

**Alberta Medical Association
Review of the *Public Interest Disclosure (Whistleblower Protection) Act*
Presentation to Standing Committee on Resource Stewardship**

Addendum to President's Letter, February 10, 2021

Good morning and thank you for the opportunity to speak to you this morning. From the Me Too movement, to Black Lives Matter, to exposure of the seditious actions of Donald Trump, recent events have shown society that individuals who witness or experience wrongdoing must be free to speak up and speak out.

This applies not only for great events, but also to daily experiences of individuals within our society and certainly within the health care system. That's why the Alberta Medical Association wishes to contribute to the review of the Whistleblower Protection Act.

In 2015 the AMA provided detailed recommendations to amend the Act. Some of these have been implemented and we appreciate those improvements. There are some, however, that were not instituted and we have noted these in our brief that you have received. I will summarize the more critical points:

1. We recommend that the definition of "wrongdoings" in the act be amended and expanded so that it is clear as to what acts or omissions constitute wrongdoings and on what grounds an event would be considered "substantial" or create a "specific danger." There is potential for misunderstanding here for everyone involved.
2. We continue to have concerns that the legislation focusses on "employees." While some amendments have been made to the definition of "employee" since 2015, no changes have been made to the relevant sections to specifically address members of Alberta Health Services or Covenant Health medical staff and the health sector. We recommend a broader term such as "individual" or "person" or "affected person" should apply.

The word "employee" also narrows the scope of protection that is provided by the Act. Most physicians working in Alberta Health Services facilities are independent contractors, not employees. Resident physicians and medical students are not employees. These individuals should be accorded the same protections as those around them. The definition should be expanded to include anyone retained by, compensated or contracted to a department, a public entity, an office or a prescribed service provider. The Act should offer protection for resident physicians, medical students, and students of other health care professions.

3. The Commissioner has only limited ability to address or rectify wrongdoings such as reprisals against whistleblowers. The Commissioner also has limited ability to act when wrongdoing has been found except to report to offices of the legislature. There appears to be no obligation on any of these bodies to do anything specific. There are no sanctions upon individuals who committed the wrongdoing. We suggest application of a fine should be their minimum capability. possibly including the ability to direct reinstatement of the whistleblower who has been fired for speaking up. This would be more consistent with the powers of analogous bodies like the Alberta Human Rights Commission.

4. While the Commissioner has discretion to refuse to conduct an investigation, or to cease an investigation which is underway, there is no corresponding right of review or appeal specified in the Act, nor is there an obligation to report on the refusal or termination to either the Legislature or to the individual who disclosed the alleged wrongdoing. We note that the only reporting requirements are in relation to investigations that are “completed.” A person who made a complaint and may have been subject of a reprisal may never hear the outcome and miss opportunities for redress.

5. In closing I would like to raise an additional point that was not part of our original notes to the committee. The purpose of whistleblower protection is to safeguard those who need to come forward with legitimate concerns without fear of reprisals. In today’s environment, there is the risk of additional bullying, harassment and intimidation through social media channels that create additional concerns. We suggest that the committee amend the definition of reprisals against whistleblowers to include retaliation against the whistleblower, expressed through social media activity.

That concludes my comments. Thank you for considering our concerns. I would be pleased to answer any questions the panel may have.