



Legislative Assembly of Alberta

The 30th Legislature
Second Session

Standing Committee
on
Resource Stewardship

Public Interest Disclosure (Whistleblower Protection) Act Review

Wednesday, April 28, 2021
10 a.m.

Transcript No. 30-2-19

**Legislative Assembly of Alberta
The 30th Legislature
Second Session**

Standing Committee on Resource Stewardship

Hanson, David B., Bonnyville-Cold Lake-St. Paul (UC), Chair
Ceci, Joe, Calgary-Buffalo (NDP), Deputy Chair

Amery, Mickey K., Calgary-Cross (UC)*
Dach, Lorne, Edmonton-McClung (NDP)
Feehan, Richard, Edmonton-Rutherford (NDP)
Ganley, Kathleen T., Calgary-Mountain View (NDP)
Getson, Shane C., Lac Ste. Anne-Parkland (UC)
Guthrie, Peter F., Airdrie-Cochrane (UC)
Issik, Whitney, Calgary-Glenmore (UC)
Loewen, Todd, Central Peace-Notley (UC)
Reid, Roger W., Livingstone-MacLeod (UC)**
Singh, Peter, Calgary-East (UC)
Turton, Searle, Spruce Grove-Stony Plain (UC)
Yaseen, Muhammad, Calgary-North (UC)

* substitution for Whitney Issik

** substitution for Searle Turton

Office of the Public Interest Commissioner Participants

Marianne Ryan	Public Interest Commissioner
Chris Ewaniuk	Manager

Support Staff

Shannon Dean, QC	Clerk
Teri Cherkewich	Law Clerk
Trafton Koenig	Senior Parliamentary Counsel
Philip Massolin	Clerk Assistant and Director of House Services
Michael Kulicki	Clerk of Committees and Research Services
Sarah Amato	Research Officer
Melanie Niemi-Bohun	Research Officer
Nancy Robert	Clerk of <i>Journals</i> and Research Officer
Warren Huffman	Committee Clerk
Jody Rempel	Committee Clerk
Aaron Roth	Committee Clerk
Rhonda Sorensen	Manager of Corporate Communications
Jeanette Dotimas	Communications Consultant
Tracey Sales	Communications Consultant
Janet Schwegel	Director of Parliamentary Programs
Amanda LeBlanc	Deputy Editor of <i>Alberta Hansard</i>

10 a.m.**Wednesday, April 28, 2021**

[Mr. Hanson in the chair]

The Chair: Thank you very much, 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. 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 by videoconference. We'll begin to my right. Mr. Dach.

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

Mr. Feehan: Richard Feehan, MLA for Edmonton-Rutherford.

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

Dr. Massolin: Good morning. Philip Massolin, Clerk Assistant and director of House services.

Mr. Huffman: Good morning. Warren Huffman, committee clerk.

The Chair: I will try to go through the list so that we don't get confusion on the phones. Mr. Ceci.

Member Ceci: Yes. Thank you very much, Mr. Chair. Joe Ceci, MLA for Calgary-Buffalo and vice-chair of the committee.

The Chair: Ms Ganley.

Ms Ganley: Kathleen Ganley, MLA for Calgary-Mountain View.

The Chair: Mr. Getson.

Mr. Getson: Shane Getson, MLA for Lac Ste. Anne-Parkland.

The Chair: Ms Issik.

Ms Issik: Good morning. Whitney Issik, MLA for Calgary-Glenmore.

The Chair: Thank you.

I'll get to the substitutions in a moment.

Mr. Singh.

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

The Chair: Mr. Yaseen.

Mr. Yaseen: Good morning. Muhammad Yaseen, Calgary-North.

The Chair: Thank you very much, everyone. Have I missed anyone?

I see Mr. Reid on there. He's also a substitute for Mr. Turton.

Mr. Guthrie, I see you're on.

Mr. Guthrie: Yes. Thank you, Chair. Peter Guthrie, MLA for Airdrie-Cochrane.

The Chair: Okay. My understanding is that Mr. Loewen is now online.

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

The Chair: Thank you, sir.

All right. For the record I'll note the following substitutions: Roger Reid for Searle Turton and Mickey Amery for Whitney Issik when she has to jump off for another meeting or an announcement, I understand.

A few housekeeping items to address before we turn to the business at hand. According to the February 22, 2021, memo from the hon. Speaker Cooper I would remind everyone of the updated committee room protocols, which encourage members to wear masks in committee rooms and while seated, except when speaking, at which time they may choose not to wear a face covering. Based on the recommendations from the chief medical officer of health regarding physical distancing, meeting attendees are reminded to leave the appropriate distance between themselves and other participants.

Please note that microphones are operated by *Hansard* staff. Committee proceedings are live streamed on the Internet and broadcast on Alberta Assembly TV. The audio- and videostream and transcripts of meetings can be accessed on the Legislative Assembly website. Those participating by videoconference are asked to please turn on your camera while speaking and to mute your microphone when not speaking. Members participating virtually who wish to be placed on a speakers list are asked to e-mail or send a message in the group chat to the committee clerk, and members in the room are asked to please signal the chair. Please set your cellphones and other devices to silent for the duration of the meeting.

Approval of the agenda. Are there any changes or additions to the draft agenda?

If not, would someone like to make a motion to approve the agenda? I see Mr. Feehan. Thank you, Mr. Feehan. Moved by Mr. Feehan that the agenda for the April 28, 2021, meeting of the Standing Committee on Resource Stewardship be adopted as distributed. All in favour? Any opposed? Thank you. That motion is carried.

Approval of minutes. Next we have the draft minutes of our February 4, 2021, meeting. Are there any errors or omissions to note?

Hearing none, would a member like to make a motion to approve the minutes? I see Mr. Dach has decided to move that. Moved by Mr. Dach that the minutes of the February 4, 2021, meeting of the Standing Committee on Resource Stewardship be approved as distributed. All in favour? Any opposed? Thank you. That motion is carried.

Hon. members, I'd like to note for the record that on February 7, 2021, the committee received a letter from David Hutton from the Centre for Free Expression at Ryerson University, who was one of the stakeholders invited to present to the committee at the stakeholder meeting on February 4. This letter was posted to the internal committee website for members to review. For the information of members, no motion on this letter is necessary unless the committee desires to take further action with respect to it. At this time I would like to open the floor to members if they have any comments on this item in particular.

Hearing none, we will move on to the review of the Public Interest Commissioner's report on stakeholder recommendations. As requested by the committee at its last meeting, the office of the Public Interest Commissioner submitted a report to the committee detailing the key recommendations from the stakeholder presentations and the commissioner's response to those recommendations. As well, the commissioner provided a tool kit document outlining how the commissioner's proposed amendments to the act would align with international best practices.

I would note that we have representatives from the office of the Public Interest Commissioner joining online today to provide technical assistance and to answer any questions members may have as the committee goes through the recommendations: Ms Marianne Ryan, Public Interest Commissioner, and Mr. Chris Ewaniuk, manager of investigations with the office of the Public Interest Commissioner. Thank you, both, for joining us today.

At this time I'd like to open the floor to a discussion of the commissioner's response to the stakeholder recommendations. If members prefer, the committee could start at the beginning of the appendix A document and then review the responses in the order they appear there.

Additionally, I would note that as the committee will likely hold its final deliberations on the act in late May or early June, the primary purpose of today's meeting is to review and discuss these recommendations. However, to provide some flexibility in the process today, if it appears that the committee can arrive at a quick agreement on some of them, I am prepared to allow a substantive motion to be put forward to accept the recommendation provided that the committee grants unanimous consent to allow the motion to be put forward.

Members will be reminded that for the purposes of the committee's report to the Assembly, a motion to accept the stakeholder recommendation is necessary only if the committee would like to adopt it as one of its own recommendations to the Assembly. If the committee does not wish to adopt the stakeholder recommendation as its own recommendation to the Assembly, a motion to reject is not required.

I would just like to add that for any recommendations that we do make to the Assembly, we would be committed to doing some further stakeholder engagement with those that would be affected by that change in policy.

With that said, I'll now open the floor to discussion, starting with issue 1 on page 4 of the appendix A document. Are there any comments? Hopefully, everybody has had a good chance to review this fairly substantial document.

Okay. What I think I'll do is that I'll just touch on the recommendation and then the commissioner's response, and we'll see if there's any discussion from the group. The stakeholder recommendation was to "extend timelines under s. 3(7)(c) of the Public Interest Disclosure (Whistleblower Protection) Regulation to conclude an investigation from 120 to 180 business days." The commissioner's response was to support this recommendation.

Is there any discussion from the floor? Mr. Dach, go ahead.

Mr. Dach: Thank you, Chair. If I may, just before we get into the detailed discussion of each of these points and issues, I wonder if the Public Interest Commissioner and/or her accompanying staff member might just illustrate a little bit to the committee the process that they used in deliberating amongst themselves to arrive at these recommendations. It's a fairly substantial document, and I'd be interested to know – obviously, staff were involved – the context within which some of these decisions were made and how they came to their conclusions, just to give us a framework of their process. How did they arrive at this? What process did they use to get here?

The Chair: Absolutely, Mr. Dach. I agree with you a hundred per cent. One of the reasons that, you know, as chair I decided that we should review this is because the Public Interest Commissioner is the one that deals with this on a daily basis. The rest of us are kind of learning from the firehose, as we usually do, so it is, I thought, very informative to have her recommendations and have a group discussion. Absolutely, if we want to go that route and have some comments by the commissioner, I welcome that.

Go ahead, Commissioner. Have you got anything you'd like to add?

10:10

Ms Ryan: Good morning. Thank you, Mr. Chair, and thank you for the question. I will say that many of the recommendations from the various stakeholders did align very closely, if not exactly, to some of the 22 recommendations we made in our initial submission. Also, as Mr. Dach commented, we did meet as a team. We examined all the recommendations extensively. We also reviewed other jurisdictions, both nationally and internationally, to, you know, inform us if this was a recommendation that other jurisdictions had also adopted. But we gave all of the recommendations, as I said, extensive consideration in preparing this report.

The Chair: Okay. Thank you very much, Commissioner.

Are there any other committee members wishing to comment on recommendation 1?

Member Ceci: Mr. Chairman, yeah.

The Chair: Go ahead, Mr. Ceci.

Member Ceci: Commissioner Ryan, how many of the investigations would regularly go beyond the 120 days and need the additional two months? Like, what proportion of the investigations: most, a few, or somewhere in the middle?

Ms Ryan: I would say that it's somewhere in the middle. By the time it reaches our office, it's a matter of serious and significant importance. You know, depending on the complexity of the file, of the investigation, I would say that it's somewhere in the middle. We are also hearing from the entities that fall under our jurisdiction that for many reasons they require more time than the original 120 days. It's somewhere in the middle. We just feel that we are getting requests for extensions quite often – and justifiable extensions – so we feel that the rationale to extend it should be there.

Member Ceci: Okay. Gotcha. Thanks.

The Chair: Thank you.

Any other comments from committee members? Mr. Getson.

Mr. Getson: Yeah. Thank you, Mr. Chair and Commissioner. I guess that with the extension of the time – typically I'm against extensions – I can understand that in this case, when you're doing your investigations, it may be dragging out a bit more. I guess one question I would have is: in your experience with the extended investigations are there any detrimental items to the whistle-blower themselves of potentially being in a bad environment or prolonging that? I guess that's where some of my caution comes in, along those lines. What's your experience there, ma'am?

Ms Ryan: Well, I think you're spot on, Mr. Getson. That is a risk and one that we take very seriously with respect to whistle-blowers, but we do feel that the overall issue is to have a timeline. Like, that is the important thing rather than to let it run on until it's completed with no timeline. You know, we monitor it very closely. I review the request for extensions and determine if they're justifiable. But you are absolutely correct. A determining factor is always: what exposure might the extension give to identifying a possible whistle-blower? We are very cognizant of that, and we absolutely take that into account. It is a risk, but we try to manage it. We keep the whistle-blower informed during the investigation at all times. We keep that contact up, just to make sure that we are aware of any

factors that haven't come through the investigation that the whistleblower may be hearing about.

The Chair: Okay. Thank you.

I see Mr. Singh. You have your hand up.

Mr. Singh: Thank you, Mr. Chair, and thank you, Commissioner. I just do not support the recommendation from Alberta Health Services, particularly, to extend timelines under section 3(7)(c) of the Public Interest Disclosure (Whistleblower Protection) Act regulation to conclude an investigation from 120 days to 180 business days. The reason I do not want to support it is that there should be a fast delivery or resolution of complaints made under the act for both parties. The complainant and the one who's being complained of will be put under a lot of distress for a long period of time as these matters have a serious effect on them.

Thank you, Mr. Chair.

The Chair: Thank you, Mr. Singh.

Any other committee members wishing to comment?

Seeing none, I think we will move on to issue 2. The stakeholder recommendation was to "increase the amount of time the Chief Officer is authorized to extend the timeline for an investigation from 30 to 60 days under section 5(1) of the Public Interest Disclosure (Whistleblower Protection) Regulation." Commissioner, do you have any additional comments on that, for the reasoning of that support?

Ms Ryan: No additional comments, but it's very similar to the issue we just previously discussed in that we monitor the responses and the engagement of the chief officers, so if they, you know, are unable to complete their investigation within the 30 days, they must also request an extension. We are seeing this, again, quite often, and we think that the 60 days is justifiable.

The Chair: Okay. Thank you.

I see Mr. Getson has a question. Go ahead, Mr. Getson.

Mr. Getson: Yeah. Commissioner, again it's going to be a question similar in nature. Maybe I'm misreading this. The first item is under a different investigation or it's the same investigation, and if we're in alignment with that, you're stretching out, potentially, to 180, and then you're looking to tack on additional time to that investigation? Is that how I understand this?

Ms Ryan: Investigations can be conducted by the entity and the authority themselves, and, you know, if at all possible, that is our preference. If an investigation is being conducted internally, we are monitoring it, but it would be led by the chief officer. Our investigations are separate or above that particular process. This particular matter deals with a matter that's being investigated internally with respect to whistle-blowing. So there are two types of investigations, one that we conduct and one that they can conduct.

Mr. Getson: Okay. Then in that latter one – we're talking about the item we're on now – is it your office, or is it the internal office?

Ms Ryan: The internal office.

Mr. Getson: Okay. Thank you.

The Chair: Okay. Thank you. Any other committee members wish to comment?

Okay. Thank you for that clarification, Commissioner.

We'll move on to item 3. The stakeholder recommendation is to "include Alberta Precision Laboratories Ltd., a subsidiary health

corporation of Alberta Health Services, within the Public Interest Disclosure (Whistleblower Protection) Regulation." Commissioner, would you like to clarify that as well? I see that you support that recommendation.

Ms Ryan: That's correct. Previously the regulations named particularly subsidiary health corporations. Names can change for various reasons, and we have already seen that happen, so we feel that it would be appropriate not just to name the specific health corporations but just to state in the regulations that this applies to all subsidiary health corporations.

The Chair: Any questions or comments from the committee members?

I have a question, Commissioner, if I could, because I think I'm a little confused. Does this recommendation not specifically name an entity rather than just a generalization?

Ms Ryan: Yes, the recommendation from Alberta Health Services does name a particular health entity, but we are recommending – that's why I said that I support a variation of this recommendation – that rather than naming Covenant Health or whatever, we just say that this applies to all subsidiary health corporations, because names can change, and we've seen this already.

The Chair: Okay. That clarifies that for me very much because you did say "a variation of this recommendation," so we'll have to make sure that we incorporate that into any recommendations that we make to the Legislature.

Any other comments from committee members on that item? Thank you.

10:20

Okay. Moving on, item 4, the stakeholder position:

Where AHS sees issues from time to time is with people coming forward from private health care providers, often long-term care facilities, with concerns. AHS may provide the private health care provider with funding, but does not have the jurisdiction to investigate those matters.

Comments from the commissioner if you don't mind.

Ms Ryan: Certainly. We believe that the objective of whistleblower protection legislation is best achieved through a broad application and ought to include all the contractors paid through public dollars to provide products or services. What we find is that the most notable entities not currently governed by the act are providers of continuing care for seniors, management bodies of housing accommodations, and child care service providers. This is why we felt that we could support this recommendation, that this would fall under what we are recommending be defined as a prescribed service provider.

The Chair: Any questions from committee members?

Seeing none, I would just ask for a quick clarification. Now, this position specifically mentions health care providers, but would that also not stretch out into any contractor that is getting funding from the public?

Ms Ryan: That is correct. We see this as part of our bigger recommendation that prescribed service providers would include anyone under contract or receiving government funds, any public injection of funds, that they would fall under the definition of a prescribed service provider. So in addition to the health care providers and anything related to private health care providers, your assessment and your interpretation are correct, that we would like to see anyone

under contract and anyone receiving government funding be under the definition of a prescribed service provider.

The Chair: Okay. I see a question from Ms Issik, and then I've got a follow-up question.

Ms Issik: Thank you, Mr. Chair. Through you to the commissioner, I just would like to understand, to be clear: if we're talking about a private daycare facility who receives a subsidy, would that be included in your recommendation?

Ms Ryan: Yes. That's correct. A private daycare that receives public funds: we believe that there should be some accountability and that they should fall under this definition of a prescribed service provider.

Ms Issik: Thank you.

The Chair: Okay. Thank you.

Further to that – thank you, Ms Issik; you kind of hit the question I was looking at. When you talk about publicly funded – you know, we issue a lot of grants to public entities and groups. Is there some way that we can clarify those folks out of this, or is that kind of the intent of the recommendation?

Ms Ryan: Well, I guess that would be up to the committee to decide, but I would argue that if public funds are going into some type of process, whether it's a grant or an institution or a privately run organization, the public deserves to have some accountability and that they should fall under this regime.

The Chair: Thank you.

I see Ms Ganley. You have a question?

Ms Ganley: Yes. Sorry; there are so many buttons going on here. Okay. I just wondered if in making this recommendation – and I'm thinking specific to child care right now, in light of that. I have recently had the opportunity to read a fatality inquiry report that dealt with the death of a child in private child care that was not licensed, so like a day home sort of a situation. Recommendations were made that sort of suggested that because the oversight was less there, it potentially – there were some recommendations to improve it; let's put it that way. I'm just curious if, in making this consideration, consideration was given to the fact that that will create sort of a different burden on some forms of child care, which arguably, according to this fatality inquiry, are actually safer for kids compared to other forms of child care, and about what influence that might have on those operators.

Ms Ryan: Well, I'm not certain I totally understand the question, but I do feel that if they are receiving public funding, they would fall under this act through the definition of a prescribed service provider.

Ms Ganley: Sorry. Just to clarify, I guess what I'm trying to ask is whether you think there is a problem created by the fact that we're creating protection for whistle-blowers in an environment that, at least according to some accounts, is already safer for children whereas, in an environment which is considered to be somewhat less safe but which some parents have to choose because they don't have the funds to choose otherwise, we're not imposing that same requirement.

Ms Ryan: I don't really have a position on that, Ms Ganley. I think that would be up for debate.

The Chair: I will remind the committee that even if we put the recommendations forward, there will be a proper consultation with

those affected by these decisions. I think this one is one of those cases that's going to need a significant amount of discussion to get it right.

Thank you very much.

Any other comments from the committee?

Thank you. We'll move on to . . .

Ms Issik: Mr. Chair.

The Chair: Sorry. Go ahead, Ms Issik.

Ms Issik: Sorry; a delay on the button here. Just one additional question. With respect to funding, there are different sorts of funding. Certainly, there's operational funding, and then there's capital funding. I think I'm speaking specifically about something like a CFEP grant. Are we proposing, then, that a community association, for instance, or perhaps a school council who receives a CFEP grant for fixing their roof or perhaps redoing a playground – do we then expect that the whistle-blower legislation would extend to those groups on issues that have nothing to do with the playground funding or the roof repair funding?

Ms Ryan: Again, in terms of how much, you know, we've only used the words "significant funding." I think that would be open for debate and discussion by the committee as to how deep this should go into these different entities. But just again for clarification, if a government ministry contracted with a private entity to do repairs or do construction, we are recommending that it would be the company that was contracted that would fall under this definition of prescribed service providers, in addition to if it's a child care or a seniors' home. It can get a bit murky, but in terms of how deep and how much funding, I think that would be up to the committee to decide.

Mr. Ewaniuk: Commissioner, may I comment on this?

The Chair: Go ahead, Chris.

Mr. Ewaniuk: Really, this recommendation stemmed from a similar system out of Australia, in New South Wales, and the way the system works is that the act applies to the extent of the contract or agreement. In using the scenario that was brought forward, where an organization is given a grant to do roof repairs, the act would apply to the extent of that specific contract, so the organization as a whole doesn't automatically become subsumed into the whistle-blower protection act. The whistle-blower protection act essentially follows the money, so it would only apply to the extent of that grant or agreement.

The Chair: Okay. Thank you for that clarification.

Any further comments from the committee?

All right. We'll move on to the submissions from the Alberta Medical Association. Item 1: "The definition of wrongdoings in the act be amended so that it is clear as to what acts or omissions constitute wrongdoings and on what grounds an event would be considered substantial or create a specific danger." The commissioner's response is that you do not support the recommendation. We'd like to hear the reasoning for that.

10:30

Ms Ryan: I guess the bottom line is that I feel it would be impossible to define every instance of every possible wrongdoing. We have not really encountered any issues with interpreting the definition of wrongdoing. We feel that it has to be a serious and significant matter and that, if we got too restrictive, that would also be too prescriptive. We feel that we haven't encountered any issues with

respect to defining what is a wrongdoing. If we went down that road, we just feel that it would be not a slippery slope, but it would just get impossible to define every possible instance of what a wrongdoing looks like. Again, we have not encountered any issues with interpreting that definition.

The Chair: Okay. Thank you.

I see Mr. Feehan has a question.

Mr. Feehan: Thank you. I just wonder whether the AMA provided any specific examples of times where they have experienced difficulty defining for themselves the definition of wrongdoing. Is there a particular case or scenario that has led to this recommendation?

Ms Ryan: I think quite often what we hear are issues involving what we would refer to as more code of conduct matters and perhaps matters that should be handled by HR, or human resources. Again, we're trying to assess: how serious or significant is this for us to be involved? Some entities' view: you know, if there is a breach of policy or if there is a dispute between two individuals, that is something that should come to us. We don't feel that that is what the legislation was originally designed for. It's that threshold that I think sometimes is not confusing people but that they see as maybe something that we should be taking on when really we would like as much as possible for the entity to work with the complaint unless it escalates to that serious or significant matter.

Mr. Feehan: I have a follow-up.

The Chair: Go ahead, Mr. Feehan.

Mr. Feehan: Thank you. I'm just reflecting on this because you're talking about thinking that there are things that should be handled by HR and not sent on to yourself, and I appreciate that.

I'm a little bit more worried about the other direction. When we spoke with the AMA, I had asked them questions about the relationship between their HR and their whistle-blower contingent, and they indicated that things are often handled by HR and never redirected to the whistle-blower group. My concern is not that you're getting a lot of HR issues that could be dealt with by HR; rather, HR is actually dealing with issues that should go to you. That's the distinction that I'm worried about here. When I spoke to AHS – I believe it was at the last meeting – they indicated that if it doesn't get redirected to their whistle-blower group, it could easily be overlooked. HR just deals with it and decides not to refer it, and there's no process for saying, "You must report this" or guidelines for when they must report this. My concern is that things are being stopped at the HR level that should be moving forward. Do you have some thoughts about that?

Ms Ryan: Yes. That is a very fair comment. I think that how we can address it is through better education and awareness, making sure that the designated officer for these entities is spreading the word about what should be escalated up and what should be handled by an HR office or some type of internal ethics officer process. That can happen. But, again, I think the best way we can deal with it is through education and awareness, and that is an ongoing thing for us in our office.

Mr. Feehan: But wouldn't that include an education on what needs to be escalated, therefore a definition of what those things are, which is essentially what's being asked there, a definition of wrongdoings?

Ms Ryan: Yes. But I believe the act does define fairly well what is a wrongdoing: you know, a substantial and significant danger to the life, health, and safety of individuals; a substantial and significant danger to the environment; gross mismanagement of public funds or a public asset; gross mismanagement of the delivery of a public service. It could also be: employees, by a pattern of behaviour or conduct of a systemic nature that indicates a problem in the culture of an organization relating to bullying, harassment, or intimidation; and also, counselling someone to commit a wrongdoing. I feel the act does give us a fairly good definition of what would fall under a wrongdoing.

Mr. Feehan: Thank you for your answer.

The Chair: Thank you.

I see Ms Ganley has a question.

Ms Ganley: Thank you, Mr. Chair. It is kind of along the same lines. I mean, I appreciate that the definition is extremely workable for someone in your position, and I think that that's right. I also appreciate that there's no way to define wrongdoing in such a way that you know up front what all the instances are, right? Like, you need a certain amount of flexibility.

What I'm wondering is whether there's someone in your office or whether there could be someone in your office who is able to take calls from private individuals and sort of talk them through that definition, because while I appreciate that for someone with legal training that definition is, you know, fairly operable, for many people sort of operationalizing that definition will be hard. So they are in a position where they're having to go to HR or the designated officer, who I understand is internal to the company, who has a certain interest, shall we say, in keeping matters internal. I'm just wondering if there's, like, a place that private citizens can go to ask about the operationalization of this definition, because these things can be confusing. I took, in my previous job, a lot of calls on bullying. Like, people don't really know what it means, right? Yeah. I guess that's my question.

Ms Ryan: Again for clarification, this relates to public-sector employees, but we do welcome and we field many calls. We have, I think, a fairly robust website. People can contact us and, you know, have confidentiality ensured if they have any questions or concerns, and then we can help guide them or direct them from there. We do this daily several times a day, take those calls or through any other mechanism. It's usually a phone call versus an e-mail. Our website does have that contact information if anyone has any questions as a public-sector employee with respect to this legislation or whether this is something that needs to be looked at. We welcome that, and we point them in the right direction.

The Chair: Thank you, Commissioner.

Are there any other questions or comments from the committee?

If not, I do have a bit of a question for you, Commissioner, on this. I agree with you that the act is quite clear. I think the problem is the interpretation and who's interpreting it, and if it's at the HR level in AHS, for example – you know, I'll be honest. I've had a number of comments from RNs, doctors that work within the system that have been told, "What happens in the hospital stays in the hospital; if you go out and speak to anyone about what's going on here, you'll be fired; your job is on the line," even to the point where they've been told, "Up to a year after you've left or been terminated, you're not allowed to speak out." So I think the education thing is a real important part. But I do have a bit of an issue – and I agree with some of the other members, that when it comes down to getting blocked at the HR level of the corporation,

that's where the issue is, and we have to find some way as a committee and with this legislation to overcome that.

10:40

Ms Ryan: Well, I certainly agree with you, and I don't dispute that that happens. But, again, I don't know any other way other than us, through regular education and awareness sessions with the public-sector employees, with the various government entities, giving examples of cases that we worked on or providing examples of how this meets the threshold of a wrongdoing. I don't know any other way of addressing it other than, you know, trying to get the word out about what we do and what we can help with.

The Chair: Okay. Thank you very much for that.

Any other questions or comments from committee members?

Seeing none, we'll move on to item 2. Stakeholder recommendation:

A broader term such as "individual" or "person" or "affected person" should apply to the Act. The word "employee" also narrows the scope of protection that is provided in the Act. The Act should include physicians, resident physicians and medical students, and students of other health care professions.

Commissioner, you agreed with that recommendation. Do you wish to comment?

Ms Ryan: Yes. Other than that, I would note that we see this would fall under the prescribed service provider definition, which would include any person, organization, or body who is a party to a contract or agreement. This would include physicians and health care professionals in private practice.

The Chair: Very good. Thank you.

I see Mr. Singh has his hand up. Go ahead, Mr. Singh.

Mr. Singh: Thank you, Mr. Chair. Thank you, Commissioner. I just want to make a comment on this recommendation by the Alberta Medical Association, which would make physicians prescribed service providers. I believe that the College of Physicians & Surgeons must be consulted with this or that. We can also appreciate their position as well.

Thank you, Mr. Chair.

The Chair: Thank you, Mr. Singh.

Any other committee members?

Any additional comments from the commissioner?

Okay. Thank you. We'll move on to stakeholder recommendation 3.

The commissioner has limited ability to act when wrongdoing has been found except to report to the offices of the Legislature. There appears to be no obligation on any of these bodies to do anything specific. There are no sanctions on any individuals who committed wrongdoing. The application of a fine should be the Commissioner's minimum capability, possibly including the ability to direct reinstatement of the whistle-blower who has been fired for speaking up. This would be more consistent with the powers of analogous bodies such as the Alberta Human Rights Commission.

The commissioner's response was that you did not support the recommendation. Would you care to comment, please?

Ms Ryan: Certainly. With respect to sanctions and remedies the act directs that I forward any investigations where I feel there's been a reprisal to the Labour Relations Board. If I find that there is, you know, possible criminal activity or an offence under any other act, I am required to forward it to the Minister of Justice and Sol Gen and, likely, law enforcement. In terms of fines or penalties, again I

feel that as an independent authority I don't want to play adjudicator as well as investigator. I believe that my job is to complete the investigation and forward it to the Labour Relations Board, who is best positioned to assess whether there should be penalties or any type of sanctions.

The Chair: Thank you.

Mr. Feehan: I wonder if the commissioner can tell me whether or not the referral to the board also includes recommendations for remedies or you just leave it completely up to the board.

Ms Ryan: I believe that we would – to this date we have not provided a report to the Labour Relations Board. We have several investigations ongoing of reprisals, but I believe it would be appropriate to provide recommendations as part of the report.

Mr. Feehan: Do you have authority to suggest things such as fines or rehiring or other things at this point as part of your recommendations?

Ms Ryan: Again, I don't think I would go that far. Again, I can't think of an example of when I would make that determination, but I don't believe that that would be appropriate, for me to assess a penalty or recommend a penalty or a fine.

Mr. Feehan: Thank you.

The Chair: Okay. Thank you.

Any other committee members wishing to comment? Mr. Dach.

Mr. Dach: Thank you. I'd just like to respond to what the commissioner just said. I think what was said was that they've never yet sent a recommendation to the ministry for prosecution. Is that the case, that there are some under consideration right now but as of yet none have been sent forward for prosecution? Is that correct?

Ms Ryan: Slightly. What I said was that we have not forwarded an investigation to the Labour Relations Board with respect to a reprisal. We have several investigations ongoing, but to this date we have not forwarded an investigation to the Labour Relations Board with respect to a reprisal.

Mr. Dach: Okay. Have there been investigations into reprisals that just never ended up being forwarded for one reason or another?

Ms Ryan: That's correct. That has happened.

Mr. Dach: All right. Interesting.

With respect to the speed of the process, I'm just wondering – I understand and I accept your hesitation to become the enforcer as well as the investigator. But what I would like to know is if you feel that the transition and the reaction time of the Labour Relations Board – when a recommendation may be coming from your office for prosecution, do you think that the process is speedy enough or would be speedy enough if you did go forward with the recommendation for prosecution?

Ms Ryan: Again, I can't say how labour relations, you know, prioritizes their investigations. I will say that when we get complaints of reprisal, we treat them with the highest priority because we know what's at stake.

Mr. Dach: Thank you.

The Chair: Okay. Thank you.

Any other committee members?

Okay. We will move on to issue 4.

Stakeholder position:

While the Commissioner has the discretion to refuse to conduct an investigation or cease an investigation, which is under way, there is no corresponding right of a review or appeal specified in the Act, nor is there [any] obligation to report on the refusal or termination to either the Legislature or to the individual who has disclosed the alleged wrongdoing.

The commissioner's response was that you do not support the stakeholder's position. Could you comment, please?

Ms Ryan: Certainly. As it relates to notifying complainants and individuals with respect to whether or not we're going to investigate, I am required to notify them. I also am required to notify the entity that is involved in the disclosure whether or not we are going to investigate, and I'm also required to report, through my annual report, the number of disclosures that we acted on and the number of disclosures we didn't act on. Then as it relates to whether someone can appeal a decision that I make, there is a process outlined in the act for a judicial review of any decision that I make.

The Chair: Okay. Thank you.

I see Mr. Singh. Do you have a question?

Mr. Singh: Thank you, Mr. Chair, and thank you, Commissioner. I just wanted to ask the commissioner on the possibility of a consideration in a case where additional information that was not made available during the investigation was made available later on after the finding of wrongdoing. This is to say that this new information was not available or could not be located during the investigation on the part of the complainant. Is there maybe some sort of reconsideration of a previous finding or decision by means of new information or evidence, or do you just suggest that a new complaint be filed in the case that new information or evidence has been made by the complainant?

Thank you.

Ms Ryan: Just so I'm clear, I understand the question is, if we conclude an investigation and then some time later we obtain or receive new information about that previous complaint, whether we would reopen or whether we would restart the investigation. Is that correct, Mr. Singh? Yes?

10:50

Mr. Singh: Yeah, definitely. Thank you.

Ms Ryan: I mean, it would depend on the information, of course. If it related to the initial disclosure, I see nothing that would prevent us from reopening the investigation if it was information related to the initial disclosure, if it was about a specific wrongdoing. If it was new information about another wrongdoing, a new wrongdoing, then we would start a new investigation.

Mr. Singh: Thank you, Commissioner, for answering.

The Chair: Thank you.

Any other committee members with a question on this issue?

Seeing none, we will move on to item 5, the stakeholder recommendation: "The committee amend the definition of reprisals against whistle-blowers to include retaliation against the whistle-blower expressed through social media activity." Commissioner, you agreed with that recommendation. Do you wish to comment on that?

Ms Ryan: Yes. Other than that just to add that any retaliation has a negative impact on a whistle-blower. We would like to, you know,

expand the definition that it would be any detriment to a person. Social media, as we all know, can be very harmful.

The Chair: Thank you for that.

Any comments from committee members? Mr. Dach.

Mr. Dach: Thank you. Just briefly, Mr. Chair, I think that this really gets to the heart of one of the issues we're dealing with here. That is the reality, that the complainant's identity has already become known within the organization that they work in, at the HR level, when the initial complaint is made. Typically, as has been I think noted by Dr. Hutchison in his comments, the initial complaint, whistle-blowing is done through HR at the company or at the organizational level, I should say. By nature of reaction at that level, quite often the individual ends up getting identified, and that's where the social media harassment might occur as a result.

I think that that sort of gets to the crux of what we're dealing with; that is, at the level where the complaint is made internally, that's where the complainant gets outed and is put at risk. That's, I think, the real, serious element that we have to consider because it's preventing people from coming forward, and I don't know if we're really getting to that yet and preventing the fear that people have of going forward and creating a safety for individuals to come forward knowing that they will be protected. I think this goes a little ways towards doing that but is sort of after the fact. The sanctions against individuals who would do harm, I think, are important because it's easy to click a button and put somebody's career or even their life in jeopardy.

Ms Ryan: I agree with you. Again, I think this is important to distinguish, that the complaints should go to the designated officer, that supervisors, people in HR should be aware that, you know, if it's a disclosure of wrongdoing, this should go to the designated officer for that entity who has the training and understands the seriousness of it. We are also proposing that if someone, as you suggest, in HR or anyone leaks the identity of the whistle-blower, they be subject of an offence as well. We have proposed that as a recommendation. That can happen. But, again, we feel that the best people to handle these complaints are people who are trained and understand the difference between a policy violation or something more significant and know how to handle it appropriately. The disclosure of the identity of someone who is coming forward with a disclosure, a whistle-blower, is very, very serious. We feel that if someone is identified through social media, the person who has outed the whistle-blower should face repercussions as well.

I see Chris. Did you want to add something, Chris?

Mr. Ewaniuk: Yes. Thank you. I guess just a point of clarification because I think this is an important issue that the committee is considering. Complaints under the whistle-blower protection act do not go to HR. That's an important distinction that needs to be made. An employee has the option, if they choose, to use the process through HR, but complaints under the whistle-blower protection act go to a designated officer. Typically what we're seeing within organizations is a chief compliance officer or a chief ethics officer, perhaps general counsel or a senior-level position. When complaints are made using that process, the identity of the whistle-blower, according to the act and their internal procedures, must be protected. In circumstances where an employee chooses to use HR or some other mechanism, it's true that they do risk exposing their identity, which is why we're encouraging employees to use the act instead as the safe mechanism for reporting wrongdoing.

Thank you.

The Chair: Thank you, Chris.

I see Mr. Getson has a question.

Mr. Getson: No, I actually – Chair, with the explanation from Mr. Ewaniuk, I think that cleared it up. The only question I would have is: in those circumstances that they've seen with the whistle-blower act being utilized and complaints being lodged, have there been any leaks that they've found through any of their investigations that actually came out of HR through that process? I guess that would be the quick follow-up.

Ms Ryan: I'm not aware of any leaks, but I am aware of investigations where suspected whistle-blowers' identities have been discussed and the identities have been leaked, so to speak. Also, if I could add – and I think we're coming to it – if a person leaves the organization and they are suspected of being a whistle-blower or whether they were a whistle-blower, even after they leave the organization they can be a subject of reprisal. We feel there should be a mechanism in place to deal with that as well.

The Chair: Okay. Thank you.

Mr. Getson: Just to follow up on that one, Chair: would that cover the social media aspect that you're proposing here, or would there be other mechanisms, Commissioner, that you would propose to cover that scenario?

Ms Ryan: Perhaps, but at least social media. That's why we feel it should be any detrimental – the definition of reprisal to include any detriment to a person, and that would include the use of social media.

Mr. Getson: Thank you.

The Chair: Thank you for that clarification.

Any other committee members?

Seeing none, we'll move on to the Alberta Professional Planners Institute, issue 1: "Ensure that whistleblower information will be held in confidence and not subject to use for another purpose." Commissioner, do you agree with that recommendation?

Ms Ryan: Yes, and I think it's pretty self-explanatory.

The Chair: Any comments from any committee members?

Seeing none, we will move on to issue 2:

Elected officials should not be the final decision-makers in determining who can come forward or what happens with information that's brought forward through the whistle-blower Act. It should be bureaucratically appointed people who are leading that decision-making process and the adjudication process.

Do you care to comment on that one, Commissioner? I didn't see a real – other than you say that it's currently in practice.

Ms Ryan: Yes. I guess I was a little unclear about the point. I am an independent officer of the Legislature, as you know. I was appointed by an all-party – there's no politics involved in my office, so I was a little unsure about where that recommendation was going.

The Chair: Okay. Thank you.

Any comments or questions from the committee? All right. Thank you.

Seeing none, we will move on to the recommendations from Dr. Hutchison. Number 1: "Reforms are made to competently interpret and administer the act according to its remedial terms, and provide adequate resources for the investigation of alleged wrongdoings and reprisals." Commissioner, do you support that recommendation? Comments, please.

Ms Ryan: Yes, I do support it. We made 22 recommendations to strengthen protections for whistle-blowers and witnesses. I don't support the position as to how I interpret and apply the act. Again, I encourage anybody that's looking for additional information or clarification on how we conduct our investigations to contact our office.

The Chair: Okay. Thank you.

Any comments or questions from committee members?

Moving right along. Okay. Item 2, stakeholder position:

Improved rigor and transparency of reprisal investigations. What is needed is properly trained investigators who aggressively turn over every stone, looking for evidence of a disguised reprisal.

Commissioner, you did not support that stakeholder position. Do you wish to comment on that?

11:00

Ms Ryan: Yes. I mean, it's my view – and I know I'm biased, but I feel I have the best investigators to conduct the investigations and, you know, to thoroughly investigate it, highly skilled. I don't feel that that is a deficiency in my office.

The Chair: Okay. Thank you.

I see Mr. Feehan has a question.

Mr. Feehan: I'm just wondering if the individual who made the recommendations, Dr. Hutchison, provided any examples of times where there was inadequate rigour or transparency. You know, have there been incidents that have led to this concern?

Ms Ryan: I'm not aware of it, and I can't speak to it.

Mr. Feehan: Thank you.

The Chair: Thank you.

Any other committee members?

Okay. Thank you, Commissioner. We'll move on to item 3. The stakeholder recommendation: "There should be a right of appeal to the Alberta Labour Relations Board or, alternatively, the Court of Queen's Bench against a negative reprisal finding." The commissioner's response was support for that motion.

Ms Ryan: Yes. That is correct. We do believe that that provision already exists, and I mentioned it earlier. There is a process of judicial review of a decision I make with respect to a reprisal.

The Chair: Okay. Thank you.

Mr. Dach: Just wondering, Mr. Chair, if the commissioner believes or could highlight the distinction between what exists right now and what the stakeholder is recommending, that the appeal to the Alberta Labour Relations Board or the Court of Queen's Bench be granted, whereas the commissioner is saying that it already is subject to a judicial review. Are there distinctions there that the commissioner could outline to us that would perhaps be different, one from the other, if indeed the stakeholder's recommendations were adopted?

Ms Ryan: I think the point is that there should be a review. There should be, you know, some process for a review of a decision that I make with respect to a reprisal. I believe a judicial review, which is a court process, already exists in the legislation. If there is another, if the committee feels that there should be a different process for that appeal, I take no issue.

The Chair: Okay. Thank you.

Any other committee members?

Seeing none, we'll move on to item 4. The stakeholder recommendation:

Take into account the experiences and concerns of public service employees through an anonymous survey to gauge the kind and extent of wrongdoing they encounter in the workplace, and to help determine which legal reforms would encourage them to make disclosures.

Commissioner, you did not support that recommendation.

Ms Ryan: Yes. Thank you. I will say that we gave this careful consideration. At first I thought it was a very good suggestion, but then we started to look at, from our own experiences, how surveys are conducted. Again, sort of a paramount tenet of the whistle-blower protection act is to protect the whistle-blower, and we had concerns about, you know, whether people would be identified through a survey. In terms of how they responded to a survey, is it possible that they could be identified in their response? So while I felt it was a good idea with the best of intentions, we felt that the best thing is, again, education and awareness and to have the public-sector employee go through the designated processes to bring forward any concerns or any questions about wrongdoing or any allegations of wrongdoing.

The Chair: Okay. Thank you.

Mr. Dach.

Mr. Dach: Thank you, Mr. Chair. It appears as though, from the commissioner's comments, she feels that the results of such a survey would provide very beneficial information. However, she has concerns around anonymity being guarded. Now, if there was a way – and I know that other surveys have certainly looked at gleaning information while maintaining anonymity, and it's possible to do that – if indeed the commissioner was convinced that the anonymity of the respondents to such a survey could be guaranteed, would she not then decide to support this survey mechanism, which would glean information which I believe she would find quite useful and has already said she thought would be useful?

Ms Ryan: Yes, I agree. But, again, I'm very concerned about the risk of exposure, and I'm concerned about the benefits of the survey outweighing, you know, the identification of the whistle-blower. I would have concerns around that.

I see that Chris has joined us. Any comments, Chris?

Mr. Ewaniuk: Yeah. I think the confidentiality piece is big, but I guess the other piece is being able to verify the accuracy of the information and whether these are individuals who have actually engaged the whistle-blower system or whether they've used another mechanism.

The other issue is that the committee or whoever provides this survey may end up receiving some information about a serious and significant issue, so the committee would need to consider how it would respond if it receives that information, if they become aware of some form of illegality or some type of wrongdoing, how they would address that, and whether they would want to be, you know, I guess, burdened with that information.

The Chair: Thank you, Chris.

Any other comments? Do any other committee members wish to comment? Okay. Thank you.

We will move on to item 5. The stakeholder recommendation: "Include private sector employees under a revamped regime." Commissioner, you support a variation of the stakeholder's recommendation.

Ms Ryan: Yes. As the act currently stands, it just involves the public sector. It would require significant, you know, development of a whole new legislation. The act is dealing with the public sector. Where we feel that we could involve the private sector is through the private-sector providers. That's where the private sector would come in. But to expand it to include the private sector, just full stop, would require significant legislation and probably a whole new office for my part. I'm not sure what the revamped regime would look like, but we do feel that the prescribed service provider regulation would include a significant amount of the private sector.

The Chair: Okay. Thank you.

Any comments?

Mr. Dach: Just quickly I wanted to ask the commissioner if right now the commissioner's office receives complaints from the private sector that she is not able to deal with because her mandate doesn't cover that.

Ms Ryan: Yes, we do. We do receive complaints as you described.

Mr. Dach: What happens with them? What can you do with them?

Ms Ryan: Well, we try to provide advice on where they could go, you know, depending on the disclosure, but if it is not within our jurisdiction, then we can't investigate.

Mr. Dach: What options are you able to give them?

Ms Ryan: Well, I guess, you know, again, it would depend on the nature of it: if it was a private company, whether they would seek advice either from colleagues or, depending on the size of it, if there's some type of process mechanism already in place in the private organization.

I'm going to ask Chris if he has any examples where that's happened.

Mr. Ewaniuk: Yeah. Thank you. I might be in a better position because I'm kind of in this world on a daily basis. We receive complaints from the private sector, and we also receive complaints from the private sector that would be captured underneath this prescribed service provider regulation. I think the critical piece is, you know, that the intent of this act was to give a mechanism for employees to report wrongdoing in relation to our public institutions, so that's why our focus is more so on how money is managed by our public institutions and the contracted services that they provide.

But if we were to receive a complaint from an individual employed in a private company, you know, we would give them advice on directions that they could take. Perhaps it's seeking legal advice. If it's criminal in nature, we might guide them to a law enforcement agency, or there might be another authority that's better suited to manage that particular issue. But at this point within the private sector we just don't have that capability of investigating.

11:10

Mr. Dach: Mr. Ewaniuk, are you aware of jurisdictions globally where there is a separate authority for handling private-sector whistle-blower complaints?

Mr. Ewaniuk: Within the scope of our review we looked at several provinces and some international public interest disclosure offices, and I'm not aware of any single authority that has jurisdiction over both the public and private sectors. There may very well be authorities, you know, jurisdictions that have separate offices, but I'm just not aware of those.

Mr. Dach: Thank you.

The Chair: Any other comments? I see Ms Ganley.

Ms Ganley: Yes. Thank you, Chair. I don't know if this work has been done, but I was just curious. If you expanded it to the private sector, that's a significant increase in scope. My understanding from the commissioner's earlier comments was that there were about five investigators. Has anyone sort of even ballparked, like, how much more in resources would be necessary to expand this to the private sector?

Ms Ryan: No, I have not. I would just say that it would be, you know, significant. No, we haven't looked at that because it would be a significant increase in scope.

The Chair: Okay. Any other comments?

Mr. Feehan: I appreciate the concerns that, you know, you'd be certainly dramatically taking on a larger piece of work, but I'm wondering whether or not there would be a role for your office to provide structure and support for private agencies to establish their internal whistle-blower legislation, so the role would be more enhancing the ability of the private sector to adopt rules that have been structured and designed by your agency.

Ms Ryan: Well, that is something we can certainly take away. If it is the direction of the committee, we can certainly take that away and consider it. I will add, though, almost as a follow-up to Ms Ganley's question, that with respect to resources, even with the prescribed service providers, if that is included in the legislation, we are likely looking at an increase in the number of resources that we need to cover that particular piece of legislation.

The Chair: Thank you.

Anyone else on the committee? Questions?

Just for a clarification, if I could, you support a variation of this. Would it tie in with the AHS recommendation 4, about private health care providers? Is that kind of the extent of the variation that you would support in this, so if it was publicly funded private-sector contractors?

Ms Ryan: Yes. That's correct.

The Chair: Thank you.

Any other questions from committee members?

Moving on to item 6: "The Alberta Legislature adopt a journalistic shield law protecting against journalists." The commissioner's response was that you take no position on that. Are there any comments?

Ms Ryan: No. Nothing. I do think that it would be a separate piece of legislation, as other jurisdictions, I believe, have done.

The Chair: Any questions or concerns from committee members? Okay. Thank you.

Seeing none, we'll move on to item 7. The stakeholder recommendation: "The Alberta Legislature enact legislation protecting against strategic lawsuits against public participation (aka anti-SLAPP legislation)." Any comments from the commissioner?

Ms Ryan: Again, I take no position with respect to this particular issue. I do feel that, you know, if you wanted to consider having some legislation for strategic lawsuits against public participation, again, that would be a stand-alone piece of legislation. I have made a recommendation apart from this with respect to the protection

from civil liability for persons who make disclosures of wrongdoing or complaints of reprisal.

The Chair: Okay. Thank you.

Any questions or comments from the committee?

All right. Seeing none, we'll move along to item 8, the stakeholder recommendation: "The Act does not protect employees who are believed to be the whistleblower." Commissioner, you support that recommendation.

Ms Ryan: Yes, I do, and I have made a similar recommendation to protect people who are suspected of making disclosures.

The Chair: Okay. Thank you.

Any questions or comments from the committee?

Okay. Moving on, item 9, stakeholder recommendation – oh, sorry. Mr. Dach, you had a question? Sorry about that.

Mr. Dach: Just briefly on this recommendation, protection for non whistle-blowers, saying that the act does not provide protection for employees who are believed to be the whistle-blower. I believe that the commissioner's reference to recommendation 13 and then to the act was that it was – confidentiality in the act: that protection was adequate; the concept of confidentiality, keeping the whistleblower's name confidential, was adequate protection. But I think there was inherent in this recommendation the view that greater sanctions and repercussions should exist to protect the whistleblower should these sanctions against those who would generate reprisals – I'm not sure if the commissioner would like to comment a little bit on whether or not the confidentiality is adequate protection or if, in fact, there should be a greater reliance upon sanctions against those who would generate reprisals against whistle-blowers.

Ms Ryan: Well, we do believe there should be repercussions. What that would look like: I guess that would be up to the committee. But, yes, I do believe that that should be a very serious matter. Whether there are sanctions or penalties or whatever I would leave to the committee and the Labour Relations Board.

Mr. Dach: Thank you.

The Chair: Thank you.

Any further questions from the committee?

Seeing none, I'll move on to item 9, the stakeholder recommendation: "The Act include policy violations and code of conduct violations as types of wrongdoing to which employees ought to receive protection under the Act." Commissioner, you did not support that recommendation.

Ms Ryan: Yes. That's correct. It's my belief that the intention of the act is to facilitate the disclosure and investigation of significant and serious matters. This goes back to our earlier discussion about, you know, the threshold for which matters should be investigated or looked into by internal mechanisms, whether it's human resources, or sometimes you have ethics officers in various entities. I don't believe that the original act or the intent of the act was to look into policy violations and code of conduct. I believe that it should be those significant and serious matters which would be escalated to my office. There should be some, hopefully, significant mechanisms through the existing internal human resource departments that exist in the Public Service Commission.

The Chair: Thank you.

Any questions or comments from the committee?

Okay. Seeing none, we'll move on to item 10, the stakeholder recommendation: "There should be a presumption that dismissal or reprisal is the result of whistle-blowing, leaving it to the employer to prove that it is not." Commissioner, you did not support that recommendation.

Ms Ryan: Again, we have to find that balance. As an independent officer we have to ensure that we're not biased and we remain impartial throughout the investigation. It is my position that the presumption of guilt does not conform to the principles of procedural fairness and natural justice. The standard of proof is established through a balance of probabilities, and in scenarios where an individual organization fails to demonstrate a lawful reason for the adverse employment action, the balance of probabilities would favour the complainant. Again, I have to make sure that it's balanced and impartial and that I'm not biased one way or the other.

11:20

The Chair: Thank you, Commissioner.

Any questions or comments from the committee? Mr. Feehan.

Mr. Feehan: Yeah. I just want to make a distinction here. I'm wondering if the stakeholder is making a difference between presuming that the entity is, in fact, guilty of the crime that the whistle-blower is identifying – or is it that they are asking that things be assumed to be whistle-blowing, not a determination of whether or not, in fact, the crime has occurred but that the complainant has a right to be protected under the whistle-blowing regardless of whether or not, you know, they're right that this is an appropriate thing? In other words – sorry. I'm just trying to find a very fine line here, and that is that if someone in all honesty attempts to bring something forward but it turns out that it does not fit into the whistle-blower protection, does that mean that they are no longer protected by whistle-blowing such that they could experience reprisals by their company, based on the fact that they tried to bring something forward? It didn't fit, but now everybody knows they tried to bring something forward. Do you understand the piece I'm concerned about?

Ms Ryan: I think I understand the question. Someone makes a disclosure of wrongdoing, and it turns out that it's not wrongdoing: are they still protected? If they engage the provisions of the act, yes, they are still protected.

Mr. Feehan: I guess my concern here – and I know it's a thin line, but I just want to make sure I fully understand before we proceed – is that if someone says that they tried to bring something forward and it didn't go any farther because you didn't feel it warranted a natural wrongdoing and then they were dismissed, given that you said, "No; we're not investigating this; there's not a wrongdoing here," is it possible that the whistle-blower or the person who thought they were being a whistle-blower when they were not gets dismissed for having, you know, sort of caused trouble in the agency? Are they protected in this case? Can they come back to you and say, "I know you didn't think it was whistle-blowing, but I did, and then they fired me; there is no whistle-blower case, but I still got fired because I was concerned?"

Ms Ryan: Yes. They would be protected. If they made the disclosure in good faith, you know, and it turns out that it wasn't a wrongdoing, they would still be protected.

I'll just invite Chris if I haven't explained that enough.

The Chair: Sorry, Chris. You're on mute.

Mr. Ewaniuk: Sorry. Thank you. I really appreciate that question because I think there's a lot of confusion around that specific point. To the commissioner's comment, yes, if an employee comes to us and reports an issue, and ultimately we decide that it doesn't fall within the whistle-blower protection act, then, yeah, they're absolutely protected. They're not protected just because wrongdoing is found; they're protected for using the process itself. Now, what will often happen in those scenarios is that we'll give them options. We won't direct them to take a certain step, but if it's not something that falls under the whistle-blower protection act, we might outline different options that they could use to try to address their concerns. Does that answer your question, sir?

Mr. Feehan: It does. So if an individual – sorry; I assume I can just keep going – says, "I tried to complain about my company, and I got fired," there certainly would be support for them either through you or through the options that you might present to them for reinstatement. Is that correct?

Mr. Ewaniuk: Yes. They're protected to the extent that they use this process, but if an employee, for example, then decides that they want to contact the media and, you know, address their grievances through the media, they're not protected for that activity. That's a decision that they made on their own to do that, to undertake that. They're protected for using the act and the process outlined in it.

Mr. Feehan: Thank you.

The Chair: Thank you.

Mr. Dach: Just to follow up a bit on Mr. Feehan's point, I think what we're trying to get at, Mr. Chair, is that if an individual employee goes to a supervisor, not the designated officer, and files a complaint about, say, for example, a procurement practice and that individual then is sanctioned by their employer because they opened their mouth about it, what I'm hearing from the commissioner is that that employee, because they did not go to the designated officer, is not protected by the act. What I think the recommendation of the stakeholder is is that that person should receive the protection of the act because they, for whatever reason, just simply reported something that might be a valid wrongdoing to the wrong person but suffered sanctions for it, possibly got fired. Yet the commissioner is saying: no; well, too bad, so sad; that person doesn't get protected by the act. Is that my understanding? Am I correct in that?

Ms Ryan: The act does protect employees when they seek advice from a supervisor, but the process to make a disclosure would go through the designated officer, a disclosure of wrongdoing. They are protected if they seek advice from a supervisor. The supervisor, we would hope, would refer them to the designated officer. You can talk to anyone, but we would hope that they would engage the process of using the designated officers, who are trained to handle these types of matters.

Mr. Dach: If I may, with respect, Mr. Chair.

The Chair: Go ahead.

Mr. Dach: It seems as though, Commissioner, you're saying that there's a distinction between seeking advice and making a disclosure. If a person is seeking advice from their supervisor, they are protected, but if they actually go and make an actual disclosure of wrongdoing, then it's not to the right person. It's to the supervisor, not to the designated officer. They are not protected. Is that distinction correct?

Ms Ryan: Well, again, we would hope that the supervisor would obviously speak about the disclosure but would take the disclosure and recommend that the disclosure go to the designated officer. The designated officers are trained to know how to handle disclosures. Supervisors: there are just too many. There's no way that they could be all expected to know how to process a disclosure. You know, we would hope that it wouldn't just end with the supervisor, that the supervisor would take the appropriate action.

Chris, is there anything you'd like to add on that?

Mr. Ewaniuk: Yes. Thanks. I think a very important point is that this process exists to remove that ambiguity. There are a lot of supervisors within the public service, and they are not competent or capable to receive disclosures of wrongdoing and be able to address them. That's why this process exists, and that's why the designated officer exists.

Another point is that an individual employee's perspective of what is wrongdoing in the public interest is subjective, so to extend whistle-blower protection to every employee who addresses an issue or a grievance with the supervisor, I think, sets a dangerous precedent that severely hampers an organization's ability to make any type of human resource management decisions. Every employee who addresses interpersonal conflict or a policy issue or any type of grievance would then be theoretically shielded from any type of human resource management decision, and that would be a very challenging environment, I think, for the public service to work in.

Mr. Dach: I understand the conundrum, through the chair. It's just that, from my understanding, a number of complaints don't start at the point where you would go directly to the designated officer. They would begin with an approach to your direct supervisor saying: "Hey, I see something wrong here. What's happening?" Then – boom – if that ends up with that person getting fired or sanctioned, they should have some mechanism to protect themselves. Right here you're saying: "No, they don't. They went to the wrong person."

11:30

Mr. Ewaniuk: They would. They would, sir. If they were to go to their supervisor and say, "Hey, this is happening. I'm not sure what to do here," and as a result of that they're terminated, the act absolutely protects the employee. Any employee can go to their supervisor and seek advice. The disclosure process is different. If they wanted to make a formal complaint for the purpose of an investigation, that should be funnelled through the designated officer.

Mr. Dach: All right. We'll leave it at that for now, but, I mean, there's certainly a debate the committee might want to have around this issue.

The Chair: I think that's addressed in the next submission.

Mr. Getson, you had a question.

Mr. Getson: Well, I did. It was just a point of clarity, but I think Chris solved it again, so thank you for that, Chris. There has to be due course of business to take place, and you can't have the whistle-blower act act like the nanny state, quite frankly. It has to allow that interaction for operations to organize and be efficient and healthy organizations. My understanding is that, particularly on the side of the onus or reverse onus of guilt – I'm with the Commissioner on it. That's a very slippery slope. Otherwise, we get into these types of conversations that we've just had for the last bit. Thanks for that clarity, Chris. Again, we need course of business to take place. We

need to make sure the right supervisor is in the same place and HR still has a function to fill within any healthy organization.

Thank you.

The Chair: Thank you.

Any other questions or comments?

Okay. We will move on to issue 11, stakeholder position:

Protection is currently denied when an employee reports wrongdoing to the wrong person, fails to put the disclosure in writing, or, as in one case noted, fails to reference the legislation. These look like gotcha technicalities that do not serve any purpose other than to deny eligibility for reprisal protection under the act. Employees should automatically be given protection when they report wrongdoing in the workplace regard-less of which superior they report it to, whether it is in writing, and whether or not it references the act.

Commissioner, you do not support that stakeholder position. Please comment.

Ms Ryan: I feel that it would be the same discussion that we just had with the previous recommendation, so unless there are any other questions, I think we've discussed that one.

The Chair: Thank you.

Any comments or questions from the committee?

Seeing none, we will move on to item 12, stakeholder recommendation: "Employees who refuse to participate in wrongdoing should also be covered." Commissioner, you support that recommendation.

Ms Ryan: Yes, I do, and it is already covered under existing legislation, under section 24(1)(d): employees are protected from reprisals when they "declined to participate in a wrongdoing."

The Chair: Thank you.

Any questions or comments from the committee?

Seeing none, we'll move on to item 13, stakeholder recommendation:

The committee might also wish to consider a provision found in the federal act that permits disclosures directly to the press and public in urgent circumstances only, where there is not enough time to conduct an investigation to remedy the wrongdoing.

Commissioner, you do not support that recommendation. Do you wish to comment?

Ms Ryan: Yes, certainly. We could be talking about incidents where these things, as Chris mentioned earlier, go to the media. I have big concerns about confidentiality, and I want to also find that balance. Sometimes people are accused of wrongdoing, and it could be vexatious. It may not turn out to be for all the right reasons. I have to balance between protecting people who are wrongfully accused as well as dealing with whether the alleged wrongdoing actually is occurring.

I will also add that when emergencies exist – again, Chris mentioned this – you should go to law enforcement or whatever agency, emergency service will best deal with if it's an inherent danger to health and safety. You should go seek whatever agency is best going to deal with that impending emergency. Disclosures directly to the press and in public: again, I have big concerns about maintaining confidentiality. Permitting public disclosures would permit individuals to arbitrarily invoke whistle-blower protections on any matter that they perceive as wrongdoing whether or not it is actually the case.

The Chair: Okay. Thank you.

Any questions or comments from the committee?

Seeing none, we will move on to item 14, stakeholder position: “Any hint of collaboration or informality with an employer would and should rightly scare off a whistle-blower.” Commissioner, you do not support the position. Feel free to comment, please.

Ms Ryan: Yes. I don’t support it. We’re trying very hard to make sure that, you know, we always employ the best balance to investigating disclosures of wrongdoing and maintaining confidentiality. We also feel, though, depending on the size of the organization, that if the organization can deal with a complaint or a disclosure of whistle-blowing, it could make the organization better. It can improve the culture of the organization itself if we feel that they can address the complaint and properly address it without any conflict of interest where they could investigate a complaint of wrongdoing. That would be our preference. I think it improves the culture of the organization. It gives confidence to employees that if they raise a concern, it will be addressed by the organization. However, sometimes that is not the circumstance, and that is where we need to come in. We deal with the organization in a collaborative manner but not in terms of deciding the outcome of an investigation.

The Chair: Okay. Thank you.

Any questions or comments? I see, Chris, you’re on. Did you have a comment, sir?

Mr. Ewaniuk: I just wanted to echo the commissioner’s comments and stress the success that our office and the act in general have had when we take a collaborative approach to addressing whistle-blowing because we’re trying to promote a change in the culture of these organizations. To have an external body come in and do an investigation and then publicize and publish the result of all of those investigations and publicly chastise an organization does not promote that change. An organization is not going to want to encourage their employees to report wrongdoing. It is not going to want to embrace the whistle-blower culture if that’s what happens. We’ve had great success in working collaboratively with organizations. They’ve undertaken investigations with our assistance that have been very successful. Really, that’s the direction that we feel is working best.

The Chair: Thank you.

Any further comments from the committee?

Seeing none, we will move on to item 15, stakeholder position:

(In the) 2017-2018 annual report: an employee makes a complaint of wrongdoing to the deputy minister, an authorized channel, but was denied protection because he did not mention the act, the public interest disclosure act, or identify it as disclosure under the act. This is a reprisal investigation, so that guy is out of luck, and see you later. So that’s really unsatisfactory. That’s a gotcha, and that really does not create confidence in the system.

Commissioner, you did not support the position.

Ms Ryan: Yes. I’m aware of this case, but I’m going to ask Chris to speak to it specifically because it’s important that the circumstances be articulated accurately. Chris?

Mr. Ewaniuk: Thank you. Yeah. I guess this is why we’re really stressing and encouraging individuals who have questions about information and reports on our website to contact our office for clarification. You know, sometimes the information that we give out there might not completely answer their questions.

In this particular case there was an e-mail that was sent to a deputy minister that addressed a grievance. After that e-mail was sent to the deputy minister, the employee was ultimately terminated.

The employee contacted our office and made a complaint of reprisal. What we really looked at is: was the employee using the whistle-blower protection act to make their complaint, was what they were complaining about actually a wrongdoing, and were they terminated because they contacted the deputy minister?

11:40

In this case, the e-mail to the deputy minister made no mention that they were making a disclosure, made no mention of the whistle-blower protection act or that they were seeking whistle-blower protection, so the deputy minister would’ve had no reason to believe that this person was making a public interest disclosure or even a whistle-blower complaint. The second piece was that the e-mail didn’t address a wrongdoing as described in the act, and the third piece was that the employee was terminated for reasons other than that e-mail to the deputy minister.

That’s a scenario that likely exists frequently in organizations, where e-mails are written to superiors complaining about something. If an employee is subsequently terminated, I just could not see a scenario where – I couldn’t support a regime where such a scenario would qualify a person for whistle-blower protection. I think that would just be a really dangerous precedent to set.

The Chair: Okay. Thank you.

Questions?

Mr. Feehan: I guess I’m just a little worried about the first part of that; that is, the employee identifying that this was an e-mail specifically seeking protection under the whistle-blower act. I’m concerned that if everybody has to identify that upfront, then I think that’s problematic. I think that in the previous questions we’ve asked, you know, whether people are at least coming from a reasonable place of believing themselves to be doing that. You’ve indicated that they certainly will be provided protections, and now this first section is making me wonder whether that’s true or not.

Mr. Ewaniuk: Yes. Thank you for that. No, they don’t need to identify that they’re a whistle-blower when they use the process. This individual took an unorthodox method of trying to address a grievance that they had, so they went to a deputy minister, the head of the organization. They didn’t actually engage the whistle-blower process. They didn’t contact the designated officer, or they didn’t submit a complaint form or write an e-mail to the designated officer. What we are really trying to do in this case is give the benefit of any doubt and look at this from: is there anything in here that could have possibly related to the whistle-blower protection act or that would’ve caused the organization to consider that this person might have been a whistle-blower? If there was, then we probably would’ve taken a different tack. In this case there wasn’t.

Mr. Feehan: Okay. I’m not wanting to litigate this particular case because, of course, I don’t have any access and no role in this, but I am concerned that if someone is wanting to be a whistle-blower, if they choose not to go to the designated whistle-blower employee, you know, who’s identified, somehow that is going to compromise their position, when they’re going to someone who clearly should understand the whistle-blowing legislation, in this case the deputy minister.

I’m worried, you know, as I was with HR. If you pick the wrong person, you’re in trouble here. This is the second time this has come up. Certainly, I want people to go to the right person, but I’m well enough aware that people will often not for a variety of reasons. Someone such as a deputy minister, I would think, would be a reasonable person to go to with these kinds of concerns, with the understanding that they would understand whistle-blowing and

would redirect you to the appropriate place if they themselves were not to handle it. Just as I indicated earlier, I was concerned that HR needs to send you to the right place. My concern is that we're putting a fairly strong onus on employees to kind of get it right, and I guess I just need you to hear that I'm concerned. Your answers continue to stir that up in me.

Mr. Ewaniuk: Okay. I guess I'll just go back to, you know, my previous comments. What an individual employee perceives as wrongdoing can be subjective, which is why this process exists, so that there is a mechanism where they can make a complaint and a decision can be made, right? A decision can be made under the act whether an investigation should be conducted. If an employee goes to a supervisor or a deputy minister or anybody else in an organization and they're not making a complaint under the act, there's no requirement for them to make a decision under the whistle-blower protection act on whether or not an investigation should be conducted. That's why the specific system exists, so that a designated officer or our office can assess that complaint, determine whether or not it falls within the jurisdiction of the whistle-blower protection act, conduct that investigation under the act, and also provide those protections.

Mr. Feehan: So now you're suggesting that the criteria for your decision-making would be based on whether or not the complaint does fall under the act, not the person to whom it's reported, yet in your answer to this question you identified three criteria as to why you didn't think this particular situation fell under the act. The first that you identified was not the content of the complaint but, rather, who it was reported to. That's the concern I have here. I do appreciate that this, in this particular case and in many cases, may not be a whistle-blower thing and therefore may not fit, but I'm concerned that if you're using as one of your criteria who is reported to, then I think that that puts an onus on the person who is doing the reporting to get it right. I'm concerned about that.

Mr. Ewaniuk: I suppose that the distinction is that it's not our criteria. It's the criteria set out in the legislation, and the legislation requires that disclosures of wrongdoing be made to the designated officer or to the Public Interest Commissioner. I guess that's where I'll end my comments.

Thank you.

Mr. Feehan: Okay. Thank you.

The Chair: Okay. Ms Ganley, you had a question?

Ms Ganley: Yes. Sorry. I know we've kind of diverted a little bit here, but I'm just wondering. I understand the reasons why folks have to go to the designated officer, and I understand the sort of concern here. Perhaps you don't have a position on this because I'm just sort of raising it now. It's just that over the course of the discussion what I was thinking was: is there any way, if someone comes forward and attempts to make a disclosure and they make it to the wrong person, that that person be required to direct them to the correct person?

Ms Ryan: Well, I think that's a fair comment, Ms Ganley, and, you know, something that I haven't considered other than that I would hope that that's what takes place, that a good supervisor would do that. But if the committee felt that that needed to be enshrined into the legislation, you wouldn't get opposition from me on that.

The Chair: Okay. Thank you.

Any other questions or comments from the committee?

Seeing none, we'll move on to the next presenter, the Centre for Free Expression. Issue 1, the stakeholder position: "Canada is recognized internationally as having one of the worst national whistleblower laws of any modern democracy. The provinces have generally followed the lead of the federal government." Commissioner, you do not support the stakeholder's position. Do you care to comment, please?

Ms Ryan: Yes. Two facets to my response. There is a federal Public Servants Disclosure Protection Act, and I would say that some may view that as the national whistle-blower law. However, you know, speaking for Alberta, we have ingrained in the legislation periodic reviews, so I don't believe that we are lagging far behind. We do that scan of international best practices and standards. What we're going through right now, this process, helps ensure that we are considering best practices to be encompassed in the legislation. Again, I think it's probably a difference of opinion more than anything, but I would argue that we are not lagging far behind.

The Chair: Okay. Thank you.

Any questions or comments from the committee?

Okay. We will move on. Issue 2, the stakeholder's position: "Alberta's Act is limited in scope of what can be reported." Your response is that you do not support the stakeholder position. Please comment.

11:50

Ms Ryan: Again, this goes back to earlier discussions about: what is the definition of wrongdoing? I would again reiterate that it's important that my office is where we would investigate serious and significant matters, you know, as the act sets out, that are "unlawful, dangerous . . . or injurious to the public interest." It is important to have some scope because of, first of all, the size of our office, but also, again, perhaps there are other processes that can best handle complaints – as we discussed earlier, internal HR processes – depending on what the nature of the complaint is. If it's a policy issue, that would be something that would not fall under our jurisdiction.

I believe that the act does, you know, set out an appropriate scope, and I haven't found that my office is receiving complaints relating to serious forms of wrongdoing which are not captured in the act.

Those would be my comments.

The Chair: Okay. Thank you.

Any questions or comments from the committee?

Okay. We'll move on to item 3, the stakeholder recommendation: "Alberta's Act applies a good faith test that should be removed." The commissioner's response is: I support the recommendation. Please comment.

Ms Ryan: Yes. I would say that our office presumes good faith in the absence of, you know, anything to the contrary. If a person makes a complaint by providing anything that's false or misleading, they can be subject to penalties set out in the act for making a false statement. There are mechanisms in place to deal with those vexatious or malicious complaints. I will also add that since our inception our office has not declined to investigate a disclosure based on the absence of good faith. We just don't feel it's necessary.

The Chair: Okay. Thank you.

I see, Mr. Singh, you have your hand up.

Mr. Singh: Thank you, Mr. Chair, and thank you, Commissioner, for your comments on this recommendation, which you support. Your office has not declined to investigate a disclosure based on the

absence of good faith. Has there been any instance where you have determined that the complaint was filed with bad intentions or knowingly false or misleading information and where the proper penalty under the act has been issued?

Ms Ryan: The only investigation that comes to mind – and maybe Chris has another one – is where we did receive an anonymous complaint, which I have the discretion to decide whether to investigate or not. The details of the investigation were very specific, and they were also very serious. Given that criteria, despite the fact that it was anonymous, we felt we should investigate, so we commenced an investigation. In the end we did determine that the allegation was false and had no merit. However, because it was anonymous, we couldn't determine, you know, who made the false complaint. I'm not aware of any other complaint where we determined that it was outright vexatious or malicious.

I'll just ask Chris to confirm that.

Mr. Ewaniuk: No, we haven't. I think the consideration here is that every individual has their own perspective on how something happens, how something occurred. They may have it wrong, which is fine, but it doesn't necessarily mean that because they have it wrong, they were acting poorly or vexatiously. That's why we assess complaints based on fact and merit and not the individual's motivation.

The other thing to consider is that a legitimate complaint can be made in bad faith. For example, if you have an employee who was let go for any reason, for whatever reason, nothing to do with the act, and they know about something that one of their supervisors did that was illegal, they can make that complaint, but their intention might be to harm that supervisor – right? – to get back at them for firing them. It doesn't make that disclosure of wrongdoing any less legitimate, but they might not necessarily have been acting in good faith when they made it.

Mr. Singh: Thank you.

The Chair: Thank you. Did you have a follow-up?

Mr. Singh: Just a follow-up.

The Chair: Go ahead, Mr. Singh.

Mr. Singh: Do you think that if we remove the good-faith requirement, it would open it up for more complaints to be filed, and is your office ready for this rise in cases?

Ms Ryan: It's a good question. I don't think it would open it up to more investigations. I think there's just the presumption that people come forward with the best of intentions, that, you know, they're making disclosures in good faith. I think that most people are operating under that premise, and I don't feel that removal will add to the volume of our cases.

Mr. Singh: Thank you, Commissioner, for answering.

The Chair: Thank you.

Ms Ganley.

Ms Ganley: Yes. Thank you. I was just thinking about this in relation to our previous conversation. What was said was that in an instance in which someone comes forward with a complaint, the complaint ultimately isn't – like, it doesn't fit the definition of wrongdoing or whatever else. If the individual brought it forward in good faith, they would still be protected by the legislation even though, ultimately, it didn't fall within the scope of the act. I'm just worried.

I just want to make sure that if we take out the good-faith language, we don't lose that, so that someone coming forward and making a disclosure that doesn't quite rise to the level of wrongdoing will still be protected.

Ms Ryan: Yes. It's a good point, but, I mean, that's the purpose of the investigation, to determine whether a wrongdoing was committed. You know, if someone made the disclosure in good faith and had the best of intentions and in the end it didn't meet the definition of a wrongdoing, they would still be protected.

Ms Ganley: Even if we take the language out?

Ms Ryan: Yes.

Ms Ganley: Okay. Thank you.

The Chair: Thank you.

Mr. Getson.

Mr. Getson: Yeah. This is an interesting topic, and thanks to Member Ganley there as well for asking that question.

Back to the commissioner, again, just exploring this a bit. When you might have the Hail Mary, where somebody does it anonymously – they're leaving with vexation or otherwise; they're trying to get back, as you said – is there a history of them trying other measures or going through the other processes and procedures and that it's a last-ditch effort to go through the whistle-blower act, or do you see a lot of the cases going there first? I was just trying to understand the context of when it might be in good faith versus that they're just, you know, firing off the pistols in leaving the door. What's the common path for individuals, I guess?

Ms Ryan: I'm not a hundred per cent sure I understand the question, but I will say that, you know, again, we take all complaints seriously, and we can assess through the investigation, through interviews and collecting evidence by various means, whether the complaint was made for bona fide reasons. If it wasn't, if through interviews we get feedback from people that this is a common pattern for this person or if it just confirms that the complaint was made vexatiously, we can make that determination. I don't think it's been a problem.

Chris, any comment on that from your experience?

Mr. Getson: If I may just rephrase it here so that I can get the question. Sorry. Running on low sleep and caffeine is always a great combination. I guess the pattern where it brought it to my attention is that when you have an anonymous tip, so to speak, where someone isn't putting their name to it – they're exiting, as you said – and in the context where Chris has said that some of the times where you may have good intel, if you would, it doesn't necessarily have to come from good faith only. So in bad faith they're trying to get at their supervisor for wrongdoings. You do the investigation. Potentially, you find a wrongdoing. I guess that where I'm going is: what is that percentage of individuals? Do they turn to the whistle-blower act out of desperation because they've tried everything else first and are exiting a job and on the way out the door they're hitting that button? Or have you found that for most cases with the whistle-blowers are they finding a good source, I guess, to go through the act either using the other mechanisms first? Or are you finding that they go immediately to the whistle-blower act? Like, there has to be some delineation between wrongdoings if there was a pattern or history of trying to report and do it or if they get frustrated and then just leave and then tell you.

12:00

Mr. Ewaniuk: Great question. I think it's both. I think it definitely happens. You know, we definitely see cases – I dealt with one yesterday, as a matter of fact – where they exhaust all internal mechanisms. They try to address their issue using various different avenues, and at the end they get frustrated and go outside an organization, or they might get fired for using those internal mechanisms first. That's why we always recommend to consult with our office or the designated officer first because regardless of what process flows afterwards, they're covered under that blanket of protection, right? So if it's not something that's jurisdictional to us, then we might direct them to another process or another system, but at least get that advice from our office first or their designated officer.

Mr. Getson: Okay. Thanks. I think I've exhausted that, so I feel better about removing that clause as a recommendation.

The Chair: Thank you, Mr. Getson.

Any further comments or questions from the committee?

Seeing none, we will move on to item 4, stakeholder recommendation: "Alberta's Act lacks protection when a disclosure is made through alternate channels (i.e., a supervisor)." Commissioner, you don't support that recommendation. I think we've had discussion on this particular issue, but if you have any comments, please go ahead.

Ms Ryan: No, nothing further than the previous discussion. I think we've dealt with it.

The Chair: Okay. Thank you very much.

Any questions or comments from the committee?

Seeing none, we'll move on to item 5, stakeholder recommendation: "Alberta's Act lacks protection when a disclosure is not made in writing." Commissioner, you did not support that recommendation.

Ms Ryan: That's correct. I think the purpose of committing it to paper or a form or where you have to put your name to it ensures better buy-in and ensures that, you know, the person who's making the disclosure is committed. Putting your name to something, I think, enhances that possibility or that prospect. If someone was walking by and made an offhanded comment that sounded like something in terms of a wrongdoing, how should that be best handled? Is it just the heat of the moment? Possibly. But if the person is serious, we feel that putting it to paper or putting their name to it will increase the likelihood that they are serious about it. If someone is unable to put it in writing or complete the form, our office will help. We can transcribe the conversation and have the individual verify the contents and accuracy.

The Chair: Okay. Thank you.

Any questions or comments from the committee?

Seeing none, we will move on to item 6, stakeholder recommendation: "The Act does not contain a provision to provide interim relief." You have no position on that issue, Commissioner. Any further discussion?

Ms Ryan: No, other than the fact that with the current process, you know, the reprisals will go to the Labour Relations Board, and they make that decision about whether there should be interim relief pending a final decision on the matter. But I don't have any opinion on it at this point.

The Chair: Okay. Any discussion or questions from the committee?

Seeing none, moving right along, we'll go on to issue 7, stakeholder recommendation: "The Alberta Act lacks a reverse

onus provision." You do not support that recommendation. Please comment.

Ms Ryan: Again, as I said earlier, you know, we are an independent office. We want to approach every investigation from a balanced perspective and ensure that there is no bias leaning one way or the other. As we mentioned, sometimes complaints can be vexatious, so we don't feel that there should be a reverse onus prior to the completion of an investigation. That reverse onus provision should not be there.

The Chair: Okay. Thank you.

Are there any questions or comments from the committee?

Seeing none, we'll move on to issue 8, stakeholder recommendation: "The Act contain a provision giving the Public Interest Commissioner the authority to issue orders for corrective measures." You do not support that recommendation.

Ms Ryan: That's correct. As it stands now given the current legislation, I can make recommendations. I do feel that there's a strong enough process in place that if the recommendations are not followed, there is a mechanism for me to escalate. I could go to the head of the department. I can go to the clerk of the Executive Council. I can also go to the media and, you know, report the issue that way. But I will say that I have not encountered circumstances where my recommendations following an investigation have not been followed. I guess that's why I don't support this recommendation. I feel the current mechanisms are sufficient.

The Chair: Are there any questions or comments from the committee?

Seeing none, we'll move on to issue 9, stakeholder position:

The Public Interest Commissioner is effectively a gatekeeper to the body that would grant them a remedy (i.e. the Labour Relations Board). There's not compelling need to have that role.

In other jurisdictions people can go directly to some form of tribunal and make their case.

Again, I see you did not support that stakeholder position. Please comment on that.

Ms Ryan: We believe that this would place the Labour Relations Board in the investigative business of having, you know, to investigate the matter and having that responsibility. The burden of proof then would fall to the employee to prove to the Labour Relations Board that a reprisal occurred. We feel that we are best positioned to conduct the investigation, make a determination of whether a reprisal has occurred. If we feel that a reprisal has occurred, then we would forward that to the Labour Relations Board for their assessment and their final determination.

The Chair: Okay. Thank you.

Any comments or questions?

Seeing none, we'll move on to issue 10, stakeholder position:

The laws typically give an enormous amount of discretion to do nothing, and it gives a whole list of reasons why the commissioner might decide not to investigate, including any other reason, which just invites them to make up reasons.

Commissioner, you do not support that stakeholder's position.

Ms Ryan: Yes. Correct. We don't make up reasons not to investigate. We feel that section 19 does sufficiently set out the circumstances under which an investigation is not required, you know, from (a) to (g). To date I just have not seen this as an issue. We don't make them arbitrarily, those decisions on whether or not to investigate. We give it careful consideration. The act, as I said, set out the circumstances under which I may not investigate; for

example, if we feel the disclosure is frivolous or vexatious, it has not been made in good faith. It also could be a case where it's already under investigation by a law enforcement agency, or it could be before the courts. We would not investigate at that point.

The Chair: Okay. Thank you, Commissioner.

Are there any questions or comments from the committee?

Seeing none, we'll move on to issue 11, stakeholder position:

There is substantial evidence that whistle-blowers are indeed suffering reprisals, and the track record in terms of uncovering and fixing serious wrongdoing is almost nonexistent: just one case in seven years.

Commissioner, your response.

12:10

Ms Ryan: As I've noted, I'm not aware of the substantial evidence, and I wish that if there's substantial evidence of which reprisals we're not hearing about, that would be brought to my office. We have an open door. You know, we would gladly want to hear about those circumstances. Again, reprisals are very serious and significant matters and, really, how often – I don't know what the appropriate number would be for my office to be investigating. They're special circumstances, and they are reserved for instances where the actions of individuals or organizations are unlawful, dangerous to the public, or injurious to the public interest. We also need to factor in instances where our office has worked collaboratively with organizations to correct wrongdoings outside the auspices of a formal investigation. We are investigating. We have cases currently under way where we are investigating complaints of reprisal, but I feel that this should be a small number if everyone is doing their job. However, if there are substantial cases of reprisal that we are not hearing about, I would certainly welcome to hear those cases.

The Chair: Okay. Thank you, Commissioner.

Are there any questions or comments from the committee?

Seeing none, we'll move on to issue 12, stakeholder recommendation:

If we were able to, through follow-up surveys, find out more about the whistle-blowers, we would have a lot better indication of whether the system is actually working to protect them, and if it doesn't or if people believe it doesn't.

Commissioner, you said that you support a variation of this recommendation. Could you clarify that for the committee?

Ms Ryan: Certainly. We discussed surveys earlier, but what we are proposing is – right now the entities that fall under our jurisdiction are to prepare annual reports, and in those annual reports they are to include, you know, activities that fall under this act: numbers of disclosures, numbers of wrongdoings, that sort of thing. What we feel would be helpful is if the entities that fall under our jurisdiction would send those reports of incidences that fall under our act to our office directly. That way, we could do an assessment of trends or what's happening, just get a better feel for what's happening in the various entities and whether that means we need to do more education or whether we need to come back to the committee for different legislation. We just feel that that would be helpful, if we could get those reports provided directly to our office. We can get them, but it would require a lot of work for us to go out and call them from all the entities. It would be better if they could just, as part of their process in putting them in their annual report, also send them to our office.

The Chair: Okay. Thank you very much.

I see Mr. Singh has his hand up. Go ahead, Mr. Singh.

Mr. Singh: Thank you, Mr. Chair. Thank you, Commissioner. Can you comment on this recommendation regarding the measuring of the effectiveness of the [inaudible] should allow you to require entities to provide annual reporting on the activities under the act. Would you also be in this same position or opinion if the reporting is made optional instead of making it a mandatory requirement?

The Chair: Sorry, Commissioner. You're on mute.

Ms Ryan: Sorry. I missed the first part of your question, Mr. Singh. I don't feel that it should be optional. I feel that the best assessment we could get is if we got reporting from all the entities in our jurisdiction.

The Chair: Okay. Thank you.

Are there any further questions or comments from the committee?

Seeing none, we will move on now to issue 13, stakeholder recommendation:

What we have is evidence that there's a huge conflict of interest in this role when the person is appointed by the government, can be removed by the government, and whose future career prospects may depend on the favour of the government, and they've been brought up in an environment like bureaucrats are where they're socialized to believe in protecting the bureaucracy. When someone of that background and career path is put in this role, you have a huge conflict of interest and enormous pressure on them to keep the government out of trouble in the short term. Again, that's a pattern that we see. It's quite blatant in some cases. I think that position has to be, as far as you can make it, independent of the government. There are various ways of doing that.

I see that you do not support the position. Do you wish to comment on it?

Ms Ryan: Yes. Other than that I feel the selection committee, which was quite extensive in my interview process, you know, is well positioned to address those conflicts and assess a person's background. I personally do not come from a bureaucratic background, and I have not felt that I'm in a conflict of interest, and I've not felt pressured to align myself with any political party or protect the public entities that fall under the jurisdiction of the act. I have not felt that I'm in that position. I feel that the current process, where the standing committee puts together a committee to interview applicants: that's their time to flesh out whether the person has the appropriate credentials to be in the position.

The Chair: Okay. Thank you, Commissioner.

Any comments or questions from the committee?

Seeing none, moving right along, we will address the final position, from Dr. John Huang: "The Act extend to physicians in private practice." Commissioner, I see that you support that recommendation.

Ms Ryan: Yes. This would align with our earlier discussions about, you know, physicians coming under the prescribed service provider provision.

The Chair: Thank you.

Are there any questions, comments from the committee?

Very good. That concludes that portion of the day.

I know that it isn't on the agenda, but there has been a request for the possibility of making public appendix A and appendix B, the tool kit that the commissioner used to come up with her responses. The review of the public interest disclosure submissions from the Public Interest Commissioner is public at the moment. There is

some question of whether we make this document and her comments public as well. Ms Ganley, you have a comment?

Ms Ganley: I actually just had a question. Isn't it typical for the majority of documents coming before a committee like this to be public? I had assumed the only reason this one wasn't public yet was that we hadn't made the motion yet.

The Chair: Yeah. That's, I guess, what we're trying to address here, the committee's – you know, if they would like to make it public, then we need a motion to that effect.

Ms Ganley: Oh. Well, I'm happy to make that motion.

The Chair: Okay. We will get that typed up here in short order. There we go. Moved by Ms Ganley that

the Standing Committee on Resource Stewardship make the February 10, 2021, report from the office of the Public Interest Commissioner publicly available on the committee's external website, including appendix A and appendix B.

Is that suitable, Ms Ganley?

Ms Ganley: Yes. That sounds great.

The Chair: All right. Thank you.

Any comments from the committee?

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

That motion is carried.

Thank you very much, Ms Ganley.

We'll now move on to section (c) on the agenda, next steps and timeline for completion of the review of the act. At this time I will

remind members that the committee is required to submit its final report to the Assembly by July 7. So that the committee can meet its deadline, it is anticipated that we will proceed to final deliberations in late May or early June, and we will likely schedule at least a couple of days of meetings so that there's ample time for the committee to deliberate. After the committee finishes its deliberations, the usual practice is to direct research services to draft the committee's final report containing its recommendations and then make the draft report available to the committee to review.

12:20

I'd just like to add the comment that I think that the discussions we've had today have been very good, excellent input from all sides and the commissioner as well. I really appreciate that. I think it's a very important piece of legislation that we're discussing here.

Are there any questions from anyone on the process going forward?

Okay. Thank you. Now we'll move on to other business. Are there any other issues for discussion before we wrap up today's meeting?

All right. The date of the next meeting will be at the call of the chair. I will try and give as much notice as possible.

If there's nothing else for the committee's consideration, I'll call for a motion to adjourn. I see Mr. Dach has his hand up to make that motion. All in favour? Any opposed? We don't want to hang out? All right. Thank you very much. That motion is approved and passed. This meeting is adjourned.

Thank you, everyone, for coming.

[The committee adjourned at 12:21 p.m.]

