

James Beaton
Coaldale, Alberta

November 30, 2020

Standing Committee on Resource Stewardship

RE: *Public Interest Disclosure (Whistleblower Protection) Act*

Thank you for the opportunity to provide feedback on the *Public Interest Disclosure (Whistleblower Protection) Act* and *Regulation*. I respectfully offer 3 recommendations to the Standing Committee on Resource Stewardship.

1. Sections 5(1) and (2) of the *Regulation* provide that a chief officer may extend time limits respecting a disclosure of wrongdoing (s 3(7)) or a complaint of reprisal (s 3(8)) by 30 business days, or by a longer period with the Commissioner's permission. However, chief officers do not have authority to investigate complaints of reprisal in the first place, only disclosures of wrongdoing. Thus, the reference to complaints of reprisal appears to be a drafting error. **Recommendation: Remove the reference to section 3(8) in sections 5(1) and (2) of the *Regulation*.**
2. Section 5(3) of the *Regulation* provides that the Commissioner may extend time limits respecting a disclosure of wrongdoing (s 3(7)) but not a complaint of reprisal (s 3(8)). However, the Office of the Public Interest Commissioner has interpreted the omission of section 3(8) as a drafting error on the basis that section 3(8) was mistakenly referenced in sections 5(1) and (2) of the *Regulation* instead of in section 5(3). Thus, it has interpreted that the Commissioner has the authority to extend time limits for complaints of reprisal. This may be the case, or the Legislature may have intentionally omitted a reference to section 3(8) because it recognized that an extension would adversely affect an individual who has experienced reprisal more than an individual disclosing wrongdoing. **Recommendation: If the omission of section 3(8) in section 5(3) of the *Regulation* was inadvertent, add it to section 5(3). If the omission was intentional, explicitly clarify that the Commissioner cannot extend a deadline respecting complaints of reprisal.**
3. Under sections 5(2) and 5(3) of the *Regulation*, the Commissioner may extend a time limit "as the Commissioner considers to be appropriate in the interest of a fair and efficient outcome, consistent with the purposes of the Act." Given the breadth and subjectivity of these criteria, and the lack of any upper limit on the length of an extension, I believe the Office of the Public Interest Commissioner would be better held accountable if it were required to publish in its annual report the number and length of extensions granted and why they were granted (e.g. lack of capacity, unavailability of witnesses, complexity of the matter, etc.). **Recommendation: Amend section**

33(1) of the Act to require the Commissioner's annual report to set out the number of time limits extended by the Commissioner or with the Commissioner's permission, the length of those extensions, and the reason or reasons for those extensions.

Yours sincerely,

A large black rectangular redaction box covering the signature area.

James Beaton