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The 28th Legislature
First Session

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The Honourable Gene Zwozdesky, Speaker

Legislative Assembly of Alberta
The 28th Legislature
First Session

Zwozdesky, Hon. Gene, Edmonton-Mill Creek (PC), Speaker
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Bhardwaj, Naresh, Edmonton-Ellerslie (PC)
Bhullar, Hon. Manmeet Singh, Calgary-Greenway (PC)
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Forsyth, Heather, Calgary-Fish Creek (W)
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Horne, Hon. Fred, Edmonton-Rutherford (PC)
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Redford, Hon. Alison M., QC, Calgary-Elbow (PC),
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Wilson, Jeff, Calgary-Shaw (W)
Woo-Paw, Hon. Teresa, Calgary-Northern Hills (PC)
Xiao, David H., Edmonton-McClung (PC)
Young, Steve, Edmonton-Riverview (PC),
Government Whip

Party standings:
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Legislative Assembly of Alberta

7:30 p.m. Tuesday, November 27, 2012

[Mrs. Jablonski in the chair]

Government Bills and Orders
Committee of the Whole

The Deputy Chair: Hon. members, we will call the committee to order.

Just as a reminder, I will remind you that the times between bells has been reduced to one minute. We had unanimous consent prior. Because we just recessed, we still have that approval to keep the bells at one minute between rings.

Bill 4
Public Interest Disclosure (Whistleblower Protection) Act

The Deputy Chair: So we can continue. Are there any members who would like to comment? The hon. Member for Calgary-Fish Creek.

Mrs. Forsyth: Thank you, Madam Chair. I think that just before we adjourned – it was probably about one or two minutes before 6 – I was responding to the Member for Calgary-South East. We had a brief conversation as we were leaving, and I wanted to just get it on the record. In speaking, he talked about the mandate that the Premier gave them. I'm not sure what mandate the Premier has given the government members, but I can tell you – and it's been read into the record by the Member for Lacombe-Ponoka – the mandate that the Premier told Albertans that she was going to have as she was running. I need to read this once again into the record because it goes to amendment SA2, that we're talking about.

The Deputy Chair: Hon. members, the noise level is a little high. Can we lower that noise level, please?

Mrs. Forsyth: If I may, Madam Chair, it's important to read this into the record because it goes right to what the amendments were talking about. I'm reading an article into the record.

> Redford, who released her democratic renewal strategy in May, said she would pass a law that protects whistleblowers, no matter what manner they choose to expose wrongdoing.
>
> "When you start saying (a whistleblower) must report to the ombudsman, you're being prescriptive again about the structure that is in place, in an effort to manage the information. I think that defeats the purpose," she said. "I think they need to be protected if they go public with it," she said.
>
> Redford proposes to protect whistleblowers who go to opposition politicians, media or the courts, as well as the ombudsman and internal managers. She said political leaders need to send a message that allegations of wrongdoing will be examined in full, no matter how they come to light.
>
> "You either have open government, or you don't," Redford said.

Those were words spoken by the Premier when she was running for the leadership of this party and the commitment that she was giving to Albertans at that particular time.

Again, my comments are brief. The process is in place that the Member for Calgary-South East talked about. I've again encouraged him to read the legislation because the processes are in place.

In his comments he talked about the paramedics, that he is a paramedic, and that he has represented the paramedics as a former paramedic and now as a government member. I guess my question to him in regard to the paramedics, because I've just met with him, is on the processes that he has in place or what he's done to bring the issues forward that the paramedics have right now in regard to the ambulances, all of their pensions, if he has represented that to the Minister of Health, and to get on the record what the Minister of Health is doing to address those issues that are current. Those are just a couple of the issues that the paramedics have brought up. The new ambulances that don't fit them and having problems with the stretchers getting into the ambulances: I'm sure he's well aware of all that.

I'm sure that in his role as the MLA for Calgary-South East he has brought those issues – and he's said in this Legislature that he has brought those issues – to the Minister of Health. It alludes to the fact that it is important that if you have a concern, Madam Chair, in regard to what's happening in health care issues that is wrong, that needs to be addressed, when you have paramedics in ill-fitted ambulances, that those issues be brought to the forefront, to the Minister of Health, and that if they're not dealt with through the processes that this hon. member talks about, the processes in place, they have an option to be able to go to their MLA or this MLA, or they can go to the media.

Having said that, I look forward to hearing more debate.

The Deputy Chair: Are there any other members who would like to speak on subamendment SA1?

Mr. Fraser: On the amendment let me tell you first and foremost that when it references an MLA or it references the media, what I have been known for and what I'll continue to be known for: I will stand up for anybody that needs standing up for. I will stand up for the paramedics always, without question, and the members on this side, including the Minister of Health and all other ministers, can tell you in full force that I've addressed every issue that a paramedic has brought to me in terms of me being able to represent them and their best interests. However, I also recognize that in that role not all media is good media, that there are fantastic people – let me reiterate that: fantastic, qualified people – in Alberta Health Services who are working every day to make better outcomes for the patients that they serve, and that includes this minister.

I will say this. We will continue to work, and we'll find the best collaborative solution. But it is not below me or above me if I felt that I needed to advocate through media for a particular person. I will do that, and I will do it to the best of my ability. Whether it's for a constituent, a paramedic, or for the minister himself, I will do that. I hope that answers some questions. Again, I will tell you that there are excellent people here.

The processes that I've used in the past to represent the paramedics during the transition – I believe the Member for Airdrie cosponsored the bill of that transition. We tried to meet with him, which we never did, and I don't think it was about a refusal. Let me get that clear. We just never got that opportunity. But we did meet with most of the government members.

To reference the members from the NDP caucus, they laughed about the closed-door meetings. What I meant by that is that I don't believe it's pertinent or prudent to hijack a meeting by saying, "I will show up in the meeting" and then bring all my friends. I feel sometimes that if we can take the politics out of the process, sometimes we can gain way. If we can take the media out of the process, we can gain way.

Further to that, when we reference the media, unwittingly when we put things in the media, sometimes we'll scare people away for fear that that's always the solution. That is not always the solution. That's not always the process that we take. If we put it in the media,

people sometimes will be afraid to report. That's not what we want in this legislation. We want people to feel comfortable, but we also want people to know: you're absolutely free. Let me make it very clear. This legislation does not say that you can't go to the media. This legislation doesn't say that you can't go to external people or your MLA. You absolutely can, but we want people to follow the process. We want to protect them through this process.

Again, we want to protect them through this process if they feel that there's wrongdoing, and there are many avenues for that. Coming from a paramilitary organization like EMS, like police, two services that are very highly regarded in the community, I can tell you that the process works more often than it doesn't.

Thank you.

The Deputy Chair: Thank you, hon. member.

Are there any other members who would like to speak on subamendment SA1? The hon. Associate Minister of AT and T.

Mr. Scott: Thank you very much, Madam Chair. This act is structured to enable disclosure through either the internal process or directly to the commissioner. One of the points that my hon. colleagues didn't mention as they were going through some of the various examples that they were bringing up is that there is an anonymous disclosure process, and that's in section 21 of the act. With some of the examples that were being given by my colleagues, I do believe that they will fit within those anonymous disclosure procedures. I would just ask that they consider that as they think about this act.

I know that the decision to make a disclosure can be very difficult and stressful, and I also know that whistle-blowers are not necessarily after headlines. Many want their complaints to be heard, investigated, and resolved without being in the spotlight. This legislation requires that each public body has an internal process in place. This internal process is critical for every employee who wants to do the right thing but address the matter internally. Of course, this legislation also makes it clear that wherever an employee does not feel comfortable with the internal process, has suffered a reprisal, needs to make a disclosure urgently, or has a disclosure concerning the chief officer or designated officer in their public entity, they can go directly to the commissioner.

This amendment would also present a risk of personal information being disclosed. A key advantage of this approach is that it limits the number of people with access to personally identifying information. The approach in this legislation will prevent malicious or vexatious allegations from being prematurely aired in public. Let's be clear. This amendment would not protect employees, as the opposition is claiming it would. An MLA or a member of the media has no powers or obligation to investigate, make recommendations, compel the production of records, or offer the whistle-blower any protection other than what an MLA or the media can currently already offer.

7:40

Madam Chair, Australia completed a major project entitled Whistle While You Work, which is the largest survey of whistle-blower policies, legislation, and perceptions of both management and employees. Let me share a quote from one of its reports.

> It is clear that journalists and parliamentarians see only the tip of the whistleblowing iceberg, and are also more likely to encounter cases of whistleblowing that are already complicated, if not rancorous. While this more public whistleblowing may well be justified, on occasion, by the failure of organisations to address alleged wrongdoing in the first instance, the greater extent of internal whistleblowing does not automatically mean that wrongdoing is simply swept under the carpet.

We want to ensure that employees are protected when they make disclosures. We also want to ensure that disclosures are made to an office that has the power to investigate.

One of the key benefits of the legislation as it currently stands and the reporting processes that are currently in place is that they permit something to be done about the disclosures. If we have a system set up where disclosures are made to parties other than what we've designated, that doesn't necessarily lead to a resolution of whatever the concern is. I believe that the legislation that we've created provides an avenue that not only protects somebody who is going to make a disclosure; it also lets us solve the problem. That's really one of the aims that I want to see this legislation achieve.

For this reason, Madam Chair, I do not support the amendment or the subamendment.

The Deputy Chair: Thank you very much, hon. member.

The hon. Member for Calgary-Fish Creek.

Mrs. Forsyth: Well, thank you, Madam Chair. I appreciate what this member is saying, and I'm going to again put this to him. He has come up again in regard to some answers or maybe possible answers to some of the things we're bringing forward. I want to put this challenge to him. The Member for Lacombe-Ponoka and I would be pleased to meet with your staff, your deputy, and your people that you have consulted with in regard to this legislation. We'd be pleased to do that. We would be even more pleased as a caucus to pick up the cost of conferencing in our consultants so that they can discuss the legislation. We may save probably tons of time in regard to the 21 amendments we're bringing forward, and I can't speak on behalf of the opposition.

He talked about the Australian model, and I forget his comments in regard to Whistle While You Work. I can tell you that your legislation, Minister, has been criticized as being too weak to even blow a whistle, let alone whistle while you work. I mean, this isn't something members of the opposition have made up in our heads. We're going by countless stakeholders across this country that have chosen to go to the media and speak about your whistle-blower legislation, have chosen to call us and discuss it personally.

Again, Minister, I know you talk about the anonymous allegations under section 21, but please read section 21. It talks about "may," "must manage and investigate the disclosure in accordance with the procedures established under section 5." Report back to whom?

It's okay for you to be able to read what your department has asked you to or what you want to put on the record, but it's also important to anticipate the questions that you're going to get when you make these statements in the Legislature. Trust me, Minister. I can tell you that I have spent hundreds of hours on this legislation, and I've talked to numerous people. We want this legislation to be what's good for Albertans, and what's important for Albertans is to be able to blow the whistle and be treated fairly and taken care of when they do blow the whistle.

Once again, what we're asking on amendment A2 is, one, to include MLAs in the legislation. My colleague has brought in a subamendment in regard to the media. Allow the whistle-blower to have the ability, if he's not comfortable under the section where he has to go to his immediate designated officer under section 11, to have these avenues.

With that, I'll sit down once again.

The Deputy Chair: Thank you, hon. member.

Is there anyone else who would like to make any comments?

Seeing none, we'll go to the question on subamendment SA1.

[The voice vote indicated that the motion on amendment A2-SA1 lost]

[Several members rose calling for a division. The division bell was rung at 7:46 p.m.]

[One minute having elapsed, the committee divided]

[Mrs. Jablonski in the chair]

For the motion:

Anderson	Forsyth	McAllister
Anglin	Fox	Pedersen
Bikman	Hale	Stier
Eggen		

7:50

Against the motion:

Allen	Griffiths	Olson
Bhardwaj	Hancock	Quadri
Calahasen	Horne	Quest
Casey	Jeneroux	Rodney
Dallas	Johnson, J.	Sandhu
Denis	Klimchuk	Sarich
Dorward	Lemke	Scott
Fawcett	Leskiw	Starke
Fenske	Lukaszuk	Weadick
Fraser	Oberle	Xiao
Goudreau	Olesen	Young

Totals:	For – 10	Against – 33

[Motion on amendment A2-SA1 lost]

The Deputy Chair: We'll move directly to amendment A2. Are there any other members wishing to speak or comment on amendment A2? We'll call the question.

[The voice vote indicated that the motion on amendment A2 lost]

[Several members rose calling for a division. The division bell was rung at 7:52 p.m.]

[One minute having elapsed, the committee divided]

[Mrs. Jablonski in the chair]

For the motion:

Anderson	Forsyth	McAllister
Anglin	Fox	Pedersen
Bikman	Hale	Stier
Eggen		

Against the motion:

Allen	Hancock	Olson
Bhardwaj	Horne	Quadri
Calahasen	Jeneroux	Quest
Casey	Johnson, J.	Rodney
Dallas	Khan	Sandhu
Denis	Klimchuk	Sarich
Dorward	Lemke	Scott
Fawcett	Leskiw	Starke
Fenske	Lukaszuk	Weadick
Fraser	Oberle	Xiao
Goudreau	Olesen	Young
Griffiths		

Totals:	For – 10	Against – 34

[Motion on amendment A2 lost]

The Deputy Chair: We are back on Bill 4, the Public Interest Disclosure (Whistleblower Protection) Act. Are there any members who would like to comment or speak? The hon. Member for Edmonton-Calder.

Mr. Eggen: Thank you, Madam Chair, and Calder thanks you as well for remembering where I come from. I rise with interest to speak on this whistle-blower protection act. In fact, I think this is my first opportunity to do so. I came with a number of amendments that I would like to distribute now, please, with the appropriate amount of copies and the originals.

The Deputy Chair: We'll pause at this moment and have your amendment distributed.

Hon. members, we will call this amendment A3.

Would the hon. Member for Edmonton-Calder like to proceed?

8:00

Mr. Eggen: Yes, I would. Thank you, Madam Chair. As you can see, this amendment makes a change to section 3(1) by adding a clause after subsection (d), the clause reading: "(e) a statement made to the public by public officials that conflicts with information known to an employee." The rationale behind this is that the current bill outlines wrongdoings to which the act will apply; however, it does not currently touch on misleading statements potentially made by public officials. The amendment will ensure that discrepancies between what is known and what is communicated by public officials will be considered a wrongdoing.

In order to restore trust in the public service, Albertans need to know that the information that they receive from department officials, AHS officials, or representatives from other public entities is consistent with the information that is internal to those offices. Employees of these offices and public entities would often be privy to information that might not be available to the public. Then employees can identify cases wherein true information does not match up with what is made to the public by public officials. This amendment also ensures that public offices responsible for carrying out investigations in the public interest are subject to this clause, which I think might help to ensure that information is accurate, complete, and not misleading.

I think this is a reasonable amendment, and I hope that each member of this House might consider it. Thank you.

The Deputy Chair: Thank you, hon. member.

Are there any other members who would like to comment or speak? The hon. Member for Airdrie.

Mr. Anderson: Thank you, Madam Chair. I would support this amendment. It seems like a very reasoned amendment. It says here: "This Act applies in respect of the following wrongdoings in or relating to departments, public entities or offices of the Legislature or relating to employees." Among them would be a statement made to the public by a public official that conflicts with information known to an employee.

You know, perhaps this could have helped us recently where a question was posed to the Solicitor General. The question was very clearly: could he provide the recommendations of the Chief Electoral Officer? He said he could not, that he didn't have those recommendations, that the Chief Electoral Officer does not report to him. In fact, he had received those recommendations. It would have been interesting to know. Perhaps we would have had a public official that could have gotten up in that instance and said: actually, no, that's not correct. That's just one example. There are probably hundreds of examples that we could go through, but I

won't belabour it. It just makes sense that if there's a statement made to the public by a public official that is incorrect or untrue or is a blatant falsehood, an employee should be able to communicate that so that that individual in the government can be held accountable.

I know we were going to introduce an amendment that was similar to this. We would have to bring it by subamendment now, but we won't belabour the point in the interest of time. That means we'd have to talk this one out forever while we got the subamendment ready. I know Parliamentary Counsel would just love doing that, having to scramble right now. They would be more than willing to do it. I know that. But we won't put them through that.

Just for the record we were going to amend and, instead of what's stated here, say that it would be a gross violation: this act applies in respect of the following wrongdoings in or relating to departments, public entities, or offices of the Legislature or relating to employees' gross violation of established policies or procedures of the department, public entity, or office of the Legislature. That, you know, is another thing that probably should be reported. I think that it might fall under subsection (c), which is "gross mismanagement of public funds or a public asset." One could argue that that could be included in that. I actually think that this amendment would work as well, the NDP amendment. I know that I will be supporting it and hoping that my Wildrose colleagues and friends in the government will as well.

The Deputy Chair: Thank you, hon. member.

The Member for Calgary-Fish Creek.

Mrs. Forsyth: Thank you, Madam Chair. I think it's important, like my colleague from Airdrie-Chestermere . . .

Mr. McAllister: Hey, I'm Chestermere.

Mrs. Forsyth: Sorry. From Airdrie.

. . . to get on the record in regard to supporting this particular amendment, which talks about section 3, adding a section under 3(1). He's added section (e), which is "a statement made to the public by public officials that conflicts with information known to an employee."

My colleague from Airdrie has also talked about the fact that we had a proposed amendment that we were going to be tabling. Time is important, obviously, but we don't seem to be getting too far with the government on the amendments that we have proposed on behalf of Albertans. I think my colleague has also put into the record what we were proposing.

Anything, in my mind, that's important or is going to strengthen this bill is something that needs to be debated in this Legislature. I look across from me and I look at all of the government colleagues that are sitting very quietly over there and haven't spoken other than the Associate Minister of Accountability, Transparency and Transformation, or as we've got to know him, the Associate Minister of AT and T. He has done his best to try and stick up for this bill and has actually spoken eloquently in regard to some advice that he's obviously taken upon himself or maybe even from his stakeholders that have advised him in regard to what should and shouldn't be in this bill.

We've got on the record that my colleague from Lacombe-Ponoka and I would be pleased to meet with his stakeholders and hook them up with our stakeholders and have a good discussion about what amendments need to be brought forward on this bill. If he can convince us otherwise, great. I've got better things to do at 10 after 8 on a Tuesday night than debate legislation. I could be home on the couch reading a good book, watching TV, or even maybe, for that matter, talking to my husband.

So, again, I look forward to hearing what the minister has to say. I will put on the record for my colleagues that we support this amendment. It's another round in the boxing match that we're probably going to be playing over the next several hours. I honestly look forward to hearing from some of the colleagues on the other side.

The Deputy Chair: Thank you, hon. member.

The hon. Member for Lacombe-Ponoka.

Mr. Fox: Thank you, Madam Chair. I would like to stand and speak in support of this amendment from my fellow colleague from Edmonton-Calder. The reason I want to support his amendment is that the wrongdoings definition in this bill is very narrow. What they speak about are acts violating a statute or a regulation, gross mismanagement, or endangering someone's life, health, or safety. These are all things that needed to be in the bill. What's missing is violations of policies, codes of conduct, and the like.

8:10

These can have very serious consequences as well. For example, most of the misconduct exposed within the financial industry, which might have been part of the meltdown we had back in 2008, would have been found in violation of policies, codes of conduct, and other ethical and moral areas. I mean, I think we need to have this. We must have this. This addition of wrongdoing and expanding it allows more members of the public service to come forward and talk about some of the issues that they're seeing rather than just being pigeonholed into having to define it under violation of statute, gross mismanagement, or endangering somebody's life, health, or safety.

There are many, many, many other reasons to step forward to blow the whistle in protecting Albertans to make sure that the services that the government is offering are being offered to everybody in a way that would be becoming of the government. I've had my own experiences with the front lines of the health industry, and I have to say that those people on the front lines are committed, and they are looking out for what is best for themselves and for Albertans. It's touching the way that they are committed to that. Personally, I've got a story of my own, where a nurse who had been present when my mother passed away, unbeknownst to me, had been given a message to give to me on my grad day. I would like to think that somebody who is so committed to their job and to Albertans like myself would be able to seek the protection when they're seeing a violation of a policy or procedure so that they can step forward and speak out in the interests of Albertans.

I think that the Member for Airdrie was speaking earlier about a problem in a hospital where tools weren't being cleansed properly. That would be a violation of policy. Maybe it didn't put anybody's life, health, or safety at risk in that instance, or it may have, but the fact that the policy itself wasn't being followed should have been enough to have a whistle-blower come forward and be protected under this. You know, I feel for these people on the front lines. They're doing the very best that they can with the tools that they have, and they really do care about Albertans. That's why they're doing the jobs they're doing. Let's make sure that when they see something that needs to be brought forward, it's going to be investigated and not just swept under the rug.

We did have an amendment on this, and I just want to make sure that it's in the public record that we were going to amend section 3(1) in this bill by adding a subsection (e), which would

have been: gross violation of an established policy or procedure of the department, public entity, or office of the Legislature.

Again, thank you for allowing me to stand up and speak for the constituents of Lacombe-Ponoka and for all Albertans.

The Deputy Chair: Thank you, hon. member.

The hon. Member for Cardston-Taber-Warner.

Mr. Bikman: Thank you, Madam Chair. Of course, if everyone were honest, we wouldn't need bills like this, but they aren't. Most are, I'm confident, but there are temptations. Desperate situations occur, perhaps external pressures from whatever source. Conflicts of interest can tempt one and lead one astray. I think it's incumbent upon every employee that has such knowledge to come forward. They need to know that they're encouraged to do that and that they can do it without fear: fear of retribution, fear of discrimination or, perhaps, of any other actions by their peers or their employer. I think that failure to do so makes one complicit in the transgression. So I think that they should know that they can do this and would be protected.

I appreciate the amendment, and I'll certainly be supporting it. Thank you.

The Deputy Chair: Thank you, hon. member.

Are there any other members who would like to comment?

Seeing none, we'll call the question.

[Motion on amendment A3 lost]

The Deputy Chair: We are now back to Bill 4. Are there any members who wish to speak?

Mrs. Forsyth: Well, Madam Chair, as I said, it's a boxing match, and now I think that we're on round 4.

Mr. Anderson: We lost the first five rounds, though.

Mrs. Forsyth: I know, but that's how you box versus how I box. You see, I don't give up. Somebody is ringing a bell over there, and as hard of hearing as I am, I can hear that.

I have the amendment, if I may, and I'm sure that our wonderful pages will be – as it's being passed out, I'll sit down for a minute.

The Deputy Chair: Yes, we'll pause for a few moments while we have the amendment passed to the other members.

Hon. Member for Calgary-Fish Creek, you may proceed. This will be amendment A4.

Mrs. Forsyth: Amendment A4. Fourth round, right? You were right.

Thank you, Madam Chair. Well, here we go, round 4. This is going to get the lawyers going. I'm looking forward to the Minister of Justice getting up and speaking on this particular amendment.

Let's start off, for all of those that are interested, on page 6, section 3. I'm prepared to move that Bill 4, the Public Interest Disclosure (Whistleblower Protection) Act, be amended as follows. Section 3 is amended by striking out subsection (2), which currently reads: "This act applies only in respect of wrongdoings that occur after the coming into force of this Act." Very interesting – very interesting – to see that when we first saw the legislation. To be honest with you, it was probably one of the things that struck us the most when we were looking at the legislation very carefully.

Our amendment is as follows. Section 3 is amended by striking out subsection (2) and substituting the following:

> (2) This Act applies in respect of wrongdoings that occur, or have occurred, on or after January 1, 2003.

Item B is section 19. For those that are interested, that is on page 14. Section 19 is amended by striking out subsection (2). Section 36 is on page 26, and section 36 is amended by striking out clause (j).

8:20

The issue is the time limitation within this bill. No wrongdoings will be investigated if more than two years have passed. This amendment will make any wrongdoing in the last 10 years reportable. Violations of laws performed by government and its employees that occurred before whistle-blower protections were introduced should still be reportable.

Now I have read the amendments in. I know this is going to be a good one for the Justice minister and Solicitor General because I've heard him on *Rutherford* when he was talking about the Election Act and was questioned about this.

This amendment is deleting the statute of limitations on this bill, which I have said before. I know we're going to hear about the retrospect for three years. Currently Bill 7 is retrospective for three years. This question is to the Justice minister. Why can't Bill 4 apply to wrongdoings in the recent past, especially when it's the future reprisals that come from blowing the whistle that matter?

I am going to sit back and listen. I'm falling over. Sorry. It's late at night. I've got heels on, Madam Chair. I should be taking them off, actually.

Wrongdoings, including criminal and civil wrongdoings by government departments, should always be made . . . [interjection] Excuse me? What did he say?

Mr. Anderson: He said how he thought this amendment was a real nice piece of work.

The Deputy Chair: Through the chair, please.

Mrs. Forsyth: I know that we're going to hear about the retroactive, so I want to get it on the record that laws can't be retroactive, but any wrongdoing committed in the last 10 years can be reported under the proposed amendments, and the whistle-blower will be protected from reprisal.

I am very interested to hear what the Justice minister has to say about this. Interestingly enough, this is information that we're getting from some of his federal-provincial Justice people that he's talked about in the past when he goes to his FPTs, I guess. We have talked to other lawyers, actually, that support this amendment. It's how you read it.

I'm looking forward to hearing what the Associate Minister of – I'm sorry if I'm offending him – AT and T, what they have to say. If he has a problem with that, he can let me know. The chair has always referred to that. The last thing I want to do is do anything other than use his full title.

I know my colleague from Lacombe-Ponoka wants to get up and speak on this. This is one of those amendments where we've actually reached out for legal advice, and we've reached out to some of our federal-provincial-territorial counterparts to get their advice. We've actually reached out to FAIR and those people that are renowned for their experience on whistle-blower legislation. It's important for us to hear what the government has to say about this particular amendment.

I'll be back up again. Thank you.

The Deputy Chair: Thank you, hon. member.

The hon. Minister of Justice and Solicitor General.

Mr. Denis: Thank you very much, Madam Chair. I appreciate you recognizing me. It is late, but unlike the Member for Calgary-Fish Creek, I'm not wearing heels.

I'm going to chat just about the issue of retroactive or retrospective legislation. [interjections] You know, it's really interesting. I've been very, very attentive here. I hear catcalls across the way. I'm just going to keep on talking.

When you deal with the issue of retrospective or retroactive legislation, there's a key distinction. I'll give this House just a brief overview on it. Retrospective legislation is shining the light on something that happened in the past whereas retroactive legislation is changing the rules in the past. I've always felt that retroactive legislation is improper unless you have a time machine, and I don't believe anyone here has a time machine, Madam Chair.

Where the prohibition comes from, dealing with retroactive legislation, Madam Chair, deals with section 11(g) of the Charter of Rights and Freedoms. I'm just going to pull it up on my computer here. This is just on the criminal statute. It says:

> 11. Any person charged with an offence has the right . . .
> (g) not to be found guilty on account of any act or omission unless, at the time of the act or omission, it constituted an offence under Canadian or international law or was criminal according to the general principles of law recognized by the community of nations.

Of course, that only deals with criminal statutes, which typically deal with fines, penalties, incarceration, Madam Chair. What's interesting here is that this statute, of course, is civil. This House has no authority whatsoever to bring in a criminal statute. That is a matter under section 91 of the Constitution which solely rests with the federal government. That being said, there are a number of enforcement mechanisms that make this statute very close to the criminal area. In fact, it does impose significant fines. It is not criminal, but it does involve offences.

For example, penalties as a result of prosecution for an offence under this act include a $25,000 fine for a first conviction and a $100,000 fine for subsequent convictions. Fairly significant. It does, in fact, have teeth. So we would ask ourselves: should we be making legislation that is retroactive, when someone in the past didn't know about this legislation? How could they? It wasn't even introduced. Madam Chair, this legislation wasn't introduced for a period in the past, yet at the time the opposition under this amendment suggests that we should make the rules and rewrite that for the past.

I would respectfully submit to all members of this Assembly that that would make this portion of the law de facto unenforceable. I would even go so far as to suggest that it would leave this law open to a constitutional challenge because this is a grey area. It is not a criminal statute, but at the same time it does impose significant penalties. As I've said, none of us have a time machine per se. So where does this leave us if we go and put this in? I would suggest that this is largely a political amendment from one of the members opposite that thinks that we should just have no statute of limitations whatsoever.

Well, interestingly enough, Madam Chair, almost every piece of legislation has a statute of limitations. The general one is found in section 3 of the Limitations Act, which is two years from when a person knew or ought to have known to an absolute limitation of 10 years. It is a fact of legislation, and it's been found to be necessary. It's been upheld in courts throughout this country.

I would suggest that the act in its entirety doesn't apply to wrongdoings before the enforced date that the commissioner would be required to investigate, but it would have the discretion if they consider it to be appropriate. So I would suggest, again, that the amendment would effectively force the commissioner to investigate old wrongdoings even if it was eminently clear that any and all evidence that might have assisted him was dispensed many years ago with the passage of time. So you're going to have issues of trying to call witnesses back from many different years. Of course, there's going to be a defence raised in whatever action there may be. As I mentioned, there may be a constitutional challenge.

The commissioner is an independent officer, and this would be a very difficult one for him to actually go and enforce. If you wanted to try to go back five or 10 years, you're going to have old evidence. You're going to have witnesses that understandably forget things. That's why Canadian jurisprudence is so reluctant to allow for this type of retroactive legislation.

I would suggest that the provisions that the Minister of Accountability, Transparency and Transformation has suggested are adequate here and that this amendment should be rejected for the reasons that I have indicated.

Thank you.

The Deputy Chair: Thank you, hon. minister.

The hon. Member for Edmonton-Calder.

Mr. Eggen: Thank you, Madam Chair, and hon. Member for Calgary-Fish Creek. I will save you a spot soon. I'm just so anxious to speak on your amendment.

It's interesting, you know, that although we didn't confer on this particular amendment, we in fact had something almost identical to this: section 3 amended to strike out subsection (2), section 19 striking out subsection (2), section 36. It's almost exactly a mirror image. I think both of our research teams came to a very similar conclusion on the problem that's associated with sections 3, 19, and 36. This current bill only applies to wrongdoings that occur after the coming into force of this act. The bill also allows the commissioner not to investigate a disclosure if two or more years have passed since the wrongdoing was discovered. It feels like a problem there. Absolutely. The amendment will ensure that time period applications do not hinder the commissioner from investigating and resolving issues that pertain to wrongdoings and public interest disclosures.

8:30

We may well have seen wrongdoings in the province that have gone unreported due to a lack of strong whistle-blower protection in the past. In other words, whistle-blowers would have likely felt intimidated into silence in the past because there have not been safe procedures in place for employees to, so called, blow the whistle.

So I say, Madam Chair, that if this government is serious about uncovering wrongdoing in the name of the public interest, then it would allow for this act to be applied to cases that have gone unreported in the past. Wrongdoing in public entities and in the workplace in general is often systemic and long standing. Typically gross mismanagement and illegality begin with a single instance repeated over time and spreading to other areas and other individuals. There has to be retroactive application of protection for whistle-blowers under this new bill that we're reading here today to ensure that offices wherein there is systemic wrongdoing may be found.

The commissioner should not be able to drop investigations arbitrarily after a two-year period as well because this will allow the commissioner to allow investigations to, so called, time out, to run out the clock. Although investigations should be completed in a reasonable amount of time, which would ideally be much shorter than two years, there are conceivable cases of much more signifi-

cant wrongdoing involving entire offices or entities which might require long-term investigation by the commissioner.

Deleting this section would ensure that a loophole for ending investigations according to an arbitrary time limit is then closed. Quite simply, investigations should be conducted in a reasonable time frame, and closing investigations according to any sort of meaningless, arbitrary time limit will limit the commissioner's ability to remedy wrongdoings in carrying out his duties.

Also, an arbitrary time limit will likely increase the likelihood that whistle-blowers may publicly release information relating to a wrongdoing. If a whistle-blower feels frustrated because a commissioner ends an investigation, then he or she may feel inclined to pursue other avenues for disclosure. This is in the best interest, I believe, of all parties involved to ensure that the commissioner commits to the beginning and the completion of investigations.

Again, in closing, it's interesting that both our researchers and the Wildrose came to a very similar conclusion here. I think it's a question of common sense rising to the top – right? – as does cream. The idea that we would have these limitations in place I think goes against the spirit of giving a potential investigator, a commissioner the full powers to be able to carry out their job in the office that we are going to create here.

I certainly would invite other comment on this. I would like to learn more about how your research came together on this and how both of our research teams came to a very similar enlightened and reasonable conclusion.

Thank you.

The Deputy Chair: Thank you, hon. member.

The hon. Member for Lacombe-Ponoka.

Mr. Fox: Thank you, Madam Chair. We came up with this amendment based on what's going on right now. When we're looking at what's happening and where these complaints are coming from, we want to make sure that the commissioner can investigate what has been going on in government, in our public bodies if there is issue to do so. Now, I think this is more retrospective than retroactive. We want to make sure that the commissioner can't refuse to investigate or to discontinue an investigation when it has been under way as well. If more than two years have passed, according to this piece of legislation, they can stop investigating it. If their staff drags their feet long enough, we might not ever get to the bottom of that particular individual's concern. We want to make sure that anything that's going on right now is seen.

What happens if we've got somebody today – today – who has an issue, who has seen wrongdoing? Where are they going to go? Well, they can come and talk to me, but what's going to happen? They're not protected. They could go and talk to the media, but again they're not protected. They're left open to reprisal. They're left open to dismissal. They're left without any protection. Where are the Albertans in this? Where are the taxpayers? If somebody has something that they need to come forward with, it should be investigated. We might not be able to put forward a penalty on it, but at least we can see that the procedures are going to be changed to fix whatever issue is happening in that public entity.

The way this reads now, the commissioner need not ever investigate that. We won't ever see it corrected, and we'll just see this issue roll on and on and on until maybe somebody else has the gumption to step forward if it happens. But if it stops, well, we still don't know that there's been a misuse or a misappropriation or whatever the issue might be. We just won't see it happen. We won't be able to make sure that that issue has been rectified. We've got to make sure that our public entities are running the way that we envision them to. We're here in the public interest. They're there in the public interest.

We've got to make absolutely sure that when there is an issue, if it's today, not when this is signed into law and given royal assent, that person and their issues will be investigated when this becomes law, not just pushed off to the side and told: oh, well, sorry; your issue, your problem, what you're blowing the whistle on, well, it didn't really exist because this law hadn't come into force yet. We absolutely need to make sure that they have the ability and that we have the ability to go back and make sure that our public entities are following the best practices at all times, not just from this point moving forward.

I hope that some of my other fellow members will have some more comments on this. Thank you very much.

The Deputy Chair: Thank you, hon. member.

The hon. Member for Rimbey-Rocky Mountain House-Sundre.

Mr. Anglin: Thank you, Madam Chair. I rise to speak to this amendment, but I'm going to disagree with the hon. Minister of Justice in the sense that wrongdoing can actually be investigated under criminal law under the statute of limitations, whatever rules and regulations apply accordingly. This is about so-called protection of the whistle-blower. It has nothing to do with, certainly, any type of criminal activity that would fall under the auspices of the Department of Justice and all the rules and all those regulations.

You know, the prime example on a political level is something akin to the sponsorship scandal, that took a long time gelling before investigations were complete. This isn't about a defined wrongdoing in the sense that something has been proved. This is about an alleged wrongdoing that could possibly be investigated. That's all it is, giving protection to the whistle-blower. That could still be investigated anyway without protection to the whistle-blower. If the intent of the act is to protect the whistle-blower, this doesn't affect whether or not the minister and the officer or the commissioner has the right to investigate wrongdoing or make whatever type of administrative changes they want to make.

8:40

The idea that this would not have some sort of effect coming into force on January 1, 2003, is interesting because this government has routinely passed laws that came into force on past dates. That goes back to not just the last government but the government before that and the government before that.

When I look at this, this is just a very basic step in making sure that this act is inclusive in the protection of the actual whistle-blower, not necessarily in whether or not somebody has found a wrongdoing or an offence to civil law or an offence to criminal law. That is something that would be completely different.

I'm not sure I understand the whole idea of retrospective and retroactive because that would technically, in my mind, be dealing with something else altogether in the prosecution. This is just dealing with the protection of the whistle-blower to come forward and report something that they alleged as a wrongdoing. The commissioner or the officer then has the ability to take a look at it under this act and give protection to that whistle-blower. Whether or not they find a wrongdoing is another matter. Whether or not they even investigate is another matter. That falls under different provisions, and they have to make the evaluation. But the alleged wrongdoing, to say that they can't or nothing applies until this comes into force, I suggest, makes the public extremely suspicious of what the intent of this law is.

Thank you.

The Deputy Chair: Thank you, hon. member.

The hon. Member for Calgary-Fish Creek.

Mrs. Forsyth: Thank you Madam Chair. I'm going to be brief. I really need some clarification. I've said in this House on several occasions recently that I'm not a lawyer. When you're not a lawyer, you listen to lawyers and look for legal advice from other lawyers. The joke is always that you can never get a bunch of lawyers in a room to agree on anything. You look to their wisdom and you look to their guidance and you try and understand from a common sense or a common practicality. I guess it's like a judge sitting. They listen to the lawyers, and they listen to what's brought before them, and then they make the decision even though you've got two lawyers fighting on the same case, one proving something innocent, one proving something guilty.

One of the things that this minister brought to my attention – I, again, was listening very attentively, but he talks very fast – is the fact that he referred to the Charter of Rights and Freedoms under section 11(g). I don't have that in front of me. The Charter of Rights and Freedoms has been around for quite some time. Under that Charter of Rights and Freedoms he talked about the criminal statutes. It only applies to criminal legislation. Then he went on to say that this isn't a bill that's criminal, but it could be very close to criminal statutes because this is a civil statute. My colleague from Airdrie, I'm sure, will be able to fill us in better than anybody, as a lawyer, about criminal statutes versus civil statutes. I don't quite understand that.

What was interesting was that as I listened very intensely, he went on to say that this could very well become a constitutional challenge. He doesn't want that to happen. Yet in the same breath, when we're talking about .05 to .08 legislation being a constitutional challenge, he doesn't have a problem with it. Here we have two bills in this Legislature, that have hit this Legislature floor. One on .05 and taking people's licences away and, for that matter, their cars. This minister is just standing in this Legislature passionately talking about the fact that they were expecting a constitutional challenge and that they would challenge it to the fullest degree. So we take that one step further. Now we're talking about people's lives, their careers, their livelihood, their integrity, their reputation, bringing forward a solid piece of legislation under Bill 4 because they have had the guts – and that's the only word I can think of – to blow the whistle on somebody doing something wrongful, and he's afraid to step that one step further and talk about a constitutional challenge.

To me, it's absolutely frustrating that in one breath this government can stand in this House and has no problem, when somebody blows over .05, taking away their car without due process, and we have another bill that's talking about protecting the rights of people who are blowing the whistle on some very, very serious charges. It could be serious if you look across this country at whistle-blower legislation that has been blown in the past. Serious, serious things have happened. He doesn't want to take that challenge.

I always sort of think of when I was a minister, and I can think of several pieces of legislation, as you can, Madam Chair, that challenged constitutionality. I want you to remember a piece of legislation that you brought forward in this House, that you were so passionate about: PCHAD, the Protection of Children Abusing Drugs Act.

Hence, I can talk to you about a piece of legislation that I was very passionate about, which was PCHIP, which was the Protection of Children Involved in Prostitution Act. Both of us through that process – I was with you through that process when you were bringing the PCHAD legislation; you weren't with me through the PCHIP, but I know you would have been if you were there – talked about: "You can't do this. You're going to get a constitutional challenge." Well, guess what? They challenged me constitutionally about the PCHIP legislation, and guess what? We won, which now protects probably, the last count I had, 950 children apprehended under PCHIP. I would challenge you, Madam Chair, to go to your government and ask them how many kids have gone through your PCHAD legislation and how many of those children have been saved.

It boggles my mind that we're backing down. This is a government and a province that brags about its entrepreneurship, and it brags about the people in this province that are in the forefront of everything. And we cannot – cannot – stand up on behalf of the people in this province who have the guts and want to bring forward this government or anyone else, for that matter, in regard to the wrongdoings that they're doing, and this Minister of Justice says: I don't want to have that constitutional challenge. Yet he'll do that with .05 or .08.

I'm looking forward to my other colleagues talking. I'm looking forward to the Minister of Accountability, Transparency and Transformation – and, Minister, I'm still, still, still struggling with the name of your ministry when I still haven't seen any of that through all of this legislation so far that your government has defeated. People across this country are watching this bill, and those same people are saying that this is the worst legislation in the country. So let's get on. Let's move forward. Let's talk about some of the amendments that are going to make this bill maybe even half-assed good so that we can move forward and help the people in this province.

The Deputy Chair: Thank you, hon. member.

The hon. Member for Airdrie.

Mr. Anderson: Thank you, Madam Chair. I'd like to speak to this amendment. I actually think this is a critical amendment that we added, and I really wish the government would look at this. There's no reason for them not to. It's amending section 3 to make sure that

> (2) This Act applies in respect of [all] wrongdoings that occur, or have occurred, on or after January 1, 2003.

8:50

Now, I think that the extension of it back a few years is something worth looking at. Remember, what we're looking at here is that we're not necessarily – and I could be wrong. Please correct me if I'm wrong, but I do not remember coming across parts of the bill where there are actual penalties against the wrongdoers for the specific things. That would be so broad. How can you put a jail sentence or fines or whatever on someone who may have done something dangerous in the health care system or whatever? There are other ways of dealing with those issues. I understand that.

If we were sending folks to jail in this legislation for things that occurred from the whistle-blowing acts that had been given, then I could see that maybe there'd be a problem with extending the term from three years to seven years. But this is really just looking at how long we're going to allow this bill to look back with regard to whistle-blowers and how much protection we're going to extend to them. Really, this is almost like a shield bill. It's not really a sword bill. Because it's a shield bill for whistle-blowers, I don't think that that's a problem constitutionally, but I could be wrong. I look forward to the Minister of Justice explaining to me why perhaps that is a problem, but because it's a shield, I'm not sure why that would be a constitutional issue. If it was a sword, then it

might be. I'm not sure, so I would like some clarification around that.

The other thing: these are the really offensive parts of this that absolutely need to be fixed. I mean, you have section 19 amended by striking out subsection (2), which is:

> (2) The Commissioner is not required to investigate a disclosure or, if an investigation has been initiated, may discontinue the investigation
>
> (a) if more than 2 years has passed since the date that the wrongdoing was discovered;
>
> (b) in any . . . circumstances prescribed in the regulations.

Again, I don't understand that, that two years passes from the date that wrongdoing was discovered. Well, if it was discovered three years ago, but this legislation doesn't come into effect until now, then why would we have this provision in here? It doesn't make sense. What do we mean by "discovered"? Who discovered it? Was it known to the whistle-blower or known to the commissioner? I'd like some clarification on that, minister of transparency.

Mrs. Forsyth: And accountability.

Mr. Anderson: Well, I'll call him minister of transparency just to shorten it up.

Why are we doing that? Who does this apply to? Is it the commissioner? Two years has to pass since the date of discovery of the wrongdoing by the commissioner or by the whistle-blower? Again, this is important. As you know, judges, I think, would need to know this in order to interpret this law. They're going to look to the *Hansard* and see what was said in that regard. Are we talking about discovery by the whistle-blower or the commissioner or some other person? Even if it is either of those, why the two-year limit?

Now, the second piece, the one that's a real problem, is section 36. Again, this makes this bill just very, very unpalatable. It specifically says in here that the Lieutenant Governor in Council may make regulations

> (j) prescribing circumstances in which the Commissioner is not required to investigate a disclosure.

Well, that's great. What that section says is that the cabinet can decide unilaterally to make regulations when they feel that they don't want something to be investigated, so prescribing circumstances in which the Commissioner is not required to investigate a disclosure.

Guys, gals, members, that's really weak. I mean, how can we honestly put that in there? You're basically allowing the cabinet to have the ability to make regulations unilaterally without coming back to this House that specifically could change the intent of the entire bill. They could come and say: "You know what? In circumstances where we know the minister is involved, we're not going to allow the whistle-blower act to apply to this individual."

Please, minister of transparency, let me know if I'm missing something here. It seems to say that the cabinet has unilateral authority to essentially wipe out the entire use of this act, basically say: "You know what? We're going to make . . ." If something is embarrassing to them, they can make a regulation that specifically exempts whatever is embarrassing to them without coming back to the House.

So there are three major problems. There's section 36(j), which our amendment would strike out, which seems to be more than reasonable. Then there's section 19, which needs to be clarified at the very least. Are we talking about the commissioner or are we talking about the whistle-blower with regard to that two-years-from-discovery statute of limitations, so to speak? It's not really a statute of limitations, frankly. It's just saying when you can investigate something. In my view, that's different from a statute of limitations, so I don't think that's the right way to describe what this is. Then section 3 allows the investigations to look back. Section 3(2): "This Act applies . . . in respect of wrongdoings that occur after the coming into force of this Act."

I would like to know from the Minister of Justice. He practised law for a lot longer than me. No doubt about that. I was a baby lawyer. I got out before it ruined me. I haven't been corrupted like some in this House. My decade of practising law. There's a spark of idealism still burning.

Even though I haven't practised for a while, I understand that you can't have an act that's retroactive with regard to giving out penalties and so forth. I get that. I understand that. But with regard to this, I don't think that's what this act does. With regard to what we're talking about here, if we're talking about investigations into wrongdoings, if a whistle-blower wants to blow something on something that occurred three years ago, shouldn't the whistle-blower protection act protect that individual for something that they're now letting us know may have happened three years ago? I'm not sure how that would make the bill retroactive. It would make it retrospective.

Mr. Denis: No, that's retroactive.

Mr. Anderson: Well, how would it make it retroactive? It's being used as a shield, not a sword.

The Deputy Chair: Through the chair, please.

Mr. Anderson: I don't claim to be an expert on it, but I don't understand, you know, how it could possibly be unconstitutional to say that whistle-blower protection law can't protect somebody for bringing up something that happened before it goes into effect. That doesn't make sense. In other words, an individual comes forward after this law is proclaimed and says: last Monday I saw the Premier doing X, Y, and Z. Or the minister or an MLA from this side or anybody. If he says that, apparently the investigator, the commissioner, can't investigate that. Not only that, but the protections in the act don't apply to that individual whistle-blower. I mean, it just doesn't make sense. I'm not seeing it here. I certainly think it's a debatable question.

Please, hon. Justice minister, tell me how it would be so awful to allow the commissioner to investigate things that happened before this act came into effect.

9:00

I could see if there are penalties in the act, specific penalties. [interjections] No, no, no. Hear me out here. If there are penalties that specifically say that if you've done something wrong in government and the whistle-blower blows his whistle on you and there's a fine of $50,000 when that happens, which isn't in here, but say that it was, then I could see that being a problem. You can't make something illegal that wasn't legal before. But that's not what this says. This says that you can't even look back and blow the whistle on it. How is that retroactive? I'm not seeing how that's retroactive. You should be able to look back and blow the whistle on it and still have protection under this act. I don't think the law with regard to retroactivity applies here in this instance, but I could be wrong.

The section 36 issue is unconscionable. That needs to be passed. There's no way that cabinet should have the power to unilaterally make regulations specifically, as in the words here, "prescribing circumstances in which the Commissioner is not required to investigate a disclosure." What is the point of passing the act in

the Legislature if you allow the cabinet unilateral authority to essentially wipe out the entire intent of the act? It makes no sense, Madam Chair. It makes no sense. I mean, you could literally pass this legislation and think it's the greatest in the world, and then the cabinet could individually, according to whatever circumstances arise, say specifically: you know, we're going to pass a quick regulation on this so that the commissioner can't investigate us.

Is that wrong? Is that not what it says? If it's not what it says, please clarify it for me. If it is what it says and you know that – and we've pointed it out to you now – then one must ask why it's in here and why you know it's in here yet are leaving it in here despite having an amendment brought forward in this regard. That to me is a recipe for a cover-up. That's what it is. Tell me I'm wrong. Minister of transparency, please. I beg of you. Tell me I'm wrong on that.

The Deputy Chair: Thank you, hon. member.

The hon. Member for Strathmore-Brooks.

Mr. Hale: Thank you, Madam Chair. I just want to talk on this amendment and say how important I, too, feel this amendment is. I want to agree with the hon. Member for Airdrie here. I think that when I read this, "prescribing circumstances in which the Commissioner is not required to investigate a disclosure," that's exactly the same thing we saw in Bill 2 with the Lieutenant Governor in Council being able to make any changes to the regulations at any time. Basically, I think the easiest way to explain it is that it's their get-out-of-jail-free card, that at any time they can makes changes to suit what they think is necessary.

Now, that could be what is in the best interests of the public. You know, maybe it'll work out for the best. Chances are, probably not. Going to where the act applies only in wrongdoings that occur after the coming into force, well, if it was wrong a week ago, it's still wrong today. There's no reason – and the constitutional challenges. Like the hon. Member for Calgary-Fish Creek said, well, maybe we need to make a stand and say: okay; let's have a constitutional challenge and get by that. I mean, if we know it's right, we have to take this opportunity to put it in legislation, to make those changes to ensure that the public is represented and protected. You know, if there are other circumstances that come up that happened a year ago that somebody finds out about, well, there should be no reason that that person can't have the whistle blown on them.

I mean, the ministry that brought this act up is "accountability." That's the first word of the ministry. Accountability. This is being accountable to the people of Alberta. We have to be accountable to them and not go and say: "Well, you know what? We're sorry that in your workplace this happened a year ago, but we can't be accountable for what happened a year ago to you. We're only going to be accountable from this day forward. Sorry. Take your lumps and carry on. We're just looking from this day forward."

We were elected back in April. We've been accountable since April. This Legislature has been here for 100 years. It's been accountable for 100 years to the people of Alberta. What makes us think that we can bring in an act that only makes us accountable from one day forward? We have to look after the people that elected us. I mean, I sure would hate to have someone come into my office and say: "We sure wanted to blow the whistle here on this seniors' home or this hospital or this public building or with some public employee. You know, what's going on is really bad, and it went on six months ago, and I'd sure like to talk to you about it." I'd hate to have to be the one to tell him: "Sorry. There's nothing I can do for you. This act only counts from Thursday forward."

I really think that we need to have a strong look at this and really think about who this act is affecting and how we can make it all better.

Thank you.

The Deputy Chair: Thank you, hon. member.

Mrs. Forsyth: Well, Madam Chair, the saying is: are you prepared to die on this mountain? It's one of those mountains that, you know, you're prepared to die on We have the House leader and Member for Airdrie over in the corner obviously talking to the minister of accountability and transparency to try and get some clarification from him in regard to some questions that we had that needed to get answered.

The struggle that we're having in this particular legislation is the fact that we just don't have the answers. We have the Justice minister that stands up and goes into his computer under section 11(g) of the Charter of Rights and Freedoms and talks about a criminal statute. This isn't criminal legislation. I know for a fact that anybody can serve in a provincial jail and do two years less a day, or you can serve in a federal jail for two years plus a day. Criminal statues come under criminal legislation. For example, the Criminal Code is what I assume he's talking about. Under criminal statutes it depends on what you're charged with, obviously, under the Criminal Code.

Then he talks about civil statutes. As I explained earlier, I'm not a lawyer. Maybe he'd like to get up in this Legislature and tell us the difference between civil statute and criminal statute. Yet he said that this is more like a civil statute. But it's bordering on criminal statutes. I guess in my eyes it's either criminal or it's not criminal. It's either civil or it's not civil. Quite frankly, I would really like some clarification from him on what the difference is.

Then we get into the retrospective and the retroactive. You know, laws can't be retroactive, but any wrongdoing committed since any period of time can be reported under this proposed legislation. Our proposal under our legislation is 10 years.

The other thing – and I'm sorry to be repetitive on this kind of thing – is the comments that were made in regard to the constitutional challenge, and I've talked about that. I was very, very thankful that when I brought forward the Protection of Children Involved in Prostitution Act – and we were challenged constitutionally – the government at the time, the PC government, decided to go to the wall. They decided that they were going to challenge this, and it didn't matter what. Alberta was different from other provinces and unique. We didn't want to be like every other province in this country, so we were going to be different. That particular PCHIP legislation still stands today as one of the most innovative pieces of legislation in North America along with your legislation.

9:10

When we talk about constitutional challenges and the minister stands up not six months ago and talks about the constitutional challenges he's prepared to endure and to have the government go through a constitutional challenge on the .05 legislation and then says in this House when we're talking about protecting people who want to blow the whistle that he can't support a constitutional challenge, one must scratch their head.

Mr. Denis: Keep scratching.

Mrs. Forsyth: He's told me to keep scratching it. And he talks about the chirping in the background. This is the Justice minister and Solicitor General of the province, that's supposed to be setting

an example for everyone in this province as the Justice minister and Solicitor General. It's absolutely an embarrassment as far as I'm concerned.

Point of Order
Parliamentary Language

Mr. Denis: Point of order under 23(h), (i), and (j). That's rather abusive and insulting language. I'd ask the member to please withdraw that.

The Deputy Chair: Hon. member.

Mrs. Forsyth: Yes. Is he asking me to withdraw something when he is yelling across the floor telling me to scratch my head when we're talking about a constitutional challenge and what's important to the people of this province? I say that in his role as the Solicitor General, someone I was for four years, and in setting an example for the people of this province, that is an embarrassment. Madam Chair, no.

The Deputy Chair: Hon. member, we need to stick to speaking on the amendments and not enter into personal attacks.

Mrs. Forsyth: Madam Chair, the personal attacks came from that side first. Let's be clear. I was talking about what the amendment speaks to.

The Deputy Chair: From this point on we will refrain from making personal attacks from either side of the floor.

Mrs. Forsyth: I was not making personal attacks. What I was saying was that this was an embarrassment for someone in that capacity to be yelling across the floor in his capacity as the Solicitor General.

The Deputy Chair: Hon. member, I have ruled that we will refrain from making personal attacks on either side of the floor.

Please continue with amendment A4.

Debate Continued

Mrs. Forsyth: Thank you. Let's continue on the amendment without comments from across the floor, Madam Chair. I'm fine with that.

As I was saying, I listened to the Minister of Justice and Solicitor General when he was talking . . .

The Deputy Chair: Through the chair, hon. member.

Mrs. Forsyth: I was looking at you other than looking at the paper to refer to my notes.

Under section 11(g) of the Charter of Rights and Freedoms he was going on about the Charter of Rights and Freedoms applying to criminal statutes. He also made the point that this bill is not criminal statutes; it's civil statutes. It's close to criminal statutes, but not really, and about the constitutional challenge.

What we're trying to find out from this government, which is in the amendment that we're speaking to, is some clarification from the minister of transformation on some very critical questions that have been asked his way both from the Member for Airdrie and myself. So we would appreciate – I think the Member for Airdrie has had a conversation with the Associate Minister of Accountability, Transparency and Transformation, and maybe he would like to stand up and clarify the questions we've asked him.

The Deputy Chair: Thank you, hon. member.

Are there any other members who would like to speak to amendment A4?

Mr. Anderson: Well, I will clarify as much as I think I've had it explained. My understanding is that with regard to 3(2), because it's in the wrongdoings to which this act applies section, they're saying that "this Act applies only in respect of wrongdoings that occur after the coming into force of this Act." The wrongdoing provisions apparently are being assumed here to be the sword provisions – right? – the ones where there are penalties attached to them.

Now, I really think this is fuzzy, guys. I think it could be interpreted that wrongdoings could mean wrongdoings that the whistle-blower whistles down and that need to be investigated. In that case, then, it would apply. In other words, it would shut down any wrongdoings – there's an argument to be made that this act essentially says that anything that happens before we pass this thing this week and it gets a stamp by the Lieutenant Governor is not subject to this act. I mean, I really think you can read it that way. I hope not. I hope that the minister will get onboard and stand up and clarify that because judges will look at *Hansard* to determine what was meant by it. If the government can stand up and say that it is absolutely their intent that the shield provisions in this act – the protections, the investigative powers, all those things – are intended to be in place and be available for acts that occurred before this comes into effect, then I think that would be very helpful. So perhaps they could do that.

With regard to section 19 it's specifically in the investigations section, so we know that it does apply to investigations. It specifically says:

> (2) The Commissioner is not required to . . .

I guess he may but is not required to.

> . . . investigate a disclosure or, if an investigation has been initiated, may discontinue the investigation
>
> (a) if more than 2 years has passed since the date that the wrongdoing was discovered.

We don't know if that's the wrongdoing discovered by the whistle-blower or by the commissioner. Again, poorly drafted.

Then section 36. I'm not going to put words in the mouth of the minister, but I do not understand how – and I think he had questions about it in the past, too – we can say that the cabinet should be allowed to prescribe circumstances in which the commissioner is not required to investigate. Doesn't that seem just a little bit asinine, that we pass a whistle-blower legislation act and then in the act we give the cabinet the ability to make regulations that would allow them to tell the commissioner not to investigate themselves? I don't know. It just doesn't make sense. I mean, apparently, it's so they can pass rules regarding vexatious. That's covered in another portion of the act, so it doesn't make sense.

I just don't understand. I don't understand why we can't refer this thing to a committee, get it properly dealt with, or – we're in committee right now – why we can't fix this thing. It would make all the sense in the world to do so. Government, please, you know, bring a subamendment or tell us that you're going to bring a subamendment to this section, and we can move on and talk about Bill 7 for a while while you get it ready if you don't like all of it.

Surely – surely – section 36(j) is out of line, and surely 19(2) should be clarified so we know what the heck it means, whether it means commissioner or whistle-blower, with regard to the date of discovery. Then just some clarification. If the minister of transparency is saying that the investigative powers and the protective powers of this act apply to acts that occurred before this

act comes into force and effect, if he's saying that, that's good. We agree with him. That's what the act should apply to, but the act seems to either contradict it or certainly cloud it. If we could just clarify that, I think that we'd have a much better piece of legislation. I know what the lawyers, quote, unquote, are saying there who helped draft this, but it's not the lawyers from Alberta Justice that are going to be responsible for interpreting this act. It's judges and regular Albertans. So if we're not clear on the rules, it doesn't really matter what Alberta Justice thinks it means. It's what the judge thinks it means and it's what Albertans think it means that matters. Hopefully, we can get some clarification, at least get it on *Hansard*, anyway, so we can move on and proceed.

9:20

The Deputy Chair: Thank you, hon. member.

Are there any other members that wish to comment?

Mrs. Forsyth: If I may, Madam Chair, I don't know how much more we can beg and plead for this hon. member, the hon. associate minister, to do some clarification. You can understand why across this country this bill has been slammed by the renowned organizations in regard to whistle-blower legislation. Now, I can see you sitting there, and I can see you mulling this over in your head. We're prepared, actually, I guess, to adjourn debate on this particular amendment so you can get some clarification. We've tried as best we can to give some information on what we think are faults in this bill, and I just am struggling to no end with the fact that we have had no answers yet in regard to some of the questions that the Member for Airdrie has asked.

I guess I will sit down again. We will wait for the minister to get up and try and clarify the wrongdoings under section 3. It clearly says: part 1, Wrongdoings. We've asked some good questions. Section 19 is the same. None of this makes any sense. You talk about subsection (2):

> The Commissioner is not required to investigate a disclosure or, if an investigation has been initiated, may discontinue the investigation
>
> (a) if more than 2 years has passed since the date that the wrongdoing was discovered.

Minister, I can tell you that there is legislation in this House that has passed over two years ago that we spent hours and hours and hours debating, and I'd be more than prepared to table it. It was urgent for the government to do it. The Health Act comes to mind. It still hasn't been proclaimed the last time I checked, which was about a month ago. I can't remember how many pieces of legislation that have passed in this Legislature in the time that I've been here where, when we checked to see if it had been proclaimed, it hadn't been proclaimed, but there certainly was some urgency to it. We're in the same boat today.

Again, I'm going to ask you on behalf of Albertans, on behalf of the judges that are going to have some questions and probably again look at this legislation and say: where is the clarification here? I know we have a ton of lawyers in Justice. I know you have a leg. review policy that I'm sure this legislation has gone through, and surely to goodness somebody has some questions somewhere.

With that, once again, I'll sit down, and hopefully the minister will get up and speak.

The Deputy Chair: Thank you, hon. member.

Are there any other members who wish to comment on or question amendment A4 to Bill 4, the Public Interest Disclosure (Whistleblower Protection) Act?

Mr. Scott: Madam Chair, I said this during second reading, but let me emphasize it again. The act already allows the commissioner to investigate wrongdoings before the in force date. The act in its entirety does not apply to wrongdoings before the in force date. However, the commissioner would not be required to investigate but would have discretion to do so if they considered it appropriate. The opposition's amendment would effectively force the commissioner to investigate old wrongdoings even if it was eminently clear that any and all evidence that might have assisted them had disappeared many years ago or all the relevant possible witnesses are long gone.

The commissioner is an independent officer who reports to the Legislature as a whole and should have the discretion not to investigate where such investigations would not serve the public interest or constitute a good use of resources. For that reason, Madam Chair, I do not support the amendment.

The Deputy Chair: Thank you very much, hon. minister.

Are there any other comments or questions on amendment A4 to Bill 4?

Seeing none, I'll call the question.

[The voice vote indicated that the motion on amendment A4 lost]

[Several members rose calling for a division. The division bell was rung at 9:26 p.m.]

[One minute having elapsed, the committee divided]

[Mrs. Jablonski in the chair]

For the motion:

Anderson	Eggen	Hale
Bikman	Forsyth	McAllister
Blakeman	Fox	Pedersen

9:30

Against the motion:

Allen	Griffiths	Olson
Bhardwaj	Hancock	Quadri
Calahasen	Horne	Quest
Casey	Jeneroux	Sandhu
Dallas	Johnson, J.	Sarich
Denis	Khan	Scott
Dorward	Klimchuk	Starke
Fawcett	Lemke	VanderBurg
Fenske	Leskiw	Weadick
Fraser	Oberle	Xiao
Goudreau	Olesen	

Totals:	For – 9	Against – 32

[Motion on amendment A4 lost]

The Deputy Chair: We will return to the bill. Are there any comments, questions, or amendments to be offered with respect to this bill? The hon. Member for Edmonton-Centre.

Ms Blakeman: Thank you very much, Madam Chair. You have an amendment at the table for me, which I would ask be distributed, in the yellow envelope right there.

The Deputy Chair: We'll pause until we have that amendment distributed to the other members. We will call this amendment A5.

Hon. Member for Edmonton-Centre, if you would like to proceed.

Ms Blakeman: Perfect. Thank you very much. This is going to look familiar because we're starting to see in this discussion the same sections coming up over and over and over again. They

seem to be the ones that are causing either the most questions or, as it's believed by a number of people, are most in need of changing. In other words, we disagree with what the government chose to do here.

My amendment, which I'm moving on behalf of my colleague the Member for Calgary-McCall, is to amend section 3 by completely striking out subsection (2). Whereas the previous amendment wanted to change it so that it said anything that happened on or after January of 2003, I don't think there should be a limitation on it. Now, I understand the argument that the minister is making: "Oh, come on. You know, what if we have to go back and look at something and the witnesses are dead and all paperwork is dust? That's impossible." Fair enough. But the minister has given himself the ability in section 19, for example, to dismiss anything or to not investigate something that is frivolous or vexatious or doesn't have adequate particulars about the wrongdoing.

You know, legislation is kind of a magical thing in that when you really start to get to know how this stuff is put together or you work a lot with a piece of legislation, you start to see how the whole thing is put together. If you look at the index, that starts to sort of walk you through how it works. For example, part 1 is on wrongdoings and what's covered and what's not covered by the act. Then a little later on it talks about investigations. So you can have a wrongdoing that may not be investigated. I wonder if you could do it the other way around. I'm not so sure.

So what my colleague was trying to do and I'm now talking about was to make the statement that on anything that you can possibly investigate that might have been a wrongdoing, the whistle-blower would be protected. I mean, I take the point that the minister made previously about, well, you know, we can't go back forever. That's true, but you're also not likely to have a whistle-blower in need of protection. If they're having to go back that far, they're probably dead, so it's not an issue.

When you look at how long it takes to dig information out of this government or to put all the pieces together on some of the big issues of wrongdoing like Enron, that was a long time in putting that together. Even with this government we're dealing today with information that has been dug out from freedom of information requests that took place in 2005. That's seven years ago, and we're just beginning to start to understand the implication of what some of those FOIP requests are revealing to us. So to say that we don't call it a wrongdoing – let me get the exact language here because, boy, is language ever important here. Section 3 says "Wrongdoings to which this act applies," and section 3(2) is essentially saying that a wrongdoing that occurs before this act comes into place is not a wrongdoing.

The minister himself was trying to tell us earlier, I think, that a commissioner could still investigate something even if it wasn't classified as a wrongdoing because it didn't meet the test of having occurred after the act came into force. The point that I'm trying to make here is that especially in this day and age and particularly with this government, not that I'm accusing you of any wrongdoing, but honestly it is so hard to get information out of you folks that it can take us years. When we do start to find out that there has been something that at the minimum requires explanation, there's just so much blocking, again, of additional information or of the ability to get an explanation. It seems to take a very long time.

I think we have to recognize that if we're going to offer protection to people, we may have to go back to before this act occurred. We're trying to do this to have a better government, and we're trying to do it to make sure that we're all consciously doing the best we can. You do fall into bad habits at times. You do get used to doing something a certain way and may forget that it used to be done a different way. I don't know, but I can't agree that it's only appropriate to consider an act being a wrongdoing after this act has come into commission. It's just not realistic.

That's the point of this. We don't have to spend a lot of time on it because the same concept but a slightly different application was applied in the previous motion. To be honest with you, I can't see that my amendment is going to be any more palatable to the government members than the previous one, especially because they only said after 2003 and I'm saying forever, as far back as you can go and manage to produce information.

For anybody who just wants to write this stuff off really quickly, go through some of the other sections in the act that give protection and give context to what is going on here. So you want to look at section 3 along with section 19, which is the section that says when an investigation is not required, and also, further along, look at things like 52: proceedings of the commissioner are not subject to review. That sort of starts to stack up if you take a longer view at it.

But I won't talk about a different section. I'll try and amend it. That's coming. I know you're excited, and you look forward to that. In the meantime for most of the arguments I've heard about why this section should stay, actually, the answers to them are found elsewhere in the bill.

I would ask for support for amendment A5, which is to amend section 3 by striking out subsection (2).

Thanks very much.

9:40

The Deputy Chair: Thank you very much, hon. member.

Are there any other members who wish to comment?

Seeing none, we will proceed to the question.

[Motion on amendment A5 lost]

The Deputy Chair: We'll move on to Bill 4. Are there any members who wish to comment? The hon. Member for Edmonton-Calder on Bill 4.

Mr. Eggen: Thank you very much, Madam Chair. I have an amendment, with the original on top and the appropriate amount of copies to distribute to the House.

The Deputy Chair: Thank you. We'll pause while we have that distributed, hon. member.

Mr. Eggen: Thank you.

The Deputy Chair: Hon. members, this will be known as amendment A6 to Bill 4.

Hon. Member for Edmonton-Calder, you may proceed.

Mr. Eggen: Thank you, Madam Chair. You can see that this is a fairly comprehensive amendment, looking at section 5, striking out subsection (1) and then substituting the following:

> (1) The Commissioner must establish and maintain, in accordance with this Act, a uniform set of written procedures, including time periods, for managing and investigating disclosures by employees for whom chief officers are responsible.

As well, striking out in section 5 subsections (3), (4), (5), (6), (7), (8), and (9) and, finally, in section 13 amending clause (d) by striking out "department, public entity or office of the Legislature" and substituting "Commissioner."

Madam Chair, the current bill as brought forward allows each department to have different sets of procedures as developed by the chief officer within each department. This amendment will

ensure that the commissioner will establish a uniform set of procedures for disclosure and ensure a high standard of whistle-blower protection across departments, offices, and public entities as well.

Allowing each department, office, and entity to establish their own internal procedures I think will create vast and difficult differences in the process for so-called blowing the whistle here in the province of Alberta, which will create confusion from the perspective of the administrators of the commissioner's office and employees in the province. We think that the commissioner should be responsible for ensuring that all of the province's entities have uniformity of procedure for blowing the whistle to ensure fairness in the disclosure process of an individual choosing to blow the whistle. Employees who may transfer from one department to another as well must be confident that the process that they have learned in their original environment will be transferable and that they will continue to be protected in their new workplace.

From an administrative perspective a uniform set of procedures will allow the commissioner and the commissioner's office to ensure that regulating the chief officer's internal process is manageable. Each chief officer internal to each department will have a different understanding, otherwise, of what whistle-blower protection looks like.

Although minimum requirements for internal processes are an important first step, these requirements can and should be regulated by the commissioner across all public departments, entities, and offices to ensure fair and consistent protection for whistle-blowers. This will ease the burden on the commissioner's office because it will not have to review different sets of procedures, which will be presented in different formats. Instead, hard work at the front end by the commissioner's office should pay long-term dividends because then the commissioner will not have to continuously review the compliance of varying internal disclosure procedures.

This is a bit of a bureaucratic amendment, Madam Chair, but it also, I think, mirrors the approach that other jurisdictions have used. I think it's eminently sensible to put into the hands of the commissioner that would be created by this bill the opportunity to provide uniformity throughout the public service in regard to a person who desires to come forward with information that they think is a problem somehow in their department. By allowing that oversight by the commissioner's office, we start from the front end creating something that people can recognize as the standard procedure, so to speak, in public service when they are choosing to disclose public information in the public interest.

This is not something that we just made up, right? It's a bureaucratic process that we've seen employed elsewhere, and we think that it's an eminently reasonable idea that I would encourage all of our fellow MLAs here this evening to support. With that, I leave it.

Thank you very much, Madam Chair.

The Deputy Chair: Thank you, hon. member.

Is there anyone else who wishes to comment?

Ms Blakeman: I am not sure what the hon. member is up to. If we strike out subsections (3), (4), (5), (6), (7), (8), and (9), it appears – essentially, this is setting out how the investigations are supposed to be managed and that there are to be a number of processes regarding this and that and the next thing, which is all laid out here, to be established in each department. I just wonder why you've done this. For example, if you cut out (3), then there would be no jurisdiction, no empowerment for the commissioner to ask the chief officer of any given department to provide a copy of their procedures. There would be no ability under section (4) for the commissioner to review those procedures.

I know that in the first section you're trying to get a uniform set that sort of carries through, but I don't understand what you're hoping to achieve by deleting the rest of the sections in here. For example, if you have a department that has a set of procedures but they're not great, under section (5) the commissioner could determine that those procedures that were established are not great, that they don't meet the criteria, and be able to notify the chief officer and the employees that those procedures are not very good and need to be corrected.

9:50

It seems to me that this is an intermediate stage which is allowing the commissioner to work with the processes that have been put in place by various ministries. By cutting it out – he's going to speak to it, I can tell – it looks to me like you're taking away the efforts of the commissioner to work in a nonadversarial and a co-operative manner with the various departments to put whistle-blower protections in place.

I'm going to sit down and let the mover speak to this to help me understand what he's trying to do.

The Deputy Chair: The hon. Member for Edmonton-Calder.

Mr. Eggen: Thanks, Madam Chair. Thank you very much, hon. Member for Edmonton-Centre, for pointing this out. To the best of my understanding, the rationale behind this amendment. First, the insertion in section 5(1):

> The Commissioner must establish and maintain, in accordance with this Act, a uniform set of written procedures, including time periods, for managing and investigating disclosures by employees for whom chief officers are responsible.

That is to, I guess, set the precedents and the standard from the commissioner's office so that this doesn't preclude the possibility of, you know, the interaction between the commissioner and each of the heads of departments in acting, carrying out the set of rules that would determine whistle-blowing protocol in each department and/or ministry and so forth in the public service. It sort of sets the bar and standard from the commissioner's office emanating outward to each ministry and/or to all four corners of the public service, quite frankly.

When you're setting up a bureaucratic procedure, really, you're setting up a chain of command and who is ultimately responsible for the enactment and the execution of this law. I think that's the way this amendment has been set up. The commissioner is setting the standard from which the regulations in each ministry and all aspects of the public service will take their direction in setting up their procedure so that we have more similar language and protocol and, ultimately, the responsibility for execution of this bill coming from the commissioner's office.

The Deputy Chair: Thank you, hon. member.

The hon. Member for Edmonton-Centre.

Ms Blakeman: Yeah. That's why language is so important. Now it's much clearer to me. There are words that are added into the amendment that are different from what you see in the bill. The words "The Commissioner" and "a uniform set" have been added. That makes more sense to me now. Essentially, it wouldn't be each department that would be establishing its own set of rules. It would be the commissioner that provides the template, the uniform set that applies to everybody. So each department couldn't do their own version. You don't need all the rest of this stuff where the commissioner could go in and look at what a

department has done and go, "No, it's not good enough" because everybody would be using the template that he supplied.

The issue there is that I'm not sure that it's flexible enough to deal with the various kinds of agencies and entities that are covered by the act. If you go back and look, for example, we have got departments, the legislative office, all of the different officers of the Legislature. You're covering a lot of different kinds of agencies and the way they operate, and I don't know how easy it would be to overlay a uniform set of rules on them. If you could do the same thing to a department that you can do to the office of the Auditor General – or even in some cases I'm seeing some referencing to health. Public entity: "Any agency, board, commission, Crown corporation or other entity designated as a public entity." I think that might be the issue on that one: how do you get a uniform enough set of rules that they apply to a department and to the tire recyclers and the ERCB? You know, since I've been elected, this government started to do delegated administrative organizations, and now there are more of those than there are government departments because each department has four or five of these things. That's how they actually get stuff done now.

I'm not convinced. I'll leave it at that.

The Deputy Chair: Thank you, hon. member.

Is there anyone else who would like to comment?

Seeing none, we'll proceed with the question.

[Motion on amendment A6 lost]

The Deputy Chair: We will move back to the bill. Any members wishing to speak or provide amendments? The hon. Member for Calgary-Fish Creek.

Mrs. Forsyth: Thank you, Madam Chair. I have the correct number of copies that are to be passed on to colleagues in regard to the next amendment that I will be proposing. I'll hand them over and then sit down.

The Deputy Chair: Thank you. We'll pause while we distribute the amendment.

This will be known as amendment A7.

Hon. Member for Calgary-Fish Creek, you may proceed.

Mrs. Forsyth: Round 7. As I said to my cowboy friend next to me, if he thinks he's a good bull rider, I'm on my seventh try.

Madam Chair, I move that Bill 4, the Public Interest Disclosure (Whistleblower Protection) Act, be amended in section 1(k) by adding the following after "Crown corporation," that we are going to include ", a facility that is recognized or accredited to provide insured services under the Alberta Health Care Insurance Plan, a facility that is licensed under the Supportive Living Accommodation Licensing Act."

What that means, Madam Chair, is that we would like to include in the Public Interest Disclosure (Whistleblower Protection) Act any insured or any licensed facility that is recognized or accredited to provide insured services under the Alberta Health Care Insurance Plan. What that in general means is that we're now looking at incorporating that this amendment would make the act applicable to all licensed facilities in this province. As it stands right now, the act is fairly limited on who comes under it. This amendment would allow staff at a private seniors' facility to blow the whistle under the whistle-blower legislation.

10:00

Now, why I think this is important is that it's important for our beloved seniors to be able to be protected even if it's a facility that doesn't receive any public dollars. I think what we need to understand here is "licensed" by the government. It's important that the Minister of Health and the Associate Minister of Seniors listen to this particular amendment because of the fact that they are responsible for the licensing of all facilities in this province. It doesn't necessarily have to be a seniors' lodge, but they are the ones that hold the licences and control the licences of all facilities in this province, and it could be for seniors.

What we are asking is for this amendment to be included under this act so that if a senior – and we can use my mom if you want, who is in a private assisted living facility that is licensed. We've checked the supportive living under the licence act, and we've pulled all of the facilities that this government licensed, and we just wanted to make sure and get some clarification. The home that my mom is in currently is a licensed facility, licensed under the government of Alberta. I would suspect that if something was happening in that facility that I'm not aware of and that is not drawn to my attention as having a mom there, the employee could blow the whistle on the facility.

Now, that could be as simple as – and we talked about it today. My mom is under a care plan, and the minister talked about his care plan today in regard to how many showers or baths a senior should be having in this province, whether they're in a public facility or a private facility. Subject to the act and the regulations that this minister is responsible for, each facility must have a care plan for their seniors. He knows that. If under that care plan it says that Heather's mother should be having two showers a week and I happen to be up in Edmonton all week, and I'm not aware whether she is getting showers or not, and her caregiver that the minister talks about with great respect – and I can honestly tell you that I can say the same thing for the facility that my mom is in, with great respect. They do a very difficult job under some pretty difficult situations.

If she is not getting her required two showers a week, which are regulated under her care plan; for example, if there are some health conditions within the facilities – let's say that you have a senior that has chronic kidney failure. Well, when someone is in chronic kidney failure, they're usually under a dietitian. So it could easily be that they can't have, you know, potassium. Potatoes are full of potassium. Certain things where their diet requirements aren't followed could be abuse.

The government brags about the importance of reporting of seniors' abuse. I think it's important to include not only public facilities but any licensed facility under this government. That could go to our group homes or anything.

I am interested in hearing again what the minister thinks, again what the Associate Minister of Accountability, Transparency and Transformation may want to add, why he hasn't incorporated this in the act and the rationale behind that. We have gone through the act to find out where that could be included and haven't been able to figure it out. We think that the proposed act should cover all facilities licensed by the province, including public facilities and private facilities. The private sector deserves the respect, the same as the public sector, for our seniors, not because they're getting any public dollars but because, like I said, they're licensed. I think that's what we need to do. If the government is going to license these facilities, then they should be responsible for these facilities.

Now, I know that some of my colleagues would like to speak on this particular amendment because it's an important amendment to be considered. I'm sure the Associate Minister of Accountability, Transparency and Transformation may want to add some words, or the Seniors associate minister or Health minister may want to add some words to it also, especially the Associate Minister of Seniors because ultimately, at the end of the day, he's responsible for the seniors in this province.

The Deputy Chair: Thank you, hon. member.

The hon. Member for Cardston-Taber-Warner.

Mr. Bikman: Thank you, Madam Chair. I particularly appreciate this amendment because my 91-year-old father and 92-year-old mother are living in St. Therese Villa in Lethbridge and receiving excellent care, I'm happy to say. I really appreciate the staff there and the management, the way they involve us as family, to consult with us about our concerns, and they try and address them whenever they're raised. I doubt that this would ever be needed, but I would hope that if it were, someone would have the courage to and feel the obligation to and draw strength and reassurance from this amendment and this act itself and then be able to step forward to alert whoever needed to be alerted about the circumstances that may have put my parents or other seniors needing that assisted living in jeopardy in any way.

I certainly hope that you will help me look after my aged mother and father, who were born and raised in our province and have contributed all of their lives to the quality of life in this province through providing employment opportunities for others as well as, I hope, raising pretty good children. They've got great grandchildren; I can tell you that. But I really think that they need the kind of support and help that this simple little amendment will provide.

I appeal to your better natures, if they're still awake at this hour, and hope that you will support this simple little amendment.

Thank you.

The Deputy Chair: Thank you very much, hon. member.

The hon. Associate Minister of Seniors.

Mr. VanderBurg: Well, thank you. It's interesting, the comments that you provided. Of course, we all care for the protection of people in our care in Alberta, in fact, so much so that back in July of 2010 the Protection for Persons in Care Act came into effect. There is a duty to report. Upon all of us there's a duty, and all those that work in facilities must take reasonable steps to protect people from abuse while providing care or support services, and they must maintain a reasonable level of safety for people in care.

If you don't know it, you might want to write this number down. For external reporting there's 1.888.357.9339. It's a toll-free number. If people expect some action, well, you call that number, and you're going to get some action if you're worried about abuse or any type of issue that may occur in one of our facilities.

Staff in all our facilities are very, very well aware of this act. Unfortunately, it's been used. It's an act that I'm proud of. I'm not proud that we had to have it, but there is an opportunity for people to report wrongdoing. In fact, reporting abuse is mandatory under the persons in care act, and failure to report abuse is an offence under this act, and individuals can be fined for withholding evidence from the persons in care branch.

10:10

We talked a lot about care and bathing, and any of us that have had parents in our facilities know that there is a care plan. The government, the minister doesn't develop the care plan. The caregivers and the administrators of our facilities do. The care plans are developed with loving dedication and care from all the individuals and with family input. If anybody wants to grandstand about a baths or two baths, that's not what I'm interested in. I'm interested in providing the adequate amount of bathing, the adequate number of safety standards that are put into place, the adequate amount of food. That's what we should all be concerned about.

Those of us that have had parents in these facilities know – they know very well – that there's an opportunity for family members to have input into these care plans. As I travel around the province and I talk to families and I talk to individuals in our facilities, they're very proud of the care that they get. I'll stand by that, as I said earlier.

If any of you want some information on the persons in care and the reporting of the act that we developed on July 1, 2010, it's already there.

The Deputy Chair: Thank you, hon. minister.

The hon. Member for Edmonton-Centre.

Ms Blakeman: Well, thanks. I'm sure that this minister means well, but, man, does he ever offend people quickly, and I'm one of the people that he's offended. Of course, anyone that has family members knows that you can be involved in the care plan. Not one person in here has said in any of these discussions that we feel that the care providers are in any way deficient. Not one of us has said that, and for you to try and turn it around in a discussion does not speak well of you, sir.

What we're trying to say is that there are not enough resources and capacity in that system to do it. Even when I want my relative to have more than one bath a week, shower a week, they can't do it because there aren't enough staff. So care plan, no care plan, there isn't enough capacity in that system to give them what they want. You can get up and say: oh, no, no, no; you can have whatever you want. That's just not realistic, and none of us have put this on the providers. We all know that they're working the best they can. Okay?

There are as many people in this House in this situation as there are outside of this House. We are no different than the rest of the population, and we represent the aged population as well. Please be careful of the way you speak about that.

I can also speak about the Protection for Persons in Care Act, which, frankly, failed me unbelievably. There was an incident with my relative, and the Protection for Persons in Care Act never contacted me, never gave me a final report, and did not comment at all despite the fact that they were phoned. Now, the facility did. They investigated. They got back to me. They gave me a final report. The Protection for Persons in Care Act did zippo. I was very disappointed when I was actually in that situation and found out what they didn't do. You can get up and tell me that they should've and it's terrible they didn't. Yeah, it is, but they failed me, and I'm in here. You'd think they wouldn't fail me, but no. They failed me and my family terribly. The facility didn't. Care providers came through for me.

The Protection for Persons in Care Act is an educational tool that has no teeth in it to actually enforce anything. All it does is an investigation and gives you a report, if they actually give you a report. I'm the relative on record. I never got a thing. Okay? So don't tell me that act is going to solve all the problems and leap out with a cape flying out behind it and save people from abuse. It doesn't. Be realistic. It is an educational tool that comes after the fact and may have an investigative portion to it, and that's it. If you've been in the same situation as I, then I'm willing to hear a bit more, but I've been there, and it failed me completely more than once.

Thanks very much, Madam Chair.

Let me talk about A7. I'm just going to clarify here that the sponsoring member intended to just capture the supportive living facilities because I'm looking at the act that has been referenced here, and it really is the supportive living facilities. It's not long-

term care. It's not a hospital. It's not anything under the Social Care Facilities Licensing Act.

You are trying to capture the facilities where they often have an independent unit, or maybe they're in sort of a room or a suite or something. They get meals provided if they want or not. The hallways are well lit, and there are banisters and stuff like that. There might be programming. There'll be day trips and that kind of thing. But this is not one where they are, you know, lifting people out of bed and into a wheelchair every day.

I mean, the dividing line for me is always: if there's a fire in the middle of the night, can people get out of there by themselves? In what you're talking about, they could get out of there by themselves. I'm looking at the Supportive Living Accommodation Licensing Act, and it says that it doesn't apply to a nursing home or an approved hospital or an auxiliary hospital or a Social Care Facilities Licensing Act. It is for a supportive living accommodation for four or more people not related to the operator and arranges for services related to safety and security according to standards, one meal a day, and housekeeping services.

Mrs. Forsyth: I can answer that.

Ms Blakeman: Okay. Good.

My experience with this is that once you start a list – I've had this argument with somebody over there before – you need to start making sure that everybody is on the list because now the list itself becomes important, and you're going to have to make sure that everybody is in there. The way the courts interpret it is that they go: "Okay. There's a list. Check, check, check. Oh. Not on that list. Okay. Then they're not covered by this."

We have a general definition here that's saying that a public entity is "any agency, board, commission, Crown corporation or other entity designated as a public entity in the regulations," but now we're adding one piece, a sublist, so it would be agency, board, commission, Crown corporation, "a facility that is recognized or accredited to provide insured services under the Alberta Health Care Insurance Plan, a facility that is licensed under the Supportive Living Accommodation Licensing Act," and then it would continue, "or other entity designated as a public entity." So I'm a little worried about starting a minilist and leaving the rest of them without lists because it tends to get us into problems a little bit further down the road.

So thanks for sharing the information.

The Deputy Chair: Thank you, hon. member.

The hon. Member for Calgary-Fish Creek.

Mrs. Forsyth: Thanks. I think it's important, first of all, to just get some clarification on the table, if I may, and maybe some words similar to what the Member for Edmonton-Centre said which we're enjoying at 20 after 10 at night. It's too bad we're inside and Edmonton-Centre is outside.

Every time this Associate Minister of Seniors tries to explain, he somehow manages to take his foot and stick it in his mouth further and further and further. He talks about the fact . . .

The Deputy Chair: On the amendment.

Mrs. Forsyth: He talks about the fact . . . [interjections]

The Deputy Chair: Hon. members, excuse me. If you read the amendment, it talks about including licensed facilities under the Supportive Living Accommodation Licensing Act, and I believe the member is speaking of that. Thank you.

Hon. member, please continue.

10:20

Mrs. Forsyth: Well, Madam Chair, if they have a problem, they can stand up and call a point of order, speak to the point of order on which they feel that I am not speaking to the amendment. I'd be more than pleased to deal with that.

The Deputy Chair: Through the chair.

Mrs. Forsyth: You know, the night is late. Honest to goodness, let's call a spade a spade. We're talking about the supportive living. The Associate Minister of Seniors talks about how proud he is of the protection of persons in licensed care and about how reporting of abuse is mandatory. Well, I can hearken back to when we were in estimates and I was questioning him about all of the horrific reports that had been under this act. He didn't have the numbers then, didn't have the long-term care numbers there.

I guess that when a minister talks about grandstanding and when a minister talks about the care plans, I can tell you, Madam Chair, that I live with a senior. Day in and day out I'm dealing with a senior in an assisted living facility, and I'm dealing with probably 20 other seniors that are in the same facility and other seniors that are in different facilities in my own riding. My mum doesn't live in my riding. She happens to live in Calgary-South East. When they say two showers a week, we're lucky if we get one. That isn't criticism about the people that are taking care. Those poor people are run off their feet, and they're trying to do what they can and trying to take care of seniors however they can with limited resources, limited facilities.

It's like the Member for Edmonton-Centre talks about. To be accused of grandstanding on an amendment when we're just bringing the facts to the Legislature, it's not grandstanding, in my mind. If he wants – he's more than welcome – I'll take him to my mum's facility. I'll take him to the two facilities in my riding so that he can talk to the seniors there. They don't even get a bath let alone a shower. If they want to have a bath, that costs them an extra $20, I think. It depends on the facility.

To the member's question talking about supportive living, the government has been very interesting on their continuing care plans and what they consider continuing care. I'll use my mum as an example. She's in an assisted living facility. They can be charted at an SL 4 or an SL 3, which means how much care they have, how mobile they are, et cetera. Right now in the assisted living facility my mum is in, the government's model is to move this continuing care model where you're seeing more long-term care patients being put in an assisted living place. All of a sudden they lose their mobility, as do the seniors that are in the particular facility.

Two weeks ago my mum was quite mobile, ended up in the middle of the night in the hospital. I just got her home late last night, now in a walker, now on oxygen, and she isn't going to be moving real fast at this particular time. I can guarantee you that if the fire bells go in the middle of the night, she isn't one of the seniors that is going to be in their walker, that is going to be wheeling out of that home real quick. She will have to be assisted.

So you have seniors that are currently in a lot of the assisted living facilities – and my mum is in a private facility – because of how the government is changing the continuing care model, and they're moving the SL 3s and the SL 4s and taking the seniors that should be in a long-term care nursing bed or, for that matter, a lodge, and they're putting them into the continuing care model. They're all of a sudden designating them as an SL 4 , which means they're not mobile.

The Deputy Chair: Hon. member, I'm sure you are going to relate this to the amendment.

Mrs. Forsyth: I am talking on it, the Supportive Living Accommodation Licensing Act. Madam Chair, you should know that. You're the former seniors minister. So, yes, I am talking about the amendment. I'm trying to explain to the Assembly something that you were instrumental in as the minister of seniors in moving the continuing care model under the Supportive Living Accommodation Licensing Act. You know that as the former seniors minister.

What we're trying to do is incorporate – I don't even want to call Bill 4 a whistle-blower act because it's not a whistle-blower act; I have to come up with a name for it. These seniors' facilities that are licensed by your government under your Supportive Living Accommodation Licensing Act: the people that are working there do not fall under the Protection for Persons in Care Act. So let's be careful there. They're the people that are in care, not the people that are blowing the whistle. The minister should know that. Incorporate them in Bill 4 so that they're protected if they see a serious incident, so they have the ability to blow the whistle if something is happening at my mom's facility or any of the hundred other facilities in this province.

Having said that, I wanted to get some clarification from the Member for Edmonton-Centre. Certainly the Associate Minister of Seniors needed to get, obviously, some clarification so he knows exactly what the Protection for Persons in Care Act does – yes, reporting abuse is mandatory – and, again, can discuss what his care plans aren't doing under that.

The Deputy Chair: Thank you, hon. member.

Hon. members, before we proceed, I would just remind all of you that it is getting late and to please keep your remarks on the amendment – it's A7 right now – and also to refrain from making personal attacks. I would appreciate that very much.

We will move on with amendment A7. The hon. Member for Lacombe-Ponoka.

An Hon. Member: You should tell your minister that.

The Deputy Chair: That was for everyone, hon. member.

The hon. Member for Lacombe-Ponoka has the floor.

Mr. Fox: Thank you, Madam Chair. I want to stand in support of this amendment. The reason is because it's to protect the employees of those facilities. Specifically, we want to protect them from reprisals. You'll notice something here tonight. We have taken no issue; there are no amendments to part 4, reprisals, sections 24 through 27, because we feel that the government built this legislation properly in this area.

I don't understand why we would not bring those employees under that. If there was an issue in one of these assisted living facilities within the system, something that's licensed by us, by the government, why wouldn't we want to protect those employees if they saw an issue coming and had to report it? We would want to protect them from reprisals. That's exactly what this amendment is going to do. It's going to protect them from those reprisals if they do come forward and blow the whistle. It gives them the ability to do so without fear.

I'm going to keep my comments relatively short on that. This a good amendment. This is something that is just going to backstop the persons in care act, which the Associate Minister of Seniors stood up and informed us on. I appreciate those comments from him, so I would ask that you would please consider this amendment and consider it just for the ability under part 4 to protect those employees from reprisals when they come forward with issues that deal with some of our most vulnerable in society.

Thank you.

The Deputy Chair: Thank you, hon. member.

Is there anyone else wishing to speak? The hon. Member for Airdrie.

Mr. Anderson: Yes. Madam Chair, I'll be very brief as well on this. Hopefully, we can vote on it. I hope that we can vote to pass it. I do want to be on the record. I brought this up in the House the other day with regard to our seniors. Having our seniors bathed once a week, if that – and that often is not even mandated in a lot of cases; that's just voluntarily done by the long-term care facility – is absolutely not enough.

The Deputy Chair: On amendment A7.

10:30

Mr. Anderson: Absolutely.

Honestly, Member for Edmonton-Gold Bar, the way you act sometimes, of all the people over there, makes me shake my head the most.

Absolutely we need to have this amendment passed. It deals with the Supportive Living Accommodation Licensing Act facilities. The reason is because sometimes in these facilities, obviously, there have been issues of folks being burned, there have been issues of – I know that in my constituency the wife of an individual who is in one of those long-term care facilities came to me with pictures. They were pictures of the sores and things and diseases that were all over their body and some of the awful things that occurred there. It was just awful to look at. You know, I understand that 99 per cent of our caregivers are doing a fantastic job. I think we all understand that. But we also have to understand that that isn't the case all of the time.

The folks that brought me these pictures and so forth were scared because they're older folks as well, and they feel kind of helpless. They feel that if they complain, their loved one might lose their spot in the facility. They have these fears. Some of them are rational, and some of them are irrational, but the point is that they have them. Again, I just want to be clear on the record that these facilities do need to be in this act.

For the Associate Minister of Seniors to say that because this is already dealt with in other pieces of legislation and that if there's abuse, we need to report it and so forth, that's fantastic. Great. But to say that that means we don't need to include these types of facilities under this act doesn't make sense. Why wouldn't we want to beef up the tools? I mean, we're always talking about tool boxes in here. Why wouldn't we want another tool in the tool box to add protection to these folks that are in supportive care? This would do that.

Then, of course, absolutely, without question I want to go on the record, because the Seniors minister sure did and didn't get interrupted and heckled down, as saying that one shower a week is not enough. I think it's reasonable and not in any way grandstanding, as this minister has suggested, to say that basic personal hygiene should be required. Under this act, Madam Chair, if basic personal hygiene requirements are not being met, they should be able to report it, and there should be whistle-blower protection if something like this happens because, frankly, it's inhumane. Jeepers. I mean, some of the conditions are just inhumane. It's not at every facility. It's not with every person. But our seniors deserve better than this.

I just had a grandfather pass away this year and my other grandfather the year before. These are great men and women, and they deserve to be able to age with dignity and with our respect after all that they've given us. That doesn't always happen in these facilities, so we need to put pieces of legislation in place that give us tools to be able to be alerted to wrongdoing.

You know, it's just like the other day, when the Associate Minister of Services for Persons with Disabilities, I believe, handled a terrible tragedy, an issue that came up, with absolute class and professionalism. He said: this is what happened. He was very clear. He was alerted to it. He made a game plan for it. He released it in advance, told everybody what he was doing in advance, and there was no hiding it. There was no sweeping it under the rug. There was nothing. He was just completely up front and forward. That is how whistle-blowing is supposed to work. In that case he was alerted to the situation, and he dealt with it professionally.

A lot of times when these things happen in our facilities and a whistle-blower comes out and alerts us to it, whether it's in a facility like this or if it's another case, if some of our ministers would deal with it in the same way as that minister did, you know, there wouldn't be a lot for us to gripe about over on this side. Of course, in so many cases, whether we're talking about the whistle-blower act, which could apply to a whole bunch of different things, illegal things that happen or what have you, exorbitant expenses and so forth, instead of dealing with these issues, you try to hide them or cover them up or make excuses for them. You say, "Nothing has been proven yet," even though, you know, the receipts are all laid out, and it's all there. Nothing has been proven yet in a court of law or something. Well, good grief. That's not what this is about. It's about doing the right thing.

If we can make sure that we do what we can to make it easier for whistle-blowers to come forward – and that would include these supportive living facilities – then I think this bill will be a lot stronger. I hope we can pass this amendment.

Thank you, Madam Chair.

The Deputy Chair: Thank you, hon. member.

The hon. Member for Chestermere-Rocky View.

Mr. McAllister: Thank you, Madam Chair. It is always a pleasure to get up and speak to a piece of legislation, even when we're in an amendment on a piece of legislation. Even when we're trying to get them through relatively quickly, I think it's important that we take the time to go through them and analyze them and see how we might improve them.

I would ask that Statler or Waldorf or whatever he calls himself keep it down there in the back row while we try and get through this.

It is a good amendment because I think what it does is protect employees so they can protect the very people that we need to protect. That's what whistle-blower legislation should do. It's put in place so that we can protect people so that they can blow the whistle and protect in this case our loved ones in these facilities, which is what this amendment is for, which I think does relate to the amendment because some of the practices happening at these facilities are worth reporting. It's imperative that we report some of the things going on in these facilities so that we can fix them.

I know from your background that you would agree with that wholeheartedly. I speak through you, and thank you for listening. I always feel like you do, so you fake it well.

When somebody is in one of these centres and is potentially receiving inadequate care and somebody is aware of a system that isn't working, that someone should be held accountable for, we have to pave the way for that person to come forward. I don't believe that this bill does although initially I was quite excited about it. I thought: wow; this is pretty good. Whistle-blower legislation. Public interest disclosure act. These are all words that the public likes to hear. I mean, I can imagine a husband and wife sitting around the table and discussing that. "We've got this whistle-blower act. Did you know that, honey?" "Wow. Whistle-blower act. That sounds great." And then you think of 10 government members riding giant white steeds across the prairies, up over the hill, trumpets sounding. Dun da da da. And then you realize when you read it that – wah wah – it's just flat. So we don't actually protect the people that we're trying to protect, and Albertans see that.

This amendment challenges us, challenges the government and us on this side to get together and work it out and fix it. This process would work if we'd actually discussed what was proposed to be amended with the concept that maybe it makes sense even though it comes from the other side. Maybe we have loved ones in one of those facilities.

When the Associate Minister of Seniors gets up and says that opposing one bath a week for a senior is grandstanding, he ought to be ashamed of himself. We're all going to have people in these facilities at some point. We need the people in those facilities to feel comfortable about coming forward. I would suggest that that grandstanding comment was probably sent to him by somebody in an office over yonder. I hope he wouldn't throw that out there and actually believe it. It's not grandstanding to stand up for somebody in one of these facilities; it's the right thing to do.

10:40

It's why we're proposing this amendment. The amendment reads: ", a facility that is recognized or accredited to provide insured services under the Alberta Health Care Insurance Plan, a facility that is licensed under the Supportive Living Accommodation Licensing Act." The hon. Member for Calgary-Fish Creek proposed a couple of extra words in here so that, I think, more Albertans would feel protected.

I've appreciated listening to the Member for Calgary-Fish Creek tonight because I think she understands the issue better than most of us. We should probably respect somebody that not only has a personal connection to how these facilities operate but is somebody that's been in the portfolio that she has, with the contacts that she has. This woman does more research on bills than any of us could ever imagine. I have great respect for her because she doesn't come in here thinking: I need to protest the government no matter what it does. She sits around our caucus table discussing these amendments and begging us to carry on and to point out how important they are and the reason that we need to try and get government to agree to change some of these things. I couldn't be prouder to stand alongside her. You know, I just want to get that on record, too, because I think the Member for Calgary-Fish Creek is so honourable in her representation of seniors, and this amendment would help seniors. It would help so many more people if we would just realize that it's the right thing to do.

The only way to honour transparency and accountability is to take doubt out of the equation. Well, it's not taken out of the equation here. We've allowed it to be present. People know that. People write about it. They're still writing about it. I was prepared tonight to let those that are driving this specific bill in their portfolios and those opposite to have a discussion, to listen, to learn, but I would say that when one is accused of grandstanding to stand up for a senior getting a bath once a week, it tends to raise the ire of people. We saw that. The Associate Minister of Seniors should be wiser in how he describes our opposition to that.

Thank you.

The Deputy Chair: Thank you, hon. member.

Are there any other members who wish to comment?

Seeing none, we'll call the question.

[The voice vote indicated that the motion on amendment A7 lost]

[Several members rose calling for a division. The division bell was rung at 10:43 p.m.]

[One minute having elapsed, the committee divided]

[Mrs. Jablonski in the chair]

For the motion:

Anderson	Eggen	Hale
Bikman	Forsyth	McAllister
Blakeman	Fox	Pedersen

Against the motion:

Allen	Goudreau	Olesen
Bhardwaj	Hancock	Olson
Calahasen	Horne	Quadri
Casey	Jeneroux	Quest
Dallas	Johnson, J.	Sandhu
Denis	Khan	Scott
Dorward	Klimchuk	Starke
Fawcett	Lemke	VanderBurg
Fenske	Leskiw	Weadick
Fraser	Oberle	Xiao

Totals: For – 9 Against – 30

[Motion on amendment A7 lost]

The Deputy Chair: We will return to Bill 4. Are there any members who would like to comment? The hon. Member for Edmonton-Centre.

Ms Blakeman: Thank you very much, Madam Chair. I have another amendment, which I sent to the table for ease of distribution. It is amending section 51. If I could get that distributed, that would be great.

The Deputy Chair: We'll pause for a moment while we distribute that amendment, hon. member.

Hon. member, I think we have most of it distributed, if you would like to proceed. This will be known as amendment A8.

10:50

Ms Blakeman: Thank you very much, Madam Chair. There are a couple of issues that, in my mind, are moving forward sort of lockstep. The first part of it is this section 51. You often see this clause in legislation where it indemnifies the particular officer and their staff from being sued in carrying out their job. But my concern around this one is that I don't think that any employee or officer should be exempt from having any investigation done on them if a whistle-blower needs to come forward, including the commissioner.

There are two things going on here at the same time. On the one hand, you want to say: "Okay. Fair enough. You're doing your job. You shouldn't be sued for doing your job." You really see that at the end of section 51(1), where it says: "in respect of anything done or omitted to be done in the exercise or intended exercise of any power under this Act or in the performance or intended performance of any duty or function under this Act." You know, no wonder people think we're weird when we start talking like that. Essentially, it's a fairly common clause that's saying you shouldn't get in trouble for doing what you're supposed to be doing.

My problem is that it's actually exempting the commissioner and the commissioner's staff from having any whistle-blower concerns about them brought forward. I haven't been able to find anywhere else in the section where that might happen. Of course, there's never any intention of that. I don't believe that anybody that's going to be hired into that position or assigned to that position would normally undertake anything that could possibly get them in trouble. Nonetheless, I think that the way it's written, we have left a loophole there that shouldn't be left.

It goes in lockstep with a couple of other things that are going on. The commissioner does not – in some of the investigations that he does, he can wait out a two-year period, and then he doesn't have to give a report to the whistle-blower about why he didn't proceed with an investigation. You can also add into that or stack into it or it's the next step, clause 52, which basically ends up saying that any decision of the commissioner can't be challenged in an upper court.

When you knit those three together, I think there is a problem. I couldn't figure out a way to do it in one fell swoop, so I've sort of gone at it separately. And that's why this is in here. If the drafters over there that are good at this kind of thing, the Government House Leader, the Justice minister, maybe the ag minister, if they can do something off the top of their heads, that's great. Otherwise, that's what my concern is. You know, it's not enough to stop the train in its tracks, but it is a small flaw in the writing of the bill.

I think when you consider that this does remove the commissioner and their staff, his staff or her staff, from scrutiny from an accusation of wrongdoing and from an investigation, and you put that together with the fact that if the commissioner sits on a whistle-blower investigation for two years and does nothing and at the end of the two years doesn't even have to tell the person why they didn't proceed, and you look at section 52, which says that nothing that they do can be appealed to a higher court, I think you've got a problem.

So that's why I brought this forward. I agree it's nitpicky for 5 to 11 at night. But it is the kind of thing where, if you're trying to get a good piece of legislation moving forward, you want it to be the best it can be because my experience is that once you launch this kind of new legislation, it's really difficult to get the Legislature to come back to it or the ministers to review it for about 10 years. Whatever we do here, that we, you know, crack the bottle of champagne on in a week or so and send it out there, that's going to be it for a long, long time, and everybody is going to have to live with it. Glass half full, glass half empty. I'd rather we do the best job that we can possibly do to the act now because once it's out there, I don't think that we're going to get it back for a while. This is the kind of thing that becomes problematic as you work your way through it.

That's why I've done this. I hope I can get support on it. Unless I can answer any questions, that's about all I need to do.

Thanks.

The Deputy Chair: Thank you, hon. member.

Mr. Scott: I'd just direct my colleague to section 12 of the act. I believe that that section addresses the concern that you raised, if I understood the concern properly. It sets out the procedure if somebody in the public interest commissioner's office wants to make a report and what occurs in those circumstances.

The Deputy Chair: Thank you, hon. minister.

Are there any other comments?

Seeing none, I'll call the question.

[Motion on amendment A8 lost]

The Deputy Chair: We will move back to Bill 4. Are there any members who wish to speak or comment or provide an amendment?

Mr. Anderson: Yes, Madam Chair. I do have an amendment.

The Deputy Chair: We'll pause while we have that distributed. Thank you.

We will identify this amendment as amendment A9. I would like to point out there is an error, a typo, at the very beginning of the amendment. The number 21 should not be there, if you just want to cross that out.

You may proceed, hon. Member for Airdrie.

Mr. Anderson: Thank you, Madam Chair. The amendment is one that I asked to be prepared and something that I feel quite a bit of passion about getting changed, so I sure hope that the government would think about doing so. It refers to section 18(4) of the act, which currently says:

> (4) The Commissioner shall not investigate any decision, recommendation, act or omission made or done by any individual in the course of acting as a solicitor or Crown prosecutor in a department, public entity or office of the Legislature.

Our amendment is to move that that section be struck from the bill.

You know, this one I feel strongly about because there's just been such a vivid example recently of a situation where there was this constituent of mine in Airdrie whose daughter was sexually abused for nine years. We brought it up in the Legislature many times. The case was stayed due to over 500 days of court delays and over 400 days of delays by the Crown prosecutors' office, which conflicted with the accused's Charter rights with regard to having a speedy trial. The charges were dropped, thereby denying this victim her day in court and, essentially, revictimizing her. This person, the accused anyway, right now drives around our city of Airdrie, you know, to this time and has access or easy proximity to other children as well.

11:00

So it is absolutely an awful, awful thing and an awful blemish on our justice system and something that we have to live with in our city every day until he decides, hopefully, one day to move out of our city. But then he'll be someone else's problem, so it doesn't fix it because that's not good either.

The problem with this section here is that it specifically does not apply to whistle-blowers who blow the whistle, so to speak, with regard to an omission or some kind of act of a solicitor in their capacity as a Crown prosecutor. That's just not acceptable.

Our Crown prosecutors across Alberta by and large are fantastic people. The vast majority, 99 per cent of them, more than 99 per cent of them, are fantastic people. You know, frankly, they're the best that lawyers have to offer, I would say, and no offence to the other lawyers in here. But it is true because they actually take less money in a lot of ways, in a lot of cases than some other folks that practise law.

They take less money and fewer benefits to be a Crown prosecutor, and one of the reasons they do that is because they feel very passionately about justice and about getting justice for those who have been victimized in our country and in our province. They still make reasonable money, but it's not anywhere near what they could make if they were going to go into corporate law or in some cases even criminal law as a defence attorney. They do their job, they do it very effectively. It's a great public service, what they do, and we should commend them.

However, as is the case in every single sector of our society, in every profession, no matter what it is, there are those who fall short. Sometimes it's very egregious and there are egregious abuses and awful things that happen, and sometimes it's unintentional. Sometimes it's individuals who mean well but are incompetent, and that does happen.

Sometimes when that happens, whether intentionally or through incompetence, bad things happen. Things happen like what happened in Airdrie, where now we have a case that has kind of opened people's eyes not just to that case but to other cases around the province where similar things have happened, where serious criminal charges have been dropped or stayed because of a lack of Crown resources or a poorly managed case. For whatever reason a case is managed poorly, or the court system is managed poorly and something doesn't get scheduled on time. Whatever the case is, these incredible injustices have occurred in more than one instance.

Now, some of that we're debating in this House on a day-to-day basis with regard to the amount of resources the justice system has at its disposal to do these things given the caseloads that it has and whether they're being overburdened. I think that certainly is part of it.

Whether this case is such an example or whether it is not, there are cases when something bad will happen in the justice system, something that brings doubts into people's minds as to whether we have a true justice system or whether it's just some kind of judicial system as opposed to a justice system. Those things happen, and when they happen, it is absolutely imperative that we deal with them. Like everything else, we cannot sweep these things under the rug when they occur. We have to allow people the ability to stand up and blow the whistle on situations that need to have the whistle blown on them, whether they be intentional or negligence or whatever.

There is no reason for this clause to be in there. I'm sorry, but there's no reason whatsoever for that clause to be in there. The justice system is, frankly, in a lot of ways the most important system that we have in all of government because without that basis of safety, that basis of law and order, everything else we do, whether it be health care, education, seniors, all that other stuff, would not be possible without a functioning justice system. It just wouldn't be possible. It would be the Wild West. That's all it would be. You couldn't have hospitals because you couldn't protect the hospitals. You couldn't have very much commerce because you wouldn't be able to enforce contracts, et cetera.

The justice system is absolutely critical. So to say that we're going to exempt Crown prosecutors and their actions is just not right. I don't know how this clause got in here. I don't know what the reasoning behind it is. Obviously, it should come out because in the department if there's something that's happening that is systemic, that is going to lead to someone like Arizona – this is not her name; it's the alias that she uses, the victim in this Airdrie sex abuse case. If a situation were to occur that will likely lead to more Arizonas, that has to be blown. Somebody in the Crown prosecutors' office or in the justice system or someone in there needs to be able to blow the whistle on that and not be worried about retaliation. I'm not saying that it was the Crown prosecutor's fault in this particular case. That's still being investigated.

This is a pretty obvious one. Now, we've been in here, and we've talked. This is the ninth – this is A9 – and we've also had a subamendment. Every amendment has been voted against. At some point I would hope that the governing party can admit that perhaps the opposition has a good idea or two on this.

Now, I would ask the minister of transparency – I'm not even going to try to do the full name; I've given up. Transparency is good enough. Could that minister or the Justice minister or the Government House Leader please explain why this clause is in there and if it is justified being in there? Just the reason why it's there. I know one of the thoughts might be that somebody might not be happy with the fact that a Crown prosecutor wanted to pursue a case or not pursue a case or didn't do a good enough job in a case and so forth.

Again, the commissioner already has that discretion. He doesn't have to look into every single thing, every single complaint that's brought. If it's a frivolous or vexatious complaint, he already has powers under this act not to pursue that.

That already exists. That's not an excuse. You can't say: oh, well, if we did that, everybody would be . . . You could use that same excuse for any person that does come under this act.

Please consider this. Let's make our justice system safer by shining a little bit of light on it. I think this is a reasonable amendment, and I would ask the government to support it.

11:10

The Deputy Chair: Thank you, hon. member.

The hon. Minister of Justice and Solicitor General.

Mr. Denis: Thank you very much, Madam Chair. I thank the member for his submissions tonight. I cannot support the amendment for a number of reasons, which I will outline.

First of all, I've often talked in question period about the importance of the independence of the judiciary but also the independence of prosecutions and the independence of investigations, and it is very, very important that we maintain this. There are many things that I think any of us wouldn't agree with if we looked into every type of prosecution. Again, we don't live in a banana republic, Madam Chair; we live in a place where these decisions are made independent of any political influence. Any one of us cannot just say: listen, here, go and get the bad guys. It doesn't work like that. Frankly, I wouldn't want to live in a province or in a country where things operated like that.

I wanted to mention to this member, who is legally trained, as am I – I think we used to work a few blocks from each other, actually – that the quasi-role of Crown prosecutors has to be protected. Crown prosecutors are governed by other rules, including those in the Law Society of Alberta's code of conduct, which, again, is a self-governing profession and, as such, is entirely accountable. Further governance, I would suggest, is unnecessary.

I have a particular issue with removing 18(4) because it also deals with solicitor-client privilege. I'm not talking about solicitor as in the Solicitor General, of course. I'm talking about the solicitor as a barrister and solicitor. That is something that can never be infringed. This is a common-law tradition that goes back hundreds of years, goes back across the pond in another country where our legal system originated, and it is also recognized even in civil law systems throughout the entire world. My submission to you, Madam Chair, is that allowing third parties to reveal legal advice sought or received could and would negatively impact on the information provided to lawyers, including Crown prosecutors, by their clients and threatens the effectiveness of the legal advice sought and could seriously jeopardize the Crown's interest.

The last part: we talked about the Crown's interest. There's lots of talk about the public interest in this Chamber the last couple of weeks, Madam Chair. The Crown's interest is the public interest because they are the defenders of the public interest in our legal system. I would say that they are equally as important as the police, and we have to respect their individual judgment.

I would also just mention to this member that I do not know of any other whistle-blower legislation in the country – and perhaps the Minister of Accountability, Transparency and Transformation could correct me – that is without a similar provision such as this.

The last thing I will mention, Madam Chair, is that there are other mechanisms such as the investigation that we're doing for dealing with unfortunate situations like the member mentioned in his own constituency. Again, the investigation we're doing is independent. Without this particular section you would see a floodgate of arguments coming in, and it would really threaten the fabric of the whole independent aspect of both our prosecutions and our investigations. We must maintain their independence.

I respect where this member is coming from with this amendment, but unfortunately I cannot support it for the reasons that I've indicated. Thank you.

The Deputy Chair: Thank you.

The hon. Member for Edmonton-Centre.

Ms Blakeman: Thanks very much. I know how strongly the Member for Airdrie feels about this particular situation. I just have a caution that building legislation around a particular incident may not be the best way to go. That's not to diminish the seriousness of that particular case.

Part of what occurred to me: under the purposes clause it talks about facilitating

> the disclosure and investigation of significant and serious matters in or relating to departments, public entities or offices of the Legislature, that an employee believes may be unlawful, dangerous to the public or injurious to the public interest.

Now, I'm not sure that the intent of this is to cover the kind of incident that the member is raising. I mean, obviously, he's followed this particular case a long way and is more aware than I am of other possibilities and other remedies that are available in this case which don't seem to have been very successful.

I do wonder about this. I don't see in the purposes where it is moving into that arm of the courts, and I don't think it's intended to according to the purposes section, which is section 2, for anyone that's following along. I go back and look at the section that he wants to remove, which is 18(4), which is appearing on page 14: individuals that are acting as solicitors or Crown prosecutors in departments, public entities, or offices of the Legislature. You know, I've got a number of friends that provide those services in different departments. To me, this clause is that same protection clause that I was talking about previously, where you have to have something in there that says that you've got to be protected. If you're doing your job, you've got to be protected for doing your job. You can't have somebody going after you for having actually done the work you were supposed to do.

I think that's what's being covered in subsection (4). I understand how important this is. I'm just struggling to support this particular amendment because it would leave a number of the people that I know that provide legal advice or act as a solicitor in various departments wide open to any number of accusations from people that are ultimately unhappy with the way an act comes out or the way it's been implemented or anything else that's involved in that. I really believe in that separation between what we're doing and what happens in the court system.

You know, I look to the States – and I'm a little, tiny bit off here but not on too bad of a tangent – and I see where they elect their judges, and I just think, "Oh, save us from that" because that truly does politicize the system. I think we're right in keeping

those two branches as far apart as possible. As soon as we start interfering in that process – you know, constituent A comes to me and goes: you've got to get involved; I've got a particular problem with WCB, maintenance enforcement, any number of other things. Pick one. If I interfere, well, I could be causing the person on the other side of that particular dispute – it's not for me to interfere in that dispute, and I have a real caution about doing that.

The second thing I often talk about in this House is if we write – what's the word I'm looking for? – vague law. If we write legislation that isn't clear or is unclear – and I'm not putting this onto this particular case, Member – when it gets to the courts, the judges do the best they can with stuff that isn't very directive to them. Often they'll end up sending it back to us, saying: you guys have got to write a law to clarify this. To then turn around and accuse them of judge-made law makes my hair catch on fire because it is such an unfair accusation when we, the legislators, didn't give them a very good piece of legislation to make decisions on.

It really comes back to this House to be doing a good job, and again I'm not referring specifically to the case the member is talking about. I'm really uneasy about it for a number of reasons, but I'm going to listen to the rest of the discussion and see if I can settle my unease.

Thank you.

11:20

The Deputy Chair: Thank you hon. member.

Mr. Anderson: Madam Chair, some interesting questions there for sure. First of all, this has nothing to do, in my view, with the independence between the Legislature and the judicial branch. We have that separation. There is no doubt. I mean, there still are, obviously, correlations between the government and the judiciary. For example, the government funds the judiciary. The government funds the Crown prosecutor's office. There are these attachments, okay? A case-management system, for example: you can't put a case management system together if you don't have funding to put a case management system together. Therefore, there is that attachment and that relationship between the government and the judiciary, the Crown prosecutor's office, and so forth. That's just the way it is.

Now, what the government can't do, as it always says and rightfully so, is go in and instruct a Crown prosecutor to pursue a certain case. There's no doubt about that. We all agree with that. The problem, though, Madam Chair, is that that's not what we're talking about here at all. We're not talking about the government going in like a banana republic. I guess that makes the United States a banana republic because they can do that in the United States.

Anyway, in other systems of justice the politicians can in fact go to the Crown prosecutor and say: hey, you should be prosecuting that; that's something that you need to do. And then the voters or the dictator holds them responsible. It's certainly not a system that I think is appropriate either. I much prefer the way we have it here, with independence.

What we're talking about here is not related to that. That is not what we're talking about here. What we're talking about here is – and I'll go over the application and purposes of the act real quick.

> The purposes of this Act are
>
> (a) to facilitate the disclosure and investigation of significant and serious matters in or relating to departments, public entities or offices of the Legislature, that an employee believes may be unlawful, dangerous to the public or injurious to the public interest.

Well, look. Here's an example. What if a Crown prosecutor is having a bad year? We've already established how good 99.9 per cent of them are. Let's say that one is just tired of the baloney, is having a bad time, and says: "You know what? I need a break. I've got too many cases on my plate, so I am going to start plea bargaining down as much as I can to get as many of these cases off my desk as is humanly possible." Okay? So that's what they do. They get into this rhythm, and pretty soon they find out that it's easy to do that, so they keep plea bargaining down, plea bargaining down, plea bargaining down. So people are getting out on the street without going through the system properly and being properly held accountable for their crimes. They're on the street, and they're out there being unlawful, being dangerous and possibly injurious to the public interest.

Somebody within the Crown prosecutor's office who sees that, if it is a pattern, needs to be able to come forward and share that information with the commissioner in this case and with – what do we call it again? – his designate. That needs to be pointed out. That is very important. That person who points it out says: look, this guy is purposefully offering bottom-basement plea deals or is, you know, mucking up things or perhaps falsifying documentation or whatever the heck it is. Whatever it is, there needs to be protection for the person who decides to bring that wrongful act forward, to bring that wrongful thing that's happening forward.

Now, I do not think in any way that that would make Alberta a banana republic, nor would it threaten the independence between the judiciary and the legislative branch. I don't think that's the case at all. I mean, we could talk about the same thing for solicitor-client privilege as we could for physician-patient privilege. Yet this does apply to the health care system, as far as I know. The College of Physicians and Surgeons has rules, Justice minister, lots of rules for their doctors. So why are we saying, "Okay; the College of Physicians and Surgeons has rules; the Law Society of Alberta has rules for their lawyers; we're going to allow whistle-blowing in our public health system, but we're not going to allow whistle-blowing in our public legal system"? I'm not understanding the difference. There is no difference, frankly. I'm just not seeing it. What this legislation does not do, I think, is allow for the political branch of government to in any way interfere with the judicial branch. I really do not see how that amendment would allow for that.

Again we've got to quit – and I'm saying this as a lawyer. Maybe it's because lawyers write all the legislation. Honestly, lawyers have got to be the most protected people on the face of the planet. We write all the laws. Lawyers write all the laws. It's just amazing the protections that they find to put into every piece of legislation humanly possible to protect themselves.

Well, look. At some point there has to be accountability. People are tired in this province and all across the country, frankly, of a justice system that allows people like the one in my city to be running around free without having to face his accuser in a proper trial. They're sick of that. It's not just happening in Airdrie. It's happening in other places. If somebody has information on that, as to why that's happening, why can't they bring it forward to the commissioner? Perhaps it's a breakdown in the case management system. Perhaps it's a Crown prosecutor gone rogue. Perhaps it's a ridiculous policy that has been put forward where they're directing Crown prosecutors to plea out very low sentences in order to move cases along because of a lack of resources. Maybe it is a lack of resources.

I just had a justice of the peace, I mentioned earlier, call me this week. He said that a lack of resources is an absolutely true problem – no doubt about it – in our justice system, and it is causing a lot of chaos and a lot of disadvantages for the Crown in

many different cases. But that person can't come forward to the commissioner to blow the whistle on it because of this piece in here, because of this section.

Guys, if we're going to get serious about whistle-blowing – I mean, that's what section 2(d) is intended for: "to promote public confidence in the administration of departments, public entities and offices of the Legislature." Good grief. Public confidence in the justice system? Go poll that. We have polled it. Honestly. Don't give me this garbage about how polling doesn't mean anything. Just go poll it properly, scientifically. You will find that the vast majority of Albertans today do not have confidence in our justice system. They don't. You ask them that question. They don't. Now, you can deny it and say: oh, well, blah, blah, blah. No. That's a fact. They don't. Just go talk to some of your constituents. There are some that do; most don't.

The reason they don't is because when these problems happen, I just think it's easier for us politicians to say: "Oh, you know what? We'll just ignore it because we don't want to be a banana republic. We don't want to threaten the separation of the judiciary and the legislative branch. So we're just going to forget about that. Let the lawyers deal with it. Let the Crown prosecutor deal with it. They'll get their act together. They'll do it." Well, then why are things like Airdrie happening? Why do things go wrong in that regard? I don't think it's just about this one case. I think it's about many different cases, as passionate as I am about that case.

I don't think it threatens the common law aspect of solicitor-client privilege. I think that's a complete red herring. I don't really care if it's used in other Legislatures across the country. I mean, if the government is going to start going there, do you really want to start comparing this legislation to other whistle-blower legislation across the country? Really? Do you want to go there? If you do, we'd better just start up from scratch because this is the weakest whistle-blower legislation in the country by far. Every independent analysis that I've seen on that, that has looked at this legislation and has commented on it, has said the same thing.

11:30

Is it an improvement over what we had before? Possibly, I guess. Optically it is. There might be a few improvements. But it is very weak legislation, overall, for many of the reasons we've said. So let's not go into this thing: oh, this isn't done in other legislation. I don't know if that's true. I'd have to look into that.

Those are my comments on that. I think we should support this. I think that if we started supporting measures like this, we may actually have a public that is confident in our justice system instead of feeling that they don't have a justice system that is functioning. That is the case right now.

The Deputy Chair: Thank you, hon. member.

The hon. Member for Cardston-Taber-Warner.

Mr. Bikman: Thank you, Madam Chair. Now, I'm not a lawyer, but I stayed in the Holiday Inn Express last night, so I think my comments may have some relevance here.

We aren't here for ourselves, I'd like to remind you all. We're not here to pass legislation that protects us or other special interests. As recurring comments from our constituents, sort of verifying and following up on the hon. Member for Airdrie's comments, the things that I hear from my constituents in Cardston-Taber-Warner: "How come the government can get away with that?" or "How come the government doesn't have to follow its own rules?" or "I thought the golden rule was do unto others as you would have others do unto you, not that he who has the gold, or the power in this case, makes the rules but doesn't have to follow them."

I have to tell you, quite frankly, that I still haven't recovered from your defeat of the exemption clause that we wanted out at the start of discussions today. I really think that's a huge mistake. Exemption clauses like this hurt us all, and I'll tell you how. They bring scorn and skepticism to this process. They bring disrespect and disregard for the things that we're trying to accomplish. They bring mistrust and misunderstanding. Now, I'm not going to continue with the alliterations, but I hope you get the picture. We're not helping ourselves. We're not helping the people that we've been elected to protect. We shouldn't be protecting wrongdoers, as this section potentially does.

We're supposedly allegedly trying to protect whistle-blowers, who see this stuff happening and think it ought not continue, that it ought to be stopped, but they're afraid to. We need to be protecting them, and everywhere that wrongdoing occurs, including in the Crown prosecutors' department, it needs to be reported and needs to be followed up on and acted on. I agree that it does not violate the separation that needs to exist. If we can't trust our justice system to be fair and transparent, if the people that elected us can't trust our justice system to be fair and transparent and treat all people equally and subject to the same clauses and laws as the rest of us, then we've sunk to a sorry state and, in fact, are consigning ourselves to become the banana republic that the Justice minister keeps referring to.

Thank you.

The Deputy Chair: Thank you, hon. member.

Are there any other members who wish to comment? The hon. Associate Minister of Accountability, Transparency and Transformation.

Mr. Scott: Thank you, Madam Chair. Prosecutors in this province are independent. We trust them with the discretion to choose when to prosecute offences. There are a range of reasons for choosing whether or not to prosecute. A great many of these reasons may be technical in nature. The commissioner is not expected to be an expert in the exercise of legal discretion, and to be blunt, this is not the appropriate forum for second-guessing a prosecutor's decision to prosecute or not. Like our legislation, New Brunswick's states that information relating to the deliberations of Crown prosecutors cannot be disclosed. Like our legislation, all other Canadian legislation protects information in a client-solicitor relationship. For that reason I cannot support the amendment.

The Deputy Chair: Thank you, hon. member.

Are there any other members who wish to speak on amendment A9?

I'll call the question on amendment A9 to Bill 4, Public Interest Disclosure (Whistleblower Protection) Act.

[The voice vote indicated that the motion on amendment A9 lost]

[Several members rose calling for a division. The division bell was rung at 11:35 p.m.]

[One minute having elapsed, the committee divided]

[Mrs. Jablonski in the chair]

For the motion:

Anderson	Fox	McAllister
Bikman	Hale	Pedersen
Eggen		

Against the motion:

Allen	Goudreau	Olesen
Bhardwaj	Griffiths	Olson
Blakeman	Hancock	Quadri
Calahasen	Horne	Quest
Casey	Jeneroux	Sandhu
Dallas	Johnson, J.	Scott
Denis	Khan	Starke
Dorward	Klimchuk	VanderBurg
Fawcett	Lemke	Weadick
Fenske	Leskiw	Xiao
Fraser	Oberle	
Totals:	For – 7	Against – 32

[Motion on amendment A9 lost]

The Deputy Chair: We're back to Bill 4. Are there any members who wish to speak or comment on Bill 4? The hon. Member for Lacombe-Ponoka.

11:40

Mr. Fox: Thank you, Madam Chair. I would like to move an amendment on behalf of the Member for Calgary-Fish Creek.

The Deputy Chair: We'll pause for a moment while we distribute that amendment.

Hon. members, this amendment will be known as A10, and I would remind everyone it is getting late and that we are speaking on amendment A10.

The hon. Member for Lacombe-Ponoka.

Mr. Fox: Thank you, Madam Chair. Now, this amendment is a very small amendment. It's replacing one word. We're striking out "committed" in section 50 and substituting "discovered." So let's read it the way that I'd like to see it amended. "A prosecution under this Act may not be commenced later than 2 years after the day the alleged offence was discovered."

Now, the reasoning behind this is fairly simple. We want to make sure that wrongdoings, when they are discovered, are investigated and prosecuted. Just in this one very minor amendment we would be able to make that change so that crimes would be punished. I think that's something we can all stand for in this House. We want to make sure that we hold those that are responsible responsible and that their actions do not go without consequences. We want to see them go through the system and have just punishment for the acts that have been committed.

Now, if I were a whistle-blower and I were to come forward and bring to light a scandal, for instance, I would want to see that it's taken from the investigation stage all the way through the due process to the point where if they are prosecuted, there is punishment for it. I believe that in this amendment we're doing exactly that, and we're not allowing something to be swept under the rug with a very small statute of limitation.

Thank you very much for the opportunity to speak on this, and I will defer to some of the other members now.

The Deputy Chair: On amendment A10, are there any other members who wish to comment?

Seeing none, I will call the question.

[Motion on amendment A10 lost]

The Deputy Chair: We shall move on to Bill 4. Any members wish to speak or make amendments to Bill 4? The hon. Member for Edmonton-Centre.

Ms Blakeman: Thank you. I have an amendment at the table. If I could get it distributed at this point, please.

The Deputy Chair: We'll just pause for a moment for that.

Okay, hon. member, we're almost there. This will be known as amendment A11. Bill 4, amendment A11. You may proceed.

Ms Blakeman: Thank you very much, Madam Chair. For those that are following along in hard copy, this amendment A11 is amending section 52, which appears on page 33 of the hard copy act. I've seen this kind of clause a couple of times recently in what the government is trying to do. Paramountcy clause isn't quite the right word, but it essentially says . . .

The Deputy Chair: Excuse me, hon. member. The noise level is quite loud again. Can we bring it down? If you have a really important conversation, you can always take it out into the Confederation Room. Thank you very much.

Hon. member, you can continue.

Ms Blakeman: The Chair is very kind, but it doesn't bother me in the least.

It doesn't essentially say this; it does say it. "No proceeding of the Commissioner is invalid." It can't be challenged or reviewed or quashed or called into question in any court. So it says that, you know, this is it. What the commissioner decides is the end of it. It can't go any further. I always have a problem with that. No one is perfect. No one can foresee every circumstance that could possibly apply. You have to allow that there could have been a mistake made and allow someone to be able to appeal. So that's the number one argument for why this particular clause should be struck.

The second argument is a bit more complex – I touched on it when I was speaking before to a different amendment – and that is that when you look at this idea that the rulings, the decision of the commissioner can't be challenged in any court, and then you go on and look at 49, which says, "any person who contravenes," and then there are a number of clauses that are set out there. Essentially, it's the section on reprisals, on false statements, on obstruction, or on falsification. If they contravene that, then they're guilty of an offence and they're liable.

The commissioner can decide. That's what this clause is there for. If somebody has operated in bad faith or, you know, that they shouldn't have brought this forward, the commissioner can then decide that that's it. If it's bad faith or it's vexatious or whatever, the accused can't get a more thorough investigation or be able to bring it to any kind of an appeal. Once the commissioner says that that's it, then they can't go any further. Essentially, there can be a situation or situations where there is no protection for the whistle-blower, so they have no ability to protect themselves from being fined or punished if something is coming forward.

Now, you go: "Okay, how many people are we really talking about here? Are we changing the whole law just for one or two people out of an entire population?" Possibly, but if that's the case, then I would revert to the first reason for doing this, which is that you have to allow that appeal. To say that nothing is appealable is, I think, particularly problematic.

11:50

Usually what the government says is: well, okay, you can go ahead and appeal it, but you're going into a civil court system and you're on your own, honey. Okay, fair enough. Lots of people come to my office and say: well, that's not fair because I don't have enough money to take it into that court system. But the truth is that, you know, if it's really important to them, if they really

want to do it, if it's truly egregious, it's there. The appeal process is there for them. In this case it's not there. It makes that commissioner God, and I do not think it's appropriate for this Legislature to bestow that kind of power on one individual or one office. It just is not right to me.

I have on behalf of my colleague from Calgary-McCall brought forward this amendment A11, which does ask that we strike out section 52, which says:

> Proceedings of the Commissioner not subject to review
> 52 No proceeding of the Commissioner is invalid for want of form and, except on the ground of lack of jurisdiction, no proceeding or decision of the Commissioner shall be challenged, reviewed, quashed or called into question in any court.

It's too much. It's just too much power and discretion to be applied to one individual when we're taking away a protection that is supposed to be offered to people for bringing forward a wrongdoing that's happening inside of the government. It just doesn't sit right with me, so I would ask for the support of the Assembly in deleting that section 52.

Thank you very much.

The Deputy Chair: Thank you. Any other members to speak or comment on amendment A11?

Seeing none, I'll call the question.

[Motion on amendment A11 lost]

The Deputy Chair: We will return to the bill. The hon. Member for Lacombe-Ponoka.

Mr. Fox: Thank you, Madam Chair. I have another amendment here that I would like to move on behalf of the Member for Calgary-Fish Creek.

The Deputy Chair: Thank you. We'll pause for a moment.

Hon. member, we can proceed on this amendment. It will be known as amendment A12.

Mr. Fox: Thank you, Madam Chair. This amendment here is one that would strike out section 18 and substitute the following:

> (2) An investigation is to be conducted as informally as possible and to be concluded within 12 months from the date the investigation was commenced.

What we're looking at here is putting in a firm timeline for investigation. As it stands right now, there is no timeline for the commissioner to conclude an investigation. This can put the employee at risk. As well, it means after two years the commissioner could refuse to continue on with the investigation and drop it. We see that under section 19(2), where it says:

> The Commissioner is not required to investigate a disclosure or, if an investigation has been initiated, may discontinue the investigation.

We want to make sure that when the commissioner does start an investigation, it is completed, and we also want to make sure that it is reported back in a timely manner. If we find out that the commissioner has been investigating for two years – two years – we may not see that report until the next annual report. It could be three years after the initial disclosure that the whistle-blower made. For three years this Assembly isn't going to know what's going on. We're not going to be able to hold that public entity to account. That employee may not even see satisfaction in blowing the whistle because their issue has been dropped by the commissioner because we're beyond the two-year timeline. So we just want to make sure with this amendment that investigations are concluded in a timely manner.

You know, it actually brings it kind of in line with what's in the FOIP Act. The FOIP Act right now does contain firm timelines at various stages of the process, and I think it's reasonable within that act to hold the office to deadlines. I can't see any reason why it would not be reasonable to hold this office to account with deadlines. I would hope that you would support this amendment and make sure that these investigations are concluded in a timely manner.

The Deputy Chair: Thank you, hon. member.

Are there any other members who wish to speak on amendment A12?

Seeing none, I'll call the question.

[Motion on amendment A12 lost]

The Deputy Chair: We will move back to Bill 4. Are there any comments, questions, or amendments? The hon. Member for Lacombe-Ponoka.

Mr. Fox: Thank you, Madam Chair. I have another amendment that I would like to move on behalf of the Member for Calgary-Fish Creek.

The Deputy Chair: Thank you. We will pause for a moment while that gets distributed.

This amendment will be known as amendment A13.

Hon. Member for Lacombe-Ponoka, you may proceed.

Mr. Fox: Thank you, Madam Chair. This amendment that you have in front of you is one that speaks to the very idea of transparency. The idea of this amendment is to make all of the written rules and procedures established under this section of the act viewable, seen by all members of the public so that they can understand how this process works from beginning to end throughout all of the public entities, throughout all of your ministries. Now, transparency is something that is very important, and I believe that this is something that would raise the bar, so to speak. I think that's a phrase that the hon. Premier likes to use fairly often. Well, let's raise the bar on transparency.

12:00

Now, what this is going to do and what this can do is help nonemployees, because there is a provision in this act for nonemployees to blow the whistle, to understand the procedures that they're going to have to go through and what those procedures will look like for the commissioner when he investigates this. Also, it gives them some anonymity when they're looking for information on how to do this. It's impossible to be anonymous to blow the whistle in a process when you actually have to go to your designated officer or go to the commissioner just to get the very information required to blow the whistle.

This amendment is a very friendly amendment. This is one where, I think, all Albertans would benefit just by understanding the process by which this government works, by which your ministries work. I don't see any reason why we can't all support this amendment. I feel that this is one that should get unanimous support here in the Legislature because it is such a wonderful amendment, that just goes to the core of what government transparency should be. I would hope that you would stand with Albertans when they want to stay anonymous or they want to understand how these procedures are going to work.

With that, I would hope that there might be one or two comments on this before we vote on this amendment.

Thank you so much for your time.

The Deputy Chair: Thank you, hon. member.

Are there any other members who would like to speak or comment on amendment A13?

Seeing none, we'll call the question.

[Motion on amendment A13 lost]

The Deputy Chair: We'll move along, back to Bill 4. The hon. Government House Leader.

Mr. Hancock: Thank you, Madam Chair. In light of the hour and in light of the wonderful progress that we've been making on this most remarkable bill, I would move that we adjourn debate.

[Motion to adjourn debate carried]

Mr. Hancock: I would also move that we rise and report progress on Bill 4.

[Motion carried]

[Mrs. Jablonski in the chair]

The Acting Speaker: Will the hon. Member for Dunvegan-Central Peace-Notley please report.

Mr. Goudreau: Thank you, Madam Speaker. The Committee of the Whole has had under consideration certain bills. The committee reports progress on the following bill: Bill 4. I wish to table copies of all amendments considered by Committee of the Whole on this date for the official records of the Assembly.

The Acting Speaker: Thank you, hon. member.

Does the Assembly concur in the report?

Hon. Members: Agreed.

The Acting Speaker: Opposed? So ordered.

Government Motions

The Acting Speaker: The hon. Minister of Agriculture and Rural Development.

Continuation of Enactments

15. Mr. Olson moved:
Be it resolved that the Legislative Assembly approve the continuation of the following enactments:
(a) section 33 of the Agricultural Societies Act,
(b) sections 3 and 36 of the Rural Electrification Loan Act,
(c) section 2 of the Rural Electrification Long-term Financing Act, and
(d) sections 32 and 33 of the Rural Utilities Act.

Mr. Olson: Thank you, Madam Speaker. At the risk of incurring the wrath of colleagues on all sides of the House, I'd like to get through this motion. I'll do it as quickly as I can. Briefly, all of these pieces of legislation have a provision which requires that every five years the loan and guarantee provisions be examined and debated for the purpose of determining whether they should be repealed or continued. That's the question here. I'll go through each act very briefly.

The Agricultural Societies Act does provide for guarantees of a maximum aggregate of $50 million. There haven't been any new guarantees for 20 years. When the last review was done in 2007, there was only one outstanding guarantee at that time. There are now no outstanding guarantees of agricultural societies. The logical question would be: well, then, why don't we just repeal it? Madam Speaker, we are going to be undertaking a review of this act, and we are looking at agricultural societies generally, so we think it's prudent to just leave the legislation sitting where it is. We have no plan right now to be using the guarantees, but there aren't any outstanding.

In terms of the three utilities pieces of legislation, there's one for gas and two for electrical services. The two electrical ones. In 1953 the Rural Electrification Revolving Fund Act was created. That was to help finance electrical services to farmers, either to individuals or to rural electrification associations. It evolved into the Rural Electrification Loan Act. There are two different types of loans: one for individuals, one for capital upgrades. Now, in this case there's been a history of these. They have evolved as well. Interest rates used to be very low. They then became market rates. Associations used them for major upgrades, changing their infrastructure.

The other electricity piece of legislation came a couple years later, in 1955, the Rural Electrification Long Term Financing Act: same types of purposes, same types of loans. These loans were generally made to farmers. They were charge-secured by liens on land, or they were secured by assets of the rural electrification association in the case of loans to the REA.

Now, there are outstanding loans here. In the mid-1970s there was over $75 million in outstanding loans. By 1997 there was only about $31 million left. That amount is declining. We probably still have about 10 years to go. It should be paid out in about 2022. What happened here is that in 1997 the government decided to get out of the business of financing these. They turned these outstanding loans over to the private sector. Part of the deal was that they would maintain this security. So even though the loans are administered by banks, the security is still there, and the government has a responsibility to maintain that security.

The last one is the Rural Utilities Act. That's the one that deals with the gas utilities for, obviously, provision of gas services. That was done for rural gas co-operatives to construct individual services secured by lien note. The last guarantee issued was in 1998. They've all expired, but there are about 36 outstanding loans. These would be delinquent loans worth about $130,000. So there's still a reason to have that security in place and to keep these provisions in place.

In summary, over the years, over these decades some 90,000 farm electric services have been installed with the help of this financing and some 200,000 rural natural gas services, which is the largest natural gas system in the world. So there is a reason for each of these to stay there, but they're eventually probably going to die a natural death. I'll be happy to answer any questions if there any, or I'd be pleased to hear the comments from my colleagues.

12:10

The Acting Speaker: Thank you, hon. minister.

The hon. Member for Edmonton-Centre.

Ms Blakeman: Thanks very much, Madam Speaker. I'd like to commend the minister of agriculture for actually bringing this before the House and spending the time to walk everybody through it. It didn't take that much time, and it was very much worth it.

My concern is that this minister did this, but a number of other ministers haven't. Over the summer and fall I've been watching the OCs go through, and there have been 24 OCs extending 29 acts, and all of those are extending the review date further on, pushing it further out. So while this minister actually brought this

before us, explained why he was pushing the reviews out and made a good case for it, there have been 24 OCs extending 29 acts for things like the health and wellness grants amendment regulation, that they pushed the date for review out to July 31 of 2022. The employment standards amendment regulation, extended the date for review to June 30 of 2018. On and on and on it goes: the business corporations amendment, extended to 2017; the Garage Keepers' Lien Act, extended to 2015; the personal property security amendment regulation, extended to 2015; the personal property security forms amendment regulation, 2015; the government emergency management amendment regulation, 2017.

I don't know what's in this stuff. Of course, you can do it, but it's not easy, and I don't have the capacity to do it anymore. You see the OC come out, you read what it is, then you've got to go back and actually go into the system to find out what it actually says and what it's amending. Otherwise, it just says: OC this number on this subject. To find out what it actually says, you've got to go into the system, print it out, and go: okay; it's this section. Then you've got to go to the bill, look up the bill, and go: now I understand what they're doing. It's not easy, and it's fairly time consuming to try and figure out what's going on.

Lots of these may well be completely innocuous. I have no idea because I don't have the capacity to find it out anymore. You've got the wildlife expiry date amendment regulation pushed out to 2014. The Alberta chicken producers' plan amendment regulation, 2017; the environment grant amendment regulation pushed to November of 2022. Why? If these things need review or don't need review, why can't we hear about it in the same way that this minister managed to bring it forward? The Alberta heritage scholarship amendment regulation, 2019; the Calgary election amendment regulation, 2015 – well, that would be fairly current, I would think, given we've got an Election Act in front of us – the Edmonton election amendment regulation, 2015.

All of these regulations have the deadline for review pushed out. We don't know why: you don't have time; you're not interested; you don't care. I don't know. But it all went through in OCs over the summer.

I don't mean to pick on the minister of agriculture, but I do want to commend him for actually bringing this before the House and spending the 10 minutes to tell us why. I don't know why the rest of you couldn't do that and explain what's going on here because this is part of what makes people go: why are you so secretive? You may not be secretive. I don't know. I can't tell because all we've got is an OC that when you dig deep enough, you find out that they've pushed a review out, you know, whatever it is: two, four, 10. The furthest one out was pushed to 2022. I have no idea.

My compliments go out to the minister that actually did the work. My question is as to why the government and the rest of the ministers can't be bothered bringing that information forward to us.

Thank you very much.

The Acting Speaker: Thank you, hon. member.

Are there any others who wish to speak? The hon. Member for Airdrie.

Mr. Anderson: Thank you, Madam Speaker. I'll be very brief so we can all go home. I just want to commend the minister as well for his explanation. I will say that the Wildrose wants to make very clear that our REAs have played an integral role in the development of Alberta and that we support them fully. We think they'll be key to rural Alberta's development in the future.

With regard to these specific acts, obviously, we think that it would be good to continue to review, particularly as it pertains to the liability aspects of some of these things and the liabilities that the province still has on its books, that it's been paying off for a long time now. I think that we just need to be careful in that regard. I think that the minister has given a good explanation for that, and we seem to be moving in the right direction with regard to paying back those debts.

That is all.

The Acting Speaker: Are there any other members who wish to speak?

Mr. Hale: I just have a quick question for the hon. ag minister. I might have missed it in his presentation. Under the Rural Utilities Act you said that you had a hundred and some thousand dollars left to pay. Has that been turned over to private institutions? Are you seeing further loans going out? Just to clarify that.

The Acting Speaker: Hon. member, there is no Standing Order 29(2)(a) at this point, so we'll consider that to be your speech. Perhaps the minister can answer through a note or something, but there is no 29(2)(a) at this point.

Any other members?

Seeing none, I'd ask the hon. Minister of Agriculture and Rural Development to close debate.

Mr. Olson: Thank you, Madam Speaker. I'll try to answer a few of the questions that were asked and comments that were made. First of all, I'd like to take credit, hon. Member for Edmonton-Centre, for doing this, but I'm mandated by the legislation to do it. I think that's the difference between some of the orders in council that you referred to.

Ms Blakeman: I take it all back, then.

Mr. Olson: I think you mentioned chicken producers in there, too. I'm also responsible for one of those OCs. I'm always happy to answer if you have questions about, you know, whether there was an extension of time.

Now, I just need to clarify that this has been a wonderful initiative – all of these have been – for Albertans and particularly rural Albertans, but this is not about debt owing by the government of Alberta. We don't owe any money here. We do have some contingent liability when we are guaranteeing other people's obligations. As I mentioned, the ag society legislation is there, but there is no contingent liability. It's zero right now. We don't have any liability whatsoever unless we were to guarantee some further loans, not to us but to ag societies. So we're the third party guaranteeing the debt.

That would be the case with some of these other ones as well. There are two pieces of electricity legislation. That's for REAs and for providing services in rural Alberta. The one of them does have significant money left, but that's not a debt owing by us; it's a debt owing by the people who have the services. Now, if they didn't pay, we could be at risk there, but that is a declining number. I think there's lots of protection there. There are also liens on the property, which provides security. So they're not unsecured debts. The one of them did have some outstanding delinquent debt. That's not delinquent debt owing by us; it's delinquent debt owing by the debtor, which we could be

responsible for, and it's $130,000 in 36 loans. It's not a significant amount.

You know, I think we are nearing the end, perhaps, of the usefulness of some of these provisions. Whoever drafted the legislation back when they drafted it in their wisdom decided that it was important to come back every five years and just ask the question, "Do we still need this?" and put it in front of the House and debate it. That's why I'm here, and I really appreciate the comments from my colleagues.

Thank you.

The Acting Speaker: Thank you.

[Government Motion 15 carried]

The Acting Speaker: The hon. Government House Leader.

Mr. Hancock: Thank you, Madam Speaker. I would move that we adjourn until 1:30 p.m.

[Motion carried; the Assembly adjourned at 12:19 a.m. on Wednesday to 1:30 p.m.]

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