



Legislative Assembly of Alberta

The 30th Legislature
Second Session

Standing Committee
on
Resource Stewardship

Public Interest Disclosure (Whistleblower Protection) Act Review

Friday, June 11, 2021
9 a.m.

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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

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 (Ind)
Singh, Peter, Calgary-East (UC)
Turton, Searle, Spruce Grove-Stony Plain (UC)
Yaseen, Muhammad, Calgary-North (UC)

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9 a.m.

Friday, June 11, 2021

[Mr. Hanson in the chair]

The Chair: Good morning, everybody. I'd like to call the meeting to order. I'd like to call the 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 via videoconference. We'll begin to my right.

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

Mr. Turton: Searle Turton, MLA for Spruce Grove-Stony Plain.

Mr. Dach: Morning. Lorne Dach, MLA for Edmonton-McClung.

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

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

Mr. Kulicki: Good morning. Michael Kulicki, clerk of committees and research services.

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

The Chair: Okay. Thank you.

We'll now go to the members joining virtually via Teams, starting with Mr. Ceci.

Member Ceci: Hi. Joe Ceci, Calgary-Buffalo, MLA.

The Chair: Ms Issik.

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

The Chair: Mr. Yaseen.

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

The Chair: Mr. Guthrie.

Mr. Guthrie: Hi there. Peter Guthrie, MLA, Airdrie-Cochrane.

The Chair: Ms Ganley.

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

The Chair: Mr. Singh.

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

The Chair: Have I missed anybody?

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

The Chair: Okay. Thank you, Todd.

All right. There are no substitutions to announce.

I would note that the Public Interest Commissioner was unable to join us today; however, we have representation from her office joining us online to provide technical assistance as the committee goes through the deliberations: Mr. Chris Ewaniuk, investigations

manager, Public Interest Commissioner; and Mr. Peter Sherstan, Deputy Public Interest Commissioner. Thank you both for joining us today.

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 meeting participants.

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Are there any changes or additions to the draft agenda? If not, would somebody like to make a motion to approve the agenda? Mr. Getson. Moved by Mr. Getson that the agenda for the June 11, 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 April 28, 2021, meeting. Are there any errors or omissions to note? If not, would a member like to make a motion to approve the minutes? Mr. Dach. Thank you. Moved by Mr. Dach that the minutes of the April 28, 2021, meeting of the Standing Committee on Resource Stewardship be approved as distributed. All in favour? Any opposed? Again, that motion is carried. Thank you very much.

Okay. Review of the Public Interest Disclosure (Whistleblower Protection) Act, item (a). We have a letter from the Public Interest Commissioner. Hon. members, I'd like to note for the record that on May 28, 2021, the committee received a letter from the Public Interest Commissioner following up on issues discussed at the committee's April 28 meeting. This letter was posted to the internal committee website for members to review. At this time I would like to open the floor to members if they have any comments on this item. Any members online with discussion? Okay. Thank you.

As is standard practice, the committee can decide to make the document publicly available on the committee's external website. Would a member like to make a motion to that effect? Thank you, Mr. Feehan. Moved by Mr. Feehan that the Standing Committee on Resource Stewardship make the May 28, 2021, letter from the office of the Public Interest Commissioner publicly available on the committee's external website. All in favour? Oh, sorry.

Member Ceci: Sorry. Just for clarification, Chair, I thought I read that it'd already been posted. Am I incorrect?

The Chair: Just internally, sir. This would make it publicly.

Member Ceci: Oh, okay. Sorry.

The Chair: Not a problem.

That motion is still on the floor. All in favour of that motion? Any opposed? Thank you very much.

That motion is carried.

As we begin our deliberations in relation to the Public Interest Disclosure (Whistleblower Protection) Act, I will remind members that we are now considering the recommendations that we would like to include in our report to the Assembly. I would remind the committee that we are required to report to the Legislative Assembly by July 7, 2021. Our Legislative Assembly Office staff have been available to assist committee members with the drafting of motions and to distribute proposed motions on the committee's internal website. Additionally, the summary of issues and proposals document prepared by research services in February is also available to assist members during deliberations.

With that, I would like to open the floor to begin deliberations. Go ahead, Mr. Dach.

Mr. Dach: Thank you, Mr. Chair. I'd like to begin by moving that the Standing Committee on Resource Stewardship recommend that the Public Interest Disclosure (Whistleblower Protection) Act be amended in section 1(g) to expand the definition of "employee" to include regulated members of the College of Physicians & Surgeons of Alberta, including physicians, medical residents, and medical students, who provide services to a regional health authority.

This was a recommendation, Mr. Chair, by the Alberta Medical Association, and I think it makes sense to include physicians under the act. Physicians and health services have very much been in the forefront of the public's mind, and I think this is an appropriate measure to take.

The Chair: Okay. Thank you.

Is there any discussion from committee members on that motion? Go ahead, Mr. Turton.

Mr. Turton: Yes. Thank you, Mr. Chair. I appreciate the motion put forth by Member Dach. You know, I see no issues with the rationale that he's talking about, and I think it would be a good motion to support. Thank you to the member.

The Chair: Thank you. Anybody online wish to chime in on this? Seeing none, should we put the motion to a vote?

Would you like to reread the motion, just so everybody is clear on it, sir?

Mr. Dach: Certainly, Mr. Chair. I move that the Standing Committee on Resource Stewardship recommend that the Public Interest Disclosure (Whistleblower Protection) Act be amended in section 1(g) to expand the definition of "employee" to include regulated members of the College of Physicians & Surgeons of Alberta, including physicians, medical residents, and medical students, who provide services to a regional health authority.

The Chair: Thank you, sir.

All those in favour of the motion, please say aye. Any opposed, please say no. I believe that motion is carried.

Next, go ahead, Mr. Getson.

Mr. Getson: Perfect. Thank you, Mr. Chair. I'd like to put a motion forward on the extension of internal investigation timelines. I'd like to move that the Standing Committee on Resource Stewardship recommend that the Public Interest Disclosure (Whistleblower Protection) Act regulation be amended in section 5(1) to permit section 5(1) AR 71/2013, a chief officer to extend a time limit,

provided that the overall time period for investigation and the provision of a report is not extended for more than 60 business days.

Some of the rationale behind this is that it was a recommendation from Alberta Health Services. The Public Interest Commissioner supported the recommendation at our deliberations in previous meetings. Commissioner Ryan – the request for the extension from 30 to 60 days did occur quite often, so this change would make that part more of the process, more efficient.

The Chair: Thank you, sir.

Are there any comments from committee members?

Mr. Feehan: I just want to offer my support for this motion. I think we've been given some good advice that a reasonable amount of time provides a better service in the long run even though it may extend a particular initiative at one time, so I support the motion.

The Chair: Thank you. Any other members wishing to comment? Any members online?

Seeing none, it looks like we're going through these quite well.

Do you want to reread your motion, and then we can vote on it, Mr. Getson?

9:10

Mr. Getson: Sure. Thank you, Mr. Chair. It always helps when the sun is shining outside. It makes people want to go a little quicker on a Friday. I move that

the Standing Committee on Resource Stewardship recommend that the Public Interest Disclosure (Whistleblower Protection) Act regulation be amended in section 5(1) to permit 5(1) AR 71/2013, a chief officer to extend a time limit, provided that the overall time period for investigation and the provision of the report is not extended for more than 60 business days.

The Chair: Thank you.

Having heard the motion, all those in favour? Any opposed?

That motion is also carried.

Any other members wishing to comment?

Mr. Getson: I have another one.

The Chair: Okay. Mr. Getson.

Mr. Getson: Thank you, Mr. Chair and again to all members on the sides for being very co-operative on a sunny Friday.

I have another one. I'd like to move that

the Standing Committee on Resource Stewardship recommend that the Public Interest Disclosure (Whistleblower Protection) Act regulation in section 2(1)(b), section 2(1)(b) AR 71/2013, be amended to include all subsidiary health corporations under the Regional Health Authorities Act.

Again, that was a recommendation that we had all heard from the commissioner in that regard. Currently the Calgary Lab Services capital region group care certainly has some regulations and includes a bunch of the subsidiary companies that go with it. Again, it was something that we deliberated on at length previously. I believe that we were all in the same place. I'd like to move that motion.

The Chair: Thank you, sir.

Mr. Dach: I understand that typically we do alternate, go back and forth, between opposition and government members with motions. Is that going to be our practice?

The Chair: I will endeavour to do that, sir. Sorry that we jumped; he caught my attention quickly.

Mr. Dach: Thank you, sir.

The Chair: It wasn't my intention to sideline you, sir.

Mr. Dach: Very well.

The Chair: We'll finish with this one, and then we'll go directly to you, sir.

Mr. Dach: And then to Richard.

The Chair: And then to Richard. I'm good with that if the committee is.

Mr. Dach: All right.

The Chair: Is there any discussion on the motion put forward by Mr. Getson?

Hearing none, we can go directly to a vote on that. All those in favour of the motion put forward by Mr. Getson, please say aye. Any opposed?

That motion is also carried.

Mr. Dach.

Mr. Dach: Thank you very much, Chair. I will move that the Standing Committee on Resource Stewardship recommend that the following entities be prescribed by regulation as service providers pursuant to section 4.2 of the Public Interest Disclosure (Whistleblower Protection) Act: (1) nursing homes under contract with a regional health authority under the Nursing Homes Act; (2) home care service providers under contract with a regional health authority in accordance with the co-ordinated home care program regulation; (3) operators of supportive living accommodations licensed under the Supportive Living Accommodation Licensing Act; (4) management bodies established under the Alberta Housing Act.

The Chair: Thank you.

Is there any discussion on the motion? Go ahead, Mr. Getson.

Mr. Getson: No. I thank the member for the motion. I think it makes a lot of sense, and I really would encourage other members of the committee to vote in favour of this.

The Chair: Any other discussion from committee members online?

Hearing none, we can go directly to the vote. I don't think I'll ask you to reread the whole thing. I think we can vote on the motion as proposed by Mr. Dach. All those in favour, please say aye. Any opposed, please say no.

That motion is also carried.

Mr. Feehan.

Mr. Feehan: Thank you. Sorry. I would like to propose what's numbered 19 for us, to make the motion that the Standing Committee on Resource Stewardship recommend that the Public Interest Disclosure (Whistleblower Protection) Act be amended to remove references to "in good faith" from sections 1(f), 19(1)(d), 24(1), and 27.

I think that it's important that we remove the – sorry. Can I just speak to it?

The Chair: Go ahead.

Mr. Feehan: Yeah. I realize there might be a process.

I think it's important that we remove the term "in good faith" because it implies from the beginning that somebody's complaint is suspect, and we shouldn't be starting in that place. I'm advised by legal people that it actually provides no clear legal purpose in terms

of what's going on. I don't think we should be starting with the position that we're trying to put a barrier in for people to somehow frighten them off by indicating that they're going to be suspected of acting in bad faith. I think that the act has clear criteria for the whistle-blowers and that that's sufficient, and we don't need this kind of negative phrasing.

The Chair: Very good. Thank you.

Any comments from committee members?

Mr. Getson: I know it's going to be two for two and surprising for many, but I'm in support of this one, too, from the members opposite.

The Chair: Okay. Thank you.

Any comments from the folks online?

Mr. Singh: Thank you, Mr. Chair.

The Chair: Go ahead, Mr. Singh.

Mr. Singh: I support this motion, and I appreciate Member Feehan bringing this matter. As explained by the commissioner in a submission, complaints of disclosures are assessed based on merit and not on the individual's motivation. They should not be required to examine the motivational factor on why any employee lodged a complaint. Moreover, the act penalizes anyone who would make false statements or misleading information and anyone that would obstruct an investigation or destroy, falsify, or conceal information. Absence of good faith on the part of making the disclosure should not be a hindrance to investigation and to correcting the wrongdoing should it be proven.

Thank you, Mr. Chair.

The Chair: Thank you.

Any other members wishing to comment?

Mr. Feehan, if you'd quickly read that motion back in so that we're clear, and then we will vote.

Mr. Feehan: Thank you. I move that

the Standing Committee on Resource Stewardship recommend that the Public Interest Disclosure (Whistleblower Protection) Act be amended to remove references to "in good faith" from sections 1(f), 19(1)(d), 24(1), and 27.

The Chair: Having heard the motion by Mr. Feehan, all those in favour, please say aye. Any opposed?

That motion is also carried.

Mr. Getson, I believe you . . .

Mr. Getson: Yes, sir. This mask on and off: I can't wait until we can just keep them all off.

I have another one here for our commissioner, and it's on confidentiality. It's kind of an omnibus motion, so it might be a little lengthy. I apologize in advance. I would like to amend the act to include the following:

- (a) a requirement on the Public Interest Commissioner, a designated officer or any other person to keep confidential, unless otherwise required by law or necessary to carry out the purposes of the act, the identity of a person who
 - (i) has made a disclosure of a wrongdoing,
 - (ii) is the subject of a disclosure of wrongdoing, or
 - (iii) has participated in an investigation of a wrongdoing.

The second part would be:

- (b) a prohibition on the Public Interest Commissioner, a designated officer or any other person from disclosing, unless otherwise required by law or necessary to carry out the purposes

of the act, information that might reveal the identity of a person who

- (i) has made a disclosure of a wrongdoing,
 - (ii) is the subject of a disclosure of wrongdoing, or
 - (iii) has participated in an investigation of a wrongdoing;
- (c) a provision similar to the Public Interest Disclosure Act in Australia, by which, except under specific circumstances, it is an offence to disclose the identity of a person who
- (i) has made a disclosure of wrongdoing,
 - (ii) is the subject of a disclosure of wrongdoing, or
 - (iii) has participated in an investigation of a wrongdoing.

Again, the rationale behind that, folks – we had a lot of deliberation over it. We want to make sure that the confidentiality remains intact, that we don't dissuade folks from using the act, and that it's used in the proper intents and purposes with those protections.

The Chair: Thank you, Mr. Getson.

Any discussion from committee members?

Mr. Feehan: Again, I just want to offer my support because I believe it does strengthen the whistle-blower act and, particularly, the very essential quality of confidentiality that's required for people to come forward. I think that this is an important piece of what needs to happen as we move forward.

Thank you.

The Chair: Thank you, Mr. Feehan.

Any other committee members wishing to speak to this motion? Thank you.

All right. I'm prepared. I think everybody has got the motion in front of them, so I won't ask Mr. Getson to reread everything. If we could proceed to a vote on the motion. All those in favour of the motion as presented by Mr. Getson, please say aye. Any opposed?

That motion is also carried.

Go ahead, Ms Ganley.

9:20

Ms Ganley: Thank you very much, Mr. Chair. I'd like to move the following motion – it's noted as number 21 if that's helpful to anyone – that

the Standing Committee on Resource Stewardship recommend that the government of Alberta in co-operation with the Public Interest Commissioner conduct a survey of employees, as defined in section 1(g)(i) and (iii) of the Public Interest Disclosure (Whistleblower Protection) Act, to

- (i) assess the extent to which wrongdoings are being encountered by employees in the workplace that are not disclosed, and
- (ii) collect information on the reasons why employees are not making disclosures of wrongdoing and their opinions on possible amendments to the act that would encourage them to make such disclosures.

I mean, we heard from a number of folks who wrote in that there were concerns about how the act was working. I think it's worth potentially hearing from the employees themselves. I know we certainly heard indications that people are sort of whistle-blowing to the wrong person. I know the process is streamlined – and there are some reasons why that's important – but it seems like, at least in some cases, employees are confused about how to come forward. Perhaps a survey finding out what they understand about it and what they might do differently would be helpful to make recommendations to improve it in the future.

The Chair: Okay. Thank you.

Having heard the motion and the rationale behind it, are there any other committee members wishing to comment? Mr. Turton, go ahead.

Mr. Turton: Yes. Thank you very much, Mr. Chair, and thank you to the member for putting forth this motion. I don't actually support this one, unfortunately. I know the commissioner also doesn't support the recommendations because something that they listed was that employees participating in such a survey would be asked to discuss potentially serious wrongdoing outside of the auspices of the act. For me, it's very important that we stay true to what we're discussing here today. I also find that employees could then find themselves subject to reprisals and having no protections afforded to them under the act. For these reasons, unfortunately, I will not be supporting this motion put forth by Member Ganley.

The Chair: Thank you, Mr. Turton. We were doing so well.

Any other members wishing to comment? Go ahead, Mr. Dach.

Mr. Dach: Thank you very much, Chair. I certainly support this motion. I do believe that we did uncover in deliberations that employees felt there was a need for better communication because there was evidence of attempts by employees to report to the wrong person, as far as it's stipulated under the act right now, and that the reports of wrongdoing were being brought at a lower level quite often, before they actually reached the level that, probably, the act would recognize. I think the survey would do us a great service in uncovering officially what level of understanding needs to be improved amongst employees as to how they feel barriers prevent them from going forward with complaints and allow us to focus on the fears that prevent them from making use of the act as it stands now.

So I support this survey. I think it would be very useful to have that information collected, and we could take all sorts of great measures to ensure that anonymity is guaranteed. It happens in lots of other places where surveys are taken, and they are very much secure as far as anonymity goes. I look forward to seeing what the insights are, the hurdles that employees face in coming forward.

The Chair: Thank you very much, Mr. Dach.

I see Mr. Getson, followed by Mr. Ceci.

Mr. Getson: Thank you for that, sir. I won't support this motion, just in the context, again, of our deliberations. We looked at the auspices of the act itself. It's a big motherhood statement. It really covers a lot of protection out there.

One of the other things with management and groups being able to run their organizations is that we want to make sure that not every single thing falls under the whistle-blower act. I think this starts to muddy the waters of what would be an act of wrongdoing versus something that could be of concern that's managed at a lower level. Again, through our deliberations with the commissioner I believe that position was supported as well. You want to make sure that the employees having knowledge of the wrongdoing can understand which methodology to go through when it gets to that point. If there is a typical course of business within those organizations, then it shouldn't be muddied.

I feel that the survey would start to change those items, plus the items that my fellow member brought up from this side, in regard to some of the confidentiality of having the surveys out there, so I would encourage others not to vote for this. Those are my rationales, and I'm sure you might have your own.

The Chair: Thank you very much.

Mr. Ceci, go ahead.

Member Ceci: Thank you very much, Mr. Chair. I will support this motion on the floor, and I want all committee members to be clear. We're not asking about a specific whistle-blower incident out there.

That's not the purpose of this. The purpose is to inform and gather information from employees about their understanding of the whistle-blower protection act. The previous motions that we accepted today are all about extending the whistle-blower protection act to even greater numbers of people related to the government of Alberta through contracts, so really it's an important information-sharing item to get this out there.

There was a letter on our agenda that I read that did inform me a lot about the need for doing this and the protections that would be put in place to ensure that people clearly understood that this was not asking about informing about an incident, that this was more gathering information so that we could have the best act possible for employees and contractors of the government of Alberta.

Thank you.

The Chair: Thank you, Mr. Ceci.

Mr. Feehan: I wanted to address the three concerns that were brought to the committee by the government side in turn. I think that the Member for Calgary-Buffalo has just spoken to one of them, and that is the fear that somehow this will be eliciting reports outside of the procedure of the act. But, clearly, the survey is not about particular incidents of whistle-blowing that you haven't reported but, rather, your understanding of and experience with the whistle-blower process.

You know, I would endeavour to believe that the commissioner would not be asking in a survey for particular acts – therefore, that would not be of concern – but, rather, just about incidents where you didn't feel like you were able to come forward or something of that nature. Because the survey remains under the purview of the commissioner, they would be uniquely aware of how to avoid any kind of elicitation of reporting of specific acts in this kind of a survey. We know that these kinds of surveys are done by a variety of organizations.

The second concern that was addressed was that somehow this might lead to employee reprisals. Again, I'm very concerned that that's even a worry in that the whole point of the act is such that we were moving toward ensuring that there are no reprisals for employees. So if there were any reprisals, it would be in contravention of all the rest of the act. Because those surveys are actually brought forward and conducted by the commissioner, we'd hardly be in the position of expecting the commissioner to be the one to cause a reprisal against an employee. They're the ones that are doing the survey and receiving the results, so I don't see how – the commissioner would be in violation of their own act if they were to do that, so it just doesn't seem to be likely that that is a concern.

I guess the final piece is that somehow this would muddy the waters as to what falls under the act. Of course, the very fact of the survey is to clear up the waters, to hear from the employees, you know, their understanding of the nature of the act: when they would report, things that had prevented them from reporting, and was it a lack of clarity or not? We're not actually asking for a survey of particular behaviours that would be a violation of the act. We're not asking them to report here; we're asking them to tell us their understanding of the act the way it is. In fact, the whole point of the survey actually works to reveal any muddied waters and to clear up those waters. As a result, I certainly would support this being added to the act.

9:30

The Chair: Thank you very much.

We'll quickly – I called on Ms Ganley, so I'll give her an opportunity to remark, and then we'll go to you, Mr. Getson.

Ms Ganley: You know what? I think my colleague pretty much covered it. The only thing I would add is that, in my experience, having more information generally makes better decisions, so I'm surprised to see so many members who would prefer to have less information to inform the act rather than more. I think my colleague mostly covered my other points.

The Chair: Okay. Thank you, Ms Ganley.
Go ahead, Mr. Getson.

Mr. Getson: Thank you. I guess just a point of clarity. I appreciate the comments back because that's what deliberation is about, to understand these things better. Is it a one-time survey? Is it right across the board? Is it an annual thing that takes place? Is it when new hires, employees come on? Is it quarterly? Again, I guess that when the intent comes back here, when we go out and we second and we engage all these stakeholders, we're trying to make, to Ms Ganley's point there, a better act. Please define a little bit the context of what the frequency would be if there is something else. Convince me. Otherwise, I'm still kind of on the fence here, but some of your arguments of – let me know more of the context. If you could expand on that, please.

The Chair: Go ahead, Ms Ganley.

Ms Ganley: Yeah. The answer to that would be that the way the motion is framed is intended to, because it says "survey," singular, be sort of one survey, just to kind of collect information about what people understand about it and what the barriers are. I think there are actually companies that do this sort of work, and I'm certainly aware of circumstances in which the government has used them in various sort of sensitive circumstances to ensure the utmost privacy. I think the idea would just be to do the survey once, sort of figure out what people's views are on that, then take that information back, and hopefully make improvements where possible.

The Chair: Okay. Also, if I might, just before we move on – I think you wanted to speak again?

Mr. Getson: Possibly.

The Chair: Possibly.

I'd just like to remind folks that we're sending recommendations to cabinet. We're not carving anything in stone here, right? You know, if it's something that we're undecided on, it isn't like we're going to commit anybody to anything. It will be decided at a higher level than our committee.

Just moving on, if there's anybody else that would like to comment on this particular motion. Go ahead, Mr. Getson.

Mr. Getson: Yeah. Just for clarity again, Ms Ganley. Thanks for bringing this forward and having this open conversation. My understanding is that this is kind of an HR issue still. Like, these types of input already take place through the normal course of business. Was there something – and perhaps I missed it, guys, in the conversations that we had with stakeholders – that I missed, that this isn't already kind of taking place when you have a new hire package, that people go through it, that they have the understandings of it? This is specifically to see how employees – broad space, one survey – at this point in time think the whistle-blower act is doing and any further inputs that they have for stakeholder engagement. Is that the intent?

Mr. Feehan: Thank you for the question. I think the intent is to kind of check the pulse of employees who have lived with the experience. Of course, they should have received some information when they

first got hired on – that is an HR task – but of course after you’ve worked in an institution or agency for a significant period of time, you have a very different understanding of reality than the day you first get hired. This would just be a chance for the commissioner to check: what is the lived experience of people? Now that they’ve been here for a number of years, do they understand the act? Have they been hesitant in spite of knowing that there are certain rules and practices and procedures? Have they been hesitant to engage them and to employ them for any reason? Is there something that’s stopping you from doing what you think to be the right thing to do?

The Chair: Okay. Thank you.

Ms Ganley, I see that you have another comment. Go ahead.

Ms Ganley: Yeah. All I wanted to add to that was that, like, certainly an employee could come forward to HR and suggest that they don’t feel this act is functioning appropriately, but that would expose them to a certain amount of risk, right? The whole point here is that if you go to the not-designated person, then you’re not sort of whistle-blowing appropriately, and then the protections don’t necessarily apply to you. The idea here would be to get feedback from employees in a sort of safe and controlled manner so as to avoid collateral issues, I guess, so as to avoid the sort of half coming forward of stories that kind of fall below the threshold or something like that, just so you can ensure it’s a space just to talk specifically about how the act is working – and by space to talk I mean that it would probably be a survey – just so it would have that sort of confined scope.

The Chair: Thank you.

Mr. Getson: Sorry, folks, to bounce around the details. Kind of where my headspace is at: I might be supportive of this if the context was that once we put all the other items in place, then it’s a refresh on the whistle-blower act and it acts as a restart. When you put the new act out in place, you put the new clauses in effect, so to speak. You’re advising the entire group that’s going to be under that protection, and at the same time, then, you gather how they understand how it works. If it was done in that type of sequencing, it would make sense to me from prior life and other things. When you’re implementing new things, you get two birds, one stone. It’s more cost-effective, and you’re also educating at the same time as garnering data and intelligence.

The Chair: Thank you, Mr. Getson.

Mr. Feehan: Would it be desirable, then, to amend this with a section that indicated that the survey would take place some period of time, perhaps, like, within a year after the implementation of the changes to the act?

The Chair: Go ahead, Mr. Getson.

Mr. Getson: Yeah. In that context, that would make sense to me because, again, you’re educating and you’re also seeing how the new changes are holding and taking effect. Then that way it’s a reiterative process, it’s continuous improvements, and if the timing was along those lines – I know the commissioner had some issues with trying to administer this. Those are some of the feedbacks that we all had, so we would have to work in that context to give them time to come up with it and to make sure that it’s in that context. I think that we would get a lot of bang for the buck if we did it in that way. It’s education and also retooling and recalibrating to make sure that what we’ve implemented here as a group and team actually makes sense and is not causing adverse effects.

The Chair: Thank you.

Ms Ganley.

Ms Ganley: Sorry. Me again. Oh, I probably can’t actually amend the motion to suggest what the changes be because it’s my motion, isn’t it?

The Chair: Yeah. We would actually have to get approval of the committee to . . .

Ms Ganley: Of course we would because of that rule. Okay. Sorry. I’ll just . . .

The Chair: Yeah. Okay.

Go ahead, Mr. Koenig.

Mr. Koenig: Thank you, Mr. Chair. I just might offer a couple of comments to the committee before they decide how they wish to proceed. I would just point out that in terms of determining the wording, you might want to avoid a situation where you’re assuming amendments will be made to the act. That may or may not happen. You might want to avoid, if the committee does determine that it wishes to allow an amendment and change the wording, assuming future actions that the Assembly may or may not take and also making the amendment contingent on something else happening. I would just generally recommend for committee members to ensure that the motion and the recommendation are certain so that you know exactly what the recommendation is and how to carry it out and you don’t have to wait for something else to occur before that happens.

The Chair: Thank you very much for that input. I appreciate that. We will first decide as a committee whether we are going to allow the amendment, and then we’re going to ask you to help us with the wording.

Committee members, pursuant to the changes that were made, we do need majority approval from the committee to allow an amendment. I would ask that question now to all committee members. I guess I’ll put it this way. Is there anybody opposed to allowing the amendment?

9:40

Thank you very much, members. Hearing none, we will work on the proper wording, and then I’ll ask one of the members to make that motion to amend.

Go ahead, Mr. Koenig.

Mr. Koenig: Thank you, Mr. Chair. I don’t know if I am willing to throw some wording out there right now because I’m not sure I’ve got a sense of exactly which way the committee wishes to go. I mean, obviously, the easiest path forward would be to set a clear timeline; you know, for example, conduct a survey of employees within two years. That’s a pretty definite, clear path forward. That may not, however, be what members wish to do. I’m not sure if more discussion is required, but that is one path if members may wish to consider that.

The Chair: Yeah. Thank you very much.

Go ahead, Mr. Getson.

Mr. Getson: Yeah. With Ms Ganley and I working back and forth here, with her background in law and mine in contracts, the context I would be supportive of, to your point, Mr. Koenig, is if it were two years out and if it was a two-way survey, if it was also to inform of the act and also to get feedback on how the act is working. So it

wouldn't just be a survey, one-way data; it would have to be informing and advising on how the act functions, educational purposes.

The Chair: Mr. Ceci.

Member Ceci: Thank you. Just for clarification, this report of the committee has to be tabled in July, I think, or we have one year . . .

The Chair: July 7.

Member Ceci: July 7. I wonder if we couldn't time a survey to be subsequent to the tabling of the report, not more than one year or a longer time period but some way of doing that so it's triggered with the tabling of the report. That would just be something that seems to be – anyway, it makes sense to me. I'll just leave that.

The Chair: Okay. Thank you.

Any other comments from committee members on this issue? Ms Ganley.

Ms Ganley: Yeah. Sorry. I was just going to add that, I mean, I think we could accomplish it if we sort of – and this is me just suggesting because I, obviously, can't actually amend. Even if we're allowed to amend, I don't know if I can amend. "The Standing Committee on Resource Stewardship recommend that" and before "the government of Alberta" just say, like, "within two years" or "within one year" or whatever the time frame is, and then after that paragraph it says, "conduct a survey", blah, blah, "to", and then there's (i) and (ii). Maybe if you moved those down so they were (ii) and (iii) and (i) became "to inform them of the act." That was really loose, so I'll let Parliamentary Counsel know whether that sounds like a thing.

The Chair: They're working on a solution here for us at the moment.

Thank you, members. It's been interesting.

Mr. Getson: Just in that context, Ms Ganley, if we moved it down, made a new (i), we could tie it to the milestone date that Member Ceci had also mentioned, so at the provision of the act, whatever the date that is, if it's in July, not less than two years, the government must advise and inform of any revisions to the act. That will give cabinet time or whomever within the Legislative Assembly time, if there are any revisions, to make them aware. There's another trigger point. If there are revisions made to the act, then the impetus is to inform, and that's also the time you garner and gather information on how the act works. Trying to give you some milestones.

The Chair: Does that work?

Mr. Koenig: Yeah. Thank you, Mr. Chair. That definitely gives us an idea of where the committee might wish to go. I'm wondering if it might be worth while to have a very brief five-minute recess so we can put some wording together, and then committee members can consider whether that reflects the discussion.

The Chair: Yup. Anybody opposed to taking a five-minute break? Okay. Thank you, members. We'll reconvene in five minutes.

[The committee adjourned from 9:45 a.m. to 9:54 a.m.]

The Chair: Okay. We are ready to proceed. Everybody online, welcome back.

Mr. Koenig.

Mr. Koenig: All right. I had a chance to work with the clerk to capture the discussion in terms of an amendment I believe Mr.

Getson might be wishing to move. I'm not sure if the clerk can put that up for members to see. You can confirm whether that reflects your intent.

Mr. Getson: Yeah, I believe it captures it. Now, again, the intent here, just to make sure for the edification and clarification of everybody in the room, would be that once the chair tables our report, then you trigger a timeline within that two years that requests that the government conduct an inform-and-educate process, which is inclusive of the survey, just to see how the act is doing, or if there are any revisions made in the House to the act, then that would also be another trigger point. Within those two-year timelines you would have the event of that survey to inform and advise. If there are any changes made to the act, then it also takes that opportunity to educate and advise and then see how the act is working.

The Chair: If it's my understanding, Mr. Getson, you are going to move the amendment?

Mr. Getson: Yeah, I can move the amendment.

The Chair: If you could read that into the record, and then we can have a discussion on it.

Mr. Getson: Sure. If they can make it bigger on the screen so I can read. Yeah. The amendment to the motion would be

by adding "within two years of the chair presenting the committee's report to the Assembly and when the Public Interest Disclosure (Whistleblower Protection) Amendment Act, whichever is earlier, or" after "conducting a survey of employees" . . .

There we go; that's beautiful; thank you.

. . . by renumbering clause (i) as clause (1.1), and by adding the following before clause (1.1): "inform and educate employees of the provisions of the act and the process by which the disclosures and wrongdoings are made."

Again, the intent there is to inform, advise, educate, and then also garner data and how it's working.

The Chair: Is there any discussion from committee members on the amendment?

Hearing none, we will vote on the amendment as proposed by Mr. Getson. All those in favour, please say aye. Any opposed, please say no. Two noes. Okay. I would say that that amendment is passed.

Moving back to the initial motion by Ms Ganley, is there any further discussion?

Hearing none, we will move to vote on the amended motion proposed by Ms Ganley. All those in favour, please say aye. Any opposed, please say no. Two noes registered.

That motion is passed.

Thank you very much, everyone. We will move on. Mr. Turton, I see you have your hand up.

Mr. Turton: Yes. Thank you very much, Mr. Chair. My next motion is actually going to pertain to protection of former employees, motion 15 to be exact. I move that

the Standing Committee on Resource Stewardship recommend that the Public Interest Disclosure (Whistleblower Protection) Act be amended to expand the prohibition against reprisals in part 4 of the act to include former employees who make a disclosure of wrongdoing or seek advice in accordance with the act.

I could speak to that as well, Mr. Chair.

The Chair: Go ahead. Yes, please. The rationale.

Mr. Turton: Yes. Very simply, I mean, individuals who leave employment within the public service may have more confidence to report wrongdoing just based upon their experience. However, the protection provisions of the act would not apply in that scenario. I mean, obviously, we want to know what those former employees have gone through, and I think this motion would help clean up that loophole as well as that it's a recommendation from the commissioner.

Thank you.

The Chair: Thank you.

Any discussion from committee members on that motion? Any further discussion? Seeing none, anybody online? Mr. Singh, I see that you have your hand up.

Mr. Singh: Thank you, Mr. Chair. I thank the Member for Spruce Grove-Stony Plain as well for putting forward this motion. I support this motion as former employees would be more confident to report wrongdoing. The Public Interest Commissioner mentioned in her recommendation 11 that an individual can be the victim of a reprisal even if they are not employed in the public service.

For example, they may be blacklisted for future employment opportunities, given poor references, publicly criticized, ridiculed, discredited, or become the subject of a civil action. The commissioner also mentioned that this scenario occurred in a recent case when the examination of communication during an investigation found that executives stated an intent to harm a former employee who had moved on to the private sector because they believed the former employee was the whistle-blower.

For that reason, Mr. Chair, I support this motion to include protection to former employees. Thank you.

The Chair: Thank you very much.

Ms Ganley, I see you have your hand up.

Ms Ganley: Okay. Sorry. I'm trying to rearrange my screen. It's not going exceptionally well for me over here.

With respect to this motion I just wanted to speak in support. I think this is absolutely, incredibly important because, you know, when somebody leaves, they lose the status of employee, and we still want them to be protected from reprisals. I think this is a great motion, and I support it wholeheartedly.

The Chair: Thank you very much.

Any other members wishing to speak?

Seeing none, we will move to the vote on the motion proposed by Mr. Getson. Sorry. By Mr. Turton. Sorry. I'll reword that. In reference to the motion as put forward by Mr. Turton, all those in favour, please say aye. Any opposed, please say no.

That motion is also carried.

Going over to Mr. Feehan. Thank you, Mr. Feehan.

10:00

Mr. Feehan: Thank you. Motion 20 on our list. I would move that the Standing Committee on Resource Stewardship recommend that the Public Interest Disclosure (Whistleblower Protection) Act be amended to expand the protection for employees from reprisal to include instances of a disclosure of wrongdoing that is not made in strict compliance with the requirements of the act, including who the wrongdoing must be reported to by the employee, the form in which the employee must make a disclosure, and whether the employee has specifically referenced the act when making a disclosure.

Now, I know that we had some fairly extensive conversations about this in our previous meetings. My concern, I think, has been expressed before, but just to reiterate it, I think that there is concern

from the evidence that we got, particularly from, my example at the time, AHS, indicating that because employees don't always completely understand the process even though they may have been informed about it and because they have a habit of often going to their HR to talk about issues, there have been instances where employees have gone to HR to disclose what is, in fact, a whistle-blower activity, not understanding that it was or that that is not the appropriate place to go and that HR does not necessarily then redirect people to the whistle-blower process, as was given in evidence by AHS when they were here, so that if somebody were to go to HR to make a disclosure that should have gone to the whistle-blower and then it eventually does get to the whistle-blower process, their disclosure to HR does not negate their ability to then proceed in the appropriate fashion.

I think this came up a number of times. That's why there are three different pieces included. Sometimes they go to the wrong person such as going to HR, or sometimes they have failed to actually reference that they are making a whistle-blower disclosure, not knowing that that's the classification that should be defined. We don't want people who are coming forward to have to kind of get all the rules exactly right when, in fact, upon hearing the evidence, the commissioner believes that, yes, this is indeed something reasonable for the whistle-blower act to be employed on. We don't want things to become hurdles or barriers for people moving forward. Of course, all the regular rules still apply with regard to, you know, the appropriateness of the act, the process of the commissioner making a decision as to whether or not it is appropriate and proceeding following the regular rules. We just don't want the employees to somehow be responsible for following a very strict code in order to be recognized as having addressed something under the whistle-blower act.

The Chair: Thank you.

I've got a list going, but I'm quickly going to try and just balance it, so we'll go to Mr. Getson.

Mr. Getson: Thank you, Mr. Chair, and thank you, Mr. Feehan, for bringing this forward. This is one where I'm not there yet, and I don't know that I can get there simply because the act is very definitive in the sense of: if you're going to pull that trigger, an employee should full well know what the heck they're doing. It has to reach a certain threshold where you do that; otherwise, it's HR business.

I believe that the gaps that have already been addressed – I think it was back in 2018 that we heard from stakeholders – kind of addressed some of these items. There were some valid concerns from the commissioner and from our stakeholders in that regard, and this is a case where I would say that the employee – something where they're pulling the trigger on the whistle-blower act has to be pretty significant in that event, in that context, and typically what takes place is that there is a bunch of other elements happening before that. With that context, I'm not in support of this motion just for that reason. This is one where I think we're kind of muddying the waters.

To the point of the education, we just worked really well together to come up with an education component that really informs and advises so that we have that opportunity to do that. When the employees are onboarded, they're made full well of which area or otherwise, and then even to that point, we're getting that survey data at the end now, that we've agreed to. Given that we've amended the other motion, I think that encapsulates it, some of the items we heard from our stakeholders.

Then again making sure that someone who is pulling on a whistle-blower act item had better be full well understanding what they're doing in the first place before they go there – it's not to be

toyed with. I don't mean to put it in that context, but it's something very serious once you get to that stage.

With that, I'll conclude my remarks.

The Chair: Thank you, Mr. Getson.

Ms Ganley.

Ms Ganley: Yeah. I just wanted to speak to why I think this motion is worth supporting. I think it's a very good motion because, you know, my recollection of being onboarded to jobs, which I've done a couple different times, is that, I mean, it's this mountain of paperwork that you kind of read through as best you can, but, I mean, it doesn't all stick, right? It's, like: here's this giant pile, and please read it all. Then you sign it, and then you sort of start your training for what you're actually going to do, which is typically where your focus is because most people want to do a good job. Yeah.

I think that sort of broadening this a little bit so people don't have to do it perfectly – like, not every employee is going to have, you know, a law degree or a lot of training in perfect procedure, right? People are going to do the best they can, and I think that when it's mostly right if not perfectly right, that should be good enough. I think we want to – if people really do feel that it's risen to that level, that it's at the point where this is, like, a really serious whistle-blowing matter, I think we want to encourage them to come forward, and we don't want to create a situation where, if they're not able to operate the procedure exactly perfectly, then it just doesn't count.

I think, yeah, that expanding it to include having disclosed to the wrong person is helpful, right? And, in fact, I believe in our conversations with the commissioner we had talked about the idea that maybe there should be a requirement, if you're sort of an HR person or something, to say to the person, like, "I'm not the right person, but you can go over to this other person," and that person could be protected in the interim. Like, I understand why the process needs to operate the way it operates, because the person receiving the information needs to have the skills to receive them. I totally get that, but I think that in the interim the fact that you made your initial disclosure to the wrong person because you maybe didn't get their title perfectly right – and, I mean, my recollection of government is that titles can be confusingly similar sometimes – shouldn't be a reason to allow a reprisal. That is my opinion on that one.

The Chair: Okay. Thank you.

I've got a fairly good list going here. I'm going to try to go back and forth, so it won't be just in the order that I received the list, okay?

I see, Mr. Singh, you have your hand up there. Did you still want to speak, or did you just forget to take it down?

Mr. Singh: Yeah. Thank you, Mr. Chair, and thank you, hon. member, for this motion. I do not support this motion as it will undermine the seriousness of the wrongdoing disclosures and the issues being considered. It also undermines the well-established rules and procedures provided by the act. Besides that, the commissioner has explained extensively, on page 4 of her letter dated May 28, 2021, the challenges to be considered should a complaint be filed or reported to anyone other than the designated officer or the Public Interest Commissioner. This would also create a situation that will permit disclosures to anyone in whatever form. Moreover, the form which the employee must make in disclosing wrongdoings, as provided in section 13 of the act, is flexible, is straightforward in requiring ordinary information which would be regularly available from the complainant.

Thank you, Mr. Chair.

The Chair: Thank you, Mr. Singh.

We'll go to Mr. Dach.

10:10

Mr. Dach: Thank you, Mr. Chair. Contrary to Mr. Singh's comments just expressed, I disagree strongly that this recommendation does anything to undermine the principles in the act. In fact, what it does is enshrine the principle of protection in the act and raise it to a heightened sense of awareness in that the whole naming of the act is that it's the whistle-blower protection act. What this does is protect whistle-blowers even though they may not have gone forward and identified the wrongdoing to a particular individual or designated officer. By doing so, it may indeed make it more bureaucratically difficult for the office of the Public Interest Commissioner to actually elevate such so-called misreported instances of wrongdoing to the actual level of being a whistle-blower report and a legitimate one. However, I think that is a small price to pay to actually enshrine the reality of what goes on in a workplace now, where many employees, it's been revealed in our deliberations, do not actually report to the designated officer and therefore would end up being disqualified as complainants, which does a disservice to the employee and, I think, harms the whole environment of protection.

If indeed our goal here is to improve the environment of protection for whistle-blowers and employees so that they will feel comfortable going forward and not feel that they hesitate or somehow feel there's a barrier to going forward, I think it behooves us to go forward and ensure that this recommendation is brought forward. I certainly support it. It does nothing to undermine the act; in fact, it enshrines the protection principle that we're so desirous of making available to employees.

The Chair: Thank you very much, Mr. Dach.

We'll move on to Mr. Turton.

Mr. Turton: Yes. Thank you very much, Mr. Chair, and thank you to the member for putting forth the original motion. I will not be supporting this motion for a couple of reasons: number one, specifically, the line where it says to include instances of disclosure of wrongdoing not in strict compliance with requirements of the act. To me, that in essence says that there is going to be added a very subjective and arbitrary nature to the interpretation – if the act applies, if it doesn't – and placing a lot of supervisors in a very awkward position, where before it was very definitive about at what point certain thresholds would be met in order for the act to actually take effect. Well, now, by perhaps, I would say, muddying up the waters – or the subjective nature that this motion, if implemented, would entail would simply mean that now it's going to be very wishy-washy if the act applies, if it doesn't, and place a lot of individuals in a very awkward position because now it's going to be extremely subjective about if this is actually going to meet the thresholds required where this act, this very important act, will actually take effect.

Because I do feel that it waters down the purpose of the act – it really, like I said, makes it a very awkward position in terms of moving forward and drawing that line. Where is the line at that point, moving forward, in terms of, "No, it's an HR decision," as MLA Getson was talking about earlier, or else it has to go to this level of protection? Because that line is now very blurred, I just unfortunately cannot support this motion as it's presented.

Thank you.

The Chair: Thank you very much.

Going to Mr. Ceci.

Member Ceci: Yes. Thank you very much. You know, I'll of course support the motion on the floor, particularly because people make mistakes. I think we have to be more generous in our understanding of the knowledge that employees have around the whistle-blower protection act. As my colleague from Calgary-Mountain View said, there's a lot of onboarding that goes on, and this is not at the top of people's list, frankly. More importantly, they want to know their roles and what they have to do and who they have to report to and their employees and where the bathrooms are, for gosh sakes. I think that the fact that people don't – there hasn't been a lot of reporting. That people don't know these things is covered off in this motion.

I think the ownership of the problem needs to be on the organization. There needs to be greater education. There needs to be more regular informing of what the process is. There has to be a better front-end onboarding. And until those things take place, I think it's important to put this kind of motion in place.

Lastly, the last thing I'll say about all of this is that I was looking up the stats, and I think it says that there have been six findings of validated whistle-blowing complaints in eight years. Does anybody think that there's not more going on out there that is not coming forward? I think there's a lot more going on out there that hasn't come forward, and it may be because the processes are so problematic or dense or foggy and people are taking the wrong routes and are being ruled out of order, in a sense, that it's not coming to the purview of the commissioner. I think that if we're truly interested in finding out about wrongdoing in the organization, then this sort of motion can help that.

The Chair: Thank you very much, Member Ceci.
We're moving on to Ms Issik.

Ms Issik: Thank you, Mr. Chair. I'm going to support this motion. It would, for most people, require an incredible amount of courage to report wrongdoing, and I can easily think of any number of situations where an employee may not understand who the right person is to go see about wrongdoing. When they report to a person that's not the correct person according to this act and they're offered no protection, they're actually in greater jeopardy, never mind the fact that they're actually trying to do the right thing.

The commissioner and the commission can sort out whether something is, you know, a wrongdoing or not, but that person still needs to be protected even if they went and reported initially to the incorrect person. To not offer that person protection I think is absolutely wrong, and we should be offering that protection in conjunction with actually making sure that people understand what the process should be. Also, I think that our supervisors and managers should be required to let that person know: I'm not the right person; you need to go see this person.

So I support this motion, actually. It takes courage, and I think we need to protect those people.

The Chair: Thank you.
Moving on, Mr. Dach, you're the last one I have on my list.

Mr. Dach: Thank you, Mr. Chair. I thank Member Issik for those words, for that interjection. I wanted to return to my theme that this recommendation goes to the very heart of the matter of protection, to prevent harm to employees. If indeed we have an employee who incorrectly reports right now under the act and is denied, as a result of that, having that report of wrongdoing processed under the whistle-blower protection act, they in fact have lost the protection of the act, and they are subject, potentially, to harm in the workplace, because the cat is out of the bag then. They're exposed

in a workplace having made a report of wrongdoing perhaps to the wrong person under the act.

But what happens to that individual now? Is he pressured and gets fired? Does he feel that he has to quit? Is the workplace so uncomfortable that he or she decides to leave once the cat is out of the bag? Indeed, just because they report the wrongdoing to the wrong place, it really exposes them to harm, and I think that we should as members be looking to protect employees and ensure that that harm is not done to them and afford them the protection of the act even if a mistake is made in reporting to the wrong officer.

The Chair: Thank you, Mr. Dach.

I don't see other committee members wishing to jump in on it, but we've had kind of a very robust back and forth. Would it be the will of the committee – we've got two staff from the commissioner's office – if we ask them for their thoughts on this before we vote on it? Any objection to that? You don't want to? I see heads shaking. Is that a yes or a no?

10:20

Mr. Dach: I don't think it's necessary.

The Chair: You don't think it's necessary? Okay. Thank you.

We'll just move on to the vote, then, on the motion. On the motion as presented by Mr. Feehan, all those in favour, please say aye. Any opposed, please say no.

Mr. Feehan: I request a recorded vote, please.

The Chair: Mr. Feehan has requested a recorded vote. Thank you very much, Mr. Feehan, because I don't think I can count that fast as well.

We'll start in the room on my right. In the room, all those in favour, please raise your hand.

Mr. Feehan.

Mr. Feehan: In favour.

The Chair: Mr. Dach.

Mr. Dach: In favour.

The Chair: In the room, all those opposed, please raise your hand.
Mr. Turton.

Mr. Turton: Opposed.

The Chair: Mr. Getson.

Mr. Getson: Opposed.

The Chair: All right. On the line, all those in favour, please say aye.

Mr. Ceci.

Member Ceci: Aye.

The Chair: Ms Ganley.

Ms Ganley: Aye.

The Chair: Ms Issik.

Ms Issik: Aye.

The Chair: Were there any that I missed? Online, are there any other members that wish to vote in favour?

Seeing none, all those online that are against the motion, please indicate so.

Mr. Singh: Opposed.

The Chair: Mr. Singh, opposed.

Mr. Guthrie: Opposed.

The Chair: Thank you.

Mr. Yaseen: Opposed.

The Chair: Thank you.

Is there anybody that didn't vote that would like to vote?

Mr. Huffman: Thank you, Mr. Chair. For the motion, five; against the motion, five.

The Chair: All right. You know, this day was going so well. As chair I do get the deciding vote. I will recall the deliberations that we had and the presentations from the commissioner, where she indicated kind of opposition to this, so based on the discussions that we had previously, I will be voting against this motion.

That is defeated.

Moving on, any members from the government side with further motions? Go ahead, Mr. Getson.

Mr. Getson: Thank you, Mr. Chair. I was going to get a quarter out to see if we had to flip it there for that last one.

I'd like to make a motion that

the Standing Committee on Resource Stewardship recommend that the Public Interest Disclosure (Whistleblower Protection) Act be amended to expand the prohibition on reprisals in part 4 of the act to include an employee that is suspected of making a disclosure of wrongdoing.

Again, the rationale behind this. I think a lot of us are in the same place. We want to make sure that the act encompasses and wraps its wings around, quite frankly, those that are coming forward and have the courage to come forward but also that they understand that they've reached that level where it's a threshold that needs to be part of the whistle-blower act. This was one of the recommendations from the commissioner; I believe it was number 13. The act does not protect persons suspected of making a disclosure; the act only protects employees when they undertake a protected activity described in section 24.

The Public Interest Commissioner has encountered circumstances where employers have sought to identify whistleblowers, and have made false assumptions. The employer indicated an intention to harm this employee. The employee was not, in fact, the whistleblower. Had the employer taken reprisal action ...

if that did take place,

... against the employee on the false belief they were the whistleblower, the protection provisions of the Act would not have applied. This is a significant deficiency in the Act."

Again, the act is so good that it covers off if you don't know who it is, and this is going to cover off in case there are reprisals for those that may be suspected of doing it if they didn't. That was part of the rationale.

I hope the members of the committee will support this motion.

The Chair: Thank you.

Any discussion on the motion presented by Mr. Getson?

Seeing none, on the motion as proposed by Mr. Getson, all those in favour, please say aye. Any opposed, please say no.

That motion is carried.

Going to the Official Opposition, are there any further discussions?

Ms Ganley: I have a motion to propose, Mr. Chair. Sorry that I didn't type fast enough in the chat.

The Chair: That's fine. You go ahead, Ms Ganley.

Ms Ganley: I would like to move that

the Standing Committee on Resource Stewardship recommend that the Public Interest Disclosure (Whistleblower Protection) Act be amended to provide that a complaint of reprisal by an employee under the act is considered to be substantiated unless sufficient evidence to the contrary is provided to the commissioner as part of an investigation under section 26 of the act.

I'm sorry; I should probably have mentioned that this is motion 22 in the submitted motions.

Members having had the opportunity to prepare will probably have noted that the Public Interest Commissioner herself spoke against this. She referred to it as a reverse onus. With the greatest of respect to the commissioner, I don't think that that's an accurate characterization, and here's why. You know, assigning the burden of proof in any legal proceeding is actually a pretty complicated thing, right? There's been a lot of jurisprudence that sort of deals with: who gets the burden of proof? We know that with something like criminal law, the burden is significantly higher because of the impact that that has on a person's life. It gives them a criminal record; it puts them in jail. The burden of proof, in that instance, is higher, beyond a reasonable doubt as opposed to on a balance of probabilities.

In this case, you know, the commissioner is suggesting that a reprisal is some sort of a wrongdoing, so to suggest that the person alleging the wrongdoing, i.e. the terminated employee who blew the whistle – they're alleging that the employer has done some sort of wrongdoing. I don't think that's exactly the characterization I would give it. But, beyond that, like, before we fall to philosophical arguments about who ought to bear the burden of proof in an instance, I think the first thing we should look at is: who has the evidence? In this case, the employer has all of the evidence. It is the employee who is alleging that they have been terminated as a result of a reprisal, and it is the employer that is in possession of all of the evidence about why the employee has been terminated.

So it is incredibly easy for the employer. If they have terminated the person because they got, you know, four bad performance reviews, all they have to do is adduce that evidence. If they've terminated the person because, you know, they lied to their employer or they committed a physical assault – these are things that one normally gets instantly terminated for – they have the evidence that that occurred. They have the other employees who work for them, who can turn up and say: yes, I saw so-and-so lie about this or steal their computer or do whatever else. It's very easy for the employer to adduce evidence that that employee was terminated for a different reason other than a reprisal.

On the other hand, it is nearly impossible for the employee, who has now been terminated, to prove what was in the mind of their employer. It's nearly impossible for the employee. They would have to sort of stand up and say: well, you know, I didn't steal anything, and I didn't hit anyone, and I didn't lie to anyone, and I never had a bad performance review. They don't have that evidence – right? – so it's much, much, much more difficult for them to prove it.

Also, we're talking about a balance of probabilities, right? Really, what we're talking about is who gets the benefit of the doubt if it's, like, a 50-50 situation.

10:30

I think there are a lot of reasons to suggest that this isn't so much a reverse onus as a situation where we're saying that in the absence

of evidence to the contrary – and the Criminal Code does this, too; the Criminal Code does this in certain situations where one party would have more evidence – if you blow the whistle and then you're terminated, that is probably a reprisal. All the employer has to do as a result of that is just be able to prove what the other reason was. Yes, with the greatest of respect to the commissioner, I think that this is a very good change to the act. I think it will protect people who have done a very brave thing and come forward and done something very difficult and very scary, and it just correctly places the burden on the person who has the evidence.

Thank you.

The Chair: Thank you, Ms Ganley.

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

Mr. Singh: Thank you, Mr. Chair, and thank you, hon. member, for this motion. I do not support this motion. This motion subverts the basic legal principle of innocent until proven guilty. It assumes that the entity is guilty until proven innocent. We'd be setting a dangerous precedent by adopting this recommendation. The commissioner does not support this recommendation. The Public Interest Commissioner must be impartial and not demonstrate bias that favours a party to a complaint. A presumption of guilty does not conform to the principles of procedural fairness in national justice established through Canada's common law. The standard of proof applied is a balance of probabilities. In scenarios where an individual or organization fails to demonstrate a lawful reason for the adverse employment action, the balance of probabilities would favour the complainant.

Thank you, Mr. Chair.

The Chair: Thank you, Mr. Singh.

Any other committee members wishing to speak to the motion? Mr. Feehan.

Mr. Feehan: Thank you. I really want to offer my support for this motion, and I think that the Member for Calgary-Mountain View has articulated quite clearly that this is not the same as assumption of guilt, as one would have in a situation of a criminal act, for example, where the consequence is to the individual who is being accused of the act. In this particular case the issue is that if we need to produce the evidence in order to make an appropriate determination, we know that the evidence resides only with one person, and that is with the employer. Therefore, it should be a requirement that the employer produce that evidence because the employee cannot. He simply doesn't have the wherewithal to do that, and therefore, by putting this into the act, we are simply asking the employer to step up to do what they would do in any of a number of other situations, and that is to produce the evidence that is on file and, of course, that would have to be produced in other situations; for example, if there was a trial regarding improper dismissal, that kind of situation.

So it's simply a matter of ensuring that before any determination is made, all the evidence is produced. Putting things in this order allows that to be ensured and does not put someone who does not have the capability of producing evidence in the position of trying to prove something that is impossible to prove.

Thank you.

The Chair: Thank you.

Okay. Mr. Getson, quickly.

Mr. Getson: Yeah. I really believe that this motion was brought forward with the best of intents. I really believe that, you know, they were trying to look out for the employees under the whistle-blower act, but I'm with my colleague from Calgary-East in the

context where we're almost tipping things upside down here. To Member Feehan's comments about wrongful dismissal: there are tons of other mechanisms out there in place to encapsulate and capture all those items already, inclusive, depending on if they're union or non-union employees – there are tons of other mechanisms that are out there for wrongful dismissal.

The concerning part for me really is this reverse onus. Member Ganley has articulated quite well the position of proving, you know, guilt or otherwise or having that evidence, but I would submit to the group here as well, again, that under the whistle-blower act there is a ton of record of evidence that that employee would have to come forward with first, again, in the context of going to – reaching the level of whistle-blowing. Then if there were any potential reprisals for that, we already have a history and an investigation and everything behind that. So my concern, again, would be putting the cart in front of the horse in that regard, in that onus. That really makes me nervous of doing that. I appreciate the arguments, but I'm still not there. It really upsets a lot of balances that I'm very comfortable with as the current systems work.

Thank you for that.

The Chair: Thank you.

Mr. Dach.

Mr. Dach: Thank you, Mr. Chair. I think that I'd like to further a few comments made by my colleague from Edmonton-Rutherford when he suggested that the protection of the so-called presumed reprisal is similar to one that you'll find in a wrongful dismissal suit whereby the evidence is expected from both sides in a balanced way, and I think there would be some discretion demanded that the evidence is provided in both directions.

In the case of a presumed reprisal, if we just take it back to the situation that is happening on the ground, Mr. Chair, if indeed an individual comes forward, the whistle-blower complains under the act, and then subsequently finds themselves unemployed – i.e., they're terminated, fired – I think the public would be correct in presuming that perhaps there was a reprisal that was going on there, and that's the question that would come to their minds. And that's what we should be looking at. What is the public thinking in this situation, and should the public be very, very well informed by having this presumed reprisal raise the bar on the part of the employer to actually prove that, in fact, it didn't happen in this case?

I think that what it does is serve, once again, the protection of the employee, and that's indeed what we're looking for under this act. That's what the whole act was created to do, to provide protection. That's what I hope we're doing.

I can think of instances in our own provincial government sphere whereby we had an Election Commissioner who was fired for blowing the whistle and – boom – there wasn't any protection there. Anyways, I just thought I'd put that out there.

The Chair: Thank you, Mr. Dach.

We'll move on to Ms Issik.

Ms Issik: Thank you, Mr. Chair. I must say that the Member for Calgary-Mountain View has made quite a cogent argument. I would say that if somebody is fired as an act of reprisal for whistle-blowing, they should not have to depend upon other legislation to prove wrongful dismissal. We should be discouraging reprisals for whistle-blowing, and I think that this would actually accomplish both of those ends.

One is to allow the employee who has been wrongfully dismissed for reprisal reasons, for whistle-blowing – this offers them an opportunity to deal with that within the same sphere or the same legislation as opposed to having to go to another piece of

legislation. I also believe that this will encourage employers to be very vigilant in their record keeping and also very vigilant when it comes to making decisions about whether or not to fire somebody because of an act of whistle-blowing.

The Chair: Thank you, Ms Issik.

Any other committee members wishing to speak?

Seeing none, we will prepare to vote on the motion as presented by Member Ganley. All those in favour, please say aye. Any opposed, please say no. Online?

Mr. Feehan: I'd like a recorded vote, please.

The Chair: In the room . . .

Mr. Yaseen: Opposed.

The Chair: Yeah. Well, we're going to get to the online in just one minute.

Mr. Yaseen: Okay.

The Chair: We're going to do a recorded vote. In the room, all those in favour of the motion, please raise your hand. I see Mr. Dach and Mr. Feehan. In the room, all those opposed to the motion, please raise your hand. I see Mr. Turton and Mr. Getson. Online, all those in favour, if you could indicate so.

Member Ceci: Aye.

Ms Ganley: Aye.

10:40

The Chair: If you could say your names, too. I will say your names. Mr. Ceci, aye?

Member Ceci: Yes.

The Chair: Ms Ganley, aye?

Ms Ganley: Yes.

The Chair: Ms Issik, aye?

Ms Issik: Aye.

The Chair: Any others online wishing to vote in favour?
Seeing none. All those online voting against, please indicate so.

Mr. Singh: Opposed.

The Chair: Thank you, Mr. Singh.

Mr. Guthrie: Opposed.

The Chair: Thank you, Mr. Guthrie.

Mr. Yaseen: Opposed.

The Chair: Thank you, Mr. Yaseen.

Any other members online that have not had a chance to vote that wish to do so?

Mr. Loewen, apparently, you're back online. Did you wish to vote?

Okay. Hearing none, we'll go ahead, sir, with the count.

Mr. Huffman: Thank you, Mr. Chair. For the motion, five; against the motion, five.

The Chair: Thank you. So it's up to the chair again to decide the vote.

Thank you. In the interest of – you know, I'd just like to take a moment to commend everybody on this committee. It's been an absolute pleasure reviewing this piece of legislation. It's a very important piece of legislation. I would just like to commend you all for your decorum in this. We've had some very robust discussion, but it's always been maintained.

In the interest of that, my vote will be in favour of this motion.

That is carried.

Thank you. Moving on, any members of the government side with a further motion? That's it? Okay.

Any other motions presented by the Official Opposition?

Mr. Dach: Yeah. I think we do have one if I'm not mistaken.

Ms Ganley: Sorry. I thought we were going to the government first. My apologies; I've printed double-sided. Here we go. I would move that

the Standing Committee on Resource Stewardship recommend that the government update the committee through a written report on progress of implementing recommendations by the committee every six months and seek continued advice on best practices during the implementation process.

The purpose of this motion is just, essentially, so that information can come back to this committee. Sorry. I should have said that it's motion 24, but you found it anyway. As the government is in the process of implementing, we all know, this committee will send recommendations, the recommendations will go to the government, and then the government will ultimately do what they like with it. So I think it would be worth while for us to get information back from the government in terms of implementation.

Sometimes when recommendations go to a government, they may not implement them immediately for reasons best known to themselves, I suppose, but other times there are genuine hurdles. Other times the government is genuinely working on something, putting something into place, but there's a genuine complication, right? These are recommendations so they – I don't want to say that they're vague; they're fairly specific, but the devil in these things is always in the details. My experience, at least, is that when you come to, say, actually drafting the legislation or actually drafting the regulation, you suddenly come upon a bunch of situations that now need to be dealt with, and that sort of complicates the process of drafting.

Now, personally, I really enjoyed that process. Most people: not so much. But I think it's worth while for this committee to hear back from the government as they move forward, and it's worth while to ask them to continue to take into account best practices. That is the reason I move this motion.

The Chair: Thank you very much, Ms Ganley.

Is there anybody that wishes to speak to the motion? I see Ms Issik has her hand up.

Ms Issik: Sorry, Chair. I forgot to take it down.

The Chair: Thank you very much, Ms Issik.

Anybody else wishing to speak? I see Mr. Singh. You have your hand up.

Mr. Singh: Thank you, Mr. Chair, and thank you, hon. member, for this motion. I cannot support this motion as it would be a duplication of usage of government resources and time. The committee recommendations are correspondingly being implemented by the government, whether by introducing amendments to the act

or revision of the regulation. Having said that, the information that could be contained in the proposed written report as required by this motion will be readily available not only to the members of the committee but to every member of the Legislature, either when amendments are introduced in the Legislature or changed to regulations published in the *Alberta Gazette*. That being the case, I cannot support this motion to require a written report for the government every six months, which would be an unwanted repetition of government work, time, and funds.

Thank you, Mr. Chair.

The Chair: Thank you, Mr. Singh.

Any other committee members wishing to speak to the motion? Mr. Dach.

Mr. Dach: Thank you, Mr. Chair. I recognize Mr. Singh's comments, notwithstanding the fact that there are other reports which may cover the work of the whistle-blower protection act. I think that this measure, the recommendation, highlights the importance that this committee wants the government to give to the whistle-blower protection act. Having us make a recommendation to have the government report every six months through a written report to this committee allows us to ensure that that high level of importance is maintained and the whistle-blower protection is afforded a top-of-mind level of awareness in the cabinet, and we should always continue to seek the advice of best practices. As a government I think that this goes a long way to ensuring that that ongoing advice is top of mind by having the obligation to report to this committee, which is instigating the recommendation in the first place.

The Chair: Thank you very much, Mr. Dach.

Any other members wishing to speak to the motion?

Seeing none, we are prepared to call the question. On the motion as presented by Member Ganley, all those in favour, please say aye. Any opposed, please say no. With the folks online and that, I'll just ask for a recorded vote if that's all right. In the room, all those in favour, please raise your hand. Mr. Dach and Mr. Feehan. In the room, all those opposed, please raise your hand. Mr. Turton. Mr. Getson. Online, all those in favour, please indicate so.

Member Ceci: Agreed.

The Chair: Any others online that are in favour?

Ms Ganley: Aye.

The Chair: I allowed you some latitude there, Ms Ganley. Thank you.

Online, all opposed, please indicate so by saying no.

Mr. Singh: No.

Mr. Guthrie: Opposed.

The Chair: Ms Issik?

Ms Issik: Opposed.

The Chair: Any other members online that have not indicated so that wish to vote?

Mr. Loewen: No.

The Chair: Thank you, Mr. Loewen.

Mr. Yaseen: No.

The Chair: Thank you, Mr. Yaseen.

Are there any other members that have not voted that wish to vote?

Thank you. Go ahead, Clerk.

Mr. Huffman: Thank you, Mr. Chair. For the motion, four; against, seven.

The Chair:

That motion is defeated.

Are there any other members wishing to speak? From the committee members, any other motions to be brought forward?

10:50

Seeing none, with the committee having concluded its deliberations, we can now proceed to direct research services to prepare a draft report containing the recommendations that the committee has approved this morning. At this time I would ask Mr. Kulicki to provide us with a brief overview of this process and what the draft report will contain.

Mr. Kulicki: Well, thank you, Mr. Chair. As you've indicated, the committee is now at the point where it will consider directing research services to prepare a draft report containing the committee's recommendations. I believe most committee members will be familiar with this part of the process as the committee has previously undertaken a review of the Public Sector Compensation Transparency Act, so I'll keep my remarks brief.

As has been done in the past, the draft report would typically include a number of elements, including an executive summary, which would list all of the motions that have been passed by the committee. It would provide a summary of the committee's mandate as well as its consultation and review process. The main section would then focus on the committee's recommendations, which would include the motions passed by the committee as well as some context on how the committee arrived at its decisions or its rationale for its decisions. And then, finally, the draft report would include an appendix indicating who made written submissions as well as oral presentations to the committee.

As this will be a draft report, the committee will still have to formally approve it, whether that be through a motion passed at a subsequent meeting or else perhaps by passing a motion today to delegate approval to the chair and deputy chair after the committee has had a chance to review the draft, which we'd make available on the committee's internal website. And then after the draft has been approved, there would still be an opportunity to submit a minority report in accordance with Standing Order 68(2).

That's a brief overview of the process with respect to the committee's report. Thank you.

The Chair: Thank you very much.

I would also note that the committee may wish to streamline the process and avoid another meeting by authorizing the chair and deputy chair to approve the draft report after it has been made available for committee members to review.

What are the members' thoughts on this issue?

Member Ceci: It's okay with me.

An Hon. Member: I'm okay with it.

The Chair: Okay. I would like somebody to make a motion, then, and I can read that out for you. Moved by the member that the Standing Committee on Resource Stewardship direct research

services to prepare a draft report on the committee's review of the Public Interest Disclosure (Whistleblower Protection) Act containing the recommendations approved by the committee and authorize the chair and deputy chair to approve the report after making it available to committee members for review. Is there a member that would agree to do that?

Mr. Getson: Yes, sir.

The Chair: Thank you, Mr. Getson.

I will read that into the record, and then we can vote on it, please.

Moved by Mr. Getson that

the Standing Committee on Resource Stewardship direct research services to prepare a draft report on the committee's review of the Public Interest Disclosure (Whistleblower Protection) Act containing the recommendations approved by the committee and authorize the chair and deputy chair to approve the report after making it available to committee members for review.

Is there any discussion on that motion?

Seeing none, all those in favour of the motion, please say aye.

Any opposed, please say no.

That motion is carried.

Just a note that the minority report should be submitted to the committee clerk no later than June 25 so that it can be appended to the committee's report.

Are there any other issues for discussion before we wrap up today's meeting? See? It's awesome that I put five hours in on a Friday, and it turns out to be a sunny day, and everybody is so amicable, right?

I would just like to again take this opportunity to thank all the members of the committee and also the members of the public, the Public Interest Commissioner for all their input and guidance, the research staff for all your help as well. You know what? It's been a very interesting process, a very interesting piece of legislation that's important to, I would say, all Albertans. I'd like to just commend you once again for all working together and making this happen. I wish we could carry this decorum into the big House. Thank you, everybody.

The next meeting will – oh, Member Ceci, you have some comments.

Member Ceci: I do. I just wanted to, I think on behalf of the whole committee, extend an appreciation to you, MLA Hanson, chair of the committee, for the really great way you handled this committee. I appreciate it.

Thank you.

The Chair: Thank you, Member Ceci. I appreciate that.

All right. The next meeting will be at the call of the chair.

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

Mr. Getson: I will.

The Chair: Mr. Getson. Moved by Mr. Getson that the meeting be adjourned. All those in favour, please say aye. Any opposed, please say no.

Thank you very much, everyone. Have a great, safe trip home.

[The committee adjourned at 10:55 a.m.]

