

# PIDWA Statutory Review

Date

**Revised February 8, 2024**

Note: new revisions and/or comments are in red.

Section	Heading
<b>PART 1</b>	INTERPRETATION
1	Purposes of this Act

## Comments

1(a)

This provision should be revised to state "to facilitate the disclosure and non-adversarial investigation..." The PIDC investigation is not an adversarial process. In our experience, many public entities immediately take an adversarial position on notice of a disclosure or reprisal complaint despite the Legislature giving them a window as per 22 and 32. This paragraph should be revised to add the words 'from reprisal' -- because the point of this purpose is to protect employees, noting that the definition of 'employees' would include public entity-controlled volunteers.

It should also be revised to include the phrase 'seeking advice about making a disclosure'.

1(b)

This paragraph should be moved and made the first of the three purposes. While the current first purpose **1(a)** is self-evident as to content, our experience is that employees (as they current are defined) will only act on that purpose if they feel that they are protected when seeking advice about making a disclosure or actually making one. If they don't act because of reprisal fear, then the current first **1(a)** and third **1(c)** purposes are pointless. The first thing that PIDWA should signal to any person defined as a discloser is that you are protected.

1(c)

Definitions

	<b>'Advice'</b> should be added to <b>2</b> to mean advice that may be requested in respect of making a disclosure or a complaint about a reprisal (under PIDWA).
NEW -- 'Advice'	
REVISE -- 'Chief executive officer'	<b>'Chief executive officer'</b> should be revised to mean the deputy minister of a department, the head of the public entity, and the relevant officer of the Legislative Assembly.
NEW -- 'Commissioner'	<b>'Commissioner'</b> means the Public Interest Disclosure Commissioner. As such, all references in PIDWA about the PIDC can be shortened to 'Commissioner'.
NEW -- 'Court'	<b>'Court'</b> means the Supreme Court of Yukon.
NEW -- 'Department'	<b>'Department'</b> should be added to mean a department of the Yukon Government, as set out in the Schedule.
NEW -- 'Discloser'	<b>'Discloser'</b> should be added to <b>2</b> to mean a <u>person</u> who seeks advice about making a disclosure or makes a disclosure. This would allow any person, whether an employee or not, to seek advice about making a disclosure or make a disclosure. The term should include an anonymous discloser.
REVISE -- 'Employees'	<b>'Employees'</b> should be revised to mean an employee of a department, public entity or office.
NEW -- 'Office'	<b>'Office'</b> should be added to mean the various 'offices', as set out in the Schedule.
DELETE -- 'Ombudsman'	<b>'Ombudsman'</b> should be deleted as the PIDC can be appointed in its own right.

		<b>Personal information'</b> should be added to mean the same as PI in the Access to Information and Protection of Privacy Act (ATIPPA).
	NEW -- 'Personal Information'	<b>'Public entity'</b> should be revised to mean an organization designated (in the Schedule or by regulation) as a public entity for the purposes of PIDWA.
	REVISE -- 'Public entity'	<b>'Record'</b> should be added to mean the same as a record in the ATIPPA.
	NEW -- 'Record'	<b>'Reprisal'</b> should be revised to mean a measure referred to in revised <b>25</b> .
	REVISE -- 'Reprisal'	<b>'Supervisor'</b> should be deleted throughout PIDWA because disclosures should only be made (in the interests of protecting a discloser's identity) to a designated officer or, where a designated officer is implicated, to a chief executive.
2 Cont'd	DELETE -- 'Supervisor'	
		For purposes of PIDWA, an employee includes a former employee who has suffered a reprisal and has been terminated by a department, public entity or office; a contract employee; and volunteers who provide their services to programs/initiatives controlled by departments, public entities or offices. It should also include directors and officers of public entities.
<b>NEW</b>	Interpretation	A provision that applies to the office of the Ombudsman, IPC and PIDC as an 'office' doesn't limit or affect the OMB/IPC/PIDC's authority/obligations under PIDWA.

<b>NEW NEW PART</b>	Relationship of Act to other Acts <b>GOVERNANCE</b>	This provision should be added to state that where a PIDWA provision is inconsistent or in conflict with a provision of another enactment, the provision of this Act prevails unless the other Act expressly provides that it, or a provision of it, prevails despite this Act.
<b>PART 2</b>	<b>WRONGDOINGS</b> Wrongdoings to which this Act applies	This new PART puts into one initial place several <u>key</u> provisions before the operational parts begin. This should include moving the current <b>7, 14, 15, 16</b> and <b>53</b> into this PART.
3		This provision should be revised to replace 'public entity' with 'a department, public entity or office'.
3(a)		This provision should be revised to raise the bar beyond a mere contravention of an enactment that could require an investigation to something that connects a significant or serious action/breach/omission to an offence/penalty under the enactment.
3(b)		This provision should be revised to replace 'gross', which is a legally-loaded word, with something of a more plain language context, such as 'significant' or 'serious'.
3(c)		
3(d)		
4	Discipline for wrongdoing	This provision should be revised to add to the existing text that if a discloser's request for advice or making a disclosure relates to their own conduct concerning a wrongdoing, then they remain liable for that conduct.
<b>PART 3 Division 1</b>	<b>DISCLOSURE OF WRONGDOING</b> <b>Procedures for Disclosers</b>	
5	Procedure to manage disclosures	

This subsection should require a chief executive of any department, public entity or office to establish disclosure procedures, subject to regulations.

Common procedures may not be appropriate in all YG non-department cases, given the differences in various public entities. It may be reasonable and efficient for all Yukon Government departments, for example, to adopt a common set of disclosure procedures by using the PSC 'Guidelines to Disclosure Wrongdoing' as an aid to creating a regulation under **56(a)**. However, other types of public entities may require a slightly different approach based on their uniqueness, something that would first have to be identified and categorized (perhaps as a 'class' of public entity). Although the disclosure procedures in their case would have to accord with section 5, the proposed **56(a)** regulation could allow for some reasonable differences based on different classes of public entities.

This provision should also allow the PIDC to have 'own-motion' power to audit compliance with PIDWA.

5(1)

5(2)

**NEW**

5(2)(a)

This provision should be added to require a designated officer to assess the risks, in the context of a request for advice or a disclosure, that reprisals may be taken against a discloser.

Delete -- see Designated officer heading below.

A designated officer can't accept a request for advice or a disclosure from an anonymous discloser. If they receive one, then they must refer it to the PIDC.

Since any person, except an anonymous discloser, should be able to request advice or make a disclosure, a department, public entity and office's disclosure procedures would have to accommodate that.

5(2)(b)

5(2)(c)

5(2)(d)

5(2)(e)

Additionally, this provision should be revised to set out timelines for taking any actions.

This provision should be revised to include requests for advice.

5(2)(f)

This provision should be revised to include a finding of wrongdoing, reasons for the finding and any recommendations arising from the finding.

This provision should be added to make sure that any personal information collected or used is limited to the PI required for investigations and the process for request for advice/disclosures.

**NEW**

**NEW**

This provision should be added, subject to any other enactment, to protect the identity of a discloser in requesting advice or making a disclosure.

NEW		This provision should be added to allow a designated officer to refer disclosure subject-matter to another appropriate entity if that entity has the necessary jurisdiction to address it. Tthe designated officer must notify the PIDC about the entity they chose.
NEW		This provision should be added to require designated officers, on receiving, reviewing and investigating disclosures, to carry out those activities as informally, fairly and efficiently as possible in the circumstances.
NEW		This provision should be added to allow a designated officer to investigate other wrongdoings that may arise during a disclosure investigation.
NEW		This provision should be added to require designated officers to provide disclosers with an appropriate summary of the investigation.
NEW		This provision should be added to require designated officers to give their department, public entity or office an opportunity to make representations prior to finalising an investigation report.
NEW [formerly 5(2)(a)]	Designated officer	Revise provision [formerly <b>5(2)(a)</b> ] to require a chief executive to designate a senior officer to receive requests for advice and receive/investigate disclosures for which the chief executive is responsible. The designated officer should not create a conflict of interest or be involved in any competing process to ensure procedural fairness. PIDWA must always be considered before any other process is contemplated. Add new provision to state that a designated officer is responsible for investigating disclosures received under 9(1)(b) or a referral from another public entity or the PIDC.
NEW	Investigations of disclosures by designated officer	The designated officer must investigate disclosures as per their disclosure procedures or alternatively may refer the disclosure to the PIDC. If the designated refers the disclosure to the PIDC -- they must notify the discloser.
NEW	When investigations of wrongdoing not required	This new provision should echo <b>20</b> but replace 'PIDC' with 'designated officer'.
6	Input from the Public Interest Disclosure Commissioner	Replace the current provision [ <b>6(1)</b> ]with "Prior to establishing disclosure procedures or amending existing disclosure procedures, the chief executive must provide a copy of the proposed disclosure procedures or the proposed amendments to the Public Interest Disclosure Commissioner for comment before establishing the procedures or amending them." Additionally, they must tell the PIDC if they're acceptiing the PIDC's comments within a certain time frame ( <i>e.g.</i> , 30 days), and if not -- why.
6(1) 6(2)		This provision should also be revised to set out a time-limited transition period to allow the chief executive to comply with establishing disclosure procedures ( <i>e.g.</i> , three-six months maximum).

This key provision should be revised. It should not just state 'widely communicated' by each chief executive but also information about how to seek advice about making a disclosure or making one, and how to make a reprisal complaint **to the PIDC**, as well as conveying any information that may be prescribed. This communication requirement should occur at least on an annual basis.

This provision should also require each department, public entity and office to provide mandatory training to the chief executive and their employees on an annual basis and require employee (including a chief executive and newly onboarded employees) to 'sign-off' that they have taken such training in the annual timeframe.

In addition, the chief executive should report annually to the PIDC on the results of meeting this communication/training provision.

This provision should be added as follows. Where a discloser presents to a designated officer or the PIDC, the designated officer or the PIDC, as the case may be, shall make reasonable efforts to protect the identity of the discloser.

Replace 'employee' with 'discloser'.

Delete.

Those disclosers who do not fit within the definition of 'employee' should only be able to seek advice about making a disclosure from the PIDC.

Since any person should be able to make a disclosure, the (non-legal) section heading should be revised to indicate this.

This provision should be revised to state "If a discloser reasonably believes that they have information that could show that a wrongdoing has been committed or is about to be committed, the discloser, in good faith, may make a disclosure to:"

Delete.

7

## Division 2 Making a Disclosure

**NEW** Discloser protection

8 Request for advice

8(1)

8(1)(a)

8(1)(b)

8(1)(c)

**NEW**

8(2)

REVISE -- Disclosure by employee  
to Disclosure

9

9(1)

9(1)(a)

9(1)(b)

9(1)(c)

9(2)

9(2)(a)  
9(2)(b)  
9(2)(b)(i)  
9(2)(b)(ii)

This provision should be added. "If the PIDC is to notify a person under subsection (2) and, in respect of the matter being investigated, the chief executive is alleged to be implicated in or responsible for wrongdoing, the PIDC must not notify the chief executive and instead must notify the following person, as applicable (a) in the case of a public entity, the minister responsible;  
(b) in the case of a public entity that is a corporation or board,  
(i) the chair of the governing board of the public entity, and  
(ii) the minister responsible, if applicable;  
(c) in the case of an office, the Speaker of the Legislative Assembly."

The purpose of this new provision is not to alert a chief executive who may be material to an investigation (because of their alleged wrongdoing implication or responsibility) prior to them being called as a witness. [See BC *Public Interest Disclosure Act* subsection 9(5)]

**NEW**  
**NEW**

Referral of disclosure to another  
public entity

10

**NEW** Anonymous discloser

11 Content of disclosure

11(1)

11(1)(a)

11(1)(b)

11(1)(b)(i)

11(1)(b)(ii)

11(1)(c)

11(1)(d)

This provision should be revised. If the information or conduct being disclosed relates to an obligation under another enactment, the disclosure must refer to that enactment.

This provision should be revised to include whether the wrongdoing has already been disclosed under PIDWA or another enactment.

11(1)(e)

If this has occurred, then it should be revised to require the name of the person to whom the disclosure was made and the response, if any, that has been received.



11(2)

12 Authority to help resolve a matter  
Public disclosure if situation is

13 urgent

13(1)

13(1)(a)

13(1)(b)

**NEW**

13(2)

13(2)(a)

13(2)(b)

**NEW**

**NEW**

**NEW**

**Information that may be**

**Division 3 disclosed**

14 Disclosure despite others Acts

15 Limits on disclosure

15(1)

15(1)(a)

15(1)(b)

15(1)(c)

15(2)

16

Other obligations to report not  
affected

This provision should be added to require the discloser to make the disclosure in accordance with **15**.

This provision should be added prohibit a discloser from making a disclosure to the public if the appropriate law enforcement agency directed them a such.

This provision should be added to allow the PIDC or designated officer (as the case may be), if they receive information under PIDWA and reasonably believe that a matter constitutes an imminent risk (in this **13** context), then they may report the information to the appropriate law enforcement agency.

This provision should be added to allow a law enforcement officers to communicate with each other about disclosures/ information provided or direction given about an imminent risk so that they can exercise their duties concerning that risk.

**Division 4**  
**Investigation of Wrongdoings**

**NEW**  
**[formerly 46(4)]**  
Carrying out investigations

This provision [formerly **46(4)**] should be revised to require the PIDC or a designated officer, in receiving, reviewing and investigating disclosures, to carry out those activities as informally, fairly and efficiently as possible in the circumstances.

**NEW**  
17  
17(a)  
17(b)  
17(c)  
Other investigations  
Purpose of investigation

This provision should be added to allow the PIDC or designated officer to postpone or stop an investigation by a department, public entity or officer, other than a PIDWA disclosure, if (absent any evidence to the contrary) there is a prima facie evidence that the investigation was undertaken with an intention to compromise a PIDWA disclosure investigation.  
This provision should be revised to add "or a designated officer" after the PIDC.

This provision should be added to set out assessment and investigation timelines for departments, public entities and offices. The designated officer should acknowledge receipt of a respective disclosure within 10 business days after receiving it -- and then notify the discloser within 20 days of receiving it of the decision to investigate or not. The designated officer must complete an investigation within 120 days of receiving the respective disclosure -- noting that this timeline can be reasonably extended (with subsequent notice and reasons to the discloser).

**NEW**  
18  
Investigation Timelines  
Investigation of Wrongdoings

This provision should not set out any timelines for the PIDC.

This provision should be added to require the PIDC [after receiving a disclosure under **9(c)**] to notify the discloser about the PIDC's decision to investigate/refuse to investigate it.

If the PIDC decides to investigate, then the PIDC must notify the appropriate chief executive -- but can delay notification if the PIDC considers that it might compromise an investigation or expose the discloser to reprisals.

If, after starting an investigation and then deciding to stop it, the PIDC must notify the discloser and chief executive.

**NEW**  
Notifications

Where the PIDC is required to notify a chief executive but the chief executive is allegedly implicated in the wrongdoing, then PIDC can bump notification up to their superior.

19	Use of internal disclosure procedures	This provision should also be revised to require designated officers to keep records of any disclosures made and any reprisal complaints received -- and to make them available for production to the PIDC for audit purposes on its request. This provision should be revised to replace "...a public entity that has disclosure procedures" with "the disclosure procedures of a department, public entity or office."
19(1)		
19(1)(a)		
19(1)(b)		
19(2)		
19(2)(a)		
19(2)(b)		
<b>NEW</b>	When investigation of wrongdoing not required	A new subsection should be added to provide an exception to the proposed new 'discloser protection' provision (just following 'Division 2 Making a Disclosure') so that a chief executive can disclose the identity of a discloser for purposes of <b>19(1)</b> and <b>(2)</b> . Revise to add 'by the Commissioner' -- in view of the above PIDC suggestion [just after <b>5(2)(g)</b> ].
20		
20(1)		
20(1)(a)		
20(1)(b)		
20(1)(c)		
20(1)(d)		
20(1)(e)		
20(1)(f)		
20(2)		
<b>NEW</b>		Where there is insufficient information provided in a disclosure made by an anonymous discloser, the PIDC is not required to investigate the matter.
21	Investigating other wrongdoings Opportunity to make	
22	representations	
23	Report regarding investigation of disclosure	
23(1)		
23(2)		

23(2)(a)  
23(2)(b)  
23(3)  
24 Notification of proposed steps

24(1) This provision should be revised to allow the PIDC to extend (on request) the specified time either before or after its expiry.

24(2)  
24(2)(a)  
24(2)(b) This provision should be revised to reflect the governing heads of a public entity and an office.

## PROTECTION FROM

### PART 4 REPRISAL

#### Division 1 Prohibition on Reprisal

This provision should be revised to incorporate the current reprisal definition in 2. It should state that a person shall not take any of the following measures of reprisal against an employee, or counsel or direct that any of the following measures of reprisal be taken against an employee, by reason that the employee has, in good faith, made a request for advice, a disclosure or a complaint about a reprisal or cooperated with an investigation under this Act:

- (a) a disciplinary measure;
- (b) a demotion;
- (c) a termination of employment;
- (d) any measure that adversely affects the employee's employment or working conditions;
- (e) a threat to take any of the measures referred to in paragraphs (a) to (d)."

This provision should also state that in a prosecution of an offence concerning a reprisal, it isn't necessary to prove that an employee made/may have made/intended to make a request for advice, a disclosure or a reprisal complaint or cooperated with a PIDWA investigation.

This provision should also state that a person doesn't contravene the reprisal prohibition if they've taken, counselled or directed a measure otherwise set out as a reprisal measure if they did so because they were managing or terminating an employment relationship -- and this wasn't done because the employee (in good faith) made a request for advice, a disclosure, a reprisal complaint or cooperated in a PIDWA investigation.

25 Protection of employee from reprisal

25(a) Delete (see above).

25(b) Delete (see above).  
25(c) Delete (see above).  
25(d) Delete (see above).

**Division 2 Making a Complaint of Reprisal**

This provision should be added to allow an employee who is considering making a reprisal complaint to make a request advice from the PID or a designated officer.

**NEW** Request for advice about reprisal  
26 Complaint of reprisal  
26(1) The PIDC or designated officer may require that request to be made in writing.

Do not change. 90 days is a reasonable period based on when the discloser knew or the PIDC deemed them to have known when the reprisal was taken against them. Any period longer than that risks the value and integrity of an investigation because material information or players may no longer be available. Moreover, the PIDC can extend this timeframe if necessary, as per **26(3)**.

26(2) Do not change.  
26(3)

26(4) This provision should be revised to specify the chief executive of an affected department, public entity or office.

26(4)(a)

26(4)(b)

26(4)(b)(i)

26(4)(b)(ii)

**NEW** This provision should be added to specify the governing head of an office.

26(5)

27 Content of complaint of reprisal

27(1) This provision should be revised as follows (see paras **b-d**).

27(1)(a) No change.

27(1)(b) A description and date of the reprisal.

27(1)(c) Delete.

27(1)(d) No change.

Whether the reprisal has already been reported, or a complaint has been made about the reprisal, under this Act, a collective agreement, a contract or another enactment;

**NEW**

<p><b>NEW</b> 27(1)(e) 27(2)</p>		<p>If the above paragraph applies, the name of the person to whom the reprisal has been reported, or the complaint has been made, and the response, if any, that has been received. No change.</p>
<p><b>Division 3</b></p>	<p><b>Investigation of a Complainant of Reprisal</b></p>	
<p>28</p>	<p>Investigation of complaint of reprisal</p>	<p>This provision should be added to state that if, during an investigation of a reprisal complaint, the PIDC has reason to believe that another reprisal measure has been taken against an employee, the PIDC may investigate that reprisal measure in accordance with this Part (4).</p>
<p><b>NEW</b></p>		
<p>29</p>	<p>No duplication of proceedings in respect of a complaint of reprisal</p>	
<p>30</p>	<p>When an investigation of complaint of reprisal is not required</p>	
<p>30(1)</p>		
<p>30(1)(a)</p>		
<p>30(1)(b)</p>		
<p>30(1)(c)</p>		
<p>30(2)</p>		
<p>31</p>	<p>Settlement of complaint of reprisal</p>	
<p>31(1)</p>		
<p>31(2)</p>		
<p>32</p>	<p>Opportunity to make representations</p>	
<p><b>Division 4</b></p>	<p><b>Investigation Report related to Complaint of Reprisal</b></p>	

33	Report regarding investigation of complaint of reprisal	
33(1)		
33(2)		
33(2)(a)		This provision should be revised to specify the chief executives of a department, public entity or an office.
33(2)(b)		
33(3)		
33(4)		This provision should be revised to specify the department, public entity or office.
33(4)(a)		
33(4)(b)		
<b>NEW</b>		This provision should be added to specify the governing head of an office.
34	Decision of the public entity	The provision heading should be revised to include departments and offices.
34(1)		
34(1)(a)		Delete 'and'.
		Add "provide a description of any corrective action taken or state the reasons why no corrective action was taken; and" Given our reasons for deleting the references to 'reprisal' in 42(1)(b), (2)(a) and (c)(ii) [below], we're of the view that a public entity must not only decide whether to follow any recommendations in the report (and provide written notice to that effect), but must also describe the corrective action taken or state its reasons for not taking such action in respect of a PIDC finding of reprisal.
<b>NEW</b>		
34(1)(b)		
34(2)		
34(3)		
		Delete OMB Act <b>28</b> . In its place (and in place of place of Division 5 Arbitration) -- this provision should be added to state: "(1) The Commissioner or a person employed in the administration of PIDWA must not be compelled in civil proceedings (a) to give evidence in respect of matters that come to their knowledge in the course of their employment; or (b) to produce records that are in the possession of the PIDC because of the PIDC's powers or duties under this Act.
	Public Interest Disclosure Commissioner and staff not compellable in civil proceedings	(2) Despite (1), a court may require the Commissioner to produce the record of the investigation report that is the subject of an application for judicial review."
<b>NEW</b>		
	Court judicial review if recommendations rejected	If a public entity rejects a recommendation under <b>33(1)</b> , the public entity may apply to the Court for a judicial review of the decision or matter to which the recommendations relate not later than 30 days after the public entity rejected the recommendations.
<b>NEW</b>		

		Div 5 -- Arbitration' should be deleted. We're 'recommendation-based' only. The appropriate remedy is a judicial review on the record. See NEW provision at <b>46(1)(i)</b> .
<b>Division 5</b>	<b>Arbitration</b>	
35	Referral to arbitration	Delete.
35(1)		Delete.
35(2)		Delete.
35(3)		Delete.
35(4)		Delete.
36	Ineligibility to act as arbitrator	Delete.
36(1)		Delete.
36(1)(a)		Delete.
36(1)(b)		Delete.
36(2)		Delete.
	Procedure governing hearing and determination of disputes	
37		Delete.
37(1)		Delete.
37(2)		Delete.
37(2)(a)		Delete.
37(2)(b)		Delete.
37(2)(c)		Delete.
37(2)(d)		Delete.
37(2)(e)		Delete.
37(2)(f)		Delete.
37(2)(g)		Delete.
38	Award of arbitrator	Delete.
38(1)		Delete.
38(2)		Delete.
38(3)		Delete.
38(3)(a)		Delete.
38(3)(b)		Delete.
38(3)(c)		Delete.
38(3)(d)		Delete.
38(3)(e)		Delete.



38(3)(f) Delete.  
38(3)(g) Delete.  
38(4) Delete.  
38(5) Delete.

39 Implementation of arbitral award Delete.

40 Authority to amend or vary award Delete.  
Fees and expenses of the

41 arbitrator Delete.

**PART 5 REPORTS**

42 Annual report by chief executive

This provision should be revised to include the PIDC in the main text of 42(1) because it is our experience that many (current) public entities only see **42(3)** as an afterthought and aren't normally compliant unless prompted by us (*e.g.*, "The chief executive of each public entity must prepare and submit annually to the PIDC, the responsible Minister...")

This provision should also be revised to specify chief executives of departments, public entities or offices.

This provision should also be revised to require chief executives (or designated officers) to keep records of any disclosures made in **42(1)(a)** and any reprisal complaints received in **(b)** -- and make them available for production to the PIDC on its request for purposes of audit.

This provision should also be revised to require chief executives to report on the assessment/investigation timelines suggested as a new provision under Division 4 following current **17(c)** -- including any backlogs.

This provision should also be revised to require chief executives to report the substantive outcomes of their (disclosure procedure) investigations to the Minister responsible for PIDWA/Board chair and additionally to the PIDC for purposes of audit. These reports should include summaries of investigations, inclusive of reasons, that did not result on a finding of wrongdoing or reprisal.

42(1) Delete 'supervisor'. Disclosure procedures should NOT be optional. As such, only a designated officer is required.  
42(1)(a)

42(1)(b)  
42(2)

Delete. Complaints of reprisal must NEVER be made to a public entity (or a corporation/board) -- they must only be made to the PIDC.

42(2)(a)  
42(2)(b)  
42(2)(c)  
42(c)(i)

This provision should be revised to delete "and complaints of reprisal." Complaints of reprisal must NEVER be made to a public entity (or a corporation/board) -- they must only be made to the PIDC.

42(c)(ii)  
42(3)

Delete. Complaints of reprisal must NEVER be made to a public entity (or a corporation/board) -- they must only be made to the PIDC.

Delete if **42(1)** is revised, as suggested above -- [move PIDC into **42(1)**].

Annual and special reports by the  
Public Interest Disclosure  
Commissioner

43  
43(1)  
43(1)(a)  
43(1)(b)  
43(1)(c)  
43(1)(d)  
43(1)(e)  
43(1)(f)  
43(1)(g)  
43(1)(h)  
43(2)  
43(3)  
43(4)

Revise the heading to include 'public comments'.

**NEW**

This provision should be added to allow the PIDC to make public comments that they consider to be in the public interest concerning matters relating generally to the exercise of the PIDC's duties -- or where there's an urgent matter that the PIDC reasonably believes to amount to an imminent risk of a substantial and specific danger to the life, health or safety of persons or to the environment.

**NEW**

Although the PIDC publishes summaries of reports on its website in the interests of purposes **1(a) - (c)**, as well as for education and awareness, there should be a provision that overtly provides for such publishing *e.g.*, website, etc).

**THE PUBLIC INTEREST  
DISCLOSURE**

**PART 6**

**COMMISSIONER**

Office of the Public Interest

Disclosure Commissioner

44

44(1)

44(2)

44(3)

Appointment of the Public Interest

Disclosure Commissioner

45

Delete **45(1)**.

**45 (1-5)** should be revised to delete reference to the Ombudsman except in **2(a-b)**.

Reference to the respective *Ombudsman Act* provisions in paragraphs **(a-h)** should be set out in their appropriate and full text as PIDWA provisions -- with no further need to cross-reference tediously to the *Ombudsman Act* .

Move **45(2)** to **45(3)**.

45(1)

45(2)

45(2)(a)

45(2)(b)

45(3)

45(4)

45(5)

45(5)(a)

45(5)(b)

45(5)(c)

45(5)(d)

45(5)(e)

45(5)(f)

45(5)(g)

45(5)(h)

Move **45(3)** to **45(1)**. Delete reference to Ombudsman.

Move **45(4)** to **45(2)**.

This provision should be revised to state that the following provisions apply to the PIDC and the office of the PIDC.

Set out OMB Act **3** ('Term of office') but replace Ombudsman with PIDC.

Set out OMB Act **4** ('Remuneration') but replace Ombudsman with PIDC.

Set out OMB Act **5** ('Resignation, removal or suspension') but replace Ombudsman with PIDC.

Set out OMB Act **6** ('Commissioner in Executive Council') but replace Ombudsman with PIDC.

Set out OMB Act **7** ('Staff') but replace Ombudsman with PIDC.

Set out OMB Act **8** ('Premises and supplies') but replace Ombudsman with PIDC.

Set out OMB Act **9** ('Financing of operations') but replace Ombudsman with PIDC.

Set out OMB Act **10** ('Confidentiality') but replace Ombudsman with PIDC.

46	Powers and protections in conducting investigations	<p><b>46(1)</b> should be revised to delete reference to the <i>Ombudsman Act</i> as it is no longer necessary to import this Act into PIDWA. The PIDC, as per <b>current 45(3)</b> and <b>(4)</b>, can be appointed in their own right (as is currently the case). The respective paragraphs below <b>(b-k)</b> should therefore be set out in their full text as PIDWA provisions (inclusive of suggested PIDC revisions), with no further need to cross-reference tediously to the <i>Ombudsman Act</i>.</p>
46(1)		
46(1)(a)		Delete.
		<p>This provision should be added to require that an investigation conducted under this Act shall be conducted without the presence of legal counsel for the witness unless there are special circumstances that, in the PIDC's opinion, warrant such presence. This revision would not preclude an individual's right to seek legal advice before or after a witness interview.</p>
<b>NEW</b>		
46(1)(b)		Set out OMB Act <b>12</b> but replace Ombudsman with PIDC.
		Set out OMB Act <b>16</b> but replace Ombudsman with PIDC.
		[OMB Act <b>16(b)</b> ] should be revised to add 'in the opinion of the PIDC' immediately after the text 'possession or control that...'
		<p>This provision should be added after OMB Act <b>16(e)</b> to state that if a person named in and served with a Notice to produce Documents or a subpoena does not comply with these instruments, the person is liable, on application to the Supreme Court, to be punished for contempt as if in breach of a judgment or an order of the Supreme Court.</p>
46(1)(c)		
46(1)(d)		Set out OMB Act <b>18</b> but replace Ombudsman with PIDC.
46(1)(e)		Set out OMB Act <b>19(1)</b> but replace Ombudsman with PIDC.
46(1)(f)		Set out OMB Act <b>20</b> but replace Ombudsman with PIDC.
46(1)(g)		Set out OMB Act <b>21</b> but replace Ombudsman with PIDC.
46(1)(h)		Set out OMB Act <b>27</b> but replace Ombudsman with PIDC.
46(1)(j)		Set out OMB Act <b>29</b> but replace Ombudsman with PIDC.
46(1)(k)		Set out OMB Act <b>30</b> but replace Ombudsman with PIDC.
46(2)		
46(3)		
46(4)		
46(5)		Delete. See text under Division 5 Investigations of Wrongdoings.
47	Referral by Legislative Assembly	

47(1)  
47(1)(a)  
47(1)(b)

**PART 7 OFFENCES AND PENALTIES**

Willful non-protection of discloser  
identity

There should be, in concert with **5(2)(d)**, an offence provision for willfully not protecting the identity of a discloser.

**NEW**  
48

False or misleading statements  
Obstruction in performance of  
duties

49

Destruction, falsification or  
concealment of documents or  
things

50  
50(a)  
50(b)  
50(c)  
50(d)

Offence and penalty

This provision should be revised to raise the fine for a first offence to not more than \$25,000 and to add that a second or subsequent offence should be not more than \$100,000.

51(1)  
51(2)

Limitation period for prosecuting  
offences

52

**PART 8 MISCELLANEOUS**

Public interest Disclosure  
Commissioner employees may  
make complaints of reprisal

PIDC employees should be able to request advice, make disclosures or reprisal complaints arising from issues in their workplace. Given the deemed conflict of interest, this provision would also have to include the appropriate venue that such employees go approach for complaint and investigation purposes (*e.g.*, AGC, an outside Commissioner). No similar PE issue because discloser can come directly to us.

**NEW**

The following provision should be added.

"(1) The Commissioner must notify the Speaker of the Legislative Assembly, without delay after the PIDC determines that, with respect to the performance of a duty or exercise of a power under this Act in relation to a particular matter

(a) the Commissioner has a conflict of interest; or

(b) there would be a reasonable apprehension of bias if the Commissioner considered or dealt with the matter.

(2) Without delay after being notified of a determination under subsection (1), the Speaker must

(a) consult with the Members' Services Board (being a standing committee of the Legislative Assembly); and

(b) appoint, in writing, an acting Commissioner for the purpose of considering or dealing with the particular matter to which the notification relates.

(3) An acting Commissioner appointed under subsection (2)

(a) must perform all of the duties of the Commissioner in respect of the matter in relation to which they are appointed; and

(b) may exercise any of the powers of the Commissioner in respect of the matter in relation to which they are appointed."

**NEW**  
Acting Public Interest Disclosure  
Commissioner if conflict of  
interest  
Collection, use and disclosure of  
information

Move to NEW PART GOVERNANCE

53

53(1)

53(2)

54

Protection from liability

Delete 'arbitrator'.

54(a)

54(b)

**NEW**

Protection in relation to powers,  
duties or functions

This provision should be added to state that no proceeding can be commenced or maintained for anything done or omitted in good faith in the exercise a power duty, duty or function conferred under PIDWA.

**NEW**

Protection in respect of libel or  
slander

This provision should be added to state that for the purposes of any law concerning libel or slander, anything said or any information/documents/things produced during an investigation by the PIDC or a designated officer are privileged to the same extent as if the inquiry/proceeding were a court proceeding. Same with a report made by the PIDC or a designated officer, including a fair and accurate account of the report by the media, is privileged to the same extent if the report were a court order.

<b>NEW</b>	Contractual duties to not limit disclosure	Contractual/agreement provisions are not enforceable to the extent that they would prevent a request for advice, a disclosure, a reprisal complaint or cooperation with a PIDWA investigation. This provision would apply to any contract/agreement between an employer/employee -- including an agreement to refrain from instituting/continuing any proceeding under PIDWA or any proceedings for breach of contract.
<b>NEW</b> 55 55(1)	Rules Review	<p>This provision should be added to allow the PIDC to determine (within the confines of PIDWA) the PIDC's procedures in exercising the powers conferred and performing the duties imposed by PIDWA. For example, it could state that the PIDC can establish and implement practices and procedures for the office of the PIDC in order to ensure its efficient and timely compliance with this Act.</p> <p>Delete -- spent.</p>
<b>NEW</b>		This provision should be added to require that at least every five years a special committee of the Legislative Assembly, at the request of the PIDC, must begin a comprehensive PIDWA review.
<b>NEW</b>		<p>It must also require the special committee to submit a report about the PIDWA review within one year of its appointment. This provision should be added to allow a report by the special committee to include any recommended amendments to PIDWA (and consequentially to other enactments).</p>
<b>NEW</b> 55(2) 56	Regulations	<p>This provision should be added to state, that for the purpose of the PIDWA review, the first 5-year period began when PIDWA first came into force.</p> <p>Delete.</p>
<b>NEW</b>		Prescribing a class of persons for the purposes of the definition of 'employee' in <b>2</b> .
<b>NEW</b>		Designating an organization as a department, public entity or office.
56(a)		
<b>NEW</b>		Prescribing information for the purposes of <b>7</b> .
56(b)		
56(c)		
56(d)		
56(e)		
56(f)		
56(g)		
56(h)		
56(i)		

**NEW**

56(j)

**PART 9**

57

**COMMENCEMENT**

Coming into force

Prescribing public entities for purposes of the PIDWA Schedule (as described below in line 368).

Delete -- spent.

**PUBLIC ENTITIES**

This Schedule should be revised to follow the ATIPPA regulatory model (OIC 2021/025) in which there are two schedules, noting 'body/ies' would have to be changed to 'entiy/ties' where applicable.

**SCHEDULE**

A department, directorate, secretariat or other similar executive agency of the

1

Government of Yukon

**NEW**

Human Rights Commission

2

The Legislative Assembly Office

The Office of the Chief Electoral

3

Officer

The Office of the Child and Youth

4

Advocate

Workers' Compensation, Health

5

and Safety Board

6

Yukon College

7

Yukon Development Corporation

8

Yukon Energy Corporation

9

Yukon Hospital Corporation

10

Yukon Housing Corporation

11

Yukon Liquor Corporation

This Schedule, revised or otherwise, should be moved completely into PIDWA Regulations.

If the PIDWA Schedule is not changed to follow the ATIPPA schedule model as recommended, then delete. This phrase is too ambiguous to administer. As stated above, all entities, including new ones, should clearly be identified and be listed in alphabetic order under their respective headings.

Add.



**NEW**

Yukon Water Board

Add.