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Review of The Public Interest Disclosure (Whistleblower Protection) Act

Dianna Scarth

I would like to express my appreciation to all those who agreed to be interviewed for this project. I also wish to thank Paul Thomas, Professor Emeritus at the University of Manitoba, and Professor Alan Levy, of the University of Brandon, for generously providing me with extensive background materials about whistleblowing legislation in Canada and at an international level.

Executive Summary

My review of the Public Interest Disclosure (Whistleblower Protection) Act of Manitoba (“PIDA”) has focused on whether this relatively new legislation has been functioning effectively since it came into effect in Manitoba in 2007. As I have noted throughout my report, Manitoba was the first province in Canada to introduce this type of legislation on a stand-alone basis and any assessment of its effectiveness should be considered in the context of the evolution of whistleblower protection laws in Canada and elsewhere since PIDA was proclaimed.

My review did not deal with broad policy issues, for example, whether private sector companies ought to be covered under PIDA, or whether the definition of what constitutes a wrongdoing should be expanded. My mandate was to consider whether the existing procedures within PIDA are functioning effectively and to make recommendations that would support and improve its functioning.

The strengths of PIDA include the fact that it is comprehensive stand-alone legislation which sets out clear definitions of wrongdoings and provides options for employees to elect whether to make disclosures within their own organizations or to the Ombudsman. The definition of wrongdoings include a contravention of a law, acts or omissions that create a substantial danger to the life, health or safety of persons or the environment, gross mismanagement or knowingly directing or counseling a person to commit a wrongdoing (Section 3). An employee who commits a wrongdoing will be subject to appropriate disciplinary action, including termination of employment and any other penalty provided by law (Section 4).

PIDA also sets out the requirements for receiving and investigating disclosures which generally incorporate procedures of natural justice and fairness. Although there are some issues related to using the Labour Board as the sole process available to protect against reprisal actions, the Labour Board has the power to issue orders which include significant penalties in appropriate circumstances.

The concept of public interest disclosure legislation is closely linked to concepts of transparency, integrity and accountability. Whistleblower protection legislation will function most effectively in workplaces in which these concepts are promoted widely and employees feel confident that their disclosures will be taken seriously, dealt with quickly, fairly and confidentially, and that they will be protected from reprisal. The development of a high level of trust and confidence among employees is a gradual process. It is encouraging to note the significant increase in disclosures received by the Ombudsman in 2013, which suggests that there has been an increase in public confidence in the way PIDA is functioning.

Recommendations

Based on the concerns I have heard during my consultations, and after reviewing concerns expressed by advocacy groups and similar legislation in other jurisdictions, I have made a number of recommendations which fall within 4 major areas:

1. Recommendations to ensure that all employees receive adequate education programs to complement information available online and that designated officers, who are responsible for managing internal disclosures, are adequately trained;

2. Recommendations to create a central process to ensure that all bodies covered by PIDA have effective procedures in place, to provide them with support when creating procedures and interpreting PIDA, and to track and gather data related to internal disclosures among all departments, bodies or organizations, and make it available to the public;

3. Recommendations that would clarify and amend procedures relating to the Ombudsman's responsibilities under PIDA;

4. Recommendations to strengthen the protections available to address allegations of reprisal by giving the Ombudsman the authority to investigate and take immediate action to address acts of reprisal.

I have also recommended that PIDA be reviewed every 5 years.

Introduction

I was retained in July 2013 to review and evaluate the Public Interest Disclosure (Whistleblower Protection) Act (“PIDA”). I was asked to take into consideration the concerns raised by the Office of the Auditor General of Manitoba’s audit report on the Office of the Fire Commissioner, principally the recommendation that PIDA be assessed and revised if necessary.

My mandate was to consult with relevant individuals and organizations on their knowledge and understanding of PIDA and/or experience working with the Act, in order to address two questions:

- 1. Are appropriate policies and procedures currently in place to support the legislation?**
- 2. Is there effective awareness of the legislation among the public and stakeholders, and how might this be improved?**

As requested, on the basis of information obtained through these consultations I have made recommendations for policy and procedure changes that I believe would improve the effective functioning of the Act.

Background

PIDA came into effect in Manitoba in 2007. Manitoba was the first province to introduce stand-alone whistleblower protection legislation. Five other provinces and the federal government now have similar legislation in place.

Recently whistleblowers have generated a great deal of media coverage, as well as articles by scholars and advocacy groups, many of which address perceived shortcomings in existing legislation.

There is no generally accepted consensus on the ideal criteria for measuring the effectiveness of whistleblower legislation. I have structured my review around the following questions:

1. Is PIDA meeting its fundamental objectives? Specifically,

- **Are the disclosure procedures within PIDA readily accessible to employees and others who are entitled to make disclosures under the Act?**
- **Are employees sufficiently aware of the Act, and do they have confidence in the process?**
- **Are the officials responsible to receive, manage and investigate disclosures within the public service and government bodies sufficiently aware of their responsibilities and knowledgeable about the procedures to be followed?**
- **What are the concerns that have been expressed by advocacy groups regarding the effectiveness of PIDA and similar legislation?**

2. Are the procedures by which the Ombudsman carries out the special responsibilities mandated to him/her by the Act adequate and appropriate?

3. Are there procedures in place in other jurisdictions from which best practices could be learned?

I interviewed government officials with direct responsibilities related to PIDA, the former and current Acting Ombudsman, and a whistleblower whose disclosures resulted in findings of wrongdoings by her employer. I spoke with

officials in other Canadian jurisdictions who are responsible for implementing whistleblower protection legislation, and other experts in the field. I also considered concerns and criticisms by advocacy groups that monitor whistle-blowing activities in Canada and other jurisdictions.¹

Although I believe it would be beneficial to learn directly from civil servants and the employees of government agencies about their level of awareness of and confidence in PIDA, it was beyond the scope of my mandate to undertake such a survey. However, in November 2013 the Auditor General circulated a survey to civil servants, which included questions about their knowledge and perceptions of PIDA as well as closely related questions about values and ethics. I hope my report will be useful as part of a broader assessment of PIDA in which the results of that survey will also be considered.

It is important to see my recommendations in the context of the evolution of whistleblower protection legislation across Canada since 2007. PIDA came into effect during the early days of Canadian whistleblower protection laws. As similar legislation has been created in other jurisdictions, it reflects lessons learned since 2007. In Saskatchewan and Alberta, for example, whistleblower protection legislation has come into effect within the past 2 years. I was informed that experiences within other jurisdictions, including Manitoba, were taken into account when the newer legislation was drafted.

The information I collected suggests that overall PIDA has functioned effectively in many respects, and its procedures and protections were carefully considered and appropriate for the time the legislation was drafted and proclaimed. However, as Paul G. Thomas reminds us, “comparative research suggests that no country on its first try has produced flawless legislation which stands the test of time and changing circumstances, so periodic reviews of laws is most appropriate.”² That is the spirit in which my recommendations should be viewed.

Procedures Related to Internal Disclosures

Creating Procedures to Receive and Manage Internal Disclosures

Employees who reasonably believe they have evidence that a wrongdoing has been committed, or is about to be committed, have the choice of making a disclosure to their supervisor, to their designated officer (a senior officer who has been designated by the chief executive to deal with disclosures) or to the Ombudsman (Section 10). An employee who is considering making a disclosure may obtain advice in advance from the designated officer or the Ombudsman (Section 9).

This section of the report considers whether the procedures available to employees who make disclosures within their own department, government body or office (“internal disclosures”) are working effectively.

Currently civil servants are much more likely to make a disclosure to the Ombudsman than to officials within their own departments. According to Information provided by the Civil Service Commission, only three internal disclosures were received between 2007 and 2013. The Ombudsman received 57 disclosures during that period (although this number would include disclosures received from employees within government bodies as well).

Every chief executive (the Deputy Minister of a department, the Chief Executive Officer of a government body, or an officer of the Legislative Assembly in charge of an office) is required to establish procedures to manage disclosures. The procedures must set out how disclosures will be received and reviewed, how principles of fairness and natural justice will be incorporated into investigations, how confidentiality will be respected and how outcomes will be reported (Section 5).

The Ombudsman may exempt small organizations from the requirement to establish procedures to manage disclosures and to name a designated officer (Section 7). I was informed by the Acting Ombudsman that in practice the number of such exemptions granted by that office has been low. The office has developed criteria to ensure consistency when it considers requests for exemptions.

Disclosures made by employees must be submitted in writing and must contain a description of the alleged wrongdoing, the date on which it took place, the name of the person(s) alleged to have committed it, and information as to whether it has already been disclosed and a response received (Section 12). An employee may make a disclosure under PIDA even where the disclosure is prohibited under another Act, subject to the exceptions of information covered by solicitor-client privilege, Cabinet confidences, or information that is subject to a restriction created by an Act of the Legislature or Parliament (Sections 15 and 16).

Over 600 “government bodies” are now covered by PIDA, including Regional Health Authorities, Child and Family Services agencies and authorities, universities, and other organizations that receive more than 50% of their funding from government. This category includes numerous small organizations with volunteer boards.

The number and variety of organizations covered by PIDA raises the concern that there is no centralized monitoring process in place to ensure that they all have created adequate internal disclosure procedures as they are required to do.

This concern was noted by Paul Thomas, who has pointed out that in the federal system, “the TBS report released in late 2010 indicated that 38 organizations (most of them specialized and small), did not even have internal disclosure procedures or a designated officer to receive disclosures.”³

In short, it is very likely there are gaps among the government bodies covered by PIDA but without a centralized monitoring process, the extent to which this is happening is impossible to assess.

One troubling example that highlights this concern appeared in the Ombudsman’s 2011 Annual Report. In this case summary three employees of a government body approached the Ombudsman with concerns that “had been brought to the attention of management but they were dissatisfied with the manner in which their disclosures had been addressed.” The Ombudsman contacted the chief executive and was informed that an internal audit was underway. It was agreed to await the results of that process, which ultimately did not conclude that a wrongdoing had occurred. The Ombudsman’s office then undertook a further investigation and determined by the process developed by the organization was “inadequate and the outcome of the process was not effective.”

As the Ombudsman explained, the review of this situation by his office had led to “serious questions about the adequacy of the financial oversight in place within the organization.... In our view, the organization’s decision to close the matter was premature, based on inadequate review, and not sup-

ported by the evidence available.” As a result, the Ombudsman made recommendations to the organization to improve its financial controls, asked that it provide copies of its new policies to the Ombudsman and suggested that it should “...revisit its whistleblower policies to ensure matters are handled promptly and thoroughly.”⁴

Of course, a single reported situation in which the internal procedures created and followed by a government body were found to be inadequate by the Ombudsman does not establish that this is occurring on a widespread basis among government bodies. However, with no process in place to assess whether government bodies covered by PIDA have created adequate procedures to receive and manage disclosures, it is impossible to make an informed assessment. This gap should be addressed proactively instead of waiting for inadequate procedures to come to light as occurred in the example discussed by the Ombudsman.

The adequacy of internal disclosure procedures is a concern that has been expressed by advocacy groups and experts on the topic of whistleblowing. For example, human resources consultant Barbara Bowes has written about the negative experiences of whistleblowers in Manitoba, and the need for all organizations to have effective internal procedures. She has also pointed out that employers often benefit from whistleblowing activities, concluding, “organizations shouldn’t have to wait for an external body to bring education to their door and/or for legislation to be strengthened. They should take leadership to ensure that policies and procedures are put in place to not only protect their employees but also protect organizational assets.”⁵

The advocacy group Federal Accountability Initiative for Reform (“FAIR”) has criticized what it sees as a similar lack of a central oversight system within the federal government: “The law places responsibilities on government heads to implement an internal disclosure system, but no accountability or oversight mechanism is defined to ensure it is done — for example by Treasury Board audits of departmental systems.”⁶

One legislative model that addresses this concern is The Public Interest Disclosure (Whistleblower Protection) Act in Alberta, which gives the Public Interest Disclosure Commissioner the authority to request a copy of the internal disclosure procedures from a government body.⁷ It also gives the Commissioner the authority to direct that future disclosures must be made directly to him if he finds that the procedures do not satisfy all the criteria in the Act.

In addition to the need for a central monitoring system to ensure that all organizations have created effective procedures if they are required to do so, there should be an avenue available to government bodies to receive support and advice when they are creating procedures. A designated officer within

a large government body told me that the procedures created by the Civil Service Commission have assisted them in creating their own procedures to manage internal disclosures, but they would have found it very helpful to be able to seek advice from the Civil Service Commission while developing the procedures, and to have ongoing support when interpreting the provisions of PIDA. The Acting Ombudsman also noted that smaller organizations find it challenging to create effective procedures.

RECOMMENDATIONS

As a minimum step, all government bodies and departments should be reminded annually of their obligations to ensure they have adequate procedures in place to fulfill their obligations under PIDA.

A central monitoring process should be created to ensure that organizations, departments and government bodies have created adequate procedures to meet the requirements of PIDA, with the authority to require that specific steps be taken to address any perceived shortcomings, following the model in the Alberta legislation.

Developing Education and Training Programs

Chief executives are required to ensure that information about PIDA and the organization's implementation procedures is "widely communicated to all employees." (Section 8). This is the only provision in the Act that imposes any obligations related to education or training.

If PIDA is to function effectively, employees must be aware of the purpose of the legislation, the procedures that will be used to receive and manage disclosures, how whistleblowers will be protected from reprisal, and the possible outcomes after a disclosure has been investigated.

Although not mentioned specifically in PIDA, supervisors and designated officers with responsibilities to receive and manage disclosures should be knowledgeable about the correct procedures to follow and should have access to experts if they require assistance. As noted above, to date there have been very few internal disclosures within the civil service; this adds to the challenge of ensuring that designated officers and supervisors remain knowledgeable about PIDA.

Education for Employees

The lack of education about PIDA for employees is one of the concerns I heard most frequently, and it is also a concern often raised by experts and advocacy groups. All of the designated officers with whom I spoke agreed it would be helpful if employees had a better understanding of the kinds of activities that PIDA is intended to cover, as well as the procedures to follow when making disclosures. One of the designated officers described a situation in which an employee had made a disclosure directly to the Minister's office, not realizing that she should have approached her supervisor or designated officer directly. This error led to confusion and delay in dealing with the disclosure.

The extent of education about PIDA provided to employees varies among government bodies, although many have information about PIDA posted on their websites. The Civil Service Commission has posted comprehensive information in a user-friendly format for government employees, who also receive information during about PIDA during orientation and training programs. The Ombudsman has posted extensive materials about PIDA on its website. These "passive" forms of employee education are important. However, the extent to which there is a regular process of "active" education offered appears to be very inconsistent.

A designated officer within a large government body believes that employees should receive information about PIDA as a component of the organization's broader integrity program. Although she makes presentations to employees that include information about PIDA, she said that consideration is being given to creating online modules of information about PIDA which employees would be required to review regularly. This plan would certainly ensure that employees remain aware of their rights and obligations under PIDA and would be particularly effective in organizations in which employees are not located in one central office. The integration of information about PIDA with materials related to values and ethics is also an effective approach to consider.

The Integrity Commissioner of Ontario released a report in 2013 in which she made a number of recommendations to strengthen the whistleblowing legislation in that province. On the issue of education for public servants, she noted that "informing public servants about the disclosure of the wrongdoing framework...will provide opportunities for deputy ministers and chairs to develop trust among their staff, encouraging them to resort to the internal processes." She stressed the importance of ensuring that public servants receive regular education about the legislation and recommended that a formal program to raise awareness should be provided to all public servants annually.⁸

Professor Alan Levy of Brandon University has carried out extensive comparative research about the effectiveness of whistleblowing legislation in many jurisdictions. He expressed the opinion that there should be much more education offered to employees.

It is worth emphasizing that the need to strengthen and create additional educational opportunities for employees to learn about PIDA was one of the recommendations I heard often during this review.

RECOMMENDATION

That government bodies and government departments should increase and strengthen educational programs for their employees to raise their awareness of the provisions of PIDA and of the procedures which support it.

Training Programs for Designated Officers and Supervisors

Another common theme I heard when interviewing individuals involved in the implementation of PIDA is the need for more extensive and more regular training programs for designated officers.

Designated officers within government were complimentary about the training programs delivered by the Civil Service Commission, but would prefer to receive training opportunities on a more regular basis. The process of conducting an investigation under PIDA is complex and made more difficult because most designated officers have received very few disclosures, and so have extremely limited practical experience.

Within government departments, designated officers have access to government lawyers who provide expertise which all of the designated officers described as essential. This support is not available to all designated officers within government bodies. A designated officer within a government body told me that she felt there should be a central support to assist with the interpretation and handling of difficult issues that often arise during the disclosure and investigation phases. She felt the creation of a network of designated officers would be a valuable way to share information with counterparts in other organizations. She also suggested there should be a process by which the government or the Ombudsman offers training programs that can be attended by designated officers in government bodies.

The Acting Ombudsman has suggested that it may be helpful for his office to co-ordinate information sessions among designated officers within the

public service, an approach that has been used successfully in Saskatchewan. Alternatively, the Civil Service Commission could provide training opportunities for designated officers in government bodies on a cost-recovery basis. A central training program would strengthen PIDA by encouraging designated officers to use a more consistent approach when they are dealing with internal disclosures.

In my discussions with officials responsible for the implementation of whistleblower legislation across the country, I became aware that many collaborative discussions about best practices occur among them. For example, the Ombudsman of Manitoba has based its framework for assessing whether gross mismanagement has taken place on practices used by the federal Office of the Federal Integrity Commissioner. If the Ombudsman were to deliver training programs for designated officers, this information could be shared and there would be an opportunity to develop a useful network among designated officers.

RECOMMENDATIONS

All designated officers should be expected to participate in regular training programs to ensure they have the necessary expertise to fulfill their responsibilities under PIDA. Consideration should be given to creating a centralized training program to support designated officers which would contribute to a more consistent approach in receiving and managing internal disclosures.

Persons to Whom Disclosures May be Made

All public interest disclosure legislation in Canada includes procedures allowing employees to make disclosures using channels within their own organization, as well as procedures to make disclosures to an independent officer (an Ombudsman or Integrity Commissioner). However, internal disclosures do not always include the option of making a disclosure directly to one's supervisor, which is found in Section 10 of PIDA. The relatively recent legislation passed in Saskatchewan and Alberta, for example, mandates that disclosures must be made to a designated officer or to the Public Interest Disclosure Commissioner.

The inclusion of a supervisor as one of the initial points of contact for an employee who is considering making a disclosure was initially perceived as a way of making the legislation more accessible to employees. Presumably, some employees may feel less intimidated by their immediate supervisor than a senior officer within their organization. I have become aware during my review, howev-

er that experiences gained since whistleblowing legislation was implemented in Canada have led to very conflicting views as to whether it is an effective option.

No doubt, as one designated officer within government suggested, the effectiveness of such an option depends on the nature of the issue being disclosed, and on the relationship between an employee and his or her supervisor.

I spoke with a senior government lawyer who has been involved in providing advice concerning receiving, managing and investigating disclosures to government officials. She expressed the opinion that the option of making a disclosure to one's supervisor is "awkward and not workable." A designated officer within government suggested that when an employee comes forward to a supervisor with a concern about a possible wrongdoing, the supervisor will "see the better side of it." In other words, when faced with information that could lead to a finding that a significant and serious wrongdoing has occurred within his or her own department, a supervisor may discourage an employee from moving forward with the steps required under PIDA.

As well, the responsibility of receiving a disclosure under PIDA is but one of a myriad of other responsibilities a supervisor is likely to have. As Paul Thomas notes, we must keep in mind that whistleblower legislation is "part of a complex web of rules and laws which overlap and intersect in the legally congested environment of the public sector."⁹

It is perhaps understandable why a supervisor may discourage an employee from pursuing a disclosure under PIDA, even subtly, in order to avoid a time-consuming and unfamiliar process.

Professor Alan Levy also shares the view that allowing employees to make a disclosure to their supervisor is not an effective option, and that disclosures should be made only to an external agency.

There has been little research on whether reporting to a supervisor or manager is a useful option. A research project undertaken by Griffith University in Australia found:

the research has shown that in many organizations, even where there is a commitment from senior management to the principles of whistleblowing, line managers can sometimes be skeptical and obstructive. Given that front line managers are the front line for the receipt of reports of whistleblowing, it is essential that they understand the agency's commitment to whistleblowing..and possess the management skills to be able to deal sympathetically with reports. As well, it is line managers who are best positioned to prevent any reprisal actions from being taken.¹⁰

It is interesting to note, however, that there is some evidence to support maintaining the option of employees making disclosures to their supervisors.

Statistics in a Treasury Board Report in 2010 showed a high number of disclosures were made to senior officials, which Paul Thomas has suggested, in his article *The Problems with Canada's Public Servants Disclosure Act*, may reflect cultural norms within the federal civil service.

Similarly, some designated officers told me that whistleblower legislation would be weakened if the internal disclosure procedures did not provide employees with the option to discuss and report disclosures to supervisors. One designated officer noted that in her organization, it is well understood that the information will be funneled by a supervisor to the designated officer, who will then ensure that appropriate action will be taken, and that it would not be well received if employees were told they could not report to their supervisor. Another designated officer suggested that there may be situations in which the relationship between a supervisor and a whistleblower is such that the whistleblower will feel supported and encouraged by the supervisor.

Including supervisors as a point of initial contact for potential whistleblowers was intended to facilitate an “up the ladder” process within departments that would encourage an early and informal resolution of the issues raised. In practice, however, the evidence I have collected suggests that the risks associated with allowing employees to make disclosures directly to their immediate supervisors may outweigh the potential benefits. Employees who are in the process of deciding whether to come forward may be struggling with the conflicting duties of loyalty to their employer and the duty to protect the public interest. Although the role of supervisors is limited to receiving disclosures, which they refer to the designated officer within their organization—in other words, supervisors are not required to adjudicate or evaluate disclosures—receiving a disclosure is, nonetheless, a critical step in the process. The information may be sensitive or complex, and the climate of an organization may discourage rather than encourage reporting.

In summary, the most recent whistleblower legislation in Canada has eliminated the option of making disclosures to supervisors, an option which is also viewed as problematic by many experts. In Manitoba, where PIDA currently allows for such disclosures, I was told that in some circumstances, it is a useful and effective channel by which internal disclosures may be made.

However, in response to a question in the Auditor-General's Survey, 58% of the respondents reported that they would report a wrongdoing initially to their supervisor, 21% selected their designated officer, and 21% would report to the Ombudsman's office.

In the face of such conflicting views, it would appear to be premature to eliminate this option entirely from the legislation and it should receive further study. PIDA has now been in effect for almost 7 years—there should be an

assessment of how often and how effectively this option has been used, and whether it should be modified or eliminated. Data reported by organizations related to internal disclosures does not usually differentiate between the number of disclosures made to supervisors and the number of disclosures made directly to designated officers, but it should be relatively easy to obtain the information from designated officers.

RECOMMENDATION

An online survey of all designated officers with responsibilities under PIDA should be undertaken to collect information as to the number of disclosures which were made to supervisors compared with disclosures made directly to the designated officers. Designated officers should also be asked whether, on the basis of their own experiences, they believe that PIDA would be more effective if this option were to be eliminated. The information would help determine whether, as most experts recommend, all internal disclosures should be made directly to designated officers.

Making a Disclosure About an Urgent Matter

Section 14 sets out special procedures that may be followed where an employee who is about to make a disclosure reasonably believes that the matter constitutes an imminent risk of substantial and significant danger to the life, health or safety of persons, or to the environment, and there is insufficient time to make a disclosure using the usual procedures. The employee may make the disclosure to the public, but must first make it to the appropriate law enforcement officer, or the chief provincial public health officer as may be appropriate. The employee is then subject to any direction that the agency or officer considers necessary in the public interest and must also then make a disclosure to his or her supervisor or designated officer. In addition, subsection 16 (1) imposes a further restriction in that the employee cannot disclose information that is protected by a provincial or federal Act.

The right of whistleblowers to make disclosures to the public without any conditions or restrictions has been recommended by advocacy groups such as FAIR, which has developed 5 principles it considers to reflect the major requirements of effective whistleblowing legislation. One of those principles, “Full Free Speech Rights”, states: “Whistleblowers must be able to blow the whistle on wrongdoing anytime, anywhere and to any audience unless the

release of the information is specifically prohibited by statute, in which case disclosure must still be permitted to law enforcement and/or to Parliament.”¹¹

Allegations of wrongdoing brought forward by employees are just that — allegations — and are not always upheld after an investigation. The interest of ensuring that the public is made aware of matters which constitute an imminent risk to life, health, safety or the environment must be balanced against the irreparable damage to reputations that may result if the allegations are found to be without merit.

I was not able to find examples of any urgent disclosures made under Section 14 of PIDA upon which to base an assessment as to whether it is functioning effectively. It does appear, however, that the conditions imposed on a whistleblower who wishes to make a disclosure of an urgent nature to the public create reasonable limits and appropriately balance the interests of the public, the employee and the respondent(s) against whom the allegations are made.

Reporting Requirements

Internal disclosures must be reported in summary form by a government department or government body in its annual report, and must include the number of disclosures received, the number of investigations undertaken as a result and, if there was a finding of a wrongdoing, a description of the wrongdoing, any corrective action taken or the reasons why no corrective action was taken. If no annual report is published, a report of activities under PIDA must be made available to the public on request (Section 18).

The requirements noted above are generally consistent with the requirements in other Canadian jurisdictions, with the exception of Ontario, which currently does not require internal disclosures to be published. (The Integrity Commissioner has recommended in her review that this be changed to bring the requirements in line with those of other provinces.)

However, the current reporting requirements set out in Section 18 of PIDA create a challenge if one wishes to obtain data that would provide an overview of the number of internal disclosures received, investigations undertaken and outcomes of those investigations. There is no centralized process of data collection from government bodies or government departments, so it would be necessary to review the hundreds of annual reports published since PIDA came into effect in 2007 to obtain this information.

Such information would be helpful to identify trends and systemic issues and would also provide statistics to assist in assessing whether PIDA is functioning effectively.

There is also great potential educational value in having information about activities related to PIDA widely reported. Case studies published in the Ombudsman's Annual Report contain relevant and useful information; it is unfortunate that the information with regard to internal disclosures is not also available in a central location. A comprehensive report prepared by the Ombudsman about an investigation under PIDA of a personal care home contains information that would assist organizations who may be required to undertake similar investigations. Similarly, many organizations' annual reports contain information about internal disclosures that could assist officials in other organizations, but there is no process in place to share that information.

Most members of the public would have no idea of the extent to which disclosures under PIDA have been investigated and corrective actions taken. It is not a matter of making the reporting requirements related to internal disclosures more stringent, but rather of making the information more accessible to the public and to other organizations that have a legal obligation to receive and manage disclosures under PIDA.

The Integrity Commissioner of Ontario has made recommendations to improve the whistleblowing legislation in Ontario and has stated, "information about internal disclosures of wrongdoings is an important part of the overall picture of the functioning of the disclosure procedures. It is the Integrity Commissioner's view that increased awareness about the use of the disclosure system will create confidence in the system itself. It is a useful for public servants to know that the mechanism is being used and that it is working."¹² Although she used this reasoning to support the need for reporting internal procedures, which is not currently required in Ontario, the same reasoning would also support the need to create a more accessible system of communicating the information that is collected and reported under PIDA. It would also create more transparency in the process, which in turn would strengthen the legislation by increasing public confidence in it.

RECOMMENDATION

A centralized process should be created to track and publish information regarding internal disclosures made under Section 18 of PIDA on an annual basis.

Investigations by the Ombudsman

The Ombudsman has the authority to conduct investigations under PIDA. Employees of government bodies, departments or offices may make disclosures, or obtain advice about making disclosures, directly from the Ombudsman (Sections 9 and 10). The Ombudsman may also intervene directly to help resolve a matter quickly and informally within the department, government body or office (Section 13). The purpose of an investigation of a wrongdoing by the Ombudsman is to bring the wrongdoing to the attention of the relevant entity and to recommend corrective measures that should be taken (Section 19).

The Ombudsman's responsibilities to receive and investigate disclosures under PIDA have been added to the Ombudsman's other duties, unlike most other jurisdictions in Canada in which a Public Interest Disclosure Commissioner or Integrity Commissioner has been assigned responsibilities that relate only to the whistleblower protection legislation. Some experts such as Professor Alan Levy, maintain that this division has resulted in a fragmented approach to dealing with disclosures.

Discretion Not to Investigate

The Ombudsman is not required to conduct an investigation if it is believed that a disclosure is frivolous or vexatious, that so much time has passed that an investigation would not be useful, that inadequate particulars have been provided, or that the subject matter could more appropriately be dealt with either initially or completely, under another Act, a collective agreement or an employment agreement (Section 21). This wide discretion given to the Ombudsman to determine when an investigation is not required is consistent with the discretion afforded Public Interest Disclosure Commissioners in other jurisdictions in Canada. It is interesting to note that there are no similar provisions as regards internal disclosures, although it is possible for government bodies, departments or organizations to include them in the procedures they create. Advocacy groups have criticized the fact that this wide discretion not to investigate exists in the federal legislation and there is no appeal from the Commissioner's decision. I have not seen commentary in which criticism has been directed specifically to the Ombudsman in Manitoba on this point.

Natural Justice and Procedural Fairness in All Investigations

Investigations undertaken by the Ombudsman are required to be conducted as informally and quickly as possible, while ensuring that the right to procedural fairness and natural justice of all persons involved in an investigation is respected, including the discloser, witnesses and respondents who are alleged to be responsible for the wrongdoing (Section 20). There is no similar requirement when internal disclosures are reported and there is no apparent reason for this discrepancy.

The right to procedural fairness and natural justice should be respected in all investigations under PIDA. The Acting Ombudsman has expressed a concern that this requirement has not been explicitly stated in relation to all investigations and has recommended that this be rectified. Subsection 21(1) gives the Ombudsman the authority to refer a disclosure to another department or body to conduct an investigation if the subject matter of the disclosure could more appropriately be dealt with, initially or completely, according to a procedure provided for under another Act. The legislation does not explicitly state that the investigations under another Act must also respect principles of procedural fairness and natural justice. In some cases the Ombudsman will refer an investigation initially to another department to investigate, and it will be referred back to the Ombudsman to determine whether a wrongdoing has occurred. The Ombudsman is concerned that there is no specific requirement that would ensure that the procedures of natural justice and procedural fairness would be respected in such an investigation.

I agree that an amendment should clarify that all investigations undertaken under PIDA must ensure that the principles of natural justice and procedural fairness are observed.

RECOMMENDATION

Amend Subsection 21(1) to state that all investigations undertaken under PIDA must ensure that the rights to procedural fairness and natural justice of all persons involved in the investigation must be respected.

Reporting Requirements for the Ombudsman

Another concern that has been identified by the former Ombudsman and the current Acting Ombudsman arises from the requirement in Section 24 that the report which the Ombudsman prepares at the end of an investigation must

be given to the employee who made the disclosure as well as to the chief executive of the relevant body. There is no disagreement that an employee is entitled to be advised of the information described in Section 24 (the Ombudsman must prepare a report containing his or her findings, and any recommendations about the disclosure and the wrongdoing) but it is an issue as to whether it is appropriate to provide the same report to the whistleblower and the chief executive. There may be circumstances during investigations in which the Ombudsman becomes aware of issues that require corrective action but which do not constitute a wrongdoing under PIDA. The Ombudsman would like to be able to prepare a report that sets out the corrective action required but it would be inappropriate to disclose this information to the employee. The Acting Ombudsman has also noted that if a report is prepared for an employee, it may be circulated to others or appear in the public domain, and this creates an opportunity to write the report with a stronger educational focus.

This is a difficult issue in that the reporting requirements of whistleblower legislation have been characterized as inadequate by a number of advocacy groups. In general, however, those criticisms appear to focus on the brief summaries which are included in Annual Reports of government bodies, departments or offices rather than the more detailed reports typically prepared by the Ombudsman. The requirement for a single report to be provided to both parties is not consistent with the requirements of legislation in other jurisdictions. The most recent legislation in Saskatchewan and Alberta gives the Commissioner the discretion to provide the whistleblower with information that the Commissioner believes is appropriate.

It is important for an employee to receive enough information following an investigation to be aware of the findings and recommendations, but this information may be provided in a different form for the reasons discussed. It is also noteworthy that it is only the Ombudsman who is currently required to provide the same report to both parties; it is unclear why this distinction has been made.

RECOMMENDATION

Section 24 should be amended to state that, upon completing an investigation, the Ombudsman will provide a report to the employee which contains information the Ombudsman considers appropriate.

Annual Report

The Ombudsman must issue an annual report to the Legislative Assembly which sets out in summary form the number of inquiries and disclosures which have been received, the number of investigations undertaken, recommendations made and whether they have been followed, any systemic issues noted and any recommendations for improvement (Section 26). These reporting requirements are consistent with the reporting requirements under similar legislation in other Canadian jurisdictions.

In Manitoba, the Ombudsman includes case studies in its annual reports which have educational value. For example, a case study in its 2012 Annual Report which outlines an investigation undertaken by the Ombudsman of alleged wrongdoings in a personal care home contains detailed information about the criteria which have been developed and will be used in the future by the Ombudsman to assess whether gross mismanagement has taken place. I was informed by a designated officer in a large government body that she has found the case studies in the Ombudsman's Annual Report extremely helpful. She plans to adopt the criteria related to making findings of gross mismanagement in her own investigations.

It appears that the requirements are working well, and the recent increase in disclosures made to the Ombudsman (from 5 disclosures in 2012 to 42 disclosures in 2014) likely reflects an increase in awareness of, and confidence in, its processes among employees.

Special Report

The Ombudsman has been given the authority to issue a special report, where it is "in the public interest to do so" on any matter within the scope of the Ombudsman's responsibilities (Section 26). To date, the Ombudsman has never issued such a report.

The Acting Ombudsman expects that this section will be used in the future, and that in doing so it will be necessary to consider when the threshold of being "in the public interest" has been reached.

In response to the question as to whether the procedures followed by the Ombudsman are adequate, based on a review of practices in other jurisdictions and discussions with the Acting Ombudsman, the former Ombudsman, and other experts, I have recommended amendments to clarify that the rules of procedural fairness and natural justice apply when investigation is undertaken, either initially or completely, by another department. I have also recommended that the reporting requirements for the Ombudsman be amend-

ed to make them consistent with those in other jurisdictions and to provide more flexibility to the Ombudsman to more easily recommend corrective actions to employers that may not fall within PIDA. (Note, for example, that in 2010 the statistics reported in the 2010 annual report included 5 instances in which such areas of concern were identified.)

Protection from Reprisal

Section 27 sets out protections from reprisal available to an employee who has sought advice about making a disclosure from the Ombudsman, his or her designated member or supervisor, or who has made a disclosure or co-operated in an investigation under PIDA. A written complaint must be filed with the Manitoba Labour Board, which may use its usual procedures available under The Labour Relations Act for dealing with unfair labour practices. The Board has broad powers to issue orders which will address acts of reprisal, including reinstatement, compensating for financial losses, requiring an activity to cease or taking any other steps necessary to remedy a consequence of the reprisal (Section 28).

The definition of reprisal is broad, and includes discipline, demotions, termination of employment or any measure or threat to take any measure that adversely affects an employee's employment or working conditions.

Protecting whistleblowers from reprisal is a fundamental element of effective whistleblower legislation. Section 1 of PIDA identifies its purposes as the provision of procedures to facilitate the disclosure and investigation of wrongdoings and to protect persons who make disclosures from experiencing retaliation. As whistleblower protection legislation has evolved in Canada, it has become apparent that achieving the second of those purposes is a challenging task.

Paul G. Thomas has written extensively about the limitations of whistleblower legislation in Canada and elsewhere. He has noted that there is no comprehensive or reliable data regarding protection against reprisals, but in general, "The fate of whistleblowers appears bleak".

Experience Reported by a Whistleblower

In attempting to assess whether the current reprisal protections under PIDA are working effectively, I arranged to speak to a whistleblower who had made disclosures under PIDA which led to findings that wrongdoings had occurred in her workplace. She was extremely distressed because she asserted that she and others in her workplace who were involved in the disclosures were subjected to acts of reprisal. She had expected to be protected but, in her words, "The fact of the matter is that this so-called protection is non-existent and re-

prisals can be taken not only against the whistleblower or employee making disclosures, but also the employee's co-workers."

She alleges that acts of reprisal began in her workplace almost immediately after the disclosures had been made. She noted that, due to the organizational structure and nature of the information on which the investigation focused, it had been relatively easy for her employer to accurately identify a small pool of potential whistleblowers among all the employees. She contends that "as a result, many consequences and reprisals were taken against the individuals who were employed within the department." The disclosures made by this person and a colleague were referred to the Ombudsman to investigate. When the whistleblower believed that she had begun to experience negative employment consequences, she immediately requested that the Ombudsman investigate her reprisal allegations, but was told that there was no authority to do so under PIDA. She also contacted a number of other organizations such as the Human Rights Commission and the Employment Standards office and received the same advice.

This whistleblower was aware of her right to file a written complaint of reprisal with the Manitoba Labour Board. She said that she had chosen not to pursue that option, however, for a number of reasons. The first was that in order to file a complaint with the Labour Board, the application form required her to identify herself as a whistleblower, and she did not wish to lose her anonymity. She was also concerned that she may become the subject of a lawsuit if she were to identify herself. Although her employer may have guessed the identity of the whistleblowers, she did not believe that she should be required to confirm her identity to them. As well, she was advised that it would be a period of months for a hearing by the Labour Board if it found that a hearing was warranted. She said that could not afford legal representation, nor would it be provided to her, although the Ombudsman arranged for her to receive a free 3 hour consultation with a lawyer. Most importantly, she explained that she was reluctant to engage in a formal legal process after she had endured the "emotional and physical anguish" of an investigation during which she alleges that acts of reprisal continued to be initiated against her. Although she expressed appreciation for the thorough and professional nature of the investigation undertaken by the Ombudsman, she felt it was unfortunate that that office did not have the authority to intervene quickly to stop the reprisals. She said that she simply did not have the emotional energy to take her allegations to the Labour Board nor was she willing to be publicly identified as a whistleblower as required in that process. In her words, "This has truly been a learning experience and a rude awakening to say the least. How can a person have faith, trust, and confidence in such a system?"

Although one must be cautious about generalizing from anecdotal information received from one person whose chose not to pursue her allegations of reprisal through the procedures available, the former Ombudsman of Manitoba and the current Acting Ombudsman told me that they have similar concerns about weaknesses in the reprisal protections.

The former Ombudsman noted that the current reprisal protections provided under PIDA are simply not available quickly enough to respond to allegations which may be made by a whistleblower or others who may be affected. Sometimes allegations of reprisal are made at the same time as a disclosure of a wrongdoing, but there is no procedure by which they may be assessed and addressed quickly. She noted that the Labour Board procedures are adversarial and lacking in flexibility. On the basis of her experience as Ombudsman during the first 6 years after PIDA came into effect, she believes that a different procedure to deal with reprisal allegations would be beneficial. She said that she prefers the procedures found in the Public Interest Disclosure (Whistleblower Protection) Act in Saskatchewan and she would recommend that they be adopted in Manitoba.

The Acting Ombudsman agreed with these observations. The fact that the identity of an individual who files an application with the Labour Board must be disclosed to his or her employer is a major concern for him, as is the adversarial nature of the process and the fact that there is no provision for immediate investigations to take place, nor can steps be taken to address the acts of reprisal against the whistleblower or others in the workplace quickly. As well, it is expensive for a complainant to retain counsel and free legal representation is not provided to a whistleblower, although he has arranged for a few hours of legal advice to be provided on an ad hoc basis. The Acting Ombudsman advised that his office will provide general information about reprisal to a whistleblower but only in a very limited way because the Ombudsman has no authority to take any action. He was unable to provide any statistics as to the volume of such inquiries that the office of the Ombudsman has received.

The Acting Ombudsman stressed that effective protection from reprisal is an integral part of any whistleblower protection scheme. He also prefers the newer approaches which have been adopted in Saskatchewan and Alberta where reprisal allegations are dealt with by a Commissioner in the same manner as other disclosures.

Other experts who have studied and written about whistleblower legislation extensively are also critical of the fact that the Labour Board is the only avenue available to deal with allegations of reprisal.

Professor Alan Levy is not in favour of using the Labour Board to address reprisal allegations because the complainant must always be protected and

the entire process should be anonymous. His preference would be for experts, including independent mediators or arbitrators, to be used to create a range of flexible approaches. He also suggests that mediation would be an effective method of resolving issues in many situations. Mediation has been effective in dealing with allegations of reprisal in the federal system, and I asked the Acting Ombudsman whether he would consider the use of mediation to be a viable option if the Ombudsman is given the authority to deal with reprisals. He said that he could see no reason why mediation should not be explored as an option.

Protections Against Reprisals in Other Jurisdictions

Under the federal Public Servants Disclosure Protection Act (“PSDPA”), a 2 tier approach has been created to deal with allegations brought forward by a public servant or former public servant who has reasonable grounds for believing that a reprisal has been taken against him or her (S 19.1). That person may file a complaint with the Public Sector Integrity Commissioner (“the Commissioner”) no later than 60 days after the complainant knew or ought to have known that a reprisal was taken. (This tight time limit is often criticized by advocacy groups and is not found in PIDA.)

The Commissioner must assess the complaint within 15 days to determine whether it will be accepted or rejected on the basis of lack of jurisdiction or several other grounds. An investigation is to be conducted “...as informally and expeditiously as possible” and efforts to conciliate complaints of reprisal may be directed by the Commissioner at any stage of the process.

I spoke with the federal Integrity Commissioner, who advised that, in addition to the 15 day deadline in which to notify complainants whether their complaint has been accepted for investigation, his office has created other service standards in an effort to increase the confidence of public servants in the PSDPA processes. He also endorses conciliation as a very useful tool to facilitate settlements.

The second “tier” within the federal scheme is the Public Service Disclosure Tribunal, to which the Commissioner may refer complaints following an investigation if he wishes the Tribunal to make a determination and order a remedy. The Commissioner advised that, in practice, very few complaints are referred to the Tribunal. He said that out of 125 reprisal complaints, only 3 were referred to the Tribunal-the remainder were investigated and dealt with under the Commissioner’s power to make recommendations, were settled or dismissed. The fact that very few complaints have been referred to the Tribu-

nal has been perceived by advocacy groups such as FAIR as a weakness of the federal scheme.

The Public Interest Disclosure (Whistleblower Protection) Acts came into effect in Saskatchewan in 2012 and in Alberta in 2013. In Saskatchewan, the Commissioner noted in his first Annual Report that “...the Commissioner serves as the final independent and impartial arbiter in cases of alleged reprisals for reports of wrongdoing. That independence should instill in the public sector the confidence that, when all else fails, there is somewhere they can go without fear of recrimination”.¹³

As noted above, both the former Ombudsman and the current Acting Ombudsman of Manitoba recommend that PIDA should be amended to incorporate the procedures in the Saskatchewan legislation. I also spoke with the Acting Public Interest Disclosure Commissioner in Saskatchewan who said that she believes that the reprisal procedures in their legislation will be effective. She noted that the Commissioner has been given the authority to take immediate action to assess allegations quickly and to take appropriate action where necessary. Her office received 15 disclosures during the first year, of which 13 included allegations of retaliation or reprisal. Although none of the 13 allegations met the threshold to trigger an investigation, she believes that it was important to be able to address concerns quickly and informally and to be able to provide explanations to the complainants. Although there has been some criticism of the fact that, unlike the Labour Board in Manitoba, the Public Interest Disclosure Commissioner lacks the authority to issue orders, the Acting Commissioner advised me that she believes that the power to issue recommendations will be sufficient. She noted that they consider a reprisal to be a wrongdoing and so treat reprisals with the same seriousness and use the same processes as are used to treat the disclosure of wrongdoings.

The Labour Board of Manitoba has reported 3 decisions in which it dealt with applications related to PIDA. None of them met the threshold required for a hearing to take place; all were dismissed on the basis of a review of the documents filed. In the face of the criticisms expressed by the whistleblower and numerous experts, this low number of cases reported certainly suggests that there should be other procedures available.

Summary of Concerns

A major weakness of the current process as noted by a number of the people I interviewed, is that complainants must identify themselves to their employer when they file an application with the Labour Board. They may also be identifying themselves in a more public way—although the Labour Board posts

its decisions online using an initialized format, members of the public and the media may attend its hearings. The loss of anonymity for a whistleblower or another employee involved in an investigation is completely contrary to the philosophy and principles which underly public interest disclosure legislation.

In addition to protecting the identity of employees, the legislation must balance a number of competing interests, including the interests of an employer. If a complaint of reprisal should be found to be without merit after a public hearing, there may be a damaging effect on the reputation of an employer. A process by which allegations are investigated quickly and confidentially would be in the best interests of everyone involved in the process.

Proceedings before the Labour Board are adversarial and legalistic. The nature of the process that is required to assess whether reprisal action(s) have been taken is more analogous to an investigation of a disclosure than to a hearing in which evidence is heard under oath and legal arguments are made. Many whistleblowers cannot afford the expense of retaining counsel which limits their rights to receive adequate protections against reprisal actions.

Whistleblower protection legislation in Saskatchewan and Alberta has created a new process for addressing allegations of reprisal. In those jurisdictions, Commissioners have the authority to investigate them in the same manner as disclosures are investigated by the Commissioner.

When PIDA was drafted, it may have seemed logical to rely on an existing body such as the Labour Board which had a proven track record of dealing with unfair labour practices. The Labour Board also has the power to issue orders so that strong actions would be available whenever findings of reprisal were made. With the benefit of experience, however, the advantages of more accessible and less adversarial approaches have become apparent. As noted above, the legislation in Saskatchewan and Alberta has created an approach in which reprisal complaints are submitted to the Commissioner and investigated in the same way that disclosures are investigated.

There has been a concern expressed that if the Ombudsman were to be given the additional responsibility of dealing with reprisal allegations, a conflict of interest may arise if that office is concurrently investigating the disclosure of a wrongdoing related to the same matter. There are other examples where this approach is used, however. For example, under Section 20 of The Human Rights Code (Manitoba), the Human Rights Commission has the authority to investigate allegations of reprisal made by individuals who have filed human rights complaints. The investigations may take place at the same time, and the remedies available to address a human rights complaint are also available to address findings of reprisal.

The weaknesses of PIDA which arise in connection with protections against reprisal touch on three of the questions which I used to guide my assessment. In response to the question as to whether the procedures are accessible to employees, the difficulties which were described by the whistleblower when she attempted to address the actions in her workplace which she perceived to be reprisals suggest that the protections are not functioning as intended. As well, there is likely to be a “chilling effect” when an employee who is considering making a disclosure realizes that the only avenue available to address acts of retaliation is the Labour Board, and that not only will they be required to identify themselves to initiate proceedings in that forum, there are other issues related to lack of legal representation and delays. If this realization occurs on a more widespread basis, it is also likely that employees will generally not have a high level of confidence in the procedures. Finally, given that one of the fundamental objectives of PIDA is to ensure that employees who make disclosures will be protected from retaliation, it is important to ensure that the strongest possible protections are in place which can be used quickly and flexibly to address employees’ concerns as soon as they arise.

RECOMMENDATIONS

The Ombudsman should be given the authority to receive and investigate complaints of reprisal as expeditiously as possible upon receipt of a written complaint of reprisal, using the same procedures it follows to investigate disclosures under PIDA. The Ombudsman should have the authority to make recommendations to address any acts of reprisal or threats of reprisal.

If an employer fails to follow the steps recommended by the Ombudsman to address the reprisal, the option of making an application to the Labour Board should remain available to the employee so that the Board’s power to issue orders will be available if required.

Section 35 Protection from Liability

An issue that has arisen from time to time is whether the protection from liability that is provided under Section 35 for supervisors, designated officers and chief executives should be extended to provide similar protections to whistleblowers. In my view, this extension would be inappropriate because whistleblowers do not have a duty to report. It is reasonable, in my opinion,

to extend the protection from liability only to those who have a statutory duty to act under PIDA.

Review of PIDA Every 5 Years

There have been a number of changes to whistleblower legislation since 2007 and it is likely to continue to evolve. Following best practices in other jurisdictions, I would recommend that a commitment be made that PIDA will be reviewed every 5 years.

Notes

- 1** See, for example, “Whistle blown on Manitoba law”/FAIR [http://fairwhistleblower.ca/content/whistle-blower.ca/FAIR content/whistle-blown-manitoba-law](http://fairwhistleblower.ca/content/whistle-blower.ca/FAIR%20content/whistle-blown-manitoba-law)
- 2** Paul G. Thomas. “Problems with Canada’s Public Servants Disclosure Protection Act” www.optimumonline.ca/article.phtml?e=zmpizzjpxm&id=380&page=6
- 3** Paul G. Thomas The Problems with Canada’s Public Servants Disclosure Act <http://www.optimumonline.ca/article.phtml?e=mpizzjpxm&id=380&page6>
- 4** Ombudsman of Manitoba’s 2011 Annual Report on the Public Interest Disclosure (Whistleblower Protection) Act.
- 5** Barbara Bowes, “Whistling in the Wind: Little Protection for Those Who Report Workplace Wrongdoing.” <http://www.legacybowes.com/latest-blog-posts-entry/whistling-in-the-wind-little-protection-for-those-who-report-workplace-wrongdoing>, accessed February 27, 2014.
- 6** What’s Wrong with Canada’s Federal Whistleblower Legislation, http://www.fairwhistleblower.ca/psdpa/psdpa_critique.html
- 7** Statutes of Alberta, 2012 Chapter P-39.5
- 8** Integrity Commissioner Recommendations-Review of Part VI of the PSOA [http://www.oico.on.ca/web-att.nsf/vw/2012/\\$FILE/Integrity_Commissioner_Open_Element](http://www.oico.on.ca/web-att.nsf/vw/2012/$FILE/Integrity_Commissioner_Open_Element)
- 9** Paul G. Thomas The Problems with Canada’s Public Servants Disclosure Act <http://www.optimumonline.ca/article.phtml?e=mpizzjpxm&id=380&page6>
- 10** www.griffith.edu.au/data/assets/pdf/file/0007/159/99/whistling-july09-full-report.pdf. The advocacy group Transparency International has also written about difficulties inherent in internal disclosures. In its study “An Alternative to Silence: Whistleblower Protections in 10 European Countries”, it is noted that “From the point of view of the organizations themselves, internal channels are an opportunity to investigate allegations and correct wrongdoing instead of seeing it publicly disclosed... However, internal channels often don’t work (and) potentially ineffective internal channels may pose an additional barrier to disclosure and discourage the whistleblower from speaking out, particularly if he or she is convinced that internal disclosures will not lead to any change.”
- 11** fairwhistleblower.ca/wblaws/five-essentials.html
- 12** [http://www.oico.ca/web-att.nsf/vw/2012/\\$FILE/IntegrityCommissionerRecommendations](http://www.oico.ca/web-att.nsf/vw/2012/$FILE/IntegrityCommissionerRecommendations)
- 13** Annual report of the Saskatchewan Public Interest Disclosure Commission March 2013, page 1.

Statistics

Disclosures Within Government

2007/08	1 disclosure (no investigation, not within scope of Act)
2008/09	0 disclosures
2009/10	2 disclosures (1 investigated but no finding of wrongdoing; 1 investigated and finding of wrongdoing made)
2010/11	0 disclosures
2011/12	0 disclosures
2012/13	3 disclosures (1 not investigated because disclosure not within Act; 1 referred to Ombudsman for investigation by Department; 1 was investigated, no finding of wrongdoing)

Disclosures to the Ombudsman

2007	5 disclosures (1 investigation)
2008	3 disclosures (1 investigation)
2009	0 disclosures (but 2 investigations from previous year)
2010	8 cases opened for investigation; no wrongdoings but 5 recommendations related to administrative matters
2011	9 disclosures (7 investigations pending at year end; 2 declined; 1 where govt. body's investigation inadequate)
2012	5 disclosures (3 carried over)
2013	42 disclosures (Note: a number dealt with same matter) (15 case files opened & some referred to investigations; 7 investigations open by Ombudsman)

Note: There is no central data collection process available for government bodies covered by PIDA.

Upon request, the material in this document is available in alternate formats.