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Speaker: Honourable Ross Wiseman, MHA

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The House resumed sitting at 7:00 p.m.

MR. SPEAKER (Wiseman): We are now debating Bill 1.

The hon. the Government House Leader.

MR. KING: Yes, Mr. Speaker, if I recollect, I actually adjourned debate to take a break.

MR. SPEAKER: Oh, you did? I am sorry.

MR. KING: I probably did not need to, but I did.

MR. SPEAKER: Okay.

MR. KING: Just to follow correct procedure at this time I would like to call from the Order Paper, Order 3, second reading of a bill, An Act Respecting Public Interest Disclosure, Bill 1.

MR. SPEAKER: The hon. the Member for The Straits – White Bay North.

MR. MITCHELMORE: Thank you, Mr. Speaker, for the opportunity to speak to Bill 1, Order 3, An Act Respecting Public Interest Disclosure.

This act, when we look at it, is providing a mechanism to disclose information and to allow an investigation for wrongdoings in or relating to public service that an employee, who would be a public servant, believes may be unlawful, dangerous to the public, or injurious to the public interest. This is something that is commonly referred to as whistleblower legislation.

A whistleblower is someone who exposes any type of misconduct, alleged dishonest or illegal activity occurring in an organization. This piece of legislation that we are debating here this evening in particular includes just public employees. It is not inclusive; it does not include the employees of Memorial University.

Unlike some other jurisdictions and some other areas across the United States, for example – the United States has whistleblower legislation as well as Canada does, but individually the majority of States have whistleblower

legislation. In it, some of them protect both private and public employees and they –

SOME HON. MEMBERS: Oh, oh!

MR. SPEAKER: Order, please!

MR. MITCHELMORE: – also protect all general employees who would be workers in general. When we look at this legislation, in a period where openness, transparency and accountability should be a hallmark of any government, having strong whistleblower legislation can be very critical in determining and ensuring that the public interest is protected. In order to do that, the employee must make sure that their interest is protected as well, that they are not going to face reprisal. That was talked about by the minister, in his response, as he introduced the bill and also when it comes to the news conference that was held earlier today which I attended.

This legislation though, just to be clear, only protects a public employee who goes to the Office of the Citizens' Representative. That is what I gauged from the briefing that I received, is that a public employee has to go to the Office of the Citizens' Representative because this legislation as put forward does not look a dual approach, which would have an internal and an independent office, like all other jurisdictions, the other six jurisdictions and the federal jurisdiction of Canada; this is the only piece of legislation put forward that only has one.

If, for example, there was something that an employee saw, there would be no protection, based on what the people in the briefing said. If they went to the manager or to someone within the department and disclosed some sort of illegal activity that may happen, then they would not have protection. They can only get protection if they go to the Citizens' Rep and make that call, make that contact, and they have to put it in writing.

That is looking at a broad overview of what this piece of legislation is and what it will do, but what I want to talk about right now is that this is something that the people of the Province, I guess, have been promised by this government for a very, very, very long time. It is something that we have seen other jurisdictions do and

implement, while the people of the Province, during a campaign promise, it was put there in an election promise in 2007 in the Tory Blue Book, just three words. It said that the government will develop whistleblower legislation.

That was something all the way back in 2007. We look at fast forwarding now; we are in 2014. People have been waiting a very long time for whistleblower legislation.

Whistleblower legislation is long overdue; it was long overdue then. You only have to look at situations where you have seen time and time again where people who work in the public service, public employees, whether they be nurses, whether they be teachers, whether they be direct employees of the core civil service, when we look at the programs that are offered, when we look at the curriculum in schools as the Minister of Education had talked about, if we look at the math program that is implemented, if we look at nursing regulations, these types of things are critical to look at the employees being the experts, the experts of these programs and the experts in administering.

If they are questioned and they are not able to have that ability – if they have information and they feel that there would be actions taken against them for sharing that information of potential wrongdoing, then there could be recourse. That is why maybe in situations we have not seen people speak out about any potential wrongdoings and things that may be deemed illegal because of fear, and that is something that could be very real when you look at government services and how they deliver them.

Like I say, this legislation extends to public bodies, it talks about school boards, and it would extend to school board employees – would that extend to the teachers? They are the ones who have their eyes and ears on the ground when you look at school closures, when you look at staff reductions, when you look at curriculum changes, when you look at the needs that are there when it comes to special education, these types of things, so that these people would be able to speak out on the legislation.

Sometimes we see that it is put forward – and the editor of *The Telegram*, Russell Wangersky, had talked about it and said, through a bulletin, that it is just not advisable for people to speak out. They are being told not to speak out on these particular issues. We see in a culture sometimes of government that people are not able to speak out and share the information that could see the improvements that are needed.

If you really want to fix a problem, you have to let people who know the issues really speak up. Let those experts – do not discipline. That is something that needs to happen. We do not want to see gag orders on people, Mr. Speaker. That is why Newfoundland and Labrador whistleblower legislation is very important.

If we look at information that was put forward, the former Premier has said they were going to introduce whistleblower legislation. If we look at the Department of Justice in 2008, in September, I have documentation from the CBC that said, from a spokesperson with the department, “...government has not conducted consultations on this matter and as this legislation affects the public service for Newfoundland and Labrador, consultations will target the public service”.

At the time, former Justice Minister Kennedy said, “...that those consultations were holding up the development and implementation of the law.” This is back in 2008, the progress, that it was the consultations that did not happen during that time because they did not begin on the bill. This was something that was asked.

Then on a campaign stop in Carbonear on October 6 during a campaign, the Leader of the PC Party said, “...government would implement whistleblower laws in the first session of the legislature after the election. We’ll get that on at the very earliest opportunity”. There was no reason then why this could not have been put on the agenda.

Then we go into June 1, 2009, still no sign of the promised whistleblower legislation back in 2007. In 2007, we have to remember there was a review conducted by Justice Derek Green. They recommended this law under the public service so they could “without fear of reprisal [could] disclose others’ improper or unethical

behaviour.” This is something that was reported by the CBC.

This is very important that we look at an election promise; a commitment was not followed through. The session passed and no whistleblower legislation. The reason for it at the time was: Well, there were a lot of requests under the Access to Information law. This is something that was covered under Bill 29. We see in Bill 29, with the amendments that came forward, they wanted to make sure that they had the time.

We go forward now to December 9, 2010. “Newfoundland and Labrador’s justice minister says Whistleblower legislation – which former Premier...” – that is two Premiers ago, beyond the current one – “promised to create in 2008 – won’t be introduced this year.”

The former Justice Minister, who is the Member for Placentia – St. Mary’s, had said, “This is a significant piece of legislation.” – when pressed by the then former Member for Burgeo – La Poile. Green recommended the law. This was something that should have been done. We have seen other things. We have seen the House and accountability piece of legislation come forward. Why did it take such a long time to get to this piece of whistleblower legislation? They reiterated the promise. It was said that we are going to do it, we are going to do it right. This was back in 2010.

Then we go to November 26, 2011. What is the status? What is the status of the whistleblower legislation? The former Minister of Justice then at the time said, “It won’t be enacted until we’re perfectly comfortable”.

They want to have the best piece of legislation. We have heard that before, that this government wants to put forward the best piece of legislation in the House of Assembly. We have seen it. We have seen those statements made in other pieces of legislation that have come forward.

We want to make sure the bill put before us is indeed the strongest piece of legislation, and as an Opposition we will certainly have lots of questions as we debate this bill on the floor of the House of Assembly. There have been repeated calls by other people, the

Newfoundland and Labrador Association of Public and Private Employees, the president has been calling for whistleblower legislation to protect the interests of the people they represent.

Then we go to May 17, 2012. Newfoundland and Labrador whistleblower law is still silent five years later. They are going to continue to monitor. We heard the minister talk about, how during this time, they monitored other pieces of legislation.

There are all kinds of coverage already in other jurisdictions, the minister said at that time. On that date in the media, with the CBC, the minister deflected then about the election promise and providing that information. He only committed to say that we are going to monitor the situation.

In the meantime, in February 2012, we saw the City of St. John’s look at passing a bylaw aimed at introducing whistleblowers. Then you continue to see forward calls.

On November 26, 2013, after six years, government promised to introduce whistleblower legislation. It was a recommendation of the Green report. That is something the Leader of the Official Opposition, the Member for Humber Valley, pressed in the House around getting this legislation to protect whistleblowers. That was something that was put forward.

The current minister at the time, the Justice Minister, said he does not know when the bill will be tabled but it will not happen during the current sitting of the House. That was in November of 2013. The House was sitting at the time – that it would not happen during that time.

So we move forward, it is a long time since the legislation has been promised, but we did see it in the Speech from the Throne. We got the text of Bill 1, the bill that we are talking about today. In it is something that is promoting transparency and accountability as part and parcel, I guess, through the Office of Public Engagement, this open government initiative.

If we go back, and I just want to make this path clear, this was something the PC party promised

in 2007 in the general election. In the 2008 Throne Speech the Lieutenant Governor at the time said, "My Government will introduce whistleblower legislation this year after appropriate consultation has taken place." That did not happen. We do not even know what consultation had taken place.

The minister, in introducing the bill, did not talk about any of the public consultation that had taken place or provided that detail to the House, nor was there discussion in the briefing of public consultation that had taken place around this. I will say that the party had dropped this campaign promise when it was re-elected in 2011. It was not there. We have seen other ministers say that it was not going to happen.

In fact, last fall, the former Minister of Justice said this was not going to happen. It was something quite clear, unequivocally said in response in this House of Assembly that this legislation was not going to happen. The minister said, "I have no intentions of tabling all-out whistle-blower legislation in this House of Assembly this term." Then the minister rescinded. It is quite clear that we see the whistleblower legislation here in the House of Assembly.

Newfoundlanders and Labradorians have been hearing a lot from this government. They want to have security, they want to have the insurance that this piece of legislation is strong, that it protects them and their rights. The public servants deserve to have that right.

When we look at the legislation itself and when we look at the popularity of whistleblower legislation, we have seen that province after province after province has introduced whistleblower legislation. We want to make sure that as the responsibilities of government, arms of government, Crown corporations, and the public bodies that it represents, that the public can be sure that alleged wrongdoings of government are not to be punished.

If we look at some situations that have happened, you cannot always follow that there will not be reprisal. All the legislation talks about is that there will not be reprisal. I am just going to state a case here of when the Premier of Manitoba took over office, there was a memo

that was sent to all provincial government departments, Crown corporations and agencies. This was something that called for an open, transparent, and very accountable Administration.

Like I said, it is something that should be a hallmark of any government. Those promising and noble words have proven many times that the actions of the government and agencies, of the employees there, were not always protected. I am going to give an example when Manitoba Hydro took its own risk management consultant, who was a whistleblower, to court. They took the whistleblower to court on the ratepayers' dollar to basically make that person quiet, as a gag order. There was a real chill of action and libel and we have seen this happen, not in really getting the answers, the openness and the transparency.

There are other examples where a former Cabinet minister misled the Legislature, leaving the deputy minister to basically be held responsible, twisting for months in a situation where there was inaccurate and misleading statements being made by a minister, a former Minister of the Crown, and the action was not taken and the whistleblower was not being protected. The former Finance Minister in this ordeal, and the minister became responsible for hydro, claimed in the article published in a newspaper that hydro rates had fallen over twenty years, but nothing could be further from the truth in that example. There was an error in the statement.

In those situations that we see there was court action taken that impacted a whistleblower. We want to make sure that when we look at legislation that we are putting forward in the House of Assembly that, indeed, our very own public servants can feel comfortable in going to the Citizens' Representative and making sure that when they state their case and their information, that they are not being dragged off to court and having all kinds of other implications that would come from it.

I would like to look at a section of the bill – and I will have time, I guess, in Committee to quote further on some of the questions here, but I will give the minister an opportunity to hear the concern and some of the things from the briefing

when it comes to a public body, under the definitions, and what a public body means.

It explicitly states, “a school board or school district constituted or established under the Schools Act, 1997...”. We have to go further and look at does that include all of the staff and employees, teachers in that public body, as well as looking at the RHA, the regional health authorities. They said they were included. It is not explicitly stated here that I see in section (h) under a public body. Those clarifications need to be made because we have seen cases where this type of activity has brought to light – we have had past scandals happen in health care. We want to make sure that we are protecting the public interest.

Just under the public body and what it means, I am wondering if this legislation extends to municipalities and those staff that would be under the Municipalities Act and the cities acts, because that has happened in other jurisdictions that it has extended to the municipal level of government as well.

When we look at the concept of this piece of legislation and how Newfoundland and Labrador is going exclusively the route of having one independent body as the only option you want to ask the question, as I made upfront, why are we going that route when every other province and the federal government has looked at the dual option where there could be an internal dispute, or resolution, or mechanism to look at bringing this – and not all public servants would maybe have that option to be able to deal with the matter internally but there could be rules written in the regulations that they could look at an internal process if that is applicable, but if not the external independent body is an option, and that would be through the Citizens’ Representative.

If we look at the process, now we have to look at – if I know there is some form of wrongdoing happening, there is nowhere internally in a department I can go to try and find that improvement. I have to go, if I am a public employee, to make a call or visit the Citizens’ Representative, get advice, which is optional. I have to sign to agree so that an investigation would happen and then an investigation will have to take place.

I am thinking of the timelines of when all this would be happening. Meanwhile, there could be activities that are happening in the public sector that is an illegal activity, or some sort of wrongful misdoing, or something that is harmful to the public interest. Once they receive it, and if they deal with it and it does not get referred out to some other body through the Labour Relations Board or some other act – and they deal with it themselves, the Citizens’ Rep, they have to conduct the investigation – then the matter does not become a public document before this House until it becomes an annual report. In that annual report it would get tabled in this very House. If the House is not sitting then it would get tabled within fifteen days of the next sitting of the House.

We have had history here, especially under this current government that sittings of the House sometimes do not extend fifteen days. Does that get deferred to another sitting? Sometimes there is not a fall sitting of the House. That is something this government has done on a couple of occasions.

We want to make sure this information from the time that it was filed and the time that it becomes a public matter in terms of proactive disclosure, because an Open Government Initiative – and when we look at transparency, to really have transparency and proactive disclosure it has to be done in a timely and efficient manner. If we see with this approach that from the time a complaint was filed it could take a significantly long time – there are no clear deadlines in the legislation that is put forward.

It is very open-ended as to how long something could continuously happen. That can create problems when we look at this piece of legislation. Some measures may have to be looked at to strengthen the legislation to ensure that things are dealt with and that we see proactive disclosure is happening in a timely manner. If not, then the damage is already done. How do you take the appropriate and corrective action to deal with it? That is something we need to look at.

There is no limitation when it comes to the timing of the investigation but there are limitations in the bill itself. I just look at the very last section, the last clause there, clause 30

on commencement. It says, "This Act comes into force on July 1, 2014." With that, we do not see – and the minister has confirmed there will be no opportunity for any activity that has happened retroactively to that date. There is no time.

The period before July 1, something that happened on June 30, or something that happened on June 30 of last year, or a month or two prior, is something that is not possible for the public sector employee to raise that complaint and have that protection. There are other avenues, obviously, for information to be disclosed but that protection may not, and is not, available to them; whether an employee opts to go to the media or opts to use some other course of action to release information that could be potentially harmful to government and to the public and the public interest overall.

When we look at the fact there is no time to look back on potential wrongdoings, that is concerning. It is basically something this current government has waited and waited to put forward, this piece of legislation, and they are not willing to go back, whether it be a year, whether it be two years. Obviously, there is a time period where an investigation would be very difficult after so much time has lapsed, because you may have employee turnover, somebody may have passed away. It may be difficult to get information.

There are all kinds of things when you look at, and that compromise the integrity of an investigation. We acknowledge and we want to state, it would be very reasonable to look at a shorter span of time reflecting back so that this legislation could be something that would be looked at in a retroactive manner.

When we look at the timelines of this piece of legislation that is put before the House right now, we see there is a very narrow time frame for the legislation to be debated, for it to get through the whole process to receive Royal Assent. To also look at the regulations that would have to be written and the whole process of providing that education piece to the public sector to ensure they are aware of all of their rights and the confines of what the legislation can provide them and how they can be protected

or how they are not protected, because having that piece is certainly very important.

We have seen in other jurisdictions that have implemented such legislation – for example, Alberta, their legislation was put forward in November, 2012 and then the regulations came forward on May 15, several months later. Then it finally came into force on June 1, 2013, several months later. We are seeing somewhat of an expedited process, and I am not necessarily saying that is a bad thing, but we want to make sure everybody has the adequate time and the information around this so that we are getting the best piece of legislation going forward, because that is certainly key.

I want to take some time to talk about some of the specific pieces and how the complaints are dealt with, from what I see, in this particular piece of legislation. This was introduced as having four pillars. One of the things I want to talk about that needs further clarification is the fact that, will Cabinet documents remain protected? It is talked about that Cabinet documents will remain protected under that purview of the Cabinet confidentiality piece, and there is another clause. It goes further than that.

We have seen other legislation that allows other pieces that advises a Cabinet document. Does that become part of that chain, where if there is something that is harmful then it just goes through that process and it is protected and gives government a way to basically not have a full investigation on something that could be very harmful to the public? We might see where somebody who is part of that process would not be able to disclose information or documents and reveal that type of deliberation because it informs (inaudible). We may end up seeing in the process, if it is not done correctly, where employees will be making contact to receive advice from the Citizens' Representative on the matter of which the Citizens' Representative cannot investigate.

We look at tying up the resources then of the Citizens' Representative. We do not want to be tying up all the resources of the Citizens' Representative. The Citizens' Representative, as we are told, is currently not getting additional resources with the implementation of this act,

despite the increased workload that will come with that.

Looking at whistleblower legislation it is not something new that the Citizens' Representative has done. In fact in 2009, the Citizens' Representative reviewed the matter on whistleblower legislation. The primary work of the Citizens' Representative is to accept complaints from citizens who feel they were treated unfairly with respect to how they have contact with government offices and agencies. They will mediate a complaint.

They only have the ability to file the report and make a recommendation. The recommendation is not enforceable actually, the same way where we see some of this information in this piece of legislation where the Citizens' Representative will do the investigation and make a recommendation. There will be a report filed.

In several cases then, if it has to be referred out to another body, that is when somebody's privacy and protection from disclosure could be revealed, and at that point then, once that person's identity is made public, that could end up causing unnecessary reprisal that may happen through another form. That has happened.

The United States has some of the strongest forms of whistleblower legislation. They also permit it to allow jury trials for somebody who feels they have a legitimate complaint. When we look at this process and how the Citizens' Representative will be operating, we have to look at this and say what this means to the enforceability and what could happen.

In other jurisdictions where I have done some research, if somebody's identity becomes revealed then they may face reprisal through additional audits, they may see where licensing is being held back or revoked. They are being penalized and we do not want to see that happen. That is not the intent of this legislation. We want to make sure that the public servants who are in it are clear of what the legislation is actually saying. That is something that is important. In it we do not see anything about private sector employees. It is not there. The UK does cover that. That is something we do not see in this particular piece of legislation.

When we look at the Office of the Citizens' Representative, the complaints must be made in writing. I asked the question, what if the Citizens' Representative hears something based on the advice that is completely illegal or could be very problematic that the Citizens' Representative knows is unjust. The person decides not to pursue it for whatever reason, they do not sign the form, and then it does not go anywhere.

Should that onus be on the Citizens' Representative if there is some form of illegal activity or potential criminal activity and it be referred out to the appropriate authorities? Then we get into a case of making sure process is followed.

It talks about – and we have seen it before in other bills – a request that is frivolous or vexatious. I guess the implementation of having something in writing gives the onus back on the individual, on the public servant that what they are saying is accurate to the best of their knowledge. If it is not, then in the legislation there is some potential where they could face a fine. That is what is put forward there.

Under section 4 it states that, "This Act applies to the following wrongdoings in or relating to the public service" and there are several things listed there. Under the final section it says, "This Act applied only in respect of wrongdoings that occur after the coming into force of this Act."

As I have said, it will not go back. It includes anything that has happened. It basically gives government an out. It gives the heads of public bodies and others the protection – all public servants the protection that anything that has happened in the past – it just does not apply to any type of ability under this act for them to raise that concern, try and correct an error or an omission that is a potential wrongdoing that may have happened. It is just giving an amnesty, basically, that level of protection. That is quite high.

The Citizens' Representative, under section 13, "The purpose of an investigation by the citizens' representative into a disclosure of wrongdoing is to bring the wrongdoing to the attention of the chief executive of the appropriate department or

public body and to recommend the corrective measures that should be taken, when appropriate.” Like I said, it is to make a recommendation.

We need to see legislation that has a lot more bite to it. There is a lot of bark here but where is the bite? There needs to be teeth to legislation to make sure the adequate protections are put in place so that a whistleblower who puts forward information is duly protected.

Section 15 talks about when investigations are not required and the Citizens’ Representative can refer out cases. We have seen federally where cases have been referred out. They have been referred out in many situations. If we look at reasons why they have either been referred out federally or there have been rejections, there are several scenarios and criteria. A bulk of that, almost 25 per cent of it, was dealt with by another body, and some did not meet the criteria. We are seeing, from a federal level, that there has not been a lot of uptake when it comes to enforcing this piece of legislation, beyond the fact of the Integrity Commissioner being dismissed basically with a golden handshake while under review of the Auditor General, federally, and no action taken because that person had left office. There were wrongdoing findings in 2011 and 2012 since that time, but the inquiries were 1,365, so the statistics are quite low.

I wanted for a second to also talk about a situation where we have seen how information has been completely protected. It has been protected because the current Citizens’ Rep has limitations. We have seen this just in a complaint situation where a ruling denied the Royal Newfoundland Constabulary information from the Citizens’ Representative’s files. Their documents were protected from criminal alleged information that the RNC was investigating a matter of possible offenses of fraud and breach of a public officer of the Crown and filed with the Citizens’ Representative for information.

The provincial court said that information should be made available. So, the Citizens’ Representative used the power to go to the Supreme Court of Newfoundland and Labrador. The Supreme Court said that the provincial court decision was to be not upheld and that the

legislation allowed the privilege of the Citizens’ Representative to be absolute. That situation protected the information and it outweighed any other considerations in such matter.

In that situation, the Citizens’ Representative Act allows for information that the RNC, the police, were looking at investigating a criminal matter and could not access the information because of the powers of the Citizens’ Representative. If this is indeed the case and the intent of where this whistleblower legislation can go, being that this office is placed in the Citizens’ Representative, and there are sections of the Citizens’ Representative Act and the powers associated with it; then information that is brought forward by somebody making a complaint, if files and information are obtained, they could be kept and kept with the Citizens’ Representative and not necessarily be released, even if there is some type of alleged criminal activity as has been the case where it has happened previously, not with the whistleblower legislation but in the act itself.

Whistleblower legislation should be there to protect the public servant, but it should also make information readily available. If there is wrongdoing done, that it can be referred out to the body appropriate to deal with it, whether it be the authorities, whether it be the Auditor General, or whether it be some other body and that information be available.

In a situation where the RNC wanted information from the Citizens’ Rep, they could not get it. The Citizens’ Representative went to the Supreme Court and used the power of the act to withhold that information. In situations like that, will we see that with this whistleblower legislation enacted?

That can be a real concern if you want to see what level of justice will be taken. Will there be sanctions? We have seen where there have been situations in other jurisdictions where there have been a lot of complaints received, investigations begun, investigations completed, findings for reprisal, referrals either made to a tribunal; but we have not seen where there has been reprisal, where there has been remedies for whistleblowers and sanctions, if necessary, taken. There has not been that there.

That can be a problem when we look at will people take this piece of legislation and say if the actions are not going to be taken, if it is not going to get results, if the bill does not have the teeth to get the results and protect the information, why would I go through that process. Why would I go through that process if I am not going to be absolutely assured that I am protected, that my identity is not going to be? We were told that there are situations that if this matter goes to a particular board or if it has to go through a court process that the protection, the identity, may not be.

There are situations where there are small government departments in the reporting mechanisms, even today. The Citizens' Representative said we are going to work at the mechanics as to how we do the current activity report, the digest that comes forward annually. The last one that is put forward is for the thirty-first of 2013. There is already a year that has passed by. So if somebody makes that complaint and makes that agreement, then it can take a very long time before that information becomes public – but, in what form is it going to be public, and how are people going to be ensured? Because they are not protected internally; they are not protected. That could lead to potential harassment. It can lead to all kinds of other things that have been seen in other jurisdictions.

Having the one individual process, I am going to need a further explanation on why there is just the one process and not a dual process. A dual process may look at providing, in certain situations, that option where things can be dealt with in a more expeditious manner, it can provide for protection, it can provide for the efficiency of government moving forward, and also the protection that the employee who is blowing the whistle has their job, that the protection of the job is there. If it is dealt with internally and there is a still an issue, they still have the option then of looking at the Citizens' Representative and their office. They have that option. Or they could look at that option right from the beginning to the Citizens' Representative. This is a situation that some of the other jurisdictions have.

When we look at the Citizens' Representative back in section 15, why they would not conduct

an investigation, it says "...so much time has elapsed between the date when the subject matter of the disclosure arose and the date when the disclosure was made that investigating it would not serve a useful purpose".

The legislation is not clear. Legislation should be as clear as possible, without being ambiguous. We want it to be very clear. It is not saying a specific time. That it is basically up to the discretion of the Citizens' Representative. Although an independent body under the House of Assembly, shouldn't there be a clear timeline as to what is too long to look into? Obviously government, in preparing this legislation, said anything before July 1, 2014, is too long because we do not want to look back. We do not want to look back at anything that has happened prior to. When we look at some matters, will there be consistency? Will, for a particular matter, something be five days too much time, a month too much time? Depending on the degree, is there some sort of test that is put forward? Is it straight across the board? Shouldn't there be a time that is put forward? These are types of things I am looking at that should be there, I would think.

The Citizens' Representative believes that the public body has not appropriately followed up with or has the recommendations, or did not cooperate in the Citizens' Representative's investigation under the act, the Citizens' Representative may make a report on the matter. They are looking at in the case of the public body, the board of directors and the minister responsible; and in the case of the department, the minister responsible. It is about: may make a report. It does not require. The legislation should be explicit and make that.

We want to make sure that in situations where there is true negligence that somebody is being held accountable for the gross mismanagement as defined and as stated in the legislation. We want to have some assurances. Whistleblower legislation can be very good legislation that is necessary when you look at how to protect the public servants on a go-forward basis and ensure that.

We have seen in this very House a scandal that happened that rocked the House of Assembly. That led to a full, thorough review by the

Auditor General and by Justice Green to do that thorough review, and go through that process. There was a court process as well. It led to an act of which members of this very House of Assembly are held to abide by. It also included the whistleblower legislation.

This piece of legislation has been long overdue. It has been long overdue because it was promised a long time ago by this government. Based on what I see right now and as moving forward, I will certainly have many more questions for the Minister Responsible for Public Engagement, how the rollout is going to happen, and how we can make sure that the legislation itself is not just putting out very broad statements, that it actually has some clear definitions, some clear, definitive timelines in how we are able to move that piece forward. That is something that is really important when we look at the whistleblower legislation that we are debating before the House of Assembly.

So, with that, Mr. Speaker, I think I will take my seat and allow somebody else to speak to this piece of legislation.

Thank you.

SOME HON. MEMBERS: Hear, hear!

MR. SPEAKER: The hon. the Member for the District of Lewisporte.

SOME HON. MEMBERS: Hear, hear!

MR. VERGE: Thank you, Mr. Speaker.

It is certainly a pleasure for me to stand in my place this evening representing the great people of the Lewisporte District and to speak to Bill 1, what has come to be known as whistleblower legislation.

This is a new piece of legislation. We have often seen bills brought before the House that are amendments to acts that are already in place and pieces of legislation that are in place, but, of course, this is a whole new piece of legislation. It is a fairly extensive piece of legislation. What I want to do in my twenty minutes allocated is to speak to a specific part of the legislation, as time would not permit me to speak to all parts of it.

The Member for The Straits – White Bay North, being the critic of course for the department that is responsible for this legislation and being the first speaker to speak to it, under the standing rules he gets sixty minutes to speak. The rest of us will get twenty minutes, other than the Leader of the Official Opposition, who will also get sixty minutes to speak.

I have twenty minutes, and I want to take probably five minutes or so at the beginning to talk about some of the things the Member for The Straits – White Bay North raised. It is my understanding of the piece of legislation – and, of course, if I say anything that is not 100 per cent correct, I am sure the minister responsible when he addresses will set the record straight.

First of all, in the first twenty minutes of the sixty, the Member for The Straits – White Bay North did not address the piece of legislation at all. He talked about the timelines and the chronology that was in place from the time when our party had first said that we would bring in whistleblower legislation up until it is now there. I recognize that, yes, it has taken some time. I am not sure it would have taken him twenty minutes to make that point, but he took twenty minutes to talk about that. I understand that this is a whole new piece of legislation, and as such there needed to be a lot of study, a lot of research, and a lot of jurisdictional analysis done to find out best practices so that when we bring in the legislation, we would have the benefit of learning what has happened in other jurisdictions.

The member questioned the definition of public body in the legislation and specifically talked about school boards and whether this legislation extended to teachers and all the staff. Again, it is my understanding from questions I asked in the briefings that we had – and I want to thank the minister, his staff, the Department of Municipal Affairs, Public Engagement, and also from Justice for the briefing – that teachers and all school staff, including principals and school board staff, are included.

As well, the member talked about the need for action to be done in a timely manner. I would refer him to section 14 of the piece of legislation, which addresses that. Section 14 says, “The citizens’ representative is responsible

for investigating disclosures that he or she receives under this Act.” It says, “An investigation shall be conducted as informally and expeditiously as possible.”

There is no exact timeline laid out there, but we have to allow time for a proper investigation to take place. A lot of these things I expect, in practice, would result in an informal investigation, which can be done very quickly. However, in cases where a more thorough investigation needs to take place, then we have to allow time for the proper procedures to take place.

Another point the Member for The Straits – White Bay North raised is about clause 30 and his concern about the fact that this legislation will take effect as of July 1, but there is no retroactivity. Again, it is my understanding that in general legislation it is forward thinking. Legislation comes into place and whatever procedures would be covered under that legislation is from that day forward. To say we are going to bring in legislation which would be retroactive, one could ask the question, if you were to do that, how far back would you go? What would be reasonably expected?

If we said three months, probably the Opposition would say we need six months. If we said six months, they might say you need a year. If they said a year, maybe they would say we should go back five. I do not think that is a very logical or sensible approach. When the legislation is enacted as of July 1, it is given Royal Assent, and from that day forward we are covered under the legislation.

One other point he made was he said the Citizens’ Representative is not given any additional resources. I asked this question in the briefing actually and we talked about it. Again, it is my understanding that the Citizens’ Representative has been talked to about this. He said that at this point he is not asking for any additional resources. He wants to see the way things unfold. If there are a lot of demands on his time, then I think the proper procedure for him, if he is looking for additional resources, would be to make that request through the Management Commission which would make a decision. Those are just a few of the things the

member brought forward that I address. I hope, Minister, that I have said it all accurately.

I want to talk specifically about one section of the legislation, and that is the four pillars. There are several pieces to this, but I want to talk just about the four pillars. Mr. Speaker, the goal of this legislation is to prevent wrongdoing in the public service, bringing attention to serious and significant matters that are illegal and, or inappropriate in accordance with the bill.

We are talking about serious stuff here, not just menial issues. The provision is here to allow people who see serious and illegal matters taking place to be able to report them without fear of reprisal. By moving this bill forward, we are acknowledging that such serious wrongdoing can occur, and we are providing a mechanism for dealing with it so that we can protect the integrity of the public service. To ensure this protection, the legislation does outline four key elements or four pillars.

First, the bill ensures that employees can disclose serious and significant wrongdoing without fear of threat or reprisal; the second pillar, the legislation will allow for an independent office that will be given power and authority to receive and investigate allegations of wrongdoing and to publicly report the findings; thirdly, there will be anti-reprisal protections for employees who disclose wrongdoings; and finally, the fourth pillar, the Labour Relations Board will hear complaints and award remedies, including reinstatement, for reprisals against whistleblowers. I would like to take each of these, Mr. Speaker, in the ten or eleven minutes I have left and to put a little bit more meat on them.

First, it is critical that employees of government departments and public bodies be confident they can come forward when they witness serious wrongdoing, and that they feel assured they can do this confidentially without worrying about losing their job, without worrying about getting demoted, or without worrying about any other consequences that are of a negative nature.

We must not allow criminal acts or other acts that jeopardize the public to go unnoticed and unreported. No one is in a better place to ensure this type of behaviour is stopped than the

thousands of public service employees who work daily to ensure that the public services are delivered efficiently on behalf of the residents of this Province. It is at the grassroots. These are the people who know. These are the people who we want to be given the ability to tell us what sort of serious wrongdoing is going on and for them to be protected in doing so.

The legislation will ensure individuals who come forward with information in good faith will be protected. Mr. Speaker, if an employee has concerns about serious wrongdoing within the public service, such as a criminal activity or gross mismanagement of public funds and assets, the employee will be able to disclose that information to the Office of the Citizens' Representative. It is also important to note that employees can seek advice from the Citizens' Representative if they are trying to determine whether or not to disclose something they know to be wrong. They can go to the Citizens' Rep to do it, and if they are unsure they can go and get some advice.

The legislation is not meant to deal with routine human resource complaints or concerns about how departments do their business. The Member for The Straits – White Bay North raised that. It is not meant to deal with human resource complaints or policy development. There are other means for employees of departments and public bodies to come forward with these concerns, including formalized union management processes and human resources policies. Unions have collective agreements and they have grievance procedures. There is already a litany of procedures laid out to deal with human resource issues.

The second pillar is the appointment of the independent body to oversee the investigation of wrongdoing. This legislation proposes a single disclosure process through the Office of the Citizens' Representative. The Member for The Straits – White Bay North has raised concerns about there being a single disclosure process. It is my understanding that in other jurisdictions, as he has said, there is a dual route to report. It is also my understanding that in doing the cross-jurisdictional analysis and the study about what has happened in other jurisdictions across Canada, the advice we got is that a dual route

can provide less protection for a whistleblower than the single route.

Again, I asked this question in the briefing. The example that was given was supposing there was a dual route in which a whistleblower could bring a complaint, let's say, to a deputy minister or go the external route to the Citizens' Representative. It was felt in the information and the experience that was garnered from looking across at other provinces, in cases like that – for example, there is a deputy minister and his or her office is there, and a normal traffic flow goes into and out of that office. It is usually regular people who go in and out.

An employee wants to raise a concern and wants to bring about a whistleblower, so they walk into the deputy minister's office, somebody who probably has never been there for a year, two years, or probably never. People see that person go in and come out, and a while later there is an investigation going on. It threatens the confidentiality of the employee.

By going with the single route, completely external to the Citizens' Rep, it was felt to actually give the legislation more teeth rather than less teeth. Mr. Speaker, a single disclosure process will also help protect the identity of those who come forward by limiting who they disclose to. Dual-disclosure processes put a significant burden on public bodies, as well, to do investigations of complaints and also open up potential whistleblowers to greater opportunities for potential reprisals. This could mean the employees would be less likely to disclose wrongdoing when they have to report to the department. Having a single disclosure process to an independent body strengthens the protection of confidentiality for the whistleblower and increases the likelihood that an employee will follow through with making a disclosure.

In all cases, Mr. Speaker, as I noted earlier, members of the public service can request advice from the Office of the Citizens' Rep without deciding whether to come forward as a whistleblower. The Office of the Citizens' Rep will be responsible for investigating disclosures received under the act. As I noted earlier, these investigations will be done as expeditiously as possible. The Office of the Citizens' Rep will

bring the matter to the attention of the head of the government department and recommend corrective measures.

The Office of the Citizens' Rep will prepare an annual report for this House outlining investigations undertaken and the results of these investigations. The Citizens' Rep can decide not to pursue an investigation where it is deemed not to be in good faith, frivolous or vexatious, or where there is another process to remedy the situation. The Citizens' Rep can decide the integrity and the sincerity of the complaint that is being brought forward, and if in the Citizens' Rep's mind it is menial and not a serious wrongdoing, then he – or she, maybe someday – can decide whether or not to do the investigation.

Mr. Speaker, the Office of the Citizens' Rep is the best choice for the role of independent body to receive and investigate disclosures. They are already doing this through legislation, the House of Assembly Accountability, Integrity and Administration Act, and they are well trained and can ensure the act is interpreted appropriately. The office is well positioned to afford confidence to employees, that they are objective, impartial, and will treat disclosures with the highest level of confidence.

The third pillar of the legislation is the assurance of anti-reprisal protection for employees who disclose wrongdoing. This legislation makes it an offence to take a reprisal against an employee or to direct that one be taken because the employee has, in good faith, either sought the advice from the Citizens' Rep, has made a disclosure, or co-operated with an investigation.

Furthermore, anyone found to be taking a reprisal on a disclosing employee is subject to disciplinary action. It can include a fine of up to \$10,000, termination, or other penalties under the law. There are protections there to make sure that people who bring issues forward do not suffer any ill consequence because of it.

The fourth and final pillar solidifying the structure of this legislation lays out a process for how complaints will be heard and what remedies will be available to those who may face reprisals, because it is not a perfect world. Maybe somebody may find a way to, in fact,

bring some ill will against somebody who has brought forth an issue. In that case, the employee has a right to take their concern to the Labour Relations Board, and the Labour Relations Board will hear it and make the determination.

Mr. Speaker, this legislation is set in a firm foundation with independent bodies in power to investigate wrongdoing, reverse and rectify reprisals, if they occur, against whistleblowers. The legislation is designed to encourage employees to come forward without fear of wrongdoing, without fear that they may see serious wrongdoing within the public service. The legislation sets out a process designed to give employees protection.

It is a good piece of legislation; I believe it is, Mr. Speaker. It falls in line with our whole way of trying to connect with the grassroots more, of our whole open government initiative. I look forward to further debate on it, and I look forward to its passage.

Thank you, Mr. Speaker.

SOME HON. MEMBERS: Hear, hear!

MR. SPEAKER (Littlejohn): The hon. the Member for St. John's Centre.

MS ROGERS: Thank you, Mr. Speaker.

I am very happy to stand and speak to Bill 1, An Act Respecting Public Interest Disclosure. I am saying finally, Mr. Speaker – finally. This has been promised by this government for seven years, and I cannot help but wonder if maybe they had the seven-year itch or something, they finally got to scratch it, and now we are seeing some results here.

This was a promise that was made by this government and they have taken seven years. Mr. Speaker, they made that promise seven years ago and then they also promised it in their Blue Book. What they could have done is they could have been a leader. They could have been a leader in this field because there was that opportunity, but no, they could not get out of their own way. What did they do? They waited until other provinces had done that work.

Why is that, Mr. Speaker? Why can we not be leaders? Why can this government not be a leader? We have the talent in our Province. We have the expertise. We have fine folks, absolutely fine employees in the Department of Justice who were eager to get on with this.

I can remember, Mr. Speaker, in the spring of 2012 when I introduced a petition asking for whistleblower legislation, a petition asking this government to honour its promises, but the Minister of Justice said it is complicated and tedious. Imagine that this government said it was too complicated and too tedious to do.

Finally, Mr. Speaker, they have found their way after seven years, after other provinces have paved the way. I find that is really disappointing, but I am thankful they are finally doing the work they should have been doing in this area because we know whistleblower protection is so important. It is about protecting our own employees and it is also about protecting the people of Newfoundland and Labrador.

We need that right now, particularly, Mr. Speaker, when we look at the huge resource development projects that are going on in our Province, Muskrat Falls, where millions and millions of dollars are spent every day, millions and millions of dollars belonging to the people of the Province. We need whistleblower protection now more than we ever did, and it is about time.

It is disappointing that this government took so long. They have missed many opportunities. Who knows what we may have found out by now in those seven years? If they had acted efficiently and swiftly with leadership, who knows what kinds of things we could have avoided? We will not know because it is not retroactive. At least going forward we as a community and as a society can be more confident because we will have legislation that will protect and allow for whistleblowing.

Whistleblowing is about how we administer our resources, how we take care of our people, how we work together. That is what it is about. It is a positive thing, and one that is needed. We have had workers living in fear when they know that they should disclose, because they had no

protection. There is a little bit of protection in some different areas but, for the most part, our workers do not have protection for disclosure. The whistleblowing protection legislation is also about respect for our workers. This is a respectful thing to do and it is about respect for the people of Newfoundland.

It is about honouring a commitment that this government made to the people of Newfoundland and Labrador – seven years later. This is a progressive move. This commitment came about because the leader of our party, the Leader of the NDP, in a debate, challenged the incoming Premier, pushing for whistleblowing legislation. He said he would do it and he said he would do it within a year. That was in 2007, Mr. Speaker. Here we are in 2014. It came from an initiative of our leader pushing the then leader of the government saying, in a general election, this is what we needed and he said yes, he would do it.

This is a progressive move, Mr. Speaker. To not introduce whistleblower legislation at this point is indefensible in a modern democracy. I would like to say that it is indefensible that it has not come before these seven years. We hopefully are a modern democracy. We know that we have a lot of democratic deficits in this House – a lot of democratic deficits. For instance, when we look at the issue of all-party standing committees, finally we have one on the fishery. That is a good thing, and we can see that it is working. It is about time that we have more. We have the ability to be a modern democracy, to not be as indefensible.

Finally, this government can no longer drag its heels on this. Again, they gave up the opportunity to be a leader. They waited and they waited and they waited, but now we are in a huge rush, which is kind of interesting because they have had seven years – and we got this legislation yesterday and we got part of our briefing last night. Here we are, less than twenty-four hours, later debating a very important piece of legislation. Just imagine – this reminds me, Mr. Speaker, of a number of things that the government does. They take a long time, they drag their heels, then all of a sudden everything is a crisis and it has to happen right away. I find that very interesting, Mr. Speaker.

Our leader is presently with the all-party standing committee on the fishery, and it is great that she can participate in that. I am happy that we finally have this stand-alone whistleblower protection –

SOME HON. MEMBERS: Oh, oh!

MR. SPEAKER: Order, please!

MS ROGERS: I am very happy that we finally have this stand-alone whistleblower protection legislation coming before the House, for all public employees in this Province. This is going to cover all public employees; public employees who need to speak out about wrongdoing in the civil service but are afraid for their jobs. It is a good thing. Slow, but finally, it is a good thing.

Up to this point, we have only had whistleblower protection for some public servants. There are sections in the Environmental Protection Act, the Occupational Health and Safety Act, the Personal Health Information Act, and in the Labour Standards Act that protects employees who need to disclose information about wrongdoings.

In 2007, the House of Assembly employees were protected through the House of Assembly Accountability, Integrity and Administration Act. That was recommended by Justice Green in 2006. It is interesting that it takes real pushing for this government to do what it really should be doing. It does not seem to take leadership; it has to be pushed. It is like moving a huge mountain.

Justice Green said at the time that if we had had whistleblower protection earlier, it might have prevented some of the financial wrongdoing in the House of Assembly spending scandal. It might have some to light sooner. That is a lesson for us all, that we have lost those seven years. We did not need to lose those seven years. If the legislation had come sooner, perhaps there were other things that could have been prevented.

In 2006, Justice Green also called for whistleblower legislation for all public servants. He was not just talking about House of Assembly employees; he was talking about all

public servants. Mr. Speaker, that, in fact, was eight years ago.

Ironically, if we had had the legislation, the ER-PR testing mistakes in Eastern Health and the ensuing cover-ups – because we know there were cover-ups – would have come to light earlier as well. Mr. Speaker, I know how important that was because my ER-PR tests were wrong. I was one of the victims of that mistake.

We know, Mr. Speaker, that the first article came out in *The Independent*, October 5, 2005 identifying that there were problems. Then the Cameron inquiry started in November 2007, and her report came out in March of 2009.

Would the inquiry have gone differently? Would things have spun out differently? Would there have been a possibility of perhaps a little less damage? Perhaps. In fact, the Task Force on Adverse Events called for an amendment to the Regional Health Authorities Act to give legal protection to employees who report accidents and adverse events. It said no one should be punished or otherwise disadvantaged for complying with the requirement to report an occurrence.

In our history now, how well we know how important this is, particularly around our health issues. We know this; it was a dark time in our history, in the history of our health care, the whole ER-PR problem. We know that perhaps lives were lost sooner than they had to be. It was a very, very difficult time.

We know that whistleblower protection is about protecting staff. It is about ensuring that everybody can work in a safe environment. That people can work with the resources that they need in order to be able to do their job well, in order to be able to do their job properly, in order to be able to do their job safely. It is also about then servicing the people of the Province in a safe manner.

In 2007, again, our party began calling for whistleblower legislation. Our NDP leader raised the issue to the 2007 general election during the leaders' debate, and the former Premier promised to develop legislation in reaction to her comments. It was a great

moment. We all felt really hopeful, because know how important this kind of legislation is.

The Premier at that time said he had no problem with rapid, rapid implementation. Boy, if this is rapid, we are all in trouble, Mr. Speaker. He said he was very strongly in favour of it. He promised to deal with it in the first session of the House of Assembly after the 2007 election. It took seven years, but we finally have a legislative policy and procedure for disclosure and protection for all employees of government departments, public corporations – because it is very important to include public corporations, because we know how important they all are – school boards, and the public college system.

Mr. Speaker, I am happy that something we have pushed for, for seven years, is finally being done. Whistleblower protection is good for public employees and it is good for the Province. This will provide a safe and a moderated avenue for public employees to disclose wrongdoing in the public service. Wrongdoing is clearly defined - that is good - and there are protections to make sure there is no abuse in this. When they see a legal offence or something that creates danger to life, health or safety, or when they see gross mismanagement they can visit the Citizens' Representative and obtain advice and maybe go on with a complaint. It is an independent body, and I applaud the government for choosing to design the legislation this way.

I remember one of the times when I stood up in the House, Mr. Speaker, presenting the petition that I started presenting on April 30, 2012, I remember standing up and saying I have every faith and confidence that the employees in the Department of Justice will be able to come up with a very thorough, comprehensive, workable, easily defined, whistleblower legislation to present to this House, and they have.

Mr. Speaker, they have come up with a very good piece of legislation. We still have some questions. We have some questions and we look forward to debating some of those questions and getting some answers to some of the questions we have but we were confident that the employees, the fantastic employees in the Department of Justice would be able to come up with a good piece of legislation.

Again, by going to the Office of the Citizens' Representative it means that employees do not have to first go to an official in their department or agency. This external disclosure process should encourage people to come forward who may be wary of disclosing internally. Because we all know what can happen in a workplace if an employee goes to a manager or to someone and then there is a closed door meeting, suspicions arise. Particularly in any kind of workplace where there are suspicions of wrongdoing or suspicions of something that is not safe, that something is off. When there are closed door meetings like that it is really not safe for the employee. I applaud the fact that this is going outside.

Also, we know the Office of the Citizens' Representative has been doing fantastic work over the years. That they are creditable, they are professional, and they are experts in their area. So we are very happy that, in fact, that will be the locus of the work for this particular piece of legislation. They can clearly identify wrongdoing and their job then will be to bring attention to the deputy minister or the CEO of a public body and make recommendations on how to avoid wrongdoing in the future.

We have great confidence in the Office of the Citizens' Representative. Over time it will be interesting to see what kind of systemic flaws in government procedures that will be caught. We look forward to the fact that this will ensure safety for employees and for the citizens.

We are also pleased there is protection from reprisal for employees who report. It also clearly defined what would be a result of a disclosure if someone were the victim of reprisal.

One of the areas I am still not exactly sure how it will play out is the whole issue of Cabinet deliberation and Cabinet documents. We know that Bill 29 still has a far-reaching effect; that hand from Bill 29 still reaches far into the whole area of Cabinet confidentiality, Cabinet documents. My concern, and I think the concern of our caucus, Mr. Speaker, is exactly what will happen.

We know that Bill 29 weakened the Office of the Information and Privacy Commissioner.

Because before the implementation of Bill 29, the Commissioner was able to review documents that were considered to come under Cabinet confidentiality and he could decide whether or not that was the case. Bill 29 removed that authority from him.

We do not know yet, Mr. Speaker, in fact, whether the Office of the Citizens' Rep will have the authority when Cabinet says these are Cabinet documents, whether they are former documents or advisory documents – we do not know yet, clearly, whether the Office of the Citizens' Rep will have the authority that the Information and Privacy Commissioner had prior to Bill 29, whether or not the Office of the Citizens' Rep will be able to make determination of whether or not in fact a document does come under Cabinet confidentiality, whether it is a Cabinet document.

That is very important because we still see a negative effect, the democratic deficit that we are living with as a result of Bill 29. That is a very important issue that I look forward to seeing explored further in debate when we have a chance to stand and ask questions specifically. Again, because that office was weakened, let's see what is going to happen, whether or not the Office of the Citizens' Rep will be able to have an effect on that.

The other issue we will have to look at is the whole issue of the resources that may be needed by the Office of the Citizens' Representative. We know this will be a very important piece of legislation and that the Office of the Citizens' Rep has done a lot of work, not only in responding to complaints but also what they do is a lot of outreach in the community. They do a lot of public education about their role in terms of what their traditional role has been for the Office of the Citizens' Representative.

One would hope they would have the resources to be able to manage this particular piece of legislation, manage it well, and that they will also be able to do outreach into the public service to ensure that people feel safe, that they understand how the legislation works, that they feel the Office of the Citizens' Representative is working in their best interest, that it is working on their behalf and they are accessible. We have to make sure, and I hope this government will

really consult with the Office of the Citizens' Representative, not just foist something on them but really consult with them and work hand in hand with them so they in fact can do the best work that they can possibly do.

MR. SPEAKER: I remind the hon. member her time is up.

MS ROGERS: Thank you very much, Mr. Speaker.

I look forward to asking more of the questions.

Thank you very much.

MR. SPEAKER: The hon. the Member for Bonavista North.

SOME HON. MEMBERS: Hear, hear!

MR. CROSS: Thank you, Mr. Speaker.

I certainly appreciate the opportunity to speak this evening in this debate on Bill 1. I also appreciated the discussions with the officials yesterday in the briefing. Bill 1, An Act Respecting Public Interest Disclosure, also known as the whistleblower act, is about to facilitate legitimate disclosure in a safe and consistent environment.

I have a few introductory comments. I am going to speak mainly on two issues in this bill but first I feel I do have to react for a moment to a comment from the previous speaker. Yesterday in our discussion we talked about the whistleblower legislation, the public disclosure bill, and it is another tool in the toolbox of open government, as a reference to it. If you listen to the previous speaker, the immediate previous speaker to me, you would think that this government, all of the public servants, everyone inside has a hand in the cookie jar. There is gross mismanagement all over the place. There seems to be a complete lack of public respect in the public service and distrust from this.

So the Member for St. John's Centre, I do not know if it is her view or the Third Party's view, but I feel that the idea of retroactivity in an act such as this, not a go-forward act, would be almost like a witch hunt, a looking for guilt, or a

reference that somewhere in our departments there is total gross mismanagement.

Whistleblower legislation, Mr. Speaker, would only be enacted in a very, very minute number of cases. It would be a rare event that someone would go through this procedure. I trust and this government trusts and feels that the faith that we have in the civil service in this Province, and the people who work in the public bodies, do not need that amount of distrust thrown at them through this legislation.

I would like to get into my comments now, Mr. Speaker. This is an act that has three important words inside the first page of the document, in the Explanatory Notes – three very good, active words. It is going to be part of disclosing, investigating, and protecting. These are the three important words that are important to this legislation. Also, the reports or the disclosure must be of a serious or significant event, or about serious and significant mismanagement. It is not your frivolous or vexatious type of comments that would get a report or would indeed need to be investigated.

One other comment I would like to pass before I get into my discussion, I want to go back to sort of answer or comment on a comment made by the Member for The Straits – White Bay North. I think the Member for Lewisporte alluded to it. He talked about the single disclosure – that there is a single representative for the disclosure, not a dual process. Employees may not always be comfortable – I just want to reiterate that – reporting to someone internally in an office; but also, if in many offices we have to have someone who can accept complaints and reports, then that means an awful lot of people have to be trained, have to offer the consistency. By having the single mechanism for reporting, that gives that consistency of constant application to all of the reports that are made. That should be a common denominator.

The two main areas I want to talk about in my response to this legislation tonight is the Office of the Citizens' Representative and its responsibilities in this legislation, and I also want to talk about the Labour Relations Board and its responsibilities and roles in this legislation.

The Office of the Citizens' Rep is contained in sections 14 to 20, mainly. In this bill, significant authority and responsibility is going to be laid in these two independent offices: the Office of the Citizens' Representative, and the Labour Relations Board. This is going to translate into some key accountability for each of these offices. We have the faith and the trust that these two offices contain the skills and the abilities to effectively implement this legislation. The Office of the Citizens' Representative is well positioned to provide advice, to accept the disclosures, and to investigate the wrongdoings within the public service, as we are looking at and outlining in this bill.

Now, Mr. Speaker, one of the officials yesterday, when we asked a question said – and this really stuck to me, and I like to use analogies – the Office of the Citizens' Representative is going to act as a sifter. Now, my first impression of a sifter is going to my grandmother watching her bake bread and she was sifting the flour. I would help her bake the bread and I would crank the sifter and the flour would go down through. That is a very poignant metaphor when the office is a sifter, because it is going to filter the complaints. It is going to refine the complaints. It is going to take the complaints and see if they really have validity. This sifter is going to decide the legitimacy of the complaints that is laid before it.

This office already provides a Province-wide Ombudsman-type service on behalf of the citizens of the Province. It has been around since 2002. It is an independent office of this House. That is very important. It is an independent office of this House. The primary work of this Citizens' Representative is to accept complaints from citizens who feel they have been treated unfairly with respect to their contact with government offices and agencies. The primary work of that Citizens' Representative – I want to say it again – is to accept complaints from the citizens who feel they have been treated unfairly with respect to their contact with government offices and agencies.

The Citizens' Representative, his staff or her staff, whatever the case may be, it may change, mediates citizens' complaints and where informal mediation is not possible, the office can undertake an impartial and unbiased

investigation. Unlike the rest of Canada, right now we are the seventh jurisdiction to implement this type of legislation, this act will provide the Office of the Citizens' Representative to act as the single independent body which will accept disclosures and investigate these wrongdoings in the public service.

Now, it is all of the public service, Mr. Speaker. I am going to sort of go aside from my notes again for a moment because yesterday when we were talking to the officials, they referenced one part of what I would consider a public body that is not included in this legislation. I made some notes on my paper yesterday. They referred to Memorial University that is not considered a public body for this legislation because Memorial University has the autonomy and has its own policies. They have a protected disclosure policy at Memorial University now. They may be included in this legislation later but, right now, their legislation just does not cover their employees; it covers the whole academic community. It is not just the public employees who are there; the whole academic community is included. So, I thought that was important to add to that.

The office will be given the power and the responsibility to conduct its work consistent with the powers and authorities contained in its jurisdictional legislation now, the Citizens' Representative Act. The office is currently responsible for a role similar to that in this proposed legislation, and it is well positioned to take on this much broader role that we are asking it to take now. The Citizens' Rep and the staff in that office have been in contact with all these other jurisdictions now that have implemented the whistleblower legislation, and through professional development, in-service for the public employees, we feel assured that they are on top of the best trends and they have the best practices from right across the country. They now have more tools in their toolbox for this legislation. They are well-positioned to carry out this and other related work in the best interests of the public and related to the public interest disclosures of the House of Assembly.

Mr. Speaker, under this bill that is before us today there is a sequence of three activities that will take place. Under this bill any public

service employee can make a public interest disclosure directly to the Office of the Citizens' Rep. That is the first step. The second sequential step here as well is that the office will then advise the employees of their rights and responsibilities under the legislation. The Citizens' Rep would have to let that employee know their rights and responsibilities. The third step is the employee can then decide whether to make a disclosure of wrongdoing in writing to the office, or they will understand they probably have been sifted out and they do not really have a complaint.

The Office of the Citizens' Representative will carry out investigations to matters related to allegations contained in the disclosure. As our minister said earlier, and I think it was also highlighted by the Member for Lewisporte, the disclosure shall be conducted as informally and expeditiously as possible. The timeliness is not the important thing; the important thing is we get it right.

SOME HON. MEMBERS: Hear, hear!

MR. CROSS: The office's investigators will ensure that the right to procedural fairness of all persons involved in an investigation is respected, including the person making the disclosure, including the witnesses, including the person whom the disclosure was made about, and any other person alleged to be responsible for wrongdoings. All of these people do have and deserve certain protections from this legislation.

The Office of the Citizens' Rep will make every effort to ensure disclosures are made confidentially, and wherever practical, individual disclosures will be dealt with in ways not to disclose the identity of the person making the disclosure. Another feature important to this is that the Office of the Citizens' Rep is not required to investigate a disclosure, and may stop an investigation where the office deems in their opinion that the disclosure reveals allegations that are frivolous or vexatious, and disclosure has not been made in good faith. We remember the two words which are very important that must be included as well; any of these actions have to be serious and significant, not trivial and minor things.

If the Citizens' Rep is in conflict or related to someone who the report is about, then the

employee or the person disclosing may report to the minister's office. The Citizens' Rep will also have the authority to publish special reports. This is another question that came from the member opposite and I will see if I can refer back very quickly. I jotted down a couple of things that I could remember from there when she was talking about this and about the reporting and the responsibilities. There is an annual report. There can be a special report. There is certainly loads of authority in the Office of the Citizens' Rep to decide and determine when issues need to be investigated.

In conclusion of this part of my talk discussing the Citizens' Rep's responsibility, the role, the responsibility, and the authority assigned to the Office of the Citizens' Representative is clear, and so too is the public accountability that will be demonstrated by the reporting requirements. I maintain and we believe we have achieved a balance for all parties subject to the provisions of this bill.

In concluding my comments on the Citizens' Rep, I think it is only fair – I read in a CBC article today a comment from the Citizens' Rep talking about today. He said, "I think it's a good day for the public service. This legislation represents, really, the best model in the country in terms of prosecuting or investigating complaints of wrongdoing," said Fleming", the Citizens' Representative in our Province.

SOME HON. MEMBERS: Hear, hear!

MR. CROSS: I could not have said it better myself.

Now I move on to sections 22 to 24 in the remaining four minutes or so I have left. I want to talk about the role and the authority of the Labour Relations Board as it is contemplated in this bill. The board is the entity which will consider complaints from employees who believe they have suffered reprisals related to making a disclosure for participating in an investigation, and to award remedies where there is a finding that the action was taken against an employee.

This Labour Relations Board provides an independent and impartial administrative tribunal process. It is very important that all

these areas are covered because due process is put in place which is set-up to support and facilitate self-representation. Someone can go and represent themselves on this. This is not a tribunal where you have to hire a lawyer to go represent you. It is designed; it is supposed to be easy. It is created such that it can be done by someone who would like to represent themselves.

The board is also made up of business and employee representatives with significant experience in labour relations matters. The board process is also designed to deal with all types of complaints that will be filed by employees as it relates to anti-reprisal protection.

Mr. Speaker, this bill states that no reprisal shall be taken against an employee who has, in good faith, sought advice about making a disclosure, made a disclosure, or co-operated with an investigation under this act. These three activities, someone could seek advice about making a disclosure, could have made a disclosure, or co-operated with someone else and they shall find no fear of reprisal.

What does reprisal mean? It is understood to include any disciplinary measures, Mr. Speaker; demotion, termination of employment. It also includes any action that adversely affects the working conditions or the threat to take such actions upon someone. It is not just the actions themselves, but if that person feels threatened that action can be taken against them, that seems to be a reprisal.

Mr. Speaker, an employee who feels that he or she has suffered reprisals from making a disclosure will have recourse to this board by filing a written complaint. The board will review the allegations. It has the power to investigate them. If it is determined reprisal action was taken, the board can order action to be taken to reverse any impacts of these reprisals. Our minister referred to this, as well. A person who takes a reprisal against an employee or directs that one should be taken is subject to appropriate disciplinary action as well, including a fine of up to \$10,000, termination, or other penalties provided under the law.

The Labour Relations Board has powers, too, Mr. Speaker, required to deal with the complaints under the Labour Relations Act. Earlier, I referenced the act that governed the Citizens' Representative; this Labour Relations Board is also governed by an act. There is other legislation that is in there already. Some of these were probably what we referred to earlier when there were certain protections already built into some legislations previously enacted.

Mr. Speaker, I have about a minute left.

A very important provision of this bill is the section which states: if another avenue is available for dealing with a complaint, the board may consider that avenue and take that action. This is relevant, for instance, for unionized employees who may proceed to take action under their collective agreement and also take sort of a joint complaint to the Labour Relations Board. Then they may put on hold the action they have taken with the Labour Relations Board until their collective agreement action has concluded.

Where the board finds a reprisal was made contrary to this act, the board may make various orders including: reinstatement; the complainant return to work; pay compensation; pay cost; action that would cause the reprisal activity to cease, or any other order that would rectify the situation.

Mr. Speaker, the independence of the Office of the Citizens' Rep and the Labour Relations Board from the day-to-day operations of the decision-making process of government will ensure employees will feel empowered and safe to act when they see serious wrongdoing, and prevent the silence that may go on for a long time.

The hope is, as I have stated in the beginning, Mr. Speaker, we are taking the time to put this act in to make it right but we are hoping to never have to implement it.

Thank you, Mr. Speaker. I am sure we will get the support we need for this great legislation.

SOME HON. MEMBERS: Hear, hear!

MR. SPEAKER: The hon. the Member for St. Barbe.

MR. J. BENNETT: Thank you, Mr. Speaker.

Thank you for the opportunity to speak to this bill. It is a well-intentioned but relatively empty document. This document is coming seven years after the promise was made. For seven years the people have waited and waited, and for seven years government has promised and re-promised whistleblower legislation.

Mr. Speaker, it reminds me of the biblical story of Jacob who worked for his father-in-law for seven years to get the wife that he loved. He married her with a veil, only to find it was the older sister and not the one he wanted. That is exactly the way I feel about this piece of whistleblower legislation. It is what people wanted, it is what government promised, but it is not what they delivered. Now is an opportunity for us to lift the veil so people can see. While the bill may be well-intentioned, it has numerous gross deficiencies.

If we start right after section 3, it says, "The purpose of this Act is to facilitate the disclosure and investigation of significant and serious matters in or relating to the public service that an employee believes may be unlawful, dangerous to the public or injurious to the public interest, and to protect persons who make those disclosures."

I ask: Why is it at that point that the employee must go to the Citizens' Rep? Why can't the employee simply go to the supervisor and say: Hey, boss, manager, deputy minister, or whatever, there is a problem going on here? We have a problem, for example, with – it might be somebody who is overseeing the Hope Brook mine and tailings. It might be somebody who is overseeing Muskrat Falls and overruns. It might be somebody who is overseeing maybe paving contracts in Labrador. It could be someone who is overseeing anything, yet the protection is not provided for that person to be able to go to their immediate superior, one up the chain, or two up the chain.

In fact, the person then, if they see a wrongdoing, has to stop and think: I cannot tell the boss, I am not protected; I cannot tell the

boss's boss, I am not protected; I really cannot make a disclosure to anybody except the Citizens' Rep. I wonder if this is something the Citizens' Rep will take an interest in.

Well, I am working in St. Anthony or maybe I am working in Port aux Basques or Goose Bay, and I guess one of these days I might get into St. John's or maybe the Citizens' Rep will come out around here, or maybe I will make a call. I am going to sit down and have one of these appointments with the Citizens' Rep, which is a good idea, to find out something that I talk about.

Why, Mr. Speaker, is it there is no protection extended for that employee to be able to speak to anybody but the Citizens' Rep? That seems to me to be a fairly significant flaw. It is not found in most of the other whistleblower legislation around North America.

In some North American jurisdictions it is extended to private employers as well as public employers, but I am content at this point that it is the public employer. If it is the public interest that is to be protected, then it is the public interest that should be protected. It is provided less protection by the whistleblower having to check with the Citizens' Rep and try to find out if it is something the Citizens' Rep would be interested in pursuing.

Mr. Speaker, I ask the minister: Why does this legislation not provide protection for somebody who wants to file a complaint within the department or within the division? If they see somebody who is skimming funds from some of the government accounts they are dealing with, if they see somebody who is taking government equipment and selling it, if they see somebody who is storing equipment free of charge in the airplane hangar in Gander, why is it they have to wait until the Citizens' Rep is available to discuss this issue with them?

Why are we creating so much extra work for the Citizens' Rep at public expense, unnecessary duplication in my view, if the opportunity was there for the employee to be protected by making disclosures at, or near, or in the workplace? That is the first significant deficiency. If this was to be a three-legged stool then it has one leg gone right there. That will

make it unstable and not a valuable piece of legislation, a necessary piece of legislation, and the important piece of legislation that the government promised, and promised again, and finally has provided us with a very weak example.

The next area of significant deficiency in this bill, Mr. Speaker, is found in the next section 4.(2). It says, "This Act applies only in respect of wrongdoings that occur after the coming into force of this Act." Government members have referred to not wanting the bill to be retroactive. In fact, they are confusing retroactivity with 'retrospectivity'. Shortly, I will refer to a paper that was delivered to the Pension Lawyers Association, I think in South Africa in 2007, explaining the difference between retroactive and retrospective legislation. Clearly, it could be retrospective without being retroactive.

In fact, when I refer to this section 4.(2), this is the clause that provides an amnesty for government and friends. It is the government and friends amnesty clause because it does not provide any protection for anybody until July 1, 2014 or forward. Most importantly, it does not cover anybody filing a complaint or any actions that took place before 2014. Somebody could be committing all sorts of wrongdoing today. They do not have to worry about it.

By way of an example, Mr. Speaker, let's say in 2012 the Department of Transportation and Works – or Works, Services and Transportation, or maybe it is the department of highways for all I know. Let's say they let a contract in 2012 to pave maybe sixty or eighty kilometres of highway in Labrador. Let's say the contract was bid on by a number of bidders. The company that actually was awarded the contract – I suppose the lowest bidder, although not necessarily so – was a friend of government.

This contract was supposed to be completed by the following year, by the summer of 2013. I believe we have an example like that we can look to very shortly. Let's say that contract was supposed to be finished by 2013 and the friends of government who have the contract got into financial difficulty on a contract that was supposed to be completed by July or August, 2013. Let's say the contract contained many clauses, including a force majeure clause, and

even a fire clause which said that if any of these foreseen or unforeseen events intervened – and if that contract were to say that in case of one of these events the remedy available to the contractor is to provide a written notice within fourteen days to tell the government we have a problem performing on the contract and we are seeking relief. If the relief that was set forth in the contract was that the timing of the contract would be stayed, postponed, or delayed for the length of time that the forest fire took, let's say the forest fire was only for two or three weeks and after two or three weeks the contract could resume, then that would mean the contract should be finished by September 2013.

If the company got into financial difficulty and six months later not having paid numerous sub-suppliers, subcontractors, and the people who supply good and services into that contract – and if the job was covered by a bond, or two bonds, maybe three bonds, but let's say two bonds, and the purpose of the bond was to ensure payment for people and, or to ensure that the contract was finished. Let's say somebody working for the Department of Transportation and Works, or any other person felt there was wrongdoing happening in that situation and the contractor was not properly performing.

Let's say we went forward into January of this year, February of this year, March of this year, April of this year, and at some point the Department of Transportation and Works said, that is okay guys, we don't mind. Let's not put anything in writing, but we do not mind that you didn't bother to perform the contract. We are going to load what is left over in this contract into another contract so we can say that it was a big emergency in Goose Bay, we had a short window, and we had to perform really quickly. We can get you out of this mess you have gotten yourselves into, even though you were supposed to have the contract finished by last summer, well within the construction season.

Let's say, Mr. Speaker, somebody knew all of these details and on July 2 went to the Citizens' Rep and said, Mr. Fleming, do I have a story for you. Mr. Fleming is going to say, well, I hope it happened within the last twenty-four hours because you are not covered for anything prior to the last twenty-four hours. What do you

mean you are not covered for anything that happened?

The act says that this act applies only in respect of wrongdoings that occurred after the coming into force of the act and the act came into force yesterday. Obviously all of this stuff that you know about the cost to taxpayers, tens of millions of dollars, we can have a coffee, you can have a chat about it, and you can sort of vent a little bit, but you have no recourse. By the way, if you squawk to anybody at all you are going to be fired because you are not covered by the act anyway. The wrongdoing happened too soon, too early. They beat you, they got away scot-free.

If the government understood the difference between – and maybe they do understand the difference – retroactivity and retrospectivity, they would say that this act comes into effect on July 1, good enough. They would also say that it covers wrongdoing that happened any time two years prior. They would include a limitation period which would say the Citizen's Representative can pursue these matters as long as they are no more than two years old. There would probably be some sort of an amendment in that section that would say the act only applies to wrongdoing that occurred after July 1, 2012.

Mr. Speaker, all wrongdoing that took place within two years before the act coming into effect would be covered and the whistleblower would be covered because the revelation was not made until July 1 or July 2, the day after the act came into effect. It would make perfect sense; home free for the whistleblower, home free for the taxpayers, and the bad guys get told about. The whistleblower legislation works.

Mr. Speaker, either there is a serious flaw in the drafting or maybe the common dictionary interpretation of retroactivity versus retrospectivity the government has not paid any attention to, and listening to government members and even the minister say we cannot make it retroactive. You could not make it retroactive because you cannot cover something that the wrongdoer told the Citizen's Rep about two years ago because the act was not even passed.

In this case I am going to direct the minister, in case he would like to make an amendment to his own bill. We certainly do not want him to withdraw it because having gotten them moving forward a little bit on whistleblower legislation, seven years later, heaven forbid if they stop.

In a paper to the Pension Lawyers Association delivered in 2007 the presenter discussed the difference between retrospective and retroactive. He refers to the logic of the distinction between the two terms: retroactive legislation would mean you did something before and it was not against the law, and that would be a bad thing because people should know what the law is; but retrospective means we can look back, see what you did, and we can provide protection for the whistleblower today for something they told us about that you did six months ago, a year ago, or maybe up to a couple of years ago.

Mr. Speaker, I would not recommend that we go back more than a couple of years because this Province has a pretty good Limitations Act. A Limitations Act that was passed before this government came into power. A two-year limitation period has been applied to many civil matters.

I would recommend or suggest to government they consider 'retrospectivity' as opposed to retroactivity and change or add a clause under section 4, which says, although it comes into effect July 1, 2014, it covers disclosures made for events that happened any time in the two years prior; and further that it contains a two-year limitation period so that in 2016, if somebody wants to come forward, now they can look back and the Citizens' Representative can examine something that happened two years before or one year before. That would be a more effective act.

Providing the definitions, this presenter referred to numerous court cases. They appear to be South African court cases, but South Africa observes the rule of law. Sometimes I wonder if our Legislature does, but certainly our nation is supposed to. Although we have a Prime Minister who does not seem to want to observe rule of law because having lost five references to the Supreme Court of Canada in a couple of years, now he is mad at the chief justice for trying to help him out.

Mr. Speaker, a retroactive statute operates as a prior time to when it was enacted. It operates backwards. We are not saying have it operate backwards; we are saying have it operate retrospective, which means it operates for the future only, but it imposes new results in respect of a past event, being the wrongdoing. It looks backwards and it attaches new consequences for the future to an event that took place before the statute was enacted. It changes the law from what it would otherwise be in respect of a prior event.

Mr. Speaker, in the case of the National Director of Public Prosecutions and Carolus and others in 2000, that was the ruling of the court and that seemed to be a perfectly solid ruling. It would be very helpful if the minister would direct, maybe, the Solicitor General's office or the Department of Justice and ask them to have a look at maybe drafting a revision or a friendly amendment on the government's own part to fix up this part of the legislation so it actually works, and it would actually work for anybody who was a whistleblower who wanted to complain of anything that happened in the last two years. That would mean if something was covered up in paving contracts, if something was covered up in maybe something like Muskrat Falls, if something was covered up in oil spills, if something was covered up in defective bridges, if something was covered up in sea lice for salmon or chemicals being used in the ocean, anything in the prior two years would be disclosable, and the whistleblower would be protected.

Anybody who has not been diligent enough in child protection, the whistleblower could say to the Citizens' Representative: Mr. Fleming, this has been going on for the last year or two and I was afraid to come forward because I had no protection. Now, I have the protection of the whistleblower act. Instead of him saying: Well, let's go have a coffee and talk about it. Now you have two choices. You can put them on notice, but you cannot do anything about it because it has already happened, and the act has some shortcomings. The shortcomings are that I cannot look at anything prior to July 1, 2014.

In fact, this part of the act seems crafted to protect this government from its own employees. From speaking to a number of employees in the

Department of Justice more recently, I can easily attest to the fact that there is a culture of fear in a lot of our excellent public employees working for this government. I have made telephone calls and spoken to people in the legal community working for the government, only to receive a telephone call within less than an hour from the Director of Public Prosecutions saying do not talk to the prosecutors – some who I have known for ten years – do not have a discussion with him, come to me if you have any questions, and preferably put your questions in writing. I am here to help you.

Then when I asked the same Director of Public Prosecutions today about a section under the handbook for public prosecutions in the Province, something that this government produced and he directed me to a particular clause in that handbook, he did not know what I was talking about.

Mr. Speaker, I have spoken with people who work in dealing and helping with victims of crime and who say to me: Well, first of all, you will not tell anybody you were talking to me, will you? I said: Absolutely not. We get private information. This person working with victims of crime says: I have no protection and if they find out that you were even here talking to me, I might get fired.

So, I understand that the legislation seeks to do this, but the legislation leaves a gaping hole. What the gaping hole does is it protects this government from any disclosures of any wrongdoing that is ongoing, past, or current, or future to June 30, 2014. In fact, this government is completely protected from any whistleblowers if they pass this legislation; however, if they were to make it retrospective and maybe gather up the last two years back to 2012, then this government itself would basically be saying to the public: We have nothing to hide. We are going to be subject to this legislation. We are going to make this retrospective for at least two years and if people have complaints about us, take them to the Citizens' Representative, please, because we are an open and accountable government today, instead of having this clause which shuts off any complaints until July 1, 2014.

Thank you, Mr. Speaker.

SOME HON. MEMBERS: Hear, hear!

MR. SPEAKER (Verge): The hon. the Member for Fortune Bay – Cape La Hune.

SOME HON. MEMBERS: Hear, hear!

MS PERRY: Thank you, Mr. Speaker.

It is certainly a privilege and an honour for me to get up tonight and speak to this very important bill, which we have all been anxiously looking forward to in the House for quite some time, and certainly quite a pleasure for us to bring it forward today. One thing that we have taken the time to do with this bill is ensure that we are bringing forward the best piece of legislation possible for the people of Newfoundland and Labrador.

This legislation represents a great step forward towards increased openness and transparency in government by ensuring that those who work in the public service can freely report legitimate wrongdoing or gross mismanagement of taxpayers' dollars, misuse of government assets, or other types of serious and significant wrongdoing that could occur, and an employee can feel free to make these types of referrals under the act without fear of reprisal.

Mr. Speaker, when I talk tonight on the bill, I want to focus on looking at other jurisdictions and how our act applies in respect to those other jurisdictions; but first, I would like to speak a little bit to what the member opposite just spoke about in terms of the date when the legislation comes into effect.

Typically, more legislation is forward facing. It is not very often you see retroactive legislation, as such. It almost always moves on a go-forward basis, Mr. Speaker. In terms of the aspects and content of our bill, I would venture to say that the team of lawyers that we have working for us in the Department of Justice and throughout various departments, the staff who have worked on this bill, I believe, have fabulous expertise. I am a little bit shocked at some of the criticisms that were made against some of the experts that have gone into this, because I truly believe that our staff have prepared the best type of legislation possible and

are very, very good lawyers. That is, I guess, why they are actually practicing law.

Mr. Speaker, I would like to take this opportunity to highlight the experience of other jurisdictions in Canada and how this legislation compares. Newfoundland and Labrador will be the seventh province to introduce whistleblower protection legislation, as currently Nova Scotia, New Brunswick, Ontario, Manitoba, Saskatchewan, and Alberta, as well as the Government of Canada have such legislation in place. This bill largely echoes many of the major provisions found in the legislation of other provinces, but we believe it has improved on a very important aspect of this type of legislation.

Mr. Speaker, in consulting with our provincial colleagues across the country, we have determined that Newfoundland and Labrador's whistleblower legislation will be differentiated from all other provinces by the existence of a single-disclosure route. The use of such a method means that all complaints of wrongdoing are solely reported to, and investigated by, the Citizens' Representative.

This difference, Mr. Speaker, is significant for a number of reasons. Our provincial colleagues advise us that the commonly used dual-disclosure route has presented two key challenges as they try to implement this legislation. First, dual-disclosure routes require the investment of a significant amount of time and financial resources, particularly with regard to ensuring consistency across all departments and public bodies, and the provision of ongoing training to employees tasked with receiving and investigating disclosures. Secondly, public service employees may be unwilling or hesitant to disclose information regarding wrongdoing to a supervisor or chief executive with assurance of protection.

I guess, Mr. Speaker, to use an example of that – and I do believe the member opposite who spoke earlier did speak to this, the Member for St. John's Centre. If you are an employee and you are not typically going to the deputy minister's office on a daily basis, or a weekly basis, or even a monthly basis, then all of a sudden you show up at the deputy minister's office or the assistant deputy minister's office, go in, have a

closed-door meeting, it does start some suspicions amongst your co-workers.

It may, in a lot of cases, prevent someone from actually going forward with something they are concerned about. This gives the employee protection of total confidentiality. They go directly to the Citizens' Representative without having any worries of anyone seeing them or having anything to say about what they are disclosing. It is a very important fact, Mr. Speaker.

The other issue, of course, being that in the Office of the Citizens' Rep our staff are very well trained. Throughout departments, I guess you do see a fair bit of turnover sometimes in departments. By having the Citizens' Representative, you will have experts dealing with this act on a daily basis and, of course, it will be much more cost effective for the Province as well.

Mr. Speaker, it is for these reasons that the Government of Newfoundland and Labrador has decided to use a single disclosure route to the independent Citizens' Representative so that employees in the public may freely – and I cannot emphasize enough the word freely – report legitimate concerns of wrongdoing in keeping with this act without fear of reprisal and receive clear and consistent guidance when they do so. In addition, Mr. Speaker, the Citizens' Representative and the employees of that office are already well trained in such matters and, as I said earlier, it significantly reduces the financial burden on the Province with respect to training.

With regard to the definition of wrongdoing, the legislation is the same as that of all other jurisdictions in Canada. Within the proposed bill, a wrongdoing is considered to include any act or omission that is considered an offence under provincial or federal law regulations, any act or omission that creates a danger to the life, health or safety of a person, or to the health and safety of the environment that may be considered outside of dangerous characteristic of their job, gross mismanagement, particularly of taxpayers' dollars and/or public assets, and advising someone to commit a wrongdoing as outlined in the act.

Mr. Speaker, the types of discipline to be administered to an employee who has committed a wrongdoing as outlined in this bill is similar to that of most other provinces in Canada that have this type of legislation. An employee who is found to have committed a wrongdoing is subject to disciplinary action, such as the termination of employment, as well as any additional legal punishments.

Again, with respect to what is required when a person makes a disclosure under this legislation; the content of that disclosure is similar across jurisdictions in that the disclosure must be in writing, it must include a description of the wrongdoing, it must include the name of the person alleged to have committed or about to commit the wrongdoing, reinforce the date when it occurred, and indicate whether the information was previously disclosed and a response received. So, Mr. Speaker, that outlines what the disclosure must entail.

Another important feature of the bill is that it not only authorizes the Citizens' Representative to provide advice, to accept disclosures, and to conduct investigations, but it also allows him or her to facilitate resolution of matters informally. Mr. Speaker, this is another aspect of the legislation where we are aligned with other jurisdictions. We feel it is very important to allow for informal resolution mechanisms while at the same time ensuring that the formal procedures exist. By allowing this flexibility, the Citizens' Representative can make the determination as to how best to proceed in these matters.

With regard to the definition of reprisal, Mr. Speaker, the legislation also mirrors what is found in other provinces. Within the proposed bill a reprisal means that one or more of the following actions have been taken against an employee, either because they have sought advice about making a disclosure, made a disclosure, or co-operated in an investigation regarding a disclosure.

A reprisal can include a disciplinary measure, a demotion, termination of employment; a measure that adversely affects the employee's working conditions, or a threat to take any of the above measures. So even a threat to do either of those things I listed would constitute a reprisal.

A person who has been found to have taken reprisal action against an employee is subject to disciplinary action, such as the termination of employment, as well as any additional legal punishment. This is also similar to that of other provinces in Canada that have this type of legislation.

Mr. Speaker, it is important to note too, this legislation works in tandem with all of the other acts. Certainly, if there is some wrongdoing and it falls under the Criminal Code, the Criminal Code Act also comes into force. The Labour Standards Act comes into force. The Office of the Citizens' Representative will determine which act any complaints that come forward fall under. Of course, it will be dealt with accordingly as spelled out in that specific act.

Mr. Speaker, provinces with this type of legislation use various entities to consider complaints related to reprisals. This proposed bill would designate and empower the Labour Relations Board as the entity to handle such complaints in this Province. Some provinces, such as Alberta and Saskatchewan, investigate reprisal complaints similarly to disclosures. However, in Newfoundland and Labrador the Labour Relations Board possesses numerous tools to rectify complaints and therefore is the most appropriate means for dealing with reprisal complaints.

Mr. Speaker, I have highlighted just a few of the main components of the bill so as to demonstrate that we are not only building upon that which has been established in other provinces, but we are also being innovative in our single disclosure process. We believe we have proposed a strong legislative framework for public interest disclosure and whistleblower protection for the employees within the public service of Newfoundland and Labrador.

Mr. Speaker, I am very pleased to stand here in the House to speak to this bill and to support this bill when we get to the vote stage. This act, I believe, contributes to increased accountability and integrity within the public service at very minimal cost and ensures that the Government of Newfoundland and Labrador continues to work towards being more open and more transparent.

Mr. Speaker, this is a very important piece of legislation for our Province and our public service. I, for one, will be very happy to rise in support of this bill.

Thank you, Mr. Speaker.

SOME HON. MEMBERS: Hear, hear!

MR. SPEAKER: Order, please!

The hon. the Member for St. John's East.

MR. MURPHY: Thank you, Mr. Speaker.

I take pleasure in rising in my place here this evening to talk about the whistleblower legislation. It is a happy day for us, I think for everybody in the House that finally this piece of legislation has come out. It was promised back in 2007. I think it was a request from our party to the government of the day that they would bring in this type of legislation. We look at it as being a – so far what we are seeing anyway, and it remains to be tested of course when the legislation comes into effect, whether it is going to be good or bad or what resources are going to be needed.

I say to the minister now, this piece of legislation may be so successful to the point that he may need more financial resources, more investigations, that he may need help in his department. So I am hoping that government is going to be pouring a few more dollars into the Office of the Citizens' Representative to meet that challenge, if that challenge happens. That may be a management question indeed; but, like I said, if there is only going to be one person investigating, we do not know exactly how many people are going to be stepping forward. I just wanted to bring up that point. We will probably chat about that in Committee when it comes up.

Mr. Speaker, just to start off and to address some of the points that have been made about – section 4 I think was brought up earlier. One of the things that I looked at when I was going through the legislation myself, section 4 states, "This Act applies to the following wrongdoings in or relating to the public service". It talks about the implementation date of July 1.

When I went further over in the legislation, it was in section 15.(1)(c) that more or less answered the question about time. Because I do not think – my personal feeling is anyway – when you are talking about a statute of limitations, you are talking a statute of limitations on what? You could be talking a statute of limitations on an ongoing theft, for example, that could be happening in a department that we do not know about.

It is under section 15.(1)(c) where I think that is addressed. Let me read the heading, "The citizens' representative is not required to investigate" – keep in mind they say not here – "a disclosure and the citizens' representative may cease an investigation if he or she is of the opinion that..." – and here is what it says in section (c), "so much time has elapsed between the date when the subject matter of the disclosure arose and the date when the disclosure was made that investigating it would not serve a useful purpose". There is kind of a timeline here, in my mind anyway, that is being set here that it does not include just everything that happens from July 1 or anything; it could be things that are ongoing and happening within a department too. So I think that was probably answered, to myself anyway, when I read that particular piece.

There are a couple of other times where the Citizens' Representative would not be required to investigate. I will not get into them right now, but that particular section there kind of answered a question that I had in my mind about the time component here.

Mr. Speaker, again, like I said we are glad that this piece of legislation has finally come forward to the House; it has been a long time coming. Like I said, that promise was made pretty much back in 2007 at the behest of government, and we know the government is trying other things to try to open things up a bit. We know that the Open Government Initiative, for example, is now going and they have a new Office of Public Engagement that has started up. Hopefully, we will see more coming out with that in the future.

They have come out with a new protocol, for example, for the oversight of Nalcor. We are hoping that is going to be effective as well. As well right now, we have an ongoing review of

the ATIPP legislation, and of course that was all brought about by the fiasco, I guess you could call it, behind Bill 29 and the faults that we found in that – and we talked about that for a long time.

The government have said that they have spent many a year at this, and they certainly have. I have to say that back in 2007 we can go back to the Minister of Justice, for example, of the day, they had been saying that they had been making time to do their work and do it right, and that they were looking at other provinces to see how their legislation was working. They have done whistleblower legislation as well in little bits and pieces. They have progressed in some departments. I have a list of some of those pieces of legislation too that they came out with, and how they do it.

The Environmental Protection Act, for example, voluntary reporting under section 10; we have the Labour Standards Act, which talks about discrimination under section 78; we have the Occupational Health And Safety Act, the changes that were made there under section 49, the allegations of discrimination under section 51 of the same act.

We also have probably one of the most important ones that government came out with, one of the changes, was the Personal Health Information Act, the non-retaliation section under section 89, where it says, “A person shall not dismiss, suspend, discipline, demote, harass or otherwise disadvantage or penalize an individual where (a) the individual, acting in good faith and on the basis of reasonable belief, has disclosed to the commissioner that another person has contravened or is about to contravene a provision of this Act or the regulations”. It goes on; I will not list off the other sections of it, but there are four particular sections of the act here and I will just mention one of them.

Government has done this in bits and pieces. They were all good changes. They were forward thinking and, of course, this act, the section in this that was kind of important is that this act here is going to circumvent all those and include all those, I guess you could say, for all intents and purposes. If there is anything in these sections that is missing, this is going to be the piece that is going to cover it. That is my

understanding of it. If there is anything that cannot be done under one of the other sections of the act – I am just trying to quickly look for the section here now after reading it a bit earlier. I cannot find that section. If I find it, I will come back to it again.

Again, this act is going to circumvent all those and probably, I guess, for all intents and purposes you can call this an umbrella, an umbrella to the other acts that we have out there. I think in that particular end of things it looks pretty good; but like I said, we will go to Committee later on this week or whenever the government is expected to bring it back in and we will ask those questions of the minister in question and see if we cannot get some answers. If we find any problems then, we will find them then.

The real sad part about this, Mr. Speaker, is that we can go by the Manitoba example on this. This piece of legislation has come forward with about seven years, according to government, of research when we could have had it gone through a standing committee of this House of Assembly and this piece of legislation could have gone through years ago. We could have gone out, done the groundwork, found out about the various pieces of legislation out there around the country and probably come up with the same example, for example, from Manitoba or Saskatchewan.

A failure of having standing committees to look at pieces of legislation rings true with this piece of legislation and the time frame that it took for this piece of legislation to actually enter into the floor of the House of Assembly and be discussed by us as Members of the House of Assembly. A lot of people have suffered, you could say, in the long term of that.

Unlike our process here in Newfoundland and Labrador, Manitoba brought their legislation in, in 2007; but previous to that, like I said, the draft whistleblower legislation went before a provincial legislative committee so witnesses could discuss the issues. We would have been able to call in witnesses on that and be able to discuss this bill. I say that it is kind of sad that we did not do that. We would have been able to do a lot of things in the process by having to meet this challenge upfront as the House of

Assembly, discuss it on the floor, call in witnesses; and again, it just shows that if you do not have standing committees that are ongoing, taking pieces of legislation, or taking the ideas that people have out there and talking about them as a group because we are all in this together, and here is where it shows itself, right here. It showed itself with Manitoba; they have done that.

In March, the Auditor General of Manitoba was concerned that civil servants were not blowing the whistle on ethics violations. They did have some problems with it. Less than one-third of Manitoba's civil servants felt that they were protected from punishment for reporting an ethical concern, and only half of those, personally aware of one, chose to report it to the province's Auditor General. That is what he said. Some people were not even aware that the legislation was in place to grant themselves some sort of protection if they went to actually report under their own legislation.

The knowledge factor in getting the facts out about what this piece of legislation is going to be able to do, and the powers that – I guess, we will use the employee as an example – an employee would have for their own protection at the same time, some of them did not even know that it was there. They did not know it was there.

We are going to have to get out there and tell our civil servants at the same time that this piece of legislation is there and we are going to have to run an educational class, if you will, an educational program of some kind to make sure that everybody knows what are their powers under this particular piece of legislation and what protections that they will have, more importantly, under this particular piece of legislation.

In Manitoba, they took an audit of 5,000 employees. They found that 94 per cent of the workers believe ethics and integrity are critical issues, but only half felt that violators would face appropriate consequences. While they were instilled with some faith in the legislation, they did not believe that there was actually going to be follow-through to actually make either a conviction or to right the wrongdoing.

Fifty-five per cent did not believe the theft from the department would be discovered. Some of these are statistics that are there that would government would need to pay attention to while this legislation rolls itself out. The auditor also found the whistleblower protection legislation was underused, perhaps because 72 per cent did not know who the designated officer for such disclosures were, or was in this particular case.

If you are going to have a reporting mechanism at least everybody knows here – and that is why I say that this particular component is good – that it is going to be the Citizens' Representative who is going to be responding to these complaints, that we know of. Again, like I said, if there are going to any number of calls, he may very well be overwhelmed with some of them, so it is a concern.

While nearly one-third were personally aware of fraud or misconduct, only 53 per cent of them actually reported it. Of those who reported, 29 per cent claimed they experienced retaliation for doing so. I think we can do better with that number. I think we can lower that number to zero with the proper work on it.

The auditor also noted that the Province lacks an anonymous reporting system. Now, while I think anonymous would be one question that would need to be answered, of course, we know that the Citizens' Representative in this piece of legislation – I think the person has to disclose who they are to the Citizens' Representative. So, there are still some questions here.

It seems that in our legislation confidentiality is built into it as far as it can, being short of a criminal matter. A Manitoba government statement said it would be reviewing their current conflict of interest policy, as well as reviewing whistleblower policies and legislation to enhance employees' ability to report wrongdoing without fear of reprisal. If you want somebody to report, there is always going to be that fear of reprisal I think. We have to make sure that is strong, that there is not going to be any fear of reprisal. Like I said, we could be dealing with anything here on a timeline that can go a long time back and finally end up being reported. That person is going to need protection.

The final point is how our government is going to do workplace education on this issue. What are they going to do about making the whistleblower legislation actually work for public employees here? We are just hoping that they are going to be motivated enough to make it work. I think there is some hope here that government has it in the right mind to do it. We know, certainly, it is well past time that it is done.

We have the examples of what happened in Manitoba. The statistics are there to speak to it, that there were problems with it. They went and put it through the Committee phase and discussed it around – called witnesses before the Committee and had input, and they still had issues with it. So I do not think you are going to get 100 per cent perfect legislation until you actually work the legislation and develop regulations around it.

Mr. Speaker, those are a few of my thoughts on it. Again, we will rise in the House later on to talk in Committee about this and ask questions of the minister then.

I want to thank you for your time and hopefully we will be able to rise again on the issue.

Thank you very much.

SOME HON. MEMBERS: Hear, hear!

MR. SPEAKER: Order, please!

I recognize the hon. the Member for Cape St. Francis.

SOME HON. MEMBERS: Hear, hear!

MR. K. PARSONS: Thank you very much, Mr. Speaker.

I just listened to the previous speaker, and he talked about Manitoba's legislation. The only thing I heard on the other side of the House tonight is they are complaining about the length of time it took to bring in this legislation. He just spoke about Manitoba and what they went through. When they brought in their legislation they did not have it done properly. There were all of these defects and there were all of these problems that they had. Well, Mr.

Speaker, I have all the confidence in the world in the people in the Department of Justice and the lawyers with government who have looked at this and have gone to other jurisdictions right across Canada, and, indeed, right around the world to look at the type of legislation we are bringing, and what we need to bring in.

When you look at this piece of legislation – I listened tonight to the members opposite me, I think they all agree that it is a great piece of legislation. Grant it, seven years seems like a long time, but I would say whatever you are doing, if you do it right in the first place then it is well worth bringing in the legislation. If it does take time to do it – but make sure you bring it in properly when you do.

Mr. Speaker, he also alluded to different committees of government. I had the opportunity in the last number of years to work on Public Accounts, and we do what you ask for. In Public Accounts we call in different organizations. The Auditor General does his report. We go through the Report of the Auditor General. So it is basically the same thing.

We do a standing committee. To say there is no committee in government, it is just not true. You are represented on the Public Accounts, so you know that, and you know the good work we do. When we call in different people that the Auditor General has a problem with, we do that on a regular basis. Last year I think we had six different hearings, and the year before I think it was seven. This year we are already going to set up some more. It is a joint committee with all members and all parties involved.

Mr. Speaker, whistleblower legislation in general terms is aimed to increase the integrity and the accountability of government. There is a general concept and national and international best practice principles which provides guidance to jurisdictions all over the world. It is important that we listen to what happened all over the world, and that is what we have done. We went out to other jurisdictions and we listened to the problems they had and we are looking at the best practices our government can do to make sure that this whistleblower legislation works for everybody. I am pleased to be here today to demonstrate how this proposed bill is consistent and it is best practices.

Mr. Speaker, first of all, the purpose and intent of the bill is to be consistent with the best established principles of whistleblower legislation, in that it facilitates disclosure of wrongdoing and outlines a clear process for disclosures, investigations, recommendations and actions. Most importantly, it ensures that the employee who makes the public disclosure is protected against any reprisal action. That is the basis of the whole piece of legislation.

The problem with any whistleblower legislation is that people do not feel confident in the legislation and they will not come forward to make their disclosures or make their complaints. In fact, the title of the bill itself represents the objectives, which refers to not only the public interest of disclosure but also whistleblower protection.

Mr. Speaker, other guiding principles of strong whistleblower legislation is that it should specify the types of wrongdoing covered, including a significant wrongdoing interaction within government, and the best public interest of the public and government itself. The definition of wrongdoing should include any illegal crime, a breach of law, corruption, breach of trust, a misappropriation of public funds or property, a failure to perform a duty that could result in unacceptable risk to public health, public safety, or the environment.

Mr. Speaker, this bill clearly outlines the types of wrongdoing covered under the legislation. Employees can really make the determination. It could be suspicious; they could have a suspicion there is something going to happen. It could be evidence covering certain behaviours as to whether the concerns fit within the definition of wrongdoing.

Another principle of strong whistleblower legislation is reporting wrongdoing should not be difficult. It should allow disclosure of suspicions as well. Strong whistleblower legislation allows for easy reporting. The law should allow whistleblowers to decline participation in suspected wrongdoing without sanctions or penalty results. Mr. Speaker, that is what this bill does.

The definition of wrongdoing includes illegal activity under the Newfoundland and Labrador

and Canadian law, as well as gross mismanagement of public funds and public assets. Again, this specifies very strong legislation, Mr. Speaker.

Another key principle to solid whistleblower legislation is it should clearly state there will be no harassment of any kind toward any employee who seeks advice – who not only discloses, but seeks advice to say, listen, I am not sure if it is proper to whistleblower legislation. There is no reprisal to that person, or to the person who actually makes the disclosure.

It ensures that any employee who feels he is being harassed, disciplined, or negatively impacted in any way for seeking advice regarding reporting of wrongdoing or having assisted in investigation of wrongdoing, he has a resource. The Labour Relations Board has the power to act decisively against anyone instigating or threatening reprisal of any kind, or counselling another to take reprisal action against an employee.

Mr. Speaker, the government will not tolerate any harassment to those making a disclosure in the public interest, and have empowered the Labour Relations Board to ensure that reprisal action is dealt with. The Labour Relations Board is also empowered to order retribution to employees found to have been affected by reprisal actions as a result of disclosure under the act. Further, Mr. Speaker, the Labour Relations Board is an independent judicial body that mitigates a variety of employment and labour relations matters. The board has been vested with the powers to make decisive decisions under the law. Mr. Speaker, decisions of the board are enforceable as judgements or orders of the court.

Mr. Speaker, utilizing the Labour Relations Board is a very important part and piece of this legislation because what it does, it is an independent body. In other jurisdictions right across Canada, they use internal people who come in and decide whether the person is after getting harassed, or disciplined, or something like this. The independent body is very important. They have the power to summons witnesses, to hear evidence, and undertake a full investigation on matters referred to it.

Mr. Speaker, the power ensures that the board has the authority necessary to make decisive investigation reprisals. The board is made up of employers, it is made up of employee representatives, an independent Chair, two Vice-Chairs, and is well positioned to act independent – a fair-minded enforcement agency related to reprisals, threats of reprisals or the intervention against those who are simply supporting the investigation of wrongdoing.

Under the proposed legislation there is a punishment, a fine up to \$10,000. Judgement can be to those committing reprisals and can be enforced by law. Mr. Speaker, the bill is compensative piece of legislation aimed to protecting employees making disclosures and enforcing penalties for those who have taken reprisal actions against employers who come forth with wrongdoing. This bill is designed to protect the confidence of the employee, that they can come forward and report wrongful doing and thereby ensure that the integrity of the public service is protected.

Mr. Speaker, the protection is similar to those in other jurisdictions in Canada as it is universally recognized that such protection is an integral aspect of whistleblower legislation. The provisions for reprisal and enforcement of those under the Labour Relations Board are critical to this bill. This will ensure employees are not fearful for disclosing illegal acts and gross mismanagement of public funds and assets. This disclosure will made them believe, so there will be will no backlash towards them.

Mr. Speaker, while jurisdictions in Canada investigate – like I said earlier – reprisals and they do it in an internal way, the Labour Relations Board investigates reprisal complaints and under this act has ensured that complainants will be handled appropriately, an independent body to empower and make sure that their issues are answered. Employees under good faith report wrongful doing and come forward understanding that they will be listened to and the action that they have taken will be protected against any reprisals.

The board may permit complainants to return to his or her duties, reinstate the complainant, and pay for damage if the complainant feels that trust cannot be restored. Mr. Speaker, the

Labour Relations Board also proposes the authority to order persons to do certain things or to restrain from doing certain things in order to remedy issues.

As such an act, employees feel secure to acknowledge their disclosure for wrongdoing, feel free that reprisals and that their access will have no actions against them. Mr. Speaker, the development of this legislation has taken into consideration best practices, key principles, and experience from other jurisdictions from all over Canada. We believe that a comprehensive framework will deal with the disclosures of wrongdoing and whistleblower protection.

Mr. Speaker, this act is very important to our employees. It is very important that they feel that they have the right to go and make their complaint and make sure that they are not harassed or disciplined in any way for making a complaint, which they feel is in the best interest of our government and feel that the safety of individuals and safety of our environment is properly in place.

I am going to be supporting this piece of legislation. I think it is a great piece of legislation. Not only do I think it, the Member for Bonavista North said today that the Citizens' Representative, Barry Fleming, calls this a good day for the public service.

Mr. Speaker, I call this a good piece of legislation for the public service. I think that the majority of the public servants are very pleased today that this is brought in. It will make our government more open and accountable, and that is what we are doing.

Thank you, Mr. Speaker.

SOME HON. MEMBERS: Hear, hear!

MR. SPEAKER: Order, please!

I recognize the hon. the Member for Burgeo – La Poile.

MR. A. PARSONS: Thank you, Mr. Speaker.

I am happy to stand here this evening in the House of Assembly and speak to Bill 1, An Act Respecting Public Interest Disclosure. This is a

bill that has been long awaited, long promised, and we are so happy to see it here on the floor.

The first thing I would like to say is that much appreciation should go out to the Department of Justice officials who took the time to brief us. They sat with us actually last night. Those people took their time to sit down, after hours, to go through this, so for that I am very appreciative. They work long days and for them to sit with us and go through it, to make sure we had the opportunity, because the fact is it is very hard – we have a great responsibility placed on us when we debate this legislation, and we want to make sure that we feel we have enough time to read it over, to have a chance to research, to have a chance to review it. So, in this case, they were available yesterday afternoon. Some of us could not make it because the House of Assembly was about to start and we had to get ready, so they came back last night. So, to those officials who are out there, I say thank you very much.

Going to the bill, again, this is something that has had a bit of a history. It was something that was promised in 2007. It is like a lot of things promised in 2007, great promises, did not see anything on it, but glad to see it now. We have always wondered what took so long, because it is not a case of having to reinvent the wheel here. This was not a piece of legislation that this government had to draft up and come up with on its own. This did exist in multiple other jurisdictions across the country, so we did have the benefit of being able to look at other jurisdictions to see what they did, how they were working, and then make ours happen. In this case, it took seven years for that to happen. Again, as the phrase goes, though: better late than never.

I think I am going to echo the comments of my colleague, the Member for St. Barbe, when he states that the legislation is well intentioned, but weak. That is precisely what this is. This legislation is a good start, but we do have some issues with it, and we are going to lay those issues out. It is one thing to talk about our problems with legislation, but we are also going to propose solutions to that. I think my colleagues have laid out a number of their concerns and will continue to do so as second reading continues, and then especially as we

proceed into the Committee stage of this piece of legislation.

So again, we have the bill itself – it is not a huge, huge piece of legislation, but there is a fair bit to it. What I think I might do is just start to go through it and pick out some of the different points that – again, I may have some questions on it, and what I might even do this evening is I will put questions out. I know the minister and his staff are listening to what we have to say. There are staff out there who are hearing what we have to say. When the minister has to speak again, he will put forward those answers to the questions that we have. I will put them out there now. I know he is not going to answer them tonight. That is fine. I know he will get an opportunity to do so later. He closes the debate, and he has the Committee, so we have plenty of time.

Again, when you look at this, we all know what the whistleblower legislation is supposed to do. It is supposed to provide protection to those who are bringing forward wrongdoing that is going on.

We look at section 4, which talks about the types of wrongdoing. You have (a) which is “an act or omission constituting an offence under an Act of the Legislature or the Parliament of Canada, or a regulation made under an Act; (b) an act or omission that creates a substantial and specific danger to the life, health or safety of persons...”.

They actually made a note last night of pointing out that this was not something that was covered in the House of Assembly Accountability and Integrity Act. This is something they wanted to make sure was here.

Section (c) is interesting, “gross mismanagement, including of public funds or a public asset”. I think that is important. It is going to tie into something that I am going to bring up after which is the date that this piece of legislation is going to come into force, which is July 1. We have some issues with that as well, Mr. Speaker.

Also, (d) “knowingly directing or counselling a person to commit a wrongdoing described in paragraph (a), (b) or (c).” It lays out very clearly the wrongdoings. We know this applies

to the public service. We know there are omissions, one being Memorial University. The reason being that they have their own.

It goes into sections 5, 6, and 7. We talk about discipline for wrongdoing, request for advice, and disclosure by employee. Some of these seem well intentioned. I have no reason to think they are not useful; one being the request for advice. You can request advice from the Citizens' Representative.

It has been mentioned here on numerous occasions this evening about the Citizens' Representative being the main person involved in this piece of legislation because this is who all of the complaints go to. I am assuming the first thing we are going to see after July is probably an increase in the resources that have to go to the Citizens' office if they are going to handle these type of matters. I guess we can look forward to that.

We can only look back at this after a period of time, a year or two years. I know there is a report. It is going to be interesting to see how many complaints do come forward, how many are investigated. We cannot figure that out now obviously, but we can look forward to seeing what does it catch and who comes forward. Hopefully, there is none.

That is the whole point here. It is a piece of legislation that you do not want to have to use. We do not want to see anybody blowing the whistle because we do not want there to be any reason for the whistle to be blown. That is the whole point here, but we have it in place.

We talked about content of disclosure. The big thing to me is the anonymity that is required. A person obviously has to put their name on it and the Citizens' Representative will know of it but the people above, the people they fear will not have access to that name. That is obviously important, because one of the reasons people do not go out there is they have fear of reprisal. Even if they feel they are making a complaint, there are other ways that people can get back at them. We have seen that before. It has happened.

A couple of things, I have a few notes. I will just go to the side here for a second. One of the

issues I have when we get into this is section 15. Section 15 talks about when an investigation is not required. I am going forward a bit because I only have twelve minutes left.

What it says here is that, "The citizens' representative is not required to investigate a disclosure...if he or she is of the opinion that" – and there are a bunch of things here – it would be better dealt with by somebody else or a procedure under a different act, that is fine; "the disclosure is frivolous or vexatious". Whenever I hear those terms I think of another debate we had on another occasion. Whenever I hear frivolous and vexatious, those terms are burned into my brain from another debate because we know how many frivolous and vexatious requests came in at that time. There were so many, hundreds and thousands.

Now, here is where I think we have one issue, and that is in section 15.(1)(c), "so much time has elapsed between the date when the subject matter of the disclosure arose and the date when the disclosure was made that investigating it would not serve a useful purpose". That right there is a prime example of the law being ambiguous and vague. That is the problem I have here, it says so much time. How much is so much time? What is the measure that we use?

There are other pieces of legislation. There are statutes of limitations. If you take a civil action, we know you have two years from the date the injury is discovered in which to make your claim. Anybody who has ever been involved in a personal injury claim or a civil claim, of which many people have, the lawyers tell you that you have two years and that is strict. You know you have to operate within that two-year time period. There is no wondering, was it enough time? Was it too much time? Should we have a year? Should we have six months? Should it be three years? It is two years. There are no ifs, ands or buts.

The good news is in that case it goes from the date the injury is discovered. Because in many of these cases you have the tort or the wrongdoing, but you may not know you have suffered injury which is the cause of the damages. You might not know that for six

months. Well, that should not be your fault. The wrongdoing was done by someone else.

There are limitations. There is two years, there is six years, there is ten years, but in this piece it is vague. We do not know how much time. We have to hope it is within there, and I have an issue with that. Why would we write a piece of legislation and have it so that it can be interpreted in any number of different ways depending on the day? I do not see the need for that. I think that should be changed there. I think if we can have limitation periods on virtually everything else, why can't we have it on this? We need to have some kind of certainty here. I think that is an issue.

Again, I am sure the minister will explain that when he gets an opportunity. Why won't we get that? We asked the individuals who briefed us last night. I was not quite satisfied with that. I think when you are writing legislation you have to write it with some certainty. There is certainly none here.

We continue on here. One of the other things that I do have an issue with is when you get to section 19. I guess what happens here is that we have already talked about the single and dual disclosure here, and we have, in this case, single which I believe is different from the other provinces.

I note the Attorney General stood up in May, 2012, upon questioning by us, and said: Well, the reason there was no whistleblowing then is that there were lots of problems with all the other provinces, all their laws had problems. I never heard what those problems were. Maybe that is something we can ask upon in the Committee stage. I would like to know: What were the problems that were identified there and how do we fix them? I think that is a relevant question.

We know that in this case you cannot keep it internal. You have to go outside to the Citizens' Representative. The Citizens' Representative investigates it. The Citizens' Representative makes a decision, informs the proper people, and makes recommendations. This is one of the problems that – again, this is a piece of legislation that has little in the way of teeth, very little.

Section 19.(1) “When making recommendations, the citizens’ representative may request the appropriate department or public body to notify him or her, within a specified time, of the steps it has taken or proposes to take to give effect to the recommendations.”

A person blows the whistle, gives notice of something like gross mismanagement of government funds or serious wrongdoing, they bring this up. They go to the citizens’ rep, the citizens’ rep does an investigation, the citizens’ rep goes to the department and says, here is what happened and here is what I recommend you do. Then, he may request that the department come back and say this is what we did.

We did this in Bill 29 too, may versus shall. I think in this case you could easily make a claim here that it should be: shall request the appropriate department to provide the steps that they have taken to address this problem. Why would you maybe ask them? If this person took the time to go through this, that department better answer – no questions; come back and tell us what you did.

The second part here is: within a specified time, of the steps it has taken or proposes to take. So, again, if you make this complaint, the Citizens’ Representative says here is what you should do and you might go back within a period of time and the department could say to you we actually have not done anything yet. What are you going to do about it? Nothing. This is a problem when we have these ways of getting around the wrongdoing.

Where the citizens’ representative believes that the department has not appropriately followed up on his recommendations, or did not co-operate in the citizens’ representative’s investigation, they can make a report on the matter in the case of a department, to the minister responsible; or in the case of a public body, to the board of directors and the minister responsible.”

I go to the department and I say your department has an issue. Your department has an issue and this is what your department shall do. The department does not do anything. So what you are going to do later is go back to that department and go to the minister and say that

your own department did not do this. It is absurd.

How are we going to get anything done here when they know that there is no fear of having to comply or take action that is necessary here? There is lot of wiggle room is what I am saying here – lots of wiggle room. Depending on who you are dealing with, you could get a department that says: What are you going to do? Force me to do something. How do we force them? We can have a sternly worded report. Let's hope that it is very stern.

I guess what I am getting at, without being facetious here, is that the departments have to realize that if they do not play ball – or a public body – that there are going to be repercussions. This person takes the time to make this report of wrongdoing, we find out there is wrongdoing, and nothing is done about it. That is going to be an issue.

I am going to continue on here. The last section of this piece of legislation, section 30, says, "This Act comes into force on July 1, 2014." Again, I have an issue – and I think the Member for St. Barbe alluded to this earlier. God forbid that there is gross mismanagement of government funds today. You are not going to be able to do anything about it, because it is before July 1. I hope there is no gross mismanagement of funds going on right now. I hope there is nothing. Somebody in those departments would not have an opportunity to say anything, because they would have a fear of reprisal and that would not be addressed because this law is no good until July 1. Why can't we go back? What is stopping us from having a retroactive piece of legislation?

SOME HON. MEMBERS: Oh, oh!

MR. A. PARSONS: Yes, we can go back.

I must have got a rise, Mr. Speaker, because they are all standing up now. If they want to stand up and speak about it – if the Member for, say, Fortune Bay – Cape La Hune wants to stand up and give me her thoughts on retroactivity, I would love to hear them; and you should, because it is an important topic. What I am putting forward here is a serious, serious piece.

Anyway, I put that out there and if they want to talk about it – and again, if it is not in their script, I am sorry. I am talking about July 1, 2014. So anything that happens up until then, there is nothing we can do. So what I am saying to you: Why can't you go back a year? Why can't you go back two years? If you want to go back ten years, that is fine too; but here is the other problem. Going back to section 15, section 15 says that there is no time period. The Citizens' Rep can make a decision. There is no actual time period. It says, "(c) so much time has elapsed between the date when the subject matter of the disclosure arose...". So what I am saying is that I do not see why you could not go backwards here. Again, I still think you should have some kind of definitive timeline here on when you can make the complaint or not. You should have some definitive time.

So, I put that out there. I hear lots of commentary from the other side. I hope they all stand up and speak to this. They should, because again, it is a piece of legislation that is well intentioned. They obviously had lots of time to plan it, because it was seven years in the works. We are putting forward some complaints – not complaints. Actually, that is the wrong word, sorry; I take that back. We are putting forward some suggestions – constructive suggestions. I hope that they will listen to our constructive suggestions, and they have an opportunity to respond to them and tell me how wrong I am.

MR. HEDDERSON: (Inaudible).

MR. A. PARSONS: Tell me how wrong I am. I say to the Member for Harbour Main, tell me how wrong I am. They have nothing to say. So again, there it is. I am standing up and putting it on the record; I invite them to do the same.

I look forward to continuing this discussion in Committee.

Thank you, Mr. Speaker.

SOME HON. MEMBERS: Hear, hear!

MR. SPEAKER: The hon. the Government House Leader.

MR. KING: Thank you, Mr. Speaker.

I move, seconded by the Minister of Environment and Conservation, that we adjourn debate on this particular bill.

MR. SPEAKER: The motion is that debate be adjourned.

All those in favour, 'aye'.

SOME HON. MEMBERS: Aye.

MR. SPEAKER: All those against, 'nay'.

Carried.

The hon. the Government House Leader.

MR. KING: Thank you, Mr. Speaker.

I appreciate the patience of all members in the House, sitting in the first night sitting of this session of the House. At this point in time, I move, seconded by the Minister of Environment and Conservation, that we do now adjourn the House.

MR. SPEAKER: The motion is that the House be now adjourned.

All those in favour, 'aye'.

SOME HON. MEMBERS: Aye.

MR. SPEAKER: All those against, 'nay'.

Carried.

This House now stands adjourned until 2:00 p.m. tomorrow, Wednesday, being Private Members' Day.

On motion, the House at its rising adjourned until tomorrow, Wednesday, at 2:00 p.m.