



BILL NO. 118

Government Bill

*2nd Session, 61st General Assembly
Nova Scotia
59 Elizabeth II, 2010*

An Act to Promote Public Interest Disclosure of Wrongdoing

CHAPTER 42
ACTS OF 2010

**AS ASSENTED TO BY THE LIEUTENANT GOVERNOR
DECEMBER 10, 2010**

The Honourable Frank Corbett
Minister of the Public Service Commission

*Halifax, Nova Scotia
Printed by Authority of the Speaker of the House of Assembly*

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An Act to Promote Public Interest Disclosure of Wrongdoing

Be it enacted by the Governor and Assembly as follows:

1 This Act may be cited as the *Public Interest Disclosure of Wrongdoing Act*.

2 The purpose of this Act is to provide a process to facilitate the disclosure and investigation of potential wrongdoing and to provide protection for those who disclose.

3 In this Act,

(a) “deputy head” means the deputy of the member of the Executive Council presiding over a government department and all others whom the Governor in Council from time to time designates as having the status of deputy head;

(b) “designated officer” means the senior official designated by a deputy head to receive and deal with disclosures by employees in the department or government body for which the deputy head is responsible;

(c) “disclosure” means a report in writing of a wrongdoing or potential wrongdoing made in good faith by an employee pursuant to this Act;

(d) “employee” means a person employed by a government body and includes a former employee;

(e) “Government” means the Government of the Province;

(f) “government body” means those government departments, offices and public service entities set out in the Schedule to this Act and includes a body designated as a government body in the regulations;

(g) “Minister” means the Minister of the Public Service Commission;

(h) “Ombudsman” means the Ombudsman appointed pursuant to the *Ombudsman Act*;

(i) “reprisal” means

(i) a disciplinary measure,

(ii) a demotion,

(iii) termination of employment,

(iv) any measure that adversely affects an employee’s employment or working conditions, or

(v) a threat to take any of the measure in subclauses (i) to (iv);

(j) “wrongdoing” means

(i) a contravention of Provincial or federal statutes or regulations if the contravention related to official activities of the employee or any public funds or assets,

(ii) a misuse or gross mismanagement of public funds or assets,

(iii) an act or omission that creates a substantial and specific danger to the life, health or safety of persons or the environment, or

(iv) directing or counselling someone to commit a wrongdoing described in subclauses (i) to (iii).

4 This Act applies to government bodies.

DISCLOSURE

5 (1) An employee may make a request for advice respecting a possible disclosure from the designated officer or the Ombudsman.

(2) The designated officer or the Ombudsman may require the request to be in writing.

6 Where an employee reasonably believes that the employee has information that a wrongdoing has been committed or is about to be committed, the employee may make a disclosure to

- (a) the employee's supervisor;
- (b) the designated officer; or
- (c) the Ombudsman.

7 A disclosure made pursuant to Section 6 must be in writing and include, if known,

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

8 (1) Where an employee reasonably believes a matter constitutes an imminent risk of substantial and specific danger to the life, health or safety of persons or to the environment such that there is insufficient time to make a disclosure pursuant to Section 6, the employee may make a disclosure to the public

- (a) if the employee has first made the disclosure to an appropriate law enforcement agency or, in the case of a health-related matter, the prescribed medical officer; and
- (b) subject to any direction that the agency or officer referred to in clause (a) considers necessary in the public interest.

(2) An employee who has made a public disclosure pursuant to subsection (1) shall immediately make a disclosure about the matter to the employee's deputy head or designated officer.

9 Disclosures made pursuant to Section 6 must be made within twelve months of the employee becoming aware of the wrongdoing.

10 All investigations conducted under this Act must be done in such a way to ensure that the right to procedural fairness and natural justice for all persons involved in an investigation is respected, including

- (a) employees who make a disclosure;
- (b) witnesses; and
- (c) persons alleged to be responsible for wrongdoings.

INFORMATION THAT MAY BE DISCLOSED

11 Nothing in this Act authorizes the disclosure of

- (a) information that would disclose the deliberations of the Executive Council or any of its committees, including any advice, recommendations, policy considerations or draft legislation or regulations submitted or prepared for submission to the Executive Council or any of its committees; or
- (b) information protected by solicitor-client privilege.

12 Where a disclosure involves personal or confidential information, the employee shall take reasonable precautions to ensure that no more information is disclosed than necessary to make the disclosure.

13 Nothing in this Act respecting disclosures is to be construed as affecting an employee's duty to report or otherwise give notice of any matter under any other Act.

DISCLOSURE TO A GOVERNMENT BODY

14 Every deputy head shall ensure that procedures for handling disclosures set out in the regulations are communicated to all employees of the government body and are followed.

15 Every deputy head shall designate a senior official to be the designated officer for the purpose of this Act, to receive and deal with disclosures by employees in the department or government body for which the head is responsible.

16 (1) Section 15 does not apply to a deputy head who determines in consultation with the Ombudsman that it is not practical to apply that Section because of the size of the government body for which the deputy head is responsible.

(2) Where no designation is made pursuant to Section 15, the deputy head is the designated officer for the purpose of this Act.

17 Where an employee makes a disclosure to the employee's supervisor or designated officer, the supervisor or designated officer shall investigate the disclosure in accordance with the procedures established under the regulations.

18 Each deputy head shall prepare an annual report of disclosures, including any findings of wrongdoing, recommendations and actions taken and shall make this report available to the public.

DISCLOSURE TO THE OMBUDSMAN

19 Where an employee makes a disclosure to the Ombudsman under this Act, the Ombudsman shall investigate.

20 The purpose of an investigation by the Ombudsman into a disclosure of wrongdoing is to

- (a) bring the wrongdoing to the attention of the appropriate government body; and
- (b) recommend corrective measures to be taken.

21 The Ombudsman shall endeavour to facilitate resolution of the matter within the government body.

22 An investigation must be conducted as informally and expeditiously as possible.

23 The Ombudsman may decide not to investigate a disclosure and may cease an investigation if the Ombudsman believes that

- (a) a procedure provided for pursuant to another Act would be more appropriate;
- (b) the disclosure is frivolous or vexatious or has not been made in good faith;
- (c) so much time has elapsed between the date when the matter disclosed arose and when the disclosure was made that an investigation would serve no useful purpose;
- (d) the disclosure does not contain sufficient information as required by Section 7;
- (e) the procedures under a collective agreement or employment agreement would be more appropriate for a resolution of the matter; or
- (f) there is another valid reason for not investigating.

OMBUDSMAN INVESTIGATIONS OF DISCLOSURE

24 For the purpose of investigating a disclosure under this Act, the Ombudsman and any persons appointed pursuant to Section 7 of the *Ombudsman Act* have the powers and protections provided for in that Act.

25 Where the Ombudsman learns of another wrongdoing during an investigation, the Ombudsman may investigate that wrongdoing in accordance with this Act.

26 (1) The Ombudsman shall prepare a report containing the Ombudsman's findings and any recommendations as may be directly related to the investigation of the disclosure of wrongdoing concerning the disclosure and wrongdoing once the investigation is complete.

(2) The report prepared pursuant to subsection (1) must be provided to the deputy head.

(3) A statement of the outcome of the investigation must be provided to the employee.

(4) Where a matter being investigated involves a deputy head, the Ombudsman shall provide a copy of the report prepared pursuant to subsection (1) to

- (a) the minister responsible, in the case of a department; and
- (b) the head of the government body, in the case of any other government body.

27 (1) The Ombudsman may request information from the government body respecting the steps it has taken or proposes to take to give effect to recommendations the Ombudsman is preparing.

(2) Where the Ombudsman believes that the government body did not co-operate with the Ombudsman's investigation or has not followed through on the Ombudsman's recommendations, the Ombudsman may report to

- (a) the minister responsible, in the case of a department; and
- (b) the head of the government body, in the case of any other government body.

28 (1) The Ombudsman shall prepare an annual report which must include

- (a) the number of inquiries made respecting this Act;
- (b) the number of disclosures received;
- (c) the number of disclosures acted on;
- (d) the number of investigations commenced pursuant to this Act;
- (e) the number of recommendations made by the Ombudsman and whether they were complied with;
- (f) whether the Ombudsman believes there are any systemic problems giving rise to wrongdoings; and
- (g) any recommendations for improvement.

(2) The Ombudsman shall provide the annual report prepared pursuant to subsection (1) to the Speaker of the House of Assembly who shall table it in the House of Assembly.

(3) The Ombudsman may publish a report on any matter the Ombudsman believes to be in the public interest as a result of an investigation pursuant to this Act.

29 Nothing in this Act overrides the authority of the employer to take any disciplinary measures against an employee as the employer deems necessary.

30 (1) Where a person who is not an employee reasonably believes that the person has information that a wrongdoing has been committed or is about to be committed, the person may provide that information to the Ombudsman.

(2) Information provided pursuant to subsection (1) must include the requirements of Section 13.

(3) Where the Ombudsman decides to investigate information received pursuant to this Section, the Ombudsman shall be guided by Sections 10, 22, 23, 26 and 27.

(4) The Ombudsman shall give a copy of the Ombudsman's report of an investigation pursuant to this Section to the person who provided the information about the wrongdoing.

REPRISAL

31 No reprisal shall be taken against an employee because the employee has in good faith taken any actions under this Act.

32 (1) Subject to Section 33, an employee who alleges that a reprisal has been taken against the employee, may lay a complaint with the Labour Standards Tribunal according to the procedures set out in the *Labour Standards Code* and the *Labour Standards Code* applies *mutatis mutandis*.

(2) Where the Tribunal determines that reprisal has occurred, the Tribunal may issue such remedy, including reinstatement as the Tribunal deems is fitting to address the reprisal.

33 Upon the coming into force of the *Labour Board Act*, any complaints of reprisal shall be made to the Labour Board pursuant to that Act and the Board has the remedies referred to in subsection 32(2).

GENERAL

34 (1) No person shall knowingly make a false or misleading statement, orally or in writing, to a supervisor, designated officer or the Ombudsman or to a person acting on behalf of any of them.

(2) No person shall wilfully obstruct a supervisor, designated officer or the Ombudsman, or any person acting on behalf of or under the direction of any of them, in the performance of a duty under this Act.

(3) No person shall, knowing that a document or thing is likely to be relevant to an investigation pursuant to this Act,

- (a) destroy, mutilate or alter the document or thing;
- (b) make a false document;
- (c) conceal a document or thing; or
- (d) direct, counsel or cause, in any manner, a person to do anything set out in clauses (a) to (c).

35 A person who contravenes Section 31 or 34 is guilty of an offence and liable on summary conviction to a fine of not more than ten thousand dollars.

36 (1) The Minister, upon the approval of the Governor in Council, may make regulations

(a) designating a public sector body as a government body for the purpose of this Act;

(b) designating an entity that receives all or a substantial part of its operating funding from the Government as a government body for the purpose of this Act;

(c) determining the procedure to be followed in making disclosures, in investigating disclosures, including procedures for receiving and reviewing disclosures, confidentiality for information collected respecting disclosures and investigations, reporting the outcomes of investigations and setting time periods for action;

(d) prescribing a medical officer of the purpose of clause 8(1)(a);

(e) defining any word or expression used but not defined in this Act;

(f) further defining any word or expression defined in this Act;

(g) respecting any matter or thing the Governor in Council considers necessary or advisable to effectively carry out the intent and purpose of this Act.

(2) The exercise by the Governor in Council of the authority contained in subsection (1) is regulations within the meaning of the *Regulations Act*.

37 This Act comes into force on such day as the Governor in Council orders and declares by proclamation.

SCHEDULE

Departments, Offices and Public Service Entities

Chief Information Office

Communications Nova Scotia

Conserve Nova Scotia

Department of Agriculture

Department of Community Services

Department of Economic and Rural Development

Department of Education

Department of Energy

Department of Environment

Department of Finance

Department of Fisheries and Aquaculture

Department of Health

Department of Health Promotion and Protection

Department of Intergovernmental Affairs

Department of Justice

Department of Labour and Workforce Development
Department of Natural Resources
Department of Seniors
Service Nova Scotia and Municipal Relations
Department of Tourism, Culture and Heritage
Department of Transportation and Infrastructure Renewal
Disabled Persons Commission
Elections Nova Scotia
Emergency Management Office
Executive Council Office
Freedom of Information and Protection of Privacy Review Office
Government House
Legal Aid Commission
Legislative Expenses
Nova Scotia Advisory Council on the Status of Women
Nova Scotia Human Rights Commission
Nova Scotia Legal Aid Commission
Nova Scotia Pension Agency
Nova Scotia Police Commission
Nova Scotia Securities Commission
Nova Scotia Utility and Review Board
Office of Aboriginal Affairs
Office of Acadian Affairs
Office of African Nova Scotia Affairs
Office of Gaelic Affairs
Office of Immigration
Office of the Auditor General
Office of the Legislative Counsel
Office of the Ombudsman
Office of the Premier
Office of the Speaker
Public Prosecution Service
Public Service Commission
Sydney Tar Ponds Agency
Treasury and Policy Board
Voluntary Planning Board
Workers' Compensation Appeal Tribunal
