

Public Interest Disclosure Commissioner Annual Report 2017



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

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April 2018

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 sixth annual report of the Public Interest Disclosure Commissioner for 2017.

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

I am pleased to present the 2017 Annual Report, which highlights our progress and activities in carrying out our duties under *The Public Interest Disclosure Act* during the past year.

The Public Interest Disclosure Act protects public sector employees from reprisal for speaking out about wrongdoings in their workplaces. The role of the Commissioner's Office is to provide advice to public sector employees, and to receive and investigate disclosures of wrongdoings and complaints of reprisal from employees who allege they have been retaliated against as a result of seeking advice, making a disclosure, co-operating in an investigation, or declining to participate in a wrongdoing.

The Act protects employees working in the office of the Executive Council, all ministries, and many boards, commissions and Crown corporations. Those employees have the option to make disclosures internally using their institution's process, or directly to our Office. The Act does not apply to employees working for the Saskatchewan Health Authority, school divisions, universities, colleges or municipalities.

We received a similar number of inquiries and disclosures in 2017 as in 2016, which is to say, very few. We note, however, that some of these inquiries were from health sector employees. Also, over 23% of the complaints we received about municipal council member conduct under *The Ombudsman Act, 2012* were from current or former municipal employees. Municipal and health sector employees do not fall under the jurisdiction of *The Public Interest Disclosure Act* and do not have the protections offered by the Act if they decide to come forward to disclose an alleged wrongdoing. We also still have people contacting us anonymously, which indicates that public sector employees continue to be reluctant to come forward. We want to assure anyone who contacts our Office that we do our work confidentially and will take steps to protect their identity. Public sector employees do not need to be afraid to raise their concerns about possible wrongdoings in their workplace to the Commissioner.

Annually, the Public Service Commission is required to report on all disclosures made to government institutions' designated officers. Since the Act was proclaimed on September 1, 2011, the PSC has reported that just six disclosures have ever been made to designated officers. To me, this means that our Office and each government institution have a lot of work to do to make sure that public sector employees know about *The Public Interest Disclosure Act* and know that they will be protected if they speak out about something that they feel is not right within their workplace.

Similar to the way we do in our Ombudsman work, publicly reporting on our role in this annual report is one way we reach out to public sector employees. Other ways include making presentations and posting information to our website.



Mary McFadyen, Q.C.
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 sector employees to disclose concerns about suspected wrongdoings.
- Protecting 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 public sector employees 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 sector 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.

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 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 sector employee 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 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, the Saskatchewan Health Authority, 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 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

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).

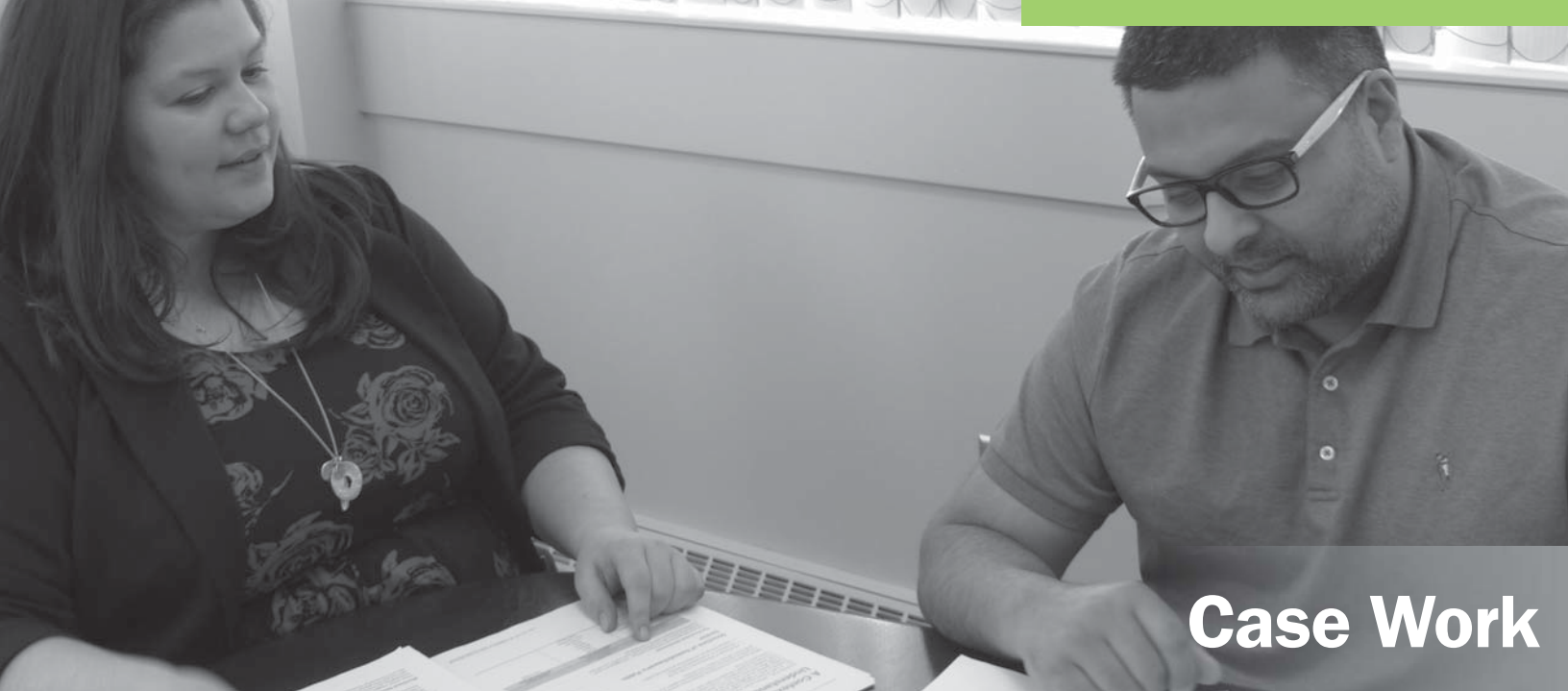
EXCEPTION CONSULTATIONS

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: **www.saskpidc.ca**.



Case Work

Inquiries

There are times when public sector employees 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 sector employees to contact us.

Those who contacted us in 2017 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 2017, four of the five inquiries outside our jurisdiction were from employees within the health sector, and one was from an employee of a Saskatchewan municipality.

Case Files

We continued to provide advice to public sector employees and to receive disclosures of alleged wrongdoing and complaints of reprisal. The following are summaries of files we completed in 2017.

These summaries have been written in a manner to help protect the identity of the discloser.

SUMMARY OF A DISCLOSURE OF ALLEGED WRONGDOING **Ministry of Justice - Corrections and Policing**

- The Commissioner received a disclosure alleging that a wrongdoing occurred at a provincial correctional facility – that excessive force was used on an inmate.
- During our investigation, all witnesses agreed that force was used, however we received conflicting information as to whether the force was excessive in the circumstances.
- Corrections' policy and the facility's local directives both require that any use of force against an inmate be documented by all staff members who are involved in or witness a use of force incident. However, only one staff member completed a report that referred to the fact that "restraint" was used against the inmate.
- There was a video camera at the main desk of the unit where the inmate was held and a camera in the cell. All those interviewed felt that their version of events would be supported by the videotape recording from the cameras.
- Corrections told us its standard practice at the facility was to keep video recordings for just 30 days, so by the time we requested copies of any recordings of the incident (about 30 days after), no video was available from the camera in the cell. We did receive 14 minutes of video of the main desk area, but it covered a time period that was not when the alleged excessive use of force occurred.
- Therefore, given that we received conflicting evidence during the investigation and did not have any independent evidence available to corroborate which version was accurate – such as a videotape recording – we could not determine whether a wrongdoing under *The Public Interest Disclosure Act* occurred.
- All corrections workers are to receive induction and refresher training with respect to the use of force. When we asked corrections workers, they advised that they received training before becoming a

corrections worker, but no general refresher training on use of force thereafter.

As a result of this investigation, we made the following recommendations:

1. The Ministry of Justice - Corrections and Policing update the video recording system at the facility so that whatever video is recorded is fully retrievable for a reasonable period that meets the objectives and the needs of its staff, inmates, the ministry and its policies.
2. The Ministry of Justice - Corrections and Policing ensure the facility management and employees understand and fully comply with the requirements of its divisional directive Security - 001 Use of Force and the Use of Emergency Response Teams, and the facility's local directives whenever there is a use of force incident.

SUMMARY OF A DISCLOSURE OF ALLEGED WRONGDOINGS

SaskPower

- The discloser alleged that SaskPower did not follow its own guidelines and procedures, and provincial legislation when responding to an asbestos exposure incident on June 29, 2013 at the Boundary Dam Power Station, which the discloser said created a substantial and specific danger to the life, health and safety of SaskPower employees, and amounted to gross mismanagement of public funds.
- We found that no one at SaskPower committed a wrongdoing under *The Public Interest Disclosure Act*.
- In response to the June 29, 2013 incident, SaskPower followed both provincial and its own corporate asbestos management policies and procedures. As required, local plant staff stopped work immediately, supervisors were called, samples were taken and tested, and all potential exposure areas were roped off. All employees and contractors were immediately informed and regular updates were provided during the clean-up process. Only authorized personnel wearing appropriate protective equipment were allowed in the areas. Air quality monitoring began immediately. SaskPower senior management and the Ministry of Labour Relations and Workplace Safety were informed of the incident, and qualified personnel were placed in charge of responding to the incident.
- Initial samples that tested positive for asbestos, did not correspond to earlier tests, so SaskPower took reasonable and appropriate steps to have further samples taken and tested by external professional labs. SaskPower's response was in keeping with both

corporate-wide guidelines and local procedures about dealing with asbestos. It also assured contractors and workers that the samples were accurate and provided a sound basis upon which SaskPower could plan and carry out the clean-up process.

- SaskPower's approach to the incident neither caused the clean up to be delayed nor caused the clean-up area to be expanded. Nor did it increase the likelihood of anyone being exposed to asbestos.
- We found that SaskPower followed its guidelines, policies and procedures, that it used qualified personnel to handle the incident, and that it did not unreasonably delay or expand the clean-up process by sending the samples for external testing.
- SaskPower was contractually obligated to pay contractors during the time that their workers were not able to work during the clean-up process. We found no evidence to support the discloser's allegation that these payments could have been avoided or substantially lessened had SaskPower managed the incident differently. SaskPower diligently and reasonably developed and carried out a plan that remediated the affected areas, ensured all workers were safe and restored its contractors' confidence that the work areas were asbestos-free or otherwise safe to work in.
- Given SaskPower's response to the incident, we found that there was no evidence to support the discloser's allegations that employees were exposed to unsafe levels of asbestos.
- Exposure to asbestos is a substantial and specific danger to life, health or safety. SaskPower had a responsibility to take reasonable steps to mitigate the danger and to make its work environment safe for its staff and contract workers despite the risk. We found that it did this – its initial response, incident planning, testing, clean-up, employee and contractor communications during the incident, and the follow-up asbestos training it offered, all demonstrated that SaskPower took its responsibility to have and maintain a safe work environment seriously.
- We found that all the allegations of wrongdoing against SaskPower were unfounded.

SUMMARY OF A DISCLOSURE OF ALLEGED WRONGDOINGS & A COMPLAINT OF REPRISAL

Ministry of Government Relations

- An employee disclosed allegations of wrongdoing to the Ministry's designated officer. The allegations involved changes made to the structure and mandate of an office within the Ministry. They were investigated. The employee then made the same disclosure to our Office, as he believed that his allegations had not been adequately investigated. He also made a complaint of reprisal. He believed that changes were made to his position and duties, because he had sought advice and made a disclosure of wrongdoing to the designated officer.
- Since the designated officer had already investigated the allegations, we decided we would initially look at her review process and conclusions. If we were satisfied that the process was fair and the resulting conclusions were reasonable, it would not be necessary for us to conduct a full investigation into the allegations of wrongdoing.
- We determined that the designated officer conducted a thorough review of all the allegations of wrongdoing made by the discloser. The designated officer determined that while some of the allegations were serious, they did not meet the definition of wrongdoing under *The Public Interest Disclosure Act*. Nevertheless, since the discloser raised legitimate concerns, the designated officer made recommendations to the Ministry to deal with those concerns and an action plan was developed to implement the recommendations. The designated officer also concluded that the changes to the structure and mandate of the office could have been handled better by the Ministry and better communicated to staff.
- The designated officer's investigation was fair and her conclusions were reasonable. While she concluded that the allegations did not amount to wrongdoings under *The Public Interest Disclosure Act*, she still dealt with what she found to be legitimate concerns raised by the discloser and took reasonable steps to deal with them.
- We also considered the discloser's complaint of reprisal. While the changes to the discloser's duties and reporting structure were made after the discloser made a formal disclosure to the designated officer, none of the information provided to us indicated that the changes were as a result of the discloser seeking advice or making a disclosure under the Act. The information we were provided indicated that the changes were made as part of the overall changes to the structure of the office within the Ministry.



Statistics

Inquiries and Disclosures

	2017	2016	2015
FILES RECEIVED			
INQUIRIES			
Within Jurisdiction	5	5	6
Outside Jurisdiction	5	3	1
TOTAL INQUIRIES	10	8	7
DISCLOSURES / COMPLAINTS OF REPRISAL	4	4	7
TOTAL	14	12	14

When a public sector employee 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.



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 2017 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**.