



Alberta Insurance Council



November 30, 2020

Standing Committee on Resource Development
c/o Committee Clerk
3rd Floor
9820-107 Street
Edmonton, Alberta
T5K 1E7

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

Dear Honourable Members:

The Alberta Insurance Council is the umbrella council for three industry insurance councils: (The Life Insurance Council, the General Insurance Council and the Insurance Adjusters' Council). The Councils are legislatively mandated to regulate all insurance intermediaries in the Province of Alberta. Insurance intermediaries include all insurance agents, brokers and independent adjusters, licensed or wanting to be licensed to do business in the Province of Alberta.

The Alberta Insurance Council is honored to have been asked to provide input to the Committee studying Whistleblower Protection in Alberta and is pleased to provide the following submissions:

Firstly, it is important to point out that the *Public Interest Disclosure (Whistleblower Protection) Act* does not apply to the Alberta Insurance Council nor any of the three industry specific councils. The legislation under review applies to provincial government departments, offices of the Legislature, Members of the Legislative Assembly and their offices, Ministers and their offices, the Premier and his office, organizations in the health and education sectors that receive public money and public entities such as provincial agencies, boards, commissions, provincial corporations and other designated entities.

In its current form, the Act does not apply to employees in the private sector nor to accredited private schools that do not receive public money.

The Whistleblower Protection Act does not apply to the Alberta Insurance Council (AIC) or any of its operations. The three industry adjudicative councils have no employees and none of the councils are provincial agencies, boards or commissions, because the AIC and each of the three industry associations have a majority of its members either elected or appointed by industry. To qualify as an ABC (Agency Board or Commission) a body must have a majority of its members or directors appointed by government.

Secondly, although the *Public Interest Disclosure (Whistleblower Protection) Act* does not apply to AIC, it is important to point out that the Alberta Insurance Council (the only one of the four councils that has



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employees) has a form of whistleblower protection in place in the form of a Safe Disclosure Policy, which forms part of AIC's Human Resources Policies and Procedures.

This policy mandates a Duty to Report (certain malfeasance), a Good Faith Requirement (to deter defamation and trivial complaints), Protection (against reprisal against whistleblowers) and a Duty on Management to Investigate and Address Concerns.

How effective the Safe Disclosure Policy is in protecting whistleblowers or in addressing employee concerns we cannot say; AIC's Safe Disclosure Policy has never been invoked or relied upon in the eight years it has existed in its current form.

Thirdly, there is a variety and non uniform application of whistleblower protection among the insurance intermediaries we regulate and no known survey that would provide that data. Anecdotally and intuitively, generally speaking, large insurance companies and underwriters (which we don't regulate) would have some form of whistleblower protection in place (although not statutorily required to do so). Meanwhile smaller, retail insurance agencies, brokers and adjusting firms would be unlikely to have a whistleblower protection in place.

Fourthly, conceptually, AIC supports the concept of protecting employees who raise concerns of fraud, criminal activity, corruption and mismanagement within their organizations. We are also mindful of the many criticisms of the Alberta legislation because of its limited scope and many exclusions. So, although increasing the breadth of Alberta's current Whistleblower Protection Act could be meritorious, the AIC is mindful that "one size fits all" remedies rarely succeed.

Accordingly, if the Committee is inclined to recommend increasing the breadth of the current legislation to include private organizations, **AIC strongly recommends that such expansion should be limited to organizations which currently have no whistleblower or other comparable employee protection in place.**

AIC supports the concept of no employee having to fear reprisal for bringing to light malfeasance or mismanagement. AIC also believes that most organizations value protecting light being shone on mismanagement within their organization. Accordingly, AIC submits that employee protection can in many circumstances be provided by employers, industry associations and regulators as well, if not better, than by government.

AIC recommends, therefore, that the **protection of Alberta's legislation be extended only to employees who do not currently enjoy protection from reprisal from their employer, industry association or regulator.**

Additionally, **the legislature could consider providing baseline or minimal protections for all employees.** Employers, regulators or industry associations could mandate supplemental protection. But if the employee was provided no whistleblower protection, the employee could avail themselves to the baseline protections provided in the provincial legislation.



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Finally, the AIC submits that employees who avail themselves of whistleblower protection must do so responsibly. Careers can be ruined, and organizations destroyed by whistleblowing disclosure. If the revelations are accurate that is one thing; but if they are false, distorted, embellished or exaggerated, the whistleblower must be held to account and be responsible for any collateral damage they have caused.

AIC recommends that **whistleblower protection should be lost if the disclosure is found to be defamatory, false, misleading, taken out of context or made in bad faith.**

The AIC is aware of many criticisms in the academic research concerning the *Public Interest Disclosure (Whistleblower Protection) Act* such as the broad powers vested in the Commissioner to decide not to hold an investigation, not to publish the results of an investigation and the lack of an appeal avenue from a decision of the Commissioner.

We are certainly mindful that a successful whistleblowing system is predicated on transparency and fair process. However, in light of the Alberta Insurance Council's status as a non-government agency; and in light of our predominant recommendation that organizations such as AIC, which already have in place Safe Disclosure (Whistleblower) Protection, continue to be exempt from the Alberta legislation, we will defer to those organizations more directly impacted by the *Public Interest Disclosure (Whistleblower Protection) Act* for comment and analysis.

We thank the Standing Committee on Resource Stewardship very much for the opportunity to make these submissions and we wish the Committee well in its important study.

Summary of Recommendations:

1. **Expansion of the applicability of the Public Interest Disclosure (Whistleblower Protection) Act be limited to employees who currently have no whistleblower protection provided by their employer, industry association or regulator.**
2. **The Act could provide minimal or baseline whistleblower protection to employees that otherwise have no protection; Employers, industry associations and regulators could supplement that protection, but all employees would enjoy at least some protection.**
3. **Whistleblowing protection would be lost if the disclosure is false, defamatory, misleading, embellished, taken out of context or made in bad faith.**

All of which is respectfully submitted,



Brent Rathgeber QC
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Alberta Insurance Council