures have been amended to conform to legislation	50%	37%
Percentage of investigations completed within 110 days*	90%	100%
Number of professional development opportunities made available to employees	6	6
Number of formal reviews of internal investigative policies and procedures to identify areas of improvement	4	6

* The Act allows a 120-day investigation period prior to an extension requirement. The target is to improve the investigation timeline such that investigations are completed in the initial 110 days.



Panellist at a day-conference hosted by Financial Management Institute for over 130 audience members of the public sector financial management community



Highlights From Our 2018-19 Results

Enhancing awareness

- ▶ In 2018-19, our office led eight awareness events on the role of the Public Interest Commissioner and the benefits of an effective whistleblower protection policy:
 - presentation to Alberta Gaming and Liquor Commission;
 - presentation and meeting with Ethics and Compliance staff with Alberta Health Services;
 - panellist at the Forum for Chairs of Public Agencies hosted by the Public Service Commission for 80 chairs from various types of agencies, both large and small. Functionally they run the gamut from advisory to adjudicative to governance.
 - two presentations to Credit Union Deposit Guarantee Corporation;
 - panellist at Justice and Solicitor General's Annual General Meeting;
 - trade show and presentation to Association of Certified Fraud Examiners and Institute of Internal Auditors; and
 - panellist at a day-conference hosted by Financial Management Institute for over 130 audience members of the public sector financial management community.
- ▶ Improvements to our website in 2018-19 included website search engine optimization, updated content and a new design. We measured increases in website visits from 17,994, reported in 2017-18, to 27,389 in 2018-19 – an increase of 52%.

- ▶ In 2018-19, we noted 37% of the jurisdictional entities contacted have procedures that conform to Alberta's whistleblower legislation. Our office intends to continue working with public entities in a collaborative manner and encourage the establishment of policies and procedures that reflect the requirements of the 2018 legislative amendments.

Our investigations

- ▶ Contact with our office increased by 20% over the prior year fiscal year, well exceeding the 5% target. This, in part, can be attributed to the ongoing positive relationship we work to maintain with designated officers and our efforts to build on a strategic initiative in 2017-18 to educate over 230 designated officers about the legislative changes to the Act.
- ▶ In 2018-19, we saw 100% of our cases meet our targeted 110-day timeline for investigation completion. As we celebrate this achievement, we acknowledge that with a 66% increase in complaints received, there may be instances that will take longer than the statutory timelines expected in the *Public Interest Disclosure (Whistleblower Protection) Act*. This is due to an increase in caseload, a higher degree of complexity in investigations, the volume of records requiring review and the need to consult with experts pertaining to case subject matter. When necessary and with good reason, the Commissioner may grant timeline extensions. If this occurs, complainants are kept well informed as to the status of their case.



Evolving operations

- ▶ Fiscal 2018-19 brought about significant change with the retirement of two senior members of our staff and the addition of new investigators to our team. Six professional development sessions were made available to employees, including workshops on strategic interviewing, cyber security and administrative law.
- ▶ We conducted six internal policy reviews including updates to our Operational Policy and Procedures and our Investigative Reporting Structure.

Looking Ahead

In the coming fiscal year, we will continue to focus on establishing the Public Interest Commissioner's office as an avenue for employees to report wrongdoing and enhance awareness of the protections afforded to them under the Act. We will look to tell the story of our office through the release of engaging

publications and case summaries while balancing the great care we place in protecting the confidentiality of whistleblowers.

We will continue to support jurisdictional public entities in their work to efficiently assess and investigate disclosures of wrongdoing under the Act. To share expertise and provide networking opportunities, our office will host a conference providing designated officers the resources and training needed to effectively assess and investigate disclosures of wrongdoing under the Act.

We will continue to adhere to the timelines established in the Act for timely and expeditious management of investigations and follow established protocol when extensions are necessary. We will also continue to prioritize skill and competency development opportunities for our staff and seek to improve business practices through the regular and objective review of internal policies and procedures.

The Public Interest Commissioner's office was pleased to be a part of an initiative to promote awareness and understanding of the *Public Interest Disclosure (Whistleblower Protection) Act* to the Legal Services Division of the Department of Justice and Solicitor General. A staff member of the Commissioner's office was invited to participate in an educational video, and was also asked to be part of a panel discussion at the annual general meeting for the Legal Services Division.

This presented an unparalleled opportunity for the Commissioner's office to engage with individuals tasked with providing legal advice across all government departments, but to also deliver the Commissioner's message of fostering collaborative working relationships in order to effectively investigate matters of public interest.



INFORMALLY RESOLVING SIGNIFICANT MATTERS IN THE PUBLIC INTEREST

Public interest investigations are typically large scale and involve substantial investigative work. They usually involve a significant amount of time and human resources both by the Commissioner's office and the entity subject of the investigation. This can cause disruption to regular business, and can result in an unjustified negative public perception of an organization where the investigation is occurring. Although these investigations are necessary in some circumstances, in other cases there may be opportunities to resolve the matter in an equally effective manner, outside of a formal investigation.

The general purpose of the *Public Interest Disclosure (Whistleblower Protection) Act* (the Act) is to bring wrongdoing to the attention of organizational heads so that corrective measures can be taken. A large scale investigation is not always the most efficient or effective way to achieve that objective. A significant benefit of the Act is that it gives the Commissioner discretion to take any steps considered appropriate to resolve the matter. This affords the Commissioner's office significant latitude to expeditiously, and informally, resolve issues.

Over the last year and continuing forward, the Public Interest Commissioner's office is giving careful consideration to disclosures received by the office, where an opportunity for informal resolution may exist.

Organizations having a strong culture around whistleblower protection, with organizational leaders sharing a desire to affect positive change, and that have a collaborative relationship with the Commissioner's office, present an opportunity to address and resolve alleged wrongdoing informally.

In one particular case, the Public Interest Commissioner worked with a public entity to resolve an alleged gross-mismanagement of employees. An organizational head was accused of bullying and intimidating employees in a manner that was impacting the culture of the organization. Inquiries found information that supported the allegations however, both the impacted employees and senior leadership wanted to avoid a full investigation. In working with the organization, the matter was informally addressed and the alleged wrongdoer resigned from their position. In this case, the issue was resolved and the impacted employees were satisfied with the outcome.

We have seen the effectiveness of this process to quickly address issues, while also allowing us to build relationships with organizations and change perspectives around the benefits of public interest disclosures. Organizations benefit in collaborating with the Commissioner's office as it allows them to avoid the time and expense of a formal investigation, mitigates potential reputation risk, and promotes confidence in the administration of their organization. We aim to continue building on this collaborative culture and working towards having all organizations share a common interest in the detection and remedy of wrongdoing.



A BRIEF GUIDE TO GOOD WHISTLEBLOWING AND BAD FAITH

Whistleblowing: The Right Stuff

Whistleblowing has been defined as a disclosure by an employee (current or former) of illegal, immoral or illegitimate wrongdoing within an organization.⁴ A whistleblower under Alberta's *Public Interest Disclosure (Whistleblower Protection) Act* (the Act) makes a disclosure of wrongdoing in good faith in relation to one of the five wrongdoings defined in section 3 of the Act. While the Public Interest Commissioner's office assesses each disclosure on its merits primarily to establish jurisdiction and determine whether an investigation is warranted, the motivation behind the whistleblowing is also a consideration.

Good whistleblowers seek to report serious and significant matters in an organization that they believe may be unlawful, dangerous to the public or harmful to the public interest. They are generally individuals with current or past access to, and detailed knowledge of, the alleged wrongdoing. They speak up honestly in the interests of accountability, transparency, and the overall well-being of the organization and its employees. Information is presented logically and even when high personal stakes exist, the whistleblower is willing and able to respond to requests in a timely and professional manner.

Recognizing & Managing Bad Faith Complaints

Under the Act, a complainant has the right to make one or more disclosures and to have them assessed in an independent and unbiased manner in accordance with the principles of procedural fairness. However, any disclosure must be free of bad faith elements that would include:

- i. Seeking to deceive the investigating authority;
- ii. Making allegations that are non-serious (i.e., frivolous); or,
- iii. Making allegations that are vexatious in nature and seeking to or cause emotional or material harm to those accused of wrongdoing.

The Act provides no license to investigating authorities or organizations to penalize with adverse employment measures the complainant behind a bad faith disclosure. Doing so runs the risk of violating the reprisal provision of the Act and generating an investigation by the Public Interest Commissioner's office, which has exclusive jurisdiction to investigate reprisal complaints.

While it cannot punish bad faith allegations under the Act, an organization is under no obligation to expend time and resources investigating them. The main option under the Act for managing complaints made in bad faith is for the authority to decline to investigate on those grounds under section 19

⁴ This definition has been adapted from Near, Janet P., and Marcia P. Miceli. "Organization Dissidence." *Journal of Business Ethics* 4, no. 1 (February 1985): 4.



of the Act. Section 19 outlines when an investigation is not required, including those occasions “...*the disclosure is frivolous or vexatious, has not been made in good faith or does not deal with a wrongdoing*.” A policy option outside of the Act includes managing the complainant’s communications (e.g., defining content, frequency, or both) with the investigating authority.

Determining the quality of a disclosure of wrongdoing is a delicate matter given the potential negative reaction of a complainant accused of having failed to act in good faith. Bad faith can co-exist with or cause other deficiencies that undermine a disclosure of wrongdoing to the extent that it either falls short of the jurisdictional requirements of the Act or triggers a decision not to investigate for another reason under section 19. The disclosure of a good whistleblower is typically clear, factual and easier to assess in relation to the requirements of the Act.



Presentation to Alberta Gaming and Liquor Commission



SEVERANCE AGREEMENTS – THE COMMISSIONER RECOMMENDS IMPROVEMENT

Severance agreements are contracts sometimes used to reach an amicable conclusion to an individual's employment with their employer. Usually a severance agreement provides extended compensation or benefits to the employee beyond the end of their employment, and in exchange, the employer receives a release whereby the employee agrees not to pursue any claims they have against the employer.

Releases are generally drafted in very broad terms however, some employers have recently begun to include language that requires an employee to reveal if they have previously made a disclosure to the Public Interest Commissioner, or prohibits the employee from making a complaint under the *Public Interest Disclosure (Whistleblower Protection) Act* (the Act).

The Act provides a safe avenue for public sector employees to report matters they believe may be unlawful, dangerous to the public or injurious to the public interest, without fear of reprisal. Protection from reprisal includes confidentiality, anonymity, and the legal ability to disclose confidential and private information. The Public Interest Commissioner is the resource for employees who want to report wrongdoing with the confidentiality and protection provisions provided in the Act. In her role, the Public Interest Commissioner works to foster a culture where whistleblowing is embraced and where employees and management share a common goal of detecting and remedying wrongdoing. This supports an effective, open and accountable public service and promotes public confidence in the administration of

the public sector. As such, the existence of any reference to the *Public Interest Disclosure (Whistleblower Protection) Act* within severance agreements is a significant concern to the Public Interest Commissioner.

A severance agreement that attempts to expose whistleblowers or prohibit employees from reporting wrongdoing in the public service undermines the spirit and intent of the Act.

Such agreements conflate public and private interest matters, and public entities that draft severance agreements that prohibit whistleblowing may be viewed as attempting to “buy” their way out of their responsibilities under the Act using public funds. In addition, the Public Interest Commissioner may consider it a reprisal for an employer to enforce the terms of a severance agreement on the basis that an employee has reported wrongdoing or taken any other step under the Act.

As such, it is recommended that severance agreements drafted by departments, public entities, offices or prescribed service providers do not include language that requires a whistleblower to waive their right to confidentiality, or denies employees any future self-initiated activity under Alberta's *Public Interest Disclosure (Whistleblower Protection) Act*.



CASE EXAMPLES

A wide variety of issues are brought to our office by individuals concerned about a potential wrongdoing, or those seeking advice or direction. The Commissioner has significant discretion in how to address each case; however, in all circumstances, our office seeks the most appropriate avenue to address the individual's concerns. Once assessed, cases may be formally investigated, referred to another authority or informally resolved by other means. The following case summaries are representative of the types of cases brought to our office and how they are managed.

Investigation into an alleged kickback scheme found no wrongdoing

A designated officer within the education sector contacted the Public Interest Commissioner's office, seeking advice in relation to a disclosure of wrongdoing that had been received. The designated officer shared concerns that the organization did not have the resources or expertise to conduct an investigation. After consulting with the employee who made the disclosure, all agreed the disclosure would be referred to our office.

It was alleged an employee entered into a kickback scheme involving an independent contractor. As part of the scheme, it was alleged the employee would complete the work under the contract and receive a portion of the payment made to the contractor.

The investigation sought to determine whether a contravention of an Act had occurred or if public funds were misappropriated through an illegitimate contract, constituting a gross-mismanagement

of public funds. For the purpose of the investigation, the designated officer provided over 60,000 electronic files relating to maintenance contracts and email communications. Documents from the time period where the alleged wrongdoings occurred were carefully analyzed. No evidence of a kickback scheme nor questionable contracts or agreements were found, and in the absence of evidence substantiating the allegation, a finding of wrongdoing could not be supported.

It was encouraging to recognize that an employee within the public sector had the confidence in their organization's internal whistleblower policy to come forward and report a potential wrongdoing. The designated officer should also be commended for contacting our office for assistance and guidance. This positive and collaborative approach to investigations captures the spirit of the *Public Interest Disclosure (Whistleblower Protection) Act* (the Act) and promotes public confidence of the organization.

Timeline of communication shows an alleged reprisal could not be supported

An employee is protected from reprisal once they make a disclosure of wrongdoing to the Commissioner or to their designated officer in accordance with the procedures established by their organization. They may also seek the advice of their supervisor about how to make a disclosure. Under these conditions outlined in section 24 of the Act, an employee is covered under the protection provisions of the Act.



A former employee of a government department alleged he suffered a reprisal in the form of a dismissal as a result of having sought advice from the Government of Alberta's (GOA) designated officer about making a disclosure of wrongdoing.

The facts of the matter were examined to establish whether the department formed the intent to terminate the individual's employment before or after his protected activity under the Act. The investigation found that there was no connection between the decision to terminate employment and contact with the GOA's designated officer. Evidence further confirmed the intention to terminate employment occurred within the department, prior to the disclosure being made. For this reason, the investigation concluded that the allegation of reprisal could not be supported.

Investigation finds no links; no wrongdoing

A public entity contacted our office for assistance with a series of wrongdoing allegations, made against them by a former employee of the organization. All of the allegations were assessed, and a single disclosure of wrongdoing was found to be jurisdictional under the Act. With the cooperation of the complainant, and the assistance of the designated officer and director of internal audit for the organization, an investigation was initiated.

The investigation would address whether a lack of enforcement action by the organization against licensees, out of compliance with industry directives, resulted in a substantial and specific danger to the environment or

to the life, health or safety of individuals. Through the investigation, it became clear that although the organization knowingly and effectively halted enforcement action under the identified directive, no evidence of this causing a substantial and specific danger to the environment or to the life, health or safety of individuals was found. Further, the organization had already made changes to their compliance strategy, with the implementation of two pilot programs for the purpose of improving issues and applying more appropriate measures for compliance.

Because the decision to halt enforcement action surfaced no links to a substantial and specific danger to the environment or to the life, health or safety of individuals, the allegation of wrongdoing could not be supported.

Gross mismanagement of employees invites scrutiny and the Commissioner's help

Under the *Public Interest Disclosure (Whistleblower Protection) Act*, the definition of wrongdoing was updated as of March 1, 2018, to include gross mismanagement of employees through bullying, harassment or intimidation. These conditions in the workplace arise when gross mismanagement occurs deliberately and shows a reckless or wilful disregard for proper management; issues of maltreatment are systemic, and indicate a problem in the overall culture of the organization.

A disclosure of wrongdoing was received alleging gross-mismanagement of employees under the leadership of a senior official. In order to determine if the matter met the Public Interest Commissioner's jurisdictional



requirements, inquiries and interviews were conducted with employees and witnesses. Through the interviews, instances of unprofessional conduct were reported and witnesses shared examples where the individual named in the complaint had demonstrated behaviours indicative of bullying, harassment and intimidation, resulting in a problem in the culture of the organization.

Following the conclusion of the initial inquiries, the individual named in the allegation of wrongdoing elected to resign from the organization.

Off-duty socializing may have professional consequences

The office received a complaint from a public sector employee concerned by the tone and language of written comments made by other employees in an online forum. The comments read as highly offensive and discriminatory in nature and although the online forum was extracurricular in nature, there were multiple employees involved. The events pre dated the March 2018 amendment to the *Public Interest Disclosure (Whistleblower Protection) Act* which would have allowed for the investigation of the matter as a gross mismanagement of employees, relating to a culture of workplace bullying, harassment or intimidation.

However, due to the seriousness of the concern and the sensitive positions the employees held, we brought the situation to the attention of the department. Our office subsequently learned the department had reviewed the matter and taken steps to address the employees' conduct. In this case, the Commissioner declined

to investigate the allegation however, similar type events reported to our office that occurred after March 2018 could be considered jurisdictional to the Public Interest Commissioner and subject to an investigation.

Effective use of informal resolution satisfies complainant

An employee reported his supervisor was performing private consulting services similar to the duties the supervisor had with her department. The complainant found documents on a shared server, including invoices from the supervisor's private company for duties performed on the same sites where their department had projects. He alleged the supervisor used connections and government documents to support her private work.

After reviewing the matter, it was determined that government documents were not used by the supervisor to further her private work. While the supervisor may have breached department policies, the conduct did not meet the threshold of what would be considered a wrongdoing under the Act.

Our investigator met with the complainant to explain our findings. Executive management for the department was advised of the situation, which allowed them to look into the potential policy breaches by the supervisor. The matter was resolved informally and to the satisfaction of the complainant.

Office of the Public Interest Commissioner

Financial Statements

March 31, 2019

OFFICE OF THE PUBLIC INTEREST COMMISSIONER

FINANCIAL STATEMENTS

Year Ended March 31, 2019

Independent Auditor's Report

Statement of Operations

Statement of Financial Position

Statement of Change in Net Debt

Statement of Cash Flows

Notes to the Financial Statements

Schedule 1 – Salary and Benefits Disclosure

Schedule 2 – Allocated Costs

Independent Auditor's Report



To the Members of the Legislative Assembly

Report on the Financial Statements

Opinion

I have audited the financial statements of the Office of the Public Interest Commissioner (the Commissioner), which comprise the statement of financial position as at March 31, 2019, and the statements of operations, change in net debt, and cash flows for the year then ended, and notes to the financial statements, including a summary of significant accounting policies.

In my opinion, the accompanying financial statements present fairly, in all material respects, the financial position of the Commissioner as at March 31, 2019, and the results of its operations, its changes in net debt, and its cash flows for the year then ended in accordance with Canadian public sector accounting standards.

Basis for opinion

I conducted my audit in accordance with Canadian generally accepted auditing standards. My responsibilities under those standards are further described in the *Auditor's Responsibilities for the Audit of the Financial Statements* section of my report. I am independent of the Commissioner in accordance with the ethical requirements that are relevant to my audit of the financial statements in Canada, and I have fulfilled my other ethical responsibilities in accordance with these requirements. I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my opinion.

Other information

Management is responsible for the other information. The other information comprises the information included in the *Annual Report*, but does not include the financial statements and my auditor's report thereon. The *Annual Report* is expected to be made available to me after the date of this auditor's report.

My opinion on the financial statements does not cover the other information and I do not express any form of assurance conclusion thereon.

In connection with my audit of the financial statements, my responsibility is to read the other information identified above and, in doing so, consider whether the other information is materially inconsistent with the financial statements or my knowledge obtained in the audit, or otherwise appears to be materially misstated.

If, based on the work I will perform on this other information, I conclude that there is a material misstatement of this other information, I am required to communicate the matter to those charged with governance.

Responsibilities of management and those charged with governance for the financial statements

Management is responsible for the preparation and fair presentation of the financial statements in accordance with Canadian public sector accounting standards, and for such internal control as management determines is necessary to enable the preparation of the financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the financial statements, management is responsible for assessing the Commissioner's ability to continue as a going concern, disclosing, as applicable, matters related to going concern and using the going concern basis of accounting unless an intention exists to liquidate or to cease operations, or there is no realistic alternative but to do so.

Those charged with governance are responsible for overseeing the Commissioner's financial reporting process.

Auditor's responsibilities for the audit of the financial statements

My objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes my opinion. Reasonable assurance is a high level of assurance, but is not a guarantee that an audit conducted in accordance with Canadian generally accepted auditing standards will always detect a material misstatement when it exists. Misstatements can arise from fraud or error and are considered material if, individually or in the aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of these financial statements.

As part of an audit in accordance with Canadian generally accepted auditing standards, I exercise professional judgment and maintain professional skepticism throughout the audit. I also:

- Identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, design and perform audit procedures responsive to those risks, and obtain audit evidence that is sufficient and appropriate to provide a basis for my opinion. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control.
- Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Commissioner's internal control.
- Evaluate the appropriateness of accounting policies used and the reasonableness of accounting estimates and related disclosures made by management.
- Conclude on the appropriateness of management's use of the going concern basis of accounting and, based on the audit evidence obtained, whether a material uncertainty exists related to events or conditions that may cast significant doubt on the Commissioner's ability to continue as a going concern. If I conclude that a material uncertainty exists, I am required to draw attention in my auditor's report to the related disclosures in the financial statements or, if such disclosures are inadequate, to modify my opinion. My conclusions are based on the audit evidence obtained up to the date of my auditor's report. However, future events or conditions may cause the Commissioner to cease to continue as a going concern.
- Evaluate the overall presentation, structure and content of the financial statements, including the disclosures, and whether the financial statements represent the underlying transactions and events in a manner that achieves fair presentation.

I communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit and significant audit findings, including any significant deficiencies in internal control that I identify during my audit.

[Original signed by W. Doug Wylie, FCPA, FCMA, ICD.D]
Auditor General

July 3, 2019
Edmonton, Alberta

OFFICE OF THE PUBLIC INTEREST COMMISSIONER

STATEMENT OF OPERATIONS

Year ended March 31, 2019

	2019		2018
	Budget	Actual	Actual
Expenses - Directly Incurred (Note 2(b), 3 and Schedule 2)			
Salaries, Wages, and Employee Benefits	\$ 612,000	\$ 469,908	\$ 643,992
Supplies and Services	537,000	478,246	391,293
Amortization of Tangible Capital Assets		-	1,945
Program - Operations	1,149,000	948,154	1,037,230
Cost of Operations	\$ (1,149,000)	\$ (948,154)	\$ (1,037,230)

The accompanying notes and schedules are part of these financial statements.

OFFICE OF THE PUBLIC INTEREST COMMISSIONER

STATEMENT OF FINANCIAL POSITION

As at March 31, 2019

	<u>2019</u>	<u>2018</u>
Liabilities		
Accounts Payable and Accrued Liabilities	\$ 8,925	\$ 13,376
Accrued Vacation Pay	41,973	59,562
	<u>50,898</u>	<u>72,938</u>
Net Debt	<u>(50,898)</u>	<u>(72,938)</u>
Non-Financial Assets		
Tangible Capital Assets (Note 4)	-	-
Prepaid Expenses	250	-
	<u>250</u>	<u>-</u>
Net Liabilities	<u>\$ (50,648)</u>	<u>\$ (72,938)</u>
Net Liabilities at Beginning of Year	\$ (72,938)	\$ (68,415)
Cost of Operations	(948,154)	(1,037,230)
Financing Provided from General Revenues	970,444	1,032,707
Net Liabilities at End of Year	<u>\$ (50,648)</u>	<u>\$ (72,938)</u>

The accompanying notes and schedules are part of these financial statements.

OFFICE OF THE PUBLIC INTEREST COMMISSIONER

STATEMENT OF CHANGE IN NET DEBT

Year Ended March 31, 2019

	2019		2018
	Budget	Actual	Actual
Cost of Operations	\$ (1,149,000)	\$ (948,154)	\$ (1,037,230)
Amortization of Tangible Capital Assets (Note 4)		-	1,945
(Increase) in Prepaid Expenses		(250)	-
Financing Provided from General Revenue		970,444	1,032,707
(Increase)/Decrease in Net Debt		\$ 22,040	\$ (2,578)
Net Debt at Beginning of Year		(72,938)	(70,360)
Net Debt at End of Year		<u>\$ (50,898)</u>	<u>\$ (72,938)</u>

The accompanying notes and schedules are part of these financial statements.

OFFICE OF THE PUBLIC INTEREST COMMISSIONER

STATEMENT OF CASH FLOWS

Year ended March 31, 2019

	<u>2019</u>	<u>2018</u>
Operating Transactions		
Cost of Operations	\$ (948,154)	\$ (1,037,230)
Non-Cash Items included in Net Operating Results:		
Amortization of Tangible Capital Assets	-	1,945
Increase/(Decrease) in Accounts Payable and Accrued Liabilities	(22,290)	2,578
Cash Applied to Operating Transactions	<u>(970,444)</u>	<u>(1,032,707)</u>
Financing Transactions		
Financing Provided from General Revenues	<u>970,444</u>	<u>1,032,707</u>
Change in Cash	-	-
Cash at Beginning of Year	-	-
Cash at End of Year	<u>\$ -</u>	<u>\$ -</u>

The accompanying notes and schedules are part of these financial statements.

OFFICE OF THE PUBLIC INTEREST COMMISSIONER

Notes to the Financial Statements

Year ended March 31, 2019

NOTE 1 AUTHORITY AND PURPOSE

The Office of the Public Interest Commissioner (the Office) operates under the authority of the *Public Interest Disclosure (Whistleblower Protection) Act*.

The Office manages, investigates and makes recommendations respecting disclosures of wrongdoings relating to department and public entities and reprisals relating to public service employees.

NOTE 2 SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES AND REPORTING PRACTICES

These financial statements are prepared in accordance with Canadian public sector accounting standards, which use accrual accounting.

The adoption of PS3430 Restructuring Transactions effective April 1, 2018, has no impact on the Office's financial statements; therefore no further notes or schedules have been included.

As the Office does not have any transactions involving financial instruments that are classified in the fair value category, there are no re-measurement gains and losses.

(a) Reporting Entity

The reporting entity is the Office of the Public Interest Commissioner, which is a legislative office for which the Public Interest Commissioner is responsible. The Office's annual operating budget is approved by the Standing Committee on Legislative Offices.

The cost of the operations of the Office is borne by the General Revenue Fund of the Province of Alberta which is administrated by the President of Treasury Board, Minister of Finance. All cash disbursements made by the Office are paid from the Fund.

OFFICE OF THE PUBLIC INTEREST COMMISSIONER

Notes to the Financial Statements

Year ended March 31, 2019

NOTE 2 SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES AND REPORTING PRACTICES (Cont'd)

(b) Basis of Financial Reporting

Expenses

Directly Incurred

Directly incurred expenses are those costs the Office has primary responsibility and accountability for, as reflected in the Office's budget documents.

In addition to program operating expenses such as salaries, supplies, etc., directly incurred expenses also include:

- amortization of tangible capital assets;
- pension costs, which comprise the cost of employer contributions for current service of employees during the year; and
- a valuation adjustment which represents the change in management's estimate of future payments arising from obligations relating to vacation pay.

Incurred by Others

Services contributed by other related entities in support of the Office's operations are not recognized but disclosed in Schedule 2.

OFFICE OF THE PUBLIC INTEREST COMMISSIONER

Notes to the Financial Statements

Year ended March 31, 2019

NOTE 2 SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES AND REPORTING PRACTICES (Cont'd)

(b) Basis of Financial Reporting (Cont'd)

Valuation of Liabilities

Fair value is the amount of consideration agreed upon in an arm's length transaction between knowledgeable and willing parties who are under no compulsion to act.

The fair values of accounts payable and accrued liabilities are estimated to approximate their carrying values because of the short term nature of these instruments.

Liabilities

Liabilities are present obligations of the Office to external organizations and individuals arising from past transactions or events, the settlement of which is expected to result in the future sacrifice of economic benefits. They are recognized when there is an appropriate basis of measurement and management can reasonably estimate the amounts.

Non-Financial Assets

Non-Financial assets are acquired, constructed, or developed assets that do not normally provide resources to discharge existing liabilities, but instead:

- (a) are normally employed to deliver the Office's services;
- (b) may be consumed in the normal course of operations; and
- (c) Are not for sale in the normal course of operations.

Non-financial assets of the Office are limited to tangible capital assets, and prepaid expenses.

OFFICE OF THE PUBLIC INTEREST COMMISSIONER

Notes to the Financial Statements

Year ended March 31, 2019

NOTE 2 SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES AND REPORTING PRACTICES (Cont'd)

(b) Basis of Financial Reporting (Cont'd)

Non-Financial Assets (Cont'd)

Tangible Capital Assets

Tangible capital assets of the Office are recognized at historical cost and amortized on a straight-line basis over the estimated useful lives of the assets. The threshold for capitalizing new systems development is \$250,000 and the threshold for major system enhancements is \$100,000. The threshold for all other tangible capital assets is \$5,000.

Amortization is only charged if the tangible capital asset is put into service.

(c) Net Debt

Net debt indicates additional cash required from the Fund to finance the Office's cost of operations to March 31, 2019.

NOTE 3 SUPPORT SERVICES ARRANGEMENTS

The Public Interest Disclosure (Whistleblower Protection) Act appoints the Ombudsman to also be the Public Interest Commissioner. The Office of the Public Interest Commissioner is a separate Legislative Office physically located with the Office of the Ombudsman.

The Offices of the Ombudsman and Public Interest Commissioner have a formal support services agreement (the agreement) for provision of shared services.

The Office of the Ombudsman's employees provide general counsel, communications, and corporate (finance, human resources, information technology, administration) services to the Office of the Public Interest Commissioner. The salaries and benefits costs of these Ombudsman employees are allocated to the Office of the Public Interest Commissioner based on the percentage of time spent providing the shared services.

OFFICE OF THE PUBLIC INTEREST COMMISSIONER

Notes to the Financial Statements

Year ended March 31, 2019

NOTE 3 SUPPORT SERVICES ARRANGEMENTS (Cont'd)

The agreement authorizes allocation of other office services (i.e. photocopier fees, etc.) paid by the Office of the Ombudsman to be allocated, on a usage basis, to the Office of the Public Interest Commissioner.

The shared services allocation is included in the voted operating estimates and statement of operations as a cost recovery for the Office of the Ombudsman and as a supplies and services expense for the Office of the Public Interest Commissioner.

For 2018 -19, the Office's supplies and services expense for services provided by the Office of the Ombudsman was \$387,376 (2018 \$313,614).

NOTE 4 TANGIBLE CAPITAL ASSETS

		2019		
	Useful Life (yrs)	Cost	Accumulated Amortization	Net Book Value
Computer hardware and software	3	\$ 5,833	\$ 5,833	\$ -
		2018		
	Useful Life (yrs)	Cost	Accumulated Amortization	Net Book Value
Computer hardware and software	3	\$ 5,833	\$ 5,833	\$ -

In 2018-19 and 2017-18, there were no tangible capital asset additions or disposals.

OFFICE OF THE PUBLIC INTEREST COMMISSIONER

Notes to the Financial Statements

Year ended March 31, 2019

NOTE 5 DEFINED BENEFIT PLANS (IN THOUSANDS)

The Office participates in the multi-employer Management Employees Pension Plan and Public Service Pension Plan. The Office also participates in the multi-employer Supplementary Retirement Plan for Public Service Managers. The expense for these pension plans is equivalent to the annual contributions of \$54 for the year ended March 31, 2019 (2018 - \$78).

At December 31, 2018, the Management Employees Pension Plan had a surplus of \$670,700 (2017 surplus \$866,006), the Public Service Pension Plan had a surplus of \$519,218 (2017 surplus \$1,275,843) and the Supplementary Retirement Plan for Public Service Managers had a deficit of \$70,310 (2017 deficit \$54,984).

The Office also participates in the multi-employer Long Term Disability Income Continuance Plan. At March 31, 2019, the Management, Opted Out and Excluded Plan had a surplus of \$24,642 (2018 surplus \$29,805). The expense for this plan is limited to the employer's annual contributions for the year.

NOTE 6 RELATED PARTY TRANSACTIONS

The Office shares information technology (IT) with other Legislative Offices. In 2019 the Office of the Child and Youth Advocate upgraded the capital IT infrastructure. The Office receives ongoing benefit from the use of the new infrastructure but incurred no cost.

NOTE 7 APPROVAL OF FINANCIAL STATEMENTS

These financial statements were approved by the Public Interest Commissioner.

OFFICE OF THE PUBLIC INTEREST COMMISSIONER

Salary and Benefits Disclosure

Year Ended March 31, 2019

	2019			2018	
	Base Salary	Cash Benefits ⁽¹⁾	Non-Cash Benefits ⁽²⁾	Total	Total
Senior Official ^{(3) (4) (5)}					
Ombudsman/Commissioner	\$ 237,646	\$ 42,095	\$ 10,697	\$ 290,438	\$ 236,862
Executive ^{(6) (7)}					
Deputy Ombudsman / Public Interest Commissioner	\$ 102,989	\$ -	\$ 29,319	\$ 132,308	\$ 85,861

- (1) Cash benefits are pension-in-lieu payments, vehicle allowance and vacation pay-out.
- (2) Non-cash benefits include the Office's share of all employee benefits and contributions or payments made on behalf of employees including pension plans, CPP/EI employer premiums, extended health care, dental coverage, group life insurance, long-term disability premiums parking, health spending account and WCB premiums.
- (3) For 2018-19, the Ombudsman/Commissioner was not provided an automobile and did not receive a taxable benefit at December 31, 2018 (2017 \$4,925).
- (4) The position functions as the Ombudsman and the Public Interest Commissioner and does not receive additional remuneration for the role of Public Interest Commissioner. This salary and benefits disclosure schedule represents 100% of the senior official's total salary and benefits received in 2018-19 and 2017-18.
- (5) Note 3 on the Notes to the Financial Statements provides information regarding allocation of shared services costs for financial statement presentation.
- (6) The Deputy Ombudsman/Public Interest Commissioner commenced on August 8, 2018.
- (7) The Director, Public Interest Commissioner was also acting Deputy Ombudsman, for the period April 1, 2018 to June 22, 2018.
- (8) The 2018 Total was restated to include the Non-cash benefits for parking, health spending account and WCB premiums.

OFFICE OF THE PUBLIC INTEREST COMMISSIONER

Allocated Costs

Year Ended March 31, 2019

Program	Expenses ⁽¹⁾	2019 Expenses - Incurred by Others			Total Expenses	2018 Restated Total Expenses ⁽⁵⁾
		Accommodation ⁽²⁾	Telephones ⁽³⁾	Business Services ⁽⁴⁾		
Operations	\$ 948,154	\$ 37,287	\$ -	\$ 5,000	\$ 990,441	\$ 1,079,062

(1) Expenses - directly incurred as per Statement of Operations.

(2) Accommodation - expenses allocated by the total square meters occupied by the Office.

(3) Telephones - effective November 1, 2017, the Office of the Public Interest Commissioner commenced direct payment for all telephone related expenses. Service Alberta is no longer responsible the Office's telephone services.

(4) Business Services - costs include charges for finance services (accounts payable, pay and benefits), IT support, and IMAGIS allocated by the Ministry of Service Alberta.

(5) Total Expenses, 2018 – a restatement of prior year financial statements, costs include \$5,000 of Business Services Costs.





**PUBLIC INTEREST
COMMISSIONER**

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