Legislative Assembly of Alberta

The 29th Legislature
First Session

Select Special Ethics and Accountability Committee

Public Interest Disclosure (Whistleblower Protection) Act Review

Thursday, February 11, 2016
9:02 a.m.

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Legislative Assembly of Alberta
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First Session

Select Special Ethics and Accountability Committee

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Payne, Brandy, Calgary-Acadia (ND), Deputy Chair
Shepherd, David, Edmonton-Centre (ND),* Acting Chair

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Jansen, Sandra, Calgary-North West (PC)
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Renaud, Marie F., St. Albert (ND)
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Standing Committee on Ethics and Accountability

Participants

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Gil McGowan, President

Ministry of Justice and Solicitor General 70
Philip Bryden, QC, Deputy Minister
Joan Neatby, Solicitor, Legislative Reform

9:02 a.m. Thursday, February 11, 2016

[Mr. Shepherd in the chair]

The Acting Chair: Well, good morning. I'd like to call the meeting of the Select Special Ethics and Accountability Committee to order. Good to see everyone here. I'm David Shepherd, the Member for Edmonton-Centre, substituting for the hon. Ms Gray, the committee chair. Welcome to members, staff, guests in attendance.

To begin, I'm just going to ask that the members and those joining the committee at the table introduce themselves for the record, and then we'll address the members that are joining via teleconference. I'll begin to my right.

Ms Babcock: Thank you. Erin Babcock, MLA for Stony Plain. I'm substituting for Minister Payne, the deputy chair.

Cortes-Vargas: I'm Estefania Cortes-Vargas. I'm the MLA for Strathcona-Sherwood Park.

Mr. Dach: Lorne Dach, MLA, Edmonton-McClung, substituting for Minister Miranda.

Mr. Horne: Trevor Horne, MLA for Spruce Grove-St. Albert, substituting for Chris Nielsen.

Ms Renaud: Marie Renaud, St. Albert.

Ms Langford: Kerry Langford, general counsel, office of the Auditor General.

Mr. Saher: Good morning. Merwan Saher, Auditor General.

Mrs. Aheer: Good morning. Leela Aheer, substituting for Mr. Nixon.

Mr. Cyr: Scott Cyr, MLA, Bonnyville-Cold Lake.

Mr. van Dijken: Glenn van Dijken, MLA, Barrhead-Morinville-Westlock.

Mr. W. Anderson: Wayne Anderson, MLA, Highwood.

Mr. Reynolds: Rob Reynolds, Law Clerk and director of interparliamentary relations.

Dr. Massolin: Good morning. Philip Massolin, manager of research services.

Mrs. Sawchuk: Karen Sawchuk, committee clerk.

The Acting Chair: Excellent.

Those on the phone, could you just quickly identify yourselves, please.

Ms Jansen: Sandra Jansen, Calgary-North West.

Dr. Swann: David Swann, Calgary-Mountain View. Good morning, everybody.

Mr. Clark: Good morning. Greg Clark, MLA, Calgary-Elbow.

Ms Drever: Good morning. MLA Deborah Drever, substituting for Stephanie McLean.

Dr. Starke: Good morning. Richard Starke, MLA for Vermilion-Lloydminster.

The Acting Chair: Good morning, Barb.

Ms Miller: Good morning.

The Acting Chair: Okay. Excellent.

Do we have Mr. Loyola with us yet? Not yet? Okay.

All right. Well, just again to note for the record that we have the following substitutions for today's meeting: Ms Babcock substituting for Minister Payne, the deputy chair; Mrs. Aheer substituting for Mr. Nixon; Mr. Dach for Minister Miranda; Ms Drever for Minister McLean; and Mr. Horne for Mr. Nielsen.

A few quick housekeeping items to address before we start with our business. Just a reminder, again, that the microphone consoles are operated by the *Hansard* staff. There is no need for us at the table to touch them. Please keep cellphones, iPhones, and BlackBerrys off the table as they may interfere with the audiofeed. Of course, just to be aware, the audio of committee proceedings is streamed live on the Internet and recorded by *Hansard*. Audio access and meeting transcripts are obtained via the Legislative Assembly website.

If we could begin, then, with approval of the agenda, which was revised slightly yesterday afternoon, does anyone have any additional changes to make? If not, could a member move the motion to approve the revised agenda?

Ms Renaud: Sure. I'll make that motion.

The Acting Chair: All right. Moved by Marie Renaud that the revised agenda for the February 11, 2016, meeting of the Select Special Ethics and Accountability Committee be adopted as distributed. All in favour? Any opposed? Carried.

Ms Drever: Sorry; could you repeat that?

The Acting Chair: The motion to approve the revised agenda as submitted yesterday has been carried.

Ms Drever: Okay. Thank you.

The Acting Chair: You're welcome.

Next, then, we have the minutes from our last meeting. Are there any errors or omissions to note? If not, could I have a member move adoption of the minutes, please?

Cortes-Vargas: I move to adopt the minutes.

The Acting Chair: Okay. Member Cortes-Vargas moves to adopt the minutes. All in favour? Any opposed? Thank you.

All right. Moving on, then, for the record at its January 27, 2016, meeting the committee passed a motion to invite the Auditor General, the Alberta Federation of Labour as well as Service Alberta, represented today by Mr. Bryden, the Deputy Minister of Justice and Deputy Solicitor General, to attend this meeting and provide an overview of their respective written submissions and to respond to questions from committee members.

As our first presenter this morning we have Mr. Merwan Saher, Auditor General. Just a quick note to advise that the members do have a copy of the written submission. At this point we'd ask you to go ahead, please. If you could keep your presentation to about 10 minutes or so, then that should leave us with about 20 minutes for members' questions.

Office of the Auditor General

Mr. Saher: Thank you very much, Chair. It's a pleasure to be here, and thank you for the invitation to spend some time with you and highlight our submission to the committee. I started thinking about how I would do that by reading from your meeting of January 27,

when Dr. Amato of research services presented to you a summarization of the I think it's 20 submissions the committee had received. She summarized that by grouping items brought forward into five main issues. As I read, I wrote them down in this way. The issues seem to be: expanding the scope or the application of the act; clarification of the definition of wrongdoing; disclosures, for example expanding to whom disclosures might be made; various respondents have talked about reprisals; then the fifth issue identified from the submissions was investigations, including appeals of the decisions of the Public Interest Commissioner and the ability of the commissioner to compel action.

With that as a background, I then said to myself that, in my opinion, I believe that with the office's submission to the committee, actually we have something to say on all five of those issues that have been collated and brought together for your information by your research staff. What I'm going to do is to concentrate on the parts of our submission that I want to stress to you, and I'm stressing them to you from my role as Auditor General.

9:10

As you listen to the things I choose to stress, I suppose what I'm really saying is that this is the way an auditor thinks. I'd like to credit my colleague Kerry Langford, the office's legal counsel. She was the person who actually put our submission together after discussions within the office, so the submission you have in front of you was drafted by Kerry. She is not an auditor primarily, but over the years I think she is legal counsel who has been influenced by auditors.

I'm going to be doing a fair amount of quoting from the letter, certain parts of it, but my intention is that this will be recorded in *Hansard*, and if you care to go back, then you will be able to find the place in our submission that I'm referring to.

I'm going to start by quoting from our cover letter, and I'd like to quote the following:

> Having reporting structures that support and encourage the reporting of wrongdoing is essential not only for the purposes described . . . in the Act, but also from a risk management perspective. Since fraud is most commonly detected through tips, having strong protection in place for those who report wrongdoing will encourage early reporting. In such cases, government or public entities may detect a fraud or other misconduct in its early stages rather than years down the road when the financial loss can be significant.

That's part of what we said in our cover letter, and that, in a way, is auditor language, this notion of risk management. What did we mean by risk management? By risk management we mean taking steps to first discourage and then, if necessary, identify misuse of public assets, and by "misuse" I as an auditor use that word when I'm referring to illegal or inappropriate use of an asset.

Our submission had a covering letter, and then it had an appendix. Now I'm going to reference some main points from the appendix. I'm going to now go to page 2 of our appendix and under the heading of the matters that we talk about there. We grouped our thoughts here under a heading: "The definition of 'wrongdoing' should be broad enough to ensure that the objectives of the Act can be met." That's the summarization of our thinking in this particular area of the submission. Here is part of what we said.

> While I [as Auditor General] take no issue with the types of wrongdoing that are included in the Act, I would encourage the committee to carefully consider whether the type of wrongdoing to which the Act applies is broad enough. By restricting the definition, serious misconduct such as bullying or harassment, considered by most to be generally offensive or otherwise harmful to the public interest, may not be captured under the Act.
>
> I recognize that there must be some parameters around the type of conduct considered wrongdoing for the purposes of the Act, but such a restrictive definition increases the risk that serious misconduct may go unreported. This is because an employee who discloses alleged misconduct to management that is not considered wrongdoing for the purposes of the Act, is not afforded any legal protection. As such, there is little incentive to report "wrongs" that are not specifically within the scope of the Act.
>
> Even in cases where an alleged wrongdoing may fall within the scope of the Act, an employee may not understand what amounts to "gross mismanagement" or what constitutes "a substantial and specific danger." In such cases, an employee may choose not to report when in doubt as to whether the Act applies.

I'm now going to move to page 4 of the appendix to our submission and the heading under which we've grouped our thoughts. I'm on page 4 of our submission, and the heading is, "Public reporting requirements under the Act need to be strengthened to include relevant and useful information that demonstrates accountable enforcement."

> Although there are annual reporting requirements in the Act, there is key information that is missing [in our opinion], such as:
>
> - the types of wrongdoing alleged in the disclosures received by the Commissioner
> - summary findings of the Commissioner in cases where a wrongdoing or act of reprisal is found to have been committed
> - the specific recommendations made to public entities or offices of the legislature, and the entities responses to [deal with] such recommendations
> - any offences committed or penalties given under the Act.
>
> While aggregate information regarding the number of disclosures received or investigations conducted is important, it does not provide the level of detail required to fully understand and appreciate the types of wrongdoings that are being committed by public entities or individuals.

Essentially there we're encouraging the committee to think about broadening the reporting requirements.

Now I'm going to move to page 6 of our appendix. The heading here is, "The Act should authorize individuals to make a disclosure of wrongdoing directly to the Commissioner without limitation."

> The primary objective of whistleblower legislation is to encourage the reporting of wrongdoing, so that management can act on it. Currently, the Act allows for direct reporting to the Commissioner only in limited circumstances. In most cases, employees are required to report internally in accordance with the procedures established by the organization. However, effective internal reporting systems can only work in organizations where there is a cultural environment that supports [such] reporting. In my role as the Auditor General of Alberta, I have found that is not always the case. Most recently, this issue was highlighted in my August 2014, Special Duty Report relating to the premier's expenses. In organizations that don't support a culture of reporting, the requirement to report internally alone may deter the reporting of wrongdoing.

The Acting Chair: Mr. Saher.

Mr. Saher: Yes.

The Acting Chair: Just to let you know, you've got about two more minutes for your presentation.

Mr. Saher: Okay. Finally, if I may quote from the *Hansard* record of the Public Accounts Committee meeting last week, on February 3. The subject matter was the August 2014 Auditor General's special duty report on the expenses of the office of the Premier,

Premier Redford, and Alberta's air transportation services program. I'd like to just read from the transcript of that meeting last week because it seems relevant to my presentation this morning. I'm quoting from the *Hansard* record, Public Accounts Committee, page 112. Mr. Westhead asked a question. His question was: "My question is to the Auditor General. You know, after we've examined this report, can you give us some lessons that we should learn from this?" This is how I responded.

> I think the biggest lesson would be that any member of the public service – it doesn't really matter what your rank or place is – has a fundamental duty to do something about anything that you believe is not correct. You should not – and there is no expectation – follow through and do things that you don't believe are the right thing to do. I think that's the biggest lesson. I think there are ways in which one can deal with being in a situation of that nature. There are colleagues. There are perhaps individuals in other ministries, other departments that you can consult for advice. There are two officers of the Legislature who exist and could play a useful part in this.
>
> To the best of my knowledge, before being asked to perform this [special] work by the former Premier, we had no indication in our office that there were problems that needed to be looked at. No one had left brown paper envelopes or written to us in any way asking us to look at anything. Arguably, with hindsight, that could be viewed as strange.

9:20

> I think, in relation to your question . . .

That's Mr. Westhead's question.

> . . . one lesson is that no public servant should ever allow themselves to be put into a position where they just feel: what I'm doing is not right, and I must do it because I'm in some sort of hierarchy, and my job is at risk if I do anything other than, essentially, what I'm being forced into doing. I think that's an important lesson. I think that to the extent that a government can build the processes and systems that, in effect, protect individuals, those who sign and approve the expenses of others as part of the process should – all you have [in fact] is your signature, in the end.

All that they can do is: don't sign. Failure to sign would result in that transaction not proceeding through the chain.

> It shouldn't get paid. Yes, I suppose some might argue: well, this would be career suicide. I don't see it as career suicide. Good control systems are designed to protect individuals, designed to encourage people to do the right thing. So I think that's the lesson from all of this.

I think what I was trying to convey to the Public Accounts Committee is, essentially, what I'm trying to convey to you today, that your efforts to produce a first-class piece of legislation – we have good legislation, but I think the fact that it is being reviewed is an indication that it might be improved – is really the right thing for this committee to be doing. As Auditor General I was very pleased to make the submission we did to the committee.

I'd be happy to answer any questions you have.

The Acting Chair: Well, thank you for your presentation. If there is any additional information that you'd like to provide to the committee, we'd ask that you do so through the committee clerk.

We'll go ahead, then, and move on to questions. MLA Dach.

Mr. Dach: Thank you, Mr. Chair. Thank you, Mr. Saher, for your presentation. I wanted to speak about broadening the definition of wrongdoing that you mentioned, particularly on page 2. You emphasize that the definition of wrongdoing should be extended. There are cases where alleged wrongdoing, as you noted, may fall under gross mismanagement, and in such cases an employee may choose not to report potential wrongdoing if they're in doubt as to whether the act applies. With regard to broadening the definition of wrongdoing, do you have any specific recommendation for crossjurisdictional models within Canada and beyond that we could tap into as a resource?

Mr. Saher: I personally don't. I think the point that we were trying to make was that – and I'm sure there's an abundance of literature on what exactly gross mismanagement means as opposed to mismanagement. I think the point we were trying to make is that language of that nature is difficult. To be honest, if you asked me to differentiate gross mismanagement from mismanagement, I'm not sure that I would know how to do it as a layperson. But I think your question is: do I know of places where the committee could seek to reference because this matter has been dealt with elsewhere? I'm personally not aware of any.

Let me ask Kerry.

Ms Langford: I believe, actually, Australia has a broader definition. But I think generally our point was, again, that when you have very discrete categories of wrongdoing and you don't have any language that sort of allows other actions that would be offensive in the context of the public sector, then you're really potentially hindering individuals coming forward and reporting conduct that I think most people would expect should be reported.

The Acting Chair: All right. Ms Renaud.

Ms Renaud: Thanks. My question is around expanding the scope. I noted in the information that you provided the committee with that the act doesn't currently apply to contractors and delegated service providers. Obviously, it's unclear why that exclusion is there because it sort of contravenes the objectives of the act. There is very little distinction between employees and contractors except that the contract governs the working relationship, obviously, with the employee. My question is: could you highlight the risk of continuing to exclude these groups versus the potential benefit of addressing the omission?

Mr. Saher: Well, I'll try, and then I'll ask my colleague to supplement. I think the point we're making is that – I mean, in many cases we're dealing with mismanagement, abuse, things going wrong when public assets, often in the form of cash, are transferred from the public purse to someone else. The act is framed with respect to people, employees of the government observing things that they believe to be wrong, and the act affords an opportunity for them to try to deal with that.

Where recipients of public money are also given protection in terms of knowledge that they may have, I think that there's just something wrong with this transaction. You know, I'm a contractor or maybe I'm employed by a contractor. I just think that it broadens the scope, the opportunity to manage risk, if I go back to the opening comments we made. Simply, I think it would make the act better. I think that in any case where by expanding something, you make it better, the inverse is that by not expanding it, what you have at the moment is perhaps limited.

Let me ask Kerry to supplement.

Ms Langford: Yes. I think we actually had one specific example a number of years ago. It was regarding an information management system that was being implemented by a contractor at Infrastructure and Transportation, which we publicly reported on. That was the TIMS project, in which case we identified an issue with the primary contractor, in which case there were relationships with other contractors, and the main contractor was receiving a cut of the proceeds of the other individuals. Those individuals had no

recourse to go forward and report on that matter, and ultimately we investigated on a tip and were able to identify issues within the contracting process. I think that's one specific example, and we can certainly refer you to the report and provide that to you.

Ms Renaud: Thank you. I just had a follow-up question. Is that possible?

The Acting Chair: I apologize, Ms Renaud, but we only have about five minutes left, and I do have a number of speakers on the list.

Ms Renaud: Okay.

The Acting Chair: Thank you.

Again, just to note if we could keep our questions and responses brief. Thank you.

Mr. Cyr.

Mr. Cyr: I will be brief. Thank you, Chair. Thank you, Auditor General, for coming here and taking time out of your day. Do you believe that there should be an appeal process to the Public Interest Commissioner's decisions? If so, how would you structure that or look at implementing that kind of a structure?

Mr. Saher: I'm going to ask Kerry to answer that because I think that she believes that there should be as part of natural justice.

Ms Langford: Right. Well, I think obviously one of the primary purposes of the act and one of the principles emphasized is natural justice, procedural fairness. One thing we noticed in the act, again, is – and I appreciate the fact – that it's geared towards individuals feeling comfortable going forward in reporting wrongdoing. At the same time, that needs to be balanced in the interests of individuals who may be found to have committed a wrongdoing. Again, for example, I think we cite one provision that allows a person who disclosed a wrongdoing to seek a review if they're not happy with the decision, but there didn't appear to be any similar process for an individual who was found to have committed a wrongdoing, not the individual who made the disclosure. Again, I think that's obviously a policy issue, and I think it's something that we would encourage the committee to really think about given the importance of the principles of natural justice and procedural fairness and that it must be balanced.

Mr. Saher: In summary, I don't think we have an answer as to how to do it. I think we're raising an issue for the committee's consideration without the mechanics, if you will, of how one might go about it if it was felt that it was worth pursuing.

The Acting Chair: Thank you.

Mr. Loyola.

Loyola: Thank you, Mr. Chair. Mr. Saher, on page 4 of the submission you talk about the commissioner's authority to make recommendations to public organizations, but as we understand, the commissioner has no authority to require an organization to comply, and this often creates challenges with accountable enforcement. If you could further elaborate on how you think we should address this.

9:30

Mr. Saher: Yes. It's my belief that if someone has the power to make or the requirement to make a recommendation – I'm just telling you what I think as an individual – that person should also be given the power to do what we in our business call follow-up work, to take a view on whether or not the recommendation, if accepted, was dealt with, because I think that until those who are to benefit from the recommendation having been made and being implemented can have assurance that the intent of the recommendation was in fact implemented, then the process is not complete. As much as the Auditor General has the ability, you know, through the auditor act to conduct follow-up work – I mean, it's not explicitly stated; it's just a standard practice, which is believed to be a good practice.

I think it's a facility that should be afforded to the commissioner. If a recommendation is made and the recommendation is accepted, I think Albertans would benefit from a view, an independent view, from the person who made the recommendation: has it, in fact, been implemented?

Loyola: Thank you.

The Acting Chair: Thank you.

We have run out of time for this section of the presentation, so what I'm going to ask – I do have three speakers remaining in line – is that as I call on you, you read your question into the record, and then we'll ask that Mr. Saher provide an answer to you in written form through the committee clerk.

All right. Dr. Swann, if you could read your question into the record, please.

Dr. Swann: Thank you very much, Mr. Saher, for a very comprehensive and helpful review of the shortcomings of this legislation and the issues that have been raised repeatedly in the House, which demonstrate, I think, the need for substantial reform, which you've identified. We don't want an act or legislation that will limit and not fulfill the purpose for which it's written, and currently it does that. I think that we have underreporting; it's clear. We have reluctance to report for the many reasons that you've cited. So I just wanted to wholeheartedly endorse all of the recommendations that you've made, and I hope that this committee can find a way to incorporate all of your recommendations. There wasn't a single one that I saw there that would not strengthen this legislation and enable better accountability and more courageous, I guess, responses from people, including the contracting sector, which has to be included if we're going to actually get at some of the root issues that we care about.

Thank you very much.

The Acting Chair: All right. Thank you, Dr. Swann.

Mr. Horne, could you read your question into the record, please?

Mr. Horne: Thank you for taking time out of your morning today. Given that the legislation around whistle-blowing is fairly new in Canada, how do you think the current structure of promoting internal reporting is affecting the implementation of the act, and how do you think direct reporting to the commissioner might help?

The Acting Chair: Thank you, Mr. Horne.

Mr. van Dijken.

Mr. van Dijken: Thank you. My question is with regard to the answer pertaining to the appeal process. When we talk about broadening the scope of reporting through other legitimate channels such as reporting directly to the commissioner, I need to try to get an understanding of your opinion on the appeal process, if it's necessary that it be in place initially before we broaden the scope of reporting channels. Another part of that is: is the power of the Public Interest Commissioner too overreaching, possibly? If you could state an opinion on that also.

The Acting Chair: Thank you, Mr. van Dijken.

Apparently, that's it for questions and for this section. Thank you again, Mr. Saher, Ms Langford, for joining us today. As we said, any additional information will be forwarded, then, through the committee clerk for consideration by all members.

We'll just take a few minutes, then, to allow our next presenters to get settled at the table.

Well, then, I'd like to welcome our next presenters, Mr. McGowan and Ms Feeny, representing the Alberta Federation of Labour. For your information, members do have copies of the written submission from the AFL.

We'll just take a quick moment to go around the table and introduce ourselves for your benefit, and then I'll call on the members on the phone line.

Ms Babcock: Erin Babcock, MLA for Stony Plain. I am substituting for Minister Payne, the deputy chair.

Cortes-Vargas: Estefania Cortes-Vargas, MLA for Strathcona-Sherwood Park.

Mr. Dach: Lorne Dach, MLA, Edmonton-McClung, substituting for Minister Miranda.

Mr. Horne: Trevor Horne, MLA for Spruce Grove-St. Albert, substituting for Chris Nielsen.

Ms Renaud: Marie Renaud, St. Albert.

Loyola: Rod Loyola, Edmonton-Ellerslie.

Mrs. Aheer: Leela Sharon Aheer, Chestermere-Rocky View, substituting for Mr. Nixon.

Mr. Cyr: Scott Cyr, MLA for Bonnyville-Cold Lake.

Mr. van Dijken: Glenn van Dijken, MLA, Barrhead-Morinville-Westlock.

Mr. W. Anderson: Wayne Anderson, Highwood.

Dr. Massolin: Good morning. Philip Massolin, manager, research services.

Mrs. Sawchuk: Karen Sawchuk, committee clerk.

The Acting Chair: And on the phones?

Ms Jansen: Sandra Jansen, Calgary-North West.

Ms Miller: Barb Miller, MLA, Red Deer-South.

Dr. Swann: Good morning, folks. David Swann, Calgary-Mountain View.

Dr. Starke: Good morning. Richard Starke, MLA, Vermilion-Lloydminster.

Mr. Clark: Good morning, everyone. Greg Clark, MLA, Calgary-Elbow.

The Acting Chair: Is Ms Drever still with us? No? Okay.

If the guests could introduce themselves for the record, please.

Mr. McGowan: Well, good morning. Thanks for this opportunity. My name is Gil McGowan, and I'm president of the Alberta Federation of Labour. I'm joined this morning by Gwen Feeny, who is the director of policy for the federation.

The Acting Chair: Thank you. Mr. McGowan, if you could go ahead, then, please, with your presentation. We'd just ask that you keep it to about 10 minutes so that we can allow about 20 minutes for members' questions.

Alberta Federation of Labour

Mr. McGowan: Okay. Well, thanks for this opportunity. We're here today because our federation believes very strongly that whistle-blower protections are an important component of workers' rights and employment rights and because we believe that they are crucial to protecting the public interest. Without whistle-blower protection, cases of dangerous workplaces and broken employment rules go uninvestigated and unresolved. Without whistle-blower protection, practices that squander public dollars, threaten the environment, and cheat consumers continue to go without remedy.

Well-crafted whistle-blower laws encourage disclosure by creating safe, accessible, simple, and transparent procedures that safeguard the rights and interests of those who report. Well-crafted whistle-blower laws also discourage the suppression of information by providing remedies to whistle-blowers if they become targets of reprisals, and they create and maintain public confidence by ensuring fair and transparent systems for investigation and reporting. Effective whistle-blower protections are particularly important in a province like ours, where so many employees are working in potentially dangerous workplaces, where undisclosed wrongdoings present the potential for widespread economic and environmental damage.

That's why we're pleased that Alberta does have the public interest disclosure act, and it's why we're even more pleased that the act is being reviewed with an eye to making it more effective. In general and in principle, we're supporters and fans of whistle-blower legislation, but the fact that there have only been two investigative reports since this particular piece of legislation came into force, in 2013, suggests strongly to us that the legislation can be significantly strengthened in order to ensure that it is meeting the objectives of encouraging disclosure, safeguarding the interests of those who do disclose, and protecting the public interest. This morning we'd like to make five suggestions for reform that, if implemented, we think would dramatically improve the act and transform it into a more powerful tool for defending the public interest.

9:40

Our first suggestion has to do with who the act covers. Currently the act covers only a very limited number of public-sector employees. This reduces the effectiveness of the regime, and it is not in line with best practices in other parts of the country or indeed around the world. More specifically, the act currently only applies to direct employees of the provincial government or designated health- and education-sector bodies. They're the ones covered by PIDA. This excludes large swaths of public-sector employees who provide public services through contracted agencies or individually. In Alberta the Public Interest Commissioner currently tracks only 377 entities as compared to Manitoba, a much smaller province, where over 600 government bodies are covered under their whistle-blower legislation. We believe that the act should be amended to ensure a minimum standard, that all those providing government-contracted services are covered by the act.

Furthermore, the definition of employee should be considered carefully in order to reflect the changing nature of work and working relationships, where many employers are able to avoid respecting their obligations and the rights of workers by structuring the relationships in a way that does not meet the legal definition of

employee under various statutes. Workers in vulnerable or nontraditional employment relationships are equally if not more vulnerable to reprisals, job loss, pay cuts, demotions, et cetera, when having the courage to report wrongdoing. For that reason, we feel that they should be explicitly covered under the act.

We think that the act should be expanded to cover all employees who work in jobs funded by the public, but we don't think that the government should stop there. We believe that all employees, regardless of where they work in the public or private sectors, should have whistle-blower protection. If the goal of this legislation is to promote disclosure and protect the public interest, then we simply cannot leave whistle-blowers in the private sector without protection.

To illustrate the importance of this point, let's consider a few examples of what's happened to whistle-blowers right here in Alberta, people of conscience who have spoken out to draw attention to wrongdoing that threatens the health of Albertans, our province's environment, or the interests of Alberta consumers.

One example that was in the media: Dr. John O'Connor, a physician, reported concerns about elevated rates of cancer in Fort Chip as a result of the downstream effects of poor environmental practices of some oil sands operators. This was an important disclosure, but he suffered harassment, threats, and negative career effects yet was later found to have raised legitimate concerns borne out by research.

In a similar way, Larry Elford, a former investment adviser, wrote about questionable practices in the financial services industry which were misleading investors, and he subsequently lost his job.

A third and final example: Evan Vokes, an engineer at TransCanada Pipelines who in 2002 warned of substandard materials and safety practices on a gas pipeline. Instead of taking action on his concern, Mr. Vokes's employer fired him. A year later the pipeline that Mr. Vokes warned about exploded, and a subsequent investigation by the National Energy Board proved that Mr. Vokes was right.

To avoid these kinds of situations and to encourage disclosure, to safeguard whistle-blowers, and to protect the public interest, we recommend that Alberta's whistle-blower legislation be applied to all employees, both in the public and private sectors.

When looking for language about how our law could be expanded to cover the private sector, we encourage the committee to look across the Atlantic Ocean to Britain. In the United Kingdom for years now, since 1998, they've had the Public Interest Disclosure Act, which provides private-sector employees with the same rights, protections, and remedies as public-sector employees. This particular piece of legislation forms part of the U.K.'s employment legislation and applies to everyone except genuinely self-employed individuals, volunteers, and those that work in intelligence services or the armed forces.

Our second suggestion for reform has to do with reporting procedures. Unlike in other provinces, Albertans covered by the act may only disclose wrongdoing to the designated officer in their workplace. Often the designated officer is not someone that the workers know or trust. It may in fact be a manager who they report to or even someone who might be complicit in the wrongdoing that they're concerned about. The act allows for reporting directly to the Public Interest Commissioner or an appropriate external third party only in extremely limited circumstances, and it is intended that such reports would only be made after the individual first makes an internal report. These limited and highly circumscribed reporting options and mechanisms work against the objectives of the act, which are to encourage and support disclosure. Reporting internally can be intimidating and difficult for employees who fear retaliation from managers or supervisors.

Furthermore, the tightly prescribed reporting procedures in the act currently are not flexible or responsive enough to reflect the needs of a range of workplaces. For example, the requirement to report to a designated officer, who is usually a senior manager, might protect the anonymity of an employee in a large or hierarchical organization, but in smaller or more horizontally organized workplaces an employee might not be able to maintain a confidential reporting relationship with their designated officer, or the reality might be that everyone else in the workplace would easily know who made the report.

To illustrate the importance of providing more options for reporting, consider the case of Manitoba. During a recent legislative review in that province a survey found that civil servants are more likely to report to the Ombudsman than to officials in their own departments. Their legislation allows direct reporting to the Ombudsman in a much greater range of circumstances than Alberta's. In the first five years of Manitoba's whistle-blower legislation being in force, only three internal disclosures were received as compared to 57 disclosures to the Ombudsman. For us, that proves that providing readier access to the Ombudsman is in the public interest.

Research from other jurisdictions also suggests that allowing reports to be made externally strengthens the effectiveness of whistle-blower legislation. A professor at the University of Brandon, Alan Levy, recommends that all disclosures be made solely to external agencies in order to prevent the possibility of stifling reports, discouragement of reporting, or accidental or intentional mishandling of reports by designated officers. A similar conclusion was reached by the Ontario Integrity Commissioner, who wrote during a recent legislative review in that province, "The [evidence] of a neutral third party to receive and deal with disclosures of wrongdoing is an essential component of a well-functioning disclosure of wrongdoing framework." For these reasons, we believe that PIDA should include a range of reporting options to ensure that all employees are supported and encouraged in making disclosures when they feel the need to.

Our third suggestion for reform has to do with the wide discretion that is currently granted to the Public Interest Commissioner under the current act. As compared to other Canadian jurisdictions and as opposed to the best practices for effective whistle-blower protections around the world, our act delegates an unusual amount of discretion to the commissioner. For example, our commissioner currently has unlimited discretion to conduct or not conduct investigations into alleged wrongdoing, and the act has no enumerated grounds for declining to investigate a disclosure. The result is a reduction in transparency around the act and its processes. The public doesn't know what the commissioner has declined to investigate, they don't know why he has declined to investigate, and they don't even know how many complaints he has declined to investigate.

For us, an important component of any effective whistle-blowing regime is that it encourages, maintains, and enhances public confidence and understanding of the system. If the public does not have confidence or an understanding of the system, it will discourage the reporting of wrongdoing and will also undermine the results of any reports or investigations that are made.

Currently when a wrongdoing is reported but not found to meet the stipulations of the statute or when complaints are dismissed outright, without investigation, the information that led to the complaint in the first place will remain confidential. Again, much of this rests with the fact that the commissioner retains discretion to disclose information about these complaints as well as the discretion to decide whether to investigate or not. This leads to the potential that worthy complaints or important information may

never be disclosed to the public or others with an interest in protecting the workplace in question. We're left to trust the commissioner.

The Acting Chair: Just so you know, Mr. McGowan, about two minutes.

Mr. McGowan: Okay. Thank you.

If a disclosure is made to the commissioner but not investigated either because it was investigated by a designated officer internally or for any other reason as per the legislation, then there is no information that may be disclosed to the public or to other employees in the workplace. This places the whistle-blower at greater risk, with the possibility of no beneficial outcome.

We submit that the wide discretion granted to the commissioner under the current act undermines confidence. With that in mind, we recommend that the act be amended to limit the discretion of the commissioner. Specifically, the commissioner should report on the number and nature of disclosures he has received. He should be required to explain why he has decided to not proceed with an investigation.

9:50

Our fourth suggestion has to do with the issue of reprisals. Many employees who witness wrongdoing or come into possession of information that they know must be disclosed fear reporting because they anticipate being demoted, transferred, fired, or bullied to the point of needing to quit. Ideally, a whistle-blower protection regime will be sufficiently robust so that such reprisals are rare or unlikely. However, it is nonetheless crucial that the legislation include effective provisions that protect against these reprisals. The legislation must clearly prohibit any form of reprisal, but it should also provide rights to relief and remedies if any employee suffers reprisals.

In terms of procedures for reporting reprisals, Alberta legislation does already provide an enhanced level of protection for whistle-blowers over and above other provinces like Saskatchewan. However, Alberta legislation is lacking in that it does not provide any remedy or compensation to the whistle-blower in the case of reprisals. Manitoba's legislation allows for the labour board to make orders of financial restitution or other forms of compensation. Similarly, in the U.K. whistle-blowers can seek a remedy before an employment tribunal, and in that country about 20 per cent of whistle-blowers have succeeded in obtaining compensation for reprisals at these tribunals.

In addition, an important tool to strengthen prohibitions against reprisals is the ability of an employee to seek an interim order when they're in the process of or suspect an impending reprisal but have not yet been demoted, fired, or docked pay. PIDA currently has no such provisions, but we believe that providing powers to the Public Interest Commissioner, Ombudsman, or the Auditor General to prevent ongoing further reprisals would be a change that would better protect employees and reduce barriers.

I have one more, but I think I'm out of time.

The Acting Chair: Yes. We are at the 10-minute mark. Thank you, Mr. McGowan.

We'll then open the floor for questions. I believe there's a question from Ms Miller.

Ms Miller: Good morning. Thank you for coming to speak with us, Mr. McGowan. Alberta does not provide in PIDA any remedy of compensation to whistle-blowers for reprisal. On page 4 you provided examples from Manitoba and the United Kingdom of what others have done for compensation. What type of compensation, based on best practice, would AFL recommend, based on what is being done nationally and internationally?

Mr. McGowan: Okay. Thanks for the question, Ms Miller. For us the gold standard when it comes to whistle-blower protection is the legislation that's been on the books since 1998 in the United Kingdom. I've already mentioned a number of reasons why we think that it's a piece of legislation that Alberta should consider emulating.

Specifically to your question about reprisals, we're attracted to the British model because it provides for restitution and compensation through an employment tribunal that is singularly focused on that task. A very significant number of whistle-blowers who have been subject to reprisals have been granted restitution through that tribunal, which we think represents basic fairness. I would also point out that the very existence of a compensation system and a tribunal to handle complaints about reprisals acts as a disincentive for employers to engage in those kinds of reprisals. The fact that our current legislation provides for no such remedies is a glaring deficiency in the law.

The Acting Chair: Thank you.

Ms Miller: Thank you.

The Acting Chair: Ms Miller, I understand you had a quick follow-up.

Ms Miller: Yes, I do. A few of the stakeholders have indicated that rewarding whistle-blowers would encourage prohibition of wrongdoing. What are your thoughts?

Mr. McGowan: Rewarding whistle-blowers? We're not suggesting that whistle-blowers be rewarded; we're suggesting that they be protected. I have not been party to your conversations with other presenters, so I'm not sure what they're suggesting in terms of incentives, but that's not something that our organization is suggesting. We're much more concerned about putting in place a system that will fulfill the objective of the act, which is to encourage disclosure and protect those who engage in disclosure. We think that in order to fully protect the rights of those engaged in disclosure and send the message that disclosure is encouraged and that it's safe, there have to be some strong mechanisms in place to compensate them in the case of reprisals. Basically, there needs to be a consequence for employers or others who try to suppress the disclosure of information that's in the public interest.

The Acting Chair: Thank you, Mr. McGowan, Ms Miller.

Ms Miller: Thank you very much.

The Acting Chair: Mr. Loyola.

Loyola: Thank you, Mr. Chair. Mr. McGowan, other stakeholders have indicated expanding the role of the commissioner to where employees can directly access the commissioner to file a complaint, and some, including your organization, have recommended a neutral third party, as you stated in your presentation. Can you discuss the merits and drawbacks of either approach and why the AFL believes a neutral third party is the preferred approach?

Mr. McGowan: Yeah. In our submission and in my remarks we stress the importance of providing alternative avenues for individuals to engage in disclosure. As it stands right now under the existing act, individuals are required to disclose internally within their workplace, and only in very narrowly circumscribed situations

can they reach out to a third party outside of their workplace. Frankly, we think this discourages disclosure and runs counter to the spirit of the act. If an employee is required to disclose to their employer, their manager, or someone else who works closely with them, they, I think, very reasonably will fear reprisal, demotion, reassignment. They'll feel that their career interests are at risk.

We feel very strongly that the act should be amended to include alternative avenues for reporting, especially to neutral third parties outside of the workplace. We're not particularly fussy about who that third party should be. It could be the commissioner himself or herself. It could be the Auditor General. It could be the Ombudsman. All of these individuals would serve the same purpose, which is to encourage reporting and send the message that people who come forward will be safe to do so.

The Acting Chair: Mr. Anderson.

Mr. W. Anderson: Thank you, Mr. Chairman. Thank you, Mr. McGowan, for coming by this morning and spending time with us. Not knowing as much about your organization as maybe others on this committee, I did a little research last evening. I was looking at your website, and I noticed that in your organization I think there were, excluding yourself, about 41 individuals who were listed as vice-presidents. That's quite a sizable management team. I also looked for what you folks do in your own organization about whistle-blowing internally. I'm wondering if you could describe to us: what are your internal processes and practices for dealing with whistle-blowers within your own organization?

Mr. McGowan: We do not have internal practices or procedures for whistle-blowing. That's one of the reasons that we advocate the extension of Alberta's whistle-blowing protection legislation to cover all workplaces in both the public and private sectors. The vast majority of workplaces in the private sector have no internal polices for whistle-blowing. That's a problem. It discourages people from coming forward even if they have intimate knowledge of wrongdoing, and in a province like ours, where so much work is being done on dangerous and risky work sites that have the potential for economic damage, environmental damage, we need to give all workers, whether in the public or private sector, the protection they need to come forward with information that's in the public interest. As an employer in the private sector I would be happy, I'd be thrilled to welcome legislation that covers my employees as well.

The Acting Chair: Thank you.

Mr. Horne: Thank you, both Mr. McGowan and Ms Feeny, for taking the time to be here today. Now, on page 1 you mentioned broadening the definition of wrongdoing, and in paragraph 4 you recommend eliminating loopholes in certain areas by strengthening definitions. Have other Canadian jurisdictions included definitions that are common and sufficiently broad, and has a broad definition resulted in unanticipated issues?

10:00

Mr. McGowan: Well, I'll be honest. You know, whether you're talking about North America or indeed most places in the world, whistle-blowing legislation is a relatively new thing, and I don't think any Canadian jurisdiction has done as much as they should in terms of providing a robust regime for the encouragement and protection of whistle-blowers. Yes. I honestly couldn't point – Manitoba probably gets it closer to right than we do, but all of this from the Canadian perspective is all in its infancy. I mean, for us, we have to expand the net more broadly to cover a wider range of workers. So when we're talking about definitions, that's what we're talking about; we're talking about definitions of who's an employee, who's covered. Manitoba does a better job of covering everyone in employment that's actually funded by the public sector as opposed to, you know, a narrow segment of it.

Once again, I'll point back to the U.K. For us, it's the gold standard when it comes to whistle-blower legislation. In that country everyone has whistle-blower protection, whether in the public or private sector.

Mr. Horne: Thank you.

The Acting Chair: I apologize, Mr. Horne. We are coming up on the end of our time.

I do have an additional speaker I'd like to give the chance to get in. Mrs. Aheer.

Mrs. Aheer: Thank you very much, Chair. Thank you to both of you. I just was wondering if it would be okay for you to just briefly give us your fifth point.

Mr. McGowan: The fifth point? Yeah. Sure. Thank you. Our fifth and final suggestion for reform has to do with education. We feel very strongly that whistle-blower legislation can only be strong and effective if employees are aware of their rights and protections and that designated officers, employers, and officials are well trained and educated on how to deal with complaints, investigate those complaints, and proceed and process a wrongdoing disclosure. Unfortunately, too often employees do not know their rights when it comes to disclosure and whistle-blower protection, and we don't think employers, even those who are charged with administering the system, know enough either.

Just as an example, during their recent legislative review in Ontario a study found that 59 per cent of public servants were not aware of the disclosure provisions in their legislation, and fully 91 per cent were not aware of how to file a disclosure of wrongdoing. So if 91 per cent have no idea how to file a request for an investigation, that suggests to me that the system is not working. We have every reason to believe that a survey of workers here in Alberta would come up with similar results. Now, we've acknowledged that the subject of education does not require legislative change, but we recommend increasing awareness of PIDA and the creation and distribution of easy to understand information and training materials and similar education efforts, both with workers and with employers who are charged with administering the system.

The Acting Chair: Thank you, Mr. McGowan.

We are at the end of our time, but I understand that there's at least one more question. We'll give an opportunity for any remaining questions to be read into the record to be answered in writing through the committee clerk.

Dr. Swann, I understand you had a question.

Dr. Swann: Thanks very much, Gil. An excellent presentation. Again, it's going to add significantly, I think, to the effectiveness of this legislation. I don't quite see how we can include the private sector when part of the challenge would be to look into book finances and books. Is there another jurisdiction that has included the private sector in their whistle-blower legislation?

Mr. McGowan: Yeah. Well, it's not within Canada but certainly overseas, and once again – and I don't want me to sound like a broken record – I point to the example of the U.K. I would point out that when it comes to financial disclosure, there are all sorts of rules

about whistle-blower protection in other jurisdictions, most notably in the United States.

The Acting Chair: Thank you.

Dr. Swann: Okay. Thanks.

The Acting Chair: Mr. Horne, did you want to read your supplemental into the record?

Mr. Horne: I can, yes. Okay. Following up my previous question, does the AFL anticipate any issues or consequences following a change in definition?

The Acting Chair: Thank you, Mr. Horne.
Mr. Cyr, you had a question to read into the record?

Mr. Cyr: I do. Thank you, Chair. Mr. McGowan, do you believe it's appropriate to issue exemptions for specific industries or unions to the whistle-blower legislation? Should it become mandated for private – so, specifically, do you think that unions should be exempt from whistle-blower legislation should this come forward?

The Acting Chair: Thank you, Mr. Cyr.
Thank you again, Mr. McGowan and Ms Feeny, for joining us today for your presentation.
Oh, sorry. Those on the phone, were there any additional questions to read into the record?

Mr. Clark: Sorry, Mr. Chair. I have a brief question.

The Acting Chair: Yes. Sorry. Go ahead, Mr. Clark.

Mr. Clark: Mr. McGowan, thank you very much for your presentation. I heard you say that there was no provision for the commissioner to communicate what has been investigated and where the commissioner has declined to investigate and why that allegation was not investigated and to disclose those allegations that were chosen not to investigate. I guess I'm just interested in your comments expanding on why you feel that would be appropriate, you know, to balance out, I guess, the presumption of innocence, if you will, where the allegation itself perhaps could be harmful if the commissioner feels that there isn't sufficient evidence to pursue. I'd just appreciate a little bit more background on your thoughts on that particular issue.

The Acting Chair: Thank you, Mr. Clark.
Mr. van Dijken.

Mr. van Dijken: Thank you, Chair. My concern is a little bit with regard to the metrics being used in what you're promoting as metrics of effective whistle-blowing and that reporting is an effective measurement of whistle-blowing effectiveness. Having been involved in private companies and in audit processes in committees, the number of reports is not necessarily, in my experience, an indication of the validity of reports. So when you quote the numbers of 57 reporting to the Ombudsman in Manitoba as opposed to 5 previous, I would be curious to know the results of that to see if the number of reports was any indication of the effectiveness of being able to stem some inappropriate behaviour within organizations.

It does concern me that AFL has not become proactive in establishing whistle-blowing mechanisms within their own organization and yet are encouraging it to be done on a higher level and brought down. So if you could give me an understanding on why you felt it was more necessary to have another entity establish that for AFL as opposed to establishing it within your own organization.

The Acting Chair: Thank you, Mr. van Dijken.
Anyone else on the phones? If not, then I'll again thank Mr. McGowan and Ms Feeny for their presentation and for joining us today. As I said, additional information then will be forwarded through the committee clerk, and we'll take a few minutes to allow our next set of presenters to get settled at the table.
Thank you.

10:10

Excellent. I'd like to welcome Mr. Philip Bryden, the Deputy Minister of Justice and the Deputy Solicitor General, on behalf of the government of Alberta ministries as well as Ms Neatby, also with the Ministry of Justice and Solicitor General. Thank you for attending this morning as the representatives for the government of Alberta ministries. Just please note that the members do have copies of the written submission made by Mr. Grant, the Deputy Minister of Service Alberta, on behalf of the ministers.
We'll just take a quick moment, then, to once more just introduce ourselves for the record and for your benefit, and then I'll call the members on the phone lines.

Ms Babcock: Thank you. MLA Erin Babcock from Stony Plain, and I'm substituting for Minister Payne, deputy chair.

Cortes-Vargas: Estefania Cortes-Vargas, MLA for Strathcona-Sherwood Park.

Mr. Dach: Lorne Dach, MLA, Edmonton-McClung, substituting for Minister Miranda.

Mr. Horne: MLA Trevor Horne, substituting for Chris Nielsen.

Ms Renaud: Marie Renaud, St. Albert.

Loyola: Rod Loyola, Edmonton-Ellerslie.

Ms Neatby: I'm Joan Neatby, Justice and Solicitor General.

Mr. Bryden: Philip Bryden, Justice and Solicitor General.

Mr. van Dijken: Glenn van Dijken, MLA, Barrhead-Morinville-Westlock.

Mr. W. Anderson: Good morning. Wayne Anderson, MLA for Highwood.

Mr. Reynolds: Good morning, Phil, Joan. Rob Reynolds, Law Clerk, director of interparliamentary relations.

Dr. Massolin: Good morning. Philip Massolin, manager of research services.

Mrs. Sawchuk: Karen Sawchuk, committee clerk.

The Acting Chair: Of course, I'm David Shepherd, MLA for Edmonton-Centre, substituting for committee chair Minister Gray.
Those on the phones, please.

Ms Jansen: Sandra Jansen, MLA, Calgary-North West.

Dr. Swann: Welcome. David Swann, Calgary-Mountain View.

Ms Drever: Deborah Drever, MLA for Calgary-Bow.

Mr. Clark: Good morning. Greg Clark, MLA, Calgary-Elbow.

Dr. Starke: Good morning. Richard Starke, MLA, Vermilion-Lloydminster.

Ms Miller: Barb Miller, MLA, Red Deer-South.

The Acting Chair: Excellent. Thank you.

Mr. Bryden, then, if you could go ahead, please. We just ask you to keep your presentation to about 10 minutes so we can leave 20 minutes or so for the members' questions.

Justice and Solicitor General

Mr. Bryden: Thank you, Mr. Chair, and thank you, members of the committee, for providing me with an opportunity to make this presentation regarding PIDA. As you know, my colleague Deputy Minister Grant and his team at Service Alberta provided this committee with a summary of government observations on this act. In preparing this summary, Service Alberta contacted all ministries to solicit their views, observations, and concerns based on their experience during the past two years that the act has been in effect. The responses were consolidated and provided to the committee. The document contains suggestions for issues that the committee may wish to consider during its review of the act, but it's also important to point out that this document was not intended as a comprehensive submission from government. We're very interested in hearing what other stakeholders have to say, and in our view it's very important for you to have the opportunity to consider the viewpoints of a variety of stakeholders.

My intention today is not to repeat everything that's in the document but instead to focus on some issues that I think this committee would consider useful when developing its recommendations. We have the benefit of the Public Interest Commissioner's presentation to you, so that's been very helpful for us in considering our own comments.

I think at the outset the most important public policy challenge that is facing the committee in terms of making its recommendations is to situate whistle-blower legislation in relation to all of the other mechanisms for accountability that we have in the public sector and, if you accept Mr. McGowan's submissions, in the private sector as well. I think everybody would accept that accountability is a good thing. We have a variety of mechanisms for accountability that range from Criminal Code prohibitions to employment law to collective bargaining law to ombudsmen investigations.

One of the challenges is to try to figure out where whistle-blower protection fits into that mix. When we think about expanding whistle-blower protection in isolation, it may not be as effective as it could be if we recognize that there are other mechanisms out there and that there are challenges when we have multiple investigations, reviews going on at the same time. It doesn't mean that we can't sort out those challenges, but I think it is something that is important for the committee to try to think through. How do these different mechanisms of accountability relate to each other?

There's a purpose section in the act, and it sets out a number of purposes, but I think, really, they can be summarized in two areas. One is to facilitate the disclosure in an investigation of significant, serious wrongdoing. We're trying to focus on significant and serious wrongdoing. That doesn't mean that other forms of wrongdoing are irrelevant, but maybe there are other mechanisms that are better suited for dealing with those kinds of problems. Secondly, we want to protect employees and potentially other people who disclose wrongdoing from reprisal.

The first thing that the committee might want to look at is expanding the definition of wrongdoing. Some commentators have indicated that the term "gross mismanagement" in the legislation could be further defined so that we have a better sense of what the distinction between gross mismanagement and ordinary, or garden-variety, mismanagement might be. Is there a meaningful distinction there? I understand that some legislation in other jurisdictions has tried to refine that definition.

The committee may be asked to consider a number of different ways that the definition of wrongdoing might be expanded. For example, the Public Interest Commissioner has raised the issue of whether the act should apply in respect of bullying and harassment. At the same time, we have human rights legislation, and we have employment law and collective bargaining mechanisms for dealing with bullying and harassments. How do we reconcile the role of the PIDA versus the role of these other kinds of mechanisms? Our submission to you would be that the committee should keep in mind these other kinds of mechanisms as you're struggling with how broadly the definition of wrongdoing should be created and if there are going to be recommendations for new legislation.

Another area with respect to scope is the scope of the application to contractors and other designated service providers. Our position has focused on governmental activity, obviously. Mr. McGowan was suggesting that this should be more broadly embraced across all workplaces, but our focus has been on the governmental sphere, and there's a question of: if we're going to focus just on the governmental sphere, how broad is the governmental sphere, and in particular should we be considering expanding this to independent contractors who provide services under contract through the government? I think it's useful to try to consider what the consequences of expanding, particularly, the kind of regime that we have at the moment would be to independent contractors.

10:20

If you look at the Human Services example that's referred to in our document, they have contracts with more than 22,000 service providers. A lot of them are small businesses. Some of them are very small businesses. If we expand the scope of the act to include them and we say that there are obligations to create designated officers, that may pose some challenges to some of the smaller organizations, maybe not so much for the bigger organizations. Those are some of the things that I think you may want to consider in thinking about your recommendations, about how broadly you want the act to operate.

Similarly, we look at board members. We currently have a situation where we're focusing on employees and their rights and obligations. If we include board members, does that mean that we're treating board members as if they're employees? What implications does that have? A lot depends on how exactly that's done in the legislation. If we simply deem people to be employees, it doesn't necessarily follow that there are other kinds of implications, but it's important not to create unintended consequences.

The legislation currently provides that an employee make a disclosure to the commissioner at the same time as making disclosure internally and sets out a set of instances in which disclosure may be made directly to the commissioner. The commissioner recommends that he be given broad discretion to accept direct disclosure. As the commissioner points out, research from other countries shows that employees often prefer to report internally when that option is open to them. So there are pros and cons in terms of reporting internally, reporting to an outside third party. Obviously, different people will have different views on what's the best way to go, but I think it's important to develop a full understanding of the rationale for providing the commissioner with

more scope for external disclosure as opposed to direct disclosure within the organizations.

The Acting Chair: Mr. Bryden, just to note, you have about two minutes left.

Mr. Bryden: Okay. Thank you.

There were two other things that I wanted to touch on, and one concerns investigation. When we're discussing investigation powers and processes, it's important to keep in mind the purposes of an investigation that are set out in the act. The first purpose is to bring a wrongdoing or a reprisal to the attention of the affected department, public entity, or office of the Legislature, the second is to recommend corrective action, and the third is to promote confidence in the administration of departments, public entities, and offices of the Legislature. As the commissioner has pointed out, the act contemplates that the commissioner might take any steps he considers appropriate to help resolve the matter within the department, public entity, or office of the Legislature. This provision anticipates that it may not be necessary to conduct an investigation in every instance.

The act also sets out the rules that apply when the commissioner conducts investigations. As the commissioner pointed out in his presentation, the act requires that he must ensure that the right to procedural fairness and natural justice in an investigation is respected, and he correctly points out that this creates obligations not only to the individuals who are making disclosures but also to the individuals who are alleged to have committed wrongdoing and to witnesses.

I think that one of the things that will be important for you to consider is what kinds of procedural protections and safeguards are appropriate with respect to each of these groups. Our submission is that it's important at a relatively early stage that people who are responding to disclosures have an opportunity to understand what exactly is the nature of the wrongdoing that is alleged to have been committed so that they can respond effectively, recognizing as well that there are often multiple processes that may be going on, including, possibly, criminal processes.

The only other thing that I wanted to comment on was appeal rights. There have been suggestions that there ought to be a mechanism for appeal. Currently the act discourages review of the commissioner's decisions through section 52. It's what's called a privative clause that limits the scope of review. While these clauses look on their face as if they prevent all judicial review, in fact they don't have that. In fact, there's still scope for judicial review, but it's constrained to some extent by the privative clause. It's something that the committee may want to consider: whether or not a privative clause is warranted in this particular situation. I think it's relatively unusual to find that in our act in comparison to other pieces of legislation. You know, at the same time, judicial review isn't exactly the same thing as an appeal, but it's useful for the committee to recognize that even with a privative clause there's still an availability for judicial review of the commissioner's decisions.

So those are my submissions.

The Acting Chair: Excellent. Thank you, Mr. Bryden.

We'll move, then, to questions. Member Cortes-Vargas.

Cortes-Vargas: Thank you very much for coming today. Yeah. You briefly mentioned this, and I kind of want you to expand a little bit more. It's on page 4 of the report. On the Ministry of Human Services you expressed the concerns about expanding the act's provision to include contracted agencies, and we understand that Human Services does administer over 3,600 contracts and grants. I understand from your report that the Human Services department is worried about the administration burdens that small service providers might face if they have to follow the whistle-blower protection act. Again, just to expand a little bit in more detail.

Mr. Bryden: Certainly. The whistle-blower protection act currently requires the appointment of a designated officer for individuals who are making a disclosure to disclose within the organization, and with very small organizations that may not be terribly practical. It may be more practical within bigger organizations. So I think our first point was to try to recognize that this act was created with big government bureaucracies in mind and that if we extend it to contracted agencies, we may find that some of the mechanisms don't fit terribly well. Now, that doesn't mean that it wouldn't be possible to expand it to the agencies but to provide a different vehicle for whistle-blowers to make disclosures. I think that if the committee is minded to expand, it's important to think about what the administration is going to look like.

The Acting Chair: Thank you.

Ms Drever, are you with us?

We'll move on, then. Ms Babcock.

Ms Babcock: Thank you. On page 9 of your recommendation you mentioned about reverse onus regarding reprisals, and I'm just wondering if you can give us a little more information on how you think that should work and clarify it a bit.

10:30

Mr. Bryden: Certainly. There are some suggestions that when there has been a concern raised about a reprisal, the onus should be on the employer who has taken action to justify their activity, as distinct from on the individual who's claiming that they have been the subject of a reprisal to show that what has happened to them has been actually a reprisal as opposed to a legitimate form of action. In collective bargaining law you sometimes see this, that during an organizing drive if an employee is dismissed, the onus is on the employer to show that that was a legitimate dismissal rather than an attempt to disrupt the union's efforts at organizing.

So that's how reverse onus works, and some of the challenges are, you know, who's in the best position to explain why a particular action was taken. Is it better for the employee to have to demonstrate that this is a reprisal, or is it better for the employer to have to demonstrate that this was something that on its face might look like a reprisal but was actually a legitimate disciplinary action of one sort or another?

The Acting Chair: Thank you.

Mr. Cyr, if you could introduce yourself and then proceed with your question.

Mr. Cyr: Thank you. Scott Cyr, MLA for Bonnyville-Cold Lake.

I would thank Mr. Bryden and Ms Neatby for attending today. I have a question about the independent contractors part of this. When tendering contracts, there are winners and losers. This is naturally adversarial. Can we agree with that? For every lost tender are we going to be looking for a complaint through this system that you're going to have to deal with, so a massive bulk of complaints coming forward? Secondly, if a complaint is brought forward after the process has been done, will the tender be put on hold during this process, and will public safety be affected if this does happen, especially with, say, snow removal or other important functions of our independent contractors?

Mr. Bryden: Thank you for the question. I should clarify that it's not our submission that independent contractors should be covered. It's

our submission that if the committee believes that independent contractors should be covered, then it's important to think about exactly the kinds of things that you have just alluded to and to think about the relationship between whistle-blower protection and the other mechanisms that we have for challenging the validity of tenders or other kinds of things that allow the government, on the one hand, to carry on with the business of government but, on the other hand, ensure that people who in good faith make bids on contracts are treated fairly and in accordance with the rules for contracting.

The real challenge is that if we have a problem in that area, is expanding whistle-blowing protection the best way to deal with it, or is a more robust approach to the way that we handle our current tendering processes the best way to deal with it? And I'm not suggesting that there's a problem with tendering processes. I'm just using that as an illustration.

The Acting Chair: Thank you, Mr. Bryden.

I understand Ms Drever had some technical difficulties, but you're back with us?

Ms Drever: Hi.

The Acting Chair: Yes. Please proceed with your question.

Ms Drever: Good morning, everyone, and thank you for your time here, Mr. Bryden. I think for the department of postsecondary education page 6 of 11 mentions that protection should be given to employees making a disclosure to their supervisor. This, I guess, is talking about an internal supervisor. How do you think this would be possible, considering the fact that internal supervisors have a mechanism to report to law enforcement agencies about any alleged misconduct?

Mr. Bryden: I don't have a great response to that question. This was an observation that was made, and it may be that the committee may find that that particular suggestion is not one that it wants to accept for the reasons that you've identified.

Ms Drever: Okay. Thank you.

The Acting Chair: Thank you.

Ms Renaud.

Ms Renaud: Thank you. On pages 10 and 11 of this submission you discuss the overlap between the whistle-blowers act and existing privacy legislation and various codes of ethics. You further discussed in your presentation the challenges related to having different mechanisms for accountability. The example that you gave was of contracted workers in long-term care and there being some confusion around accountability as they are protected by legislation for the protection for persons in care. I wonder if you could explain that overlap.

Mr. Bryden: Joan, do you want to . . .

Ms Neatby: I'm just trying to find the portion on the page.

Ms Renaud: It's on page 11.

Ms Neatby: Okay. I'm looking at the wrong page.

Ms Renaud: About in the middle of page 11.

Mr. Bryden: You may have different pagination than we do.

Ms Neatby: Yeah. I think we have different pagination.

Can you tell me what the heading is in front of the paragraph?

Ms Renaud: To contractors with a business relationship with government. [interjection] It's page 4? I apologize. Wrong page number.

Mr. Bryden: Okay. Yeah, I see it. It's here on page 4, Joan.

Ms Neatby: I think that the submission might not be correct in terms of the impact and the purpose of the Protection for Persons in Care Act. I'm just going to look at another document where I've got notes. Protection under that act is provided to the clients, not to the caregivers. I think that's just an error, a misreading of the act.

Ms Renaud: Okay. Thank you.

The Acting Chair: Thank you.

All right. Members on the phones, any questions there?

If not, then Mr. van Dijken – oh, sorry. Someone on the phone?

Dr. Swann: Yeah, David Swann.

The Acting Chair: Dr. Swann, please go ahead.

Dr. Swann: Thanks. I hadn't thought of the idea of adding to the commissioner one or two other members to adjudicate some of these allegations of wrongdoing. Is there another jurisdiction that's done it? It appeals to me in the sense that it would take the pressure off a single person and allow for a little bit more confidence, I guess, that at least two minds have been put to the case and more likely would satisfy the person who feels wronged or feels that there's been a wrongdoing. Are there other jurisdictions that have had dual or three people involved in the review of whistle-blower decisions?

Ms Neatby: I'm not aware that they have in the act themselves, but it occurs to me that we should check. Dr. Amato might have included something in her jurisdictional comparison. Just right now my recollection is that there are some jurisdictions where reviews of reprisal, for example, are sent to the labour collective bargaining sort of body, but I would like to check that and see if that's actually the case somewhere in Canada or not.

Mr. Bryden: Perhaps with your indulgence, Mr. Chair, we can respond in writing to that question.

The Acting Chair: Certainly. That would be fine.

Mr. Bryden: Thank you.

The Acting Chair: Mr. van Dijken.

Dr. Swann: Was that . . .

The Acting Chair: Oh, sorry. Dr. Swann, did you have a supplemental, a follow-up?

Dr. Swann: Just a clarification. Was that to apply only to appeals, or was that in the primary review of complaints?

Ms Neatby: You're talking about the commentary in the submission?

Dr. Swann: Yeah. Where you indicated the possibility of three members of the commission instead of a single commissioner. Is that suggested to apply only to the appeal process?

10:40

Mr. Bryden: Right now there isn't an appeal process. It could potentially apply to different aspects in different ways. You might

want to say with reprisals that maybe a three-person panel would be appropriate, and with respect to wrongdoing, you know, a single commissioner might be appropriate. I think the idea here was not to suggest that this is a recommendation from government but something that the committee may want to consider in its deliberations: what kind of adjudicative body is best to address different aspects of the mandate that's given to the commissioner's office.

Dr. Swann: Thank you.

The Acting Chair: Mr. van Dijken.

Mr. van Dijken: Thank you, Chair. I guess a couple of things I'm looking for a little bit of clarification on. I see in the report that's been presented here the need for further definitions, clarification of definitions, and one of them is gross mismanagement. Our Auditor General, in his presentation this morning, discussed that it's very difficult to give that kind of a definition. In fact, he said that it would be pretty much impossible for him to give a definition in that regard. Yet we want the functionality of the whistle-blower legislation to be able to address the purpose to facilitate disclosure, investigation of significant, serious matters as opposed to becoming possibly a dispute mechanism within departments, within divisions. If you could give some insight possibly into how you might be able to give a definition, further definitions, of gross mismanagement.

The other question I have is that the report speaks on behalf of all government of Alberta ministries, and I was just wondering if it also speaks on behalf of corporate human services, not being a ministry, and the Public Service Commissioner, if they were included in the deliberations at all.

Mr. Bryden: Let me answer the second question first. Yes, corporate human resources was included in the opportunity to make submissions. Just to reiterate the nature of this document, Service Alberta collected ideas from across government ministries and tried to organize them in a way. It didn't try to edit things or say that this is the GOA's position or this is Service Alberta's position. It's a series of observations from government ministries based on their experience with the act and based on things that we had become aware of in terms of submissions that people were making about the act and its operation.

Ms Neatby: I can just add to that. There's a little hint in the Service Alberta submission. Where you see the letters PSC, that stands for Public Service Commissioner. So the comments received from CHR are attributed to the Public Service Commissioner, and you can see what ideas were put forward for consideration of the committee by the Public Service Commissioner.

As to your first question about is there the ability or are there any ideas elsewhere as to putting more definition around what is gross mismanagement, Dr. Amato did an excellent summary in the crossjurisdictional comparison document that you've been provided with. On page 10 she's set out what other jurisdictions do, and there is some additional wording from other jurisdictions that is intended to provide more meaning to what is gross mismanagement. That might be something for the committee to consider when developing recommendations as to whether gross mismanagement should be defined, or should the act be amended so that it's clear what is meant by gross mismanagement.

The Acting Chair: Thank you.

Mrs. Aheer.

Mrs. Aheer: Thank you very much, Chair. Thank you to both of you. I was wondering if you believe that all government levels should be included in the act, meaning: should the act be clarified to specify that it applies to ministers and MLAs?

Mr. Bryden: That's interesting. I was thinking that you were going in a different direction with that question: should it apply to municipal governments as well as the provincial government?

Mrs. Aheer: We can add that in.

Mr. Bryden: There is a view that the act already applies to ministers and their staff, but it might be useful to clarify that since the question does seem to be coming up.

Mrs. Aheer: Okay. Do you believe that if there was more clarity perhaps going forward, it may have stopped situations by previous governments from happening; for example, the sky palace?

Mr. Bryden: It's always hard to speculate on whether more openness to disclosure of wrongdoing will have consequences for the way governments behave. I think we assume that greater degrees of scrutiny have impacts on the way governments behave. We also like to believe that governments will behave appropriately and are subject to scrutiny in the Legislative Assembly by the opposition and through the media and a variety of other kinds of mechanisms. So would this kind of legislation, if it were expanded, prevent a particular kind of issue coming up? I think it would be overly ambitious to say that. Is it good that we have robust mechanisms for oversight of wrongdoing? Absolutely.

Mrs. Aheer: Thank you.

The Acting Chair: Thank you.

All right. I see no other questions in the room. Members on the phones, are there any additional questions there?

Hearing none, I believe Mr. Reynolds had a brief comment he wanted to make.

Mr. Reynolds: Just to follow up, first of all I just want to say that Mr. Bryden's discussion of privative clauses – people may know he was a professor of law and dean of a few law schools, and his specialty is administrative law. If you have a problem about privative clauses, maybe I can help you with that. If not, I'm sure he'd love to come back for another discussion of it sometime because I'm sure he has several lectures on the subject.

I was going to say that with respect to follow-up on Mr. van Dijken's point about defining terms in legislation, with respect to gross mismanagement and your suggestion about a definition of that, it struck me that it was similar to negligence and gross negligence. I'm not entirely sure there's a definition of either in legislation, negligence being one of the great examples of the common law system not having to define it, but I wait for your response.

Mr. Bryden: Well, in your materials, in the summary that's been prepared on crossjurisdictional comparisons, at page 10 we see that Nova Scotia, for example, defines gross mismanagement as "an act or omission that is deliberate, and shows a reckless or wilful disregard for the efficient management of significant government resources." I'm not suggesting that you would want to automatically adopt that definition, but at least it gives you something to think about in terms of: is this exactly what we mean by gross mismanagement? Is that deliberateness part of the equation, or does it really matter? Sometimes lawyers like to leave things a little bit vague and say, "Well, we'll figure that out as we go along," but in other situations – and I think this may be one of them – it's useful to have greater clarity on where we want this

regime to operate as distinct from some of the other kinds of mechanisms for accountability that are already out there.

Mr. Reynolds: And, of course, it would be your department that would be drafting the legislation anyway, wouldn't it?

Mr. Bryden: Yes.

10:50

Mr. Reynolds: I was just wondering. I didn't notice anything in your submission about the confidentiality provisions or whether there should be any improvement to the confidentiality provisions in the act or whether there should be anything with respect to possible legal representation of whistle-blowers. Perhaps I missed it.

Mr. Bryden: There were some elements of the written submission that dealt with some of the challenges that people who have professional obligations of confidentiality face when, on the one hand, there is a right to disclose wrongdoing but not necessarily an obligation to disclose wrongdoing. Their professional obligations may say: well, you have a right to disclose confidential information when you are obliged by law to disclose that information but not otherwise. So that's something where I think it's worth the committee's while to think about the relationship between, particularly, people who have professional obligations and codes of conduct and the interface between that and the whistle-blower protection legislation.

With respect to legal representation of whistle-blowers themselves, you know, I hesitate to say it, but lawyers often think legal representation is an unmitigated good. Other people don't necessarily see it that way. Whether people should have a right to legal representation, whether they should have a right to publicly funded legal representation: those are interesting questions and, I think, things that the committee may want to deliberate about.

The Acting Chair: Thank you for providing that additional clarity. With that, we'll thank you for your presentation. Again, if there's any additional information that you'd like to provide to the committee, we'd just ask you to do so through the committee clerk.

Members, I would advise, then, that we take a five-minute break and then continue with the balance of our agenda. Thanks.

[The committee adjourned from 10:52 a.m. to 11:01 a.m.]

The Acting Chair: All right. We are back on the record. We will proceed with our remaining business.

Moving on, then, to agenda item 5, next steps for the Public Interest Disclosure (Whistleblower Protection) Act review. Looking at the question of posting stakeholder submissions, the committee has received 20 written submissions from identified stakeholders. It has been the past practice of legislative committees to post stakeholder submissions to the external committee website for public information. The question that's put to us, then: are members in agreement with this practice, or are there any comments or questions in this respect?

If not, I'd just ask a member to make a motion. Are there any questions, concerns, comments regarding posting these 20 submissions to the external committee website?

Dr. Starke: Yes, Mr. Chair. My only question would be: as long as the stakeholders that provided submissions were aware that their submissions would or could be made public, I have no objection in following past practice and would move the same.

The Acting Chair: Okay. The LAO staff is confirming that yes, it was made clear to the submitters, so we do have the motion, then, from Dr. Starke. Moved that

> the stakeholder written submissions received by the Select Special Ethics and Accountability Committee with respect to its review of the Public Interest Disclosure (Whistleblower Protection) Act be posted to the external committee website.

We will call the question, then. All in favour? Any opposed? The motion is carried.

Moving on, then, to deliberations on the Public Interest Disclosure (Whistleblower Protection) Act. For the record, the closing date for written submissions from the public with respect to the committee's comprehensive review of PIDA is February 26, 2016. The stakeholder submissions were completed earlier in the new year.

I will just ask Dr. Massolin to address the steps that the committee now needs to take to complete its review.

Dr. Massolin: Thank you, Mr. Chair. Thank you for the opportunity. As you mentioned, February 26 is the deadline for written submissions from members of the public on the Public Interest Disclosure (Whistleblower Protection) Act. I would think that at that point the committee would review those written submissions. We, of course, would be happy to summarize those submissions. The committee could review those written submissions at its next meeting.

At that point, I suppose, having received written submissions from the public and oral and written submissions from stakeholders, the committee could decide on its next step, whether to wait for public meetings on PIDA or to forgo those meetings and proceed to its deliberations. In other words, at that stage the committee could decide on what recommendations it would like to include in a report to the Assembly. I believe that's the process with respect to PIDA.

Then the committee, perhaps at that meeting as well or at the next meeting, would decide on the next steps with respect to the other pieces of legislation, which are on a bit of a different track because the committee has not yet heard written or oral submissions from stakeholders on them nor written submissions from members of the public.

There you have it. Let me know if there's anything else I can do.

Thank you.

The Acting Chair: Okay. All right. To the members, then: any questions, comments, concerns?

Okay. If not, then we'll proceed to our final item of business. We do have one item for discussion under other business. We have an item from Dr. Swann. We're going to be distributing some written copies of an e-mail that Dr. Swann sent yesterday, I believe, for anyone that was not on the list to receive it or has not had a chance to see it yet.

Dr. Swann, I'll ask you to go ahead and address the recommendations that are being circulated.

Dr. Swann: Well, thanks very much, Mr. Chair. For several years now I've been puzzling over how to get more consistency between what we stand for as representatives of the public and what we swear an oath to and, indeed, how to provide a little bit more information for the public as to what we can be held accountable for. With the help of a researcher I put together three different statements: one, a modification to the oath of allegiance to include Albertans and Alberta as a province as opposed to simply pledging allegiance to the Queen; a code of conduct that, I think, summarizes some of the fundamental principles involved with policy-making that I thought should be front and centre as we deliberate over any policy that comes forward and that would be part of what I would call the code of conduct; and then the job description, which isn't very explicit anywhere in our guidelines.

I apologize for the timing of this in the midst of some pretty heavy legislative reviews that we're doing, but I've not been able to put this forward in any other venue, so I'm simply putting it forward as draft ideas that could be dealt with in a fairly summary way if it was compatible with or comfortable for most people, or it could be referred to another, separate meeting. I don't know how the chair or the committee would like to handle this.

These are gaps, I think, in our current terms of reference, you might say, as representatives of the Legislature. I'm putting them out for discussion, for debate, and, hopefully, for some kind of decision so that, especially in the first instance, our oath of allegiance could be changed to be more current and more relevant to our role of acting in the public interest and in Alberta's interests.

I'll open it up with that. Mr. Chair, it's at your discretion whether this gets further discussion today.

The Acting Chair: Well, thank you, Dr. Swann, for bringing that forward.

I think, to open discussion on this, that it might be worth while just to get some comment from Mr. Reynolds and Dr. Massolin as to what the process would be for addressing these recommendations that Dr. Swann has brought forward.

Mr. Reynolds: Thank you, Mr. Chair. I don't know whether you're aware, Dr. Swann and members of the committee, but the oath that members subscribe to is stated in the Legislative Assembly Act, and it's a requirement of the Constitution Act, 1867. If one looked at the fifth schedule of the act, I believe that that's where they'd find the form of the oath. So what I'd say, Dr. Swann, is that it's a bit difficult to change because it's a constitutional requirement, the oath.

Dr. Swann: Is my statement not inclusive of that, or is it inviolable? Is there no change possible without a change of the Constitution? In other words, I've included that statement that we always give, but I've added to it. What is the restriction on that?

Mr. Reynolds: That would be a very interesting question if the committee wanted to consider whether it can unilaterally amend something that's prescribed in the Constitution. I haven't actually looked into whether you could do that, but the second point would be that it's in the Legislative Assembly Act. That's not one of the acts that this committee was asked to review. It's an interesting question, I guess, and it would be something for perhaps another committee, I would suggest, or another forum. As I said, apart from that, you're also suggesting that there be an amendment to the constitutionally prescribed one, which would require a little more work to see whether you could in fact do that.

Dr. Swann: What other committee would you suggest might be more relevant to this issue apart from Ethics and Accountability?

11:10

Mr. Reynolds: I'd leave that to you, sir, right now. Off the top of my head, I don't really see a committee that's addressing the Legislative Assembly Act.

Dr. Swann: Any other interest in the committee in addressing some of these questions?

The Acting Chair: Members, any comments, questions for Dr. Swann's suggestion?

Ms Renaud: I would just sort of echo what we've heard, that, you know, I think all of us take all of these things quite seriously, the information that Dr. Swann has shared with us. However, I think about the enormity of the task that we've been given, to review huge legislation, so four pieces of legislation. I'm just concerned that our tight timelines won't allow for this. That's my only comment.

The Acting Chair: Thank you, Ms Renaud.

Dr. Massolin, did you have any comment?

Dr. Massolin: Well, the only comment I would make has to do with – perhaps you can classify it as the second consideration of Dr. Swann's there, on a code of conduct, because I think that that would be in the scope of a review of this committee. However, at this point I don't think the committee is taking the Conflicts of Interest Act under consideration. I think we're dealing with PIDA today, but perhaps at a future meeting, when the committee is ready to discuss and deliberate on the Conflicts of Interest Act, Dr. Swann could bring these considerations forward.

The Acting Chair: Member Cortes-Vargas.

Cortes-Vargas: Yeah. Just to confirm, first, that the section on the code of conduct is something that we could review within conflict of interest when we get to that point.

Second, would that be something that could be considered through Members' Services?

Mr. Reynolds: Yes, with respect to codes of conduct. If I may answer, Mr. Chair?

The Acting Chair: Certainly.

Mr. Reynolds: Codes of conduct in some jurisdictions are appended to legislation or standing orders relating to what we would call the Conflicts of Interest Act provisions. So it could be considered in that context, I would think, as, if you will, an add-on to the Conflicts of Interest Act, but that's up to the committee, really. I mean, it's your decision whether you find it in keeping with the act to consider it.

With respect to the code of conduct we could have another discussion with Dr. Swann. It could, yes, be brought before Members' Services, but the answer would likely be very similar, that it's prescribed by the Constitution. Whether they'd want to undertake messing with, if you will, the constitutional requirement – but, yes, it could of course go to Members' Services.

Dr. Swann: Sorry, Rob. Are you suggesting that the code of conduct is prescribed by the Constitution or just the oath of allegiance?

Mr. Reynolds: Oh. Sorry. I thought you asked whether the oath issue could go to Members' Services.

Cortes-Vargas: No. Sorry. Let me clear that up. I was just asking because you had said previously – and I just wanted to confirm – that the code of conduct refers to the conflict of interest. Therefore, we could perhaps look at some of these recommendations later on?

Mr. Reynolds: Yes.

Cortes-Vargas: And then to separate the second part, MLA job description.

Mr. Reynolds: Oh, the MLA job description. Okay. Yeah.

Cortes-Vargas: I was wondering if that part goes to Members' Services.

Mr. Reynolds: Oh. Sorry. I thought that when you said the second part, you were referring to this other part, about the code of conduct.

I'm sorry. It's, once again, I think, up to the committee whether they find it within the purview of the review or not. One might say no, and then one might say that, yes, that would be appropriate for Members' Services to consider. Sorry for misunderstanding your question.

Cortes-Vargas: No problem.

The Acting Chair: Okay. Any other questions or comments, then, on Dr. Swann's recommendations?

All right, then. So, Dr. Swann, would you be all right with that being set aside until we come up to the review of the Conflicts of Interest Act? From what we're hearing from the expertise here, it appears that at least a portion of what you brought forward here – the code of conduct, et cetera – would be appropriate for discussion there. Would you be all right with raising it again at that time?

Dr. Swann: That sounds fine. I'm just wanting to ask the indulgence of the members there, then, to request Rob Reynolds look into the question of the oath of allegiance and additions to, rather than any subtraction from, and whether that would be consistent with past or other legislative practice and if any of the others on the committee are equally uncomfortable with simply this hundred-year-old or so oath of allegiance to the Queen with no reference to Albertans or to Alberta.

The Acting Chair: Dr. Swann, then, are you putting forward a motion that the committee make that request?

Dr. Swann: Yes, that

> Rob Reynolds investigate the possibility of making this addition to the oath of allegiance without major constitutional rewrite,

I guess I would say. What would be involved?

The Acting Chair: All right. Any comments? Anything from the members on the motion put forward by Dr. Swann that the committee call on Mr. Reynolds to investigate the issue regarding the oath of office?

Mr. Dach: My understanding is that Mr. Reynolds already made it pretty clear that he thought it was outside the scope of this committee and that the redrafting in any way of the oath of office would involve colliding with the constitutionally ordered wording that's in place already, so I'm not in favour of proceeding with a motion.

Thank you.

The Acting Chair: Any other comment?

All right, then. We'll call the question. The motion, then, from Dr. Swann is that Mr. Reynolds investigate to see – sorry. Member Cortes-Vargas.

Cortes-Vargas: Is there a possibility that we could defer this motion?

Mr. Reynolds: You can defer it.

The Acting Chair: It can still be deferred?

Mr. Reynolds: If you adjourn debate.

The Acting Chair: We can adjourn debate? Okay.

Cortes-Vargas: I would move to adjourn debate.

The Acting Chair: The motion, then, is that we adjourn debate on this issue. All in favour? All opposed? On the phones, any opposed to adjourning debate?

Dr. Swann: I'm fine with deferring it.

The Acting Chair: Okay.

Dr. Swann: Does that mean it will be raised again at the next meeting?

The Acting Chair: It can then be brought forward at a future meeting, yes.

Dr. Swann: Thanks very much.

The Acting Chair: The motion to adjourn has been carried. Thank you.

Moving on, then, to item 7 of the agenda, we will be polling members to determine their availability once we've established future meeting dates.

At this point, then, if there's nothing else for the committee's consideration, I call for a motion to adjourn. Mr. Loyola. Thank you. All in favour? Any opposed?

Thank you. Have a good day.

[The committee adjourned at 11:19 a.m.]

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