



Legislative Assembly of Alberta

The 30th Legislature
Second Session

Standing Committee
on
Resource Stewardship

Public Interest Disclosure (Whistleblower Protection) Act Review

Tuesday, July 7, 2020
6:15 p.m.

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**Legislative Assembly of Alberta
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Second Session**

Standing Committee on Resource Stewardship

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Ceci, Joe, Calgary-Buffalo (NDP), Deputy Chair

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Feehan, Richard, Edmonton-Rutherford (NDP)
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6:15 p.m.

Tuesday, July 7, 2020

[Mr. Hanson in the chair]

The Chair: Okay. Thank you, everyone. I'd like to call this meeting of the Standing Committee on Resource Stewardship to order and welcome everyone in attendance.

My name is David Hanson, MLA for Bonnyville-Cold Lake-St. Paul and chair of the committee.

Before we begin, I would just like to note that in accordance with the recommendations from Dr. Deena Hinshaw regarding physical distancing, attendees at this evening's meeting are advised to leave the appropriate distance between themselves and other participants.

I'd ask that members and those joining the committee at the table introduce themselves for the record, and then I will call on those joining in via Skype. We'll begin to my right.

Member Ceci: Thank you. Joe Ceci, MLA for Calgary-Buffalo and vice-chair of the committee.

Mr. Yaseen: Muhammad Yaseen, MLA, Calgary-North.

Ms Rosin: Miranda Rosin, MLA, Banff-Kananaskis.

Mr. Singh: Peter Singh, MLA, Calgary-East.

Mr. Smith: Mark Smith, Drayton Valley-Devon.

Mr. Loewen: Todd Loewen, MLA, Central Peace-Notley.

Mr. Sabir: Irfan Sabir, Calgary-McCall.

Mr. Feehan: Richard Feehan, Edmonton-Rutherford.

Mr. Koenig: Good evening. I'm Trafton Koenig with the Parliamentary Counsel office.

Dr. Massolin: Good evening. Philip Massolin, clerk of committees and research services.

Mr. Kulicki: Good evening. Michael Kulicki, committee clerk.

The Chair: On Skype we have Mr. Lorne Dach and Mr. Devinder Toor, who is standing in for Mr. Getson.

Mr. Dach: Thank you. That's correct.

Mr. Toor: Thank you.

The Chair: Thank you.

Okay. For the record I will note the following substitution: Devinder Toor for Shane Getson.

A few housekeeping items to address before we turn to the business at hand. Please note that the microphones are operated by *Hansard*. Please set your cellphones and other devices to silent for the duration of the meeting. Committee proceedings are live streamed on the Internet and broadcast on Alberta Assembly TV. The audio- and video stream and transcripts of the meeting can be accessed via the Legislative Assembly website.

Hon. members, section 6 of the Legislative Assembly Act authorizes members of the committees of the Legislative Assembly to participate by teleconference or other methods of communication if unanimous consent is granted. As members will recall, at the committee's first meeting, on June 25, 2019, members agreed to permit the use of teleconferencing for the duration of the 30th Legislature. But given the circumstances that we are facing with the

COVID-19 pandemic, the use of additional means of communication such as video conferencing would give the committee another means to proceed with its work. In order to proceed with the video conferencing option, the committee would need to approve a motion unanimously to that effect. Is there a member who would be willing to move such a motion?

Member Ceci: I'll move it.

The Chair: Moved by Mr. Ceci that

for the duration of the Second Session of the 30th Legislature the Standing Committee on Resource Stewardship permit Members of the Legislative Assembly to participate in committee meetings via video conference subject to the proviso that the committee may require members' in-person attendance at a particular meeting upon passage of a motion to that effect.

All those in favour, please say aye. Any opposed?

An Hon. Member: Nobody opposed.

The Chair: Nobody opposed. Okay. Thank you.

That motion is passed.

Skype participants. I'm going to try and address this. I'll have to ask you to put your phones on mute, and then when we go to a vote, I'll ask you to unmute, and we'll try and get through this.

Approval of agenda. Are there any changes or additions to the draft agenda? Everyone should have received those.

If not, would someone like to make a motion to approve?

Member Ceci: I'll move it.

The Chair: Moved by Mr. Ceci that the agenda for the July 7, 2020, meeting of the Standing Committee on Resource Stewardship be adopted as distributed. All those in favour? Any opposed? On the phone? Anybody opposed? Thank you. That motion is carried.

Approval of minutes. Next we have the draft minutes of the October 15 meeting. Are there any errors or omissions to note?

If not, would a member like to make a motion to approve the minutes? Mr. Singh will get on the record.

Mr. Singh: I move the motion to accept the minutes.

The Chair: Okay. Moved by Mr. Singh that the minutes of the October 15, 2019, meeting of the Standing Committee on Resource Stewardship be approved as distributed. All those in favour, please say aye. Any opposed? That motion is carried. Thank you.

Okay. The mandate, Government Motion 22, and draft schedule. Hon. members, on June 15, 2020, the Assembly approved Government Motion 22, which referred the Public Interest Disclosure (Whistleblower Protection) Act to this committee and deemed this committee to be the special committee of the Assembly for the purpose of conducting a comprehensive review pursuant to section 37 of the act. In accordance with section 37 the committee's report may include recommendations for amendments to this act. The act also currently provides for regular reviews at five-year intervals after this review has been completed.

I would just note that this will be the second comprehensive review of this legislation since it came into force in 2013. The first review was completed during the 29th Legislature by the Select Special Committee on Ethics and Accountability, which presented its final report to the Assembly in September of 2016.

A draft schedule for the committee's review was made available to members on the internal website, and the committee will have one year to complete its review starting from today. The draft schedule is not intended to be rigid, but it is meant to provide for flexibility as the committee conducts its review. However,

members may wish to note that the draft schedule anticipates that the committee would table its final report at the start of the spring session next year, before the Assembly considers the main estimates next spring. So although the committee has until early July next year to table its report, the draft schedule allows for the committee to complete its review well in advance of our reporting deadline.

Are there any questions about the mandate of this committee in reviewing this legislation or about the draft schedule that was presented?

Mr. Dach: A quick question regarding the, as you say, flexibility of this draft schedule. If it was approved tonight in its present form and there were certain things that came up, whether due to COVID-19 or other items, what would be the process to amend it in the future? Would it be a majority vote of the committee?

The Chair: Thank you very much for the question, Mr. Dach. I think it's more for just kind of setting some dates for what we would shoot for. Like, the next meeting I'm looking at is in the early part of September. Now, if something drastically changes, when I put out the request for dates to members, we could deal with it at that time. I think going forward, as long as we're trying to keep in mind our target of an early report next spring and – you know, that's kind of the reason that we went for that, to give ourselves a little bit of latitude there. But definitely if something came up, we would sit down as a committee or have a teleconference and make that decision.

Mr. Dach: Thank you, Mr. Chair.

Member Ceci: Could I ask that another way?

The Chair: Go ahead.

Member Ceci: If another issue was directed to this committee, would the committee work on that as well as what's before us?

The Chair: Absolutely. Yeah. We have that flexibility with the changes to the standing orders, where we didn't have that previously. But now that the standing orders have been changed, if we have a gap of, say, two months or three months when we're waiting for some research to be done and something comes up at that point, we can address that as well.

Member Ceci: Okay. All right.

The Chair: Absolutely.

Member Ceci: Thank you.

The Chair: Any other questions or concerns regarding the schedule?

As members may be aware, one of the officers of the Assembly, the Public Interest Commissioner, is responsible for the administration of the Public Interest Disclosure (Whistleblower Protection) Act. To ensure that the committee has a solid understanding of this legislation, it may be beneficial to request a technical briefing from officials from the office of the Public Interest Commissioner. Would members wish to have a technical briefing at the next meeting?

Some Hon. Members: Yes.

The Chair: Everybody would be agreed on that?

Mr. Smith, you would like to make a motion to that effect.

6:25

Mr. Smith: Yes.

The Chair: Moved by Mr. Smith that the Standing Committee on Resource Stewardship invite officials from the office of the Public Interest Commissioner to provide a technical briefing on the Public Interest Disclosure (Whistleblower Protection) Act at the next meeting.

Is that a reasonable motion? All in favour of that motion?

Mr. Smith: It is a reasonable facsimile of the motion I would put forward.

The Chair: All those in favour of that motion, please say aye. Anybody opposed?

That motion is passed.

Okay. Research services is the next item. Turning now to research services, I would first remind members that various LAO staff will be available to support the committee during its review, including the committee clerk, Parliamentary Counsel, and LAO corporate communications. However, one of the items that the LAO research staff can provide for the committee during this early phase of the review is a draft stakeholder list, which will be necessary if the committee decides that it would like to reach out to stakeholders for feedback during its review. If the committee is interested, it could direct research services to develop a draft stakeholders list for review at the next meeting, and then committee members would be able to propose additions or changes to the draft. Would members be interested in requesting that research services put together a draft stakeholder list for committees? Any questions or concerns there?

Mr. Sabir: As you mentioned, we will be able to propose changes?

The Chair: Absolutely. Yes. You know, just looking at the way it's been done in the past, they've put together a stakeholder list. If somebody could make a motion to that effect.

Mr. Yaseen: Yeah.

The Chair: Mr. Yaseen wants to get on this. Moved by Mr. Yaseen that

the Standing Committee on Resource Stewardship direct research services to prepare a draft stakeholders list for review at the next meeting as part of the committee's review of the Public Interest Disclosure (Whistleblower Protection) Act.

Mr. Yaseen: Mr. Chair, in addition to that: including past stakeholders lists.

The Chair: So you'd like to add that to the motion?

Mr. Yaseen: Please.

The Chair: I believe what he's asking for is that in addition to a stakeholders list we would get the list from the last sessions.

Member Ceci: The reviews that were done in '16 and '13?

The Chair: In 2016. Is that what you're looking for, Mr. Yaseen?

Mr. Yaseen: Yes.

Dr. Massolin: Can I speak to that?

The Chair: Sure.

Dr. Massolin: Well, I think that if this is acceptable, through you, Mr. Chair, to Mr. Yaseen, I mean, that stakeholder list from the last

time would likely be the core of this list, right? Then members could – but we could certainly post the list from the last committee meeting up on the website, and you could certainly review it to see if there's any, you know, overlap. That's basically the process in any event, that we start from what the committee did in 2015-2016 since it was pretty recent. But it's entirely up to you if you wanted to have both lists integrated into one.

The Chair: I think, if it's acceptable to the committee, we would just stick with the one original list, and then if you have something to add to it, we could at that point.

Dr. Massolin: If that's okay. Then, Mr. Chair, like I said, we could post the old list so that you'd have that available if you wanted to see what it was.

The Chair: Is that acceptable, Mr. Yaseen?

Mr. Yaseen: Yes.

The Chair: Okay. All those in favour of the motion, please say aye. Any opposed? There you go. All right. Thank you very much, everybody.

That motion is passed.

Another research item that committees typically request from research services for a statute review is a crossjurisdictional comparison, which would analyze and compare the statutory requirements for whistle-blower protection in different jurisdictions across Canada. Would members be interested in receiving a crossjurisdictional comparison? Any questions or concerns?

Member Ceci: Just a question.

The Chair: Question? Go ahead.

Member Ceci: In '16 were just Canadian jurisdictions looked at, or were there others?

Dr. Massolin: Mr. Chair, I'd have to check, and I can do that quickly here. I think it was Canadian jurisdictions alone. I'm not absolutely sure. I'd have to check. I don't know if the committee clerk knows differently.

Member Ceci: Philip, do you have any idea if there are best practices internationally that we should be looking at?

Dr. Massolin: Well, not offhand. I mean, we can certainly investigate that. Obviously, it's the committee's decision at this point, but if we were given the latitude to look at other jurisdictions, we can certainly include them. With that understanding, this motion could proceed as such. Does that make sense?

Member Ceci: Yeah.

The Chair: Any questions or concerns? Mr. Singh.

Mr. Singh: Thank you, Mr. Chair. I would like to move that research services make a report for the committee on crossjurisdictional comparison on the Public Interest Disclosure (Whistleblower Protection) Act.

The Chair: And, as Mr. Ceci has requested, would you like to see that just centred on Canada, or do we want to look across borders?

Mr. Singh: I feel that Canada is the best way right now.

The Chair: Okay. Would you like to make the motion?

Is there any issue with us reaching out other than in Canada to see what other countries are doing?

Mr. Smith: I guess the question I've got is: why do you want to go outside of Canada? Do we usually go outside of Canada? Is there a value? What's the argument behind it?

Member Ceci: I think I said: best practices. If those best practices are just Canadian, then stick with Canada, for sure, but if best practices in this area are somewhere else in the world, internationally, why wouldn't we want to understand them?

Mr. Smith: Do we do that usually on any other piece of legislation?

Dr. Massolin: Depending on the legislation, certainly. I can just also inform the committee, Mr. Chair, that the last time out it was just Canadian jurisdictions.

The Chair: Okay. I guess it's the will of the committee, then, on how you want to proceed. If you would like your motion to stand, Mr. Singh, we can vote on that.

Mr. Singh: I would like my motion to stand: just Canadian jurisdictions.

The Chair: All right. Can we have a vote then? All in favour of Mr. Singh's motion, please say aye. Any opposed? The voice vote carried.

That motion is passed.

Mr. Kulicki: Sorry. If I could maybe just interject as well. There'll certainly be an opportunity later in the process for other sorts of research requests to come forward as well. What I would advise the committee is that after they've maybe considered a crossjurisdictional review of other Canadian jurisdictions, they might want to request some additional information on best practices at a later date.

The Chair: Okay. Is that reasonable to everyone?

Mr. Sabir: I was going to suggest that if we want to make a motion to that effect, there's still an opportunity to do so right now.

The Chair: I believe that that could be done. Yes. Would you like to propose a motion?

Mr. Sabir: I will propose a motion that we be provided a general overview of best practices that may include Canada and elsewhere outside Canada.

The Chair: Okay. Mr. Clerk, do you want to read that into the record?

Mr. Kulicki: Yeah. I'll have to take a minute here to type it in.

Mr. Sabir: I have another question of clarification.

The Chair: Okay.

Mr. Sabir: Is that the only way to get information from research services, or can any member also request some kind of information?

The Chair: Go ahead, Philip.

Dr. Massolin: Yeah. Mr. Chair, through you to Mr. Sabir, yes, the way that research services works is that it works for the committee as a whole, whether that's by consensus or through motion, so there are no individual requests.

Mr. Kulicki: Member, does the motion on the screen represent what you were thinking?

Mr. Sabir: Yeah.

The Chair: Okay. Would you like me to read that, or is there any discussion on the motion at this point?

Mr. Loewen: I don't disagree with having some international best practices looked at, but if we leave it open like that, there are almost 200 countries in the world, and I don't think we need our research team looking at 200 different countries. I think this could be better taken care of later in the process, where if somebody wants to pick a couple of countries that have similar democracies as we have, maybe they can be investigated. I don't know. If we just leave it open for research to have to look at 195 different countries around the world for best practices, I think that leaves it open for quite a bit of work for maybe not much benefit. So my suggestion is to not support this motion, but, like I said, I think there's an opportunity later on in the process, as Mr. Kulicki has brought forward, for us to bring other countries into the mix and have that research done at the time.

6:35

The Chair: Okay. Thank you, Mr. Loewen.
Mr. Ceci.

Member Ceci: Yeah. This motion may come to nothing in terms of, you know, finding out that Canada is the best place for whistle-blower protection, but I'm not, I guess, arrogant to think that we are. I think there probably is research that could be done quite simply by the support people, to look at the literature and find out where the best whistle-blower practices are and to incorporate those into our review. I don't see it as being a big or onerous thing. I think they have the ability to use the Internet and the search engines out there to find what is good and to bring it here to our deliberations and to do a more thorough deep dive on Canadian jurisdictions no doubt would be helpful. I don't see this as a big thing, Todd. I just see it as investigating. If there's nothing there, then they come back and tell us. I don't think every country needs to be reviewed.

The Chair: Okay. Mr. Feehan, you had a comment?

Mr. Feehan: Well, I think my point has been made. I just would ask Dr. Massolin whether he would feel compelled to look at every country if we worded it this way, or if he would be able to use his judicious decision-making to select some appropriate examples?

The Chair: Go ahead, Dr. Massolin.

Dr. Massolin: Thank you, Mr. Chair and through you to Mr. Feehan and the committee. The only issue from a purely neutral sort of research perspective is that, you know, in for a penny, in for a pound, right? When you're looking at the jurisdictions, you have to do a fair bit of preliminary research to understand the nature of the legislation in order to make the call. It would take – you know, you'd obviously apply a pretty rigorous and, hopefully, rational strategy to suss out the appropriate jurisdictions where you'd start; you know, the United States and Europe, obviously, and Australia and the Commonwealth jurisdictions. But even with that, that's quite a few to start with. I mean, it's certainly – you know, you'd have a research strategy there, but I think you'd have a lot of preliminary research to do in order to ascertain which other jurisdictions are worth sort of a deeper dive.

Thank you.

The Chair: Okay. Thank you for that. Is there any other discussion on the motion that would make it more palatable?

Mr. Smith: I mean, I understand what you're saying, and I see that there's some value in it, but I think we've also heard from Dr. Massolin that that could be a pretty onerous task there. So maybe the best thing to do is to simply wait. As we go through the process, if you come up with some suggestions for some countries that we'd like to see researched, then we could take a look at those specific countries and ask the research department to do that. But let's not place an extra burden for little value unless we can see that – because you probably have some suggestions or some ideas, perhaps, of some of the countries that we should look at.

Mr. Sabir: The U.K. and the United States, basically.

The Chair: Just a suggestion from the chair, if you'd like to change your motion, Mr. Sabir.

Would that be more palatable?

Dr. Massolin: Yeah. I think that makes sense from our perspective, but I think an amendment would be necessary. I think this motion has already been moved.

The Chair: Okay. Yeah. The discussion is on the motion.

Mr. Feehan: Can I make an amendment, then, that the motion would read: move that

the Standing Committee on Resource Stewardship direct research services to provide a briefing on American, British, and European Union best practices with respect to whistle-blower legislation.

The Chair: Okay. Discussion.

Mr. Loewen: I think we just opened the door back to where we were before. I'm not sure if each of the 50 United States have their own whistle-blower protection. I don't know if the European Union – that's a lot of countries, too. I don't know if we've reduced the workload for research on this. Again, I think we can take care of this later on in the process. I don't know that taking care of it now is wise.

Of course, I think, as Dr. Massolin has indicated, it isn't just a matter of jumping on the Internet and googling best practices and, boom, it's all done. I mean, there's definitely more research that has to be done than just that simple google, otherwise each one of us could do that. That's why we have research to do it, because it is a little bit more complicated than jumping on Google.

Again, I don't know that we've made the workload any less by including the European Union and the United States and Great Britain. Again, I guess I won't be able to support this motion with that amendment either.

The Chair: Thank you, Mr. Loewen.
Any other discussion?

Mr. Dach: Yes, Mr. Chair.

The Chair: Go ahead, Mr. Dach.

Mr. Dach: I do think that given various global phenomena that are taking place right now that it is interesting for the committee to seek a wider review of whistle-blower best practices. I think what we're looking for is really what's happening in the democratic governments of the world, and I think we can confine them to Commonwealth countries, North American countries, and European countries which are democracies. Yes, indeed, it does create work for our researchers. I understand that and appreciate

that, but there are some significant global phenomena that are taking place which do potentially involve whistle-blowers globally in those democracies, and it would be very interesting to see the developments that are taking place to reflect the changing importance of whistle-blower protection.

The Chair: Okay. Thank you, Mr. Dach.

Mr. Loewen: I guess I want to make sure everybody understands that I'm not against having this input and this research done in some of the other countries, but I don't want it to be a burden while we, you know, try to cover 20 or 30 different countries. We've got to be able to do this in a simple way. Maybe research could come to us and say: you know, maybe we would recommend that we look further into these three or five different countries. Again, I'm not against learning that information from these countries, but I think we have to be reasonable in the work that we have research do. We don't want to create undue work; we want it to make sense. The road we're headed down, I don't think it's making that sense. Again, I think we can have a better way to do this that's a lot more efficient.

The Chair: Thank you.

Mr. Sabir: Mr. Chair, quick question. The capacity of the research team has been brought in to the discussion a few times. Is it too much work that the research team wouldn't be able to handle?

The Chair: Go ahead, Dr. Massolin.

Dr. Massolin: Yeah. Well, I'm not going to do it, so I'm okay with it. Sorry. I just thought I would add that. Sarah is regretting that she didn't come to the meeting, I'm sure.

In all seriousness, Mr. Chair, I think that, you know, it depends on the time frame we're given, and it depends, again, on what you find – right? – because once you start finding things, you realize that to investigate this properly you have to do a greater amount of research on the writing. If you don't find as much, maybe it's a little bit lesser, but it's hard to estimate the amount of work and the amount of time that it's going to take at this point until you start looking.

But what I can tell you as well is that the decision to focus on Canadian jurisdictions last time was based in part on the idea that they are the most comparable jurisdictions. I'll leave it at that.

The Chair: Thank you.

I'd just like to point out that the kind of loose schedule that we did – just to prove a few minutes ago – calls for a research services review of cross-jurisdictional comparisons and any other research briefings by the beginning of September. Would that give you enough time to do any significant . . .

Dr. Massolin: Well, you know, Mr. Chair, what I would suggest on that one is that because the time frame is a little bit longer for this committee – I mean, not suggesting we take the entire year, obviously – perhaps we can leave it to, like, a subsequent meeting. My sense of these reviews, and I've sort of partaken in a number of them, is that the initial stage of the review is that the committee is gathering information, and largely that's through the technical briefing, stakeholders, and then research starts producing its work. That informs the deliberative process that comes towards the end of the process. If we can leave it a little bit open ended and we can sort of deliver this obviously in a timely way so that the committee can still find it useful and timely in terms of making up their minds with respective recommendations but you kind of leave it to us and then

we'll post it and then speak to it at the appropriate meeting, if that's possible, I think that can work from our perspective.

6:45

The Chair: Thank you.

All right. Any other discussion on the proposed motion amendment? Go ahead, Mr. Smith.

Mr. Smith: Thank you. Yeah. I think that what I'm hearing here is that there is going to be a spot and a place as we move forward where we might get some clarity on this. Maybe it's not so much the countries as it is – Mr. Dach referred to some of the interesting things that are happening around the world with regard to whistle-blower legislation. Maybe as we begin to deliberate and we look at the Canadian research, it would be appropriate for somebody to bring onto the table a specific issue or a specific idea with regard to whistle-blower legislation that they've heard of that is tied to a specific country that you'd like the research people to do, which would allow you to be able to meet the timelines that we have while at the same time being able to do a deeper dive.

The Chair: Thank you. Any other further discussion on the amendment?

Mr. Sabir: I think there are many ideas like that. That's part of the reason we were asking that. I may or may not have the exact information, but in some other jurisdiction, I read somewhere, international jurisdiction, they make it part of their orientation process for all government employees, for instance. Like, those kinds of practices are out there as well to inform employees. That is not the case right now in Alberta's legislation.

But anyway, if the committee's motion is written differently and it cannot pass, that's fine, too.

The Chair: Okay. Thank you.

Any other discussion on the amendment?

Seeing none, we'll vote on the amendment moved by Mr. Feehan that

the motion be amended by striking out "international" and substituting "American, British, and European Union."

Do we have to read the original as well? Just on the amendment. All those in favour of the amendment, please say aye. All those opposed, please say no.

That motion is defeated.

All right. Back on the main motion. Any other further discussion on the main motion? Seeing none. Moved by Mr. Sabir that the Standing Committee on Resource Stewardship direct research services to provide a briefing on international best practices with respect to whistle-blower legislation.

All those in favour of the motion, please say aye. All those opposed, please say no.

That motion is defeated.

Moving on, as Michael has said, other research requests would be available. There would be other additional research opportunities if necessary in the future.

Mr. Feehan: I'd like to move that the briefing be done on court cases over the last five years in Canada that have been directly related to whistle-blower legislation.

The Chair: That's interesting. I was just about to say: is there any other business?

Mr. Feehan: Oh, sorry. I apologize.

The Chair: That's okay. That's fine.

Member Ceci: Could I ask a question?

The Chair: Sure.

Member Ceci: How does this get to court? I thought these were internal processes within government.

Mr. Feehan: You can still go to court if you were fired from work and you believed you were protected by whistle-blower legislation. It's gone as far as the Supreme Court.

The Chair: Okay. We have: moved by Mr. Feehan that the Standing Committee on Resource Stewardship direct research services to provide a briefing on court cases over the past five years that were related to whistle-blower legislation. Is that what you were looking for?

Member Ceci: Just in Canada, Richard?

The Chair: Just in Canada? Okay. You'll make that correction, adjustment?

Mr. Kulicki: I'll make that adjustment.

The Chair: Okay. To provide a briefing on Canadian court cases over the past five years that are related to whistle-blower legislation.

Any discussion on the . . .

Mr. Koenig: Mr. Chair, if it's helpful, of course, as a lawyer in the Parliamentary Counsel office I'm always happy to provide any advice or recommendations for the committee in that respect. I'm not sure, Member Feehan, if you've settled on wording of the motion. The two things that I might just suggest to ensure that you would receive what you're looking for is either clarifying that you're looking for leading court cases, so court cases that set precedent or are particularly useful, or potentially court cases from the Supreme Court, just so that a summary wouldn't come back with court cases from, you know, junior levels of court or Provincial Court, let's say. That might not be as germane to what you're looking for.

Mr. Feehan: Okay.

The Chair: Would you like to adjust?

Mr. Feehan: I think that's quite acceptable. We could limit it to Court of Appeal and above.

The Chair: We'll just wait till the motion is up, and then we'll read it. Then we can have some discussion on it.

Okay. We have moved by Mr. Feehan that the Standing Committee on Resource Stewardship direct research services to provide a briefing on Canadian Supreme Court cases and Court of Appeal cases over the past five years that are related to whistle-blower legislation.

Now we're open to discussion.

Mr. Smith: Just a question. Would that not be part of the research that you're already going to be doing?

Dr. Massolin: Mr. Chair, through you to Mr. Smith, not necessarily. I mean, the cross-jurisdictional comparison would be on the legislation and the provisions of each of the statutes and comparing them, the more important ones, obviously, not some of the boilerplates. It is a different task.

The Chair: Any other discussion?

Mr. Loewen: Any idea of the time it would take or would be to do this? Again, just out of concern for time and energy. I would be curious myself, but as far as value to the committee, that's where we have to draw the line, I guess.

Dr. Massolin: Yeah. I mean, this, Mr. Chair, is not my area of expertise because this more of a legal sort of research task, but I would imagine it would take, you know, a fair bit of time. Maybe Mr. Koenig, not putting him on the spot or anything, can speak more authoritatively on this one.

The Chair: Go ahead, please.

Mr. Koenig: Yeah. I mean, I can't really provide the committee much here. I don't know what kind of litigation has been out there with respect of whistle-blower legislation. Of course, it really depends on each jurisdiction, what was in the act, how it functions, so it may not necessarily just be an appeal that's going forward, but there might be a challenge to the legislation itself. It really depends on the structure of that legislation and what's included. I wouldn't even hazard a guess how many court cases might be relevant sort of within Supreme Court decisions or Court of Appeal in all Canadian jurisdictions. It could be a lot. It might not be. I really couldn't say.

The Chair: Okay.

Ms Rosin: I have a question. This is not to overwhelm research services, but would it be possible to put a date on this motion to say, "Bring some kind of a briefing by X date," whether that is 500 cases by that date or they only get to the top 10 on that date? Could we maybe do a motion that has a firm "We want some form of a briefing on this date" to maybe satisfy both concerns as to what's in the briefing and the time that we have to review this act? Is that something that's possible? I'm genuinely asking. Is that something that's possible or feasible?

Mr. Sabir: You can bring a motion to amend it.

Ms Rosin: But I want to know if it's feasible or too much before I propose such a thing. Like, is that acceptable to research services?

The Chair: Well, there is that, and we do have the schedule and some kind of goal dates for certain things. If I may as chair, we're tasked with doing some research and possibly adjusting existing legislation, and it might be best to base those decisions on – if we put through legislation that's just going to get challenged in court and thrown out, it doesn't make a lot of sense. It might be a worthwhile effort to at least get some of the major cases that have been handled federally and have gone to the Supreme Court to, you know, give us some guidance as to whether our legislation is supportable or not in the courts, right?

6:55

Mr. Loewen: If I could make a suggestion, then, because I am interested, too, in this information, I think it's a great idea to gather that information, but maybe we could put an amendment on this to maybe instruct research to pick 10 cases to review or something in different jurisdictions, so that way we can compare what the legislation is in those jurisdictions to the court case and how that went. If there are 10 cases across Canada, that's great. If there are 400, then we're in for a pile of trouble. Maybe, Mr. Feehan, you know how many there are. I don't know.

Mr. Feehan: Well, I do have a sense, but I appreciate that you're trying to limit – sorry.

The Chair: That's okay. We're open to . . .

Mr. Feehan: Apologies.

No, I appreciate that desire to limit the excessive work, and I'm more than happy to just put a limit on it. "Can you give us an overview of significant cases as judged by you?" would be a fine definition.

The Chair: Yeah.

Go ahead.

Mr. Koenig: Thank you, Mr. Chair. Yeah. If the committee is moving in that direction, someone may wish to make an amendment to add a reference to a briefing on significant litigation from the Supreme Court or Court of Appeal. It's very possible – and, again, I have done no research at this point – that there is one leading case from the Supreme Court, all jurisdictions follow it, that is what the gold standard is that's cited in all jurisdictions. It's entirely possible that the number could be one or two. It could be very low. There may not be any leading cases. In terms of number, it's hard to gauge that.

I think if the committee is looking for what is the legal principle that's likely to apply, referring to those leading cases is likely going to be the most useful because if you get a list of 15 cases from, you know, a court of appeal in Quebec that uses a different legal system than Alberta, it's probably not going to be particularly useful. In my own personal interest I don't know if it's worth while to have a listing of those court cases, but certainly if there is something that's moved up to the Supreme Court that is cited in many, many jurisdictions, that's likely going to be the most useful for the committee.

The Chair: Okay.

Mr. Loewen: If I was to make a suggestion, I'd just make an amendment to add "significant" in front of the words "Canadian court cases" – in front of "Canadian", "significant," – and I think that may be acceptable.

Mr. Kulicki: I would just ask the question to Parliamentary Counsel: would it help to say "significant or leading," or is "significant" enough?

Mr. Koenig: Either way, I think the direction from the committee is pretty clear in terms of what you would be looking for. Like, I feel like I understand what the direction would be if that's what

you're looking for. As long as committee members are comfortable, either way, "significant" or "leading," you're not looking for a survey of all of the reported cases; you're looking for the ones that set precedent or are clearly established and cited commonly in Canadian jurisdictions.

The Chair: Okay.

Moved by Mr. Loewen that

the motion be amended by adding "significant" after "briefing on."

The new motion would read that the Standing Committee on Resource Stewardship direct research services to provide a briefing on significant Canadian Supreme Court cases and Court of Appeal cases over the past five years that are related to whistle-blower legislation.

On the amendment is there any further discussion?

Seeing none, all those in favour of the amendment, please say aye. Any opposed?

That amendment is carried.

We will move on to the main motion as amended.

Moved by Mr. Feehan that

the Standing Committee on Resource stewardship direct research services to provide a briefing on significant Canadian Supreme Court cases and Court of Appeal cases over the past five years that are related to whistle-blower legislation.

Any further discussion on the motion?

Seeing none, I'll call the question. All those in favour of the motion by Mr. Feehan, please say aye. Any opposed?

That motion is carried.

That was in other business. Is there any other business that we need to bring forward?

Seeing none, the date of the next meeting will be at the call of the chair, probably during the second week of September after Labour Day. The committee clerk will poll members on a couple of different options as we get to that point.

If there's nothing else for the committee's consideration, I'll call for a motion to adjourn.

Member Ceci: Moved.

The Chair: Moved by Mr. Ceci that the meeting be adjourned. All those in favour, please say aye.

Thank you very much, everyone, for your time.

[The committee adjourned at 7:01 p.m.]

