

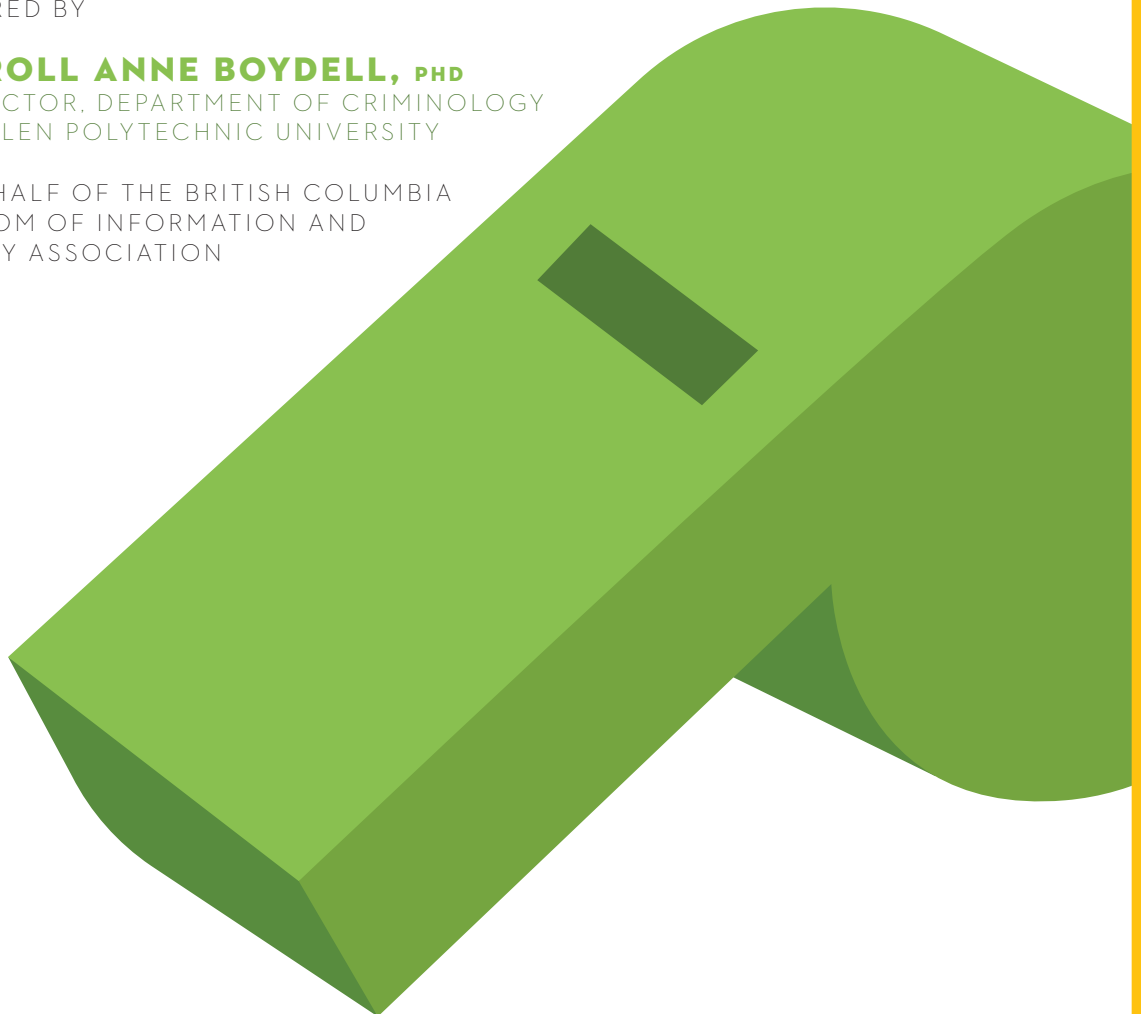
BEST PRACTICES IN WHISTLEBLOWER LEGISLATION

AN ANALYSIS OF FEDERAL AND PROVINCIAL
LEGISLATION RELEVANT TO DISCLOSURES OF
WRONGDOING IN BRITISH COLUMBIA

PREPARED BY

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ON BEHALF OF THE BRITISH COLUMBIA
FREEDOM OF INFORMATION AND
PRIVACY ASSOCIATION



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ABSTRACT

BEST PRACTICE PRINCIPLES exist for laws, regulations, and procedures aimed at the protection of those who report wrongdoing. The purpose of this paper is to examine selected legislation containing whistleblower protections that are relevant to those who disclose wrongdoing in British Columbia to determine how well they follow best practice principles. Several best practice principles were reflected in the legislation reviewed, and the introduction of the new Public Interest Disclosure Act (PIDA) in British Columbia is a positive development in the protection of whistleblowers who are employees of the provincial government. However, not all best practice principles are enshrined in the laws examined here. For example, there are still types of whistleblowers that do not have adequate protections, such as private sector

workers and those in the public sector who are not employed by a provincial ministry, government body, or office. In addition, though types of protected disclosures have been expanded under the PIDA, there are still some disclosures of wrongdoing that may remain unprotected, such as interference with freedom of information requests. Some issues were also found related to transparency of decisions made about investigations into disclosures of wrongdoing and complaints of reprisal against whistleblowers, as well as about the accountability of government agencies in protecting whistleblowers. Therefore, some refinements and amendments to whistleblower laws and disclosure management procedures are needed to ensure that adequate protections are afforded to those who disclose wrongdoing in British Columbia.

BEST PRACTICES IN WHISTLEBLOWER LEGISLATION

AN ANALYSIS OF FEDERAL AND PROVINCIAL LEGISLATION RELEVANT TO DISCLOSURES OF WRONGDOING IN BRITISH COLUMBIA

A COMMON PHRASE invoked when a noble act is met with negative consequences is that no good deed goes unpunished. There are few that appreciate this axiom more than a whistleblower, one who either discloses the wrongdoing of others or refuses to engage in wrongdoing. Whistleblowers have been identified as critical to the detection of corruption, disclosing wrongdoing committed in a variety of organizational settings. However, whistleblowers can face reprisals for their disclosures. In response, whistleblower protection laws have been increasingly adopted over the last few decades across the world. Alongside these developments, best practice principles have been established to guide the creation and revision of whistleblower laws and policies.

The purpose of this paper is to examine legislation relevant to whistleblowers in British Columbia (BC) and the extent to which

they conform to best practice principles. In this analysis, best practices in whistleblower legislation - informed by the work of advocacy groups, government organizations, analysis of law, and research - will be reviewed. Next, selected federal and provincial laws relevant to whistleblowers in BC will be reviewed and critically analyzed to determine how well they conform to best practice principles. Important goals in this paper are to highlight how features of whistleblower protections afforded to those in BC promote government accountability and transparency, as well as how this legislation affects freedom of information, access to information, and protection of privacy. This analysis will examine both stand-alone laws aimed at protecting whistleblowers and laws containing provisions for whistleblower protections, but which have a main purpose other than protection of whistleblowers.

Who are the Whistleblowers and How Do They Disclose Wrongdoing?

THOUGH DEFINITIONS VARY among researchers and legal scholars, the most widely used definition of an act of whistleblowing is “the disclosure by organization members (current or former) of illegal, immoral or illegitimate practices under the control of their employers, to persons or organizations that may be able to effect action” (Near & Miceli, 1985, p. 4). Others also consider the refusal to engage in wrongdoing directed by an employer to be an act of whistleblowing (e.g., Transparency International, 2013). Whistleblowers vary in their relationship to the organization to whom the disclosure of wrongdoing is relevant, as

well as the channel via which they report. First, whistleblowers may be *insiders* that are internal to an organization, such as an employee or volunteer, or *outsiders* that are external to the organization, such as a shareholder or journalist (Smaili & Arroyo, 2017). Second, where these mechanisms are available, whistleblowers may choose *internal* channels to report wrongdoing to designated persons or offices internal to their organization, or they may choose to report to an *external* channel outside their organization like an independent regulatory body or a media outlet.

Importance of Whistleblowers to Detection of Wrongdoing

WHISTLEBLOWER DISCLOSURES are critical to the detection of a variety of wrongdoings, including “exposing corruption, fraud, mismanagement and other wrongdoing that threatens public health and safety, financial integrity, human rights, the environment, and the rule of law” (Transparency International, 2018). Such disclosures allow for the early detection and internal management of wrongdoing, as well as to allow for corrective actions to be taken (Keith, Todd, & Oliver, 2016). This early detection may prevent more substantial harms or even health and safety disasters from occurring (Lewis, 2008). Timely detection of corruption is in the best interest of governments and organizations, and whistleblower disclosures are increasing being used to detect and combat corruption internationally (de

Maria, 2006). Kaplan et al. (2010) note that because acts of fraud often go undetected by an organization’s internal controls, whistleblowing is critical to its detection. Such disclosures are also arguably most critical where no physical record of wrongdoing exists, and only the whistleblower and the perpetrator could disclose the act.

Given the creation of substantial legislation in the US related to the reporting of financial misconduct and protections of disclosures about this misconduct (i.e., Dodd-Frank Act, 2010; Sarbanes-Oxley Act, 2002), laws and protections for those who disclose financial misconduct have received substantial attention in whistleblowing research. Less research attention has been paid to other types of whistleblower disclosures, such as exposing

interference with access to information. As per BC's Freedom of Information and Protection of Privacy Act (FIPPA, 1996), those who make freedom of information (FOI) requests have legal rights to certain public and personal information, with some exceptions, and to receive that information in a timely manner, barring necessary delays or appeals to the process. Applicants also have the right to be informed about progress in the FOI request, as well as to be provided with reasons for the disclosure or nondisclosure of their personal information to them. Examples of possible misconduct that can occur could include engagement in acts that are offences against the FIPPA, such as interference with investigations conducted by the Office of the Information and Privacy Commissioner (OIPC). Other examples of interference with FIPPA rights that are not offences but are still considered to be acts of wrongdoing include inappropriate redactions of information, delays in responding to requests past statutory deadlines, arbitrary fee assessments, and failing to provide prescribed information on FOI requests. Given that there will be no record of some of these actions to conceal or unduly delay information that is the subject of FOI requests, or directives to engage in these behaviours, whistleblowers can be critical to the uncovering of such wrongdoing.

One example in which a whistleblower exposed serious interference with access to information requests is what has been termed the triple-delete email scandal ("Email scandal uncovered", 2015). In May 2015, Tim Duncan, a former Executive Assistant to the Minister of Transportation and Infrastructure, submitted a

letter to the OIPC indicating that in November 2014, he was instructed by a fellow staffer, George Gretes, to delete multiple emails that were the subject of an FOI request made by NDP MLA Jennifer Rice. The request sought information about meetings held by officials discussing what has become known as the "Highway of Tears". The Highway of Tears refers to Highway 16, which runs through Northern BC, and along which multiple cases have been reported of women going missing and/or having been murdered. Many of these cases remain unsolved ("Email scandal uncovered", 2015). The phrase "triple-delete" refers to the deletion of original emails, copies of those emails in deleted item folders, and any back-ups of emails. In a report from the OIPC, this practice was found to have been part of a culture within the BC Liberal Government of destroying information to avoid legal mandates to release it to the public (*Access Denied*, 2015). Duncan indicated that upon refusing to delete the emails, Gretes took his computer keyboard and deleted the emails himself. In 2016, Gretes plead guilty to two charges under BC's FIPPA for willfully misleading the OIPC investigation into this case (Dickson, 2016). Duncan concluded his letter to OIPC stating that it is "[his] belief that the abuse of the Freedom of Information process is widespread and most likely systematic". Since this case, the practice of triple deletion of emails has been banned by the government. Without Duncan's disclosure of wrongdoing, this practice of interference with access to information requests by destroying email records may have been permitted to continue.

Harms Incurred by Whistleblowers

WHISTLEBLOWERS MAKE DISCLOSURES that can be used to stop current and prevent future harms to individuals, organizations, the environment, and other entities. However, though their disclosures could prevent harms to others, whistleblowers themselves can incur harm resulting from intended and actual disclosures. First, there are psychological costs to engaging in whistleblowing. For example, whistleblowers report anxiety, depression, panic attacks, and feelings of extreme guilt before, during, and after the disclosure of wrongdoing (Watts & Buckley, 2017). Some of these issues are the direct result of reprisals that whistleblowers can face for their disclosures, a reaction that is argued by some (e.g., Sinzdak, 2008) to stem from whistleblowers' role as a watchdog. Harms to whistleblowers include "career and health-shattering reprisals when they report wrongdoing" (de Maria, 2006, p. 644), endangering their jobs, lives, and relationships. In a study by Dussuyer and Smith (2018), whistleblowers and directors who managed whistleblower disclosures were interviewed. All participants indicated that there were a range of negative consequences faced by whistleblowers upon discovery that they had disclosed wrongdoing. Reprisals reported in this study included "criticism, denial, blaming and retaliation by management, feelings of fear, and actual bullying and harassment [and]...violent mistreatment or assault of the whistleblower" (Dussuyer & Smith, 2018, p. 6). In addition to psychological trauma, participants indicated that they experienced physical health issues,

exhaustion, and a profound sense of having been treated unjustly after providing a disclosure of wrongdoing. Bullying (e.g., Park, Bjørkelo, & Blenkinsopp, 2018) and harassment from colleagues (e.g., Bjørkelo, Einarsen, Nielsen, & Matthiesen, 2011), have been reported by whistleblowers in other studies as well. Others have found that whistleblowers may be portrayed as mentally unstable to undermine their claims of wrongdoing (Kenny, Fotaki, & Scriver, 2018) or even may face death threats because of their disclosures (Richardson & McGlynn, 2011). Thus, the personal costs to those who provide disclosures of wrongdoing can be substantial.

In some cases, harms faced by whistleblowers are numerous and protracted. For example, Sylvie Therrien, a fraud investigator with Service Canada in Vancouver, BC, was fired in 2013 after she reported to a Montreal newspaper that she and fellow employees were directed by their employer to meet quotas whereby they were to find ways to reduce recipients' EI payments to save \$485 000 annually (Johnson, 2018). She was fired from her position and though her claims were initially denied by the Conservative government, they later indicated that the dollar amounts for reductions in payments were targets and not in fact quotas (Vincent, 2016). After her employment was terminated, Therrien has seen her income reduced to less than half of what she made as a fraud investigator with Service Canada, forcing her to downsize her living arrangements, and recently to file

for personal bankruptcy (Johnson, 2018). In 2017, Therrien was given leave to appeal her termination as an EI investigator (*Therrien v. Canada*, 2017). Her dispute of her wrongful termination is still ongoing in 2018, five years after her initial disclosure.

Legal protections for whistleblowers are clearly needed to prevent what can be severe reprisals for disclosure of wrongdoing and, as a result, remove any fear that someone with knowledge of wrongdoing might have that prevents them from disclosing it. Such protections increase the likelihood of openness and accountability in both public and private sector workplaces and entrench the right of

citizens to disclose wrongdoing, which benefits society (Transparency International, 2018). These protections are especially important when considering that multiple whistleblowers interviewed in Dussuyer and Smith (2018) were insistent that they did not identify as victims, despite reporting that they had experienced harms once identified as having disclosed wrongdoing. Those who reject being labelled as a victim might be less likely to seek remedies for harms that they face. Therefore, in these cases, it is critical to develop laws that attempt to deter reprisals against whistleblowers who disclose wrongdoing.

What Compels Disclosure of Wrongdoing?

GIVEN THE HARMS that whistleblowers can face, it can be difficult to understand why anyone would want to disclose wrongdoing. A model called the whistleblower triangle has been developed recently to explain the conditions under which whistleblowers are more likely to disclose wrongdoing. In this model, three factors are considered in relation to making a disclosure. The first factor is pressures/incentives, or whistleblowers' motivations to report wrongdoing. Motivations to disclose may include psychological, social, and personal moral pressures, having an internal locus of control, pressures from media, a prescribed duty (i.e., a job requirement), financial pressures, concerns for one's reputation, or even a desire to seek revenge (Smaili & Arroyo, 2017). Though beyond the scope of this analysis, interested readers should consult Cho and Song

(2015) for a review of characteristics of the individual, disclosure context, and wrongdoing that motivate whistleblowing reports. The second factor is opportunity, which refers to the amount and quality of resources, both internal and external to the organization, that whistleblowers can access to assist them in reporting wrongdoing. Disclosures are more likely when employees perceive that there are internal channels in their organization via which they can report wrongdoing (Miceli & Near, 1992), when they perceive that they have the competence and resources to disclose wrongdoing, and when their organization has ethical codes or provisions that will protect them if they disclose wrongdoing (Cho & Song, 2015; Smaili & Arroyo, 2017). The third factor is rationalization, whereby a whistleblower must justify their decision to report in response

to the discomfort that results from cognitive dissonance (Festinger, 1957), which is when an unpleasant emotional reaction is experienced by a person when his or her actions and beliefs are in conflict. For a whistleblower, this is hypothesized by Smaili and Arroyo (2017) to result from the conflict between the need to disclose wrongdoing and the awareness that disclosure could result in serious and negative consequences for themselves or others (e.g., stakeholders in an organization or fellow employees). Rationalization can occur before or after disclosure of wrongdoing. As argued under this model, rationalizing disclosures as being positive actions should increase the likelihood of disclosures being made.

When considered alongside all three factors of the model, it is clear that laws, procedures, and regulations that protect whistleblowers could increase the likelihood that disclosures of wrongdoing are made. That is, having laws that protect whistleblowers sends a message that society values the disclosure of wrongdoing and that those actions should be protected.

Best Practices in Whistleblower Protection Laws

THERE ARE VARIOUS FORMAL PROTECTIONS for whistleblowers from harms that could result from disclosures that they provide. One approach is the creation of stand-alone legislation that is created specifically to protect whistleblowers. Critics of such legislation argue that some laws are like cardboard shields (e.g., Devine, 2016; Vandekerckhove & Lewis, 2012), appearing but failing to offer adequate protections for whistleblowers. Thus, efforts have been made by to identify the features that

Therefore, this could motivate disclosures from those who believe it is their civic duty to report wrongdoing. Further, whistleblowers should be more likely to report if they can see that, under the law, there are resources and protections that exist for them that are internal and external to their organizations that can help them to navigate the disclosure process. Finally, laws could assist in rationalizing the act of disclosing wrongdoing and help to reduce cognitive dissonance that results from disclosure. If cognitive dissonance results from the conflict between reporting of wrongdoing and the fact that this could result in personal harm, and laws prohibit harms perpetrated as a result of disclosing, potential reprisals would be less likely to occur. As a result, potential whistleblowers could feel less conflicted over whether they should report wrongdoing or protect themselves from harm. Therefore, having proper legal protections for whistleblowers may increase the likelihood that disclosures of wrongdoing will be made.

whistleblower laws should have to ensure that they are not cardboard shields, but rather that they act as metal shields for whistleblowers (Devine, 2016).

Several groups have made efforts to develop best practice principles for whistleblower protection legislation. For example, the G20 Anticorruption Action Plan for the Protection of Whistleblowers outlines best practices and guidelines for the creation of whistleblower protection laws (see <https://www.oecd.org/>

g20/topics/anti-corruption/48972967.pdf).

However, given the provision in the Plan which indicates that its intended purpose is not to analyze existing legislation, which will be done here, it will be not be discussed further.

Another group that has developed best practice principles for laws that protect whistleblowers is Transparency International, a group comprised of over 100 chapters worldwide that is dedicated to combatting acts of corruption. These guidelines are aimed at assisting countries in the development of new and existing legislation that protects whistleblowers who make disclosures in the public interest (Transparency International, 2018). These best practice features of whistleblower protection legislation are based on “input from whistleblower experts, government officials, academia, research institutes and NGOs from all regions” (Transparency International, 2013, pg. 3). They argue that the guiding principles for whistleblower protection legislation should be the protection of individuals and disclosures of wrongdoing in both the public and private sector via “accessible and reliable channels to report wrongdoing, robust protection from all forms of retaliation, and mechanisms for disclosures that promote reform...and prevent future wrongdoing” (Transparency International, 2013, pg. 4). Their recommendations will be discussed throughout this paper and are grouped into multiple categories. Some refer to the *scope of application* of the law, such as who and what types of disclosures should be protected, and the standard for determining if a person or disclosure is protected. Principles

surrounding *protection* of whistleblowers are also provided, such as protection from retaliation, protection of identity via confidential or anonymous reporting channels, requiring the employer to prove reprisals and disclosures were unrelated, protection of whistleblowers from civil or criminal liability, personal protection for threats to disclosers’ or their families’ safety, protection of wrongfully accused from false disclosures, and preservation of rights to disclose. Other recommendations pertain to *disclosure procedures*. These principles include guidelines surrounding the need for visible, transparent, thorough, and timely procedures to investigate and manage disclosures and complaints of reprisal; for disclosing to external organizations or to the public; for resources for whistleblowers; and for disclosing national security issues or matters of secrecy. *Relief and participation* principles also are included in their recommendations, including remedies for reprisals, the right to fair hearings, rights of whistleblowers to participate in investigations, and rewards or recognition for disclosing wrongdoing. *Legislative structure, operation, and review* principles include the creation of stand-alone whistleblower legislation; publication of data about whistleblower complaints and investigations; guidelines for review and consultation with key stakeholders; and the need for comprehensive training of organizations and their management and staff in policies in whistleblower laws and procedures. Finally, *enforcement* principles are articulated for whistleblower protection laws, including having an independent agency that vets complaints about reprisals, punishments

for reprisal, and follow-up on whistleblower investigations. These principles are described in more detail in subsequent sections of this paper. Interested readers can refer to the full list of principles in Transparency International (2013) or to an abridged list of “Dos” and Don’ts” for those creating or revising existing whistleblower policies and laws in Transparency International (2018).

Finally, the Global Accountability Project (GAP), a not-for-profit public interest law firm specialising in the protection of

whistleblowers, has also developed best practice guidelines for legislation and policy. These 20 recommendations were developed based on the GAP’s 35 years of operational experience and the analysis of whistleblower protections in 31 nations that have “minimally credible dedicated whistleblower laws” (see Devine, 2016 for these guidelines). There is substantial overlap between the GAP guidelines and the Transparency International (2013), so for the sake of simplicity, the latter will be discussed here primarily.

Laws that Protect Whistleblowers in British Columbia

THE FOLLOWING SECTION contains brief descriptions of laws which protect whistleblowers in BC that will be reviewed here against best practice principles. Each law selected for analysis in this paper will be described in more detail in subsequent sections. It is important to note that there are other laws and policies that exist that apply to whistleblowers in BC (such as municipal government whistleblower policies). However, while worthy of study, their analysis is beyond the scope of this paper. The laws reviewed here were selected because they apply to a substantial number of potential whistleblowers in BC. Different municipal laws, for example, will only apply to certain individuals, and inclusion of too many laws in this analysis would serve to confuse the reader. However, a separate review of whistleblower laws in various municipalities in BC would be a worthwhile research endeavour.

CRIMINAL CODE OF CANADA

The Criminal Code of Canada (CCC, 1985), which codifies most criminal offences and procedures in Canada, affords some protections for both whistleblowers in public and private sectors. Specifically, section 425.1 of the Canadian Criminal Code describes offences related to reprisals against whistleblowers and the punishments associated with those offences. Subsection 1 indicates that anyone in authority over an employee may not engage in or threaten to demote, terminate, or adversely affect the employment of an employee to prevent them from or punish them for disclosing information to law enforcement that their employer, fellow employees, or directors of a corporation are or have committed criminal acts.

PUBLIC SERVANTS DISCLOSURE PROTECTION ACT

The Public Servants Disclosure Protection Act (PSDPA, 2005) was enacted to encourage

federal government employees to report wrongdoing in their workplace and to protect them from fear of reprisal for such disclosures (Keith, Todd, & Oliver, 2016). Those protected under this Act includes most federal government employees, as well as contractors external to the federal public service that have information about wrongdoing within the government. The Act outlines multiple types of disclosures of wrongdoing that are protected. It also requires that procedures be set up to manage disclosures from whistleblowers by a chief executive in each sector. The PSDPA indicates to whom and when that protected disclosures may be made, prohibits reprisals against those who provide protected disclosures, and identifies specific acts that constitute reprisal. The PSDPA indicates the duties, powers, and requirements of the Office of the Public Sector Integrity Commissioner in conducting investigations of complaints of reprisal against whistleblowers. It also describes the duties and powers of the Public Sector Disclosure Protection Tribunal, to which the Public Sector Integrity Commissioner may refer reprisal complaints after an investigation is completed. The Tribunal has the power to order remedies for victims of reprisal and to punish those who in engage in reprisals. It also indicates to whom notifications must be made about the progress and outcome of investigations and decisions made about complaints of reprisals. Finally, the PSDPA outlines offences against the act, including making false disclosures, interfering with investigations related to the administration of the act, and engaging in reprisals against whistleblowers.

PUBLIC INTEREST DISCLOSURE ACT OF BC

BC is one of the last provinces and territories in Canada to have adopted stand-alone legislation to protect whistleblowers (the Northwest Territories have yet to adopt such legislation at the date of writing of this report). In May 2018, the Public Interest Disclosure Act (PIDA, 2018) was passed in the BC Legislative Assembly. Like the PSDPA, the PIDA is aimed at the protection of public sector workers, in this case at provincial government employees who report serious wrongdoing. Modelled after similar legislation in other Canadian provinces and some Commonwealth countries, BC's PIDA was proposed after an inquiry into the firings of provincial employees in the Ministry of Health in 2012 (Ministry of the Attorney General, 2018). Like the PSDPA, the PIDA (2018) includes the requirement to have procedures to manage whistleblower disclosures in each ministry, government body, and office. It also indicates what can and cannot be included in disclosures, and what types of disclosures are protected. The PIDA allows for those who intend to make a disclosure of wrongdoing to seek advice and indicates to whom that disclosures can be made and when. The PIDA also outlines who may conduct investigations of disclosures and complaints of reprisal and when those investigations may be paused or halted. The PIDA describes to whom and what must be contained in summaries, notifications, and reports of the progress and outcomes of those investigations. Under this act, the Ombudsperson is permitted to make recommendations that result from

these investigations and to report which recommendations are implemented. Numerous statutory offences, including making false disclosures, reprisals against whistleblowers, and interference with investigations related to the act, are also outlined.

FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT

The Freedom of Information and Protection of Privacy Act (FIPPA, 1996) was created in BC to hold public bodies accountable for their actions, to protect the privacy of personal information by permitting individuals the rights to access public and personal records and to have records of personal information corrected, and to place limits on access to information and the ability of public bodies to use personal information. The FIPPA sets out a duty of public bodies to assist in accessing and correcting personal information and indicates what information may not be disclosed. Provisions are also included for how information must be securely stored and accessed. There are a number of possible offences against the FIPPA, including actions intended to mislead or obstruct those carrying out investigations prescribed by this act, unauthorized disclosure of personal information or failing to inform that this occurred, engaging in any acts prohibited by the Act (e.g., unlawful storage of personal information), or failure of a service provider or their employees or associates to engage in behaviours compelled by the act (e.g., reporting foreign demand for disclosure of personal information).

Though the FIPPA is not a whistleblowing

statute, it includes some whistleblower protections. Under section 30.3, it is prohibited for any employer to engage in reprisals against an employee who, acting in good faith and on reasonable belief, discloses offences related to this Act or who refuses to engage in actions in contravention of the FIPPA. Reprisals are also prohibited when the employer believes that the employee will or has engaged in any of these acts. Reprisals against whistleblowers are offences under this Act as well.

PERSONAL INFORMATION PROTECTION ACT

The Personal Information Protection Act (PIPA, 2003) is a statute that controls “the collection, use and disclosure of personal information by organizations in a manner that recognizes both the right of individuals to protect their personal information and the need of organizations to collect, use or disclose personal information for purposes that a reasonable person would consider appropriate in the circumstances” (s. 2). Unlike most of the laws reviewed here, this act mostly applies to activities in the private sector. Provisions in the PIPA include guidelines for compliance with the act by organizations. The act prohibits the collection, use, and disclosure of personal information unless informed consent is given by individuals or there are prescribed circumstances that permit it. This act applies to the collection, use, and disclosure of employee information as well. Like the FIPPA, the PIPA allows individuals the right to access and correct personal information. Outlined in the law are processes for requesting reviews of

decisions made about access to and correction of personal information, or to make complaints. Organizations must comply with any orders made by the Information and Privacy Commissioner that result from an investigation into a review or complaint.

Like the FIPPA, the PIPA also includes protections for those who, in good faith and based on reasonable belief, report or intend to report that an organization or an employee of an organization has contravened the

act. Offences under the PIPA include using deception to collect personal information, destruction of information to circumvent a request for access to information, obstruction of anyone authorized to carry out their duties under this Act, making false statements with intent to mislead the Information and Privacy Commissioner, failing to comply with orders from the Commissioner, or engagement in reprisal against those who report or fail to engage in behaviours that contravene the Act.

Best Practice Principles and Whistleblowers Protections in Federal and BC Laws

HERE, THE SELECTED LAWS will be examined for the extent to which they conform to best practice principles for whistleblower legislation. The analysis is divided into the categories of best practice principles used by Transparency International (2013). Table 1 provides an overview of the best practice principles in each piece of legislation reviewed here.

SCOPE OF APPLICATION PRINCIPLES

Transparency International (2013) argues that legislation should have a broad definition of wrongdoing, “including but not limited to corruption; criminal offences; breaches of legal obligation; miscarriages of justice; specific dangers to public health, safety or the environment; abuse of authority; unauthorised use of public funds or property; gross waste or mismanagement; conflict of interest; and acts to cover up any of these” (pg. 4). It also argues that the definition of a protected whistleblower should extend beyond current employees to

people like “consultants, contractors, trainees/ interns, volunteers, student workers, temporary workers, and former employees” (pg. 5), and it should include those in both the public and private sectors. Finally, protections should be granted to whistleblowers who have a “reasonable belief of wrongdoing” (pg. 5) at the time that they make their disclosures, to protect those who “make inaccurate disclosures made in honest error” (pg. 5).

Section 425.1 of the CCC contains narrow provisions for the protection of disclosures, as it only pertains to disclosures of crime or quasi-crimes (Keith et al., 2017). Broader definitions of wrongdoing are included in the PSDPA and the PIDA, whereby both offer protections for disclosures of wrongdoing related to contraventions of federal and provincial acts and regulations, gross mismanagement in the public sector, substantial and specific dangers to life, health, or safety of persons, or to the environment, or directing another person to

carry out these acts (PSDPA, s. 8; PIDA, s. 7). The PSDPA also includes a serious breach in codes of conduct as a protected disclosure (s. 8). Types of wrongdoing under the FIPPA and the PIPA for which disclosures are protected are offences against their respective acts (FIPPA, s. 30.3; PIPA, s. 54); in addition, protections against reprisal are afforded to those who refuse to engage in behaviours that contravene their respective acts.

Types of defined whistleblowers under the CCC are employees, which could be from both public and private organizations. The PSDPA applies to former and current public servants, defined as anyone “employed in the public sector” [s. 2(1)]. Public sector, in turn, is defined in this act as “the departments named in Schedule I to the Financial Administration Act and the other portions of the federal public administration named in Schedules I.1 to V to that Act and the Crown corporations and the other public bodies set out in Schedule 1 [s.2(1)]”. The PIDA applies to public sector government employees. Under s.2(a) (i-ii), the definition of “employee” includes employees of ministries, government bodies, and offices, as well as directors or officers, and former employees if the wrongdoing they disclose occurred while they were employed by the government. Those appointed by the Lieutenant Governor in Council under section 15 of the Public Service Act are also protected. For both the PSDPA and the PIDA, engaging in reprisals against external contractors who have disclosed wrongdoing is also prohibited; reprisals that are prohibited include termination or failing to initiate a contract with a good

faith discloser or withholding payment from a good faith discloser [42.2(2); s. 32]. Due to the types of offences that could be reported by whistleblowers under the FIPPA, this act is most likely going to apply to public sector workers as well, whereas the PIPA could apply to both public and private sector workers. Finally, the PSDPA [s. 42.2(1)], PIDA (s.12.1), FIPPA (s. 30.3), and PIPA (s. 54) all incorporate the “reasonable belief of wrongdoing” standard in determining if protections for disclosure of wrongdoing are afforded to whistleblowers.

PROTECTION PRINCIPLES

An important best practice principle is that whistleblower laws should offer protection from a variety of reprisals. Examples of harm are “dismissal, probation and other job sanctions; punitive transfers; harassment; reduced duties or hours; withholding of promotions or training; loss of status and benefits; and threats of such actions” (Transparency International, 2013, pg. 5). Laws should protect against both overt forms of reprisal like job termination, and more discrete forms like being ostracized (Transparency International, 2018). They also recommend that those who refuse to engage in wrongdoing should be extended the same protections as those who disclose wrongdoing. Transparency International (2013) also recommends that whistleblowers should have the option to make disclosures that are confidential or anonymous. When bona fide complaints are made that reprisals were taken against those who disclose wrongdoing, it is suggested that the burden of proof should shift to the employer to establish that the sanction

against the worker and the disclosure are not related. Protections are also recommended against false accusations by prohibiting legal protections for disclosures made that are knowingly false. Finally, whistleblowers who provide good faith disclosures should be immune from civil and criminal responsibility for the information that they reveal in disclosures, complaints of reprisal, and investigations of both.

Section 425.1 of the CCC prohibits reprisals of disciplinary action, demotion, and termination, or threats to do any of the previous actions, to prevent or retaliate against disclosures by employees. The PSDPA and the PIDA prohibit disciplining, demoting, and terminating whistleblowers, as well as adversely affecting their working conditions or threatening to engage in any of those actions (PSDPA, s. 19; PIDA, s. 31). Further, in the PIDA, these actions cannot be taken against those who have sought advice on making a disclosure, those who have made a disclosure, or those who have participated in a disclosure [s. 31(1)], and it does not have to be proven that the whistleblower did make a disclosure or cooperated with an investigation [s. 31(2)]. The FIPPA states that employers “must not dismiss, suspend, demote, discipline, harass or otherwise disadvantage an employee of the employer, or deny that employee a benefit” (s. 30.3) if employees make or the employer believes that the employee has or will make a protected disclosure. Similar wording is used in section 54 of the PIPA.

The PSDPA (s. 44) and PIDA (s. 9) allow for confidential disclosures to be made, while

under PIPA, whistleblowers can request confidentiality of their disclosures (s. 55).

Confidentiality of whistleblower disclosures is not addressed directly in the FIPPA or section 425.1 of the CCC. However, disclosures under CCC s. 425.1 likely have confidentiality protections that other disclosures of crime to police do. As for the burden of proof being on the employer to prove that the reprisal and disclosure were not directly related, s. 35(2) of the PIDA indicates that “the description of the facts necessary to establish that a reprisal has been taken or directed against the employee are prima facie proof, in the absence of evidence to the contrary, of the facts stated”. This section seems to indicate that the burden of proof is not on the discloser to show that the reprisal and disclosure are directly related to one another. None of the other laws reviewed included specific provisions about the burden of proof being on the employer that the reprisal and disclosure were not connected. However, multiple laws examined here address false disclosures of wrongdoing. Those who provide false disclosures of wrongdoing could be charged with public mischief under section 140.1 of the CCC. Section 40 of the PSDPA prohibits false disclosures to the Public Sector Integrity Commissioner, while the PIDA [s. 41(1)], the FIPPA [74(1)(a)], and the PIPA [56(1)(d)] indicate that it is an offence to make false statements that mislead or intend to mislead anyone tasked with carrying out duties in their respective acts. In most cases, it was mentioned that the disclosures must be made in good faith to be protected [PSDPA, s. 2(1); PIDA, s. 12; FIPPA, s. 30.3; PIPA, s. 52].

Another legal protection, waiver of legal liability for making disclosures or participating in investigations, was contained in some of the legislation reviewed here. For instance, section 45 of the PSDPA protects the Public Service Integrity Commissioner, as well as anyone working on his or her behalf, from civil and criminal liability for actions taken related to the administration of the act. Similarly, section 32 can protect public servants who provide information or evidence during an investigation by the Commissioner from self incrimination. Sections 42 and 44 of the PIDA indicate that no criminal or civil actions will be brought against those who, in good faith, assist in investigations related to the Act. Protections against libel and slander for information that is provided during an investigation are provided under section 46 of the FIPPA and section 40 of the PIPA, which could include investigations resulting from whistleblower disclosures.

Fewer protections were found for those who refuse to participate in wrongdoing and against obstruction of whistleblower rights. Legal protections for those who simply refuse to engage in wrongdoing (as opposed to disclosing wrongdoing) were only explicitly mentioned in the FIPPA and the PIPA [s. 30.3; s. 52]. Only in the PIDA (s. 45) were there specific prohibitions against provisions in contracts or agreements that prevent disclosures of wrongdoing (i.e., “gag orders”).

Consistent with best practice principles, anonymous disclosures are permitted under the PIDA (s. 14); however, though Transparency International (2013) recommends that anonymous disclosers be afforded the same

rights as other disclosers, the PIDA does not guarantee the same right of notification of the outcome of investigations to anonymous disclosers as to non-anonymous disclosers. Anonymous disclosures were not explicitly stated in the other legislation reviewed, though anonymous reporting of all criminal offences is permitted via tip lines like Crime Stoppers. Finally, none of the legislation reviewed included specific reference to legal entitlements to protection for whistleblowers or their families whose safety is threatened because of disclosures of wrongdoing. Though the police can provide peace bonds for those who pose a threat to whistleblowers or their families, no specific protections for whistleblowers are contained in s. 425.1 of the CCC.

DISCLOSURE PROCEDURE PRINCIPLES

Transparency International (2013) recommends that procedures for reporting disclosures in the workplace be visible and understandable; protect identities of disclosers unless they waive that protection; allow for complete, timely, and independent investigations of disclosures of wrongdoing; and ensure “transparent, enforceable, and timely” (pg. 7) responses to complaints about and engagement in discipline of those who retaliate against whistleblowers.

Both the PSDPA [s. 10(1)] and PIDA [s. 9(1)] require that chief executives establish internal procedures to manage whistleblower disclosures. Section 9(2) of the PIDA outlines features that must be included in those internal procedures, including: conducting a risk assessment of whistleblower reprisals; outlining

how disclosures will be received and reviewed and how quickly actions must be taken; protecting the confidentiality of information and identities of disclosers and others involved in disclosure investigations; limiting the personal information that is collected during disclosures and investigations to only what is necessary, and protecting that information; referring disclosures to other authorities if they have jurisdiction over the information disclosed; abiding by the sections of the Act related to notifications of decisions about disclosures and investigations and prescribed reasons for refusing, stopping, postponing, or suspending an investigation; investigating other wrongdoings revealed during investigations; providing any findings of wrongdoing, reasons for findings, and recommendations to address the wrongdoing in a report; and making a summary of the report available to disclosers and other individuals that require this information.

Dissemination of information about the PSDPA is the responsibility of the President of the Treasury Board (s. 4). Section 4 of the PIDA indicates that information about how to make a disclosure must be made available to employees by the chief executive of their ministry, government body, or office. However, neither law includes explicit direction on how this information should be made highly visible or understandable to those who could make protected disclosures. Both acts require confidential protections of identities of those involved in investigations of disclosures of wrongdoing [PSDPA, s. 11(1)(b); PIDA, s. 9(2)(c)]. The PSDPA's section 15.1(a) also

requires that no more information may be collected than is necessary for investigations. As mentioned above, section 6(b) of the PIDA also indicates that precautions should be taken to ensure only reasonable and necessary personal information is collected, used, or disclosed while investigating disclosures or complaints of reprisal.

Some time limits for investigations into whistleblower disclosures and complaints of reprisal are included in the laws reviewed here. For instance, under the PSDPA, the Commissioner must respond to complaints about reprisals for disclosures of wrongdoing with 15 days of receiving them [s. 19.4(1)]. Any complaints made about reprisals must be made within 60 days of discovery of reprisal by the complainant [s. 19.1(2)]. The PIDA requires that when the Ombudsperson makes recommendations following an investigation of wrongdoing to a ministry, government body, or office, it must respond within 30 days by indicating if and how those recommendations have been implemented [s. 28(1)]. Further, though the PIDA does not specify time limits for responses to disclosures of wrongdoing, it does indicate that these must be set by chief executives in their procedures for managing disclosures [s. 9(2)(b)].

As for features of the laws that are related to transparency, both the PSDPA and the PIDA legally require notifications be sent to the discloser/complainant and relevant parties about whether an investigation will be conducted and reasons why actions have or have not been taken in response to the disclosure or complaint. Under the PSDPA,

if the Commissioner decides to deal with a complaint, a written notice must be sent to the complainant and the person or entity who may take disciplinary action against those who commit reprisals. If the complaint will not be dealt with, written notification must be sent to the complainant with reasons why [ss. 19.4(2-3)]. Upon receiving a report about the investigation, the Commissioner must decide whether to dismiss the complaint or forward it to the Public Service Disclosure Protection Tribunal, and must send notifications of decisions to the complainant, their employer, those accused of reprisal, anyone with authority to discipline those guilty of reprisal, and designated parties involved in the investigation of the complaint (s. 20.6). Section 21(2) requires the Tribunal to create policies regarding submission of notifications of decisions they render to those who should be notified.

As for the PIDA, the Ombudsperson must notify whistleblowers and designated officers in the relevant ministries, government bodies, and offices about whether an investigation will or will not occur and why (s. 21) and must notify these individuals of any postponement or suspension of investigation (s. 23) or referral of matters to another designated officer or the Auditor General (s. 24). Upon conclusion of the investigation, a report must be made by the Ombudsperson to the chief executive of the ministry, government body, or office to which the investigation pertains. This report must include any findings of wrongdoing, reasons to support any findings, and any recommendations deemed appropriate by the Ombudsperson. However, only a summary of this report must

be provided to the discloser and any alleged perpetrator of the wrongdoing (s. 27).

Transparency International (2013) counsels that when it is not feasible for disclosures to be reported in the workplace, such reports should be made to external regulators and authorities. Under the PSDPA and the PIDA, there are multiple people to whom a disclosure of wrongdoing can be made to ensure that they are not made to those implicated in the disclosure. For instance, federal public sector employees may make disclosures of wrongdoing to either a chief executive or designate, a supervisor, or the Public Integrity Service Commissioner (ss. 12-14), whereas provincial public sector workers may disclose to a chief executive or designate, the Ombudsperson, or the Auditor General (ss. 12-13). Complaints of reprisals under the PSDPA are made to the Public Sector Integrity Commissioner [s. 19.1(1)], while under PIDA they are typically made to the Ombudsperson but can also be made to the Auditor General [ss. 33(1-2)]. Disclosures of wrongdoing under the FIPPA (s. 30.3) and the PIPA (s. 54) can be made to the Information and Privacy Commissioner, and additionally under the FIPPA, disclosures can be made to the minister in charge of the Act. These individuals and offices are typically considered at arm's length from disclosers and accused wrongdoers and having multiple individuals to whom disclosures can be made prevents whistleblowers from being forced to disclose to those who they are accusing of wrongdoing. However, external regulators or authorities are not included in any of the legislation reviewed as possible recipients of

disclosures.

Transparency International (2013) also recommends that laws allow for protected disclosures to be made to external parties like the media in cases where the wrongdoing is a case “of urgent or grave public or personal danger, or of persistently unaddressed wrongdoing that could affect the public interest” (pg. 7). Disclosures to external parties are indeed permitted under federal and provincial law, but under limited circumstances. The PSDPA protects disclosures to the public if it is necessary to reveal the wrongdoing after being considered via internal disclosure processes, and if the wrongdoing disclosed is a serious violation of federal or provincial law or it poses an imminent risk to the public or environment (s. 16). The PIDA similarly permits public disclosures for serious and imminent risks to individuals and the environment. However, public disclosures are only protected if approval to disclose publicly is granted by a designated protection official after he or she has been consulted on the matter [ss. 16(1)(a-b)]. However, it is possible for some disclosures to the public to be made by the Office of the Ombudsperson [s. 5(3)]. The CCC does not protect external disclosures of wrongdoing, such as to the media, and no explicit provisions allowing for reporting to external parties are covered under either the FIPPA or the PIPA.

Next, it is recommended that “a wide range of accessible disclosure channels and tools be made available to employers and workers” (Transparency International, 2013, pg. 7) who have disclosed or intend to disclose wrongdoing, such as access to advice lines,

hotlines, and compliance and Ombudsperson offices. BC’s PIDA affords permissions for intended whistleblowers to seek advice from the employee’s union or professional association, a lawyer, a supervisor, a designated officer in their employment sector, or the Ombudsperson [ss. 11(1)(a-e)]. The PSDPA permits the Commissioner to afford access to legal advice to any public servant who is considering making a disclosure of wrongdoing related to the act, has already made a disclosure, or who is considering making a complaint of reprisals made against them. Legal advice is also available to any person who may provide information to the Commissioner about wrongdoing related to the act, who is involved in an investigation related to the act by the Commissioner, or anyone accused of making reprisals related to disclosures and investigations related to this act [s. 25.1(1)]. In sum, access to legal and professional advice related to disclosures is permitted under these acts. However, other resources such as access to advice lines, hotlines or online portals are not explicitly mentioned as possible resources for whistleblowers in the legislation reviewed here.

Finally, special procedures and safeguards are recommended for laws that pertain to disclosures containing information related to national security or official secrets (Transparency International, 2013). Certain groups are excluded from the definition of “public servant” in the PSDPA, such as members of the Canadian Forces and the Canadian Security Intelligence Service (s. 2). A likely reason for their exclusion under section 2 is that these individuals are more likely to

make disclosures that contain information about sensitive governmental issues. However, these groups are mandated to have their own disclosure procedures like those in the PSDPA (s. 52). Similarly, under section 5 of the PIDA, certain privileged information (such as anything restricted under BC or federal law) is not authorized to be released from disclosures to or in a report by the Ombudsperson, or in a disclosure that is made to the public.

RELIEF & PARTICIPATION PRINCIPLES

Recommendations in this category include affording whistleblowers “a full range of remedies [that] must cover all direct, indirect, and future consequences of any reprisals” (Transparency International, 2013, pg. 8), such as reimbursement of attorney fees or lost wages, compensation for pain and suffering, and interim financial relief to offset the costs of lengthy delays in investigations of reprisal. They also include entrenching the right to a fair and participatory hearing of the violation of whistleblowers’ rights, participation of whistleblowers in subsequent investigations or inquiries, and also offering rewards for making disclosures, such as monetary rewards or public recognition for disclosures (Transparency International, 2013).

Under the PSDPA, the Public Sector Disclosure Protection Tribunal is permitted to order remedies in favour of complainants if it is determined that they suffered reprisals for disclosing wrongdoing [s. 20.4(1)]. These remedies include permission to return to duties or employment, lifting of disciplinary actions, and compensation for lost wages or

financial losses directly occurring from reprisals. Complainants can receive up to \$10 000 for pain and suffering resulting from reprisals [s. 21.7(1)]. Though the PIDA is not explicit in the remedies for those victimized by reprisals, several sections of the act indicate that remedies from other sources are not limited by it. The FIPPA and the PIPA also do not identify specific remedies for whistleblowers who disclose wrongdoing related to their respective acts. None of the laws examined here articulated specific rights to interim relief for whistleblowers.

As to being entitled to a fair hearing before an impartial forum, multiple features of fair and transparent investigations have already been described, such as having specific procedures to disclose wrongdoing and rights to be notified about the outcomes of investigations of disclosures and complaints of reprisals. Section 46 of the PIDA indicates that “nothing in [the] Act limits or affects that remedy, right of appeal, objection or procedure” in other enactments or rules of law. However, the right to a “genuine day in court” (Transparency International, 2013, pg. 9) was not addressed specifically in the legislation reviewed, as direct references to physical participation in a hearing before an impartial forum or rights of a whistleblower to call and cross-examine witnesses were not obvious here. Similarly, entrenched rights to participate in subsequent investigations or inquiries were not explicitly mentioned in the legislation reviewed. Finally, no legal rights or entitlements to rewards for disclosing wrongdoing were directly mentioned in any of the laws examined here.

LEGISLATIVE STRUCTURE, OPERATION, AND REVIEW PRINCIPLES

It is recommended that countries adopt dedicated, stand-alone legislation to promote whistleblower disclosures and provide whistleblower protections. Statistics should also be published and made publicly available about disclosures and investigations into whistleblower complaints of reprisal by those who field and investigate disclosures and complaints of reprisal. In addition, the development and review of laws should involve consultation with multiple stakeholders, and training should be provided to agencies, corporations, management, and staff in whistleblower disclosure procedures. The final recommendation in this category is that whistleblower laws and policies should be clearly posted in the workplace (Transparency International, 2013).

Both the PSDPA and the PIDA are stand-alone legislation intended to encourage and protect disclosures of wrongdoing. In addition, though the primary purpose of the CCC, the FIPPA, and the PIPA is not to protect whistleblowers, all contain sections pertaining to whistleblower disclosures and protections. As for public data, though the RCMP reports data to the public about criminal offences, detailed information about offences of reprisal against whistleblowers is not typically reported in official statistics available to the public. For the other legislation, annual reports must be compiled and submitted about activities of government offices related to their duties under their respective acts. Under sections 38(1-2) of the PSDPA, the Commissioner

must prepare an annual report about his or her work related to this act, including the number of general inquiries about the act, disclosures received, complaints of reprisals received, investigations, disclosures and complaints that were acted upon, recommendations made, applications to the Tribunal, settlements reached, and applications to the Tribunal. The Commissioner must also identify any systemic problems that lead to wrongdoing and make recommendations to remedy these issues.

Sections 38(1-2) of the PIDA indicate that the chief executive of a ministry, government body, or office (or their delegate) must prepare an annual report about all disclosures of wrongdoing during the last year. These reports must include how many disclosures were received, referred, and acted or not acted upon. They also must indicate how many investigations into disclosures of wrongdoing were made, and in cases where wrongdoing was found to have occurred, a description of the wrongdoing, recommendations related to the wrongdoing, and any corrective actions taken. This report must be made publicly available on a government website (s. 39). Similar information about investigations conducted by the Ombudsperson must be contained in an annual report to the BC Legislative Assembly, as well as information about any recommendations made by the Ombudsperson to correct issues identified during investigations, if those recommendations have been implemented, and about any systemic problems that may facilitate wrongdoing that should be remedied (s. 40). For the Information and Privacy Commissioner, such reports contain

information about his or her work related to FIPPA and PIPA, which may include information about whistleblower disclosures or reprisals. Annual reports must be made to the Speaker of the BC Legislative Assembly by the Information and Privacy Commissioner about the work of their office under the FIPPA (s. 51(1)(a-b) and PIPA [s.44(1)].

As for the involvement of multiple actors in the design and review of whistleblower laws, regulations, and procedures, the PSDPA, the PIDA, the FIPPA, and the PIPA all include sections requiring review of their legislation within 5-6 years. The PSDPA requires that the President of the Treasury Board conduct an independent review of the Act (s. 54). The PIDA requires review by special committee of the BC Legislative Assembly to be conducted within 1 year of the striking of the committee [s. 50(1)]. Similar provisions exist in the FIPPA [s. 80(1)] and the PIPA (s. 44). Though it is possible that stakeholders may be consulted, no specific provisions are included in the reviewed legislation for consulting with multiple stakeholders in either the development or the review of whistleblowing procedures, regulations, or laws.

Unfortunately, none of the laws reviewed here included comprehensive training in whistleblower procedures, regulations, or laws for agencies, corporations, management, or staff. Some of the legislation reviewed here designates an official who is responsible for making information about the acts available, and it is possible that chief executives could include training as part of the procedures they must develop in managing disclosures.

However, there is little guidance in the legislation reviewed about training. As mentioned previously, direct statements about how to make those laws highly visible to potential whistleblowers also do not appear to be made in the text of the legislation reviewed.

ENFORCEMENT PRINCIPLES

Finally, Transparency International (2013) makes three recommendations about the enforcement of whistleblower protection laws. First, an independent agency should investigate claims of reprisal and problematic vetting of disclosures and may make binding recommendations and forward information to authorities who can enforce the law. Public advice and education efforts should also be made by this agency. Second, there should be punishments for retaliation and interference with whistleblowers disclosures and investigations. Third, regulatory agencies should engage in “follow-up, correction actions, and/or policy reforms” when bona fide whistleblower disclosures and complaints of reprisal are made (Transparency International, 2013, pg. 11).

As stated previously, though independent investigations are conducted, these tend not to be done by agencies external to the organizations covered under the acts reviewed here. For example, under section 21.5(1) of the PSDPA, the Commissioner can apply to the Public Servants Disclosure Protection Tribunal to decide if a reprisal has been made against a complainant who has disclosed a wrongdoing. Section 21.5(5) allows the Public Servants Disclosure Protection Tribunal to order penalties against those found to have engaged

in reprisals against a complainant. The Tribunal may take any necessary measures to achieve disciplinary actions, including the termination or revocation of employment of perpetrators of reprisals [s. 21.8(1)]. In the PIDA, investigations of complaints about reprisals are made to the Ombudsperson or Auditor General [s. 33(1-2)]; for both the FIPPA and the PIPA, complaints of reprisal against whistleblowers are made to and investigated by the Information and Privacy Commissioner. In all the above acts, there are designated persons who are permitted to make recommendations for change in various organizational sectors after investigation of whistleblower disclosures and complaints, and all are permitted to make referrals to authorities who are tasked with the enforcement of these Acts.

Numerous punishments exist for retaliation against whistleblowers. For example, under the CCC, offences in s. 425.1 are hybrid offences, with a maximum penalty for an indictable offence of five years of imprisonment. Acts in contravention of the PSDPA (against ss. 19, and 40-42.2) are also hybrid offences, whereby the maximum penalties for indictable offences are

a \$10 000 fine and two years of imprisonment (s. 42.3). The PIDA sets maximum penalties for violations of the Act at \$25 000 for a first offence and \$100 000 for any subsequent offences [s. 41(4)(a-b)]. For the FIPPA, acts in contravention of section 30.3 (whistleblower protections) can result in a maximum penalty of a fine between \$2000 and \$500 000, depending on whether the offender is a service provider or not, or is an individual or corporation [s. 74.1(5)]. Section 56(2) of the PIPA sets maximum fines for offences under the Act at no more than \$10 000 (for individuals) and no more than \$100 000 (for organizations).

Lastly, both the federal Public Service Integrity Commissioner and the Public Sector Disclosure Tribunal, as well as the provincial Ombudsperson, chief executives, and Information and Privacy Commissioner are permitted to make recommendations for corrective actions and policy reforms. In the PIDA, the Ombudsperson may request notification from the relevant ministry, government body, or office, as to whether the recommendations have been implemented within a set time period [s. 28(1)].

DISCUSSION

TRANSPARENCY INTERNATIONAL (2013) states that all workers should have the ability to report wrongdoing and be protected from retaliation, and that mechanisms should exist to promote reform of whistleblower laws and prevent future harm. In many ways, legislation relevant to potential whistleblowers in BC is consistent with those ideals. In the laws reviewed here, disclosures of multiple types of wrongdoing are protected, with protections afforded for disclosures made by current employees, former employees, and external contractors, depending on the legislation. Broad protections for whistleblowers under the law are important to ensure that the greatest number of people will have those rights (Lewis, 2008). Some protections against legal liability and reprisal are even offered under some legislation to parties other than whistleblowers, such as those who cooperate with investigations of disclosures or complaints of reprisal. If fear of reprisal

decreases the likelihood that a whistleblower will make a disclosure (Smaili & Arroyo, 2017), fear of reprisals could similarly deter cooperation by others during investigations. Therefore, legal protections should improve cooperation with investigations by all parties involved who have those protections. Multiple acts reviewed here included the “reasonable belief” threshold standard in determining who should receive whistleblower protections, ensuring that those who make good faith disclosures are protected even if it is revealed that their perception of an act of wrongdoing is inaccurate. Acts of wrongdoing can occur in complex social situations, so in the absence of legal protections for good faith disclosures, disclosures of serious wrongdoing may not be made by individuals who doubt the strength of their memory for witnessing wrongdoing or are uncertain in their interpretation of others’ behaviour related to that wrongdoing.

It is clear from the legislation reviewed here that reprisals against those who disclose wrongdoing in BC are unacceptable behaviours. All law sources reviewed here included prohibitions against whistleblowers reprisals, and mechanisms exist in the law to punish those who make false disclosures of wrongdoing. The existence of prohibitions and punishments for reprisal against whistleblowers could deter potential acts of reprisal and provide justice to those who have suffered reprisal. They also send a message that we value and therefore must protect those who put themselves at risk by providing information that could halt wrongdoing. Under the PIDA, whistleblowers do not have to prove, once a valid disclosure has been made, that sanctions against them and the disclosures they made were related. This provision is important because the whistleblower may have faced serious reprisals and may have had to shoulder multiple burdens during disclosure investigations, such as financial strain and psychological stress. In addition, multiple acts reviewed here entrench the right to confidential protection of identities and personal information of those involved in investigation of whistleblower disclosures and complaints. Guaranteeing protections for personal safety and reputation can be critical to convince people to cooperate in investigations of wrongdoing; indeed, such a practice is a cornerstone of the management of confidential informants in the criminal justice system.

Another best practice principle is that stand-alone whistleblower legislation should be created, rather than relying on

individual whistleblower protections spread across different laws and statutes. In BC, such legislation exists to protect federal and provincial public sector government employees. Further, some BC provincial acts intended for other purposes, like the FIPPA and the PIPA, protect against whistleblower reprisals. Though stand-alone legislation is preferred over having individual provisions for whistleblower protections scattered across different pieces of legislation, the inclusion of such provisions in legislation can serve to highlight specific acts that are considered wrongdoing that a whistleblower might report that are highly relevant to that legislation. Unfortunately, when we are left to interpret broad categories of wrongdoing that could be reported by whistleblowers, such as “gross or systemic mismanagement”, more specific acts of wrongdoing may be missed or may fail to be identified as belonging to that category. Dedicated sections of laws to protections for whistleblowers can illuminate specific whistleblower rights and protections.

Both the federal and provincial whistleblower acts require specific procedures to be established for managing disclosures of wrongdoing in each ministry, government body, and office. This is prudent because when organizations each have their own individual policies for handling disclosures and complaints of reprisal, they are more effective at dealing with whistleblower issues than if everyone follows the same provisions in overarching legislation (Hassink et al., 2007). The PIDA sets out specific features that must be enshrined in procedures developed by chief executives

to manage whistleblower disclosures. Further, both the PSDPA and PIDA include guidelines for how, when, and why investigations may be refused, postponed, or suspended, and in many cases require that notifications of decisions made during and upon conclusion of investigations of whistleblower disclosures and reprisal complaints be distributed to relevant parties. Doing so increases the likelihood that investigation decisions will be made transparently and that the whistleblowers will be kept informed about the process of investigating their disclosures and complaints. An especially important feature of both the PSDPA and PIDA is that during these investigations, no more personal information may be used, collected, or disclosed than is necessary to conduct the investigations, protecting the privacy of individuals involved.

All of those in charge of investigations have the power to make recommendations or orders related to whistleblower provisions, increasing the likelihood that reform of issues which facilitate wrongdoing will occur. These individuals can also refer offences prohibiting reprisals against whistleblowers to relevant law enforcement authorities to increase the likelihood that wrongdoers will be held accountable for their actions. Most legislation reviewed here included direction for how disclosures related to issues of national security or official secrets must be managed, while all the acts reviewed here permitted for some data about whistleblower disclosures and complaints of reprisal to be reported to government bodies and made available to the public. These provisions attempt to balance the protection of

information that could jeopardize the security of the public with the distribution of certain information to which the public has rights. Further, provisions for the enforcement of issues related to complaints of retaliation against whistleblowers, including offences and penalties for those offences, are included in all legislation reviewed here. Again, these provisions send the message that punishing whistleblowers for reporting wrongdoing will be met with punishment. Finally, some mechanisms for follow-up, corrective action, and policy reform are afforded to those responsible for making reports about reprisal investigations. Thus, in many ways, legislation aimed at or that contains provisions for the protection of whistleblowers in BC are consistent with best practice principles. They contain multiple provisions and protections which promote accountability and transparency related to decisions reached after investigation of whistleblower disclosures and complaints of reprisals, as well as some that preserve rights of access to information and protection of privacy for those involved in those investigations.

Unfortunately, some best practice principles for whistleblower policies, regulations, and laws were not met in the laws reviewed here. First, protections are not provided for all types of whistleblowers recommended by Transparency International (2013). Notably, most protections for whistleblowers in the laws reviewed here are for government workers in the public sector. When BC's PIDA was introduced by the Ministry of the Attorney General (2018), it was indicated that the legislation may later be extended to offer protections to whistleblowers

in the private sector, but it remains to be seen if this will occur. Unfortunately, current protections for whistleblowers in the PIPA are insufficient to compensate for the lack of private sector whistleblower rights in the PIDA. Thus, unless whistleblowers in the private sector disclose wrongdoing such as an employer assaulting an employee or an organization that is failing to store personal information securely, many who disclose wrongdoing in the private sector are left vulnerable to reprisal. In addition, fewer types of whistleblowers are protected under federal and BC laws than is recommended under best practices guidelines. That is, while employees and external contractors are covered under the PSDPA and PIDA, individuals like volunteers or interns are not explicitly mentioned as those who could make protected disclosures or against whom reprisals might be prohibited. These omissions are problematic because volunteers and interns could have insider knowledge about wrongdoing, just as an employee or contractor would. These are also individuals who arguably are more vulnerable because they are less likely to have knowledge about the inner workings of their organization and their rights than employees.

Similarly, not all types of disclosures of wrongdoing recommended by Transparency International (2013) may be protected. Though the PSDPA and PIDA protect major disclosures of wrongdoing such as of criminal and statutory offences, dangers to individuals or the environment, and misuse of public funds, misconduct such as corruption, conflicts of interest, and abuse of authority were not

specifically mentioned in the laws reviewed here. Though some of these acts of wrongdoing may belong to the breach of code of conduct category in the PSDPA, or fall under a broad category of wrongdoing like “gross or systemic mismanagement” in the PIDA, some acts may not be interpreted as examples of wrongdoing within broad categories and therefore some disclosures of wrongdoing still may not be protected.

Within the category of protection principles, legislation reviewed here did not meet all best practice recommendations. Though multiple types of retaliation were prohibited in the legislation reviewed, such as disciplinary action, demotion, termination, and anything adversely affecting working conditions or employment in the PSDPA, these are more overt forms of reprisal. Some covert or atypical forms of reprisal were not explicitly mentioned. Though an action that “adversely affects the employment or working conditions” (PSDPA, s. 42.1.1) of a whistleblower could serve as a broad category that captures multiple forms of reprisal, leaving this up to interpretation could result in less obvious forms of retaliation – such as ostracizing or being deemed redundant as an employee to permit termination of position - being missed as forms of retaliation.

Protections for whistleblowers that were included less often in the laws reviewed here are the nullification of gag orders which prevent employees from disclosing wrongdoing, and legal permissions for anonymous reporting. These were only clearly outlined in the PIDA. However, contrary to Transparency International (2013) principles, anonymous

disclosers do not have the same rights as those who do not disclose anonymously to be notified of investigations into whistleblower disclosures under the PIDA. Further, though the need for these protections is arguably rare and could be requested from police, none of the legislation explicitly enshrined protections for whistleblowers and their families whose safety is in danger. Affording these rights to individuals could prevent organizations from enabling themselves to engage in wrongdoing by prohibiting employees from speaking about it, may compel disclosures of wrongdoing for those who especially fear reprisal if their identity was revealed, and ensure that disclosures of wrongdoing are not held back due to fear of reprisal against loved ones.

A few best practice principles related to disclosure procedures were not clearly featured in the legislation reviewed here. For example, no explicit provisions were included in either the PSDPA or PIDA for how to make whistleblower procedures highly visible and understandable. Prescribed time limits for responding to disclosures or complaints, or conducting investigations (e.g., 15 days for responses to disclosures under the PSDPA) were rare in the legislation reviewed. Investigations therefore could be lengthy, to the detriment of whistleblowers who have faced reprisals such as termination of employment. Time limits imposed on whistleblowers for reporting reprisals under the PSDPA (60 days from discovery of reprisal) are considered by some to be prohibitive to whistleblowers because many of them are not aware of their disclosure rights within that

time frame (Devine, 2016). As a result, the GAP recommends that time limits on reports of reprisal be increased to within 6-12 months of discovery (Devine, 2016). Further, though the legislation reviewed provided numerous instances where whistleblowers and designated parties must be notified of investigations of complaints and reasons for those decisions, the PIDA only affords whistleblowers and those accused of wrongdoing the right to a summary of the investigation report, not the full report. This restriction in access to information is less transparent than providing the full report to whistleblowers and accused wrongdoers, though transparency must be balanced against rights to protection of personal information.

Though the legislation reviewed includes provisions for disclosure and reprisal complaint investigations by independent organization members or offices, external organizations were not tapped to deal with whistleblower reports. Though external reporting via public disclosures are permitted in some serious and timely cases under the PSDPA and the PIDA, procedures in the latter for reporting to the public require the approval of a protection officer. Thus, the ability to make a protected report to the public may be contingent on the decision of one individual (unless a disclosure can be made via the Office of the BC Ombudsperson). Beyond considering the definitions of serious wrongdoing provided in legislation, it is unclear from the legislation how a protection officer might make a valid determination of when a public disclosure of wrongdoing should be permitted. Further, though some rights are afforded to actual or intended whistleblowers

to seek advice about disclosing wrongdoing, these resources are largely relegated to seeking legal or professional advice. Legal mandates to provide resources like advice lines, hotlines, or online employee portals to seek advice on disclosures were not mentioned in the laws reviewed. Thus, the ability to report wrongdoing externally and advice available about whistleblower disclosures and complaints of reprisal is more restricted than is recommended by Transparency International (2013) for BC whistleblowers, which in some cases could result in investigations being less objective or informed. The more resources and advice available to potential whistleblowers, the better the decisions that they can make for themselves in deciding whether to disclose wrongdoing.

The category of principles that was reflected the least in the laws reviewed here was the relief and participation category. For example, interim financial relief for whistleblowers who are subject to lengthy investigations of complaints of reprisal was not mentioned in the laws reviewed here. Neither were rights to participate in subsequent investigations or rewards for providing disclosures of wrongdoing, such as monetary awards or public recognition. Providing such incentives could motivate disclosures of wrongdoing, especially in cases where whistleblowers are reluctant to report.

As for best practice principles in legislative structure, operation, and review, the most notable absence from the legislation reviewed here were provisions for comprehensive training in whistleblower laws and

procedures for management and staff in public sector agencies and publicly traded companies. Given the potential complexities of whistleblower disclosure and reprisal investigations, as well as the harm that can result from mismanagement of these investigations, it is critical that at the very least, procedures created by chief executives include proper training of themselves, management, staff to ensure that good laws and procedures are followed accurately and faithfully. Further, consultation with all relevant stakeholders in the development and revision of whistleblower laws and policies was not articulated specifically in the laws reviewed here. With specific reference to the development of the PIDA in BC, there have been some concerns raised about whether all relevant stakeholders were consulted in the development of the law. For example, the BC chapter of the Freedom of Information and Privacy Association was not extensively consulted on this matter.

Finally, though several best practice principles are contained in laws relevant to whistleblowers in BC, this does not guarantee fair outcomes for whistleblowers. The province of BC must take care under the PIDA not to fall prey to the same issues that have arisen under the PSDPA related to investigations of reprisals against whistleblowers. The Public Sector Integrity Commissioner and the Public Interest Disclosure Protection Tribunal have been criticized for failing to refer cases of reprisal and recommend discipline against wrongdoers. When Christiane Ouimet was the Public Sector Integrity Commissioner, out of 200 complaints filed, zero findings of wrongdoing or reprisal

were reached. In addition, over a seven-year period studied, out of 140 reprisal cases that were filed, only six of those cases were referred to the tribunal (Keith et al., 2016). Out of 306 individuals who have made complaints of reprisal to the federal Integrity Commissioner since 2007, only 14 have settled through conciliation (Johnson, 2018). It is critical that investigations into complaints of reprisals against whistleblowers result in fairer outcomes for whistleblowers who have faced reprisals and in proper disciplinary action for perpetrators of reprisals.

With new legislation comes the hope that new rights and protections will be afforded to those who need them. In many cases in BC, this will likely be true. However, as previously mentioned, even with the introduction of BC's PIDA, protected disclosures may still not be broad enough, such as for disclosures of misconduct related to interference related to access to information via FOI requests. As mentioned earlier in this paper, the triple delete scandal stemmed from the destruction of information that was the subject of an FOI request. In that case, charges were laid, but not directly related to the act of interference with the FOI request. Rather, George Gretes plead guilty to willfully misleading investigations into the incident. Under the FIPPA, interference with FOI requests is not an offence in contravention of the act, and when examining the disclosures under the PSDPA, the PIDA, and the FIPPA, protected disclosures are provided for offences against BC or federal laws. Thus, disclosures about interference with FOI requests may not be protected.

It is possible that the wrongdoing category of "gross or systemic mismanagement" [PIDA, s.7.1(d)] could capture interference with FOI requests and therefore such misconduct could comprise a protected disclosure. However, this category is not specifically defined in the PIDA. A similar category of wrongdoing (gross mismanagement in the public sector) exists in section 8(c) of the PSDPA. Though that concept is also undefined in the PSDPA, the Government of Canada (2018) suggests several things that may be considered when determining if gross mismanagement has occurred in the workplace. One consideration that can be made about a potential act of wrongdoing is its "degree of departure from standards, policies, or accepted practices" (Government of Canada, 2018). During Gretes' sentencing, it was noted by the judge that the triple deleting of emails was not considered to be an improper or prohibited behaviour at the time it was occurring ("Former BC government worker", 2016). However, the practice was clearly in violation of a duty to provide information that is the subject of an FOI request. Thus, in a culture where interference with access to information is commonplace, some misconduct may not obviously fall under this category. As such, BC's Freedom of Information and Privacy Association maintains that for whistleblower disclosures about interference with FOI requests to be protected under the PIDA, amendments must be made to the FIPPA to include an offence related to "alteration, concealment, or destruction of records with the intention of denying or interfering with access rights" (BC Government

Introduces Public Interest Disclosure Act, 2018, pg. 2). Notably, under the PIPA, willful disposal of personal information to interfere with access to requests for personal information is an offence [s. 56.1(b)]. Therefore, some private sector whistleblowers may be better protected against reprisals for disclosures of interference with access to information requests than public sector workers.

CONCLUSION

THE NEW PUBLIC INTEREST DISCLOSURE ACT IN BC is a positive step toward ensuring that those who report wrongdoing in BC are protected under the law. Though this and other laws relevant to whistleblowers in BC contain many features of best practice principles, other principles are absent. Broader definitions of whistleblowers, such as private sector workers, and broader definitions of protected disclosures, such as those pertaining to interference with FOI requests, are needed. In addition, more provisions are required in the law to protect the identities of disclosers and afford them more access to information about outcomes of investigations. There are still others who do not appear to be protected currently via existing

legislation, such as those employed in the public sector but who do not work for federal or provincial governments and who do not have whistleblower protections within their own organization, such as some BC municipal governments. Therefore, we must continue to develop whistleblower laws and policies to protect those who provide good faith disclosures of wrongdoing in the public interest. It is critical that when new laws and policies are developed or when existing laws and policies are revised, best practice principles inform these developments and revisions to ensure that all whistleblowers in Canada are protected with metal and not cardboard shields.

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TABLE 1
SUMMARY OF CONSISTENCY OF LAWS RELEVANT TO BC WHISTLEBLOWERS WITH BEST PRACTICE PRINCIPLES

Best Practice Principle	CCC	PSDPA	PIDA	FIPPA	PIPA
<i>Broad definition of whistleblowing</i>	Relevant to disclosures of CCC violations	Covers disclosure of offences against provincial and federal enactments; misuse of public funds/assets, substantial/specific danger to life, health, or safety of person or environment, gross mismanagement, breach of code of conduct, and knowingly directing or counselling any of above.	Covers disclosure of offences against BC and federal enactments, misuse of public funds/assets, substantial/specific danger to life, health, or safety of person or environment, gross or systemic mismanagement, and knowingly directing or counselling any of above.	Relevant to disclosures of FIPPA violations	Relevant to disclosures of PIPA violations
<i>Broad definition of whistleblower</i>	Employees in public and private sector	Covers current and former federal public servants; some protections for external contractors	Covers current and former provincial employees of ministries, government bodies, or offices; some protections for external contractors	Covers anyone reporting Act violations (mostly public sector workers)	Covers anyone reporting Act violations (could be private and public sector workers)
<i>Reasonable belief of wrongdoing threshold</i>	N/A	Yes	Yes	Yes	Yes

Best Practice Principle	CCC	PSDPA	PIDA	FIPPA	PIPA
<i>Protection from retribution</i>	Covers discipline, demotion, termination, or threatening to do above to prevent or retaliate against disclosure	Covers discipline, demotion, termination, adversely affecting employment or working conditions, or threatening to do above	Covers discipline, demotion, termination, adversely affecting employment or working conditions, or threatening to do above against anyone seeking advice on making disclosure, who has made disclosure, or cooperated with disclosure investigation	Covers dismissal, suspension, demotion, discipline, harassment, disadvantage, or denial of benefits	
<i>Preservation of confidentiality</i>	Likely same as for disclosures of other crimes	Yes	Yes	Not mentioned explicitly	Can be requested by discloser
<i>Burden of proof on employer</i>	No	No	Burden of proof not on discloser	No	No
<i>Knowingly false disclosures not protected</i>	Possible (public mischief charge)	Yes	Yes	Yes	Yes
<i>Waiver of liability</i>	Not mentioned in s. 425.1	Yes (from criminal and civil liability)		Yes (from libel and slander)	
<i>Right to refuse participation in wrongdoing</i>	Not mentioned in s. 425.1	No	No	Yes	Yes

Best Practice Principle	CCC	PSDPA	PIDA	FIPPA	PIPA
<i>Preservation of rights</i>	N/A	No	Yes (but limited rights for anonymous disclosers)	No	No
<i>Anonymous disclosures permitted</i>	Possible (via anonymous tip line)	No	Yes (but limited rights for anonymous disclosers)	No	No
<i>Personal and family protection</i>	Police can protect but not enshrined in s. 425.1	No	No	No	No
<i>Reporting within workplace</i>	N/A (report made to police)	Requires chief executives to establish disclosure management procedures; President of Treasury Board responsible for disseminating information about PSDPA; limits on collection of personal information; no info on how to make disclosure procedures highly visible/understandable; identities of those participating in investigations must be kept confidential; Commissioner must respond to reprisal complaints within 15 days; complaints of reprisal must be made within 60 days; notifications about status and outcome of investigations must be sent to all interested parties	Requires chief executives to establish disclosure management procedures (multiple features included in legislation) and provide information to employees about how to make disclosures; limits on collection of personal information; no info on how to make disclosure procedures highly visible/understandable; identities of those participating in investigations must be kept confidential; chief executive must set time limits for investigating disclosures; ministries, government bodies, and offices must respond to recommendations from Ombudsperson within 30 days; Ombudsperson must notify interested parties about status and outcome of investigations; only summary of outcomes provided to whistleblowers and those of accused of reprisal	N/A (reports made to Information and Privacy Commissioner)	

Best Practice Principle	CCC	PSDPA	PIDA	FIPPA	PIPA
<i>Reporting to regulators and authorities</i>	Reporting to police is outside of organization	Disclosures can be made to Office of Public Service Integrity Commissioner	Disclosures can be made to Office of Ombudsperson or Auditor General	Disclosures made to Information and Privacy Commissioner or Minister in charge of act	Disclosures made to Information and Privacy Commissioner
<i>Reporting to external parties</i>	Does not protect external disclosures to media	Possible if disclosure is in public interest, risk is imminent, wrongdoing is serious violation of law, and if serious risk posed to individuals or environment	Possible if situation is urgent, serious risk to individuals or environment, and if public disclosure is approved by designated protection official; can also be disclosed via Office of Ombudsperson	Not mentioned explicitly	
<i>Disclosure and advice tools</i>	N/A	Commissioner may afford access to legal advice to public servants who have made or are considering making disclosures of wrongdoing or complaints of reprisal, are cooperating with investigations into disclosures of wrongdoing, or who are accused of making reprisals; no access to advice lines, hotlines, or online portals explicitly mentioned	Intended whistleblowers may seek advice from union or professional association, lawyer, supervisor, designated officer in their employment sector, or Ombudsperson; no access to advice lines, hotlines, or online portals explicitly mentioned	Not mentioned explicitly	

Best Practice Principle	CCC	PSDPA	PIDA	FIPPA	PIPA
<i>National security/ official secrets</i>	N/A	Certain groups (e.g., Canadian Forces) excluded from definition of public servant but must make own similar internal disclosure procedures	Certain privileged information may not be revealed in a disclosure to or report released by the Office of the Ombudsperson, or in a disclosure made to the public		Not mentioned explicitly
<i>Full range of remedies</i>	N/A	Public Sector Disclosure Protection Tribunal can order remedies for retaliation against whistleblowers such as permission to return to duties or employment, lifting of disciplinary actions, and compensation for lost wages, financial losses directly occurring from reprisals, or pain and suffering; no rights to interim relief mentioned	Not explicit in remedies for reprisals, but several sections indicate that remedies from other sources are not limited by the PIDA; no rights to interim relief mentioned		Not mentioned explicitly
<i>Fair hearing/ genuine day in court</i>	N/A		Have rights to notification of outcomes of investigations, no rights entrenched to specific “day in court” or to call and cross-examine witnesses		Not mentioned explicitly

Best Practice Principle	CCC	PSDPA	PIDA	FIPPA	PIPA
<i>Whistleblower participation</i>	N/A	Rights to notification of progress and outcomes of investigations into disclosures and reprisals afforded to whistleblowers; rights to meaningful opportunities to provide input to subsequent investigations/inquiries not mentioned explicitly		Not mentioned explicitly	
<i>Reward systems</i>	Not mentioned explicitly	Not mentioned explicitly	Not mentioned explicitly	Not mentioned explicitly	Not mentioned explicitly
<i>Dedicated stand-alone legislation</i>	Not whistleblower code, but contains protections		Yes	Not whistleblower acts, but contain protections	
<i>Publication of data</i>	S. 425.1 crimes not typically reported publicly	Yes, via official annual report to government which are publicly accessible; must contain statistics and information about investigations of whistleblower disclosures and/or reprisals			
<i>Involvement of multiple actors</i>	N/A	President of Treasury Board must conduct independent review; no specific requirement for consultation with stakeholders to revise law	Special committee of the BC Legislative Assembly must review; no explicit requirement for consultation with stakeholders to revise law		
<i>Whistleblower training</i>	Not mentioned explicitly	Not mentioned explicitly	Not mentioned explicitly	Not mentioned explicitly	Not mentioned explicitly

Best Practice Principle	CCC	PSDPA	PIDA	FIPPA	PIPA
<i>Whistleblower complaints authority</i>	Police conduct investigation into reprisals	Public Sector Integrity Commissioner or Public Sector Disclosure Protection Tribunal can receive and investigate disclosures or complaints of reprisal	Chief executive or designate, Ombudsperson, or Auditor General receive and investigate disclosures or complaints of reprisal	Office of Information and Privacy Commission receives and investigates complaints of reprisal	
<i>Penalties for retaliation and interference</i>	Max. penalty = 5 years imprisonment		Max. penalty = \$25 000 (first offence) or \$100 000 (subsequent offences)	Max. penalty = \$2000 (individuals) - \$500 000 (corporations)	Max. penalty = \$10 000 (individuals) = \$100 000 (corporations)
<i>Follow-up and reforms</i>	All government agencies can make recommendations for corrective actions and policy reform				

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