Legislative Assembly of Alberta

The 30th Legislature
Second Session

Standing Committee
on
Resource Stewardship

Public Interest Disclosure (Whistleblower Protection) Act Review

Monday, October 26, 2020
9 a.m.

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Second Session

Standing Committee on Resource Stewardship

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9 a.m. Monday, October 26, 2020

[Mr. Hanson in the chair]

The Chair: All right. Ladies and gentlemen, good morning. 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 the chief medical officer of health regarding physical distancing, attendees at this morning's meeting are advised to leave the appropriate distance between themselves and other meeting participants. As well, I would remind everyone that aside from those who have an exemption, those observing the proceedings of the Assembly or its committees are required to wear face coverings.

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 via Skype. We'll begin to my right.

Member Ceci: Thank you. Hi. Joe Ceci, Calgary-Buffalo, MLA and vice-chair.

Mr. Yaseen: Muhammad Yaseen, Calgary-North.

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

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

Ms Fir: Tanya Fir, MLA, Calgary-Peigan.

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

Mr. Rehn: Pat Rehn, MLA, Lesser Slave Lake.

Mr. Sabir: Irfan Sabir, MLA for Calgary-McCall and replacing Kathleen Ganley, MLA for Calgary-Mountain View.

Mr. Dach: Good morning. Lorne Dach, MLA for Edmonton-McClung.

Mr. Feehan: Good morning. Richard Feehan, MLA, Edmonton-Rutherford.

Ms Sorensen: Good morning. Rhonda Sorensen, manager of corporate communications with the LAO.

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

Ms Rempel: Good morning. Jody Rempel, committee clerk.

The Chair: Do we have any members joining via Skype?

Mr. Getson: Yeah. This is Shane Getson, MLA, Lac Ste. Anne-Parkland.

The Chair: Any others? Thank you.

For the record I will note the following substitution: Mr. Sabir standing in for Ms Ganley.

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 meetings can be accessed via the Legislative Assembly website.

Are there any changes or additions to the draft agenda? If not, would somebody make a motion to approve the agenda? Mr. Ceci makes a motion. All those in favour? Thank you. I guess we have to do this properly, don't we? Sorry. Moved by Mr. Ceci that the agenda for the October 26, 2020, meeting of the Standing Committee on Resource Stewardship be adopted as distributed. All in favour? Any opposed? Thank you. That motion is carried. We'll get to it. It's early Monday morning.

Approval of minutes. Next we have the draft minutes of our last meeting. Are there any errors or omissions to note? If not, would a member like to make a motion to approve the minutes? Mr. Ceci again. Moved by Mr. Ceci that the minutes of the July 7, 2020, meeting of the Standing Committee on Resource Stewardship be approved as distributed. All in favour? Any opposed? Thank you. That motion is also carried.

We are under the review of the Public Interest Disclosure (Whistleblower Protection) Act. Office of the Public Interest Commissioner technical briefing is where we're at right now. Turning now to the committee's review of the Public Interest Disclosure (Whistleblower Protection) Act, I would ask the officials from the office of the Public Interest Commissioner to join us at the table. Committee members will recall that at our last meeting we agreed to invite officials from the office of the Public Interest Commissioner to provide a technical briefing on the act.

Ms Ryan, thank you to you and your colleagues for joining us today. You have up to 30 minutes for your presentation. Please begin by introducing your colleagues and then proceed when you are ready.

Ms Ryan: Good morning, and thank you for the opportunity to meet with us here this morning. I am Marianne Ryan, and I am the Public Interest Commissioner and the Ombudsman for the province of Alberta. Today I have with me our Deputy Public Interest Commissioner and Deputy Ombudsman, Peter Sherstan. We have also seated behind us our general counsel, Rodney Fong, and our manager of our public interest disclosure team, Chris Ewaniuk.

For ease of reference we have prepared some PowerPoint slides. To begin, I'd like to give you some general information about our office. As I just noted, I am both the Ombudsman and the Public Interest Commissioner. These are two separate and independent offices of the Legislature. Our operational work is completely separate, but we share the services of our administration, our finance, our information technology and communications in an area that we call corporate services. On this next slide I have highlighted the area in the red box which shows the areas of shared services along with our public interest, or PIC, team. I'd also like to point out that our PIC team has five full-time positions, and all of these positions are located in Edmonton.

I'd now like to turn to the Public Interest Disclosure (Whistleblower Protection) Act, which is more commonly referred to as the whistle-blower protection act. This legislation came into effect seven years ago, in 2013, and it was also amended on March 1, 2018. The term "whistle-blower" is not defined in the act. The term is only used once, and that is in the title of the act. However, I think it's fair to say that given the fact that the term has been used much more frequently in some high-profile cases in the media, most people have a general understanding of the term. For our purposes today a common definition of whistle-blowing is the disclosure by employees, former or current, of wrongdoing which they believe may be unlawful, dangerous to the public, or injurious to the public interest.

The whistle-blower protection act gives employees a clear process for voicing concerns about serious and significant wrongdoing and provides a legislative process for reporting and investigating wrongdoing. Protection from reprisal includes confidentiality,

anonymity, and the legal ability to disclose confidential and private information. The purpose of the whistle-blower protection act is to create a safe avenue for public servants in Alberta to speak out about wrongdoings or make complaints of reprisal. Our job is to ensure that thorough investigations are conducted if public-sector employees disclose wrongdoing or complaints of reprisal. Our larger aim is to promote a culture within the public sector that encourages employees and management to report wrongdoings in their workplace.

I will be explaining in greater detail what is meant by a wrongdoing or a reprisal, but first it is important to understand what is within our jurisdiction and to whom the whistle-blower act applies. The applicable entities and offices are set out in the act, but broadly speaking, the act applies to the public sector and includes Alberta government departments; offices of the Legislature; provincial agencies, boards, and commissions; school boards; accredited private schools that receive public funding; postsecondary academic institutions; public-sector health authorities, including Alberta Health Services; MLAs and their offices; ministers and their offices; the Premier and the Premier's office; and prescribed service providers.

So what are prescribed service providers? They are essentially entities that have contracted with the government to provide services and could include entities who receive grant funding under an agreement. This allows for employees working for contracted or grant-funded government entities to safely make disclosures under the act. It should be noted that while prescribed service providers were added to the act in 2018, the regulation defining exactly what constitutes a prescribed service provider has not been created. This is an area where we will have recommendations on how prescribed service providers may be defined in the regulation.

9:10

The next area I'd like to speak to deals with disclosures. The definition of a disclosure as provided in the act means "a disclosure of wrongdoing made in good faith by an employee," but in plain language it means making a report or a complaint when you believe something significantly wrong is or was happening. Once again, I want to note that the act only protects people who make disclosures and are current employees of a department, public entity, government-related office, or a prescribed service provider. The exception to this relates to claims of reprisals. Past employees who suffered a reprisal and were terminated as a result may also make a complaint of a wrongdoing under the act. The ability of former employees to make disclosures and be afforded the protection of the act will be the subject of another recommendation.

The act specifies a few things. Disclosures must be in writing and may be made within the organization to the chief or designated officer and/or they may be made directly to myself as the Public Interest Commissioner. The act requires all jurisdictional entities to have a disclosure process in place. In order to assist entities in accomplishing this, we have created and made available various templates. This next slide is an example of a template. The form on this slide could be used by a school division, for example, and is basically a checkbox and fill-in-the-blank form which covers all of the requirements for a disclosure under the act. A very similar form can also be found on our website should an employee wish to make a disclosure directly to our office.

It's important to point out that we can also accept anonymous complaints or complaints from nonemployees. We may investigate them or refer them to the appropriate authority. As you can imagine, anonymous complaints can be difficult since there is no person to follow up with and there are often insufficient details and information gaps. That is not to say that anonymous complaints cannot be successfully investigated.

My office recently investigated an anonymous complaint. The disclosure involved a public entity which, if substantiated, fell under the category of being a serious and significant matter, that I referred to earlier. In this case the details of the allegation were quite specific in that it named potential witnesses and identified a particular individual. However, mindful of the potential to create serious reputational harm to both the entity and the individual, I approached the CEO directly with a plan to handle the investigation as discreetly as possible until the facts could be determined. A false or vexatious claim may cause as much damage to reputation as one that is substantiated. In this case, an expeditious investigation was conducted with the full co-operation of the CEO, and the allegation was found to be unsubstantiated. The matter was discreetly concluded.

One last comment on anonymity: while employees may identify themselves to us when making a disclosure, we are obliged to do our best to ensure that no one else knows they are a whistle-blower. This was the case with the person who first made the disclosure of wrongdoings at the Alberta Energy Regulator. That investigation was reported publicly last year and was extensive. You will likely recall that the Ethics Commissioner and the Auditor General also conducted investigations. To this day, I am pleased to say that we have been able to keep the identity of the individual who made the disclosure to our office confidential.

At this point I'd also like to add that our work is not subject to the Freedom of Information and Protection of Privacy Act. All PIC employees swear an oath of confidentiality, inclusive of all of our information technology. Public-sector entities often ask for specific details of information provided to us by the complainant. Conversely, the whistle-blower may seek to see the authority's specific response. Parties are not entitled to full disclosure for many reasons. For example, full disclosure of what was told to us by a whistle-blower may jeopardize their anonymity. We examine all requests on a case-by-case basis and only provide what is necessary to ensure our investigations are procedurally fair and conducted in accordance with the principles of natural justice.

The act also protects my office and those officials in the public-sector organizations responsible for carrying out the requirements under the legislation from prosecution or civil action in respect of anything done or omitted in the exercise of the powers within the act. It also protects anyone who complies with the requirements of the act. The act also protects our office in that our investigations cannot be reviewed, with the exception of a question of jurisdiction.

So who are those officials in the public sector responsible for ensuring that the legislative requirements under the act are met within their organizations? Under the act these officials are called chief officers, and they include the deputy minister in the case of government departments, the department head in the case of an office of the Legislature, or the prescribed individual in the case of public entities. Chief officers for public entities are further defined in the regulation and include, for example, superintendents of public or separate school boards; presidents of a designated university, public college, or technical institute; and chief executive officers of public entities.

Under the whistle-blower act chief officers of all public entities are responsible for the administration of the act within their own organization. This includes developing internal procedures for receiving and investigating disclosures from employees. A clear process for receiving and investigating disclosures is necessary in order to ensure that employees can bring forward any complaints of wrongdoing internally, at least in the first instance.

The act allows the chief officer to appoint a designated officer, who is responsible for receiving and investigating allegations of wrongdoing made by employees. The designated officer should be

a senior official within the entity. The term "senior official" is not defined in the act and can include anyone who could fulfill the role. Examples of senior officials who serve as the designated officers include individuals who are also the general counsel of a public entity, the ethics and compliance officer, or a human resource executive. If a designated officer is not appointed, the responsibility for administering the act within the organization remains with the chief officer.

The chief officer is also responsible for ensuring that information about the act and procedures for reporting wrongdoing are widely communicated to employees in their organization. Chief officers are also obliged to prepare an annual report detailing the number of disclosures received and investigated. The outcome of investigations, whether by a designated officer or by my office, are ultimately reported to the chief officer. As a result, chief officers are accountable for implementing corrective measures when wrongdoing is found. In doing so, they promote public confidence in the administration of their organization. From a greater perspective, chief officers as heads of their organization set the cultural tone. Chief officers are responsible for fostering an environment where employees are encouraged to come forward to report wrongdoing without fear of reprisal.

The act does not state that an employee must disclose a wrongdoing to the designated officer. Whistle-blowers may make disclosures directly to my office without having to go to the chief or designated officer first. Having said this, we believe that the act is written such that, if possible, disclosures of wrongdoing should be reported internally first. Consequently, when we get calls from employees who have questions about the act, we assess their concerns and, if appropriate, refer them to the designated officer within their organization.

Now I'd like to address what is meant by wrongdoing as described under the act and provide you with some examples of disclosures of wrongdoing that we have received and investigated, but, first, it's important to note that there's a difference between something that's a wrongdoing and something that is simply wrong. Wrongdoing is specifically defined in the act and is broken up into three categories: gross mismanagement, breach of legislation, and circumstances where there may be imminent risk to health and safety.

9:20

When dealing with disclosures regarding mismanagement, the alleged conduct must be a very marked departure from the challenges of daily management. Matters such as minor policy violations, verbal abuse, unfair decisions, or poor decision-making do not constitute gross mismanagement under the act. For example, if we consider a case of bullying or harassment, which is certainly undesirable behaviour, 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 wrongdoing, especially if it becomes systemic and affects the culture of an organization.

Breach of legislation includes the contravention of an act or regulation, either federal or provincial. In the example I gave earlier with respect to an anonymous disclosure of a serious and significant matter, the allegation, if substantiated, would have constituted an offence under the Criminal Code. If during the course of investigation I or, where the investigation is being conducted internally, the chief or a designated officer reasonably believe that an offence has been committed under any act or regulation, I must, as soon as reasonably practical, report the matter to a law enforcement agency and to the Minister of Justice and Solicitor General. If the matter is one involving imminent risk to individuals or the environment, we must direct the matter to the appropriate law enforcement or the chief medical officer of health or to the public entity responsible for the area.

For example, our office received a disclosure in late March of this year that a postsecondary institution was contravening a public health order. The institution had opened its gym facilities to staff and students, and recreational activities were taking place. This appeared to be contrary to the public health order issued by the chief medical officer of health. We contacted the chief officer of the postsecondary institution and informed him of the complaint we had received. Further, I notified the chief medical officer as the alleged contravention may have constituted an imminent health risk, given the current public health emergency. The chief officer responded and quickly took steps to ensure compliance with the public health orders. This case serves as a good example of how, when it is appropriate, we can resolve serious and significant matters that could constitute a wrongdoing expeditiously through a collaborative resolution process.

In another case a disclosure of wrongdoing was received alleging gross mismanagement of employees under the leadership of a senior official. In order to determine if the matter met the jurisdictional requirements as intended in the act, inquiries and interviews were conducted with employees and witnesses in the organization under the management of this senior official. Through the interviews instances of unprofessional conduct were reported, and witnesses shared examples where the individual named in the complaint had demonstrated behaviours indicative of bullying, harassment, and intimidation, resulting in a problem in the culture of the organization. Following the conclusion of the initial enquiries, the individual named in the allegation of wrongdoing elected to resign from the organization. Since the individual was the source of the bullying behaviour, it was not necessary for us to open a full investigation as no further corrective measures were required. This case is another example of how we were able to resolve a serious issue without the necessity of a formal investigation.

A case that I'm sure many of you are familiar with considered wrongdoing at the Alberta Energy Regulator, which is commonly referred to as the AER. In October of last year, after an extensive investigation, I released a public report outlining significant and serious wrongdoing being committed at the AER. Our office received a whistle-blower complaint from a public-sector employee with concerns about the International Centre of Regulatory Excellence, or ICORE, a side project established within the AER by the then president and CEO of AER. The allegations included the improper use of public funds and AER human resources to establish and operate ICORE. This alarmed AER staff, who saw it as a diversion from AER's true mandate.

As a result of our investigation, I found that the president and CEO of AER at the time demonstrated a reckless and wilful disregard for the proper management of public funds, public assets, and the delivery of a public service. In my report I provided the AER with a series of recommendations that outlined how the agency was to take corrective measures and protect itself and its staff against further wrongdoing.

There is one further element to this section setting out what can compromise a wrongdoing, and that is the counselling of an individual to commit a wrongdoing. This can occur where there is an allegation of reprisal. A reprisal includes a dismissal, a layoff, a suspension, a demotion, a transfer, the discontinuation or elimination of jobs, change of job locations, or reduced wages. Basically, it is any measure taken by an employer against an employee which may adversely affect the employee.

The act states that no one can take a reprisal against an employee who has made a disclosure, sought advice about a disclosure, or co-

operated in an investigation. Employees who wish to make a claim of reprisal can do so directly to my office. These matters are investigated in the exact same fashion as other disclosures of wrongdoing. If I find that a reprisal has been taken, directed, or counselled against an employee or a former employee, I must refer my decision and the reasons for my decision to the Labour Relations Board for a determination as to the appropriate remedy.

The possibility of a reprisal arose in the AER case. Our investigation revealed that once the disclosure to my office had been made, there was a concerted effort by senior officials in the AER to try and identify the whistle-blower. Although these efforts were ultimately unsuccessful, it was very concerning to me that reprisals were planned against individuals suspected of being the whistle-blower.

Once a disclosure has been made, there are some strict timelines within the regulation. Acknowledgement of the receipt of a disclosure of wrongdoing or a complaint of reprisal must be completed within five business days, the determination on whether or not to investigate needs to be done within 20 business days of the receipt of the disclosure, and an investigation must be concluded within a total of 120 business days. A chief officer may extend the timeline for an investigation by up to 30 days, but further time extensions require my approval. Time extensions regarding investigations conducted by investigators in my office are subject to my approval.

So what if no wrongdoing is found? The case is simply concluded, the identity of the disclosing employee remains confidential, and the employee remains protected under the legislation. Even when no wrongdoing is found, I as the commissioner may report on observations regarding issues which arose during the course of an investigation.

An example of this occurred in a case where a whistle-blower alleged gross mismanagement and a possible reprisal in a government-related agency. While my investigation found no wrongdoing, it did uncover a significant problem that warranted action. It was this agency's practice to have terminated employees sign a release and waiver. The receipt of their severance depended on the release being signed. The problem was that the wording of the release forced the employee to disclose whether they had ever made a whistle-blower complaint.

9:30

A fundamental principle of the whistle-blower act is that disclosures may be made anonymously and that anonymity will be protected. Forcing someone to identify themselves as a whistle-blower, even at the end of their employment, is contrary to the principles of the act. After much discussion the agency agreed to remove references to the whistle-blower act from the releasing waiver, thereby ensuring anonymity even after employment has ended.

After an investigation is completed, I must prepare a written report with my findings and the reasons for the findings. I must also provide any recommendations I consider appropriate. I can compel the affected entity to report back with what action they followed or proposed to follow. Further, I must provide a copy of the report to the chief officer, and I must also notify the discloser.

In the event that the chief officer is the subject of the complaint, the report goes to Executive Council, in the case of a department, or the minister responsible for the public entity involved. This was the situation with the investigation at the AER where the president and CEO was also the chief officer. In that case I provided my report to both the Minister of Environment and Parks and the Minister of Energy.

Just a few other points I'd like to cover off before concluding my presentation here today. Committing an offence under the act or not co-operating with an investigation under the act is not without consequence. Offence sections in the act include penalties for committing a reprisal against someone. A fine of up to $25,000 for the first offence and up to $100,000 for every subsequent offence may be assessed.

Further, I should point out that there are sections in the act which prohibit people from withholding information or making false statements, prohibit obstruction in respect of investigations, and prohibit the destruction, falsifying, or concealing of any document or thing. During an investigation I'm authorized to require any person to provide oral or written responses to questions, to produce any records, or to provide any other information. This includes personal information, including health information or financial information. I may inspect, examine, make copies of, or temporarily move records, provided I leave receipts or provide copies, and I must return them when we're finished with them.

The act also authorizes me to decline to investigate under certain circumstances. For example, these include where the subject matter of the disclosure could more appropriately be dealt with under another act or authority, a collective agreement, or for any other valid reason. I may also decline to investigate something that's more than two years old. When I do decline to investigate or discontinue, I must provide a written reason and the reasons for my decision. I should also note that if during the course of an investigation other wrongdoings are uncovered, my office may investigate those wrongdoings.

I will add that our office also seeks opportunities to provide presentations and awareness to employees across our various jurisdictions, and we encourage those authorities to work both with us and independent of us to ensure that employees are made and kept aware of their rights and obligations under the act.

Before I finish, I'll point out that we have included for your information a slide which shows the number of cases in the various public sectors we have received since 2014. In addition, we have included the number of cases involving disclosures of wrongdoing as well as complaints of reprisal for the last three-year period or since the most recent amendments to the act came into effect.

That completes my technical briefing, and we are available for any questions you have.

The Chair: Thank you very much for the briefing.

We're now open to questions from the floor. Mr. Dach.

Mr. Dach: Thank you, Chair. Just a couple of quick questions, Madame Ryan. I noted in your presentation that at least two items were going to become the subject of recommendations that you plan to make at some future point, I believe. One of them was that the prescribed service providers were not defined in the regulations and also, regarding disclosure definition, that the ability of former employees to file a complaint about a reprisal was also going to become a recommendation of yours. I'm wondering at what point you will be making those recommendations, through what process and what avenue. Also, would you further recommend that the term "whistle-blower" actually be defined in the act?

Ms Ryan: Thank you for the question. It's my understanding that this is the start of a process that will involve consultation with stakeholders, and as part of that consultation as a stakeholder I will have the opportunity and my office will have the opportunity to make specific recommendations to the act.

But with respect to the prescribed service provider definition: yes, that is an area that we would like to have clarity established.

Although it's in the act, it was never set out in the regulations what exactly those prescribed service providers are. It would include consideration of things, entities such as long-term health care, child care services. Any, you know, entity, particularly that receives government funding and involves the vulnerable sector: we would be interested in having that as part of the definition. Where government funds are provided, we feel that the citizens of Alberta should expect some accountability for the funding of those government funds, so we will be very interested and keen to provide recommendations and have a discussion as a stakeholder about the prescribed service provider.

With respect to disclosures of former employees, that is also an area that we're interested in. Right now the people that are protected against reprisal are only current employees, and we would like to see that extended. That will be a recommendation that we are making.

As far as the term "whistle-blower," that's a good question, whether that should be defined, possibly. I think it was just, in my opinion, obvious to everyone involved what the definition is; however, I found it strange that it was not defined in the act. It would be something worth considering.

Mr. Dach: One follow-up if I may.

The Chair: A quick follow-up? Yeah.

Mr. Dach: Would it also be a recommendation of yours in future presentations to this committee during this process to determine, I guess, whether or not a resignation of an employer or an individual under investigation for wrongdoing would end a prosecution or investigation. I think the public might find it kind of curious that a person would kind of get a get-out-of-jail-free card by simply resigning. Would there not be some benefit in continuing the investigation and prosecution in certain circumstances that should be defined under the act? There may be more sanctions available other than simply those found in the workplace. There could be criminal prosecutions involved as well. I'm wondering if the public would be satisfied by allowing an individual simply to resign and thereby avoid further prosecution.

Ms Ryan: A very good question. I will say that we have to stay within our jurisdiction, and right now our current legislation states that it is serving senior officials that we can investigate. With respect to whether investigations look like they may be criminal in nature, that would not – a resignation, I don't believe, would prevent me from making a referral to Justice and Solicitor General or a law enforcement agency at any point; I feel that I would have that authority or that obligation and responsibility to make that recommendation.

With respect to the example that I referred to where the individual resigned, we still worked with the entity to make recommendations to prevent, you know, future situations like that happening. We balanced the confidentiality and the need to continue the investigation carefully. The individuals involved preferred that the matter be handled quietly and confidentially, and they were very satisfied. I was satisfied that the matter had been addressed with the resignation and that, really, no further action was required other than to work with the human resources department to ensure that those types of things don't happen again. Beyond that, I think we're really expanding the area of our jurisdiction, and that would require a lot of discussion.

9:40

Mr. Dach: Thank you very much. I look forward to your continued presentation.

The Chair: Thank you very much.

Mr. Getson: Mr. Chair?

The Chair: Yeah. I've got a bit of a list going here, so I'll go with Mr. Singh, then Mr. Feehan, then you, Mr. Getson. Okay?

Mr. Getson: Thank you, sir.

Mr. Singh: Thank you, Mr. Chair, and thank you as well to the Public Interest Commissioner for the presentation. I appreciate you for taking time to come here today. My question is: how does whistle-blower protection work in sectors like municipalities, hospitals – that covers nurses and doctors – and in the education system?

Ms Ryan: The first entity was – I've got hospitals, education, and . . .

Mr. Singh: Municipalities.

Ms Ryan: Municipalities. I will speak to municipalities first. We do not have jurisdiction to cover municipalities. It is my view that the large municipalities have very extensive and robust protections in place and procedures in place for people to report wrongdoings, however they refer to complaints in municipalities. I think it would be very difficult to extend it to all municipalities, and, again, that would be subject of an extensive discussion.

With respect to hospitals and education, we're talking not so much about the entity but about the employees. If they are part of the public service, if they report to an entity that does fall under – like education, for example, many of the educational institutions do fall under our jurisdiction. For example, in the example that I referred to which involved a disclosure of a postsecondary institution opening up its gym – this was just when the pandemic had really hit Alberta in March – someone within that institution, that public-sector institution, made the complaint to us. So we deal with people in education – and health, for example, is a big one. Again, it is the public service employees who report to us.

Mr. Singh: Thanks for answering.

The Chair: Okay. Thank you very much.
Mr. Feehan.

Mr. Feehan: Thank you. Thank you, Ms Ryan. My questions are a little bit of an extension of the last two that were just asked. I'll go back to the first one that Mr. Dach just asked, and that is about people leaving and then ending – I'm wondering if that even applies when it's a minister. If there was a ministerial shuffle, would that actually end an inquiry?

Ms Ryan: It would be my understanding – and I may draw on my general counsel here. We had a situation involving investigations of Members of the Legislative Assembly. Our investigation started, but those MLAs during the course of the investigation became MLAs no longer, so our investigation ceased. As long as you are a serving member, a minister, part of the Premier's office, wherever you move, I think our authority would still remain to have jurisdictional oversight.

Mr. Feehan: So if an election were held, you're off, but if it's just a ministerial shuffle, you're still in.

Ms Ryan: I believe so. Yes. I'm getting the nod that that would be correct, and that would be my understanding as well.

Mr. Feehan: Okay. Great. Thanks.

Just sort of an extension of Mr. Singh's question, and that is, you talked about municipalities and how it would be difficult to go to all of them. I guess I can appreciate that although I'm wondering if something could be done. I notice in Quebec, they also have other agencies such as Loto-Québec or Hydro-Québec that are involved. We don't seem to have all of those kind of – I don't know if we consider them Crown agencies or not – involved. Do you have some thoughts about the involvement of those kinds of agencies?

Ms Ryan: I think our jurisdiction is quite broad. However, with respect to municipalities – and there's even some discussion in our own office whether we should pursue this. I would be very interested to meet with the Minister of Municipal Affairs or the ministry to discuss that because there may be an opportunity where if there was a situation in a small municipality that required some independent investigation that couldn't be resolved through normal code of conduct policies or normal human resource practices, that may be something that we could assist with. But I'm cognizant of the fact that a lot of the large, mid-sized municipalities have already processes in place, so I don't want to be seen to be another layer on top of that.

I'm also concerned about very small municipalities sort of – you know, there might be a dispute between council members, for example, in a small municipality, and then they would be coming to us to help resolve that. As you can appreciate, there are over 350 municipalities, and that could be quite burdensome and take us away unless we significantly augmented our staff.

However, to answer your question, I do feel that there may be room to assist by being appointed, perhaps, by the ministry to an area where there is significant conflict or, you know, something that does meet our jurisdiction in terms of gross mismanagement like harassment, bullying, intimidation that's systemic that we could assist with.

Mr. Feehan: If we were to write in something about the minister having discretion to bring you in in a situation as opposed to making it already part of your mandate across the board for all municipalities.

Ms Ryan: Yes. I think that would perhaps be the best possible balance.

Mr. Feehan: Thank you.

One final question if that's okay.

The Chair: Go ahead, sir.

Mr. Feehan: You just mentioned bullying here as an issue, and I notice in our notes that our act doesn't necessarily explicitly cover bullying when it comes to reprisals for people who have made disclosures. It says that you can't fire them, but I'm just wondering about the culture of intimidation that may occur subsequent to a disclosure. Do you feel like the act appropriately covers that, gives you the range that you need to protect people after they've made a disclosure?

Ms Ryan: Yes, I do. We take that, obviously, very, very seriously, and we're very mindful that even when a disclosure is made, we're watching for any potential attempts of reprisal, especially in the areas of bullying, harassment, intimidation because, you know, it gets to be quite nasty, and people are looking to blame others. As I mentioned, in the investigation with the AER file, although it didn't involve bullying, harassment, intimidation, the intense efforts to try to find those people who made the disclosure or the person who made the disclosure were quite significant. Right now the act doesn't speak to attempts to identify whistle-blowers, and I feel that that should be also addressed.

Mr. Feehan: That's a piece that could actually be changed in the act, the attempts to try to find whistle-blowers.

Ms Ryan: Exactly.

Mr. Feehan: Thank you very much. I appreciate your time.

Ms Ryan: And take reprisals against them.

Mr. Feehan: Right. Yes. Of course.

The Chair: Thank you, Mr. Feehan.

We'll move on to Mr. Getson on the line. Go ahead, Mr. Getson.

Mr. Getson: Yeah. Can everyone hear me okay?

The Chair: You bet. Go ahead, sir.

Mr. Getson: Well, thank you very much to the presenter for bringing more light to this act. I guess one of the things that comes off the page at me is that it comes down to that culture that you'd mentioned. A couple of indicators to me on the culture would be: how often is the act used per year? Are there any particular agencies that have high reporting? Are there any that don't report? Again, I guess part of that prior light comes down to safety culture and behaviour. When you're trying to bring a positive culture about, sometimes you can drive reporting underground, where it doesn't happen, or then, you know, you have some that are overreporting as well. Just a general sense of how the act is working, the number of cases per year, where the high spots are, where the low spots are, and if there are any challenges that you see in the culture of reporting when wrongdoings take place.

9:50

Ms Ryan: I provided a statistic slide that breaks down the various sectors over the past five years. Obviously, just given the number of public service employees, government ministries is one of the highest areas, but a specific ministry: no. I don't believe there's a specific ministry that we could point to that would have more disclosures of wrongdoing.

With respect to the culture one thing that our office works very hard on in terms of a proactive perspective is that we try to meet with the various sectors, the chief officers, designated officers and just, you know, help them to, first of all, try to manage disclosures within their entity if at all possible. We feel that the best way for the organization to come on board is if we can refer it back to them and watch it and make sure that any wrongdoings that are reported to them are dealt with appropriately.

We also do a significant number of presentation and awareness sessions, both to the chief officers and designated officers but also to public-sector employees where we can to make them aware of the act and make sure that they seek out who those officials are in their own organization, that should they see a wrongdoing, they understand how that process works, that it is a safe process if they report in their organization and also to my office.

You know, I think the culture – it's probably stating the obvious – is determined by the top, and if the chief officer sets the tone of one which welcomes disclosures to improve how the organization operates, I think that is the goal.

Mr. Getson: Just a follow-up if I can with that, Chair.

The Chair: Go ahead, sir.

Mr. Getson: Yeah. I guess with the culture in establishing it, too – again, not having been through one of your orientations, so to speak, on that. The delineation between a wrong and a wrongdoing: is there a certain percentage of wrongs before it becomes a wrongdoing? In your sense, does the public sector have a good understanding of what the difference is between a wrong and a wrongdoing?

Ms Ryan: Well, it's difficult to assess if the public sector has a good appreciation. I will tell you that we receive a lot of phone calls and enquiries, and we are very open to having that discussion where someone sees something and they're just not sure what to do about it. We try to, you know, obviously, ascertain as much information as we can and make that assessment, but really it is something that is acquired, I guess, through the experience of our investigators what really crosses the threshold.

You can usually tell by the nature of the call if it's, first of all, worth us pursuing. You know, at the end of the investigation we may quite often determine that it doesn't meet that threshold of wrongdoing. However, we may still go back to the organization and say: "This was what was reported. We do not have any findings of wrongdoing; however, we have observed this, and we strongly suggest that you consider making changes to this policy." Areas like procurement, those types of things. IT is another one. Management of IT and the security around IT have also become very prevalent, and a lot of concerns are raised around that. Those are things that we can work with the public entity.

Our act also speaks to, you know, that it's our goal to work as informally as possible unless there's a serious or significant wrongdoing that involves a senior official or involves someone that really needs to be addressed.

Mr. Getson: Okay. Thank you.

The Chair: Any further questions there, sir, while you're on the phone?

Mr. Getson: No. I'm good from this end. Really appreciate the candour of that.

The Chair: Very good. Thank you, sir.

We'll move on to Mr. Ceci.

Member Ceci: Thank you, Chair Hanson. Commissioner Ryan, thank you very much for the presentation. I enjoyed the sprinkling of examples throughout your presentation. That was helpful for me. I'm looking at the same slide, the statistics slide, and I see the breakdown by sector is there. You know, from the examples you shared – agencies, boards, and commissions, AER was in that, the postsecondary institutions, the gym use was in that. But when I look at the dozens and dozens of complaints that have been investigated or in the course of investigation throughout the '19-20 year, I'm just wondering – it would help me out if you could characterize the types of complaints that come from those different sectors if that is possible.

Ms Ryan: Yes. As I mentioned, some of them – you know, maybe I should preface this. It seems recently, in the last year or so, that while we haven't got more of a volume of disclosures, it seems to me that the seriousness and the severity have increased. I go back to the AER investigation, for example.

Also, with the COVID-19 pandemic we are receiving several complaints about health, and people are concerned. Obviously, we want to work with the chief medical officer of health and make sure that, you know, she's aware of it.

Other examples would be – as I mentioned, procurement is one that we feel that the policies really need to be enforced and audited so that the public knows that, you know, things are sourced properly and fairly, that there isn't sole-sourcing in all instances. Again, I think that's what's expected.

Another interesting one that we have received and we have also worked very successfully with the entity was what I mentioned around IT and the information management. There were some concerns about a particular public entity and how they were managing information, personal information, and whether there were robust safeguards in place for the management of that information. I have to say and commend the entity involved because – it was a real good wake-up call, I think – they put all hands on deck and, in my opinion, took us seriously and took the complaint seriously and addressed the matter quite well.

You know, to say that there is a specific type of complaint more prevalent than others, it's difficult to say. It's quite a range.

Member Ceci: Yeah. I certainly gather that everybody's situations are somewhat different.

Thank you, Mr. Chair.

The Chair: You're finished, sir?

Okay, we'll move on to Mr. Smith, followed by MLA Fir.

Mr. Smith: Thank you, and thank you for your presentation today. I guess I'm not sure if – I mean, this is always going to be difficult. In your opinion – I mean, we've talked a lot about wrongdoing versus wrong, and it's always going to be difficult, I think, to come down with both an education piece for the employees as well as giving you direction as to how you can move forward. In the act I think you said that it was "a substantial and specific danger to the life, health or safety of individuals" or the environment. Do you think that definition is specific enough for you to be able to do your job and for people to be able to clearly understand the difference between a wrong and a wrongdoing? If it isn't, do you have recommendations for us to consider?

Ms Ryan: I guess it comes through experience, you know, what the threshold is, but, as I mentioned, we will take inquiries from anyone if they're unsure whether this is a wrong or a wrongdoing. We will work with them, or we will work with the designated officer, chief officer. We really want to work collaboratively to get the matter addressed the best way that we know how.

10:00

Education is helpful. Examples are helpful. As we progress in our office and acquire more cases, we give examples in our education and awareness sessions to the various entities that are in our jurisdiction. But, I guess, if it's something that we feel could be managed by internal human resource policies – for example, if it is an example that I referred to, bullying and harassment, it's only when it becomes systemic. In the example that I referred to where the individual resigned, it was pretty much through the whole office. Multiple employees were impacted and affected and made the same confirmation of information as the initial whistle-blower. But if it's a situation where an employee feels that their boss is bullying them, they can go, they should go to their human resource office first and see if it can be dealt with properly that way.

It is difficult to sort of say, you know: "This is the cut-off. It doesn't meet the criteria." It's case by case. I'm sorry I can't be more specific about that.

Mr. Smith: I think you realize that I sort of was leading up to that. It's always going to be individual, and it's always going to be difficult. I guess for the committee – I'm sorry, Chair. I can follow

up. Should we consider – and you have used the word "systemic" now several times in our conversation.

Ms Ryan: Yes.

Mr. Smith: Should we be adding that in to the definition of wrongdoing?

Ms Ryan: I believe it is. Is it? Yeah, it is in the definition. It was an addition, if I could add, as part of the last set of amendments to wrongdoing. It is part of the definition. It is under section 3(1)(c)(iii). It says, if I could read: "employees, by a pattern of behaviour or conduct of a systemic nature that indicates a problem in the culture of the organization relating to bullying, harassment or intimidation." I think that was a welcome addition that the committee made at the last go-round of amendments.

Mr. Smith: Thank you very much.

The Chair: Mr. Smith, are you finished?
Go ahead, MLA Fir.

Ms Fir: Thank you. Thank you so much for this presentation. Having spent my career in human resources and having done countless investigations, I find this fascinating, so thank you so much.

When it comes to investigating a reported incident, what information is the commissioner privy to from the entities under investigation, and how much time do these entities have to provide this information to the commissioner during an investigation?

Ms Ryan: Essentially, the act allows my office to obtain and request whatever information we feel is necessary. It's basically unlimited. Anything that we feel will assist the investigation, I will ask for. It could be cellphones. It could be banking information. It could be anything. When it's an affected entity, we generally work with the general counsel for that entity. We reach out to them. We make sure that, you know, they understand what we're coming in for and what we're requesting for the investigation. Sorry; I forget the second part of that question.

Ms Fir: How much time do these entities have?

Ms Ryan: Oh, time. Yeah. That was also an important component. They have 120 days unless they require an extension. I think that's important because, you know, if it has reached our level, it's important that the investigation move along and not be given whatever time they feel is necessary. It holds the entities accountable for completing that investigation in a timely manner. They can ask for an extension, and we have granted extensions, but, again, it has to be reasonable, and they are required under this legislation to meet that timeline.

Ms Fir: One more follow-up?

The Chair: Go ahead.

Ms Fir: What about in situations of noncompliance?

Ms Ryan: Then I can actually look at obstruction, you know, and I can start to work with Justice and Sol Gen about their offences if someone does not surrender what we're looking for, if someone does not meet the timelines. If I feel that someone is wilfully obstructing the investigation, then I can make a request for Justice and Solicitor General to look at charging them and having it as an offence.

Ms Fir: Thank you.

The Chair: Very good.
Mr. Yaseen, you have a question.

Mr. Yaseen: Thank you, Chair, and thank you, Commissioner, for your presentation. Just a couple of questions. First, if the commissioner is sick or absent from their position, is there a staff replacement for the commissioner during that time? And – three questions – what if the complaint is against the designated officer? How is that investigated? Last question: I noted the definition of disclosure, and in that it says, "disclosure of wrongdoing made in good faith by an employee in accordance with [the] Act." That word "employee" wasn't defined, but I noted that earlier on in your presentation you said: employee or former employee. So can you please explain that? Also, is there a time limit to make the complaint?

Thank you.

Ms Ryan: Under the act if I am unable to fulfill my role, the deputy commissioner can be delegated and appointed to take over. That is under the act. I'm just going to look at my counsel. Yes? Correct.

With respect to the second question, a complaint against a designated officer or a chief officer: the complaints can come to me directly. Again, that was an amendment that was made through the last round of amendments, which was a welcome amendment. I'll use the example of the AER. In that case the chief officer and even the designated officer were involved, so the whistle-blower did not feel that they could go to the internal process. So they were able to, under this legislation, make the complaint directly to my office. That is also a provision, that if the complaint involves the designated officer or the chief officer, it can come directly to my office, and it can come directly to my office regardless, for any reason.

With respect to your question about employees and former employees, the act right now protects current employees from reprisal. If you've left the organization and you didn't make a disclosure and now you're making a complaint of reprisal, the act does not protect you if you've already left. It only protects current employees from reprisal and not people who have left, so that is something where we're also interested in making an amendment to the act.

Then with respect to the timelines, as I mentioned earlier, there are specific timelines for an investigation to be completed. I noted in my last few comments that you want to ensure the person making the disclosure or the whistle-blower that this is going to be dealt with as soon as possible. Right now the requirement is to respond within a very brief period of time – I believe it's five days – and then consider an investigation very shortly after that, within 20 days commence an investigation, and then wrap up that investigation, if at all possible, within 120 days. Again, it's to hold those entities, including my own organization, accountable to a swift, as swift as possible, resolution of the matter. That's why the timelines are in place.

Mr. Yaseen: Thank you.

The Chair: Do you have a follow-up?

Mr. Yaseen: Yes.
How long does the whistle-blower have to complain?

10:10

Ms Ryan: Okay. Yes. Under the act I have the discretion not to look at a complaint that's over two years old. That's not to say that I won't, I mean, but I would have the ability to decline to investigate

something that is more than two years old. It would depend, again, on the circumstance. Not to say that I wouldn't, but I do have that ability to decline to investigate something that is more than two years old.

Mr. Yaseen: Thank you.

The Chair: Thank you, sir.
Mr. Loewen, you had a question.

Mr. Loewen: Thank you, Chair, and thank you. I appreciate the presentation that you've provided for us and the answers that you've given us, too. I appreciate that.
What happens to the employee if the investigation turns out to be false or if the commissioner determines that an investigation does not need to proceed any further?

Ms Ryan: If it turns out to be false, nothing happens. We do not disclose the identity, still. You know, I will say that at the onset we're very careful to consider whether a complaint is vexatious or is being made in bad faith. We take a lot of preliminary steps to make sure, before we open an investigation, that this seems legitimate. If it's not vexatious but still no wrongdoing is found, as I noted, we simply conclude the file. Sometimes we might still make an observation, but the identity of the whistle-blower remains confidential, and we leave it at that.

Mr. Loewen: How about ones that are deemed malicious? How do you deal with those ones?

Ms Ryan: Well, again, we would likely decline to investigate, first of all. We still want to be careful. We would not disclose the identity of a whistle-blower. You know, I can't think of any circumstances where we would do that. I mean, we'd caution them. We'd probably have a conversation with them about vexatious complaints, but once we determine that it is vexatious, we would cease the investigation.
In the incident that I mentioned where an anonymous complaint came forward, that was really tricky because on its own we generally would be very cautious to open an investigation based on an anonymous complaint. However, there were so many specifics about this and it was such a significant and serious matter, that could have gone into the realm of even criminal activity, that we felt that we'd better wade in carefully and discreetly, just in the event that there was some truth to it and there was some validity. Again, we worked with the CEOs, the chief officer, who gave us full access to whatever we needed. And in the end we determined it was unsubstantiated.

Mr. Loewen: Thank you.
Just one other question. When I look at the cases per sector, I see you've got government ministries, and you've got education and health sectors isolated from government ministries. Is there any particular reason; maybe because they're high volume? What's the reasoning for having those two separated out?

Mr. Sherstan: In that case the education sector would include things such as postsecondary education, boards of education, school boards, which are separate from the Ministry of Education. So it's just to delineate between those which are actually within the government departments and those which receive funding but operate independently outside, which are overseen, for example, by Education. The same thing applies to health. Alberta Health Services, again, is external to Alberta Health, and although the funding flows from Alberta Health, it is its own entity, and that is why we break them out that way.

Mr. Loewen: Okay. Thank you.
That's good.

Mr. Rehn: I wanted to thank you very much for the informative presentation this morning. What I wanted to inquire about was: what protections do whistle-blowers have once an investigation is in motion?

Ms Ryan: The protections are, obviously, anonymity, but if there are reprisals, for example, if the person who made the disclosure is suspected of being the whistle-blower, and, let's say, they are demoted or they're transferred, you know, they let us know. Then if we feel that that is a bona fide reprisal, that something negative happened to them as a result of them being the whistle-blower, that somehow their identity was disclosed, we will make a report to the Labour Relations Board with our recommendations that this person was, you know, unfairly demoted or fired or downgraded and turn it over to them for their decision. Again, that was another amendment that was made the last round, and we feel that that is the appropriate mechanism to decide what is the appropriate remedy. Maybe it's not that they be rehired; maybe it's compensation, that sort of thing. Other than anonymity, for us, that is the protection.

Mr. Rehn: Do you feel there's anything else we should consider; in other words, changing it and adding anything else for their protection that you can think of?

Mr. Sherstan: Nothing that immediately came to mind in our discussions prior, leading up to this. The protection against reprisal is the key. To date we have not had to take an investigation to the labour board. To date our ability to maintain the confidentiality of the whistle-blower has been sufficient. We haven't thought of anything at this point that we need further than the remedies available through the Labour Relations Board.

Mr. Rehn: Okay. Thank you.

Mr. Sherstan: Thank you.

The Chair: Thank you, Mr. Rehn.
Mr. Smith, you had a further question?

Mr. Smith: Yeah. Thank you again. We've had a lot of conversation about who you can follow up on. I guess that got me thinking: is there anybody that is exempt, or can you exempt persons from looking into whistle-blower issues?

Ms Ryan: It's not so much who we would exempt; it's who does fall under our jurisdiction. You know, the private sector does not fall under our jurisdiction. Again, you would have to be in one of those entities, a public service employee. I don't recall having consideration about exempting anyone. I'll just again look to my counsel. No. I'm getting the nod. There's no one that . . .

Mr. Smith: So as long as they fit into those categories, then there's nobody within those categories that either you have the capacity to exempt or that you should consider exempting.

Ms Ryan: Correct.

The Chair: Mr. Feehan, go ahead, followed by Ms Fir.

Mr. Feehan: Are you satisfied that you are able to address everybody who you'd like to have included? Like, I notice you have agencies, boards, and commissions. Does that include a hundred per cent of them, the AGLC and things like that?

Mr. Sherstan: Well, sir, there is one alignment within the act that we'll be looking for, perhaps in discussion as we present our recommendations. There is some incongruence in postsecondary institutions. The definition of a public corporation varies, different from that of a public agency, and as such we do have some postsecondary institutions which do not fall under the jurisdiction of the commissioner. That'll be one of the things we'll be looking at. It's more housekeeping, a simple change of wording. Again, after the committee's consideration, you might see fit to change the definition to include all public agencies, which would align that.

Mr. Feehan: Can you give me an example of one that does not fit currently?

Mr. Sherstan: I'll turn to Chris for that.

Yeah. Banff Centre, King's, and Concordia, just because of the construction of – they're not public corporations as defined under the act. They are public agencies.

Mr. Feehan: But currently things like the AGLC are appropriately covered?

Mr. Sherstan: Yeah.

Mr. Feehan: Thank you. I appreciate it.

The Chair: Thank you, Mr. Feehan.

Ms Fir: I just wanted to ask a quick follow-up question to MLA Loewen's question about malicious and false complaints. I think I heard you say that if a complaint is found to be outright malicious, you talk to the individual about that. I'm not sure if you've had the situation happen where it's repeated malicious complaints by the same individual. Is there any discipline, beyond just a talk, if there are repeated clearly shown malicious, false complaints targeting someone?

10:20

Ms Ryan: Again, we have to be very careful because our number one goal is to protect the anonymity of the person. I don't recall any investigation where it's been repeated vexatious complaints. Again, we would cease the investigation. We may, you know, strongly encourage the person: don't call us again unless you have something new to report. But, no, again, personally as the commissioner, for the sake of another annoying phone call versus identifying someone, I would not want to identify someone. There are ways that we can strongly encourage the person: "Look, you have other avenues," or "What you're complaining about does not meet our jurisdiction; we can refer you to here or here or here, but we're not going to pursue that investigation at this time." It's difficult.

Ms Fir: I can appreciate that delicate balance in making sure people don't hesitate or fear coming to your office. Thank you.

Thank you.

The Chair: Any further questions from the floor? Mr. Getson? Good to go?

Okay. Well, thank you very much, Ms Ryan, for the very informative hour or a little over. It's been great. If there are no further questions, I'd like to thank the officials from the office of the Public Interest Commissioner for joining us today. Thank you.

Mr. Getson: Mr. Chair, I was just stumbling with my mute button. Sorry about that.

The Chair: That's okay.

All right . . .

Member Ceci: He's got a question.

The Chair: Oh. Do you have a question, sir?

Mr. Getson: Yeah, just one last part here, just so I have some clarity. The motivations for any whistle-blowers coming forward: there's no monetary motivation; there's nothing like that, Commissioner. These are folks that are just typically coming forward because they're concerned about issues and wrongdoing. Is that correct?

Ms Ryan: That's correct. There's no reward or compensation, you know, advertised by our office or encouraged by our office. It's exactly what you've said. They've seen a wrongdoing, and they feel that it needs to be looked at or addressed.

Mr. Getson: Now, just to follow up on that, given that occurrence would you, in your mind or in your own words, say that it's worth while for folks to come forward, again, if there are any potential negative connotations for them? So they are doing good; they are doing the right thing for the public's interest and for their fellow employees, et cetera. You feel strongly that the motivation and intent are there for the right reasons and that these folks are taken care of currently, or are there suggestions that we could have to potentially bring folks forward through this process?

Ms Ryan: Well, absolutely, I feel it is a good process. It is one that is premised on trust. Internally, whether it's someone coming forward in their own organization, there's trust in the senior leadership that they will hear the person and take the appropriate action. If they come to our office, again, it's a question of trust. You know, they're putting a lot out there. In the past this did not exist, and even in various other forums and mediums we've seen the possible negative impact on people who are even suspected of being whistle-blowers. I think it's what the public expects, that if you see something, you report it.

Again, as I said, the act has specific reference to the fact that we will try to manage it informally if we can with the various public entities, but, you know, if it needs to go to a higher level, an investigation and to the full extent that we did with the AER investigation, then we will. You know, what we could have help with is support of the legislation and our office by all the various sectors that are involved. We do our best to build that trust and support both with the public servants and also the chief officers and designated officers.

Mr. Getson: Thank you for your time and the great work that you and your team do. I appreciate that.

No further questions from me, Chair. Thank you.

The Chair: Thank you, Mr. Getson.

One last time: any further questions from the floor?

Thank you again, Ms Ryan, for your time today.

Moving on to the decision on technical support during a review process, as members will be aware, during statute reviews committees often request that public officials with expertise on the subject matter attend committee meetings to provide technical assistance as requested. Is this a request that the committee would like to make of the office of the Public Interest Commissioner? Any discussion on the matter at all?

Mr. Feehan: They will have an opportunity to supply a full written report of their request for changes and everything so far. Is that right?

The Chair: That's correct, yeah. They are included in the list as well.

Mr. Feehan: I just wanted to make sure of that. Then I'm okay.

The Chair: There's no desire to have them sit in on our future meetings, then? Just for information?

Member Ceci: Do you want them to?

The Chair: I'm asking. I'm just the chair here. It's normally something that is requested, so I'm just giving that option.

Mr. Dach: I don't see any reason to depart from normal practice. There is certainly a benefit to having the technical support there.

The Chair: Well, thank you, Mr. Dach. I just happen to have a motion prepared if you're interested in moving that motion, sir.

Mr. Dach: I would never have doubted you.

The Chair: Thank you very much. Moved by Mr. Dach that

> the Standing Committee on Resource Stewardship request that officials from the office of the Public Interest Commissioner work in conjunction with the Legislative Assembly staff, as requested, to support the committee during the review of the Public Interest Disclosure (Whistleblower Protection) Act and that officials attend committee meetings and participate when requested in order to provide technical expertise.

Sounds like it's right out of your mouth, sir.

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

That motion is carried.

Thank you very much, sir.

Next we move on to review of research by research services. Turning now to research services, at our last meeting the committee requested some information from research services. The related briefings are available on the committee's internal website for members to review.

First of all, I believe Mr. Koenig has a few comments regarding the case law summary. Mr. Koenig.

Mr. Koenig: Right. Thank you, Mr. Chair. I'll walk briefly through this because I see that we don't have a lot of time remaining. In this case, all research was prepared following a motion carried at the July 7 meeting of the committee, and the specific request was for any significant case law from the Supreme Court of Canada or Canadian Courts of Appeal with respect to whistle-blower legislation.

After canvassing what was out there, to date there's only one reported case in Alberta commenting on the Public Interest Disclosure (Whistleblower Protection) Act, and that was from the Court of Queen's Bench in 2019. There were no cases I could locate from B.C., New Brunswick, Nova Scotia, or Newfoundland commenting on their respective legislation, and I couldn't find any relevant case law from Manitoba or Saskatchewan.

At the federal level and in Ontario most cases appear to be considered by administrative tribunals, and it looks generally like most of the legislation doesn't provide for complaints to go directly to courts, which is why there are not a lot of decisions from courts. There may also not be a clear right of appeal from an administrative tribunal to a court, and these processes appear to be set up to direct these complaints through another process, so that's part of the explanation of why there isn't a lot that was located.

You know, I found the most useful judicial commentary from prior to the introduction of the legislation. That would have been based on common-law principles, but they talked about kind of the broad strokes of this issue of disclosures. They're kind of based on this balance between an employee's right to disclose confidential information about their employer and then the need to protect the public interest so that if there is a wrongdoing, it can be addressed. I think that's a useful framework for looking at Alberta's legislation. When is it desirable for a public servant to be empowered to make a disclosure as a means of, for example, discouraging illegal activities or preventing gross mismanagement of public money?

Quickly running through the cases, I'd just draw your attention first to the Fraser case from the Supreme Court of Canada, and that enumerated certain circumstances where disclosure would be appropriate, so where an employee, despite their obligation to maintain the confidentiality of their employer, could make a disclosure. That included illegal acts; jeopardizing the life, health, or safety of the public; or where the information being disclosed had no impact on the employee's ability to perform their duties.

10:30

Some other principles from the case law that were interesting, I think, or would be interesting for members: the importance of maintaining an internal process for reporting potential wrongdoing rather than requiring someone, for example, to go directly to police as a precondition to making a disclosure. It's also important, as has sort of been touched on in discussion so far, for the process to be able to address improper complaints or complaints that are made without any evidence.

Whistle-blower schemes: I think another interesting aspect is that whistle-blower schemes are designed to protect the public interest rather than necessarily a right of an individual for redress. I mean, I think the case comment there is interesting in terms of why this legislation exists, and it's not a right of an individual employee; it's really the need generally to prevent these wrongdoings from occurring.

Finally – this also touches on some discussion that's happened so far – the application provisions of these acts. From that one case from Alberta it appears that those application provisions are applied fairly rigorously. What that means is that if something doesn't fall within the scope of the act, those complaints are not receivable. The courts can't look at them. That is really a threshold that's important. If it falls outside of the scope of that application of the act, then the process under that legislation is stopped.

Keeping in mind that I'm not a technical expert on whistle-blower legislation, I'm happy to answer any questions of members about the case law if they have any.

The Chair: Any questions?

Mr. Feehan: Having done this review – and thank you very much; I really appreciate it. When I read it, it was exactly what I was hoping for. I'm just wondering if there's anything that highlighted for you a need for changing our legislation particularly.

Mr. Koenig: No. I mean, I wouldn't make any recommendations by any means. I think what the case law really helps identify is some of the broad, underlying principles. You know, maybe more generally, sort of as counsel to the committee I would suggest that when you go through some of these detailed kind of analyses of different sections and how they should look, there are some broad, underlying principles that you should keep in mind. I think those older cases that were based on the common law really talk in generalities that are useful just for setting a framework like: what's the purpose of this legislation? Generally how should it function? What are the issues that can come up? I think it's more of maybe

just setting a framework for how you approach those maybe more detailed discussions.

Mr. Dach: I'm wondering if Mr. Koenig could post a reference to the Fraser case to the committee website.

Mr. Koenig: Yeah. If the cases aren't on the internal website, they certainly all can be placed on there. You'll find that some of them are very on point, and then some of them are dealing with other issues. For example, the case from Alberta really only had a small bit of commentary on the legislation. But they can all be posted if they're not on there.

Mr. Dach: Okay. Thank you.

Mr. Sabir: I think, you know, that it's interesting that this legislation is not a redress for employees but is there to protect the public interest. In that regard do you think there is enough clarity in this legislation, what the public interest is, when it can be used, and whatnot?

Mr. Koenig: Again, I'm not really in a position to make recommendations on this legislation. Just to really emphasize this point, these cases that are in the case law summary: the majority of them predate, like, statutory law, so the issue that was arising in these cases is that you were only relying on common-law principles. There was no process that was existing to describe how these complaints should be made or even when an employee could make a complaint and disclose confidential information from their employer. Again I would just point out that this case law is useful for setting a framework for some of the very broad principles that you can use when you're looking at this legislation. But it certainly is not – I wouldn't suggest that it could be used as a tool for commenting on specific legislation because that legislation was passed after these cases were already decided, most of them.

The Chair: Thank you.

Any further questions?

Thank you, Mr. Koenig. Moving on to the crossjurisdictional comparison document, do you have some comments on that document as well?

Mr. Koenig: Yes. I'm speaking more at this meeting than I think I have for a very long time. At the last committee meeting, on July 7, research services was also asked to prepare a crossjurisdictional summary of public interest disclosure legislation in Canada, and a research document that's dated September 17 was prepared by Dr. Amato and posted internally for members. I'm going to provide a brief summary of that report and highlight some of the stuff that I found to be the most interesting, keeping in mind that I'm not the author of the document. I'm just going to touch on some interesting points that might be useful for members.

Just to set the stage, the summary includes Alberta, British Columbia, Saskatchewan, Manitoba, Ontario, Quebec, New Brunswick, Nova Scotia, Newfoundland, Yukon, Nunavut, and Canada. As has been noted, none of the legislation references the term "whistle-blower" despite it being used in the title of some of the acts, and I think that's important because the concept of whistle-blowing will really depend on how it's defined in the act. It's not using that term "whistle-blower," but that concept is encapsulated a bit differently depending on the act.

In the crossjurisdictional summary it begins with a general overview of what public interest disclosure legislation does, and that's on pages 6 and 7. The statement of purpose sections are somewhat different between the different pieces of legislation. For example, in Alberta the act references in part facilitating disclosure of significant and serious matters while the federal act emphasizes the duty of loyalty of an employee balanced with the right of that employee to freedom of expression.

The next section of the report sets out the application of the legislation, which is important because that's a threshold issue. Who do the rules apply to? For example, in Alberta the act applies not only to public servants but also members, ministers, and their respective offices as subject of disclosure. In Manitoba it does include certain municipalities. That's a topic that was touched on a little earlier on in the meeting.

Then pages 12 to 15: the report summarizes what constitutes a wrongdoing. You've heard about what's in the Alberta legislation, so I won't repeat that. It's interesting because terms like "gross mismanagement": that's quite a broad term. Comparison between the jurisdictions, I think, is interesting for members, or I would expect it to be. For example, Alberta appears to be unique in that gross mismanagement includes the misuse of public funds or public assets, the mismanagement of a public service as well as bullying and harassment. That seems to be interesting.

With respect to process the report then goes on to describe the procedure for making a disclosure, and that's pages 16 and 17. Typically statutes allow for disclosures to be made directly to the Public Interest Commissioner or whoever the equivalent is in that jurisdiction, and it may also provide for disclosure to a supervisor or a public entity's designated officer. That's, of course, the case in Alberta.

The concept of reprisals is summarized in the report. You've heard that that could be, like, a dismissal, a layoff, a demotion, or a threat to do so. The definition of reprisal is similar in Alberta, B.C., Manitoba, New Brunswick, Nova Scotia, Newfoundland, and Yukon. Interestingly, in Ontario the definition of reprisal also includes intimidation or coercion. That seems notable.

In terms of the investigations by the commissioner those are dealt with on pages 31 to 33. The process is similar between Alberta and a range of other jurisdictions: Manitoba, New Brunswick, Nova Scotia. Ontario's legislation seems to be a bit different. Another interesting feature of their legislation is that when the Integrity Commissioner receives a disclosure, he or she can determine the person who is in the best position to do the investigation and refer the matter to that person. That's quite a bit different than in Alberta.

In terms of findings and recommended actions certain jurisdictions, including Alberta, have a process for following up on recommendations that are not implemented – and there are various jurisdictions that also have that – if recommendations are made and nothing is done.

10:40

Then, finally, just a few comments about the offences and penalties in these acts. Most legislation has established offences that fall within one of three general categories: making false statements; obstruction; and destruction, falsification, or concealment of documents. In all jurisdictions it appears that it's an offence to commit a reprisal for making a disclosure. In B.C. it's also an offence to reveal information, personal information, about the person making the disclosure. In B.C., Manitoba, and federally it's also an offence to make a reprisal against a person contracting with the government.

Just very, very quickly about kind of monetary fines. In Alberta we're talking about up to $25,000 for a first offence and not more than $100,000 for subsequent offences. That's the same as in B.C. In Saskatchewan, Manitoba, Nova Scotia, Newfoundland, and Yukon the penalty is not more than $10,000. Some jurisdictions like Ontario don't specify a penalty, and federally it is a fine of not more than

$10,000 or imprisonment for a term of not more than two years or both – that first one was for an indictable offence – or for a summary offence, $5,000 or imprisonment of not more than six months.

I went through that very, very quickly, but hopefully that touched on some of the highlights that would be of the most interest for members. I'm, again, happy to answer any questions members may have.

The Chair: Any questions from committee members? Mr. Getson, on the phone, fighting with your mute button.

Mr. Getson: No, I'm okay. Thanks. It took me a little bit there.

The Chair: Thank you very much.

Seeing no questions, thank you.

We will move on to the stakeholders list. At our previous meeting the committee directed research services to prepare a draft stakeholders list, to provide the stakeholders list from the previous review of the act in 2015-2016. These documents were made available on the committee's internal website for members to review. At this time do members have any additions or changes that they would like to make to the draft stakeholders list?

Seeing none, could I get a motion from someone to approve? Mr. Ceci. You're very busy here today, Mr. Ceci. Moved by Mr. Ceci that

> the Standing Committee on Resource Stewardship approve the draft stakeholders list for the committee's review of the Public Interest Disclosure (Whistleblower Protection) Act as distributed.

All those in favour, please say aye. Any opposed, please say no.

That motion is carried.

The committee will need to set a deadline for receiving written submissions, but before doing so, committee members may also wish to consider whether they would want to receive written submissions from members of the public as well as stakeholders. If this is the will of the committee, I would note that members may wish to consider setting a deadline of 4:30 p.m. on Monday, November 30, 2020, for receipt of all written submissions. You will notice that that is a change from the previous schedule that was put forward, but because of the delays in getting to today's date, we had to make some adjustments. Any questions on that?

Mr. Dach: I would certainly like to invite submissions from the public, and I would so move that we adopt your time frame.

The Chair: Thank you very much, sir. If you would like to make that motion. Moved by Mr. Dach that

> the Standing Committee on Resource Stewardship invite written submissions from stakeholders and members of the public as part of the committee's review of the Public Interest Disclosure (Whistleblower Protection) Act and set a deadline of 4:30 p.m. on Monday, November 30, 2020, for the receipt of written submissions.

All those favour, please say aye. Any opposed, please say no. Thank you.

That is carried.

Next, since the committee would like to call for written submissions from members of the public as well as from stakeholders, we will need to consider how to reach out to the public during our review. At this time I will turn it over to Ms Sorensen from LAO corporate communications, who can, first, provide us with some advice on the options available to us and answer any questions members may have.

Ms Sorensen: Thank you, Mr. Chair. With the committee wishing to engage the public in this consultation, I've laid out a number of no-cost, low-cost, and paid advertising options that we've used with other committees in the past. Essentially, the no-cost and low-cost options have been what a lot of committees have been going with, and it includes a lot of social media posts, organic posts, as well as social media advertising, sending out news releases, preparing e-cards or information cards that members can share with their constituents or their own stakeholders, preparing information for MLA newsletters. If some of you are sending out newsletters, those are within the no-cost options. Low-cost options tend to be more of the paid advertising and social media, but they're still very low cost.

I will say that particularly now that we are seeing a lot of the advertising with social media, us having to appeal the decision that Facebook or Twitter might be coming back to us with, saying that this doesn't qualify due to political content or whatever, we're having to re-word a lot of things, so sometimes it delays our ability to advertise slightly because we have to appeal it and get them to approve the ad. I just want to make that clear to members because we have seen that in a few other committees. Yeah. We do Google ad words campaigns, Twitter ads, Facebook ads. There are also a number of paid options there. We haven't been engaging in those as much, just due to budget constrictions, and we've found that we've been getting quite a bit of success with the no-cost and low-cost options.

Based on that, I'm open to any questions or direction.

The Chair: Questions from the floor?

Member Ceci: A recommendation.

The Chair: Okay. We just happen to have a motion prepared that deals with the no-cost and low-cost options, if somebody would be happy to make that motion.

Member Ceci: Yeah.

The Chair: Thank you, Mr. Ceci. Moved by Mr. Ceci that

> the Standing Committee on Resource Stewardship authorize communications services of the Legislative Assembly Office to solicit submissions as part of the review of the Public Interest Disclosure (Whistleblower Protection) Act from members of the public through the no-cost and low-cost options presented by communications services at this meeting and that the chair be authorized to approve the final messaging.

Any comments or questions on that? Do you have a comment?

Member Ceci: Yeah. Just in support of that motion. I've been part of previous committees where we used this approach, and I'm willing to give it another shot. I think it's useful, particularly the low-cost ones on social media. I find that quite useful to know that they're ads but then to go into the content of what the ad is and see what that is, so I support that.

The Chair: Okay. Any other comments?

Seeing none, we'll vote on the motion. All those in favour of the motion, please say aye. Any opposed, please say no.

That motion is carried.

Are there any other issues for discussion before we wrap up today's meeting? Mr. Getson on the phone?

Mr. Getson: No, I'm good here, Chair.

The Chair: Very good. Thank you very much.

With the deadline for written submissions being November 30, 2020, I would anticipate that we will be able to hold our next meeting by mid-December, likely after session. Of course, teleconference and video conference attendance will be an option

for committee members. I will have the committee clerk poll for a few dates shortly.

Our next meeting will be to review the submissions we have received and make a decision on inviting additional input. We are a few weeks behind our estimated schedule at this point, but if we are able to proceed with a December meeting, we should be able to return to our original plan. As discussed at the first meeting, we gave ourselves a little bit of latitude at the end, so we do have a little bit of room before we have to submit our report, but just to maintain that kind of short time frame, I will be looking at a meeting probably early to mid-December.

Go ahead, sir.

Member Ceci: Are we to adjourn?

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

Member Ceci: Just before we do it, thank you, Mr. Chair, for allowing me and my colleagues to look for a date that was today as opposed to I think it was last week sometime. That helped us out.

But I'll move to adjourn.

The Chair: Absolutely. Thank you.

Moved by Mr. Ceci that the October 26, 2020, meeting of the Standing Committee on Resource Stewardship be adjourned. All those in favour, please say aye. Any opposed? Thank you.

This meeting is adjourned.

[The committee adjourned at 10:49 a.m.]

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