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Legislative Assembly of Alberta
Standing Committee on Resource Stewardship
c/o Committee Clerk
3rd Floor, 9820 – 107 Street NW
Edmonton, AB T5K 1E7
RSCommittee.Admin@assembly.ab.ca

RE: SAIT's feedback on the *Public Interest (Whistleblower Protection) Act* and accompanying Regulation

Thank you for the opportunity to provide feedback, and in response to the Government of Alberta's review of the Public Interest Disclosure (Whistleblower Protection) Act, we acknowledge the importance of this legislative framework in promoting transparency and accountability within public institutions. The comments provided herein reflect our organization's perspective on the current provisions of the Act and offer considerations for its continued effectiveness and improvement.

1. Lack of clarity in process relating to disclosures and complaints of reprisal made directly to Public Interest Commissioner

Part 2.1 of the *Public Interest (Whistleblower Protection) Act* addresses situations where an employee of a public entity makes a disclosure of the public entity's alleged wrongdoing directly to the Public Interest Commissioner. In particular, pursuant to s.15.1 of this Act, an employee may make a disclosure of alleged wrongdoing directly to the Public Interest Commissioner regardless of any wording in a public entity's procedure that indicates that that the entity's decision on a matter is final and regardless of whether the employee has already made a disclosure to the public entity and the public entity has already concluded its own investigation. The Commissioner then has the authority to carry out its own investigation, to decline to investigate a disclosure, or to refer the disclosure back to the public entity.



Although the Act sets out detailed provisions relating to how the Public Interest Commissioner will conduct the investigation, the need for the Commissioner to respect procedural fairness and natural justice during its investigation, etc., neither the Act nor its accompanying Regulation (*Public Interest Disclosure (Whistleblower Protection) Regulation*) indicate when the Commissioner must notify the public entity that it has received a disclosure about the public entity's alleged wrongdoing or when the Commissioner must notify the public entity that it has decided to investigate/not investigate that disclosure. In particular:

- While the Regulation provides in s.3(7) that the public entity (and by extension the Public Interest Commissioner) must acknowledge that it has received a disclosure of wrongdoing within 5 business days from the date that it received that disclosure, this acknowledgement is made to the employee making the disclosure. Nothing in this section requires the Commissioner to make any acknowledgement to the public entity that it has received a disclosure.
- Likewise, s.3(7) of the Regulation provides that the public entity (and by extension the Commissioner) must notify the employee within 20 business days of receiving the disclosure as to whether or not it will investigate the employee's disclosure. Again, this notification is limited to the employee who made that disclosure. Nothing in this section requires the Commissioner to advise the public entity that it will or will not investigate the disclosure.
- Similarly, while s.19(3) of the Act does require the Commissioner to advise the public entity that it has decided not to investigate a disclosure or that it has decided to discontinue its investigation of a disclosure, neither the Act nor the Regulation sets specific timelines for the Commissioner to do so. As well, the Act does not seem to require the Commissioner to advise the public entity that it has decided to investigate the disclosure in the first place.

This is also the situation where an employee, under s.25(1) of the Act, makes a complaint of a reprisal directly to the Public Interest Commissioner. Section 26 of the Act indicates that the Commissioner will manage and investigate the complaint in the same manner as it manages a



disclosure. Again, however, nothing in the Act or the Regulation indicates when the Commissioner must advise the public entity that it has received a complaint of reprisal or when it must advise the public entity that it will investigate/will not investigate that complaint.

2. Reporting Requirements and the Public Entity's Annual Report

Pursuant to s.32(1) of the Act, the public entity must prepare an annual report of all disclosures made or referred to the public entity's designated officer. The Act states that the report must include information on the number of disclosures received, the number of disclosures acted on and not acted on, the number of investigations and the outcome of investigations that have resulted in a finding of wrongdoing.

It is unclear why information relating to the total number of disclosures is required, as compared to the number of disclosures that meet the requirements for investigation and the outcome of those investigations. An aggrieved employee may make a complaint about a public entity for any number of personal reasons, legitimate or otherwise, and the public entity may decide, upon review of such a complaint, that it does not meet the criteria to be considered a disclosure under the legislation, that it is not made in good faith, etc. It is unclear why information on the total number of complaints, as opposed to the total number of disclosures falling under the scope of the legislation, needs to be included in an annual report.

Consideration should be given to limiting the scope of information to be provided to disclosures that have been investigated, the number of disclosures that were founded or unfounded as a result of the investigation, and the outcome of those founded investigations.

3. Anonymity of complaints made to the Public Interest Commissioner

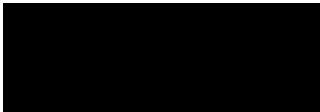
Under s.21 of the Act, and as stated at the Public interest Commissioner's website, an employee may make a complaint anonymously. Although the Public Interest Commissioner is required to follow the rules of procedural fairness and natural justice, as per s.18(3) of the Act, the Public Interest Commissioner may, in its discretion, investigate the allegation while still maintaining the anonymity of the reporting individual. It is unclear from either the Act or from the Public Interest Commissioner's website what steps the Public Interest Commissioner may



or should take to ensure that the public entity can adequately respond to an allegation where the person making the complaint is allowed to remain anonymous. To put it another way, while anonymity may help protect an employee who makes a disclosure, the Act and the Commissioner's website are both silent as to the implications that anonymity may have for the public entity's ability to address that allegation.

I trust that the observations and recommendations outlined herein will be given due consideration in the Committee's deliberations. Should further clarification or elaboration be required, we remain available to provide additional input upon request.

Sincerely,



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