

November 27, 2020

By Email Only

Committee Clerk
Standing Committee on Resource Stewardship
3rd Floor, 9820 - 107 Street
Edmonton Alberta T5K 1E7
Email: RSCCommittee.Admin@assembly.ab.ca

David Goldie, PSc, MBA
Chair, Board of Directors
david.goldie@aer.ca

tel 403-297-7222
fax 403-297-8326

www.aer.ca

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

Attention Committee Clerk, Standing Committee on Resource Stewardship:

Thank you for the opportunity to provide input to the Standing Committee on Resource Stewardship in regards to the *Public Interest Disclosure (Whistleblower Protection) Act* (PIDA). The Alberta Energy Regulator is pleased to make the following submission.

There are two areas where the Alberta Energy Regulator would like to provide input.

1. The importance of alternative dispute resolution

Currently the PIDA legislation highlights the importance of alternative dispute resolution in the context of the Public Interest Commissioner's (PIC) process. Specifically, s. 17 of the legislation states:

Commissioner to facilitate resolution

17 When an employee makes a disclosure to the Commissioner, the Commissioner may take any steps the Commissioner considers appropriate to help resolve the matter within the department, public entity, office or prescribed service provider.

It may be of value for the Standing Committee to review if there is a value to include this type of concept for public agency processes as well. Currently public agencies have specific statutory timelines to complete its processes and there is no specific statutory allowance for the public agency to conduct alternative dispute resolution or undertake other means to facilitate resolution. Without such express statutory allowance, this may act as a deterrent to conducting alternative dispute resolution or undertaking other means of facilitating resolution of a matter.

The current times for public agencies are set out in sections 3 and 5 of the *Public Interest Disclosure (Whistleblower Protection) Regulation*¹. While there is the clear ability to ask the PIC Commissioner for an extension of time, there may be value to expanding the concept in s. 17 of PIDA to public agencies.

¹s. 3 (8) The procedures for receiving and reviewing a complaint of a reprisal shall provide for their timely and expeditious management as follows:

- (a) a complaint of a reprisal must be acknowledged not more than 5 business days from the date on which the complaint of a reprisal is received;
- (b) not more than 20 business days from the date on which the complaint of a reprisal is received,
 - (i) a decision whether to investigate must be made, and
 - (ii) an employee who submitted a complaint of a reprisal to which the investigation relates
- (c) an investigation must be concluded not more than 120 business days from the date on which the complaint of a reprisal is received;
- (d) if the Commissioner finds that a reprisal has been taken, directed or counselled contrary to section 24 of the Act, subject to section 26(2) and (4) of the Act, the Commissioner's report on the investigation must be referred to the Board not more than 5 business days from the date on which the investigation is concluded.

Extension of time

s. 5(1) A chief officer may extend a time limit referred to in section 3(7), (8), 4(1) or 4(1.1), provided that the overall time period for investigation and the provision of a report is not extended for more than 30 business days.

- (2) A chief officer may, with the Commissioner's permission, extend a time limit referred to in section 3(7), (8), 4(1) or 4(1.1) for a longer period that the Commissioner considers to be appropriate in the interest of a fair and efficient outcome, consistent with the purposes of the Act.
- (3) The Commissioner may extend a time limit referred to in section 3(7) or 4(2) as the Commissioner considers to be appropriate in the interest of a fair and efficient outcome, consistent with the purposes of the Act.
- (4) An extension by the Commissioner under subsection (2) or (3) may be made before or after the time period in question has expired.
- (5) If a time period is extended under this section, the individual who submitted a disclosure of wrongdoing or complaint of reprisal must be promptly advised when he or she may expect the next procedural step to occur or be completed.

2. Disclosure by a public agency of a report of the PIC Commissioner

Currently, the PIDA legislation speaks to who the PIC Commissioner provides its report to and circumstances when the Commissioner may make its report public. The legislation does not speak to public disclosure by a public agency of a report of the PIC Commissioner (if the report is not made public by the PIC Commissioner). Without express statutory provisions, this creates uncertainty for the public agency if it is allowed to release such a report, what rules apply if it is released (i.e. do the provisions of the *Freedom of Information and Privacy Protection Act* apply?) and is there any protection afforded to the public agency if it does release such a report.

There are various potential options to address this issue; the legislation could be amended to specifically address each of these issues. Or another possible solution is to align the PIDA legislation with the approach taken in the *Conflict of Interests Act*. In that legislation, specifically, section 23.96, it provides some direction on the applicability of *Freedom of Information and Protection of Privacy Act*.

I trust these submissions will be of value to the Standing Committee. If the Standing Committee has any questions, please do not hesitate to contact myself or the AER's General Counsel, Charlene Graham at [REDACTED].

Thank you.

[REDACTED]

David Goldie
Chair, Board of Directors

cc. Charlene Graham, AER EVP Law and General Counsel