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Legislative Assembly of British Columbia

BILL 2

**PUBLIC INTEREST DISCLOSURE
AMENDMENT ACT, 2021**

Honourable David Eby
Attorney General and Minister Responsible for Housing

Explanatory Notes

SECTION 1: *[Public Interest Disclosure Act, section 1]* adds the definition of “advice” and amends the definitions of “designated officer”, “discloser” and “disclosure”, consequential to amendments made by this Bill to the Act.

SECTION 2: *[Public Interest Disclosure Act, section 3]* clarifies the application of references to provisions of the *Ombudsperson Act*.

BILL 2 – 2021

**PUBLIC INTEREST DISCLOSURE
AMENDMENT ACT, 2021**

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

1 Section 1 of the Public Interest Disclosure Act, S.B.C. 2018, c. 22, is amended

(a) by adding the following definition:

“**advice**” means advice that may be requested in respect of making a disclosure or a complaint about a reprisal under this Act; ,

(b) in the definition of “designated officer” by adding “receive requests for advice and” after “under section 10 [designated officer] to”,

(c) by repealing the definition of “discloser” and substituting the following:

“**discloser**” means an employee who requests advice or makes a disclosure or a complaint about a reprisal under this Act; , **and**

(d) in the definition of “disclosure” by striking out “, unless the context otherwise requires”.

2 Section 3 is amended by adding the following subsections:

(3) The following sections of the *Ombudsperson Act* apply, with necessary modifications, to the conduct of an investigation by the Ombudsperson under this Act:

- (a) section 9 [*confidentiality*];
- (b) section 11 (3) [*jurisdiction of Ombudsperson*];
- (c) section 15 [*power to obtain information*];
- (d) section 17 [*opportunity to make representations*];
- (e) section 18 [*Attorney General may restrict investigative powers*];
- (f) section 19 (1) [*application of other laws respecting disclosure*];
- (g) section 20 [*privileged information*];
- (h) section 27 [*no hearing as of right*].

SECTION 2: *[Public Interest Disclosure Act, section 3 – continued]*

SECTION 3: *[Public Interest Disclosure Act, section 4]* adds information about how to make requests for advice and complaints about reprisal as information to be communicated by chief executives.

SECTION 4: *[Public Interest Disclosure Act, section 5]* provides for requests for advice and complaints about reprisal in respect of the unauthorized release of information.

SECTION 5: *[Public Interest Disclosure Act, section 6]*

- clarifies the protection of personal information in respect of requests for advice;
- clarifies a prohibition in respect of the disclosure of personal information.

SECTION 6: *[Public Interest Disclosure Act, section 7]* extends the authorization to report offences to requests for advice and complaints about reprisal.

SECTION 7: *[Public Interest Disclosure Act, section 8]* extends a clarifying provision to address requests for advice and complaints about reprisal.

SECTION 8: *[Public Interest Disclosure Act, section 9]* provides for procedures to manage requests for advice.

(4) The following sections of the *Ombudsperson Act* apply, with necessary modifications, in respect of all of the duties, powers or functions of the Ombudsperson under this Act:

(a) section 28 [*Ombudsperson not subject to review*];

(b) section 30 [*delegation of powers*].

3 *Section 4 (b) is amended by striking out “how to make a disclosure” and substituting “how to request advice or make a disclosure or a complaint about a reprisal”.*

4 *Section 5 (1) and (3) (a) is amended by striking out “in a disclosure” and substituting “in a request for advice, a disclosure or a complaint about a reprisal made”.*

5 *Section 6 is amended*

(a) in subsection (1) by adding “requesting advice or” after “For the purposes of”,

(b) in subsection (1) (b) by adding “request advice or” after “reasonably necessary to”,

(c) in subsection (2) by striking out “A person who is authorized to receive or investigate disclosures or complaints of reprisals” and substituting “Subject to subsection (3), a person who is authorized to receive requests for advice and provide advice or to receive or investigate disclosures or complaints about reprisals”,

(d) in subsection (2) (a) by adding “a request for advice,” after “is included with”, and

(e) by repealing subsection (3) and substituting the following:

(3) A person who is authorized as described under subsection (2) must not disclose personal information about a discloser to a person other than the discloser if that information is likely to enable the identification of the discloser as a person who has requested advice or made a disclosure or a complaint about a reprisal.

6 *Section 7 (2) is amended by striking out “in relation to a disclosure under this Act” and substituting “in relation to a request for advice, a disclosure or a complaint about a reprisal under this Act”.*

7 *Section 8 (2) is amended by striking out “if a discloser’s disclosure” and substituting “if a discloser’s request for advice, disclosure or complaint about a reprisal”.*

8 *Section 9 is amended*

(a) in subsections (1) and (2) (b) by striking out “disclosures” wherever it appears and substituting “requests for advice and disclosures”,

SECTION 8: *[Public Interest Disclosure Act, section 9 – continued]*

SECTION 9: *[Public Interest Disclosure Act, section 10]* is consequential to changes made by this Bill to the Act to include requests for advice in respect of designated officers.

SECTION 10: *[Public Interest Disclosure Act, section 11]* clarifies that the authority to request advice includes the receipt of advice.

SECTION 11: *[Public Interest Disclosure Act, section 13]* provides for requests for advice by employees of the office of the Ombudsperson.

SECTION 12: *[Public Interest Disclosure Act, section 14]*

- permits anonymous requests for advice;
- provides for the notification of anonymous disclosers.

(b) in subsection (2) (c) by striking out “disclosures” and substituting “requests for advice, disclosures”,

(c) by repealing subsection (2) (d) (i) and substituting the following:

- (i) is limited to the personal information required for investigations of disclosures and the process for
 - (A) requests for advice, or
 - (B) disclosures, and , **and**

(d) by repealing subsection (2) (e) and substituting the following:

- (e) protecting the identity of persons involved in requests for advice, disclosures and investigations, subject to any other Act; .

9 Section 10 is amended

(a) in subsections (1) and (3) by adding “receive requests for advice and” after “designated officer to”, and

(b) by repealing subsection (4) and substituting the following:

- (4) For certainty, different senior officials may be designated by a chief executive under subsection (1) for
 - (a) receiving requests for advice,
 - (b) receiving disclosures, and
 - (c) investigating disclosures.

10 Section 11 (1) is amended by adding “and receive” after “may request”.

11 Section 13 (1) and (2) is repealed and the following substituted:

- (1) A discloser may request and receive advice from, or make a disclosure to, the Auditor General instead of the Ombudsperson if
 - (a) the discloser is an employee of the office of the Ombudsperson, and
 - (b) the advice or the disclosure relates to the office of the Ombudsperson.
- (2) If a discloser makes a request for advice or a disclosure to the Auditor General under this section, the Auditor General is to carry out the responsibilities of the Ombudsperson under this Act in relation to the discloser and the request for advice or the disclosure.

12 Section 14 is amended

(a) in subsection (1) by striking out “A disclosure” and substituting “A request for advice or a disclosure”,

SECTION 12: *[Public Interest Disclosure Act, section 14 – continued]*

SECTION 13: *[Public Interest Disclosure Act, section 16]* provides for the reporting and communication of information about specified risks.

SECTION 14: *[Public Interest Disclosure Act, section 21]*

- provides for disclosure notifications to chief executives;
- clarifies the notification procedure in circumstances when a chief executive is not to be notified.

(b) by repealing subsection (2) and substituting the following:

- (2) Subject to subsection (3), an anonymous discloser need not be notified under the following sections:
- (a) section 19 *[investigations of disclosures within ministries, government bodies or offices]*;
 - (b) section 21 *[notifications]*;
 - (c) section 23 *[circumstances for postponing or suspending investigation]*;
 - (d) section 24 *[referral of matter]*. , **and**

(c) by adding the following subsection:

- (3) If an anonymous discloser provides contact information, notification may be sent to the discloser at the discretion of a designated officer or the Ombudsperson, as applicable.

13 Section 16 is amended by adding the following subsections:

- (5) If, as a result of receiving information under this Act, a designated officer or the Ombudsperson reasonably believes that a matter constitutes an imminent risk of a substantial and specific danger to the life, health or safety of persons, or to the environment, the designated officer or the Ombudsperson may report the information to a relevant protection official.
- (6) A protection official may communicate with another protection official about disclosures or information provided or any direction given under this section, in respect of an imminent risk, to ensure that the protection officials may exercise their lawful duties, powers and functions in respect of the risk.

14 Section 21 is amended

(a) in subsection (2) by striking out “a designated officer” and substituting “the chief executive”,

(b) in subsection (3) by striking out “the designated officer” and substituting “the chief executive”, and

(c) by adding the following subsection:

- (5) If the Ombudsperson is to notify a person under subsection (2) or (4) and, in respect of the matter being investigated, the chief executive is alleged to be responsible for wrongdoing, the Ombudsperson must not notify the chief executive and instead, subject to subsection (3), must notify the following person, as applicable:
- (a) in the case of a ministry, the minister responsible;

SECTION 14: *[Public Interest Disclosure Act, section 21 – continued]*

SECTION 15: *[Public Interest Disclosure Act, section 22]* clarifies circumstances for refusing or stopping investigations in respect of a decision by a court, tribunal or other statutory decision maker.

SECTION 16: *[Public Interest Disclosure Act, section 25]* is consequential to the amendment made by this Bill to references to provisions of the *Ombudsperson Act*.

SECTION 17: *[Public Interest Disclosure Act, section 27]*

- clarifies the reporting procedure in circumstances when a chief executive is not to receive a report;
- clarifies who are to be the recipients of the summary of a report.

SECTION 18: *[Public Interest Disclosure Act, section 30]* provides for special reports to chief executives.

SECTION 19: *[Public Interest Disclosure Act, section 31]*

- provides that making a complaint about a reprisal is an activity that is protected from reprisal;
- clarifies the authority to request and receive advice about complaints about reprisal in a manner that is consistent with requests for advice about disclosures.

- (b) in the case of a government body,
 - (i) the chair of the board of directors, or an executive officer or a person occupying a comparable position with respect to the government body, and
 - (ii) the minister responsible, if applicable;
- (c) in the case of an office, the Speaker of the Legislative Assembly.

15 *Section 22 (1) (d) is amended by adding “, including a decision, or the processes or deliberations that have led to or may lead to a decision, by the court, tribunal or other statutory decision maker” after “statutory decision maker”.*

16 *Section 25 is repealed.*

17 *Section 27 is amended*

(a) by adding the following subsection:

(3.1) Despite subsection (3), the Ombudsperson must not provide a copy of the report to the chief executive of the relevant ministry, government body or office if either of the following circumstances apply:

- (a) the Ombudsperson was prohibited from notifying the chief executive in accordance with section 21 (5) [notifications];
- (b) the report includes a finding that the chief executive was responsible for wrongdoing. ,

(b) in subsection (4) by striking out “When the matter being investigated involves the chief executive, the Ombudsperson must also provide” and substituting “If a circumstance described in subsection (3.1) applies, the Ombudsperson must provide”, and

(c) in subsection (5) (b) by adding “or found” after “alleged”.

18 *Section 30 (1) is amended*

(a) in paragraphs (a) and (b) by striking out “a designated officer” and substituting “the chief executive”, and

(b) in paragraph (c) by striking out “a designated officer and the relevant officer with respect to the office” and substituting “the chief executive”.

19 *Section 31 is amended*

(a) in subsection (1) by striking out “sought advice about making a disclosure, made a disclosure” and substituting “made a request for advice, a disclosure or a complaint about a reprisal”,

SECTION 19: *[Public Interest Disclosure Act, section 31 – continued]*

SECTION 20: *[Public Interest Disclosure Act, section 35]* clarifies a cross-reference to reporting provisions under which the Ombudsperson is authorized to make reports.

SECTION 21: *[Public Interest Disclosure Act, heading to Part 6]* amends the Part heading to better represent the scope of the Part.

SECTION 22: *[Public Interest Disclosure Act, section 40]* provides for limits in respect of public comments by the Ombudsperson.

(b) in subsection (2) (a) by striking out “a disclosure” and substituting “a request for advice, a disclosure or a complaint about a reprisal”,

(c) in subsection (3) (b) by striking out “sought advice about making a disclosure, made a disclosure” and substituting “made a request for advice, a disclosure or a complaint about a reprisal”, and

(d) by adding the following subsections:

(4) An employee who is considering making a complaint about a reprisal may request and receive advice from

(a) the employee’s union representative or employee association representative, as applicable,

(b) a lawyer,

(c) the employee’s supervisor,

(d) a designated officer of the relevant ministry, government body or office in respect of the employee, or

(e) the Ombudsperson.

(5) The supervisor, designated officer or Ombudsperson may require that the request for advice under subsection (4) (c), (d) or (e), as applicable, be in writing.

20 Section 35 (1) is amended by adding “and Part 6 [Reporting and Public Comments]” after “of Part 4 [Investigations]”.

21 The heading to Part 6 is repealed and the following substituted:

PART 6 – REPORTING AND PUBLIC COMMENTS .

22 Section 40 is amended

(a) in subsection (4) (b) by adding “subject to subsections (4.1) and (5),” before “comment publicly about”,

(b) in subsection (4) (b) (ii) by striking out “, subject to subsection (5),”, and

(c) by adding the following subsection:

(4.1) The Ombudsperson must not include the following in any public comments:

(a) information that is not authorized for release under this Act, in accordance with section 5 [unauthorized release of information];

(b) material that the Ombudsperson would be required to delete or exclude for the reasons set out in subsection (6) of this section.

SECTION 23: *[Public Interest Disclosure Act, section 41]* provides for a limitation period in respect of offences.

SECTION 24: *[Public Interest Disclosure Act, section 45]* extends protections relating to contracts, consequential to amendments made by this Bill to the Act.

SECTION 25: *[Public Interest Disclosure Act, section 48]*

- provides authority to make regulations in respect of reasons to not conduct, or to stop, investigations;
- authorizes circumstances for different regulations to be made.

23 Section 41 is amended by adding the following subsection:

- (5) The time limit for laying an information for an offence under this section is 2 years after the time when the subject matter of the proceeding arose.

24 Section 45 (1) is amended by striking out “a disclosure, a complaint about a reprisal” and substituting “a request for advice, a disclosure, a complaint about a reprisal”.

25 Section 48 is amended

- (a) in subsection (2) (g) by striking out “not investigating disclosures, or for stopping the investigation of disclosures” and substituting “not conducting an investigation, or for stopping an investigation”, and**

(b) by adding the following subsection:

- (3) In making a regulation under this Act, the Lieutenant Governor in Council may make different regulations for
- (a) requests for advice, disclosures or complaints about reprisals, and
 - (b) different government bodies, persons or classes of persons.

Commencement

- 26** This Act comes into force by regulation of the Lieutenant Governor in Council.