

Public Interest Disclosure Commissioner Annual Report 2016



**Public Interest
Disclosure
Commissioner**
Speak out. Safely.

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April 2017

The Honourable Corey Tochor
Speaker of the Legislative Assembly
Province of Saskatchewan
Room 129, Legislative Building
2405 Legislative Drive
Regina, Saskatchewan S4S 0B3

Dear Mr. Speaker:

In accordance with section 23(1) of *The Public Interest Disclosure Act*,
it is my duty and privilege to submit to you the fifth annual report of the
Public Interest Disclosure Commissioner for 2016.

Respectfully submitted,

Mary McFadyen Q.C.
COMMISSIONER

Vision, Mission, Values and Goals

Ombudsman Saskatchewan also serves as the Office of the Public Interest Disclosure Commissioner. Our vision, mission, values and goals reflect our dual role:

Vision

Our vision is that government is always accountable, acts with integrity, and treats people fairly.

Mission

Our mission is to promote and protect fairness and integrity in the design and delivery of government services.

Values

We will demonstrate in our work and workplace:

- fairness, integrity and accountability
- independence and impartiality
- confidentiality
- respect
- competence and consistency

Goals

Our goals are to:

- Provide effective, timely and appropriate service.
- Assess and respond to issues from a system-wide perspective.
- Undertake work that is important to the people of Saskatchewan.
- Demonstrate value to the people of Saskatchewan by making recommendations that are evidence-based, relevant and achievable.
- Be experts on fairness and integrity.
- Educate the public and public servants about fairness and integrity.
- Have a safe, healthy, respectful and supportive work environment.

Commissioner's Message

September 1, 2016 marked the fifth anniversary of *The Public Interest Disclosure Act* coming into force. At the time, it was promoted as increasing integrity and accountability, and enhancing public confidence in public sector institutions. It provides for the establishment of procedures for public servants to disclose wrongdoings or potential wrongdoings, either to designated officers within their public institutions or to the Office of the Public Interest Disclosure Commissioner. It protects public servants from reprisal and retaliation for speaking out. This protection is provided to public servants working in the office of the Executive Council, all ministries, and many boards, commissions and Crown corporations, as listed in Part 1 of the Appendix to *The Freedom of Information and Protection of Privacy Regulations*. *The Public Interest Disclosure Act* does not apply to employees of regional health authorities, school divisions, universities, colleges, or municipalities.

As the Office of the Public Interest Disclosure Commissioner, we provide advice to public servants, and we receive and investigate disclosures of wrongdoing and complaints of reprisal from public servants who allege they have been retaliated against for seeking advice, making a disclosure, cooperating in an investigation, or declining to participate in a wrongdoing.

We have not seen much change in the number of public servants coming forward to seek our assistance. The numbers are still very small. We completed one investigation during 2016. We do, however, still have people contact us anonymously. To me, this means that public employees are afraid to come forward. We continue to assure those who contact our Office that we do our work in confidence and that they do not need to be afraid to speak out and report a wrongdoing to us. It is clear, however, that employees of Saskatchewan's provincial public institutions are not coming forward in appreciable numbers to seek advice or to make disclosures under the current system. We hope this changes. We will continue to do our utmost to help improve the effectiveness of the system. One approach we are taking is to publicly report on our work to show that public servants can make a difference by coming forward.



Mary McFadyen,
Commissioner



About Public Interest Disclosure

The purpose of *The Public Interest Disclosure Act* is to promote accountability and integrity within Saskatchewan's public sector. It does so by:

- Establishing a system for public servants to disclose concerns about suspected wrongdoings.
- Protecting public servants who make a disclosure or seek advice under the Act from reprisals.
- Ensuring that disclosures of wrongdoing are investigated in a fair and effective manner.

The Act provides two avenues for public servants who want to seek advice or make a disclosure: either the Public Interest Disclosure Commissioner or a designated officer within their institution.

It is up to the individual public servant to decide whether to seek out the Commissioner or the institution's designated officer. No matter which option the public servant chooses, he or she is equally protected from reprisals.

Roles and Definitions

THE ROLE OF THE PUBLIC INTEREST DISCLOSURE COMMISSIONER

The Office of the Public Interest Disclosure Commissioner is established under *The Public Interest Disclosure Act*. The Act allows the provincial Ombudsman to be appointed as the Commissioner.

The Commissioner is an Officer of the Legislative Assembly and as such is independent from the provincial government and the government institutions subject to the Act. She is free to reach her own conclusions about concerns that come to her Office.

Under the Act, the Commissioner has jurisdiction to investigate and take appropriate steps to help resolve matters raised by public servants related to alleged wrongdoings in government institutions.

The Commissioner has sole jurisdiction to investigate complaints of reprisal taken against public servants for actions they took under the Act.

WHO IS CONSIDERED A PUBLIC SERVANT?

The Act defines a public servant as an employee of any provincial government institution that falls under the Act. The Act protects public servants, but does not apply to members of the public.

WHICH GOVERNMENT INSTITUTIONS DOES THE PUBLIC INTEREST DISCLOSURE ACT APPLY TO?

Government institutions include the office of Executive Council, any department, ministry, secretariat or other similar agency of the executive government of Saskatchewan or any body listed in Part 1 of the Appendix to *The Freedom of Information and Protection of Privacy Regulations*. All provincial government ministries and many agencies, boards, commissions, and Crown corporations are covered by *The Public Interest Disclosure Act*.

The Act does not apply to members of the Legislative Assembly, other officers of the Legislative Assembly, regional health authorities, publicly-funded health agencies, school divisions, universities, colleges, or municipalities. It also does not apply to the federal government, other provincial governments, the courts, or private businesses.

WHAT IS A WRONGDOING?

A wrongdoing is any of the following:

- a contravention of a provincial or federal act or regulation
- an act or omission that creates a substantial and specific danger to the life, health or safety of persons* or the environment
- gross mismanagement of public funds or assets
- counselling to commit a wrongdoing

** Other than a danger that is inherent in the performance of a public servant's job.*

Generally, wrongdoings under the Act do not include issues related to personal or private interests such as individual grievances and workplace conflicts. These issues are more appropriately dealt with by existing workplace or public sector policies, codes of conduct and grievance procedures.

WHAT IS A REPRISAL?

Public servants may make a complaint to our Office if they believe they have suffered reprisals for having sought advice about, disclosed or refused to participate in a suspected wrongdoing, or co-operated in an investigation under the Act.

Reprisals include but are not limited to:

- dismissal
- layoff
- suspension
- demotion or transfer
- discontinuation or elimination of a job
- change of a job location
- reduction in wages
- change in hours of work
- reprimand
- any other measure that adversely affects the public servant's employment or working conditions
- threats to take any of these measures

THE ROLE OF THE PERMANENT HEAD

Permanent heads include:

- deputy ministers
- the president or other official in charge of a government institution, who is directly responsible to a minister or the Premier
- chief executive officers of Crown corporations
- the chairperson of a prescribed government institution

Sections 5, 6 and 8 of the Act assign specific responsibilities to permanent heads.

Section 5: Appoint a Designated Officer

Section 5 requires permanent heads to appoint a senior official to be the designated officer for the purposes of the Act. If the permanent head does not designate a senior official then the permanent head is the designated officer.

Section 6: Establish Procedures to Manage Disclosures

Section 6 requires every permanent head to establish procedures to manage disclosures by public servants of the government institution, and specifies the features the procedures must include.

Section 8: Communicate Widely with Public Servants

Section 8 requires permanent heads to ensure that information about the Act and the disclosure procedures of the government institution are widely communicated to the public servants of the government institution.

THE ROLE OF THE DESIGNATED OFFICER

Designated officers are often the first point of contact for public servants who want to disclose their concerns or to seek advice within their workplaces.

Designated officers must receive and deal with disclosures according to the requirements of the Act (e.g. confidentiality, procedural fairness).

EXCEPTION CONSULTATIONS

Section 7 of the Act allows the permanent head of a government institution to not appoint a designated officer and not establish procedures to manage disclosures, if the permanent head believes that it is not practical because of the size of the government institution.

Section 7 requires permanent heads to consult with the Commissioner before making this decision.

All disclosures and inquiries from employees of these institutions must be directed to the Commissioner. These government institutions are still required to comply with the rest of the Act, including section 8, by widely communicating information about the Act to their employees.

Government institutions whose permanent heads have decided not to have a designated officer or procedures to manage disclosures are listed on our website: **www.saskpidc.ca**.



Case Work

Inquiries

There are times when public servants wonder whether something going on in their workplace would qualify as a wrongdoing under *The Public Interest Disclosure Act*. Sometimes they have questions about what they can do about it. We welcome these inquiries and encourage public servants to contact us.

Those who contacted us in 2016 were able to discuss their questions and concerns with us and we were able to help them understand whether their concerns were wrongdoings or reprisals under the Act. We were able to discuss their options with them.

We continue to receive inquiries about institutions outside our jurisdiction. When this happens, we refer the person to the options available to them. In 2016, the three inquiries outside our jurisdiction were from employees of regional health authorities.

Case Files

We continued to provide advice to public servants and to receive disclosures of alleged wrongdoing and complaints of reprisal. Following is a summary of a file we completed in 2016.

SUMMARY OF A DISCLOSURE OF ALLEGED WRONGDOINGS AND COMPLAINTS OF REPRISAL

This summary has been written in a manner to help protect the identity of the complainant.

A former employee of SaskEnergy (the discloser) disclosed information to the Commissioner that the discloser believed could show that safety-related wrongdoings had occurred or were occurring at SaskEnergy. The allegations ranged from employees having to travel three hours to respond to emergencies, to gas monitoring equipment not being properly calibrated, to regulator stations not being properly maintained, to crossing signs not being replaced, to odourant tanks not being filled when required, to an employee driving drunk in a company vehicle, and to trucks being overloaded, among a few other concerns.

The discloser also made complaints of reprisal, alleging that he was first bullied and harassed for raising safety concerns and then was forced to quit his job because not enough was being done to address his concerns and he felt he could no longer continue to work in an unsafe environment.

Before contacting the Commissioner's Office, the discloser had reported the same safety concerns to the President of SaskEnergy after tendering his resignation.

SaskEnergy has two parallel processes under which employees can report allegations of wrongdoings. It has both an internal whistleblower policy and procedures for reporting wrongdoings under *The Public Interest Disclosure Act*. Its internal Whistleblower Policy defines wrongdoing as including "any serious act or omission, intentional or not, that is: illegal; contrary to the public interest, whether unethical, immoral, illegitimate or inappropriate; or contrary to SaskEnergy's policies or operating procedures."

SaskEnergy investigated the issues reported by the discloser to its President under its internal Whistleblower Policy. Instead of starting with a formal investigation under *The Public Interest Disclosure Act*,

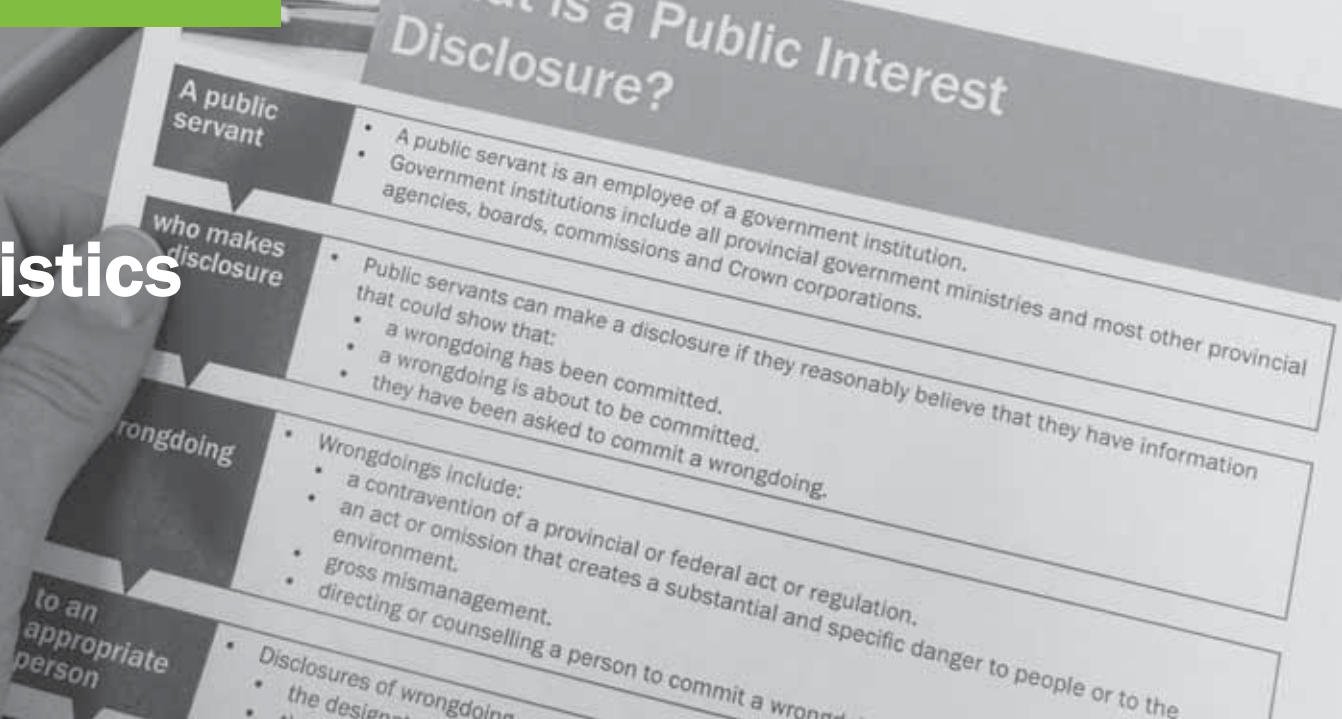
we decided to assess how SaskEnergy investigated and addressed the issues. With SaskEnergy's cooperation, we conducted an independent assessment of its investigation into the safety concerns raised by the discloser and separately assessed the discloser's complaints of reprisal.

We found that SaskEnergy properly investigated and addressed the safety issues raised by the discloser under its internal Whistleblower Policy. We then considered whether these safety issues were wrongdoings under *The Public Interest Disclosure Act*. Specifically, we considered whether the information disclosed showed that any acts or omissions created a substantial and specific danger to the life, health or safety of persons, other than a danger that is inherent in the performance of the duties or functions of a public servant, one of the wrongdoings under the Act.

Without discounting the importance of the safety issues disclosed to us, we found that none of them met the definition of a wrongdoing under the Act. None of the information disclosed showed any danger that was substantial and specific enough to be considered a wrongdoing under the Act. Further, in some cases, the danger was inherent to the performance of SaskEnergy's functions. Importantly, SaskEnergy had plans and protocols in place to address and manage the safety issues raised by the discloser. For example, SaskEnergy's internal whistleblower investigation concluded that the nature of the gas detection equipment it uses is such that it will occasionally fail in the field, but it has backup devices available and safety procedures in place to minimize the risk associated with the devices failing.

Regarding the discloser's complaints of reprisal, while we found that the discloser was in some instances treated disrespectfully by two supervisors he worked with in 2010 and early 2011 (before *The Public Interest Disclosure Act* was in force), we did not find any connection between the supervisors' behaviour and the discloser's attempts to report what he believed were safety issues. The discloser's complaint of harassment against these two supervisors was investigated by SaskEnergy under its Workplace Conflict Policy and determined to be unfounded. Lastly, although we found that the discloser's decision to resign from SaskEnergy was in part based on his unresolved safety concerns, none of his safety concerns amounted to wrongdoings under the Act and we found no evidence to suggest that he was being made to work in unsafe conditions that were not inherent to the performance of his duties. Therefore, we found that the complaints of reprisal were not founded.

Statistics



Inquiries and Disclosures

When a public servant makes a disclosure under *The Public Interest Disclosure Act*, the first step is to assess whether the allegations fit a definition of wrongdoing under the Act. If they do, we then determine the most appropriate course of action: we might see if there are steps we can take to help resolve the matter within the government institution; we might refer the matter to the government institution to deal with under its internal disclosure procedures; or we might conduct an investigation.

At the end of 2015, we carried over four cases. Two were completed in 2016. One was the case about SaskEnergy (summarized above) and the other we closed without contacting the public institution, because the information disclosed did not, on its face, show that a wrongdoing or a reprisal had been committed. The remaining two files were carried over.

We received three disclosures of wrongdoing and one complaint of reprisal in 2016. Two disclosures were closed after a preliminary assessment because the information disclosed did not show that a wrongdoing could have been committed. The third disclosure is still being investigated and the complaint of reprisal is still being assessed.

	2016	2015	2014	2013	2012
INQUIRIES					
Within Jurisdiction	5	6	5	10	4
Outside Jurisdiction	3	1	3	4	3
TOTAL INQUIRIES	8	7	8	14	7
DISCLOSURES / COMPLAINTS OF REPRISAL	4	7	4	2	0
TOTAL	12	14	12	16	7

Staff and Budget



Staff

As a combined Office, Ombudsman Saskatchewan and the Office of the Public Interest Disclosure Commissioner share staff. The staff list for 2016 is in the Ombudsman section of this report.

Budget

The Office of the Public Interest Disclosure Commissioner operates as part of Ombudsman Saskatchewan. The Ombudsman receives funding to carry out the Commissioner's mandate under *The Public Interest Disclosure Act*. The Ombudsman's estimates and financial statements encompass all financial aspects associated with the Ombudsman's role, including the Public Interest Disclosure Commissioner. The Ombudsman's Audited Financial Statements are available at www.ombudsman.sk.ca.