



Diane McLeod-McKay

The Honorable David Laxton
Speaker, Yukon Legislative Assembly

Dear Mr. Speaker:
As required by section 43 of the *Public Interest Disclosure of Wrongdoing Act*, I am pleased to submit my Annual Report of the Public Interest Disclosure Commissioner for the calendar year 2015.

In keeping with past practices, I am also pleased to share this with the Yukon public.

Kind regards,

Diane McLeod-McKay,
Yukon Public Interest Disclosure Commissioner

Protecting employees who speak out on wrongdoings

I'm pleased to provide my first Annual Report as the Public Interest Disclosure Commissioner.

New mandate

On June 15, 2015, the *Public Interest Disclosure of Wrongdoing Act* or 'PIDWA' became law. As part of this, I became the first Public Interest Disclosure Commissioner. Like the Ombudsman and the Information and Privacy Commissioner, this position is independent of both the Yukon Legislative Assembly and the Yukon government. Its main purpose is to investigate disclosures of wrongdoings and complaints about reprisals in the Yukon public sector and, most importantly, to make sure they're resolved. I'm also able to review disclosure procedures set up by public entities and provide advice to employees about reporting a wrongdoing. In this way, the new position contributes to an honest and transparent government.

What's a wrongdoing?

PIDWA defines four types of wrongdoings in the public sector. The first is the breaking of a law made by Yukon or Canada. The second is something done or not done that creates a substantial and specific danger to someone's life, health or safety, unless their job normally involves some danger, such as fighting fires. This wrongdoing also includes substantial and specific dangers to the environment. The third is a very serious mishandling of public money or something publicly owned. The last is when someone knows they're directing or encouraging a person to commit any of the three wrongdoings just described. You can probably think of other types of wrongdoings but PIDWA is about these four.

Disclosing without fear

Reporting a wrongdoing before PIDWA became the law could be very frightening. Someone working in the public sector may have strongly believed they were doing the right thing but knew their disclosure could cost them dearly. PIDWA changes that. Now employees or former employees of public entities are legally protected in disclosing wrongdoings in good faith without fear of reprisal. A reprisal can be any action negatively affecting your employment or working conditions including termination, as well as any

threat to do something like this. Reprisal protection also exists for employees who seek advice about a wrongdoing, cooperate in a wrongdoing investigation and refuse to participate in the wrongdoing itself.

Under PIDWA, I have authority to investigate a complaint about reprisal. I can also make any recommendation I believe necessary to deal with it. If a public entity refuses to accept my recommendation, I have the authority to refer the complaint to an arbitrator. This is a person who has the power to order the public entity to correct a reprisal.

Making a disclosure

Although PIDWA clearly defines wrongdoings, it also places certain limits on what you can disclose. For example, you can't disclose anything that's restricted by solicitor-client privilege or information that's restricted by a particular law. It's also possible to disclose a wrongdoing publicly but there are very specific conditions you must follow to be protected. All things considered, I'd encourage employees and former employees of a public entity who wish to make a disclosure to seek advice from my office before they do anything else. While you can seek advice from a supervisor or a designated officer if one's been appointed in your public entity, seeking our advice before making a disclosure gives us the ability to help you in a number of important ways. The first is to evaluate whether the activity that concerns you could be a wrongdoing. The second is to discuss the disclosure procedures themselves. The third is to talk to you about the protections provided by PIDWA when you make a disclosure. If we determine the activity could be a wrongdoing, we'll then tell you that it's your decision to report it or not. Our advice is free and confidential.

To report a wrongdoing, you have to be a Yukon public sector employee or former employee. You must also have a reasonable belief that the wrongdoing has happened or is about to happen. 'Reasonable' means your belief must be fair or sensible under the circumstances, as opposed to having some improper motive. You can disclose the wrongdoing to one of three officials. The first is a supervisor. The second is a designated officer if one's been

appointed by their chief executive, such as a deputy minister or head of a public corporation. The third is the Public Interest Disclosure Commissioner.

Public entities under PIDWA

A wrongdoing must concern a public entity. You can find a list of them at the end of PIDWA. They include Yukon government departments, the Legislative Assembly Office, the offices of the Chief Electoral Officer and Child & Youth Advocate, the Yukon Workers' Compensation Health & Safety Board, Yukon College and the Yukon public corporations concerned with development, energy, hospitals, housing and liquor.

Under PIDWA, public entities can choose to develop their own disclosure procedures, provided they follow the rules set out in the legislation. One of those rules, for example, is the requirement to designate a senior official who can receive and deal with disclosures. When a public entity intends to establish procedures, it must first provide a copy of them to my office for comment. This also applies if the public entity has procedures that have already gone through this process and wants to amend them. We didn't receive any copies in 2015, although we did have one public entity ask about the process for developing procedures.

Any disclosure we receive will be handled by the Investigation & Compliance Review team unless I decide, under my PIDWA authority, one of two things. The first is not investigate it. The second is hand the investigation to the Early Case Resolution (ECR) team. But given the complexity of wrongdoing investigations, it's unlikely that these types of investigations will readily lend themselves to the ECR process. We received one disclosure in 2015.

We can only act on a disclosure if you make it to us. That's why I encourage any Yukon public sector employee or former employee who's concerned about a wrongdoing to contact my office. My PIDWA authority, like that under the *Ombudsman Act*, is complaint based. That means it's up to you to make sure any wrongdoing that's either happened or about to happen within a public entity is reported, investigated and resolved.

Making a reprisal complaint

Reprisals are defined in PIDWA. If you've been the subject of a reprisal, you can make a complaint to my office. We're not allowed to help you if you make the same complaint under some procedure involving, for example, a different law, collective agreement, employment agreement or public entity policy. We didn't receive any reprisal complaints in 2015.

Outreach

PIDWA is very new. In 2015, my office developed brochures and posters. We distributed them to all public entities and I also met with a group of employees from one of them. In 2016, I again plan to meet with employees of public entities to raise awareness about PIDWA. Part of my plan is to clarify two key things. The first is the role of the Public Interest Disclosure Commissioner. The second is the process for making disclosures or complaining about reprisals.

Accountability

PIDWA requires that I report on the activity of my office and any information contained in an annual report prepared by a public entity about PIDWA activities. Please see the stats page. As we gain more experience with PIDWA, I'll be planning performance targets and reporting on our success in meeting them.

Impact on resources

Before PIDWA became law in Yukon, I canvassed all jurisdictions with this type of legislation about the effect on their resources. Most reported little or no activity for the first couple of years after their legislation was passed. Our experience differs from these jurisdictions. In the six months since PIDWA was proclaimed, we've had nine enquiries, opened three advice files and one wrongdoing investigation. Please see the stats page for more information.

The amount of work already generated by PIDWA has had a noticeable impact on our resources. As a result, I'm monitoring how much PIDWA affects our ability to perform all our duties under three, soon to be four, pieces of legislation.

Diane McLeod-McKay
Public Interest Disclosure Commissioner

PIDWA Accountability Metrics

File management goals

- To come

Proactive compliance work

- Met with Education Administrators
- Developed brochures and posters and delivered them to all public entities
- Developed a new website

Skills development

- Attended one national meeting

Complaints

- None

PIDWA - PIDC 2015 Activity

Resolved at Intake - no file opened

Non-jurisdiction	0
Referred-back	0
Requests for Information	9
Informal complaint resolution	0
Total	9
Advice files opened	3
Disclosure files opened (disclosures received)	1
Reprisal files opened	0
Total Files opened in 2015	4
Files carried forward from prior years	0
Files closed	3
Files to be carried forward	1

Budget Summary

The office of the Public Interest Disclosure Commissioner (PIDC) budget covers the period from June 2015, when the *Public Interest Disclosure of Wrongdoing Act* (PIDWA) became law, and March 31, 2016

Operations and maintenance (O&M) are expenditures used in carrying out day-to-day activities. A 'capital' expenditure is used to buy things that last longer than a year and are quite expensive, such as office furniture and computers.

'Personnel' is the largest part of our annual O&M budget. It includes salaries, wages and employee benefits. For accounting purposes, 'Personnel' is reported jointly for the offices of the PIDC, the Ombudsman, and the Information and Privacy Commissioner (IPC) because all staff have duties in these three areas. We also received funds under 'Personnel' to hire a new position. The *Health Information Privacy and Management Act* will soon become law and we'll be filling this position shortly. In addition, we received a small 'cost-of-living' increase for staff.

'Other' includes such things as rent, contract services, supplies, travel and advertising. We received a small increase in funding to manage the new costs associated with PIDWA. Please

see the fourth row in the budget table below.

For accounting purposes, 'Capital' is also reported jointly for the three offices because all staff use these assets in their work. The capital budget in 2014 included \$100,000 to purchase a case management system. This means we'll be able to handle case files and perform other work more effectively. It's taken longer than expected to obtain this asset so the Legislature has carried the funds forward. We expect to have the system in place sometime this year.

2014/15 Budget	
Personnel (combined)	\$ 645,000
Other (Ombudsman's office)	\$ 81,000
Other (IPC's office)	\$ 134,000
Capital Items	\$ 12,000
Total	\$ 872,000

* 100,000 was revoted to 2015/16

2015/16 Budget	
Personnel (combined)	\$ 765,000
Other (Ombudsman's office)	\$ 104,200
Other (IPC's office)	\$ 131,000
Other (PIDC's office)	\$ 17,800
Capital (combined)	\$ 34,000
Total	\$ 1,052,000

Activity within the office of the Public Interest Disclosure Commissioner	Government department
Disclosures received	1
Disclosures acted upon Y/N	Y
Disclosure investigations commenced	1
Number of recommendations made	
Public entity has complied with the recommendations	
Reprisal complaints received	0
Reprisal complaints acted upon	
Number of recommendations made	
Public entity has complied with the recommendations	
Number of reprisal complaints sent to arbitration	0
Systemic problems that may or will give rise to wrongdoings	
Recommendations for improvement	

Activity reported by public entities*

Disclosures received	0
Disclosures acted upon	0
Disclosure investigations commenced	0
Description of wrongdoing	
Description of corrective action taken/Reasons why not taken	No disclosures of wrongdoing received
Reprisal complaints received	0
Reprisal complaints acted upon	
Description of reprisal	
Description of corrective action taken/Reasons why not taken	No disclosures of wrongdoing received

* Public entities:

- Community Services
- Economic Development
- Education
- Environment
- Finance
- Health & Social Services
- Highways & Public Works
- Tourism & Culture
- Public Service Commission
- Executive Council Office
- Women's Directorate
- Yukon Workers' Compensation Health & Safety Board
- Yukon Development Corporation
- Yukon Hospital Corporation
- Yukon Legislative Assembly
- Chief Electoral Officer's Office

The PIDWA requires public entities to provide a report containing the above information to their chief executive annually and provide the PIDC with a copy. No reports were received from the departments of Energy, Mines & Resources, and Justice, Yukon Energy Corporation, Yukon Housing Corporation, Yukon Liquor Corporation, the Child & Youth Advocate's Office.

The PIDWA went into effect in June 2015. The PIDC sent out a request for a copy of the reports in early January. Unfortunately, not all public entities were able to provide their reports by the deadline of January 31, 2016. Statistics for those reports not received for the period of June 2015 to December 2015 will be reported in the PIDC's annual report for 2016.

Contact us

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All services of the PIDC's office are free and confidential.

We welcome your feedback on our Annual Report including the method of delivery.