Legislative Assembly of Alberta

The 29th Legislature
Second Session

Select Special Ethics and Accountability Committee

Election Finances and Contributions Disclosure Act Review
Public Interest Disclosure (Whistleblower Protection) Act Review

Wednesday, July 6, 2016
9 a.m.

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Second Session

Select Special Ethics and Accountability Committee

Littlewood, Jessica, Fort Saskatchewan-Vegreville (ND), Chair
Miller, Barb, Red Deer-South (ND), Deputy Chair

Anderson, Wayne, Highwood (W)
Clark, Greg, Calgary-Elbow (AP)
Connolly, Michael R.D., Calgary-Hawkwood (ND)
Cortes-Vargas, Estefania, Strathcona-Sherwood Park (ND)
Cyr, Scott J., Bonnyville-Cold Lake (W)
Drever, Deborah, Calgary-Bow (ND)
Jansen, Sandra, Calgary-North West (PC)
Loyola, Rod, Edmonton-Ellerslie (ND)
McKitrick, Annie, Sherwood Park (ND)*
Nielsen, Christian E., Edmonton-Decore (ND)
Nixon, Jason, Rimbey-Rocky Mountain House-Sundre (W)
Renaud, Marie F., St. Albert (ND)
Starke, Dr. Richard, Vermilion-Lloydminster (PC)
Sucha, Graham, Calgary-Shaw (ND)
Swann, Dr. David, Calgary-Mountain View (AL)
Sweet, Heather, Edmonton-Manning (ND)**
van Dijken, Glenn, Barrhead-Morinville-Westlock (W)

* substitution for Rod Loyola
** substitution for Marie Renaud

Also in Attendance

Yao, Tany, Fort McMurray-Wood Buffalo (W)

Office of the Public Interest Commissioner Participants

Peter Hourihan	Ombudsman, Public Interest Commissioner
Sandy Hermiston	General Counsel
Ted Miles	Director

Support Staff

Robert H. Reynolds, QC	Clerk
Shannon Dean	Law Clerk and Director of House Services
Trafton Koenig	Parliamentary Counsel
Stephanie LeBlanc	Parliamentary Counsel and Legal Research Officer
Philip Massolin	Manager of Research and Committee Services
Sarah Amato	Research Officer
Nancy Robert	Research Officer
Corinne Dacyshyn	Committee Clerk
Jody Rempel	Committee Clerk
Aaron Roth	Committee Clerk
Karen Sawchuk	Committee Clerk
Rhonda Sorensen	Manager of Corporate Communications and Broadcast Services
Jeanette Dotimas	Communications Consultant
Tracey Sales	Communications Consultant
Janet Schwegel	Managing Editor of *Alberta Hansard*

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9 a.m. Wednesday, July 6, 2016

[Mrs. Littlewood in the chair]

The Chair: Good morning. I'd like to call the meeting of the Select Special Ethics and Accountability Committee to order. Welcome to members and staff in attendance.

To begin, I will ask the members and those joining the committee at the table to introduce themselves for the record, and then I will address members on the phone. I'll begin to my right.

Ms Miller: Barb Miller, MLA, Red Deer-South.

Cortes-Vargas: Estefania Cortes-Vargas, MLA for Strathcona-Sherwood Park.

Mr. Nielsen: Chris Nielsen, MLA, Edmonton-Decore.

Mr. Cyr: Scott Cyr, MLA, Bonnyville-Cold Lake.

Dr. Starke: Good morning. Richard Starke, MLA, Vermilion-Lloydminster.

Ms Hermiston: Sandy Hermiston, counsel for the office of the Public Interest Commissioner.

Mr. Hourihan: Peter Hourihan, Public Interest Commissioner.

Mr. Miles: Ted Miles, director for the office of the Public Interest Commissioner.

Ms Sweet: Heather Sweet, MLA for Edmonton-Manning.

Mr. Sucha: Graham Sucha, MLA, Calgary-Shaw.

Drever: Deborah Drever, MLA for Calgary-Bow.

Connolly: Michael Connolly, MLA for Calgary-Hawkwood.

Ms McKitrick: Annie McKitrick, MLA for Sherwood Park.

Dr. Amato: Good morning. Sarah Amato, research officer, Legislative Assembly Office.

Dr. Massolin: Good morning. Philip Massolin, manager of research and committee services.

Ms Dean: Good morning. Shannon Dean, Law Clerk and director of House services.

Ms Rempel: Good morning. Jody Rempel, committee clerk.

The Chair: And on the phones, please.

Ms Jansen: Sandra Jansen, Calgary-North West.

Mr. Yao: Tany Yao, Fort McMurray-Wood Buffalo, for Mr. Nixon.

Mr. W. Anderson: Wayne Anderson, Highwood.

The Chair: Thank you.

For the record Ms Sweet is the official substitute for Ms Renaud, and Ms McKitrick is the official substitute for Mr. Loyola.

Mr. van Dijken: Glenn van Dijken, Barrhead-Morinville-Westlock.

The Chair: Okay. Thank you.

Dr. Swann, would you like to introduce yourself for the record?

Dr. Swann: Yes. Good morning, everyone. David Swann, Calgary-Mountain View.

The Chair: Thank you.

A few housekeeping items to address before we turn to the business at hand. A reminder, again, that the microphone consoles are operated by the *Hansard* staff, so there's no need for members to touch them. Please keep cellphones, iPhones, and BlackBerrys off the table as these may interfere with the audiofeed. Audio of committee proceedings is streamed live on the Internet and recorded by *Hansard*. Audio access and meeting transcripts are obtained via the Legislative Assembly website.

Up next we have the approval of the agenda. Does anyone have any changes to make? If not, would a member please move a motion to approve the agenda? Moved by Member Cortes-Vargas that the agenda for the July 6, 2016, meeting of the Select Special Ethics and Accountability Committee be adopted as distributed. All in favour? Any opposed? Carried.

Next are the minutes from our last meeting. Are there any errors or omissions to note with the draft minutes? If not, would a member move adoption of the minutes, please?

Mr. Nielsen: So moved.

The Chair: Moved by Mr. Nielsen that the minutes of the June 17, 2016, meeting of the Select Special Ethics and Accountability Committee be adopted as circulated. All in favour? Any opposed? That is carried.

Moving on to deliberations on the Public Interest Disclosure (Whistleblower Protection) Act, we will turn to our comprehensive review of PIDA. I would like to remind the committee members that we passed a motion at our last committee meeting to consider this legislation by going through the issues and proposals document item by item. At our last meeting we were discussing expanding PIDA so that under the legislation gross mismanagement would include the management of people. Some committee members indicated during discussions that they would find it helpful to have some information on the processes in place for public-sector staff who may be encountering harassment or similar workplace issues. To this end, a document illustrating informal and formal complaint processes for the government of Alberta was included with the briefing materials for today's meeting.

When we ended our last meeting, the following motion was under consideration: moved by Mr. Clark that the Select Special Ethics and Accountability Committee recommend that the Public Interest Disclosure (Whistleblower Protection) Act be amended to expand the definition of gross mismanagement in section 3(1)(c) to include managing people in the public sector. I will open that up to the floor for discussion.

Cortes-Vargas: I'd just like to ask a question. Do you mind explaining what addressing the gross mismanagement of individuals in the definition of wrongdoing would look like and what type of wrongdoings it would cover?

Mr. Hourihan: If it were to include the public-sector people or whatever phraseology, it would still be in the area of the gross side of mismanagement, if you will, on the continuum as opposed to regular mismanagement, the same as assets or monies are right now. Right now it's restricted to just government assets and government funding. There's a determination that has to be made as to whether or not it is or is not gross, and we have sort of an internal protocol that we go through to make that determination.

If it were to expand to include people, it would be in the same vein. It would be far off on the continuum in the area of what's gross, so it would not be, as I've said before, something where it would mean that we would be, you know, the HR police for government or anything like that. Most of these things would be handled internally but not, say, extremely serious situations of harassment or bullying or extreme cases of disrespect and gross mismanagement. It would just be in that arena, not in anything less than that. All those other areas, the vast, vast majority, if they did come to us, would be referred back to the government authority involved.

Cortes-Vargas: I have more questions.

The Chair: Okay. Member Cortes-Vargas.
Oh. Sorry. Member Connolly.

Connolly: Thank you. Just to continue on in a similar vein, you mentioned the expansion of the act to activities such as harassment and bullying. Currently those issues are being dealt with by human resources within entities. Why do you think the act should cover already covered issues such as harassment? How would you define gross mismanagement of people?

Mr. Hourihan: Well, I'm not sure that I'm recommending that it should or should not. It's not sort of my platform. It's issues that have been raised with us. Most of the complaints we get, quite frankly, are not to do with the mismanagement of government funds or assets. They're to do with mismanagement in terms other than funds and assets. You know, we can't frame the term "asset" to include people or some other type of mismanagement.

What would it constitute? For the most part, I think, as I said, it would go back to the entity involved. It would be a referral back there. If it were so serious, a total disregard for whatever, whether it be a code of conduct, if there's that or any type of thing that is gross – and the word "gross" is a hard one to define in and of itself because it is a continuum from somewhere. On the one side of the pole it would suggest that it's a very, very right approach and on the other side that it's very, very obviously gross mismanagement. It's everything in between that becomes less clear, and there's always got to be a determination. Of course, most of those things that we would deal with would probably end up in that very central area. I mean, even if it were gross, we would try and refer it back to the entity if we can and if there's an ability for the entity to do it without compromising the identity of the person or those other types of things where the whistle-blower protection would kick in.

Connolly: Thanks.

Cortes-Vargas: You've kind of mentioned some of the criteria that you would use to identify the gross mismanagement of people specifically. I know that for the federal Public Sector Integrity Commissioner they have specific criteria laid out. Would those be similar definitions? Can you kind of expand on their criteria and how they would be implemented through your office?

Mr. Hourihan: Yes, but I'll defer to Sandy because she's got it in front of her.

Ms Hermiston: I don't actually have that in front of me.

Cortes-Vargas: I can read it out if you'd like.

Ms Hermiston: Sure.

9:10

Cortes-Vargas: They use the following criteria:

- Matters of significant importance;
- Serious errors that are not debatable among reasonable people;
- More than de minimis wrongdoing or negligence;
- Management action or inaction that creates a substantial risk of significant adverse impact upon the ability of an organization, office or unit to carry out its mandate;
- The deliberate nature of the wrongdoing; and
- The systemic nature of the wrongdoing.

Ms Hermiston: In fact, those are the types of tests that we currently are using for the funds and assets, so it would be very similar. I would have pointed out that they use the words "public sector," and they don't talk about people or bullying and harassment or anything like that. It's a broad term that is then left for some interpretation. So those are things to think of. Again, as Mr. Hourihan said, I don't think this office is advocating for it, just that it's an issue raised for you to consider whether it's appropriate for this jurisdiction.

Cortes-Vargas: Thank you.

The Chair: Mr. Sucha.

Mr. Sucha: Thank you, Chair. One of the comments I heard from you is that you end up getting a lot of complaints about people specifically. Do you find you end up referring a lot of these complaints to other entities like, let's say, the Labour Relations Board?

Mr. Hourihan: Do you want to answer?

Mr. Miles: Sure. No, we don't seem to make a lot of referrals ourselves. What we do is that we provide advice to those complainants about other entities that are out there that may better serve their needs or questions, but we don't take a role in doing the referral.

Mr. Sucha: Okay. How many times do you find people end up being redirected to other entities?

Mr. Miles: Last year, as an example, we had 225 files. Thirty-six of those files were deemed to be nonjurisdictional. Only eight of those files were nonjurisdictional due to human resource issues alone, which is really only 3 per cent of the overall files that we took in.

Mr. Sucha: Thanks. I was just curious about that.

The Chair: Is there anyone on the phone that would like to be added to the speakers list? Okay.
Ms Sweet.

Ms Sweet: Thank you, Chair. I just have a question in regard to the bullying and harassment. Is there currently under the public sector language that already exists within human resources that is meeting the needs to deal with these issues existing already, or is there, like, strength that can come from that so that it doesn't need to go to the Public Interest Commissioner?

Mr. Hourihan: I suppose that's a million-dollar question in the sense that prior to the whistle-blowing act coming into place, there were areas to go to report things that weren't going well that are now included in the whistle-blower act. That said, I know that the public sector, the public service for sure, has specific guidelines on harassment and bullying, and I presume that most organizations of

any size or quantity of people as well have significant policies around those kinds of things, including other areas of code of conduct and that sort of thing. However, that said, those would under normal circumstances go back to them for review or referral or investigation or whatever. Similar to before the act came into place, assets and funds would have been the same. So there are always regimes where it could be addressed.

I guess the question for the committee is: are the ones that are sort of a wanton disregard or something that would meet the definition of gross mismanagement placed well where they're at now, or would they be best placed on the gross mismanagement side of the whistle-blower act? We don't really have a specific pitch that it should or should not be included. It's been raised by a number of people to our office and in conversations that we have had and, of course, in different debates and those kinds of things, and it's a debate that's alive and well around the world.

Anything to add, Ted?

Mr. Miles: I have an example where I see that it may be of benefit. If a person is working in a toxic work environment and there are a number of employees, they often feel threatened about taking that forward internally because of the fear of reprisal. If we had the capacity or the capability to have employees come to us, we would likely refer the matter back to the chief officer or the deputy minister of the department. However, we would keep the identity of the whistle-blower – we would be able to protect that from the unit or the department or the entity themselves and then raise the matter in an anonymous fashion with the chief officer, with an expectation that they're going to deal with that situation with whatever internal processes they already have established.

Ms Sweet: Thank you.

Just for one more point of clarity. When we're looking at assets and gross mismanagement, it's pretty clear how to measure that. I'm just wondering, when you're looking at bullying and harassment, how you would be able to define or create some kind of mechanism to measure when it becomes gross mismanagement versus just someone feeling like they're being bullied and harassed, I guess.

Mr. Hourihan: It would just be the criteria that we mentioned earlier similar to the federal organization. It's more of a wanton disregard. It's more polarized than just the normal view, and it's not a simple determination as to whether it is or is not gross. Franky, it's not a simple determination when it involves assets or funds either because there's always an opinion on that continuum. It's like anything. If I find that it was gross mismanagement, I get questioned why I found that and why I didn't find it not gross mismanagement and vice versa. If I find it not gross, then the question is why I didn't find it gross. The difficulty is probably in the whole notion that people believe, just in general terms without studying anything, that if it's wrong, then it must be a wrongdoing and therefore it must fall within the act, which is not true. The act is very specific in section 3 as to where it goes significantly on the other side of the continuum.

Ms Sweet: Thank you.

The Chair: Mr. Cyr.

Mr. Cyr: Thank you, Madam Chair. It's great to see you on this wonderful morning. I know that you work really hard. I do have some concerns about this, as I put forward in the last meeting we had. I just want to make sure that I fully understand how this all came about. We had the AG, the AHS, and the AMA come forward and say that we need to define gross mismanagement. They didn't anywhere say that your office should be included within this scope. It was your office that actually put this forward as a recommendation. Is that not true?

Mr. Hourihan: We put forward a number of recommendations, recommendations in the sense of some that we feel are necessary for our – but most of them were issues for consideration, and this is one of the issues for consideration. I hold no position on whether it should or should not be. Whatever act we have, at the end of the day it's the act that we will work with.

Mr. Cyr: Okay. But you have given opinions on other pieces?

Mr. Hourihan: Yes.

Mr. Cyr: But you have no opinion on this one? For something so important as bullying and harassment, I guess it's odd that there is no positon from your office on this. It appears that we have the internal ability to deal with these complaints, so I'm trying to understand how we get from this being recommended that it needs to be defined – I agree – to suddenly being added as a whole new part to your department. You've got no, I guess, basis to show that you actually should have that authority.

Mr. Hourihan: Well, all I can say is that we get a certain number of complaints or concerns called into us about mismanagement, and it quite often does not involve funds or assets. If it did involve people, we would certainly be positioned to look into the gross mismanagement of that side of the fence. I'm keeping in mind that we would still refer most, where we can, back to the governing authority, which is the intent of this where it can be. That changes a little bit on a reprisal.

The Chair: Sorry.

Dr. Massolin, you had something to add?

Dr. Massolin: Thank you, Madam Chair. I just wanted to point out for the committee's information that a document called Informal and Formal Issue Resolution Process was posted to the committee's website, and it outlines the government of Alberta approach to harassment and bullying in the workplace.

Thank you.

9:20

The Chair: Mr. Clark, could I get you to just add yourself to the record.

Mr. Clark: Good morning. Greg Clark, MLA, Calgary-Elbow. Thank you.

The Chair: Thanks.

Mr. Cyr: I guess, is it the intent of the Public Interest Commissioner to encompass all gross mismanagement across the government, not just limit it to assets? Why would we even bother defining it at this point, then, if you're just wanting to add everything underneath your scope?

Mr. Hourihan: Like I said, I don't just want to add everything under my scope. It's just an issue we put forward for consideration because it has been raised with us as a significant issue that people are concerned with. It's not other jurisdictions. Some have it and some don't across Canada and across the world. I suppose the debate is alive and well in that regard: should it or should it not be included? When the debates were going on prior to the act being brought into force in Alberta, it was a debate. It has been a debate since it's been in force, and I felt it was important to provide all of

the input that we had received back to you. That's why we listed it under issues of consideration compared to one where we recommend that we need to move forward.

Mr. Cyr: Sorry. I've been going a lot. If somebody else wants to go, I can wait for my question. Is it okay? Thank you, Madam Chair.

When your department was first set up, was it discussed then that this should or shouldn't be added under your mandate? When those discussions happened, it appears that they had intentionally left this out of your mandate. Can you bring some clarity to that, or was it not brought up at all?

Mr. Hourihan: Not really can I bring clarity to it. It was just that when we were getting ready for the act, because we're following the debates as they're going on in the Legislative Assembly and watching, and then when we were given the – you know, the act is put under the mandate of my position. We look at it to see what the act says, what it does or does not include. It does not include the public sector per se. It includes funds or assets. We just go from there, work with the act as it is written. Certainly, our opinion of legislative drafting is that if it's not in the act, it was intended not to be in the act. Regardless, it's not in there, but we do get calls. We do get concerns. Some are not questions. Some are just comments and feedback that it would be helpful to be in.

Other jurisdictions around Canada and the globe are getting asked the same question: should it be in there, or should it not be in there? The debate is alive and well. As I said earlier, some have it in their jurisdiction; some don't. For those reasons, because it was an issue here prior, we have received a significant number of questions. We do get a number of calls about it. The fact that it's alive and well out there: we felt that it was something that would be beneficial for you as the committee to be presented with as an issue of consideration. That's why I hold no specific position on whether it should or should not.

Mr. Cyr: Thank you very much. That answered my questions.

The Chair: Is there anything further? Dr. Starke.

Dr. Starke: Thank you, Chair, and thank you to the Public Interest Commissioner for the answers to the question. I guess my concern with regard to the examination of this question is that including gross mismanagement of people would on the surface appear to be something that should at least be considered. My concern is the lack of a clear definition or lack of clear guidelines as to what that is. I guess the reason I say that is because I think it could be argued that the definition of gross mismanagement of either public funds or public assets is something that is a little bit more cut and dried and is not a matter of opinion. As far as gross mismanagement of human resources I would suggest that the interpretation of what that consists of is a lot more broad, and you'll have a lot more disagreement on it.

I do have to say that the documents that were provided by research services with regard to the resolution process both for informal issue and formal issue – I did not find them particularly helpful. It's, you know, a flow chart or an algorithm that indicates that this is what you do if this is the problem; this is what you do if you follow this particular course of action. I note that these were set up in July 2015. They've been in place for the past year. But apart from saying "harassment or workplace bullying behaviour" and on the second page, "bullying or other disrespectful workplace behaviour," I'm not satisfied with that definition. I'm not satisfied that that is consistent with the definition of gross mismanagement.

While I would be prepared to consider recommending that the whistle-blower protection act be amended to include the gross mismanagement of employees, I'm not prepared to support that unless gross mismanagement is more specifically defined, so I think we have to do the definition first. We have to come up with a definition. Again, I would argue that this flow chart does not constitute a definition and that we need it clearly defined because if it's not clearly defined, I'm concerned that even if you're in a situation where you have a difference of opinion as far as management style or management technique or management practices, that might be interpreted by some as being gross mismanagement and by others as being simply a different way of managing human resources.

I'm concerned. It's always a question of: are we going to start boiling the ocean here? You get flooded with complaints from people who, you know – what it may in fact be is a difference of opinion as to what the management technique applied is. I guess my question more specifically, then, is: can we anticipate receiving a clear definition of gross mismanagement to include what gross mismanagement of human resources would include?

Mr. Hourihan: That's a hard one to answer. I mean, even the courts have struggled with the notion of gross, whether it be gross negligence or whatever, over many decades. We try and get some clarity in our definition in terms of what we look at currently under the act with assets and funds. We do have different criteria: is that a wanton disregard? Was their intent incorrect? Those kinds of things would polarize it so that I can make a determination as to whether it is or is not gross and therefore a wrongdoing. The conundrum is exactly as you say. There is a huge area in the middle, kind of as I had alluded to earlier, that makes it difficult, where probably no matter what the determination I make in that case, there is certainly debate around that.

On the positive side of that, and I suppose in other things, is that if I find that it is a wrongdoing, that a particular behaviour is a wrongdoing, and I suggest – my power comes back in the form of recommendations. I go back to the deputy minister or the chief officer and say, "These are the issues that I found were a wrongdoing, thereby being gross. These you need to fix, and we're going to track those recommendations and follow up on them to make sure that they get fixed," so to speak, as much as I can enforce that. If I find that it's not a wrongdoing, the exact same behaviour, I still provide observations back to the deputy minister saying: "This is wrong. I didn't feel that it met the threshold of wrongdoing, but this is not correct, so you need to fix it."

At the end of the day, I suppose that there is an argument to be made that we're going to go back and tell them that they need to fix what's wrong. But, that said, it's an extremely difficult position to try and determine what is and what is not a wrongdoing. It's one of those areas of study or concern or whatever where it's hard to make a list. You can, presented with a case, a situation, with a set of facts, sit back and place it on the left side or the right side of the page quite often, but it's hard to delineate those down into a concrete list.

Cortes-Vargas: I was just curious kind of on the note of understanding what gross mismanagement of people is defined as and also, from you perspective, what kind of training your office has in being able to interpret those actions.

9:30

Mr. Hourihan: We don't have any specific training. I mean, it's a skills background for folks that come to the office. When I say that, we have people that have a police background, we have people that have a government background, we have – I've got to think now –

banking backgrounds in the area of whistle-blowing. We try and look for a diversified workforce in terms of skills and otherwise to be able to provide that.

We look around for training. There is limited training on this because, insofar as that's concerned, we are often considered to be the people who might do the training. We do look for input and feedback from folks such as designated officers or in this case maybe human resource professionals and other agencies around Canada and the world in terms of how they've been dealing with it, most specifically in the area of whistle-blowing in Australia, New Zealand, U.K., and the U.S. because they have had regimes around for much longer than here, but still the formalized training is limited. Most of it would be European based, but we still look. I mean, in terms of if you look at the broader side of it in the Ombudsman office, we have skill sets in there where, you know, people can certainly provide perspective, but there is no specific training that we have in that particular regard.

I will add that we're meeting in September as a group, all of us in Canada, and looking at some of those areas. You know, we try to bring in someone who can provide perspective just from their area of expertise. But that's about the extent of it so far.

The Chair: Mr. Clark.

Mr. Clark: Thank you, Madam Chair. I want to pick up on what Dr. Starke was talking about. I share his feeling that the flow charts that were provided, while helpful in one regard, I suppose, don't really address the question at hand here because I do think that bullying and workplace harassment are a different topic than gross mismanagement.

Dr. Starke, to your point in terms of how we define gross mismanagement, the crossjurisdictional document has provided examples from the provinces of Ontario and Nova Scotia, Nunavut, and also the government of Canada in terms of their definitions. If I can just briefly read some of those definitions. In Ontario their act speaks of "gross mismanagement by a public servant, a minister or a parliamentary assistant in the work of the public service of Ontario." So it's fairly broad. Nova Scotia's is "an act or omission that is deliberate, and shows a reckless or wilful disregard for the efficient management of significant government resources." Again, it broadens, so it's not just financial assets or a physical asset. Government resources, I think, is broadly based. The government of Canada separates "misuse of public funds or a public asset" from "gross mismanagement in the public sector," which, again, is broad.

I think that we have some language, and I don't know if this committee wants to pick and choose what specific wording we like. Perhaps we could leave that up to the folks who draft the legislation. I think that these are – I guess perhaps I'll phrase this in the form of a question. Are there concepts in there that you believe are open ended enough to allow you to – what's that old saying? "I can't define obscenity, but I know it when I see it." Right? That sort of concept is open enough but specific enough to allow you to do your job. I mean, is there one piece of language here that you prefer over another? Or can you maybe comment if there's a particular jurisdiction you feel we should be emulating?

Mr. Hourihan: No. I don't have one specifically. I know that Nova Scotia has some words in there that are seemingly descriptive. There certainly can be a lot of debate on each of those words as well, so that's why I don't mind it, but at the same time it's a challenge as well. They all are. I mean, consistency is probably preferable where we can, but I don't have any particular position on that per se. I know that it's a difficult situation.

I would say that we look at the purpose of the act all the time when we look at something. The goal, if we can, is to allow and encourage the government entity to look after itself, to properly manage it, to embrace people coming forward, to treat people properly, if it's people, and all those kinds of things. That's kind of the purpose we look at. So we try and drive it back where we can. Where we can't for obvious reasons or for reasons where protection is the issue and those kinds of things, then, of course, we certainly look into it.

That's not part of the answer to your question, but suffice it to say that I don't really have a specific wording that I think is more or less helpful than the other jurisdictions have.

Mr. Clark: If I may, Madam Chair, just a quick follow-up.

The Chair: Sure.

Mr. Clark: Just to be clear, given your prior comments to the committee and the submission you made initially, is it your feeling that expanding the definition of gross mismanagement to include managing people in the public sector would be beneficial to Alberta and would allow you to dispatch your role more effectively? Is that a fair statement?

Mr. Hourihan: Yes. I believe it would be beneficial if we had that ability to have that extra external view of things when it's not working well internally.

Mr. Clark: Okay. Thank you.

The Chair: Ms Sweet.

Ms Sweet: Thank you. Just going back again to sort of the definition of bullying and harassment and how it's seen in other jurisdictions. I'm wondering if there are existing measurements or the ability to deal with these issues in other forums outside of the Public Interest Commissioner such as, like, the Human Rights Commission, different places like that, and how they would engage in trying to mitigate the bullying and harassment piece.

Mr. Hourihan: I don't have a specific list. There would be situations, I would guess, that may include, say, the Human Rights Commission, if the grounds of the bullying were in the arena in which they have jurisdiction, but outside of that, they wouldn't go there. So I suppose they might catch some there. They might catch some somewhere else in a similar type of thing.

I mean, I'd like to say that most of them should be caught by the authority within their policies, procedures, and codes of conduct, that it ought to be manageable in that regard. Of course, that's easy enough to say. The problem is that when they're not being managed correctly, should there be an external ability to do that? I guess, again, the question is: is that best to be our office or not?

I don't know of any, specifically, that are there, but I suppose there are some that might catch it.

Ms Sweet: So we don't know, then – if these issues are coming forward in other areas, is there not a model in Alberta that's being used to measure this, or is it all just based on sort of the federal definition? I mean, these issues do come forward at some point in different areas, so I'm just wondering if somewhere within the province we haven't figured out some kind of measurement tool on this or some guiding principles that other areas are using.

Mr. Hourihan: If there are, we don't know them. We would just, if we got a complaint – for the most part when we get a complaint or questions about guidance, you know, for guidance and that sort

of thing, we view it as nonjurisdictional to our office. We don't do a lot of in-depth examination or analysis of what they are actually doing because it would be outside of our jurisdiction to do so, so we send it back to the entity. Now, the entity, the public service itself, so all the departments, would have one policy that would be common to all, but universities or the health sector or other schools may have their own self-sufficient, self-standing one.

Ms Sweet: So would you think it would be fair, then, that a definition needs to be required so that it's consistent among all jurisdictions, you know, so that you're measuring it on the same definition of what bullying and harassment would be?

Mr. Hourihan: My answer there would be that I think any time things can be consistent, it is always advantageous. That said, I presume that there are probably significant challenges in defining certain things like bullying, harassment, what it does or does not entail, as with other things such as, you know, gross versus not gross mismanagement.

Ms Sweet: Okay. Thank you.

The Chair: Mr. Nielsen.

Mr. Nielsen: Thank you, Madam Chair. I guess I'm kind of getting sort of a sense around the room that people want to see something happen. We're probably heading in a direction, so maybe just to throw it out for a bit of discussion, and we can certainly build from that point, you know, maybe considering management action or inaction that creates any kind of substantial risk of adverse impact upon the ability of, say, an organization, an office, or a unit to carry out its mandate. I'm kind of curious what folks around the room maybe think about something like that because I'm getting a sense that we're trying to maybe add some more stuff here, that we want to move forward on this. I'm curious what other members might be thinking here, or if the Public Interest Commissioner would comment on that.

9:40

Mr. Hourihan: Yeah. When you were saying that, I was just looking at the sheet here that you're going to be reviewing, the definition of wrongdoing and the whole notion of gross mismanagement. I think that they are definitely intricately related. One goes with the other. I don't know. It's a consideration for the committee. If they want to have something in there that would include that in our jurisdiction . . .

Mr. Nielsen: Is it something you could work with?

Mr. Hourihan: I certainly could work with it, again keeping in mind that my main intent going in would be that, where and when possible, it goes back to the responsibility of the government authority to manage this effectively, properly, and build that confidence that employees and indeed Albertans need.

The Chair: Are there any further comments? Please go ahead, Dr. Swann.

Dr. Swann: Thanks. Mr. Hourihan, could you confirm the breadth and scope of your jurisdiction? I understand it would include contracted agencies of government. Can you just review all of the current scope of your jurisdiction?

Mr. Hourihan: Sure. The current scope of our jurisdiction is the public service, so all of the departments; the health sector, so Alberta Health Services and there are other articulated entities within that, another five – I just forget all of them; we can dig it out in the act – the education sector, which are schools, universities, chartered schools, private schools.

I've got it here, back to health: Calgary Lab Services, the CapitalCare group, Carewest, Covenant Health, Lamont Health Care Centre as well as Alberta Health Services. The other public entities in the education sector: the boards of public school districts, separate school districts, school divisions, or regional divisions; the regional authority of francophone education; private schools registered and accredited under the School Act that receive a grant under the education grants regulation; a chartered school established under the School Act. And agencies, boards, and commissions, too, and offices of the Legislature. That's it to this point.

Mr. Cyr: So when I'm looking underneath recommendation (b), gross mismanagement, it looks like we actually have two issues here that need to be dealt with. The first one is whether we should be adding the management of people to the Public Interest Commissioner, and the second one is that we need to come up with a definition for gross mismanagement. Has there been anything in the reading that shows what a definition should look like for gross mismanagement? I'm asking the technical department. If so, I apologize.

Dr. Amato: So I can answer some of those questions. If you look on pages 10 and 11 of the crossjurisdictional document, you can see the ways in which gross mismanagement is defined in other jurisdictions. But if the question was with regard to the way in which recommendations are defined in gross mismanagement – was that the question?

Mr. Cyr: Well, it says that we need to define it. Yeah, that's what the actual recommendation was. The AG, AHS, and AMA came up and said that we need a better definition. It's like item (b) has two separate issues going on here.

Dr. Amato: Correct.

Mr. Cyr: So I guess the big problem here is that we actually are trying to say what should be with the Public Interest Commissioner, but we actually haven't done step one, which was to come up with a definition of gross mismanagement. So how can we know what their abilities are if we don't actually define what gross mismanagement is?

The Chair: Mr. Cyr, right now we are discussing the motion from Mr. Clark. Moved by Mr. Clark that the Select Special Ethics and Accountability Committee recommend that the Public Interest Disclosure (Whistleblower Protection) Act be amended to expand the definition of gross mismanagement in section 3(1)(c) to include managing people in the public sector. That's the motion we're discussing right now.

Mr. Cyr: To get to my point on this motion, are we jumping ahead before – I respect my colleague here, but how can we vote on his motion without understanding what gross mismanagement is? My concern is that by not defining it, we're kind of blindly trying to create a motion without really, truly understanding what gross mismanagement is. It's hard for me to support Member Clark's motion without defining it first. I would like to hear Mr. Clark's response on this and whether or not he would be willing to, I guess, revise his motion or pull his motion back until we can actually define what it is.

The Chair: Mr. Clark.

Mr. Clark: Thank you, Madam Chair. The Public Interest Commissioner had spoken earlier about some of the challenges you have in nailing down an actual dictionary definition of gross mismanagement. Not being the expert in that field, I don't feel qualified to define that. Perhaps I can ask you, then, Mr. Commissioner, or someone from your office to help us with this. Is there a standard that's applied when determining gross mismanagement? I recall that earlier today you said that the courts will struggle with what is gross negligence versus negligence, what is mismanagement versus gross mismanagement, those sorts of questions. Can you maybe expand on that and perhaps address Mr. Cyr's question?

Mr. Hourihan: Well, a little bit like I said before, I guess, it is really hard to define, and it's one of those things that you can place on one side of the page or the other, if you will, when you're given a complete set of facts. Now, getting close to the centre of the page, there's always going to be debate over whether it is or is not. I'm not sure that a definition is a simple exercise. In fact, I would suggest that it's a very complex exercise. As I said, the courts have struggled with it for years around the term "gross" and have fallen to words like "wanton disregard," "reckless or wilful disregard," that kind of language, but it's never been more precise than that, and it does come down to the set of facts.

Currently, we have to make that determination if it involves something that involves funds or assets, and we have no particular difficulty in interpreting the section and working with the definition, as inexact as it is, and making that determination with common. That wouldn't change with the public sector in terms of if people or other aspects were included. It would still be that specific challenge of looking at those lists of things that are developing all the time in common law, I suppose, in terms of: was there intent? What's the gravity of the situation? Was it wanton disregard, or was it just disregard? Those kinds of things help you make that determination. So I'd be comfortable with it, but that said, it's not a simple definition to put together, I'm sure.

The Chair: Mr. Clark.

Mr. Clark: Thank you. Let's take a totally hypothetical example, which I hope is a totally hypothetical example: if we had someone working in a particular department who had access to a government asset, a pickup truck, for example, and they said, "Well, I'm going to use this truck, and I'm not going to use it to do my job; I'm going to take some topsoil from the store, and I'm going to take it to my house, and better yet I'm going to take some topsoil from a government asset." The truck is the asset. The soil is the asset. It is inappropriate to take that and use that for your own personal use. That would clearly be something where someone would contact your office. There'd be a whistle-blower. There'd be an investigation that probably would determine that that's a wrongdoing.

9:50

If you were to have someone in the department who's in a position of authority direct six of their staff to go and now take the pile of topsoil which is on their front lawn and spread that around and plant some grass and do all the landscaping on government time, presumably, while that feels like a wrongdoing, I mean, would that be excluded from the act in terms of directing people to do something?

Mr. Hourihan: Well, actually, that wouldn't. If the first one were wrongdoing, the second one would be as well because of section 3(1)(d), "knowingly directing or counselling an individual to commit a wrongdoing." So they would be doing that. Even if there is a more minor use of government assets that way, that could also and would also fall to an infraction under 3(1)(a), which is just the contravention of an act or regulation, because that would be theft. That's something that we would certainly include in an investigation to go have a look at, but the counselling would also.

Mr. Clark: Okay. So I guess the question, then, is – oh, sorry. Could I just close the loop on this last point? Then I'll cede the floor

The Chair: Sure.

Mr. Clark: That then raises the question: can you come up with a hypothetical example of what would be included if we were to include expanding the definition of gross mismanagement to include managing people in the public sector, which is currently excluded? That might help the committee.

Mr. Hourihan: Sure. Abuse of employees and belittling, harassing, bullying, if you will, whatever definition that fits in there, that probably is – the fact that it happens doesn't necessarily make it gross mismanagement. The fact that it doesn't get managed and it gets worse and worse even under direct complaint and those kinds of things – it just keeps getting worse and worse, and there are more and more threats, subtle as they might be. It might considered a reprisal if there were a wrongdoing attached to it. But, in fact, the treatment of the individual is the wrongdoing if it was included. That would be one of those things where, "Well, is this just a rude comment?" on the one side, and you'll say, "Clearly that's not gross mismanagement," to, "No; it's a very ingrained approach to doing business within a particular department, unit, school, whatever, where everybody's terrified to bring it forward," and those kind of issues.

The Chair: Mr. Sucha.

Mr. Sucha: Thank you, Madam Chair. I'll direct this to the Public Interest Commissioner. I heard you mention a couple of times about the fact that the courts have always been trying to define what gross mismanagement is. If we were to put that under your purview, is there not some concern that a lot of your decisions could be tied up in appeals within the courts or that we could end up having people take your decisions to litigation on a regular basis?

Mr. Hourihan: No, that's not a concern. Just for clarity, they don't struggle with the term "gross mismanagement." They struggle or they have over the years debated the notion of "gross." Normally it involves negligence and that sort of term, so not gross mismanagement per se. That doesn't concern me. Number one, I make recommendations back to a chief officer, so I'm not making decisions. You know, the whole appeal in that regard is not something that is of significant concern because I suppose what they can do is choose not to follow the recommendation, so it can kind of end there, if you will, so I'm not concerned with that. But that said, we're always going to be mindful to keep our counsel on the front edge of all cases in terms of that and other issues where the tests, if you will, for making certain determinations are always being advanced within the common law. That's on a regular basis, and I can probably give examples of that.

The Chair: Thank you.

Any further discussion or questions?

Mr. Cyr: I'd like to follow the process of what this would look like. So you get a complaint, you would investigate the complaint, and let's say that you found that there was gross mismanagement in place. Then you would issue recommendations, and you have no

authority to follow through to ensure that these recommendations are, I guess, enacted. Then you would just go to the papers and then embarrass that department. Is this kind of – I'm trying to . . .

Mr. Hourihan: That could be an alternative. We would make recommendations, similar to the Ombudsman – that's the power I have with the Ombudsman Act – similar to the Auditor General. You make recommendations. If I'm not satisfied that those recommendations are being followed appropriately by the particular authority, I would try to use as much moral suasion as I could to have them certainly embrace it in a proper fashion. If that didn't work and I was still adamant, then I would bring it forward through the more public perspective of bringing it to the Legislative Assembly, per the act, where it would be discussed amongst all of you. Section 22 of our act states what the process is for that. Of course, we always have the public aspect of it, too. If it did go to the media, then there is that opportunity, as well, which would be used sparingly but, nonetheless, is available.

The Chair: Mr. Cyr.

Mr. Cyr: Thank you, Madam Chair. So you don't have the ability at this moment to be able to, say, suspend people or be able to levy a fine or even put a letter on an employee file, for instance?

Mr. Hourihan: No. That would be left up to the government authority to look after those aspects in the fashion that they see fit.

Mr. Cyr: Okay.

Mr. Hourihan: It's an interesting concept, you know, in terms of the powers because it seems like, on the one hand, it feels like there aren't any, and on the other hand, it's very powerful. Just ask the media if they feel that they have power. Certainly, forms of media can have power. I think it's important on the other end, too. That's the likelihood and the very probable reason why we have so much power under those acts like the Ombudsman Act or the Public Interest Disclosure Act, to have the power of investigation, to be able to go demand things, to be able to bring people forward to answer questions directly.

If there were powers on the other end where we could levy things like suspensions and those kinds of things, I would suggest that the powers of investigation would be significantly limited insofar as the people that you want to talk to have different levels of rights that they don't necessarily have under these enactments.

Mr. Cyr: I sit on the Public Accounts Committee. I'm trying to understand exactly what the difference is between your office and the Auditor General's, then. He can do, it sounds like, exactly what you're doing. What differentiates the Public Interest Commissioner and the Auditor General?

I guess my question is: are we duplicating resources at this? Please, I'm trying to understand exactly what it is that you do.

Mr. Hourihan: We're not duplicating resources. I mean, the Auditor General has, in this case, his mandate, and I'm not qualified to answer it, frankly, what areas he does look at, you know, the gross financial aspects and oversight of government in terms of financial and that sort of thing. In terms of if you look prior to the whistle-blower act coming into place, a lot of these things would have fallen probably to the Ombudsman office because it would have been: I don't feel I have been treated fairly. Let's say somebody feels that they were wrongfully dismissed because they were reprised against. Well, now it specifically comes to the whistle-blower act, which comes under the Public Interest Commissioner's mandate, but prior it would have been under the Ombudsman Act.

I mean, if you step back, it's really the job of the department or the government entity to get it right in the first place. Our job steps in and tries to help them do that, keeps them on the straight and narrow to make sure that they do. So it's providing oversight. In terms of that it's duplication, I suppose, if you look at it from one perspective, but it's more oversight in the other. The oversight between myself and the Auditor General – I can't tell you his specific mandate, but we don't collide very often at all, if that helps, in terms of what we think we should look into or what we shouldn't.

10:00

For example, a couple of years ago there was an anonymous complaint that came to the Auditor General concerning the purchase of computers and the deployment of those computers within Alberta Health Services. Mr. Saher got the complaint through his office. I spoke with Mr. Saher, and, you know, we discussed my mandate. We both agreed that that would be best looked after by my office because it was a whistle-blowing event as opposed to something that he might look into. But, again, it would probably be a bit case specific.

There's a more recent one, very recently, in the public where we looked into a part of a matter, and he was looking into a different part of the matter from an unrelated perspective, which was fine. Our mandates didn't collide in that respect. However, they did deal in the same area, broadly speaking, government oversight.

Cortes-Vargas: I'm actually wondering if Dr. Starke would like to clarify what kind of definition should be included when talking about the gross mismanagement of people, if there could be an amendment made that would provide the clarity that he was looking for.

Dr. Starke: Well, Chair, I'm happy to respond. Actually, that's exactly what I would like to see here. I would have difficulty supporting Mr. Clark's motion while, you know, the intent of the motion I support. Unless gross mismanagement is clear, specifically with regard to gross mismanagement of the management of people, unless that's clearly defined, I would have a hard time supporting the motion. Whether that's by way of subamendment – and with regard to Member Cortes-Vargas's suggestion about what I would like included in that definition, it's difficult for me to come up with specifics there.

Again, I would suggest, you know, that perhaps we could collate some of the items that are included from some of the other jurisdictions in the crossjurisdictional study. Whether that's something that we could pull together before the adjournment of today's meeting or whether we would have to table this particular motion until another meeting and when we have that actual definition in front of us to discuss and to debate, I don't know which is going to be easier. Perhaps it's something that could be pulled together over the lunch break or something like that.

I don't see myself supporting the motion without having clarity on the issue of what gross mismanagement of people would include.

The Chair: Would counsel be able to comment?

Ms Dean: Thank you, Madam Chair. We can certainly look at that issue over the course of the next hour or two and get a response back to the committee. I believe Dr. Massolin may have some information at his fingertips right now, because Nova Scotia provides some more details with respect to the definition of gross mismanagement.

Dr. Massolin: Yeah. Thank you, Madam Chair. I think, as has been mentioned by Mr. Clark as well, this is coming from the crossjurisdictional comparison that Dr. Amato did. Basically, again, to reiterate, Nova Scotia's act defines gross mismanagement as "an act or omission that is deliberate, and shows a reckless or wilful disregard for the efficient management of significant government resources."

Then, as is being pointed out to me as we speak, Nunavut also has a definition of wrongdoing as "gross mismanagement of public property or resources for which the employee is responsible, including an act or omission showing a reckless or willful disregard for the proper management of public property or resources." So some similarities there.

Thank you.

The Chair: Mr. Clark, would you like to perhaps withdraw it as it stands?

Mr. Clark: Well, yeah. I guess I'll just make this one comment or, I suppose, ask a question either of Parliamentary Counsel or of the commissioner. My understanding of anything that is defined as gross negligence, gross mismanagement: it is presumably and, hopefully, fairly rare, and it's quite a high bar. It's quite a high definition for us to get to a place that would be called gross mismanagement. You know, perhaps we can table this and even just have a bit of an offline hallway conversation about what we're all trying to achieve here. My hope would be that we through this committee would indicate that we are interested in including gross mismanagement of people, recognizing that that is actually quite a high bar in terms of a definition.

To me, given that other jurisdictions – Ontario, Nova Scotia, Nunavut, the government of Canada – have this provision and we do not, I would suggest this is an opportunity for us to move in that same direction. I can only imagine, Mr. Commissioner, that you would use other jurisdictions' examples – you know, other precedents that would exist in case law – should something come before your office to determine whether or not you would even consider this, because there are, as we've heard, other processes, human resource processes, for what I suppose we would call ordinary mismanagement. We've seen the flow chart. But given that we have further clarification, bullying that is unaddressed and ingrained even though that normal process has been followed repeatedly, that would be a process where the people who would be in the public service would now have another avenue to go down should the existing avenues not work.

Really, I think that while we're getting caught up in this question of gross mismanagement, I wonder if it's a high enough bar that we could recommend that we include it and leave it to the drafters of the legislation to define or perhaps even not actually define it and allow you the latitude in your office to deal with it. I mean, from your perspective, do you have a preference in how we would approach that?

Mr. Hourihan: No, I don't have a preference. I mean, frankly, you know, if the notion of gross mismanagement of people or the public sector, whatever language is used, was included within section 3, if it would be gross mismanagement, I would still be left with the interpretation of what is or is not gross. If there were other language in there such as "reckless" or "wanton disregard" or that kind of terminology that would be written down, articulated within the section and that certainly can be referred to and which we refer to now as something that is significantly bad in terms of behaviour or in terms of management as opposed to normal, as you state – I have no preference either way, and I have no particular concern if it is or is not included in there within the definition now.

The Chair: Mr. Nielsen.

Mr. Nielsen: Thank you, Madam Chair. I guess we probably need to have some more conversations, maybe even between us, so I'm going to suggest that we adjourn this, and hopefully we can maybe have some of those conversations.

The Chair: All those in favour of adjourning debate on this motion? All opposed? Okay. We are adjourned on that motion.

We are moving on to item 3, procedures for disclosure. Being that we already have a motion, that passed, on direct disclosure to the commissioner, we are moving on to point (b), disclosure to supervisors.

Dr. Amato, would you like to start us off there.

Dr. Amato: The issue is disclosure to supervisors. This is on page 6 of the issues document. The proposal before the committee made by stakeholders is that "PIDA should be amended to permit internal disclosures to supervisors in addition to chief officers and designated officers." Some of the notes in the far column on the right discuss some of the rationale behind that recommendation.

Thank you.

The Chair: Thank you.

I will open that up for discussion. Mr. Clark.

Mr. Clark: Thank you, Madam Chair. Given that it was the Public Interest Commissioner, amongst others, who suggested that this be included, I'm wondering if perhaps you can expand on why you believe it is important, specifically, that it would allow for an employee to make that protected disclosure to a supervisor or a person of authority within your organization and extend protection of section 24 to employees in that situation in addition to the direct disclosure. I'm curious why you feel that that distinction is necessary. It feels like it's adding a third process. I'm just curious if you can provide some more context as to how you think this would be beneficial.

10:10

Mr. Hourihan: Sure. Right now the protections only extend to the employee if they make a disclosure to the designated officer, the chief officer, or to ourselves. You know, in terms of the normal goings-on of any enterprise or activity the logical spot for somebody to voice a concern when something is not right is probably to the people they work with and, more importantly, to their direct supervisor or the supervisor above that or above that or above that, however many levels there are. The act doesn't contemplate that, and we have had feedback and push-back from the Department of Justice that it does not include disclosure to a supervisor.

If they disclose to the supervisor thinking that they're doing everything right, they don't have any protection because they didn't go to the designated officer and therefore have stepped outside the jurisdiction of that. It seems completely logical to me that you ought to have that ability, that if you see something going wrong at work, you would bring it up first with your supervisor.

Mr. Sucha: Just a question to the Public Interest Commissioner. Since we are expanding the act to allow direct disclosure to the commissioner on top of the already existing internal disclosure mechanisms, how would opening up disclosure to direct supervisors impact the whistle-blowing process?

Mr. Hourihan: I don't think it would. It would just provide that protection to somebody who had, like I said, sort of in the logical sequence of events probably voiced it with their supervisor first.

Ted can give an example.

Mr. Miles: I'll give an example of a recent case that the office investigated, where an employee had gone forward to their supervisor internally, alleging that a wrongdoing was occurring, and then they suffered a reprisal. They came to our office and said: I've been reprised against. As our office went in to investigate, the argument from the departmental lawyers was that we have no jurisdiction because you can't have a reprisal unless you first have a protected disclosure. Since this person had not gone forward to their designated officer, their chief officer, or us, their disclosure was not protected; therefore, it was not a reprisal as defined in the act, and we had no jurisdiction to investigate. That was the argument that we had to undertake with the departmental lawyers.

We just feel that if someone goes forward internally and tries to make a disclosure internally and then suffers a reprisal, we should have the jurisdiction to investigate, and currently, in the circumstances that are outlined in the act, we do not.

Mr. Sucha: Now, if the act was to extend so that whistle-blowers could disclose wrongdoing to their supervisors, would that require some sort of training, and if so, what kind?

Mr. Hourihan: It certainly wouldn't hurt. The first step would be awareness. The amount of training is probably, you know, not that significant. If somebody at work notices something that's not right and brings it forward, in the normal sense I would suspect that there's not a chief officer out there within our jurisdiction that wouldn't state: well, it should be looked at and managed effectively and appropriately as soon as it's reported. Other than the regular training that they have in that regard in terms of being managers, I don't think there's anything specific other than probably an awareness of what whistle-blowing is and what you ought to do if somebody comes forward.

Mr. Sucha: Thank you.

Mr. Hourihan: Sorry. If I can just add. That's already a requirement under the act as it currently sits. The government entity has a responsibility to provide all employees with a significant awareness of the parameters of the act and whistle-blowing, section 6.

Mr. Sucha: To me, that policy sounds a little vague. What do you define as significant awareness?

Mr. Hourihan: Well, to start with, we'd like them to at least tell employees, because that doesn't happen, and to certainly continue to tell employees on a periodic basis. You know, the nature of movement in the public sector is ongoing, so any message you want to get out there, you probably have to repeat it every six to nine months to make sure that people just stay current on it. Significant awareness is making sure that it's there. Certainly, units – supervisors and managers – should help their employees be aware of all things important. The free-flowing, proper management of things should be one of those areas.

The Chair: Mr. Cyr.

Mr. Cyr: Thank you, Madam Chair. Now, you said that there has been push-back from the Justice ministry on interpreting the act. Some of the points that you brought up seem to be common sense, like that bringing up a complaint to the supervisor should fall underneath whistle-blower. What justification are they saying that they shouldn't be underneath this act, and what other ministries are you getting push-back from that you feel is preventing you from being able to protect our workers?

Mr. Hourihan: This has been the significant one in the sense that it's – to me it does make common sense that if somebody's going to report something, they're probably going to go to their supervisor first. It becomes whistle-blowing at some point in time when somebody doesn't look into it. You know, you come to your wits' end, and then maybe you do go to the designated officer, the chief officer, or to us, depending on the situation.

I mean, like in the situation that Ted brought up, the example, what was brought up to us quite point blank was that it's not protected because it says right in the act that you have to disclose to the designated officer, chief officer, or Public Interest Commissioner. Because they didn't, that action that took place against that employee was not a reprisal because it wasn't hinging on any wrongdoing complaint, disclosure of wrongdoing. It was just very – you know, I mean, a part of me wants to go: "Well, yeah. Okay. I guess I understand what you're saying by the strict letters of the words on the page; however, the spirit and object and purpose of this act is to investigate wrongdoings and to protect the people who do bring those forward." It does seem common sense to me. Unfortunately, our sense is that it may need to be bolstered to ensure that that's the case.

The Chair: Mr. Clark.

Mr. Clark: Thank you. What I'm hearing here is really that we're fixing a gap in the act where there's a loophole, essentially, where I think those of us looking from the outside would go: "Gosh. Of course that ought to be protected." What you have are potentially somewhat obscure legal arguments to say: "Well, gosh. You know, technically this isn't a protected disclosure, so sorry. You may have been reprised against. Can't do anything about it. Sorry about that."

You know, I just want to address briefly Mr. Sucha's question about awareness. I think that any change that we would make, of course, needs – and I suspect that given the number of changes that are likely coming in this act, there will be a broad communication. Certainly, people will be aware within the public service that many changes have happened. I would strongly argue that just simply because it may be somewhat inconvenient or time-consuming to inform of changes – I would think that would be akin to making an argument that says that we ought not to have new health and safety regulations because it's kind of inconvenient to let people know that the rules have changed. I guess I would say that if we feel it's the right thing to do, if we're closing a loophole, and even if that creates a little bit of work to make sure that folks understand what that actually means in the context of broader HR rules, I think that is certainly worth doing.

Given that, I'd like to make a motion, Madam Chair, on this point, and I will try to speak slowly to allow Ms Rempel to get it captured.

The Chair: Go ahead.

Mr. Clark: I move that the Public Interest Disclosure (Whistleblower Protection) Act be amended to allow employees to make protected disclosures to a supervisor or person of authority within their organization and extend the protections within section 24 to employees in these situations.

10:20

The Chair: With that, I will open up discussion. Dr. Starke.

Dr. Starke: Thank you, Chair. Yeah, I'm certainly supportive of this. I think the Privacy Commissioner correctly points out that it's not an uncommon practice for employees if they observe some form of wrongdoing to disclose directly to supervisors and perhaps be under the unfortunately mistaken impression that that disclosure is protected. As Mr. Clark correctly points out, it's a gap. You know, that disclosure is not specifically covered within the act. Had that same employee made the exact same disclosure to the designated person, then they're protected, but if they make that disclosure to a supervisor, someone they may have more day-to-day contact with, as opposed to the designated officer, which may be in a different building, a different city for that matter, and may be a whole lot harder to get a hold of – that's the only way that they are protected if they make a disclosure. Yes, absolutely, we should support this. It's the right thing to do, and as Mr. Clark correctly points out, it closes a loophole or a gap or whatever you want and makes sure that there is more robust protection for whistle-blowers. I'm fully in favour of the motion.

The Chair: Before I go to Ms Sweet, is there anyone on the phone that would like to be added to the speakers list? Okay.

Ms Sweet.

Ms Sweet: Thank you, Chair. Just for a point of clarity around the motion, typically someone would go to their supervisor within the chain of command to make a report or to, you know, discuss an issue or whatever, so it would go: the employee, the supervisor, manager, whatever under the ranks. I'm just wondering with this change how that would typically impact that relationship between the employee and the supervisor. Would that then mean that every time an employee goes to their supervisor and says, "I'm having this issue from this context," everything would be open to being protected? I don't know if I'm explaining that properly. I mean, there would still be a measurement tool, but if you have a disagreement with a supervisor and it ends up turning into a really negative experience, would there be an ability for then someone to say, "Well, this discussion was supposed to be under confidential protection." Right?

Mr. Hourihan: Well, it would offer the protection, but it normally would hinge on something that's a wrongdoing, so there would be a determination there. If it's just something where they go and say, "Well, I'm not really happy that you put your notepad on the left side of my desk; I'd prefer it on the right," that doesn't give anybody any protections per se of anything.

However, that said, the relationship shouldn't change anyway. It's just that it would give the employee the ability to initiate those issues of wrongdoing and make the complaints to the people that he or she is most likely going to speak with to begin with anyway. It doesn't say that they have to. It just says that that's another avenue open to them in addition to our office, chief officer, or designated officer. So, as Mr. Clark said, the loophole is kind of closed on that one.

I don't frankly see it, speaking as a past manager. I think that the act states that where we want to be is: when something isn't working well at the office, you bring it forward, you address it, and everybody does what they need to do to patch it up to make sure that it's a well-oiled machine moving forward. That's the state we want to be at. Certainly, there are pockets out there, maybe vast whole departments, that do exactly that, but there are units that, based on the nature of what happens, are the opposite, so we want to make sure that it covers that off.

Ms Sweet: Thank you.

Mr. Sucha: I want to kind of ask a question in relation to sort of the next steps with the prudence of the protection of the whistle-blower in mind and making sure that the investigations are moving forward. A supervisor receives a complaint from a whistle-blower. What are the supervisor's next steps following receiving that complaint?

Mr. Hourihan: To manage it.

Mr. Sucha: Are they obliged to do anything moving forward, and if so, what would it be?

Mr. Hourihan: No, they would not be. I mean, they're obliged in the sense of whatever procedures and processes they have in place at their office.

To use an example, somebody comes in and says: you know, I was going through the records here, and I found on this procurement of goods that Mr. John Doe in the office has been purchasing TV monitors for different departments, and I noticed that they were supposed to purchase 18 and that they purchased 24, and I see that six of them were delivered to his house and five of his best friends, and I think you should look after that. I mean, with or without the whistle-blower act something should be done that's at least initiated by the person that that employee reports to.

In this case it's whistle-blowing, so this person would report it under normal circumstances. The supervisor, let's say, in our example doesn't do anything about it and says: "Yeah, yeah. I'm part of that group, so just keep your mouth shut or else you're going to lose your job." Well, his protection is already in place. Or if somebody, a manager above that or whatever, comes and says: "Hey, fire him because I'm not happy because he came forward with this. It puts us in a bad light." Then they get fired, and then they come to us and say, "Well, I got fired because I brought something forward that was a wrongdoing," and we go: "Yeah, you did." Currently they're saying, "Well, no he didn't because he didn't speak to the right person. Yeah, it happened and all that, but because he didn't speak to the designated or chief officer or you, there are no protections there, so you have no jurisdiction." So really nothing changes in the sense of what they ought to do.

Investigation of disclosures has to be done, has to be completed, and they can certainly get that guidance and advice from the designated officer because that person is responsible for ensuring that this act is indeed adhered to. If there is no designated officer, then the chief officer, and the chief officer is ultimately responsible for all of that. Certainly, the education or awareness that they're required to provide to the employees is enveloped in the act. We work in that regard, too. We try and provide an opportunity to provide guidance and advice, as well, to designated officers, and we try and help designated officers ensure – and they do know that it's their responsibility – that these things are looked at, specifically like procedure for disclosures, how it gets investigated, and all those kinds of things. They can provide that guidance and advice as well.

The Chair: Mr. Cyr.

Mr. Cyr: Thank you. Can I get that motion read back, please?

The Chair: Ms Rempel.

Ms Rempel: Thank you. Moved by Mr. Clark that

> the Select Special Ethics and Accountability Committee recommend that the Public Interest Disclosure (Whistleblower Protection) Act be amended to allow employees to make protected disclosures to a supervisor or other person of authority within their organization and extend the protections within section 24 to employees in these situations.

Mr. Cyr: I guess for myself I'm curious exactly what "other positions of authority" is. If you tell your friend who is a supervisor within your organization that isn't directly within your area, are you suddenly becoming a whistle-blower at that point? Are you asking, when you put this forward, to ask for other authorized personnel, or were you just looking specifically for supervisors to be added to this? I think we're going a little broad with this. I fully support this motion. Please don't take this as criticism. I'm just suddenly thinking that I had a conversation with somebody six months ago that I remembered. It's something that is outside of the process. I just would like your thoughts.

Mr. Hourihan: Our contemplation was, you know, within the direct line of authority or direct organizational chart authority that the person has because from the perspective that that is, that's where the person normally would go. In fact, a lot of places would be critical if you didn't go to your supervisor first, if you went around that supervisor to someone else. But, certainly, we weren't contemplating that it would be anybody who happens not to be at your level and is one level higher, that if you mention it to them, they're now somehow protected. No.

Mr. Cyr: So would you say that adding that other position of authority is probably far-reaching in all of this?

10:30

Mr. Hourihan: From my perspective I wouldn't if it was the supervisor's supervisor. You know, in the direct chain of command the person who makes the disclosure might be second to the chief officer, so their option might be to the chief officer, but somebody down the org chart, towards the bottom of it, might have a supervisor that's a manager and a director above that and an executive director above that. If they went in the chain of command, the responsibilities would lie to the chain of command to look into things. I mean, that happens now. I suspect that there's an expectation that people look after things. You know, their responsibilities come with that job. But the protections of the act would kick in. If you're reporting this in a bona fide fashion upwards in your chain of command, if you will, or your line of authority, there should be protections there, not just because it has to be specifically to the designated or chief officer.

The Chair: Mr. Nielsen.

Mr. Nielsen: Thank you, Madam Chair. I guess, just a point of clarity – I don't have the motion in front of me – with how it's worded and based on our discussion in terms of reporting to the chain of command, we're not pigeonholed where the individual has to disclose to the supervisor first. You know, for instance, if they're about to make a disclosure and it happens to be that supervisor that they're pointing out, they have the ability to go around to the next person or straight to the commissioner.

Mr. Hourihan: No. It's not meant to be complicated. In my mind it's meant to, again to use the phrase, close the loophole of something which seemingly would be the normal chain of events when something doesn't go right at the office.

The Chair: Does research have anything to say about that? No? Mr. Clark.

Mr. Clark: Thank you, Madam Chair. Yeah. To just address some of the comments here, I think there are a couple of points Mr. Cyr raised, and I think I'm on side here with Mr. Nielsen. The idea of making a protected disclosure to a supervisor or a person of authority within their organization allows you to go up the chain of command as you see fit, but I think most importantly here there are two essential points.

One, it doesn't supersede other procedures. There are existing processes which were discussed previously. What it covers, from my understanding, is where that disclosure is perhaps not even intended originally as a disclosure of wrongdoing or a whistle-blowing action, if you will. It's saying: "Gosh. You know, my boss seems to be doing something that doesn't seem right, so I'm going to tell my boss's boss." Now, in the fullness of time that turns into something which now perhaps your office investigates and determines to be a wrongdoing, that there has been a reprisal, and as it stands now, there is really no jurisdiction within your office to frankly do anything about it. You'd say: "Yes, this is a wrongdoing. Yes, you were reprised against. Unfortunately, you have no protection. Sorry about that."

So, really, it's only if something turns into a wrongdoing. It doesn't change other processes. You know, like, you say: "Gosh. You know, we're buying yellow sticky notes. I think we should buy green because they're one cent cheaper." Whatever. That's just sort of day-to-day management. But if it's some of the examples you've used, it truly becomes a wrongdoing. Really, all that we're doing is closing a loophole and not trying to change a procedure and complicate things. It's, I think, hopefully, a fairly straightforward fix in my estimation.

Mr. Hourihan: I agree. It's similar to the presentations we gave when the act came out. There was a concern by government authorities: well, this adds a whole lot of work to our plate. Our feedback to them was: "No. It doesn't add any work to your plate other than to follow this procedure. You're already suppose to be properly managing things. That's your job: to properly manage things up the chain of command or line of authority that you see fit. That's the way it's supposed to work." That's the way that it's supposed to work under this as well. It just should be properly managed, and when it doesn't, at what point in time does it become a wrongdoing, et cetera, et cetera, when the act kicks in?

Dr. Swann: Can we call the question, Madam Chair?

The Chair: Yes. We'll call the question. All those in favour of the motion say aye. On the phones? Any opposed? On the phones? That is carried.

We will take five minutes for a brief recess.

[The committee adjourned from 10:35 a.m. to 10:43 a.m.]

The Chair: I'd like to call the meeting back to order.

We are moving on now to point (d) under procedures for disclosure, after the conclusion of internal investigations. Dr. Amato, would you like to expand on that?

Dr. Amato: The issue is discussed on the bottom of page 6 of the issues documents, and the recommendations are twofold. The issue is after the conclusion of internal investigations, and the two recommendations are:

- PIDA should be amended to clarify if section 10(1)(d) constitutes some form of appeal with regard to the conclusion of an internal investigation of disclosure.

And the second proposal is:

- The wording of section 10(1)(d) of PIDA should be amended to reflect a process with similar standards as a judicial review.

The wording of section 10(1)(d) is referenced on the right-hand column of the document.

The Chair: With that, I will open up a discussion.

Mr. Sucha: Just to the commissioner: under section 10(1)(d), which constitutes a form of appeal if a conclusion of the internal investigation on alleged wrongdoing is not satisfied, do you understand that section as being as such?

Mr. Hourihan: We view it as: it's an opportunity for us to do an investigation when somebody comes to us and says that it wasn't done correctly. They can come to us. In that regard it's an additional review to what's been done, and it allows us to do our own investigation as well as have another look at it. It offers, you know, the certainty that the matter is being thoroughly and properly investigated and not swept under the carpet, so to speak, from the employee's perspective.

Mr. Sucha: Okay. If a whistle-blower comes to you who's not satisfied with the conclusion, do you currently have the power to overturn the conclusion of an internal investigation?

Mr. Hourihan: We would look at it, and we'd make comment back to the government authority. You know, if there's something that they find that we find different, we'll certainly provide that opinion to them.

Go ahead, Sandy.

Ms Hermiston: Just in terms of the technical word "appeal" and overturning, it's really not that. All this allows them to do, as Peter said, is bring it to us and not have it swept under the carpet. What we do then is not an appeal. We just do a regular investigation, and we would offer our decision and recommendations. It would be a fresh investigation, not an appeal and overturning of someone else's findings.

The Chair: Is there any further discussion?

Mr. Clark: I would perhaps like the commissioner to provide a little more context given that we have already passed a motion recommending allowing direct disclosure to the commissioner. Section 10(1) says that

> an employee may make a disclosure directly to the Commissioner only . . .
>
> (b) if the employee has made a disclosure,

et cetera. Is 10(1)(d) now moot given that we have passed a motion recommending direct disclosure to the commissioner, or am I misinterpreting that?

Mr. Hourihan: No, I don't think so. I think that this just adds an extra sense of security, I suppose, for employees. This would be meant for someone who reports it internally through the proper processes, where it's looked into, from their perspective, inappropriately or inadequately or not at all, I suppose, but certainly not in conformance with the act. Then they come to our office saying: "Look, I thought I was getting the action that this deserves, but I'm not. Please have a look at this file." It gives us the ability to look at that. It allows them to come to us directly that way.

Yes, if the act changes to include direct disclosure to my office in and of itself, then part of that wouldn't be necessary, but it does give clarity, I suppose, to someone who went through the other process first, who went internally first.

The Chair: Dr. Starke.

Dr. Starke: Thanks, Chair. I guess I'd just appreciate some comment from the commissioner on whether he sees there being a risk given that now we've said, you know, that we should have the ability to report a wrongdoing to a direct supervisor. There's also a mechanism to report to the internal officer, and there's also a suggestion that we should have an appeal mechanism. Are we going to run into a situation or do you see there being a risk that we'd run into a situation where someone who feels strongly that something is going on that shouldn't be but doesn't get the answer they want at level 1 just keeps on going and going and going up the line until they get the answer they want? Is that a risk?

Mr. Hourihan: There's a level of risk there, but I think it's minimal. There are certainly opportunities for – that would be a situation where I would decline to investigate, frankly, if they're just shopping for an answer. That can happen. This is meant more, from my perspective, for the ones where there is something bad going on and they're just not looking after it appropriately.

10:50

Dr. Starke: Okay. That's fair enough. I appreciate that.

I guess my second question is a little bit unrelated to the first. It's on the second recommendation or proposal, at the very bottom of page 6: "PIDA should be amended to reflect a process with similar standards as a judicial review." Could you provide a little bit of clarification there? This is a good one. Is the current process consistent with a judicial review? What would have to change? Would that place some sort of onerous restrictions on your ability to conduct investigations in what strikes me as being – I don't want to minimize it by saying that it's informal. It strikes me that your review process is systematic, but it's also, you know, carried out in a way that's designed to provide an answer and not necessarily restricted by the requirements of a more let's call it legalistic or judicial process. I'm not sure if that explains things right, but I'm curious to know your interpretation.

Mr. Hourihan: That does. You're right; it is not supposed to be informal, but just as you stated, it's not meant to be a particular regime of court-structured approach, because that's already available if somebody wants to, you know, sue somebody or do those kinds of things. But a judicial review is always available to somebody.

Sandy can best answer that question.

Ms Hermiston: We don't want to be performing a judicial review type process within our office, as you just said. So if we make recommendations and somebody doesn't like them, they can go on judicial review to the Court of Queen's Bench. When a judicial review happens in the courts, the courts don't provide an answer. They say that the decision is reasonable or that the decision is unreasonable, and they don't provide their own opinion, necessarily, of what the decision should be. They don't put their own spin on it. They send it back to be done again.

To impose that on our office: it's obviously a choice open to the committee to consider, but it would change the flavour of what we're doing, for sure.

Dr. Starke: Chair, just to, then, conclude my questioning on this section (d), personally I would favour some form of a motion that would incorporate the first and the third of the recommendations under this section, which I think are reasonable and would add important additional safeguards to the act. Based on the questions that we just asked and had answered, I would not wish to include the second of the three recommendations as we move that forward to those that are drafting the proposed amendments to the legislation.

The Chair: So would you like to make a motion?

Dr. Starke: Sure. Why not? I would therefore move that

> the Public Interest Disclosure (Whistleblower Protection) Act be amended to clarify section 10(1)(d) to make provision for an appeal mechanism with regard to the conclusion of an internal investigation of a disclosure and, further, that the same act be amended to provide a mechanism by which an employee found to have committed a wrongdoing may have that decision reviewed.

So essentially just taking the wording directly from those two recommendations.

The Chair: With that, I will open up discussion.

Mr. Sucha: Madam Chair, could I have that read out again just for clarification?

The Chair: Just a moment. I will allow Ms Rempel some time to have that written down.

Member Cortes-Vargas.

Cortes-Vargas: It's not really a point of discussion, but is there any way that we could get the amendments on the floor to be written on the screens? I mean, it's not, like, immediate. [interjections]

The Chair: They will discuss that further.

Cortes-Vargas: Okay.

The Chair: I will get Ms Rempel to read out what she has, and, Dr. Starke, you can let us know if that's right.

Ms Rempel: I believe that Dr. Starke has moved that the Select Special Ethics and Accountability Committee recommend that the Public Interest Disclosure (Whistleblower Protection) Act be amended to clarify that section 10(1)(d) constitutes a form of appeal with regard to the conclusion of an internal investigation of a disclosure and, further, that the same act be amended to provide a mechanism by which an employee found to have committed a wrongdoing may have that decision reviewed.

The Chair: Dr. Starke.

Dr. Starke: Yeah. If I could offer just one small change to that. I think what I said in the first part of that motion was that the Public Interest Disclosure (Whistleblower Protection) Act be amended to clarify that section 10(1)(d) include – as opposed to constitute – some form of appeal, and then I would say: a mechanism with regard to the conclusion, et cetera.

The Chair: Are members prepared to discuss the motion, then?

Mr. Sucha: Madam Chair, I have a question. Just for some clarification from the commissioner, can you explain how you currently work to ensure that the investigations of the offices are complete, fulsome, and accurate?

Mr. Hourihan: The ones done by ourselves or by the government entity at the first step?

Mr. Sucha: Primarily by yourself and then by the government entities.

Mr. Hourihan: For ourselves, we try to be as thorough as we possibly can be. You know, the investigators will investigate matters. They'll deal with Mr. Miles as the director to ensure that the investigation is going in the right direction and those kinds of things. We'll ensure that we get all the details we can from all parties that we need to talk to and that sort of thing and try to be as thorough as we can. We certainly have legal input. We have things like challenge meetings and that sort of thing, where we ensure that we're looking at everything. We recognize that this is the last step for someone, and we want to make sure that we are right.

In terms of if an investigation is done initially internally but somebody was to complain that it was not done properly, we would review it with the same level of scrutiny that we would have ourselves to check those types of things, to see if they did in fact look into all of the aspects that we feel or believe were necessary to be looked into.

The Chair: Mr. Cyr.

Mr. Cyr: Thank you, Madam Chair. It's curious that we're using the words "a form of appeal" or "appeal" in all of this. I like where Dr. Starke is going with this, but is there any way that we can use "review" instead of "appeal"? It throws misinformation that the Public Interest Commissioner can actually overturn a decision. That is what appeal, actually, in my understanding, means. Would Dr. Starke be open to a friendly amendment to change out "appeal" with "review"?

The Chair: Mr. Cyr, did you want to amend that, then? Do you want to propose an amendment?

Mr. Cyr: I suppose I can propose an amendment, then. I just don't feel that it's appropriate to show that this is an actual appeal process.

The Chair: What amendment would you like to make?

Mr. Cyr: Just that every instance in the motion that says "appeal" be changed to "review."

11:00

The Chair: Discussion on the amendment?

Ms McKitrick: I really need some clarification. When we're using the words "appeals" and "review," they have different meanings in different circumstances, so I really need to clarify what is meant in the motion that we're voting on before I can personally vote for it. I need to be clear as to who would do the appeal, the review and where it's at within the whole judiciary system of appeals, judicial review, and so on. We're using wording that is not clear to me at this point.

Ms Hermiston: I can take a stab. Currently the act says: if they don't like it, they can come to us. The way it would work right now given the wording in our legislation is that we would just do an investigation of our own and come to our own conclusions and make recommendations accordingly. If the people are given the right to appeal to our office, it changes the flavour of how we would deal with it because then we would be having to look at everything that they did and their conclusions and all of that, which is quite a different process than just doing an investigation and making recommendations.

It's a choice you make, whether you want to include an appeal mechanism. It would be the only jurisdiction in Canada to have that kind of a formal appeal mechanism. There are two other jurisdictions that currently allow people to come to the Public Interest Commissioner's office after an investigation is done internally if they're not satisfied, which is the exact wording in our legislation. I think Nunavut and Yukon currently have provisions that allow them to come to us. There is no other piece of legislation that I'm aware of that offers an appeal to the Public Interest Commissioner after an internal investigation.

The Chair: Mr. Nielsen.

Mr. Nielsen: Thank you, Madam Chair. Based on the amendment – and I guess it doesn't matter whether we want to call it an appeal or a review. From what you've just said, it sounds like there is something at least in place already. Would this amendment duplicate that process or create a second process?

Ms Hermiston: It would change the flavour of the current process. The current one just says: if you don't like what happened internally, you can come to the Public Interest Commissioner's office. A different provision would say: if you don't like it, you can ask the Public Interest Commissioner's office for an appeal or a review. Those would be a little different. Appeal would be much more formal. Review could probably be more like what we do right now.

Mr. Nielsen: Okay. But you already have in place the ability for somebody to say: I don't like your decision; can you take a second look at it?

Ms Hermiston: Yeah. It's section 10(1)(d).

Mr. Nielsen: Right. By putting this in, then, are we duplicating what's kind of already there, and would it then create a situation where you make a decision, somebody asks for it to be reviewed, and then you've got to review the review? Do you see where I'm going?

Mr. Hourihan: Typically, if we get one where they want us to look at it and they come in under 10(1)(d), they'll say: I'm not happy with what happened; do you want to have a look at it? We will have a look at it. We can provide comment back. I mean, our first step is to look at what they did. We might be able to provide some guidance and advice to the person so that they have some sense of understanding, and that may suffice. If not, we can look at it again. The only difference, I suppose, here is that the phraseology used in section 10 is: if a person is not satisfied, they can come to us and make a disclosure.

Now, in terms of the employee who comes to us, I'm sure that they see that as: if I'm not happy with what happens, I can go ask them to see if they did it right. That's really what's going on here. Is it a review, an appeal, or otherwise? It's an opportunity for the person to come when dissatisfied to our office, and we will look into things. We'll look at it as we see fit in terms of the investigation. So, yes, it does exist right now. You know, not that it matters, but this wasn't put forward as something that we felt was necessary. It was put forward by other groups. I don't particularly see an issue with what we have in place now.

The Chair: I'm going to call the question on the amendment.

Mr. Clark: Sorry. I have a question I'd like to . . .

The Chair: Is it related to the amendment?

Mr. Clark: It is, actually.

The Chair: Go ahead.

Mr. Clark: What I'm curious about is: are there – sorry, Madam Chair. A point of clarification, then. There's an amendment on the floor

to change the word "appeal" to "review."

The Chair: Right.

Mr. Clark: Okay. I do apologize. I'll come back and speak to the main question, then.

The Chair: Okay. I will call the question on the amendment. All those in favour of changing "appeal" to "review" in the motion, say aye. Any opposed? On the phone? That is defeated.

We are back on the main motion. Mr. Clark.

Mr. Clark: Thank you, Madam Chair. Perhaps, we have some confusion here about the source of the recommendations, and it will be difficult, of course, without the Auditor General or the representatives from the University of Alberta here to provide some context. What I've heard in the discussion so far is that where there has been an internal review, then there is an ability to make a disclosure directly to the commissioner when the whistle-blower or perhaps the person found to have committed a wrongdoing is dissatisfied with that finding. That's one stream.

But I do wonder here if the recommendations or the request from the Auditor General and the University of Alberta speak to the findings of the commissioner and your office itself. My question, then, to you is: is there some sort of appeal or review mechanism beyond your office should proponents within the system, someone or other, either a whistle-blower or someone who has been found to have committed a wrongdoing, be dissatisfied with the outcome?

Mr. Hourihan: Just the judicial review.

Ms Hermiston: Yes. They can go to court. There's a judicial review process open to them. My interpretation of the Auditor General's submissions is that they're looking not at the appeal from us but this other internal, because they refer to section 10(1)(d). Then there's a section later in the discussion paper that talks about appeals of our decisions as a separate issue.

Mr. Clark: Okay. Thank you.

The Chair: Mr. Nielsen.

Mr. Nielsen: Thank you, Madam Chair. Has there ever been a decision that you've made in the past where somebody has asked for it to be reviewed and you found that you actually changed your decision?

Mr. Hourihan: Not my decision, no. There haven't been any of those.

Mr. Nielsen: Okay.

The Chair: Is there any further discussion on the motion?

Then I will call the question. All those in favour, say aye. On the phones? All those opposed? On the phones? That is defeated.

On to point (e), timelines and disclosure. Dr. Amato, on page 7.

Dr. Amato: The issue is on page 7. It's point (e). It's timelines for disclosure, and there are two proposals made there.

- The regulation should be amended to combine the time limits for acknowledgement of a disclosure or complaint of reprisal and the decision whether to investigate.

The second is:

- PIDA should be amended to extend the timeline for making a determination as to whether an investigation will be made to 20 business days.

The Chair: I will open that up for discussion.

Mr. Sucha: This is actually directed to research services. In comparison to other jurisdictions what kinds of timelines do you generally see?

11:10

Mr. Hourihan: I may be able to help out there a little bit while you're looking. In the federal legislation they have a 90-day examination period to conduct a jurisdictional assessment prior to confirming whether or not it will be investigated, Nova Scotia provides 20 days to commence an investigation following the receipt of a disclosure, Nunavut gives 45 days to commence an investigation following receipt, and then, of course, we have our five days of acknowledgement and a total of 10 days for determining if we're going to investigate.

I'll just make note that I think on your notes on your document it says, "The Commissioner is suggesting a new timeline of 15 business days." No, that's a misunderstanding. I wasn't. I believe I said or I meant to say that what we're looking at is that we have 110 days right now, and that's all part and parcel of the investigation. Five to acknowledge is fine. It just takes longer than 10 days sometimes to determine whether or not we actually want to investigate. However, there's an argument to be made that once we start looking into something, it is actually part of the investigation. As long as it falls within the overall timeline, that's probably fine.

The Chair: Is there anyone on the phones that would like to be added to the speakers list?

Dr. Swann: I just want to get a sense from the commissioner about whether 20 days, then, is something that you think is reasonable.

Mr. Hourihan: In most cases 20 days is reasonable in that we can start looking into things. In complex matters sometimes it becomes an issue of that we don't know that it's actually jurisdictional to us until 45 or 50 days into it because something else comes up, and we go, "No, it's not jurisdictional" for this or that reason. However, those are less common, and they're fairly manageable in the sense that we're already investigating, if you will. I suppose it depends on what the concept of jurisdictional assessment is versus investigation.

To describe it, the way the federal legislation is is that they do that assessment specifically. We do it as part and parcel. We do an assessment. Right now we have the 10 days, so we acknowledge and make the assessment. If that changes over time, then we just conclude the investigation and discontinue, if you will. It hasn't caused us a lot of grief or complexity, but it would be beneficial if we weren't stuck to the 10 days to make that initial assessment.

Mr. Miles: A quick example of the challenge. We received a disclosure last week with 45 allegations on the disclosure. We have a very motivated whistle-blower in this case. It's hard to make a determination on 45 allegations, which of those are jurisdictional for us to investigate and which are not. I'm hesitant in telling this particular individual that, yes, we're investigating because we're not going to be investigating all of those allegations. In fact, we may not be investigating any of those allegations, but we can't get to that decision within the 10 days it's allowed. I think we're already at 14, and we're still working our way through those multiple allegations.

Dr. Swann: Would it be reasonable to suggest a range of time, then? There would be acknowledgement of receipt within 10 days, and within 20 to 45 days a decision would be made as to whether or not it falls within and which elements fall within your jurisdiction.

The Chair: Mr. Hourihan.

Mr. Hourihan: Yes. I think that it would be suitable if we – I certainly like the perspective that we have to acknowledge it quickly. Five days is good for that. That's a simple process. After that I'm not so sure that we need the 10 days in there. We're going to look into matters, and we're going to come to a conclusion as to whether or not they are or are not jurisdictional as soon as we can, and we will investigate those that are as soon as we can. I think that if we were restricted to five days' acknowledgment and 110 days for the investigation, that would be fine.

The Chair: Mr. Cyr.

Mr. Cyr: Thank you, Madam Chair. Isn't it your suggestion that you are looking at a 15-day timeline? Is that not . . .

Mr. Hourihan: No. If that was stated by me, then I misstated that or I left the wrong impression. I didn't mean a 15-day time limit. Right now, depending on how you look at it, it's five days to acknowledge, 10 days to make the determination, but that 10 is actually a total. It's not 15, and I'm not suggesting that 15 is what would be beneficial. I think that it would be fine to just have, as I said, the receipt and acknowledgement and the 110 days.

Dr. Swann: Madam Chair, I'm a bit confused.

The Chair: Can I add you to the list? Mr. Cyr is still speaking.

Dr. Swann: Yup.

Mr. Cyr: I guess my concern always is when we open end these things. You're looking at coming back with a decision that you're going to come up with after investigating it for three months, more or less. Now, that seems to be pretty open ended, to come up with that decision in that time frame. Most people put their whistle-blowing concern forward, and they want an answer fairly quickly, which is why I understand it was initially set at 10 days. I guess I'm just not comfortable moving it all the way up to 110 days.

I noticed here that AHS put forward that they were wanting to see 20 days as a compromise. Now, I just thought that that's strange, that we're getting AHS putting forward 20 days. Is there an impact that they're seeing because of the short time frame in all of this? Is there a real burden on them?

Mr. Hourihan: Well, there hasn't been so far. They can come to us if they need extensions. They can come to me, and I can provide those extensions.

Just for clarity, I wasn't suggesting 110 days to make a determination that we would investigate. I was suggesting that the current language of 110 days to complete the investigation is fine. The reference to whether we will or won't investigate will be made as soon as we can, the same as it will be investigated as soon as it can be, with the notion that we will in all our best efforts try and be done by 110 days, keeping in mind that the act does provide me with the ability to provide an extension to myself but also to provide an extension to the internal authority that may be investigating things from their side.

Right now what we've been treating it as – as Ted provided in the example, sometimes we get these ones where it's really hard to make a determination within a short period of time. That said, we look at it and say: "Look, we're going to look into this matter. We're going to try and get it done within 110 days if at all possible." In the meantime, when we look into it as part of an investigation, if we determine that there are pieces or all of that investigation that need to be continued or discontinued, we'll make that assessment as we go and in as timely a fashion as we possibly can.

The Chair: Dr. Swann.

Dr. Swann: Well, thank you. I guess we would all be a little more comfortable, especially the whistle-blower, if there was some kind of parameter around which to establish the legitimacy of the complaint or not or whether you're going to investigate or not. So 110 days may be well within reason to do these complete investigations, but I'm thinking that we should try and provide a standard for actually determining the legitimacy or the decision to investigate and not leave it open. You don't seem to be comfortable with that?

Mr. Hourihan: I'm not really uncomfortable with it either. I do know that 10 days has caused us some concern because we haven't been able to do it within 10 days, and likewise the authority hasn't been able to do it within 10 days. You know, receipt is a simple thing. You get it, and you acknowledge receipt. The assessment under normal circumstances is done within the 10 days; if not, it's done within 12 or 15.

There are cases, though, as Ted described, 45 allegations and those sorts of things, that are going to take much more time. If there's a requirement in there to provide notice back to the whistle-blower within 10 days, we can certainly do that, and that advice would be in the future. As it is now, if we don't know at that point in time, we just provide that guidance back to them saying, "Look, this is what we do know; this is what we don't know; we can't give you an answer for another whatever," and we'll fill in the blank on that one and make the determination and keep them apprised throughout the investigation.

11:20

The Chair: Mr. Clark.

Mr. Clark: Thank you. Yeah. I agree with Dr. Swann. I do think we need some parameters.

Just so I'm clear and hopefully everyone else is clear, I'm hearing that there are three stages. There's acknowledgement of receipt: simple. There's the decision to investigate, which can be simple or it may not be simple. And then there's the investigation itself. Is that a fair – just so I'm clear, are those the three steps?

Mr. Hourihan: Totally correct.

Mr. Clark: As it stands currently, the first two steps, acknowledgement and the decision to investigate, are constrained to 10 days with the option to extend. But the expectation, given the act, would be that you'd hear back in 10 days, as it stands now, and then an additional 110 days to investigate?

Mr. Hourihan: A total of 110.

Mr. Clark: Sorry. Is it cumulatively 120?

Mr. Hourihan: No, cumulatively 110.

Mr. Clark: Cumulatively 110, total. So essentially it's 10 days to acknowledge and decide to investigate plus 100 to investigate, as it stands now.

Mr. Hourihan: Correct.

Mr. Clark: I personally would like to see specific parameters set for each of those three stages and to choose numbers here. If we were to say that we would acknowledge within five days, decide to investigate within 15 additional – so now that's 20, total, between the acknowledgement and the decision to investigate – and then another 100 days to investigate, is that sufficient? Do you feel that that decision to investigate needs to be longer? I'm okay if you feel it should be longer, but I believe we should have some parameters on each stage of the process.

Mr. Hourihan: I think it should be longer, and this is the reason why. If we get a complaint – I don't know if it needs to be longer for the government authority as often as it does for us, and the only reason I say that is because if we're asked to investigate it, we have to go back to the authority and say: "Okay. Please provide us with the following information." It takes them a certain amount of time to gather that information and get it back to us. So in terms of if they're doing it themselves, they might be able to speed that up a little bit because they don't have to wait for us to ask, if you will.

Right now, certainly in our early days, we have all of the challenges, things like: well, they didn't make the disclosure here, so we don't think that we want to give this to you. We're running up against roadblocks right now where legal counsel with the authorities are suggesting that they get to determine the relevance of the information that they provide to us as opposed to where I would make that determination.

So we have a bit of wrangling, if you will, to get the information in the first instance, and that can't all be done within 10 days. Sometimes we're lucky if we get that within 90 days. In fact, we've had cases where it's been six, seven months before we got the information that we were looking for, and not necessarily because somebody is trying to be belligerent but because they're trying to understand what it is they need to get to us. Those kinds of cases cause us grief in the sense of the 10 days and the 110 days, so no date is particularly helpful. What I have to do there is provide extensions to myself to continue, and I document that sort of thing.

However, on your run-of-the-mill one it's 10 days just to write a letter over to the department and ask them to gather the information. If it's got any scope and breadth to it at all, it takes them some time to gather, so 10 days and even 15 or 20 can be extremely short for those ones.

That said, right now what we do because we're required to is that we try and make the determination as fast as we can, and then, knowing that I can certainly discontinue if I find that what appeared to be jurisdictional at the front end is not, I can go back at any point in time to the whistle-blower and say: "Look, here is what we found. It's not going to be investigated further for these reasons."

Mr. Sucha: What you're saying is that the act does have provisions that allow you to extend the timeline anyway, so if there are situations as in the prime examples that you have given, you already have those powers. From what I'm hearing in the room, it would be nice to kind of set sort of those timelines to allow those whistle-blowers to have some clarity on the process unless the rare occasions come where you can't meet those timelines.

I kind of compare it to my time in the restaurant industry. You know, it didn't matter how good your place was, as soon as the health inspector came, everything stopped. There is always that anxiety that comes from any investigation or any inspection, whether it be routine or for a reason. From my experiences kind of dealing with regular investigations that happen all the time, I can really sort of see a lot of anxiety and people wanting to have clarity on the process moving forward as well.

Mr. Hourihan: I would agree with timelines. I mean, I certainly appreciate timelines within the act to make sure that my feet are held to the fire, to make sure that those timelines are met as best as they can be. You're right that if you provide a timeline – unfortunately, if I go to a department and say, "Please provide this within the next 45 days," my expectation, frankly, is going to be

that around 45 days from now I'm going to get it or I'm going to send a chaser. If I say 10 days, then chances are I'm going to send that chaser in 10 days. So there's no disadvantage in that sense of having a tight timeline.

Just in terms of the realism of actually being able to make that determination, 10 days is too narrow. Could we do it in 20 days? We can do a significant number of them in 10 days. We would be able to do many more within 20 days, and then, of course, it goes out from there. I certainly wouldn't be opposed to a date but would probably propose something larger than 10, and if it were 20, that's certainly much more workable.

The Chair: Mr. Nielsen.

Mr. Nielsen: Thank you, Madam Chair. Just from what I'm hearing, obviously, the acknowledgment that that's a simple piece of cake there. I didn't hear too much, I guess, concern with trying to finish an investigation, and you have that ability to extend it in more severe circumstances. So it sounds like it's that one little middle part that seems to cause problems on a more regular basis and that increasing that time frame would help and then allowing you to extend it in extreme circumstances.

Mr. Hourihan: Correct.

Mr. Nielsen: Okay. Thank you.

Mr. Clark: It sounds like we need to pick a date. There's no perfect date. It's going to, I think, by definition, be somewhat arbitrary. I wonder if perhaps we look at the combination of acknowledgement and decision to investigate within 30 days. That seems to me, if I were to be someone who's a whistle-blower, like a reasonable amount of time to make a determination. I'm wondering if perhaps we were to break that down between five days for acknowledgement and 25 days for a decision to investigate with the existing 100 days to complete the investigation itself, which now makes the total process 130 instead of 110.

I'd be interested in the perspectives of both the commissioner as well as my fellow committee members on whether that feels like a reasonable balance there, where we're actually putting some parameters. We're extending the timelines that need to be extended but not enormously. I'd appreciate thoughts before we bring a motion for those specific numbers.

Mr. Hourihan: From my perspective that would work well. It would enable us to certainly acknowledge, as has been said, give a sufficient amount of time on most matters to be able to make that determination within that extra 25 days, and still conclude. For those that are much more complex and problematic, we can always provide good communication back to the whistle-blower and to the department to make sure that everybody understands that we're working in their best interest and everybody's best interest to get it moving in a timely fashion.

Mr. Sucha: Earlier on I was hearing – do you have challenges with the acknowledgement date, or is it just the determination on commencing the investigation?

Mr. Hourihan: We receive it, we put it through our administrative process, write a letter back, and it's done virtually overnight, if you will. Sometimes it takes us a couple of days to read the package, you know, because it can be thick. But five days is not an issue.

Ms McKitrick: Commissioner, I was wondering if some of the challenges were the different kinds of authorities that you are dealing with that may or may not increase the length of time that it takes for you to determine if an investigation is warranted. My understanding is that the scope of which authorities you're going to be able to possibly investigate may be extended by the committee. Would that make a difference?

11:30

Mr. Hourihan: No. The type of organization we look into makes no difference. Frankly, it just will be the complexity of the disclosure itself.

Ms McKitrick: Thank you.

Mr. Nielsen: I guess when you find yourself in situations where you've had to extend because you weren't able to complete the process in the timeline, how often would you say that there's been dissatisfaction because you didn't hit the timeline?

Mr. Hourihan: None yet. I realize that this isn't a good way to articulate something in an act, but we've been very intent on making sure that there's good communication going back to whomever it needs to go back to in an ongoing and timely fashion to ensure that the process is well understood and acceptable to them. So far we've had significantly positive feedback from whistle-blowers in spite of the fact that some of them have taken a significant amount of time to get through.

Mr. Nielsen: Okay. Any opinion, then, on extending both that middle timeline, I guess, for a lack of better words, and the end timeline?

Mr. Hourihan: No. I mean, I have the ability to extend, and I have the ability to extend for the internal government authorities as well. I mean, I think it's helpful for all of us to have timelines that force us to focus on significant pressure to get things done, keeping in mind that there's a balance between speed and thoroughness, but that can be handled through an extension by me. From my perspective, in terms of extending somebody else's, I find that a very simple thing. In terms of extending myself, I find that a little more challenging just in my own mind because I want to make sure that I can force my own feet to the fire, if you will. So I just try and make sure that I articulate well with Mr. Miles, the director, and we articulate our reasons on paper for our own satisfaction as well, that we're moving through it as we can.

Mr. Nielsen: Obviously, if you don't need the time, you just proceed.

Mr. Hourihan: Oh, I mean, ideally, if we can get done within 30 or 40 days, that's our goal wherever possible.

Mr. Nielsen: Okay. Thank you.

Cortes-Vargas: I'm just looking at the crossjurisdictional review of the time limits, and I'm thinking that actually extending it for longer than it is might be unnecessary. Other jurisdictions, on average how long do they have?

Mr. Hourihan: Some don't have any. They don't have a timeline in terms of completing the investigation. In fact, most don't, I think. I know that the federal legislation has a timeline, but I think that if it's not a year, it's two years. I can't state that unequivocally. I know that the challenges across the country are to try and do it in a timely fashion.

Cortes-Vargas: Yes.

Dr. Amato: This information is on pages 28 and 29 of the crossjurisdictional. With regard to the federal jurisdiction, that's on page 29. With the question of whether to decide to investigate, I believe at the federal level the Public Sector Integrity Commissioner has 15 days to decide whether to investigate and whether he has all the necessary information to complete the assessment. He needs to make that initial assessment within 15 days.

One of the issues here that I was made aware of also is to think about how days are being defined, so whether that's actually 15 calendar days or 15 working days. Unfortunately, I didn't include that information here, but that is something to consider. Fifteen days could be, in fact, three weeks – right? – depending.

Cortes-Vargas: Currently are we talking about business days, or are we talking about calendar days?

Dr. Amato: I'm not sure . . .

Cortes-Vargas: My understanding was calendar days.

Dr. Amato: . . . when it comes to the federal jurisdiction, but Alberta has business days.

Mr. Hourihan: I know the public federal integrity commissioner can decide within 15 days of the complaint being filed with the office and when the office has all of the necessary information to complete the assessment. I think there's an extra parameter on their 15 days because they've got to get that material from the other department or wherever they need it to make the determination. But I'm not sure that that matters from my perspective.

Mr. Clark: That takes us into section 4 of the issues summary. I wonder if issues like compelling information and solicitor-client privilege have been addressed. I presume that would speed up your ability to conduct an investigation. Can you speak to that? I mean, it sounds like some of the challenges you're talking about are, generously, confusion, quote, about what may be required to be disclosed, which could legitimately be confusion, or it could just be foot-dragging. I don't know. Is that part of the challenge here? Is it misunderstanding about what exactly is required to be disclosed?

Mr. Hourihan: I think that's a correct assessment, that it is confusion. You know, as much as we like to think we've been around for three years and that's a significant amount of time, that's still pretty new in the sense of organizations that have to deal with our office or deal with the issue of investigating and disclosure.

When we're involved and they ask questions back, we try to make sure that we provide good information. But I think it's clarity of what is and isn't required, and it's sort of a stage in our growth and development that we probably won't see 10 years from now. I would suspect that when the Ombudsman Act came into place in 1967, from some of the reading I've done, there were some things that took a long time to make determinations on back then that don't take any time at all now because there's comfort in what the process is from all sides. So, yes, I agree that if some of the loopholes, if that's the right word, are closed and tightened up and more as we progress, that will be a simpler process.

I think that at the end of the day there are always still going to be those complex files. Well, most files have some complexity to them in terms of wrongdoing. We'd still need, you know, whether it's 30 days – a reasonable time like that to make that determination would be helpful.

Mr. Sucha: Madam Chair, I'm going to propose a motion just so we can kind of hash out some of these details on the floor here as well, too. I would like to move that the Select Special Ethics and Accountability Committee recommend that the Public Interest Disclosure (Whistleblower Protection) Act be amended to extend the timeline required to determine whether or not to investigate complaints to 20 business days.

The Chair: Any discussion on the motion? Mr. Nielsen.

Mr. Nielsen: Thanks, Madam Chair. Based on what I was hearing from the commissioner and the discussion on the floor, it does seem that that second stage would allow you a little bit more freedom to make those determinations. I could certainly support that motion.

The Chair: Anyone on the phones?
Mr. Clark.

Mr. Clark: I guess I'll ask Mr. Sucha: the decision to investigate being 20 days, does that include the acknowledgement, or are you anticipating there would be an additional, say, five days to acknowledge receipt? Or that 20 is both combined?

Mr. Sucha: I would see it as both combined because it doesn't seem like the challenge is the acknowledgement; the challenge is about the time over investigations. It seems pretty straightforward – you can always correct if I'm wrong – but the acknowledgement is just more of a clerical thing that has to be handled.

The Chair: Any further discussion? Ms Hermiston, did you have something to add?

Ms Hermiston: The regulation currently reads five, 10, 110: five for acknowledgement, 10 for the decision, and then 110 overall. You might keep that in mind in terms of how you frame the recommendation.

The Chair: I'm going to ask research. Does the motion cover – like, is it specific to that piece, then?

Dr. Massolin: Well, I think that the motion on the floor has to do with 20 business days, and that's a combination between sort of acknowledgement and investigation. In case I'm getting that wrong, Mr. Sucha, please clarify. But that's what I understand it to be.

Mr. Sucha: Sorry. You're saying 20 days following the confirmation is what you deem it as?

Dr. Massolin: No, 20 business days combined.

Mr. Sucha: Oh, yes. I view it as 20 days combined.

The Chair: Okay. Mr. Clark.

11:40

Mr. Clark: Yeah. I mean, they do say a camel is a horse made by a committee. I suppose it's always challenging in a group like this to quibble over specific numbers. Having said that, why don't we do exactly that?

I think the five days to acknowledge makes a lot of sense. I would support. If I heard the motion correctly – and perhaps Ms Rempel can read out the motion again – if the motion is 20 business days to make a decision to investigate, that seems reasonable to me. That's five – perhaps, you know, in practice it's probably less than five in most cases – and then an additional 20, which is up from 10, for that decision to investigate. Hopefully, that gives your office a little more runway, yet there are still some fairly tight timelines for all involved in the process to have an understanding of whether this is going forward or not, with the continued opportunity and ability of

your office to extend as necessary for the larger, more complex cases. To me that feels reasonable, and I guess I'd put that to Mr. Sucha, if you would agree with that. As I heard your motion, that's actually what I heard, that the decision-to-investigate piece itself is 20 days, in addition to five. I'd appreciate just a reread of the motion. Perhaps we could go with that.

Ms Rempel: Moved by Mr. Sucha that

> the Select Special Ethics and Accountability Committee recommend that the Public Interest Disclosure (Whistleblower Protection) Act be amended to extend the timeline required to determine whether or not an investigation is required to 20 business days.

The Chair: Any further discussion? Mr. Sucha.

Mr. Sucha: Yeah. I'm in agreement with what Mr. Clark is saying. Like, it is very important to acknowledge that these are business days, so we're looking at a month's span pretty much, and for a whistle-blower that could be a vast amount of anxiety within a period of time, so I think it's important that we kind of hash out clear days for these as well.

The Chair: Is there any further discussion on the phones?

I will call the question then. All in favour of the motion say aye. On the phones? Any opposed? On the phones? That is carried.

Moving on to (f), remedies/rewards for disclosers.

Dr. Amato: This is on page 7. The issue is remedies/rewards for disclosers. There are two proposals. The first is that "PIDA should be amended to provide remedies and/or rewards for disclosers." The second is that "PIDA should be amended to provide monetary awards to complainants whose complaints are found to be grounded."

The Chair: With that I will open up discussion.

Mr. Sucha: To the commissioner. You mentioned in your submission that there are some concerns around offering rewards to disclosers. Would you care to elaborate a little bit on that?

Mr. Hourihan: The debate nationally and globally has been whether or not this is a good thing. The debate is certainly alive and well. In general those types of rewards are – you'll see them in securities industries, where they're providing it, and I believe the Toronto Stock Exchange just recently authorized rewards for whistle-blowers. The discussions around the world, frankly, are more around those. The reward is more around the financial piece of things like securities, but there is conversation going on about whether it would or would not be a good idea to have them within. I'm not a proponent one way or the other of this. It's a debate that's alive and well, and I'm interested to listen to it.

The Chair: Mr. Clark.

Mr. Clark: Thank you. We've been in several meetings here, and I recall a long, protracted discussion about the issue of remedies for disclosure. Just flipping through my pages here, I can't find the minutes at hand, but I recall we passed a motion – did we not? – on remedies specifically. In fact, in my notes here I have a check mark beside this one. So there's these two . . .

The Chair: Yes. We did. On remedies for reprisals.

Mr. Clark: Remedies for reprisals. Is this one, then, seen as distinct, being an actual reward over and above remedies?

The Chair: Yes.

Mr. Clark: Okay. Just so we're clear, the remedy in terms of should you have been demoted, lost your job: they essentially make you whole. What we're talking about is over and above that, essentially, well, reward. Okay.

The Chair: Dr. Starke.

Dr. Starke: Yes, Chair. Thank you. I'm very uncomfortable with the notion of providing specific financial rewards or monetary awards for whistle-blowers in a situation like this. You know, I guess I still rely on the altruism of people and that if something is going on that is improper or that is unethical or whatever other word you want to use and that needs to be outed, then just doing the right thing should be the incentive for people. I guess I'm always concerned that as soon as you bring in any sort of monetary reward for something like this, one then calls into question what the motivation of the whistle-blower is, and I think that's something that we need to take great lengths to avoid.

I can certainly understand it in the situation with securities trading and that sort of thing when we're talking in some cases about very, very large sums of money, and I acknowledge as well that in some cases in government operations we may also be dealing with fairly substantial sums of money. But I would say that this is just a direction that I would be very uncomfortable with us moving in. I would not support any moves towards providing financial rewards or monetary awards for whistle-blowers.

Mr. Sucha: You know, I have to echo a lot of what Dr. Starke is saying. I think we've already started creating a lot of clear remedies in the system to allow it to be easier for whistle-blowers to come forward. Yeah, I don't know personally how I could explain to my constituents moving forward with these sorts of remedies. We are talking about government money, and it is the people's purse, so I'm not in favour of moving forward with that.

The Chair: Is there any further discussion, or can we move on? Mr. Hourihan.

Mr. Hourihan: Sorry. I just noticed that there's a typo in the document they have. It says under Recommendations and Proposals that "PIDA should be amended to provide remedies," and then it's got behind it in brackets "(PIC)." That's actually a typo. It was more of a question. We're not a proponent of this. It's: for consideration of the committee, "Should PIDA be amended" as opposed to "PIDA should be amended." Just so we're clear.

The Chair: With that, we will move on to item 4, investigations by the commissioner, issue (a), compelling information. Dr. Amato.

Dr. Amato: Sure. The issue is compelling information, and the proposal is:

- Section 18 should be amended to strengthen the Commissioner's right to information and create an obligation for the entity to provide the requested information in a timely fashion. Anyone providing the requested information should be protected.

The Chair: With that, I will open it up. Ms Miller.

Ms Miller: Yes. Thank you, Chair. Could the commissioner expand on how the clarification will impact the application of the act?

Mr. Hourihan: Section 18 now says that I "may . . . require." We're getting push-back from counsel and other areas that that doesn't mean they have to provide it. It says there that "the

Commissioner may in the course of an investigation require any person who . . . is able to give any information" to give that information. They're just seeing that as that it's an optional opportunity for them to provide it as compared to an instruction to provide it. It would be much better and much more effective and, in my argument, necessary that we are able to look at what we believe we need to look at to make our determinations, not allow the other party to make the determination of relevance.

The Chair: Mr. Cyr.

Mr. Cyr: Thank you, Madam Chair. So we change this from "shall" to "will." Does that mean you want to be able to enforce the "will"? Even if we do change this to "will" and they don't co-operate, I guess, what is the next step to all of this?

Mr. Hourihan: I would be able to go through a process of subpoenaing the records.

Mr. Cyr: So we're going to start suing our government agencies?

Mr. Hourihan: No, just to get them, to enforce it, the same as what we would do under – like, the Ombudsman Act right now provides the ability to ask for the materials that we need to make our determination and to speak to whomever we determine we need to speak to, and we have the ability to compel that information.

11:50

Ms McKitrick: Mr. Commissioner, I have two questions, and I'm sorry I wasn't there when you spoke to the committee originally. I'm wondering as to the scope of the problem and how changing the act would alleviate the problems that you're having. This is an issue that you're coming up against constantly, that you're faced with: not giving you the information. I also was wondering if one of the ways that this could be resolved is around providing a timeline for providing you the information. I'm interested in the scope of the problem and, two, if providing a timeline would help you.

Mr. Hourihan: We're coming up on a regular basis against the debate around whether or not we get to ask for information and receive it. I'm not sure that timelines would make the difference there. When we get into those discussions, their question has been more along the line, "We don't have to give this to you, so you're not getting it" as opposed to, "We don't have to give this to you by Friday." Is this a development and growth situation with the act, for people to get comfortable with it? You know, I'd like to think that maybe it is. However, it needs to be clear, I think, that when we ask for information, we should have the ability to go get it. Otherwise, what we're left with is incomplete information to try and make a determination with respect to a significant situation that's not going right within government.

Ms McKitrick: If I understand it correctly, when you're requesting information from another authority, you have some challenges in getting complete information that you require to make a determination. Am I correct?

Mr. Hourihan: Correct.

Ms McKitrick: Okay.

The Chair: Mr. Clark.

Mr. Clark: Thank you very much, Madam Chair. You read the relevant section of the act earlier. I've got a two-part question. Could you please just reread that relevant section, where it says "may . . . require"? I just want to get that context again, please.

Mr. Hourihan: Sure. Just in advance of reading it, when it says "may . . . require," I see that I can require and that they must give. They're seeing it as that I may require and that they may give.

Section 18(5) says:

> The Commissioner may in the course of an investigation require any person who, in the Commissioner's opinion, is able to give any information, including personal information, individually identifying health information or financial information, relating to any disclosure being investigated by the Commissioner.

And then there are three paragraphs to it.

> (a) to give written or oral replies to questions,
> (b) to produce any books, records, reports, documents or other items, including electronic records and documents, and
> (c) to provide any other information requested by the Commissioner that may be related to the administration of this Act or the regulations.

Then, further, subsection (6) goes on to say:

> The Commissioner may in the course of an investigation inspect, examine and make copies of . . . books, records,

and that sort of thing.

Mr. Clark: I am not a lawyer, which is good news for anybody who might be in trouble with the law, but I agree with your interpretation of "may in the course of an investigation require," et cetera. But, of course, that's why we have lawyers, so they can look at those sorts of things and go, "Aha; we may provide that to you," as you said earlier.

I also note that in the issues summary we have, I suppose, a difference of opinion between your office and the submission of Service Alberta. They're worried that you have almost unlimited authority to request information whether it's relevant or not. To me, I certainly am not aware of any case where you'd be requesting information on IT when conducting an investigation on whether a truck was used properly. I mean, it seems a little odd that you'd extend your reach. It doesn't seem like the best use of your time in a busy office, those sorts of things.

You know, I think it's an opportunity for us to tighten up that language in the act to be very clear. I think your office should be able to compel the production of information. One of the members earlier asked whether this means that the government can sue itself, in essence, in terms of subpoenaing information, and as I've grown into this job, I'm somewhat troubled to learn that that sort of thing actually happens on a fairly regular basis, not even in the course of an investigation but between departments. Department A asks for information from department B, and department B says, "Why, gosh, no; that's subject to solicitor-client privilege," to which I would say, "Aren't we all working for the people of Alberta?" But that's a different issue, which we'll solve when I'm in government.

I guess my point is that I support the idea that we strengthen your ability to compel information and, really, remove any question as to whether or not your office has that ability, because frankly that will, I think, streamline the investigation process and just make it as clear as possible. I'd certainly support any motion that would allow that to happen. I can give some thought to what that motion may look like, but I'd certainly support that motion.

The Chair: Ms McKitrick.

Ms McKitrick: Thank you. I have a question for research services. I'm wondering what kind of language has been used in other jurisdictions to resolve the problems that were outlined and if there were any suggestions around the language that should be used.

Dr. Amato: I don't believe this is an issue that I examined in my crossjurisdictional.

The Chair: Is that something that you would be able to come back with?

Dr. Amato: Certainly.

Ms Hermiston: I can answer that. I did a little bit. Many of the other pieces of legislation refer to the powers in the Ombudsman Act, but there are some that actually give additional powers that would be found in their Public Inquiries Act. That's mostly it. Either it's the same kind of powers as found in the Ombudsman Act or additional powers under the Public Inquiries Act.

Mr. Cyr: To get back to subpoenaing, is there any other province in Canada that allows the Public Interest Commissioner to subpoena agencies?

Mr. Hourihan: Most are under the Ombudsman Act because they're in the same office. We just happen to be two separate offices, as I've sort of described before, and they have that ability within their act there. So, yes, as do we in the Ombudsman Act.

Ms Hermiston: Yeah. They don't use the word "subpoena," but it's effectively that. Requiring someone to appear and to produce documents is to subpoena, but they don't actually use the word "subpoena."

Mr. Hourihan: Correct.

Mr. Clark: And other officers of the Legislature have similar powers. I understand that the Auditor General has that power. The Information and Privacy Commissioner has that power. Is your office the only one that does not have this specific power or at least clarity around whether or not you have that authority?

Ms Hermiston: That's more exactly it. Probably it's more the clarity around what the power is, and it's a matter of establishing our presence and having a clear message that we are able to do these things.

Mr. Clark: Right. Okay. So, really, it's a question of just being crystal clear that there's no legal wiggle room when your office comes calling and says: we would like you, please, to produce documents that meet these criteria. What you're seeing is often a lawyer on the other side who will say: we don't believe we need to produce that. Now we send letters back and forth and have meetings and discuss whether or not, in fact, they need to produce it as opposed to getting on with the job of actually investigating the complaint. So it's an opportunity for them to drag out the process. Is that a fair statement?

Mr. Hourihan: If it's their goal to drag it out, I'm not sure, but their goal, I think, often is that there's a sense that they can determine what to give us based on its relevance, and our argument is: "No. We'll decide if it's relevant, and we need to have this information within these parameters. You provide it to us, and we determine relevance."

Mr. Clark: Yeah. That's seems to make a lot more sense to me.

The Chair: Ms Miller.

Ms Miller: Yes. I'd like to propose a motion that the Select Special Ethics and Accountability Committee recommend that the Public Interest Disclosure (Whistleblower Protection) Act be amended to strengthen the commissioner's right to information and create an obligation for the entity to provide the requested information in a timely fashion.

The Chair: Okay. I think, with that, we are going to break for lunch. It's noon. I'm going to just do a poll around the room. Half an hour, 45 minutes, or an hour? An hour? Okay. We will reconvene at 1, then.

Thank you.

[The committee adjourned from 12 p.m. to 1 p.m.]

The Chair: All right. Thank you, everyone. I am going to call this meeting back to order. Right now we are discussing a motion on compelling information, so I will open it back up to discussion. Ms Rempel, would you like to read back the motion?

Ms Rempel: Thank you, Madam Chair. The motion on the floor is: moved by Ms Miller that the Select Special Ethics and Accountability Committee recommend that the Public Interest Disclosure (Whistleblower Protection) Act be amended to strengthen the Public Interest Commissioner's right to information and create an obligation for the entity to provide the requested information in a timely fashion.

The Chair: Would you like Ms Rempel to read it again for your benefit?

Mr. Cyr: Well, for the people on the phone.

The Chair: Ms Rempel.

Ms Rempel: Thank you, Madam Chair. The motion on the floor was: moved by Ms Miller that

> the Select Special Ethics and Accountability Committee recommend that the Public Interest Disclosure (Whistleblower Protection) Act be amended to strengthen the Public Interest Commissioner's right to information and create an obligation for the entity to provide the requested information in a timely fashion.

The Chair: Is there anyone that would like to speak to the motion? Anyone on the phones?

I will call the question. All those in favour of the motion, say aye. On the phones? Any opposed? On the phones? That motion is carried.

On to point (b), limits on disclosure, solicitor-client privilege. Dr. Amato.

Dr. Amato: Yes. This is on the top of page 8 for everyone's reference, and the issue is limits on disclosure, solicitor-client privilege. The proposal is that "section 29(1)(b) should be amended to grant the Commissioner access to information that is protected by solicitor-client privilege if the Act affords the same privileges to designated officers for internal investigations." Section 29(1)(b) is on the right.

Thanks.

The Chair: Ms Miller.

Ms Miller: Yes. I've got a couple of questions. The first one is to the commissioner. What is the position of the commissioner on having access to client-solicitor privileges of information?

The Chair: Ms Hermiston.

Ms Hermiston: Thank you. What we're trying to do here is get access to solicitor-client privileged information because often the department itself will have already had access when they're looking at an investigation because they're part of the department, so there's no worry about a compromise of solicitor-client privilege by

disclosing it within the department. What the Department of Justice is concerned about is that if they give it to us, someone will think they've waived solicitor-client privilege, and it will put them in a bad position somewhere else. We understand that concern. So it might be more appropriate to have an amendment to the act that is similar to the federal amendment that says that disclosure of solicitor-client privileged information to the commissioner does not constitute waiver of solicitor-client privilege elsewhere. That's really what we're trying to get at.

I can't speak, really, on behalf of the Department of Justice to say that that would satisfy them, but it would certainly, I think, go some way to addressing their concerns that by letting us have it, they've compromised it for other proceedings. We totally understand that. We don't want them to give it to us if it's going to compromise them somewhere else.

The Chair: Mr. Clark, did you have your hand up?

Mr. Clark: I did. This comes back to a concern I expressed earlier, which I'll restate here because I think it's more relevant to this particular section. I was told a story of one particular government department trying to create a particular legal structure for an activity they wanted to do, and they asked another department for a legal opinion on that. That department was given a legal opinion by counsel, and then instead of the multi-page legal opinion, they shared five bullet points: here's why we think this can't happen. The requesting department said: well, it's a little difficult for us to interpret or address your issues if you don't share with us the legal opinion. They say: well, we're not going to do that because there is solicitor-client privilege here. My concern with that, obviously, is: are we working for department A or are we working for Albertans? I think that's a slightly different but similar question here, and it does I think come back to the same idea of what we were talking about previously around clarifying how your office compels information.

I look at this as an opportunity to remove another potential roadblock that can be thrown up in front of one of your investigations, as Dr. Starke and I were just discussing, remembering that our role in this committee is not to draft the legislation itself and to consider all of the potential wording or challenges. I think that, as Ms Hermiston has said, we want to be careful that we're not waiving solicitor-client privilege elsewhere. I imagine that's something that could be handled and addressed through the legislative drafting process and then through debate on the floor of the Legislative Assembly to ensure in fact that's happened. Given that, I'm certainly supportive of proposing a motion that we recommend that disclosure of privileged information does not constitute a waiver of that and that it be added to the act. That's my perspective.

The Chair: Mr. Clark, would you like to make a motion?

Mr. Clark: I'd happily make that motion. I would move that the Select Special Ethics and Accountability Committee recommend that the Public Interest Disclosure (Whistleblower Protection) Act be amended to grant the commissioner access to information that is protected by solicitor-client privilege – sorry. I'm just struggling with the second half of the sentence here, which says: if the act affords the same privileges to designated officers for internal investigations. That's a slightly different discussion, so I think I'll exclude that for now. In another discussion we could perhaps choose to include that. I will just add something to the end of my motion, then. It will be amended to grant the commissioner access to information that is protected by solicitor-client privilege so long as it does not constitute a waiver of solicitor-client privilege elsewhere.

The Chair: Ms Miller.

Ms Miller: Yes. I'd like to ask research: what are the positions taken by other jurisdictions on the matter of solicitor-client privilege in the case of whistle-blowing?

Dr. Amato: The information that I have included on this is found on page 19 of the crossjurisdictional document. There I've said that, as in Alberta, the comparable statutes of most jurisdictions with the exception of Nunavut do not permit the disclosure of information that is protected by solicitor-client privilege, which is not quite the answer to the specific question at hand but is the information that I had in the general sense of solicitor-client privilege.

Ms Miller: Thank you.

The Chair: Are there any speakers on the phone? Any further discussion? Mr. Cyr.

1:10

Mr. Cyr: Is it possible to read it back?

Ms Rempel: Moved by Mr. Clark that

> the Select Special Ethics and Accountability Committee recommend that the Public Interest Disclosure (Whistleblower Protection) Act be amended to grant the Public Interest Commissioner access to information that is protected by a solicitor-client privilege so long as it does not constitute a waiver of solicitor-client privilege elsewhere.

The Chair: Mr. Cyr, do you have a clarifying question?

Mr. Cyr: I'm not clear on what a waiver is. Can you explain that to me, please?

Ms Hermiston: What normally happens is that you're not required to disclose a document that is subject to solicitor-client privilege whatsoever. You can choose to waive the solicitor-client privilege and disclose it, but that's a decision that you get to make that no one else can make for you. Sometimes, though, you can take an action that can be interpreted as you having decided to waive it, so entities are concerned that if they give us a solicitor-client privileged document, someone else will argue that because they gave it to us, they waived privilege everywhere, and that's never a good thing. People don't want to waive privilege, you know, in that sort of a fashion; they want to be able to make choices about who they disclose a privileged document to.

The Chair: Mr. Nielsen.

Mr. Nielsen: Thank you, Madam Chair. I have to say that this one concerns me a little bit. First off, I'm wondering if this is even in our scope but, besides that, potentially opening up maybe a can of worms here of, well, to begin with, I think potentially all kinds of legal challenges to that right to confidentiality. You know, I'm not aware of anybody else doing anything like that, so why haven't they brought in something similar in other jurisdictions and whatnot? What has held them back? I would have to say that I'm not ready to support something like this without doing some very serious research.

Ms Hermiston: I think there are two things. The first recommendation was the Auditor General's recommendation with respect to solicitor-client privilege and us being able to have access to it

because the internal ones do, and we agree that that makes sense. Another solution: there's only one jurisdiction that deals with solicitor-client privilege, and it isn't that they compel the disclosure of it. You could also choose, instead, to do what the feds did, which was say that, essentially, if they choose to disclose information, it doesn't constitute a waiver of solicitor-client privilege. That would help us convince them to choose to disclose because there would be protection in the act if they chose to disclose that it wouldn't constitute a waiver. That has been done, and it leaves the decision with the holder of the client privilege and their determination whether they want to give it to us knowing that if they do, it won't be waived.

The Chair: Mr. Cyr.

Mr. Cyr: Thank you, Madam Chair. Does the Auditor General have the same power to be able to get protected information?

Ms Hermiston: I'm sorry. I'm not familiar with their legislation. I can look it up. I'll try.

Mr. Cyr: Are you the only department in Alberta that is looking for this ability to be able to do this, or is this something that is common for, like, the Ombudsman, that kind of thing? I'm just curious. Are we breaking ground?

Ms Hermiston: We're not asking to be able to do it. What we're asking is to put some protection in the legislation if they choose. It's different than the motion that's on the floor. My suggestion isn't that we be allowed to just make them disclose it. My suggestion is that if they choose to disclose it, they're going to be able to do that knowing that there's this protection that no one will be able to argue that they've waived privilege for other purposes. That helps them make a decision to disclose because there's a provision that we can all argue about if somebody tries to say that it was a waiver. Of course, our office would back them up, too, and say: "It wasn't a waiver. The act says that it wasn't a waiver." That is much different than the current motion.

Mr. Clark: Given that, now that we have that understanding, I don't believe I can procedurally withdraw my motion, but perhaps we can quickly vote on my motion and defeat it.

The Chair: Mr. Clark, you can withdraw the motion if we have unanimous consent.

Mr. Clark: If it's all right with the committee, I will happily withdraw that motion, then, and we can work on a different one that's a better reflection, I think, of what we're driving at here.

The Chair: All in favour to

> withdraw the motion,

say aye. Any opposed? That is carried and withdrawn.

Mr. Clark: So let's try that again, that the Public Interest Disclosure (Whistleblower Protection) Act be amended to allow for the voluntary disclosure of information subject to solicitor-client privilege on the understanding that such disclosure does not waive solicitor-client privilege. I'm open to help on the wording here.

Cortes-Vargas: If the Public Interest Commissioner could maybe provide some guidance so that it matches.

Ms Hermiston: Sure. Section 48 of the federal act says, "The disclosure of information to the Commissioner under this Act does not, by itself, constitute a waiver of any privilege that may exist with respect to the information."

Mr. Clark: So instead of trying to mimic the specific wording of the act in the motion, is it appropriate, then, again, remembering that we're not actually writing legislation, for this committee to recommend that the Alberta act mirror the federal act?

Ms Hermiston: Or you could maybe say that a provision be added that provides protection from waiver of solicitor-client privilege in the event that a disclosure is made to the Public Interest Commissioner pursuant to an investigation, or something like that.

Mr. Clark: Could you read the second half of that back? A provision added that provides protection for solicitor-client privilege . . .

Ms Hermiston: Yeah. For solicitor-client privilege – sorry. I lost my train of thought.

Mr. Clark: That a provision be added to the act that provides protection for solicitor-client privilege where information is disclosed?

Ms Hermiston: Yeah. That provides protection for solicitor-client privilege so that it does not constitute a waiver of that privilege if disclosed to the Public Interest Commissioner or when disclosed to the Public Interest Commissioner.

Mr. Clark: Okay. I think I've got it.

The Chair: It will just take a few seconds to get that jotted down before we go ahead and read it out.

Mr. Clark: You bet.

The Chair: Ready?

Ms Rempel: This is a bit of putting the two together. I have: to add a provision that provides protection from waiver of solicitor-client privilege in the event that a disclosure is made to the Public Interest Commissioner as part of an investigation.

1:20

Ms Hermiston: That covers everything.

Mr. Clark: Yeah. Could you read it just one more time, please?

Ms Rempel: I'll read the whole thing. So I believe it is moved by Mr. Clark that

> the Select Special Ethics and Accountability Committee recommend that the Public Interest Disclosure (Whistleblower Protection) Act be amended to add a provision that provides protection from waiver of solicitor-client privilege in the event that a disclosure is made to the Public Interest Commissioner as part of an investigation.

The Chair: Discussion on the motion?

Cortes-Vargas: I think I'm generally in agreement with that. I think I do want to take this away and consider it. If we're coming back to some other issues, I'd actually move to

> adjourn debate on this one and come back to it.

The Chair: All in favour to adjourn debate? Any opposed? That is carried and adjourned.

Moving on to point (c), when the commissioner does not investigate.

Dr. Amato: This is on page 8 of the issues document. The issue is when the commissioner does not investigate. There are four

proposals under consideration, and the relevant section in PIDA is section 19. First:

- PIDA should be amended to prevent the Commissioner from refusing to investigate a disclosure or cease an investigation.

Second:

- PIDA should be amended to require the Commissioner to explain why he or she has decided not to investigate a disclosure.

Third:

- PIDA should be amended to permit a review or appeal of the Commissioner's decision not to investigate a disclosure or cease an investigation.

Finally:

- PIDA should be amended to include grounds for the Commissioner to consider before declining to launch an investigation.

The Chair: With that, I will open it up for discussion. Ms McKitrick.

Ms McKitrick: Thank you. I'd like to ask a question to the commissioner. I was wondering if under the act as it is now, there are specific reasons listed to direct the commissioner's decision not to undertake an investigation after receiving a complaint.

Mr. Hourihan: Section 19 of the act provides some scenarios, I guess, if you will, seven or eight subparagraphs, of when something doesn't have to be investigated or when an investigation is not required, things such as if the subject matter could more appropriately be dealt with initially or completely under this or another act or regulation; if it could be investigated in accordance with the procedures in section 5, which would be internally; if it relates to a matter more appropriately dealt with under a collective agreement or employment agreement; if it's frivolous or vexatious or has not been made in good faith or does not deal with a wrongdoing; if it relates to a decision or matter that results from a balanced and informed decision-making process on a public policy or operational issue; if the disclosure does not provide adequate particulars to afford a fair and effective investigation; or if there is any other reason for not investigating the disclosure.

Ms McKitrick: So this is what your investigating officers are basing their decisions on, then, on the eight or nine reasons listed in the act as it is?

Mr. Hourihan: Yeah. We look at all of that. There are a couple of others, too. We're not required if more than two years have passed since the date or in any other circumstance prescribed in regulations, of which I don't think there are any right now. So, yeah, we look at that and provide those reasons back to whomever requires that information and disclosure.

Ms McKitrick: I'm assuming that this is the kind of information that is given to people who contact your office or is in your brochures and in the material that you provide to people, that these are the reasons why you would not launch an investigation, then.

Mr. Hourihan: Correct.

Ms McKitrick: If I could ask another question, if it's okay, Madam Chair. I was just wondering where those reasons are compared to other jurisdictions across Canada. Are they similar to or different than other jurisdictions in Canada? Is that something that I could just leave to be answered at a different time?

Dr. Amato: You certainly can.

Ms McKitrick: I'm really interested if what is listed in the act is comparable to other jurisdictions so that we can make a decision on this issue as outlined in the issues document.

The Chair: Is there any further discussion?

Okay. I will move us on, then, to point (d), the commissioner's ability to compel action. Dr. Amato.

Dr. Swann: Sorry. I had my mute on.

The Chair: Go ahead, Dr. Swann.

Dr. Swann: Back on part (c), bullet 2, "PIDA should be amended to require the Commissioner to explain why he or she has decided not to investigate a disclosure," is that currently your practice, to explain?

Mr. Hourihan: Yes. I mean, when we get a disclosure, provided we know who it is, it's not anonymous, and it doesn't get investigated, we provide reasons back to the whistle-blower. We also report in our annual report this kind of information, why things aren't investigated. You know, we wouldn't compromise an identity issue or confidentiality, but we would provide the reasons.

Dr. Swann: Is there, then, a willingness to respond, I guess I would call it, to an appeal or a desire to question the decision not to investigate, or is it simply a one-way communication that this will not be investigated and you're not entertaining any further discussion on the issue?

Mr. Hourihan: That wouldn't be my practice at all. I would provide reasons. If somebody, you know, once given those reasons, comes up with other information to suggest that it should be otherwise, certainly I would look at that, and that would be consistent with how it's handled in my other office, at the Ombudsman office.

Dr. Swann: Okay. Thank you.

The Chair: I'm going to move us back to point (d), then, the commissioner's ability to compel action.

Dr. Amato: There are two proposals related to the commissioner's ability to compel action, firstly that

- PIDA should be amended to increase the Commissioner's powers to compel action and enforce compliance with respect to his or her recommendations

and, secondly, that

- PIDA should be amended to grant the Commissioner the ability to impose a fine or other punishment upon conclusion of the investigation.

The Chair: I will open that up for discussion.

Mr. Hourihan: I can make a comment there, I guess, fairly bluntly, that I don't want that power. I think it's important that the way it's structured, I have a significant amount of power, as I said earlier, in investigation, to go in and look at anything I want to look at, and I then provide recommendations back. The power that I have upon recommendation are moral suasion and publicity, more likely through the Legislative Assembly and that, but I could resort to the media if necessary. I think those powers are significant. It's for the government entity to fix what the wrongdoing has identified, and I think those powers are sufficient to do that.

The Chair: Any further discussion?

Mr. Nielsen: I guess my question would be: how often have you potentially seen where you've made recommendations in one direction or the other and the recommendations have been ignored?

Mr. Hourihan: None so far. I mean, that said, I should asterisk that by saying that we haven't had that many, you know, in our three years. If I can, on the Ombudsman side it's exactly the same in the sense that I can make recommendations. I have the exact same powers of investigation and recommendation. In 98-plus per cent of the situations in the Ombudsman office they are adhered to immediately and very willingly.

Mr. Nielsen: And the other 2 per cent?

1:30

Mr. Hourihan: Those other 2 per cent are negotiations, and more often than not I'm able to get concurrence from the department. Sometimes it's because there wasn't complete information, and it just required that extra communication. I can say that in my last five years I have not been required to take it up higher than that level to have the recommendations adhered to.

Mr. Nielsen: Would there be, I guess, a downside, in your opinion, to having that there?

Mr. Hourihan: I think the downside would be that if I have powers of compliance and that sort of thing and powers to enforce, then I think it would be a logical extension of that to reduce the powers of investigation so that the rights of those investigated are such that they receive protections in terms of not providing information when it implicates them, et cetera, et cetera. The powers of investigation would be minimized to help out, so to speak, on the power of over and above recommendation. I don't feel that that's necessary because at the end of the day what I'm doing is that I'm going back to the government entity and providing them with information that they need and is very helpful to them in repairing their own issues.

Mr. Nielsen: Thank you.

The Chair: If there's no further discussion on this point, I will move us on.

On point (e) we already had a motion that was defeated.

Moving on to (f), appeal or judicial review of commissioner's decision. Dr. Amato.

Dr. Amato: Certainly. This is on the bottom of page 8. The proposal is that "PIDA should be amended to provide an appeal or judicial review of the Commissioner's decisions."

The Chair: I will open that up for discussion.

Mr. Clark: I'm looking at the notes. Service Alberta has – I presume, Mr. Commissioner, that you have the document in front of you here. It talks about section 52 being a privative clause limiting the scope of the review. I'm just curious if you could comment on that and whether you feel that the act is appropriate as is or if you have any thoughts on what changes may be necessary in this section, if any at all.

Ms Hermiston: I'll take that one. A privative clause is a clause that's present in many pieces of legislation that is a direction from the Legislature to the courts limiting the court's scope of review. The Legislature can never completely deprive the court of the ability to review decisions because the court has what's called an inherent jurisdiction, that comes from the common law, that you can't override. What you can do is tell the court: "You can't treat this like an appeal. You can't substitute your own decision. It's not going to be a trial." That's all that says.

I know it looks like it means it can never go to court, but how it gets to court is by judicial review, and a judicial review is a review of the decision to determine whether the decision, depending on the kind of statute it is, is either reasonable or correct. More often than not nowadays the test is whether it is reasonable. If the court decides that a decision of the commissioner is unreasonable, the court would remit it back and have the commissioner do it again. Given that the commissioner actually has no powers to make anybody do anything, it is almost a futile exercise to go to court, but you can never deprive people of the right to go to court, so that judicial review will always be there.

We have experience on the Ombudsman side. It has a privative clause. Very, very rarely has an Ombudsman decision ever gone to court. Every time it has, the courts come back and say: look, this is just a recommendation; we're not getting involved. In our view, the privative clause is effective. It gives the court the instruction that it will not treat it as an appeal but rather as a judicial review and that that is an adequate remedy, especially given that our powers are only to recommend.

Mr. Clark: So the recommendation from the three groups or individuals who put this forward that a judicial review be included is somewhat irrelevant given that that ability already exists.

Ms Hermiston: Yes. Already existed.

Mr. Clark: It's already the right, so there's no need to put it into the legislation.

Ms Hermiston: Yeah. No need.

Mr. Clark: I understand that.

The Chair: Okay. Is there any further discussion on the issue?

I will move us on to section 5, reprisals, (a) protection of whistle-blowers from reprisals.

Dr. Amato: There are three proposals under (a), protection of whistle-blowers from reprisal, and this is at the top of page 9.

- PIDA should be amended to expand the powers of the Commissioner such that he or she can order specific corrective action when an act of reprisal has been committed against an individual.
- PIDA should be amended to expand the powers of the Commissioner, Ombudsman or Auditor General to make interim orders to protect whistleblowers who are facing potential reprisals.
- PIDA should be amended to better protect whistleblowers from reprisal and specifically protect whistleblowers from loss of employment.

The Chair: Is there any discussion on the point? Anyone on the phones? Would someone on the phones like to be added to the list? Go ahead, Dr. Swann.

Dr. Swann: Well, I'd like to ask the commissioner: currently what powers does he have to address reprisals, and would any of these three add to his current ability?

Mr. Hourihan: I don't have the power to offer or provide corrective action. If offences are committed, I can refer that to the Department of Justice prosecutions for referral in terms of prosecution of somebody who commits a reprisal, that sort of thing, but in terms of these bullets, loss of employment, interim orders to protect them, no, I don't. I could encourage departments not to

release somebody or fire somebody or to otherwise reprise against them, you know, within the current legislation, but I don't have any power per se.

Dr. Swann: So what is your action, then, in the face of a reprisal if you do not choose to use the Justice department to take action? What are you able to do to remedy a situation?

Mr. Hourihan: Provide a recommendation back to the government entity with whatever suggestion that might be, if it's to reinstate the person from employment or back to having their job or whatever other reprisal has taken place, that it cease if that's the type of situation that can be stopped and they can be brought back to where they were before. I can make those recommendations, but that's it.

Dr. Swann: Thank you.

The Chair: Mr. Cyr.

Mr. Cyr: Thank you, Madam Chair. Is this really similar to the commissioner's ability to compel action, where your concern is that this could actually cause more grief or hinder your ability more than help?

Mr. Hourihan: Certainly, if there were powers in the act for me to compel certain things, if they were, so to speak, simple things in terms of that, you know, if this happens, the commissioner can make a recommendation that the person shall be reinstated their employment or those kinds of things, that might be simple enough for me to have that power, so to speak. But other than that I don't think that it's beneficial for me to have the power to do that. I think it comes back through the power of recommendation and the department or entity to do it themselves.

Mr. Cyr: So it's your recommendation that we don't move forward with this, then?

Mr. Hourihan: You can always go to remedies, and if there are remedies that you talk about later or whatever, then I could always go there, but, no, I would not recommend having the power into this section.

Mr. Cyr: Thank you very much. That was very clear.

1:40

The Chair: Is there any further discussion on this item? Mr. Nielsen.

Mr. Nielsen: Thank you, Madam Chair. With this situation and the proposed changes the committee has already made, what do you think the difference, then, is between the two?

Mr. Hourihan: I'm not sure I understand. I'm sorry.

Mr. Nielsen: With the situation we're talking about right now and the changes that we've already recommended, do you feel there's a difference between the two? Or with the changes we've already recommended, are we, I guess, covered there?

Ms Hermiston: When you say changes already recommended, which ones are those?

Mr. Nielsen: Remember us making – now I don't have those notes in front of me, unfortunately.

Ms Hermiston: Is it on the remedies part of it, where it might go to the Labour Relations Board or something like that?

Mr. Nielsen: Yes.

Ms Rempel: I believe that the motion that he may be referring to was moved by Member Loyola, that the committee recommend that the act "be enhanced to ensure that whistle-blowers that suffer reprisals receive appropriate restitution where wrongdoing has been established."

Mr. Hourihan: Yes. That's consistent with that. My thoughts here are to not have the power here. If there's something in the remedy that's very obvious, I guess, that the person will be compensated for lost time or whatever goes in there, that's fine. It's just that I don't think the powers are appropriately placed here.

Mr. Nielsen: Okay.

The Chair: Is there any further discussion on this? Okay.

Moving on to (b), reverse onus and reprisals.

Dr. Amato: The issue is reverse onus and reprisal. It's on page 9. The proposal is that "PIDA should be amended to provide a reverse onus with respect to reprisals, where the onus is on the employer to prove that a reprisal did not take place as a result of the disclosure."

The Chair: I will open that up for discussion. Anyone on the phones?

Mr. Nielsen, go ahead.

Mr. Nielsen: Commissioner, from your experience investigating reprisals as a result of disclosure of wrongdoing, was the process on the employee to have to prove that there was a reprisal?

Mr. Hourihan: Yes. That's the structure. They have to show that there was a reprisal. I mean, accurately, if there's an allegation of reprisal, we investigate it. We come up with all the information that we can come up with, and we can make a determination from that. So in that regard they are proving that. I mean, we challenge the entity to provide information. If we find a direct nexus between the disclosure and the reprisal, I can make that determination. But certainly it's a bilateral communication back and forth to try and – once the case has been established, if you will, that a reprisal has taken place, it's in the best interest of the department to provide information to us to suggest otherwise if that's their feeling.

Mr. Nielsen: So there have been cases, then, where you've asked the employer to justify . . .

Mr. Hourihan: Sure. We ask. I mean, the onus is not on them to prove that they didn't do it. The onus is on the other side to prove that it did take place, which is pretty common. Investigatively that has not caused us any issues. There certainly are issues from time to time in showing a nexus between an alleged reprisal and a disclosure because, of course, as you can imagine, the environment is pretty dynamic, and it didn't all probably happen in a day or two. If it happens over months and years, it becomes specifically difficult.

That said, I guess the question that I would have would be: would the normal onus or the reverse onus be a better approach to determining what actually happened? I don't know that that would make a big difference at the end of the day. I mean, if somebody says that the reverse onus should be on the government entity to provide us information, we can certainly work with that, but that's not generally the way things take place, to put in a reverse onus.

Mr. Nielsen: Would you recommend that to be, or at the very least you could work with it if it was there?

Mr. Hourihan: Yeah. If it was there, we could work with it. We didn't recommend this. It was recommended by somebody else.

Mr. Nielsen: Okay. Thank you.

The Chair: Mr. Clark.

Mr. Clark: Thank you. I have a real concern with the idea of providing a reverse onus. It's pretty tough to prove a negative. While I imagine that this recommendation comes from a good place in terms of a power imbalance potentially from management to staff, I think that if reprisal is to be proven, the onus ought to be on the whistle-blower themselves. It sounds to me from your comments throughout the committee that you take this very seriously. We'll look very carefully at that whole question. I don't think I could support the idea to reverse the onus.

The Chair: Is there any further discussion? On the phones?

Okay. I'm going to move us on to (d), the role of employment standards or labour relations officers, seeing as we had a motion that was carried on (c).

Dr. Amato: There are two proposals under this, which are at the bottom of page 9. The first is:

- PIDA should be amended to provide that employment standards or labour relations officers and arbitrators conduct hearings on reprisals and are empowered to award damages and remedies.

The second is:

- PIDA should be amended so that employees who suffer reprisals are granted restitution through a tribunal dedicated to handling complaints about acts of reprisal.

The Chair: With that, I will open it up for discussion.

Mr. Cyr: Again, this is the same kind of thing, where you're going to be able to action some kind of a . . .

Dr. Swann: Remedy.

Mr. Cyr: Thank you. A remedy. I appreciate that.

Is this far reaching from what you would desire? Is that the same kind of thing, or is this totally different from the other two sets?

Mr. Hourihan: This is different. I mean, in this regard, I think that my office should retain the responsibility for the investigation of alleged reprisals because they're linked to the disclosure of wrongdoing and that whole justification. However, if a reprisal has been identified as occurring, if I identify that one did occur, if it should be brought anywhere, I would suggest that it be brought to the Labour Relations Board compared to employment standards or a labour relations officer.

Mr. Cyr: So in this case you're not actually wanting to be involved in this process?

Mr. Hourihan: No, not at all. Again, it would be something where I would not – I don't think that me having the power to make determinations would be effective.

The Chair: Mr. Nielsen.

Mr. Nielsen: Thank you, Madam Chair. Two questions, I guess. The first maybe I'll ask research services. Are there any other jurisdictions that have taken this approach of using labour relations as a way to resolutions?

Dr. Amato: The short answer is yes. If you look on page 24 of the crossjurisdictional document, it's stated there that this is used in Manitoba, Ontario, New Brunswick, Nova Scotia, and Newfoundland and Labrador.

Ms Hermiston: And the federal legislation.

Dr. Amato: And the federal legislation as well. Yes. Thank you. That's in the supplementary document that I provided at the last meeting.

Ms Hermiston: The federal has a stand-alone, specialized tribunal to deal with that issue, and the others refer it, I think, generally to the Labour Relations Board because that's seen as a more sophisticated level of decision-making for these types of difficult questions.

Mr. Nielsen: Segueing into that, is there anything currently in the act, you know, if you have a complaint around reprisals, that can address that? Nothing currently right now?

Ms Hermiston: No. Once we find a reprisal, that's the end of it. If there was an amendment that allowed, once we found a reprisal, for the matter to go to the Labour Relations Board, for example, to make an assessment of potential remedies, that would be what this would be doing, identifying where they would go in order to get the issue of a remedy dealt with.

1:50

Mr. Nielsen: Would that be a useful tool to have?

Ms Hermiston: Well, somebody has to figure out – you've already said that there are going to be remedies for reprisals – where it's going to go. One of these recommendations is employment standards or labour relations officers. Another is a stand-alone tribunal. Our suggestion would be that employment standards officers are maybe not at the level of sophistication that you would expect to make those kinds of awards and that it might be a good idea to consider the Labour Relations Board as the place to go for that. It's just a question of identifying any of those options.

Mr. Nielsen: Madam Chair, maybe I'll make a motion here for discussion. I'll move that

> the Select Special Ethics and Accountability Committee recommend that the Public Interest Disclosure (Whistleblower Protection) Act be amended to allow for the use of the Labour Relations Board to conduct hearings on reprisals and be empowered to call for remedies.

The Chair: Discussion on the motion?

Mr. Cyr: It would be nice to hear from the Labour Relations Board before we empower them with this kind of responsibility. I commend you for trying to do this, but we're asking the wrong people these questions. It could be that you're empowering a board that doesn't want this ability. I guess my concern is that we should be tabling this and maybe bringing in the Labour Relations Board and hearing what they have to say.

Mr. Nielsen: I certainly don't have an issue with that. We can see if they're capable, qualified, able to take on that and see what they can give us for information.

Dr. Swann: Is that currently part of their terms of reference? Does anyone know the terms of reference and whether they include issues of employment reprisals?

Ms Hermiston: They currently do not have jurisdiction to make that decision because our act doesn't provide remedies for reprisals. That would be something new for whomever you determine is the best organization to make that determination.

Dr. Swann: I'd like to still vote on the motion. I think it's obviously an issue that's dealt with across the country by various commissions. From the recommendations we've heard today, they would be an appropriate body to take that on even though they haven't taken it on so far. I would like to vote on the motion.

The Chair: Mr. Nielsen, did you want to make a motion to adjourn debate?

Cortes-Vargas: He just called the question.

The Chair: Oh, sorry. I couldn't hear.

Cortes-Vargas: I could move adjournment, but hasn't he just called the question? [interjection] Okay. Just because we need more clarity on specifically the people implicated in this, I think it would be best to move to

> adjourn debate on the motion.

The Chair: All in favour of adjourning debate, say aye. Any opposed? Okay. That is carried.

Dr. Swann, I understand that you would like to go back to 4(c) on page 8, regarding when the commissioner does not investigate.

Dr. Swann: Yes, if you don't mind. It's a late amendment, but given that the commissioner now has no clear mandate to explain his decision not to investigate, I would like to make it explicit. My motion would read something to the effect that

> the Select Special Ethics and Accountability Committee amend PIDA to require the Public Interest Commissioner to report reasons not to investigate a disclosure.

So it's no longer under his discretion. It's a requirement to report on reasons not to investigate.

Mr. Hourihan: This may answer the question or not. Section 19(3) says:

> (3) If the Commissioner decides not to investigate or to discontinue an investigation, the Commissioner must, in writing, inform the employee who made the disclosure and the affected department, public entity or office of the Legislature
>
> (a) of the Commissioner's decision, and
>
> (b) of the reasons for the decision.

Dr. Swann: Very good. Thank you. I withdraw the amendment.

The Chair: Okay. I think we have to take a vote on withdrawing the motion. All in favour

> to withdraw the motion,

say aye. Any opposed? That is withdrawn.

Moving on to general matters, (a) commissioner's power to exempt.

Dr. Amato: Just a reminder that the term "general matters" is lifted from the act. That's part 5 of the act. That's why it's called "general matters." And (a), the first proposal on the top of page 10, has to do with the commissioner's power to exempt. There are two proposals. The first is:

- The Commissioner's power to exempt persons, entities or things from the Act should remain.

The second is:

- The Committee might consider whether the exemption powers under section 31 should be limited or removed.

The Chair: I'll open that up for debate.

Mr. Clark: What I'm curious about on this is that, I believe, based on what Service Alberta has submitted and I think what we've heard before the committee from the commissioner, there are fairly limited exemptions that are granted, and there are some examples here from your submission earlier that are fairly narrow in scope. I wonder if there is a need, perhaps, to future-proof the legislation should we find that a future commissioner may decide that that's something they would like to arbitrarily expand or limit even, perhaps. It's not a comment so much on this current commissioner or the work of your office.

I just wonder about the thoughts of the committee on whether or not this is something, in fact, we want to build into the act because it is fairly broad ranging and could be widely interpreted in the future. I don't know if this is a challenge elsewhere, if we can have a look at some of the crossjurisdictional comparisons. I guess I just asked that question openly to the committee and perhaps to the commissioner as well.

Mr. Hourihan: I can answer that. The exemption power has been discussed a little bit, but just to recap, the only exemption power we use is the one to exempt a small organization from the need to go through all of the policies and procedures that are required in section 5, no other reason. That said, when the act was being debated and after it came into force, the folks who were critics of the act as structured certainly voiced this as a significant concern, that I would have exemption powers.

I think that if the exemption were limited in the stated fashion, it certainly would not hinder anything that we do or that I do, so there's not an issue there. It may send a message to those folks that were critical of this, if it is removed, to take away that critical aspect of it and take away all doubt of that. I certainly don't plan on myself – you know, I said before that I don't plan on exempting any person or organization or whatever from the act per se. It would be in the very strictest of circumstances in their structure for reporting things.

2:00

The Chair: Any further discussion on the phones? No?

Member Cortes-Vargas.

Cortes-Vargas: Yeah. I think, you know, part of the consideration when we're also extending the power of the commissioner for people for direct disclosure comes from knowing who can establish policies in place.

I'm also wondering, I guess, if for contracted services or small entities, because we're changing some of the scope, whether limiting might actually impact your ability to be able to assess those entities and their capacity and maybe know when having that direct disclosure might be the best route. I was just hoping that you would expand on that as well.

Mr. Hourihan: I don't think this power, whether it's there or not, would affect that. Like I say, we've considered this. I suppose there are other things that might crop up that I haven't considered, but we've looked at it fairly exhaustively. The only exemption we can think of is sort of per the regulation, which enables based on the size. That is basically the main consideration, and if that were there, that certainly is beneficial, not so much to me but beneficial to the organization that might be affected so that they don't have to do that. Then people can just come directly to us or go directly to our policies as opposed to having to come up with a regime. But, other than that, I can't think of anything else that would be exempted, contracted or otherwise.

The Chair: Dr. Starke.

Dr. Starke: Yeah. I've mulled this one over a little bit, but I'm actually quite comfortable with the current level of discretion that is placed in the hands of the commissioner with regard to exemptions. I think it's important to note that the exemptions for small organizations are only for the requirement under section 5; in other words, to name a designated officer under section 7. It's not an exemption from the act itself; it's just an exemption from certain provisions of the act that would be very difficult to administer within a small organization.

I think that represents a certain level of sensitivity and, you know, the requirement to recognize that one size does not fit all when applying legislation to organizations. So I'm comfortable with the way this is set out. I don't know that there is a pressing need to change if you want to call it the fulcrum on this. I'm quite comfortable with where it is, so I don't see a need to change the power to exempt under section 31.

Mr. Cyr: I'm still a little unclear on exactly what a small entity is. Can you walk us through an example of what you would exempt?

Mr. Hourihan: Certainly. An excellent example probably would be, under the offices of the Legislature, the Ethics Commissioner's office. There are four people. There's no purpose in them having to come up with all the processes and policies and procedures for one or two of the people that might be there to make a complaint when it would be just as easy for them to just come directly to me. Small private schools, small entities of any nature where there are only a handful of employees – I don't know if I'd want to say under five or under seven. It might make good sense when it's under nine or 10 as well. Certainly, 40 would be too many because the spirit and the object of the act is that organizations take an effective role within this legislation and within the spirit of it, and that is to look into the thing, to make sure that they have good policies, procedures, and so on in place. So we would look at that. I would say that the number we've been using in general terms, give or take one or two sometimes, would be seven.

Mr. Cyr: Okay. So this is a red-tape-cutting kind of thing that you're trying to bring forward? You're trying, for these small entities that would fall under this, to not put the cost on them to go out and get a lawyer to create the policy that they would need to go forward with this.

Mr. Hourihan: And to do their own investigations.

Mr. Cyr: Okay. Now, where is it laid out who is exempt and who isn't? Is it here, or is it that when there is a problem and they've got eight employees, you say, "Hey, you weren't exempt"?

Mr. Hourihan: There is no requirement in the act for our office to go out and proactively figure out if people do or don't have proper procedures and policies in place. However, that said, we can have a look if we choose. When we were going out and trying to figure out who was and was not in our jurisdiction, we came across a variety. So we would suggest to them: look, you have to have all of the processes and procedures in place. If we see one that is small or they identify as small, we provide that information to them. When we exempt them, we provide a letter back to them with the parameters of the exemption, which is per the act and the regulation, and we have that on our website, a list of the ones that are exempt.

Ms Hermiston: And they're only partially exempt from the act. There is no one completely exempted because there is no power to completely exempt.

Mr. Cyr: So that must be quite the list that you've got on the website. Or is it just that you haven't run across that many?

Mr. Miles: Three or four right now.

Mr. Cyr: So this is something that rarely happens.

Mr. Hourihan: Most have a bigger organization than that, but there are some that are just small. Now, there are others out there that are still small that we haven't come across or that haven't been identified to this point. I mean, there's no procedure in the act or a requirement to have the procedures in place. If the procedures are not in place by a department or an entity, then it defaults to our office. In those cases if we have – and I know that when I was giving presentations to the education sector a couple of years go, they were saying, "Well, what if we just don't do it?" I said, "Well, then it would fall to us." But that's not the spirit or object of this act. The whole notion, especially for large organizations, is to get onboard and to embrace this, so we certainly would push hard to have that happen.

That said, it falls to our responsibility until they have the proper procedures in place for themselves. However, in those small-entity examples we do provide an exemption so that they know and we know that they don't have to, and we want to make sure that they advise their employees that their employees can come directly to us for any issues that arise.

Ms Hermiston: Just for your information, currently on our website we have two entities. There were no exemptions granted in 2013-2014, one to the Morinville Christian School in 2014-2015, and one to the Calgary German Language School Society in 2015-16. It's very clear on the website that it is a partial exemption.

Mr. Cyr: What prompted these organizations to decide to get an exemption? It doesn't sound like anybody else is doing it. Is it something where somebody made a complaint and then they said, "Well, we're exempt under section 5," so they went to you for the exemption? Did they just decide one day to write you guys? Like, how does this work?

Mr. Miles: In our initial stages, as we ramped up over the first two years, our office did go out in an awareness campaign to every entity that fell underneath the jurisdiction, and some of the small entities in our discussions with them said: we only have four employees here. It made sense to our office to say, you know, that you can't have the person that you're working with every day do the investigation on you and hope to get an unbiased investigation. It made sense to exempt them so that they could bring their complaints directly to us. We now have it explained on our website, and we're encouraging entities to look at possible exemptions when there are only three or four employees because it did not make sense to have them create policies and have them identify a designated officer to do their own internal investigations.

Mr. Cyr: Just a last question.

The Chair: Sure.

2:10

Mr. Cyr: I apologize for so many questions here.

I see that AUPE brought forward that they want to limit or remove the exemption. I'm just curious if they've brought forward their concerns to you guys on why you have the exemption.

Mr. Hourihan: Not specifically. The way I can possibly answer that is that when this first came out, the organization called FAIR – I just forget what the acronym stands for, but Mr. David Hutton was instrumental in that organization – provided a critique document of all the concerns that they had about the implementation of the proposed Public Interest Disclosure (Whistleblower Protection) Act. I think the committee has a copy of that. The number 1 concern on the list, or at least listed as number 1 – I don't know if he prioritized them, but it was certainly number 1 – was the notion that I would have the ability to exempt people and organizations from the act, and there was a significant concern about that.

At the presentation that I was at, which was the one and only one that I know of, a representative from AUPE agreed with that assessment, that it was a significant shortcoming in the act, where one person, the commissioner, would have so much power to just let anybody they saw fit out of the requirements of the act. Certainly, my perspective then, as it is now, was that that's not going to happen. It would be in the spirit of the act and of the regulation only in regard to that partial exemption, the requirement to come to my office directly as opposed to having your own stand-alone processes and procedures.

Mr. Cyr: Thank you very much. You did a very good job of answering that.

Thank you.

The Chair: Is there any further discussion on this on the phone?

Okay. We'll move on to point (b), privilege and protection from giving evidence.

Dr. Amato: This is in the middle of page 10. The issue is privilege and protection from giving evidence, and there are two proposals. First:

- A provision should be added to PIDA which exempts the Commissioner and staff from giving evidence in any other proceedings of a judicial nature.

Second:

- A provision should be added to PIDA which protects all information gathered in the course of an investigation by privilege.

The Chair: I'll open that up to discussion.

Ms Hermiston: If I can just set the stage for this, these are provisions that are in the Ombudsman Act. They're in most of the acts in all of the other jurisdictions. I don't know why they weren't included initially because they are very common provisions in the offices of the Legislature. We just identified it as more of a housekeeping issue, in our minds. But we are concerned about our people getting subpoenaed in other proceedings, and that really jeopardizes our investigations and the confidentiality and those sorts of things.

The Chair: Dr. Starke.

Dr. Starke: Well, thanks, and thank you for that clarification. I mean, I think it's fairly clear. I would certainly agree with the notion that both the individuals, the commissioner and staff members, as well as the information should be protected, so I would make a motion that

> the Select Special Ethics and Accountability Committee recommend that the Public Interest Disclosure (Whistleblower Protection) Act be amended to provide for an exemption for the commissioner and staff from giving evidence in any other proceedings of a judicial nature and, further, that all information gathered in the course of an investigation be protected by privilege.

The Chair: Discussion on the motion?

Ms McKitrick: I'm sorry, Mr. Commissioner, but I'm not too familiar with the operation. I was just wondering if you use contracted staff to do investigations, or are all your investigations done by employees?

Mr. Hourihan: To this point it's all been done by full-time employees within my office.

Ms McKitrick: Okay. I just wanted to check so that the wording of the motion would reflect the kind of staff complement you have. Thank you.

Cortes-Vargas: I just wanted to clarify if there were any situations that emerged that made you bring this forward.

Ms Hermiston: There's a potential one right now. We're not sure. We're alive to a concern in one.

Mr. Miles: It's public now, anyway. There's a discussion. We conducted an investigation into matters that the employee has also filed a wrongful dismissal suit in court, and we were doing an investigation on a complaint of reprisal over the dismissal or alleged dismissal of that employee. The concern, certainly from the department we were involved in, was that if we provide this information to the investigators of the Public Interest Commissioner's office, could that report or could the investigator be subpoenaed to give evidence in court on the information in the findings of our office? That's where the discussion in our office initiated, and it was learned that in most other offices of the Legislature there is protection for investigators of legislative offices.

Mr. Hourihan: I will add, too, that it protects the investigators from being compelled to go to court. I would argue that it protects the organization that's being complained against as well as the whistle-blower in terms of that the information is not going to get out in some other fashion based on that.

The Chair: Is there any further discussion on the motion?

I will call the question, then. All those in favour of the motion, say aye. On the phones? Any opposed? On the phones? That motion is carried. Okay. We carried a motion on point (c).

Moving on to (d), legal counsel to whistle-blowers, on page 11.

Dr. Amato: This is on page 11. The issue is legal counsel to whistle-blowers, and the proposal is that "PIDA should be amended to require the Office of the Public Interest Commissioner to provide legal counsel to whistleblowers."

The Chair: I'll open that up for discussion. Any discussion on the phones?

Mr. Clark.

Mr. Clark: Thank you. This is maybe one of those perfect world kinds of things, where if we go back to some of what we have heard, this may have helped in some situations. I wonder if this creates some sort of conflict of interest whenever something like this is

happening and also whether this is common. You know, is this the kind of thing that's provided anywhere else? It seems a little bit of an overreach. Those would be my two major concerns, and I wonder if the commissioner could speak to either or both or something entirely different.

Mr. Hourihan: It's not a common provision. That I know. Should our office provide legal counsel to whistle-blowers? I don't think it would be appropriate for us to provide that legal counsel. If it was deemed that it was important for that to happen, I certainly would want to go back to my budget in a significant way, I suppose. So no, I don't believe it should be in our office.

The Chair: Member Cortes-Vargas.

Cortes-Vargas: Yeah. This could definitely potentially make undue burden on resources. But also, I mean, we've recommended protection, so reprisals in the way of aspects that could affect whistle-blowers, in a way that I feel is more consistent with jurisdictional approaches to supporting whistle-blowers. I'm more comfortable with that, and I'm actually not supportive of this direction.

The Chair: Is there any further discussion?

Mr. Cyr: It looks like this is government suing government, more or less. I would oppose that as an option. The fact is that when we start looking at the fact that you've got two sides with taxpayer money, you always have to be very, very cautious. So I definitely would oppose this motion moving forward if there was to be one put forward.

2:20

Dr. Swann: Could I ask if the commissioner is aware of some cases in which the absence of legal counsel compromised the employee or limited their capacity to present their case?

Mr. Hourihan: No, we are not.

The Chair: Okay. If there is no further discussion on that, I'll move on to point 7, offences and penalties, (a) offences for reprisal. Dr. Amato.

Dr. Amato: Yes. This is in the middle of page 11. The issue is offences for reprisal. There are two proposals for consideration. The first is that

- PIDA should be amended to increase the penalties for reprisal, such that the penalty for a first offence can lead to a fine of up to $500,000 and/or a prison term of up to six months, and up to $1,000,000 and/or a prison term of up to 12 months.

The second proposal is that

- PIDA should be amended to provide minimum fines and other mandatory discipline for any retaliation against whistleblowers or interference with the disclosure process.

The Chair: With that, I will open it up to discussion.

Drever: Just a question to the Public Interest Commissioner: from the crossjurisdictional investigation can you tell us what amounts are being used in other provinces and territories?

Mr. Hourihan: I can't give that off the top of my head.

The Chair: Dr. Amato has the crossjurisdictional if you'd like to share that.

Dr. Amato: This information is on page 32 and page 33 of the crossjurisdictional review. I'm assuming that there is some familiarity with Alberta.

> In Alberta, the penalty for contravention of these offences or for counseling or making a reprisal against an employee is a fine of not more than $25,000 for a first offence, and a fine of not more than $100,000 for a subsequent offence.

In Saskatchewan, Manitoba, Nova Scotia, Newfoundland and Labrador, and the Yukon

> the penalty for a contravention of the Act's offences or for counseling or making a reprisal against an employee is a fine of not more than $10,000.

In Saskatchewan and Manitoba there are provisions about when a prosecution may be commenced or not. I'm just looking at other jurisdictions. In New Brunswick the fines are considerably less. They're between $240 and $5,200, so you can see there's variance in different jurisdictions.

Mr. Hourihan: We're the highest of any of them, I do believe.

Mr. Clark: Given that we're already the highest in the country, while I understand why there may be some interest in increasing the fines and not having done much research on what other fines for other offences may be in Alberta or even elsewhere, these numbers seem extreme to me, especially given that our fines range between $25,000 and $100,000, which to me are pretty significant. To the commissioner: do you levy fines on a regular basis? Have you every levied a fine?

Mr. Hourihan: No. I don't levy the fine. I would refer that to provincial prosecutions and go from there, and that has not been done to date.

Mr. Clark: Okay. Yeah. In my opinion, I don't believe we need to adopt this recommendation.

The Chair: Is there any further discussion on the phones?

Dr. Swann: Yes. To the commissioner: if you made a recommendation for a fine, say it was for one of the government departments, would that be identified with an individual, or would the department itself be forced to pay it? In other words, would it come out of the public purse, or would it come out of a private individual's purse?

Ms Hermiston: Depends.

Mr. Hourihan: Yeah. I guess the best answer, as counsel said here, is that it probably depends. I don't think that I can answer that.

Ms Hermiston: Courts aren't often anxious to impose fines on an individual employee, but there may be circumstances where they do because the word is "persons." So that's open to being an individual, but it would depend on the facts of the case how the court might determine who would be subject to that fine.

Mr. Hourihan: I should add, certainly, the offences include offences such as failing to provide information, obstruction, those kinds of offences, where it would be a person involved in that particular offence.

Dr. Swann: Under what circumstances – well, you just indicated one. Under what circumstances would you be considering recommending a fine?

Mr. Hourihan: I wouldn't recommend the fine. I would refer the matter to prosecutions to say that I think this is a matter that is

significant enough and serious enough that prosecution should be considered and would defer to prosecutions to make the assessment of that and the direction it would go from there.

Dr. Swann: This could be imposed on anybody from a deputy minister down to any level of management?

Mr. Hourihan: Yeah, to whatever the court would decide, ultimately. I mean, it would depend on all the recommendations up the line, for sure. I could foresee making a recommendation if it was an individual, certainly of the nature of things like providing a false statement, obstruction, falsification or concealment of documentation, or that sort of thing. Specifically for a reprisal, then it would be based on the facts of the situation. If it was more of a departmental thing, then I suppose it would be a recommendation there that the department be considered or, more likely, an individual in the case of something that does meet the definition of reprisal.

Dr. Swann: Thank you.

The Chair: Is there any further discussion?

If not, I will move us on to section 8, other issues for possible consideration, (a) definition of disclosure.

Dr. Amato: This is on the middle of page 11. The issue is definition of disclosure, and the issue for possible consideration is that "PIDA should be amended to clarify the definition of disclosure so that it is not overly broad."

The Chair: Discussion on the point?

Drever: What would be the interpretation or an example of a context where a disclosure is not a disclosure of wrongdoing "made in good faith by an employee in accordance with the Act" but is still covered under the act based on "except where the context requires otherwise"?

Mr. Hourihan: That would probably be the example of disclosing health information, where we would provide that disclosure. Well, that's not a disclosure of wrongdoing. The context is different. It would be that type where the wording in the act would include that type of disclosure, which is I believe clear enough that it's not a disclosure of wrongdoing.

Ms Hermiston: There is a particular provision in the act that uses the word "disclosure." Section 29 says, "Nothing in this Act authorizes the disclosure of," and then there's a list. If you went to the definition of disclosure in the act, it would make no sense. You have to know that that disclosure, even though it's a defined term in the act, doesn't mean the defined term in the act; it means the normal definition of the word "disclosure." That's one of the reasons that the drafters had to include that. They couldn't find another word other than "disclosure" in section 29, for example.

The Chair: Is there any further discussion on the point?

Seeing none, I will move on to (b), definition of whistle-blower or whistle-blowing.

Dr. Amato: The proposal here is that "PIDA should be amended to include a definition of whistleblower or whistleblowing."

The Chair: Discussion on the point? Any on the phones?

Dr. Swann: I think it's probably worth discussing. We do like to provide appropriate information for people to give them confidence in what they're doing. Although it's somewhat well known, the term "whistle-blower," it wouldn't hurt to have a definition of whistle-blowing, whistle-blower so that people have some comfort with that in connection with this whole act. It's a bit surprising that we don't have any definition. It's really one who brings forward or alleges wrongdoing within his area of work. I don't see any reason not to have something that simply – in any document there should be a glossary of terms.

2:30

The Chair: Mr. Cyr.

Mr. Cyr: Thank you. I have to wonder, though: are we going to be limiting what whistle-blower means by adding a definition to it? And then if it doesn't meet that definition clearly, does that mean that we won't be prosecuting that whistle-blower's concern? I guess my thought is that if we define it, it has to be very broadly defined anyway. I guess I'm just a little concerned with going down this road with that specific term.

Drever: I'm just wondering: does any other jurisdiction in Canada or other countries include a definition of whistle-blower and whistle-blowing in their acts?

Mr. Hourihan: No.

Drever: Okay. Interesting.

The Chair: Is there any further discussion?

Dr. Swann: Could I make a motion that the research team come forward with a broad definition of whistle-blowing?

Ms Hermiston: Just to be clear, in order to have a definition of a term, it actually has to appear in the legislation. If it doesn't appear in the legislation, you can't define it or shouldn't define it. I'm not aware of a provision that talks about a whistle-blower or whistle-blowing. The only place it appears is in the title. You don't normally define a word that's in the title, if that's helpful.

Dr. Swann: Well, that seems to me to make it even more imperative that we define it if it's in the title.

Ms Hermiston: No. I mean, you don't define words in a title. You have to define words in a provision.

Dr. Swann: Okay.

Ms Hermiston: The drafters would be left at a loss as to what to do with that.

Dr. Swann: I'm confused.

Ms Hermiston: You'd have to create a provision that used the word and then define the word.

The Chair: I believe Ms Hermiston is saying that it doesn't exist within the provisions. It's just in the title.

Ms Hermiston: Right.

Dr. Swann: Well, I stand by my comment. If it's in the title, surely it should be defined somewhere in the body of the document.

Mr. Clark: I guess I would ask a couple of questions, perhaps, of Parliamentary Counsel. Is there an upside, a benefit, to defining? And I guess the inverse question: is there some potential risk in defining it if it only exists in the title? Perhaps there's some background context you can provide.

Ms Dean: Well, as a drafter we don't define terms that aren't used in the four corners of the statute, so my recommendation would be not to move forward with the definition of that term.

Mr. Clark: Okay. Thank you.

Mr. Hourihan: Not that it's particularly relevant to the definition of whistle-blowing, but, I mean, there's more discussion around the world about the whole notion of: is "whistle-blower" a term that ought to be used? The discussion is not that it's going too far but because it still gets used because it's a common nomenclature, there is concern about: is it a negative or is it a positive term? That's really where the discussion has been globally on whistle-blowing as opposed to a definition. The definition doesn't seem to cause much concern for any of the jurisdictions out there.

The Chair: I'm going to call a question on the motion.

Ms Rempel: I'm not sure if he actually made the motion.

The Chair: Sorry. Dr. Swann, did you make a motion?

Dr. Swann: It was more of a suggestion. I don't think I need to make it a formal motion.

The Chair: Okay. If there's no further discussion on it, we will move on.

There was discussion earlier about requesting more information from the Labour Relations Board, so I will suggest that someone move that

> the Select Special Ethics and Accountability Committee request a written response from the Labour Relations Board on the proposal that the Public Interest Disclosure (Whistleblower Protection) Act be amended to provide for the Labour Relations Board to conduct hearings on reprisals and be empowered to order remedies.

Moved by Mr. Nielsen. Is there any discussion on that? All those in favour, say aye. Any opposed? On the phones? That is carried.

We will move on at this point to point 5, Election Finances and Contributions Disclosure Act.

Before we proceed with this agenda item, I would like to note for the record that one of our presenters from our last meeting, Dr. Ian Urquhart, had provided additional documentation in response to questions raised at that meeting.

For the summary of issues and proposals under the Election Finances and Contributions Disclosure Act, at our last meeting it was determined that the next piece of legislation that we would be reviewing is the Election Finances and Contributions Disclosure Act. In preparation for this, research services has prepared an issues and proposals document to assist us with our review.

At this point I would like to ask Dr. Amato to give us a brief overview of this document.

Dr. Amato: The document is another summary of issues and proposals, and I think by now we are very familiar with how these documents work. I will just give a brief summary of it and also speak a little bit about how it's used.

This document is a summation of issues and proposals made with respect to the Election Finances and Contributions Disclosure Act, and it summarizes the proposals made by both stakeholders and members of the public. It groups those proposals into seven issues roughly. These are contribution limits, contributors, loans and guarantees, political advertising, spending limits, public funding of candidates and party expenses, and other issues for possible consideration. The seventh issue, other issues for possible consideration, lists other proposals that the committee may wish to consider in the course of its deliberations.

Just like the document that we were discussing, the column on the far left captures the issue, the second column captures the proposal, there's a column for relevant sections of the act, and then there's the notes section, which I draw your attention to because it contains information from proposals made by Elections Alberta. I also want to say that it contains proposals made from Elections Alberta in the very large compendium of 56 recommendations that were made to the committee on October 22, 2015, but it draws on that document selectively insofar as it only summarizes recommendations made by Elections Alberta in their oral submission. So for a complete list of the recommendations made by Elections Alberta, please refer to the larger compendium of the 56 recommendations.

That's a really brief encapsulation of the document.

The Chair: Are there any questions at this time on this item?

Dr. Swann: Will we be referring to any specific one of those documents now? I missed that.

The Chair: We're not debating it currently, Dr. Swann. This would just be for when we get to deliberations on the Election Finances and Contributions Disclosure Act.

Dr. Swann: Okay. Thank you.

2:40

The Chair: Also, the research area has put together a cross-jurisdictional comparison focused on the same act. This document was distributed to committee members for information in early May, but now that consideration of this act is coming up, I would like to ask research services to go through the document with us.

Dr. Amato, go ahead.

Dr. Amato: Again, I'm drawing the committee's attention to the crossjurisdictional comparison of the Election Finances and Contributions Disclosure Act. This crossjurisdictional comparison covers five topics. These are contribution limits, loans and guarantees, third-party advertising, and spending limits. The comparison focuses on the jurisdictions of Alberta, British Columbia, Saskatchewan, Ontario, Nova Scotia, and at the federal level, the government of Canada. In addition, it compares the contribution limits of all 14 jurisdictions in Canada in the charts titled figures A, B, and C. The purpose of comparing all 14 jurisdictions with respect to contribution limits is to provide the committee with a fairly broad frame of reference.

I also want to say by way of introduction to this document that the provisions of most statutes under comparison are very different, and I want to draw the attention of the committee just to this fact. It's often very important to consider the ways in which, for example, a given statute provides contribution limits, loans and guarantees, third-party advertising, and spending limits altogether and to note that different jurisdictions do these things quite differently. This means that some statutes establish contribution limits while others, for example, provide no limits on contributions. But where contribution limits are established, these tend to differ by jurisdiction. At the same time statutes that provide no contribution limits tend to limit expenses that parties and candidates might incur during the course of an election campaign.

What I'm trying to say here in a muddled kind of way is that it's important to look at all of the statutes being compared as a whole and then to look at what they're doing in order for the comparison to be quite valid. That's the suggestion, and I suggest that this

document be considered, as we've done, alongside the summary of issues and proposals.

Thank you.

The Chair: Are there any questions at this time of Dr. Amato?

Okay. Moving on to organizing of deliberations for the Election Finances and Contributions Disclosure Act. Legislation required that PIDA receive a comprehensive review. Of course, we are currently still in the midst of that. As well, our mandate is for reviewing two pieces of election legislation and the Conflicts of Interest Act, so it does allow us to set our own agenda and focus on substantive issues covered by the legislation also influenced by the focus that has been put on it by the public and stakeholder submissions on the legislation.

After reviewing this input, while of course not all of these pieces agree, there do seem to be some common themes that have arisen. At this point I will open it up to the floor to start naming topics that we'll start covering as we go through the Election Finances and Contributions Disclosure Act legislation.

I will start with Ms Miller.

Ms Miller: I've got a few on my list: under section 1, contribution limits, specifically the contribution limits and leadership contribution limits; under section 4, political advertising, (c) limiting election advertising contributions to a third party or just third-party advertising in general, the three points (b), (c), and (d); under section 5, spending limits; and under section 6, public funding of candidates and party expenses, specifically the rebate program.

The Chair: Mr. Clark.

Mr. Clark: Thank you. Given what I think has been a very, very worthwhile discussion of all of the summary document – I wouldn't say all of it. We haven't quite gotten through all of it yet. While I have the floor, I just want to be on the record as reminding the committee that we have not yet finished our review of the Public Interest Disclosure (Whistleblower Protection) Act. I think we're close, but we'll pick it up next time. I see absolutely no reason why we shouldn't do the same thing for the election contribution disclosure act. You know, we've been given an important job to do here, and I think that Albertans would expect us to consider their input on all those matters.

You know, if I look at the number of motions that we have proposed and carried in the time between when we were going to stop talking about whistle-blower protection and decided to go through it line by line, it's pretty remarkable. I would propose a motion at this time, given the contributions made by stakeholders and Albertans at large, that the Special Select Ethics and Accountability Committee shall deliberate on each line item in the summary of issues and recommendations documents for the Election Finances and Contributions Disclosure Act, the Election Act, and the Conflicts of Interest Act. I think that's our job here, and if we don't do that, I think we're not doing our job.

Thank you, Madam Chair.

Cortes-Vargas: Just to clear up, I don't think any of us are opposed to going line by line. I think that a compromise would be to go through the priorities first and the big changes and then, after that, go line by line. It kind of provides, like, a structure of the bigger changes, and then you can go through the other ones because there are obviously implications. I'll just put that out there.

The Chair: Any discussion on the phones?

Dr. Swann: I'm not sure what Cortes-Vargas is calling the priority areas.

Cortes-Vargas: What was originally suggested for how we're going to move through the issues document: really, what they did was just put all of the issues from the different people into a document and summarized it. What was originally suggested was that people bring up the sections that they want to discuss. That was the original one. We did that first, and then we went through the entire document afterwards. I'm suggesting that we continue doing that, to identify the priority sections that we want to cover first and then afterwards also go through everything else. So it's a little bit of both. It really covers what Mr. Clark is explaining, but it also provides a little bit of structure for how we move forward with the issues and maybe get some of the bigger issues out of the way quickly.

Dr. Swann: Have we established as a committee the priority areas?

The Chair: That's what we're doing right now. The committee members are to identify the issues that they see as substantive that have come forward from the submissions. But we have a motion on the floor right now.

Dr. Swann: Okay. They're not mutually exclusive. The priority areas are not mutually exclusive of moving through line by line. At the end of the priority areas we still have concerns about some of the line items, and we would go back to the line items. Is that what you're suggesting?

Cortes-Vargas: That is what I'm suggesting. Always you can add more priorities if you feel they need to be discussed before we go line by line.

Mr. Cyr: I had a hard time following exactly what we were doing last time. As soon as we went line by line, we were able to keep track of where we were. Actually, when we were in discussions, we could even come up with points ahead of time on the next point. I guess, for me, going line by line is more structured than the chaotic route that we went before, which was to just go everywhere and then try to figure out what we had done and go back line by line. I just don't know if that's the right route to go. I like going the line-by-line route, and I think it focused us and got us working faster. I think that's, by far, a better route to go.

2:50

The Chair: Mr. Nielsen.

Mr. Nielsen: Thank you, Madam Chair. I think that when we have the ability to sort of see what priority areas folks are looking at, once those have been identified, it also gives me the ability to go and do a little bit of research on that so that I kind of know what's going on and I'm not necessarily having to take the position of "You know, that seems interesting, but I need time to think about it," and we delay it. In this way, I'm ready for your issue, and I can move forward on your issue. The lower priority stuff we can then discuss because it does tend to be a very quick discussion right on the spot. That's kind of where my position lies there.

Dr. Swann: Madam Chair, I apologize. I have to head out to another commitment. I'll leave it to the committee to make the distinction there. Thank you.

The Chair: Thank you.

Mr. Sucha: I kind of have to disagree with what Mr. Cyr said about this being chaotic. I found, actually, as we were going line by line, that some of the decisions we made were based on what we made when we came up with our priorities first. We looked at our priorities, and then they reflected the decisions when we were looking at the things that weren't as important for us to view when we were going line by line. It helped us drive our future decisions as well because moving forward on one recommendation sometimes helps us move forward on another one. I think it's important that we look at our priorities first and that then we go line by line to help drive the conversations and the decisions we're making.

The Chair: Mr. Clark.

Mr. Clark: Thank you. Just a couple of points. Given that it is grouped by theme anyway, I feel it is not likely that we're going to have that feeling like we're jumping around. Frankly, until we discuss each line item, it's a little difficult to know exactly what our priorities are. In terms of being ready, we need to talk about it anyway.

Given that we're going to be going line by line anyway, I think it's a bit presumptuous of us to say, based on the feedback that's been given to us by Albertans and by key stakeholders, what we think is most important. I think that comes up through the course of discussion. Given that we're doing it anyway, I would caution that there is potentially a perception created, whether accurate and fair or otherwise, that the government majority on the committee will identify areas they want to make sure get discussed before the expiry of the committee for their own purposes versus giving all pieces of legislation thorough consideration. I hope that's not the case, and I would suggest that going line by line eliminates any risk that that perception becomes reality. So I would really encourage the committee, please, to support the motion and to go line by line through election finance the same way we have through whistle-blower protection.

Thank you.

Cortes-Vargas: Can you read out the proposed motion?

The Chair: Ms Rempel.

Ms Rempel: Thank you. I believe Mr. Clark has moved that

> given the contributions made by stakeholders and Albertans at large, the Select Special Ethics and Accountability Committee shall deliberate on each line item in the summary of issues and proposals documents for the Election Finances and Contributions Disclosure Act, the Election Act, and the Conflicts of Interest Act.

Cortes-Vargas: So the motion as it stands wouldn't preclude us from – because we're going line by line, we could cover each line, but we could cover some parts first. It doesn't preclude us from making a priority list.

The Chair: Would you like to move an amendment?

Cortes-Vargas: Not necessarily. I kind of want to know if the motion as it stands would still allow us to make a list first and still go line by line.

Ms Rempel: It does say "each line item." Was it your intention that we would go through in order?

Mr. Clark: It is my intention. Certainly, the intention of my motion is that we would start at the top of the document and go through the document from beginning to end, in that order.

Ms Rempel: In the order of the document?

Mr. Clark: Yeah. That's certainly my intention.

Mr. Nielsen: Well, certainly not to draw out this debate again here, let's just get moving on it if that's the case. You know, it would have been nice just to have an idea of what people were really, really excited about and that I could do some research on it to be prepared for them, but otherwise let's just get going on this.

The Chair: Okay. All those in favour of the motion, say aye. Any opposed? That motion is carried.

Is there any other business that committee members would like to raise right now?

Dr. Starke: Chair, I'm curious to know whether you've received back the requested input with regard to the scheduling of further meetings?

The Chair: We're still waiting for some responses.

Dr. Starke: Okay. Thank you.

The Chair: We are still polling members for availability on multiple dates throughout the next couple of months. We are waiting for responses before we firm up the next meeting date so that, of course, people can make summer plans, being that everyone is out in their constituency. The date is to be determined at this moment.

If there's nothing else for the committee's consideration, I will call for a motion to adjourn. Moved by Member Connolly that the July 6, 2016, meeting of the Select Special Ethics and Accountability Committee be adjourned. All in favour? Any opposed? That's carried.

Thank you.

[The committee adjourned at 2:57 p.m.]

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