WHISTLEBLOWER PROTECTIONS IN BRITISH COLUMBIA

Understanding the federal and provincial framework for disclosures

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KEY TAKEAWAYS

- British Columbia does not have one whistleblower law that protects every person or every disclosure.
- Protection depends on who is reporting, what is being reported, and which reporting channel is used.
- Confidentiality can often be protected, but complete anonymity can rarely be guaranteed.
- Public disclosure may create privacy, confidentiality, defamation, contractual, and employment risks.

I. OVERVIEW

This article is intended for people considering whether and how to report suspected wrongdoing in British Columbia. It explains the main statutory regimes, identifies common gaps in protection, and highlights why the safest reporting path depends on the whistleblower's role, the subject matter, and the reporting channel used.

Whistleblowing can expose serious wrongdoing, protect public funds, and prevent harm. The difficult question is not only whether the concern is serious, but whether the person reporting it is protected and whether the chosen reporting channel is lawful.

British Columbia does not have a single law that protects every whistleblower. Instead, protection comes from a patchwork of federal and provincial statutes, employment law, criminal law, human rights legislation, workplace policies, collective agreements, and the common law.

Whether a disclosure is protected usually depends on four questions: (1) who is making the disclosure, (2) what is being reported, (3) to whom the report is made, and (4) how the information is obtained and shared. A federal public servant, a municipal employee, a private-sector worker, a contractor, and a member of the public may each face a different legal framework.

The most comprehensive federal and provincial statutory regimes generally apply to employees within defined parts of the public sector. In British Columbia, the Public Interest Disclosure Act provides a similar framework for qualifying employees of provincial ministries and other public bodies brought within the legislation. These statutes identify the kinds of wrongdoing that may be disclosed, prescribe internal and external reporting channels, impose confidentiality obligations, and prohibit reprisals against eligible employees.

British Columbia's legislation does not presently provide equivalent general protection to every municipal employee, private-sector worker, contractor, municipal elected official, volunteer, or member of the public. The scope of protection depends on the individual's relationship with the organization and the statutory regime that applies.

For those outside an applicable employee-disclosure framework, public disclosure is protected only in limited circumstances and should not be treated as interchangeable with a confidential report to an authorized body. Whistleblower protections also do not guarantee anonymity.

Anyone outside a clear statutory disclosure framework should obtain independent legal advice before coming forward, particularly before disclosing confidential documents, personal information, privileged material, or allegations publicly. This article provides general legal information, with particular attention to British

Which framework may apply?

FEDERAL	B.C. PUBLIC	MUNICIPAL	OTHER
Federal public servant	**Employee of a covered B.C. body**	**Municipal employee or official**	**Private employee, contractor, or citizen**
PSDPA may apply	PIDA may apply	Policies and narrower laws	Issue-specific protections

Columbia. It is not legal advice and should not be relied on as such.

II. FEDERAL PUBLIC-SECTOR EMPLOYEES

The federal Public Servants Disclosure Protection Act (PSDPA)[1] applies to much of the federal public sector. It establishes internal and external disclosure channels, identifies protected categories of wrongdoing, and prohibits reprisals against public servants who make protected disclosures or cooperate with investigations.

Wrongdoing under the PSDPA includes contraventions of federal or provincial legislation, misuse of public funds or assets, gross mismanagement, serious breaches of a code of conduct, and conduct that creates a substantial and specific danger to life, health, safety, or the environment.

The PSDPA is not a general law for every worker in Canada. Its protection is tied to employment in the federal public sector, subject to statutory inclusions and exclusions. It does not ordinarily protect provincial or municipal employees, private-sector workers, independent contractors, or members of the public merely because their information concerns government.

Even within the federal regime, disclosure directly to the public is permitted only in narrow and urgent circumstances. The existence of wrongdoing does not automatically authorize publication to the media or online.

III. BRITISH COLUMBIA'S PUBLIC INTEREST DISCLOSURE ACT

British Columbia's Public Interest Disclosure Act (PIDA) creates a disclosure and anti-reprisal protection regime for employees of provincial ministries, offices of the Legislature, and organizations designated by regulation. Coverage under the Act has expanded in stages and now includes many provincial public-sector organizations, including designated Crown corporations, health authorities, school districts, and public post-secondary institutions.

An eligible employee may seek advice and may disclose qualifying wrongdoing to a supervisor, a designated officer, or the Ombudsperson. Disclosures may be made anonymously. The Act also establishes a process for complaints about reprisals and requires covered organizations to adopt procedures for receiving and investigating disclosures.

PIDA is broad within its defined sphere, but it is not universal. Coverage of a particular organization or individual must be confirmed under the Act and its regulations. PIDA's definition of “employee” includes directors, officers, and members of prescribed classes of designated government bodies, as well as former qualifying employees where the alleged wrongdoing occurred or was discovered during their employment.[2]

Contractors are not generally treated as employees under PIDA’s disclosure regime, although s. 32 separately protects persons contracting with government from certain adverse contractual measures arising from good faith cooperation with an investigation under the Act. Municipalities are not designated as government bodies under PIDA.[3] Therefore, private-sector employees, most contractors, municipal elected officials, and members of the public are generally outside PIDA’s employee disclosure framework.[4]

[1] *Public Servants Disclosure Protection Act*, SC 2005, c 46 [PIDA].

[2] PIDA, ss. 1, 2(a)(ii).

[3] *Government Body Designation (Public Interest Disclosure) Regulation*, BC Reg 58/2022, s. 1 and Schedule.

[4] PIDA, s. 1; *Government Body Designation (Public Interest Disclosure) Regulation*, s. 2.

IV. THE MUNICIPAL GAP

British Columbia does not currently have a general whistleblower statute for municipal employees equivalent to PIDA. Municipalities may adopt codes of conduct, ethics policies, respectful workplace policies, fraud reporting procedures, or protections in collective agreements. Those measures can be important, but their scope and available remedies vary.

Municipal employees and officials also remain subject to statutory and common law obligations governing confidential and personal information. Under British Columbia's Freedom of Information and Protection of Privacy Act (FIPPA),[5] employees, officers, and directors of public bodies must not collect, use, or disclose personal information except as authorized by the Act.

The potential risks and consequences of unauthorized disclosure are illustrated by R. v. Skakun.[6] In that case, a municipal councillor was convicted under FIPPA after providing the media with a confidential workplace harassment report containing personal information that he had received during a closed council meeting. The Court of Appeal ultimately upheld the conviction, concluding that a municipal councillor was an “officer” of a public body for the purposes of the applicable FIPPA prohibition. Skakun illustrates that a person who believes disclosure is in the public interest must nevertheless consider the statutory restrictions governing the information and whether the proposed disclosure is authorized.

Accordingly, a confidential report through an authorized channel is legally different from publishing documents or allegations to the public. Public disclosure can create additional privacy, confidentiality, defamation, contractual, professional, and employment risks.

[5] *Freedom of Information and Protection of Privacy Act*, RSBC 1996, c 165 [FIPPA].
[6] *R. v. Skakun*, 2012 BCSC 1103, aff’d 2014 BCCA 223.

V. NARROWER PROTECTIONS UNDER OTHER LAWS

Outside the main public-sector disclosure regimes, protection is usually narrower and more issue specific. Other statutes may protect a person from retaliation only where the report concerns the subject matter of that statute, is made by a covered person, and is directed to an authorized recipient.

Criminal Code

Section 425.1 of the Criminal Code[7] makes it an offence for an employer or person in authority to threaten or take employment action to prevent an employee from giving information to a person whose duties include enforcing federal or provincial law, or to retaliate because the employee has done so.

This provision applies in both public- and private-sector employment, but it has important limits. It concerns information about an offence that the employee believes has been or is being committed, and the information must be provided to an appropriate law enforcement or regulatory authority. It does not create a general shield for disclosure to journalists, advocacy groups, websites, or the public.

Privacy, Employment Standards, and Human Rights

FIPPA contains a targeted anti-reprisal provision. Section 30.3 protects an employee who, acting in good faith and on a reasonable belief, reports a suspected contravention of FIPPA to the Information and Privacy Commissioner, takes steps required to prevent a contravention, or refuses to participate in a contravention. However, its protection from reprisal is limited to conduct connected with FIPPA.

[7] *Criminal Code*, RSC 1985, c C-46.

British Columbia's Employment Standards Act[8] prohibits reprisals connected to complaints, investigations, and rights under that statute. The BC Human Rights Code[9] similarly prohibits retaliation connected to a human rights complaint or proceeding. These provisions protect participation in specific statutory processes; they do not create a general right to report unrelated misconduct.

Other legislation and professional regimes may protect or require reports about subjects such as occupational health and safety, environmental harm, securities misconduct, health-care concerns, or professional wrongdoing. The governing statute and the authorized recipient should be identified before assuming that anti-reprisal protection applies.

VI. PUBLIC CRITICISM AND THE DUTY OF LOYALTY

The law presumes that employees generally owe duties of loyalty, fidelity, and confidentiality to their employers. Public servants retain freedom of expression, but this freedom must be balanced against the public interest in an effective and politically neutral public service.

In Fraser v. Public Service Staff Relations Board,[10] the Supreme Court of Canada recognized that public criticism may be justified in limited circumstances, including where government conduct is illegal or threatens life, health, or safety. The result remains context-specific and may depend on the employee's role, the seriousness and accuracy of the concern, the form of the criticism, the effect on the employer's operations, and whether reasonable internal steps were available.

Fraser did not create a general right to release confidential records. Criticizing government policy and disclosing protected, privileged, or personal information are legally distinct acts.

VII. CONFIDENTIALITY IS NOT ANONYMITY

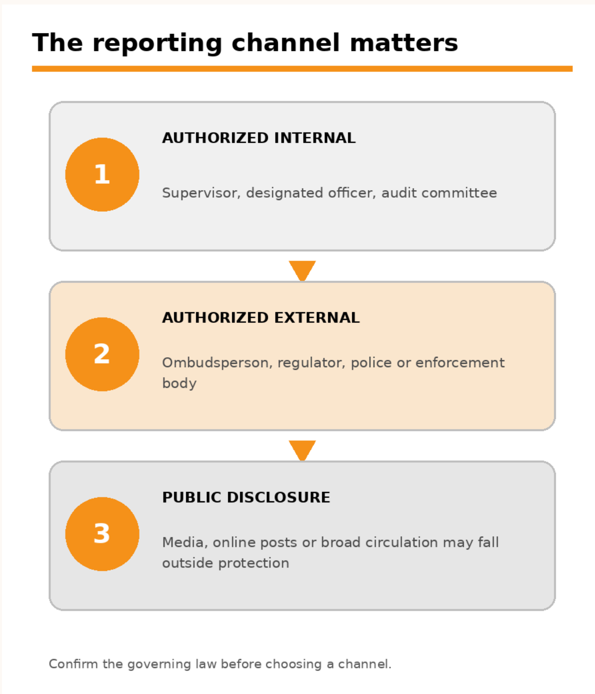
A disclosure process may promise to keep information confidential to the extent permitted by law. That is not the same as guaranteeing anonymity.

A source's identity may become apparent or may have to be disclosed because an allegation must be investigated fairly; a person accused of wrongdoing must receive enough information to respond; a court, tribunal, arbitrator, regulator, or statute requires production; the documents reveal the source; or only a small number of people could have known the information.

Organizations should therefore avoid promising absolute anonymity unless they can lawfully and practically provide it. A more accurate commitment is that identifying information will be restricted, protected, and disclosed only where necessary or required by law.

[8] *Employment Standards Act*, RSBC 1996, c 113, s. 83.
[9] *Human Rights Code*, RSBC 1996, c 210, s. 43.
[10] *Fraser v. Public Service Staff Relations Board*, [1985] 2 SCR 455.

VIII. THE REPORTING CHANNEL MATTERS



Statutory protection often depends on using an authorized channel

Protection is generally clearest when a report is made through a channel identified by legislation, a workplace policy, or a collective agreement. Depending on the governing regime, the recipient may be a supervisor, designated disclosure officer, board or audit committee, ombudsperson, regulator, police service, or other enforcement authority. By contrast, going directly to the media, posting online, or circulating documents broadly may fall outside the applicable statutory protection and may create separate legal exposure for the source and for anyone who receives or republishes the information.

Even where a concern is genuine, reporting does not authorize every form of disclosure. Relevant constraints may include privacy legislation, contractual confidentiality clauses, professional duties, solicitor-client or litigation privilege, defamation law, records management requirements, and prohibitions against interfering with an investigation or proceeding.

Good faith and reasonable belief are frequently important, but they are not the only considerations. The identity of the recipient, the relevance of the information disclosed, and the steps taken to protect confidential or personal information may determine whether the report is protected.

IX. PRACTICAL CONSIDERATIONS

Several considerations may be useful before a potential whistleblower decides to make a disclosure:

The regime that governs the whistleblower’s organization and their relationship with it, including applicable workplace policies, collective agreements, professional rules, and designated disclosure procedures.

Whether an authorized internal or external channel for reporting exists, including disclosure policies.

Where the concern involves the ordinary recipient of a disclosure, whether an alternate channel is available, such as a designated officer, ombudsperson, regulator, board committee, or independent reporting service.

Whether the potential whistleblower is in possession of and may disclose any relevant information lawfully, or whether the disclosure pertains to records they are not entitled to possess.

What laws, policies, or regulations, if any, may exist to protect against retaliation.

XI. SELECTED AUTHORITIES

Public Servants Disclosure Protection Act, S.C. 2005, c. 46.

Criminal Code, R.S.C. 1985, c. C-46, s. 425.1.

Public Interest Disclosure Act, S.B.C. 2018, c. 22.

Freedom of Information and Protection of Privacy Act, R.S.B.C. 1996, c. 165, ss. 25.1 and 30.3.

Employment Standards Act, R.S.B.C. 1996, c. 113, s. 83.

Human Rights Code, R.S.B.C. 1996, c. 210, s. 43.

R. v. Skakun, 2012 BCSC 1103, aff'd 2014 BCCA 223.

Fraser v. Public Service Staff Relations Board, [1985] 2 S.C.R. 455.

This publication provides general information only and should not be relied on as legal advice. Laws and organizational policies may change. Legal advice should be obtained before making any public complaint or disclosure.