Province of Alberta

The 29th Legislature
Third Session

Alberta Hansard

Tuesday morning, May 16, 2017

Day 34

The Honourable Robert E. Wanner, Speaker

Legislative Assembly of Alberta
The 29th Legislature
Third Session

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Party standings:
New Democrat: 55 Wildrose: 22 Progressive Conservative: 8 Alberta Liberal: 1 Alberta Party: 1

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Legislative Assembly of Alberta

10 a.m. **Tuesday, May 16, 2017**

[Ms Sweet in the chair]

Prayers

The Acting Speaker: Good morning.

Hon. members, let us pray or reflect, each in our own way. Let us remain humble for the opportunity to work on behalf of the citizens of our great province. Let us find strength and encouragement from them to seek out solutions and opportunities that will create a better tomorrow for our future generations.

Thank you, and please be seated.

Government Bills and Orders
Committee of the Whole

[Ms Sweet in the chair]

The Deputy Chair: I would like to call the committee to order.

Bill 13
Securities Amendment Act, 2017

The Deputy Chair: Are there any comments, questions, or amendments to be offered in respect of this bill? The hon. Member for Banff-Cochrane.

Mr. Westhead: Thank you very much, Madam Chair. I'm pleased to stand up to speak about the Securities Amendment Act, 2017, this morning. I would just like to start out my comments by briefly noting that not too long ago in this Chamber the Member for Strathmore-Brooks on behalf of the Wildrose caucus pledged to undertake an erasing and revising of history if they were ever to form government. I think it bears noting that that's been said, especially when we're considering a bill like this, that goes to protect investors and, particularly, seniors. It should be deeply troubling to Albertans that the Wildrose would plan to overturn bills like this. I think that deserves to be on the record.

I think also, Madam Chair, that Albertans deserve to feel comfortable and confident when they entrust their money to investment dealers, advisers, and their representatives. Organizations that regulate the investment industry need the capability to regulate effectively. Accordingly, the amendments proposed in this bill will provide regulatory organizations the same enforcement authorities as the Alberta Securities Commission. It will give regulatory organizations the ability to compel attendance and production of evidence so they are better able to do their jobs and protect Alberta investors. It will also protect the people who investigate these cases from liability when carrying out their duties in good faith.

Madam Chair, our government is working to make life better for everyday Albertans by making practical changes that help to make sure their investments are safe. I think the Minister of Finance and President of Treasury Board deserves a great deal of credit for working with the industry and taking actions to protect Albertans. As Wanda Morris from the Canadian Association of Retired Persons has said, "I've heard too many heart-wrenching stories of individuals who lost their life savings because they trusted the wrong person: an unscrupulous financial advisor." Individual investors and large investors need to know that the investment industry is being regulated properly. Financial markets are getting more and more complicated every day, and more and more people are relying on financial advisers to help guide their decisions.

As government we need to encourage investment because it is critical to the development of our economy, but we also must do everything we can to protect investors against the very few people in the system who would take advantage of them. We already have strong organizations in Alberta like the Alberta Securities Commission. The ASC is mandated to protect investors and foster a fair and efficient Alberta capital market. The commission currently has statutory powers to compel attendance and the production of evidence during both the investigation and adjudication phases.

However, self-regulatory organizations such as the Investment Industry Regulatory Organization of Canada and the Mutual Fund Dealers Association do not currently have this authority. These proposed changes that we have before us in Bill 13 will give these organizations the same authority as the commission and will strengthen their enforcement abilities and improve investor protection. In most provinces across Canada provincial governments have delegated certain aspects of their authority to these regulatory organizations to provide more efficient and effective regulation.

A well-regulated and efficient financial system where investors are protected is absolutely essential for confidence in the markets. The Canadian and international markets are also changing, and Alberta must ensure that our securities regulatory system aligns with international standards and regulatory reforms.

Another thing these proposed amendments will do is to extend immunity to the directors, officers, employees, and agents of these regulatory bodies. These proposed amendments will also clarify the conditions under which immunity is granted to these organizations, which will make it possible for them to conduct enforcement more effectively.

As with all legislation dealing with the fast-changing world of securities law, some of these proposed changes are merely housekeeping to ensure clarity and better compliance with Alberta's securities laws. Take, for example, amendments to regulations that will make sure these provisions apply to persons and companies, ensure the act is consistent, and allow the application to all parties as intended by the legislation.

Madam Chair, as the government was preparing these amendments, they consulted with the investment industry. The Alberta Securities Commission and the Investment Industry Regulatory Organization of Canada were both engaged with developing these changes, and these common-sense amendments that are being proposed have been welcomed by groups like the Canadian Association of Retired Persons. As I mentioned earlier, there are heartbreaking situations where people have lost their life savings, and we are proud to stand up for Albertans and make it safer for them to invest.

I agree with our Minister of Finance, and I think we can all agree that keeping our securities laws up to date is a great idea. It is in the best interests of Albertans, the best interests of our financial markets, and the best interests of our investors. The long-term health of our capital markets, our economy, and our citizens depends on it. That's why I support this bill, Madam Chair, and I'm hoping that all other members in the House will do the same.

I'd like to read into the record several quotes from stakeholders that have been consulted and were a part of the creation of this piece of legislation. I'll start out by reading from Ms Wanda Morris, who is the vice-president of advocacy at the Canadian Association of Retired Persons. She says:

> I've heard too many heart-wrenching stories of individuals who lost their life savings because they trusted the wrong person: an

> unscrupulous financial advisor. Today's changes will help hold wrongdoers to account. We welcome today's announcement as a critical step in bringing rule-breakers to justice and deterring wrongdoing, thus better protecting investors in this province. We look forward to additional, practical steps like this from the Government of Alberta.

Another quote, from Andrew Kriegler, who is president and CEO of the Investment Industry Regulatory Organization of Canada. He says:

> We congratulate the Minister of Finance and the Government of Alberta for their leadership in being at the forefront of investor protection in Canada. With these legislative changes, Alberta becomes the first province in Canada to provide IIROC with a complete toolkit, enabling us to more effectively fulfil our responsibilities as a public interest regulator and bring wrongdoers to justice.

The next quote I'll read is from Stan Magidson, who is chair and CEO of the Alberta Securities Commission. Stan says:

> Strong investor protection is a critical component of our mandate, and we support meaningful and practical regulatory advances such as this that can have a real impact on protecting Albertans from financial misconduct.

Now, Madam Chair, I'd like to read in a little bit of background to why I support this bill but also why this bill was necessary in the first place. Alberta has made a commitment to ongoing reform and modernization and harmonization of securities laws in Canada, and since that commitment Alberta has had a practice of reviewing and updating its securities laws annually along with other provinces and territories. That was a result of a 2004 memorandum of understanding.

10:10

The securities regulatory landscape in Canada has become more complex, sophisticated, international in scope, and driven by technology than ever before. Since the 2007 financial crisis it has been more difficult to sustain quality capital markets. Alberta's challenge is to deliver the right regulation to support investor confidence and to encourage investment, innovation, and economic growth in Alberta and across Canada. Alberta must ensure that our securities regulatory system reflects the realities of today's markets and stays in step with evolving international standards and global regulatory reform initiatives.

Madam Chair, I've had a number of questions from constituents and stakeholders regarding this legislation, and I'd like to read some of those questions and their respective answers into the record as well. You know, of course, the most obvious question is: why is the government amending the Securities Act? Well, I've touched on this a little bit before, but I think it deserves a fulsome answer. Our government is committed to maintaining a well-regulated, efficient capital market in Alberta that protects investors and encourages innovation. We are enhancing investor protection by providing stronger enforcement authorities for regulatory organizations. These changes are also planned by other jurisdictions across Canada, and these changes mean that Alberta is first out of the gate and continues to be a leader when it comes to securities regulation.

Another question is: how will these changes promote a fair and effective Alberta capital market and protect investors? Well, the answer is that these amendments will help to ensure Alberta has a fair and effective capital market by extending powers to recognized regulatory organizations so that they can compel testimony and the production of evidence during a disciplinary hearing.

The changes will extend immunity from civil liability to the directors, officers, employees, and agents of regulatory organizations when conducting enforcement activity. Another question is: why are you providing immunity to these regulatory organizations? The answer is that the people responsible for enforcing securities rules must be able to do their jobs without fear of being held personally liable. Protecting them from liability when carrying out their duties in good faith makes it possible to enforce the rules more effectively.

Another question is: how do these legislative changes compare to other jurisdictions'? I mentioned before that Alberta is leading the way, and that's good to know, that our province is at the forefront of these changes. Immunity and the statutory powers to compel attendance and the production of evidence for securities law investigations were some things that were recommended by the Investment Industry Regulatory Organization of Canada. This came from broad public consultations with industry and investors. These changes are also planned by other jurisdictions across Canada. For example, Quebec is considering similar investigative authorities for regulatory organizations, and B.C., Ontario, Saskatchewan, New Brunswick, P.E.I., and the Yukon have also committed to adopting immunity provisions.

Another question that I received. You know, sometimes when you mention the word "securities" to people, it doesn't necessarily resonate with them. It's a bit of a technical term. Sometimes the average Albertan might not understand what it is exactly that we're talking about here, so I think that also deserves to be elaborated upon. So the question is: what is securities regulation? It's the regulation of the conduct of securities market participants, including issuers that raise capital through security offerings, and their directors and officers and securities firms, their directors and officers and their employees registered to advise and trade in securities.

Canada does not have federal securities regulation, but regulation instead falls under provincial jurisdiction. The provinces are working together through the Canadian Securities Administrators to co-ordinate securities regulation throughout Canada.

Securities regulation in Alberta is the responsibility of the Alberta Securities Commission. So that leads to the question: what is the Alberta Securities Commission? Now, the commission is an industry-funded provincial corporation that is responsible for ensuring that a fair and efficient capital market exists in Alberta. The commission develops and enforces securities regulations, offers information and resources to Albertans about investing, and administers Alberta's Securities Act and regulations.

What exactly is a regulatory organization? Organizations such as the Investment Industry Regulatory Organization of Canada and the Mutual Fund Dealers Association of Canada have authority that's delegated by the Alberta Securities Act to make sure their members' firms meet standards set by the province's securities laws. These regulatory organizations are an important part of the enforcement mosaic in Canada.

The three key regulatory organizations, as overseen by members of the Canadian Securities Administrators, are the Investment Industry Regulatory Organization of Canada, the Mutual Fund Dealers Association of Canada, and La Chambre de la Sécurité Financière. These three organizations concluded 139 enforcement cases in the year 2015 compared with 112 in 2014. In 2015 Canadian Securities Administrators members concluded matters involving 233 individuals and 117 companies, or 350 total respondents. Certain securities violations proceed to prosecution either through an administrative tribunal or Provincial Court, depending on the type of violation and the jurisdiction where it occurred.

Canadian Securities Administrators is an umbrella organization of Canada's provincial and territorial securities regulators, whose objective is to improve, co-ordinate, and harmonize regulation of the Canadian capital markets.

The Investment Industry Regulatory Organization of Canada is the national regulatory organization which oversees all investment dealers and trading activity on debt and equity marketplaces in Canada. They were created in 2008 through the consolidation of the Investment Dealers Association of Canada and Market Regulation Services Inc., and they set high-quality regulatory and investment industry standards, protect investors, and strengthen market integrity while maintaining efficient and competitive capital markets.

The Mutual Fund Dealers Association is the national regulatory organization for the distribution side of the Canadian mutual fund industry. The association regulates the operations, standard of practice, and business conduct of its members and their representatives.

A final question that people may be asking is: why does the government delegate authority to these regulatory organizations? The answer is that provincial regulators have delegated certain aspects of their authority to regulatory organizations to provide more effective and efficient regulation of the market to market participants.

Madam Chair, considering all of the information that I've just detailed and the intention of the bill to protect investors and given that seniors are specifically one of the groups that are targeted to be protected through this legislation, you know, it makes me a bit worried when the Wildrose proposes to undo the things that the NDP government has done. We'll be putting seniors at risk if they have their way, and that's dangerous. I think that the Wildrose ought to make it a little bit more clear what their plan is. All they do is propose to undo things. They don't propose to bring things forward.

Mr. Hanson: Carbon tax.

Mr. Westhead: An example that the Member for Lac La Biche-St. Paul-Two Hills just mentioned is the carbon tax. You know, of course, that's something that they have made very clear.

Mr. Hanson: Bill 6.

Mr. Westhead: And Bill 6, protection for paid farm workers: here they want to put workers at risk . . .

Ms Hoffman: Pipelines.

Mr. Westhead: . . . and pipelines at risk. They would prefer for Ottawa to impose their carbon plan on us. You know, Madam Chair, it's pretty worrisome that you have to ask the question: whose interests are they really looking after? It seems as though it's a quest for power, and that's all it is. It's not a quest to have people's backs and make life better for people; it's to make life worse. They want to undo protections for people who work in one of the most dangerous occupations. That's shameful.

Madam Chair, especially when it comes to securities acts, when we're talking about vulnerable populations who put their trust in people to look after their best interests . . .

10:20

Mr. Hanson: We're supporting this.

Mr. Westhead: You know, the Member for Lac La Biche-St. Paul-Two Hills claims that they're supporting this, but at the same time one of his own caucus members has committed to undoing everything and erasing from history and revising history in what we've done here. I mean, they can't have it both ways. They've got to really pick and choose. And how do they pick and choose, Madam Chair? Is it just with their ideology and no evidence-based practice here?

Mrs. Aheer: Yes. That's right. Exactly.

Mr. Westhead: The Member for Chestermere-Rocky View says, "That's right." They just do think blindly with ideology. You know, that's scary, Madam Chair. I think that the opposition ought to get up and explain to Albertans what exactly their plan is because we haven't heard anything from them on their plans other than that the Member for Cardston-Taber-Warner attended an anti women's reproductive rights rally. That's one of their most clear policy directions that we've heard from them, and that's pretty scary.

The Deputy Chair: Before I call the next speaker, I just want to remind everybody in the House that we are speaking to the clauses of the bill, please.

Would there be any other members that would like to speak to the clauses of the bill? The hon. Member for Calgary-Currie.

Mr. Malkinson: Thank you very much, Madam Chair. As much as I enjoy pointing out all of the flaws in the opposition's ideology, I will of course stick to the clauses of the bill.

You know, it's good to rise this morning and speak on this bill. I've actually spoken on this bill previously. To review some of my comments from earlier, the Minister of Finance and President of Treasury Board has made clear that this government has laid out three key principles when it comes to approaching Alberta's capital market. The minister said that the government is focused on, number one, investor protection; number two, ensuring market integrity; and number three, ensuring that we have an efficient system for capital formation. From what I've heard thus far in this House, there seems to be some general agreement that these are indeed laudable goals and are useful guideposts when we consider changes to the Securities Act.

As a result, as we consider this bill, you know, I feel like we must consider the following questions. If they sound familiar, they should be. I've talked about this at length previously. Does this legislation serve to enhance consumer protection? Does this legislation serve to further improve market integrity? And will these changes continue to ensure that we have an efficient system for capital formation? Well, Madam Chair, I believe the answer to all three of these questions is yes, and I note nods of agreement from the opposition, so that's great.

Now, one, specifically in the bill's section 69.1, I believe really meets that second test, that being: does this legislation serve to further improve market integrity? If we look at page 2 of the bill that we have in front of us, section 69.1 talks about the powers regarding investigations. It says:

> Where a recognized exchange, a recognized self-regulatory organization or a recognized quotation and trade reporting system is empowered under the bylaws or rules of the exchange, self-regulatory organization or quotation and trade reporting system, as the case may be, to conduct investigations, the following applies for the purposes of such an investigation:
>
> (a) a person appointed to conduct an investigation has the same power as is vested in the Court of Queen's Bench for the trial of civil actions
>
> (i) to summon and enforce the attendance of witnesses,
>
> (ii) to compel witnesses to give evidence on oath or otherwise, and
>
> (iii) to compel witnesses to produce documents, records, securities, derivatives, contracts and things.

I'd be very interested to note – I'm assuming the "and things" part is for all-inclusive documents that might not otherwise be covered under this particular act, but if we want to debate what those things are, I would love to do so.

In section 69.1(b) it goes on to say that

> (b) the failure or refusal of a person summoned as a witness under clause (a) to attend at the required location and time, to answer questions or to produce documents, records, securities, derivatives, contracts and things that are in that person's custody or possession makes that person, on application to the Court of Queen's Bench by the person appointed to conduct the investigation, liable to be committed for contempt by the Court of Queen's Bench in the same manner as if that person were in breach of an order or judgment of that Court.

I think that's a very interesting clause, Madam Chair.

Section 69.1(c) goes on to say that

> (c) a person appointed to conduct an investigation may take evidence under oath.

Part (d) goes on to say:

> (d) a person appointed to conduct an investigation or a person authorized by a person conducting an investigation may administer oaths for the purpose of taking evidence.

Now, section (e) goes on to say:

> (e) notwithstanding the Alberta Evidence Act,

another very interesting piece of legislation if you have some time to read it,

> a bank or any officer or employee of the bank is not exempt from the operation of this section.

Now, if you're following along at home, continuing on to page 3, section 69.1(f) says:

> (f) a person giving evidence at an investigation may be represented by legal counsel.

Of course, in our justice system being able to have legal counsel or a lawyer at your disposal is a very reasonable and prudent thing to do. I would imagine if you were under investigation by this act, that would probably be a wise choice.

That is section 69.1. Now, I really do believe that it meets that question of: does this legislation further serve to improve market integrity? I think it does. It talks about adding investigation powers just as if they are members of the Queen's Bench and have the full power of our courts to compel the attendance of witnesses and to compel witnesses to give evidence under oath and so on.

One thing that is interesting, though – I mean, this section is fine and good, but if you combine it with the amendments we're making to section 222(1), it lays out additional and I think very necessary protections for those who are going to be investigating wrongdoing that would be covered under this act.

Now, it's actually quite extensive, you know. Section 222(1) is actually repealed and is substituted with a great deal of extra detail, and what it talks about is immunities, in fact, though I know the opposition would like to be immune from fact. But this specifically talks to immunities for those doing the investigations. I think this is a very necessary part of the bill, especially when it goes in combination with the new investigative powers.

Section 222(1) starts off by saying that

> No action or other proceeding for damages may be instituted against the Commission, a member of the Commission, the Executive Director, the Secretary, a person employed by the Commission or a person appointed under this Act or [through] regulations to perform a function or duty of or for the Commission, the Executive Director or the Secretary
>
> (a) for any act done in good faith
>
> (i) in the performance or intended performance of any function or duty, or
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> (ii) in the exercise or intended exercise of any power,
>
> or
>
> (b) for any neglect, omission or default in the performance or exercise in good faith of any function, duty or power.

10:30

Now, as interesting as that is, subsection (2) goes on to say:

> (2) No action or other proceeding for damages may be instituted against a recognized auditor oversight organization or its directors, governors, members, officers, employees or agents for
>
> (a) any act done in good faith
>
> (i) in the performance or intended performance of any function or duty, or
>
> (ii) in the exercise or intended exercise of any power,
>
> or
>
> (b) any neglect, omission or default in the performance or exercise in good faith of any function, duty or power,

Now, those last sections that I just read, subsection 2(a) and its appropriate subclauses, go to further say:

> in respect of a function, duty or power that has been assigned to the recognized auditor oversight organization pursuant to its recognition under section 64.1.

From there it goes on to subsection (3) of section 222.

> (3) No action or other proceeding for damages may be instituted against a recognized self-regulatory organization or its directors, officers . . . or agents for
>
> (a) any act done in good faith.

Now, it further goes on to say:

> (i) in the performance or intended performance of any function or duty, or
>
> (ii) in the exercise or intended exercise of any power.

Then in subsection (b) it goes on to further clarify:

> (b) any neglect, omission or default in the performance or exercise in good faith of any function, duty or power,
>
> in respect of a function, duty or power that has been authorized under section 64 or 66.

Now, section 222 goes on to further state – and this is also quite interesting as well – that

> (4) No person or company has any rights or remedies and no proceedings lie or may be brought against any person or company for any act or omission of the last mentioned person or company done or omitted in compliance with Alberta securities laws.

Section 222(5) goes on to a further clarification. It reads:

> (5) Subsection (1) does not, by reason of section 5(2) and (3) . . .

I will note that subsection (3) was the one that I actually just read previously, which was talking about that no actions or proceeding for damages may be instituted against a self-regulatory organization or its directors, against its agents.

I think we've sort of gone on at length about this, Madam Chair. I'm of course going to be very happy to talk more about this, I'm sure, as we go through Committee of the Whole. For the moment I will leave my comments there, and I'm sure I'll be up again speaking to this.

Thank you, Madam Chair.

The Deputy Chair: Thank you, hon. member, for speaking to the clauses.

Any other members wishing to speak? The hon. Member for Edmonton-Ellerslie.

Loyola: Thank you, Madam Chair. As always, it's a pleasure to get up and speak in the House. I rise today to say a few words about the

Securities Amendment Act, 2017, in particular and a few words more generally about our capital markets.

As members of this Chamber come together to consider this bill, I think it's important that we reflect on the big picture and how we can ensure that our capital markets work well. As all observers of capital markets know well, the decision-making in financial markets is driven by one very important factor, and that's good information, and by trust. When investors have access to good-quality information, when risk is credibly priced, and when trust is high, our capital markets work well. However, we also know what happens when investors have access to poor information and when the trust is low: the health of our capital markets deteriorates rather quickly.

All members of this House can remember the great scandals of the recent past that eroded trust in capital markets around the world. Take, for example, the actions of Bernie Madoff, whose failed Ponzi scheme cost investors an estimated $65 billion, or Jérôme Kerviel of the Société Générale, whose secretive futures trades cost the bank nearly $8 billion, or, for that matter, Nick Leeson of Barings Bank, whose risky bets in Singapore on the International Monetary Exchange resulted in the stark collapse of one of Britain's most iconic and historic investment banks.

Madam Chair, I raise these examples as they serve as a cautionary reminder of what can happen in our capital markets when bad apples are allowed to take action, and that's exactly what the Securities Amendment Act, 2017, is to address. As all members of this Chamber know, the direct loss to investors in these scandals was significant. Many people were impacted. Many people's retirement savings were impacted. I'll remind members of the House of when I spoke to the Securities Amendment Act, 2017, during second reading, when I talked about Maria and her savings and how these people depend on that as they move into retirement. We don't want people to have to go through that experience.

Of course, there was a broader cost, a wider cost, and that was borne by all participants in the capital markets. Because of the actions of a few bad apples, trust was eroded: trust in the investment industry, trust in our institutions, and trust in the broader market. When trust in our capital markets erodes, it has an effect on everyone. Liquidity dries up, investment declines, and, as we saw with the financial crisis of 2008, declining levels of confidence and trust coupled with poor information can lead to a world-wide recession.

Madam Chair, as you and all members of this Chamber know well, Alberta has the second-largest capital market in the country. Our capital market is unique and is largely driven by the enormous capital needs of our resource sector. As we consider this bill, I think it's important that we keep in mind how critical our capital markets are to the future economic health of our province.

What should be the principles that guide our decision-making when it comes to keeping the Securities Act and our regulatory framework up to date? In his remarks the other day during second reading the Minister of Finance and President of Treasury Board laid out those principles. As a reminder to members of the Assembly those principles were: strong investor protection, continued market integrity, and developing an efficient system of capital formation. In my view, these are the right principles to guide our decision-making with respect to this bill because it gets to the core of the issue of trust in our capital markets, and anything we can do to increase trust in our capital markets is good for capital formation, good for Alberta businesses, good for investors, and good for the long-term health of Alberta's economy.

On that note, Madam Chair, it is through this lens and with these thoughts in mind that I'd like to discuss the amendments before us today with the Securities Amendment Act, 2017. As we've all heard, the amendments before us are largely focused on increasing investor protection. As members know well, the Alberta Securities Commission currently has the statutory powers and authority to compel attendance and the production of evidence during investigations and during the adjudicative phases of their enforcement work. Of course, these powers and authorities are entirely appropriate for the Alberta Securities Commission. In fact, absent these powers and authorities, it is not clear that our capital markets could function properly as market integrity would be put at risk.

10:40

In the amendments before us the government is seeking like powers for self-regulatory organizations that have devolved powers under the Alberta Securities Commission. As members know well, self-regulatory organizations like the Investment Industry Regulatory Organization of Canada, also known as IIROC, and the Mutual Fund Dealers Association play an important role in ensuring market integrity and in protecting investors. By providing like powers and authorities to organizations like IIROC and the Mutual Fund Dealers Association, we are increasing trust in the marketplace and increasing investor protection. Perhaps more importantly, we are creating an institutional disincentive for bad apples to operate in our marketplace in the first place. Madam Chair, keeping bad apples out of our capital markets is good for investors. It's good for Alberta businesses and good for our overall economy.

I should add, Madam Chair, that extending immunity to directors, officers, employees, and agents is an important step in investor protection. By ensuring that we are only providing immunity for good-faith acts in the exercising of regulatory or deregulated duties, functions, or powers, we are enabling these self-regulatory organizations to conduct their enforcement much more effectively. All these things considered, the amendment before the House takes another important step forward in ensuring trust in the marketplace and therefore enhancing overall market integrity. The rest of the amendments in the bill before us are housekeeping in nature, but they are important nonetheless.

I would like to commend the Finance minister for taking the time to regularly review this act and make sure it is crystal clear whenever possible. Ensuring regulatory and, for that matter, legislative clarity is critical for all market participants. When the rules governing capital formation are clear, when we have smart regulations like we do here in Alberta, we provide the institutional framework that allows our capital markets to flourish. As I said before, having well-functioning capital markets in Alberta is critical for our economy, particularly because our resource sector is so dependent on raising huge sums of capital.

Madam Chair, as I wrap up these brief remarks, I want to emphasize how important this legislation is for Alberta, and I want to encourage all members of this House to support this bill. I think all members appreciate how important it is to develop trust in our capital markets and how important investor protection is to that end.

As all members of this House know, Alberta has a long and proud tradition of innovation in our capital markets. We're often looked at as leaders in the country and rightfully so. Today, with this legislation, Alberta is once again leading in Canada. We'll be the first jurisdiction in Canada to extend these powers to self-regulatory organizations like IIROC and the MFDA. As I read in the paper and as I hear on the street, these types of actions are being demanded by regular Canadians, trade associations, civil society, and, most importantly, investors and firms trying to raise capital. Quite frankly, everyone is onboard precisely because the amendments

before this House are reasonable and, at the end of the day, will make our capital markets stronger while protecting investors.

On that note, Madam Chair, I encourage all members of the Assembly to support this bill. Thank you very much.

The Deputy Chair: Thank you, hon. member.

Are there any other members wishing to speak to the bill? The hon. Member for Edmonton-Whitemud.

Dr. Turner: Thank you, Madam Chair. I rise to speak to Bill 13, which is the Securities Amendment Act, 2017, and I wish to commend my associates on both sides of the House that have spoken already on this. This is a good bill, and I think it fulfills our government's mandate to provide a suite of consumer protection legislation that tells Albertans that their government – and that's this whole government – really has their backs.

I'm very proud of what our government has done so far on consumer protection. Actually, it's not just me; there have been several commentators recently that have said that we're on the right track. We're looking after middle-class problems and making sure that vulnerable folks are protected from predatory financial actions. The payday loan legislation that was passed a year ago I think has been very successful. It has prompted basically the reversal of usurious interest rates that were being charged and has prompted a whole new class of lending institution that is going to provide short-term loans at more reasonable rates. I actually want to thank ATB as well as various credit unions in the province for stepping up on this. This will have a big impact on the welfare of lower income Albertans.

Another act that I'm very proud of is the one that banned door-to-door sales, at least has tightened up the contractual relationships that people enter into. I think that there are some analogies with this particular act, Bill 13, and the banning of door-to-door sales for certain products. Along those lines, the bill that we just passed licensing contractors and making sure that people that are building new homes can trust the contractor to have the appropriate background and education and facilities and as well provide some redress for the buyer of the new homes is very good and actually, again, has analogies to this bill.

The fourth thing that I would mention – it hasn't been mentioned recently, but the seniors' home adaptation and repair program is another example where, through an act that involves both grants and a type of reverse mortgage, seniors are able to get credible renovations done on their facilities. These renovations will help them stay in their home for longer periods of time.

Now, none of this, Madam Chair, is actually in a clause of this bill, but I think it's important as context to why we need to have clauses such as the powers re investigation, which is clause 69.1. I think that this is actually the real meat of this bill. It's what gives investors as well as the investment community and our businesses such as oil and gas and other entities that require strong investment support the trust in our system here in Alberta that will make for improved economic activity as well as the welfare of all Albertans. Clause 69.1 says:

> Where a recognized exchange, a recognized self-regulatory organization or a recognized quotation and trade reporting system is empowered under the bylaws or rules of the exchange, self-regulatory organization or quotation and trade reporting system, as the case may be, to conduct investigations, the following applies for the purposes of such an investigation:
>
> (a) a person appointed to conduct an investigation has the same power as is vested in the Court of Queen's Bench for the trial of civil actions.

That's really powerful language: a justice of the Court of Queen's Bench can summon and enforce the attendance of witnesses. Somebody can't say that they're away on other business or on vacation or need a sick day off. They actually can be compelled to attend, and they can be compelled to give evidence on oath, which means that if they provide testimony that is later found to be in error, there are consequences for that. Those consequences can be dire. So this ability to compel the witnesses to give evidence as well as to attend is very important.

10:50

Witnesses are also compelled "to produce documents, records, securities, derivatives, contracts and things." I know there has been some discussion about what the definition of "things" is in the context of another piece of legislation, but this means that the witness really needs to bring all the information pertinent to the case.

Under clause 69.1

> (b) The failure or refusal of a person summoned as a witness under clause (a) to attend at the required location and time, to answer questions or to produce documents, records, securities, derivatives, contracts and things that are in that person's custody or possession makes that person, on application to the Court of Queen's Bench by the person appointed to conduct the investigation, liable to be committed for contempt by the Court of Queen's Bench in the same manner as if that person were in breach of an order or judgment of that Court.

Again, very, very powerful language.

> (c) A person appointed to conduct an investigation may take evidence under oath.

I think I mentioned that before.

> (d) A person appointed to conduct an investigation or a person authorized by a person conducting an investigation may administer oaths for the purpose of taking evidence.

So we don't have to actually go to court and bring these people before a Court of Queen's Bench. This can be done under oath in a lawyer's office or other suitable environment.

> (e) Notwithstanding the Alberta Evidence Act, a bank or any officer or employee of the bank is not exempt from the operation of this section.

Again, it's very often that the persons providing investment advice and handling investments actually are employees of a bank, so this part of the legislation is, again, crucial.

In another section there is immunity to civil suit for these investigators. Again, this is very strong language that is going to help make sure that the investigators in these situations get all of the information that's pertinent to the situation.

I've lived in Alberta for 40 years, and I've basically started a career and had a successful career in medicine, started a family, bought a home, got my children educated with the help of RESPs, been a strong supporter of the RRSP systems in this province as well as the tax-free savings account, that is actually a federal responsibility, and I'm also trying to plan for my retirement, which may come sooner than later, I guess, if the opposition has its way. But in all of these segments of my life, in all of these segments of my financial life I've actually had to trust that the financial system is operating correctly. As I said in the second reading of this bill, that trust is very, very important, not only for me as an investor but also for the financial institutions that are providing the investments and by extension, as I mentioned earlier in this speech, the various industries and services that require investment support to flourish and to improve our economy.

Back in the day not so long after, 40 years ago, this province was devastated by the failure of something called the Principal Group. I

don't know if any of those in the Chamber today remember the Principal Group. This was devastating. This was basically kind of a hybrid mutual fund, savings bank operation. They actually charged a 9 per cent upfront sales fee on their products and then purported to give a higher rate of return than comparable mutual funds. But it turned out that it was a form of Ponzi scheme that was going on, and it failed. It caused economic devastation in this province when it failed, not only to the employees of Principal Group, of which there were many that were devastated by the loss of their job, but also to a wide range of investors who had put their life savings into that. There were other groups.

One of the things that I'm pleased with that the previous government did was set up or at least made amendments to the Securities Act, which I think has prevented something like the Principal Group from ever occurring again in this province. But we need to keep being vigilant, and I think that's what this act is doing, to make sure that newer products – we don't even talk about mutual funds much anymore – that are available, derivatives and high-speed trading and all these other things, are being controlled.

Just to come to the current, just to today, there's an issue on the Toronto Stock Exchange with Home Capital. This is a company that provides high-risk mortgages, and they've had to be bailed out by a variety of pension funds and other corporations. The problem that I have with this is that Home Capital has the investment of a large number of Canadians in the mortgages as well as in the stock of this company, and those folks are at risk. It just points out the need to be vigilant, to keep on track of that. It was the failure of those high-risk mortgages in 2007 and 2008 which led to the collapse of Lehman Brothers in the United States and the financial crisis of 10 years ago. I certainly don't want to see a repetition of that either in Toronto or in Alberta.

For all of these reasons and largely, basically for investor protection and to protect the integrity of our capital markets, I think that this bill deserves our fulsome support. Thank you for the opportunity to speak to it.

The Deputy Chair: Thank you, hon. member.

Are there any other members wishing to speak to Bill 13? The hon. Member for Calgary-Shaw.

Mr. Sucha: Thank you, Madam Chair. I was trying to find a quote by the president and CEO of IIROC, Andrew Kriegler. So I googled "Bill 13 Alberta," and the first subject I saw was A Little Bit of it is Jealousy: Alberta Town Proud of Nickelback Despite Haters. I doubt that those two apply. With that being said, I did find my quote in relation to this.

I'm going to speak in relation to three pieces that Bill 13 underlines, which are that it provides regulatory organizations the same enforcement authority as the Alberta Securities Commission, gives regulatory organizations the ability to compel attendance and production of evidence so they are better able to do their jobs and protect Alberta investors, and protects people who investigate these cases from liability for carrying out their duties in good faith. As the CEO of IIROC did associate, these are three pieces that we need, the three legs of the stool. With the introduction of this legislation, when it passes, then we will have them, and we will be excited to have them. It really provides that leverage and allows justice for individuals who've been defrauded.

11:00

When I spoke a couple of days ago, I spoke about Bill 12, the New Home Buyer Protection Amendment Act, 2017, and I talked about how having regulatory bodies that enforce regulations can be a good thing. I alluded to whenever we entrust someone with our well-being, whether it is our financial well-being, our physical or emotional or psychological well-being, we put a lot of trust in them. I alluded to the fact that there are regulatory bodies that oversee the guy outside the Federal building who sells hot dogs, that he's monitored by Alberta Health Services. It's important that we ensure that we give the proper powers for these individuals to investigate. If I got sick because of the hot dog I enjoyed yesterday, it's important that Alberta Health Services has the ability to investigate in good faith and doesn't have the liability that they could fall under by doing that investigation.

It's important that as we move forward, the Alberta Securities Commission has those powers as well because we put a lot of trust into securities, and there are many heartbreaking stories of when individuals are defrauded when their life savings have been entrusted with someone. To be frank, it becomes too emotionally overwhelming for those individuals, and those individuals take their own lives. It's heartbreaking, and it's tragic. If they were protected, then they probably would still be around today. At the end of the day, it's important for those individuals who have been defrauded that, first, we find ways for them to recoup their capital, if possible, and that we provide them with closure from the situation as well.

I reflect to when I had my first child at the age of 21. There was a commitment that me and my then partner made, which was that we were going to invest in their education. We were going to put away $100 every single month to make sure that they had a great education. While it seemed like a little bit at the time, we knew that it would continue to add up for our children. You know, we were living from paycheque to paycheque, but this was an important investment for us, so we continued to make it and continue to make it.

Fortunately, we have a financial adviser we trust, who is a family friend, and we know very well that he's not going to do anything to us. But if we reached out to an investor that we did trust but they defrauded us, I can only envision how heartbreaking it would be for us to lose this nest egg that we are saving up for them, especially at a time when, you know, maybe we didn't go on the nice trip or maybe we bought the chairs from Value Village. These were hard decisions that were made on the merits that we wanted to make sure that we had a better life for our kids. I can only empathize with those who have been defrauded and feel sympathy for the pain that those individuals have had to go through.

It's important that we give these investigative bodies the tools that they need. The Alberta Securities Commission is mandated to protect investors and really foster a fair and efficient capital market here in Alberta. It's not about interfering. It's not about sticking our nose where it doesn't belong.

You know, I often hear the analogy of bureaucratic red tape. Well, you know what? When you don't give investigative bodies the powers that they need to investigate properly and when they have to continuously seek other avenues to get all the information they require and they can't compel people to provide that information in meaningful time, that just creates more red tape for those individuals. I'm happy that this government is moving forward to really cut the red tape when it comes to investigating securities.

At the end of the day, I think a lot has been said by many of the members here in the House. With that being said, I'm happy to support Bill 12 – sorry; Bill 13. I'm also supporting Bill 12, but I support Bill 13 because I think it's going to create some very positive protection for many Albertans, especially those who are first entering the capital market and may not entirely know all the laws and regulations that exist or may be really, really busy and it's hard for them to really do a lot of their homework in relation to that.

I will take my seat.

The Deputy Chair: Thank you, hon. member.

Are there any other members wishing to speak to the bill? The hon. Member for Banff-Cochrane.

Mr. Westhead: Thank you, Madam Chair. I think we've made a lot of good progress and had some good discussion on the bill this morning in Committee of the Whole. I would move that the next time the committee rises and reports, it report Bill 13.

The Deputy Chair: Hon. member, just to clarify: rise and report? So you would like to call the question on the bill as of now?

Okay. Anybody else looking to speak at this point on Bill 13?

Seeing none, I will call the question.

[The clauses of Bill 13 agreed to]

[Title and preamble agreed to]

The Deputy Chair: Shall the bill be reported? Are you agreed?

Hon. Members: Agreed.

The Deputy Chair: Opposed? Carried.

Bill 11
Public Interest Disclosure (Whistleblower Protection) Amendment Act, 2017

The Deputy Chair: Are there any comments, questions, or amendments to be offered on this bill? The hon. Member for Battle River-Wainwright.

Mr. Taylor: Yes. Thank you, Madam Chair. I rise today to speak to Bill 11, the Public Interest Disclosure (Whistleblower Protection) Amendment Act, 2017, better known as the whistle-blower act. In a perfect world whistle-blower legislation would never have to be used, but as we heard during the deliberations of the Select Special Ethics and Accountability Committee and as we heard during the debate on Bill 11, there are those who abuse the system, leading to gross mismanagement of government resources. These people need to be held to account, and whistle-blowers are in the best position to bring these cases forward.

It's not an easy decision for a whistle-blower to come forward and file a complaint. They take on a significant amount of risk. They risk their career advancement and soured relationships with other employees. You know, frankly, it's terrible to think that someone who is trying to make Alberta a better place may actually have to suffer for it. The risk is necessary and important to make sure that taxpayer resources aren't being wasted or the public being put in harm's way. As legislators it's our responsibility to ensure that we are equipping these brave men and women with as many tools as possible to allow for reprisal-free disclosure.

I think that Bill 11 has incorporated a significant change to the act which makes it safer for employees to blow the whistle when they see wrongdoing. When we take a step back and look at Bill 11, we can see that the government actually listened to the recommendations made by the all-party Ethics and Accountability Committee. This is how committees are supposed to work. I know that my colleagues spent a significant amount of time last summer hammering out the details of PIDA, and the results are something that all parties in the Assembly should be proud of.

It's worth noting that the well-functioning committee did take an unfortunate turn for the worse in the late stages of summer and into the fall mainly because the government was more concerned about stacking the deck on electoral finance rules than actually completing the committee's mandate. The committee was also tasked with reviewing the Conflicts of Interest Act, an act that still has some significant problems. These problems are preventing members of the Assembly from one side to the other from speaking on legislation which has a big impact on our constituents, the people who have hired us to be here. It's unfortunate that the committee couldn't continue to function well and produce legislation that could benefit all Albertans and not just the NDP.

11:10

Like I said before, the opportunity was missed, the opportunity to work with the Conflicts of Interest Act. There was a bill before this House, which was Bill 12, that my constituents would have benefited from if only I were able to comment. The Ethics Commissioner is bound to work with the rules that exist. Those rules still have not changed, yet perhaps they should have changed. However, it seems that the NDP was more concerned with advancing their own interests above the interests of the great people of Alberta and Battle River-Wainwright.

Like I said before, I think that Bill 11 is a great example of what this Assembly can accomplish if we actually work together to help Albertans and not just the governing party, but I also believe that it could have been a better bill. I will be supporting Bill 11 and encourage other members of the Assembly to do so.

Thank you.

The Deputy Chair: Thank you, hon. member.

Are there any other members wishing to speak to the bill? The hon. Member for St. Albert.

Ms Renaud: Thank you, Madam Chair. Unlike my friends across the way, I'm actually going to focus on the bill and give you a little tour. I'm going to contrast a little bit so that there's really clear understanding about what was existing and what is proposed.

Just a little background. The Public Interest Disclosure (Whistleblower Protection) Act came into force in 2013. The act provides a process for employees in government or certain public-sector entities to report potential serious wrongdoings related to government and to receive protection from reprisal when they have done so. The Public Interest Commissioner along with the chief officer and designated officer in each government department or public-sector entity is charged with investigating wrongdoings and making recommendations.

This bill proposes to enhance protection for whistle-blowers and expands the scope of the act. I'm going to walk you through a few of the finer points and describe what is existing now and what the new bill or the amendment will provide. Currently the act applies to government departments, offices of the Legislature, and public entities such as Alberta Health Services and school boards. The amendment act references prescribed service providers, which are persons or entities that provide public services as a result of an arrangement or contract with government under an enactment. Specifics regarding which service providers and any exemptions will be dealt with in the regulations.

It's not clear whether the current act applies to ministers as heads of departments. The act does not apply to MLAs. Constituency staff are employed by the Legislative Assembly so are covered as employees. The current act does not apply to the Premier's or ministers' staff. With the amendments that we are proposing, the act will clearly lay that out. Subject to parliamentary privilege, MLAs, ministers, and the Premier can all be investigated when a disclosure is made to the Public Interest Commissioner. Likewise, political staff will be protected from reprisal should they choose to blow the whistle.

Currently Alberta's legislation already applies to physicians who are directly employed in public entities as well as other health practitioners and professional staff with admitting privileges in hospitals run by those public entities such as Alberta Health Services and Covenant Health as well as others. The new bill will have regulation-making authority that could be used in the future to expand the legislation to physicians who are in alternative relationship plans or receive other forms of payment from government.

The current act covers gross mismanagement of public funds or a public asset but not mismanagement of the public service or human resources. Gross mismanagement is not defined in the act, and the commissioner interprets when something constitutes gross mismanagement. The new bill will define gross mismanagement to include acts or omissions that are deliberate and that show reckless or wilful disregard for proper management of public funds, public assets, public service delivery, or the management or performance of a contract, arrangement, or enactment, or funds administered under a contract, arrangement, or enactment. In addition, gross mismanagement also includes egregious and/or systemic cases of bullying and harassment.

Around reporting requirements, currently whistle-blowers are required to report to the designated officer of their department or employer. In limited circumstances they can make a disclosure directly to the commissioner. Otherwise, they are not protected under the act. The new amendments will allow an employee to disclose to the designated officer or the commissioner at the employee's choice. This will apply to employees of departments, offices, and public entities. Employees of any contractors, prescribed service providers added in the regulations will report directly to the commissioner.

A whistle-blower may approach their boss about a wrongdoing, and their protection from reprisal would start at that very moment. The employee must still make the official disclosure to their designated officer or the commissioner before an investigation can begin. This avoids new obligations and procedures for supervisors.

Currently we require that the commissioner report an alleged offence to a law enforcement agency or to the Minister of Justice and Solicitor General. Designated officers are not obliged in the same way. The new bill will have a reporting obligation that applies consistently to the commissioner, chief officers, and designated officers.

Now, around freedom of information currently the commissioner is not subject to freedom of information and protection of privacy. However, if disclosures are made to designated officers, those disclosures may not be protected from a FOIP request and could result in the name of a whistle-blower being released. The new bill ensures that the name of the whistle-blower and other identifying information is exempt from those FOIP requests.

Around timeline to decide, currently the regulation provides that the commissioner has 10 business days to decide whether or not to investigate an alleged wrongdoing. The new bill will have the timeline extended to 20 business days. This balances the need to ensure that the decisions are made promptly and that cases do not fall through the cracks with the commissioner's need to make an informed decision.

Around powers to investigate, currently the act provides that the commissioner may require any person to produce or provide information. The changes would authorize the commissioner to go to an employer's work site to view records on-site, similar to the Auditor General's powers.

Currently there's an authorized designated officer or chief officer or the commissioner to collect personal information, including individually identifying health information and other information necessary to investigate disclosures. The changes would require a chief officer, designated officer, or the commissioner to use reasonable efforts to inform someone if they have received their individually identifying health information.

Currently when a designated officer or the chief officer is involved in an alleged wrongdoing, the Public Interest Commissioner will investigate. Normally the commissioner would provide a report and recommendations to the chief officer and designated officer, and the commissioner can request that they report back to the commissioner on actions being taken. However, if the chief officer and/or the designated officer is involved in the alleged wrongdoing, a report must be provided to other specified individuals, but the act is missing the requirement for those individuals to report to the commissioner on the steps taken. Changes would include an obligation on the specified individuals to report to the commissioner on the steps taken.

In terms of no remedies being allowed in the old legislation, currently while reprisals are prohibited, there are no remedies available if a reprisal occurs. Changes would see the Labour Relations Board empowered to decide on restitution to the whistle-blower, and the board's order would be enforceable as if it were a court order. The commissioner will investigate and decide whether or not a reprisal has occurred, and if a reprisal is found to have occurred, the commissioner refers the matter to the Labour Relations Board.

11:20

Around annual reporting, currently it requires the commissioner to annually report to the Legislative Assembly. The required contents are mainly statistics related to the number of inquiries, disclosures, and investigations. The changes would require more detailed annual reporting, including the types of proven wrongdoings and the disclosures received by the Public Interest Commissioner, a summary of findings in cases where wrongdoings or acts of reprisal are found to have been committed, the specific recommendations made to the public entities or offices of the Legislature and entities' responses to such recommendations, and also any offences committed or penalties given under the act. The annual report must also contain information about referrals to the Labour Relations Board and dispositions of those cases.

Currently the commissioner does not have the ability to delegate authority. The changes will give the commissioner the ability to delegate authority in the event of normal absence. This would be done at the discretion of the commissioner and would allow investigations to continue if the commissioner is away.

[Mr. Hinkley in the chair]

Currently the commissioner and staff are not exempt from giving evidence or appearing as witnesses in any other proceedings of a judicial nature. The changes would provide that the commissioner and their staff are not compellable in other judicial proceedings but still allow the Labour Relations Board to ask the commissioner for relevant information when determining restitution for the whistle-blower. It will also provide that the Labour Relations Board members and staff are not compellable.

Currently in terms of records management the legislation does not include any records management provision for the office of the commissioner. The changes allow the Standing Committee on Legislative Offices to make an order related to records management similar to the records management provision for other legislative offices.

With that, I am going to end my little tour of the changes in this very important bill. Thank you.

The Acting Chair: The hon. Member for Vermilion-Lloydminster.

Dr. Starke: Well, thank you, Mr. Chair. The discussion on Bill 11 today has been interesting, and I appreciate the comments made by both the Member for Battle River-Wainwright as well as the Member for St. Albert. I have an amendment to the bill if the pages can come pick up a copy. The original is on the top of the stack. I'll wait until everyone has had a chance to take a look at it.

I'll just make a few comments to preface the talk on the amendment, Mr. Chair. I would concur with other members who have spoken both in second reading and also during the committee stage of this bill that it has been an important update to a piece of legislation which was passed in a past Legislature, and I think it made some very important improvements. I think that among the improvements I'm particularly pleased to see is the option for people who are whistle-blowers – if they don't feel comfortable bringing knowledge of a wrongdoing to an immediate supervisor or a designated officer, they can also go to the Public Interest Commissioner and make that information known to them. We had a very compelling presentation on behalf of a whistle-blower who felt that that was something that was very important to include in the act, and it has been adjusted to do so.

Mr. Chair, I'd like to read for the record that I move that Bill 11, the Public Interest Disclosure (Whistleblower Protection) Amendment Act, 2017, be amended in section 27 by striking out the proposed section 26(5) and substituting the following:

> (5) The Speaker of the Legislative Assembly must lay the report referred to in subsection (4)(c) before the Legislative Assembly, if it is then sitting, or if it is not then sitting, within 15 days after the commencement of the next sitting, for review, referral to a committee of the Legislative Assembly or other action as the Legislative Assembly considers appropriate.

The Acting Chair: Thank you, hon. member. We will call that amendment A1. You may now proceed.

Dr. Starke: Thank you, Mr. Chair. Now, some may ask: well, what exactly is the purpose of the amendment? The purpose of the amendment – and there's certainly not anything earth-shattering or groundbreaking in this amendment – is to create a sense of urgency and timeliness for the report that is being provided. During debate in second reading I believe it was the Member for St. Albert that talked about how the whistle-blower legislation would create a situation where that legislation would make Alberta a leading jurisdiction in terms of supporting and promoting the activities of whistle-blowers in reporting wrongdoings.

[Ms Sweet in the chair]

I took a little bit of disagreement with that because I don't know that legislation alone can do that. In my view, what needs to happen is that there needs to be an overall culture whereby, first of all, wrongdoing is discouraged, obviously, but that, secondly, if wrongdoing occurs, anyone in a position to make a report, anyone who is a whistle-blower, you know, feels that they have the opportunity to do this.

One of the important improvements in this proposed act is the fact that reprisal is dealt with and some remedy for reprisal is dealt with, and that's specifically what this specific clause refers to. The reason I'm proposing this amendment is because I don't want a situation whereby there is no specific time limit on when a report can be dealt with and when a report can be recorded and tabled in the Legislature. This particular clause is actually quite common in lots of pieces of legislation, and it is common whenever we have a situation where we want to see something dealt with in a very timely and forthright manner. I can't think of many things that would fall into that category more than a report on a reprisal or a report on a remedy for a reprisal.

I think that's an extremely important part of creating that overall culture in our province whereby not only is wrongdoing discouraged but also that whistle-blowing, you know, in the public interest – people can come forward and report a wrongdoing, whether that report is done through a traditional channel, through the designated officer within the department of government, or whether that report goes directly to the Public Interest Commissioner.

I would ask my colleagues in the Legislature to seriously give consideration to this amendment. I think that it makes a small but not insignificant improvement to a bill that is important and one that we have, you know, basically stated has broad support across all parties within the Legislature, and I would ask for your support in supporting this amendment.

Thank you.

The Deputy Chair: Thank you, hon. member.

Are there any members wishing to speak to amendment A1? The hon. Member for St. Albert.

Ms Renaud: Thank you, Madam Chair. I'm just having a look at this amendment. I'd like to thank the Member for Vermilion-Lloydminster and actually agree. I think it's important that the Legislative Assembly be informed about what is happening as soon as possible. I'd just like to thank him for making this reasonable amendment.

Thank you.

The Deputy Chair: Thank you, hon. member.

Are there any other members wishing to speak to amendment A1?

Seeing none, I'll call the question.

[Motion on amendment A1 carried]

The Deputy Chair: We are now back on the original bill as amended. Are there any members wishing to speak to the bill as amended? The hon. Member for Edmonton-Ellerslie.

Loyola: Thank you very much, Madam Chair. I'm hoping to continue speaking to what I consider the riveting points I brought up during second reading in terms of the culture that we have here in the province of Alberta and how we can make it a little bit better when it comes to the PIDA specifically and this act – right? – the Public Interest Disclosure (Whistleblower Protection) Amendment Act, 2017.

Last time I was speaking about the fact that under the current legislation people feel reluctant to come forward and disclose information regarding potential wrongdoing within the ministry that they're working in. I was speaking about how important it is within the public sector that public servants feel that they can come out and speak directly to issues of wrongdoing or gross mismanagement and even bullying and harassment, which aren't considered under the current legislation, and how that directly impacts the level of democracy that we have here in the province of Alberta.

11:30

If people do not feel secure – I think that is the ideal word we need to make sure that we're addressing here – that they can come forward and not suffer reprisals for what they are disclosing, then that actually makes our democracy poorer, right? I think that we can all agree on that. This amendment act is really important in that sense because it's making sure to address exactly that.

Now I want to go a little bit more into specifics when it comes to the act being proposed before us and speak a little bit about gross mismanagement because under the previous piece of legislation it wasn't very clear what was meant by gross mismanagement, what was included in gross mismanagement. It wasn't broad enough to include mismanagement of public service or human resource issues, which the current act will now encase within it.

With the proposed amendments gross mismanagement will include an act or omission that is deliberate and that shows a reckless or wilful disregard for the proper management of public funds, public assets, public service delivery, or the management or performance of a contract, arrangement, enactment, or funds administered under a contract, arrangement, or enactment. In addition, gross mismanagement will also include egregious and/or systemic cases of bullying and harassment, as I alluded to before. Ultimately, the commissioner, as an independent officer of the Legislature, will interpret when something constitutes gross mismanagement.

I think that this is a step in the right direction, where we're being more clear about what the intent is or, specifically with this definition, of what gross mismanagement is. Not only our government, but I do want to recognize at this time that the all-party committee was very constructive in the support that it gave to the minister responsible for democratic renewal and Minister of Labour when it came to putting this piece of legislation together. I want to applaud the fact that gross mismanagement is now going to include systemic cases of bullying and harassment.

I want to say how important this is because I've heard specifically from public servants who have experienced what they would consider systemic bullying or harassment on behalf of others within departments, specifically when it comes to their day-to-day work within the government. I want to say how important it is that people should feel free from that kind of bullying and harassment in their day-to-day life. Can you think about the level of stress that it would cause an individual to have to consistently put up with that kind of behaviour when they go to work every day, to put up with that kind of bullying day in, day out? You know, I can only imagine how tough that would be. So I'm very glad and I'm very happy that that will now be included if this amendment act were to be approved.

On another note, this legislation would improve the reporting process and ensure that whistle-blowers are protected when they need it. Under the old legislation a potential whistle-blower had to report to a designated officer before a wrongdoing would be investigated, and they were not protected from reprisal until that time. Under the proposed legislation potential whistle-blowers could bypass their designated officer and report directly to the Public Interest Commissioner if they chose to do so. Furthermore, the new act would clarify that a whistle-blower may approach their boss about a wrongdoing and that their protection from reprisal would start from that very moment. That's another move in a positive direction, making sure that they would be protected from the moment that they disclosed.

In some cases employees may not know their designated officer, and as a result they may be more comfortable speaking with their supervisor before going to their designated officer. In other cases a potential whistle-blower may prefer to go directly to the commissioner, which I think is important. If I'm not mistaken, that was requested by the commissioner himself, opening up that possibility. Also if I'm not mistaken, in committee I think that received support from everybody, and I want to acknowledge that.

Another matter that was considered was: what happens if during an investigation the commissioner has reason to believe that an offence has been committed? Under the current act they must report it to law enforcement. When this happens, the commissioner's investigation is suspended pending the results of the law enforcement investigation. The new legislation would clarify that designated officers and chief officers are also required to report to law enforcement in the same way, which is something that the old legislation overlooked. This change was requested by the Auditor General.

It is also important that the identity of whistle-blowers be protected. To that end, it's already the case that the Freedom of Information and Protection of Privacy Act does not apply to records held by the Public Interest Commissioner. However, if a designated officer initiates an investigation rather than the commissioner, it is possible for a third party to submit a FOIP request asking for records connected to the investigation.

Our new legislation will ensure that the name of the whistle-blowers and other identifying information is exempt from these FOIP requests, of course, to the all-important objective of protecting the whistle-blower and making sure that they're free of reprisals. Madam Chair, let's not forget that at the end of the day that's the major objective that we're trying to achieve, to make sure that people feel confident when coming forward to disclose a wrongdoing or gross mismanagement that they will be protected.

Another aspect that the all-party committee considered was: how long should the commissioner have to decide whether or not to investigate a complaint? Under the current act the commissioner has 10 business days to conduct initial inquiries and decide whether or not a full investigation is warranted. The act establishes a timeline to ensure that these decisions are made promptly and that cases do not fall through the cracks. However, this should be balanced with the commissioner's need to make an informed decision. Therefore, we have accepted the committee's recommendation and will extend that deadline to 20 days. Since the current deadline of 10 days is in the regulation, the change will be made in the regulation.

A further aspect that the all-party committee considered was: how should identifying health information be treated in whistle-blower investigations? Custodians of health information are obligated by other legislation to limit disclosure of that information to the least amount necessary. When the all-party committee was reviewing the whistle-blower legislation, the Public Interest Commissioner noted that there had never been a situation – I repeat: there had never been a situation – where his office received identifying health information. However, the legislation already provides the authority for the commissioner to collect that information in the course of an investigation. With this in mind, the new legislation will require the Public Interest Commissioner to make reasonable efforts to notify someone if their office receives identifying health information.

Now, another aspect that the all-party committee considered was: what happens if a chief officer or designated officer is involved in an alleged wrongdoing? For example, after conducting an investigation, the commissioner would normally provide a report and recommendations to the chief officer and the designated officer for the department or agency that was the subject of the investigation, and these officers would then report back to the commissioner on actions being taken. I'm sure that all members can see how this would be problematic.

11:40

If a chief officer and/or designated officer is involved in the alleged wrongdoing, the amended act will identify alternates to fill in for them. Under the new legislation it would clarify that these alternates have obligations that are as consistent as possible with the normal obligations of the chief officer or designated officer. If the commissioner found that there had been a reprisal against a

whistle-blower, the Labour Relations Board would hear the matter and determine a remedy, as I will now describe.

I think that this is really important with the new piece of legislation coming forward, this whole issue of reprisals because, of course, I go back to my opening remarks about how important it is that public servants feel that they're being protected and that they are able to bring forward issues. At the end of the day, that makes our democracy all that more rich. It improves our democracy. I honestly believe that all members, regardless of what side of the House they sit on, can agree on that, on strengthening our democracy, and that's what this piece of proposed legislation is doing.

One of the most important goals of this piece of legislation is to protect whistle-blowers from any sort of punishment or retaliation from their employer. Under the existing legislation an employer in the public sector can already be charged for punishing an employee for exposing a wrongdoing – this is true – however, the old legislation does not provide for any sort of restitution to the whistle-blower if they suffer an unlawful reprisal. To solve this problem, the new legislation would enable the Labour Relations Board to order remedies when there has been a reprisal.

For example, the board may decide that the whistle-blower should get their job back if they were fired for blowing the whistle, or in other cases they may be entitled to compensation for lost wages. Ultimately, it will be up to the board to decide what is appropriate, and the board's order would be enforceable like a court order.

Now, that being said, I hope that it would never come to that. But it's reassuring to me and I believe to many members of this Assembly and to many of those in the public sector to know that this is written into the proposed amendment act that we have before us. This provides a sense of security to those that would be potentially coming forward if they were to disclose a wrongdoing or gross mismanagement that they may encounter.

While the current act requires the commissioner to issue an annual report, the required contents are mainly statistics relating to the number of inquiries, disclosures, and investigations. The amended act would require more details, including the types of proven wrongdoings in the disclosure received by the Public Interest Commissioner, summary findings in cases where wrongdoings or acts of reprisal are found to have been committed, the specific recommendations made to public entities or offices of the Legislature and the entities' responses to such recommendations, and any offences committed or penalties given under the act. This will make it more clear to Albertans what the commissioner achieves every year.

Additionally, the all-party committee also considered: what should happen if the commissioner is away while there is still work to be done? I'm sure that we've all found ourselves in that kind of a situation, where we've had to leave for whatever reason and need to delegate our responsibility to someone else. Under the new legislation this would give the commissioner the ability to delegate authority in the event of a normal absence, and this would be done at the discretion of the commissioner and would allow investigations to continue if the commissioner is away. The provision we are proposing is effectively the same as the delegation authorities already given to the Information and Privacy Commissioner and the Alberta Ombudsman.

In conclusion, Madam Chair, I just want to say how important I feel this piece of legislation is. Not only is this contributing to an improvement in our overall culture and making sure that we are working hard together with public servants here in the province of Alberta to make sure that our ministries are functioning well, but we are making sure that we're doing it at the same time as we're strengthening our democracy. At the same time, this strengthens our public service here in the province and makes sure that things are functioning in the best way possible.

With that, I'm going to complete my remarks. I'd encourage all members to support this particular bill. Thank you, Madam Chair.

The Deputy Chair: Thank you, hon. member.

Are there any other members wishing to speak to the bill? The hon. Member for Edmonton-Mill Creek.

Ms Woollard: Thank you, Madam Chair. This is a very important bill, in my mind. I have a very strong belief in accountability, honesty, transparency in government as in all dealings.

One of the things in listening to other speakers that's really clear is that it's not just having the ability to report but the fact that individual people are making the choice to basically, in some ways, take a very big chance on their future employment, on their standing in different settings to make these reports. The choice is always there. Every one of us at every stage in our lives every day have choices to make. Do you report something you see that you know to be a wrongdoing, or do you sometimes, you know, ignore it or leave it till later because you haven't got the time? First and foremost, I think I would really admire the people that do come forward when they see or are aware of something that they know to be a wrongdoing.

Wrongdoings can be the very obvious ones like somebody creating a substantial, specific, or undue danger to the public or to the environment. Even there, though, you're taking a chance. You're putting yourself out there, and there is some potential for harm. The one that really spoke to me, though, was the section on gross mismanagement of public funds or a public asset and/or knowingly directing or counselling an individual to commit any of the other wrongdoings already mentioned. It's not that one so much but the gross mismanagement, including egregious and/or systemic cases of bullying and harassment.

Actually, when I thought about it, I realized I know someone in this situation right now, and it's pretty horrendous. This is a person who's working in a very responsible position, has been for 35 years, and another person in the same building, in the same institution but not directly her supervisor, has taken it upon herself to bully the person I'm speaking about. Bullying is a very difficult behaviour to counter because bullying is often subtle, and it can be repeated and subtle, and then it becomes harassment if it's regular and ongoing. Somebody looking in from the outside might say, "Well, it's not causing physical harm," but it's causing harm in so many invisible ways.

One of the things that comes out is that the person starts to experience – or several of the things that come out is that the person upon whom this bullying is inflicted starts feeling unsure of themselves: did I really do something wrong? They begin to doubt their own abilities even, like I said, when working in a position for over 30 years very successfully with no complaints, no problems, never any problem at work, no work complaints. They start doubting themselves. They've got anxiety about what they're doing. They start suffering. In a lot of cases there's some depression because it's very, very hard to go into work every day being pretty certain that you're going to be facing behaviour that is negative to you, negative about you.

If it carries on for long enough, it spreads, behaviour like that. Things can be said to other people. People who are not directly affected in the workplace can start taking sides. You know: am I on the side of the victim, or am I on the side of the bully? The bully has the advantage because they often have the power, and then people who are undecided, uncommitted may go with them because

this is the side most likely to come out on top. As you can see, the person who is being bullied is put increasingly into a very solitary, very lonely, and very anxiety-ridden corner, where they don't know what they should do, what is the best thing to do to not be bullied even more.

11:50

When you put all that together, you know, I'm really, really happy that this description of bullying and harassment is in the new whistle-blower legislation because it does give the person who is being harassed or bullied another way they can get justice for themselves; that is, if their union maybe helps to a certain point but hasn't completely helped, if human rights legislation hasn't helped. When all things are exhausted, then they can go to the Public Interest Commissioner, the Ombudsman, and be free of danger of reprisal. This is so important because we are speaking about people's livelihoods.

By the time it gets to the legislative and the point where they're taking action against the bully or trying to, they're often very worn down in points of confidence, so the more supports they have and the more they feel that society as a whole supports them in fighting for themselves and in stopping something that everybody knows in their heart of hearts is wrong is a good thing.

I am very happy about this legislation and support it completely. Thank you, Madam Chair.

The Deputy Chair: Thank you, hon. member.

Are there any other members wishing to speak to the bill as amended? The hon. Member for Spruce Grove-St. Albert.

Mr. Horne: Yeah. Thank you, Madam Chair. You know, I was very interested to see not just this bill but many related bills that this government has brought forward in the two years that we've been here. I was thinking about this bill earlier this week, this one in particular, when I was taking a document I had gotten from my grandmother to get framed. As I've spoken about in this House a few times, my great-grandfather was a Member of Parliament back in the '50s and '60s. We would not have seen eye to eye on many policies as he was a Diefenbaker Conservative, but this meant that he was present for the passing of the Human Rights Act. As such, being a personal friend of Diefenbaker, he had a hand-signed copy of the Bill of Rights. It had been sitting in a box in my grandmother's basement for a number of years. She felt that it was appropriate that she hand it on to me, so I brought it in to get framed.

I was thinking about, you know, what that bill intended to do. It ended up not being as effective as it could have been, which is why we now have the Charter of Rights as opposed to the Bill of Rights. But I was reflecting back on all of the developments in Canadian democracy that we've seen over the years. There are things that have always been a part of Canadian democracy, things like freedom of the press, mostly freedom of speech, things like that that are truly part of any Westminster-style parliament, indeed part of any democracy. I was happy to see that all of these are continuing to be brought forward.

You know, the public interest disclosure act, often referred to as whistle-blower protection, was brought forward previously, and it allowed for employees of various public bodies to come forward . . .

The Deputy Chair: Hon. member, I hesitate to interrupt, but pursuant to Standing Order 4(3) we will now rise and report.

[Ms Sweet in the chair]

The Acting Speaker: The hon. Member for Wetaskiwin-Camrose.

Mr. Hinkley: Thank you, Madam Speaker. The Committee of the Whole has had under consideration certain bills. The committee reports the following bill: Bill 13. The committee also reports progress on the following bill: Bill 11. I wish to table copies of all amendments considered by the Committee of the Whole on this date for the official records of the Assembly.

Thank you.

The Acting Speaker: Thank you, hon. member.

Does the Assembly concur with the report?

Hon. Members: Agreed.

The Acting Speaker: Opposed? So ordered.

The hon. Member for Banff-Cochrane.

Mr. Westhead: Thank you, Madam Speaker. I think we've made some great progress and had some vigorous debate this morning, so I would move that we call it 12 o'clock and adjourn until 1:30 this afternoon.

[Motion carried; the Assembly adjourned at 11:56 a.m.]

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