



Legislative Assembly of Alberta

The 30th Legislature  
Second Session

Standing Committee  
on  
Resource Stewardship

Public Interest Disclosure (Whistleblower Protection) Act Review  
Stakeholder Presentations

Thursday, February 4, 2021  
8:30 a.m.

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

**Standing Committee on Resource Stewardship**

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Ceci, Joe, Calgary-Buffalo (NDP), Deputy Chair

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Singh, Peter, Calgary-East (UCP)  
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## **Standing Committee on Resource Stewardship**

### **Participants**

|   |        |
|---|--------|
| Panel A .....   | RS-376 |
| Ian Bron, Senior Fellow, Centre for Free Expression, Ryerson University                                   |        |
| Mac Hickley, President, Alberta Professional Planners Institute   |        |
| Cameron J. Hutchison, Associate Professor, Faculty of Law, University of Alberta                          |        |
| David Hutton, Senior Fellow, Centre for Free Expression, Ryerson University                               |        |
| Panel B.....  | RS-382 |
| Andrea Beckwith-Ferraton, Chief Ethics and Compliance Officer, Alberta Health Services                    |        |
| John T. Huang, Fellow of the Royal College of Surgeons of Canada  |        |
| Lyle Mittelsteadt, Former Assistant Executive Director, Professional Affairs, Alberta Medical Association |        |
| Office of the Public Interest Commissioner.....   | RS-390 |
| Chris Ewaniuk, Manager  |        |
| Marianne Ryan, Public Interest Commissioner   |        |



**8:30 a.m.****Thursday, February 4, 2021**

[Mr. Hanson in the chair]

**The Chair:** Here we go. It's 8:30. Good morning, everyone. I'd like to call this meeting of the Standing Committee on Resource Stewardship to order and welcome everyone in attendance. My name is David Hanson, MLA for Bonnyville-Cold Lake-St. Paul and chair of the committee.

Before I begin, I would just note that in accordance with the recommendations from the chief medical officer of health attendees at today's meeting are advised to leave the appropriate distance between themselves and other meeting participants. In addition, pursuant to the November 16, 2020, memo from the hon. Speaker Cooper I would remind everyone of the updated committee room protocols, which require that outside of individuals with an exemption, those attending a committee meeting in person must wear a mask at all times unless they are speaking.

I would ask that members and those joining the committee at the table introduce themselves for the record, and then I will call on those committee members who are joining us remotely. We will begin to my right.

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

**Mr. Smith:** Good morning. Mark Smith, Drayton Valley-Devon.

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

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

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

**The Chair:** And now online. I see Mr. David Hutton. If you could just introduce yourself.

**Mr. Hutton:** Hello. My name is David Hutton. I am a senior fellow with the Centre for Free Expression, whistle-blowing initiatives, at Ryerson University.

**The Chair:** Thank you.

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

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

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

**Member Ceci:** Hi. I'm Joe Ceci, the MLA for Calgary-Buffalo.

**The Chair:** I see Mr. Hickley.

**Mr. Hickley:** Yes. I'm president of the Alberta Professional Planners Institute.

**The Chair:** Thank you.

**Dr. Hutchison:** Good morning. My name is Cam Hutchison. I am a law professor at the University of Alberta.

**The Chair:** Thank you.

**Mr. Bron:** Hi. I'm Ian Bron. I'm with the Centre for Free Expression, whistle-blowing initiative. I'm also a senior fellow there.

**The Chair:** Thank you.

Is there anybody that we've missed?

**Mr. Dach:** Yes. Mr. Dach, MLA for Edmonton-McClung.

**The Chair:** Thank you, Mr. Dach.

Is there anyone else?

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

**The Chair:** Thank you, sir.

Going once, going twice. Okay.

For the record I will note the following substitutions: Devinder Toor for Tanya Fir and Irfan Sabir for Kathleen Ganley. Are either of those on the line? Not yet. Okay.

A few housekeeping items to address before we turn to the business at hand. Please note that the microphones are operated by *Hansard*. Please set your cellphones and other devices to silent for the duration of the meeting. Committee proceedings are live streamed on the Internet and broadcast on Alberta Assembly TV. Those participating by video conference are asked to turn on your camera while speaking and to please mute your microphone when not speaking. To avoid overlap of speakers, virtual participants are asked to request to be placed on a speakers list by e-mailing the committee clerk or utilizing the meeting software chat function, and members in the room are asked to please raise their hand or otherwise signal to the chair. The audio- and video stream and transcripts of meetings can be accessed via the Legislative Assembly website.

Moving on to item 2, approval of the agenda, are there any changes or additions to the draft agenda?

If not, would someone like to make a motion to approve the agenda?

**Mr. Getson:** I'll make the motion.

**The Chair:** Moved by Mr. Getson that the agenda for the February 4, 2021, meeting of the Standing Committee on Resource Stewardship be adopted as distributed. All in favour, please say aye. Any opposed? [An electronic device sounded] Okay. Thank you. That wasn't in opposition, was it? No. Thank you. That motion is passed.

Moving on to item 3, approval of the minutes, we have the draft minutes of our January 13, 2021, meeting. Are there any errors or omissions to note?

Seeing none, would a member like to make a motion to approve the minutes? Moved by Mr. Smith that the minutes of the January 13, 2021, meeting of the Standing Committee on Resource Stewardship be approved as distributed. All in favour, please say aye. Any opposed? That motion is carried.

We'll move on to item 4, review of the Public Interest Disclosure (Whistleblower Protection) Act. Turning now to the committee's review of the Public Interest Disclosure (Whistleblower Protection) Act, at our last meeting a motion was passed to invite stakeholders to make oral presentations to the committee. Some of these individuals were not available today and have appointed another presenter in their place. However, because of the wording in the motion, that named specific individuals to proceed in the appropriate fashion, the committee would have to rescind that motion and put forward a new motion.

Would anyone like to move a motion to rescind the original motion? I see Mr. Getson has his hand up.

**Mr. Getson:** Yeah. I would like to move that we rescind the motion, and if we can go back in, I would like to move a second motion after that, Mr. Chair.

**The Chair:** Okay. We'll deal with the first motion, to rescind. If you could make that.

**Mr. Getson:** Sure. I'll make a motion that the motion to invite the presenters as part of the review of the Public Interest Disclosure (Whistleblower Protection) Act, which was approved at the January 13, 2021, meeting of the Standing Committee on Resource Stewardship, be rescinded.

**The Chair:** Having heard the motion, is there any discussion? Hearing none, having heard the motion, all those in favour, please say aye. Any opposed, please say no.  
That motion is carried.

Now the committee must propose a new motion that accurately reflects the presenters. Can I get someone to move such a motion? I see Mr. Getson has his hand up again.

**Mr. Getson:** Yes. Thank you, Mr. Chair. I would move that the Standing Committee on Resource Stewardship invite the following individuals and organizations:

Again, it will be blank on the individuals in this case.

- (a) the office of the Public Interest Commissioner; (b) Alberta Health Services; (c) the Centre for Free Expression, Ryerson University; (d) Cameron J. Hutchison, SJD; (e) Dr. John T. Huang, MD, FRCSC; (f) the Alberta Medical Association; and (g) the Alberta Professional Planners Institute to make these presentations to the committee part of the Public Interest Disclosure (Whistleblower Protection) Act.

**The Chair:** Okay.

**Mr. Getson:** With my muffled mask. Sorry.

**The Chair:** You can actually remove your mask when you're speaking.

**Mr. Getson:** Oh. Thank goodness.

**The Chair:** All right. Having heard the motion, is there any discussion on the motion?

**Mr. Dach:** I just want to confirm that these presenters are representing the same presenting list that we had initially approved.

**The Chair:** That is my understanding, Mr. Dach.

**Mr. Getson:** Yeah. That's correct.

**The Chair:** It was just a matter of allowing for substitutions from those organizations if that person wasn't available.

**Mr. Dach:** Thank you, Mr. Getson.

**Mr. Getson:** You're welcome.

**The Chair:** Is there any further discussion?

Hearing none, having heard the motion, all those in favour, please say aye. Any opposed, please say no. Thank you.  
That motion is carried.

We will now move on to our first group of presenters. Our first panel of presenters this morning will include Mr. Mac Hickley, the Alberta Professional Planners Institute; Mr. David Hutton and Mr. Ian Bron of the Centre for Free Expression at Ryerson University; and Dr. Cameron J. Hutchison.

Thank you very much for joining us today, everyone. Each stakeholder has up to seven minutes to make a presentation to the

committee, followed by up to 40 minutes of questions from committee members. For the presenters, if you have anyone presenting with you, please introduce them for the record.

Mr. Hickley, if you're ready, could you please lead us off.

## Panel A

**Mr. Hickley:** Thank you, and thank you for inviting me to speak to the committee this morning. I'm pleased to represent the Alberta Professional Planners Institute. I'm the current president, and I was the same one who submitted the letter on behalf of the APPI. I'll be mercifully short, I think, this morning and get my part of this process over so you can have more discussion with the others.

I'd just like to start with my interpretation of what the purpose of the Public Interest Disclosure (Whistleblower Protection) Act is and is for. In my reading of it, it's for allowing good people within government to expose bad actions or bad decisions without threat of retribution and to allow staff to expose actions and decisions that are contrary to the public interest. In my letter to the committee I went over a little bit about why the public interest is important to the Professional Planners Institute and to the profession of planning itself, and I'd just like to reiterate that: for the purpose of protecting people who are coming forward to reveal delicate information or sensitive information or information that could cause them grief and stress. I think the protection of the public interest is the reason for this act, and it's also one of the reasons behind the Professional Planners Institute.

8:40

For all those reasons, I'd just like to make it clear that partisan politics and whistle-blowing are issues that go hand in hand, and for potential whistle-blowers to feel like they are free to come forward and speak their mind, they need to be assured that their information will be held in confidence and not subject to partisan politics or ideology but, rather, to regulations and rule of law and rule of, you know, administration, clear processes and rules. I think that elected officials should not be the final decision-makers in determining who can come forward or what happens with information that's brought forward through the whistle-blower act. It should be bureaucratically appointed people who are leading that decision-making process and the adjudication process.

Those are, really, my points for this review. Thank you again.

**The Chair:** Okay. Thank you, Mr. Hickley.

Committee members, are there any questions for Mr. Hickley? Mr. Ceci.

**Member Ceci:** Yes. Thank you very much. Mr. Hickley, how would . . .

**The Chair:** Oh, I thought. . .

**Member Ceci:** Sorry. Can I go, Mr. Chair?

**The Chair:** Yeah. Go ahead, Mr. Ceci.

**Member Ceci:** I heard my name. I'm sorry if I jumped the line.

Mr. Hickley, how would members of your professional association be connected with government? Would they be public servants, or would they be contracted with government to work on behalf of projects that the government has identified?

**Mr. Hickley:** There are just under a thousand members of APPI that are registered professional planners, and by far the largest percentage of that membership works for the public sector. Mostly they work for the city of Calgary and the city of Edmonton, but

there are a good number of registered professional planners in the government of Alberta. I was one for several years myself. There are also professional planners who work in the private sector, who would be working on behalf of projects for private developers or, you know, private industry.

**Member Ceci:** Okay. Just one question: does your professional association have similar kinds of whistle-blower rules in place for your association?

**Mr. Hickley:** We have a professional code of practice, that obligates members to act ethically and bring forward cases of unethical behaviour amongst our colleagues, and we have a disciplinary process that is laid out and followed. There have been a few cases of disciplinary action in the past few years. It's not labelled as whistle-blower protection, but we do have processes in place to discipline colleagues and bring forward information.

**Member Ceci:** Okay.

Those are all my questions, Mr. Chair. I appreciate it.

**The Chair:** Thank you, Mr. Ceci.

A little procedural error, I guess. We'll hear the other two presentations before we move on to questions.

We'll move on right now to Mr. Hutton and Mr. Bron.

**Mr. Hutton:** Thank you. Mr. Chair, I'd like to thank the committee for the opportunity to present, and I hope you'll find this information useful.

Why should the people of Alberta want this government to protect whistle-blowers? Because whistle-blowers are the single most effective source for organization leaders to learn about errors or wrongdoing that threaten the public interest. This is a conclusion that's been confirmed year after year by multiple research studies.

No organization is immune, and in a public service that includes 27,000 employees and consumes a budget of about a billion dollars a week, there are almost certainly some serious problems brewing today that could dominate the headlines in a year or so unless they're stopped soon and nipped in the bud.

Whistle-blowers provide by far the most effective way of doing this, acting as kind of a firewall to protect both the public and the government from incompetence or corruption within the bureaucracy. Conversely, silencing and crushing whistle-blowers simply ensures that senior leaders will be kept in the dark until it's too late. This also drives concerned employees to the media in desperation since they can see no other way of getting the problems dealt with.

What's a whistle-blower really like? They're typically portrayed in a very negative light by those seeking to discredit them, but research demonstrates that these frequently heard slurs against whistle-blowers are usually false. In reality they're typically among your best employees, dependable high performers who uncover problems by doing their job properly and feel duty bound to report them. The vast majority report up through the chain of command, giving the organization every chance to respond, and are shocked at the cover-up and reprisals that very often follow.

They're trying to protect the organization, not to cause harm or embarrassment. They're not looking for trouble or publicity. Only a tiny handful, perhaps 1 or 2 per cent, ever approach the media, even when all else has failed. The consequences that they face go often far beyond just losing their job. Many suffer devastating, life-changing reprisals designed to isolate them, bar them from their chosen profession, ruin them financially, undermine their mental health, and even destroy their families and friendships.

Do we know how to protect the public by protecting whistle-blowers? Absolutely, we do. Given the proven value of whistle-blower protection it's not surprising that it's now recognized internationally as an essential component of responsible governments, and best practice in this field is being defined ever more precisely and applied more widely. Two excellent authorities are the Government Accountability Project in Washington, DC, which has been the leading NGO in this field for more than four decades, and also the European Union, which has recently instituted a comprehensive directive instructing all member countries to implement strong whistle-blower protections by the end of this year.

We have drawn upon this body of knowledge to examine all of Canada's provincial laws, and we set out these essential best practices under the following five headings: one, freedom to blow the whistle, that anyone should be able to raise a concern about anything that may threaten the public interest without barriers, hazards, and uncertainties that could inhibit them; secondly, preventing reprisals of any sort by ensuring consequences for those who attempt reprisals or simply fail to protect those who are raising concerns; third, redress for reprisals when these do occur to ensure that complete remedies can be obtained readily and in a timely manner to make the person whole again; four, protection of the public to ensure that disclosures are subject to thorough, independent, competent, and timely investigation, that appropriate and timely corrective action is taken to protect the public, and that the public is informed of the process with findings on the actions taken; five, evidence of effectiveness to ensure that searchable information is collected and made readily available, demonstrating how our system is working and also providing the basis for routine monitoring and subsequent improvement cycles like we are engaged in right now.

How well are we doing in Canada and Alberta? By the end of this year 62 countries will have national whistle-blower protection laws. All the modern democracies that we typically compare ourselves with have well-designed, effective laws, but not Canada. We have one of the worst national whistle-blower laws found anywhere. Regrettably, the provinces have generally followed the lead of the federal government. You'll see this in our slide, some of the shortcomings we find in the Alberta law. We've also provided separately an in-depth assessment of the act. Overall, this law is not fit for what we want it to accomplish. It falls short in most categories of the criteria, and some of these shortcomings are particularly serious. Any one of them would render the entire system ineffective.

**8:50**

When we turn from what's on paper to what's happened in practice, we see precisely the consequences one would expect. There is substantial evidence that whistle-blowers are indeed suffering reprisals, and the track record in terms of uncovering and fixing serious wrongdoing is almost nonexistent: just one case in seven years.

I'll end by stressing that we're here not just to criticize but to help. We bring to bear considerable expertise, and we can help you create a law that will protect the citizens of Alberta by protecting whistle-blowers. By doing so, you can make Alberta the leading jurisdiction in Canada and a beacon for others to follow.

Thank you.

**The Chair:** Thank you very much, Mr. Hutton. You still have about 40 seconds if Mr. Bron has anything to say.

**Mr. Bron:** No. I think we're good with that.

**The Chair:** Okay. Thank you very much.

Finally, Dr. Hutchison. When you're ready, you can begin, please.

**Dr. Hutchison:** Thank you very much, Chair. Thanks to members of the committee for this opportunity to make submissions. My name is Cam Hutchison. I'm a law professor at the University of Alberta who teaches and researches in the area of anticorruption law. My written submission to this committee, subsequently published by the Parkland Institute, examines the shortcomings of the current Alberta whistle-blower legislation and as well considers the need for Alberta to adopt a law to protect confidential news sources and for an anti-SLAPP law. These reforms are all critical measures needed to combat corruption in Alberta.

In my short time today I'd like to focus on the public interest disclosure act, in particular measures that will create the needed trust for employees to come forward to report wrongdoing, knowing that their jobs will be protected. This is the only way to make this legislation work effectively. All of us here today, regardless of affiliation, share the values embodied in whistle-blower protection. Wasted government resources, corruption, shocking newspaper headlines are not what anyone wants to see. This undermines both proper governance and public confidence in government. Effective whistle-blower legislation creates confidence when the public sees that a system is in place to uncover and deal with bad actors.

According to annual reports on the Public Interest Commissioner website ending in March 2020 there have been 215 disclosures since the act's inception. Only three cases have reached the level of wrongdoing as that term is defined in the act. One cannot help but infer from such a measly figure that employees do not have the necessary trust in the system to come forward to report wrongdoing. Any view that does not appreciate that whistle-blowers are reluctant to come forward to report wrongdoing for the obvious reason that they put their livelihood on the line misses the point. Whistle-blowing is a bargain that says to the employee: if you want me to report wrongdoing, then you must cover my back.

In the time I have left, I have four suggestions for improvement that build on the existing legislation that I think will help improve employee confidence in the system. First of all, no-loopholes protection for whistle-blower employees. The commissioner has clarified, notwithstanding how the act is written, that eligibility for protection against reprisal is not tied to actual findings of wrongdoing by her office. However, protection is currently denied when an employee reports wrongdoing to the wrong person, fails to put the disclosure in writing, or, as one case noted, fails to reference the legislation. These look like gotcha technicalities that do not serve any purpose other than to deny eligibility for reprisal protection under the act.

It's imperative that Alberta adopt a no-loopholes approach, meaning whistle-blowing employees are automatically given protection when they report wrongdoing in the workplace regardless of which superior they report it to, whether it is in writing, and whether or not it references the act. Moreover, employees who refuse to participate in wrongdoing should also be covered. The committee might also wish to consider a provision found in the federal act that permits disclosures directly to the press and public in urgent circumstances only, where there is not enough time to conduct an investigation to remedy the wrongdoing.

My second recommendation is to improve rigour and transparency of reprisal investigations. I noticed recently on the website that the commissioner claims over 1,400 employees have been protected since 2013. I'm not sure what that figure means. I'm assuming this means that by maintaining anonymity for whistle-blowers and others who contact her office, she believes they are protected.

Commissioner confidentiality on its own, however, is inadequate protection, as important as it is. Employers often know the whistle-blowing employee because the complaint is made internally. All studies show that whistle-blowers almost always report internally before going outside the organization, or for those reporting to the commissioner directly, employers may guess the whistle-blowing employee, correctly or not, based on who had access to incriminating information or through their suspicion.

Reprisal, when it happens, does not take the form of immediate punishment or dismissal; rather, it is done surreptitiously through such things as inappropriately difficult or onerous job assignments and inaccurate performance reviews. It takes place over a number of months or years. In other words, the employer builds a case against the employee, setting the stage for dismissal or some other kind of disguised reprisal.

It's not clear at all how rigorous current reprisal investigations are. The act tells us that investigations are to be informal, but what is needed is properly trained investigators who aggressively turn over every stone, looking for evidence of a disguised reprisal. Any hint of collaboration or informality with an employer would and should rightly scare off a whistle-blower. The act as drafted requires the Public Interest Commissioner to investigate allegations of reprisal, yet to date not a single finding of reprisal has been made in over 52 complaints, by my counting, of reprisal by employees. There have been only two reports that have explained to some extent the process of the reprisal investigation. Neither of these reports, nor the Public Interest Commissioner website assure employees that the Public Interest Commissioner is alive to or dedicated to uncovering disguised reprisals.

My third point. There should be a right of appeal to the Alberta Labour Relations Board or, alternatively, the Court of Queen's Bench against a negative reprisal finding. Currently the act mandates that any finding of reprisal by the commissioner's office should be referred to the Alberta Labour Relations Board to determine an appropriate remedy. Because there has never been a finding of reprisal, this mechanism has never been used. I suggest that the role of the Labour Relations Board be expanded. An employee against whom there is a negative reprisal finding by the commissioner's office should have a right of appeal to either the Labour Relations Board or, alternatively, the Court of Queen's Bench. Whatever the adjudicative process, there should be a presumption that dismissal or reprisal is the result of whistle-blowing, leaving it to the employer to prove that it is not. There should also be a limited waiver of confidential communications between an employer and . . .

**The Chair:** Okay. Thank you, Dr. Hutchison. Your time has expired.

**Dr. Hutchison:** Okay. Thank you.

**The Chair:** I will now open the floor to questions from committee members. I see Mr. Singh is waving at me. Are you just being friendly, or do you have a question?

**Mr. Singh:** I do have a question.

**The Chair:** Go ahead, Mr. Singh.

**Mr. Singh:** Thank you, Mr. Chair, and thank you to the representative of the Alberta Professional Planners Institute for taking time to present here today. My question is: how does your organization interact with the Public Interest Disclosure (Whistleblower Protection) Act?

**Mr. Hickley:** As far as I know, my institute has never had an interaction with PIDA in the past.



**Mr. Singh:** Thank you. In the Alberta Professional Planners Institute's written submission you recommend that the act afford greater protection for whistle-blowers than what is contained in the act currently. Could you please provide the committee with more detail into this recommendation and what sort of protection you might have in mind?

**Mr. Hickley:** Well, my submission says that it's APPI's, the Professional Planners Institute's, position that the public interest disclosure act should not be amended at this time, with possible exceptions for instances where the proposed amendments afford greater protection for whistle-blowers than is currently contained in the act. I don't have specific ones.

I had identified one spot where, just to avoid conflicts of interest or perceived conflicts of interest, the Lieutenant Governor of Alberta might be a more appropriate choice than the Public Interest Commissioner. Oh. No. The Lieutenant Governor or the Public Interest Commissioner might be more appropriate than the Speaker of the Legislative Assembly, for example.

9:00

**Mr. Singh:** Thanks for answering.

**The Chair:** Mr. Feehan has a question. Go ahead, Mr. Feehan.

**Mr. Hickley:** Mr. Feehan, you're muted.

**Mr. Feehan:** Sorry. I just wanted to ask Dr. Hutchison a little bit about his fourth point there – I'm not sure he had a chance to get to it – about the nature of the survey that could be used with other employees. What is the nature of the questions that would be most useful to ask employees so that we could get at what's important here?

**Dr. Hutchison:** Thank you for the question, especially since I didn't get to that point. Yeah, definitely, there are existing Alberta public servant surveys that I'm aware of. I won't present to tell or suggest particular types of questions. I think that would be, you know, something for somebody with a bit more expertise about how to elicit proper responses to things you're trying to find out, but obviously, I think, maybe: what are you willing to come forward with when you see wrongdoing? Are you afraid of losing your job? Do you have trust in the whistle-blower protection system? What are your impressions of it? I suppose questions like that would help.

Of course, if we have specific things we're concerned about, you know, is it transparent enough in terms of how the process of investigation goes forward? Do you feel confident about that, what I think is a lack of transparency? Then, you know, those kinds of questions could be asked.

**Mr. Feehan:** Thank you.

Could I have a follow-up, Mr. Chair?

**The Chair:** Go ahead.

**Mr. Feehan:** Okay. I just wanted to take you also back to your very first point about the loopholes. Now, you have identified a number of them in your written submission. Are these ones that you've identified specifically with the Alberta legislation, or are these general loopholes that you have looked at around the world in terms of this type of legislation?

**Dr. Hutchison:** Thank you again for the follow-up. I'm familiar with the federal act. I'm familiar with the Alberta act. I'm less familiar with other provincial legislation. I believe they follow pretty much the same model. The examples I use of loopholes are

from the Public Interest Commissioner's website. They refer to Alberta cases.

Now, I should say that, you know, the overwhelming majority of cases of disclosure are not transparently reported. They show up as a figure on the annual report as a disclosure, but we know nothing about them. We have eight investigative reports over the last seven years. They're put on the website. Occasionally we get a sprinkling of a case or two or maybe a handful in an annual report, so we know very little about what's going on, but what we do see is sometimes troubling.

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

I could tell you other stories of, you know, complaints made outside, after they had left the employment, and being denied protection on that basis. But we get from this that you've got to be careful how you come forward and make your allegation of wrongdoing because if you don't follow the letter of the law, then you're out of luck.

**Mr. Feehan:** Great. Thank you very much.

I do have more questions, so perhaps you can put me back on the list after others have had an opportunity, Mr. Chair.

**The Chair:** Thank you, Mr. Feehan.

We'll move on to Mr. Dach for the next question.

**Mr. Dach:** Thank you, Mr. Chair. I also have a question for Dr. Hutchison. If I may, Dr. Hutchison, you seem to imply in your comments, sir, that the Public Interest Commissioner's defence of her office, in terms of anonymity and privacy protection being adequate protection against reprisal, wasn't sufficient. I just wanted to hear some comments about that because it appears as though there may be some difference of opinion between yourself and the Public Interest Commissioner regarding the benefit and reach of anonymity and privacy protection. You seemed to indicate – and I believe you've said very strongly – that other measures such as counterreprisal measures are needed and improved investigation procedures. Are you sort of in a difference of opinion with the Public Interest Commissioner with respect to anonymity and the adequacy of current privacy protections?

**Dr. Hutchison:** I think I am. I'd like to know, for the 1,400 employees who are protected, what that means. That seems like that's based on a number of disclosures, 215 over the years, to her office – I'm not sure where that figure comes from. But, yeah, you know, confidentiality is really critical, and I'm sure the office does a great job of doing that. That seems to be their priority, and that's great. But you're just forgetting the reality of the fact that most – now, she would know better than I would, but certainly the literature in other jurisdictions suggests that most disclosures are made internally or at least initially made internally, again, and they don't always appear as: I am pursuing this under the whistle-blower act; therefore, I demand protection. They are: did you know that there's an accounting issue here and that proper procedures aren't being followed in this procurement process? Well, if the person you're bringing that to is implicated in the wrongdoing, then suddenly you are a target. And so much for confidentiality; your confidentiality doesn't exist.

That's where protection from reprisal through the vigorous investigations – and, you know, I would not leave it just to the investigation. You have to have a right of appeal to have a process for the employee to go to some external body to make their own case and have full disclosure because they're putting their job on the line. So I would say that confidentiality is absolutely not enough. It's part of the story, but you're leaving open a huge swath of whistle-blowers who have either come forward internally and are known, or even if through confidentiality being maintained by the Public Interest Commissioner's office, employers may take guesses about who that person is, and they know who it is based on the fact that only a few people have that information disclosed to them and, therefore, retaliate without knowing for sure. That's something called spillover retaliation, which should be covered as well. So, absolutely, I think reprisal investigations and appeals are a necessary complement, not just confidentiality.

**Mr. Dach:** Thank you very much, Dr. Hutchison. I've been well informed by your comments this morning. Thank you for appearing.

**Dr. Hutchison:** Thank you very much. I appreciate that.

**The Chair:** Thank you, Mr. Dach.

Are there any questions from the floor? Mr. Smith has a question.

**Mr. Smith:** Yeah. Thank you. I'm going to direct my questions to Dr. Hutchison, so thank you for appearing today. I guess the first question that I've got is that in your written submission you recommended that the act include private-sector employees under a revamped regime. Can you explain to the committee why you think the act should include the private sector?

9:10

**Dr. Hutchison:** Well, if you look at the objective of the act, which is to uncover wrongdoing in the public interest, if you look at the examples of wrongdoing – a risk of serious harm, substantial harm to the environment or to health or anything of that nature – you know, that could happen as much in the private sector as it can in the public sector. If we're thinking of the objectives of what whistle-blower protection is supposed to do, which is to protect the public interest, then it's an artificial distinction to say that we're just going to cover public employees and not private employees.

Now, the way that private employees have been dealt with in other jurisdictions, in the U.K. for example: the private and public are included under one regime. Sometimes in the U.S., especially in the financial services sector, they rely more on a bounty reward system. You report the wrongdoing; you're successful in going to court, and the government is successful in recovering that money, and you get a percentage of it. I think, I'm led to believe, that we actually have that with the Alberta Securities Commission here in Alberta as well. That's an alternative mechanism that tends to apply just to the financial services sector. That actually seems rather attractive for that area, but I don't think that would cover all the private sector. You know, including the private sector would require a lot more resources, so that would have to be a consideration.

Thank you.

**Mr. Smith:** Thank you.

Mr. Chair, could I have a follow-up?

**The Chair:** Go ahead, Mr. Smith.

**Mr. Smith:** I just wanted to go back to some earlier comments that you made with regard to the survey. How would the benefits – or how would it differ from the commissioner's current outreach? How would the survey differ from what the commissioner can already do?

**Dr. Hutchison:** You know, I don't know how extensive her outreach is. I don't know if every employee is aware of those initiatives. I guess, similarly, not every employee necessarily takes the survey. But given that the survey is already there, putting an add-on in there – again, as my colleague in this presentation Mr. Hutton talks about, performance indicators for whistle-blower protection should be something that the committee and any oversight body for this legislation should be considering. What are you trying to achieve, and are you trying to achieve it? I plead ignorance about what's actually going on in terms of outreach. Again, I'm sure that great work is being done there, but I see no harm and I see a lot of upside to doing a survey.

**Mr. Smith:** Okay. Thank you very much.

**The Chair:** Thank you, Mr. Smith.

We'll now go on to Mr. Yaseen, followed again by Mr. Feehan. Go ahead, Mr. Yaseen.

**Mr. Yaseen:** Thank you, Chair. My question is for Mr. Hutton. In your written submission you mentioned that you think the act is limited in the scope of what can be reported. Could you please provide the committee with further details into this and what changes you would like to see?

**Mr. Hutton:** Is this question for me or Dr. Hutchison?

**Mr. Yaseen:** This is for Mr. Hutton, yes, for you.

**Mr. Hutton:** Okay. So you're referring to part of the written submission where we say that the act is limited in what it allows people to disclose?

**Mr. Yaseen:** Yeah.

**Mr. Hutton:** Okay.

I'm going to ask my colleague Ian to address that because I'm not quite certain which part you're referring to.

**Mr. Bron:** The Alberta act is typical of many across Canada. As has been noted earlier, there has been a fair amount of copying going on. In Alberta's case one thing that is notably not covered by the act are violations of codes of ethics or codes of conduct. That's a big gap. The types of wrongdoing that can be conducted, it's very hard to create the perfect list. You've got to keep it as broad as you possibly can. That would be the most immediate thing that I would add, that codes of conduct and codes of ethics be included. I note that it includes patterns of harassment and that there have been some findings on the harassment issue. That's all well and good, but why not expand it to include as many possible violations of policy, for example, that sort of thing.

**Mr. Hutton:** Okay. I'll just add – I'm a bit clearer about what you're asking – that many whistle-blower laws set the bar far too high in terms as what qualifies to be covered, and you can do a great deal of harm without breaking the law. If you look at the European directive which addresses this, it basically says that anything that defeats the purpose of law should be covered; hence, you need to have a more open list rather than a kind of hard cut-off that says: let's go through this checklist, and if you don't meet those exact requirements, then you're out of luck.

**Mr. Bron:** If I could add a bit more. I did a rough analysis of the amount of text that's spent in the act, and more is said about what cannot be disclosed and exemptions and things that can't be spoken about, essentially, than is about what can be disclosed.

**Mr. Yaseen:** Okay. Thank you.

I have another question. One of your sections in your written submission deals with issues around preventing reprisals. What are some of your concerns, and how would you like to see these concerns being addressed?

**Mr. Hutton:** Well, basically, in preventing reprisals you must, first of all, take efforts to stop them happening in the first place, and that means being proactive so that when someone feels that they have suffered reprisal, there's immediate what we would call interim relief, that whatever has been done against them can be stopped rather than allow them to be languishing unemployed or whatever while some lengthy court procedure drags on.

Secondly, we need to put in place good redress mechanisms, and in the case of the Alberta law that doesn't seem to be working at all. You have the situation that the Public Interest Commissioner is effectively a gatekeeper to the body that would grant them a remedy. There's not compelling need even to have that role. In other jurisdictions people can go directly to some form of tribunal and make their case.

And a really extraordinary omission from the act is the lack of reversals. That's a little bit technical, so bear with me. It's been known for at least 20 years that if you simply send a whistle-blower to a tribunal type of party with a complaint of reprisal, the chances of success are close to zero, and that's because the employer holds all the cards, all the information, and they can make all kinds of excuses for what they did to the whistle-blower. They can claim that they're a bad person and on and on.

So in every jurisdiction across the country, in the world practically, you'll find what's called a reverse onus provision, and that means that if there is some kind of connection between the adverse actions against the employee and them blowing the whistle – they could be very close together in time, for example – then you reverse the onus. You put the burden of proof on the employer to prove that the actions they took against the whistle-blower were not intended as reprisals. That gives them a better chance.

Now, I should point out that even with that provision, it is not a slam dunk for the whistle-blower. In jurisdictions that have that kind of provision, typically only about 20 per cent are successful, but that's a lot better than zero, and it gives them a chance. Without that provision you really don't have any kind of protection that's worth the paper it's written on.

**Mr. Yaseen:** Well, thank you for your elaboration on that.

This is my last question. In the issues you raised about the act, you mention that there is very little evidentiary basis for the views of the act and that there is lack of mechanisms to measure the evidence of effectiveness. What sort of reporting would you like to see in the act, and how would you like to see information used to better the act?

9:20

**Mr. Hutton:** Okay. I would start with some basic information around the operation of the agency that's administering the act. You know, basically, they can throw open their case-tracking system to make that public in a way that still protects the identity of the whistle-blowers, of course. That way you can actually see how long it's taking to handle cases, how long they're taking, and so on. When this information became available at a federal level through an Auditor General's approach, we discovered that the commissioner there had sat on some cases for almost two years, and they were cases that seemed to be particularly troubling to the government. They just did nothing about them and, in fact, lost the files repeatedly.

That would be kind of basic operating information which we don't currently have.

Another valuable source of information is feedback from the whistle-blowers themselves. I don't know what information the commissioner has, but to the public there's virtually no information. It would be very nice to know what those people who dealt with that office felt about their experience. Did they think they had due process? Did they think they were dealt with respectfully? Did they believe the investigation was thorough? Were they consulted and allowed to challenge the findings of the investigation? What has their career trajectory been since? Are they unemployed? Under what circumstances did they leave the public service? Are they on welfare? You know, if we were able to, through follow-up surveys, find out more about the whistle-blowers, we would have a lot better indication of whether the system is actually working to protect them, and if it doesn't or if people believe it doesn't, then you simply don't get a good flow of good-quality disclosures.

**Mr. Yaseen:** Thank you, Mr. Hutton.

**The Chair:** Thank you, Mr. Yaseen.

We'll move on to Mr. Feehan. Go ahead, Mr. Feehan.

**Mr. Feehan:** Thank you, very much, Mr. Hutton and Mr. Bron. I'd like to continue some of the questioning, specifically about section 4 of your comparisons with other jurisdictions, which you entitle Protection of the Public. You've identified within that that there is an issue with the corrective action not being assured in that there are no order powers. Can you suggest what powers you would like to see?

**Mr. Hutton:** Ian, I'll let you handle that.

**Mr. Bron:** Well, the credible corrective process covers such things as the soundness of the investigations; whether the recommendations or the orders by, in this case it would be, the commissioner have to be followed; and whether, ultimately, the problem does get fully resolved. The way the process goes now, as Professor Hutchison was saying, is that there's no clarity on the rigour of the investigations that are being done. We know that they do a preliminary review, but it's unclear how thorough those investigations are. Once the investigation is done and a finding is made – again, bringing back the fact that these can be as informal as the commissioner wants them to be or believes they should be – the recommendations are sent to the head of the agency, and they can either implement the changes or not. If they don't, then the commissioner can elevate it to another level, but that's not a guarantee that the problem is fixed.

So you have several possible weak links here. One might be in the investigative process; the other one might be in the follow-up afterwards to ensure that the problem is dealt with and appropriately resolved. Sometimes organizations will take corrective action in the short term and then revert to bad practices in the long term, so you need to keep an eye on it.

Do you want to add to that, David?

**Mr. Hutton:** No. I think that's a good summary. Thank you, Ian.

**Mr. Feehan:** All right. I wonder if you could perhaps say a little bit more as well about the loopholes with regard to the commissioner's ability to compel evidence?

**Mr. Hutton:** Sorry. I'll ask you to have a first go at that, too.

**Mr. Bron:** I actually think she has the powers that she needs. If I'm looking at my analysis, she's got a fair amount of power to compel

the production of evidence and to compel the testimony, particularly of public officials. It's a little harder to go outside the organization, say, into the private sector. If the wrongdoing extends into the private sector, such as a kickback scheme or some sort of collusion process, it's a little more complicated, but still her powers are pretty good. It's more about a willingness to use them, I would say.

**Mr. Hutton:** I'll add to that, if I may, that, you know, we see this pattern across the country, that the powers can be very powerful, in fact. But the laws typically give an enormous amount of discretion to do nothing, and it gives a whole list of reasons why the commissioner might decide not to investigate, including any other reason, which just invites them to make up reasons. So that would be one of the reasons.

The other observation has to do with the role itself. Again, what we have is evidence that there's a huge conflict of interest in this role when the person is appointed by the government, can be removed by the government, and whose future career prospects may depend on the favour of the government, and they've been brought up in an environment like bureaucrats are where they're socialized to believe in protecting the bureaucracy. When someone of that background and career path is put in this role, you have a huge conflict of interest and enormous pressure on them to keep the government out of trouble in the short term. Again, that's a pattern that we see. It's quite blatant in some cases. You know, this is not an attack on the Public Interest Commissioner. This is an observation regarding the process that's used to appoint and remove that person.

**Mr. Feehan:** So in other jurisdictions have they resolved that by making the position itself independent from the government?

**Mr. Hutton:** I think that position has to be, as far as you can make it, independent of the government. There are various ways of doing that. You can look around other jurisdictions and see how they've done that. It's not necessarily easy to do, but we know that – we obviously know more about the federal system than the individual provinces, but at a federal level what we've seen is a very, very clear and determined strategy of putting in place people who were I'll call them safe hands, who could be trusted not to cause problems, to the extent that, you know, our first integrity commissioner at the federal level had to resign in disgrace because she just was closing files without even looking at the cases. She was engaged in all the kind of behaviour that she was supposed to be driving out of the public service.

The previous holder – before we had a law, there was a policy at the federal level. We had Dr. Keyserlingk, who was an academic, who did an absolutely splendid job and made the recommendations that that office should have more power and more independence, which led to a law. Keyserlingk wrote a very astute letter explaining why that position had to be so independent. I'd be happy to share that with the committee.

**Mr. Feehan:** Great. Thank you very much. Those are the end of my questions for the moment.

**The Chair:** Thank you, Mr. Feehan.

I see Mr. Yaseen. Your hand is still up. Do you have another question, sir?

**Mr. Yaseen:** No, I don't. Sorry.

**The Chair:** Okay, you're just waving at me. All right.

Mr. Loewen, are you on the phone? Did you have a question, sir?

**Mr. Loewen:** Not at this time. Thank you very much.

**The Chair:** Okay. Anybody else from the committee members in the room?

Hearing none. Okay. No further questions for the panelists. I'd like to thank you once again for presenting today. We'll now take a brief recess and reconvene at 9:45. Thank you.

[The committee adjourned from 9:29 a.m. to 9:45 a.m.]

**The Chair:** Okay. Welcome back, everyone.

Our second panel of presenters this morning will be Mr. David Weyant and Ms Andrea Beckwith-Ferraton, Alberta Health Services; Dr. Lyle Mittelsteadt, Alberta Medical Association; and Dr. John Huang. Good morning, everyone. Thank you for joining us today. You will each have seven minutes to make your presentation, followed by 40 minutes of questions from the committee members once all three of you have presented. I would ask that if someone else will be presenting with you, they be introduced for the record. Mr. Weyant and Ms Beckwith-Ferraton, if you're ready, please begin your presentation.

## Panel B

**Ms Beckwith-Ferraton:** Thank you and good morning. My name is Andrea Beckwith-Ferraton. I am the chief ethics and compliance officer for Alberta Health Services, and I've been in this role since 2017. Mr. Weyant passes along his regrets. He has a meeting right now, I understand, with some other government officials, so you're stuck with me.

As part of my role with Alberta Health Services among other things I am the designated officer for AHS under the public interest disclosure act, and two of our organization's key values are safety and accountability. Those values are certainly consistent with the spirit of the act and its stated purposes such as facilitating the reporting and investigation of wrongdoing, protecting employees in this regard, and promoting public confidence in the administration of our services.

I'll refer the committee to slide 2 of the slide deck that has been provided to you. As indicated in Mr. Weyant's letter to the committee, we have various suggestions for your consideration. They are set out on this slide. I do want to note that Mr. Weyant's letter indicated four suggestions, but it's been brought to my attention that the first one is actually a moot point. That's on me. When I was preparing the letter for Mr. Weyant, I was looking at an older version of the regulations, so the key takeaway there is to please just ignore the first suggestion in that letter.

Referring to the slide, the first two suggestions all relate to a theme of possibly extending some of the legislated timelines under the public interest disclosure act regulation. We want to be very clear that we're not suggesting that these extensions are needed because we find the Public Interest Commissioner to be unreasonable in granting extensions when requested. On the contrary; we find them very reasonable and practical in their approach. Rather, extending the timelines, in our view, would be appropriate because it would reflect the reality on the ground that these investigations and processes are often very complex. They involve a variety of stakeholders of varying availability and other work commitments.

The last suggestion is that we bring Alberta Health Services' subsidiary Alberta Precision Laboratories under the umbrella of the act. Its predecessor, Calgary Laboratory Services, is covered, as you will know. This would help to ensure that the same protections are available to the Alberta Precision Laboratories workforce as are

available to our AHS workforce and that of our other subsidiary organizations.

I'll refer the committee to slide 3 of the presentation that was forwarded yesterday. I thought it might be helpful for the committee to have some information at a very high level as to what the process is that we use at AHS when we receive a whistle-blower complaint, just to sort of maybe bring a practical or realistic perspective to the discussion.

The first step, of course, is that we would need to receive the disclosure in our office. It would then be reviewed by myself or one of our two senior advisers. We would review the details. We would circle back, contact the complainant, and request additional details that we might need to, you know, do our preliminary assessment of the matter to determine an appropriate approach. At that time we would typically also discuss confidentiality with the complainant, ask for their consent to discuss the matter further internally as required, again so that we can collect some details and not assess these things in a vacuum. Of course, we try to protect the confidentiality of complainants wherever we can, but depending on the nature of the allegation, that is sometimes not practical or realistic, so we try to be as transparent with people in that regard as we can be.

Once we have collected that information, we essentially make an assessment based on whether, if founded, the allegation would suggest or meet the threshold of wrongdoing as defined in the act, and if we think that it would, then that invokes the processes under our whistle-blower policy. If we don't think it would meet that threshold, then the matter would be governed by other workplace practices: maybe a workplace investigation, perhaps a workplace assessment. Perhaps a referral to an external body would be appropriate such as a regulatory college or law enforcement. Maybe some remedial workplace ADR would be appropriate such as mediation. It really would depend on the matter before us.

Referring the panel, then, to slide 4 of the presentation that was sent to you. Again, just trying to, you know, provide some real-world examples for you, this slide just reflects situations where, in our view, an allegation is found that might constitute wrongdoing under the act, other types of workplace misconduct complaints that might come forward and how we might characterize those, and then the types of concerns that come forward that, frankly, typically would not be either wrongdoing or misconduct. Again, it's important to stress that each situation needs to be assessed on its own merits, and I think the legislation as currently drafted does reflect that and builds in some discretion for the organization to make that reasonable assessment.

Referring the panel to slide 5, I have mentioned our whistle-blower policy previously. This is just kind of a skeleton outline of what we have covered in the policy. It is aligned with the act and the regulation and, again, it is our governance document when we are required to, you know, look into matters of this nature. That, I'll note, is available to the public on our ahs.ca website and also to our workforce on our internal intranet site.

Referring the panel to slide 6 of our package, I thought it might be useful for the panel to have some information from our annual reports, that we're required to provide under the act, about the number of investigations that we conduct under PIDA. This does reflect the reality that there are very few whistle-blower investigations that occur at our organization, and I very strongly suspect that if you look at similar data for other Alberta agencies, boards, and commissions, you would find a very similar trend.

Putting that, again, in context, if we go to the next slide, this table shows the volume of concerns that we receive in our office annually. This shows that although we may not conduct many whistle-blower investigations, we do receive many concerns.

**The Chair:** Sorry to interrupt. Thank you very much, Ms Beckwith-Ferraton. Your time has elapsed.

**Ms Beckwith-Ferraton:** Okay. Thank you.

**The Chair:** We will move on. Dr. Mittelsteadt, please begin your presentation when ready. You have seven minutes, sir. Oh, you're muted.

**Dr. Mittelsteadt:** Thank you.

**The Chair:** There you go.

**Dr. Mittelsteadt:** Good morning, and thank you for the opportunity to speak to you this morning. From the Me Too movement to Black Lives Matter to exposure of the seditious actions of Donald Trump, recent events have shown society that individuals who witness or experience wrongdoing must be free to speak up and speak out. This applies not only to great events but also to the daily experiences of individuals within our society and certainly within our health care system. That's why the Alberta Medical Association wishes to contribute to the review of the whistle-blower protection act.

In 2015 the AMA provided detailed recommendations to amend the act. Some of these have been implemented, and we appreciate those improvements. There are, however, some that were not instituted, and we've noted these in our brief that you've received. I will summarize the more critical points.

One, we recommend that the definition of wrongdoings in the act be amended and expanded so that it is clear as to what acts or omissions constitute wrongdoings and on what grounds an event would be considered substantial or create a specific danger. There is a potential for misunderstanding here for everyone involved.

Two, we continue to have concerns that the legislation focuses on employees. While some amendments have been made to the definition of employee since 2015, no changes have been made to the relevant sections to specifically address members of Alberta Health Services or Covenant Health medical staff and the health sector. We recommend that a broader term such as "individual" or "person" or "affected person" should apply.

**9:55**

The word "employee" also narrows the scope of protection that is provided in the act. Most physicians working in Alberta Health Services' facilities are independent contractors, not employees. Resident physicians and medical students are not employees. These individuals should be accorded the same protections as those around them. The definition should be expanded to exclude anyone retained by, compensated, or contracted to "a department, a public entity, an office or a prescribed service provider." The act should offer protection for resident positions, medical students, and students of other health care professions.

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

Four, while the commissioner has the discretion to refuse to conduct an investigation or cease an investigation which is under way, there is no corresponding right of a review or appeal specified

in the act, nor is there an obligation to report on the refusal or termination to either the Legislature or to the individual who has disclosed the alleged wrongdoing. We note that the only reporting requirements are in relation to investigations that are completed. A person who made a complaint and may have been subject to a reprisal may never hear the outcome and miss the opportunity for redress.

Five, in closing, I would like to raise the additional point that was not part of our original notes to the committee. The purpose of whistle-blower protection is to safeguard those who need to come forward with legitimate concerns without fear of reprisals. In today's environment there is a risk of additional bullying, harassment, and intimidation through social media channels that create additional concerns. We suggest that the committee amend the definition of reprisals against whistle-blowers to include retaliation against the whistle-blower expressed through social media activity.

That concludes my comments. Thank you very much.

**The Chair:** Thank you very much, Dr. Mittelsteadt.

Our final presenter in this panel is Dr. Huang. Please begin when you're ready, sir.

**Dr. Huang:** Thank you to the committee for allowing me this chance to talk on this issue. As you know, I'm not a representative of any association, and I'll be brief and to the point. I'm a front-line health care provider for the past over a quarter century, and I'm going to take it from a slightly different angle than the previous two people from Alberta Health and the AMA.

If you go to panel 2, the reason I'm talking is that during my course of my career, like everybody else here, we've seen the steady rise in the cost of health care. I don't think I need to expand too much on slide 2 other than to say that if you look at the 2011 Fraser Institute study, it projected a steady increase in the percentage of the provincial economy that's being used for health care. In the current situation – we'll go to slide 3 – it's quite clear that, while their numbers were a bit off, the total percentage of our government budget being designated for health care is expanded to, in the current situation, almost 50 per cent.

Now if we go to panel 4, I agree with the previous two presenters on the issue of wrongdoing and fraudulent conduct. To me, though, having practised 25 years, I think this is a very small percentage of the concerns that I have. Obviously, you've heard various recommendations and you've even heard from the AHS official that the number of actual complaints they have is very tiny. To me, I think the real issue and the reason I'm presenting is that I see there's an opportunity here to deal with what I have observed as a practitioner for the past 25 years to be a real issue that has to be addressed in the health care system, and that's the permissive structure of the way health care is structured. There's what I would call and that many of my colleagues call the grey zone, where we've seen in the past, certainly in my career, the steady expansion of costs based on people, or practitioners if you will, basically not doing something that's clearly fraudulent or misconduct but sort of pushing the edges and utilizing the health care system and billing codes in such a way that, while not openly fraudulent, are at best questionable.

In my previous submission to the committee I gave three examples of how, when I was the head of the eye association of Alberta, the AMA brought forward to us three concerns, and we dealt with them by analyzing them scientifically and then responded to the AMA. Subsequently nothing was done. While I'm not a lawyer – I don't know if changing legislation here can help address how to deal with examples like that – I think it's very important to consider it because the fact is that I and my colleagues see this every day.

I know that if patients – you know, Albertans are smart people. They're common-sense folk, and they're the patients we take care of. When they see something that they're not sure about in terms of medical or surgical care, I think there should be a mechanism in place for them to in a very easy fashion – maybe “easy” was not the best word – in a robust way that's accessible to the average Albertan, report this back to the government in some fashion, and the government can look into the matter. I think there should be ways of specifying to Albertans how their reports or concerns are addressed. There should be a way to report back to them in a clear way on how these concerns will be dealt with. I make reference to this in slide 5 of my presentation.

I think the key is to try to force the system to give best care where it's really needed, not because someone feels they can use a billing code to their advantage. While not being openly fraudulent, they can stretch that grey zone and use it in a way that's questionable, not openly fraudulent, that should be looked into. This is why I'm presenting. I don't know if this committee understands how extensive this is. It isn't just by accident that the medical budget continues to expand. I understand demographic change and all of that, but the bottom line is that this is why I'm presenting.

On my final slide I will just say this. Criminal and openly fraudulent activity: of course, that has to be dealt with. Of course, there has to be a way to deal with it in a clear way. There should be accountability and consequences. But I think that's only a very tiny, tiny number of cases, at least in health care. I think there's a much bigger issue, that stretching of the boundaries of billing and other forms of payment that's ongoing and expanding, that I and my colleagues see. I think this committee – it may not be the appropriate committee, but I think it's something to look at, to allow Albertans to have a say when they don't know if the care they're getting is appropriate and to have a way to report back to the government to ask them to look into the matter and perhaps report back to Albertans as to whether or not the care they're getting is the proper care at the appropriate time and not being just done because someone can make some money at it.

Thank you for your time.

**The Chair:** Thank you very much, Dr. Huang.

I'll now open the floor to questions from committee members. On my list I've got Mr. Getson, Mr. Ceci, Mr. Singh, and Mr. Feehan. Go ahead, Mr. Getson.

**Mr. Getson:** I'm taking advantage of the rule to remove the mask for a second, so thank you for that.

To the first presenter – actually, to all the presenters – thank you very much. I found this very informative. You know, Dr. Huang, at the end there I was rapidly scribbling down notes and ideas while you were presenting, so I thank you for that, sir.

The first one, if I can, is to Ms Beckwith-Ferraton. You pointed out a number of the items where you've made requests for extension, and then you started to elaborate a bit on it. Because of the process for extensions, it's cumbersome to go through. In the past the commissioner has had no issues with granting extensions. Can you expand on that a bit, please? Again, I'm struggling a bit with why you would need extensions to try to conduct these cases if they're very infrequent at best.

10:05

**Ms Beckwith-Ferraton:** Thank you for the question, a good one. Again, when the investigations do occur – and we have had some – they tend to be complex. The people that are conducting these are in a variety of AHS stakeholder areas, whether it's our office, HR, medical affairs, internal audit, procurement. Again, of course, it

would depend on the allegation's nature. The reality is that these people are very busy, with a lot of different commitments. Obviously, this work is important, but to the extent that we can, you know, have some reasonable timelines in place to keep everybody on track but reflect what's going on realistically on the ground, I think that's reasonable.

You know, again, when we ask for extensions, we typically get them. My thought is that instead of going and asking for extensions, why don't we just use the time to actually get the investigation done? To be honest, this is not a hill for us to die on. I think it just, again, reflects the reality of what happens.

**Mr. Getson:** A follow-up if I may, Mr. Chair?

**The Chair:** Go ahead, Mr. Getson.

**Mr. Getson:** To that extent, too, I'm glad it's not a hill that you're, you know, willing to die on. In looking at the process, my personal thing is to look internally and see what's causing it. Some of the comments that we had from other feedback was that these processes need to be less complex and more to the point.

The next one that I want to talk about, if I can, with you to that extent is on the culture itself. In a prior life, when we were trying to motivate individuals for continuous self-improvement or for safety parameters, you want to encourage reporting. You want to make sure that that comes forward. Now, to some of the commentary we've heard otherwise, there seems to be – and I'm hoping you can clarify for me – a misunderstanding at times where, with either contracts through AHS or service agreements, the culture is that those supersede the whistle-blower act. Do you find that that is anything that needs clarity from AHS or from employees or contractors, as it was pointed out by the AMA representative?

**Ms Beckwith-Ferraton:** I don't think so. I certainly don't take issue with the suggestion of the AMA representative that other members of our AHS team, be it students or medical residents, should be covered under the act. To me, that's quite reasonable. Where I see more issues with – I'm sorry. I'm not sure I answered your question, so I'm not sure if my answer will be responsive, but I'll take a stab at it. Where we do see issues from time to time is with people coming forward to us from private health care providers, often long-term care facilities, with concerns. We may provide them with funding, but we don't have the jurisdiction to go in and investigate those, you know, as whistle-blower matters. They're not our employees. These are issues that these organizations largely need to handle in-house. It doesn't mean we just ignore them. If we can get their consent, we will circle back with the provider and talk to them about what's going on. To the extent we may have auditor inspection rights under our contracts, we may pursue those, but it's definitely grey in that kind of an area, for sure.

**Mr. Getson:** Chair, if I can, just to clarify that?

**The Chair:** Yeah. Go ahead.

**Mr. Getson:** Okay. Thank you. I guess that in the context of where I'm going with that – and that does help frame the message – when it comes back to the reporting, if it's infrequent or it's problematic to try to get it out there, I'm trying to put a pin in it, and you're helping me get there, I think. Is it a cultural item? Is it because the whistle-blower act is too prescriptive? Do these folks actually feel that they can come forward without repercussions?

**Ms Beckwith-Ferraton:** We definitely do have people come to us who say, "I am scared of coming forward, you know, but I'm here,

and I'm talking to you about it." We say: "That's great. You've done the right thing. We're glad you have." I obviously can't speak for the people who don't come forward because I don't hear from them. I think that in an organization as big as AHS, it's going to vary, the level of safety, as far as what people feel in coming forward with concerns, certainly to their front-line managers. That will vary from one program or portfolio to the other. I think we'd be naive to suggest otherwise.

The last slide that I provided to you in the package does reflect some of the resources we have available that, you know, we try to make sure people know about to come forward. We do have a 24/7 whistle-blower hotline that people can call with concerns. We are not part of HR. That's quite intentional. I have a reporting line to our governance committee and to our board such that if a matter comes in in particular that involves executive or senior leaders, and I don't think it's appropriate for those folks to be involved or aware of the investigation, I just go to the board and the governance committee on those matters. So that's kind of a check and balance that is in place.

I would say that one challenge that we have in making sure people are aware of these processes is just the volume of material that does go out to our workforce overall on a variety of initiatives. You know, the reality is that we're competing for airtime and eyeballs with many other things, whether it's related to our pandemic response, of course, at present or to seasonal or COVID vaccination campaigns; other workplace health and safety initiatives; connect care, which is our electronic medical records system; professional development opportunities; conduct reminders on things related to privacy, respectful workplaces, diversity and inclusion. These are all great things, and it is important, obviously, to make our workforce aware of these tools and programs that are available, but I do think there's a lot of information out there for people. I think it can be hard for people sometimes on the front line to – there's a lot coming at them at once. I guess that is what I'm trying to say.

**The Chair:** Thank you, Ms Beckwith-Ferraton. Could I get you to turn your video on, please?

**Ms. Beckwith-Ferraton:** Oh, my apologies.

**The Chair:** Not a problem.

**Ms. Beckwith-Ferraton:** It says that it is on. I'll try again.

**The Chair:** Okay. We'll move on to Mr. Ceci. Go ahead, Mr. Ceci.

**Member Ceci:** Yeah. My questions are for Ms Beckwith-Ferraton as well. I did see that last slide, and I guess my question is around the culture in AHS. I'm thinking that many young people get employed, whether they're nurses or working in other positions, and I'm just not sure of the level of import they place on the kind of onboarding topics you just talked about with regard to whistle-blowing or other things. Are there ways that that can be better supported, better bolstered in the onboarding process that you would recommend? Or maybe you think it's fine. I don't know. I just wonder.

**Ms. Beckwith-Ferraton:** I think that's a fair comment and a good question. Sorry. I hope my camera is working now. It says that it's on.

**Member Ceci:** It's still not.

**Ms. Beckwith-Ferraton:** Oh. I'm not sure what's going on here.

**The Chair:** It is on our end. Go ahead.

**Ms. Beckwith-Ferraton:** Okay. Thank you.

I guess the first thing I would say, as far as trying to instill a culture of people speaking up, is that I think that even starts before people arrive at AHS, quite frankly, to the extent that there are opportunities to promote that in nursing schools, medical schools, and other faculties. I think that's appropriate. My sense is that there is an awareness among the younger generation of many of the – I won't say an awareness. Well, there is an awareness, but from what I've observed, many of them are actually not afraid to speak up. I think that is a very good thing, and it gives me lots of hope.

But as far as when people arrive at AHS, what happens is that we have mandatory onboarding that they're required to do online. That's referred to as their passport. We have some annual continuing education for various of our employees to do as well. I think, you know, it's a challenge, right? Where, obviously, resources for functions such as ours are limited, understandably we want to devote as many resources as we can to actual front-line health care, so we do the best with what we have. We have to reach an audience of about a hundred thousand people with varying levels of sophistication, I'll say, as far as understanding the legalities of some of these things. So we have to take all of that into consideration.

I'll be blunt. I have one person on my team accountable for education and awareness, so I can't start sending one person all over the province to train groups. You know, it's just not realistic, to be honest, with the current landscape. So we do the best that we can. When we do bring new people onboard, again they're being trained on a variety of things, not just this, so it's one of many different things that get some airtime with them. But I don't dispute that there's probably more we could do. There's always room for improvement.

10:15

**Member Ceci:** Okay. I didn't hear the number of employees that are in the – what is it? – ethics and compliance office, but maybe you could just share that in a second. Those 100,000 people that you're talking about, employees of AHS or connected deliverers of service that AHS is affiliated with: does that include employees working in long-term care facilities or seniors' lodges throughout this province as well?

**Ms Beckwith-Ferraton:** Not unless they're facilities that are owned and operated by AHS.

**Member Ceci:** Okay. So private ones are exempt from the kinds of resources you're talking about from your office.

**Ms Beckwith-Ferraton:** Correct.

**Member Ceci:** Okay. Thank you very much.

**Ms Beckwith-Ferraton:** You're welcome.

**The Chair:** Thank you, Mr. Ceci.

We'll move on to Mr. Singh. Go ahead, Mr. Singh.

**Mr. Singh:** Thank you, Mr. Chair. I also want to thank the representative of the Alberta Medical Association for coming here today and having this presentation to the committee. My question is regarding – in the Alberta Medical Association's submission to this committee there is a mention, under the characterization of "employees," that the inclusion of members of a medical staff or those with privileges may exclude certain categories of physicians such as residents or medical students. Could you please explain this a little bit further and how the act could provide more clarity under the characterization of "employees"?

**Dr. Mittelsteadt:** Sure. Thanks for that question. The act currently specifies employees. Though many physicians have contracts with Alberta Health Services where they employ, if they have some sort of leadership position – the vast majority of physicians are not employees. They are working as independent contractors with privileges to work within Alberta Health Services. As such, they are not covered by the act currently. That's why we ask for that change. As well, students are not covered because they, again, are not employees. They are not working there. They are in an educational capacity. They're in an educational register, so they're a vulnerable population because they're less likely to be willing to sort of speak out without any degree of protection. I think that they are also keen observers of what is going on and maybe, you know, cognizant of wrongdoing going on within facilities, so I think that it would be very valuable for them to have that degree of protection under the act as well.

Incidentally, I do think, too, it would be worth while for the committee to look at private long-term care facilities and include them under the act. I know that Alberta Health Services has contracts with all private suppliers, and they are supposed to be compliant with the policies and regulations of Alberta Health Services. But they don't necessarily have all of the resources, so I think that looking at how that could be extended in that environment for their employees would be a worthwhile endeavour as well.

**Mr. Singh:** To reference section 22 of the act, one of the recommendations in the written submission is to provide clarity to section 22 of the act as to what occurs after the commissioner submits the relevant report regarding the failure of the department, public entity, office, or public service provider to appropriately follow up on the commissioner's recommendation. Could you explain this recommendation to the committee a bit further?

**Dr. Mittelsteadt:** I'm sorry. I'm not sure I understand what your question is.

**Mr. Singh:** This is in reference to section 22 of the act. One of the recommendations in the written submission is to provide clarity to section 22 of the act as to what occurs after the commissioner submits the relevant report regarding the failure of the department.

**Dr. Mittelsteadt:** Right. What we're looking at here is: what is the authority of the commissioner to provide accountability for wrongdoing? What is the authority of the commissioner to provide accountability if there are reprisals as a result of a whistle-blower protected report, and how is that enforced? If there is no accountability, there's no – in our submission it talked about providing the ability to provide fines if there is evidence of wrongdoing and to allow for reinstatement or compensation if there has been a wrongful termination, for instance, as a result of a report. Just providing that degree or that level of accountability for the organizations that are under the act, I think, is there, and the act doesn't really specify any ability or authority for the commissioner to do those kinds of things.

**Mr. Singh:** Thank you.

To the reference to 24(1)(a) and (b) of the act, the written submission mentions that there is a potential conflict in the scope between section 24(1)(a) and (b) of the act. Can you provide further detail as to the perceived conflict?

**Dr. Mittelsteadt:** You know what? What I can do is that I can ask our legal counsel to provide some written clarification for you on that question.



**Mr. Singh:** Thank you very much for answering.

**The Chair:** Thank you.

We'll move on to Mr. Feehan. Go ahead, Mr. Feehan.

**Mr. Feehan:** Thank you very much, Dr. Mittelsteadt. I appreciate your comments on the employees, so I'll drop my question on that.

You also mentioned some concern about the lack of right of appeal, and I'm just wondering if you have a prescription for how that might be appropriately redressed.

**Dr. Mittelsteadt:** Well, I don't think it's necessarily easy, because anybody who's been involved in complaints processes will recognize that there are times when people bring things forward that simply are nonsensical or are frivolous and how to address appeals in that manner. I do think that there needs to be an ability for sort of jurisdiction, but I think that in any legal process there should be an ability for appeal. That would mean that you'd need to look at other acts where appeals are allowed and develop a process where – and it may have to be outside of, you know, or external to the commissioner if that is an appeal of a commissioner's actions – maybe you want to go to an advocacy body, that kind of thing, or maybe develop some sort of independent appeals board that would see those kinds of things. There's a similar process, for instance, for privileges with physicians, where there's a privileges appeal board. If Alberta Health Services denies or withdraws privileges and they're felt unjust, there is an appeals board for that.

**Mr. Feehan:** Would that include appeals through legal court processes as well, or are you looking for appeals just within the system of whistle-blower protection?

**Dr. Mittelsteadt:** Yeah. I think our intent was not to make it a legal process but to have something else.

**Mr. Feehan:** Okay. Thank you.

I have a question as well for Ms Beckwith-Ferraton. I just noticed on your slides – I believe it's slide 3 – that when you're talking about the process within AHS, there is a large note that indicates that most workplace concerns are submitted to AHS human resources rather than ethics. I was just wondering if issues that are submitted to human resources – does that exclude them from going to ethics, or is there a directive to human resources to refer them to ethics if that is the appropriate place for them to go?

**Ms Beckwith-Ferraton:** Typically the only time matters like that would be referred to our office – well, certainly, if it's a serious matter involving conflict of interest, because, among other things, we're accountable for managing conflict of interest within our organization, they would bring us in as a subject matter expert for any investigations they do there. And if . . .

10:25

**Mr. Feehan:** So I – sorry. Go ahead. I'll let you finish.

**Ms Beckwith-Ferraton:** I was going to say that the reality is that most of the concerns that they receive as well: again, they wouldn't meet the threshold of wrongdoing, meaning broad, systemic wrongdoing. Very serious matters: there is absolutely no question. But these are typically workplace investigations, the types of allegations that you will see in probably slide 9 of the deck that I provided. Again, that's just for illustrative purposes, to sort of give the committee the broader context of the types of allegations that we typically see in the workplace. We have very experienced HR professionals here who would conduct those investigations. They know that if something is likely to meet – if they're concerned it

might meet the threshold of wrongdoing, they do know that they need to loop us in. So, yes, that is there, and that expectation is in our whistle-blower policy as well.

**Mr. Feehan:** Okay. I think I'm raising the point because some previous presenters have expressed concern that if the person initiating the complaint proceeds in the wrong manner – that is, they go to the wrong person; they don't go to the designated ethics disclosure individual, for example – that tends to become a loophole where people are excluded from the appropriate processes. I'm just wondering if that's something that we should be concerned with or whether or not, if you initiate by going to, for example, human resources when it should have in fact gone to another process through the disclosure, we're losing some cases because somebody just went to the wrong person.

**Ms Beckwith-Ferraton:** Yeah. I think that is an insightful observation. I do think that sometimes, you know, matters end up not falling under the act because people didn't come in through a certain door. Again, it doesn't mean the matter isn't investigated and addressed – it typically still would be – but it just might not be subject to the processes under the act.

**Mr. Feehan:** So it is a concern. If they go to HR because that's their natural inclination rather than your offices, then indeed there isn't a process for ensuring that it gets redirected, and it could be lost.

**Ms Beckwith-Ferraton:** Well, conceivably, that's right; it could be lost. But, again, you know, the vast majority of the time, even if that was the case, it wouldn't be a matter that would appropriately be referred to our office because it wouldn't be something that suggests or reflects potential wrongdoing under the act, right? HR is where it should be. I don't think we want to discourage people from going to managers or HR with their concerns. Generally speaking, the closer to the source you can address a matter, it tends to be the most efficient and effective. We don't want to make things more formal and discourage people from coming forward, but to the extent that people need protection from reprisal under the act, I don't personally think it should really be material which door they come in through to the organization.

**Mr. Feehan:** All right. Thank you very much for your answers.

**The Chair:** Thank you, Mr. Feehan.

We'll go to Mr. Dach, followed by Mr. Smith.

**Mr. Dach:** Thank you, Mr. Chair. My question is for Dr. Mittelsteadt. In his final comment he made reference to social media bullying, that it be included as a definition in the means of retaliation that could be made against a complainant. I'm just wondering, Dr. Mittelsteadt, if you believe that currently the definition parameters wouldn't capture social media or other evolving platforms for bullying that might exist or exist in the future and you feel the need and necessity to specifically identify new methods of bullying as they evolve. Or would you think that we should also better widen the scope of the definition itself so that it would capture new and evolving means of retaliation?

**Dr. Mittelsteadt:** Thanks for that question. I appreciate it. I think one could interpret the act to say that it would include, but I think the way we looked at the act was that it really is focused on bullying in the workplace, harassment at a site, a toxic work environment, that sort of thing.

We're becoming much more aware that it doesn't stop now just when you're at work and when you're in the workplace. You know,

this harassment and these attacks on social media are becoming more common and more prevalent in our society, unfortunately, so including the specific mention of that in the act, I think, would strengthen the act and strengthen the confidence of people who are thinking of bringing forward a complaint as well.

**Ms Beckwith-Ferraton:** May I make a comment just to follow up?

**The Chair:** Go ahead.

**Mr. Dach:** Please do.

**Ms Beckwith-Ferraton:** Thank you. I agree with Dr. Mittelsteadt that this is an issue we are seeing with, you know, people using social media to bully and harass other folks in the community, but I would just respectfully caution the committee that I think we need to be careful about how far we go in making employers accountable for the off-duty conduct of their workforce. It can be a very slippery slope there, so I just wanted to mention that.

Thank you.

**Mr. Dach:** Thank you.

**The Chair:** Mr. Smith, go ahead.

**Mr. Smith:** Thank you, Chair. My questions I would like to direct to Dr. Huang if that's possible. Is he still on the line?

**The Chair:** Yes.

**Mr. Smith:** Okay. Thank you. In your submission you recommended that reporting to the College of Physicians & Surgeons of Alberta should be automatic if wrongdoing is confirmed. Could you provide more detail into why you have made this recommendation?

**The Chair:** Dr. Huang, you're muted. There you go.

**Dr. Huang:** Can you hear me now?

**The Chair:** Yes.

**Dr. Huang:** Okay. Sorry. I think you're referring to a slide in my first presentation. It was in context of where, if there's clearly a demonstration that someone has frauded the medical benefits program, it would seem appropriate and should be automatic that this be reported to the College of Physicians & Surgeons. If someone is defrauding the system, that would be a pretty big violation of our medical ethics, I mean, to me. I think the CPSA is a reasonable body to deal with when it comes to situations where it's a black-and-white issue, as I had mentioned earlier. When we're talking about fraudulent billings or billings that are done in such a way that, for example – these are not common, mind you. That's why I said in my second presentation that we're dealing with a minority of practitioners where it's clear fraud; for example, someone bills for a patient that wasn't seen or someone bills for a procedure that wasn't done. In that situation I think it should be automatic that the CPSA be involved when there's a clear violation of medical ethics.

**Mr. Smith:** Okay. Thank you.

Can I have a follow-up, please?

**The Chair:** A follow-up, Mr. Smith. Go ahead.

**Dr. Mittelsteadt:** Can I comment on that, please?

**The Chair:** Yes. Please go ahead, Dr. Mittelsteadt.

**Dr. Mittelsteadt:** Yeah. At the Alberta Medical Association we're often very much involved when there's an audit of billings of a physician. You know, in fact, if there's clear fraud there, there should be a referral to the College of Physicians & Surgeons because that's unprofessional conduct, but in the vast majority of these it really comes down to an interpretation of what the rules state for billings and what's acceptable and what's not acceptable. More often than not it's a misinterpretation of the rules for billings and whatnot rather than clear fraud. Just to be clear, we say: "No; this is, you know, your billings. You're interpreting the billing rules incorrectly. We do not support that." We say: pay a fee and move forward. It's a very small minority of those kinds of circumstances where there is actual fraudulent billing.

**The Chair:** Thank you.

Go ahead, Mr. Smith, with your follow-up.

10:35

**Mr. Smith:** Okay. Again my follow-up will be for Dr. Huang. You mentioned that you'd like to potentially see a whistle-blower legislation change to treat improper billings that are over \$5,000 as matters appropriate to be referred to the Ministry of Justice as possible infractions under section 380(1) of the Criminal Code of Canada. Could you provide more detail into this recommendation? I think the previous speaker, Dr. Mittelsteadt, and you, you know – all of this is coming together, and if it's a code of ethics violation, if it's something that should be referred to the CPSA, I think you're also saying that it should go to the Ministry of Justice. Could you provide a little more detail with that?

**Dr. Huang:** Sure. As everyone knows, I'm not a police officer, but I'm certainly thankful – it seems to me that again, as Dr. Mittelsteadt indicates, it is an infrequent thing. That's why my actual presentation, my second presentation, focused on those areas where it's a much more expansive problem for this supposed misinterpretation of codes.

Anyway, that being said, for those rare or infrequent circumstances where someone commits clear fraud, it seems to me that if someone is stealing more than \$5,000 from the medical system, that would seem appropriate. If you're stealing more than \$5,000, that would fit the definition, as far as I could read it when I looked at the Criminal Code. It would fit under the Criminal Code of Canada. It seems to me it would have put an end to, even though they're infrequent, criminal behaviour. I mean, these situations should be referred to the police and, if appropriate, then dealt with accordingly. That seems to be a no-brainer. But then I'm not a lawyer, so maybe I'm speaking out of turn here.

**Mr. Smith:** Okay. Thank you very much.

**The Chair:** Thank you. Any more questions, Mr. Smith?

Are there any other committee members that would like to question the panel at all? Anybody on the phone?

Seeing none, well, very good. Thank you very much for your presentations. I'd like to thank you again.

I'm sorry. Apparently, Mr. Sabir would like to ask a question. Go ahead, Mr. Sabir.

**Mr. Sabir:** Just a second. I'm trying to turn my camera on.

**The Chair:** Yeah. We've got about five minutes. Go ahead, Mr. Sabir.

**Mr. Sabir:** Thank you, Mr. Chair. I'm somewhat troubled with the comments that Dr. Huang made about clear fraud and about criminal things and billing practices, so I would like to give AMA

an opportunity to clarify for us what protections are available there to put checks and balances on these billing practices.

**Dr. Mittelsteadt:** Sure. We have a billing services division within the Alberta Medical Association. One of the things that we do is we provide education to physicians with regard to what the rules are with regard to billings, and they can be very complicated for some specialty areas and that sort of thing. There's not a lot of information given to physicians or medical students, residents in their training, so they often rely on the AMA with regard to proper billing practices once they start into practice. Of course, these things change with time. We also have a committee that looks at billings and services and analyzes that, and often we will even make recommendations to say, you know, that this section of the rules needs to be clarified because it's subject to misinterpretation, that sort of thing.

We often get physicians calling our billing services and saying, "What do I do for billings?" and that sort of thing. So we're very clear that we do not support inappropriate billing, and when we became aware of it, we've had some processes where we've actually made changes because we're aware of it. Some of these fee codes were being billed inappropriately, and we've made recommendations and worked with government to change that. But I will also be clear that where we feel that physicians are underbilling and not billing correctly for services that they're providing, we encourage them to bill appropriately and increase the billings as well.

**The Chair:** Thank you, Dr. Mittelsteadt.

I see that Dr. Huang has his hand up. Would you like to comment, sir? You're on mute.

**Dr. Huang:** Just a very brief comment. I acknowledge what Dr. Mittelsteadt has said, but as I indicated in both my presentations, as well intentioned as those AMA procedures are – and he's explained them in quite thorough detail. As a former head of one of those specialty sections I can assert to this committee that in those grey zones, not the areas where there's obviously criminal activity but grey zones, the mechanisms in place, as well intentioned as they are, are completely ineffective.

Thank you.

**The Chair:** Thank you.

Mr. Sabir, are you finished with your questions?

**Mr. Sabir:** Thank you, Mr. Chair.

**The Chair:** Okay. Thank you.

I understand that Mr. Getson has a quick question as well.

**Mr. Getson:** Yes, please. Just as a follow-up. You know, between AHS, the AMA, and yourself, Dr. Huang, this is fantastic information, quite frankly, and I really appreciate everyone's candour to talk about this. What I'd like to explore is that grey area that we're talking about. I think that the doctor – I missed your name there – from the AMA said that there's a billings committee that reviews these practices, which is fantastic. The AHS: I'm not sure if you're involved in that process to make sure that the billings are correct.

Now that you've got even membership coming forward, whether you're a head or otherwise, sir, you know, in your past, bringing this to the public – it's on record. It's right now being videotaped and broadcast to whoever is watching that there is an issue, so how do we do steps forward? Is the best way to look at the billings, to look at this through the AHS? Is it for us to look at the whistleblower practice to try to bring some common sense or realities to what's taking place? What would be your recommendations on this

for new practitioners coming up, how to solve the grey area? Is it punitive measures? Is it a reform that we're looking at internally? Maybe we need to fire up a different panel or a task force to look at that. Just some comments on that, please.

**Ms Beckwith-Ferraton:** Maybe if I can just make a brief comment. Thank you. I'm not an expert in this area. There may be a role for AHS here to the extent that some of the billings may be occurring in our facilities, but my understanding is that physician billing and oversight of that are largely, I think, an accountability with Alberta Health. My general understanding is that they have some audit and inspection rights in relation to those processes. Again, I'm not an expert. I don't know what that process is and how often it's invoked, but there may be some processes already there that could be looked at in relation to this issue.

**The Chair:** Thank you.

Any comments from either Dr. Huang or Dr. Mittelsteadt?

**Dr. Huang:** Yes. I can just say that on slide 27 of my original presentation I did indicate that these mechanisms exist. The problem is that there are no teeth. We don't need to reinvent the wheel here. Alberta Health already knows every cent, in terms of billings, at least, where it goes. It's just that they can then analyze if there are very questionable trends in certain practitioners' billings and if they far exceed the standard average. That's how, when I was head of ophthalmology, the AMA would come to me and say, "Hey, we won't tell you who they are, but there's" – for example, in one slide I explain that they approached me and said: "There are two practitioners who are billing one particular code at a rate of 300 times the provincial average. Can you explain that?" We looked at it and said, "No, we can't." We hypothesized, and we said, "No; I mean, this is inexplicable." Then what happened was that it ended there. I'm not trying to put Dr. Mittelsteadt on the defence. I'm just giving background here.

I think the mechanisms are in place when it comes to billings. It's just that we have to put some teeth and accountability into it, pretty much like in my second presentation when I said that I think Albertans themselves – they're the patients. They're common-sense folk. There should be a mechanism, an easily utilized mechanism, where if they're wondering, "Am I supposed to be getting this treatment?" they can go back to the government or some agency and say: "Listen, I'm concerned. Can you look into this?" In the case of billings I would say that you need more teeth in outcomes if we know there have been questionable billings and, in the case of everything else, have something that Albertans can engage in that's easy to access.

10:45

**Dr. Mittelsteadt:** If I could make a brief comment as well.

**The Chair:** Okay. We're going to be very brief. We've run out of time, but I'll give you a minute. Dr. Mittelsteadt, please.

**Dr. Mittelsteadt:** Sure. We are doing a lot of analysis of billings and have an ability to sort of identify where we have concerns about billing across, for instance, small groups of physicians or individual physicians. We have a proposal to Alberta Health in regard to an independent means of dealing with this. My understanding is that those discussions are ongoing.

**The Chair:** Thank you very much.

Unfortunately, our time for this portion has elapsed. I'd like to once again thank each of you for your presentations. Very informative, I think, for the committee as well.

We will now take a short break and reconvene at 10:50. Thank you very much.

[The committee adjourned from 10:45 a.m. to 10:50 a.m.]

**The Chair:** Thank you, everybody. Welcome back. We will now move on to our final presentation of the day, which is from the office of the Public Interest Commissioner. We have Ms Marianne Ryan, the Public Interest Commissioner, as well as Mr. Chris Ewaniuk, manager of investigations with the office of the Public Interest Commissioner. Thank you, both, for joining us today. You may begin your presentation when ready.

#### Office of the Public Interest Commissioner

**Ms Ryan:** Good morning, and thank you to the committee for giving us this opportunity to meet with you again. As was mentioned, I am joined by Chris Ewaniuk, who is the manager of our public interest disclosure investigations team. Both Chris and I will be available to take any questions that you may have. We have provided, for your ease of reference, three slides, which I will be referring to in my presentation.

Turning to the first slide, we've recommended several ways to enhance the scope of the act. Most significantly, we recommend creating a prescribed service provider regulation, expanding protection to individuals who through contract or agreement are in a business relationship with government and want to come forward to report wrongdoing in relation to that contract or agreement. This would include a broad sector of the private sector and include vulnerable sectors such as continuing care services for seniors, management bodies of housing accommodations, and child care service providers. The public's perception is that entities receiving significant government funding and entities funded by the public through a service levy are the responsibility of government. Ensuring the proper management of these funds is particularly important during challenging economic periods.

We also propose creating a mechanism for the Minister of Municipal Affairs to request assistance from my office to investigate and remedy the most serious circumstances of potential wrongdoing within municipalities. Further, we recommend the act include 71 public agencies currently excluded from the act, private postsecondary institutions receiving government funding, and all subsidiary health corporations. We believe this ensures employees within these organizations receive the same protections as their colleagues in similar institutions and is consistent with the spirit and intent of the act.

The second area of our submission relates to strengthening protections for whistle-blowers and witnesses. We recommend that the act protect individuals who make disclosures of wrongdoing or complaints of reprisals from civil liability. Employees are deterred from reporting wrongdoing to my office because they believe doing so may expose them to civil liability.

Further, we recommend expanding confidentiality provisions through four amendments to the act. Ensuring confidentiality is the single most important aspect of whistle-blower protection as the absence of an assurance of confidentiality is a deterrent to disclosing wrongdoing or providing unfiltered information as part of an investigation.

We also believe it is important to expand protections to all individuals from any detriment as the result of a disclosure being made under the act. This includes nonemployees, individuals who are no longer employees but may have information about a possible wrongdoing, and persons suspected of making a disclosure. We have encountered circumstances where employers have sought to

identify whistle-blowers and even indicated an intention to harm suspected whistle-blowers. We believe this is a serious deficiency in the act.

The third area I would like to highlight involves adding provisions to improve the functionality of the act. I have recommended removing the term "good faith" from the act. I have also recommended giving my office the ability to decline to investigate matters before a court or a law enforcement agency, including protections against self-incrimination, providing me the authority to obtain information under oath, and affording me the ability to make recommendations regardless of whether a finding of wrongdoing is made. Finally, for this slide, it will be very beneficial for jurisdictional entities to provide any reporting on their activities under the act. This information will be highly useful in identifying systemic issues, recognizing deficiencies, measuring the effectiveness of the act, and observing the performance of public entities in applying the act.

Now, turning to the second slide, I would like to speak to the analysis that my office conducted in advance of our stakeholder submission. In addition to the crossjurisdictional analysis of whistle-blower legislation in Canada and internationally, we have also conducted analysis using two internationally recognized assessment models. Both the European Union directive of the European Parliament and of the council on protection of persons who report breaches of law and a tool kit developed by Transparency International are generally recognized as best practice guides. In our analysis we looked at how Alberta's law with our proposed amendments would measure up to these international best practice standards. I would be happy to expand on our analysis if the committee requires.

Lastly, referencing our third slide, our experience, combined with the feedback we receive from persons served by our office and the perspectives generated through collaborative relationships with public entities, has given my office a strong sense of the effectiveness of the act and where improvements could be made. We feel we are well positioned to give the committee information and advice on the practicalities and potential risks associated with applying any amendments it may be considering.

This concludes my presentation to you today, and both Chris and I would welcome any opportunity to answer any questions you may have.

**The Chair:** Okay. Thank you very much.

We will now open the floor to questions from the committee. I see Mr. Singh has his hand up. We'll start with Mr. Singh, followed by Mr. Yaseen and Mr. Getson.

**Mr. Singh:** Once again, thank you, Mr. Chair, and thank you to the office of the Public Interest Commissioner for presenting here today about these submissions as we review the Public Interest Disclosure (Whistleblower Protection) Act. My question is in reference to 1(f), 24(1), and 24(2) of the act. Many of the recommendations received by this committee mention the unclarity of "good faith" in the act, and you have also recommended that the term "good faith" be removed from the act. Can you provide the committee with further insight as to why this term should be removed from the act?

**Ms Ryan:** Certainly. The way we look at it is that we presume good faith in the absence of clear evidence of malice or anything untoward in that regard. If a person makes a disclosure by providing knowingly false or misleading information, he or she will be subject to the penalties set out in the act for making that false statement. I will note that since our inception my office has not declined to investigate a disclosure based on the absence of good faith.

Complaints, I feel, ought to be assessed on facts and on the merits of the complaint, and the complaint's motivation, in my mind, should not be a prerequisite to making a disclosure.

**Mr. Singh:** Thank you, Mr. Chair, and thanks for answering.

**The Chair:** Thank you.  
Go ahead, Mr. Yaseen.

**Mr. Yaseen:** Thank you, Chair, and thank you, Ms Ryan. In your submission to the committee, under the category Enhancing the Scope of the Act, you recommend that the act give the Minister of Municipal Affairs the ability to refer matters of potential wrongdoing relating to a municipal authority or council to the Public Interest Commissioner for investigation in accordance with the act. What is the current status of the act in accordance to municipalities, and what would this recommendation mean for the scope of the act?

**Ms Ryan:** Well, thank you, Mr. Yaseen, for the question. Currently we do not have jurisdiction over municipalities. The recommendation we are making is that it has been our observation that large municipalities have very good processes in place to deal with whistle-blowing and, you know, serious wrongdoings. What we have observed is that there are small municipalities where there are serious issues of complaints of serious wrongdoing brought forward, and the municipality may not have the resources or the experience and the ability to deal with those wrongdoings. Rather than giving us the jurisdiction for municipalities, we are just recommending that, should the Minister of Municipal Affairs come to a situation where, you know, a small municipality or a municipality is struggling and reaching out to his office for help, he could come to us and request assistance, and perhaps we could assist that municipality in the investigation of a complaint of a serious wrongdoing.

11:00

**Mr. Yaseen:** Okay. Thank you.

On the same topic of enhancing the scope of the act, you recommend that the act apply to public agencies as defined in the Public Agencies Governance Act, to publicly funded private postsecondary institutions as defined in the Post-secondary Learning Act, and to all subsidiary corporations. Could you please provide details as to what this would mean in terms of scope and why you have recommended these inclusions?

**Ms Ryan:** Yes. Again, thank you for the question. At the present time – and I actually think this may have been an oversight in the previous legislation review. The act right now refers to public entities. Those are defined as any agency, board, commission, Crown corporation, or any other entity designated as a public entity in the regulations. However, we believe that the definition of a public entity has ambiguity, and the definition may also be interpreted to include any agency, board, commission, including provincial corporations defined in the regulation. What we are recommending is that we feel that the definition should include public agencies as defined under the Public Agencies Governance Act, which would expand the jurisdiction and, you know, basically clarify those entities that we feel should fall under our jurisdiction and should fall under the act.

**Mr. Yaseen:** Thank you. Thank you, Chair.

**The Chair:** Thank you, Mr. Yaseen.  
We'll go to Mr. Getson, followed by Mr. Dach.

**Mr. Getson:** Thank you, Commissioner, for the presentation. I have a couple of questions here. Obviously, that's why I'm asking. I really appreciate that. The first one: I'm very curious to hear a little bit more about the analysis that you had. Out of that, I'm looking for any low-hanging fruit items and how it might apply to one of your recommendations being on protection from civil liabilities.

**Ms Ryan:** I'm going to ask Chris Ewaniuk, who's the manager. He led the crossjurisdictional analysis as well as looking at the international best practice standards to see how our legislation measured up and, more importantly, how our proposed recommendations would fit into those models, so I'm going to turn that over to Chris.

**Mr. Ewaniuk:** All right. Thanks, everyone. In 2019 the European Union adopted a directive on the protection of persons who report breaches of union law. This was referred to as the EU whistle-blower directive. What it did is that it provided standards for EU member states to adopt into their own national legislation. Although the directive applies only to EU member states, what we found is that it contains some pretty strong guidance on what international expectations for best practices are.

We also looked at Transparency International, which is a highly recognized international NGO that combats global corruption through research and advocacy work. What Transparency International did is that it created international principles for whistle-blower legislation. It then created a tool kit which allowed researchers and legislators to compare existing legislation with those principles and with the specific standards in the EU directive. This tool kit was comprehensive. It comprised 25 core indicators with just a little over 300 specific criteria to assess.

We conducted this and compared it to Alberta's law. Our analysis found that if all of the recommendations that we're making were applied to the act, Alberta's whistle-blower law would be strongly in line with international best practices. Where our law wouldn't conform to the directives and the Transparency International guidelines are areas that don't apply or are inapplicable to Alberta law because this directive applies to EU law or areas that we believe would not be advantageous to include in Alberta's act. There were three specific areas in that regard, and I'd be happy to go into them if the committee would like, but in all other areas Alberta's law would strongly be in line with international best practices.

**Mr. Getson:** Okay. Perfect.  
Just a follow-on question?

**The Chair:** Go ahead. A follow-up.

**Mr. Getson:** Perfect. Well, I appreciate that, and it's nice to know that the recommendations are there. Given that I'm not sure if you folks have also seen the other presenters and some of their recommendations, how does that fit with anything that they're seeing? Is it kind of following in line? That would be the first part of that.

The second one that kind of jumped off the page was: when it comes to AHS and their contracts with their contractors, either employees or otherwise, have you found in some of the past investigations that you've done that there was any ambiguity between the act itself and some of those contracts, if it was causing some of that decline in reporting, potentially? It's more of a feeling, I guess, on that one, kind of an analysis. I know you don't have anything hard on that, but just trying to follow a different line of questioning for items that came up earlier.

**Ms Ryan:** I'll start, and then I'll invite Chris. With respect to your first question and the previous presenters, yes, we were both listening to all the presenters. There are some recommendations that we can speak to where we likely disagree with some of the presenters. Some we do agree with, particularly around protecting employees and expanding the definition of that application under the act. However, you know, I think the list is quite significant, so if there's time we could go through what we see are opportunities for our perspective on their recommendations.

I will say with respect to Mr. Hutchison that, you know, I certainly appreciate his passion. We've seen that in his presentation but also in his publications. We do disagree with many of his interpretations of the act and our processes and how we apply the act, but I won't take up too much more time with that.

With respect to your second point, I'll ask Chris to respond to that, with respect to AHS.

**Mr. Ewaniuk:** As it relates to AHS contractors, I think that falls in line with one of our recommendations, which is to include prescribed services providers. Prescribed service provider, using the definition that we proposed, would include contractors of AHS. That would include care homes, nursing homes, and even physicians in private practice. Right now those individuals and those groups are not included in the act. Yes, we have received complaints and inquiries from those areas that, had they applied to the act, it certainly would have been something that we could look into. We feel that protections should extend to those groups and individuals as well, and that's why we made the recommendation that we did.

**Mr. Getson:** Just a quick follow-on, not another question.

**The Chair:** Go ahead.

**Mr. Getson:** Given that the commissioner had offered to maybe provide some additional feedback on what they see as other recommendations that they could get in line with and if there are any challenges or areas where we might be painting ourselves into a corner, Chair, to be quite frank, I would be very much open to receiving that, and I would put that out to the rest of the committee as well. I think it might be beneficial for us all going forward to have that line of sight.

**The Chair:** Okay. We're going to move on to Mr. Dach and Mr. Ceci, but I will say that we've got about 20 minutes left, so at that point if the committee runs out of questions, feel free to, you know, help us out with that concern of Mr. Getson's.

Go ahead, Mr. Dach.

**Mr. Dach:** Thank you, Mr. Chair, and thank you to the Public Interest Commissioner for her responses so far. I have a question about a recent very eloquent defence, Madam Ryan, that you made of your office in an op-ed on December 18 in the *Edmonton Journal*, whereby you are defending against, it seems as though, an attempt to discredit the office's protection of whistle-blowers.

**11:10**

One of the things that you did say in that op-ed – it was quite interesting. You said: "My office's ability to oversee government is hampered by a general lack of awareness of the protections afforded by Alberta's whistleblower [protection] legislation." I'd like you to expand on that a little bit and let us know, as a committee, what different methods you think the government should be using or this committee could request and recommend to improve your ability to raise awareness of the protections that are afforded by Alberta's

whistle-blower protection legislation, either to Albertans in general or to the public in general and also to those who might wish to bring forward a complaint.

**Ms Ryan:** Well, thank you, Mr. Dach, for the question and raising that very important issue. In my view, the biggest detriment to, you know, being able to enforce the act is knowledge amongst the public sector about the act. We're a small office in the public interest disclosure commissioner's office. We make a sincere effort and a planned effort to meet with as much of the public sector as possible, either through conferences and looking for invitations to attend, to expand our outreach capabilities to make sure that people are aware of the act and how it works. The bottom line is that if there are any questions at all, call our office and, you know, through our website as well.

To specifically answer your question, the biggest help that we need is through your offices and support, just spreading the word that our office is here and welcomes any questions, any concerns. As I mentioned in our presentation, confidentiality is paramount, so we make every effort to maintain confidentiality no matter what the level or the nature of the call or interaction is.

That, to me, is the biggest detriment, just getting the word out. In the big picture, the legislation hasn't been around that long, but we still need to do a lot more to convey through every possible means that the legislation is here. It is the act which protects people. It is not my specific mandate although I'm a very big part of it, but it's the act which protects the public sector. You know, again, it's the outreach that we really see as sort of the downfall.

**Mr. Dach:** Okay. So are you saying that you need more resources to conduct and perform that outreach? Are you lacking resources to do that?

**Ms Ryan:** Well, I wouldn't say that we're lacking resources at this point. As you know, the word does get out. Yes, our calls for service could go up, but it's just getting the engagement of the various entities that are under our jurisdiction – the ministries, the Crown corporations, the public agencies that do fall under us – and making them aware, all new employees, using the designated officer's role to put posters up and distribute information. I believe Ms Andrea Beckwith-Ferraton did a great job of explaining how that works with AHS. We'd like all ministries and all areas of the public sector to help us. It's not just ours alone; it's everyone's responsibility in the public sector.

**Mr. Dach:** All right. Thank you for that.

Now, also further in your op-ed on December 18 in the *Edmonton Journal* you seem to imply that there was a campaign, either by individuals or groups. You said: "However, even more damaging is misinformation suggesting that whistleblowers will not be protected." Implicit in that is an accusation that somebody out in the public, either groups or individuals, is attempting to create the impression that whistle-blowers are not protected, and your article certainly is trying to counter that. Could you comment on that if you feel able?

**Ms Ryan:** Yes, I will, to the best of my ability. You know, I'm not sure that this is the correct forum. There was a publication made in a forum that we took exception to. I thought it was important. I wasn't sure how widespread that publication was going to be, but I did feel that there was a misinterpretation or a lack of interpretation or a lack of due diligence applied in that publication. So I took the opportunity to try to correct the record and really underscore that the interpretation that employees are only protected if an investigation by my office finds wrongdoing is not how the act was

intended to be interpreted, and we have never interpreted the act that way or applied it that way. Employees are protected for using the act regardless of the outcome of a review of a complaint or the outcome of an investigation.

The misconception was that – it could be harmful, in my view, to public service employees as it discourages them if there's some sort of taint to our office. I found it very frustrating and discouraging to have that public document out there, and I felt that we have demonstrated that we do absolutely everything to protect confidentiality, to work with people making disclosures to get to the bottom of alleged wrongdoing, and pursue it to the full extent of the act that it allows me to do. I just didn't support that interpretation that the act is a trap and that whistle-blowers shouldn't dare to use the act to bring forward concerns of wrongdoing. I felt I needed to speak publicly on that and correct that.

**Mr. Dach:** Thank you for that.

Now, in the same vein, Mr. Chair, just to follow up, if I may, to ask about the crossjurisdictional analysis and the reference that the Public Interest Commissioner made to her disagreement with Dr. Cam Hutchison's appraisal of how Alberta stands up to other jurisdictions. Obviously, he claimed that we were woefully falling short in comparison to other jurisdictions and suggested that Mme Ryan's reliance upon protection of whistle-blowers in terms of confidentiality was insufficient. He suggested that there was much more depth that we had to go into to deter – to support his claim that we were not following best practices in that there was inadequate investigation done, that there were very few actual findings of abuse of the complainants, that the complainants needed to have more protection than just anonymity, that there had to be a method to actually sanction those who would generate reprisals against complainants. So I would, as you suggested, Mme Ryan, invite you to go into that disagreement a little bit further because it is, I think, very germane to our discussion today about the whole piece of legislation that we're going to make recommendations about.

**Ms Ryan:** Just sort of working my way back to those issues that you've raised – and again I would welcome Chris to talk about the analysis. But with respect to sanctions, as a legislative officer, like all the other legislative officers, I make recommendations. There are opportunities for me to elevate those recommendations should wrongdoing be determined, and there are opportunities for me if I don't feel the recommendations are being addressed or are not being dealt with. I can elevate them through various processes to make sure that they are addressed. In terms of whether there should be fines or sanctions, I really don't have a position on that. I would leave that to the committee. I should tell you that there have been no recommendations made where they have not been acted on by anyone.

**11:20**

The other piece is, with respect to identifying instances of disclosure of wrongdoing, again, that we want to maintain confidentiality. I will say that, for us, what we think the public expects is that if a wrongdoing is identified, it will be addressed. Sometimes the issue that is raised does not meet the threshold of that serious and significant wrongdoing. That doesn't mean that it ends for us. We will work with the entity that's involved and help them to address it. Sometimes that takes on a more informal role and may not meet, again, that threshold of serious or significant wrongdoing and result in a check mark of a wrongdoing.

The bottom line is that we believe the public expects accountability from the government and the public sector, and I feel we do

everything in our power to make sure that those issues are addressed. I did take exception to Dr. Hutchison's comment that, you know: do we turn over every stone with respect to a reprisal? Absolutely. Absolutely. You know, our investigators are extremely dedicated. They're the best professionals from various areas, and there is no doubt in my mind or there are no regrets in my mind about any investigation that we've conducted.

With respect to the analysis, and just in the interest of time, I'm going to turn it over to Chris, just to provide a bit more context about our crossjurisdictional analysis.

**The Chair:** Yeah. Quickly, if you could. We have one more question coming forward. So go ahead, Mr. Ewaniuk.

**Mr. Ewaniuk:** So what are you specifically looking for in regard to the analysis?

**Mr. Dach:** That would be for me, I imagine. I'm looking to find the comment you might have with reference to objections you have with Dr. Hutchison's allegations that we fall short, particularly in investigations and the number of complaints regarding reprisal that actually are brought forward and are found to be legitimate and prosecuted.

**Mr. Ewaniuk:** Sure. Our office would invite anybody to contact our office to get information if they're uncertain. I think the information on our website is generic and it is limited for confidentiality reasons. So if anyone has any questions and needs additional information, I'd invite them to contact our office.

I think there are probably three significant points in the last presenter's comments that need to be addressed, first off being the number of wrongdoings reported. The actual number of wrongdoings our office has found is six. These were instances that the commissioner or her predecessor found serious enough to constitute a declaration of wrongdoing. We feel that such a finding should not be taken lightly. It's reserved for instances that are unlawful, dangerous, or injurious to the public interest.

But looking at the number of findings of wrongdoing as a statistic alone is not a sufficient measure of the performance of the act. A finding of wrongdoing isn't necessary for us to effect significant change in an organization. There have been many investigations where we have found wrongs that don't necessarily meet that threshold of wrongdoing, but our office has still addressed them with the organization, and corrective steps have been taken.

It also doesn't include those cases where our office has worked collaboratively with public entities to correct potential wrongdoing outside the auspices of a formal investigation. This has been a very effective approach, particularly with organizations who have fostered that positive culture around whistle-blowing and are eager to remedy wrongdoing. Our office isn't about publicizing wrongdoing and making a big issue of it. We're about finding mechanisms to correct the wrongdoing.

And, finally, that number doesn't include the number of circumstances where wrongdoing was found by designated officers working within those public entities and where they were assisted and supported by our office. These are the substantive results of our work that aren't often captured in generic statistical reporting.

I think that the second issue I wanted to talk about relates to the comments around reprisals and that no reprisals have been found to date. That is true, but it's important to know that we're not going to find a reprisal for the sake of a statistic. The presumption is that reprisals occur every time a complaint is made, and that's just not the case. As the commissioner alluded to, I can also state firmly that no employee who brought a complaint of reprisal to our office has been reprisal against as a result of using this act. It hasn't happened.

What we have found is that the complaints of reprisal that have come to our office are the result of employees expecting protections for making complaints outside of the act, for example to HR or to the media, or they're under performance management for ongoing issues, and the employer had already undertaken a process of terminating the employee for reasons outside of the act.

**The Chair:** Good answer. Sorry, Mr. Ewaniuk. Mr. Ceci would like to get on, and we're down to about four minutes left. I apologize again.

Go ahead, Mr. Ceci.

**Member Ceci:** Thank you. Thank you, Commissioner Ryan and Mr. Ewaniuk. Thank you very much for the presentation. I wonder if both of you have had an opportunity to look at Mr. Hutton's presentation, wherein they do an international best practices review as well. I think, if I can remember the slide from memory, it talks about 19 to 20. You and he use different measurement gradients. I'm just looking at your slide here that talks about: if the proposed amendments that you're making on your first slide were incorporated into what we have now, you know, it looks like most of what we would have would meet the criteria and be pretty good, and there would be some things that could be improved still.

My question is – sorry for the confusing question. Mr. Hutton shared that their view is that Canada and the respective provinces in Canada don't have very good best practices with regard to whistle-blowing. They're in the zero to 1 range, and best practices is up to 20. With the proposed amendments you've spoken to – and maybe it's just the opinion from both of you – where do you think we'd land on the scale that Mr. Hutton shared with us? Would Alberta then move to the top of that rank in terms of best practices internationally?

**Ms Ryan:** Well, thank you, Mr. Ceci. In the interest of time, I'm going to turn it over to Chris, because he did the analysis of those two models.

**Mr. Ewaniuk:** Thanks very much. I think the important distinction is that Mr. Hutton's submission and his comments related to the federal act, so Canada's whistle-blower law, and he mentioned that Alberta's law somewhat followed suit. Our analysis focused on Alberta's law and how it would conform to EU best practices and Transparency International's standard of best practices, and what our analysis found using the tool kit was that if we applied all of the recommendations that we've made, we would have a strong piece of legislation. But the important thing I want to note, with all of the different analyses that you're all getting and different interpretations, is that it's difficult to apply a universal best practice internationally because different nations have different perspectives, they have different experiences, and they have different systems of law, so there is no international system of administrative law. So we really need to look, when we're looking at those international best practices, and see how they apply to our regional laws and how they apply to our regional environment.

**Member Ceci:** Great. Thank you for all of that. I appreciate the presentation, and it's given me lots to think about. I appreciate it. Thanks.

11:30

**The Chair:** Thank you very much.

If there are no further questions, I think we are just about out of time here. I'd like to thank both Ms Ryan and Mr. Ewaniuk for their very informative discussion here today. I know that I cut off Mr.

Ewaniuk when he was answering one of the questions, so I would welcome it if you want to send a written submission to the committee with your response. That would be more than adequate, I think. We have that option available.

That brings us to the end of our presentations. I'd like to thank everyone for taking the time out of their day to present to the committee. Your input has been very helpful.

We will now move on to next steps. Having received feedback from stakeholders and members of the public through written submissions and oral presentations, the committee is now in a position to proceed to deliberations on the Public Interest Disclosure (Whistleblower Protection) Act. I would like to provide members with a brief reminder of the purpose of the committee's deliberations at this stage. In accordance with Government Motion 22 and section 37 of the act the committee must next prepare a report to the Assembly that contains the committee's recommendations on the act and its regulations, including any recommendations for amendments.

The purpose of our deliberations at the committee's next meeting will therefore be to decide what recommendations will go into the committee's report to the Assembly. If committee members have any recommendations that they wish to bring forward, they will need to be brought forward as motions for the committee to consider. Any such motion is required to be put on notice prior to the committee's next meeting, under Standing Order 52.04(1). Throughout our deliberations on the act Parliamentary Counsel will be available to assist members with the drafting of motions.

When committees have undertaken similar statute reviews in the past, at this point in the review they have requested that research services draft an issues-and-proposals document for review at its next meeting. Is this something the committee would like to consider in its review of the act? Just before we go into that, I would just ask: how much time would be required to do that justice?

**Dr. Massolin:** Thank you, Mr. Chair. We would need a few days just to get the transcript from this meeting so that we can incorporate the feedback that was received from the stakeholders here into that document. I would think that by the middle to the end of next week that would be posted for the committee's benefit.

**The Chair:** Okay. Thank you.

Having heard that, we would need a motion that the Standing Committee on Resource Stewardship direct research services to prepare an issues summary for the committee's review of the Public Interest Disclosure (Whistleblower Protection) Act. Is there somebody that would – Mr. Getson.

**Mr. Dach:** Dach speaking.

**The Chair:** Okay. Well, you know, we're going to go with Mr. Dach this time, okay? Thank you very much, Mr. Dach, for jumping forward.

Mr. Dach to move that the Standing Committee on Resource Stewardship direct research services to prepare an issues summary for the committee's review of the Public Interest Disclosure (Whistleblower Protection) Act. Any discussion on the motion? I see Mr. Ceci waving.

**Member Ceci:** Oh, sorry. I didn't mean to.

**The Chair:** Okay. Thank you, Mr. Ceci.

Seeing that there is no further discussion, all those in favour of the motion, please say aye. Any opposed, please say no. Thank you. That motion is carried.



Moving on to other business, are there any other issues for discussion before we wrap up today's meeting? Mr. Getson, followed by Mr. Dach.

**Mr. Getson:** Yeah. Mr. Chair, just on a comment the commissioner had made, that they would be willing to give a follow-up document kind of showing the areas where they had agreed with recommendations or disagreed and the reasons why. I think it would be very beneficial, at least for me, to go through that in the context of the report prepared by legal.

**The Chair:** Is that something that would be covered in the report by research services?

**Dr. Massolin:** Mr. Chair, no, it would not. Maybe you would ask the committee if they would wish to receive that document.

**The Chair:** Okay. I guess we would put that forward to the committee. Following Mr. Getson's comments, is that something that we would want? In the essence of time, I guess, we're coming up fairly close to session starting, and I understand research services is as well. If we could get a motion to that effect, unless somebody has another idea on that. If Mr. Getson would like to make a motion to that effect.

**Mr. Getson:** Yeah. I would make it in the motion as well that we would have it within next week so that, again, it would give us time to make sure that it's in with your work, sir, that you would have everything together at one time by the end of business close next week, Friday, if that's where you were targeting.

**Dr. Massolin:** Maybe just to clarify, Mr. Chair. I mean, it's up to the committee, and of course we'll take the direction from the committee, but this could be an independent document from ours. Like, we're planning on simply summarizing all the feedback from all the stakeholders and the submissions that this committee has received and other information. I mean, this . . .

**Mr. Getson:** The two could run in parallel.

**Dr. Massolin:** Yes. I think this is, like, a separate document where, you know, the commissioner's office is acting like a stakeholder, in essence, to respond to some of these issues that have come up and prepare a response. That would be independent of the issues document that we would prepare. So that the committee would have both documents to refer to for its deliberations, that might be the best course of action. But, again, we work at the pleasure of the committee.

Thank you.

**Mr. Getson:** Thank you for that clarification.

With that, I would request that the commissioner provide the information no later than business close next week, Friday, so the two documents can be available to the committee to review on the committee site, which would be, obviously, inclusive of yours and the separate document.

**The Chair:** Okay. Have you got a motion in mind, Mr. Getson, so that you could sum that all up for us?

**Mr. Getson:** Essentially, I'll make a motion that the commissioner provide their report and feedback from the stakeholder findings today in areas in which they are in agreement and in areas on which they would not agree with recommendations from the other

stakeholders and that that document be provided no later than business close on Friday of next week.

**The Chair:** Thank you.

Any discussion on the motion? Go ahead.

**Dr. Massolin:** Because it was not put on notice, you have to first ask the committee whether or not they're in agreement with receiving this motion.

**The Chair:** Do we need unanimous consent on that as well?

**Dr. Massolin:** You need a motion. It's a simple motion.

**The Chair:** All right. Being that the motion was not given to us with proper advance notice, it will be up to the committee to make a motion to accept Mr. Getson's motion. Is there a committee member that would like to make that motion?

**Mr. Feehan:** I would be happy to make that motion.

**The Chair:** Thank you, Mr. Feehan.

Mr. Feehan is moving that

the committee allow Mr. Getson's motion to stand on the floor.

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

That motion is carried.

Go ahead, Mr. Getson.

**Mr. Getson:** What I said before. For the record I'd like to make a motion that the Ethics Commissioner provide their report . . .

**The Chair:** The Public Interest Commissioner.

**Mr. Getson:** Oh, I'm sorry. You've really got to help me out here. That

the Public Interest Commissioner provide their report itemizing which items the stakeholders under this committee have already provided which they're in agreement with and identify the items with which they have objections and the reasons why by no later than business close next week, Friday.

**The Chair:** Thank you.

Having heard the motion, any committee discussion on the motion? Go ahead, Mr. Smith.

**Mr. Smith:** Can we require or can we request?

**Mr. Koenig:** I would suggest starting off with a request to the office.

**Mr. Getson:** I believe that they are amenable since they suggested it. It might just be the timeline.

**Mr. Smith:** I was just trying to remember what word you used, whether it was "require" or "request."

**The Chair:** A request: yeah, I think that's something that we can put forward. I'm pretty sure that the commissioner would be happy to provide that. She did kind of open the conversation today.

Any other further discussion on the motion?

Seeing none, all those in favour of the motion, please say aye. Any opposed, please say no. Thank you very much.

That motion is carried.

Thank you, Mr. Getson.

The next order of business – sorry. Mr. Dach, you had another other business item.

**Mr. Dach:** No, I no longer have. Thank you.

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

Anybody else on the committee with other business?

Seeing none, we'll move on to the date of our next meeting. I don't know about the rest of you, but I feel like I've just eaten a big Christmas dinner. There's a lot to digest here today. But, in the essence of time, I know that the session starts on the 25th of February, so the next meeting will be at the call of the chair. I would look forward to input from committee members as to dates, when we put those dates forward. Giving research time to do their work next week, I would suspect that probably the following week we'd be looking for a date there.

**11:40**

I think we've got some very, very important work ahead of us. This information we were given by stakeholders today was incredible. Like I said, the committee has some very important work ahead, so let's get to it.

Other than that, if there's nothing else for the committee's consideration, I'll call for a motion to adjourn. Mr. Smith has moved that the meeting be adjourned. All those in favour, please say aye. Any opposed, please say no.

Thank you, everybody. It's been a great day. This meeting is adjourned.

[The committee adjourned at 11:41 a.m.]



