



**Public Interest
Disclosure
Commissioner**

Speak out. Safely.



2020

Annual Report



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How to Reach Us

REGINA OFFICE

500 – 2103 11th Avenue
Regina, Saskatchewan S4P 3Z8

Phone: 306-787-6211
Toll Free: 1-800-667-9787
Fax: 306-787-9090
ombreg@ombudsman.sk.ca

SASKATOON OFFICE

500 – 350 3rd Avenue North
Saskatoon, Saskatchewan S7K 6G7

Phone: 306-933-5500
Toll Free: 1-800-667-9787
Fax: 306-933-8406
ombsktn@ombudsman.sk.ca

www.ombudsman.sk.ca/pidc



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April 2021

The Honourable Randy Weekes
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 2020.

Respectfully submitted,

A handwritten signature in black ink that reads "Mary McFadyen".

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 *2020 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 provincial public sector employees to disclose potential wrongdoings they believe are happening in their workplaces. Disclosures must be kept confidential and employees are protected from reprisals for making them. The Act protects employees working in the office of the Executive Council, all ministries, most provincial boards, commissions, agencies, authorities, Crown corporations, and, as of December 12, 2019, the 40,000+ employees of the Saskatchewan Health Authority and the Saskatchewan Cancer Agency.

The Office of the Public Interest Disclosure Commissioner investigates disclosures of wrongdoings and complaints of reprisal from provincial public sector employees. We also provide advice to public sector employees about making disclosures. A reprisal is a negative change to an employee's employment or working conditions made because they sought advice, made a disclosure, cooperated in an investigation of a disclosure of wrongdoing, or declined to participate in a wrongdoing. 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. While the Ombudsman is an office of last resort, the Commissioner is not; public sector employees do not have to use internal mechanisms first before coming to the Commissioner's Office.

Our work under the Commissioner's mandate increased in 2020. This year, we had a total of 41 inquiries, disclosures of wrongdoing and

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complaints of reprisal compared with 25 in 2019. Of note, 12 (about 30%) of the matters we dealt with in 2020 were related to COVID-19 concerns in the workplace. We received 10 inquiries from employees of organizations that we do not have jurisdiction to investigate.

We hope this increase means public sector employees are becoming more aware of the protections the Act provides them and are more comfortable contacting us. This is important. If someone thinks something is not right at work but they are not comfortable raising it within their organization – for whatever reason – we can provide them with advice and review the matter to determine whether further action should be taken. In all cases, disclosers are protected. We do, however, continue to get anonymous disclosures – which to me means employees are still afraid of being identified. Anyone who contacts our Office should never be afraid that they will suffer retaliation for coming forward with concerns.

The increase in inquiries and disclosures we saw in 2020 may grow in the coming years. This is because, on December 10, 2020, the Legislative Assembly gave first reading to Bill No. 20 *The Publicly-funded Health Entity Public Interest Disclosure Act*, which is expected to extend protections to employees of all publicly-funded health entities who make disclosures of wrongdoing or complaints of reprisal. The Commissioner will have the same mandate under this new Act as under *The Public Interest Disclosure Act*.

2020 Summary

The Office of the Public Interest Disclosure Commissioner ensures provincial public sector employees can seek advice and disclose wrongdoings in the workplace to have them appropriately addressed without fear of retaliation or reprisal.

One of the reasons our complaint numbers increased is because employees of the Saskatchewan Health Authority and the Saskatchewan Cancer Agency are now protected under *The Public Interest Disclosure Act*. In 2020, we received six inquiries (seeking advice about making a disclosure), two disclosures, and one complaint of reprisal from SHA employees – this was 22% of the matters we dealt with this year.

We want to ensure that public sector employees know about our Office and our role. We also want them to know that our work is confidential: no one in their organization will know they have contacted us. They need to know that if they think something wrong is happening in their workplace, they can contact us, and we will take the appropriate steps to deal with it. Even if the matter does not end up being a “wrongdoing” under the definition in *The Public Interest Disclosure Act*, it still may be wrong and still may need to be addressed and resolved.

COVID-19

Public sector employees who contacted us this year had concerns related to COVID-19 and about public safety in the workplace. Some of the issues they raised with us included a public sector institution’s decision to not let certain employees work from home due to operational requirements, decisions regarding the use and availability of PPE in the workplace, and decisions to allow certain medical procedures to go ahead during COVID-19.

While we like to highlight our work, it is important that we maintain the confidentiality and the trust of the public sector employees who contact us. Here is an example of one disclosure we received in 2020, which demonstrates our approach. It is written in a manner so as not to identify the discloser.

TRAVEL MAY BE UNSAFE

Early in the pandemic, we received a disclosure of wrongdoing from a public sector employee working for a government institution in a larger urban area. The employee was required by their employer to go to work

in another location where staff were needed. The discloser felt it was unsafe for employees to be travelling at that time. The discloser also told us they were required to carpool with other employees to the location and back. Given that we were all being told by public health to not mix with people we did not live with and to stay home, the discloser felt the employer's decision was a wrongdoing – that employees were being unnecessarily subjected to substantial danger of contracting COVID-19.

We reviewed the disclosure and determined that, based on the operational requirements of the organization under the current circumstances, the decision to deploy staff to work in other locations was reasonable. We did not investigate this part of the disclosure any further. However, we determined that the decision to make the employees carpool to the location merited further review and we gave notice to the institution. Upon receipt of our notice, the institution contacted the Ministry of Health about the carpooling concern. At the time (April 2020), the advice the Ministry of Health gave the institution was that carpooling in and of itself did not pose a risk to the occupants of the vehicle as long as they followed the proper self-monitoring protocols and took the required steps if they developed symptoms. Nevertheless, the institution decided to give employees the option to carpool or to use separate vehicles.

Status: Resolved

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 from reprisals when they make a disclosure or seek advice under the Act.
- 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.

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 or municipalities. It also does not apply to the federal government, other provincial governments, the courts, or private businesses.

Other than the Saskatchewan Health Authority and the Saskatchewan Cancer Agency, the Act does not apply to publicly-funded health entities. However, similar protections will be provided to their employees if Bill No. 20 *The Publicly-funded Health Entity Public Interest Disclosure Act* is passed.

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.

To date, the government institutions whose permanent heads have decided not to have a designated officer or procedures to manage disclosures are listed below and on our website.

- Athletics Commission Saskatchewan
- Law Reform Commission of Saskatchewan
- Liquor Board Superannuation Commission
- Multitype Library Board Saskatchewan
- Public Employees Pension Board
- Public Service Superannuation Board
- Saskatchewan Pension Annuity Fund Board
- Saskatchewan Police Commission

Statistics

Inquiries and Disclosures

	2020	2019	2018
FILES RECEIVED			
INQUIRIES			
Within Jurisdiction	20	13	2
Outside Jurisdiction	10	4	1
TOTAL INQUIRIES	30	17	3
DISCLOSURES / COMPLAINTS OF REPRISAL	11	8	3
TOTAL	41	25	6

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 2020 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.