October 31, 2025

VIA EMAIL: RSCommittee.Admin@assembly.ab.ca

Standing Committee on Resource Stewardship
% Committee Clerk
3rd Floor, 9820 107 Street
Edmonton, Alberta T5K 1E7

Re: Review of the *Public Interest Disclosure (Whistleblower Protection) Act*

We are writing to the Committee in response to an invitation received by Mr. Curtis Stange of ATB Financial to provide submissions in the Committee's review of the *Public Interest Disclosure (Whistleblower Protection) Act* (the "Act"). ATB Financial appreciates the opportunity to participate and thanks the Committee for their efforts on this important topic. Our comments are focused on two areas where we believe amendments would improve the Act's clarity and operational effectiveness, particularly as it applies to commercial corporate enterprises like ATB Financial.

1. Amending the Definition of 'Public Entity' or 'Wrongdoing'

Our primary recommendation relates to the application of the Act to commercial enterprises. Per section 2(1), the Act applies to government departments or offices and to 'public entities'[1], and per section 2(2) the purposes of the Act are, among other things, to facilitate the disclosure and investigation of matters that an employee believes may be unlawful, dangerous to the public, or injurious to the public interest. Section 3 then speaks to the types of wrongdoings to which the Act applies, and it includes the gross mismanagement of public funds, a public asset, or the delivery of a public service.

With respect, we do not believe that the current definition of 'public entity' entirely aligns with the intended purpose of the Act, given that this definition captures commercial entities, such as ATB Financial, that do not perform a traditional public function. Unlike typical public agencies, ATB Financial's operational characteristics include:

- **Commercial Nature:** ATB Financial operates in a commercial manner, with a specific statutory mandate[2] to seek short and long term returns that are similar to or better than privately or publicly held corporations.
- **Funding:** Our operations are self-funded, and we do not rely on public money to operate.
- **Asset Stewardship:** Funds held in ATB Financial accounts belong to our clients, not the general public, in contrast to entities that are stewards for assets belonging to the public generally.

[1] It also applies to 'prescribed service providers', however it does not appear as if any entities have been so prescribed.
[2] Per s. 11.1(b) of the *ATB Financial Act*.

- **Public Service:** ATB Financial's services are not provided directly to Albertans as a whole, but rather are focused on our clients.
- **Statutory Role:** We do not possess a statutory decision or rule-making authority over the public, unlike a regulator or administrative tribunal.

Simply put, ATB Financial is unique when compared with other agencies, boards, or commissions that are considered public entities under this legislation. This has been identified for other government purposes, such as ATB Financial's designation as a corporate enterprise operating in a commercial manner under the *Alberta Public Agencies Governance Act*. Unlike other agencies, boards, and commissions ATB Financial competes directly with private enterprises. We believe it would be appropriate for the Act to reflect ATB Financial's unique role.

Recommendation 1A: Exclusion from the Act

We suggest the Committee consider amending the definition of 'public entity' to exclude ATB Financial. This exemption would recognize ATB Financial's commercial status and ensure the Act's application is aligned as closely as possible with its intended purpose. This could be done by amending either the Act (in sections 1(k) or 2(1)) or the underlying *Public Interest Disclosure (Whistleblower Protection) Regulation* (the "Regulation") (in section 2(1)). Amending the Regulation would also recognize that section 36(1)(a) of the Act, which authorizes the Regulation, specifically refers to entities that "receive all or a substantial portion of their operating funding from the Government" when considering who should be designated as a public entity under the Act, suggesting this is a particular area of focus for the Act. As noted above, ATB Financial's operations are self-funded.

Recommendation 1B: Narrowing the Definition of Wrongdoing

Alternatively, if the Committee prefers a more limited approach, we propose amending the definition of 'wrongdoing' in section 3(1)(c) of the Act. Specifically, we suggest the definition, which includes "gross mismanagement of public funds, a public asset, or in the delivery of a public service", should not apply to entities such as ATB Financial that do not deal with public funds or public assets, or provide a public service in the same way as other agencies, boards, and commissions.

This alternative approach would still recognize ATB Financial as a 'public entity' but, in relation to ATB, would limit the definition of 'wrongdoing' to violations of law or substantial and specific dangers to an individual or the environment. We believe this would better reflect our status as a commercial entity.

Recommendation 1C: Expansion of the Commissioner's Ability to Exempt

As a further alternative, the Committee may prefer to rely on the Public Interest Commissioner's ability to grant exemptions from the Act. We believe this could also be a useful approach, though suggest an expansion to the factors considered relevant in exercising that discretion. In this regard, section 31 of the Act recognizes that there may be situations where it is

inappropriate to apply the Act to certain public agencies or situations and grants the Commissioner the ability to make exemptions in accordance with the Regulations. The Regulations, in turn, provide that this discretion may be exercised if, in view of certain specific factors, the Commissioner believes it is inappropriate to apply the Act. These factors are the "small size or management structure of a public entity", the nature or content of a disclosure, or the persons involved in the disclosure. Given the Commissioner's expertise in applying the Act, we believe it would be appropriate to expand these factors, either to permit the Commissioner to consider any factor deemed relevant, or to specifically add the nature of the public entity in question as being a relevant consideration.

2. Ensuring Explicit Confidentiality and Non-Producibility of Reports

We also recommend strengthening the confidentiality provisions within the Act, particularly concerning the report produced at the conclusion of an investigation of wrongdoing.

Recommendation 2A: Explicit Confidentiality in Section 22

Upon the conclusion of an investigation, the Commissioner is required to provide a report to the relevant entity and notify the complainant of the fact that a report has been made, along with any other appropriate information (sections 22(3) and 22(4)). We believe the Act would benefit from including explicit confidentiality requirements in section 22 for both:

1. **The organization receiving the report (section 22(3)):** While reports may use tools such as generic language to protect identities, section 22 lacks an explicit obligation on the receiving organization to maintain the report as confidential. Including this explicit duty would be consistent with protecting the identities of individuals involved and serving the public interest.
2. **The complainant (section 22(4)):** Currently, there is no explicit obligation on the complainant to maintain the confidentiality of information provided by the Commissioner. Establishing this explicit duty of confidentiality would allow the Commissioner to more fully explain the investigation's results, protect the overall confidentiality of the process, and potentially make complainants and witnesses more comfortable with participating.

Recommendation 2B: Non-Producibility of Reports in Court

We recommend expanding and clarifying section 52(1), which provides that no proceeding or decision of the Commissioner related to wrongdoing can be called into question in any court (except on the grounds of jurisdiction).

Specifically, we suggest clarifying the Act to state that no report related to wrongdoing is producible in any court proceeding. While the existing restriction prevents a challenge to the Commissioner's decision, it does not explicitly prohibit a party from attempting to introduce and rely on a report's conclusions in civil litigation to which the Commissioner is not a party. Introducing a report into litigation would contradict the confidentiality principles we advocate and

would be contrary to the purpose of the Act, which is not intended to provide evidence for use in civil litigation.

We thank the Committee once again for the opportunity to provide this feedback. We are available to discuss these matters further at your convenience.

Respectfully Submitted,

[redacted]

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