

**LEGISLATIVE ASSEMBLY
OF
YUKON**

First Session of the
Thirty-first Legislative Assembly

BILL NO. 104

ACT TO AMEND THE
PUBLIC SERVICE ACT

First Reading

Second Reading:

Committee of the Whole:

Third Reading:

Assented to:

BILL NO. 104

Thirty-first Legislative Assembly

First Session

Act to Amend the Public Service Act

The Commissioner of Yukon, by and with the advice and consent of the Legislative Assembly, enacts as follows:

- 1 This Act amends the *Public Service Act*.**
- 2 Subsection 196(2) of the Act is amended by repealing the expression “frivolous and vexatious” and substituting for it the expression “frivolous or vexatious”.**
- 3 The following part is added following Part 13, subsection 202**

Part 14

Employee Complaint and Protection (Whistleblower Protection)

Definitions

203 In this Part,

‘commission’ has the same meaning as in Part 13;

‘complaints commissioner’ means the Information and Privacy Commissioner established by the *Access to Information and Protection of Privacy Act*;

‘conflicts commissioner’ means the Conflict of Interest Commission established by the *Conflict of Interest (Members and Ministers) Act*;

‘retaliatory action’ means to

- (a) dismiss or threaten to dismiss an employee,
- (b) discipline or suspend or threaten to discipline or suspend an employee,
- (c) impose any penalty upon an employee, or
- (d) intimidate or coerce or attempt to intimidate or coerce an employee.

Employee Assisting or Providing Information

204 No retaliatory action shall be taken against an employee who provides information to, or assists the commission, the conflicts commissioner, or the complaints commissioner with respect to the investigation of a matter under this Part, Part 13 of this Act, Part 4 of the *Cabinet and Caucus Employees Act*, or the *Conflict of Interest (Members and Ministers) Act*.

Complaint by Employee

205(1) An employee may make a complaint to the complaints commissioner if the employee reasonably believes that a policy or practice of the Government of the Yukon, or an action or series of actions by another employee of the Government of Yukon, or the absence of a policy or practice, or a failure by another employee to take action

- (a) contravenes a statute or regulation;
- (b) contravenes criminal law;
- (c) represents gross mismanagement;
- (d) represents an abuse of authority; or
- (e) poses a grave health or safety hazard to any person or a grave environmental hazard.

(2) A complaint under subsection (1) shall be made in accordance with the procedure set out in the regulations.

Report to Supervisor and Deputy Head

206(1) Before making a complaint to the complaints commissioner pursuant to section 205, an employee shall report the nature and substance of the complaint to that employee's immediate supervisor and the deputy head of the employee's department, and the deputy head shall be given a reasonable opportunity to respond to the report.

(2) If the complaint involves the employee's immediate supervisor, the employee may make the report required under subsection (1) solely to the deputy head of the employee's department.

(3) If the complaint involves the deputy head of the employee's department, the employee may make the report required under subsection (1) to the employee's immediate supervisor and the complaints commissioner.

Duties and Powers of Complaints Commissioner

207(1) The complaints commissioner may investigate a complaint made pursuant to section 205.

(2) The complaints commissioner has, in respect of an investigation under this Part, the powers and privileges set out in section 196.

Public Disclosure of Complaint

208 Notwithstanding the provisions of sections 205 and 206, if an employee has reasonable grounds to believe that a policy or practice, action, failure to act, or absence of policy or practice, poses a serious and imminent threat to an individual, to the environment, or to the public good, the employee may seek counsel directly from the complaints commissioner with respect to making a public complaint through a Member of the Legislative Assembly or through some other public means.

Advisory Role of Complaints Commissioner

209(1) If an employee seeks counsel from the complaints commissioner with respect to making a public complaint in the manner described in subsection 208, the complaints commissioner shall provide fair and objective advice concerning the duties, obligations and responsibilities of the employee, both to the Government of Yukon and to the public, and will make best efforts to advise the employee of possible consequences that could arise as a result of making a public complaint.

(2) At the discretion of the complaints commissioner, the advice provided in accordance with (1) above may include a recommendation that the complainant seek independent legal counsel before making any public complaint.

Opportunity to be Heard

210 When the complaints commissioner investigates a complaint under subsection 207, the complaints commissioner must inform the Premier and the deputy head of the employee's department of the particulars of the complaint, and give the Premier, the deputy head or their designates a reasonable opportunity to make representations, either orally or written, in response to the complaint.

Possible Criminal Wrongdoing

211 If, in the course of investigating a complaint under this Part, the complaints commissioner is satisfied that reasonable grounds exist to believe that a criminal offence may have taken place, may be in process of taking place, or may be about to take place, as outlined the complaints commissioner shall immediately inform the appropriate law enforcement agency.

Complaints Commissioner's Report on Investigation

212(1) At the conclusion of an investigation under subsection 207, the complaints commissioner shall decide whether or not the policy or practice, or the action, failure to act, or absence of policy or practice, falls within any of paragraphs

205(1)(a), (c), (d) or (e) and shall, subject to subsection (3) below, report its decision and recommendations to the Legislative Assembly and send a copy of the report to the Premier, the deputy head of the employee's department and the employee who made the complaint.

(2) The complaints commissioner shall keep confidential the details of an investigation conducted under subsection 207 and the subsequent report to the Legislative Assembly shall include only the complaints commissioner's decision, the reasons therefor and any recommendations made under subsection (1).

(3) If the complaints commissioner dismisses a complaint made to it by an employee on the ground that it is frivolous or vexatious or made in bad faith, it shall provide this finding only to the Government Leader, the deputy head of the employee's department and the employee.

No Retaliatory Action

213(1) No retaliatory action shall be taken against an employee for making a complaint to the complaints commissioner in accordance with this Part.

(2) Subsection (1) does not apply if the complaints commissioner dismisses the complaint by the employee on the ground that it is frivolous or vexatious or made in bad faith.

(3) No retaliatory action shall be taken against an employee for any testimony that employee provides under oath in the course of any privileged proceedings under the *Conflict of Interest (Members and Ministers) Act*, or the *Public Inquiries Act*, or the *Ombudsman Act*.

Regulations Under this Part

214(1) Regulations necessary to give full force and effect to this Part, including penalties for violations of its provisions, shall be developed jointly by the Public Service Commission, representatives of bargaining units having current collective agreements with the Government of Yukon, and the complaints commissioner, and shall be brought to the Legislative Assembly for approval within one year of the passage of this Act.

(2) Subsequent additions or amendments to the regulations shall be brought to the Legislative Assembly for approval at the earliest opportunity after they have been developed by the bodies mentioned in subsection (1) above.

Coming into Force

215 This Act shall come into force immediately upon the Legislative Assembly giving its approval to regulations pursuant to subsection 214(1).