

1998 BILL 207

Second Session, 24th Legislature, 46 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 207

WHISTLEBLOWER PROTECTION ACT

MR. MacDONALD

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

Bill 207
Mr. MacDonald

BILL 207

1998

WHISTLEBLOWER PROTECTION ACT

(Assented to , 1998)

HER MAJESTY, by and with the advice and consent of the
Legislative Assembly of Alberta, enacts as follows:

Definitions

1 In this Act,

- (a) “Board” means the Labour Relations Board established under the *Labour Relations Code*;
- (b) “contractor” means a person, corporation, partnership or sole proprietorship that has a contract with an institution to provide goods or services to that institution;
- (c) “department” means a department of the Government or of the public service of Alberta established under the *Government Organization Act*;
- (d) “employee” means an individual employed by an institution or a contractor;
- (e) “employer” means an institution or a contractor;
- (f) “head” means
 - (i) in the case of a department, the member of the Executive Council having the administration of the department, or
 - (ii) in the case of any other institution, the person designated as head of the institution under a statute or regulation;

- (g) “institution” means
 - (i) a department of the Government, or
 - (ii) any agency, board, or commission, corporation or other body designated as an institution in the regulations;
- (h) “public file” means a file maintained by the Ombudsman which shall be disclosed to the public as provided in the regulations;
- (i) “record” means a record of information in any form and includes books, documents, maps, drawings, photographs, letters, vouchers and papers and any other information that is written, photographed, recorded or stored in any manner;
- (j) “serious government wrongdoing” means an act or omission of an institution or of an employee acting in the course of his employment and includes the following:
 - (i) contravening a statute or regulation,
 - (ii) gross mismanagement,
 - (iii) gross waste of public money,
 - (iv) abuse of authority, or
 - (v) causing or allowing a grave health or safety hazard or a grave environmental hazard.

Ombudsman

2 The Ombudsman shall advise employees concerning

- (a) what constitutes serious government wrongdoing that ought to, in the public interest, be disclosed,
- (b) whether particular information may reveal serious government wrongdoing that ought to, in the public interest, be disclosed,
- (c) the process by which information is made public or disclosed to particular agencies under this Act,
- (d) the Ombudsman's powers and duties,

- (e) the employee's rights and obligations in seeking to make allegations of serious government wrongdoing public through the Ombudsman or in seeking to disclose those allegations to any other person, and
- (f) the employee's rights and obligations under this Act.

Information disclosed to the Ombudsman

3(1) An employee may disclose to the Ombudsman information from an institution that the employee is required to keep confidential

- (a) in order to seek advice concerning the employee's rights and obligations under this Act, or
- (b) if the employee believes that the information may reveal serious government wrongdoing that ought to be disclosed in the public interest.

(2) Notwithstanding subsection (1), a lawyer employed by an institution shall not disclose to the Ombudsman any privileged information that the lawyer has received in confidence from an institution or an employee during the course of his employment.

(3) An employee may disclose information to the Ombudsman regardless of whether the information is in oral or written form.

(4) If an employee, acting in good faith, believes on reasonable grounds that a record may reveal serious government wrongdoing, the employee may copy the record for the purpose of disclosing it to the Ombudsman and may provide that copy to the Ombudsman.

(5) Subsection (4) does not authorize an employee to remove an original record from an institution for the purpose of disclosing it to the Ombudsman.

(6) No proceedings lie against an employee for copying a record or disclosing a record or information to the Ombudsman in accordance with this section, unless the employee did not act in good faith.

Disclosure of information

4(1) Neither the Ombudsman nor any employee of the Ombudsman shall disclose information received from an employee under this Act to any person without the consent of the employee who disclosed the information.

(2) If an employee seeks advice from or discloses information to the Ombudsman, neither the Ombudsman nor any employee of the Ombudsman shall disclose the identity of the employee to any

person without the employee's written consent.

(3) Notwithstanding subsections (1) and (2), the Ombudsman may disclose information received from an employee and the employee's identity to the Royal Canadian Mounted Police or a municipal police force if the Ombudsman believes on reasonable grounds

- (a) that a crime is likely to be committed if that information is not provided, or
- (b) that the disclosure is necessary to prevent a crime.

(4) Subsection (3) does not authorize the Ombudsman to disclose to the Royal Canadian Mounted Police or a municipal police force a copy of a record that an employee has disclosed to the Ombudsman under section 3.

(5) Notwithstanding subsections (1) and (2), if the Ombudsman believes on reasonable grounds that it is in the public interest that information disclosed by an employee be disclosed to the public or persons affected and that it reveals a grave health or safety hazard to any person or a grave environmental hazard, the Ombudsman shall, as soon as practicable, disclose that information to the head of the institution to which it relates.

Disclosure of
serious
government
wrongdoing

5(1) On request by an employee, the Ombudsman shall review information the employee has disclosed to the Ombudsman to determine whether, in the Ombudsman's opinion, the information, if correct, may reveal serious government wrongdoing.

(2) Subject to subsection (3), the Ombudsman may require a report under this Act from the head of an institution if

- (a) the Ombudsman determines that the information, if correct, may reveal serious government wrongdoing, and
- (b) the information is sufficiently credible that the Ombudsman believes there may be serious government wrongdoing.

(3) The Ombudsman may refuse to require a report from the head of an institution if, in the Ombudsman's opinion,

- (a) it would be more appropriate for the employee to bring the allegation of wrongdoing to the attention of a

responsible official in the institution to which the information relates, or

- (b) it would be more appropriate for the employee to bring the allegation of wrongdoing to the attention of a law enforcement agency or a government agency whose mandate is to investigate similar allegations.

(4) Subsection (3)(a) does not apply where an employee fears retaliation if the employee were to bring the matter to the attention of a responsible official.

(5) The Ombudsman shall inform the employee of his determination under this section and of the reasons for it.

Disclosure to head of institution

6 If the Ombudsman determines that a report is not required from the head of an institution, the Ombudsman may, with the consent of the employee, disclose part or all of the information received from the employee to the head of the institution to which the information relates.

Submission of report

7(1) The Ombudsman shall, by written notice, require the head of the institution to which information disclosed by an employee relates, to submit a report concerning the information the employee has disclosed if

- (a) the Ombudsman determines that a report is required, and
- (b) the employee consents to the Ombudsman requiring the report.

(2) The Ombudsman may, by written notice, require a report from any member of Executive Council he considers appropriate in the circumstances concerning information disclosed by an employee if the employee consents to the Ombudsman requiring the report.

(3) Subject to subsection (4), the notice requiring a report shall include a written summary of the information disclosed to the Ombudsman that relates to the allegation of wrongdoing and copies of any record which the employee seeks to have made public through the Ombudsman.

(4) A report required from either a head of an institution or Member of Executive Council, under subsections (1) or (2), must be

submitted to the Ombudsman within 20 days after receipt of the Ombudsman's notice.

(5) The Ombudsman may, with the consent of the employee, delete information from the summary or records which the employee seeks to have made public that might directly or indirectly disclose the identity of the employee.

Investigation
by
Ombudsman

8 The Ombudsman shall undertake such investigations as he, in his absolute discretion, determines are appropriate and may commence his investigation prior to receiving the report required by section 7.

Inquiry Report

9(1) Upon completing his investigation, the Ombudsman shall prepare an inquiry report.

(2) The Ombudsman shall place his inquiry report in the public file unless he determines that it is not in the public interest to do so.

(3) To determine whether the inquiry report should be placed in the public file, the Ombudsman shall consider all of the relevant circumstances including

- (a) if the inquiry report does not disclose serious government wrongdoing, whether its publication would unfairly damage the reputation of a person or an institution,
- (b) whether the disclosure could reasonably be expected to endanger the life or physical safety of any person,
- (c) whether the disclosure could reasonably be expected to prejudice or interfere with an investigation by a law enforcement agency, and
- (d) whether the inquiry report might identify the employee whose information initiated the investigation.

(4) Before placing his inquiry report in the public file, the Ombudsman must show it to the employee whose information initiated the investigation and give the employee an opportunity to make submissions on whether it is in the public interest to place it in the public file.

(5) The Ombudsman may place the inquiry report in the public file without the consent of the employee whose information initiated the

investigation.

Referral to
Government
agency

10(1) The Ombudsman may, with the consent of the employee, refer a matter to a government agency whose mandate is to investigate similar allegations and not prepare his own report.

(2) If the Ombudsman refers an allegation of serious government wrongdoing under subsection (1), he shall place notice of the referral in the public file unless he believes that doing so could reasonably be expected to prejudice or interfere with the investigation.

Adverse
employment
action

11(1) No employer or person acting on behalf of an employer shall take adverse employment action against an employee where the employee, acting in good faith,

- (a) has disclosed information to the Ombudsman under this Act, or
- (b) has exercised or may exercise a right under this Act.

(2) An employer or person acting on behalf of an employer takes adverse employment action against an employee if the employer or person

- (a) dismisses, disciplines or suspends or threatens to dismiss, discipline or suspend an employee,
- (b) imposes a penalty or threatens to impose a penalty on an employee, or
- (c) coerces, intimidates or harasses or attempts to coerce, intimidate or harass an employee.

(3) There is a presumption that an employer has contravened subsection (1) if

- (a) the Ombudsman has required a head of an institution or a Member of Executive Council to submit a report to the Ombudsman concerning an employee's allegation of serious government wrongdoing, and
- (b) after the Ombudsman has done so, the employer has taken adverse employment action against the employee.

Complaints

12(1) An employee may make a written complaint to the Board that adverse employment action was taken against the employee contrary to section 11(1).

(2) The Board may, upon receiving a complaint under subsection (1), conduct any investigation, hearing or inquiry it deems necessary to ascertain whether section 11(1) has been contravened.

(3) The Board may refuse to investigate a complaint if the Board considers that the complaint is frivolous or vexatious or there is insufficient evidence to substantiate the complaint.

(4) Every employer and person acting on the employer's behalf and every employee must give whatever assistance is necessary to enable the Board to make an investigation or inquiry.

(5) If the Board determines that adverse employment action was taken against the employee contrary to section 11(1) and the Board is unable to mediate, arbitrate, settle or compromise a difference between the employer and the employee, the Board may order the employer to

- (a) cease the adverse employment action;
- (b) pay compensation to the employee for loss of earnings or other employment benefits in an amount assessed by the Board;
- (c) reinstate the employee to the employee's former position on a date that, in the opinion of the Board, is just and proper in the circumstances and under the same terms and conditions under which the worker was formerly employed; or
- (d) remove any reference to the dismissal, suspension, disciplinary or discriminatory action from the employee's record.

Compliance

13 If the employer fails to comply with a term of the Board's order within 14 days after the date of its release by the Board or after the date provided in the order for compliance, whichever is later, the employee may file the Board's order with the Court of Queen's Bench and it may be enforced as if it were an order of that court.

- Offences **14(1)** Every employer or person acting on behalf of an employer who contravenes section 11(1) is guilty of an offence and is liable on conviction to a fine not exceeding \$50 000.
- (2)** A prosecution for an offence under section 11(1) may not be commenced
- (a) without the consent of the Board, and
 - (b) after one year from the date the alleged offence occurred.
- (3)** An application for consent to commence a prosecution for an offence under this section may be made by a trade union or an employee's organization, among others and, if consent is given by the Board, the information may be laid by an officer, official, or member of the body that applied for consent.
- Civil remedies **15** Nothing in this Act affects any right an employee may have under any other Act or at law to seek a remedy with respect to adverse employment action.
- Crown Bound **16** This Act binds the Crown.
- Regulations **17** The Lieutenant Governor in Council may make regulations
- (a) designating bodies as institutions for the purposes of this Act;
 - (b) designating heads of institutions for the purposes of this Act;
 - (c) prescribing the manner by which a public file is to be disclosed;
 - (d) providing for any other matter considered necessary for the purpose of the administration and operation of this Act to meet cases that may arise and for which no provision is made in this Act.

Consequential Amendments

Amends RSA
1980 cP-31

18 The *Public Service Act* is amended

(a) by repealing section 20 and substituting the following:

20(1) Every new employee shall take and subscribe an oath in the following form:

I, _____, do swear that I will execute according to law and to the best of my ability the duties required of me as an employee in the public service of Alberta and that I will not, without due authorization or unless permitted by the *Whistleblower Protection Act*, disclose or make known any matter or thing which comes to my knowledge by reason of my employment in the public service.

(2) Any employee who without due authorization or contrary to the *Whistleblower Protection Act*, discloses or makes known any matter or thing which comes to his knowledge by reason of his employment in the public service of Alberta is guilty of an offence and liable to a fine of not more than \$500.

(b) Section 25 is amended

(i) by adding the following after subsection (2):

(2.1) An employee shall not be subject to dismissal, suspension or other disciplinary action by his department head if the employee, acting in good faith, has disclosed information to the department head, the Ombudsman under the *Whistleblower Protection Act*, a Member of the Legislative Assembly or has exercised any other right under the *Whistleblower Protection Act*.

(ii) in subsection (3) by adding "Subject to subsection (2.1)" before "Nothing";

(c) Section 29 is amended by adding the following after subsection (6):

(7) In every contract of employment under this section, there shall be implied the following term:

An employee shall be entitled to, in good faith, disclose to the head of a department, board or agency, the Ombudsman or to a Member of the Legislative Assembly, information relating to an act or omission of an institution or of an employee acting in the course of his employment if

- (a) it contravenes a statute or regulation,
- (b) it represents gross mismanagement,
- (c) it causes a gross waste of public money,
- (d) it represents an abuse of authority, or
- (e) it poses a grave health or safety hazard to any person or a grave environmental hazard

unless it is not in the public interest to disclose such information.

(8) Any provision of a contract which purports to waive or limit the term set out in subsection (7) shall be deemed contrary to public policy and void.

Amends RSA
1980 cP-33

19 The *Public Service Employee Relations Act* is amended in section 70 by adding the following after subsection (3):

(4) No employer and no person acting on behalf of an employer shall dismiss, suspend an employee or subject an employee to disciplinary action in respect of disclosure in good faith of information concerning serious government wrongdoing.

Amends SA
1983 cL-10.1

20 The *Legislative Assembly Act* is amended In section 10(2) by adding the following after clause (b):

(b.1) penalizing, disciplining, dismissing, coercing, intimidating, or attempting to coerce or intimidate any person by reason of the person contacting or attempting to contact a Member for the purposes of the *Whistleblower Protection Act*.

Coming into Force

21 This Act comes into force on Proclamation.