

CAYMAN ISLANDS



Supplement No. 1 published with Extraordinary
Gazette No. 81 dated 19 October, 2015.

**A BILL FOR A LAW TO ENCOURAGE AND FACILITATE THE
MAKING BY EMPLOYEES OF SPECIFIED DISCLOSURES OF
IMPROPER CONDUCT IN THE PUBLIC INTEREST AND TO
PROTECT EMPLOYEES WHO MAKE SPECIFIED DISCLOSURES
FROM BEING SUBJECTED TO DETRIMENTAL ACTION; TO
REGULATE THE RECEIVING, INVESTIGATING OR OTHERWISE
DEALING WITH DISCLOSURES OF IMPROPER CONDUCT; AND FOR
INCIDENTAL AND CONNECTED PURPOSES**

THE WHISTLEBLOWER PROTECTION BILL, 2015

MEMORANDUM OF OBJECTS AND REASONS

This Bill seeks to-

- (a) facilitate and encourage the making by employees of disclosures of improper conduct;
- (b) protect employees who make specified disclosures from being subjected to detrimental action;
- (c) regulate the receiving, investigating or otherwise dealing with disclosures of improper conduct;
- (d) provide protection to the person and the property of the employee making the protected disclosure; and
- (e) compensate an employee making protected disclosures from damages suffered by him as a result of making such disclosures.

PART 1 - PRELIMINARY

Clause 1 of the Bill provides the short title of the legislation.

Clause 2 is the interpretation clause.

Clause 3 provides that the legislation applies to any disclosure made after the commencement of the legislation, notwithstanding that the conduct to which the disclosure relates may have occurred before such commencement. The clause further provides that a disclosure of information is not a protected disclosure if the employee making the disclosure commits an offence by making it.

It is also provided in clause 3 that an employee is not protected under the legislation if he discloses information protected by legal professional privilege.

Clause 4 provides for a public interest test to be applied to a protected disclosure and states that a disclosure shall not qualify for protection under the legislation unless it is made in the public interest.

Clause 5 provides that the Deputy Governor, in relation to public entities, and all employers should disseminate information about the legislation by any means that they consider appropriate.

**PART 2 – DESIGNATED AUTHORITY AND ADMINISTRATION OF
LAW**

Clause 6 provides that the Governor may, by Order, designate an individual or a public entity as the designated authority for the purposes of the legislation. The designated authority shall, in addition to any other function provided under the legislation, be responsible for receiving, investigating and dealing generally with protected disclosures in accordance with procedures as well as monitoring compliance with the legislation.

Clause 7 provides that the Governor shall be responsible for-

- (a) overseeing and inspecting the work of the designated authority;
- (b) reviewing annual reports submitted by the designated authority under this section; and
- (c) the discipline of the designated authority.

Clause 8 provides that the designated authority shall, at the end of each year or within such longer period as the Deputy Governor may in special circumstances approve, cause to be made and transmitted to the Governor a report dealing with the activities of the designated authority during the preceding year. The Deputy Governor, on behalf of the Governor, shall cause a copy of the report to be tabled in the Legislative Assembly.

Clause 9 provides that, notwithstanding the provisions of any other Law, the designated authority shall not be required to provide any information, documents or evidence except in accordance with the provisions of this legislation or in compliance with an order made by the Grand Court.

PART 3 - DISCLOSURES GENERALLY

Clause 10 provides that an employee may make a protected disclosure to the designated authority.

Clause 11 provides that an employee may make a protected disclosure to an attorney-at-law.

Clause 12 provides that a disclosure shall be in writing and must contain the minimum information specified in Schedule 1. Such minimum information includes the following-

- (a) the full name, address and occupation of the person making the disclosure;
- (b) the nature of the improper conduct in respect of which the disclosure is made;

- (c) the name of the person alleged to have committed, to be committing or to be about to commit the improper conduct; and
- (d) the time and place where the alleged improper conduct is taking place, took place or is likely to take place.

Clause 13 provides that, subject to clause 3, an employee who makes a protected disclosure shall not be liable in any civil or criminal proceedings or to any disciplinary proceedings by reason of having made a disclosure in accordance with the legislation.

PART 4 - PROTECTION AGAINST DETRIMENTAL ACTION

Clause 14 provides that this Part applies to a protected disclosure from the time the disclosure is made. Clause 14 also provides that any further information relating to a protected disclosure provided by the person who made the disclosure shall be treated as if it were a protected disclosure.

Clause 15 gives a defence of qualified privilege in defamation proceedings in respect of the making of a protected disclosure.

Clause 16 provides that a person's liability for his own conduct is not affected by his disclosure of that conduct under the legislation.

Clause 17 defines how a person takes detrimental action against an employee. "Detrimental action" is defined in clause 2 as follows-

- (a) action causing injury, loss or damage;
- (b) intimidation or harassment;
- (c) unlawful discrimination, disadvantage or adverse treatment in relation to a person's employment, family life, career, profession, trade or business, including the taking of disciplinary action;
- (d) preventing, restraining or restricting an employee from making a protected disclosure; and
- (e) inducing any person by threats, promises or otherwise to contravene the legislation.

Clause 17 goes on to provide that a person takes such type of detrimental action as defined above against an employee in reprisal for a protected disclosure if-

- (a) the person takes or threatens to take detrimental action against the employee because, or in the belief that-
 - (i) the employee has made, or intends to make, the disclosure; or
 - (ii) the employee has cooperated, or intends to cooperate, with an investigation of the disclosure; or

- (b) for either of the reasons in paragraph (a)(i) and (ii), the person incites or permits someone else to take or threaten to take detrimental action against the employee.

Clause 18 provides that it is a criminal offence to take detrimental action against an employee who has made a protected disclosure. A person who commits such an offence is liable-

- (a) on summary conviction, to a fine of twenty thousand dollars, to imprisonment for a term of two years or to both; or
- (b) on conviction on indictment, to a fine or to imprisonment for a term of five years or to both such fine and imprisonment.

Clause 19 provides that the dismissal of an employee who has made a protected disclosure shall be considered to be an unfair dismissal.

Clause 20 provides that if a person is found guilty of taking detrimental action, the court may, and, with the agreement of the employer and the employee, order re-instatement.

Clause 21 provides for the payment of damages to an employee against whom detrimental action has been taken. The clause provides, inter alia, that any remedy that may be granted by a court with respect to a tort including exemplary damages may be granted by a court in proceedings under this clause.

Clause 22 deals with the vicarious liability of an employer in the case of detrimental action taken by his agent or his employee against another of his employees. The clause provides that if an employee in the course of employment with, or while acting as an employee or agent of an employer takes detrimental action against another employee of his employer in reprisal for a protected disclosure-

- (a) the employer and the first-mentioned employee or agent are jointly and severally civilly and criminally liable for the detrimental action; and
- (b) a proceeding under clause 23 may be taken against either or both.

It is a defence to proceedings against the employer if that employer proves, on the balance of probabilities, that he took reasonable precautions to prevent the employee or agent from taking detrimental action against the other employee in reprisal for the protected disclosure.

Clause 23 provides that, upon application by an employee or by the designated authority on behalf of an employee, a summary court, if it is satisfied that a person has taken or intends to take detrimental action against an employee in reprisal for a protected disclosure, may-

- (a) order the person who took the detrimental action to remedy that action; or
- (b) grant an injunction in any terms the summary court considers appropriate.

Clause 24 provides that an application for an injunction under clause 23 may be made by the employee who alleges that detrimental action has been taken or will be taken against him or by the designated authority.

Clause 25 provides that, as an alternative to any other remedy under the legislation, an employee may file a complaint with the Director of Labour under the Labour Law on the ground that he has been subjected to detrimental action. Upon receipt of a complaint, the Director shall refer the complaint to a labour tribunal which shall consider the complaint. A person aggrieved by a decision of a labour tribunal upon the hearing of a complaint may appeal to the Grand Court.

Clause 26 sets out the remedies which are available on the hearing of a complaint by a labour tribunal. Remedies include re-instatement and compensation in lieu of reinstatement.

Clause 27 provides that a labour tribunal shall make a report to the police for investigation, in relation to any person named in the application who was determined by it to have subjected the employee to detrimental action.

Clause 28 provides for the transfer of an employee of a public entity who has made a protected disclosure and who believes on reasonable grounds that detrimental action will be, is being or has been taken against him in contravention of clause 18. An employee may only be transferred if-

- (a) the employee requests or consents to the transfer;
- (b) the Chief Officer of the public entity has reasonable grounds to suspect that detrimental action will be, is being or has been taken against the employee in contravention of clause 18;
- (c) the Chief Officer of the public entity considers that the transfer of the employee will avoid, reduce or eliminate the risk of detrimental action being taken against the employee; and
- (d) the Chief Officer of the public entity to which it is proposed to transfer the employee consents to the transfer.

PART 5 – RECEIVING, INVESTIGATING AND OTHERWISE DEALING WITH PROTECTED DISCLOSURES

Clause 29 provides that the designated authority shall receive a disclosure and take appropriate steps in accordance with this Part and Schedule 2 to investigate or to cause the disclosure to be investigated.

Clause 30 gives the designated authority the right to refuse to deal with a disclosure. For example, the designated authority may refuse to deal with a disclosure where-

- (a) the disclosure is not a protected disclosure;
- (b) the subject matter of the disclosure or the related investigation has been adequately dealt with;
- (c) the subject matter of the disclosure is frivolous or not sufficiently important to warrant an investigation; or
- (d) the circumstances surrounding the subject matter of the disclosure have changed (whether by reason of insufficiency of evidence or otherwise) so that it renders the investigation unnecessary.

Where the designated authority refuses to carry out an investigation, the designated authority shall provide reasons in writing to the employee who made the disclosure within fifteen days of the refusal.

Clause 31 provides that any provision of an employment agreement shall be void and of no effect if the provision precludes an employee from making a protected disclosure or purports to require an employee to-

- (a) agree to not make a disclosure under the legislation during or after his period of employment;
- (b) refrain from instituting any proceedings pursuant to the legislation; or
- (c) withdraw or abandon any disclosure made under the legislation, or proceedings instituted pursuant to the legislation.

PART 6 - MISCELLANEOUS

Clause 32 provides that the designated authority investigating or otherwise dealing with a disclosure under the legislation shall regard and deal with as secret and confidential-

- (a) the identity of the person making the disclosure and any disclosure made; and
- (b) any statement given, or document, information or thing provided, to the person in the carrying out of an investigation,

except that any statement given, or document, information or thing provided, given in furtherance of an investigation or any legal or disciplinary proceedings shall not be regarded as being inconsistent with the obligation for secrecy and confidentiality.

Clause 33 specifies some offences and the penalties therefor. Thus, a person commits an offence if he-

- (a) makes a disclosure under the legislation knowing that it contains a statement that is false or misleading, or reckless as to whether the statement is false or misleading; or
- (b) aids, abets, procures or conspires with any other person to contravene the legislation.

Penalties for the above include imprisonment for up to three years.

Clause 34 makes it an offence to obstruct the designated authority, or a member or officer of the designated authority, in the performance of functions under the legislation. A person is liable under this clause to be dealt with by the Grand Court as if he had committed a contempt of court.

Clause 35 deals with the immunity of a designated authority and any member or officer of the designated authority from liability for damages in the discharge or purported discharge of functions under the legislation if the exercise of the functions was carried out in good faith.

Clause 36 provides that the Government shall indemnify a designated authority or a member and officer of a designated authority against any claims if the claims were not caused by the bad faith of such persons.

Clause 37 empowers the Cabinet to make regulations, subject to affirmative resolution, for the better carrying out of the purposes of the legislation.

Clause 38 provides that nothing in the legislation relating to the making of disclosures is to be construed as affecting any obligation of any person to disclose, report or otherwise give notice of any improper conduct under any other Law.

Clause 39 provides that the legislation shall be reviewed, from time to time, by a committee of the Legislative Assembly appointed by the Speaker for that purpose. The first such review shall be conducted not later than three years after the date of commencement of the legislation.

Clause 40 provides that the legislation binds the Crown.

Schedule 1 sets out the minimum information to be provided in a disclosure.

Schedule 2 sets out the procedure to be followed by the designated authority in investigating a disclosure.

THE WHISTLEBLOWER PROTECTION BILL, 2015

ARRANGEMENT OF CLAUSES

PART 1 - PRELIMINARY

1. Short title
2. Interpretation
3. Application of the Law
4. Public interest requirement
5. Promotion of ethical practices and dissemination of information

**PART 2 - DESIGNATED AUTHORITY AND ADMINISTRATION OF
LAW**

6. The designated authority
7. Oversight of the designated authority by the Governor
8. Annual report
9. Designated authority restricted from providing information

PART 3 - DISCLOSURES GENERALLY

10. Disclosure to the designated authority
11. Disclosure to attorney-at-law
12. Procedures for making disclosures
13. Employee's immunity from civil and criminal proceedings

PART 4 – PROTECTION AGAINST DETRIMENTAL ACTION

14. Application of this Part
15. Protection from defamation action
16. Liability for own conduct
17. Detrimental action in reprisal for protected disclosure
18. Offence of taking detrimental action
19. Unfair dismissal of employee
20. Order for re-instatement
21. Damages for detrimental action
22. Vicarious liability of employer
23. Injunction or order
24. Application for injunction or order
25. Complaints to the Director of Labour
26. Remedies for detrimental action

27. Report to the police by a tribunal against person who made reprisal
28. Transfer of employee

**PART 5 – RECEIVING, INVESTIGATING AND OTHERWISE DEALING
WITH DISCLOSURES**

29. Duty to receive disclosures and carry out investigations into disclosures
30. Right to refuse; duty to refer
31. Provisions for non-disclosures in employment agreement void

PART 6 – MISCELLANEOUS

32. Obligation of secrecy and confidentiality
33. Further offences and penalties
34. Obstruction and contempt
35. Immunity of designated authority
36. Indemnity of members and officers of the designated authority
37. Regulations
38. Obligations to report under any other Law
39. Review of Law by legislative committee
40. Law binds the Crown

SCHEDULE 1- Information to be supplied in disclosure

SCHEDULE 2- Procedure of the designated authority

CAYMAN ISLANDS

A BILL FOR A LAW TO ENCOURAGE AND FACILITATE THE MAKING BY EMPLOYEES OF SPECIFIED DISCLOSURES OF IMPROPER CONDUCT IN THE PUBLIC INTEREST AND TO PROTECT EMPLOYEES WHO MAKE SPECIFIED DISCLOSURES FROM BEING SUBJECTED TO DETRIMENTAL ACTION; TO REGULATE THE RECEIVING, INVESTIGATING OR OTHERWISE DEALING WITH DISCLOSURES OF IMPROPER CONDUCT; AND FOR INCIDENTAL AND CONNECTED PURPOSES

ENACTED by the Legislature of the Cayman Islands.

PART 1 - PRELIMINARY

1. This Law may be cited as the Whistleblower Protection Law, 2015. Short title
2. In this Law- Interpretation
“appointed day” means the date of commencement of this Law;
“Chief Officer” has the meaning assigned by the Public Service Management Law (2013 Revision) (2013 Revision)

“complaint” means a complaint made under this Law;

“designated authority” means the person so designated under section 6;

“detrimental action” includes-

- (a) action causing injury, loss or damage;
- (b) intimidation or harassment;
- (c) unlawful discrimination, disadvantage or adverse treatment in relation to a person's employment, family life, career, profession, trade or business, including the taking of disciplinary action;
- (d) preventing, restraining or restricting an employee from making a protected disclosure; and
- (e) inducing any person by threats, promises or otherwise to contravene this Law;

(2011 Revision)

“Director of Labour” means the Director of Labour appointed under the Labour Law (2011 Revision);

“disclosure” means disclosure of information made by a person where the person has a reasonable belief that the information disclosed shows or tends to show that improper conduct has occurred, is occurring or is likely to occur;

“employee” means-

- (a) any person who-
 - (i) works or has worked for another person; and
 - (ii) receives, received, or is entitled to receive, any remuneration for work done;
- (b) any person who in any manner assists or has assisted in the carrying on or the conduct of the business of an employer, without any entitlement to receive remuneration or reward; or
- (c) any person who is, or was, engaged or contracted under a contract for services to do work for another person, or any agent of the person;

“employer” means any person who-

- (a) employs or has employed another person to carry out work or provide services and who remunerates, or expressly or tacitly undertakes to remunerate, that other person for the work carried out or services provided; or
- (b) permits or has permitted another person to assist in any manner in the carrying on or the conduct of the business of that person, without any obligation to provide remuneration or reward to that other person;

“improper conduct” means-

- (a) a criminal offence which has been committed, is being committed or is likely to be committed;
- (b) a failure to carry out a legal obligation;
- (c) conduct that has resulted, is resulting or is likely to result in a miscarriage of justice;
- (d) conduct which is or is likely to be a detrimental action;
- (e) conduct that has resulted, is resulting or is likely to result, in a violation of the human rights set out in the Constitution of the Islands;
- (f) conduct that has resulted, is resulting or is likely result, in a threat to the health or safety of a person or of the public;
- (g) conduct that has resulted, is resulting or is likely to result, in a threat or damage to the environment;
- (h) conduct that shows gross mismanagement, impropriety or misconduct in the carrying out of any activity that involves the use of public funds; or
- (i) wilful concealment of any act described in paragraphs (a) to (h);

“investigation” means the carrying out of an enquiry under this Law in respect of a disclosure;

“labour tribunal” means a tribunal established under the Labour Law (2011 Revision) (2011 Revision);

“protected disclosure” means a disclosure made in accordance with this Law by a person to a listed person or to an attorney-at-law; and

“public entity” means a ministry, portfolio, statutory authority, government company, the Office of the Complaints Commissioner, the Office of the Information Commissioner, the Audit Office, the Legislative Assembly and the courts.

3. (1) This Law applies to any disclosure made after the appointed day, notwithstanding that the conduct to which the disclosure relates may have occurred before the appointed day. Application of the Law

(2) A disclosure of information is not a protected disclosure if the employee making the disclosure commits an offence by making it.

(3) Nothing in this Law authorises an employee to disclose information protected by legal professional privilege and a disclosure of such information is not a protected disclosure for the purposes of this Law.

Public interest
requirement

4. A disclosure shall not qualify for protection under this Law unless it is made in the public interest.

Promotion of ethical
practices and
dissemination of
information

5. (1) The Deputy Governor, in relation to public entities, and all employers, shall promote ethical practices as well as a positive environment for disclosing improper conduct by disseminating to employees knowledge of this Law and information about its purposes and processes by any means that they consider appropriate.

(2) Information provided under subsection (1) shall, among other things, specify-

- (a) the types of disclosures that are protected under this Law;
- (b) the manner in which, and the persons to whom, information may be disclosed under this Law; and
- (c) the protections and remedies available under this Law if the disclosure of information in accordance with this Law leads to detrimental action against the person making the disclosure.

PART 2 - DESIGNATED AUTHORITY AND ADMINISTRATION OF LAW

The designated authority

6. (1) The Governor shall, by Order, designate an individual or public entity as the designated authority for the purposes of this Law.

(2) The designated authority shall, in addition to any other function provided under this Law, be responsible for receiving, investigating and dealing generally with disclosures in accordance with procedures under this Law as well as monitoring compliance with this Law.

(3) In furtherance of the functions specified in subsection (2), the designated authority shall-

- (a) publish such procedural guidelines regarding the making, receiving and investigation of disclosures under this Law, as it considers appropriate;
- (b) provide such assistance as may be practicable to-
 - (i) any person who seeks to make a disclosure under this Law; or
 - (ii) any person who is an employer or other person subject to the requirements of this Law;
- (c) on an ongoing basis, plan, implement and monitor public awareness programmes aimed at informing and educating employees, employers and the general public in the Islands about the making, in a responsible manner, of protected disclosures and

about the procedures for receiving and investigating such disclosures; and

- (d) make recommendations to any person arising from any review under paragraph (c) or (d).

7. (1) The Governor shall be responsible for-

Oversight of the designated authority by the Governor

- (a) overseeing and inspecting the work of the designated authority;
- (b) reviewing annual reports submitted by the designated authority under section 8; and
- (c) the discipline of the designated authority.

(2) Pursuant to subsection (1), the Governor, in his discretion, may give to the designated authority directions as to the policy to be followed in the exercise and performance of the functions of the designated authority in relation to matters appearing to the Governor to concern the public interest and the designated authority shall give effect to any such directions.

8. (1) The designated authority shall, at the end of each year, in relation to that year, or within such longer period as the Governor may in special circumstances approve, cause to be made and transmitted to the Governor an annual report dealing with the activities of the designated authority during the preceding year and containing the particulars specified in subsection (2).

Annual report

(2) The annual report shall include the following particulars-

- (a) the number of general inquiries relating to this Law;
- (b) the number of protected disclosures received and complaints made in relation to detrimental action and the number of them that were acted on and those that were not acted on;
- (c) the number of investigations commenced under this Law;
- (d) the number of prosecutions under this Law;
- (e) the number of recommendations relating to any matter arising under the Law made by the designated authority and the responses to such recommendations; and
- (f) any other matter that the designated authority considers necessary.

(3) The Deputy Governor, on behalf of the Governor, shall cause a copy of the annual report to be tabled in the Legislative Assembly no later than three months after the annual report has been transmitted to the Governor.

(4) The designated authority shall not disclose in an annual report any information that would directly or indirectly identify any person who has made a disclosure under this Law, or a person about whose conduct a disclosure was made.

Designated authority
restricted from providing
information

9. Notwithstanding the provisions of any other Law, the designated authority shall not provide any information, documents or evidence except in accordance with the provisions of this Law or in compliance with an order made by the Grand Court.

PART 3 - DISCLOSURES GENERALLY

Disclosure to the
designated authority

10. (1) Subject to this Law, an employee may make a protected disclosure to the designated authority.

(2) Where information relating to disclosure under subsection (1) was obtained by the person making such disclosure in the normal course of business the designated authority shall not in investigating such disclosure request any subsequent disclosure relating to that investigation unless the court, upon the application of the designated authority, so directs.

(2015 Revision)

(3) In this section, “normal course of business” and “professional person” have the meanings respectively assigned by the Confidential Relationships (Preservation) Law (2015 Revision).

Disclosure to attorney-
at-law

11. A disclosure made by an employee to an attorney-at-law is a protected disclosure for the purposes of this Law if the employee makes the disclosure to the attorney-at-law with the object of obtaining legal advice on such disclosure or if the disclosure is made during the process of obtaining legal advice.

Procedures for making
disclosures

12. (1) A disclosure shall be in writing and shall contain, at a minimum, the information specified in Schedule 1.

(2) Notwithstanding subsection (1), if a disclosure is made orally, the designated authority shall, within twenty-four hours after receiving the disclosure, cause the disclosure to be reduced into writing containing the same particulars as are specified in subsection (2).

Employee’s immunity
from civil and criminal
proceedings

13. (1) Subject to section 3, this section applies notwithstanding any duty of secrecy or confidentiality or other prohibition of or restriction on the disclosure of information under any enactment, rule of law, contract or practice.

(2) An employee who makes a protected disclosure shall not be liable in any civil or criminal proceeding or to any disciplinary proceeding by reason of having made a disclosure in accordance with this Law.

PART 4 - PROTECTION AGAINST DETRIMENTAL ACTION

14. (1) This Part applies to a protected disclosure from the time the disclosure is made. Application of this Part

(2) For the purposes of this Part, any subsequent information relating to a protected disclosure provided by the employee who made the disclosure shall be treated as if it was a protected disclosure.

15. In any proceedings for defamation arising out of the making of a protected disclosure there is a defence of qualified privilege in respect of the making of the protected disclosure. Protection from defamation action

16. Notwithstanding anything to the contrary in this Part, an employee's liability for his own conduct is not affected by the employee's disclosure of that conduct under this Law. Liability for own conduct

17. For the purposes of this Law, a person takes detrimental action against an employee in reprisal for a protected disclosure if- Detrimental action in reprisal for protected disclosure

- (a) the person takes or threatens to take detrimental action against the employee because, or in the belief that-
 - (i) the employee has made, or intends to make, the disclosure; or
 - (ii) the employee has cooperated, or intends to cooperate, with an investigation of the disclosure; or
- (b) for either of the reasons in paragraph (a)(i) and (ii), the person incites or permits someone else to take or threaten to take detrimental action against the employee.

18. (1) A person shall not take detrimental action against an employee in reprisal for a protected disclosure and a person who takes such action commits an offence and is liable- Offence of taking detrimental action

- (a) on summary conviction, to a fine of twenty thousand dollars, to imprisonment for a term of two years or to both; or
- (b) on conviction on indictment, to a fine or to imprisonment for a term of five years or to both such fine and imprisonment.

(2) A person may, apply to the designated authority to determine whether a disclosure is protected and in such a case it is a defence in a proceeding for an offence against subsection (1) if-

- (a) the designated authority, at the application of the person who took the detrimental action, determined that the disclosure is not a protected disclosure; and

- (b) at the time the person took the detrimental action, the person knew of that determination.

Unfair dismissal of employee

19. An employee who is dismissed as a consequence of seeking to make, making or intending to make a protected disclosure, shall be treated as being unfairly dismissed.

Order for re-instatement

20. (1) If -

- (a) an employer; or
- (b) someone in the course of employment with, or while acting as an agent of, the employer -

is convicted of an offence against section 18 in relation to detrimental action taken against an employee, the court may, in addition to imposing a penalty and in addition to any damages ordered under section 21, order, subject to the agreement of the employer and the employee, that the employer reinstate or re-employ the person in his former position or, if that position is not available, in a similar position.

(2) Without limiting the court's discretion, when making an order under subsection (1) the court may take into account any order made under section 23 in relation to the same conduct.

Damages for detrimental action

21. (1) A person who takes detrimental action against an employee in reprisal for the employee making a protected disclosure is liable in damages for any injury, loss or damage to that other person.

(2) The damages may be recovered in proceedings as for a tort in a court of competent jurisdiction.

(3) Any remedy that may be granted by a court with respect to a tort, including exemplary damages, may be granted by a court in proceedings under this section.

(4) The right of an employee to bring proceedings for damages does not affect any other right or remedy available to the employee arising from the detrimental action.

(5) Proceedings for damages under this section may be brought whether or not a prosecution in relation to the detrimental action has been brought under section 18.

(6) When granting a remedy under this section the court shall take into account any order made under section 20 or 23 in relation to the same conduct.

22. (1) If a person in the course of employment with, or while acting as an employee or agent of an employer takes detrimental action against another employee of the employer in reprisal for a protected disclosure-

Vicarious liability of employer

- (a) the employer and the first-mentioned employee or agent are jointly and severally civilly and criminally liable for the detrimental action; and
- (b) a proceeding under section 23 may be taken against either or both.

(2) It is a defence to proceedings against the employer under subsection (1)(a) if that employer proves, on the balance of probabilities, that he took reasonable precautions to prevent the employee or agent from taking detrimental action against another employee in reprisal for the protected disclosure.

(3) An employee or agent of an employer is not liable by reason of subsection (1)(a) for taking detrimental action against the other employee if-

- (a) the first-mentioned employee or agent takes that action in reliance on a statement by the employer that doing it does not contravene this Law; and
- (b) it is reasonable for the first-mentioned employee or agent to rely on the statement,

but this does not prevent the employer from being liable by reason of subsection (1)(a).

23. (1) If, on receipt of an application under section 24, the summary court is satisfied that a person has taken or intends to take detrimental action against an employee in reprisal for a protected disclosure, the court may-

Injunction or order

- (a) order the person who took the detrimental action to remedy that action; or
- (b) grant an injunction in any terms the summary court considers appropriate.

(2) The summary court, pending the final determination of an application under section 23, may-

- (a) make an interim order in the terms of subsection (1)(a); or
- (b) grant an interim injunction.

(3) When granting a remedy under this section, the summary court shall take into account any order made under section 20 or 21 in relation to the same conduct.

Application for
injunction or order

24. An application for an order or an injunction under section 23 may be made by-

- (a) an employee who believes that detrimental action has been taken or may be taken against him in reprisal for a protected disclosure; or
- (b) the designated authority believes that detrimental action has been taken or may be taken in reprisal for a protected disclosure the subject of which is a matter that the designated authority is authorised to investigate under another Law.

Complaints to the
Director of Labour
(2011 Revision)

25. (1) As an alternative to any other remedy under this legislation, an employee may elect to file a complaint with the Director of Labour under the Labour Law (2011 Revision) on the ground that he has been subjected to detrimental action in contravention of section 18 and the Director of Labour shall, upon receipt of such a complaint, refer the matter forthwith to a labour tribunal.

(2) A labour tribunal shall consider a complaint made under subsection (1) in accordance with this Law and procedures prescribed by regulations under this Law.

(3) A hearing before the labour tribunal may be held in camera at the request of any party if the party establishes to the satisfaction of the labour tribunal that the circumstances of the case so require.

(4) On application, the labour tribunal shall determine whether the complainant has been subject to detrimental action and, if it so determines, the labour tribunal may make an order granting a remedy specified in section 26 to the complainant.

(5) A person aggrieved by a decision as to a remedy of the labour tribunal under section 26 may, within twenty-one days of the date on which notice of the decision is received, appeal to the Grand Court against the decision.

Remedies for
detrimental action

26. Where, upon hearing a complaint of detrimental action, a labour tribunal has determined that the employee has suffered detriment it may, by order, require the employer to take all necessary measures to-

- (a) permit the employee to return to his duties;
- (b) reinstate the employee or pay compensation to the employee in lieu of reinstatement if, in the tribunal's opinion, the relationship of trust between the parties cannot be restored;
- (c) pay to the employee compensation in an amount not greater than the amount that, in the tribunal's opinion, is equivalent to the damage that the employee has suffered by reason of the reprisal;

- (d) rescind any measure or action, including any disciplinary action, and pay compensation to the employee in an amount not greater than the amount that, in the tribunal's opinion, is equivalent to any financial or other penalty imposed on the employee;
- (e) pay to the employee an amount equal to any expenses and any other financial losses incurred by the employee as a direct result of the reprisal; or
- (f) compensate the employee, by an amount of not more than ten thousand dollars, for any pain and suffering that the employee experienced as a result of the reprisal.

27. A labour tribunal shall, in relation to any person named in the application who was determined by it to have subjected the employee to detrimental action make a report to the police for investigation.

Report to the police by a tribunal against person who made reprisal

28. (1) An employee of a public entity who has made a protected disclosure and who believes, on reasonable grounds, that detrimental action will be, is being or has been taken against him in contravention of section 18, may request a transfer of employment in accordance with this section.

Transfer of employee

(2) Subject to subsection (3), a Chief Officer of a public entity may transfer an employee of the public entity who has made a protected disclosure to duties within another public entity or a different area of the same public entity on terms and conditions of employment that are no less favourable overall.

(3) An employee may only be transferred under subsection (2) if-

- (a) the employee requests or consents to the transfer;
- (b) the Chief Officer of the public entity has reasonable grounds to suspect that detrimental action will be, is being or has been taken against the employee in contravention of section 18;
- (c) the Chief Officer of the public entity considers that the transfer of the employee will avoid, reduce or eliminate the risk of detrimental action being taken against the employee; and
- (d) the Chief Officer of the public entity to which it is proposed to transfer the employee consents to the transfer.

(4) The transfer of an employee under subsection (2) may be permanent or for a fixed term.

(5) The transfer of an employee under subsection (2) does not constitute a resignation or termination of employment and the post-transfer service is to be regarded as continuous with the pre-transfer service.

**PART 5 - RECEIVING, INVESTIGATING AND OTHERWISE
DEALING WITH PROTECTED DISCLOSURES**

Duty to receive disclosures and carry out investigations into disclosures

29. (1) The designated authority shall receive a disclosure and take appropriate steps in accordance with this Part and Schedule 2 to investigate or cause the disclosure to be investigated.

- (2) Subject to the provisions of this Law, the designated authority shall-
- (a) receive and record the matter being disclosed; and
 - (b) take steps, where the designated authority considers that an investigation should be proceeded with and that the circumstances specified in section 30(2) do not apply, to cause the conduct disclosed to be investigated in accordance with Schedule 2.

Right to refuse; duty to refer

30. (1) The designated authority acting in good faith, may, in any of the circumstances set out in subsection (2)-

- (a) refuse to deal with the disclosure, or commence an investigation into any improper conduct alleged in the disclosure; or
- (b) cease an investigation.

(2) The circumstances are-

- (a) the disclosure is not a protected disclosure;
- (b) the subject matter of the disclosure or the related investigation has been adequately dealt with;
- (c) the subject matter of the disclosure is frivolous or not sufficiently important to warrant an investigation; or
- (d) the circumstances surrounding the subject matter of the disclosure have changed (whether by reason of insufficiency of evidence or otherwise) so that it renders the investigation unnecessary.

(3) Where the designated authority refuses to carry out an investigation, the designated authority shall provide reasons in writing to the employee who made the disclosure within fifteen days of the refusal.

Provisions for non-disclosure in employment agreement void

31. Any provision of an employment agreement is void and of no effect if the provision precludes an employee from making a protected disclosure or purports to require an employee to-

- (a) agree to not make a disclosure under this Law during or after his period of employment;
- (b) refrain from instituting any proceedings pursuant to this Law; or

- (c) withdraw or abandon any disclosure made under this Law, or proceedings instituted pursuant to this Law.

PART 6 – MISCELLANEOUS

32. The designated authority on receiving, investigating or otherwise dealing with a disclosure under this Law shall regard and deal with as secret and confidential-

Obligation of secrecy and confidentiality

- (a) the identity of the person making the disclosure and any disclosure made; and
- (b) any statement given, or document, information or thing provided, to the person in the carrying out of an investigation,

and any statement given, or document, information or thing provided, given in furtherance of an investigation or any legal or disciplinary proceedings shall not be regarded as being inconsistent with the obligation for secrecy and confidentiality.

33. (1) A person commits an offence if he-

Further offences and penalties

- (a) makes a disclosure under this Law knowing that it contains a statement that is false or misleading, or reckless as to whether the statement is false or misleading; or
- (b) aids, abets, procures or conspires with any other person to contravene this Law.

(2) A person who commits an offence under subsection (1) is liable upon-

- (a) summary conviction, to a fine of ten thousand dollars, to imprisonment for a term of two years or to both; or
- (b) conviction on indictment, to a fine or to imprisonment for a term of three years or to both such fine and imprisonment.

(3) A person who, without reasonable excuse, fails to comply with a requirement imposed by the designated authority in the lawful exercise of the functions of the authority under this Law, commits an offence and is liable on summary conviction to a fine of five thousand dollars, to imprisonment for a term of three months or to both.

34. (1) If any person, without lawful excuse, obstructs the designated authority, or, if the designated authority is a public entity, any officer of the designated authority in the performance of his functions under this Law, or is guilty of any act or omission in relation to an investigation under this Law which, if that investigation were a proceeding in the Grand Court, would constitute contempt of court, the Commissioner may certify the offence to the Grand Court.

Obstruction and contempt

(2) Where an offence is certified under this section, the Grand Court may inquire into the matter and after-

- (a) hearing any witnesses who may be produced against or on behalf of the person charged with the offence; and
- (b) hearing any statement that may be offered in defence,

deal with the person in any manner in which the Grand Court could deal with him if he had committed a contempt of the court

Immunity of designated authority

35. Neither the designated authority, nor, if the designated authority is a public entity, any member or officer of the designated authority, shall be liable in damages for anything done or omitted in the discharge or purported discharge of their respective functions under this Law unless it is shown that the act or omission was in bad faith.

Indemnity of members and officers of the designated authority

36. The Government shall indemnify the designated authority, and if the designated authority is a public entity, a member and officer of that public entity against all claims, damages, costs, charges or expenses incurred by the designated authority, the member or the officer, in the discharge or purported discharge of his functions under this Law, but such indemnity shall not apply to any claims, damages, costs, charges or expenses caused by the bad faith of the designated authority, the member or officer.

Regulations

37. (1) The Cabinet may make regulations, subject to affirmative resolution, for the better carrying out of the purposes of this Law and without limiting the generality of the foregoing, may-

- (a) prescribe procedures to be applied in the making, of disclosures;
- (b) prescribe forms to be used under this Law;
- (c) prescribe fees or other charges that may be imposed for services provided if any; and
- (d) make provision in relation to the operations of the designated authority.

(2) Regulations made under subsection (1) may provide for the imposition of penalties on summary conviction in a summary court of a fine of five thousand dollars or imprisonment for six months, or both such fine and imprisonment.

Obligations to report under any other Law

38. Nothing in this Law relating to the making of a protected disclosures is to be construed as affecting any obligation of any person to disclose, report or otherwise give notice of any improper conduct under any other Law.

Review of Law by legislative committee

39. (1) This Law shall be reviewed, from time to time, by a committee of the Legislative Assembly appointed by the Speaker for that purpose.

(2) The first such review shall be conducted not later than three years after the appointed day.

40. This Law binds the Crown.

Law binds the Crown

SCHEDULE 1

(Section 12)

Information to be supplied in disclosure

1. The full name, address and occupation of the person making the disclosure.
2. The nature of the improper conduct in respect of which the disclosure is made.
3. The name of the person alleged to have committed, to be committing or to be about to commit the improper conduct.
4. The time and place where the alleged improper conduct is taking place, took place or is likely to take place.
5. The full name, address and description of a person (if any) who witnessed the commission of the improper conduct.
6. If the person is an employee making a disclosure about that person's employer or a fellow employee, whether the person making the disclosure remains in the same employment.

SCHEDULE 2

(Section 29(2))

Procedure of the designated authority

Procedure in respect of investigations

1. (1) The designated authority may adopt whatever procedure the authority considers appropriate to the circumstances of a particular case and, subject to the provisions of this Law, may obtain information from such person and in such manner and make such enquiries as the authority thinks fit.

(2) Nothing in this Law shall be construed as requiring the designated authority to hold any hearing.

(3) Regulations made under this Law may prescribe the practice and procedure to be adopted at any hearing.

Evidence

2. (1) Subject to the provisions of sub-paragraph (5), the designated authority may at any time require any person who, in the opinion of the designated authority, is able to give any assistance in relation to an investigation in respect of any disclosure made pursuant to this Law, to furnish such information and produce any document or thing in connection with such investigation as may be in the possession or under the control of that person.

(2) Subject as aforesaid, the designated authority may summon before the authority and examine on oath-

- (a) any person who has made representations to the authority; or
- (b) any other person who, in the opinion of the designated authority, is able to furnish information relating to the investigation,

and such examination shall be deemed to be a judicial proceeding.

(3) For the purpose of an investigation under this Law, the designated authority shall have the same powers as a Judge of the Grand Court in respect of the attendance and examination of witnesses and the production of documents.

(4) No person shall, for the purpose of an investigation, be compelled to give any evidence or produce any document or thing which he could not be compelled to give or produce in proceedings in any court of law.

Designated authority not to disclose certain information

3. (1) Information obtained by the designated authority or his officers in the course of or for the purposes of an investigation under this Law shall not be disclosed except-

- (a) for the purposes of the investigation and of any report to be made on the investigation under this Law;
- (b) for the purposes of proceedings (or possible proceedings) for an offence of perjury connected with an investigation under this Law; or
- (c) for the purposes of any proceedings under section 17,

and the designated authority and his officers shall not be called upon to give evidence in any proceedings (other than such proceedings as aforesaid) of matters coming to his or their knowledge in the course of an investigation under this Law.

(2) The Governor acting in his discretion may give notice in writing to the designated authority, with respect to any document or information specified in the notice, or any class of documents or information so specified, that in the opinion

of the Governor acting in his discretion the disclosure of that document or information, or of documents or information of that class, would be prejudicial to the safety of the Islands or otherwise contrary to the public interest.

(3) Where a notice is given under sub-paragraph (2) nothing in the Law shall be construed as authorising or requiring the designated authority or any officer of the designated authority to communicate to any person for any purpose any document or information specified in the notice or any document or information of a class so specified.

Procedure after investigation

4. (1) After conducting an investigation under this Law, the designated authority shall, in writing, inform the person who made the disclosure of the result of that investigation and make such recommendations as the authority considers necessary in respect of the matter which was investigated.

(2) If any report of the designated authority reflects adversely upon any person, the designated authority shall, so far as practicable, inform that person of the substance of the report.

Disciplinary action recommended

5. If the designated authority finds, during the course of the investigation or on the conclusion thereof that there is evidence of a breach of duty or misconduct or criminal offence, the authority shall refer the matter-

- (a) to the person or persons competent to take any disciplinary proceedings;
- (b) to the Commissioner of Police in the case of a criminal offence;
or
- (c) to the Governor, if the breach of duty, misconduct or a criminal offence is allegedly committed by the Commissioner of Police, the Complaints Commissioner, the Attorney General, the Auditor General, the Information Commissioner or the Director of Public Prosecution.

