



Legislative Assembly of Alberta

The 29th Legislature
First Session

Standing Committee
on
Legislative Offices

Thursday, December 10, 2015
6:01 p.m.

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Standing Committee on Legislative Offices

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Cooper, Nathan, Olds-Didsbury-Three Hills (W)
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* substitution for David Shepherd

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Jill Clayton	Information and Privacy Commissioner
Del Graff	Child and Youth Advocate
Peter Hourihan	Ombudsman, Public Interest Commissioner
Glen Resler	Chief Electoral Officer
Merwan Saher	Auditor General
Marguerite Trussler, QC	Ethics Commissioner

Office of the Ombudsman and Public Interest Commissioner Participants

Joe Loran	Deputy Ombudsman
Brad Ward	Manager, Office of the Public Interest Commissioner

Support Staff

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Janet Schwegel	Managing Editor of <i>Alberta Hansard</i>

6:01 p.m.

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[Cortes-Vargas in the chair]

The Chair: All right, everyone. We're going to call this meeting to order. Welcome to this meeting of the Standing Committee on Legislative Offices. I'm Estefania Cortes-Vargas, MLA for Strathcona-Sherwood Park, and I'm the chair of this committee.

I'd ask all the members and those joining us on the committee at the table to introduce themselves for the record. I'd like to note that Ms Jabbour is substituting for Ms Sweet and that Ms Gray is substituting for Mr. Shepherd at this evening's meeting. Mr. McIver is joining us via teleconferencing but hasn't joined us just yet and is substituting in place of Mr. Bhullar.

Meeting materials were posted to the committee's internal website last week. If anyone requires copies of these documents, please let our committee clerk know.

Before we turn to the business at hand, a few operational items. Microphone consoles are operated by *Hansard* staff. Please keep all cellphones and BlackBerrys on silent, off the table as these can interfere with the audiofeed. Audio of the committee's proceedings is streamed live on the Internet and recorded by *Alberta Hansard*. Audio access and meeting transcripts are obtained via the Legislative Assembly website.

Jason, if you want to start us off with introductions.

Mr. Nixon: Jason Nixon, MLA for Rimbey-Rocky Mountain House-Sundre.

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

Mr. Cooper: Nathan Cooper from the wonderful constituency of Olds-Didsbury-Three Hills.

Mr. Loran: Joe Loran. I'm the Deputy Ombudsman.

Mr. Hourihan: Peter Hourihan, Ombudsman and Public Interest Commissioner.

Mr. Ward: Brad Ward from the office of the Public Interest Commissioner.

Mr. Kleinsteuber: Jamie Kleinsteuber, MLA, Calgary-Northern Hills.

Ms Woollard: Denise Woollard, Edmonton-Mill Creek.

Mr. Horne: Trevor Horne, Spruce Grove-St. Albert.

Ms Gray: Christina Gray, MLA for Edmonton-Mill Woods.

Mr. Connolly: Michael Connolly, MLA for Calgary-Hawkwood.

Ms Jabbour: Debbie Jabbour, MLA, Peace River.

The Chair: Thank you.

Karen, do you normally introduce yourself?

Mrs. Sawchuk: Sure. Karen Sawchuk, committee clerk.

The Chair: Okay. Now we're going to move on to the agenda. Would a member move to approve today's meeting agenda, please? Mr. Kleinsteuber moved that the December 10, 2015, meeting agenda of the Standing Committee on Legislative Offices be adopted as circulated. All in favour? The motion is carried.

Okay. I have two sets of minutes for approval. Are there any errors or omissions to note?

Ms Woollard: Is September 24 the first one?

The Chair: Yes. This is the adoption of the September 24, 2015, minutes. Would a member move to adopt?

Ms Woollard: So moved.

The Chair: Ms Woollard. All in favour? Opposed? Thank you. The motion is carried.

Okay. A motion is also required for the September 29 minutes.

Mr. Connolly: So moved.

The Chair: Mr. Connolly. All in favour? Opposed? The motion is carried. Thank you.

I'll turn now to item 4 on our agenda, officers of the Legislature: overview of mandates. For the record at its September 24 meeting the committee passed a motion to invite the officers of the Legislature to attend future committee meetings and provide an overview of their respective mandates and operations. We're joined this evening by Mr. Hourihan, Ombudsman and Public Interest Commissioner, and senior staff for both offices. Welcome. Thank you very much for joining us.

I'd suggest you address one office at a time. We'll open the floor to questions from the committee following each of your 25- to 30-minute presentations. You can go ahead and start your presentation for the office of the Ombudsman first.

Mr. Hourihan: Okay. Thank you. I will do both offices. I'm going to just give a very quick overview because we do join some things at the front end, but they are separate.

The Chair: Okay.

Mr. Hourihan: In terms of structure we have 33 personnel: 25 on the Ombudsman side and eight on the Public Interest Commissioner side. They're co-located in Edmonton and Calgary. Twenty-three of them are investigators. The other 10 are executive, corporate, legal, and support, which is shared between the two offices.

In terms of the Ombudsman I'll give you a sense of where we have been and what the act looks like and where we're going. I'm going to refer to the annual report and strategic business plan as I go through.

In 1967 Alberta became the first jurisdiction in North America to have a parliamentary Ombudsman. The act has been amended, however not substantially. The first portion of the act addresses administrative aspects of the office. Section 2 authorizes the appointment of an Ombudsman responsible for investigations. What this means is left largely to interpretation. Newer acts include a purpose, and this would be beneficial as it would provide clarity.

As Ombudsman I cannot be an MLA nor hold any office of trust or profit. One exception is my authority to act in an office of trust for a territory in Canada. This stems from the early days of our existence, where the Alberta Ombudsman also worked as the Yukon Ombudsman. It's a section that can be removed, frankly.

The Ombudsman is appointed for five years, with reappointment permitted. I'm the eighth Ombudsman, and I've been in this position since October 2011. I'm just in the early stages of my fifth year. I can resign my post at my preference. However, I can only be removed by the Lieutenant Governor in Council for reasons of disability, neglect, misconduct, or bankruptcy. This is a common provision in order to help preserve the independence required of the office.

Section 7 addresses vacancies within the job. The issue we encounter is delegating an acting Ombudsman during temporary

absences such as sick leave or vacation. We address this indirectly through our section 27, which is the delegation of powers, which I'll refer to a little bit later on.

Section 8 sets out the salaries and benefits and the requirement of the standing committee to review pay annually. The act requires benefits similar to a deputy minister. In Alberta we're equivalent to senior official category D appointments. This is common in other provinces. Generally speaking, ombudsmen's salaries and benefits are similar to a deputy minister's or a provincial judge's. It's another key aspect of the independence of the office.

Section 10 establishes the office as a department of the public service under the Public Service Act. The committee may, on my recommendation, exempt our office from regulations, orders, directives, and policies and whatnot, but there are no such orders in place at this time. Similarly, we're not subject to most Treasury Board directives.

Section 11 deals with the financing of operations. It's this section that brings us to you each year when we present our budgetary requirements. It directs that I present an estimate to you and that you are to forward it to the Minister of Finance, who furthers it to the Legislative Assembly. This section also addresses the special warrant process when not in session.

Now, our act is not broken into parts like most; it's just portioned out. The next portion addresses the operations of the Ombudsman office. Section 12 is a very significant section. It describes the functions and duties of the office. It provides the authority to investigate decisions and make recommendations concerning matters of administration within departments, agencies, or professional organizations, which includes most medical colleges. This includes any recommendation made to a minister, which has been interpreted to mean that I do not have the authority to review decisions made by a minister. This makes sense insofar as the notion that my authority is within the administrative branch as compared to the executive branch of government. I should stay away from policy decisions. There are times, however, when this is not particularly beneficial. An example is when a minister makes an administrative decision. The determining factor should really be one of what the decision pertained to as compared to who made it. Clarity here would be beneficial.

Section 12 also authorizes the types of investigations that we can conduct. Complaints from individuals are the main focus of our office. Of approximately 5,000 calls we get for service each year, we investigate approximately 150 to 200 annually.

6:10

Section 12 also authorizes what they call own-motion investigations. No complaint is required, and these are systemic in nature. We conduct one to three annually. They're broader in scope, and they may involve public consultation and the solicitation of concerns.

Committees can refer a matter to our office for an investigation, or a minister can order one. In these cases my report goes back to the committee or the minister and would generally be made public. Unfortunately, no committee or minister has referred any matters to our office since 1995. I'm not sure why. It's an opportunity for government to have important matters reviewed, and it's an excellent way to demonstrate accountability and transparency objectively, and I encourage the approach. There have been 17 in Alberta since our existence but none since '95.

Section 12 also provides us jurisdiction over matters where the government decision or recommendation was meant to be a final one and no appeal is possible. It can be referred to us.

Section 12.1(2) was added in 2003. It is particularly noteworthy because it takes health authorities out of my jurisdiction. In other

words, I do not have jurisdiction over Alberta Health Services. There's a corollary in section 12.1 where I do have jurisdiction, however, over the patient concerns resolution process within the health authority. So when we receive a complaint about patient care, we have to refer the complainant to the AHS patient concerns process. We advise the complainant to call back if they're not particularly satisfied with what that patient concerns officer does. We can only look at what the patient concerns officer did, however; we cannot look into the full complaint. This causes some confusion with people as most believe we should have broader jurisdiction or would have broader jurisdiction. I've had numerous matters referred to our office, including from the Ministry of Health, so it can confuse everyone.

Our jurisdiction is further restricted to one of an office of last resort. We cannot become involved until all avenues of review or appeal have either been exhausted or have expired, including court appeals. We assist complainants in this process insofar as we direct them to the proper authorities to ensure that they've completed all the action required, and we advise them to come back to us afterwards if they're not satisfied and if they feel they weren't treated fairly. This is important, because we're not advocates for a complainant nor the government. We're advocates only for fairness.

I do not have jurisdiction over decisions made by the Mental Health Patient Advocate. This is odd, and I don't think it makes much sense. I have jurisdiction, as I noted, over the patient concerns resolution process at AHS, and I have jurisdiction over the Seniors' Advocate and the Health Advocate but not the Mental Health Patient Advocate. Indeed, the mental health patient, seniors', and health advocates all work out of the same office. This is a section that I would like to see reconsidered. I believe we could assist the Mental Health Patient Advocate make stronger, fairer decisions.

There's another restriction in the area of contracted and delegated government services. For example, the provision of long-term care facilities: I have no jurisdiction. A facility is either under the umbrella of AHS, which I've discussed about my jurisdiction, or it's considered private, over which I have no jurisdiction. I would assert, as would many others, that these are indeed government services, and the role of government is to ensure that service is delivered appropriately. The public presumption is that entities receiving significant government funding and those funded by the public through a levy or a fee for service are the responsibility of government.

Currently when we receive a complaint concerning a contracted or a delegated service, we direct the complainant to the government department responsible or advise the complainant that it's private and outside the jurisdiction. In some cases we may have jurisdiction over the government department process that managed the complaint, if it did. However, we cannot look at the services provided. We should have direct jurisdiction.

Consider an example. A senior with mental health issues who is a resident in a care facility has an issue with the treatment that she's receiving, and she feels her complaints were not addressed. From a health perspective I can review the patient concerns process only if AHS managed. If private, I can only advise her that I cannot look into it. From the mental health patient aspect I have no jurisdiction. I might be able to refer or assist her in respect of the Health Advocate or the Seniors' Advocate in those specific areas. It's confusing, and it's drawn out, where, if we're simply within our jurisdiction, matters could be better managed and the advocates would still perform their roles. Complainants get very frustrated, and they feel that bureaucracy is either stonewalling or incompetent.

Complaints to our office must be in writing, and the complainant must have a personal involvement. We allow complainants to be represented by someone else provided that we get a written authorization to do so from the complainant. Similarly, in the case of an MLA seeking to assist a constituent, if you contact our office, we still require such a delegation.

I also have the authority to decline or refuse to investigate complaints. Section 15 provides that if there's another remedy available, whether the complainant seeks it or not, the matter can be declined, or on the whole of the circumstances of the complaint I can refuse or decline to investigate.

I can decline matters that are more than a year old at the time of the complaint, and I can refuse to investigate trivial, frivolous, vexatious, or bad-faith complaints. I will refuse to investigate some cases. However, this is not a very common practice at all. We seek to provide assistance where possible to ensure a complainant has been fully considered by the appropriate authorities and fully by our office. As an office of last resort it's important that all aspects are considered before declining.

We do have a number of challenging, abusive, and repeat complainants we restrict in various ways. We work very hard to ensure they receive proper attention because from time to time their complaints are valid. Also, if I refuse to investigate, I must provide reasons to the complainant, and I have made it my practice to always advise reasons for any of the decisions I make.

Prior to investigating, I must give notice to the deputy minister or the administrative head, and I must consult with the minister or authority head if I consider a recommendation. When a matter comes to our attention, it's first analyzed to ensure we have jurisdiction. Most people would presume this is a fairly simple process. However, it can be complex. Indeed, it's getting more so with departments as they commingle activities and co-ordinate policies amongst each other or where various services are contracted out.

However, once analyzed, it's reviewed to ensure the person has completely exhausted all of the reviews available to them. It's then considered for an investigation. We send out a letter to the complainant and to the deputy minister or authority head to advise that one will be conducted. In the initial letter we seek the information the department or authority possesses. This process has proven to work well. Occasionally we experience delays and have had to press for quicker information.

Our investigations are private and confidential. Section 17 requires it. We can speak with or obtain information from anybody that we choose to. However, it's confidential. Section 20 requires Ombudsman personnel to maintain secrecy. At times it would be wonderful to share the stories and publicize more of the variety of aspects that we do. However, we have to ensure confidentiality is not breached. We change some details to offer information to others, but at times that can be challenging, especially in those cases which become a little bit more public. That said, I'm also allowed to disclose information to establish grounds for making recommendations.

Section 18 is an important section as well in respect of the powers that I am given to investigate. I can require any person to provide information or documentation. I can do it under oath if required. Further, I can take documents or things for purposes of an investigation. The people who provide information are protected. If there's a confidentiality requirement of their office, they are still permitted to disclose to mine. They receive the same rights as a witness does in court, and no answer they give is inadmissible in any court of inquiry. They cannot be prosecuted for complying. We have the authority to enter onto any jurisdictional authority's premises to inspect the premises and to carry out the duties of

investigation. I must inform them before I do so. All these powers are pretty significant powers, powers that are not afforded to many. Indeed, the police have less power. One of the reasons for this is because the powers after the investigation is completed are limited to my recommendations only. I'll discuss those a little bit later.

Further, an Ombudsman investigation is meant to be a quicker process through the potential bureaucratic hurdles, one that bypasses and negotiates matters outside the potential red tape or legal wrangling that might otherwise cause delays. We are there to help government make better decisions, fairer decisions. Some of the things that are disclosed to our office are restricted deliberations and proceedings of Executive Council, and those are off limits if the Minister of Justice and Solicitor General says so. This hasn't arisen in my tenure nor for many years prior to that.

In terms of our experiences, we don't experience many hurdles in doing our job. The process works well, and it's quite collaborative. There are times when I have to push to get the information that I am requesting; however, it's fairly rare. The biggest challenge nowadays is the notion that everything needs to go through a legal unit before it's released to us, which contradicts the intent, that the Ombudsman cuts through the red tape. It's not been a problem to get the information; it's just been slow at times. The authorities will often advise me in those situations that that's because there's a lack of resources. However, that argument really only holds a little bit of weight with me because they can merely give it all to us without the review or the vetting that they feel is necessary. We determine the relevance in any case, so those pleas are not particularly valid.

6:20

Now, turning to the process when an investigation is complete, if I find something was contrary to law, unreasonable, unjust, oppressive, discriminatory, was a mistake of fact or law, or was just wrong or for an improper purpose, then I can make recommendations to the government entity responsible. I can recommend that the matter be referred, corrected, varied, altered, that reasons be given for a decision, or any other recommendation that I feel is appropriate.

In general terms, we look at the process of the decision-making. That said, there's nothing restricting us from looking at the merits of a decision. However, that doesn't occur very often. Those decisions are left to the entity to review and redecide if they need to. Should the need arise to do so, I will provide full details to the appropriate authorities.

The government departments and authorities are authorized to rehear or reconsider matters and to quash, confirm, or vary their decisions. This holds true in situations where the underlying legislation states that their decisions are final or that no appeal is available.

When I make recommendations, I'm required to advise the appropriate minister in the department or the authority head. I generally seek a response to the recommendations and request that I be notified of what steps are taken to correct the matter. If the recommendations are not met in a timely fashion, I can furnish a report to the minister. If that doesn't work, I can forward the report to the Lieutenant Governor in Council and make a report. I also advise the complainant of the results.

The powers I have are down to persuasion and publicity. Though not binding, both can be very powerful. The most convincing attribute we have, however, is providing effective and fair recommendations that are reasonable. I don't expect government to be infallible, but I do expect it to be reasonable, considerate, professional, effective, and timely. We try to educate and assist departments and authorities through the process. Similarly, we try

and manage expectations. For complainants it's a benefit that they are generally seeking when they come to us in terms of their fair or not fair treatment, and when they're not receiving what they want, it can be very difficult to persuade them. The hardest job our investigators have is to convince someone that they were treated fairly when they don't believe they were.

For departments it's much more about the process and the procedure. I do get asked from time to time how many times someone is allowed to complain about the same matter. My answer is always the same: they only get one chance as long as you manage it correctly the first time.

Protections are provided in the Ombudsman investigations and proceedings. Our investigations and reports cannot be the subject of an inquiry, investigation, or review. The Legislative Assembly can review if it decides to, however. For these purposes Ombudsman personnel can be compelled as witnesses. However, we're not required to provide any information related to a secret or confidential matter. An Ombudsman proceeding cannot be challenged, reviewed, quashed, or called into question in any court except concerning Ombudsman jurisdiction. Similarly, no one can proceed against the Ombudsman or his personnel, bad faith notwithstanding. We cannot be called to give evidence in any court in respect of anything coming to our knowledge in the course of our duties. It's privileged information. Similarly, any report I make is protected from defamation.

Section 32 is our offences and penalties section. There are offences for obstruction, retaliation, refusing to comply, or making a false statement. The fine is capped at \$1,000 maximum or three months in jail.

Before I get to the annual report, there are a few other miscellaneous provisions in the act. I can, with prior approval of this committee, delegate my powers to anyone in my office with the exception of the power to delegate or the power to make a report. This poses a practical problem for us. If I'm away on vacation or I'm sick, the person delegated cannot report on any of the investigations that are completed while I'm away because that's considered a report. They have to wait until I return, and that's not very practical or effective. The power to delegate further, however, should remain restricted.

As I said a minute ago about the annual report, I am required to provide one to the Legislature. I'm also authorized to express an opinion about a department, agency, professional organization, or person. I just must give notice first and information about the opinion before I do it.

Near the end of the act, sections 30 and 31 address our records management. Basically, it says in there that I've got to keep all documentation for six years and that then we forward it on to the Provincial Archives except for those that are declined for investigation, that those can be destroyed. On my recommendation this committee can make orders respecting how the records are managed and classified.

Finally, the Ombudsman Act does not limit any remedy or rights to appeal, and it's in addition to any other provisions that are out there.

I'm going to turn now to our annual report. Our annual report can get a little bit confusing sometimes because I talk about my annual report first and then the strategic plan after. The annual report is about the period in time that ended on March 31, 2015. When I talk about the strategic plan, it's actually the plan that starts next April and goes through the following year.

This year we produced our annual report electronically. The journey through the bureaucracy and administration of government can be confusing and frustrating. This is why this year we chose the theme Untangling the Issues. The average person who complains to

our office comes to us very frustrated and exasperated about the treatment they have received, which they feel was not only unfair but incorrect.

Some of the things in our annual report. This year we welcomed an Edmonton student who was studying law at the University of Victoria in a co-op program. She completed significant work on a number of legal opinions and other work in our office for a period of 15 weeks, and we're going to consider doing that again in the future.

Our annual report includes a number of short articles. One article is titled From 10 Seconds to 10 Years. This involved a man who felt he received substandard, unprofessional service in the health sector. One thing led to another, and over the ensuing several years the person lodged complaints wherever he could. Matters degenerated into a full-blown criticism of all of the procedures, processes, and fairness that he came across.

There are a number of important points in this example. The first is that all front-line employees are encouraged to treat people with respect and sincerity and to remember that what is a common occurrence to them is often a rare and difficult time for the person receiving the service. Second, where resources are too thin, government needs to ensure that proper resources are in place and provided so that the front-line worker is not stretched and stressed to the point of blowing off steam at the client. Third, these situations result in a significant amount of time, energy, and resources to work through. Ten seconds of interaction can and does often cause 10 years of frustration.

There is another article in there, highlighting the good and positive work of a government employee. We recognize the efforts of many government employees working diligently to meet the needs of the clients that they serve.

The annual report also has a number of example case summaries, that we put in there every year, of things that we've dealt with through that past year. These summaries are important to provide a perspective on some of the confidential matters we deal with and offer suggestions to the various government authorities on how best to treat matters of fairness and administration. I'm led to believe that our annual report does get wide readership amongst the government departments that we send it to, so that's helpful.

The strategic priorities in 2014-15 were not markedly different from the year prior, which makes sense as they are strategic in nature. We continued to focus on ensuring that Albertans and the government were aware of our role and what assistance we can provide.

I held several meetings with deputy ministers and other authority heads. I visited 20 constituency offices across the province. We held outreach sessions, where complainants were able to meet in person with investigators. We offered public presentations during these trips as well. We gave 55 presentations, visited nine communities, and hosted nine intake-outreach days across the province. It included visits to Fort McMurray, Slave Lake, Brooks, Olds, Hinton, Pincher Creek, Lethbridge, St. Paul, and Bonnyville. The visits were received positively. Complaints or inquiries often rise a little bit after we're in a location.

We also developed an electronic quarterly newsletter to disseminate information within government. Subscription levels rose throughout that year, and we received numerous requests to reprint. We were exploring social media, and we have a limited involvement now on Twitter. We seek to ensure that our involvement is beneficial and does not violate confidentiality. For that reason, we will not get involved in back-and-forth comments with individuals.

Our second priority was one of service excellence. In '14-15 we implemented a new case management system that's called i-Sight.

It provides opportunities where we can improve our critical analysis capabilities. Some areas are continuing in development, and at this time we're able to provide better information dissemination.

We also created a quarterly report for use by deputy ministers at this point. It's a snapshot of the activity within their departments as it relates to Ombudsman complaints. It's quite new, and we're implementing changes to better serve their needs. We plan to expand this to agencies, boards, and commissions.

Our own-motion team is focused on systemic investigations where appropriate. Last year technology was a strategic priority for us because we were looking into a number of things. As much as it's an integral part of our business and ongoing activities, we had it as a strategic priority to explore the various areas to ensure that the need we had was appropriate. We conducted needs assessments on social media, online web applications, case management systems, and encryption to ensure that security and confidentiality were met.

We eliminated a positive work environment as a strategic priority at the end of that year as it's now part of our regular business. We have robust performance evaluations and standards, effective teams, and a diverse and positive environment. We replaced it with a priority of seeking a legislative review of the Ombudsman Act. I will seek to gain support from this committee for the legislative review in due course.

6:30

Turning to our statistics within the annual report, oral complaints dropped approximately 15 per cent, to 3,252 from 3,847. Interestingly, the year prior the oral complaints had risen by 14 per cent. We believe that there are two reasons. First, last year was significantly higher and was the anomaly, and this year is closer to a normal year. Also, our new case management system enables us to classify our complaints to come to us in a better manner, so we're able to follow up an oral complaint with a written complaint and match them better than we were able to do before, and people are becoming more and more comfortable with online submissions.

In respect to our oral complaints 1,534 were nonjurisdictional. That's an important service we provide to Albertans because a lot of calls come to us, and they think it's government, but it's not. It might be some other area: banks, federal government, other areas. So 747 were referred to another remedy or an appeal, for 733 we provided information in the first instance, for 150 we sought a written submission, and 52 were resolved informally.

Our written complaints rose from 1,008 to 1,125, which is a 12 per cent increase. To repeat, this is likely due to the comfort level people have with online submissions. As well, our outreach and awareness campaigns are contributing factors to the increase. Of these written ones 967 resulted in no investigation –that can be for a variety of reasons: referrals to another remedy, nonjurisdiction, same reasons as the oral – 25 were alternate resolution, and 133 new formal investigations were launched. This gives you a snapshot of where a lot of our complaints come from, the major contributors, I guess, to the number, if you will. Of the 1,125 written complaints the most common involved Justice and Solicitor General, at 139; Human Services, at 126; Workers' Compensation Board, at 61; health professions, 49, 24 of which were the College of Physicians & Surgeons; Appeals Commission for Alberta Workers' Compensation Board, 39.

Just turning over to a couple of other areas, similar to all independent offices of the Legislative Assembly our budget was reduced by 2 per cent in late '14 and held there for '15-16, resulting in a further reduction, or crunch, of 2.25 per cent with the increase. As a public-funded office we understand the significant financial

pressures in today's environment. We continue to commit to do our best to minimize our costs and maximize our efficiencies.

For these reasons we scaled down our plans. We eliminated out-of-country travel this past year. It's not extensive in a normal year. However, we do have some international obligations. I'm the North American president for the International Ombudsman Institute, and our office is a member of the United States Ombudsman Association. It's important that our IOI, International Ombudsman Institute, obligations are met in '16, or we should consider severing our ties with the institute. That would be unfortunate as the IOI was founded and headquartered in 1978 in Edmonton. It moved to Vienna in 2009 when Austria agreed to pay significant funding and accommodation of the office. The Alberta Ombudsman has always played a significant role in the institute, and as a board member I'm expected to attend the annual meeting or host it, and the location switches yearly through the six global regions. Also, this year we reduced our outreach trips from 12 to six, and we downscaled professional development opportunities.

Now, turning over to our strategic plan for '16-17, our plan continues to be a collaborative effort, with all employees participating in at least one committee and actively contributing to the goals. All staff see themselves and their work reflected. We continue to focus on specific desired outcomes, and going forward, our priorities are ensuring administrative fairness, enhancing understanding of our office, providing excellent service, and supporting continued growth and development of best practices. We've developed a number of educational packages, and we're going to be rolling those out this following year. We'll continue to enhance awareness across the province.

Alberta is dynamic and growing, and many people do not know about our office and the services that we provide. It's especially true for newcomers to Alberta and to Canada as well as the marginalized. We'll continue to provide more widespread access by taking our services to communities outside Edmonton and Calgary through the outreach program. People want to see our investigators in person, and they're appreciative of this when it can be in their home location. We're going to continue to focus on improving our investigative competence, knowledge, and expertise in activities, policies, and services.

We'll focus our efforts on ensuring that people that request our service are provided with quick initial responses and strong communication throughout. We're going to continue focusing on own-motion investigations, addressing those systemic matters that need review and seeking public feedback where appropriate, and we're going to continue to scan our environment continually to seek out best practices and share those practices with others. It's important during that to do needs assessments and that sort of thing to make sure that we do stay on top of the curve on those.

As I've spoken about earlier, we've included a strategic initiative of seeking to have the Ombudsman Act reviewed. It was a new and stand-alone priority last year, which we've merely converted to an initiative this year. It's well past time to modernize our act. It should include a purpose statement, clarity of authority in areas which I've mentioned, and a periodic review requirement.

That covers the Ombudsman office. As directed, I can answer questions on the Ombudsman office now.

The Chair: All right. Thank you.

I'll now open the floor to questions from the committee. Members, we'll follow general practice. We can rotate between government members or opposition, but please keep it to one question and one supplemental so all members have an opportunity to ask questions. Does anyone have questions?

Mr. van Dijken: At the beginning of your presentation you talked about the Yukon section being removed. Is that not active?

Mr. Hourihan: Oh, no. It was only active for a few years, while they didn't have a Yukon Ombudsman. They have one now, as does every jurisdiction in Canada with the exception of P.E.I., Nunavut, and Northwest Territories. As far as I know, the Northwest Territories is still looking at it, under consideration, and they've been speaking with Manitoba and Ontario in that respect.

Mr. van Dijken: Okay. What would be the process of removing that?

Mr. Hourihan: I think it's just a section that's in the act that's not particularly of much use nowadays, and I guess it's sort of indicative or demonstrative of the notion that our act, although it's been amended a few times over the last 48 years, has never really been scrubbed down and reviewed in full.

Mr. van Dijken: Okay.

Mr. Kleinsteuber: I have a question. The annual report notes that the Alberta Ombudsman launched a Twitter account in July 2014. How successful has this practice been in engaging Albertans in dealing with those concerns?

Mr. Hourihan: Not overly. Our use is quite limited in respect of the fact that, like I said, I won't get into conversation back and forth with people particularly. We use it to provide information about upcoming presentations or outreach visits and those sorts of things. We don't get a lot of feedback directly from people that may have gone on although we have been able to look to see what sort of numbers are out there, and it's not high. The usage is not high.

Mr. Kleinsteuber: Okay. So they kind of contact you, then, and you give them information to follow up that contact?

Mr. Hourihan: Yes, if they contact us at all, frankly. It's more just put out there. It's an avenue for us to provide information. It doesn't cost us anything to do it, so to speak, so it's not bad. We just don't want to get into something that would take us into an area where we ought not be.

Mr. Kleinsteuber: Do you have a rough estimate of how many of the overall complaints are sent to you through that process, through Twitter?

Mr. Hourihan: No. We don't get any complaints through there. We'll just direct them to get a hold of us either online or on the phone.

Mr. Kleinsteuber: Gotcha. Okay.

Mr. Hourihan: In fact, we steer them away from that. If they want to give details on Twitter, we steer them away for purposes of confidentiality.

Mr. Kleinsteuber: Another question. According to the annual report, written complaints increased 12 per cent over the previous year, to a total of 1,125 complaints, like you had mentioned earlier. Do you have any insight as to the reason for the increase in complaints?

Mr. Hourihan: No, I can't give a definitive answer there. We're confident that our new i-Sight case management system, which we're still developing and getting fully up and running in terms of our critical analysis – that may offer us more in time. We do find

some spikes after we've gone and visited a community, and we do find some spikes – like, when the change of government came in, there would be a little bit of a spike, which just stands to reason in the sense that people may revisit old ideas or those kinds of things. Otherwise, it's just the comfort level of going online as compared to calling.

Mr. Kleinsteuber: Okay.

The Chair: Sorry. Before you go into another question, does the opposition want to ask any questions?

Mr. Nixon: Just two seconds.

6:40

The Chair: Okay. Keep going if you have more.

Mr. Kleinsteuber: Okay. Yeah. Just a supplement to that one, then. Of the total number of new complaints that were received, 25 were referred to alternative complaint resolution, but only 19 of these were resolved. What is the average number of cases that are referred to the alternative complaint resolution, and what is the average success rate for resolution in these cases?

Mr. Hourihan: That's pretty consistent. Our alternative complaint resolution is one where – I just have to explain it a second. We have to be careful that we don't become advocates, but some people will contact us and their problem will be such that if we could just get them in touch with somebody at the agency or department or wherever, they can probably get this resolved.

A good example is at the correctional centre. At the correctional centre they'll have to fill out what they call an RFI, a request for information. The inmate will fill out an RFI for the manager of the guards that day, and that person, the manager, will look at it, and they may not respond, so the inmate will call us and not be getting a response. So we'll make a few calls or a few initial inquiries to get them in touch with one another to see if they can resolve it rather informally.

We have probably between an 80 and 90 per cent success rate on there. The ones where we don't have a success rate in all likelihood go over to a formal investigation, which is just a little more drawn out. We get more information. We go down and we do file reviews and those sorts of things.

Mr. Kleinsteuber: Okay. Thanks.

The Chair: Mr. Nixon.

Mr. Nixon: Yeah. Thanks. If Alberta Health Services and private health were under your jurisdiction, do you have an idea of how much that would increase the volume of complaints and investigations? I realize you can't give a solid number, but do you have an estimate of what that would look like?

Mr. Hourihan: No, I can't probably give much of an estimate. I can tell you that the patient concerns office at Alberta Health deals with 9,000 to 10,000 complaints a year. That's the number of complaints they get about patient concerns, so that would increase. I mean, we probably get several hundred calls in a year, but they're fairly quick calls because we refer them back over to patient concerns.

The Chair: Thank you.

Are there any more questions?

Mr. van Dijken: I just have one question. With regard to the International Ombudsman Institute you recommended to keep up

with that. Could you just extrapolate a little bit on the value that brings to your organization?

Mr. Hourihan: Well, it keeps us in touch with the global community to make sure that we stay on top of the best practices and the approaches that they're taking across the globe in terms of ombudsman work and protocols. I'll give you a very concrete example. Australia developed a very worthwhile, effective manual on dealing with difficult people, and our contacts within that organization, because we're members, were able to share that documentation with us so that we could use it and put it sort of straight into our policies. We didn't have to go back and reinvent the wheel, if you will. It's that type of networking and information gathering and just broadening our perspectives on what the best practices are around the world.

The Chair: Supplemental.

Mr. van Dijken: Yeah. Then you also talked about hosting and the time frame there.

Mr. Hourihan: Oh. What happens is that, like, as a board member I'm expected, of course, to go. We have one board meeting a year, and that's somewhere in the world. There are six global regions, so it's just the directors of each region. There are three of us here: myself; the federal correctional investigator, Howard Sapers; and Diane Welborn out of Dayton, Ohio. We're the three North Americans, so we all attend the meetings once a year, but once every six years or so we have to host one because, of course, it goes around. The nature of international networking is that it goes around and just goes from region to region, so we either attend or we host.

The hosting isn't particularly remarkable in terms of costs. People come here, and for the most part they pay their own way and do all those kinds of things like we do, but there are some we host: you know, we provide the refreshments and the luncheon and those kinds of things. It's probably less money to host it than it is to travel to it. However, neither is particularly high. My costs are generally in the neighbourhood of about \$3,200 for the meeting, to get there and stay and come back.

The Chair: Are there any other questions?

Mr. van Dijken: You made a comment with regard to committee recommendations: none since 1995. I look at that that we've got a new government, a new way of doing business, and we're all trying to get to a position of better government, a transparent government, an accountable government, and possibly into more committee work and due consultation through committee work. Is that going to trigger more recommendations coming to your office, do you think?

Mr. Hourihan: I think it could. I mean, I think the important message is just to make sure that people are aware of that, sort of out of sight, out of mind. So if members in committees, you know, are just kind of reminded about that, like now, that there might be an opportunity for things to come our way when it ought to be looked into. I think it would be a very effective way to have something looked at in terms of transparency and accountability. My argument is sort of: what better way to show transparency and accountability than to ask us to look into this area?

Mr. van Dijken: Yeah. Good. Thank you.

The Chair: Thank you.

Are there any more questions? Great.

Then we'll just go into the presentation of the Public Interest Commissioner.

Mr. Hourihan: All right. Thank you. Well, the act came into force on June 1, 2013. We were the seventh jurisdiction to do so in Canada. There are now nine.

The common title of our act has become known as the whistleblower act. The term resonates with people in a way not captured by the term "public interest disclosure." It's also a term, however, that can stigmatize a situation or a person. The term is not defined in the act. In fact, it's used only once, and that's in the title. A commonly accepted definition of whistle-blowing is, quote: the disclosure by employees, former or current, of illegal, immoral, or otherwise illegitimate practices of their employers to persons or organizations that may be able to effect action. End quote. This is broader than our act contemplates; however, it provides a really good perspective of a common view of whistle-blowing.

The definition of disclosure, found in our act in section 1, refers to the "disclosure of wrongdoing made in good faith by an employee," which includes past employees, who "suffered a reprisal" and were terminated as a result.

Section 2 outlines the purposes of our act. The general purpose of whistle-blowing legislation is to create accountable organizations by contributing to the diligence, integrity, and responsibility of those organizations. This is accomplished by a clear system of reporting wrongdoings coupled with the protection of employees from reprisals. The purposes include facilitating the disclosure investigation of significant and serious matters that an employee believes may be unlawful, dangerous to the public, or injurious to public interest; to protect employees who make disclosures; to manage, investigate, and make recommendations regarding disclosures and reprisals; and, the bigger one, to promote public confidence in the administration of entities included within the legislation.

The act applies in general terms to the public sector, specifically to government departments, offices of the Legislature, and public entities. Now, public entities is also defined, or provided in the act. It includes agencies, boards, and commissions, Crown corporations, and other entities.

Those other entities are found in the regulations and schedule 1, and within the education sector it includes provincial corporations as per the Financial Administration Act, district and regional public and separate school boards, the regional authority of a francophone education region, registered and accredited private schools, and charter schools. Within health it includes regional health authorities, Alberta Health Services, Calgary Lab Services, CapitalCare Group, Carewest, Covenant Health, and the Lamont health care centre.

There are a couple of notable areas that the act does not apply to. It does not apply to any contracted or delegated services of government. It does not include municipalities; however, they can opt in. We've had a half-dozen municipalities contact us and inquire with us; however, none have opted in.

6:50

Now, the concept of wrongdoing is described in section 3, and wrongdoing is restricted to the contravention of a statute, federal or provincial; an act or omission that creates a substantial and specific danger to the life, health, or safety of individuals or the environment; gross mismanagement of public funds or assets; or directing or counselling an individual to commit one of those.

It is important to note here that there's a significant distinction between something that's a wrongdoing and something that's wrong. There's a difference between mismanagement and gross mismanagement. Many people feel that if something is wrong, then it must be a wrongdoing, that the words are interchangeable. This is not the case within the act. Wrongdoing is specifically restrictive

and does not include matters such as policy violations, verbal abuse, unfair decisions, or mismanagement. These are not matters contemplated at all. The focus is only on very marked departures from the challenges of daily management and execution.

It's also a significantly grey area and a continuum. Take bullying or harassment, for example. It's certainly undesirable behaviour. However, per the act, it's likely best managed internally through proper, well-functioning human resource policies and practices. Left unmanaged, however, it could escalate into the realm of a wrongdoing, especially if there's intent or wilful blindness.

In terms of the act, the requirements of the act, the act contemplates employees disclosing internally, at least in the first instance. There's a statutory requirement for all chief officers, which are the deputy ministers or the authority head, of all public entities to establish and maintain written procedures for the purpose of investigating and managing disclosures internally. A chief officer may identify a designated officer to manage those matters. The designated officer should be a senior official within the entity. The term "senior official" is not defined, but it can include anyone who could fulfill the role. I've had no situations arrive to this point where I felt the wrong person was designated. If none are designated, the responsibility goes back to the chief officer. Chief officers are also – and this is an important point – expected to promote awareness of the act and prepare an annual report.

Section 5 provides for some internal procedure requirements. This includes receiving and reviewing disclosures and referring matters to our office in a timely manner. It requires that the entity ensure that procedural fairness and natural justice are provided and the confidentiality of any information collected is maintained and the identity of people involved is protected and, further, that they follow up in reporting of outcomes and follow up in respect of corrective action and discipline.

The act permits our office on the public interest side to review the procedures. If not in place or they're unsatisfactory, I'm required to notify the chief officer and the affected employees and inform them that until their procedures are satisfactory, any matters of disclosure would come directly to my office. In this vein we've been working quite hard over the last two years with the public sector to make sure that they do have the policies in place. It's not something where we have to go check each one, but we're working the best we can to make sure that when we get the opportunity, we look at them.

A key role every chief officer owns is the requirement to ensure that the information about the act and the procedures are "widely communicated" to the employees of the entity. Over the past two years we've emphasized this many times; however, we've had limited success. Public-sector employees commonly advise that they were completely unaware of the act. There seems to be the notion that a simple e-mail to employees or a posting of the policies to the website suffices to be widely communicated.

I take some issue with this, and we're going to continue focusing on this gap over the following months and year. Our office also seeks opportunities to provide presentations and awareness to employees across the various jurisdictions, and we encourage those authorities to work with us and independent of us at the same time to ensure employees are made aware and kept aware of this important legislation.

I had mentioned that there is an expectation that a complainant contemplates internal disclosure in the first instance. This is alluded to in sections 9 and 10. Section 9 gives employees the ability to report wrongdoings to a designated officer and the ability to report the matter to my office immediately afterwards, and they can indicate that the designated officer has been advised. Section 9 does not indicate that the employee must report to the designated officer

but, rather, "may." This has been interpreted by some authorities that the employee must report to the designated officer and any other disclosure does not trigger jurisdiction with the act. I disagree with that interpretation.

Section 10 provides a number of situations where disclosure can be made directly to me. Those include areas such as where no procedures are in place, where no investigation takes place internally, where the prescribed timelines were not met, where the employee is not satisfied with the outcome, where the matter involves a designated or chief officer, where they believe the matter is an imminent risk and there's insufficient time to disclose to the designated officer, or where they made a disclosure in accordance with the internal procedures but cannot complete it because a reprisal was taken against the employee.

The intent is for employees to report internally first. Often when we get calls from employees who have questions, we will refer them back to the designated officer where appropriate, not in terms of where there are reprisals but where appropriate. If the matter is one involving imminent risk, we direct the matter to the appropriate law enforcement agency, the chief medical officer of health, or to the public-sector entity responsible. We've had none of those cases yet.

There's also a provision which enables disclosures to our office in situations where a public-sector entity decision was otherwise a final one, similar to the Ombudsman Act, or where no appeal is available or where the decision cannot otherwise be questioned. Disclosures, similarly, must be in writing.

This act and the regulations have some pretty significantly tight timelines. We have five days – and this applies to the designated chief officer as well as my office – to acknowledge receipt of the disclosure; 10 days, total, from the time the disclosure came in to determine whether or not to investigate; and 110 business days to complete the investigation, total. A chief officer can extend that up to 30 days themselves, and they can do so for longer with my approval.

These timelines can be quite difficult to deal with matters involving our office. We experience delays in receiving information requested or as government entities consult with counsel. We're attempting to provide awareness and education in order to shift this, but our results haven't been particularly successful to this point. In a number of matters it's been due to the information getting bottlenecked in the government authority process. Most commonly, the organizations want the information to flow through their legal counsel, causing significant delays as jurisdiction or approach is being challenged. It's a problem area currently, and we're working to try to educate and provide awareness and have conversations to alleviate some of these roadblocks.

Just a couple of sections in our act. The technical requirements of disclosure are dealt with in sections 11 to 15 of our act. Section 11 requires a discloser to report to their designated officer as soon as reasonably practicable after they have reported directly to our office. Section 12 deals with complaints made against myself as Ombudsman or Public Interest Commissioner. They get referred to the Auditor General. Section 13 deals with the form of disclosure. It talks about that it must be in writing, it must include the name of the wrongdoer, the date of the wrongdoing, if the matter was reported to the designated officer, and any additional information. Section 14 authorizes a designated officer to consult with the chief officer. Section 15 authorizes the collection of personal information or individually identifying health information by a designated officer or chief officer to perform their duties.

Looking a little bit at what our role is, the purpose of our investigations is to bring the disclosure or complaint of reprisal to the attention of the department or entity and to recommend corrective measures and to promote confidence in the

administration of departments and public entities. I'm authorized to take any steps that I consider appropriate. We review policies and procedures, as I alluded to earlier, to ensure that there is compliance with the various authorities. Also, under section 8 of the regulation, I authorize exemptions, which I'll talk about a little bit later.

Our investigations are guided by section 18. It's an important section. Our investigations are meant to be informal where possible and to respect the rights of procedural fairness and natural justice regardless of whether it concerns the discloser, the committer of a wrongdoing, or any of the witnesses. I'm authorized to require any person to provide oral or written responses to questions, to produce records, or provide any other information. This includes personal information and individually identifying health information. I can examine and make copies of any records, and I leave a receipt if I take them with me, and then provide them back.

In this vein we are getting challenged by entities, most often legal counsel, who feel it's their responsibility to determine the relevance and the release of information to my office. We're seeking opportunities to better inform chief officers that this is not their responsibility nor the authority of legal counsel or their department and that the authority rests with me to determine relevance. These discussions have led to significant delays in our investigations, in a few of them.

Section 19 authorizes me to decline investigations here, similar to the Ombudsman Act, if it would be more appropriate to be looked at under a different authority, if it can be dealt with internally or through a collective agreement, if it's frivolous or vexatious, if indeed it was a proper decision, if the details are insufficient, or for any other reason. It's quite broad. I can also decline to investigate a matter that's more than two years old, and I must provide a written decision and reasons.

7:00

Also, we can investigate any wrongdoing we come across during an investigation. If it involves an offence, then I report it to the law enforcement agency of jurisdiction and to the Minister of Justice and Solicitor General, and I suspend our investigation at that point in time.

I can accept anonymous complaints or complaints from nonemployees, and I can investigate them or refer them to the appropriate entity. Anonymous complaints, however, can be difficult as there's no person to provide information to or get further information from. There can often be insufficient detail and information gaps. However, if we receive several anonymous complaints, it may be indicative of a reluctance to complain within a particular area, and that's important. The inability or reluctance to complain is a highly significant concern of whistle-blowers.

There are benefits to us investigating whistle-blowing, and we get asked that from time to time. We're independent, we're unbiased, and we're confidential. We're not subject to the Freedom of Information and Protection of Privacy Act. All our employees swear an oath of confidentiality, and we do not provide information we receive to other parties. This is often contested as well. The public-sector entity seeks to obtain the complaint as provided by the complainant, or the complainant requests us to provide the authority's response. We don't provide those back and forth to each other. We examine the requests, and we provide what we feel is necessary under the circumstances and nothing more. We offer protection from reprisal. This is triggered when someone seeks information or lodges a complaint and is similar to that offered with insurance policies or criminal law insofar as the protection we offer is after the fact.

Once an investigation is complete, I prepare a written report with my findings and reasons, and I also provide recommendations. I can

compel the entity to report back with whatever action they follow or propose to follow. I must provide a copy of my report to the chief officer, and I must notify the discloser. If the chief officer is the subject of the complaint, then the report goes to Executive Council in the case of a department or the minister in the case of a public entity. There's no requirement to provide a copy to the wrongdoer. I can, but there's no requirement.

The act is similar to the Ombudsman Act. My power is limited to recommendation. I access the powers of persuasion and publicity in much the same way. In this case, I've committed to provide publicity wherever possible to ensure transparency and accountability; however, that's balanced with the need to maintain confidentiality. If the department or authority doesn't comply with my recommendations, I can take the matter further to Executive Council, to the minister, to the Speaker, or to the Premier as required in the act depending on where it happens.

Now, turning to reprisals. What is a reprisal? No one can reprise against an employee where they made a disclosure, sought advice about a disclosure, or co-operated in an investigation. This can include a dismissal, a layoff, a suspension, a demotion, a transfer, the discontinuation or elimination of a job, the change of a job location, reduced wages, basically any measure that adversely affects the employee. Employees who wish to lodge a complaint can do so directly to my office. They're investigated in the same fashion as disclosures are investigated.

The offences are covered through sections 46 to 49. People are prohibited from withholding information or making false statements, obstruction in respect of investigations, or the destruction or falsifying or concealing of any document or thing. In this case the penalties are \$25,000 for a first offence and a maximum of \$100,000 for subsequent offences. There's a two-year limitation on prosecution.

We have designated officers. Chief officers in our office are protected from prosecution or civil action in respect of anything done or omitted in the exercise of the powers in the act. It also protects anyone who complies with the requirements of the act with the exception, of course, of cases of bad faith. Similar to the Ombudsman Act, our office proceedings cannot be reviewed with the exception of a question of jurisdiction. It's quite common in the independent offices legislation. So those are the main features of the act as it pertains to complaints, investigations, and reporting.

I'm just going to turn to a few provisions, other general provisions in the act. There are a number of matters that cannot be disclosed: deliberations of Executive Council; matters of solicitor-client privilege; in the case of imminent disclosures, information subject to a restriction created by an act or personal information; or identifying health information. That personal information or identifying health information can be disclosed if the designated officer, chief officer, or myself feel it's in the public interest to do so, however.

Exemptions. This has been a significant issue, not in terms of experience, but it was prior. Section 31 authorizes me to exempt anyone, any entity, information, or any thing from the act in whole or in part. The regulation expands on this and specifies exemptions from portions of the act because of the size of the public entity, the nature of the wrongdoing or reprisal, or the persons involved. I must provide written reasons and make the information publicly available.

I have provided partial exemptions to the very small public entities which have very few employees, generally private or charter schools. What my exemption includes – and it's only this – is that they are not required to develop internal policies or procedures normally required under section 5 and the sections that relate to designated officers. Otherwise, the act fully applies to these

entities. The only difference, really, is that if there's a case of whistle-blowing within those entities, the employees there come directly to my office instead of having to go through the internal side.

Annual reporting. The act requires annual reporting by the government entities as well as from our office. We report on the number of inquiries, disclosures, investigations, recommendations, complaints of reprisal, and suggested improvements that we come across.

Any committee of the Legislative Assembly or the Lieutenant Governor in Council can refer matters to our office for investigation or report. It's noteworthy here to advise that I do not have the authority to investigate matters on my own determination, as is the case with the Ombudsman Act. I can only act on the receipt of a specific complaint. Similar to the Ombudsman Act – and this is just at the tail end of the act instead of at the beginning like it was in the Ombudsman Act – as an officer of the Legislature I'm appointed for a five-year term with reappointment permitted. I can be removed for the same causes. What they did when they appointed me as the Public Interest Commissioner, because it was later than my appointment as Ombudsman, they coincided the appointments to come due in the middle of October of this coming year.

That completes the overview of the act.

Now, similarly, I will return to the annual report and our strategic business plan. This past year our theme was Shedding Light on the Facts. Honesty, accountability, and transparency are words we often hear from a variety of sources: politicians, media, business, and so on. They're easy words to speak. Our role is to help the bureaucracy live those words and to adopt practices and policies which encourage all public-sector managers to embrace the concept. Our annual report included a section on our previous strategic plan and how we met our objectives for the year.

Our priorities were to enhance awareness of whistle-blowing, provide excellent service, and facilitate a legislative review. Being so new, we recognized the need to continuously scan our environment, identifying new opportunities and adapting accordingly. Expanding awareness was certainly anticipated to be a priority before we began operations in mid-2013, and it hasn't changed any today.

Over the past year inquiries to our office have increased. Awareness is growing; however, there is a long way to go in this respect. Government departments and other public entities could do a lot more to advance awareness to employees and engage in a proactive approach to whistle-blowing. I cannot accurately report the gap in knowledge or awareness as we continue to develop benchmarks and to understand the environment fully. With approximately 200,000 public-service employees impacted by this legislation, it's a challenge to reach all areas of personnel. We've provided and continue to provide a variety of presentations to management and employees, offering information and guidance.

This past year has revealed that some areas of the bureaucracy are more engaged than others. The Department of Seniors is a positive example, where leadership proactively organized four presentations, each with a significant number of employees attending. Others have not been so supportive. In one department's case we were forced to cancel presentations on more than one occasion due to a lack of interest. It's possible that there are no issues or concerns at this department; however, it's also quite likely to be due to insufficient internal promotion and senior management support. The lack of education and awareness by individual entities and departments remains a cause for concern. These observations over the past year provide us with opportunities for future change.

In the '14-15 fiscal year a significant amount of our time was spent assisting and providing guidance to the almost 400 entities

which were required to implement the legislation. We worked with many chief and designated officers to ensure that the processes and procedures being developed were compliant and met the requirements of the act. We scanned extensively to determine if public-sector employees were provided information concerning the act and the protection provided by organizations. Though entities were seemingly working towards constructing policies, it seemed that in many instances little was done to communicate.

We recognize the challenge of implementing new procedures and policies. However, if the goal is to modify the culture, where whistle-blowing is embraced, it's critical for the procedures to be instituted and for senior management to lead the awareness and actively support the concept. As the annual report indicates, some headway in respect of awareness has been made. We provided several employee outreach presentations at a number of departments such as Health, Seniors, Justice and Solicitor General, and school districts. Our website is also managed actively to provide information, answer questions, and assist complainants and management.

7:10

The cornerstone of the work we do is to investigate and manage individual disclosures of wrongdoing and complaints of reprisal. Our focus is professionalism, competence, and timeliness. We seek to ensure that our investigators are skilled and engaged to deliver on these goals. In '14-15 our personnel worked together to provide a well-balanced and thorough investigation and follow-up process. We gathered and analyzed data, including client satisfaction and complaints, and sought to address issues effectively where we could. We sought to ensure that designated officers are engaged where appropriate. This, of course, was done with the full knowledge and understanding of the complainant and only when no issues arose.

Our final strategic priority was a focused review of legislation. While we recognize that the committee conducts the review and is now conducting the review, we also recognize that our responsibility is to provide the necessary information from the work we've done as well as the information we've gathered from other jurisdictions and research into whistle-blowing. We also hosted a meeting of key stakeholders in the province to identify or surface issues, and we collect and document and collate identified issues and concerns. Our work is ongoing here, and we'll follow the direction of the other committee.

Our annual report includes articles of our disclosure process. This is important as many people don't understand what wrongdoing includes or the parameters of improper treatment when they disclose one. There are also a couple of articles about wrongdoing and what the difference is between wrong and wrongdoing, as I alluded to earlier. We've included an article on the experience that one whistle-blower had with our office. It was good because it was a very positive experience. She felt she was kept well apprised of the investigation, was provided with a copy of the report, and, in her words, "felt very valued" and was highly satisfied.

We include a piece on the experience of three key designated officers for government departments, AHS, and the University of Alberta. Each provided their perspective on implementing new legislation and how it fits with the existing processes for reporting serious matters. We also have a number of case examples in this report that are informative to read, for the readers to understand what the parameters are. They can be challenging at times to include in a public report, again, back to the restrictions on confidentiality.

Examples of things we found include gross mismanagement concerning some procurement contracts or the management of a health program for youth, both being significant wrongdoings, and

the example also is included where although I didn't find gross mismanagement, I did make observations about some areas which were wrong and required the attention of AHS. Also noteworthy in this is that AHS embraced this as an opportunity to correct the mismanagement of the situation, and they were not looking at trying to identify the whistle-blower or anything in a negative perspective like that. So that was good. Other examples include a human resource matter, a complaint of a minister breaching hiring rules, a communication gap, and others.

Now, turning to some of our statistics. In total in that last year we generated 168 files: 35 were from government departments; 43 from education; 10 from agencies, boards, and commissions; three from officers of the Legislature; 33 from health authorities; 17 from postsecondary institutions; and 27 were not jurisdictional. Those are not complaints of disclosure; those were inquiries. In terms of disclosures we had 21. All were acted on. Thirteen investigations were commenced, two were referred to the chief officer, and six were determined not to be wrongdoing at the time. In terms of reprisals we received eight complaints of reprisals. Seven were investigated; however, they were not reprisals. One was withdrawn.

In terms of compliance we identified 377 entities within our jurisdiction in '14-15. The first two bars, government and the ABCs: 68 of the 72, or 94 per cent, of the agencies, boards, and commissions, health services, and government indicated that they were compliant and that they had policies in place. Fifty-six of the 63 school authorities, or 89 per cent, and nine of the 13 chartered schools, or 69 per cent, indicated that they were compliant. However, only eight of the 229 private and early childhood schools, or 3 per cent, indicated that they were compliant. We've been following up pretty steadily with all of them ever since, and we're sure that we'll get there. It's just a matter of getting the attention out to the right places. I granted partial exemptions in '14-15 to three schools.

That completes the annual report, and I'll just speak briefly about the strategic business plan. Our strategic priorities will not be changing much for the upcoming year although they've been modified to focus on outcomes. We're going to provide excellent service to provide awareness, protection, and confidence to the public sector and ensure that the legislative review of the act is supported and furthered through the legislative committee.

In terms of service we will provide timely, professional, thorough, and confidential investigations. We'll track our timelines and those of the various authorities where relevant to do so. We'll seek to ensure that our personnel receive the appropriate tools and training to do the job. We'll gather, analyze, and research to ensure that we're reviewing matters completely and fairly. We'll report information on our work to further the goals of the office and the legislation, and we won't compromise confidentiality.

In respect of awareness of the act – I've spoken about this to a significant extent – we'll continue seeking opportunities to provide awareness and seek to press government to provide awareness to the employees that they're responsible for. Further, where required we'll ensure that public-sector entities have compliant processes and procedures in place as required under the act.

We'll provide presentations and information directly in an effort to improve our overall goals and to ensure that employees and managers understand their rights and protections. These initiatives will have us working collaboratively with chief and designated officers, and that will be a good thing.

We will continue to enhance our capacities in respect of critical analysis, social media, and our website. This will help increase awareness as well and engage employees and management to possibly further disclosures of wrongdoing.

As far as the third priority goes, we are going to continue, with Justice and the legislative committee, throughout the legislative review of the act collecting and preparing information as necessary and making recommendations as required.

That concludes this portion of the presentation. Again, I'm open for questions.

The Chair: All right. Thank you very much.

Does anyone have any questions? Ms Woollard.

Ms Woollard: Thank you. Thank you very much for your presentation. That was really very thorough. I've just got a few questions here. One of the things that came up was that at the beginning of the Public Interest Commissioner's mandate there was some concern about the whole whistle-blower protection legislation – right? – and there were some complaints at the time or concerns. Are there any concerns being raised at this time about that legislation, or have any recommendations been brought forward to strengthen the protection of the whistle-blower legislation?

Mr. Hourihan: There were certainly significant concerns going into a new act, and I imagine that's pretty typical of any new legislation. The most significant ones were raised by an organization called FAIR, Federal Accountability Initiative for Reform. The biggest concern was that there was the exemption provision in the act. They had several; they had about 14 or 15 significant concerns. Their document is available online, for sure, and we can certainly get it for you if you like. They had a number of concerns, but the biggest one was the exemptions. As I said, the act does say that I have the ability to exempt anyone or any thing or organization from the act. I suppose that as much as I can appreciate that that could be a concern for somebody, it's not a particular concern for me because I have no intention of doing that. Yes, I do have the intention of exempting those small organizations where it makes little sense, when you've got three employees, to have a whole finely tuned procedure process. That doesn't make any sense. They can just call our office. They have to abide by the act in every other sense. So there were concerns around that.

There were concerns raised, you know, and we're going to raise this with the committee reviewing the legislation, too. There were concerns about: should it include a broader definition of wrongdoing? Should it include the private sector? Should it include contracted or delegated services? Those are the big ones. There are other ones in there, and we've identified a couple of other areas where we're going to not necessarily make recommendations but provide information where we've received some comments from people or we've observed some things.

Ms Woollard: Okay. So these are the things that you're going to be working on as you go forward?

Mr. Hourihan: Yes. For sure.

Ms Woollard: Good. Thank you.

The Chair: Does anyone else have any questions? Mr. van Dijken.

Mr. van Dijken: Yeah. Thank you. Just looking at process here, we've got a chief officer, typically a deputy minister or . . .

Mr. Hourihan: A deputy minister or authority head.

Mr. van Dijken: . . . authority head, and they appoint a senior official to be the contact?

Mr. Hourihan: Right. A designated officer, yeah.

Mr. van Dijken: Okay. A designated officer. Is that typically within the department itself?

7:20

Mr. Hourihan: Well, that's an interesting question because it's typically within in terms of authority heads. It's not within with the government departments. The government departments two years ago decided to sort of get together and appoint, or name, one person as the designated officer for all departments. So they have one person there.

Now, I didn't oppose that at the time because I felt that it wasn't against the act. So it conformed to the act, and in some senses it probably makes it easier for someone to complain to somebody who's not particularly within their own department. However, the flip side of that coin is that it makes it more difficult, too, because they're not right there. They're not in the same building and those kinds of things. Some people would be more in tune to complain to a designated officer who's not part of the department, and some people may not be. However, we weren't opposed to it as long as it was done properly.

The other concern I had at the time was that it will work fine as long as they're not so overworked that they can't get to everything, because the timelines are pretty significantly challenging in this legislation, and that's a good thing, that there are time pressures.

So I have no comment, really, to make. We're still increasing awareness. We're still trying to get out there and make sure that all of the designated officers and chief officers get out there and educate and provide awareness to their personnel.

Mr. van Dijken: If I may?

The Chair: Yes. Absolutely.

Mr. van Dijken: You know, I look at whistle-blower in private, and I have limited experience, but in an organization where we had employees across western Canada, it was a centralized system. They weren't reporting within their department, and I felt fairly confident that that gave the person that had the complaint some level of comfort that they were going to be dealt with fairly. So I realize there are pros and cons both ways. I think the biggest thing is awareness, like you say, making sure that the chief officers are actually promoting the system and making sure that employees are recognizing that they have an avenue to turn to. That's something that should be really encouraged: more promotion, more promotion.

Mr. Hourihan: I would agree fully with that. Like I said, I certainly haven't had any concerns to the point where I've thought I should go to the departments and suggest that it's not working.

Mr. van Dijken: Okay.

Mr. Hourihan: To this point in time it's working, and people do know where to go that do know where to go. I guess my concern is: do enough people know where to go?

Mr. van Dijken: I hear you. Yeah.

Mr. Hourihan: Once we're comfortable with that, then I guess, you know, I'll be in a much better position to answer that question. We'll address it as time goes on if the need arises.

The Chair: Are there any other questions?

Ms Woollard: I've got one more.

The Chair: Ms Woollard, go ahead.

Ms Woollard: Great. In the strategic business plan desired outcome 2 is to enhance awareness of the act and the Public Interest Commissioner. Now, I know you identified that increasing awareness is always a big goal of yours. So we are wondering what type of outreach is currently being done to expand awareness among the public-sector employees and the general public.

Mr. Hourihan: Well, the general public: we don't focus on that.

Ms Woollard: No. That's right.

Mr. Hourihan: Yeah. Because it really relates to employees. I mean, certainly, the website is there and those kinds of things for people that do have an appreciation for it, but we don't focus on that.

In terms of employees we're focusing on a couple of areas. The one area that we're focusing on significantly is trying to get the departments and the authority heads to make sure that they are providing awareness. Also, we provide presentations where we can. So we're doing that. We're trying to provide a number of presentations and visits, and we're contemplating what that's going to look like over the coming year.

We're also in a directed fashion getting a hold of all of the organizations, especially those schools that I mentioned where the compliance was very low.

Ms Woollard: Yes.

Mr. Hourihan: We're getting a hold of them by letter and by phone and explaining to them what their requirements are, what needs to be done, and to get moving on it. During those individual calls we're providing as much awareness and sort of guidance and assistance as we can to get them to make sure that their folks are aware. So, it's good. Well, in terms of the small schools, that's good. A lot of them are small, and they're getting exemptions now, which is fine because at least they know. It's not that onerous to advise two or three people.

However, for the larger departments we're encouraging the designated officers, and they are trying to get out and provide awareness. So we're going to be pressing that and doing more presentations ourselves.

Ms Woollard: Thank you. That's good.

The Chair: All right. Does anyone else have any more questions? Mr. van Dijken.

Mr. van Dijken: Yes. Thank you. With regard to offences and penalties you talked about the gathering of information, that there were some challenges on getting the information, primarily running into legal roadblocks of interpretation of whether or not legal authority was there for you to just receive the information. Has there ever been a situation where you felt that penalties had to be levied in order to get the information you needed?

Mr. Hourihan: No, we're not at that point yet. There are delays in this. You know, when I look at this and I look at the Ombudsman office, we don't have the issues in the Ombudsman office that we do with the public interest office – and, of course, it's the same office in a lot of respects – so that kinds of intrigues me. I think back and go: I imagine they had the same hurdles when the Ombudsman office first opened up.

So we have a pretty positive outlook on this. We feel at this time pretty strongly that it's a matter of sort of education and awareness for them to understand that our work involves investigating and making recommendations. I'm trying to impress upon the chief

officers and senior people: “I’m really doing a job for you, not against you. I’m providing you with recommendations for you to implement in your own area to make things better, so don’t fight the battles within there so that you don’t find out what it is that I need to tell you because that makes no sense.” We think that if we can sell that properly and that our powers of persuasion and, maybe, publicity are working, we’ll certainly get past those hurdles and, hopefully, long before it turns into an issue of required publicity.

Mr. van Dijken: Right. Building relationships. You’re there to help.

Mr. Hourihan: Yeah. There are some questions, and we say: no; we disagree, so let’s get past this. I mean, everybody has been cooperative so far. It’s just been the battling.

The Chair: We have about three more minutes. Is there a brief question that needs to be asked?

Ms Woollard: I had a question, but it was about compliance, and that’s pretty much been dealt with. Thank you.

Ms Jabbour: Can I just make a comment? I think that you guys are doing some fabulous work, and I’d love to learn more about it. I wish we had a little more time, and I look forward to another opportunity, maybe, that we can go a little bit more in depth.
Thank you.

Mr. Hourihan: We’re available, myself or others, in the office any time to answer questions – individually or in a group or in any setting – and we would appreciate the opportunity to do so.

Mr. van Dijken: And if you join the Ethics and Accountability Committee, you’ll learn all about it.

The Chair: That’s great. I like everyone’s enthusiasm.

We’ve had a good discussion this evening. I’d like to thank the office of the Ombudsman and the Public Interest Commissioner and their staff for their presentations and for answering the committee’s questions. Thank you very much.

To the committee members: thank you very much for attending today. I know that it’s been a very long week, and I appreciate your attentiveness throughout the evening.

If there are any outstanding questions you wish to address or additional information that you want to provide to the committee, please forward the information to the committee clerk. We will be contacting your office once the dates are established to review the officers’ 2016-2017 budget estimates.

I’d invite a motion to adjourn.

Mr. van Dijken: So moved.

The Chair: Okay. We can adjourn.
Thank you.

[The committee adjourned at 7:29 p.m.]

