

2006 Bill 214

Second Session, 26th Legislature, 55 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 214

PUBLIC SERVICE DISCLOSURE OF WRONGDOING ACT

MR. SHARIFF

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

BILL 214

2006

PUBLIC SERVICE DISCLOSURE OF WRONGDOING ACT

(Assented to _____, 2006)

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

Definitions

1(1) In this Act,

- (a) “Minister” means the Minister determined under section 16 of the *Government Organization Act* as the Minister responsible for this Act;
- (b) “Ombudsman” means the Ombudsman appointed under the *Ombudsman Act*.

(2) Unless the contrary intention appears, an expression used in this Act that is defined in the *Public Service Act* has the same meaning in this Act as it has for the purpose of that Act.

Wrongdoing

2(1) For the purposes of this Act, a wrongdoing occurs if there is

- (a) a contravention of any Act of the Parliament of Canada or of the Legislature, or of any regulations made under any such Act, or if the contravention relates to the official activities of employees or any public funds or assets;
- (b) gross mismanagement;

- (c) an act or an omission that creates a substantial and specific danger to the life, health or safety of a person; or
- (d) the taking of a reprisal against an employee.

(2) For the purpose of subsection (1)(b), gross mismanagement means a deliberate act or an omission showing a reckless or willful disregard for the efficient management of significant government resources.

Protection of employee from reprisal

3(1) A reprisal occurs if any of the following measures are taken against an employee by reason solely that the employee has, in good faith, made a disclosure of a wrongdoing under this Act or expressed an intention to make a disclosure of a wrongdoing under this Act or has, in good faith, co-operated in an investigation carried out under this Act:

- (a) a disciplinary measure;
- (b) demotion of the employee;
- (c) termination of the employment of the employee;
- (d) any measure that adversely affects the employment or working conditions of the employee; or
- (e) a threat to take any of the measures referred to in clauses (a) to (d).

(2) No person shall take a reprisal against an employee.

Request for advice

4(1) An employee who is considering making a disclosure of a wrongdoing may make a written request for advice to the Ethics Commissioner designated under the *Conflicts of Interest Act*.

(2) The Ethics Commissioner must not publicly disclose any information provided under subsection (1) and must protect the identity of persons named under subsection (1), unless otherwise required by law.

Contents of disclosure of wrongdoing

5(1) A disclosure of a wrongdoing under section 6(1) must be in writing and must include the following information, if known:

- (a) the nature of the wrongdoing;
- (b) the name of the person or persons alleged to have committed or about to commit the wrongdoing;
- (c) the date and description of the wrongdoing; and
- (d) whether the disclosure has already been made and a response received under this Act,

and any additional relevant information.

(2) A disclosure of a wrongdoing under section 6(1) must be made within 12 months of the employee becoming aware of the wrongdoing.

Procedure for disclosure of wrongdoing

6(1) An employee who reasonably believes that he or she is being asked to commit a wrongdoing, or who reasonably believes that a wrongdoing has been committed or is about to be committed, may disclose the matter to

- (a) their immediate supervisor,
- (b) their deputy head, in accordance with section 8, or
- (c) the Ombudsman, in accordance with section 10.

(2) Despite subsection (1), an employee may make a disclosure of a wrongdoing other than as provided for in subsection (1) if he or she believes on reasonable grounds that

- (a) it is necessary to do so to prevent imminent and serious danger to the life, health or safety of a person, and
- (b) there is not sufficient time to make the disclosure under this Act.

(3) A disclosure under subsection (2) must be made to the law enforcement agency that the employee reasonably believes can address the imminent and serious danger identified.

Response of immediate supervisor to disclosure of wrongdoing

7(1) A supervisor who receives a disclosure of a wrongdoing under section 6(1)(a) must investigate the matter to the extent appropriate and must respond in writing to the disclosing employee within 30 days of receiving the disclosure.

(2) A supervisor who receives a disclosure of a wrongdoing under section 6(1)(a) must report in writing to their deputy head, within 30 days of receiving the disclosure, advising of

- (a) the disclosure,
- (b) the results of the investigation to date, and
- (c) the written response to the disclosing employee.

(3) Unless required by law, a supervisor who receives a disclosure of wrongdoing under section 6(1)(a) must

- (a) not publicly disclose any information that comes to their knowledge in the performance of their duties under this Act, and
- (b) to the extent possible, protect the identity of persons involved in the disclosure process, including employees, witnesses and persons who are alleged to be responsible for wrongdoings, from publication.

Disclosure of wrongdoing to deputy head

8 To make a disclosure of a wrongdoing under section 6(1)(b), an employee must

- (a) have received a response from his or her immediate supervisor under section 7(1) and must reasonably believe that the matter will not be appropriately addressed, or
- (b) reasonably believe that it would not be appropriate to disclose the matter to the employee's immediate supervisor because of the subject-matter of the wrongdoing or the person alleged to have committed it.

Response of deputy head to disclosure of wrongdoing

9(1) A deputy head who receives a disclosure of a wrongdoing under section 6(1)(b) must investigate the matter to the extent appropriate and must respond in writing to the disclosing employee within 30 days of receiving the disclosure.

(2) A deputy head who receives a disclosure of a wrongdoing under clause 6(1)(b) must report in writing to the Ombudsman within 30 days of receiving the disclosure, advising of

- (a) the disclosure,

- (b) the results of the investigation to date, and
- (c) the written response to the disclosing employee.

(3) Unless required by law or considered appropriate by the deputy head under the circumstances, a deputy head who receives a disclosure of wrongdoing under section 6(1)(b) or a report under section 7(2) must

- (a) not publicly disclose any information that comes to their knowledge in the performance of their duties under this Act; and
- (b) to the extent possible, protect the identity of persons involved in the disclosure process, including employees, witnesses and persons who are alleged to be responsible for wrongdoings, from publication.

(4) A deputy head who receives a disclosure of a wrongdoing under section 6(1)(b) or a report under section 7(2) may, within 30 days of receiving the disclosure or report, refer the matter to the Ombudsman, and the referral must be treated in the same manner as a disclosure of a wrongdoing under section 6(1)(c) made for the reasons set out in section 10(a).

Disclosure of wrongdoing to Ombudsman

10 To make a disclosure of a wrongdoing to the Ombudsman under section 6(1)(c), an employee must

- (a) have received a response in accordance with section 9(1) and must reasonably believe that the matter will not be appropriately addressed, or
- (b) reasonably believe that it would not be appropriate to disclose the matter to the employee's immediate supervisor or deputy head because of the subject-matter of the wrongdoing or the person alleged to have committed it.

Investigation by Ombudsman

11 The Ombudsman must investigate a disclosure of a wrongdoing under section 6(1)(c) unless the Ombudsman is of the opinion that

- (a) the disclosing employee ought to have exhausted other procedures available to the employee,
- (b) the subject-matter of the disclosure is one that could more appropriately be dealt with, initially or completely,

according to an alternate procedure provided for under an Act of the Legislature, regulation or policy,

- (c) the subject-matter of the disclosure is trivial, frivolous or vexatious,
- (d) the disclosure was not made in good faith with the reasonable belief in the truth of the allegations,
- (e) the disclosure does not provide adequate particulars of a wrongdoing as required by section 5(1),
- (f) the matter was not submitted within the time limit specified in section 5(2),
- (g) the matter should be referred to another authority having jurisdiction to investigate, or
- (h) having regard to all the circumstances of the case, further investigation is not warranted.

Notification of investigation

12(1) If the Ombudsman concludes under section 11 that it is appropriate to investigate a disclosure of wrongdoing under section 6(1)(c), the Ombudsman must give written notice to the disclosing employee and the deputy head of the department to be investigated.

(2) If the Ombudsman concludes under section 11 that it is not appropriate to investigate a disclosure of wrongdoing under section 6(1)(c) made for the reasons set out in section 10(a), the Ombudsman must give written notice to the disclosing employee and his or her deputy head of the Ombudsman's conclusion and of the reasons for it.

(3) If the Ombudsman concludes under section 11 that it is not appropriate to investigate a disclosure of wrongdoing under section 6(1)(c) made for the reasons set out in section 10(b), the Ombudsman must give written notice to the disclosing employee of the Ombudsman's conclusion and of the reasons for it.

Ombudsman's report of investigation

13(1) The Ombudsman must report any investigation findings in writing, including

- (a) the information received in the disclosure,
- (b) the steps taken in the investigation,

- (c) a summary of the evidence obtained, and
- (d) whether a wrongdoing has been established,

and any additional relevant information, to the disclosing employee and any deputy head involved in the disclosure or the investigation.

(2) If a finding of wrongdoing is made by the Ombudsman, the Ombudsman

- (a) must recommend measures in writing to correct the wrongdoing to the appropriate deputy head, and send copies to the disclosing employee; and
- (b) may request notification, within a specified time, of any steps taken to give effect to the recommendations made under clause (a).

Deputy head to respond to Ombudsman's recommendations

14 In addition to any requested notification under section 13(2)(b), a deputy head who receives recommendations under section 13(2)(a) must respond in writing within 30 days to the Ombudsman.

Ombudsman may report to member of Executive Council

15 If the Ombudsman considers it necessary, the Ombudsman may report a matter to an appropriate member of the Executive Council, including, but not limited to, when

- (a) action has not been taken within a reasonable time in respect of one of the Ombudsman's recommendations to a deputy head under section 13(2)(a); or
- (b) a situation exists that constitutes an imminent risk of a substantial and specific danger to the health and safety of the public.

Ombudsman's annual report

16(1) Within 3 months after the end of each fiscal year the Ombudsman must submit an annual report to the Speaker of the Legislative Assembly setting out for that fiscal year

- (a) the number of general inquiries relating to these regulations,
- (b) the number of disclosures received,
- (c) the number of investigations commenced,

- (d) the number of recommendations made pursuant to section 13(2)(a),
- (e) whether there are any systemic problems that give rise to wrongdoings, and
- (f) any recommendations for improvement that the Ombudsman considers appropriate,

and any additional matter that the Ombudsman considers necessary.

(2) Upon receipt of the Ombudsman's report under subsection (1) the Speaker shall, if the Assembly is sitting, table the report in the Assembly or, if the Assembly is not sitting, make the report public by providing a copy to every Member of the Legislative Assembly and tabling it at the next sitting of the Assembly.

Co-operation with Ombudsman

17(1) A deputy head must provide the Ombudsman with any facilities, assistance, information and access to the offices under their control and direction that the Ombudsman requires for the performance of the Ombudsman's duties under this Act.

(2) Subject to section 18, every employee must co-operate with the Ombudsman and provide the Ombudsman with any information that the Ombudsman may require in the performance of the Ombudsman's duties under these regulations.

Information employee not authorized to disclose

18 Nothing in this Act authorizes an employee to disclose

- (a) information that would reveal the substance of deliberations of the Executive Council or any of its committees, or
- (b) information that is protected by solicitor-client privilege.

Disciplinary action against employee

19 In addition to, and apart from, any other sanction provided for by law, an employee may be subject to appropriate disciplinary action, including termination of employment, if the employee

- (a) commits a wrongdoing,
- (b) makes a disclosure of a wrongdoing and the disclosure is frivolous, vexatious or in bad faith, or

- (c) makes a disclosure of a wrongdoing other than in the course of a procedure established under this or any other Act of the Legislature or when otherwise lawfully required to do so.

False or misleading statement

20 No person shall, in a disclosure of a wrongdoing or in the course of any investigation of a wrongdoing, knowingly make a false or misleading statement, either orally or in writing, to a supervisor, deputy head, the Ombudsman or a person acting on behalf of or under the direction of any of them.

Obstruction in performance of duties

21 No person shall willfully obstruct a supervisor, a deputy head, the Ombudsman or any person acting on behalf of or under the direction of any of them, in the performance of their duties under this Act.

Destruction, falsification or concealment of documents or things

22 No person, knowing that a document or thing is likely to be relevant to an investigation under this Act, shall

- (a) destroy, mutilate or alter the document or thing,
- (b) falsify the document or make a false document,
- (c) conceal the document or thing, or
- (d) direct, counsel or cause, in any manner, any person to do anything mentioned in clauses (a) to (c), or propose, in any manner, to any person that they do anything mentioned in those clauses.

Confidentiality obligation of Ombudsman

23 Unless required by law or permitted by this Act, the Ombudsman must

- (a) not publicly disclose any information that comes to the Ombudsman's knowledge in the performance of the duties under this Act, and
- (b) to the extent possible, protect the identity of persons involved in the disclosure process, including employees, witnesses and persons who are alleged to be responsible for wrongdoings, from publication.

Grievances and appeals not prohibited

24 Nothing in this Act prohibits a person from filing a grievance under an applicable public service collective agreement or an appeal under the *Public Service Employee Relations Act*.

Offences and Penalties

25 Any person who contravenes section 20, 21 or 22 is guilty of an offence and liable upon conviction to a fine of \$10 000 or 6 months imprisonment or both.

Paramountcy

26 Where there is a conflict between this Act and any other enactment, including the *Health Information Act*, the provisions of this Act apply in resolving the conflict.

Amends RSA 2000 cF-25

27 The *Freedom of Information and Protection of Privacy Act* is amended by adding the following after section 91:

Public Service Disclosure of Wrongdoing Act

91.1(1) No person shall be found to be in violation of this Act for

- (a) disclosing what he or she believes to be a wrongdoing, or
- (b) investigating an allegation of wrongdoing

pursuant to the *Public Service Disclosure of Wrongdoing Act*.

Coming into force

28 This Act comes into force on Proclamation.