



**PUBLIC INTEREST
COMMISSIONER
of Alberta**



2019-20 ANNUAL REPORT



**PUBLIC INTEREST
COMMISSIONER**
of Alberta



To the Honourable Speaker
of the Legislative Assembly



**PUBLIC INTEREST
COMMISSIONER**

The Public Interest Commissioner's office is pleased to present its 7th Annual Report to you and through you, to the Legislative Assembly.

The Report has been prepared in accordance with section 33(1) of the *Public Interest Disclosure (Whistleblower Protection) Act* and covers the activities of the Public Interest Commissioner's office for the period April 1, 2019 through March 31, 2020.

Respectfully,

A handwritten signature in cursive script, reading "Marianne Ryan".

Marianne Ryan
Public Interest Commissioner

Fall, 2020
Edmonton, Alberta



**PUBLIC INTEREST
COMMISSIONER**

Vision

A public sector wherein wrongdoings are confidently reported without fear of reprisal, and effective and appropriate management responses are undertaken.

Mission

The Public Interest Commissioner fosters a culture that:

- Encourages the reporting of wrongdoings
- Provides fair, independent and impartial investigations
- Protects employees from reprisals

Values

Integrity | Respect | Accountability | Independence

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Message from the Public Interest Commissioner



Welcome to our 2019-20 annual report.

Since 2013, *Alberta's Public Interest Disclosure (Whistleblower Protection) Act* (the Act) has been in place to ensure public sector employees who report serious wrongdoing have a safe avenue and clear process for disclosing their concerns. Further, the Act serves to shield those who choose to speak out from any type of retaliation that may be directed towards them because of their disclosure.

My office is in place to facilitate these disclosures and as an independent Officer of the Legislative Assembly of Alberta, I lead a team responsible for investigating allegations of wrongdoing and reprisal in the public sector.

We receive all manner of complaints to our office and we employ investigators with expertise in government, administrative fairness, fraud and policing to respond and investigate. Upon receipt, all complaints undergo an assessment process to determine whether the circumstances of the complaint meet the criteria provided for disclosures of wrongdoing and reprisal in the Act. Investigators consider each case carefully so they may provide appropriate advice, work informally to resolve the issue or advance the matter to a full investigation.

As the Public Interest Commissioner, I appreciate all contact with our office in that it provides us the opportunity to hear directly from public sector employees about what they may be experiencing in their respective workplaces. While my office responds to individual complaints, we also monitor for systemic trends that may give rise to or have given rise to wrongdoings. I may also make general recommendations for improvement that I consider appropriate.

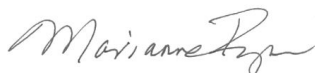
Our annual report provides an excellent opportunity to communicate with our stakeholders including public sector employees. Here we revisit our role, describe our processes and through real case examples we illustrate how our work promotes public confidence in the administration of an effective public service.

In 2019-20, we opened 191 cases including complaints ranging in topic from misappropriation of public funds to gross mismanagement of employees to complaints of broken policy and violation of public health orders. As in previous years, we received general inquiries, requests for advice, non-jurisdictional complaints involving private sector organizations and complaints we observed to be better suited to another complaint handling process or legislative office. In all cases, we took the time to explain our assessment results and provided advice about the Act so the individual had a better understanding of how they could advance their complaint.

Noteworthy in 2019-20, we concluded a significant investigation into serious wrongdoing occurring at the Alberta Energy Regulator that was initiated as a result of a whistleblower complaint. The article, found on page 15, summarizes the investigation and describes the type of wrongdoings that indeed had taken place. Of significant importance was how this case confirmed whistleblower protection legislation provides public servants with an effective mechanism to speak out about wrongdoings or make complaints of reprisal. While the matter was exposed so corrective measures could be taken, the whistleblower's identity remained confidential and continues to remain anonymous to their employer and others outside of our office.

At the time of this report's release, Albertans continue to persevere through daily challenges brought on by the COVID-19 global pandemic. I would like to take this opportunity to thank my staff for rising to meet each new challenge and for exemplifying what it means to be public servants in Alberta. While provincial health restrictions require us to change the way we do our work, I am confident that our office continues to operate at a high level, meeting and exceeding the requirements of our mandate. We appreciate the level of trust Albertans place in us to protect whistleblowers in the public sector.

Finally, I encourage public sector organizations to continue in their work ensuring internal whistleblower protection policies are in place and employees are made aware of the protection provisions afforded to them under the Act. I encourage organizations accountable to the Act to foster a workplace environment that welcomes the reporting of wrongdoing. We recognize that no organization is immune to wrongdoing and it's only when managers and employees work together to apply corrective measures that significant positive change can be implemented.



Marianne Ryan
Public Interest Commissioner

Giving Whistleblowers a Voice

A foundational building block to an effective public service is a commitment to an ethical framework that sets the expectation for employees and guides decision making at all levels.

While this is a model the public service strives to achieve, we know that from time to time, serious issues can and do arise. The best organizations want to understand the problems and act quickly to remedy the situation, restoring faith in all levels of administration.

Legislated Protections

The *Public Interest Disclosure (Whistleblower Protection) Act* (the Act) is in place for when these ideal systems break down. The Act creates a safe avenue for public sector employees to disclose concerns about wrongdoing with safeguards for confidentiality and protection provisions that shield employees from reprisal. The Act provides the Commissioner the authority to investigate significant and serious matters that a public sector employee believes may be unlawful, dangerous or injurious to the public interest.

The Act applies to provincial government departments, offices of the Legislature, Members of the Legislative Assembly and their offices, Ministers and their offices, the Premier and his/her office, organizations in the health and education sectors, and public entities. Public entities include agencies, boards, commissions, provincial corporations, or other entities designated by the *Public Interest Disclosure (Whistleblower Protection) Regulations*.

Serving the Public Interest

The Public Interest Commissioner's office is an independent office of the Alberta Legislative Assembly, responsible for investigating allegations of wrongdoing and complaints of reprisal in the public service.

The Public Interest Commissioner's office formed in June 2013 to advance and promote the Act and its requirements. The Commissioner's responsibility is to advocate for a culture within the public sector that encourages employees and management to report wrongdoings in their workplace. Her office investigates in a fair and impartial way and if wrongdoing has occurred, the Commissioner will make recommendations for corrective measures.

A critical component in the creation and existence of the Act is to promote confidence in the administration of the public service.

Investigative Expertise

Investigations at the Public Interest Commissioner's office are administrative investigations. Investigators probe into the circumstances of an event or incident in order to collect and analyze relevant evidence and form a basis for the Commissioner to make a decision. To us, service delivery means a fair and impartial investigation delivered within the legislated timeline for managing disclosures. The Commissioner may approve applications to extend timelines when cases are particularly complex or require consultation from external subject-matter experts (e.g., forensic IT specialists).

From time to time, the Commissioner will make the outcome of an investigation public when it serves in the public's best interest to do so.

The Public Interest Commissioner is also Alberta's Ombudsman, whose office responds to complaints of unfair treatment by authorities and organizations identified in the *Ombudsman Act*. The Ombudsman, along with her Deputy, direct three investigative teams in providing oversight to ensure fair treatment through independent investigations, recommendations and education for all Albertans.

The two offices maintain separate investigative operations but share corporate services and executive management.

“You have no idea of the degree of relief here right now. This process worked incredibly well and I totally appreciate that we have this safe place to go. Thank you for the work your office does.”

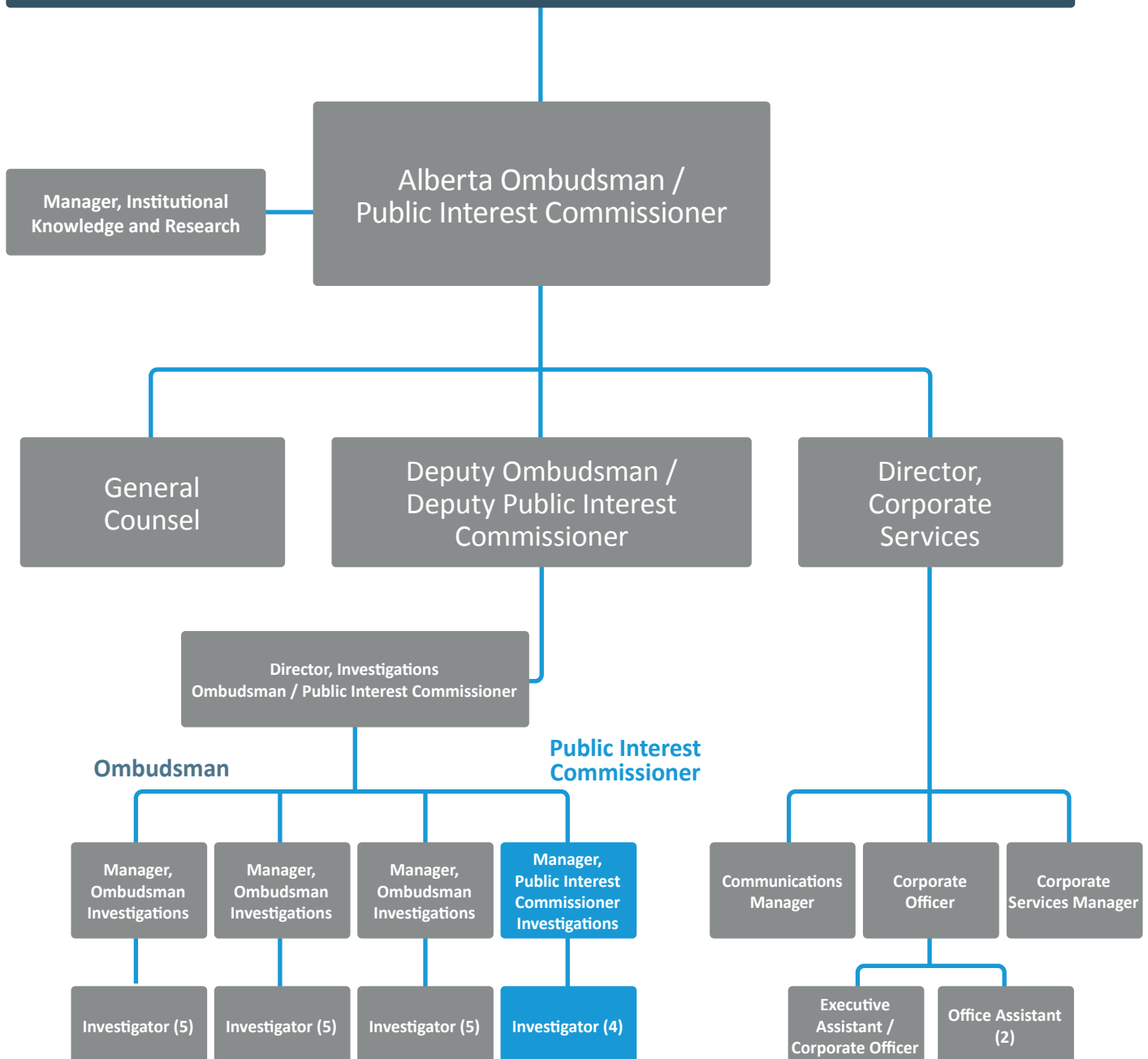
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from a public sector employee
who spoke with us after submitting a disclosure of
wrongdoing



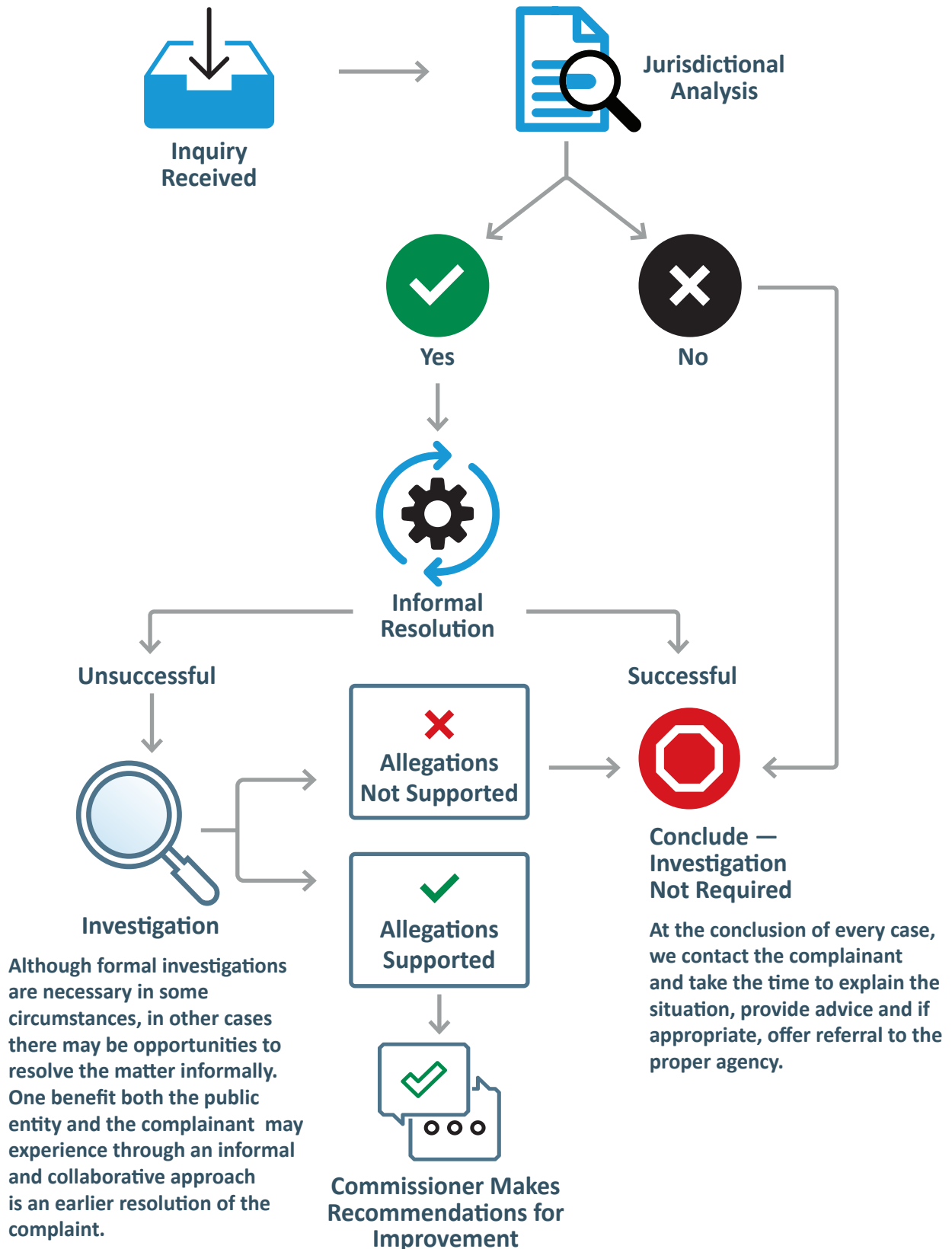
Legislative Assembly of Alberta

Standing Committee on Legislative Offices



This organization chart reflects a reduction from 33 Ombudsman full-time employees in fiscal year 2019-20 to 30 in 2020-21.

Our Complaints Process



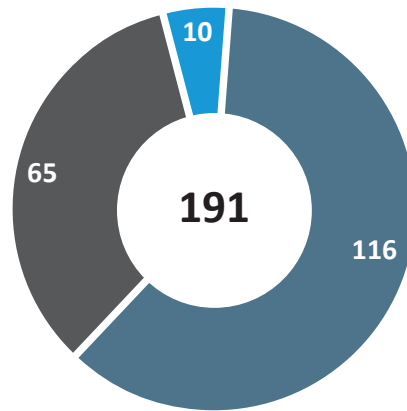
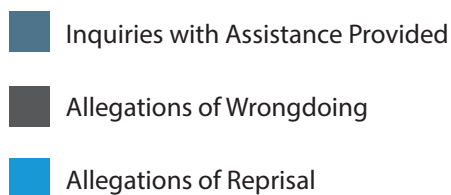
2019-20

By the Numbers

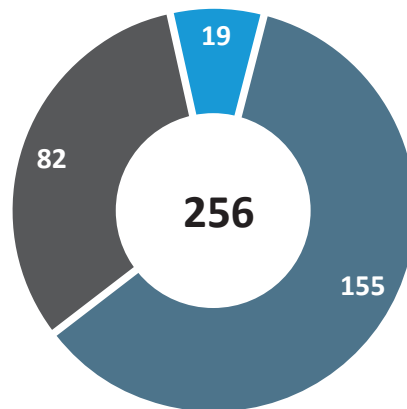
Three Year Comparison of Cases Received

The volume of cases our office receives about public entities varies from year to year.

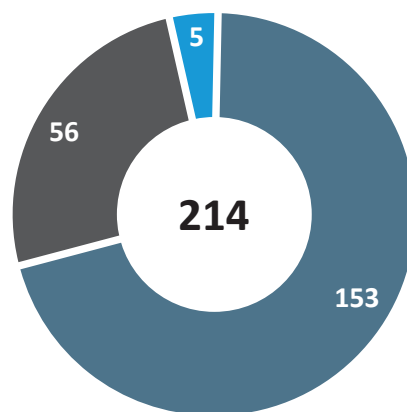
These graphs demonstrate that fluctuation by comparing inquiries with assistance provided, allegations of wrongdoing and allegations of reprisal in 2019-20 to previous years.



2019-20



2018-19



2017-18

2019-20

By the Numbers

Cases Received by Sector



Government Ministries

54



Non-jurisdictional

48



Agencies, Boards & Commissions

28



Health Sector

25



Education Sector

24



Post-Secondary Institutions

6



Offices of the Legislature

5



Members of the Legislative Assembly

1

Total 191



2019-20

By the Numbers

The following information meets the mandatory reporting requirement for 2019-20 as per the *Public Interest Disclosure (Whistleblower Protection) Act* (the Act).

Exemption, section 31(3)	
The Commissioner must provide reasons for giving an exemption under this section and must ensure the exemption, including any terms or conditions imposed, and the reasons for the exemption are made publicly available.	No exemption requests received
Commissioner's annual report, section 33(1)	
The Commissioner must report annually to the Legislative Assembly on the exercise and performance of the Commissioner's functions and duties under this Act, setting out	
(a) the number of general inquiries made to the Commissioner relating to this Act,	116
(b) the number of disclosures received by the Commissioner under this Act,	65
the number of disclosures acted on and	13
the number of disclosures not acted on by the Commissioner,	52
(b.1) the number of disclosures referred by the Commissioner to a designated officer for investigation in accordance with Part 2 and	1
the number of investigation outcomes,	0
enforcement activities or	0
other follow-up reported concerning those disclosures,	0
(c) the number of investigations commenced by the Commissioner under the Act,	2
(d) in the case of an investigation that results in a finding of wrongdoing, a description of the wrongdoing and any recommendations made,	Please refer to the article <i>Investigation into the Alberta Energy Regulator (AER) Finds Significant and Serious Wrongdoing</i> on page 15

<p>(d.1) the number of recommendations the Commissioner has made, and</p> <p>(i) whether the departments, public entities, offices or prescribed service providers to which the recommendations relate have fully implemented the recommendations or taken any corrective measures, and</p> <p>(ii) if the departments, public entities, offices or prescribed service providers to which the recommendations relate have not fully implemented the recommendations or taken any corrective measures, the reasons provided,</p>	<p>4</p> <p>AER is taking steps to fully implement recommendations for corrective measures and the Commissioner's office continues to monitor progress</p> <p>None</p>
<p>(e) the number of complaints of reprisals received by the Commissioner under this Act,</p> <p>the number of reprisals the Commissioner finds to have been taken, directed or counselled contrary to section 24 and a description of the reprisals,</p> <p>(e.1) the number of complaints of reprisals with respect to which the Commissioner finds that no reprisal was taken, directed or counselled,</p> <p>(e.2) the number of reprisals in or respecting the office of a member of the Legislative Assembly that the Commissioner finds to have been taken, directed or counselled contrary to section 24, a description of the reprisals and any recommendations provided to the Speaker of the Legislative Assembly and the resulting corrective measures taken, if any,</p> <p>(e.3) the number of remedial orders made by the Board, a description of each remedy awarded, the number of referrals for which no remedy was awarded and the reasons why no remedy was awarded,</p> <p>(e.4) in the case of a prosecution under this Act, a description of the offence and any penalty imposed in relation to the offence,</p>	<p>10</p> <p>0</p> <p>9*</p> <p>0</p> <p>0</p> <p>No prosecution under the Act so no description and no penalty provided</p>
<p>(f) whether, in the opinion of the Commissioner, there are any systemic problems that may give rise to or have given rise to wrongdoings, and</p>	<p>No systemic problems identified</p>
<p>(g) any recommendations for improvement that the Commissioner considers appropriate.</p>	<p>None</p>

* One case received as a complaint alleging reprisal in 2018-19 was concluded with no reprisal found and two cases received in 2019-20 as complaints alleging reprisal remain under investigation.

2019-20

By the Numbers

Business Plan Results

The Public Interest Commissioner's office business plan for 2019-20 identified three goals and key strategies that build on the skills, ideas and talents of our people to find innovative ways to achieve our objectives.

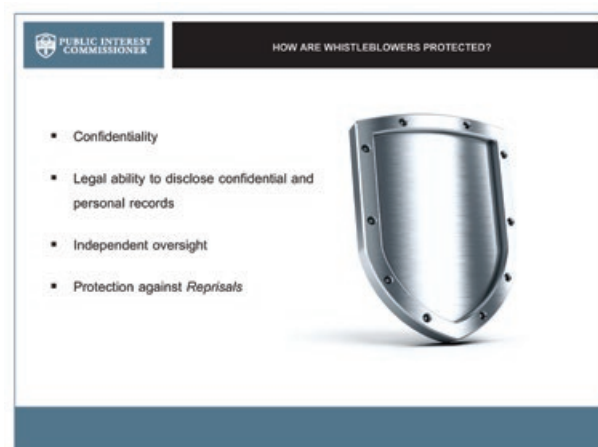
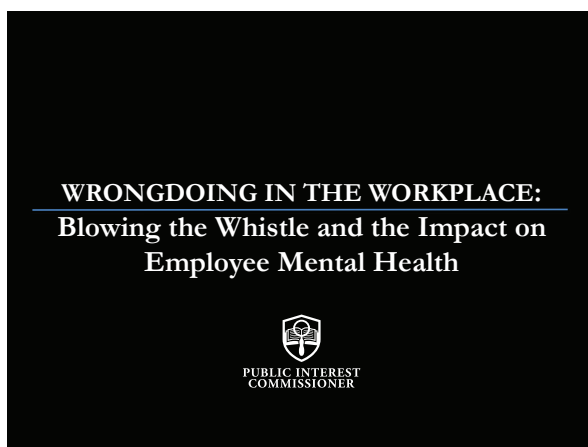
By analyzing our results, we gain the insight necessary to build on our strengths and understand where opportunities exist so we may reset priorities for the future. Here is a look at the highlights from the 2019-20 fiscal year.

Goal 1:

All individuals, offices and entities to which the Act pertains recognize the office of the Public Interest Commissioner as an avenue for reporting wrongdoing in the public services, and are aware of the protections afforded to them under the Act.

The *Public Interest Disclosure (Whistleblower Protection) Act* (the Act) assigns chief and designated officer within public sector organizations responsibility for establishing written procedures and widely communicating information about the Act to their employees. It is important that employees know about the protection provisions afforded to them by the Act and what considerations they may take in making a disclosure of wrongdoing or reporting a reprisal.

We respond to requests for presentations, participate in media interviews and engage with Albertans online through publications, investigation reports and educational resources. Highlights from 2019-20 include an education session at Alberta's Canadian Mental Health Working Stronger event titled ***Wrongdoing in the Workplace: Blowing the Whistle and the Impact on Employee Mental Health***. The mental health of employees in the workplace has become increasingly important to Albertans and employers are interested in creating healthy workplace environments.



Further, the Commissioner, along with other Officers of the Alberta Legislative Assembly, presented to Members-elect at an orientation organized by the Legislative Assembly Office. We attended the ***Transform*** event hosted by the Northern Alberta Risk & Insurance Management Society as a trade show exhibitor and welcomed numerous media invitations for interview, including a CBC Alberta at Noon podcast called ***Blowing the Whistle at Work***.

Goal 2:

Designated officers within departments, offices and public entities are aware of how to assess and investigate disclosures of wrongdoing under the Act.

March 1, 2018 brought important changes to the Act, affecting how chief and designated officers investigate disclosures, give advice to employees and educate staff. We aim to assist jurisdictional entities more efficiently assess and investigate disclosures of wrongdoing under the Act.

Late in the fiscal year, along with organizations in various Canadian provinces working to achieve greater integrity in public services, we prepared to announce the creation of ***National Whistleblower Awareness Day*** in order to raise public awareness of the role of whistleblowers in our society, as well as the awareness of the staff of government departments and agencies. At that time, we also planned a ***Public Interest Disclosure Conference*** for designated officers from across Alberta. The conference was scheduled for the last week of March with approximately 40 designated officers and support staff registered to attend. However, due to the onset of the COVID-19 pandemic and public health measures implemented in Alberta, both events were postponed. It is our intention to revisit these important activities at a more suitable time.

Goal 3:

Departments, offices and public entities work collaboratively with the office of the Public Interest Commissioner to investigate and remedy wrongdoing within their organizations in order to advance public confidence in the administration of the department, office or public entity.

Designated officers have a statutory function similar to the Commissioner's office in that they are responsible for managing and investigating disclosures made under the Act. Our office strives to build collaborative relationships with designated officers which has resulted in a more efficient and effective process for managing complaints.

From a practical perspective, designated officers are better positioned to undertake investigations within their organizations as they are the most familiar with the organizational structure, records management systems and applicable internal policies, procedures and laws that govern the organization. The Commissioner's investigators provide the investigative expertise and resources unique to an independent office of the Alberta Legislature.

By working collaboratively through investigations, responses to allegations of wrongdoing and complaints of reprisal can be far more effective and in turn promote public confidence in the provision of government services. The cases highlighted in this report reflect the results of collaboration with designated officers.

The Commissioner's office also provides expert advice and guidance to assist designated officers in carrying out their duties under the Act. The Commissioner's office provided advice to designated officers on the management of 18 cases during the 2019-20 fiscal year.

At the request of AHS Legal Services Division, investigators from our office presented to approximately 30 solicitors on the purpose of the Act, the Commissioner's role and the benefits of an effective whistleblower policy. We valued the opportunity to answer questions and build positive relationships with senior executives from AHS.

A change in perspective....



A culture where employees and management share a common goal of detecting and remedying wrongdoing

Investigation into the Alberta Energy Regulator Finds Significant and Serious Wrongdoing

The Commissioner's finding of significant and serious wrongdoing committed by the Chief Executive Officer of the Alberta Energy Regulator (AER) gained national attention in the news this year. This case demonstrates not only the effectiveness of the whistleblowing process in Alberta to correct wrongdoing, but also its ability to protect the whistleblower.

As long as wrongdoing is occurring in Alberta, whistleblowers who stand against it will be needed. The Public Interest Disclosure (Whistleblower Protection) Act ensures a safe avenue exists for public sector employees to report significant wrongdoing that is taking place in their organization. The decision to report wrongdoing in the workplace takes courage. Our office remains dedicated to protecting those who make a disclosure, and as in this case, ensuring the whistleblower's identity remains confidential.

Marianne Ryan, Public Interest Commissioner

In October 2019, after an extensive investigation, the Public Interest Commissioner released a public report outlining significant and serious wrongdoing taking place within the Alberta Energy Regulator (AER). Our office received a whistleblower disclosure from a public sector employee concerning the International Centre of Regulatory Excellence (ICORE), a side project established within the AER by its CEO and President at the time. The disclosure alleged the improper use of public funds and AER human resources to establish and operate ICORE. This alarmed AER staff who saw it as a diversion from AER's true mandate.

Given the seriousness of the allegations, the assigned investigator brought the disclosure to the Commissioner's attention, and an investigation was initiated. AER staff and executives were interviewed and thousands of records and electronic communications were analyzed.

Shortly into the investigation, the Commissioner recognized that the alleged wrongdoing was substantial and extended to the mandate of other legislative officers. Consequently, the Commissioner met with two other independent legislative officers, the Ethics Commissioner and the Auditor General, who ultimately initiated their own investigations.

Although the mandates of the three legislative officers are different, they share a common responsibility; protecting Albertans' interests through effective government oversight. Their investigations were independent but ran concurrently. Upon the conclusion of the investigations, the three legislative officers conducted a joint news conference setting out their findings; an unprecedented occurrence in Alberta.

The Commissioner found that AER's CEO and President at the time, demonstrated a reckless and wilful disregard for the proper management of public funds, public assets and the delivery of a public service. From his position as CEO, he was directly responsible for decisions that intended to transform ICORE from a training centre for AER employees to a for-profit organization, establishing himself as a director and executive chairman.

Both the Ethic Commissioner's [investigation](#) and the Auditor General's [investigation](#) were publically released. The Public Interest Commissioner's full report on this investigation can be found at www.yourvoiceprotected.ca.

This case clearly demonstrates the availability of a mechanism for whistleblowers to effectively and confidentially disclose wrongdoing in a publicly funded agency, board, commission or department. The Commissioner's ability to receive confidential information from whistleblowers, regardless of whether the workplace environment is supportive of disclosures of wrongdoing is something Albertans can be proud of.

The process relied on confidentiality and we are pleased to report that the identity of the whistleblower remains anonymous to their employer and all other parties including other legislative offices.

The employee suffered no adverse action in relation to their disclosure and their identity has remained protected. We commend the whistleblower and other employees at the AER for acting in Alberta's best interest by recognizing and reporting potential wrongdoing.

About AER

The Alberta Energy Regulator or AER is the single regulator of energy development in Alberta. *The Responsible Energy Development Act (REDA)* establishes AER as a corporation and section 2(1)(a) outlines the organization's mandate "... to provide for the efficient, safe, orderly and environmentally responsible development of energy resources in Alberta..." As a public entity, the AER is governed by the *Alberta Public Agencies Governance Act* and accountable to the Financial Administration Act and any other applicable legislation. While the province appoints a board of directors to provide general management of the regulator and its business activities, the Chief Executive Officer (CEO) remains responsible for the day-to-day operations and management of staff.

The AER regulates wells, pipelines, processing plants, oil sands mines, coalmines and coal processing plants across Alberta.



The Commissioner's Recommendations

As a result of the investigation into wrongdoings within the AER, the Commissioner recommended:

1. The wrongdoer, although already departed from the AER, not be permitted future employment or contracts with the AER.
2. AER undertake a thorough internal review of actual time and resources expended on ICORE and take whatever legal steps are required to collect any amounts outstanding.
3. The AER should take any necessary measures to protect its intellectual property related to the training curriculum and the OneStop application (a web application developed by AER and intended for sale through ICORE).
4. The new President and CEO address a culture within the AER that discouraged employees from voicing their concerns by overseeing a full review of the AER's whistleblower policy and procedures to ensure compliance with the Act. The Commissioner recommended the chief officer confirm that the designated officer is knowledgeable about, and prepared to pursue, their responsibilities under the Act, including ensuring AER's employees are aware of the organization's internal whistleblower policy and procedures. The Commissioner recommended that the chief officer also brief the Board in that regard.

The Public Interest Commissioner's office will remain in contact with AER and maintain awareness as to the progress of AER's response to the Commissioner's recommendations.

Office Receives Allegations of Imminent Risk to Health and Safety of Employees Related to COVID-19

The impact of the COVID-19 pandemic was unprecedented for the people of Alberta. As the government implemented public health orders to protect Albertans, concerns regarding how public entities executed the restrictions came to the forefront.

In one case, the office received a complaint that individuals within a public entity were not complying with public health orders issued by Dr. Deena Hinshaw, Alberta's Chief Medical Officer of Health.

We contacted the Chief Officer of the public entity to inform them we had received a complaint made about activities that may not be compliant with an order issued by the Chief Medical Officer of Health. Further, the Commissioner notified the Chief Medical Officer of Health as persons gathering in recreational facilities may constitute an imminent health risk given the public health emergency at the time.

The Chief Officer of the public entity responded and quickly took steps to ensure compliance with the orders.

In another instance, our office received a complaint from a public sector employee who alleged their division was continuing to host an educational program in their facility. The complainant alleged this did not comply with public health restrictions and created a potential health risk for all involved.

Our investigator contacted the public entity to discuss the details of the complaint and received a response the following day. The public entity was already aware of the issue as the complainant had also previously contacted them about the matter. The public entity subsequently advised they would take the concern to the appropriate party and also committed to getting back to the complainant with a response.

The complainant subsequently contacted our investigator and advised the program would no longer be hosting on-site classes. The complainant was appreciative of our office's response and thanked him for looking into the matter.

These cases serve as good examples of how, when it is appropriate, we can resolve significant and serious matters expeditiously and informally.

Unfounded Reprisal Still Results in Positive Change

A complaint of reprisal proved unfounded, but the Commissioner's investigation resulted in improvements to a public entity's whistleblower policy and a change in its severance agreements.

A complainant contacted our office within a week of having their employment terminated by an Alberta public entity. The complaint of reprisal alleged the organization terminated the complainant's position without cause after they disclosed multiple allegations of wrongdoing under the *Public Interest Disclosure (Whistleblower Protection) Act* (the Act) through the organization's internal whistleblower complaints process.

Our investigation revealed no reprisal as the public entity could document other reasons for terminating employment. However, our investigator observed two areas of concern related to the organization's responsibilities under the Act.

Firstly, the complainant signed a severance agreement that required them to report if they had made any disclosures under the Act and to forego initiating any future disclosures. While it might seem prudent to forestall any further involvement with a former employee, such requests are not compatible with the aims of whistleblower legislation. Severance agreements cannot be used to impede an Albertan's legislated right to report wrongdoing. In other words, whistleblowers being released from employment should not have to out themselves, nor should they be prevented from speaking out against a wrongdoing or reprisal that may have occurred during their employment in order to conclude a severance agreement.

Secondly, the investigator noted a conflation of the entity's internal complaint review process and its duties under the Act. The Commissioner observed the organization could have mitigated this confusion with better communication about the Act to its employees.

The designated officer acknowledged the opportunity and detailed the steps already underway to enhance employee awareness of the organization's newly revised whistleblower protection policy. Further, with removal of the reference to the *Public Interest Disclosure (Whistleblower Protection) Act* from future severance agreements, the organization has taken a step in the right direction to foster an environment where employees are confident in reporting wrongdoing without fear or adverse financial consequences.

While the evidence did not establish a connection between the employee's internal disclosure and termination actions made by the organization, the complaint did spark significant change within the organization. It is only when public sector employees speak out about wrongdoing and reprisal and make contact with our office that we can do our part to ensure improvements that ultimately build public confidence in the delivery of public services.



Significant Change Stems From Non-Jurisdictional Complaint

The owner of a private company was frustrated when their attempts to be considered as a vendor with a public entity were turned down. The complainant submitted a complaint of wrongdoing to the Public Interest Commissioner alleging that a public entity failed to offer a fair and open competition for contracted work. The allegations claimed that up until this point, the public entity had been utilizing the services of a single vendor for many years. Despite becoming aware of the second vendor who offered the same goods and services, the public entity's practice of sole sourcing continued.

In Alberta, government ministries administer contract opportunities for goods, services and construction according to the expected average spend of the project. Procurement laws provide public entities a legal framework to shape their policies and ensure Alberta businesses are treated fairly in the procurement process.

While the analysis of the complaint found the alleged wrongdoings did not meet the required threshold for wilful acts of gross mismanagement as defined by the *Public Interest Disclosure (Whistleblower Protection) Act* (the Act), it did reveal several irregularities. We found that contrary to the public entity's own internal policies, it did not enter into a formal contract with the sole-sourced vendor until 2018. Additionally, the dollar amount these services cost combined with the fact that another vendor had now become known to them, a competitive procurement process for services should have occurred. The findings from the analysis were important and in working collaboratively with the public entity, it was agreed that a procurement process was required at the expiration of the current contract. The case also assisted the public entity in identifying a gap in its procurement processes.

While not all cases meet the threshold for wrongdoing, cases like this one provide an opportunity to encourage public entities to embrace the Act as a means to swiftly resolve issues. This in turn helps maintain and promote public confidence in the administration of public services.

Collaborative Approach Resolves IT Threats

A whistleblower exposed serious IT vulnerability that if left unaddressed could place an Alberta public entity at serious risk.

Smart phones, laptops, desktops, networks, servers... all form a complex information technology (IT) system essential to individuals as well as the private and public sector organizations. When any part of the system goes down, the impact on administration and operations is significant.

An individual disclosed to our office that a large and significant entity under the jurisdiction of the Public Interest Commissioner, had failed to address serious IT security vulnerabilities. According to the whistleblower over 120 specific vulnerabilities created a substantial risk not only to the security of the information controlled by the entity but also to the IT network itself. A systems failure or compromise could have a devastating impact on the operations of the entity.

The overarching goal of the *Public Interest Disclosure (Whistleblower Protection) Act* (the Act) is to promote confidence in the administration of government. The Act authorizes the Commissioner to take any steps she considers appropriate to resolve the matter. Further, she has the ability to choose how to conduct an investigation. Sometimes an informal approach is best.

Through an independent expert analysis, the Commissioner's investigators confirmed that the vulnerabilities alleged by the whistleblower were legitimate and presented a significant risk. They then engaged with the person responsible for information security within the organization. A collaborative relationship developed as the investigators worked with members of the entity to resolve the issues identified by the whistleblower.

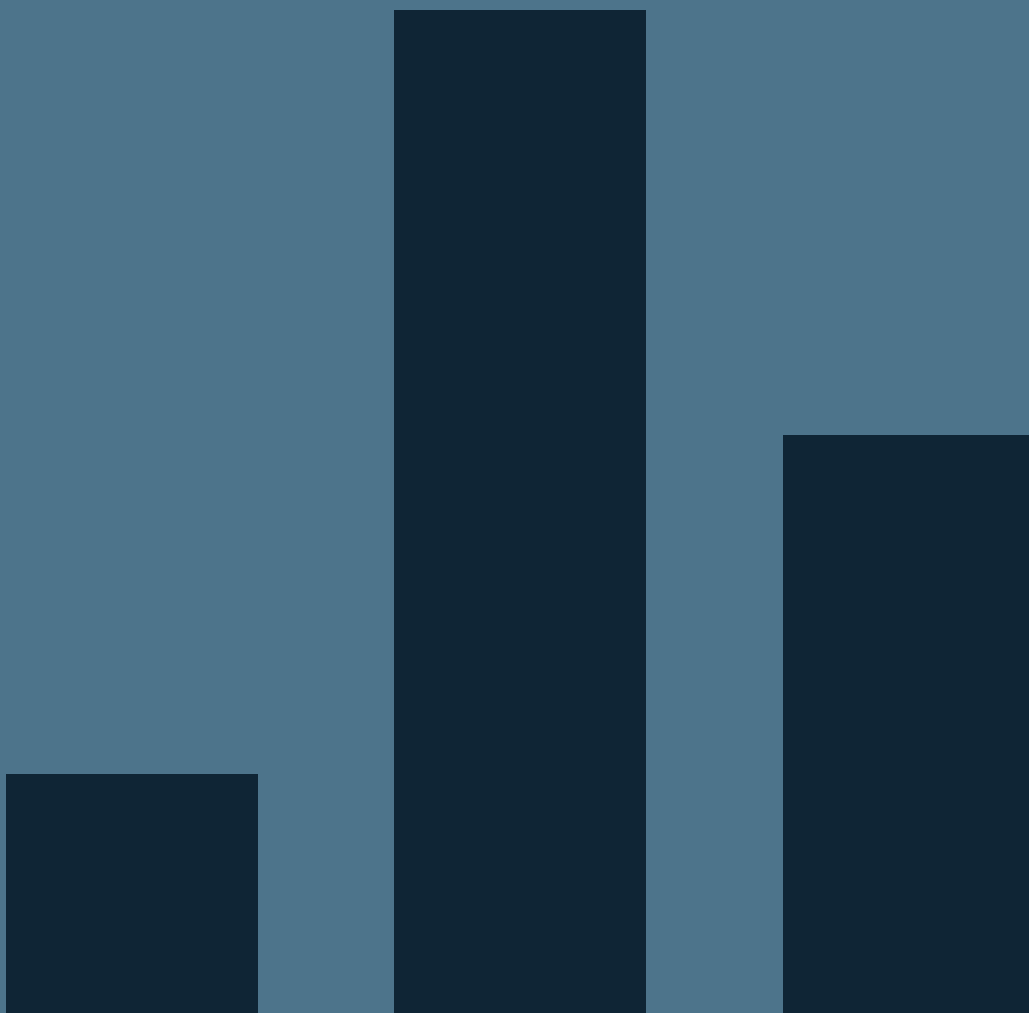
Resource issues played a role in the organization's ability to address all vulnerabilities. Therefore, the organization took the approach to act on vulnerabilities it considered a priority based on their internal assessments of risk exposure. Where possible, the organization had applied temporary mitigation controls. To build on this approach, the organization then formed a specialized group that focused their efforts on addressing the vulnerabilities. The Commissioner's investigators were routinely updated as progress on each issue was tracked.

Ultimately, the public entity addressed the security vulnerabilities identified by the whistleblower and made significant process changes and resource commitments to ensure it would identify and expeditiously resolve potential future vulnerabilities. Moreover, the public entity expressed appreciation that the whistleblower came forward to bring to their attention the IT vulnerabilities that may have otherwise gone unresolved.



Financial Statements

March 31, 2020



Office of the Public Interest Commissioner

Financial Statements

March 31, 2020

OFFICE OF THE PUBLIC INTEREST COMMISSIONER
FINANCIAL STATEMENTS
Year Ended March 31, 2020

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To the Members of the Legislative Assembly

Report on the Financial Statements

Opinion

I have audited the financial statements of the Office of the Public Interest Commissioner (the Commissioner), which comprise the statement of financial position as at March 31, 2020, and the statements of operations, change in net debt, and cash flows for the year then ended, and notes to the financial statements, including a summary of significant accounting policies.

In my opinion, the accompanying financial statements present fairly, in all material respects, the financial position of the Commissioner as at March 31, 2020, and the results of its operations, its changes in net debt, and its cash flows for the year then ended in accordance with Canadian public sector accounting standards.

Basis for opinion

I conducted my audit in accordance with Canadian generally accepted auditing standards. My responsibilities under those standards are further described in the *Auditor's Responsibilities for the Audit of the Financial Statements* section of my report. I am independent of the Commissioner in accordance with the ethical requirements that are relevant to my audit of the financial statements in Canada, and I have fulfilled my other ethical responsibilities in accordance with these requirements. I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my opinion.

Other information

Management is responsible for the other information. The other information comprises the information included in the *Annual Report*, but does not include the financial statements and my auditor's report thereon. The *Annual Report* is expected to be made available to me after the date of this auditor's report.

My opinion on the financial statements does not cover the other information and I do not express any form of assurance conclusion thereon.

In connection with my audit of the financial statements, my responsibility is to read the other information identified above and, in doing so, consider whether the other information is materially inconsistent with the financial statements or my knowledge obtained in the audit, or otherwise appears to be materially misstated.

If, based on the work I will perform on this other information, I conclude that there is a material misstatement of this other information, I am required to communicate the matter to those charged with governance.

Responsibilities of management and those charged with governance for the financial statements

Management is responsible for the preparation and fair presentation of the financial statements in accordance with Canadian public sector accounting standards, and for such internal control as management determines is necessary to enable the preparation of the financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the financial statements, management is responsible for assessing the Commissioner's ability to continue as a going concern, disclosing, as applicable, matters related to going concern and using the going concern basis of accounting unless an intention exists to liquidate or to cease operations, or there is no realistic alternative but to do so.

Those charged with governance are responsible for overseeing the Commissioner's financial reporting process.

Auditor's responsibilities for the audit of the financial statements

My objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes my opinion. Reasonable assurance is a high level of assurance, but is not a guarantee that an audit conducted in accordance with Canadian generally accepted auditing standards will always detect a material misstatement when it exists. Misstatements can arise from fraud or error and are considered material if, individually or in the aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of these financial statements.

As part of an audit in accordance with Canadian generally accepted auditing standards, I exercise professional judgment and maintain professional skepticism throughout the audit. I also:

- Identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, design and perform audit procedures responsive to those risks, and obtain audit evidence that is sufficient and appropriate to provide a basis for my opinion. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control.
- Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Commissioner's internal control.
- Evaluate the appropriateness of accounting policies used and the reasonableness of accounting estimates and related disclosures made by management.
- Conclude on the appropriateness of management's use of the going concern basis of accounting and, based on the audit evidence obtained, whether a material uncertainty exists related to events or conditions that may cast significant doubt on the Commissioner's ability to continue as a going concern. If I conclude that a material uncertainty exists, I am required to draw attention in my auditor's report to the related disclosures in the financial statements or, if such disclosures are inadequate, to modify my opinion. My conclusions are based on the audit evidence obtained up to the date of my auditor's report. However, future events or conditions may cause the Commissioner to cease to continue as a going concern.
- Evaluate the overall presentation, structure and content of the financial statements, including the disclosures, and whether the financial statements represent the underlying transactions and events in a manner that achieves fair presentation.

I communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit and significant audit findings, including any significant deficiencies in internal control that I identify during my audit.

[Original signed by W. Doug Wylie FCPA, FCMA, ICD.D]

W. Doug Wylie FCPA, FCMA, ICD.D
Auditor General

July 7, 2020
Edmonton, Alberta

OFFICE OF THE PUBLIC INTEREST COMMISSIONER

STATEMENT OF OPERATIONS

Year ended March 31, 2020

	2020		2019
	Budget	Actual	Actual
Expenses - Directly Incurred (Note 2(b), 3 and Schedule 2)			
Salaries, Wages, and Employee Benefits	\$ 584,000	\$ 459,485	\$ 469,908
Supplies and Services	565,000	432,626	478,246
Program - Operations	1,149,000	892,111	948,154
Cost of Operations	\$ (1,149,000)	\$ (892,111)	\$ (948,154)

The accompanying notes and schedules are part of these financial statements.

OFFICE OF THE PUBLIC INTEREST COMMISSIONER

STATEMENT OF FINANCIAL POSITION

As at March 31, 2020

	<u>2020</u>	<u>2019</u>
Liabilities		
Accounts Payable and Accrued Liabilities	\$ 9,621	\$ 8,925
Accrued Vacation Pay	29,968	41,973
	<u>39,589</u>	<u>50,898</u>
Net Debt	<u>(39,589)</u>	<u>(50,898)</u>
Non-Financial Assets		
Tangible Capital Assets (Note 4)	-	-
Prepaid Expenses	-	250
	<u>-</u>	<u>250</u>
Net Liabilities	<u>\$ (39,589)</u>	<u>\$ (50,648)</u>
Net Liabilities at Beginning of Year	\$ (50,648)	\$ (72,938)
Cost of Operations	(892,111)	(948,154)
Financing Provided from General Revenues	903,170	970,444
Net Liabilities at End of Year	<u>\$ (39,589)</u>	<u>\$ (50,648)</u>

The accompanying notes and schedules are part of these financial statements.

OFFICE OF THE PUBLIC INTEREST COMMISSIONER

STATEMENT OF CHANGE IN NET DEBT

Year Ended March 31, 2020

	2020		2019
	Budget	Actual	Actual
Cost of Operations	\$ (1,149,000)	\$ (892,111)	\$ (948,154)
(Increase)/Decrease in Prepaid Expenses		250	(250)
Financing Provided from General Revenue		903,170	970,444
Decrease in Net Debt		\$ 11,309	\$ 22,040
Net Debt at Beginning of Year		(50,898)	(72,938)
Net Debt at End of Year		<u>\$ (39,589)</u>	<u>\$ (50,898)</u>

The accompanying notes and schedules are part of these financial statements.

OFFICE OF THE PUBLIC INTEREST COMMISSIONER

STATEMENT OF CASH FLOWS

Year ended March 31, 2020

	2020	2019 Restated
Operating Transactions		
Cost of Operations	\$ (892,111)	\$ (948,154)
Non-Cash Items included in Net Operating Results:		
(Increase)/Decrease in Prepaid Expenses	250	(250)
Decrease in Accounts Payable and Accrued Liabilities	(11,309)	(22,040)
Cash Applied to Operating Transactions	(903,170)	(970,444)
Financing Transactions		
Financing Provided from General Revenues	903,170	970,444
Change in Cash	-	-
Cash at Beginning of Year	-	-
Cash at End of Year	\$ -	\$ -

The accompanying notes and schedules are part of these financial statements.

OFFICE OF THE PUBLIC INTEREST COMMISSIONER

Notes to the Financial Statements

Year ended March 31, 2020

NOTE 1 AUTHORITY AND PURPOSE

The Office of the Public Interest Commissioner (the Office) operates under the authority of the *Public Interest Disclosure (Whistleblower Protection) Act*.

The Office manages, investigates and makes recommendations respecting disclosures of wrongdoings relating to department and public entities and reprisals relating to public service employees.

NOTE 2 SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES AND REPORTING PRACTICES

These financial statements are prepared in accordance with Canadian public sector accounting standards, which use accrual accounting.

As the Office does not have any transactions involving financial instruments that are classified in the fair value category, there is no statement of re-measurement gains and losses.

(a) Reporting Entity

The reporting entity is the Office of the Public Interest Commissioner, which is a legislative office for which the Public Interest Commissioner is responsible. The Office's annual operating budget is approved by the Standing Committee on Legislative Offices.

The cost of the operations of the Office is borne by the General Revenue Fund (the Fund) of the Province of Alberta which is administrated by the President of Treasury Board, Minister of Finance. All cash disbursements made by the Office are paid from the Fund.

OFFICE OF THE PUBLIC INTEREST COMMISSIONER

Notes to the Financial Statements (Cont'd)

Year ended March 31, 2020

NOTE 2 SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES AND REPORTING PRACTICES (Cont'd)

(b) Basis of Financial Reporting

Expenses

Directly Incurred

Directly incurred expenses are those costs the Office has primary responsibility and accountability for, as reflected in the Office's budget documents.

In addition to program operating expenses such as salaries, supplies, etc., directly incurred expenses also include:

- pension costs, which comprise the cost of employer contributions for current service of employees during the year; and
- a valuation adjustment which represents the change in management's estimate of future payments arising from obligations relating to vacation pay.

Incurred by Others

Services contributed by other related entities in support of the Office's operations are not recognized but disclosed in Schedule 2.

OFFICE OF THE PUBLIC INTEREST COMMISSIONER

Notes to the Financial Statements (Cont'd)

Year ended March 31, 2020

NOTE 2 SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES AND REPORTING PRACTICES (Cont'd)

(b) Basis of Financial Reporting (Cont'd)

Valuation of Liabilities

Fair value is the amount of consideration agreed upon in an arm's length transaction between knowledgeable and willing parties who are under no compulsion to act.

The fair values of accounts payable and accrued liabilities are estimated to approximate their carrying values because of the short term nature of these instruments.

Liabilities

Liabilities are present obligations of the Office to external organizations and individuals arising from past transactions or events, the settlement of which is expected to result in the future sacrifice of economic benefits. They are recognized when there is an appropriate basis of measurement and management can reasonably estimate the amounts.

Non-Financial Assets

Non-Financial assets are acquired, constructed, or developed assets that do not normally provide resources to discharge existing liabilities, but instead:

- (a) are normally employed to deliver the Office's services;
- (b) may be consumed in the normal course of operations; and
- (c) are not for sale in the normal course of operations.

Non-financial assets of the Office are limited to tangible capital assets, and prepaid expenses.

OFFICE OF THE PUBLIC INTEREST COMMISSIONER

Notes to the Financial Statements (Cont'd)

Year ended March 31, 2020

NOTE 2 SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES AND REPORTING PRACTICES (Cont'd)

(b) Basis of Financial Reporting (Cont'd)

Non-Financial Assets (Cont'd)

Tangible Capital Assets

Tangible capital assets of the Office are recognized at historical cost and amortized on a straight-line basis over the estimated useful lives of the assets. The threshold for capitalizing new systems development is \$250,000 and the threshold for major system enhancements is \$100,000. The threshold for all other tangible capital assets is \$5,000.

Amortization is only charged if the tangible capital asset is put into service.

(c) Net Debt

Net debt indicates additional cash required from the Fund to finance the Office's cost of operations to March 31, 2020.

NOTE 3 SUPPORT SERVICES ARRANGEMENTS

The Public Interest Disclosure (Whistleblower Protection) Act appoints the Ombudsman to also be the Public Interest Commissioner. The Office of the Public Interest Commissioner is a separate Legislative Office physically located with the Office of the Ombudsman.

The Offices of the Ombudsman and Public Interest Commissioner have a formal support services agreement (the agreement) for provision of shared services.

The Office of the Ombudsman's employees provide general counsel, communications, and corporate (finance, human resources, information technology, administration) services to the Office of the Public Interest Commissioner. The salaries and benefits costs of these Ombudsman employees are allocated to the Office of the Public Interest Commissioner based on the percentage of time spent providing the shared services.

OFFICE OF THE PUBLIC INTEREST COMMISSIONER

Notes to the Financial Statements (Cont'd)

Year ended March 31, 2020

NOTE 3 SUPPORT SERVICES ARRANGEMENTS (Cont'd)

The agreement authorizes allocation of other office services (i.e. photocopier fees, etc.) paid by the Office of the Ombudsman to be allocated, on a usage basis, to the Office of the Public Interest Commissioner.

The shared services allocation is included in the voted operating estimates and statement of operations as a cost recovery for the Office of the Ombudsman and as a supplies and services expense for the Office of the Public Interest Commissioner.

For 2019-20, the Office's supplies and services expense for services provided by the Office of the Ombudsman was \$326,951 (2019 \$387,376).

NOTE 4 TANGIBLE CAPITAL ASSETS

		2020		
	Useful Life (yrs)	Cost	Accumulated Amortization	Net Book Value
Computer hardware and software	3	\$ 5,833	\$ 5,833	\$ -
		2019		
	Useful Life (yrs)	Cost	Accumulated Amortization	Net Book Value
Computer hardware and software	3	\$ 5,833	\$ 5,833	\$ -

In 2019-20 and 2018-19, there were no tangible capital asset additions or disposals.

OFFICE OF THE PUBLIC INTEREST COMMISSIONER

Notes to the Financial Statements (Cont'd)

Year ended March 31, 2020

NOTE 5 DEFINED BENEFIT PLANS (IN THOUSANDS)

The Office participates in the multi-employer Management Employees Pension Plan and Public Service Pension Plan. The Office also participates in the multi-employer Supplementary Retirement Plan for Public Service Managers. The expense for these pension plans is equivalent to the annual contributions of \$48 for the year ended March 31, 2020 (2019 - \$54).

At December 31, 2019, the Management Employees Pension Plan had a surplus of \$1,008,135 (2018 surplus \$670,700), the Public Service Pension Plan had a surplus of \$2,759,320 (2018 surplus \$519,218) and the Supplementary Retirement Plan for Public Service Managers had a deficit of \$44,698 (2018 deficit \$70,310).

The Office also participates in the multi-employer Long Term Disability Income Continuance Plan. At March 31, 2020, the Management, Opted Out and Excluded Plan had a surplus of \$11,636 (2019 surplus \$24,642). The expense for this plan is limited to the employer's annual contributions for the year.

NOTE 6 BUDGET

The budget shown on the statement of operations is based on the budgeted expenses that the all-party Standing Committee on Legislative Offices approved on November 30, 2018. The following table compares the office's actual expenditures, excluding non-voted amounts such as amortization, to the approved budgets:

	Voted budget	Actual	Unexpended
Operating expenditures	\$ 1,149,000	\$ 892,111	\$ 256,889
Capital investment	-	-	-
	<u>\$ 1,149,000</u>	<u>\$ 892,111</u>	<u>\$ 256,889</u>

OFFICE OF THE PUBLIC INTEREST COMMISSIONER

Notes to the Financial Statements (Cont'd)

Year ended March 31, 2020

NOTE 7 CONTRACTUAL OBLIGATIONS

Contractual obligations are obligations of the Office to others that will become liabilities in the future when the terms of those contracts or agreements are met.

Estimated payment requirements for the unexpired terms of these contractual obligations are as follows:

2020-21	\$ 8,700
2021-22	8,700
2022-23	8,700
	<u>\$ 26,100</u>

NOTE 8 APPROVAL OF FINANCIAL STATEMENTS

These financial statements were approved by the Public Interest Commissioner.

OFFICE OF THE PUBLIC INTEREST COMMISSIONER

Salary and Benefits Disclosure

Year Ended March 31, 2020

	2020			2019	
	Base Salary	Cash Benefits ⁽¹⁾	Non-Cash Benefits ⁽²⁾	Total	Total
Senior Official ⁽³⁾ ⁽⁴⁾ ⁽⁵⁾ Ombudsman / Public Interest Commissioner	\$ 239,474	\$ 42,419	\$ 10,912	\$ 292,805	\$ 290,438
Executive ⁽⁴⁾ ⁽⁵⁾ ⁽⁶⁾ Deputy Ombudsman / Deputy Public Interest Commissioner	\$ 160,613	\$ -	\$ 37,375	\$ 197,988	\$ 132,308

- (1) Cash benefits are pension-in-lieu payments and vehicle allowance.
- (2) Non-cash benefits include the Office's share of all employee benefits and contributions or payments made on behalf of employees including pension plans, CPP/EI employer premiums, extended health care, dental coverage, group life insurance, long-term disability premiums, parking, health spending account and WCB premiums.
- (3) For 2019-20, the Ombudsman / Public Interest Commissioner was not provided an automobile and did not receive a taxable benefit at December 31, 2019 (2018 \$0).
- (4) The Senior Official is both the Ombudsman and the Public Interest Commissioner and the Executive is both the Deputy Ombudsman and the Deputy Public Interest Commissioner. These positions do not receive additional remuneration for their Public Interest Commissioner roles. This schedule represents 100% of total salary and benefits for the Senior Official and the Executive for fiscal years 2019-20 and 2018-19.
- (5) Note 3 on the Notes to the Financial Statements provides information regarding allocation of shared services costs for financial statement presentation.
- (6) The Deputy Ombudsman / Deputy Public Interest Commissioner commenced on August 8, 2018.

OFFICE OF THE PUBLIC INTEREST COMMISSIONER

Allocated Costs

Year Ended March 31, 2020

Program	Expenses ⁽¹⁾	2020			2019	
		Accommodation ⁽²⁾	Business Services ⁽³⁾	Total Expenses	Total Expenses	
Operations	\$ 892,111	\$ 25,031	\$ 5,000	\$ 922,142	\$ 990,441	

(1) Expenses - directly incurred as per Statement of Operations.

(2) Accommodation - expenses allocated by the total square meters occupied by the Office.

(3) Business Services - costs include charges allocated by Service Alberta for finance services (accounts payable, pay and benefits), IT support, and IMAGIS - the financial and human resources system.



**PUBLIC INTEREST
COMMISSIONER
of Alberta**

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