

# BILL

No. 20

## An Act respecting the Protection of Employees of Publicly-funded Health Entities who make Disclosures

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(Assented to \_\_\_\_\_)

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

PART 1  
**Preliminary Matters**

**Short title**

1 This Act may be cited as *The Publicly-funded Health Entity Public Interest Disclosure Act*.

**Definitions**

2 In this Act:

**“Commissioner”** means the Public Interest Disclosure Commissioner appointed pursuant to *The Public Interest Disclosure Act* and includes any acting commissioner appointed pursuant to that Act;

**“designated officer”** means, with respect to a publicly-funded health entity:

- (a) a senior official of the publicly-funded health entity or other prescribed person who is designated as a designated officer for the publicly-funded health entity in accordance with section 5; or
- (b) the permanent head if:
  - (i) the permanent head of the publicly-funded health entity does not designate a senior official or other prescribed person in accordance with section 5; or
  - (ii) the permanent head makes a determination pursuant to section 7;

**“disclosure”** means a disclosure of wrongdoing made in good faith by an employee in accordance with this Act;

**“employee”** means an employee within the meaning of Part II of *The Saskatchewan Employment Act*, and includes:

- (a) a physician;
- (b) any other prescribed person who performs services under contract for a publicly-funded health entity; and
- (c) any other prescribed person;

**“government institution”** means a government institution as defined in *The Public Interest Disclosure Act*;

**“minister”** means the member of the Executive Council to whom for the time being the administration of this Act is assigned;

**“permanent head”** means, with respect to a publicly-funded health entity:

- (a) the chief executive officer or other officer who has supervision over and direction of the work of the staff of the publicly-funded health entity; or
- (b) any other prescribed person;

**“physician”** means a duly qualified medical practitioner;

**“prescribed”** means prescribed in the regulations;

**“publicly-funded health entity”** means:

- (a) the provincial health authority, as defined in *The Provincial Health Authority Act*;
- (b) the Saskatchewan Cancer Agency continued pursuant to *The Cancer Agency Act*; or
- (c) any other prescribed entity;

**“reprisal”** means any of the following measures taken against an employee because the employee has, in good faith, sought advice about making a disclosure, made a disclosure, cooperated in an investigation pursuant to this Act or declined to participate in suspected wrongdoing:

- (a) a dismissal, layoff, suspension, demotion or transfer, discontinuation or elimination of a job, change of a job location, reduction in wages, change in hours of work or reprimand;
- (b) any measure, other than one mentioned in clause (a), that adversely affects the employee’s employment or working conditions;
- (c) a threat to take any of the measures mentioned in clauses (a) and (b);

**“wrongdoing”** means a wrongdoing mentioned in section 3.

## PART 2

### Wrongdoings

#### Wrongdoings to which this Act applies

**3** This Act applies to the following wrongdoings in or relating to publicly-funded health entities:

- (a) a contravention of an Act, a regulation made pursuant to an Act, an Act of the Parliament of Canada or a regulation made pursuant to an Act of the Parliament of Canada;
- (b) an act or omission that creates:
  - (i) a substantial and specific danger to the life, health or safety of persons other than a danger that is inherent in the performance of the duties or functions of an employee; or
  - (ii) a substantial and specific danger to the environment;
- (c) gross mismanagement of public funds or a public asset;
- (d) knowingly directing or counselling a person to commit a wrongdoing mentioned in clauses (a) to (c).

#### Disciplinary action

**4** Notwithstanding any provisions in any contract to the contrary and in addition to, and apart from, any penalty provided for by law, an employee who commits a wrongdoing is subject to appropriate disciplinary action, including:

- (a) termination of employment; and
- (b) termination of a contract.

PART 3

**Disclosure of Wrongdoing**

DIVISION 1

**Procedures re Disclosures**

**Designated officer**

**5**(1) Every permanent head of a publicly-funded health entity shall:

- (a) designate a senior official of the publicly-funded health entity or other prescribed person to be the publicly-funded health entity's designated officer for the purposes of this Act; or
- (b) if the permanent head does not designate a senior official or other prescribed person pursuant to clause (a), perform the duties and exercise the powers of a designated officer imposed or given by this Act with respect to the publicly-funded health entity for which the permanent head is responsible.

(2) Every designated officer shall receive and deal with disclosures by employees in the publicly-funded health entity with respect to which the designated officer is acting.

**Procedures to manage disclosures**

**6**(1) Every permanent head of a publicly-funded health entity shall establish procedures to manage disclosures by employees of the publicly-funded health entity for which the permanent head is responsible.

(2) Subject to the regulations, the procedures mentioned in subsection (1) must include the following:

- (a) procedures for receiving and reviewing disclosures, including setting periods for making recommendations to the publicly-funded health entity and the permanent head respecting any corrective measures that should be taken;
- (b) procedures for referring the matter to one of the following, if the matter would more appropriately be dealt with there:
  - (i) another publicly-funded health entity;
  - (ii) a government institution;
  - (iii) a prescribed licensing body, regulatory body or licensing and regulatory body that is responsible for establishing the standards of professional conduct for the relevant profession pursuant to an Act;
- (c) procedures for reviewing and investigating disclosures in accordance with the principles of procedural fairness and natural justice;
- (d) procedures for maintaining the confidentiality of information collected in relation to disclosures and investigations, unless there is an imminent risk of a substantial and specific danger to the life, health or safety of persons, or to the environment;
- (e) subject to any other Act and to the principles of procedural fairness and natural justice, procedures for protecting the identity of persons involved in the disclosure process, including the person making the disclosure, witnesses and persons alleged to have committed the wrongdoings;

- (f) procedures for reporting the outcome of investigations;
- (g) procedures for enforcement and follow-up of any disciplinary action or corrective action taken or directed pursuant to this Act;
- (h) any additional prescribed procedures.

**Exception**

7(1) Sections 5 and 6 do not apply to a publicly-funded health entity if the permanent head determines that it is not practical to apply those sections to the publicly-funded health entity given the size of the publicly-funded health entity for which the permanent head is responsible.

(2) Before making a determination pursuant to subsection (1), the permanent head shall consult with the Commissioner.

**Information to be communicated**

8 A permanent head shall ensure that information about this Act and, if the disclosure procedures mentioned in section 6 apply to the publicly-funded health entity, the disclosure procedures are widely communicated to the employees of the publicly-funded health entity for which the permanent head is responsible.

**DIVISION 2****Making and Dealing with a Disclosure****Seeking advice before making a disclosure**

9(1) An employee who is considering making a disclosure may request advice from:

- (a) the designated officer for the publicly-funded health entity where the employee is employed; or
- (b) the Commissioner.

(2) The designated officer or Commissioner may require a request for advice to be in writing.

**Disclosure by employee**

10(1) Subject to Division 3, if an employee reasonably believes that the employee has information that could show that a wrongdoing has been committed or is about to be committed or that could show that the employee has been asked to commit a wrongdoing, the employee may make a disclosure to:

- (a) the designated officer for the publicly-funded health entity where the employee is employed; or
- (b) the Commissioner.

(2) If a disclosure is made to the Commissioner pursuant to this section, the Commissioner shall notify the permanent head of the publicly-funded health entity to which the disclosure relates about the disclosure.

**Content of disclosure**

**11(1)** A disclosure pursuant to section 10 must include the prescribed information and be in the prescribed form.

(2) Subject to Division 3, the person receiving the disclosure may request the employee making the disclosure to provide any additional information that the person receiving the disclosure may reasonably require in order to investigate the matters set out in the disclosure.

**DIVISION 3**

**Information that may be Disclosed**

**Disclosure may be made notwithstanding other Acts**

**12** Notwithstanding any other Act but subject to section 13 and to the regulations, an employee may disclose information pursuant to this Act even if a provision in another Act prohibits or restricts disclosure of the information.

**Limits on disclosure**

**13(1)** Nothing in this Act authorizes an employee to disclose:

- (a) information that is protected by solicitor-client privilege; or
- (b) any other prescribed information.

(2) In making a disclosure, an employee shall provide no more information than is reasonably necessary to make the disclosure.

**Other obligations to report not affected**

**14** Nothing in this Act relating to the making of disclosures is to be construed as affecting any obligation of an employee to disclose, report or otherwise give notice of any matter pursuant to any other Act or law or a provision of any agreement, including a collective agreement.

**PART 4**

**Investigations by Commissioner**

**DIVISION 1**

**Conduct of Investigations**

**Duty on disclosures**

**15(1)** If a disclosure is made to the Commissioner, the Commissioner shall:

- (a) take any steps the Commissioner considers appropriate to help resolve the matter within the publicly-funded health entity to which the disclosure relates;
- (b) refer the matter to the publicly-funded health entity to which the disclosure relates;
- (c) refer the matter to a prescribed licensing body, regulatory body or licensing and regulatory body that is responsible for establishing the standards of professional conduct for the relevant profession pursuant to an Act;
- (d) subject to section 16, conduct an investigation in accordance with this Part; or
- (e) take any other prescribed action.

(2) If the Commissioner refers a matter to a publicly-funded health entity pursuant to clause (1)(b), the Commissioner may request the publicly-funded health entity to notify the Commissioner, within any period that the Commissioner may specify, of the steps that the publicly-funded health entity has taken or proposes to take to deal with the matter.

(3) If the Commissioner refers a matter to a prescribed body mentioned in clause (1)(c), the Commissioner may request that prescribed body to notify the Commissioner, within any period that the Commissioner may specify, of the steps that the prescribed body has taken or proposes to take to deal with the matter.

#### **When investigation not required**

**16(1)** The Commissioner is not required to conduct an investigation or, if an investigation has been initiated, may cease the investigation if, in the opinion of the Commissioner:

- (a) the subject-matter of the disclosure could more appropriately be dealt with according to a procedure provided for pursuant to another Act or law;
- (b) the disclosure is frivolous or vexatious, has not been made in good faith or concerns a trivial matter;
- (c) too great a period has elapsed between the date when the subject-matter of the disclosure arose and the date when the disclosure was made so that an investigation would not serve a useful purpose;
- (d) the disclosure relates to a matter that results from a balanced and informed decision-making process on a public policy or operational issue;
- (e) the disclosure does not provide adequate information about the wrongdoing as required by section 11;
- (f) the disclosure relates to a matter that could more appropriately be dealt with according to the procedures under a collective agreement, an employment agreement or other prescribed agreement, contract or bylaw; or
- (g) the circumstances of the case do not warrant investigation.

(2) If the Commissioner decides not to investigate or to cease an investigation, the Commissioner:

- (a) shall inform the employee who made the disclosure and the affected publicly-funded health entity; and
- (b) may, if the Commissioner considers it to be appropriate to do so, provide reasons for the decision.

#### **Notice re decision involving investigation**

**17(1)** Before investigating the subject-matter of a disclosure, the Commissioner shall notify the permanent head of the affected publicly-funded health entity of the proposed investigation.

(2) A notice pursuant to subsection (1) must:

- (a) be in writing; and
- (b) set forth the nature of the disclosure received by the Commissioner and any other prescribed information.

**Conduct of investigations**

18(1) If the Commissioner considers it appropriate to do so, the Commissioner may conduct an investigation in an informal manner.

(2) The Commissioner shall ensure that the right to procedural fairness and natural justice of all persons involved in an investigation is respected, including persons making disclosures, witnesses and persons alleged to have committed wrongdoings.

(3) Sections 13, 17, 19, 25 and 26 of *The Ombudsman Act, 2012* apply, with any necessary modification, to the conduct of an investigation and to any decision of the Commissioner.

**Referral to Provincial Auditor**

19(1) If the Commissioner believes that a disclosure made to the Commissioner would be dealt with more appropriately by the Provincial Auditor, the Commissioner may refer the matter to the Provincial Auditor, and the Provincial Auditor may deal with the matter in accordance with *The Provincial Auditor Act*.

(2) If a matter has been referred to the Provincial Auditor pursuant to subsection (1), the employee who made the disclosure continues to have the protection from reprisals set out in section 27.

**Investigation of other wrongdoings**

20 If, during an investigation, the Commissioner has reason to believe that another or additional wrongdoing has been committed, the Commissioner may investigate that wrongdoing in accordance with this Part.

**Report after investigation**

21(1) On completing an investigation, the Commissioner shall prepare a report that sets out:

- (a) the Commissioner's opinion and reasons for that opinion; and
- (b) any recommendations the Commissioner considers appropriate respecting the disclosure and the wrongdoing.

(2) If the Commissioner makes a recommendation pursuant to subsection (1), the Commissioner may request the publicly-funded health entity to notify the Commissioner, within any period that the Commissioner may specify, of the steps that the publicly-funded health entity has taken or proposes to take to give effect to the recommendations.

(3) The Commissioner shall provide a copy of the report mentioned in subsection (1) to the permanent head and designated officer, if any, of the affected publicly-funded health entity.

(4) The Commissioner shall notify the employee who made the disclosure that a report pursuant to this section has been made and provide the employee with any information respecting the report that the Commissioner considers appropriate in the circumstances.

**If subject-matter involves permanent head**

22 If the subject-matter of a disclosure that is being investigated involves the permanent head of a publicly-funded health entity, the Commissioner shall also give a copy of the report mentioned in section 21 to the minister.



## DIVISION 2

**Reports by Commissioner****Report by Commissioner**

**23(1)** In accordance with section 13 of *The Executive Government Administration Act*, the Commissioner shall, in each year, submit to the Speaker an annual report that:

- (a) describes the progress and activities of the Commissioner in the previous year; and
- (b) sets out the following respecting the previous year:
  - (i) the number of disclosures received and the number acted on and not acted on;
  - (ii) the number of investigations commenced pursuant to this Act;
  - (iii) in the case of an investigation that results in a finding of wrongdoing:
    - (A) a description of the wrongdoing; and
    - (B) either:
      - (I) any recommendations made or corrective actions taken in relation to the wrongdoing; or
      - (II) any reasons why no corrective action was taken in relation to the wrongdoing;
  - (iv) the number of recommendations the Commissioner has made and whether the publicly-funded health entity to which recommendations were made has acted on the recommendations;
  - (v) whether, in the opinion of the Commissioner, there are any systemic problems that give rise to wrongdoings;
  - (vi) any recommendations for improvement that the Commissioner considers appropriate;
  - (vii) any other matters that the Commissioner considers appropriate.

(2) In accordance with section 13 of *The Executive Government Administration Act*, the Speaker shall lay before the Assembly each report received by the Speaker pursuant to subsection (1).

**Special report**

**24(1)** If the Commissioner considers that it is in the public interest to do so, the Commissioner may publish a special report relating to any matter that arises out of a disclosure and that is within the Commissioner's jurisdiction pursuant to this Act, including a report referring to and commenting on any particular matter investigated by the Commissioner.

(2) On making a special report, the Commissioner shall provide a copy of each special report to the Speaker.

(3) In accordance with section 13 of *The Executive Government Administration Act*, the Speaker shall lay before the Assembly each special report received by the Speaker pursuant to subsection (2).

**Reports at request of committee or the Lieutenant Governor in Council**

25(1) A committee of the Assembly may, at any time, refer to the Commissioner for investigation and report any petition or matter that is before the committee for consideration.

(2) The Commissioner shall:

(a) subject to any special directions of the committee, investigate the petition or matter referred to the Commissioner so far as it is within the Commissioner's jurisdiction pursuant to this Act; and

(b) make any report to the committee that the Commissioner thinks fit.

(3) The Lieutenant Governor in Council may, at any time, refer to the Commissioner for investigation and report any matter that is within the Commissioner's jurisdiction pursuant to this Act.

(4) The Commissioner shall:

(a) subject to any special directions of the Lieutenant Governor in Council, investigate the matter referred to the Commissioner so far as it is within the Commissioner's jurisdiction pursuant to this Act; and

(b) make any report to the Lieutenant Governor in Council that the Commissioner thinks fit.

**DIVISION 3****Annual Report re Publicly-funded Health Entities****Annual report re publicly-funded health entities**

26(1) In this section:

**"ministry"** means the ministry over which the minister presides;

**"reporting period"** means the period commencing on April 1 in one year and ending on March 31 of the following year.

(2) In accordance with section 13 of *The Executive Government Administration Act*, the ministry shall prepare and submit to the minister a report on all disclosures that have been made in the previous reporting period to the designated officers of all publicly-funded health entities.

(3) The report required pursuant to subsection (2) must include the following information with respect to publicly-funded health entities:

(a) the number of disclosures received and the number acted on and not acted on;

(b) the number of investigations commenced as a result of a disclosure;

(c) in the case of an investigation that results in a finding of wrongdoing:

(i) a description of the wrongdoing; and

(ii) either:

(A) any recommendations made or corrective actions taken in relation to the wrongdoing; or

(B) any reasons why no corrective action was taken in relation to the wrongdoing.

(4) A publicly-funded health entity shall, for the purposes of preparing the report mentioned in subsection (2), provide the ministry with the information described in clauses (3)(a) to (c) with respect to:

- (a) all disclosures made to the designated officer in the previous reporting period; and
- (b) all disclosures with respect to which the Commissioner has notified the permanent head pursuant to subsection 10(2) in the previous reporting period.

(5) In accordance with section 13 of *The Executive Government Administration Act*, the minister shall lay before the Legislative Assembly each report received by minister pursuant to subsection (2).

## PART 5

### General Matters

#### Reprisals prohibited

**27(1)** No person shall take or direct a reprisal against an employee or former employee because the employee or former employee has, in good faith:

- (a) sought advice about making a disclosure from the designated officer or permanent head of the publicly-funded health entity in which the employee or former employee is employed or the Commissioner;
- (b) made a disclosure;
- (c) cooperated in an investigation pursuant to this Act; or
- (d) declined to participate in a wrongdoing.

(2) If an employee or former employee alleges that a reprisal has been taken or directed against the employee or former employee, the employee or former employee may make a written complaint to the Commissioner respecting the matter.

(3) A complaint must be in a form that is acceptable to the Commissioner and must include the prescribed information.

(4) If a complaint is made to the Commissioner pursuant to this section:

- (a) the Commissioner shall deal with the complaint in the same manner as a disclosure made to the Commissioner; and
- (b) Division 1 of Part 4 applies, with any necessary modification, to the complaint.

#### Offence—false statement

**28** No person, in seeking advice about making a disclosure, in making a disclosure or during an investigation, shall knowingly make a false or misleading statement, orally or in writing, to:

- (a) a designated officer;
- (b) a permanent head;
- (c) the Commissioner; or
- (d) a person acting on behalf of or under the direction of any of the persons mentioned in clauses (a) to (c).

**Offence—obstruction**

**29** No person shall wilfully obstruct a designated officer or permanent head, the Commissioner or any person acting on behalf of or under the direction of any of them in the performance of their duties pursuant to this Act.

**Offence—destruction, falsification concealment**

**30** No person, knowing that a document or thing is likely to be relevant to an investigation pursuant to 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 a person to do anything mentioned in clauses (a) to (c).

**Offence and penalty**

**31** Every person who contravenes any of subsection 27(1) or sections 28 to 30 is guilty of an offence and liable on summary conviction to a fine of not more than \$10,000.

**Limitation on prosecution**

**32** No prosecution for a contravention of this Act is to be commenced more than 2 years after the day on which the alleged contravention was committed.

**Immunity**

**33** No action or proceeding lies or shall be commenced against the Crown, the minister, the Commissioner, the Office of the Commissioner or any other person if that person is acting pursuant to the authority of this Act or the regulations, for anything in good faith done, caused or permitted or authorized to be done, attempted to be done or omitted to be done by that person or by any of those persons pursuant to or in the exercise or supposed exercise of any power conferred by this Act or the regulations or in the carrying out or supposed carrying out of any order made pursuant to this Act or any duty imposed by this Act or the regulations.

**Proceedings of Commissioner not subject to review**

**34** No proceeding of the Commissioner is invalid for want of form and, except on the ground of lack of jurisdiction pursuant to this Act, no proceeding or decision of the Commissioner shall be challenged, reviewed, quashed or called into question in any court.

**Act to provide additional remedies**

**35** The provisions of this Act are in addition to the provisions of any other Act or rule of law pursuant to which any remedy, right of appeal or objection is provided for any person, or any procedure is provided for inquiry into or investigation of any matter, and nothing in this Act limits or affects any such remedy, right of appeal, objection or procedure.

**Regulations**

**36** The Lieutenant Governor in Council may make regulations:

- (a) defining, enlarging or restricting the meaning of any word or expression used in this Act but not defined in this Act;
- (b) prescribing persons who may be designated as a designated officer of a publicly-funded health entity;
- (c) prescribing persons who are employees of a publicly-funded health entity;
- (d) prescribing entities as publicly-funded health entities;
- (e) prescribing persons to be heads of publicly-funded health entities;
- (f) for the purposes of subsection 6(2), governing the procedures respecting managing disclosures by employees, including prescribing the period within which reviews and investigations of disclosures must be completed and for reporting the outcomes of investigations;
- (g) for the purposes of subclause 6(2)(b)(iii) and clause 15(1)(c), prescribing licensing bodies, regulatory bodies or licensing and regulatory bodies that are responsible for establishing the standards of professional conduct for the relevant profession pursuant to an Act to which matters may be referred;
- (h) prescribing other procedures for the purposes of clause 6(2)(h);
- (i) for the purposes of section 11, prescribing the information that is required to be included in a disclosure and the form of a disclosure;
- (j) for the purposes of section 12, prescribing information that is subject to, governed by or described in all or any part of an Act or a regulation made pursuant to an Act as information that is confidential and respecting which no disclosure may be made;
- (k) for the purposes of section 13, prescribing any other information that an employee is not authorized to disclose;
- (l) for the purposes of subsection 15(1), prescribing any other action that the Commissioner may take;
- (m) for the purposes of clause 17(2)(b), prescribing information that the Commissioner must provide to the permanent head of the affected publicly-funded health entity;
- (n) for the purposes of subsection 27(3), prescribing the information that is required to be included in a complaint;
- (o) prescribing any matter or thing that is required or authorized by this Act to be prescribed in the regulations;
- (p) respecting any other matter or thing that the Lieutenant Governor in Council considers necessary to carry out the intent of this Act.

**PART 6****Coming into Force****Coming into force**

**37** This Act comes into force by order of the Lieutenant Governor in Council.





FIRST SESSION

# Twenty-ninth Legislature

SASKATCHEWAN

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## B I L L

No. 20

An Act respecting the Protection of Employees of  
Publicly-funded Health Entities who make  
Disclosures

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Received and read the

First time

Second time

Third time

And passed

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Honourable Paul Merriman

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