

*Bill 11*  
*Mr. Yankowsky*

## **BILL 11**

2003

### **AUDITOR GENERAL AMENDMENT ACT, 2003**

*(Assented to , 2003)*

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

#### **Amends RSA 2000 cA-46**

**1 The *Auditor General Act* is amended by this Act.**

**2 The following is added after section 2:**

#### **Oath**

**2.1(1)** Before beginning the duties of office, the Auditor General must take an oath to perform the duties of the office faithfully and impartially and, except as provided in this Act, not to disclose any information received by the Office of the Auditor General under this or any other Act.

**(2)** The oath referred to in subsection (1) must be administered by the Speaker of the Assembly or the Clerk of the Assembly.

**3 Section 10(2)(b) is repealed and the following is substituted:**

(b) to the Executive Council, without the consent of the  
President of the Executive Council.

**4 Section 12 is amended**

- (a) in subsections (2) and (3) by striking out “Provincial Treasurer” and substituting “Minister of Finance”;
- (b) in subsection (5) by striking out “for the fiscal year in which the special warrant is signed”.

**5 Section 14(1), (2) and (3) are repealed and the following is substituted:**

**Access to information**

**14(1)** The Auditor General is at all reasonable times and for any purpose related to the exercise or performance of the Auditor General’s powers and duties under this or any other Act entitled to access to the records of, and electronic data processing equipment owned or leased by,

- (a) a department, fund administrator or Provincial agency, or
- (b) a Crown-controlled organization or other organization or body of which the Auditor General is the auditor.

**(2)** The following persons shall give to the Auditor General any information, records or explanations that the Auditor General considers necessary to enable the Auditor General to exercise or perform the Auditor General’s powers and duties under this or any other Act:

- (a) present or former public employees, public officials or personal service contractors;
- (b) present or former employees, officers, directors or agents of a Crown-controlled organization or other organization or body of which the Auditor General is the auditor.

**(3)** The Auditor General may station any employee of the Office of the Auditor General in the offices of

- (a) a department, fund administrator or Provincial agency, or
- (b) a Crown-controlled organization or other organization or body of which the Auditor General is the auditor,

for the purpose of enabling the Auditor General to exercise or perform the Auditor General's powers and duties under this or any other Act more effectively, and the department, fund administrator, Provincial agency, Crown-controlled organization or other organization or body shall provide the necessary office accommodation for an employee so stationed.

**6 The following is added after section 14:**

**Evidence under oath**

**14.1(1)** In conducting an audit or examination or performing any other duty or function under this or any other Act, the Auditor General may by a notice require any person

- (a) to attend before the Auditor General to give evidence under oath with respect to any matter related to the audit, examination or other duty or function, and
- (b) to produce any records respecting the matter referred to in the notice.

**(2)** If a person fails or refuses to comply with a notice under subsection (1), the Court of Queen's Bench, on the application of the Auditor General, may issue a bench warrant requiring the person to attend before the Auditor General in compliance with the notice.

**(3)** If a witness refuses

- (a) to give evidence in compliance with a notice under subsection (1),
- (b) to answer any questions before the Auditor General pursuant to the notice, or
- (c) to produce any records referred to in the notice,

the Court of Queen's Bench, on the application of the Auditor General, may commit the witness for contempt.

**(4)** A person who is given a notice under subsection (1) shall not be excused from giving evidence or from producing records on the ground that the evidence or records might tend to incriminate the person or subject the person to a penalty or forfeiture.

(5) A witness who gives evidence or produces records pursuant to subsection (1) has the right not to have any incriminating evidence so given used to incriminate that witness in any other proceedings, except in a prosecution for or proceedings in respect of perjury or the giving of contradictory evidence.

**Non-compellable witness**

**14.2** Despite any other Act or law, unless the Auditor General otherwise consents in writing, a person who

- (a) holds or formerly held the office of Auditor General,
- (b) is or was an employee of the Office of the Auditor General, or
- (c) is or was engaged as an agent of the Auditor General pursuant to section 9 or is or was an employee of an agent or former agent of the Auditor General,

shall not give or be required to give evidence relating to any record or other information obtained by that person in the course of exercising and performing that person's powers and duties under this Act or in the course of providing services pursuant to section 9, as the case may be.

**7 Section 17 is amended by adding the following after subsection (2):**

(3) The Auditor General shall present any report prepared by the Auditor General under subsection (1) to the chair of the Select Standing Committee, who shall lay the report before the Assembly forthwith if it is then sitting or, if it is not sitting, within 15 days after the commencement of the next sitting.

(4) The Auditor General shall present any report prepared by the Auditor General under subsection (2) to the President of the Executive Council and afterwards the Auditor General may, on 3 days' notice to the Speaker of the Assembly, deliver copies of the report to the Speaker, who shall forthwith distribute the copies to the office of each Member of the Assembly.

(5) After the Speaker has distributed copies of the report under subsection (4), the Auditor General may make the report public.

(6) Despite subsection (4), if there is no Speaker or if the Speaker is absent from Alberta, the Auditor General may give the notice under subsection (4) to the Clerk of the Assembly, who shall comply with subsection (4) as if the Clerk were the Speaker.

**8 The following is added after section 20:**

**Assembly not sitting**

**20.1(1)** When the Assembly is not sitting and the Auditor General considers it important that a report presented to the chair of the Select Standing Committee under section 17(3), 19(5) or 20(2) be made available to the Members of the Assembly and to the public, the Auditor General may, on 3 days' notice to the Speaker of the Assembly, deliver copies of the report to the Speaker, who shall forthwith distribute the copies to the office of each Member of the Assembly.

(2) After the Speaker has distributed copies of the report under subsection (1), the Auditor General may make the report public.

(3) Despite subsection (1), if there is no Speaker or if the Speaker is absent from Alberta, the Auditor General may give the notice under subsection (1) to the Clerk of the Assembly, who shall comply with subsection (1) as if the Clerk were the Speaker.

(4) Nothing in this section dispenses with the requirement of the chair of the Select Standing Committee to lay a report before the Assembly pursuant to section 17(3), 19(5) or 20(2).

**9 Section 28 is amended by striking out "Provincial Treasurer" and substituting "Minister of Finance" and by striking out "Provincial Treasurer's" and substituting "Minister of Finance's".**

**10 Section 30(4) is amended by striking out "Treasurer" and substituting "Minister of Finance".**

## Explanatory Notes

**1** Amends chapter A-46 of the Revised Statutes of Alberta 2000.

**2** Oath of office required.

**3** Section 10(2)(b) presently reads:

*(2) The Auditor General may not delegate a power or duty to report*

*(b) to the Lieutenant Governor in Council, without the consent of the Lieutenant Governor in Council.*

**4** Section 12 presently reads in part:

*(2) The Select Standing Committee shall review each estimate submitted pursuant to subsection (1) and, on the completion of the review, the chair of the Committee shall transmit the estimate to the Provincial Treasurer for presentation to the Assembly.*

*(3) If at any time the Legislative Assembly is not in session the Select Standing Committee, or if there is no Select Standing Committee, the Provincial Treasurer,*

*(a) reports that the Auditor General has certified that in the public interest, an expenditure of public money is urgently required with respect to any matter pertaining to that office, and*

*(b) reports that either*

- (i) *there is no supply vote under which an expenditure with respect to that matter may be made, or*
- (ii) *there is a supply vote under which an expenditure with respect to that matter may be made but the authority available under the supply vote is insufficient,*

*the Lieutenant Governor in Council may order a special warrant to be prepared to be signed by the Lieutenant Governor authorizing the expenditure of the amount estimated to be required.*

*(5) When a special warrant is prepared and signed under subsection (3) on the basis of a report referred to in subsection (3)(b)(i), the authority to spend the amount of money specified in the special warrant for the purpose specified in the special warrant is deemed to be a supply vote for the purposes of the Financial Administration Act for the fiscal year in which the special warrant is signed.*

**5** Section 14 presently reads:

*14(1) The Auditor General is entitled to access at all reasonable times to*

- (a) *the records of a department, fund administrator or Provincial agency, and*
- (b) *electronic data processing equipment owned or leased by a department, fund administrator or Provincial agency,*

*for any purpose related to the exercise or performance of the Auditor General's powers and duties under this or any other Act.*

*(2) A public employee, public official or personal service contractor shall give to the Auditor General any information, reports or explanations that the Auditor General considers necessary to enable the Auditor General to exercise or perform the Auditor General's powers and duties under this or any other Act.*

*(3) The Auditor General may station in the offices of any department, fund administrator or Provincial agency, any employee of the Office of the Auditor General for the purpose of enabling the Auditor General to more effectively exercise or perform the Auditor General's powers and duties under this or any other Act, and the department, fund administrator or Provincial agency shall provide the necessary office accommodation for an employee so stationed.*

*(4) The Auditor General or an employee of the Office of the Auditor General who receives information from a person whose right to disclose that information is restricted by law, holds that information under the same restrictions respecting disclosure as governed the person from whom the information was obtained.*

**6** New provisions for evidence under oath and non-compellable witness.

**7** Tabling of reports.

**8** Assembly not sitting.

**9** Section 28 presently reads:

*28 The Auditor General shall as soon as practicable advise the appropriate officers or employees of a department, Provincial agency or Crown-controlled organization of any matter discovered in the Auditor General's examinations that, in the opinion of the Auditor General, is material to the operation of the department, Provincial agency or Crown-controlled organization, and shall as soon as practicable advise the Provincial Treasurer of any of those matters that, in the opinion of the Auditor General, are*



*material to the exercise or performance of the Provincial Treasurer's powers and duties.*

**10** Section 30(4) presently reads:

*(4) A report made under this section shall be presented to the chair of the Select Standing Committee and to the Treasurer for inclusion in the public accounts.*