



**Public Interest
Disclosure
Commissioner**

Speak out. Safely.



2019

Annual Report



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April 2020

The Honourable Mark Docherty
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 subsection 23(1) of *The Public Interest Disclosure Act*, it is my duty and privilege to submit to you the annual report of the Public Interest Disclosure Commissioner for 2019.

Respectfully submitted,

Mary McFadyen Q.C.
COMMISSIONER

Vision, Mission, Values and Goals

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 employees about fairness and integrity.
- Have a safe, healthy, respectful and supportive work environment.

Commissioner's Message



Mary McFadyen, Q.C.
Commissioner

I am pleased to present the 2019 Annual Report highlighting our progress and activities in carrying out our duties under *The Public Interest Disclosure Act* during the year.

The Public Interest Disclosure Act provides mechanisms for employees of provincial government institutions to disclose wrongdoings in their workplaces. Disclosures must be kept confidential, and employees who come forward are protected from reprisals. Public sector employees can make these disclosures to a designated officer within their institution or directly to my Office. The Act protects employees working in the office of the Executive Council, all ministries, and many boards, commissions, agencies and Crown corporations. It now also protects employees of the Saskatchewan Health Authority and the Saskatchewan Cancer Agency. It does not protect employees of school divisions, universities, or municipalities.

When public sector employees contact my Office, our role is to provide them with advice and to receive and investigate disclosures of wrongdoings and complaints of reprisal. Reprisals are any negative changes to their working conditions made because they sought advice, made a disclosure, cooperated in an investigation, or declined to participate in a wrongdoing.

In last year's annual report, we highlighted the very low numbers of public sector employees making disclosures to either our Office or within government institutions. That had a lot of impact. While the 2019 numbers are still low, we received 25 inquiries and disclosures – so quite a few more than in 2018.

We hope this means that public sector employees are becoming more aware of the Act and the protections it provides. We hope they feel secure in contacting our Office. This is important. If someone thinks something is not right at work and they are not comfortable raising it within their institution – for whatever reason – we can provide advice and determine whether further action should be taken. In all cases, employees are protected. We do continue to get anonymous disclosures – which to me means that employees still are afraid of being identified. Anyone who contacts our Office should never be afraid they will be retaliated against for doing so.

On December 12, 2019, *The Public Interest Disclosure Regulations* were amended to include the Saskatchewan Health Authority and the Saskatchewan Cancer Agency as government institutions that are subject to *The Public Interest Disclosure Act*. This means that more than 40,000 more public sector employees now have the protections under the Act. We expect this change will increase the number of inquiries and disclosures made to our Office. We have reached out to the Authority and the Agency to ensure their employees are given information about the Act and how to seek advice and make disclosures of wrongdoing.



2019 Highlights

The 40,000+ employees of the Saskatchewan Health Authority and the Saskatchewan Cancer Agency now have the protections guaranteed by *The Public Interest Disclosure Act*.

More public sector employees contacted our Office in 2019 than in past years. This year, we received 17 inquiries (employees seeking advice or information about making a disclosure or a complaint of reprisal) and 8 disclosures of alleged wrongdoing.

Four inquiries were from employees of institutions not subject to *The Public Interest Disclosure Act*. Two of those four wished to remain anonymous. Of the 13 inquiries that came from public sector employees falling under the Act, two wished to remain anonymous.

All disclosures of wrongdoing, two of which were received anonymously, were assessed to determine if an investigation was necessary. In five cases, we decided that a formal investigation was not necessary. Three cases remained open and under review as of December 31, 2019.

On the public education side, we provided training to public sector designated officers in May 2019 on how to set up a good process for receiving and investigating disclosures of wrongdoing.



Public Employees: You Are Protected

Through *The Public Interest Disclosure Act*, the Legislative Assembly protects provincial public sector employees who report wrongdoings in their workplaces. It is in the public interest that public sector employees feel safe in coming forward and have an effective, confidential way to do so, when something does not feel right at work.

Provincial public sector employees can seek advice and make disclosures of wrongdoing to the designated officer within their government institution or to the Commissioner, but only the Commissioner can investigate complaints of reprisal.

If you are considering making a disclosure of wrongdoing, you can contact our Office for advice. You can also contact us if you are ready to make a disclosure of wrongdoing. We will discuss the details of your disclosure to clarify what it is you believe to be a wrongdoing and decide on the most appropriate way to deal with your concerns. We investigate disclosures confidentially and in private. This means that we take steps to keep your identity confidential. If you seek advice or make a disclosure of wrongdoing to either the Commissioner or to the designated officer within your organization, or if you refuse to participate in what you believe is a wrongdoing, and you suffer a reprisal as a result, you can make a complaint to our Office and we can investigate.

Reprisals can take many forms, including disciplinary measures such as demotion, termination of employment, or any actions or threats that adversely affect your working conditions.

The Public Interest Disclosure Act contains strong measures to protect you from reprisal. If we find that you have suffered a reprisal, we can make appropriate recommendations to your employer to address it. Anyone who commits a reprisal against a public sector employee for coming forward under the Act is subject to prosecution and may be fined up to \$10,000 if convicted.

Remember, if you come forward, your confidentiality is protected.



Government Institutions: You Have a Responsibility to Your Employees

For the whistleblower protection system under the Act to be effective, every government institution must foster and support a culture that encourages employees to report situations they believe may be unlawful, dangerous or harmful, and protects them from reprisal when they do. This is critical to ensuring the highest possible standards of honesty, openness, and accountability.

The permanent head of each government institution must:

- Designate a senior official under the Act to provide advice to employees who are thinking about making a disclosure, and for receiving and dealing with disclosures.
- Establish a fair and effective internal process for employees to disclose alleged wrongdoings and for the wrongdoings to be investigated, including protecting the confidentiality of everyone involved, reporting on the outcome of investigations, and enforcing and following up on disciplinary/corrective actions.
- Ensure that information about the Act and the institution's procedures are widely communicated to employees.
- Report on the disclosures received, including on any investigations.

About Public Interest Disclosure

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

- Establishing a system for provincial public sector employees to disclose concerns about suspected wrongdoings.
- Protecting provincial public sector employees 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 provincial public sector employees who want to seek advice or make a disclosure of wrongdoing: either the Public Interest Disclosure Commissioner or a designated officer within their institution.

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



Employees at the Saskatchewan Health Authority and the Saskatchewan Cancer Agency are now protected.

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 provincial public sector employees related to alleged wrongdoings in government institutions.

The Commissioner has sole jurisdiction to investigate complaints of reprisal taken against public sector employees who made disclosures or took other actions protected under the Act.

WHO IS CONSIDERED A PUBLIC SECTOR EMPLOYEE?

The Act defines a “public servant” as an employee of any provincial government institution that falls under the Act. The Act protects public sector employees, 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, the Saskatchewan Health Authority, the Saskatchewan Cancer Agency, 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, school divisions, universities, colleges, municipalities and publicly-funded health entities, other than the Saskatchewan Health Authority and the Saskatchewan Cancer Agency. 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 sector employee'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 sector employees may make a complaint to our Office if they believe they have suffered a reprisal for having sought advice about, disclosed or refused to participate in a suspected wrongdoing, or for having co-operated in an investigation under the Act.

Reprisals include:

- 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 employee'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
- the CEOs of the Saskatchewan Health Authority and the Saskatchewan Cancer Agency

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 sector employees of the government institution and specifies the features the procedures must include.

Section 8: Communicate Widely with Public Sector Employees

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 sector employees of the government institution.

THE ROLE OF THE DESIGNATED OFFICER

Designated officers are often the first point of contact for public sector employees 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.

Statistics

Inquiries and Disclosures

	2019	2018	2017
FILES RECEIVED			
INQUIRIES			
Within Jurisdiction	13	2	5
Outside Jurisdiction	4	1	5
TOTAL INQUIRIES	17	3	10
DISCLOSURES / COMPLAINTS OF REPRISAL	8	3	4
TOTAL	25	6	14

When an employee makes a disclosure under *The Public Interest Disclosure Act*, the first step is to assess whether the information they disclosed is about one of the wrongdoings under the Act. If it is, we then determine the most appropriate course of action. For example, 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.

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 2019 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 on our website.