Title: Monday, October 24, 2005 COI Review
Date: 05/10/24
Time: 9:04 a.m.
[Dr. Brown in the chair]

The Chair: Good morning, everyone. I guess we can get started now. I think we've got a good attendance, well in excess of our quorum requirements.

Before we proceed, I just want to introduce Nancy Mackenzie, who is with us this morning. Nancy is the writer that we've chosen through the request for proposal process, and she's going to be assisting us in drafting the recommendations of the committee. Welcome, Nancy.

I guess we'll start by introducing everyone at the table. We'll start down there with the staff.

Ms Sorensen: Rhonda Sorensen, communications co-ordinator with the Clerk's office.

Mrs. Mackenzie: Nancy Mackenzie, writer.

Mr. Reynolds: Rob Reynolds, Senior Parliamentary Counsel.

Ms Dafoe: Sarah Dafoe, with Alberta Justice.

Ms South: Karen South, office of the Ethics Commissioner.

Mr. Hamilton: Don Hamilton, Ethics Commissioner.

Ms Croll: Sandra Croll, personnel administration office, representing the Public Service Commissioner.

[The following members introduced themselves: Dr. Brown, Mr. Groeneveld, Mr. Lukaszuk, Mr. Martin, Dr. Miller, Dr. Morton, Mr. Rogers, and Mr. Shariff]

Mrs. Sawchuk: Karen Sawchuk, committee clerk.

Mr. Elsalhy: Mo Elsalhy, Edmonton-McClung.

The Chair: Before we start, I just want to mention that Mr. Elsalhy has been attending our meetings quite faithfully from the inception. The chair has been advised by the Leader of the Official Opposition that Ms Pastoor is wishing to be relieved of her obligations on the committee due to other time commitments and so on, and apparently Mr. Elsalhy will be attending. When the Legislature comes back in, we have to go through the formal process of replacing Ms Pastoor.

So welcome, Mr. Elsalhy. Again, you've been here and are well familiar with what's going on in the committee. We look forward to your participation as an official member.

The meeting packages were delivered to everyone. I just want to go through and make sure that everyone has the materials that were sent out. We have a submissions summary chart. The reason I asked for this to be done was that there was a lot of paper floating around, and it was very difficult when we were going through a particular question to have to flip through all the submissions to see whether or not there were particular comments that were relevant to each one of the questions. Now we have a table that is organized by question number in the discussion guide, so as we go through each of the questions in numerical sequence, you'll be able to see what the submissions were on each of those particular questions.

Dr. Morton: Is that under tab A, or that depends on how it was filed?

Mrs. Sawchuk: Yes.

The Chair: Yes, tab A. That's correct.

Dr. Morton: Thank you.

The Chair: That's new. We had another little table that was done up before, but it wasn't done up by question number; it was done by submission.

We've had a couple of additional submissions since the last meeting. Summaries of those submissions have been given to you as summaries 19 and 20, so you should have those.

Next you should have a number of information papers, numbered 4 through 11 and 13 and 14. Is that right, Sarah?

Ms Dafoe: That's right.

The Chair: We're missing 12, right?

Ms Dafoe: Number 12 is noted on the bullet beneath.

The Chair: Okay. We have Information Paper 12 from the personnel administration office. Is that right?

Ms Dafoe: Yes.

The Chair: Then we also have the discussion guide. You already had a copy of the discussion guide.

So if there's anyone lacking any of those materials, you may want to see Mrs. Sawchuk.

We've got two full days scheduled for the committee. It's my hope and our expectation that we will get through all of the questions during this round of meetings and have some full discussion on that. The procedure that we will follow thereafter I anticipate would be that we would come back with some draft recommendations and some further information that our resource people, Sarah Dafoe and Rob, may be able to provide us. At that point we will get into the detailed discussion about the actual recommendations.

9:10

On the minutes from the September 19 meeting, included in the packages, are there any errors or omissions that anyone wishes to bring to the attention of the committee? Hearing none, could I have a motion to approve the minutes as circulated?

Mr. Shariff: Yeah. So moved.

The Chair: Mr. Shariff. All in favour? Anyone opposed? That's carried.

Okay. We'll move on to question 7. We left off after having discussed question 6 last time, so question 7 in your discussion guide: "Do the referenced restrictions and prohibitions adequately address the principles of impartiality, as outlined in the Preamble?"

Anybody like to kick off discussion on that item?

Mr. Shariff: Based on the feedback, I'm getting a sense that it's adequately reflected therein. It appears, based on the responses that I'm just reading, that there really isn't much of a need to change very much.

The Chair: This topic has been discussed in previous meetings, and I think there was reference to the fact that while it's referred to in the preamble, it may not be properly reflected in the legislation itself.

Dr. Miller.

Dr. B. Miller: Yes. In reviewing the Tupper report, recommendation 3, on page 26, mentions that there doesn't seem to be a positive statement about impartiality in the act. Of course, they're referring to the act previous to the Tupper report, saying that "the present Act does not have . . . an obligation," dealing with impartiality, and that an impartiality clause might be important to remind members of their duties and obligations and so on. Then they give a couple of examples from the government of Canada's conflict of interest, et cetera.

The Chair: I'm sorry. Which page are you referring to?

Dr. B. Miller: Pages 26, 27, 28.

It just strikes me that what you have in part 2 of the act, Obligations of Members, are all breaches. They're negative comments or negative stipulations; thou shalt nots, in other words. Even the Ten Commandments have a few that are positive, not just thou shalt nots. I mean, I think it would be great to add to the beginning of this some sort of positive statement of obligations.

Reviewing the House of Commons code of ethics, it begins with purposes and principles. I think one of the principles refers to impartiality, just outlining what the obligations of members are in a very positive way without being over the top about that. I can hear some people say: well, we don't want to legislate morality. If you're going to have some thou shalt nots, maybe we should have a thou shalt at the beginning; in other words, just outlining that it is an obligation of members to fulfill their duties and uphold the highest standards so as to avoid real or apparent conflicts of interest. I'm just quoting from the House of Commons code of ethics.

The Chair: Just before we move on, I want to make sure everybody has their Tupper report in their hands there. Does everybody still have that in their materials?

Mr. Lukaszuk.

Mr. Lukaszuk: Thank you, Mr. Chairman. I hate to argue with Moses here, but it's a common structure of legislation that we don't put positives in. You know, the Criminal Code of Canada doesn't say what one ought to be doing; it speaks to what one ought not to be doing. When you look through all the statutes of Alberta, they clearly focus on what is prohibited and not what is allowed. There are very few, if any that I can think of, statutes that would be speaking to the permissive aspect of behaviour; it's mostly to the prohibitive aspect of behaviour. I appreciate that it would spin it positively, would be more of a positive reading, I guess, if one was to entertain reading the act, but I'm not sure if it would then be in sync with the rest of the legislation that we have on hand.

The Chair: Well, as it notes in the Tupper report, though, those types of things have been interpreted under our own act, the Conflicts of Interest Act. In that case, I think it was the B.C. ethics commissioner who investigated and found that there was no capacity under our Conflicts of Interest Act to in fact cope with any unethical behaviour that did not fall within the strict parameters of conflict of interest.

I think Dr. Miller's point is well taken with respect to the idea of impartiality. It certainly is seen in the preamble of the act as being one of the objectives of the act, but there appears to be no mechanism under the present act to deal with unethical behaviour where there may be a lack of impartiality. So I think it's a good point.

Mr. Shariff: Can you give us an example of how a positive one would reflect in our legislation?

Dr. B. Miller: Well, if you look at page 28 in the Tupper report, there are two examples given of statements from various codes of ethics from the government of Canada and the Northwest Territories. I mean a simple sentence like "public office holders shall act with honesty and uphold the highest ethical standards so that public confidence in the integrity, objectivity and impartiality of government are conserved and enhanced." I'm not suggesting that that should be the statement, but in looking at various codes across the country, these statements are present.

Maybe Alberta has done things differently in the past, but that's no reason why we can't include something positive. After all, part 2, at the beginning, says Obligations of Members, but it doesn't state what the obligations are positively. It just goes into: a member breaches this act if.

So I think it would strengthen the act, but I'm not suggesting that it should be something specific. I mean, it should be sort of a general statement which is open to interpretation. You know, we don't want to be so specific about what proper ethical behaviour is but at least some statement to the effect that we're trying to uphold the best kind of standards possible. Maybe even we'd leave out the word "ethical." Just standards for impartiality and so on.

Mr. Shariff: Just a question for Mr. Hamilton. Should such a sentence be inserted in our Conflicts of Interest Act, how would it differ from what we are currently doing? What would be changed or enhanced for your part?

Mr. Hamilton: Well, I agree with Bruce about being positive. I think that would strengthen it at the beginning.

Mr. Shariff: It would.

Mr. Hamilton: I don't know how many people read it.

The Chair: I think that we've done that in the preamble, and we dealt with this in a sort of collateral sense when we talked about whether or not the principles in the preamble should be part of the act. I think the general feeling was that we didn't need to do that. If you go back and look at the preamble of the act, it says, "Whereas Members of the Legislative Assembly, in reconciling their duties of office and their private interests, are expected to act with integrity and impartiality." Those are concepts, integrity and impartiality, which don't necessarily fall within the strict criterion of conflict of interest. So I think that might be something that we would want to articulate, as Dr. Miller says, in a positive way rather than a negative way.

9:20

Mr. Martin: Well, on the same lines as the legal counsel, what would it mean by sticking something in like "public office holders"? Does that mean anything in a legal way, or does it enhance the scope of what we're looking at? What does it do? Is it just a statement?

Legal counsel.

Mr. Reynolds: I think I'm coming down with a cold, so I may be slightly hallucinating. You'll forgive me if I'm not as . . .

Dr. Morton: I can sell you some good stuff.

Mr. Reynolds: Oh, great. Thank you very much. There is a prohibition about that, I think, as Mr. Elsalhy can tell you.

In any event, it's an interesting question. If you had a positive statement, a clause like the one found in, let's say, the last recital of

the preamble, where it says that "Whereas Members of the Legislative Assembly, in reconciling their duties of office and their private interests, are expected to act with integrity and impartiality," that would be interesting. I'm not entirely sure how you would enforce it.

Frankly, I'm not entirely sure what impartiality means. I'm not trying to be difficult about this, but in the sense that if one says, "Well, you're to be impartial in your dealings," what does that mean? I imagine a clause like that might cause some concern for elected members in the sense that it's only natural, I would imagine, that you would have partisan views in dealing with issues and that you would give preference to certain issues over another. Certainly, if it means dealing in your financial affairs, I'm not sure how you could be impartial in dealing with your financial affairs here. It makes sense with respect to government, I imagine, in the sense that someone who's entitled to a benefit shouldn't be denied one, but that's not really the preserve of members, as I understand the system.

So that's a long answer, but the short answer is that I'm not sure how that would be enforced. Of course, I'm not sure how the Ethics Commissioner would be able to enforce it. I mean, it may be something he's waiting to do. I don't want to subvert his interest in this, but I would find it would be a difficult provision to enforce.

Dr. B. Miller: It's not a question of enforcement. What is enforced are the prohibitions. I'm just raising the question because it seems to me that there could be more balance. If you're going to have a whole list of prohibitions, why not a positive exhortation? As a preacher I'm used to 90 per cent wrath, judgment, and 10 per cent positive, grace. I think one could be more balanced in approach, you know. There's something positively said that as members of the Legislature we ought to fulfill our public duties with honesty, uphold the highest standards, et cetera, et cetera. What's wrong with that?

Mr. Shariff: This is legislation that has to be upheld in court.

Dr. B. Miller: Well, why do other codes have it? The one I'm looking at is the House of Commons. It starts with purposes and principles, and that's built right into the conflict of interest code.

An Hon. Member: Has it helped them?

Dr. B. Miller: That's another question.

The Chair: Mr. Hamilton, do you have anything that you wish to add to the discussion on impartiality as a part of your mandate? According to the Tupper report, there was a previous incident where something that appeared, at least, to be unethical behaviour didn't involve an actual financial conflict of interest but may have been at the same time something that was worthy of condemnation, could have been dealt with under the act had there been a provision in there.

Mr. Hamilton: Yeah, I understand. I think that would be difficult for us. Unless it's specific, we're in a grey area. I think what Bruce is getting at is laying out a map and then moving in to be specific. It would be difficult for us unless it's specific and gives us power to do that. But I don't think that's what you're getting at in this.

The Chair: No. I think what I'm more along the lines of is what's referred to on pages 26 and 27 of the Tupper report there, where "members and appointed officials would be expected to discharge their duties fairly and with due regard to proper process." I mean, that would be a positive statement of impartiality, I would think.

Mr. Martin: Well, it's fine if we put it in, but I sometimes hesitate when none of us knows what it means. I worry about that because then we have an act down the way, and somebody will find this, and I don't know what it means exactly. I understand what Bruce is saying, you know, about a balance of seeing something positive, but this is more than a negative thing.

We expect politicians to act in the highest ethical way, but when you put something in that could be interpreted, it's in the eye of the beholder who interprets it. That's what I worry about. None of us here can really know what we mean here on this. I don't.

The Chair: Well, just to explore that idea there. We've talked previously about things like nepotism and so on and favouring someone. Presently there's a prohibition in the act that one cannot favour one's spouse, adult interdependent partner, or minor child. That's where it sort of stops right now. There's a fence around, you know, those issues, but it doesn't go any further beyond that. I mean, just thinking about some of the instances that might occur, there could be instances where impartiality, you know, would be breached beyond those particular strict parameters, for example.

Mr. Lukaszuk.

Mr. Lukaszuk: Thank you, Mr. Chair. I would agree with Mr. Martin on this one. I fear when you start introducing into legislation terms like "fairly." There's no such thing as absolute fairness. What is fair? What's fair to you may not be to me. It's time relevant as well. What's fair today may appear to be very unfair tomorrow. If you enshrine that in legislation, it could create a whole bunch of problems and a whole bunch of work for lawyers down the road. To be cognizant and apply due process: that's something one could live with because we know exactly what due process is and what should be applied. But to use things like "fair" or "just," you know, those are very relative terms and would cause us a lot of trouble.

The Chair: Okay.

Would anyone else like to participate?

Mr. Groeneveld: I think I can't agree with this situation either. I appreciate what Bruce is trying to get to here, but I don't know if we should take it any farther than the preamble. It is stated there, and I think maybe we wouldn't be gaining anything by moving it to the next step.

The Chair: Dr. Morton.

Dr. Morton: Thank you, Chair. Maybe two different examples might clarify things. Was the incident referred to on page 27 of the Tupper report the Bovar? Was that the name of the company that was involved?

Unidentified Speaker: Bovar resources in Swan Hills.

Dr. Morton: Yeah, the waste management. That's what this is about, right? So I guess my question is to the Ethics Commissioner. Which of the two following scenarios is covered by the existing act, and would the second be covered by the addition? If a member of the Legislative Assembly received money to vote a certain way on a certain piece of legislation, that clearly is contrary to the existing act. That's covered. But what if a member receives a financial contribution duly registered with the Chief Electoral Officer, a contribution to the campaign from a corporation or group, and subsequent to that, the member votes on legislation that comes before him affecting that contributor's operations and interests? Is

that protected by representing constituents? Is that allowed through the representation of constituent interest? That probably happens all the time.

9:30

Mr. Hamilton: Yeah, and we have questions about that. We give the answer, "Yes, you can" or "No, you can't." In other cases, not since I've been there, we've just done an investigation. But there's a process that we go through.

Dr. Morton: Would adding the impartiality to the text of the act change anything then?

Mr. Hamilton: Yes, I suppose it would if it had teeth with it. I mean, if it's sort of just warm and fuzzy, we can't do anything with that. It has to be specific, and what is the meaning of those words that you're concerned about?

The Chair: I think that, clearly, if we did go down that route, we'd make sure that the impartiality was qualified by very strict parameters. As Mr. Lukaszuk pointed out, we don't want something in there that's so general that it could be interpreted in any way that someone might find inadvisable. We'd end up in protracted proceedings on all kinds of different things.

If it was directly proscribed, something like Dr. Morton has mentioned, a specific instance where there was, you know, a clear case of bias or impartiality, then there may be ways to put a fence around that and make it narrowly defined so that it would be enforceable. You couldn't have just the appearance of an impartiality because then everybody that gave money to a campaign would necessarily be proscribed from having a contract with government or whatever. So I think you'd have to have it very narrowly defined. I think that's what I'm trying to say.

Dr. Morton: Is there a way to do that?

Mr. Groeneveld: Mr. Chairman, you said, "There may be." That suggests that we have nothing with teeth here unless Bruce can come up with something specific.

The Chair: Well, let me ask this question: is this something that the committee wishes to explore further, or is it something that we just want to pass over? If it's something that we want to explore further, we could perhaps ask our counsel to assist us in drafting some specific, narrow parameters for this, but if it's not something that we wish to proceed with, then I think we should, you know, stop here and move on to the next question.

Dr. Miller: No. You're going beyond what I was interested in proposing. You know, I think there's a place for a statement of purposes and principles. That's the area that I would like to know whether we want to come back to. Even if it was at the very beginning, after the preamble. It doesn't have to be specific and enforceable and so on.

In reading your discussion from the last meeting, which I missed – it took me a few hours to go through while watching a football game – it seemed like you were having trouble even defining on the negative side words like "improper," "improper behaviour." I mean, there's a certain vagueness there. But in the sense that the whole act allows, I think, room for interpretation by the Ethics Commissioner, I don't know about being so definitive in all cases. I wasn't pressing for a positive statement that would be definitive but more for a broad statement.

The Chair: So you would favour having something like, "In interpreting the provisions of this act, the following principles should be taken into consideration: A, B, C, D, whatever"?

Dr. B. Miller: That's right.

The Chair: Well, clearly, the Tupper report, which was produced before, pointed this out as a weakness in the legislation that is there right now. So do we want to deal with this perceived weakness in the legislation, or do we not?

Mr. Rogers.

Mr. Rogers: Thank you, Mr. Chairman. Again, I don't want to repeat everything that's been said before, but if we're trying to improve this piece of legislation, the last thing that we want to do is add in a bunch of language that makes it even harder to enforce, to interpret. Dr. Miller talks about a place for a statement of principles. I think we've got it exactly where it belongs, in the preamble, where it gives an expectation as to how one is going to attempt to interpret what is laid out in the legislation. Any attempt to use the words "fairness" and "impartial" and so on to try to codify that, I believe, is just going to create the opposite of what we're trying to do here: to make this piece of legislation more user friendly, to do what it's intended to do.

So we could go on and spin our wheels on this point for a while. I think there have been some very good points made, all good intentions, but I don't know if we want to spend too much more time on this. I certainly wouldn't think it would be the best use of our time.

The Chair: Anyone else? What's the wish of the committee, then, on this point?

Mr. Shariff: Let's just have that vote that you suggested, whether we deal with it or move on.

The Chair: Okay. Can we get some feeling, then, from the committee? Who wishes to pursue this issue of, as the Tupper report refers to it, a deficiency in the present act and deal with the issue of a positive reflection of impartiality, an obligation of impartiality? Let's see who's in favour of pursuing this issue further. All in favour of that? Opposed to that issue then? Okay. Well, I think that, clearly, the committee doesn't want to get into those dangerous waters.

We'll move on to question 8, the exemptions from the list of private interests. We do have Information Paper 4 with respect to that. Thank you, Ms Dafoe, for the great job in summarizing the state of the law in other jurisdictions and so on there. I think that's very useful.

Under the present act a private interest does not include an interest in a matter that is of general application, an interest in a matter that affects a person as one of a broad class of the public – I guess that would be in the case where Mr. Groeneveld would be dealing with farm issues or the like – an interest that concerns the remuneration and benefits of a member, an interest that is trivial. Again, we didn't define what the word "trivial" means, but it does have some meaning that is capable of interpretation in law. And an interest of a member relating to publicly traded securities in the member's blind trust.

So we'll open up the floor to discussion on that question 8 in the discussion guide.

9:40

Dr. Morton: What is the relevant section of the current act?

Ms Dafoe: The definition of private interest is in section 1. There are a number of definitions. It's 1(g).

Dr. Morton: Section 1(g)?

Ms Dafoe: Yes.

Dr. Morton: Okay. Thank you.

The Chair: Are there any suggestions for changes in the lists of private interests?

Mr. Shariff: Is there somebody here, an expert who can give us a little more insight on this matter?

The Chair: Ms Dafoe, do you want to stimulate the discussion?

Ms Dafoe: I'll do what I can. It's fairly common in Canadian jurisdictions for this kind of provision, defining what is not a private interest instead of trying to define what is a private interest. The only place I found that took a stab at defining what a private interest actually is is the federal conflict-of-interest code for members. You'll see in the information paper that on page 2, about two-thirds of the way down, it excerpts the definition of private interests. It says: "A Member is considered to further a person's private interests, including his or her own private interests, when the Member's actions result, directly or indirectly, in . . ." Then there is a list of six things, talking about a change in value of a person's assets or their liabilities; acquisition of financial interest; increase in income from employment, a contract, or a business or profession; the gaining of a directorship or office in a corporation, association or trade union; or becoming a partner.

That was the only provision I found in the Canadian legislation that took a stab at trying to define what private interest is.

The Chair: For what it's worth, I think the chair would say that all of those items that are articulated there would be something that the general public would expect to be proscribed under the legislation, and I don't have any particular problem with incorporating the thoughts or capturing those thoughts or ideas in the legislation that we have.

Mr. Lukaszuk: It would be interesting to hear from our Ethics Commissioner. If this section from the House of Commons, section 3(2) and 3(3), was to be entrenched in our act, how would he deal with the members who are currently actively involved in agriculture?

Mr. Hamilton: Well, it's a double standard. People who have companies or whatever have to disclose that, and an MLA can still run his farm, so it's a double standard. I don't know how this committee is going to address that, but it's a tough question. Karen tells me that we're okay with this. There are no changes.

Mr. Shariff: The way it is. Good.

The Chair: Dr. Miller.

Dr. B. Miller: Yeah. I don't want to flog a dead horse here since we did move on, but I think the House of Commons comes up with this more positive statement about what is a private interest. In their principles or their purpose statement at the beginning they made a clear distinction between the public interest and the private interest. In our act there's no real reference or description of what the public interest is. I mean, surely, as members of the Legislature we are to dedicate ourselves to placing the public interest ahead of private interests. That seems to me the principle. So then that leads to the House of Commons coming up with a more positive statement about private interest because they've already made a distinction between public interest and private interest.

We just have in our act a negative statement. I mean, it's an attempt to define what public interest is because

> a private interest does not include the following:
>
> 1. an interest in a matter that is of general application . . .

Well, that's a matter of public interest, right?

> . . . [or] that affects a person as one of a broad class of the public.

So there's a try to define what the public interest is in the process of defining what the private interest is not. It's kind of a strange way of going about things.

Mr. Shariff: The only regrettable statement is that the feds are notorious – if they are setting any example, we're not seeing it correctly.

The Chair: So we're dealing with section 2 of the act, where "a Member breaches this Act if the Member takes part in a decision . . . knowing that the decision might further a private interest of the Member [or his spouse or] minor child." So furthering a private interest: do we want to look at those other provisions? For example, the way we have it now, it may not be that making one a partner or a director of a company would necessarily fall within the parameters of being a private interest. You know, it might be or it might not be, but it's just not defined clearly.

Mr. Shariff: Just so that we have clarity of where the Ethics Commissioner is coming from to help us make that next decision, Mr. Hamilton, did I hear you correctly that, according to your understanding, what currently exists within this act meets the needs and that there is no need for further change to this?

Mr. Hamilton: On this?

Mr. Shariff: Yeah, on this particular issue.

Mr. Hamilton: Yes.

Mr. Shariff: Okay. So our Ethics Commissioner feels that we have adequately covered what we need for this province, and he doesn't feel that there is a need. So take that into consideration as we move along with this discussion.

Mr. Martin: Well, a point that a couple people including the Auditor General put down: "an interest that is trivial." I don't know what that is, whether that's a necessity to be in there or not. As I say, the Auditor General says: clarify. Some other people say that it's too vague. I'm wondering if it even needs to be there, if it has any basis on what the Ethics Commissioner looks at.

Mr. Rogers: Mr. Chairman, if I may. Just from my accounting background the only thing I could think of on whether we would want to change the wording is a term in accounting where something is material, so if potentially – and maybe we'd need some advice on this – we replaced the word "trivial" with "material." You know, certainly in the accounting world the term material means something, whether you're dealing with something that's got a value of 50 bucks versus $50,000 or $5 million, versus trivial. Really, what's trivial to me, to you, to the next person is certainly open to a lot of ridicule. That's just a thought I would add.

The Chair: Well, you're talking about the exemptions to the private interest now rather than what are private interests.

Mr. Rogers: Yes. Under section 1 is that (g)?

The Chair: Section 2 is the one that proscribes furthering your own private interests. I think the issue that we're trying to deal with here is whether or not we've adequately iterated what are private interests. The suggestion was that the federal conflict of interest code certainly goes into things beyond things that are materially valuable. Although it does talk about increase or preservation of the value of a person's assets, clearly that's not something that's dealt with specifically.

Do you want to leave it general, then, you know, private interest with the exemptions that are put into the definitions section there? I mean, clearly, something that is trivial is not included in private interest right now.

9:50

Mr. Rogers: Open to interpretation.

Dr. Morton: I'm satisfied with the status quo.

The Chair: Does anyone want to take any further initiative on this particular question? Okay. Then it looks like the committee's consensus is that the definition of private interest there is adequate.

So we'll move on. We have an information paper on questions 9 through 11, the first three in that block of questions. That's Information Paper 5.

Ms Dafoe: Could I just make a point before we get too far through Information Paper 5 just to forestall any potential confusion? Information Paper 5 talks about employment and offices for members. I just want to point out that there are some extra rules and some variations when members become ministers, members of Executive Council. That will be covered in Information Paper 6. So right now this information paper is dealing with members only as members, not including anyone in Executive Council.

The Chair: Okay. Thank you.

This is dealing with disqualifying offices then. The suggestion that's been made by counsel is that to simplify the amending process in future years, we should get this thing out of the act as a schedule and get it into regulation. Does everyone agree with that general proposition? Is there anyone that wishes to speak against that idea?

Okay. Is that correct, Ms Dafoe?

Ms Dafoe: Absolutely. That would make it much easier to update on a regular basis.

The Chair: I think it makes sense too because the names are changing, and there are always new bodies being formed and disbanded and so on.

So anyone wish to speak against that then?

Can I have a motion to that effect, then, that

> the list of disqualifying offices be moved into regulation as a recommendation.

Mr. Rogers.

Mr. Rogers: Yes. So moved.

The Chair: All in favour?

Hon. Members: Agreed.

The Chair: Anyone opposed? Okay. That's carried.

Is there any other discussion regarding what criteria should be used as the basis for including those things? Now, the Ethics Commissioner has made some specific recommendations on this point and suggested that anything with a quasi-judicial function ought to be classified as disqualifying offices. Do you want to speak to that, Mr. Hamilton or Ms South?

Mr. Hamilton: No, I don't think so.

The Chair: Okay. Does everybody understand the proposition that's being put there then, that if you're acting as a judge of some issue, it should be a disqualifying office? Is that the general proposition? Mr. Reynolds, do you wish to add something to that?

Mr. Reynolds: Well, just on a very technical level. There is no regulation section in the act right now, so there would have to be a section added that allows the Lieutenant Governor in Council to make regulations. This is something for later on. At the end of your discussions if you see a need for there to be other regulations made, you might want to note that in your notes. So if there was a new section dealing with regulations, it would specify what those could be on.

You may want to consider, given the nature of the act – and I can't think of anything that is really similar to this – that you put in a requirement or recommend a requirement that when there is a regulation made under that section, it be circulated or provided to all Members of the Legislative Assembly in the sense that then members wouldn't be left looking at the *Gazette* or something like that to say: "Oh, was there a regulation? I didn't know about it." It would be exceptional, I realize, to have that in legislation, but I don't know how else to ensure that it gets observed, the point being that you, Members of the Legislative Assembly, would know if there were any changes to that and with respect to disqualifying offices.

So you would be kept up to date at all times because in a sense you've just delegated the responsibility to make that rule to the Lieutenant Governor in Council for expediency reasons in the sense that, obviously, you can change the disqualifying offices a lot quicker by regulation than by legislation.

Thank you.

Dr. B. Miller: I understand what we just did about, you know, the disqualifying offices on the list, but where in the act itself is there a statement of specific criteria, as the Auditor General has mentioned or asked for? I mean, is there a clear policy basis and specific criteria for deciding what offices should be disqualified?

Ms Dafoe: Mr. Chair, if I may. There is no reference in the act to how you get on this list. I think one of the questions that's going to be before the committee today is: what sort of agencies, boards, commissions, tribunals should be on this list? How do you determine who's in and who's out?

The Chair: One thing that occurred to me as I was going through this particular section was that I wondered whether it would be profitable to put some general – I mean, I can see the difficulty with iterating all these offices which were prohibited, or disqualifying offices, but would there be any worth in putting some general propositions in there with respect to the types of offices and then saying "as set out in the regulation"; in other words, where there's a quasi-judicial function or where there could be an allegation of impropriety or patronage with respect to the work of that particular

body? I think that's the mischief that the particular legislation is trying to get at here. You don't want to put the MLA in a position that could give rise to those difficulties. So is it something that we'd want to put in as a general proposition, you know, not so that it would be an enforceable thing but to give an idea as to what things under the regulations ought to be there, what types of offices? Any comments?

Mr. Hamilton: Well, are you prepared to accept our suggestion?

The Chair: Yes, I think so. That was the quasi-judicial suggestion, Mr. Hamilton, right?

Mr. Hamilton: Yeah.

The Chair: Anything beyond that in terms of things that may be dispensing of privileges, rights? I'm thinking of perhaps offices or tribunals that grant licences or rights or something of that nature or have a function which could provide, you know, a private interest to citizens.

10:00

Mr. Hamilton: Well, the agencies that exercise quasi-judicial – doesn't that cover that?

The Chair: Well, I'm not sure. I'm not sure if it would. I guess what I'm suggesting is that it might go beyond something where there was a quasi-judicial function to something that would be dispensing rights or privileges and not being an arbiter between competing interests.

Ms Dafoe: Another option that you may want to consider is if the government is regularly a party to a proceeding that is appearing before one of these agencies, boards, or commissions, there may be an opportunity for there to be an appearance of bias. If the government is regularly there, that may be a body that should be a disqualifying office.

The Chair: Anyone else?

Dr. B. Miller: I'm not sure what we're doing. I mean, it's one thing that the Ethics Commissioner has some criteria to determine what offices should be disqualified apart from the act. Should there be something more in the act like under 6(1)(b)(ii), that "A Member breaches this Act if the Member . . . becomes at any time while a Member . . . the holder of any of the offices set out in the Schedule"? Or should it be the holder of any of the offices where there is a quasi-judicial function, et cetera, et cetera, et cetera? I guess that's the issue.

The Chair: If I can try and encapsulate the issue, we've got a list of proscribed offices right now that are black-and-white letter. We're suggesting that those be moved into regulation. I think the issue is whether or not we want to describe what types of offices we as a committee think ought to be covered by the act and therefore be in the regulation.

I see some merit in doing that because, as Mr. Hamilton points out, I mean, clearly ones where there's a quasi-judicial function would be included in that category. If you look down that long list of, you know, tribunals and commissions and so on, what I'm saying is that there may be other types of things that are not quasi-judicial in function but which dispense rights or are not necessarily arbiters between conflicting interests. That's what I'm suggesting, and it might be something that we would want, you know, to encapsulate in the body of the act. So it's just a suggestion.

Mr. Hamilton, do you want to weigh in on this?

Mr. Hamilton: Well, I guess, where does it stop? You know, you put everybody in, the phone book. On the other hand, the securities in Calgary: we don't have jurisdiction over that even though it's a quasi.

The Chair: Well, we could look at some of these things like the Alberta Cancer Board, the Building Standards Council. You know, they may not exercise quasi-judicial function, but obviously it was an intention previously of the legislators that those are the types of things that ought to be covered as disqualifying offices. So do we want to try and articulate why those things are in there?

If we're going to move it to regulation, don't forget that we as legislators don't have any immediate power over that. That power is delegated to the executive to make those regulations from time to time, which I don't have any problem with except that we haven't given any guidelines as to what should be included in that list.

Mr. Hamilton: Our office is three people, and we do only permanent members of boards. If you widen it more, that's going to . . .

The Chair: I'm not suggesting that we widen it. What I'm suggesting is that we give some guidance in terms of what should be captured within the regulation. If you look down this list right now, boards of governors of postsecondary institutions, these are not quasi-judicial functions, and the suggestion of the Ethics Commissioner that those bodies automatically be a disqualifying office I agree with, but I don't think it captures what's in the list as it exists now.

Mr. Lukaszuk: Mr. Chairman, the Ethics Commissioner mentioned that very often if we do any significant adjustments, his office simply doesn't have the capacity to handle the work that may be stemming from them. Is that something that we should be looking at as a committee?

I would like to hear from the Ethics Commissioner. I'm not sure whether the capacity of the Ethics Commissioner's office to handle caseloads should be the guiding light for what we should or should not be doing in the amendments to the act. I would be interested to hear what the current capacity of the Ethics Commissioner's office is and whether there is a need for expansion to turn it into full-time or more staffing or whatever it may be.

Mr. Hamilton: Well, in the act on page 40 the list is all there. Pages 38 and 39. If you want to broaden that . . .

The Chair: Well, I see that that might be relevant to some other things, but really what we're talking about here has no bearing whatsoever on the workload of the commissioner because the commissioner is going to enforce the fact that there are disqualifying offices here.

We're suggesting that this be moved to regulation. The question that the chair posed was: should we have something in there that adds to the commissioner's suggestion that quasi-judicial functions ought to be included under the regulation as disqualifying offices? Clearly, when you look down that list, Hospital Privileges Appeal Board is a quasi-judicial one, but other ones like postsecondary institutions and whatnot are not quasi-judicial. So do we want to try and capture the types of things that should be proscribed there without making it an enforceable provision but giving some

guidance to cabinet as to when a new tribunal or when a new commission is set up whether or not it should be under that list, if you follow my line of thinking?

Mr. Elsalhy.

Mr. Elsalhy: Thank you, Mr. Chair. I actually agree with what you're saying because if we're going to move it into regulation – and regulation is only done in cabinet or Executive Council – what we have to do is avoid the appearance of ad hoc or random. Especially when names change or, you know, agencies merge or take over one another and so on, we want to be offering a definition of what falls into the exclusion list, what falls into that disqualifying offices list, if we're talking about postsecondary institutions, if we're talking about things that have to do with the Police Commission or things that have to do with hospital boards or psychiatry or whatever it is.

So going through the list and, okay, thinking backwards, when they first initiated this legislation and had that schedule, why did they add that agricultural board? Why did they add this? Not expanding or growing it to an unworkable list, as basically the threat that the Ethics Commissioner sees, but what we're trying to do is actually limit it, not expand it. We're actually limiting the definition and then maybe dispensing with the names. We don't have to worry about the names. If they fit the criteria, they're included; if they don't, then they're not.

10:10

Mr. Martin: It seems like this has sort of hit us, and now we've got to go through all these boards and that. I would suggest that a smaller group, and I don't know who it is, come back with some recommendations, rather than the whole committee sort of sitting here and going over them – I think that's what you're driving at – and maybe come up with some definitions, too, when they've had a time to look at it. So I would suggest – and as I say, I don't know who the group is – that the bigger group can then take a look at it after they've done some work on it.

The Chair: Okay. We'll come back to that in a second then.

Dr. Morton: Is the common denominator of everything in the schedule that all of those are appointments made by the executive branch, either by a cabinet minister or by the Lieutenant Governor in Council?

The Chair: Mr. Reynolds, do you know the answer to that question?

Mr. Reynolds: No. I don't know every single one, but I mean, generally speaking, I'd say that they're from the Lieutenant Governor in Council or the minister.

Dr. Morton: In the discussion guide on page 8 at the bottom it says that

> the original idea was to avoid having MLAs in positions that could potentially give rise to allegations of undue patronage, and to avoid an incompatibility between membership in the Legislative Assembly and the holding of another office.

So it looks like it's to protect the perception that the executive can hold out carrots to members of the Legislature. If what underlies that long list of disqualifying offices is appointment by the executive branch, then that would be either the or one of the criteria that we could identify as restricting what can be added to the list.

The Chair: Anyone else?

We're going to come back to Mr. Martin's suggestion, then, that we try to maybe capture some of the flavour of what we're doing here, rather than discussing this at length, that we go on with . . .

Mr. Rogers: On this point, Mr. Chairman, the suggestion that we need a smaller group, I think what I've heard from a lot of the discussion so far is that we're looking for some kind of language that would accompany this move to regulation, that would lay out what criteria would move a particular agency or body in or out. I think that's something that we could lean on our legal staff to provide. I can't imagine that we need another group of us to sit around and thrash that out. All we're looking for is a short paragraph, a sentence that outlines the intent of what we've talked about here today.

The Chair: Mr. Hamilton, is that something that perhaps your office could try and tell us, just in a general sense: why particular types of agencies are located in the schedule? Is that something that we could ask you to come back with?

Mr. Hamilton: Sure.

The Chair: Is everyone agreeable with that then? Because Mr. Hamilton's office obviously is the one that's administering the act, has a clear idea of, you know, what is producing the conflict of interest, I think that would be an appropriate way to proceed. Is everyone agreeable to that?

Dr. B. Miller: Well, I'm not clear about whether Mr. Hamilton is going to bring back suggestions for putting something in the act at that point where it refers to the holder of any of the offices set out in the schedule or whether we want this to refer to the holder of any of the offices set out in the regulations or something, and then the regulations would have clear criteria and so on.

The Chair: I don't know. I think the suggestion was that we put into the act in a general sense what types of agencies would be included in the regulation without making it, you know, a binding thing that he would have to interpret, that the commissioner's office would be free to look at the regulation to say, "Well, it's there" or "It's not there" but have some guidance for Executive Council in there in terms of what types of things dispense patronage or whatever, as Dr. Morton was saying.

Mr. Rogers: Mr. Chairman, again my suggestion was that, you know, if we're looking for language, I mean, we've got Ms Dafoe and Mr. Reynolds and so on. I'm thinking that they have the expertise to write that kind of language. Again, I don't know if that's something that we should be – I'm sure Mr. Hamilton in his office would be quite capable of working with that once we come up with it, but I'm not sure if that's where the language should be coming from. It would be out of his shop.

The Chair: Well, if Mr. Reynolds or Ms Dafoe want to have input into what Mr. Hamilton comes up with, they're certainly free to do so, but I think they've got lots of other things to occupy their time.

Is the committee, then, agreed that we'll refer that to Mr. Hamilton's office to come back with some general propositions as to what types of agencies are in the prohibited list? All agreed?

Hon. Members: Agreed.

The Chair: That's carried.

Can we take a five-minute break, then, so everybody can get coffee, et cetera.

[The committee adjourned from 10:16 a.m. to 10:29 am.]

The Chair: We'll call the meeting back to order. We're dealing with question 10 in the discussion guide, and that refers, in turn, to section 8 of the act as it now exists. The act sets out a number of different classes of contracts to which a member or a person directly associated with the member shall not be a party. The issue is whether or not this section is broad enough to cover all of the kinds of contracts that have to be avoided.

Presently there's a prohibition on borrowing money from the Treasury Branch; selling land to the Crown; a contract to which the Crown is also a party for construction, demolition, alteration, or repair of a public work; a contract where Agriculture Financial Services Corporation . . . does that particular body, Agriculture Financial Services Corporation, still exist, George? Do you know?

Mr. Groeneveld: Oh, yeah.

The Chair: . . . lends money or guarantees a debt; a contract with Alberta Opportunity Company, where it lends money to, and finally

> a contract to which the Crown is also a party, other than a contract referred to in clauses (a) to (e), if the Member or the person directly associated with the Member receives a preference from the Crown on entering into the contract or receives a benefit . . . not available to other members of the public.

So it's kind of a broad provision there.

In the discussion guide there is a summary of the lists, and in the schedule of your submissions you'll see that there have been some suggestions on that. One of the suggestions was that "neither the Member nor those associated with the Member should enter into any contract with the government" during the time of service. Another suggestion was to "disallow any contract where there is a direct financial gain by the Member," and then, finally, to "adopt a principle-based approach by generally describing the type of contracts that should be avoided."

The Ethics Commissioner has given us some suggestions on this item, one of them being that the Alberta Opportunity Company is no longer in existence, that we should consider exempting trivial or insignificant contracts, and perhaps the use of some plain language in that section as well.

Mr. Hamilton, do you want to comment on your suggestions in that regard?

Mr. Hamilton: What is it you want me to respond to?

The Chair: Well, for question 10 in the guide you've given us some suggestions in that regard, and I wondered if you could just explain for the committee.

Mr. Hamilton: Well, the Treasury Branch is there, and it's a Crown company, so we're saying that stays the same. "Approve a renegotiation or renewal of a mortgage, if there is a very short term left." We have had members who had to have some time leeway to take care of their business. "Compensate Member for having to move mortgage" from the Treasury Branch. That's obviously the same thing. "Not include small overdrafts on chequing accounts/increased line of credit." We're saying that it's there, but we have some leeway.

The Chair: Members, any comments, suggestions on question 10? Is it reasonable to allow the commissioner some discretion on those items such as renegotiation of a mortgage and compensating to move a mortgage from ATB?

Mr. Groeneveld: I'm sure we should do that. I'm sure he has to do it now. It's not there, and he's already doing it, probably, is what I suspect, so we should certainly bring that up to date.

Dr. Morton: You just said that the Ethics Commissioner was acting unethically.

Is the current state of the law to prohibit a member from having anything to do with the Treasury Branch or just from borrowing money?

Mr. Hamilton: If you have a mortgage or a loan, you can keep it, but you can't increase it, and we advise them to move to another bank.

10:35

Mr. Morton: But for other, normal things involving a chequing account or a savings account, there's not a problem?

Mr. Shariff: Just as a clarification – I'm just curious – why is ATB treated this way? It's at arm's length. We as a government don't really deal with it in terms of influencing its decisions.

Mr. Hamilton: You own it.

Mr. Shariff: Okay.

Ms South: Just a historical note, that it was in the mid-50s when two MLAs were alleged to have gotten some loans from ATB for some buildings that they owned. It resulted in some inquiries and an election when the Social Credit government suffered as a result of the allegations. After that election, they changed the law so that MLAs could not borrow from them.

The Chair: Are we agreed then?

Dr. B. Miller: Mr. Chairman . . .

The Chair: Just before we go on, Dr. Miller, on that point? The commissioner's recommendations?

Dr. B. Miller: Not on that point.

The Chair: Are we agreed, then, that the commissioner's recommendations should be incorporated into our recommendations?

Hon. Members: Agreed.

Dr. B. Miller: I wondered about the Auditor General's comment. Because all the references are so specific in terms of what contracts are not allowed, it doesn't leave open the leeway to be able to deal with other kinds of contracts. I can't think of any other types of contracts that might be prohibited. I mean, if there was a more principle-based approach, as he suggests, then of course that leaves it open that other kinds of contracts might be prohibited on the basis of the principles that are laid out. I can't think of any other examples.

It's very specific. It's driven by specific incidents in the past, I guess, so that's why they're here. There may be incidents in the future where we might think that a contract was not acceptable. Does this act give you the leeway to deal with that? I wish I could be more concrete, but I can't think of any other examples though.

The Chair: Ms Dafoe, you had a comment about that?

Ms Dafoe: Yeah. I'm sorry. It was on the issue prior to the one that Dr. Miller has raised now. The committee accepted the recommendations made by the Ethics Commissioner. Was that just for the recommendations regarding Treasury Branches, or was that regarding all of the recommendations?

The Chair: I think there are three of them there.

Mr. Shariff: All of them.

The Chair: All of them.

Ms Dafoe: So exempt trivial or insignificant contracts?

Mr. Shariff: Yes.

Ms Dafoe: Use plain language. We'll take it as removing the Opportunity Company.

The Chair: I'm not sure how much plainer we could get on that issue of what the contracts are.

Ms Dafoe: So all the other ones? The recommendations regarding Treasury Branches, deleting the Opportunity Company, and exempting trivial or insignificant contracts have been approved?

The Chair: Yes.

Ms Dafoe: Thank you.

The Chair: I think they're small issues that can be dealt with by the commissioner.

Ms Dafoe, did you have anything else you wanted to add to the issue about, perhaps, some of the specific provisions relating to contracts?

Ms Dafoe: These two provisions, sections 8 and 9, are fairly lengthy. In doing my preparation for the meetings, I was comparing Alberta's provisions to Ontario's provisions specifically. The difference that I noted between them was that Alberta's legislation tries to set out specific rules, specific situations where a member cannot contract with the Crown, whereas Ontario has a general rule that no member can knowingly be a party to a contract with the government of Ontario under which the member receives a benefit. So they go very general, and then they allow the commission to exempt from that general rule, whereas in Alberta we set out specific situations.

It just depends on the approach that you want. I think that, you know, setting out specific situations has a lot to commend it because it makes it very clear what isn't allowed and tries to also at the same time give members flexibility in what they can and cannot do.

The Chair: I do see some merit in having a broad provision in there with respect to receiving a benefit, you know, as a general proposition.

Anyone else like to contribute on that one?

Dr. B. Miller: Well, that was the point I was trying to make, although it seemed abstract. By just listing specific examples, then it doesn't give the Ethics Commissioner the leeway to interpret future contracts that might be questionable as something that's prohibited unless there's a general principle that's laid down.

The Chair: Would you like to add in addition to 8(f), then, a general sort of basket provision that would catch other things. Except with the consent of the commissioner: something along those lines.

Dr. B. Miller: I don't know. Or just at the beginning, 8(1): "the Member becomes a party to a contract," if there's an extra clause there that would just say something to the effect that the person would be in a conflict of interest if they received the benefit. Something like that, along the lines that Ms Dafoe was mentioning.

Mr. Hamilton: We're talking about MLAs. The rest of the government has all kinds of contracts. We don't have anything to do with that. I don't know what more we could do in terms of the banking. I suppose if you had a provision that if an MLA has a contract for doing something, do you want that to be under our purview?

Dr. B. Miller: I mean, there are two different ways of approaching it. I like the way that Ontario approaches it. You know, rather than be so specific and try to cover everything possible, have a general criterion up front which you could apply to future examples, future situations. I don't know what they would be.

Mr. Hamilton: When you find out, will you let us know?

Dr. B. Miller: I'll let you know. Okay. Fair enough.

Dr. Morton: The fact that it's the Ontario approach in itself may be reason enough to oppose it, but there are additional reasons. Yes, the approach of listing a specific list of prohibited contracts restricts the discretion of the Ethics Commissioner, but it also protects members from being found guilty of something that wasn't specifically listed ahead of time. If something new comes up and the Ethics Commissioner thinks it should be added to the list, he can communicate that to the Legislative Assembly, and that can be added when the statute is updated the next time around. But it seems to me that our current approach protects members from being found guilty of doing something that you didn't know was prohibited.

Mr. Shariff: I was just going to make that comment, and I think you've hit it right head on. In the last 10 years, you know, having this clarity laid out so clearly for us has really helped me as an MLA know what I can or cannot do, and I'm not so sure if I want to turn to Ottawa or Ontario's model for Alberta. I think we have it good here, so we should improvise on what we have and make it better.

10:45

Mr. Martin: Well, I guess the reason we did it here is because Alberta is much more socialist. They own banks whereas other provinces do not own banks. As a result, that created a special circumstance. I think that that's why they had to lay it on very specifically here. I think that's probably the reason. I think you'd need those specific reasons. For that I think you'd need specifics. I have no objection to adding something else, but I think that's the reason.

The Chair: Anyone else? Am I hearing, then, that it's the wish of the committee that the classes of contracts that we have there are adequate as presently framed? Is that the consensus?

Dr. B. Miller: Except for (e). Get rid of (e).

The Chair: Right. Yeah. That's redundant.

Mr. Shariff: That's what the Ethics Commissioner has recommended, right?

The Chair: Yeah.

Mr. Shariff: Mr. Chairman, did you have anything particular?

The Chair: No. No, I'm fine.

Mr. Shariff: Oh, okay. I just wanted to make sure that your views are also incorporated.

The Chair: We'll move on to question 11. This was just seen as an exception to the general rule that a member had to declare their interest and absent themselves from the proceedings. The question was a simple one as to whether or not, if you were going to take a position against your own interest, you should be allowed to participate in the discussion. I didn't see any positive comments on that in terms of the submissions that we received, but does anyone else want to comment on that? I think it just creates a bit of a narrow exception that I don't think is necessary.

Hearing nothing, then, I think that the answer that we have received in terms of the submissions and the will of the committee is that you should not be able to participate in discussions regardless of whether it's in your favour or not. Correct? Agreed?

Mr. Groeneveld: I think the Ethics Commissioner on his last statement just should have put there: keep your mouth shut.

The Chair: Question 12. That is contained in Information Paper 6. The suggestion of the Ethics Commissioner was that the act "already allows some discretion in this area" and that we ought to leave it as it is. "There are many variations in professional requirements, including an ability to be listed as an 'inactive member'." For example, in the Law Society you can become inactive. The time or education needed to requalify or resume one's profession upon leaving public office is varied. That's the suggestion of the commissioner.

We haven't received any negative input on that. I think there are four other submissions that were on point from the parties, including the Auditor General's office, and I don't see anything negative there with respect to that issue. I think the general consensus of the submissions, at least, is that, yes, there's no difficulty in maintaining one's professional qualifications. Is everyone agreed on that point then?

Hon. Members: Agreed.

The Chair: We'll move on. Okay. That moves us on to question 13, the rules on blind trusts. This is a bit of a difficult topic area because of the definition of what is a blind trust and so on. Now, Mr. Hamilton, can you just sort of tell us in practical terms how the present provisions work vis-à-vis your office in terms of a blind trust and what has to be done with shares in public corporations and so on both for members and cabinet?

Mr. Hamilton: I've only been here two years, and I haven't had to deal with blind trusts very much. It sounds good, but how do you regulate it? That's the problem. The blind maybe have good glasses.

The Chair: The issue is who's administering the trust, I guess. They'd better not have any relationship to the parties.

Ms DeLong: Would you meet with whoever is holding the blind trust so that they tell you what's in there? If you've met with the minister, then the minister wouldn't know what's in there anyway. Yeah, I see it as a problem. How do you deal with it?

Mr. Hamilton: Well, we do our best. If somebody wants to have a blind trust and doesn't go by the rules, it's very difficult for us to find out.

The Chair: The issue with respect to the shares in corporations I think is reasonably clear. It's when you get into private corporations, I guess, that it becomes problematic because by the nature of a private corporation you would know what type of business that private corporation was in regardless of who was running it. I think that's really a thorny type of issue.

Mr. Hamilton: His brother is doing it, or his son is doing it. They don't talk. Well, how do you know? I mean, it's difficult.

Mr. Shariff: There must be some industry standards about a blind trust, and as long as we're following them . . .

Mr. Hamilton: If you are.

The Chair: Anyone else?

Mr. Martin: I'm just wondering. This became federally a major issue with Paul Martin. I wonder if we've got some information, because they probably had to go through this federally, on how they've dealt with this. I expect there's no perfect way to deal with it because of the nature of it being blind, but surely we should be able to learn something from what happened to them because they had to deal with it over and over again. I don't know if we know that or should check that out or what.

The Chair: Ms Dafoe, do you want to comment on that?

Ms Dafoe: The provisions in Alberta's legislation dealing with blind trusts are aimed at managing a minister's investments in publicly traded securities. There's nothing in the legislation that currently allows a minister to put private interests into any sort of trust.

10:55

If you want to go down that road, that would be something new for Alberta. It's not unheard of. There are other jurisdictions that have that. Unfortunately, I don't have a lot of information on the federal rules right now. I know that they've been in development for the last few years. But there are what are called management trust provisions for private interests in a number of jurisdictions – Ontario, New Brunswick, P.E.I., Nunavut, B.C., Saskatchewan, and the Northwest Territories – that to some degree or other would allow a minister to move his interests in a private corporation or a partnership or a sole proprietorship into some sort of management trust. There are rules set out in those other jurisdictions' legislation governing how those management trusts are to be handled.

Mr. Martin: It seems to me, I mean, that it's simple. I'm not sure if you've got a lot of securities in the public realm, that that's going to be the thing that causes much difficulty, even though we have the blind trusts, because they're so huge. Where we're going to run into problems is precisely in the private area. I would suggest that maybe we don't even make a decision here, that we get some of that information and take a look at that.

The Chair: Would you be suggesting that we go beyond the general provision that's in section 21 of the act right now, which says that you can't carry on a business "that creates or appears to create a conflict between a private interest of the Minister and the Minister's public duty"? Are you suggesting that we need something beyond that general provision?

Mr. Martin: I'm not sure. That's why I'd like to take a look at how other people are dealing with it.

Mr. Shariff: So a minister who's a farmer continuing being a farmer and getting subsidies for whatever the issue of the day is is kosher?

Mr. Martin: Now he's picking on farmers.

Mr. Shariff: No, no. I'm just asking for clarification. I'm just seeking clarification. Are we then saying that it's okay in that situation, but it's not okay for Mr. Mo Elsalhy to continue in his pharmacy profession for whatever reason that we could find to prohibit him if he becomes a minister, which we now have?

The Chair: These provisions only apply presently to ministers, correct?

Mr. Hamilton: Yes.

The Chair: Are you suggesting that they should apply to private members?

Mr. Shariff: Well, no. Since we're talking about increasing the scope, I'm just curious. I'm seeking clarification. Is this where we're heading?

The Chair: No.

Mr. Shariff: Oh, good.

The Chair: I don't think anybody has suggested that yet.

Mr. Lukaszuk: Can we obtain a better description of the criteria that Ottawa uses right now for cabinet ministers, what they can and cannot do as cabinet ministers? Do we have that information available? I haven't seen it.

Ms Dafoe: I don't have that information, but I could get it.

The Chair: Do you want, then, to defer further discussion on this question 13?

Mr. Lukaszuk: It's an important one.

The Chair: Okay. Are we agreed, then, that we will defer the discussion of question 13 until we get further information on what other jurisdictions are doing?

Hon. Members: Agreed.

The Chair: Okay. We'll move on, then, to question 14. That's the one that specifically deals with the management of private corporations. Anyone wish to lead off on this item?

Mr. Shariff: I think it would really help us if somebody who has a better understanding of the subject matter leads the discussion so we have clarity.

The Chair: Well, I'll try and kick that off then. When one has a private corporation right now, you have no opportunity to keep on running that business. If there's a possibility or an appearance of a conflict, as a minister you would have to divest yourself of that private holding. Am I getting that right, Ms Dafoe?

The Ethics Commissioner has given us some comments regarding that submission, saying that members have asked about placing a private corporation in the hands of a trustee. We presently do not allow that possibility. Ontario has evidently developed a management trust that attempts to deal with that type of arrangement. We've sort of got a split in opinion, I guess; three of them said that it was negative. We got negative responses from one individual and two of the counties regarding that. So the issue is whether or not we want to look at having something along the lines of what Ontario has provided, to have a management trust.

Again, this is problematic because by nature, when a private company is in the process of making widgets or of providing certain types of services, we inherently know what is going to be good or bad for that company. Therefore, even though somebody else – your brother, as Mr. Hamilton mentioned – is running the company, there may be a tendency there to have some sort of conflict even with it being in a management trust. Personally, I think it's a road that I'd be reluctant to go down in terms of running a business when you're a member of cabinet.

I'll open up the floor at that point and see who else has comments.

Ms DeLong: I don't see any difference between a management trust and a blind trust. Is there supposed to be a difference? Does this imply that there is a difference?

The Chair: I think I can answer that question if you'll allow me. They're both in a sense blind trusts, but the management trust is a subset of the blind trust which actually allows someone to manage the company as opposed to determining when you should buy or sell shares or whatever. In other words, somebody would step in as the management.

If I had a company, a trucking company for example, a management trust would be something where I would divest myself of all the management decisions to do with the company as to who they contracted with or what they did with the company, but still, inherently, I would be the beneficial owner of the shares. As I said, by the nature of the business I would know what was going to be in the best interests of that company regardless of who is managing it. So a management trust is basically setting aside all the decision-making within the company to somebody else.

Mr. Rogers: No input? Would you have input? Like, if you were managing my company in that scenario, would I have any input in what you did?

The Chair: Well, that's one of the issues: would you allow that or not? Should we do an amalgamation with another trucking company? I mean, is that something that you would want to let the person, the cabinet minister, be involved in?

Mr. Shariff: You know, I just want to raise this, and I don't know if this adds any value to the discussion. We are a province in which business is okay. I don't think that an MLA working in this job, if he gets appointed to the Executive Council, is expected to forfeit all the benefits of the business that they've built over the years.

So I think the issue is more in terms of taking advantage of inside information. We should not be building an act that completely penalizes a business that has grown and flourished but, I think,

setting up rules that will prevent conflict, that will prevent them from taking advantage of inside information. You know, if I had a multimillion dollar company, to just give it up completely and have somebody else make every decision and let that business go down the tube – I don't know if it's right for us to set it up that way.

11:05

The Chair: Well, I don't think there was any legal requirement, but I think that under pressure Mr. Martin ended up divesting himself of his interest in the Canada Steamship Lines.

Mr. Hamilton: To his sons.

The Chair: Yes. That's right.

Dr. B. Miller: Well, I mean, the language used in the discussion paper is about allowing management trusts, that a person may do that. A person could do that now, right? I wouldn't like to see any kind of stipulation that a person must put his company into a management trust. I think that's going too far.

I would worry about the point that you just raised, Mr. Chairman. Would a minister of the government be able to use the fact that his company is in a management trust as an excuse to participate in a debate in which he may appear to be in conflict of interest? That would be a big mistake then. You see the point?

The Chair: I do, but I think you still would be covered by the provisions of section 21 right there, which says that you breach the act if you carry on a business "that creates or appears to create a conflict" between your own interest and the public duty.

Mr. Hamilton: What if you had a chain of drugstores and you became the minister of health? That's the kind of problem.

The Chair: Where do we want to go with this? Is there a consensus that we should be looking at this issue, or not?

Mr. Martin: What is the status quo right now? What happens in the circumstances that we're talking about?

Mr. Hamilton: If you're a minister, you divest or get a blind trust or sell your company.

The Chair: If you have a private business as a cabinet minister right now, then you've got a problem, right?

Mr. Hamilton: Yeah.

The Chair: That problem only kicks in when section 21 applies, when you've got a conflict or an appearance of conflict.

Mr. Shariff: I'd like to suggest that maybe we should consider this. I would like to suggest somewhere in this act giving the Ethics Commissioner the authority to deal with matters that are otherwise not covered in the act. Then at the next review we will have some examples of how the Ethics Commissioner has dealt with those situations, and if we need to include it in the act, we should do so. There might be provisions that are just not included in the act, and if you give the Ethics Commissioner that authority, then maybe he or she can come up with that mechanism over time.

The Chair: Well, presently there's nothing, Mr. Shariff, that would say that you couldn't have a business or a company as a cabinet minister. Correct? The only time when section 21 would kick in is if there would be a conflict or an appearance of a conflict with your public duties. In the example that Mr. Hamilton pointed out, where you were health minister and you had a chain of drugstores, obviously you'd have difficulty, but if you were the minister of health and you owned a farming operation or a feedlot . . .

Mr. Hamilton: Hopefully, farms are okay.

The Chair: Let's say a feedlot operation or a slaughterhouse or something unrelated. In those instances you could certainly carry on your duties as a cabinet minister and still keep the company. There's no requirement that you divest yourself of all your business interests. I really think that section 21 captures the difficulties that are there. I mean, it anticipates eliminating those conflicts. So, really, I don't see any need to go beyond what we have there.

Would anyone else like to contribute?

Dr. B. Miller: So a management trust wouldn't make any difference then. That's what you're saying, that in terms of the appearance of conflict of interest it wouldn't make any difference whether that minister of health has drugstores under a management trust situation or not.

The Chair: I think you're exactly right. I think that section 21 would capture that anyway.

Mr. Hamilton: Perception: that's the problem.

Dr. B. Miller: Right. Yeah.

The Chair: It's pretty broad the way it is.

Would anyone else like to contribute then?

Ms DeLong: If a minister has a chain of drugstores, then right now he doesn't have to give up those drugstores if he's, say, minister of sustainable development.

Mr. Hamilton: Say that again?

Ms DeLong: If someone is appointed minister of sustainable development and he owns a chain of drugstores, then it's not a problem unless in the cabinet meeting they're discussing drug plans, in which case he would absent himself.

Mr. Hamilton: My view is that if you're a cabinet minister, it's a full-time job anyway. It should be.

Ms DeLong: It's about three full-time jobs.

Mr. Hamilton: I don't know of anybody that's been burned since I've been in there. We had one issue, but it wasn't a big deal.

Ms Dafoe: To clarify on your question, if this minister of sustainable development had a bunch of drugstores, as you were using in your example, and something came up where there's suddenly a conflict between his interest as an owner of these drugstores and his duty as a minister, he can't just absent himself from discussions. He's right then in breach of the act. So it's not just as simple as he can withdraw from certain discussions and partake in other discussions. He's in breach of the act if he's carrying on a business and the private interests of that business are in conflict with the public interest as a minister.

The Chair: Well, getting back to the specific issue of question 14, then, the issue is whether or not we want to establish a trust for the management of private corporations. I guess it relates to the previous questions on blind trusts.

Mr. Martin: I guess I'm trying to figure out what would be the advantage of it. I don't see that that solves anything. I may be missing something. What does it solve if we have a management trust? Can anybody tell me?

The Chair: In other words, you're agreeing with what I said, that the appearance of a conflict is going to be there anyway.

Mr. Martin: Yeah. It's still going to be the perception.

Ms DeLong: I guess the one thing that I see that would help is – you know, supposing you had your finances and your business organized such as you did so that you were in a ministry where you weren't dealing with issues to do with your company, and things all of a sudden changed, and you had to deal with it, then to me that's an exposure that you have, that suddenly you'd be in breach of the ethics regulations. I can see that there might be an advantage to actually having a management trust at that point in that if you've got a management trust, it seems that at least you've got – even though you try to create an arm's-length relationship, it's not a true arm's-length relationship, but at least there is some sort of a buffer in there. But I don't know, maybe not.

11:15

Ms Dafoe: Hopefully I'm going to add to this discussion and not make it more confusing, but the way I see management trusts is as a kind of exception to section 21(1). The general rule is that a minister will breach the act if he's carrying on businesses in conflict with the minister's public duty. The minister can carry on business that might otherwise be in violation of section 21(1) if he or she employs a management trust.

So that's, I believe, what management trusts are intended to do: to give a minister a little bit more flexibility in allowing maintenance of some private interests but ensuring that there's enough of a distance between the minister and those private interests so that there's no appearance that the minister is using information he or she has received as a minister or using any sort of influences as a minister to help advance his or her private interests.

Mr. Lukaszuk: This is all great if you want to split hairs and talk about semantics, but from an outsider's perspective there's no way to avoid at least a perceived conflict of interest. You know, we may have very ethical ministers that indeed would absent themselves from meetings and even make decisions that would affect their businesses adversely; nonetheless, from a public perspective unless one divests himself of any interest in a company, there will remain a conflict of interest from a perceptual point of view.

The Chair: Well, I haven't heard anybody advocating strongly for the establishment of a management trust here, so on question 14, then, is the committee agreed that this is something that we would not pursue in terms of a recommendation?

Hon. Members: Agreed.

The Chair: Okay, we'll move on, then, to question 15, and that is in Information Paper 8.

Mr. Shariff: What's there to discuss on this?

The Chair: We have a number of submissions on that point as well.

Mr. Hamilton, do you want to just perhaps describe the way that this is administered presently in terms of the public disclosure statement and, you know, the issue of the amounts and where that goes? I think it's disclosed to you, but that's as far as it goes presently. Is that right?

Mr. Hamilton: Yeah. Well, you've all gone through it. Tell me: is it a good system?

Some Hon. Members: It is.

The Chair: I don't have any difficulty with it.

Mr. Rogers: It's a good balance. Some of the comments here suggest that there's a good balance, and I agree.

The Chair: Dr. Miller.

Dr. B. Miller: Yeah. I guess that the submission from our caucus was about that the values should be included in a public disclosure, but I'm not going to argue for that. I think it was an overzealous researcher there. I mean, there is an issue about . . . [interjections] Not him.

I mean, what we have is in keeping with other legislation across Canada. You know the values – right? – as the Ethics Commissioner, but in terms of public disclosure, that's another matter. So, no; I'm satisfied with it.

The Chair: Mr. Elsalhy, would you like to contribute on that point, being one of the members of the caucus making that submission?

Mr. Elsalhy: Where is it that says that?

Dr. B. Miller: Yeah. You weren't involved.

Mr. Elsalhy: I wasn't involved. Actually, if I can just butt in here with that other question about making the disclosure public, making the member's disclosure statement available to the public.

The Chair: Well, they are now. They're made available to the public, but the issue is whether or not the value is in there.

I think certainly one could argue that presently the fact of disclosing what type or category of interest you have is enough to alert the public to the fact that you may have a problem or a conflict there without getting into the fact of what the value of that item is. I guess that that's simply the issue, whether or not the public has a right to know how much you have invested in certain investments or whatever, how much you're worth.

Dr. Morton: I'd speak in favour of the status quo because if you actually disclose the dollar values of various types of assets and investments, it potentially exposes you to harmful actions by either friends or enemies in your business dealings.

Mr. Hamilton: We take that very seriously. We have had no breaches, and there won't be any. We keep it very serious.

The Chair: I don't hear any dissent on this point, so I think the status quo with respect to disclosure of financial interests is sufficient. Are we all agreed on that point?

Hon. Members: Agreed.

The Chair: So we'll move on to question 16, and we'll just ask the Ethics Commissioner if he can comment. "Is there any other kind of information that Members should be required to report?" I think a couple of the suggestions were with respect to back taxes, bankruptcies, or things of that nature. Is that the type of thing that we were referring to there, Mr. Hamilton?

Mr. Hamilton: Yes, I guess so, those three bullets.

The Chair: My recollection is not completely clear on this point, but it was either the Tupper report or the Wachowich report that specifically made a recommendation regarding disclosure of back taxes, of owed taxes. Presently that's not something that is of interest to the Ethics Commissioner. Is it something that the public should have a right to know? I don't know why they recommended it, but they did.

Mr. Rogers: There's a provision in the Municipal Government Act that – I forget what the amount is – if you're more than a year in arrears on your taxes, for example, you're disqualified from even running for council. That's about the only thing I'm aware of.

The Chair: That's in the Municipal Government Act?

Mr. Rogers: Yes, it's in the MGA.

The Chair: Well, it wouldn't apply to us then.

Mr. Rogers: No, no. Just a reference.

Mr. Shariff: Just a clarification from Mr. Hamilton. The second bullet, "consider disclosure regarding programs accessed by a Member": what kind of programs are we talking about?

Mr. Hamilton: Consider disclosure regarding programs.

Ms South: Sometimes members do advise us, more in the case of asking for advice that they are accessing an emergency relief fund, that they are applying for a grant or something that is permissible to certain people in certain areas. That doesn't necessarily mean that that would be on a public disclosure, but it might be something to be added to the private disclosure, that we know what issues you may have that involve the government.

11:25

Mr. Lukaszuk: I have a question for the Ethics Commissioner. He also includes litigation, and I'm wondering why because that's already public information. If I file a civil claim against any entity in courts, that's available to public view – it's on a docket – the same with criminal if I'm charged. Why would we file that separately if it's already available through courts?

The Chair: Bankruptcy would also be in that category as well.

Mr. Hamilton: So why wouldn't you give it to us?

Mr. Lukaszuk: Well, I will, but why would I if it's otherwise available? You know, your office doesn't ask for information that's otherwise available in other categories. This one is available through a simple search through courts. You punch in my name in the Law Courts Building, and everything pops up to an interested member of the public. Sure, we could, but would that not create extra work for your office which you don't need to do because it's already available?

The Chair: I could conceive of certain instances where having a right or entitlement to a claim under a piece of litigation might be useful to the Ethics Commissioner in deciding whether or not there was a conflict of interest there. If they have a potential pecuniary interest in a particular issue or as a plaintiff in a lawsuit, for example, that could conceivably be of interest. It's not something that would have to be disclosed to the public, but I think it might assist the commissioner in some instances. I could see where it might be useful.

Mr. Shariff: I also see another side to this with the Ethics Commissioner. In my dealings with the Ethics Commissioner I find that, first, it clarifies a lot of what I do, but it also guides me and in many ways protects me from doing things that could become embarrassing down the road. If there is a disclosure to the Ethics Commissioner about such matters, then somehow the interest of the member is also protected therein. So I don't see a harm in it, as long as it's not something that then goes out as a public disclosure. But just reporting to the Ethics Commissioner, I have no difficulty with that.

Mr. Hamilton: Well, we don't put it out. We keep it, and we do that diligently.

But enforcement orders: what if you got an MLA on some kind of an order for beating his wife or kids or you know? Don't you want us to know that?

The Chair: Shall we deal with these items, then, individually? Under question 16 responses received, if you look at the submissions table there, dealing with the last one first, which we've just been talking about, "disclosure of involvement in litigation or enforcement orders," are we agreed that that would be information that we'd want to be included?

Some Hon. Members: Sure.

The Chair: Anyone opposed?

Mr. Groeneveld: So we take "consider" off there is what you're saying. We just do it, put it in.

Mr. Shariff: Yeah. The forms of the Ethics Commissioner would have that section, disclose that.

Mr. Lukaszuk: I agree. I never considered the points that the chairman brought up, and I reverse my comment. I can see benefit.

But would you then, Mr. Commissioner, want it upon filing a statement of claim? At what point would you want that disclosure to be forwarded to your office by a member?

Mr. Hamilton: Well, when it happens. If an order comes for you, you send it in to us, you tell us. We had two, two years ago and eight years ago.

Ms Dafoe: There is a requirement already in the act that says that if there's a material change that's happened to a member, then the member must tell the Ethics Commissioner's office within 30 days of that material change. Presumably, if there's new litigation, it would have to be disclosed within 30 days.

Mr. Reynolds: As you know, Mr. Chair, very well, there could be litigation against you that you're not aware of. You know, certainly you can have the situation where there's a statement of claim filed, but it's not served. You may not be aware of it. They may just be doing it to preserve their rights. I don't think anyone does, well – I don't know – perhaps people do a rigorous, frequent search of courthouse records. I think there would have to be something in there to say that within so many days of the member becoming aware of it because you'd hate to be in breach of it for having litigation against you or an order against you that you're not aware of because you've never been served.

The Chair: Is the committee agreed, then, that it should be when the member becomes aware of either of these circumstances: involvement in litigation or the existence of an enforcement order? Are we agreed on that point?

Hon. Members: Agreed.

The Chair: Can we move on, then, to the consideration of disclosure regarding the programs accessed by a member? That's another suggestion of the Ethics Commissioner. All agreed on that? Anyone dissent?

Mr. Rogers: Before the vote, is that really practical? I mean, how many programs are we talking about? Can we get some examples, a member or associates? Again, it depends on the definition, and I'm sure we've got a definition further in the act about associates, but is that really practical?

Mr. Hamilton: Yeah, we think so.

Mr. Rogers: No problem. I can live with it. I just wondered.

The Chair: Well, I can see where access to a government program might give you an appearance of conflict of interest on voting on a particular issue if you voted to kill that program or to keep it or to expand it or whatever, the benefits. I could see why it would be useful information to the Ethics Commissioner.

Mr. Lukaszuk, did you have a comment on this one?

Mr. Lukaszuk: No. No. I don't want to touch this one.

Ms DeLong: In the past we've had rebates for replacing your furnaces with high efficiency furnaces, something which I support but also a program which I might one day get around to applying for if I had the time. What would my situation be, then, with that?

Mr. Hamilton: Come and see us.

Ms DeLong: Oh. Okay.

Mr. Martin: I guess the prosperity bonuses are okay.

Ms DeLong: I think everybody gets that one. Yeah.

The Chair: That's the resource rebate, Mr. Martin.

I think that brings up a serious point, and that is that if it's something that is of general application, if it goes out to everyone, then obviously we're not interested in it.

Mr. Hamilton: No.

The Chair: If it is something that generally applies to everyone over the age of 18, then I don't think it's worthwhile reporting it to the Ethics Commissioner. So maybe we could come up with some wording that would say that if it's a program for which you have to apply or, you know, that has a restricted list of beneficiaries, like Ms DeLong's example of the energy efficiency program, we ought to declare that type of thing. I don't know.

Mr. Hamilton, do you have any suggestions in that regard? Am I on the right track there in terms of, you know, the broader general application? It means you're not interested in that.

Mr. Hamilton: Yes. Yeah, I think so. Yeah.

The Chair: Is the consensus, then, of the committee that we should consider disclosure regarding programs accessed by a member or a member's direct associates with the proviso that if it's of general application to the citizenry at large, it wouldn't be something that would be required to be reported? Is everyone agreed on that?

Mr. Shariff: The only additional information should be a definition of programs so that there's clarity on what it means. You know, programs generally could mean a lot of things, so you want to narrow that definition to what we do mean in this act by program. Add a definition is what I'm saying.

11:35

The Chair: Alberta government programs which confer a benefit of some sort on an individual: I think that's a pretty simple way to approach it.

Mr. Elsalhy: Mr. Chair, with this in mind, if you look under Comments on page 2 of the discussion paper, second bullet from the bottom, it says: disclosing to the commissioner contracts that the member or his direct associates are part of. Contracts with the government: should this also be something that we disclose, not just programs that are conferring benefit upon us or our associates but also contracts? If I'm required to disclose my private interests, then maybe this is something as well.

The Chair: Yeah. Well, that's just – that's right – expanding on the idea of a contract to something that's not contracted out.

Mr. Elsalhy: Maybe requiring us to disclose it or update it as it changes.

The Chair: Can we move on, then, to the next question, number 17? This is the one involving asking your spouse or adult interdependent partner for financial information which has to be disclosed to the commissioner.

Mr. Rogers: I'd just like to play a little devil's advocate here. I mean, not all relationships are the same. I'm just wondering: what if that partner, he or she, refuses or only gives you partial information? I realize this puts some stress on the member, but I'm just wondering how we deal with that situation where a partner refuses to disclose adequately or completely. How do we deal with that from an ethical and maybe even a legal standpoint?

Mr. Hamilton: We haven't had any problems that I know of except after the election. The new members, some brought their wives, and they were very outspoken that she didn't have to do this. We explained to her that we did have to do that, and you should have looked into it before your husband ran. I mean, that's all we can do

is be reasonable with them, and they calm down, and we got the information.

Mr. Lukaszuk: Is it the requirement of the spouse to diligently report to the Ethics Commissioner, or is it the requirement of the member to ask his or her spouse or partner to advise him and then the member reporting to the commission? If it's the latter one, you never have a problem because if the member never finds out, then you'll never know nor will the member ever know, obviously, if the spouse is not forthcoming.

Mr. Hamilton: Well, you don't know what we don't know, and I can tell you that the member . . .

Mr. Lukaszuk: Where's the onus? On you to find out or the member to find out for you?

Mr. Hamilton: Well, in many cases the wife whose husband is an MLA does the books. She sends him in with it. But we haven't had any trouble. Well, not this couple of years but maybe before that.

Ms Dafoe: The requirements in the disclosure statement to the commissioner require a disclosure of the assets, liabilities, financial interests of the member, spouse, or adult interdependent partner and minor children and any private corporation so far as is known to the member after the member has requested information from the spouse or adult interdependent partner. So there's an onus on the member to provide the information, but the onus also extends to asking the question.

Mr. Rogers: Mr. Chairman, if I may, just to follow that point. Then it would seem that there is a little bit of, for lack of a better term, slack in there for the member because you can only disclose as much as you are aware.

Ms Dafoe: You have to ask the questions. Yes, that's right.

Mr. Rogers: Thank you.

The Chair: We're dealing with legislation here. I guess if we wanted to make it apply to spouses of members, we could do so in our infinite wisdom and bring them in under the act too. That's really a decision for the committee.

Well, everyone, the submissions were unanimously in favour of keeping the system of disclosure for spouses and partners. I don't see any dissent there, and I don't hear any around the table. So are we agreed, then, on that point?

Hon. Members: Agreed.

The Chair: Shall we move on, then, to question 18? That's whether or not the list of items that are exempt from the public disclosure requirement is appropriate. We've got some niggling little items that I think we want to deal with on this issue.

Mr. Shariff: Where is the list in the act?

Mr. Martin: Section 14(4), on page 16.

The Chair: Now, the Ethics Commissioner suggested that the amount of $1,000 may be, I presume, a little bit too low. Mr. Hamilton, do you have any comments on what you think would be an appropriate level there for disclosure?

Mr. Hamilton: No. I think the members here should give us some. You're the people that are going to deal with it.

The Chair: We talk about, you know, things like automobiles, material assets and things like that. I mean, clearly, $1,000 is – I have shotguns that are worth more than that.

Mr. Groeneveld: Mr. Chairman, when was this $1,000 last reviewed?

Ms South: It's original to the act in 1992.

Mr. Groeneveld: In 1992.

Mr. Groeneveld: So if we could use that as a basis, we'd better be looking at about $5,000 or more, hadn't we?

The Chair: Well, I don't think so much taking into account inflation but as to what's reasonable for us as members to, you know, have to disclose in terms of assets. You know, even $5,000 is – I mean, you look at the purpose of the legislation. The purpose of the legislation is to alert the commissioner and the public to when we might have some problems here and to let people know, when this thing is made a public disclosure, what types of interests we have, and therefore they can judge whether or not we've done something that steps over the line, especially the commissioner. So the issue is: at what level would that be an appropriate disclosure that would help the commissioner to determine whether there's a potential conflict or a conflict there? Five thousand might be – at least, it's a starting point.

11:45

Dr. B. Miller: Just noting the comparative list, it's interesting to see. If I might mention Ontario again, $2,500, and then there's Nunavut, $10,000. P.E.I. is $5,000. So I take the idea of $5,000 to be . . .

The Chair: Sort of a median.

Dr. B. Miller: Yeah, a median proposal.

The Chair: Would anyone else like to make a suggestion or a comment on what the appropriate level is?

Mr. Martin: Well, I'm not sure. What are we looking at? Which assets? Is that your furniture?

The Chair: Yeah, the public disclosure to, you know, the commissioner.

Mr. Martin: I don't know how having furniture could influence people.

The Chair: Household furnishings, it seems to me, are not going to affect your . . .

Mr. Martin: I don't know. What are we talking about here? Is it a car, or what is it?

Ms South: Nothing used personally by a member or the member's family is disclosed publicly, so those are out anyways. You disclose them to us on the private disclosure. But we use the $1,000 amount as what you disclose to us even on the private.

Mr. Lukaszuk: The caution I would throw here is that having as

low a limit as $1,000 probably would cause many members to be in breach, voluntarily or involuntarily. A thousand dollars is a lot of money, but let's be honest: we all spend $1,000 very often. You know, you buy a suit; you buy tires for your car; you buy a television set. You buy those things very frequently for $1,000, and you really ought to be disclosing every single time.

Now, if we were to raise the threshold to $5,000, all of a sudden you don't buy very often $5,000 items, at least I don't, and I'm not even sure if that is, you know, a proper mark. But at $1,000 literally a member would have to disclose something at least every two months because you buy items as life goes on.

The Chair: Well, Dr. Miller has made a suggestion of $5,000. Does anyone else want to offer a different number, or do you want to vote on that?

Mr. Groeneveld: I guess, Mr. Chairman, that once again there's a set of rules for farmers and a set of rules for other people. I mean, on the farm we lump our machinery and assets all under one lump and give them in all at once. We don't break them down. I don't think anyone would take the time to look at them anyway. You know, in daily life on the farm if you replace a fence, you're over $5,000. It goes on and on and on. So if you're happy with the way we kind of calculate now, the $5,000 is fine. Otherwise, we could get into the nitty-gritty of many items. Maybe $5,000 is a little bit low at this time for anyone.

The Chair: Do you want to make another suggestion?

Mr. Groeneveld: I would suggest $10,000. There's one in there, and I don't think that's inappropriate in this day and age.

The Chair: Well, in fact, $10,000 is used in the federal code right now and in Newfoundland, the Northwest Territories, and Nunavut. Right?

Mr. Elsalhy: Just on the same topic here, are we talking aggregate amounts, or are we talking item by item? If we itemize it – furniture, vehicles, you know, recreational vehicles, clothing, and so on – are we talking item by item, or are we talking aggregate? Because this will address that concern.

Mr. Hamilton: Do your disclosure. In the disclosure you fill out, then you have something extra, and now you can be at $10,000 without referring it to us.

Mr. Elsalhy: Okay.

The Chair: Well, we've got two suggestions. First of all, I think that maybe the way to deal with it is: is there a general consensus that we would raise it at least to $5,000? Can we deal with that first of all? Is everyone agreed on that point?

Hon. Members: Agreed.

The Chair: Anyone oppose that?

Now, from $5,000 – it's kind of like a Dutch auction. We've had another suggestion that we would go to $10,000.

Mr. Groeneveld: I will move that if you want to yea or nay it. I will do that, yes.

The Chair: Sure. That's what I'm proposing. We would see whether or not there's consensus of the committee to move it up further, from $5,000 to $10,000. Who's in favour of that proposition?

Some Hon. Members: Agreed.

The Chair: Can I see the hands then? Opposed? All right. Well, the recommendation of the committee – and again, this is just us recommending to the Legislature; what they want to do with this thing is up to them – is to move it up to $10,000 then. So that's another one down.

I think that with the fact we've gotten through that question, we're going to take a break now. If, say, at about 25 after we could reconvene after lunch, it'll give everyone a chance to answer their voice mail messages and have some lunch. We'll be back at 25 after 12.

[The committee adjourned from 11:53 a.m. to 12:32 p.m.]

The Chair: Okay. We'll call the meeting back to order. We finished the first part of question 18 regarding the monetary limits for disclosure on assets, liabilities, and interests. Now we're dealing with the monetary limits on the sources of income.

I think the point that's been made by Mr. Martin here is an appropriate one; that is, there may be good reason to know what the sources of income are even if they're less than $10,000 per year, I guess, or whatever. I'll open up the discussion on the issue there. That's under . . .

Mr. Shariff: Section 14(4)(b).

The Chair: Yeah. Section 14(4)(b) in the act.

Mr. Martin, any suggestions there on sources of income?

Mr. Martin: Yeah. I would leave that one alone because that's a totally different situation. If you move that up to $5,000 or $10,000, that could be seen as a conflict depending on who was giving you that money. So I don't think that's one that we should change, particularly. It seems to me that that's different than your assets and liabilities, that we just discussed.

The Chair: Different from disclosing your boat and your car and all that kind of stuff.

Mr. Martin: Yeah.

Dr. B. Miller: I know that most of the comparative statistics seem to be that: they are both about the same amount. I don't know the rationale. Anyway, $1,000 per year: that means about five sermons. So I guess that after that I have to report to the Ethics Commissioner. Is that the idea?

The Chair: Do you want to make a suggestion?

Dr. B. Miller: I think $5,000 source of income.

An Hon. Member: You charge God $200 a shot?

Dr. B. Miller: Well, sometimes I ask for a love offering.

I think $5,000, the same as on the . . . or no. We decided $10,000 – right? – on the first item.

The Chair: That was on the assets, and that really is different. I

agree with Mr. Martin: it's a different issue. If you do have a source of income, it's really in a different category.

Mr. Shariff: But, Bruce, currently you would be disclosing that income anyhow.

Dr. B. Miller: Well, if I only preached five times a year, I wouldn't have to.

Mr. Shariff: This $1,000 sounds good to me from just a perception point of view, for the public to know what our sources of income are. It's transparent, clear, known up front.

The Chair: Is there any desire on the part of the committee, then, to tamper with the provisions on the sources of income, the amount? Does anybody want to offer anything other than that? We had a suggestion, but I think Dr. Miller has withdrawn that suggestion. Is there anybody else that wants to make a suggestion in regard to the sources of income disclosure? Remember the purpose of it. I mean, it's something to be disclosed to the commissioner so that he can help us to avoid potential conflicts or problems.

Mr. Groeneveld: I was just going to tell Bruce that I was going to vote with him for a change here.

Ms DeLong: I'd see putting it up a bit anyway. Maybe just put it up to $2,000 or $5,000, not $10,000 though.

The Chair: You're saying $2,000?

Ms DeLong: Well, I think there might be a consensus to do $5,000. I think we should at least vote on it.

The Chair: You're suggesting five?

Ms DeLong: Yeah.

The Chair: Any discussion on that issue?

Mr. Shariff: Does the Ethics Commissioner have any opinion?

Mr. Hamilton: No. It's in your hands. We'll carry it out wherever you want the level to be.

The Chair: We'll take a vote, then, on the suggestion of Ms DeLong. Don't forget that this is for the purpose of the Ethics Commissioner again, so this would not be disclosed to the public in terms of the quantities or anything. It would assist the Ethics Commissioner in determining whether or not you were in a position of conflict.

With that in mind, all in favour of moving that limit up to $5,000, could you please raise your hands? Opposed? So it's a narrow, narrow majority here. I've got 4 to 3.

Mrs. Sawchuk: It's 5 to 2, Mr. Chair.

The Chair: Okay. Well, I was counting Mr. Elsalhy too.

Mrs. Sawchuk: You can't count Mr. Elsalhy.

The Chair: No. I realize that, but certainly we can take his views into consideration and move it forward.

So I guess that's the consensus of the committee then.

We'll move on to the next item. Any difficulty with item 14(4)(c)?

Item (4)(d), "things used personally." I think that that is somewhat nebulous, the use of that type of terminology. I guess Aristotle Onassis would probably have said that his yacht, the *Christina*, was to be used personally. My fishing boat would be used personally. I don't know. It's sort of a meaningless term to me. I know what the intent is. I mean, it's probably for personal accoutrements of living or furnishings or whatever.

12:40

Ms DeLong: But this isn't what we report. This is what gets published. These are the exclusions for publishing, not for what gets reported. We still have to report things.

The Chair: That's right. But now we're saying that these things are excluded from public disclosure.

Ms DeLong: Just from the public disclosure.

Mr. Shariff: So George would still have to report his fence; it just doesn't get disclosed publicly. It doesn't save you any paperwork, George.

The Chair: I guess that if we move to the $10,000 limit in terms of the asset, it would be items that were over $10,000 that were used personally that we would be dealing with practically, wouldn't it? If it's over $10,000, it's going to be included in the report to the commissioner, but if it's over $10,000 and it's used personally, it won't be disclosed to the public.

Mr. Groeneveld: I guess, Mr. Chairman, you'll have to explain to me the difference between assets and things.

The Chair: Well, I'm trying to think of this practically.

Mr. Shariff: Your car doesn't have to go to public disclosure, what kind of car you drive. You report it to the Ethics Commissioner that you bought one, but he doesn't have to go out and say that you have a Mercedes and I have a Volkswagen or a beat up, you know, 30-year-old. Isn't that what it means, Mr. Chair?

The Chair: Yeah.

Mr. Elsalhy: I need clarification. Everything I own is used personally. Whether it's 10 bucks' worth of stuff or whether it's 10 grand, it's all used, and it's all personal.

The Chair: I guess the issue is that for purposes of transparency or disclosure, do we want to have an exemption in there for things that are used personally? If somebody enters the Legislature without a 40-foot yacht and, you know, six years later somebody looks on the thing and sees that they have that asset now, there might be some questions asked, I suppose. But that's the issue: if it's something that's over $10,000, whether or not there should be disclosure. All I'm saying is that to me the term "used personally," I don't know what that means.

Mr. Shariff: Well, this is how I understand this. When you buy an asset, you disclose it to the Ethics Commissioner, but if that asset is for your personal use – for example, a car – then that doesn't have to be disclosed publicly. You still have to report it.

The Chair: That's correct.

Mr. Shariff: You don't report what car I drive. That's how I read this.

Mr. Elsalhy: Can you give me an example of an asset that I would not use personally? What can I buy that I won't use personally?

Mr. Shariff: You bought a rental property. Now, that is your income because you're getting an income out of a rental property. That becomes disclosed publicly, right?

Ms Dafoe: Again, hopefully this will be helpful rather than not. There are a number of jurisdictions that exempt personal property used for transportation, and then they have a description that is household, educational, recreational, social, or aesthetic purposes, and those are excluded from disclosure requirements.

The Chair: And that I understand; things used personally I don't. I mean, those are fairly clear categories, but things used personally, as Mr. Elsalhy is saying, I mean, could be anything.

Ms DeLong: But it wouldn't be rental property. It wouldn't be stocks. Essentially, it's investments.

Mr. Martin: But they're already covered.

Mr. Shariff: That's right. So do we need to change it?

The Chair: Well, I like the clarity, you know, of the words.

Ms DeLong: Yeah, I think it's fine.

Mr. Groeneveld: If the ethics department deems that this is a reasonable thing to have in there and they can use it, I'm all for leaving it there. I just thought maybe it was a useless statement we had in there. I think they have indicated that there are times you'll use this, right?

Mr. Martin: So what about the one you were talking about?

The Chair: Yeah. I think that what Ms Dafoe has just said in terms of what these objects are that are used personally, I think it would be helpful to have some clarification in there, whoever is interpreting it, particularly for the Ethics Commissioner. I think he had a general idea what – you know, I think it makes it clear.

Do you want to read that again, Ms Dafoe, the terminology that you had there? What jurisdiction was that again?

Ms Dafoe: British Columbia, Ontario, PEI, Newfoundland, Northwest Territories, and Nunavut all have excluded from their public disclosure requirements personal property that is used for transportation or for household, educational, recreational, social, or esthetic purposes.

The Chair: I think that's pretty clear.

Dr. Morton.

Dr. Morton: Yeah. That's obviously a much better approach than we have. It says specifically "personal property" rather than "real property." I think the confusion maybe comes when we just say "used personally," which could mean anything.

Mr. Shariff: Well, Mr. Chairman, I mean, if there is a general understanding that what is in the act right now works for us but that clarity will help better it, I don't see a problem. Maybe I can move that we adopt those words into it.

The Chair: Any discussion on that?

Dr. Morton: Is it to strike the existing wording and substitute the alternative words or to leave the existing wording and add the additional words for clarification?

Mr. Shariff: We add those words by taking out the "things" because this is what the issue was. "Things used personally" was too ambiguous, was the point being made. So as long as we can insert those words without taking the essence of this section away from it, then there's no problem with it.

Dr. Morton: So leave the existing wording but add the additional wording.

Mr. Shariff: You would take off the reference to "things used personally" and insert the clarification that is used in the rest of the provinces.

The Chair: We'd have to reword it a little bit to make it fit.

Dr. Morton: I'd support that.

The Chair: All in favour of that proposition then? Anyone opposed? That's carried.

Now, excluded from public disclosure are "unpaid taxes, except property taxes under the Municipal Government Act and taxes under the School Act." No reason to tamper with that, I guess.

Ms DeLong: Why aren't those inclusions? Oh, this is public reporting. Okay.

The Chair: Yeah. We don't have to publicly report it.

Support obligations. Again, they're reported to the commissioner but not exposed publicly. Any difficulty with that issue? Okay.

Anything else that needs to be added to the list of items that are not disclosed publicly? Last chance.

Mr. Shariff: I think we have made that change, but let me just ask the Ethics Commissioner. This was the disclosure of your spousal income if they worked for the government or ATB. How are we handling that right now? Are we disclosing that?

Ms South: The source only.

Mr. Shariff: Just the source. We're not disclosing the amounts. We corrected that some time ago.

12:50

Ms South: We've never disclosed the amount.

Mr. Shariff: I thought we used to at one time.

Ms South: It may very well show up in the Minister of Finance's report on payments.

Mr. Shariff: That's where it was. Yes. Has that been changed, do you know?

Ms South: I can't answer that one.

Mr. Shariff: Okay. It used to happen that the Minister of Finance, when they tabled the report, would actually disclose your spouse's income if they worked anywhere in the government or for ATB and actually showed the amount. I believe that that may have been corrected, but it doesn't apply to this act.

The Chair: Okay. Well, I think we're done with that issue. We can move on now to question 19. We have quite a number of submissions on this. We got seven different submissions on that particular point, and that's discussion paper – have we got one on that? No.

The question is whether any other members should be subject to those restrictions that we just dealt with there.

Ms Dafoe: That's covered under Information Paper 6. You have to flip backwards for questions 19 and 20.

The Chair: Sorry?

Ms Dafoe: Questions 19 and 20 are covered in Information Paper 6.

The Chair: Information Paper 6. Okay. What's the section number in the act on that one? Could somebody help me there?

Ms Dafoe: This question is dealing with section 21, which is a section that sets out employment restrictions on members of Executive Council. The question asks: should these restrictions be applicable to other members aside from members of Executive Council?

The Chair: During the cooling-off period then.

Ms Dafoe: No. This isn't dealing with cooling off yet. This is simply employment restrictions. The minister and the Leader of the Official Opposition are restricted in the employment they can undertake. They can't engage in employment or in the practice of a profession, carry on a business, or hold an office or directorship other than in a social club, religious organization, or political party.

We dealt with this section a bit a little bit earlier. It would have been question 12. So questions 19 and 20 are just asking the question whether it should be expanded to apply to other parties.

The Chair: Does the Official Opposition have any position in this regard, Dr. Miller?

Dr. B. Miller: No.

The Chair: Mr. Martin?

Mr. Martin: Well, I honestly haven't chatted with anybody about it. I think if anybody, if they were a leader of the third party or whatever, tried to engage employment, I don't think they'd be the leader very long. It's pretty full-time, as near as I can tell, but that's just common sense.

The Chair: So you're speaking in favour of extending it.

Mr. Martin: No, I'm not. I really don't care, to be honest.

The Chair: Okay.

Mr. Martin: Yeah. I can live with it either way.

Ms DeLong: There is a suggestion here that it get extended to SPCs. I really don't think that the SPC chairs have the access to the information or access to the decision-making powers of the ministers, so I don't think that they should have to be restricted, I guess. I just don't see them as . . .

The Chair: Powerful individuals.

Ms DeLong: Well, if they handle their chair really well, they can be influential but not because of the insider information.

The Chair: Anyone else?

Mr. Martin: This is not to deal with information as such; it's to deal with employment.

Mr. Shariff: Employment, carrying on a business, holding an office.

Mr. Martin: Yeah.

Dr. B. Miller: The issue is just whether we would extend that to apply to all MLAs instead of just the ministers, right?

The Chair: Section 21. Right?

Dr. B. Miller: Section 21. Well, the question is: should any other members be subject to these restrictions then?

The Chair: Correct. That's right.

Dr. B. Miller: Even the fact that we raise that question is probably because of the evolving of MLAs into a full-time position. Certainly, as you say, we wouldn't expect a minister or the Leader of the Opposition to be carrying on employment while carrying out his office for the Legislature, but I don't know about MLAs in general.

The Chair: If I can just add one point before we move on with this thing, we do have the specific prohibitions in the act presently which deal with the positive obligation to absent oneself from discussions when that situation arises. This is really a broader provision that talks about somebody in Executive Council who is carrying on a business that appears to conflict with, you know, his public duty. So the issue is whether or not, if you look at it in practical terms, the Leader of the Official Opposition, for example, would be put in a position where they could be seen to be in a conflict between their private interests and their public duty. I can't see it in the way of a private member.

Mr. Lukaszuk, you had a new one there?

Mr. Lukaszuk: No. I withdraw.

The Chair: Mr. Hamilton, we'll turn it over to you. You've got some suggestions in there. I guess you've raised this as a potential concern, and you're not strongly advocating one way or another.

Mr. Hamilton: Well, the chairs are rotated on a regular basis. We're reluctant to support a requirement that chairs divest their interests or establish a blind trust.

The Chair: You're suggesting that because the Leader of the Official Opposition has the equivalent salary to a cabinet minister, they should be subject to those same restrictions. Again, I'd be interested to hear what the members of that party or the opposition parties would think.

Mr. Elsalhy: Mr. Chair, I'm approaching this from a different angle. We are adequately and fairly compensating the Leader of the Official Opposition and cabinet ministers to carry on their duties and perform their responsibilities, and they don't need, from a financial standpoint, to be engaging in a secondary business. Some of the MLAs have actually accepted a pay cut to become MLAs. So if I practise on a Saturday afternoon for a couple of hours – I'm not drawing a salary from it, but others might – or if an hon. member goes back to his farm and, you know, raises chicken and then sells that and makes a couple of thousand bucks, you know, I don't think it's applicable to the private members. So certainly to cabinet and certainly to the Leader of the Official Opposition. If we want to expand this to the leader of the third party or any party with official status, that's another discussion.

1:00

The Chair: Well, again, it's not just the carrying on of business here. I mean, there's nothing prohibiting carrying on business as long as it doesn't create the appearance of a conflict. We used the example earlier where the minister of health may have a chain of drugstores. That would be an example where it may appear to be a conflict, but there's nothing, in the present legislation at least, that would prohibit anybody from doing that. So all we're doing here is looking at the issue of whether or not, if it does create that appearance of conflict, you want it to extend to the Leader of the Official Opposition. I guess we'll start at that point and carry on from there.

Ms Dafoe: The Leader of the Official Opposition is already covered by these employment restrictions pursuant to section 23. It applies to members of Executive Council and the Leader of the Official Opposition.

The Chair: Under the definition?

Ms Dafoe: Right now section 23 says, "Sections 20, 21 and 22(2) apply, with the necessary modifications, to the Leader of Her Majesty's loyal opposition." So they're already covered.

The Chair: So do we want to extend? I don't know why we asked that question then.

Ms Dafoe: It's to other opposition parties.

The Chair: Okay.

Mr. Martin, any comments there?

Mr. Martin: Well, as I say, I can live with it either way. If they're basing it on salary, of course, the leader of the third party or any other recognized party does not get the same salary if that's what it's based on. I don't see a big need for a change, but if you wanted to.

The Chair: So is everyone content, then, to leave it the way it is, the answer to question 19? I don't hear anyone advocating otherwise. So agreed to leave it?

Hon. Members: Agreed.

The Chair: Okay.

Question 20. Any changes to the offices or directorships? The Ethics Commissioner has pointed out that the act doesn't address volunteer activities, for example charitable fundraising, and that ministers presently ask the commissioner's permission for approval.

Mr. Apedaile's submission, I think, is worth having a look at, at the bottom there: "Presence of an elected official on any board may give that organization an advantage." I mean, there is a point to be made there.

Mr. Shariff: Not only that, Mr. Chairman. I'm aware of at least a few former members of the Executive Council currently working with not-for-profit or charitable groups. Just from an optics point of view, would somebody use the office that they have to sit on a board so that it becomes a landing spot for them when they're done with politics? I don't know if anybody planned it that way, but could that be one of the optics?

Mr. Rogers: Mr. Chairman, just to add a little bit to this discussion. I'm thinking that if we found some language that took out the cases where an organization is involved in raising funds that receives government funding or may apply for government funding or something like that versus fraternal organizations – you're the honorary chair of your campus fraternity or homecoming chair or something like that for your university – I think there is a difference between those types of organizations that are not in the business of fundraising in any manner versus organizations that are typically out doing very significant fundraising efforts. Regardless of where those funds end up, from the fact that you are someone who is well connected, so to speak, and if the potential is there for raising funds from government, then I can see where it might behoove us to put something in that distinguishes from those types of nonprofit or fundraising-type organizations.

The Chair: Well, is this something, then, where the commissioner maybe should have some discretion; for example, if it was a particular type of group that would not in the normal course be dealing with that minister's department in any fashion? I mean, it seems to me that there wouldn't be any harm in that type of involvement.

Mr. Martin: There could be still the perception – people talk, you know – even if it's not in your group. For a short period of time I think this does create the potential for perception at least. It's a short period of time for the cabinet minister where we're saying: don't involve yourself in groups. I agree with what George is saying, but I don't know how to break it down; you know, take some out, some in. The charities, the nonprofits are competing against each other. If there's a perception that a cabinet minister is with one, then the other ones are going to be upset because they're all competing for limited dollars there.

So I think it's a wise thing not to be involved as a cabinet minister. I also understand – and I don't know what the wording is, how you break it out – that some other ones wouldn't be in that same situation, but I think there is that potential. I mean, if all of a sudden you have a high-profile cabinet minister and you're in the heart society and the cancer society is trying to get money, you're creating that perception.

The Chair: Would you suggest, then, Mr. Martin, that you would want to break out that item (c) from the other ones and create a separate prohibition on being an officer or a director? Is that kind of what you're suggesting then? Not just having it create or appear to create a conflict, because there is the appearance in any event. I think that was what you were saying there.

Mr. Martin: Yeah. But I'm also trying to grapple with what George is talking about because for so many fraternal organizations and that, that wouldn't be the case. There would be no harm.

Mr. Rogers: Chair of your alumni association for the university or something like that.

Mr. Martin: Yeah, rather than the broad brush. But there are very active fundraising groups among many different nonprofit areas. They hire people to do it full time.

The Chair: We'll come back to Mr. Hamilton in a second, but if I get the essence of what you are saying, then you're saying that we should have a stronger prohibition on holding office or directorships, other than in the social clubs, religious, or political parties, than we presently have right now. Is that fair?

Mr. Martin: Yes.

Mr. Hamilton: This is a wide berth. For the last two years we have had several phone calls about going onto a board. That can be a small board, or it could be Northlands, where two members in the Leg. sit on the board – and it's the same in Calgary – and they just got $70 million. But they don't get anything personally. That's where I say: are you getting paid for this? If they say yes, then you can't do it. If it's in a community, an event or whatever, as long as they're not getting paid or anything, then they can go on the board. That's the way we have done it. You're going to tell us how we're going to do it from now on.

1:10

The Chair: Mr. Shariff.

Mr. Shariff: Yeah. I just want members to be aware so that we don't make a decision that really stands in the way of progress for a lot of groups out there. From time to time, and I see this quite often: let's say, the honorary chairmanship of a certain committee or a board where the member really doesn't even attend but where the title is used – you know, the Premier is an honorary chair of a certain thing – and the end product of whatever that organization is, whether it's academic or nonprofit or a research-based organization, is to benefit Albertans at the end of the day. If the member is not getting any personal benefit out of it but the member's name is being used so that the association can raise funds that'll benefit Albertans, I hope we don't penalize this.

The second group that we shouldn't be penalizing is the example like the Stampede board and Northlands and maybe the Homeless Foundation and others who do need government representation to direct them so that they end up making the right decisions.

So I'm just cautioning members, you know: let's beware before we make any drastic changes to this particular section.

The Chair: Mr. Reynolds, I think you were next.

Mr. Reynolds: I just had one small point to build on the point that Mr. Hamilton made, which was that if one looks at that subsection, section 21(1)(a), (b), and (c), and then if you look at the bottom of it, it says, "that creates or appears to create a conflict between a private interest of the Minister and the Minister's public duty." I'm not sure. I think what I hear the Ethics Commissioner saying is that if you are the honorary chairperson of a social club, you don't have a private interest necessarily in that, which would mean that you would have to build more into this section, I think. The underlying assumption seems to be that there is no private interest in a social club, religious organization, or political party. So if you want to build that in, then you're creating the assumption that there is a private interest. Or would you want to rewrite that in a different way?

Dr. B. Miller: I agree with that because isn't the assumption that the office or directorship that is applied here is on a board where there would be some private interest, where there would be some benefit, whereas the other organizations, other involvements are strictly volunteer? I think that's not made very clear here. I think the distinction is between, you know, organizations where you get a financial benefit and volunteer organizations where there is none. I mean, if I'm a member of the Gandhi foundation, there's no financial benefit. An interesting thing for me as an MLA: as soon as I became an MLA, all these organizations didn't want to have me anymore. But I guess it's different if you're a minister. If you're a minister, maybe they would want to have you. These organizations want to be nonpartisan.

The Chair: Well, just a caution. I mean, there's a two-part test that's there already. The two-part test is that you engage in employment or carry on a business or hold office or a directorship other than in the social club, and the second part of the test is that it has to create a conflict. Really, that together with the other prohibition on taking part in discussions and decisions – I think it really covers most of what we're trying, you know, to get away from. Am I right there, Mr. Reynolds?

Mr. Reynolds: That was the point I was coming to, but you made it a lot better than I did, I think.

The Chair: So you really have to jump over those two hoops before you get into a problem. It has to create or appear to create a conflict in addition to just holding the directorship. But the issue raised by the commissioner is: what about those charitable fundraising things and volunteer activities? Is it something that we want to deal with in a more stringent way, or is it covered in a general way by the appearance of conflict, which is already in there? That's the issue, I think.

Mr. Elsalhy.

Mr. Elsalhy: Okay, sir. I would support allowing the ministers to participate in charitable events and fundraising and so on as long as they don't hold an office or a directorship in that organization.

Let me give you an example. Assume one minister whose spouse has breast cancer or vice versa, her spouse has colon cancer, feels very strongly about raising funds for the Cancer Society and so on. They can. I don't think we should really prohibit them from doing this, because that's a cause that they feel very strongly about, and that's a cause that they can relate to. They see it every day. Maybe they should not be a director or a board member on the Cancer Board or the Cancer Society team. They can fund raise, they can attend the events and participate in discussions and dialogue and so on, but they should not be on that board. There is some private interest in there because based on the funds that they receive, they can develop a cure that might help their spouse. This is where the visual is bad.

So, yes, they can fund raise, but I don't think they should be on the board. I think that's a happy medium. I think it's a fair medium.

The Chair: Well, it's kind of a fine distinction because, like I said, the test is whether or not there appears to be a conflict. If you were the Minister of Economic Development and you were involved in something to do with a tourism promotion group – the Calgary tourist and convention board, for example – then there might be an appearance of a conflict if you sat on that convention board. Clearly, there's an appearance of a conflict there, but I think that we really deal with it in a general sense in there.

I don't know. You know, what's the will of the committee? Do we want to go beyond this in terms of things like charitable fundraising?

Mr. Martin: I think Mr. Peter Apedaile does hit something, that volunteer associations, not-for-profits increasingly depend on government grants. It's not so much a personal thing, but there's a perception of one group. Probably the best examples, I think, are the ones you talked about, the stampede board and the racing convention, because those things tend to be thought of as more political than, say, the Cancer Board or other areas. I don't know. Maybe it's not worth pursuing.

There is, again, that perception that if somebody was a very high-profile cabinet minister and they're with one group, another group may not be that happy about it, you know, and claim that there is at least a conflict. It's not for personal gain, but it's for the charity or the group – it doesn't have to be a charity – that they're involved with, and that, I think, creates some problems. Now, I don't have an easy way to break it out, though.

Mr. Shariff: Maybe a clarification would really help us. I can't think of a minister sitting on any board. I can't think of any. The only ones that I can think of are honorary chairmanships like accorded to the Premier. Any other boards are basically represented through private members. Are there any cabinet ministers that really sit on any boards, that anybody's aware of?

Mr. Hamilton: I don't.

Mr. Shariff: So it's not an issue here today in Alberta.

Ms DeLong: Didn't Pat used to work on raising money for liver? Maybe she wasn't on the board. Maybe it was just for liver research.

Mr. Shariff: It could be. I mean, I do a lot of fundraising, but I'm a private member. As a minister I have never seen a problem in Alberta, that I'm aware of.

The Chair: Well, Mr. Hamilton, I'm going to throw this one back to you and Ms South, as to whether or not you perceive that there is an issue there that we should be dealing with.

1:20

Mr. Hamilton: Or at least have some . . .

The Chair: Some guidelines on it.

Mr. Hamilton: Yeah, guidelines.

The Chair: Is there something, you know, that you would like us to clarify so that you can interpret the legislation better, or is it something that is crying out for a solution or a resolution? In other words, what's the mischief that we're trying to remedy here? I keep using that term.

Mr. Hamilton: I guess it's making it more simple for the MLAs. If he goes on a board, he sends us a letter, and we maybe get back to him or her to see what it is, or if they explain in the letter that this is doing community work in their constituency, we just send a letter back and say okay.

Mr. Shariff: But this just deals with ministers; this doesn't deal with members.

The Chair: That's right. Presently we're dealing with the ministers.

There would be an easy way to resolve that particular conundrum, by putting some sort of a specific prohibition in there on soliciting a benefit or funds for that organization to the government. That's an easy way to deal with it. If they're dealing with a general solicitation to the public, a fundraising campaign, that's one thing. We could easily build in some kind of a prohibition about lobbying on behalf of that organization to their own government.

Mr. Martin: That's the key right there. It's not general fundraising that people care about; it's if there are government grants that that person could be perceived to be lobbying for.

The Chair: Could we get at your problem, then, Mr. Hamilton, if we put a specific provision in there – just thinking out loud here – that prohibited a minister in any capacity with a charitable organization from participating in a solicitation of a benefit or funds from the government of Alberta, something along those lines?

Mr. Hamilton: Why wouldn't you do it as per all MLAs and cabinet?

The Chair: Well, I guess the rationale is for the same reason that we've separated out the ministers: the ministers are the government. We as backbench MLAs are simply private members; we're not the government.

Mr. Shariff: My job as an MLA is to try and get the right resources out in the community, so I would lobby the government to build more hospitals or build a certain resource in my neighbourhood. I do that all the time.

Mr. Hamilton: That's your job.

Mr. Shariff: That's my job. So why would I have to disclose that to you every time I do any fundraising for a community or lobby for any government grants to go to my neighbourhood?

Mr. Hamilton: That's true.

The Chair: I think we should deal with it, first, from the point of view of the ministers because the ministers really are in a special provision. Can I get some feedback on what I've suggested there in terms of what I think gets at Mr. Hamilton's desire, which is to look at some issues that may be ethically dicey, such as charitable fundraising soliciting funds back from their own government. Is there some kind of a general consensus that we should proceed along those lines?

Dr. Morton: I think that makes good sense. I also think some ministers might welcome that because it would give them an excuse not to be cornered by groups with the expectation that if they say no, then it's some sort of rejection. I should think ministers might welcome this restriction.

The Chair: Mrs. Mackenzie, are you clear on what we're trying to achieve there then?

Mrs. Mackenzie: I think so, yes.

The Chair: Mr. Reynolds, do you have anything to add?

Mr. Reynolds: In terms of 21(1)(c), as I understand what you're

saying, that clause wouldn't necessarily change, but you are talking about creating a new subsection, if you will, or clause that says something like, and I'm just paraphrasing here: no minister shall solicit funds on behalf of any noncharitable organization of which he or she is a director or a minister shall not be a director of a nonprofit organization if that group solicits funding from the government, or something like that. Is that what you were talking about?

The Chair: Yeah. I think that's the general idea.

Does that get at what your problem is then, Mr. Hamilton?

Mr. Hamilton: Well, it was not my problem.

The Chair: No. I mean, you have to administer it though.

Mr. Hamilton: That's fine, I think.

The Chair: All agreed?

Hon. Members: Agreed.

The Chair: Thank you, Mr. Reynolds, for the clarity there.

Mr. Reynolds: It was just pointed out that I should have said charitable organizations instead of noncharitable.

Mr. Martin: I thought I'd heard it wrong.

Mr. Reynolds: Yes. It's that cold that I was talking about.

The Chair: I guess that brings us up to question 21.

Mr. Shariff: What section of the act does it relate to?

Ms Dafoe: Part 6 of the act deals with restrictions on former ministers. That's page 30, if you have it.

The Chair: We're dealing with section 31 in the act. Dealing, first of all, with the list of activities, is the list of activities adequate, or is there anything else that we need to add to the restricted activities there?

Ms DeLong: Are we on 21 or 22?

The Chair: We're on question 21 but section 31 of the act.

Ms DeLong: Okay.

The Chair: We've got four pieces of paper that you need to look at here. One's the discussion guide, question 21. You've got question 21 with the summary of submissions, then section 31 of the act, and then Information Paper 9.

I see that I had a lot of comments on this when I went through it. I looked at the Ontario provision in this regard, and there was something in there that we have not referred to with respect to the prohibitions on the cooling-off period. The one thing that I looked at was the issue of lobbying activities, and my suggestion was that we look at that and add another provision in there that would prohibit a cabinet minister during the cooling-off period from engaging in any lobbying activities on behalf of any person or entity to a department of the public service or a provincial agency with which the cabinet minister has had significant dealings during his or her last year. That's along the lines of what Ontario has in there right now. We don't deal with that specifically during that cooling-off period.

1:30

Mr. Hamilton: We're going to come to it.

The Chair: Yeah. The actual time. But what I'm dealing with is the list. The list, I'm just suggesting, should be extended along the lines of – I think it's 2 and 4, you know, of Ontario, that I had looked at there, whatever that means. Oh, that's those little dots, the little items in there, I think, that I was referring to.

Dr. Morton: Those currently aren't on our list of prohibited activities?

The Chair: During that six-month period they can't do those specific things there, Ted.

Mr. Martin: Basically, what you're saying, as I understand it, is that this could be a way around the act. Acting as a lobbyist for a group could be a loophole basically. So it makes some sense to put in there, too, that you can't lobby.

Ms Dafoe: There is an existing provision now, 31(1)(c), for those that have the office consolidation in front of them, that prohibits a former member from acting on a commercial basis in connection with any ongoing matter. So, arguably, that may apply to lobbying, but if you want to provide a specific prohibition . . .

Mr. Elsalhy: Can I ask Ms Dafoe if we can clarify this? Item (c), again, says, "The former Minister, while in office, directly acted for or advised a department." So let's assume that a cabinet minister was the minister of agriculture, but now he's coming to lobby the government on energy. Would this apply?

Ms Dafoe: Did he directly act for or advise the Department of Energy?

Mr. Elsalhy: So the answer would be no because he was only the minister of agriculture, and supposedly they don't interfere.

Ms Dafoe: I would think generally – I mean, I'd hate to make it black and white because I guess there could be a scenario where agriculture and energy worked together on common projects or they had some dealings that were common.

Mr. Elsalhy: So my point, the issue that Mr. Martin raised, is basically: should we change the language to say that he should not perform any lobbying, period, during the cooling-off period?

The Chair: Well, I think that if you look at the commissioner's information bulletin, his office has already elaborated somewhat on what the definition of personal dealings with the agency there is, which somewhat broadens the concept of being their own department. It looks at regular and routine contact, for example, as being a strong indication of official dealings. So if there have been official dealings with another department, for example, along the lines that you were suggesting, I think that the information – now, the question is whether or not we would like to incorporate some of those specific provisions that you've got in your information thing now into the legislation and maybe tighten that up somewhat so that there is more clarity in the act.

Dr. Morton: I think I would still prefer the broader prohibition on lobbying per se because any minister who sits in cabinet has knowledge of things that he or she may not be responsible for or may not even have direct interaction with but still has knowledge of. So I think the broader prohibition on lobbying is better.

The Chair: Mr. Shariff, you're nodding.

Mr. Shariff: Yeah. You know what? It's a perception issue.

When a minister leaves office, we do have a substantial transition allowance in place to allow that cooling-off period to occur. There's no prohibition to a former minister going out in the private sector and working anywhere. This is just to deal with government. So if you can build in the safeguards for perception, I think it helps us. It helps our integrity overall.

The Chair: So something along the lines of Ontario's wording there, would that be acceptable to the committee then? Is there consensus on that?

Ms DeLong: I prefer this more direct language that we have right here. It actually brings up whether or not they "directly acted for or advised a department of the public service or a Provincial agency involved in the matter." In other words, is there a conflict of interest? I mean, I think we're a little bit more direct this way. You know, is there a conflict of interest? Did this minister set up some program and then left and became head of the organization that works with the program? I much prefer that to just sort of saying that you're unemployable for six months.

The Chair: Well, just perhaps to add a little bit to the complexity of this discussion, let's take the example that we were just talking about, a charitable or nonprofit organization. As soon as the minister leaves office, would it be okay for him or her to come back and lobby for a grant to that board or that charitable group? I think probably not.

Ms DeLong: Why?

The Chair: Well, because of the fact that they still have influence around the cabinet table in the government. The perception is that there's no impartiality there, that there's a bias or a conflict of interest.

Mr. Shariff: It's only for the cooling-off period.

The Chair: We're talking about that period immediately following their departure. In other words, the fact that it's not a commercial basis, which is what's in there right now – what I'm saying is that given our previous discussions on the perception that there may be a conflict of interest there, what we're trying to rectify wouldn't be remedied if you only looked at "accept employment" or "a commercial basis," which is in there now. So lobbying is a more general proposition I guess is what I'm suggesting.

Mr. Martin: Well, as Dr. Morton, I think, and Mr. Shariff said, there are perceptions here, and it's a short period of time. If you sit around the cabinet table, you're obviously going to have more access to information or influence or whatever, and all we're saying is that for a short period of time that not happen. I think it's cleaner doing it the way you suggested than trying to lay out that this is a commercial basis and the rest of it. So I think we may be well served by doing that.

The Chair: Do you want to make a specific suggestion, then, Mr. Martin, along those lines?

Mr. Martin: Well, I'm not sure whether the words are missing. I think what we're talking about, as I understand it at least, is that there should be no lobbying of government for the cooling-off period by ex-ministers, period.

The Chair: No lobbying for . . .

Mr. Martin: Lobbying for money or whatever.

The Chair: For a benefit or something.

Mr. Martin: Yeah.

The Chair: We don't want to prevent them from lobbying for a policy.

Mr. Martin: A benefit to an individual or his organization.

Mr. Shariff: Lobbying to the government basically.

Mr. Martin: Yeah.

Ms DeLong: That's just during the cooling-off period.

The Chair: Yes.

Dr. Morton: After the cooling-off period it is okay; you're right.

Mr. Martin: During the cooling-off.

Mr. Lukaszuk: Well, the cooling-off period, you know, as much I appreciate why it needs to be there, when you really sit down and think about it, it's only there for perception. If you have a minister, for example – and we had an example of that – who resigns, who loses his portfolio at election time, simply doesn't run again or is not reappointed to that particular role at election time, then you have a whole new slate of ministers and a whole new slate of MLAs. I can see why the cooling-off period would help because his personal contacts diminish significantly. But if you have a minister who ceases to be a minister and an MLA mid-term or at the beginning of a term, which happened following the last election, then for the next three years until the next election he still is well acquainted with the cabinet and government of the day for at least three more years, even though the cooling-off period is only six months at this point.

Hence the length of the cooling-off period really becomes irrelevant. What you really have to rely on is that the process will not allow a minister or ex-minister to duly affect outcomes of decisions regardless of how long the cooling-off period is. Some ex-ministers may become influential for maybe 15 years following their role as a minister because of the fact that they remain active in government circles.

I think it's just semantics, but if we are aiming at perceptions and if we think it'll change perceptions, then that'll be it.

1:40

Dr. Morton: I think Thomas' example points to something that wouldn't be caught by the time period that we're discussing, but I don't think it disproves the need for a broader prohibition. I think the nature of the prohibition is that item 2 on the list of prohibited activities that Ontario has, that you referenced earlier, captures what people have been talking about.

The Chair: You're referring to the schedule?

Dr. Morton: Yes. The schedule for Information Paper 9, page 2, summarizes the Ontario act. Bullet 2 says, "can't make representations to government on own behalf or on another person's behalf with respect to contract or benefit." I think that's the legal wording for saying: no lobbying.

The Chair: That's what I was referring to earlier, bullets 2 and 4 there.

Do you want to make a proposal then, Dr. Morton, on that, and we can perhaps achieve some consensus on those?

Dr. Morton: That would be that

part 6, section 31(1)(c) be amended to include the gist of the Ontario wording.

The Chair: Discussion? Does everybody have a copy of that now? It's the schedule to Information Paper 9, second page. Is everyone agreed on that then?

Hon. Members: Agreed.

The Chair: Anyone opposed? You win some; you lose some.

The next one is question 22.

Ms DeLong: Excuse me. Question 21. There was an item we didn't look at. It was a suggestion from the Ethics Commissioner adding the provision "to allow a former Minister to accept employment 'in further service to the Crown'."

The Chair: Mr. Hamilton, do you want to comment on that?

Mr. Hamilton: Well, we add a provision. We want to allow a former minister to accept employment "in further service to the Crown."

The Chair: Any discussion on that?

Mr. Shariff: I think we have a classical example in Murray Smith. Would this kind of prohibit the government of Alberta from using good people like Murray Smith as our ambassadors to benefit this province?

Ms DeLong: Just the opposite. It allows it.

Mr. Shariff: It allows it?

Ms DeLong: Yes.

Mr. Shariff: It would allow us to do that?

Dr. Morton: Nothing personal to Murray, but I think that looked very bad publicly. You have someone leaving government with a significant severance package and then immediately receiving a lucrative contract. I think that's the type of cronyism that was referred to in an earlier discussion, and I think a one-year prohibition on that would make sense.

Ms DeLong: I totally disagree. Again, I would use exactly the same example. There is no one who we could possibly have gotten for that work down in Washington that could have filled that role, could have been so effective. I mean, it was absolutely fantastic that we managed to get him for that, and I think that we need to have the flexibility to be able to do that.

Mr. Martin: I didn't know that Murray was such a superman, that there was nobody else around.

No, I agree with Ted Morton. I mean, that was a major issue with people. You know, we talk about perception. That perception hit hard here at the time, that this was a job created for friends of the government and the rest of it. A cooling-off period for six months or whatever we decide should be a cooling-off period. As pointed out, there are jobs other than, you know, getting contracts in government.

I think that that was a very good example of the public being very cynical when that happened. I don't agree that that should happen. I think cooling off means cooling off. That's not cooling off; that's going into the fire even further.

The Chair: Mr. Lukaszuk.

Mr. Lukaszuk: Thank you. I'll be a perfect politician: I agree with both of you, with Ms DeLong and Dr. Morton.

We're back into semantics again. I agree that nothing looks worse than a minister who recently has stepped down from his portfolio and then is offered and accepts a position that may be perceived by some to be lucrative or influential, but at the same time it doesn't only happen in this government. It happens in every government of any political stripe. When you have available positions that are very crucial and instrumental to governance of a province or a state, you will appoint people whom you know and whom you trust and whose performance has a good, solid track record. You don't do an RFP for a position of that sort. You appoint individuals in whom you trust. A prime example: Liberal Prime Minister Chretien appointed his brother to the position of ambassador to the United States because he may have trusted in the track record.

Now, you know, as I said earlier, this cooling-off period, as much as we need it for public perception, is really a misnomer because of the fact that some individuals – and I use the same Prime Minister, Chretien. He will continue being influential in the federal Liberal circles for as long as that government is in power because a number of the ministers who continue to be ministers he made ministers for the first time. A number of the MPs who remain MPs are affiliated with him or have debts of gratitude towards him for a number of years to come. Even though a cooling-off period may be six months or a year, it really doesn't change anything.

So I guess that extending it or leaving it the same really will not pragmatically change anything. It'll only perhaps change perceptions, if that.

1:50

Dr. Morton: I agree with Thomas's distinction between reality and perception, but I think a lot of this is about perception and about trying to restore and keep the public's faith in the integrity of government. We all know that in politics perception is reality, for better or for worse. Probably a lot of times it is for worse, but that's the way it is. Particularly for the members of our party as we approach over three decades in office now, I think it's imperative that we set some of the very highest standards for conflict of interest, that can become a model for other provinces, even if it contradicts some of our recent practice. I think this not only would be good policy, but I think it would be good politics for this party going forward to set the highest possible examples of integrity in public office.

Dr. B. Miller: I'm just curious because the act does make reference to appointment by the Crown. This is section 31(3)(a). A minister would be able to take a contract with or benefit from the Crown if certain conditions were met, one of them being, then, an impartially administered process open to everybody, you know, and that kind of thing. I don't know why you want this added if that's already there, why we have to add this provision to accept employment "in further service to the Crown" when that possibly is already here although it's subject to conditions. I like the conditions.

The Chair: Mr. Hamilton, why do you want this provision in there?

Mr. Hamilton: Well, our office doesn't permit me to go into the details of Mr. Smith. If the government wants to hire ministers, or MLAs for that matter, they can do it openly if you have this in. I don't want to say anything more about that.

The Chair: Well, I think Dr. Miller's point addresses some of Dr. Morton's point too, that to avoid the appearance of cronyism, it has to be something that's open in a general competition to all people. That provision already is there. There's a provision in subsection (3) that already allows that contract on certain conditions, including the fact that it's an impartially administered process to select that person. As Mr. Lukaszuk says, they may be the most qualified. There may be certain parameters there that need to be met. So the issue is: why do we need to go beyond what's already there?

Dr. Morton.

Dr. Morton: Yeah. I confess that I hadn't read 31(3), and it seems to me that that does do the job with respect to what I was talking about.

The Chair: Is there anyone, then, that wishes to proceed? We did come back to this, Ms DeLong, because it was an outstanding issue, but is there anyone that wants to go down that road and proceed with a further provision allowing this?

Mr. Shariff: I just want to make a statement that given where we are at as a province, I think we have arrived on the international stage. Here I will clarify: I have a personal bias because of my political affiliation. In my private, personal opinion, I don't think the federal government necessarily paints the right picture for my province. So if my province wants to send a person who represents the provincial interests on a special project that will do the right things for my province and if that person happens to be a former minister or a former MLA, I have no difficulty with that. I think we should be able to do that so long as the process is open and clear and the disclosure is, you know, publicly made. We should not change the act to prohibit that occurring.

The Chair: Well, that's not a suggestion. The suggestion is that we broaden the act beyond what is already there in 31(3) to allow a general allowance, and I don't hear any groundswell of support for that.

Mr. Elsalhy: Mr. Chair, just to remind myself and the committee, the Auditor General in his latest report drew attention to the issue of appointments. He said that they have to be administered with fair, open competitions and that, you know, those job placements should be fully accountable and that they should be people who hold the highest qualifications. So if we broaden this and have a blanket allowance for no scrutiny, actually we're damaging our picture. We're not actually improving it.

Mr. Hamilton: I guess that we put this in here because if the government – what they did in this case: they were going to have a test, but they changed their mind. They were going to appoint him, and they did. So you might as well put it in there.

The Chair: Well, I think the point is that we do have some restrictions there now which, hopefully, are enforceable either through the offices of your office or the Auditor General, which do make some pretty stringent requirements upon, you know, these contracts with the Crown. I mean, having to be impartially administered and open to a significant class of persons – I think that it's really beneficial to have that in there in some sense.

So I'm at your wish here.

Dr. Morton: Is your concern, Mr. Hamilton, that 31(3) sounds good but is basically unenforceable?

Mr. Hamilton: In that instance, yes.

Dr. Morton: So, Chair, to go the extra mile, then, the highest standard would be to actually prohibit such contracts for one year. Is that correct? Just an absolute prohibition.

The Chair: That's right.

Mr. Lukaszuk: Mr. Hamilton, why was it nonenforceable in that case?

Mr. Hamilton: I don't want to go into the mechanics of it. You have to trust me that he was appointed.

Mr. Lukaszuk: So the question, then, would be: what deficiency exists in subsection (3) that makes it nonenforceable irrelevant of case studies?

The Chair: Rather than allowing it, I think Mr. Lukaszuk is saying: is there anything we can do to make it more objective and verifiable? Is there anything that we could add to that provision in order to make sure that the process is transparent and open?

Dr. B. Miller: Well, I would prefer just to leave it for now and go on and keep that in mind when we look at the Ethics Commissioner's duties and the process, investigation, and sanctions and so on, all of that, and come back to this. If it's not enforceable, maybe it has to do with the kind of Ethics Commissioner office we've set up.

The Chair: The powers.

Dr. B. Miller: The powers. Right.

So rather than change this, I would rather revisit it later, after we look at the Ethics Commissioner's office.

The Chair: Well, I don't hear any consensus that we want to go further than what's already there. Am I correct in that assumption? Agreed?

Some Hon. Members: Agreed.

2:00

The Chair: Anyone opposed to that concept then?

Mr. Shariff: One lonesome voice here.

The Chair: Okay. I think we should move on to the next question then. It's 22. Currently the cooling-off period is six months. The issue is whether or not this is an appropriate level of time. I think the submissions that we received were unanimous in saying that it wasn't adequate.

Mr. Martin: It was not unanimous.

The Chair: There was one person?

Mr. Martin: One in Camrose thought that six months was good.

The Chair: If you look at the schedules to Information Paper 9, you'll see in there what the comparable jurisdictions are doing. I think that there are a couple others that are still six months, but they've almost all gone to 12 months or more. In the case of B.C. they're 24 months.

I think that there is just one factor in Alberta, when you look at the other jurisdictions, that sort of mitigates here. We're dealing with the perception of the balance of two things here. One is the balance between a person's right to seek gainful employment after the termination of their position, and we're offsetting that with the perception of some advantage or impartiality and undue influence gained by their special knowledge while they were in a position of the cabinet.

In that regard I think it's important for us to keep in mind the fact that we have this transition allowance here in Alberta, which they don't have in other jurisdictions. If, for example, a cabinet minister was in a position for two 4-year terms, typical election periods, they would be entitled to two years' transition allowance after they left. In a way it sort of mitigates in favour of having a longer cooling-off period in Alberta than six months because of the fact that they're getting paid. You can't really rationalize it, saying, "Well, you're taking the bread off their table," because we do have that provision in our province.

Mr. Elsalhy: Further to this, Mr. Chair, there is nothing to prevent them from working day 1 after they lose an election or after they retire in their old field maybe or their old profession. It's basically their being able to lobby or have the government's ear. Some ministers might argue that this is the only thing they're good at, talking to government, but I think that's just something that we're not ready to accept.

The Chair: Mr. Hamilton, I think you've made a suggestion that we should go to a 12-month cooling-off period. Do you want to add anything to that?

Mr. Hamilton: Well, we also are proposing that for the senior officials in the government.

The Chair: We can deal with that later. Right now we're dealing with the cabinet.

Mr. Hamilton: Yeah, that's right.

Dr. Morton: I move that we amend it to 12 months. It's consistent with the practice of other provinces, and as you said, any perceived hardship is mitigated by the transition allowance.

Ms DeLong: I think that we do need to keep in mind that that transition allowance for many of those ministers who would be retiring is also the whole sum of their pension, which doesn't get them very far.

The Chair: I don't think the transition allowance can in any sense be deemed to be a pension. As you know, there's a contribution to half the RRSP allowance, which is supposed to be somewhat compensatory for a pension allowance.

Any other discussion along the lines of changing it to 12 months as proposed?

Mr. Rogers: Mr. Chairman, I would generally favour the change to 12 months. I'm just wondering. Do we have any concern that this might discourage people from seeking this office and ultimately hoping to get into cabinet? Is that a concern that we should look at before we suggest this change?

Mr. Hamilton: The first two hurdles are far higher than our office.

The Chair: Is there anyone that wants to propose any other period?

Mr. Shariff: Just a clarification, Mr. Hamilton. Let's say that somebody resigned from being a minister three months before the election and doesn't run again. What cooling-off period currently would apply to that individual? At the termination of the office he would be a private member and not a minister.

Mr. Hamilton: He ran in the election?

Mr. Shariff: No, he didn't run in the election. He stepped down from being a cabinet minister one month before election.

Mr. Hamilton: So he's got 11 months to go.

Mr. Shariff: Oh, so the 12-month period, then, would . . . Okay.

Mr. Hamilton: Well, that's the way I understand it.

The Chair: Anyone else want to contribute on this before we vote on it?

Dr. Morton's proposal is that

> we move the cooling-off period to 12 months for cabinet ministers.

All in favour?

Some Hon. Members: Agreed.

The Chair: Anyone opposed? One. Thank you.

Number 23: "Should former Cabinet Ministers be able to obtain an exemption from their cooling-off period from the Ethics Commissioner?" I presume that that would be for specific permission for a specific activity or whatever.

Mr. Hamilton, would you like to comment on that?

Mr. Hamilton: Well, it would be assessed. There might be a case that you would want somebody in that position, and we could hear what it was and make a ruling on it.

Mr. Shariff: You could have an interim person in that office for three months before an election. You don't want to penalize that individual. So I support you.

Mr. Martin: Well, I guess that's what I was wondering. I mean, we either have rules or we don't. I'm just thinking about what you said, that if there was a person that had just been put in there and lost an election. Remember, we're only talking about lobbying the government. We're not talking about work. So it would have to be a very exceptional circumstance.

Mr. Hamilton: But since we're doing it, we should have a way to deal with that if it arises.

The Chair: Can you envision a particular circumstance where you would perhaps give permission, where it wouldn't create the appearance of a conflict to do so? I'm just trying to envision what type of a circumstance would be suitable for a relaxation of that general proposition.

Mr. Hamilton: It would be an exception.

The Chair: Just what type of a circumstance might be an example? Dr. Morton.

Dr. Morton: Yeah. This is of course almost unthinkable, but just as a hypothetical, a different party than ours wins the next election, and on a crucial issue, to prove nonpartisanship on a special project, they want to hire an ex-Conservative minister who has a reputation for fair dealings on a particular issue. Of course, it's a completely ludicrous hypothesis, but hypothetically it makes the point that . . .

2:10

Mr. Shariff: What drugs have you been taking today?

Dr. Morton: NyQuil at night, DayQuil by day.

But that would be an example. Often at the federal level ex-members from opposition parties have been appointed to key commissions by the government party, of course the Liberals, to emphasize the nonpartisan nature of the commission.

The Chair: That's a good example actually.

Mr. Martin?

Mr. Martin: Yeah. I'm feeling charitable today.

Dr. Morton: I'd forgotten about question 23 and the possibility of exemptions. If exemptions are allowed at the discretion of the Ethics Commissioner for good reason, then there would be no reason not to have an absolute prohibition on former cabinet ministers accepting contracts. If there were a compelling case, it could be made to the Ethics Commissioner. I apologize for taking us backwards, but the two are related to one another. The public interest would be safeguarded by the fact that the decision rests with the Ethics Commissioner as to whether the exemption is justified or not. The general rule is: no contracts but the possibility of an exemption for the public interest in the eyes of the Ethics Commissioner.

Mr. Rogers: Mr. Chairman, just on that specific point, I'd think that by going that route, you'd be making the Ethics Commissioner have to try to make this determination the rule rather than the exception. I think what we did before with the 12-month prohibition and then now this point where the Ethics Commissioner has the opportunity on a case-by-case basis, which should not be that often, one or two occasions where the Ethics Commissioner would have to rule – if we went to a prohibition and the Ethics Commissioner is able to on a regular basis look at exceptions, then I think you've defeated the purpose.

So I would like to see anything that the Ethics Commissioner has to rule on be rare. I think that the way we've got it, the 12-month prohibition and then this that offers some discretion, not a lot – I don't know how you'd write that.

The Chair: Mr. Hamilton, if there was that discretion allowed, would it be your view that the circumstances of that allowance or that exception would be made public, then, and the reasons, presumably, for it in order not to create that appearance of conflict in the public mind? It seems to me that if you have a general rule and you allow the commissioner to make those exceptions, you should be able to justify it to the public in order for it to be under scrutiny. Would that be something that you'd . . .

Mr. Hamilton: Yes, I agree with that.

Mr. Shariff: You have to preserve the integrity of the ethics office.

The Chair: Dr. Morton.

Dr. Morton: Yeah. I don't think I explained myself very well. I didn't mean I think what George took me to mean. We were discussing about 10 minutes ago subsection 31(3), which is the exception that allows contracts to be let if certain procedures are followed, and we were discussing whether or not we should – that creates an exception already. So if we answer question 23 in the positive, now we've created a broader exception. What I'm saying is: take section 31(3) out altogether because it doesn't work, and then add the answer to question 23 in the affirmative. So the general rule is no appointments for 12 months, but if there are compelling circumstances, a government can go to the Ethics Commissioner under the exception rule and ask for an exception.

The Chair: I think what you're saying is okay to a certain extent, but you wouldn't want to lose the provisions in subsection (3), which deal specifically with the impartiality and the openness of the process. You'd want to keep that in there in addition to the discretion of the commissioner. You wouldn't want to throw the baby out with the bathwater there, because I think there was general agreement that you need to have the openness and fairness of the process. So we wouldn't want to leave the whole thing out there, Dr. Morton, would we?

Dr. Morton: No. I see your point, Chair. I guess what I'm trying to get at is: it seems to be under 31(3) that the decision somehow seems to rest with the government of the day. I think we should try to create a legal regime where at the end the of day the decision rests with the Ethics Commissioner to justify the exemption from the general prohibition.

The Chair: I think we could achieve that if we said that there was a general prohibition except in the cases (a) where the Ethics Commissioner has deemed that it's in the public interest, and (b) where the process is open and impartially administered, et cetera. So I think there's a way to combine those two concepts and get at where you are, to have the general prohibition.

Mr. Martin: Well, to come back to Dr. Miller's point, I think that maybe the problem, it seemed to me in that discussion of the specific case, seems to be in the powers of the Ethics Commissioner. We should look at that and perhaps deal with it at that level because if the Ethics Commissioner is saying something and the government can do what they want anyhow, then we have a problem with the whole act. Perhaps to review it there, the actual powers, would be more appropriate, I think.

The Chair: To get at this thing, to marry these concepts, then, could we take this suggestion that there be a discretionary provision back

into subsection (3) and add as an additional proviso that you need to clear that hurdle. Because we have the prohibitions on any commercial contracts, then the exception would be where the commissioner deems that it's okay and in the public interest, and you go through that open and accessible process. Would that get at your comments?

Mr. Martin: Well, I'm saying that I want to know what powers the Auditor General has in this specific case. It doesn't look like he had the powers to do what he recommended, and I think that's an important thing.

The Chair: The Auditor General or the commissioner?

Mr. Martin: I'm sorry; the Ethics Commissioner. Did I say Auditor General? I'm dealing with both of you.

Dr. Morton: The wording that the Chair has just suggested, which is procedural in nature, in fact significantly enhances the power of the Auditor General.

Some Hon. Members: Ethics Commissioner.

Dr. Morton: Excuse me.

The wording is procedural, that at the discretion of the Ethics Commissioner an exemption is allowed in the name of compelling public interest and that the procedure requirements in the existing subsection (3) are filled. The fact that it uses condition (a) and condition (b) significantly gives the final say to the Ethics Commissioner, which addresses the power issue that you're concerned with.

The Chair: It adds an additional test to the restricted allowance there.

Ms Dafoe, you've got your hand up.

2:20

Ms Dafoe: I think perhaps question 23 is a little bit misleading, and for that I apologize, because it's worded as if such a provision does not exist. But section 31(3)(b) does say that the restrictions on former ministers do not apply to "an activity, contract or benefit if the Ethics Commissioner has exempted the activity, contract or benefit from the operation of subsection (1)" and the former minister basically does what the Ethics Commissioner tells him to do. So the Ethics Commissioner now has the power to create the exemption. Question 23 properly should have said: should former cabinet ministers continue to be able to, et cetera, et cetera?

The Chair: But there is a subtle difference there because if it's presently either/or, either you go through that impartial process as an exception or you get the commissioner's – I think the suggestion is that you had to clear both of those hurdles in order to have this contract with the Crown.

Ms Dafoe: That's a suggestion of the committee, that it be an "and"?

The Chair: Yes. That's what Dr. Morton is suggesting, and I would agree with it.

Mr. Lukaszuk: I agree. In 31(3)(a) I think the last word instead of "or" following the comma should be "and."

Then we should seriously take a look at 31(5). I would again seek guidance from the Ethics Commissioner whether subsection (5) gives him enough, for lack of a better term, teeth to be able to enforce subsections (a) and (b).

The Chair: Shall we take a 10-minute break? We'll reconvene, and we'll come to some conclusion on this issue.

Mr. Shariff: I think we've come to a resolution. I think we can vote now. We have a consensus around this room, I think.

The Chair: Okay. Do you want to vote on it then?

Ms DeLong: I still don't quite understand. Just change the "or" to an "and"?

The Chair: You would be prohibited from dealing with the Crown in a commercial basis or in a contract except on the following conditions: (a) that you would seek and receive the consent of the commissioner, who would deem it in the public interest to do so, and (b) you would go through this impartial process. It's a combining of the two tests. You'd have to get through those two hurdles in order to have a contract with the Crown.

Dr. Morton: In order to be exempted from the general prohibition.

The Chair: That's right.

Ms DeLong: Just to make this clear. "Any contract with or benefit from the Crown," that we're talking about in (a), is quite different from "in further service to the Crown." Okay? To me, the reason that he should even be looking at these exemptions is because of service to the Crown; in other words, that there is going to be considerably more service to the Crown than if this doesn't happen. So I guess I'd really like to be able to see that whole concept in there in that the decision should be based on sort of the needs of Alberta.

The Chair: I think that "contract with or benefit from the Crown" deals with the issue of service to the Crown except if you were volunteering your services to the Crown, which nobody has any problem with anyway because it's not dealt with. But "contract with or benefit from the Crown" deals with that issue: service to the Crown.

Ms DeLong: I guess to me it doesn't. I guess if you see that it's very much in the best interests of Alberta that this move ahead, sort of thing.

The Chair: But we're saying that you can do that provided that the commissioner says that it's okay, it meets his tests, and (b) that it's an openly transparent process where other qualified people are able to participate.

Dr. Morton: I think that there's a divide here between the two lawyers and the nonlawyer because you guys are thinking contract for services – right? – and Alana is thinking of service in the sense of high-minded civic service.

The contract is a contract for services, and the justification that would be part of the submission for the exemption to the commissioner would be that this is a . . .

The Chair: It includes employment contracts too.

Dr. Morton: . . . highly distinguished former minister.

Ms DeLong: Oh, yeah. It does. It's just that it's not – I think you guys understand.

Dr. B. Miller: I see what you're saying. Why would the (a) and (b) be distinguished if that wasn't the case? There must be activity, contract, or benefit. I mean, there's a wider scope there than (a) is covering. I can't think of any examples.

An Hon. Member: Lobbying.

Dr. B. Miller: Lobbying.

The Chair: And we've already dealt with that because we recommended that the Ontario provisions be put in there.

Mr. Shariff: I think Rob can help us here. The way I read this – and we're just getting to (3)(a) – is that if there is a bidding process that exists, and a former minister wants to bid like any other Albertan for a particular project, then I believe he's allowed to do that under this particular section. Isn't that correct?

Mr. Reynolds: I think I agree with what you're saying. I think that (a) is, yes, a situation where there is something that it appears that it would be put out to tender or whatever – there was a competitive process – and (b) would seem to cover the situations where the requirements of (a) were not met. So if you don't qualify under (a), then presumably the commissioner could grant you an exemption under what is now (b). That's how I read that.

Mr. Shariff: So the reason I'm raising this is that we need to have both (a) and (b) there, and then whatever (c) we need to add on, let's talk about that. But I don't think we should omit or remove (a) and (b) as they are currently. Right?

The Chair: That's correct.

Mr. Shariff: Okay.

The Chair: That's exactly what we're getting at. It's a two-part test.

So is everyone clear on what the concept is now? Do you want me to restate it? Okay. The proposition is that subsection (3), which provides the exemption, would not apply to conditions where (a) the Ethics Commissioner deems that it's appropriate and proper and in the public interest or whatever, along those lines, and (b) that particular contract or benefit or employment or service to the Crown – whatever you want to call it – is awarded or approved or given on the basis of an impartial and open process, as it already states there. You need to have both of those things in order to get the exemption.

So can we vote on that? Is everyone agreed with what I just said?

Ms DeLong: So I just want to make this clear. Right now within that first six months, if there is a job opening, a minister can apply for it as long as it's totally, you know, impartially administered and open to a significant class of persons. Okay? Right now he can apply for that and get it. End of story. But now what we're going to add on top of that is that he also has to get approval from the Ethics Commissioner.

The Chair: Correct. It's a two-part test now instead of one.

Dr. B. Miller: Okay. I mean, I think I'm content with what's here.

Mr. Lukaszuk: The way it is?

Dr. B. Miller: Yeah.

The Chair: I'll explain it to you over the break, but let's vote on it right now.

Dr. B. Miller: My only question is: why is it so hard to press the (a), and (b) is easy to do?

The Chair: Okay. I'm going to call a break, 10 minutes. We'll have a little discussion over the water cooler, and then we'll come back and we'll finish off.

[The committee adjourned from 2:30 p.m. to 2:45 p.m.]

The Chair: Okay. We'll call the meeting back to order. We were discussing the issue of the exceptions to contracting with the Crown and whether or not we should add in these provisions regarding the permission of the commissioner. Is there anybody that's unclear on what the suggestion was that we were about to vote on and whatnot? Dr. Miller, you're clear on that now?

Dr. B. Miller: Yeah.

The Chair: Can we ask, then, for a consensus on that issue of marrying those two concepts, where the commissioner would grant an exception to contracting with the Crown in an appropriate case and the process would be either an open tendering process or a competition that would be open to other qualified applicants? Is that agreeable? Are we all agreed on that?

Hon. Members: Agreed.

The Chair: Anyone dissenting from that requirement? No one? So that's carried then.

Okay. Then we'll move on. The next question is 24, and that's to do with the sanctions for breaching this part of the act. It's presently a fine not exceeding $20,000. If you look at your little schedule, Information Paper 9 – right? – we have six responses on that. I guess it's not in the schedule. It's in the body of the information paper. Right, Sarah?

Ms Dafoe: That's right. My apologies. It's in the body. It's at the bottom of page 3.

The Chair: So page 3 of Information Paper 9 deals with the issues. The comments have been made that $20,000 may not be an effective deterrent in cases where there's a greater benefit to be gained by breaching the act. One suggestion was that it should "be commensurate with the economic benefit that the Member may have gained from violating the Act." Also, there's an interesting suggestion in there that there should be some sort of restitutionary remedy so that the elected official would have to pay back any gains that they had made by reason of breach of the act.

Mr. Rogers: Just a comment. I would tend to agree with a component of one of the submissions. While it's not $100,000 or $200,000 or maybe commensurate with any potential benefit gained, a $20,000 fine in any situation short of, you know, environmental contamination or something like that is certainly not chump change and particularly for the people that we're dealing with in this situation. One of the comments somebody made was that it has to do with the ruination of their reputation. I firmly believe that if somebody goes through this process where they're called to account pursuant to some report by the Ethics Commissioner and the $20,000 fine, that's going to be a significant hurt on someone. I don't really see a need to change it from $20,000, personally.

Mr. Hamilton: I ask you to go to page 34, section 40, and go down to (8).

The Chair: In the act?

Mr. Hamilton: In the act. It's on page 34 of the act, and it's (8).

The Chair: Well, our act is different. Give us the section number.

Ms DeLong: Section 40(8).

Mr. Hamilton: I ask you to read that. We try to keep out of the media, and when people phone me from the *Journal* or whoever asking about something, I read them this. Then I say, "Now, if you want to send the $20,000 now, I'll give you the information," and they hang up like that. We think that $20,000 is quite fine, and it has never been used anyway.

The Chair: What if a contract was worth half a million dollars, though, and they said: well, that's the cost of doing business, the $20,000 fine? Without any obligation to regurgitate the money, to pay it back or to have some restitutionary remedy, then it kind of invites the breach of it. It's just like a parking fine. You may someday want to park quite badly and be willing to pay the $25 fine.

Dr. B. Miller: Well, I think some sort of restitution clause here is in order. You know, we talk a lot about restorative justice these days at every level, whether it's involving sentencing. It's a question of keeping in mind who the victim is, and if money is lost, it should be restored. So I agree with the other jurisdictions that have some sort of restitution.

The Chair: The committee should also just remember that what we're advocating or what's going into the act is not going to be a defined sanction, and it isn't even going to be a defined maximum, really. I mean, what we're talking about is the ability to recommend, if I'm correct in this assumption, to the Legislature. The Ethics Commissioner can't impose any fines. It's only the Legislature, the body of the Legislature, that can impose the punishment or the fine. What we're talking about is the ability for the commissioner to recommend to the Legislature a certain level of fine.

So I think that you've got a double protection there in terms of the upper limit. If you're afraid of the fact that this is a huge number, then it still has to be vetted. Even if the Ethics Commissioner recommended it, it would have to be vetted through the Legislature. Am I right there, Mr. Reynolds?

Mr. Reynolds: I would think yes, of course, generally. But with respect to the provision we are dealing with about former ministers breaching something, it says, "on summary conviction," which I took to mean going to court on summary conviction. Likewise with the Ethics Commissioner breaching the act or a former Ethics Commissioner, which is I guess why the act doesn't say that prosecutions must have the consent of the Ethics Commissioner before they can proceed.

Mr. Shariff: So, Rob, are you then saying that this determination of the amount will be done by the courts, not by anybody else?

Mr. Reynolds: Yes. That would be the normal practice, yes, for this particular part with respect to former ministers and the provision about the Ethics Commissioner. The $20,000: I would imagine it would represent to the court that that would be, yes, the maximum fine.

2:55

Mr. Shariff: So if you made $20,000 the minimum, the courts could go beyond that then?

Mr. Reynolds: Well, that would be interesting. Usually the way legislation is written is that there's a maximum fine prescribed rather than a minimum because then the court would have absolute discretion. I mean, usually the court would take this, I would imagine, as a sign that the fine would be anything up to $20,000.

The Chair: I guess the reason that that provision is in here is because after the time they cease to be a minister, then the Legislature wouldn't have that jurisdiction over them.

Mr. Reynolds: Yes. Precisely.

The Chair: So while they are a minister, then any breaches would be dealt with by the Legislature, but as soon as they cease, then it becomes a matter for the court then, I take it. Okay.

Dr. Morton: A clarification. Does what you just said explain the difference between sub (4) and sub (5)?

Mr. Reynolds: Yes.

The Chair: Yeah, that's right. If they're still an MLA, then they would have jurisdiction over them. That's right.

So is there any willingness on the part of the committee, then, to move from what the Ethics Commissioner suggested, that the $20,000 fine is adequate the way it is?

Mr. Lukaszuk: Just on a different point, in response to Mr. Reynolds' comment, we do have precedents in provincial statutes where minimums are specified as opposed to maximums. One that comes to mind instantly is driving without insurance. It has a minimum fine right now of $2,500 I believe it is and no ceiling set. So there are precedents for minimums.

Mr. Reynolds: I stand corrected. But there's no jail time provided in this act.

Mr. Lukaszuk: No. It's summary.

Mr. Shariff: Mr. Chairman, based on the clarification that has just been provided, if we were to set a minimum of $20,000 and the court then learns about the financial benefits that the individual has gained, which are substantial, the court would then have the ability to fine the individual for a substantial amount, but if you leave the ceiling at $20,000, then that's the max.

The Chair: Or you could also add in a restitutionary remedy, which would allow the court to force the person to disgorge the unjust enrichment. I guess that is the way it probably would be phrased in legal terms. That's a possibility as well.

Mr. Martin: Well, before we get to the numbers, just to get some idea about how it works, let's say that the Ethics Commissioner decides in this particular thing that the act has been breached in the cooling-off period. Where does it go from there then? What happens?

Mr. Hamilton: What happens?

Mr. Martin: Let's say that you have made a decision that somebody has breached the cooling-off period. This is what we're talking about here. What happens then? Does that come back to the Legislature before it goes to the courts or go right to the courts? What I'm trying to figure out is: how does this process evolve?

Mr. Hamilton: I don't know. I've never been there.

Ms South: It's not happened here, but my assumption would be that the commissioner, having conducted an investigation, is obligated to report to the Assembly. I would assume that the Assembly then would direct Justice to take it to court.

Ms Dafoe: I'm not sure that necessarily the Assembly would have to be involved. I would think that if there is a finding that there is a contravention by a former member and that person is no longer a Member of the Legislative Assembly, any person could file an information to begin proceedings against that former member in a court on summary conviction.

Mr. Reynolds: We were talking about the former minister provisions here. So, yes, it would depend whether they're a member or not. If they're not a member, it would precede the courtroom.

Mr. Martin: Well, does the Ethics Commissioner do that, or does he just make a report?

The Chair: He cannot to do anything in this instance of a former member because the Ethics Commissioner is an officer of the Legislature, and it's only if the Legislature has jurisdiction over that person, which they do over all the members.

Mr. Martin: Yeah. I understand that, but I'm saying: how does the process work?

The Chair: Well, it's just like any act. If you have something that's punishable on summary conviction, it could be the highway traffic act or anything else. It could be a peace officer. It could be anyone, as Ms Dafoe has said, that goes down and bothers to swear out information that somebody's committed an offence. So anybody could bring those charges on that basis because it's subject to the jurisdiction of Her Majesty's courts.

Mr. Martin: No. I understand that, the process, but it just seems that this is. . .

Ms DeLong: According to section 30 "a breach of this Act by a Member is not an offence to which the Provincial Offences Procedure Act applies."

Mr. Shariff: What does that mean?

Ms DeLong: That I don't think that it goes to court, does it?

The Chair: That's by a member. That's because only the Legislature has jurisdiction because of the invocation of parliamentary privilege, et cetera. That's only for a member, not a former member. Section 30 doesn't apply in this case of 31 because we're talking about former ministers unless they're a Member of the Legislative Assembly. If they're still a member – let's say they were a cabinet minister who is no longer a cabinet minister, but they're a member – then they would be subject to the Legislature, and the commissioner would make his report and recommend sanctions to the Legislature. But if you're out of the Legislature altogether, then section 30 doesn't apply, and you're subject to the courts.

Ms DeLong: Where does that say that this actually does go to the courts? I don't understand where it goes to the courts.

The Chair: Section 31(5).

Ms DeLong: Okay.

Mr. Shariff: I just want to follow on the trend of thought of Ray. I think he's raising a very interesting point. A former member or former minister does not report or disclose any information to the Ethics Commissioner. I'm not so sure if the Ethics Commissioner's jurisdiction really applies to a member once he quits, in terms of being able to demand information from that individual. So how do you find that person in violation of or breaching this act? I just need this for an information point. Who determines? How do you determine? How does it go to the next stage of appearing in court? Who leads the charge?

Mr. Reynolds: It would proceed, I assume, like what they term a regular summary conviction offence, and that's what the Provincial Offences Procedure Act applies to. That's just a procedural guide as to how you go to court. But if you read the section that Ms DeLong pointed out, a breach of this section by a member, and then 31(5) says a "former Minister who contravenes this section and who at the time of the contravention is not a Member of the Legislative Assembly," that's how if you see a contradiction, there isn't one. One applies when you are a member, and the other one applies when you are not a member.

3:05

Mr. Shariff: Rob, the question is this: if a former member does not disclose the information to the Ethics Commissioner, how does the Ethics Commissioner determine that that person has violated this act and, therefore, take it to the next stage of charging?

The Chair: It's like any offence under a provincial statute where any peace officer could lay the charge. It's up to the trier of fact, the judge, to determine whether or not you have solicited or accepted a contract with a department with which you had significant former dealings. I mean, it would be up to the judge to determine whether you fall within that test, but anybody could charge. A peace officer could charge.

Mr. Lukaszuk: Mr. Chairman, you have to go a step back on this one. Let's draw an analogy. Let's say a minister of infrastructure ceases to be one, is no longer a member of Legislature. Next thing you know, he's hired by Goodyear tire, and next thing you know, all government vehicles are driving on Goodyear tires. How does the Ethics Commissioner find out that he started working for Goodyear tire and that Goodyear tire got a sweet deal if no one informs him of it? He can't call the ex-member any more because he has no jurisdiction over him. Unless he somehow, through innuendo or coincidence, finds out about it, he'll never know, will he?

Mr. Martin: And he doesn't have the right to investigate it because he's no longer a member.

Ms DeLong: It does say on page 34, section 42(2):

> Where this Act provides for the doing of anything by a time or within a prescribed period of time, the Ethics Commissioner may,

> before or after the time has expired, extend the time for the doing of that thing under this Act.

Doesn't that give him the right?

Mr. Lukaszuk: He has to find out first that there is a thing.

Mr. Martin: That's the point. When you're not in the Legislature, how you deal with the cooling-off period is what I'm driving at, how you would begin to investigate. The commissioner can investigate a member of the Legislature, but then during the cooling-off period if you're not in the Legislature, how does he go about doing that?

Ms South: Well, we actually did do an investigation of a former minister on an allegation of a breach of the postemployment provisions, and the former minister co-operated with us throughout. That's just it; you're quite right that the act doesn't really address it.

The Chair: Is it something that the commissioner's office would like to see enhanced in terms of making a specific provision to be able to investigate former members, or is it not a concern?

Dr. B. Miller: Mr. Chairman, I remember that in the discussion with the Ethics Commissioners this came up. Dr. Shapiro, from the House of Commons, said that they have so many people that the act extends to that if they had to pursue every person and check up on them for the next two years, they'd have to triple their staff. That was the gist of what he was saying.

I think that in this section 31, really, the Ethics Commissioner's role is very limited. He can provide an exception, and that's about it. I don't see any grounds here for investigation.

The Chair: I think we're getting a little bit off topic. Can we come back to the issue of the sanctions here and whether or not we need to deal with the sanctions? Is there a general feeling that a former member – again, this is the one that's going to be enforced by the courts – guilty of an offence is liable to a fine not exceeding $20,000? Is that adequate, first of all, that number?

Ms DeLong: I do like the idea of restitution.

The Chair: Okay. We can come back to that. Let's deal with the fine, and then we'll see whether there are other sanctions that need to be added to it. Is that okay?

Ms DeLong: Okay. Well, I just see this as more than the $20,000.

The Chair: Right. This is a fine; this is not a restitutionary remedy, which could be in addition to this.

Ms DeLong: Right.

The Chair: Do you want to make it part of the fine or increase it?

Mr. Lukaszuk: What fines do other jurisdictions have under this section?

The Chair: It's laid out in the volume.

Ms DeLong: Some have just fines, and some have restitution and fines.

The Chair: Page 3 of Information Paper 9. Ontario and Saskatchewan have $50,000.

> In Manitoba, a judge may require a member to make restitution to the Government for any pecuniary gain which the member has realized in any transaction to which the violation relates.

So there's your restitutionary remedy. We've got fines up to $50,000, and we've got a restitutionary remedy in other jurisdictions.

> In Nova Scotia, a Member may be required to return any benefit improperly obtained. In Newfoundland, Northwest Territories and Nunavut, a Member may be ordered to pay compensation or restitution.

Those are additional powers that we could recommend that the Legislature give to the courts under that section.

Mr. Shariff: Let's go $50,000 plus restitution.

The Chair: Mr. Shariff?

Mr. Shariff: I make a motion that we increase from $20,000 to $50,000 and add on a provision for restitution.

The Chair: Discussion?

Ms DeLong: I think that the earlier discussion about increasing the fine was because, you know, theoretically you could make some big windfall, and the $20,000 wouldn't cover that windfall. If we were to first of all require that restitution be made and then a possibility of a fine on top of that, I don't see that we really need to increase the value of the fine at all.

The Chair: Good comment. Anyone else?

Mr. Martin: I'm still figuring out how you're going to do it.

The Chair: You're content with it the way it is?

Mr. Martin: That's fine. I'll support the motion.

Mr. Lukaszuk: Well, there are reasons why we have fines and why we have restitution orders. They each serve a different role in a justice system. The restitution is simply to allow the Treasury to regain any dollars that they may have lost as a result of an ill gain. The fine is a punitive measure that deters others from engaging in such an activity. I guess we have to think of it from both perspectives: (a) do we want to recover the dollars that may have been gained in an inappropriate manner, and (b) do we want to have a prohibition type of measure more effective than $20,000? I think one could effectively argue in favour of both.

The Chair: Well, dealing with Mr. Shariff's motion, is there anybody else that wants to contribute to the discussion before we vote on that?

Mr. Reynolds: Just one small point. I think the fines are payable to the Crown anyway. If you're looking at restitution, I'm not sure who you were contemplating restitution would flow to. Given the wording of the part that we're talking about here, the offence would probably be against the Crown, would it not? The Crown would be the one that would be receiving the restitution, and it would also receive the fine?

The Chair: Well, not necessarily. There could be somebody else who lost a contract to a member who abused his privileges there. That's why the three jurisdictions of Newfoundland, Northwest Territories, and Nunavut have, the way I read it anyway – in the

summary it says that they could be ordered to pay compensation or restitution. A restitutionary remedy could also apply not only to the Crown but to someone who was disadvantaged by virtue of losing a contract to a former cabinet minister or something. I could see circumstances where the court would want to make a restitutionary order on those cases, where somebody else had lost an opportunity or maybe even lost a contract if it was terminated and taken over by a former cabinet minister.

3:15

Mr. Reynolds: It's an interesting proposition, and I'm not sure of the extent of the restitution in there. I would think that what you're discussing might be in the nature of a separate civil claim, but I'm not that familiar with how the restitution schemes work.

The Chair: Well, it could be worded in such a way that we would say that the court may order restitution or compensation to any party who suffered a loss.

Anyway, any other discussion before we vote? Then Mr. Shariff's suggestion is that we would increase the maximum fine to $50,000 and that we would also introduce the concept of restitution as some of the other jurisdictions have in their legislation, allow a judge to make a restitutionary order in addition to any fine.

Mr. Shariff: Restitution or compensation: those are the two words in there.

The Chair: Right. Yeah.

Mr. Elsalhy: Mr. Chairman, I probably misheard it. Is it to replace a fine, or is it in addition to a fine?

The Chair: In addition to or in place of. I think it's just an additional remedy. I would put the word "or."

Mr. Elsalhy: Not both?

Mr. Shariff: The court will decide that.

Mr. Elsalhy: So "and/or."

The Chair: Yes.

All in favour? Anyone opposed? It's unanimous. Okay. That's number 24.

Moving on to number 25, here's the question regarding the Ethics Commissioner . . .

Mr. Shariff: Mr. Chairman, before you move to number 25, will we have a chance to come back to raise a probing question?

Mr. Martin: Yeah. I think that's an important issue. Passing legislation that we can't do, or whatever. How do we deal with that cooling-off period? We can put all we want in here, but if people thumb their noses at it, there may not be much we can do unless it has to be with some other legislation.

The Chair: Well, not really.

Mr. Lukaszuk: Maybe the Ethics Commissioner can help us by answering this: would it be of any advantage to the Ethics Commissioner's office if his ability to conduct investigations or obtain disclosures was extended to the term of the cooling-off period so that he would still have full jurisdiction over a member during the cooling-off period?

Mr. Martin: It's not there. That's the point. They said the only reason they had authority is that one minister co-operated, right? He didn't have to.

The Chair: There's no reason why it couldn't be done as Mr. Lukaszuk has suggested. It's a piece of legislation that has application to whoever it applies to. Do you want to suggest that that be part of the answer to question 25, then, which is what we're moving on to in any event?

Mr. Martin: Well, wherever it fits.

The Chair: The ability to conduct investigations on their own initiative would also include the ability to investigate former members up to the end of their cooling-off period then.

Mr. Martin: Yes. I think that solves the problem because you have some legal authority to be able to do it. It seems to me that if this happened during the cooling-off period and the person said, "You have no authority over me," if we haven't done that, he couldn't investigate. How could he investigate?

Mr. Hamilton: We can't.

Mr. Martin: That's what I'm saying.

Mr. Hamilton: A whistle-blower would want to come and give us a letter so we'd investigate it. Some of them are probably not going to be able to, or they're way out of their league or something. But for another person we might find that he or she is honest, and we can look into it without having somebody in the government give us a letter. I think it's important.

The Chair: Does somebody want to make a motion to that effect then?

Mr. Martin: Well, I would say that the Ethics Commissioner should be able to conduct investigations for ex-ministers up to the end of their cooling-off period.

The Chair: Discussion on the point? Agreed?

Some Hon. Members: Agreed.

The Chair: Anyone opposed?

Ms DeLong: I'm sorry. I still don't understand why this isn't covered under 42(2), why you don't already have that ability under 42(2). It says, "Where this Act provides for the doing of anything by a time or within a prescribed period of time, the Ethics Commissioner may, before or after the time has expired, extend the time for the doing of that thing under this Act."

The Chair: Because those are specific prescribed times in the legislation. I think the one that it refers to there is, for example, under the reporting provision, that you have to report within so many days to the Legislature if I'm not mistaken. So there are some specific timelines in there that that's probably meant to apply to.

Ms DeLong: So you're saying that we need something else where? Where is it that we need something else to open it up?

The Chair: Well, because under section 31, that we just dealt with,

a former minister is subject to the jurisdiction of the courts. The suggestion is that in order to initiate this process or to have some sort of policing, for lack of a better word, of the conduct of the former members, you need some powers on the part of the commissioner to be able to go out and investigate whether or not there's been a breach, which then presumably ought to be reported to the authorities, a peace officer or whatever, in the normal course of business if there's been a perceived breach of the act. So Mr. Martin's suggestion is that he be able to go out and investigate after the person is no longer a member.

Mr. Reynolds: I haven't checked the other jurisdictions' legislation on this, but you may want to consider a penalty for someone who doesn't co-operate, then, a former minister.

The Chair: Well, we're not saying anything about the necessity of co-operating, are we?

Mr. Reynolds: No. But if you had something that said that a former minister must co-operate with the Ethics Commissioner, what happens if they didn't? What happens if they said, "I'm glad you put that in, but I'm not going to"? Without a penalty, there wouldn't be a sanction to prohibit them from doing that.

The Chair: Presumably the way that you would deal with it is in the same way that you deal with contravention of the section as a whole. It is to say that if you didn't co-operate with the commissioner, then you would be subject to a fine in accordance with the court's discretion.

3:25

Mr. Reynolds: Yes. I just wanted to make that point clear, that non co-operation with the Ethics Commissioner would constitute a separate offence . . .

Mr. Martin: A breach in itself.

Mr. Reynolds: Yeah. . . . for which you could be fined, and then that would have to be taken to court.

The only thing I want to add is in terms of consequential amendments. If you follow down this line or say, "Well, if the Ethics Commissioner investigates something," the problem you're going to have is: how can you impose something on a former minister? He or she has obviously stopped being a member. At which point, someone may want to consider whether there should be an amendment to the confidentiality provisions of the Ethics Commissioner's act because if the Ethics Commissioner does an investigation and it does turn up evidence that should go or perhaps could go to a law enforcement jurisdiction, the Ethics Commissioner would presumably still be bound by the confidentiality requirements. I think the provision refers to an inquiry under that section, Karen, if that's what you're looking for, and I don't think this would be necessarily an inquiry.

Anyway, it's just a consequential amendment the committee might want. For instance, even if a former minister didn't co-operate, how would the Ethics Commissioner make that known?

The Chair: Okay. We've already voted on this proposition that the Ethics Commissioner be able to investigate, correct? So the consequential amendments that we might recommend, as Mr. Reynolds has put it, are, number one, that we need some provision in there that the former member must co-operate with the investigation of the Ethics Commissioner and, secondly, that if warranted and if the Ethics Commissioner deemed that there was an offence under the act, he would have a right or an obligation to disclose that to relevant authorities for enforcement purposes. Am I capturing what you were getting at?

Mr. Reynolds: Yes.

The Chair: Any discussion on those ancillary amendments that are being proposed? So they really all go together. If you're going to investigate the person, you need to be able to investigate, and you must be able to do something with the results of your investigation. All in favour of that proposition then? Anyone opposed? Okay. I think we've got that capsulated.

That is the general proposition to do with former cabinet ministers. Now can we move on to the broader general proposition, which is what the Ethics Commissioner has asked us to proceed on: whether or not the Ethics Commissioner ought to be able to in any event conduct an investigation on their own initiative without having to wait for a request to do so. Mr. Hamilton, do you want to speak to that?

Mr. Hamilton: Well, we're asking you to do that because if there's something going on and we hear about it or something, we can't go and investigate it until somebody sends us a letter, signed. I don't see us having a whole bunch of detectives running around, but it would be helpful sometimes.

Mr. Shariff: I just want to use this analogy of the Auditor General. They do have the regular audits that they do, but if they get information about something that is inappropriate, they do have the ability to go and investigate. Applying that same logic here, I think the Ethics Commissioner should have that ability if that information comes to their office. So I believe we should support this request.

The Chair: Any other comments on that? Did everyone agree with what Mr. Shariff just stated? Okay. So are we agreed, then, that the investigation ought to be carried out on the initiative of the commissioner?

Hon. Members: Agreed.

The Chair: Anyone opposed? It's unanimous.

Okay. We'll move on to the next question. Question 26 is: "Should there be a limitation period after which the Ethics Commissioner would be prevented from investigating?" That is also part of Information Paper 10. There are a number of pieces of legislation that have prohibitions on prosecutions and whatnot.

Mr. Reynolds, do you want to – you're cringing.

Some Hon. Members: Put him on the spot.

The Chair: Presently the Limitations Act in Alberta, generally, for civil actions is two years from the date of discovery, but there is an overriding provision – I believe it's 10 years, if I'm not mistaken – after which no action could be taken on a claim or potential claim even if you didn't know about it at the time.

It seems to me that there's some commonsense element to that element of discovery, but I think that maybe 10 years is far too long to wait to foreclose this thing. I personally would think that anything after a period of five years – given the fact that the average term of a member is somewhere around four, usually the normal period between elections, a period of four or five years would be more than adequate as a limitation period. But I think that probably

it's a good idea to have a limitation period. We don't want people resurrecting things 10 years after somebody's left office or whatever.

Mr. Lukaszuk: Mr. Chairman, why not use the standard statutory limitations that we have set out in the rules for civil actions? Why extend it to four years? The statutory limitation otherwise would be two years, wouldn't it?

The Chair: What I just was suggesting is that maybe we'd want to have the discovery rule incorporated in there, that it would be two years from the date that it becomes known to the commissioner or whatever but not later than five years from the time that the alleged offence took place.

I just think that you have to turn the page sometimes; you can't go back digging up skeletons out of the closet indefinitely. I think it's a good thing to have some sort of a limitation period beyond which you don't go, like I said, digging up skeletons.

Dr. B. Miller: Mr. Chairman, I like the idea of four or five years, I mean, because it coincides with the length of a term, of a session. A member might be an MLA only for one session, one term.

The Chair: Well, Saskatchewan is two years after you leave office, during which you can prosecute it. P.E.I. is two years from the date of the contravention. So it may not even be known for a period of time. I was just suggesting maybe a little bit longer period.

Mr. Shariff: I like the two years after you leave office.

Mr. Martin: That could mean for some members a long time.

Mr. Shariff: But in the sense that nobody can come on a witch hunt.

Mr. Martin: No, but there are people that have been members for 20 years. You mean two years . . .

3:35

Mr. Shariff: After you leave your office, a charge – what are the words that he used, the legal language?

The Chair: So if I understand Mr. Shariff, he's suggesting something along the lines of the Saskatchewan provision there, which would preclude the court from convicting anyone – the prosecution, I guess, would have to be initiated within two years after the former member leaves office. After you quit the Legislature, there are two years in which somebody could charge you with an offence under the act, you know, of dealing with the government improperly or whatever.

Ms Dafoe: I'm thinking out loud here, so pardon my rambling. Karen South just pointed out to me that the legislation now only authorizes the Ethics Commissioner to investigate current members.

The Chair: We've already recommended that he be able to investigate former members. Now we're talking about the limitation.

Ms Dafoe: Former ministers.

The Chair: Yeah, former ministers.

Ms Dafoe: So if I understand it, then, the Ethics Commissioner would be able to investigate people. Say, if your term ends tomorrow, they would be able to investigate your file for two years from tomorrow.

The Chair: That's what Mr. Shariff is suggesting, and this is a recommendation of the committee.

Mr. Elsalhy.

Mr. Elsalhy: Thank you, Mr. Chairman. I think I agree with your version of it when you recommended two years after the discovery and five years after the offence has taken place because some people might not be very comfortable bringing it to the attention of the Ethics Commissioner until after a certain period has lapsed; you know, like whistle-blowers who feel insecure or who are faced with some pressures. So five years would allow them to come forward and alleviate that concern that they might have.

The Chair: Let's get there first. We've got two years on here. Let's see if we can get some kind of a limitation on when this investigation – we've recommended that at least for ministers we would be able to investigate these transgressions after they've left. Now, let's talk about this limitation. Mr. Shariff suggested two years. Let's just see if there's a general consensus. Again, we'll do that; then we'll see if there's any appetite for going beyond that. Is that okay?

Mr. Lukaszuk: Two years seems like a proper date because the commissioner has the entire time while the member is in office, so a minimum of four or five years, however long the term is. In most cases it's more than one term, so he has that entire timeline to investigate. Then he still has two more years after the member has left the office. Two years is not an incidental date, because it is a statutory limitation date, the limitation for civil claims as well.

The Chair: Anyone else want to contribute?

Ms Dafoe: Another thought. Thinking on the fly here again. Generally speaking, if the Ethics Commissioner finds a member to have breached the act, the Ethics Commissioner makes a recommendation to the Assembly, and the Assembly makes a decision as to what sort of penalty or sanction to impose on the member.

Now, if we're talking about the Ethics Commissioner's office during an investigation into a person who is no longer a member making a recommendation as to a sanction, the Assembly no longer has authority to impose a sanction over the person who is no longer a member of the Assembly. So query whether there would be a need for different sanction provisions for the Ethics Commissioner to recommend because the Leg. Assembly is going to impose a fine or a penalty. They may suspend sitting in the Assembly.

The Chair: Sorry. I'm not following you. What we're talking about is the limitation on the right of the commissioner to – well, we've already dealt with the issue of investigation. What we're talking about is the limitation on the prosecution of somebody whom, presumably, the Ethics Commissioner has found by virtue of his investigation to have breached the act in his view. So that's something that would end up going to the court. We're not talking about the Legislature. At the point they leave, as you point out, they've lost jurisdiction over the member because they're not subject to the rules of the House.

Ms Dafoe: So you're still talking, then, about going after former ministers, not members?

The Chair: Well, what Mr. Shariff is advocating is that we put a lid on it. We'd say: look, two years after you leave office, we don't care, really, what you've done because it's water under the bridge. It's gone. We've put a limitation on it. In other words, you would have to be prosecuted for an offence under that within two years. I mean, that's what he's suggesting.

Ms Dafoe: So that's within two years of the offence taking place.

The Chair: No. He suggested two years after leaving office.

Ms Dafoe: But if someone's left office – I'm sorry. Am I the only one who's not understanding this? I guess I am. I'll just sit back and listen.

Some Hon. Members: No. No. You're right.

The Chair: Well, it's only six months right now, the ministers' cooling-off period, and we've recommended to go to 12 months. But we're talking about two years after they've left office.

Ms DeLong: This is members now that we're talking about, not ministers.

Mr. Reynolds: You're talking about members.

Mr. Shariff: Mr. Chairman, just maybe to help, I will just withdraw the motion that I made. Let's have a little more understanding of what the subject matter is, what the issue is. Then maybe another motion can come to the floor. So let me just withdraw it so that this confusion that I've raised by putting in two years is clarified.

The Chair: I don't think it's confusing.

Mr. Shariff: It's not confusing?

The Chair: It's helping to focus the discussion.

Mr. Shariff: Is it? Okay. Well, then, I'll let the lawyers sort it out for us.

The Chair: Well, we've got two issues. One is whether or not there should be a limit for the investigation to take place – right? – then possibly a limitation after which somebody could not be prosecuted under the act because the Legislature no longer has jurisdiction over them and the courts do. So we could deal with both of those concepts in terms of the limitation and what is the appropriate level.

Mr. Reynolds: There are just a few points. To my knowledge there is no provision in the act right now to go after a former member. I'm not talking about a former minister. I'm talking about a member, a member who was not a member of cabinet. If that person is accused of doing something and they've left – that, I think, is the situation Ms Dafoe is talking about – the commissioner wouldn't have the authority necessarily to compel them, and, two, there would be no penalties that could be brought because the Assembly would have lost jurisdiction over this person.

So you would have to add something into the act to make them, well, if you want, quasi criminally responsible. The same provision that you have concerning former ministers you would have to make with respect to former members. It escapes me what other jurisdictions do on that point. I think that the committee would have to decide that because the commissioner and the Assembly would have lost jurisdiction over a former member.

The Chair: Presumably, the circumstances in which that would happen would be under section 2, and the only thing I could think of is where they sat in on a decision of a committee and it was later found out that they were in conflict, for example. If they'd sat in on a committee meeting and advocated a certain government policy or a certain contract or whatever and had neglected to absent themselves and had voted on this thing and it later surfaced that they'd been involved in the thing and that they had a personal interest at stake, then you're saying that there would be no way to follow up with them once they'd left the Legislature unless we change the act.

3:45

Mr. Reynolds: Yes. That would be my point.

The Chair: I guess that's another complicating issue.

Mr. Martin: Isn't that what Saskatchewan said that they'd done?

Ms DeLong: Where is the information about the time frames for the other provinces?

Ms Dafoe: The other provinces don't have time frames except that there's something in Saskatchewan's legislation. I'm just looking for it now.

The Chair: It's page 2 of Information Paper 10.

Mr. Martin: So they must have made some provisions in their act in Saskatchewan to cover that.

The Chair: Can we come back then? I want to try and focus the conversation back on the suggestion. Would you be willing to put your resolution back on the table, Mr. Shariff, please?

Mr. Shariff: Yes, sir.

The Chair: Can we deal with the proposition first of all of a limitation beyond which the Ethics Commissioner couldn't commence an investigation after a minister – it's a minister now – leaves office?

Ms Dafoe: It's a minister in Saskatchewan. It's a minister. So that's a typo, and it's my mistake.

Mr. Lukaszuk: I think it would bring a fair balance. This is only a proposal to the Legislature; we're only recommending. If the Legislature was to adopt our recommendations, we have given significant additional powers to the office of the Ethics Commissioner. Now he has full authority over a minister, full jurisdiction over an ex-minister for the period of cooling off. We'll be discussing the extension of the cooling-off period. We have also increased the punitive and the restitution measures that he and courts can impose. So to balance this off, I think it would be a fair suggestion to put a cap on it for how long he can do that, and two years, because it is in line with other laws that govern filing civil suits in this province, seems like a reasonable date to put on it.

Mr. Reynolds: I just want to point out, Mr. Chair, that the Provincial Offences Procedure Act is quasi-criminal. Of course, the province can't make criminal law, so it's quasi-criminal. It pre-

scribes that it's supposed to be six months: "Subject to any express provision in another Act, no proceedings to which this Act applies may be instituted more than 6 months after the time when the alleged offence occurred."

Now, the reason I point that out is because it is quasi-criminal. If you did proceed against a former minister, it would be in court – of course, you can set a different period, two years. The reason, I think, why it's shorter is because for offences there's a need for the accused to know what the charges are in a timely fashion, and for other offences it is two years, for Criminal Code offences, I think, under summary conviction procedure, generally speaking. But that's the reason why it's a little shorter in quasi-criminal proceedings than civil proceedings.

The Chair: Well, given that that would apply to a former minister in terms of the court's jurisdiction, then really there's no need for us to go beyond that because that's an overriding limitation, in any event, for the prosecution. There's no need for the commissioner to be investigating a year or 18 months or two years after if they couldn't charge them anyway. Correct?

Mr. Reynolds: Well, you can make a longer period in legislation that said: subject to any provision in another act. The general period is six months. So the way it is, if the legislation is silent, the provisions of the Provincial Offences Procedure Act would be read in, and it would be a six-month limitation. But you can prescribe a longer one.

The Chair: I see.

Well, we have a suggestion here in terms of investigations.

Mr. Lukaszuk: Extending it.

The Chair: Two years. Mr. Lukaszuk, you supported that.

Would there be any other discussion regarding a limitation being put on the ability to investigate former ministers at this point?

Ms DeLong: I would suggest that we just leave it as is, that we let the six months apply rather than extending it, you know, especially extending it.

The Chair: Okay. We're talking about the investigation at this point, not the prosecution.

Ms DeLong: But if there's already a six-month limit, then why extend the investigation?

Mr. Rogers: Mr. Chairman, just to be clear, the six months that we dealt with earlier was for cooling off, was for ministers moving into other types of work that may or may not be not in conflict with but relative to what they did in their life as a minister. Now we're talking about any breach, anything that would be subject to some sanction beyond their term as a member.

Mr. Martin: That's all MLAs too.

Mr. Rogers: Right.

So it seems we're confusing the two when we talk about the six months. The cooling off was specific to something to do with someone's ministry. Now we're talking about anything worthy of sanction beyond their term as a member. That's where I thought we were, unless I've missed it. Have I?

Ms DeLong: We're getting a whole pile of things all mixed in here now.

The Chair: Yeah, but let's try and keep it narrowly focused on the issue of investigation at this point. We're talking about former ministers. The suggestion has been made that we would extend it to former members as well as ministers, but we haven't discussed that yet, and let's leave that aside for the moment.

For the moment let's just focus in on whether we want to put some fences around the ability – we've suggested that we're going to make a change to allow the commissioner to investigate former ministers. Right now he doesn't have that power, but if we did allow him to do it, we wouldn't want to allow him to do it indefinitely. As Mr. Lukaszuk says, we'd want to put some fences around it. So the suggestion is that two years is the appropriate period beyond which you can't look into some transgressions or whatever. It's only 12 months anyways during which the cooling-off period that we were recommending would be there. So two years is more than enough time, I think, to get where we're going.

Ms DeLong: I don't understand why we would give him two years to investigate if it's only six months that he has to be able to lay charges.

The Chair: Well, we haven't dealt with that yet.

Ms Dafoe: Yeah. You can change that six months in this legislation if you choose to do so.

Ms DeLong: Okay.

Dr. B. Miller: It doesn't seem to make sense to have two years if there's only a one-year cooling-off period. Why would we, if the one-year cooling-off period is over . . .

The Chair: Because it might happen at the end of his cooling-off period, one year later.

Mr. Lukaszuk: I think that some of the confusion may be arising from: the offence may have happened prior to the end of the term. A minister may have committed an act which put him in breach prior to the end of the term. He doesn't run again, he's no longer a minister, and the cooling-off period only applies to his actions subsequent to his not being a member anymore. But the Ethics Commissioner still should have a prescribed period of time during which he can investigate his conduct while being a minister prior to the elections, which has nothing to do with the cooling-off period.

Ms DeLong: So does this two years apply to everything all the time? In other words, if he's been in office for 10 years, is this two years just the last two years?

3:55

The Chair: The suggestion was that it be from the time they leave office.

Ms DeLong: And then two years after. So then if he was in public office for 30 years, you could go back 30 years and investigate something that happened 30 years ago because he's still in office?

The Chair: That's the suggestion.

Mr. Shariff: Today if a member has been in office for 30 years and

information comes to the Ethics Commissioner about something he did not disclose 25 years ago, I believe that he has the authority even today to do that investigation.

Mr. Martin: Only up to the time the act was proclaimed.

Mr. Shariff: Or whatever, yeah, 10 years ago. So, Alana, if when you got elected you did not disclose some piece of information that you should have and that only comes to light today, I think they can investigate today.

The Chair: Ms South, do you have something to add on that?

Ms South: No, we can't go back that far. The act says that "no proceeding may be commenced under this Act in respect of an alleged breach of this Act committed prior to March 1, 1993," the coming into force of the act.

The Chair: The act came into force then. Okay.

Mr. Martin: I don't know why we need to break this one down to be just members, because we're not talking about the cooling-off period, rather than ministers – we're all the same in that regard, it would seem to me – and do it twice. I'm still not sure.

Again, to come back to I think your point, how do we enforce it after those two years? Let's say that it starts an investigation and that it's during the time they're no longer members, so the Legislature doesn't have any authority then. Have we got that figured out? At least, I haven't yet. Do we have it figured out over there?

The Chair: Well, let me recap just where we've been here for the committee. We suggested that we were recommending that there be an ability to investigate; number two, a requirement to co-operate; number three, an ability to disclose the results of the investigation. If that happened within the period of the limitation period, the results of the investigation would be turned over to somebody, and the courts would have the jurisdiction, not the Legislature. So that's what's happening. We're talking about the ability of the Ethics Commissioner to go out after somebody has left and investigate. So let's keep it on that narrow point.

Mr. Martin: So we're going to do that with this one too. That's great. That's part of it. Then I would just say: why do we need to break out ministers here? This particular one I understood to be all members with the two years.

The Chair: It may be. Let's vote on this recommendation on ministers now.

Mr. Shariff: Right now the subject matter before us pertains to ministers.

Mr. Martin: It doesn't say that in the question.

Mr. Lukaszuk: Well, that's the motion.

The Chair: The motion is that

there would be a prohibition on investigating after two years.

Ms Dafoe: Two years after the date of occurrence or after the member leaves office?

The Chair: From the time they left office. All in favour of that? Opposed? No one. That's carried.

So now let's deal with the issue of whether or not it should apply to members as opposed to just cabinet ministers. Would anyone like to speak to that?

Dr. B. Miller: But two years after leaving: that doesn't make sense for members.

The Chair: Within two years.

Dr. B. Miller: Well, I think that the Ethics Commissioner should only have jurisdiction over members while they're in office, while they're Members of the Legislative Assembly.

Mr. Martin: Why would we treat ministers differently?

Mr. Shariff: Ministers have more information than you or I do.

Dr. B. Miller: Yeah. Exactly. That's the point of the act.

The Chair: The example that I gave where somebody voted and you weren't perhaps aware of the fact that they had an interest that they didn't disclose and they were participating: under section 2 you've got an obligation to disclose that you have a conflict. You have to report it to the secretary or to the Clerk at the time, and that person then has an obligation to report to the Ethics Commissioner the fact that there was such and the circumstances. Hypothetically, if somebody neglected to do that and they voted on something that was in their own interest and took a position, you could find that out after they left office, and presently you would have no power to do anything about it.

Mr. Lukaszuk: Let's say a private member carries a bill, a private member's bill. Let's use an example that's already on the books, the bicycle helmet bill, and the next thing you find out is that you have an outlet or a manufacturing plant that produces that given item for helmets, you know, as far-fetched an example as it may be.

The Chair: Okay. So the issue is whether or not there should be the power of the Ethics Commissioner to investigate former members as opposed to just cabinet.

Ms Dafoe: At the risk of being irritating, I don't understand what the purpose would be of allowing an investigation if there's no sanction available. Right now the act only allows sanctions imposed by the Legislative Assembly on members. There's no ability to impose sanctions on former members. What you would have to do, I think, is – you're taking the act out of the powers of the Assembly to sanction its members into some sort of quasi-criminal realm.

The Chair: You're absolutely right. As Mr. Reynolds, I think, pointed out, there would have to be some specific sanctions put in there.

Ms Dafoe: Sanctions to be imposed by whom?

The Chair: By the legislation and by the courts. If the legislation said that you could impose a sanction, then the courts would be able to do it, the same as they could do for the minister. That's the only reason that they could do it, because that's in the legislation, section 31. Instead of a "former Minister who contravenes this section," you could say: a former member who contravenes the section breaches the act. It would be simple to do, but do we want to do it? That's the issue.

Mr. Shariff: The contravention by a member would occur while the member is a Member of the Legislative Assembly. The reason we go to the ministers and beyond the term of office is because there is a cooling-off period that applies to ministers. I think we are entering into a very grey area and probably a sliding slope. I like what Bruce said, that for the membership this act should apply to Members of the Legislative Assembly. I think that when we're talking about ministers, because of that cooling-off period, we can have provisions that deal with the cooling-off period. So I'd be in favour of just limiting it to the term of office.

The Chair: Okay.

Mr. Martin, it doesn't look like you've got a lot of support for extending this to private members.

Mr. Martin: Why don't we say, then, to keep it consistent, certainly, if we want to do that, that the cooling-off period should be one year for the ministers, then go back to that and keep it consistent – we're sort of saying that that's a term of government for ministers, their time plus one year – rather than making it two. At least it's consistent then.

4:05

The Chair: Is there anyone else who would support extending the sanctions to private members?

Mr. Martin?

Mr. Martin: That's fine.

The Chair: Okay. If I can summarize, the consensus is that we don't want to extend any sanctions post office-holding to private members. Okay. That's done.

Now, is there anything else that we want to deal with under the issue of the limitation period?

Mr. Elsalhy: When the motion was presented, you said that you were going to see if there was an appetite to maybe make it even more than two years.

The Chair: Okay. On the ministers issue?

Mr. Elsalhy: Yes.

The Chair: Okay. We can explore that.

Ms DeLong: I would first like to make a motion, that Ray just made, that we're covered as long as we're in the Legislature, and ministers are covered while they're in the Legislature and during their cooling-off period. That way the whole thing hangs together.

Mr. Shariff: That's what we've done.

Ms DeLong: That's what we've done? Okay.

The Chair: Mr. Elsalhy's suggestion was that we increase the period.

Mr. Elsalhy: So that the Ethics Commissioner has two years, one year of which would be the cooling-off period, so two years after the minister had left cabinet and then up to a maximum of five years.

The Chair: I'm not following the difference between the two and the five.

Mr. Elsalhy: Two years to investigate but five years to press charges, you know, for the courts, to pursue legal action.

The Chair: Oh, I see.

Any support for that idea?

Mr. Elsalhy: I'll tell you why, if I could explain my rationale.

The Chair: Sure.

Mr. Elsalhy: Some people might be intimidated by the ex-minister. A former minister still has a bit of clout and connections.

Ms DeLong: No, he doesn't. He's nobody.

Mr. Elsalhy: Okay. Different cases maybe. But, you know, some junior employee in the ministry who is aware of some wrongdoing might feel intimidated and not come forward till after the dust has settled, till after the fizz has escaped. If they see this minister continue to be involved or continue to be connected, they might hesitate before they bring it forward. I think that if we allow him a bigger window and the Ethics Commissioner to make a recommendation to the courts to pursue charges or to take it to the next level – if no other jurisdiction has done it, why not be the leader? Why not start here and set the example?

The Chair: I'm going to ask the committee: is there any willingness to extend the limitation beyond the two-year period that we've already discussed?

Ms DeLong: We were back down to one year, I thought.

The Chair: For the investigation I think we said two years.

Mr. Shariff: It was two, but she wants to suggest that we bring it down to one year to make it consistent.

The Chair: Wait a minute. The two years that we have talked about is from the date of leaving office. The cooling-off period, if they adopted our recommendations, would be one year. What you're down to is, if you committed an offence during the cooling-off period, you would have no time to investigate if you reduced it to one year after the period of office. So I don't think you want to go there.

The issue that Mr. Elsalhy's suggesting is that perhaps we broaden it even further beyond the two years, and I want to just get the committee's vote on that.

Mr. Elsalhy: Not for the investigation but for the charges.

The Chair: For the charges. Yeah.

Can we vote on that? Any willingness to move on that? All in favour of that proposition? All opposed? Okay. Well, I don't see a lot of support for it, so two years.

There's one unfinished piece of business that we need to deal with, and that is that if we're going to be able to investigate for two years, do we want to make a recommendation in the act, as Mr. Reynolds has pointed out, that there be a period other than the six months in which to lay charges? It certainly makes sense to have some equality between the right to investigate and the right to charge. I mean, otherwise it's a moot point, as Ms DeLong pointed out.

Is there some willingness, then, to extend that period during which

a charge could be laid? Remember that the Legislature loses jurisdiction as soon as the minister leaves office. We've now got the investigator out there investigating up to a period of two years. Well, it could be within six months of the investigation being concluded but within a period of two years. The charges must be laid within that two-year period. So that seems a logical extension if we're going to be consistent in dealing with it.

Would somebody like to make that proposition? Ms DeLong, you've got a suggestion. Why don't you make it?

Ms DeLong: No. I think we should just stay with it as it is. If it applies to everything else, why do we need more than six months?

The Chair: Because you might not know about it.

Ms DeLong: You might not know about a lot of things in the world.

The Chair: Well, to use a hypothetical example, if there's a cooling-off period, in the 12th month of the cooling-off period if there's something done which is contrary to the act, then after six months it would fall off. You're saying that the investigation would become a moot point at that juncture. If it happened during the period of office, then six months after the minister left office, there would be no right to investigate or whatever. That's what you're suggesting, that six months be the operative limitation on charging from the time of offence.

Ms DeLong: Yes. That was where I wanted to be in first place, you see? Don't put it on me to bring forward a motion which is not what I want.

The Chair: You want to just leave the status quo so that the provincial procedures act kicks in then?

Ms DeLong: That's right. Yes.

The Chair: Discussion? Do you want to vote on it?

Mr. Shariff: There's no motion. Alana hasn't put it forward.

The Chair: Well, no, but I want to get the consensus of the committee. If you want to leave it alone, then that's fine, but leaving it alone in a way is rendering useless any investigation beyond the six months from when the offence occurred. It really cuts it down. If you're going to do that, that's fine.

Mr. Groeneveld: Mr. Chairman, I would like a recommendation from one of you lawyerly types of what would be sensible here, whether it's you or Rob.

Mr. Martin: Stick your neck out, Rob.

Ms DeLong: Go ahead and say it.

The Chair: Go ahead, Rob.

Mr. Groeneveld: If it sounds good, I'll make the motion.

Mr. Reynolds: They elect you, not me.

Well, I concur with what the chair is saying in the sense that if you have an investigation provision that extends beyond six months after the alleged offence may have occurred, I would think you'd have to extend the period to bring a charge because it would make no sense, I don't think, to have the investigation go on a year after the event occurred. You'd be restricted because you'd passed the six-month period. Really, I hate to say this, but if you're not going to allow a prosecution to commence in a period greater than six months, then there's no point in having the investigation procedure go a year or two later. I mean, they're inconsistent, I think.

Dr. Morton: I move that

> the deadline for laying prosecutions be made coterminous with the deadline for investigation, which is two years.

4:15

The Chair: Okay. Discussion on that point? Everyone agreed? All in favour?

Some Hon. Members: Agreed.

The Chair: Opposed? One opposed.

Okay. We move on to question 27. Number 27 is Information Paper 10.

Dr. Morton: Would the chair entertain a motion to adjourn until tomorrow?

The Chair: I would. Do you want to make that motion?

Dr. Morton: I move that we adjourn proceedings until tomorrow at 9 o'clock.

The Chair: You make it 9 a.m.?

Mrs. Sawchuk: It's posted on the board outside the Chamber. It's on the website. It's a public meeting, Mr. Chairman.

Dr. Morton: What's on the website?

Mrs. Sawchuk: The meeting notice.

Dr. Morton: I know, but for what time?

Mrs. Sawchuk: From 8:30 until 4 for the second day.

Dr. Morton: Will we get fined for coming half an hour later?

The Chair: No. It's up to the committee if you want 8:30 or 9. Which is it going to be?

Dr. Morton: I move that we adjourn until 9 o'clock tomorrow morning.

The Chair: Okay. All in favour of that?

Hon. Members: Agreed.

The Chair: Carried.

[The committee adjourned at 4:17 p.m.]