



Yukon Legislative Assembly

SELECT COMMITTEE ON WHISTLE-BLOWER PROTECTION 32nd Yukon Legislative Assembly

Interim Report December 2008

Appointment

The Yukon Legislative Assembly created the Select Committee on Whistle-blower Protection through the adoption of Motion #125 on May 24, 2007. The Members of the Legislative Assembly appointed to the Committee were Hon. Ted Staffen, Steve Cardiff, Eric Fairclough, Hon. Jim Kenyon and Steve Nordick. Motion #125 stipulated that Hon. Mr. Staffen would chair the Committee.

Over the course of its meetings other MLAs – Arthur Mitchell, Gary McRobb and Hon. Marian Horne – have substituted for permanent members of the Committee, as provided for in Standing Order 47(2).

Mandate

The Committee's mandate, as detailed in Motion #125, is as follows:

THAT the committee report to the House its findings and recommendations respecting the central issues that should be addressed in whistle-blower protection legislation including:

- (1) whether all public institutions and private organizations performing "public" functions will be covered;
- (2) whether only employees or others -- unions, advocacy groups, the media, citizens -- can use this legislation;
- (3) what types of wrongdoing will be covered,
- (4) whether the same office will conduct investigation, mediation and the protection of whistle-blowers;
- (5) whether employees will have to exhaust departmental procedures before approaching the whistle-blower protection office;
- (6) how retaliation against whistle-blowers will be defined and how long protection will exist;
- (7) whether there will be a reverse onus on the employer to demonstrate that adverse decisions on a whistle-blowing employee were not a reprisal;
- (8) what remedies for employees judged to be adversely affected will be specified in the legislation; and
- (9) what sorts of consequences there will be for employees who engage in reckless or malicious accusations of wrongdoing and for managers who engage in reprisal against employees who act in good faith;

THAT the committee report to the House its recommendation as to whether whistle-blower protection legislation should include a sunset clause similar to that found in section 35 of the *Ombudsman Act*;

THAT the committee have the power to call for persons, papers and records and to sit during inter-sessional periods,

THAT the committee hold hearings for the purpose of receiving the views and opinions of Yukon citizens and interested groups on whistle-blower protection legislation;

THAT the committee have the power to seek background information from experts and to be able to call and hear these experts as witnesses;

THAT while all testimony provided to the committee shall be in a matter of public record, the committee have the power to hold in-camera meetings and to direct that the records of the committee, in specific instances, not contain details that could lead to the identification of an individual group, third party, or community;

THAT if the House is not sitting at such time as the committee is prepared to present its report, the committee transmit its report to all Members of the Legislative Assembly and then, not more than one day later, release the report to the public; and

THAT the Clerk of the Legislative Assembly be responsible for providing the necessary support services to the committee.

Meetings

The Committee has held eight meetings since its appointment. These meetings took place on the following dates:

- Meeting #1, Wednesday, June 13, 2007
- Meeting #2, Wednesday, July 11, 2007
- Meeting #3, Monday, September 10, 2007
- Meeting #4, Wednesday, October 31, 2007
- Meeting #5, Tuesday, January 22, 2008
- Meeting #6, Thursday, March 13, 2008
- Meeting #7, Thursday, April 11, 2008
- Meeting #8, Friday, November 7, 2008

Background materials

In order to inform their deliberations the Clerk has presented Committee Members with numerous documents, including:

- “Policy on the Internal Disclosure of Information Concerning Wrongdoing in the Workplace”, Treasury Board of Canada Secretariat (February 10, 2004)

- “Bill C-11: The Public Servants Disclosure Protection Act”, a legislative summary prepared by Parliamentary Information and Research Services, Library of Parliament (revised version, November 2, 2005), and
- A list of further readings regarding Bill C-11, prepared by the Library of Parliament

Members also expressed an interest in the manner in which other assemblies have approached whistle-blower protection issues. The Committee therefore directed the Clerk to “gather, compile and distribute to committee members information regarding the experiences of other Canadian jurisdictions in addressing whistle-blower protection issues.”

The Clerk subsequently distributed to Members a document entitled “Survey of Canadian (and other) Jurisdictions Regarding Whistle-blower Protection.” The Clerk reported that his analysis of the responses indicated that there did not appear to be an agreed-upon best practice amongst the jurisdictions surveyed. These jurisdictions reported a variety of approaches to whistle-blower protection. As whistle-blower protection appeared to be a relatively new endeavour in these jurisdictions, most could not report on successes and failures.

This document led Members to discuss what approach might be taken in Yukon. Of particular focus has been the breadth of legislative protection – whether whistle-blower protection should extend only to Government of Yukon employees or to others, such as government contractors, Members of the Legislative Assembly, private sector employees and members of the public.

This has led to a further discussion of the difference between protecting those who blow the whistle on allegedly illegal activity versus those who seek an avenue to complain about inefficient or unethical activity. It was acknowledged that some, if not all, complaints falling into the latter category might properly fall within the purview of the Ombudsman, rather than whistle-blower protection mechanisms.

Hiring a committee advisor

Given the complexity of whistle-blower protection issues the Committee has spent considerable time discussing the prospect of retaining the services of an individual (or individuals) with expertise in whistle-blower protection issues to act as an expert advisor to the Committee. Early in this discussion, the Members agreed that any advisor engaged to assist the Committee should be independent of the Government of Yukon or any stakeholders. The Committee then tasked the Clerk to contact one or more recognized experts on whistle-blower protection to determine their interest in acting, and their availability to act, as an expert advisor to the Committee.

As a result of that research and subsequent discussions, the Committee has had substantial contact with two expert advisors. Paul G. Thomas is the Duff Roblin Professor of Government at the University of Manitoba where he has taught for over 30 years. Professor Thomas has written extensively on public administration issues, including whistle-blower protection. The Committee’s other contact, Ralph Heintzman,

was recommended to the Committee by Professor Thomas. Mr. Heintzman is Adjunct Research Professor, Graduate School of Public and International Affairs, University of Ottawa. In a previous role Mr. Heintzman was, according to Mr. Thomas, a "senior federal public servant who actually drafted the national (whistle-blower protection) law and spent a great deal of time before a parliamentary committee discussing the act and proposed amendments." No formal agreement or contracts have been signed with these individuals, although the select committee is hopeful that they will be able to assist the committee in its work.

Public hearings

The Committee has discussed the utility of holding public hearings outside Whitehorse, as most of the stakeholders with an interest in whistle-blower protection are based in Whitehorse.

Alternate ways of communicating with the public outside Whitehorse – newspaper advertisements soliciting public input, teleconferencing and videoconferencing, email submissions – were also discussed. Members also discussed the possibility of individual members, or one or more sub-committees, holding public hearings outside Whitehorse. The Committee has not taken a firm decision on the scheduling of public hearings.

Interaction with stakeholder groups

While the Committee recognized the importance of securing the services of expert advisors, it also places great importance on interaction with local stakeholder groups. The Committee has, therefore, decided to solicit input from local stakeholders before meeting with expert advisors. Among other benefits, this would provide a sharper focus for the eventual meeting with expert advisors.

At its first meeting, the Committee directed the Clerk to draft a letter to be sent to the Yukon Employees Union, the Yukon Teachers' Association, chambers of commerce, and other labour organizations soliciting their input into the legislative committee process.

After Committee approval the letter in question was sent to representatives of the Yukon Employees Union, the Yukon Federation of Labour, the Yukon Teachers' Association, the Association of Yukon Communities, the Dawson City Chamber of Commerce, the Watson Lake Chamber of Commerce, the Whitehorse Chamber of Commerce, the Yukon Chamber of Commerce and the Yukon Contractors' Association on June 28, 2007.

In response to the letter, the Yukon Employees' Union and the Whitehorse Chamber of Commerce both indicated an interest in participating in the Committee process. The Association of Yukon Communities declined the opportunity to participate in the Committee process.

At its January 2008 meeting the Committee decided to send a second letter inviting stakeholders to provide written submissions to the committee. At this writing, the Committee has four responses to the second letter. These responses were from the Yukon Employees' Union (Public Service Alliance of Canada), the Yukon Federation of

Labour, the Whitehorse Chamber of Commerce and the Watson Lake Chamber of Commerce.

The Committee held its seventh meeting on April 11, 2008. At this meeting, the Committee discussed the written submission received from the Yukon Employees' Union (Public Service Alliance of Canada) with a representative from that organization. At that meeting the Committee also discussed advice it received regarding the breadth of the application of whistle-blower protection legislation passed by the Yukon Legislative Assembly. The Committee was advised that if whistle blower protection legislation is intended to be a law of general application, it would apply to First Nation people and First Nation governing entities unless a First Nation had occupied the field with its own legislation. As the law could not apply to federal institutions, federal public servants could not use territorial whistle-blower protection legislation.

In November 2008 the Committee contacted the Public Service Commission to determine whether the PSC wished to participate in the Committee process. The PSC has indicated that it will make a written submission to the Committee.

Letter from the Ombudsman

On June 26, 2007 the Chair received a letter from the Ombudsman, Tracey-Anne McPhee, offering her assistance to the Committee. The Committee discussed the role the Ombudsman might take in dealing with whistle-blower matters at its meeting on July 11, 2007. The Committee has agreed to take the Ombudsman's offer under advisement.

Hon. Ted Staffen, Chair
Select Committee on Whistle-blower Protection