

A GUIDE TO BC'S PUBLIC INTEREST DISCLOSURE ACT

WHAT IS PUBLIC INTEREST DISCLOSURE?

BC's *Public Interest Disclosure Act* (PIDA), also known as whistleblower protection legislation, was passed by the Legislative Assembly in May 2018. This legislation provides legal protections for current and former provincial public sector employees who report serious wrongdoing in the public sector.

Under PIDA, employees have the option to report wrongdoing to their employer or to the Ombudsperson. PIDA is designed to:

encourage employees to report wrongdoing by protecting those who speak up

ensure that allegations are investigated fairly and effectively

enhance workplace culture by normalizing speaking up

strengthen public sector accountability and transparency

WHAT IS WRONGDOING?

The Act applies to disclosures of “wrongdoing”. Wrongdoing is defined as:

- a serious act or omission that, if proven, would amount to an offence under BC or Canadian law
- an act or omission that creates a substantial and specific danger to the life, health or safety of persons, or to the environment, other than a danger that is inherent to the performance of an employee’s duties or functions
- a serious misuse of public funds or public assets
- gross or systemic mismanagement
- knowingly directing or counselling a person to commit any of the above

Under PIDA, allegations of misconduct must meet specific thresholds to qualify as wrongdoing. For example, policy disagreements or human resource disputes between an employee and their employer are unlikely to qualify.

WHO CAN REPORT WRONGDOING?

An employee or former employee of any provincial government ministry or office of the legislature* can report wrongdoing. A former employee can make a disclosure if the wrongdoing occurred or was discovered while they were employed by the public body.

Disclosures can be about wrongdoing which took place before or after the Act came into force.

Employees can make disclosures about matters that:

- relate to a ministry or office of the legislature
- they reasonably believe relate to a wrongdoing under the Act

* Office of the Auditor General, Elections BC, Office of the Human Rights Commissioner, Office of the Information and Privacy Commissioner, Office of the Merit Commissioner, Office of the Ombudsperson, Office of the Police Complaint Commissioner, Office of the Representative for Children and Youth, Office of the Registrar of Lobbyists

WHERE CAN EMPLOYEES SEEK ADVICE?

You have a **choice** about where to seek advice. You are protected against reprisal if you seek advice from:

- your union representative or employee association representative, as applicable
- a lawyer
- your supervisor
- your Designated Officer
- the Ombudsperson

The identity of employees who seek advice or report wrongdoing is protected.

Employees who wish to seek advice about reporting wrongdoing, or learn more about the investigation process to make an informed decision about coming forward, can speak with an Ombudsperson Officer by calling our office at 1-800-567-3247.

WHERE CAN EMPLOYEES REPORT WRONGDOING?

There are two clear pathways to report wrongdoing.
It is the employee's choice:

Report to their employer
through their supervisor
or Designated Officer

Report to the BC
Ombudsperson's Office

Regardless of the choice, the law requires that the disclosure of wrongdoing is managed in accordance with fair, timely and effective procedures.

Each issue brought forward to our office will be assessed to determine whether an investigation is warranted.

WHAT HAPPENS AFTER A DISCLOSURE IS MADE TO THE OMBUDSPERSON?

The Ombudsperson will confirm receipt of a disclosure within two business days.

We will review the information provided to determine if there is a reasonable basis to begin an investigation. This includes assessing whether, if proven, the allegations meet the threshold of wrongdoing under PIDA. Not all allegations of misconduct will qualify as potential wrongdoing.

1

Once we have decided whether or not the disclosure warrants an investigation, we will notify the discloser. If we decide not to investigate, we will provide written reasons for our decision.

2

Our investigations are conducted in a timely and fair manner. This includes providing any person who is the subject of an investigation with notice of the allegations against them and the opportunity to respond.

3

Following an investigation, we will issue a report containing any findings and recommendations to the public body. We also provide a report summary to the discloser and, where practical, to the alleged wrongdoer or person found to have committed wrongdoing.

4

We may report publicly on the outcome of an investigation if the Ombudsperson determines it is in the public interest. Annually, we will publish an update on PIDA disclosures and reprisal complaints in summary form. Public reports will be anonymized.

HOW IS IDENTITY PROTECTED?

PIDA includes confidentiality provisions to protect, to the extent possible, the identity of employees who seek advice or report wrongdoing.

We will not share the identity of an employee who seeks advice or reports wrongdoing without their written permission, unless doing so is for the purposes of the Act or another lawful purpose.

HOW ARE EMPLOYEES PROTECTED FROM REPRISAL?

Current and former BC public sector employees are entitled to bring concerns forward under the Act.

Employees who seek advice, make a disclosure, or cooperate with an investigation are legally protected from **reprisal**, which includes any action that negatively impacts an employee's working conditions, such as a demotion or termination.

It is an offence under PIDA to take a reprisal against an employee.

The BC Ombudsperson investigates allegations of reprisal under the Act and can make recommendations for corrective measures if reprisal is found.

WHAT IS REQUIRED OF PUBLIC BODIES UNDER PIDA?

PIDA requires public bodies to:

- provide information to employees about how to report wrongdoing
- appoint a Designated Officer to receive and investigate reports of wrongdoing
- manage allegations of wrongdoing fairly and effectively, and establish processes that:
 - provide a framework for investigating disclosures
 - protect the identity of employees who report wrongdoing and maintain the confidentiality of information
 - assess the risk of reprisal to employees who speak up
 - report on the outcome of investigations and any recommendations made

Best practices from across Canada and around the world recommend that senior leadership support employees who speak up and encourage a safe organizational culture where retaliation against employees is not tolerated.

ABOUT THE BC OMBUDSPERSON'S OFFICE

For 40 years, the BC Ombudsperson has worked in the public interest by holding public sector organizations accountable for their actions.

Our experienced and impartial investigators have access to a broad range of evidence, allowing us to conduct detailed, rigorous and independent investigations.

The BC Ombudsperson's services are **free** and **confidential**.

The Office will begin receiving and investigating **public interest disclosures** and any **allegations of reprisal** against employees when the law comes into force.

SUPPORTING EMPLOYEES

We recognize that stepping forward to speak about wrongdoing may be challenging. As an employee, if you have questions about the Act, the role of our office, or if you need more information about how to make a disclosure you can speak to an Ombudsperson Officer directly by calling our office at 1-800-567-3247, or contacting us via email at report@bcombudsperson.ca.

SUPPORTING PUBLIC BODIES

Public bodies can contact us to receive assistance with establishing disclosure management procedures or to consult with us regarding their investigative role under the Act. If you are interested in learning more, please contact the BC Ombudsperson's Office at 1-800-567-3247 or report@bcombudsperson.ca.



SPEAK UP. YOU CAN MAKE A DIFFERENCE.