

**Title: Tuesday, October 25, 2005**

Date: 05/10/25

Time: 9:04 a.m.

[Dr. Brown in the chair]

**The Chair:** Good morning, everyone. We'll call the meeting to order.

I believe yesterday we finished talking about question 26, so we're on to question 27. There is a fair assortment of comments that we've had here, and I think the Ethics Commissioner has raised some questions for us to wrestle with.

Mr. Hamilton, perhaps I could ask you just to speak briefly to the issue of question 27, which is whether the sanctions available to the Ethics Commissioner are presently adequate.

**Mr. Hamilton:** Well, we have more questions than we have answers for this one. B.C. has a provision that if a financial gain is realized, any person affected by it "may apply to the Supreme Court for . . . restitution." That's all I know anyway.

**The Chair:** So that would be something that you'd like to see in the legislation?

**Mr. Hamilton:** Yeah.

**The Chair:** I think in our earlier discussions we talked about a restitutionary remedy as being something that the committee would like to see in respect of cabinet ministers after they have left. Really this is sort of a logical corollary of the previous position. Maybe I could ask whether or not somebody would be interested in proposing that that would apply to the sanctions available, for which the Ethics Commissioner could make a recommendation, I think is the proper terminology. Isn't it, Mr. Hamilton? The actual sanction would presumably be taken to the Legislature, would it? Right?

**Ms DeLong:** So we need a motion that would allow one of the sanctions to be a restitution. Is that what we need here? Okay.

**Dr. B. Miller:** Well, the difference is that our previous discussion talked about summary conviction in a court of law because it was dealing with a minister who has left the Legislature. In this case these sanctions refer to sanctions against members of the Legislature. How could a reference to the Supreme Court be in order? I don't know how that would apply.

**Mr. Shariff:** With members we deal in the Legislature, not with the court.

**The Chair:** Well, the issue, I believe, would be enforceability.

Mr. Reynolds, would you like to speak to that?

**Mr. Reynolds:** Yes. Reverend Miller, it's not a reference to the Supreme Court of Canada. In British Columbia their Court of Queen Bench is styled the Supreme Court of British Columbia. It's the first level of a federally appointed court. So that's what they meant when Mr. Hamilton was reading out about the Supreme Court. The equivalent in Alberta legislation would be the Alberta Court of Queen's Bench.

**Dr. B. Miller:** My question still is relevant. If these sanctions apply to members of the Legislature, on what basis can you have a sanction of a person that takes a member of the Legislature to court outside the Legislature?

**COI Review**

**The Chair:** I think I can answer that question. I think that the difficulty that the commissioner has is that he could recommend a sanction which the Legislature could exert, but the Legislature per se really doesn't have the tools available to enforce a pecuniary sanction in terms of a judgment whereas the court would be able to do that. Once a court judgment is rendered, you would have all of the powers of execution to collect the debt. In other words, we're talking about something that goes beyond in order to give them the powers to enforce that order, you know, to send in the garnishee summons, writ of execution, those other things that would be available during the normal court process. I could see where having the court apply that restitution order would be a valuable tool, I suppose.

**Mr. Martin:** Well, I guess, then, to come back to Bruce's question, there would have to be a recommendation from the Legislature if it was a member there. That's one of the things that they could recommend, that it be sent to court. How else do you get it there if it's a member in the Legislature?

**The Chair:** Well, even more than that, I think that there would have to be an enabling provision in the legislation, and if I understand the commissioner correctly, that is what he's recommending.

9:10

**Mr. Shariff:** Mr. Chairman, I think we need to have clarity. We are talking about two different groups of people: people who have inside information, which we've dealt with; then we have private members, who don't have access to inside information. So if they breach the act and they are current members, then I think the provision should be within the Legislative Assembly to deal with the matter. I can't imagine a situation where you would have breached the act and have an impact on somebody else outside the Legislative Assembly in terms of financial material gains. You don't have inside information, so how do you benefit from it?

**The Chair:** Could we perhaps have some clarification on what the B.C. provision actually accomplishes? In the meantime, Ms DeLong, do you have a comment on it?

**Ms DeLong:** Are you ready?

**Mr. Reynolds:** I was just going to read it out if that's okay.

**The Chair:** Yeah. Go ahead.

**Mr. Reynolds:**

Despite anything in this Act, if any person, whether or not the person is or was a member, has realized financial gain in any transaction to which a violation of this Act relates, any other person affected by the financial gain, including the government or a government agency, may apply to the Supreme Court for an order of restitution against the person who has realized the financial gain.

**The Chair:** It seems fairly clear what they're accomplishing. So that's an enabling provision giving the cause of action, really, isn't it? It's broader than just enforcement. It's giving the cause of action.

**Ms DeLong:** That to me sounds like a very reasonable way of doing it. Yeah, I think that's quite reasonable.

**The Chair:** Can I have a suggestion from the committee on a way to proceed? Is that mechanism something that you'd want to make a recommendation on?

**Dr. B. Miller:** Yes. So moved, that we include that statement of restitution along the lines of the B.C. model.

**The Chair:** Any discussion on that motion?

Can I ask for a show of hands? All in favour of incorporating a provision along the lines of the B.C. restitutionary remedy? It really is parallel to what we already talked about yesterday for ministers. This is a broader one, that would apply to ministers or MLAs. Anyone opposed? That's carried.

Now, anything further under the sanctions available other than the clause dealing with the restitution? Mr. Hamilton, you posed some other questions here in terms of limits on penalty and so on. Would you like to comment any further on that?

**Mr. Hamilton:** I think our legal people should do that. I'm not a lawyer. I don't know what the courts can do.

**The Chair:** Mr. Reynolds or Ms Dafoe, do you have any comments on sanctions?

**Ms Dafoe:** The only limit in the act right now is the limit on penalties available against a former minister who has breached the act. That's one we discussed yesterday. That was a fine not exceeding \$20,000. For breaches of other provisions of the act there isn't a maximum penalty in the legislation right now.

Rob, do you have anything to add?

**Mr. Reynolds:** Well, if members would care to discuss it, question 28 indicates: "Should such a contract be automatically terminated? What if the other party to the contract entered into that contract in good faith, and would be harmed if the contract was terminated?" I think it's a very difficult position to put into legislation that a contract could be voided based on a finding by the Ethics Commissioner. I think it gives the Ethics Commissioner a lot of power that is normally reserved for a court.

Also, when you're talking about voiding or terminating a contract, as I think the Auditor General pointed out, you could have other parties who have relied in good faith on that contract. The term of art sometimes is bona fide purchasers for value or whatever, people who have rights or have taken money or acquired goods under a contract of which now the validity is being challenged. I think that that would be something that perhaps a court could consider, but it seems to be a very sweeping provision with respect to the powers of the Ethics Commissioner. That's my view.

I noticed that Manitoba, I think – I'm not sure which other jurisdictions – has a provision like that, which makes the contract not void but voidable, which is a discussion which could occupy three hours of someone's time. I won't bore you with it. In any event, it means the contract is not automatically void. I could be wrong on this, but I think that is the furthest any provision in legislation goes on that point.

**The Chair:** Mr. Lukaszuk.

**Mr. Lukaszuk:** Thank you. I would be interested to hear from the commissioner. However, I would imagine that the commissioner would have neither the capability within his office nor the expertise to make such determinations on whether the best outcome for all parties involved would be a termination of a contract. I can think of instances where termination of a contract would actually be creating a multiplying factor of wrongdoing whereas allowing the contract to continue – I'm wondering: how does the commissioner feel? Is it something that he would want to have within his realm?

**Mr. Martin:** Are we still on 27 now, or are we on 28?

**The Chair:** Well, I think we're talking about both at the moment. It really is one of the sanctions, so it's appropriate to talk about. It really is part of the sanctions issue as well.

**Ms DeLong:** Getting back to sanctions other than cancelling a contract, we're doing an awful lot, you know, in the last day or two in terms of strengthening our Ethics Commissioner. I'm concerned about sort of the balance that we've got going on here now, that we're adding quite a bit more in terms of investigations, and we're adding a lot more strength in terms of penalties, only on the one side though. I think that because of that, we've got to add more strength to the other side. In other words, when the Ethics Commissioner comes out with a report that says that there is no problem, that someone is cleared of having an ethics thing there, we need to put some more teeth into the legislation.

You know, the game is a confrontational game in the Legislature quite a bit. We have protection for people in the Legislature to essentially say anything that they want in there. I think that we need to put some more teeth into the legislation so that if someone has been investigated by the Ethics Commissioner, cleared by the Ethics Commissioner, at that point if anyone in the Legislature sort of continues to infer that there is a problem there, there are heavy sanctions over on that side. In other words, they sort of lose their right not to be sued for slander.

9:20

**The Chair:** Any comments?

**Mr. Martin:** Well, I guess the bulk of what we're talking about here, as I understand it, is whether we should be putting – because he can recommend "any one of the following," you know, to the Legislature, the only question that I see is: do you want to determine what sorts of limits should be there and whether we want to do that? I think that as it stands right now, the Ethics Commissioner can pretty well recommend whatever he wants. I think the question is: should there be parameters in terms of what he recommends? I think that's what the discussion about the sanctions should be.

**The Chair:** I think that's right.

Mr. Reynolds, do you want to comment on that? I think what we're talking about, really, is the range of sanctions which the commissioner could recommend to the Legislature in respect of people that are still within the jurisdiction of the Legislature, that are members of the House at the time.

**Mr. Reynolds:** Well, in a sense, of course, it all flows through the ability of the House to discipline its own members. I mean, that's one of the privileges that exists. It simply can expel a member if it wishes. That's where the Ethics Commissioner's powers really flow from in the sense that he makes recommendations to the Assembly to do something, and it's up to the Assembly to actually undertake that action. In that sense, you know, there are cases, one from B.C. that indicates that because the Ethics Commissioner performs that function, the Ethics Commissioner is cloaked in parliamentary privilege to an extent because he or she is offering advice to the Assembly about how it's going to conduct its business or how its going to discipline its members.

So that's the principle for the range of options that are laid out with respect to penalizing people, the list of options available to the Ethics Commissioner. That's the background to it.

**Ms DeLong:** The situation that I'm concerned about is where the Ethics Commissioner has cleared a member, and then the opposition continues to infer that there is a problem with the ethics. I mean, that's the situation that I'm concerned about, and I think that we need to put a little bit more teeth in. Essentially, we need to be able to be stronger in that situation.

**Mr. Reynolds:** If I might, you already have an unprecedented term in the Conflicts of Interest Act which has been interpreted by successive Speakers to mean that you cannot ask questions in the Assembly when a matter has been referred to the Ethics Commissioner. I mean, apart from the sub judice convention that's incorporated under our Standing Orders, that's really unprecedented because this is not a judicial body.

There is nowhere else, really, where you have that sort of respect for an officer of parliament or the Legislature in the sense of not being able to ask questions on a matter. You know, the privilege of free speech is sort of the highest level of parliamentary privilege in our system. I mean, it allows you as an elected member to go in the Assembly and not be afraid of making a statement, not be afraid of being penalized for making the statement. It's really what separates Members of the Legislative Assembly and Members of Parliament from other people. It is a privilege. It's a special right or immunity that certainly doesn't accrue to members of a municipal council, for example.

But what I want to say on that is that after we've given this deference to the commissioner and to the process that you've established by legislation, there are two points. One is that when the commissioner comes down with his or her report, the Assembly is supposed to deal with it under the legislation within 30 days I believe, and perhaps we'll get into a discussion of how that's worked out.

The other thing is that I couldn't imagine – well, it's obviously up to the committee – a recommendation that would take away from the ability of free speech in the Assembly. I mean, I'd even question the constitutionality of that in the sense that, you know, parliamentary privilege has been held to be part of the Constitution of Canada, and freedom of speech is certainly the most important, I would suggest, parliamentary privilege that's available, which goes back at least to the English Bill of Rights of 1689. That's the basis for section 13 of the Legislative Assembly Act, which says that members can't be sued for what they say in the Assembly. I mean, it would certainly be an unprecedented move to take away from the parliamentary privilege of freedom of speech if you were to go down that route.

You know, without sounding slightly jaded, members are not, obviously, under oath in the Assembly when they speak, and sometimes there are allegations made. It's a difficult place that you've become elected to. Of course, if people are making false allegations, after a while I would imagine that that will come out in the sense that in the public or in the House itself it will be dealt with.

In any event, I've lectured too long there.

**The Chair:** Dr. Miller and then Mr. Groeneveld.

**Dr. B. Miller:** My comment is not in direct relationship to this.

**The Chair:** Mr. Groeneveld, do you have a comment?

**Mr. Groeneveld:** Well, no. My comments aren't either, but I think that's the problem. I think that maybe we've gone off track here a little bit. Have we not? "Should there be a limit on the penalty?" Then you go to the next bullet, and we're talking finances, as far as I'm concerned. How did we get off on to the tear we're on right now? I'm not quite sure.

**The Chair:** I think that was seen as part of the answers to 27 and 28 in the general sense of sanctions.

Dr. Miller, do you want to make your point then?

**Dr. B. Miller:** Yeah. Maybe this is what the hon. member was concerned about, that in terms of ministers the fine was – what? – \$50,000. There's no specified amount here although I notice that in other jurisdictions there is, or at least it's not exceeding \$5,000 or not exceeding \$10,000. It's under section 27(2)(b): "That a penalty be imposed on the Member in an amount recommended by the Ethics Commissioner." Well, in some jurisdictions they say, "A fine not exceeding \$5,000" or "a fine not exceeding \$10,000." Would that be helpful? I mean, the Ethics Commissioner is asking: should there be a limit on the penalty? Should that be stated?

**The Chair:** There's no limit on it, I think, right now. Under the provisions of section 27(2) the Ethics Commissioner can recommend that a penalty be imposed "in an amount recommended," and it doesn't even have a limit. It could be unlimited then.

**Mr. Martin:** It doesn't necessarily have to be dollars and cents either.

**The Chair:** No. That's right.

**Mr. Groeneveld:** Well, that was going to be my next question. Are we talking lashes? What are we talking here?

**The Chair:** Those aren't provided for. There's a reprimand, a financial penalty, the right to sit and vote in the Legislative Assembly, and possibly expulsion as the ultimate sanction, I guess. So those are the ranges of sanctions right now, and I guess the issue is: are those sanctions comprehensive? Is there anything else that we want to add? To me it looks like it's fairly well covered unless, Mr. Hamilton, you have a specific one. We've talked about restitution, obviously.

**Mr. Hamilton:** Question 28. Manitoba and P.E.I. have provisions addressing the question. Have you got that?

**The Chair:** Under question 28?

**Mr. Hamilton:** Question 28, yes.

**The Chair:** You're talking about the power to void the transaction then?

**Mr. Hamilton:** Yes.

**Mr. Martin:** Are we moving on then?

**The Chair:** We were on to 28. Right. I didn't hear anybody say that there were additional sanctions that needed to be added to section 27(2) of the act.

9:30

**Ms DeLong:** Just one question. When someone's name is cleared by the Ethics Commissioner, is there any way that we can sort of strengthen – I don't know.

**An Hon. Member:** The report?

**Ms DeLong:** It's not the report. Maybe under sanctions is the

wrong place to put it, but something that makes it definitely clear that when the Ethics Commissioner clears your name, you are clear? No suggestions? Okay.

**Mr. Rogers:** Mr. Chairman, I had another point, but if I may just follow up on Ms DeLong's point. Alana, I hear where you're coming from, but the nature of this world that we live in is that there is a certain amount of perception that you're going to be dealing with one way or the other. I think the individual, whoever is the subject of that investigation, what have you has to go on their own strength and the strength of their character. I don't think there's anything more. The report comes out. The report says: yea. I think I hear you saying: well, there's still this cloud out there.

The reality is that I don't know how you could put something in writing that's going to take that away. It's unfortunate, but that's just the nature of this fishbowl that we live in in this political world. I just don't know how we could write something that could take that away. It's the nature of the beast. It's sad, but that's the fishbowl that we all become a part of once we get in here.

**The Chair:** Mr. Lukaszuk.

**Mr. Rogers:** Mr. Chairman, I have a point. The suggestion that a contract be voided or voidable: I would suggest that this is something for the courts. I really don't feel comfortable with that provision in here. Particularly when other parties are involved, people's livelihoods, their businesses, and particularly other people getting into these contracts in good faith, I really think that it's a pretty dangerous road to go down to put all that power in here.

**The Chair:** You're reinforcing what Mr. Lukaszuk said in terms of the expertise of that particular office, that the commissioner may not be the best arbiter.

**Mr. Rogers:** Well, I guess I'm looking at the other parties and their rights and their investment, what have you. Nothing against the expertise or anything here, but I think it behooves us to make sure that those people have, I guess, the best avenues of recourse for preserving their reputation, their business, et cetera, that they might have entered into in good faith.

**The Chair:** Mr. Lukaszuk.

**Mr. Lukaszuk:** Thank you, Mr. Chairman. My statement was in the form of a question. I would love to hear from the commissioner relative to the capability of the office to make those determinations, the expertise available, and whether it is the best venue or whether courthouses would be the best venue for this decision process.

**Mr. Hamilton:** We have legal people to turn to, so we can use them if we need to, and we would determine whether we should go to the courts or not. So it would depend on what the issue is. We certainly wouldn't do it on our own.

**The Chair:** Mr. Elsalhy.

**Mr. Elsalhy:** Thank you, Mr. Chairman. If I remember correctly from yesterday, we talked about situations where something happened that breached the act and there was somebody who was done ill, like a company that competed and didn't win the contract. Then we added that phrase yesterday about restitution and/or compensation so that these people who suffered from that decision or that breach can be compensated.

Voiding a contract just because it happened contrary to the act shouldn't be done as a blanket policy. It should be done case by case. The Ethics Commissioner makes the recommendation, whether it's to the Legislature or to the court, and then the Legislature or the court takes it from there. Sometimes the contract might have been conceived through a breach, but maybe it's still in the interest of the people at large. So I think it has to be done case by case, not blanket policy.

**Mr. Lukaszuk:** To Mr. Reynolds perhaps. I guess if we're to imagine that a contract has been entered into and it has been entered into under false pretenses or under wrongdoing of a minister or an MLA, and we find ourselves in a situation where the determination has to be made now whether this contract is allowed to continue or whether it has to be nullified and voided, which route would give most recourse to parties affected? Would it be through the office of the Ethics Commissioner or courthouse, allowing them the ability to present their case properly and/or appeal the case or have some form of independent review? If we granted those powers to the Ethics Commissioner, would they still have a recourse to have the decision reviewed?

**Mr. Reynolds:** A very interesting question. Let me just point out that in British Columbia and I believe Manitoba the transaction that would be voidable relates to any contract or other financial transaction that was made when the member failed to comply with what is section 10 of the B.C. act, which is Procedure on Conflict of Interest. That's where you don't declare that you have a conflict of interest. I mean there's a provision in the act, section 2 I believe, that says that you have to stand up and say, "I have a conflict," or notify the chair of the meeting or whatever. So the voidability only arises when that doesn't occur.

As I read it, in both Manitoba and British Columbia it's only voidable at the instance of the government. Typically, I would imagine, it would be the Crown that would be saying that they were the ones who suffered or lost money or whatever. So, really, who would be deciding if it was voidable would be the government.

**The Chair:** Well, it could be others. As the Ethics Commissioner's submission stated, there could be instances where a third party entering into the contract in good faith suffered damages.

I think what really we're asking here and I hear Mr. Lukaszuk and Mr. Rogers saying is that perhaps this is a sanction that, if it was going to be available, ought to be available through the judicial process and not through the commissioner's office. Am I correct in that?

**Mr. Lukaszuk:** Correct.

**Mr. Rogers:** Correct.

**The Chair:** Any other comments on that point?

**Mr. Martin:** Well, just briefly, I think the Ethics Commissioner has a fair amount of latitude to make recommendations, you know, to the Legislature or wherever. If in a specific case he thought somebody was wronged, I think he could say that, and it's up to the other groups to do it. It seems to me that there is that latitude in the act as it already stands.

**The Chair:** Are you suggesting that that would be part of the sanctions that he could recommend to the Legislature then?

**Mr. Martin:** Yeah. If he thought that something had happened there, that somebody was wronged, he could certainly. Whether the courts or the Legislature want to follow up on it is up to them then.

**The Chair:** Any further comments?

**Mr. Shariff:** I just want to make one comment, and I don't know whether what I'm saying fits into this argument or not. From time to time from our vantage point in the west we complain about how courts are being given so much authority to literally write legislation for us or read into our legislation. I'm just wanting us to be sure: if the matter can be dealt with within the Legislative Assembly, does it need to go to the courts? I'm not objecting to sanctions. I'm just saying that if it can be handled from within, let's handle it within the Legislative Assembly. If it can't, then send it to the courts.

9:40

**The Chair:** Well, backing up, then, to 27 again, would it be something that the committee perhaps would recommend? Mr. Reynolds, I'm going to ask you to comment on this. Would this perhaps be another one of the possible sanctions that could be recommended by the Ethics Commissioner to the Assembly, the fact that a contract could be voidable at the instance of the Legislature?

**Mr. Reynolds:** Well, it sounds to me that what you're talking about here in a recommendation, what Mr. Martin was talking about was really that the recommendation for a voidable contract would go to the government, if you will. While I'm a big backer of the Assembly's powers and privileges, the Assembly, despite what you might have heard, is not actually a court.

When it comes to determining matters of restitution, for instance, the Assembly would speak through legislation. You would have to have a separate bill to indicate that so-and-so should be compensated for this. I mean, really, when you look at restitution, I think it's an equitable remedy, and that's what the courts are set up to deal with, deciding disputes between people. I don't think this is a matter of rewriting legislation.

**The Chair:** We are not talking about restitution in this case. We've already recommended that the delegation be through the courts to impose an order of restitution. What we're talking about is whether or not the Legislature ought to have the power to void a contract, I guess.

**Mr. Martin:** They could recommend it.

**Mr. Reynolds:** Once again, for the Legislature to void a contract, that would require a special act. I mean, you can't void a contract on a motion, for instance. That would require a separate bill, a piece of legislation. That's how the Assembly acts.

A court is a court of equity that would determine the voidability of a contract. That's what they do day in, day out.

**Mr. Martin:** I'm not suggesting that the Legislature do that, but they could make a recommendation to the various government department or the courts or whoever if they so decided in the Legislature. They couldn't do it themselves.

**Mr. Groeneveld:** Just a question. If we went that route, would we be taking this right out of the hands of the Ethics Commissioner? That's our first line of defence. If we can solve it there, is that not where it should be done?

**Mr. Shariff:** Well, let me give you an example, and it's a current example. Sorry to put Mr. Martin on the spot. You know that issue

about Fort McMurray. The ruling was done the way the Ethics Commissioner determined. Had the ruling been the other way around, that there was some wrongdoing in the giving of the contracts, how would we have handled cancelling their contract? How would it impact the municipality and the other people who have already entered into subcontracts for development purposes? I don't know how far that would go. You know, the implications are pretty severe in cases like that.

**The Chair:** Mr. Lukaszuk.

**Mr. Lukaszuk:** Thank you. That's why I think, Mr. Shariff, that you're arguing my case, that courts would be the venue. One could find it just to null and void a contract where the two wrongdoers have entered into a contract knowingly, and any punitive sanctions that would result in losses from it, financial or others, could be construed to be justifiable. After all, they have entered into that contract under false pretenses.

However, how do you justify losses to third parties, in your case sample the subcontractors and others who through no fault of their own have subcontracted into this deal and now will suffer significant financial losses? If we do it through the Legislature or through the Ethics Commissioner's office, they will have no venue to intervene. They will not have a possibility to state their case. If you put it before the courts, they will be interveners, and they will be able to subrogate somehow into the action one way or another.

**Mr. Elsalhy:** If I can offer clarification on my previous statement, what I'm hoping to achieve here is a statement that says that the Ethics Commissioner, based on his findings, can make a recommendation to the appropriate authority, be it the Legislature, be it the courts, be it the government to void the contract. He's not saying that it has to be done; he's just recommending. Whether we accept or take it, whether the government accepts or takes it, or whether that third party takes it to court, at least he made a recommendation. We're not talking about enforcing it. We're not talking about making sure that it happens. It's just basically a recommendation. Part of his report would be: "I recommend that this contract be cancelled," or "I recommend that this contract stands and continues because there might be a public good, and maybe we shouldn't void it." So case by case.

**The Chair:** Well, if there was a recommendation made by the commissioner, it would be a recommendation made to the Legislature or someone who was within the power of the Legislature. As far as the courts go, I mean, the commissioner would not make a recommendation to the courts that a contract be voided. It would be up to the trier of fact to decide whether or not it was voided.

I think the committee has to decide whether they want (a) the power of making that recommendation to the commissioner and (b) whether or not the committee wishes to empower the courts to void a contract or to look at the issue of whether or not there's a bona fide third party that's entered into the contract in good faith, whether or not that's a road that you want to go down. So I guess that what I'd like to have is a motion on those two issues. I think those are the issues that I hear emerging.

**Mr. Groeneveld:** Mr. Chairman, we can't tie his hands too tight on this because the severity of the breach here would certainly come into play. I mean, some are virtually trivial, I guess, that I'm sure he would deal with out of hand. So I guess that my caution is, you know, saying, "Thou shalt do," that type of thing. We want to be pretty careful there.

**The Chair:** Well, the issue is whether or not we want to make the contracts voidable (a) by the Legislature, you know, with the recommendation of the commissioner or (b) whether we wish to have these contracts voidable by the courts, and if so, then we need to recommend that there be a provision empowering the courts to do that because right now there's nothing in the act that allows that.

Mr. Lukaszuk, do you want to make a proposal?

**Mr. Lukaszuk:** I would put a motion forward that this committee recommend that empowering legislation be put in place allowing the courts to void contracts where deemed suitable.

**The Chair:** Discussion on that point?

**Mr. Martin:** Well, I tend to agree with it, but I notice in the one that we had, Manitoba, it says: give the commissioner a power to void a transaction or procedure except as against anyone who acted in good faith and without actual notice of the breach. I guess the motion would be that he doesn't necessarily have to, right? Okay.

**Dr. Morton:** I would support Mr. Lukaszuk's motion, I think, for the reasons that counsel has pointed out. Legislatures are ill-suited to deal with the specific issues of contracts and having what, in effect, would be private bills. It's awkward and a poor use of the Legislature's time.

**The Chair:** Anyone else?

**Mr. Groeneveld:** If you put the word "enabling" in there, that certainly satisfies my concern on it.

**The Chair:** I'm not sure that I'm following.

**Mr. Groeneveld:** Well, going back to my other point, I mean, the Ethics Commissioner's hands aren't tied on this. There's some flexibility in there now, right?

**The Chair:** Well, in the case of the courts, no. I mean, you're giving a power to the courts, outside of the Legislature.

**Mr. Groeneveld:** Are we saying that he has to do that?

**The Chair:** He wouldn't be involved in that. I mean, he'd uncover or unearth something, but he's not going to make a recommendation to the court that the contract be voided.

**Mr. Rogers:** His report would state that he has found some anomalies, et cetera, et cetera, which may lead the court to void the contract. That's all. That would come out of his report.

9:50

**The Chair:** Well, except that the court would not act on the commissioner's report. It wouldn't even be admissible. It's not evidence before the court. It would be hearsay. The court would have to hear the evidence on its own merits directly from the parties involved.

**Mr. Rogers:** But my point, Mr. Chairman, is that someone, whoever that may be, would bring an action based on the indications that something may be wrong. You're right that the evidence would all come forward and be evaluated on its merits before the courts, but that action would probably get instigated by the findings of the Ethics Commissioner.

**Mr. Elsalhy:** I need to ask legal counsel: can the Ethics Commissioner make a recommendation to the government department, to the minister to void the contract? Can't the government void a contract that it entered into?

**Mr. Reynolds:** Can the Ethics Commissioner make a recommendation to the government? There are sections in the Conflicts of Interest Act that talk about what the scope of the report can be, which is something you might want to look at. Generally, if he does make a recommendation, it's a recommendation. The government itself can't void the contract unless there are specific provisions in an individual contract, but generally speaking, I would imagine that they would have to go to court in order to void the contract.

**The Chair:** Are we ready to vote on that suggestion?

**Mr. Shariff:** Let me get this clear, Mr. Chairman. A report would come to the Ethics Commissioner that there is some wrongdoing, or the Ethics Commissioner, according to one of the other recommendations that we had, may initiate an investigation on his own because some information comes to light. Then the Ethics Commissioner would have to determine whether there was a breach of the act or not. If the Ethics Commissioner determines that there is a breach of the act, that report would be made to the Legislative Assembly. Once that report is made public, would somebody then be able to take the matter to court, or would somebody be able to take the matter to court regardless of what the Ethics Commissioner's finding is?

**Ms Dafoe:** It seems to me that if there is a fundamental flaw in the contract such that it was induced by fraud or misrepresentation of some kind, there doesn't need to be any provision in the act to enable someone to sue on that contract. That's a right under law. You don't need a provision in the act to give someone the power to sue on a contract if they've been misled or misrepresented.

**Mr. Shariff:** If that's the case, why are we putting it into this act?

**Ms Dafoe:** That's a fair question.

**Mr. Reynolds:** It was just pointed out that it's in Manitoba's and British Columbia's legislation, and the Auditor General commented on it, I believe, and the Ethics Commissioner raised it as a question.

I can't say for sure. I don't know whether this section has ever been relied on in court, quite frankly. Karen or Mr. Hamilton may have an idea.

**Mr. Lukaszuk:** Well, in the absence of this section, when you think about it, if you have two parties, one a minister or an MLA and the other one some private contractor out there, and if they enter into an unethical contract, which one of them would file the suit, when both of them are direct beneficiaries of the conduct unbecoming? Unless there was a third party that somehow suffered a loss from the conduct unbecoming and then filed a lawsuit, which is highly unlikely.

This case would arrive before the courts not because of someone suffering losses but because of a breach of an ethics act, which, in turn, once voided could bring losses upon the parties involved. Otherwise, there's really no cause of action for anybody. At least, there is nothing compelling one to bring it before the courts because both of the parties who are in the contract are benefiting from it.

**Ms DeLong:** Well, actually there is a third party, or there is assumed

to be a third party, and that would be the company or the person who did not get the contract. I mean, that would be the person or the group that would take it to court.

**The Chair:** I don't think we should lose sight of what the overriding purpose is of the legislation that we're talking about here: to instill public confidence in elected officials. The issue, in my mind, is whether or not, by making a contract voidable, we give confidence to the public that somebody is not abusing their rights as a member or a cabinet minister. So rather than dealing with this in abstract terms, let's look at it as: what would the public expect if there was a contract entered into that was an inappropriate use of power or inside knowledge or a clear conflict of interest, where that person had a pecuniary interest in the contract? In my mind, to have the contract voidable would be something, you know, that the public would expect.

We've dealt with it in a sense in terms of its restitutionary remedy, where the person would have to disgorge any profits. This is one more tool that may be available. The question is: how do you want to proceed with that? The suggestion has been made that we empower the courts to void that contract. This is a complicated issue. I mean, as the office of the Auditor General has said, it has legal implications. It may have implications vis-à-vis parliamentary privilege.

I'm going to make a suggestion. I'm going to suggest, at the risk of incurring the wrath of our legal counsel here, that we ask for some further information regarding this issue of voidable contracts and what the implications would be with respect to things like parliamentary privilege, turning over that power to the courts, and whether or not there are any other adverse implications of making that kind of a recommendation, and together with that, the issue of the Ethics Commissioner making that recommendation to the Legislature, which, as you pointed out, has its own inherent problems.

Mr. Reynolds, would that be something that you could perhaps give us a little bit of guidance on, if we deferred the issue of the voidability of contracts?

**Mr. Reynolds:** Certainly.

**The Chair:** I think the Auditor General really had a good point; that is, that where people enter in in good faith without notice of any wrongdoing, it would be a difficult position to put them in, you know, to void the contracts.

Does the committee want to defer that for a period of time, and we'll come back to that issue, or do you want to proceed with it?

**Mr. Groeneveld:** Well, Thomas did make a motion here. If you want to do that, that's fine.

**The Chair:** Do you want to deal with it now, Mr. Lukaszuk?

**Mr. Groeneveld:** The way I look at it, what if we passed a motion, and they found no adverse effect? Then at least we've moved on.

**Mr. Lukaszuk:** What I will do is I will withdraw this motion until such time that we receive sufficient information.

**The Chair:** Okay. Can we move on then? Question 28 we've deferred.

Question 29. I don't see any suggestions in the submissions. The commissioner has indicated that the restrictions are comparable to those now existing in other jurisdictions. Mr. Hamilton, do you want to make any comment? Are there any other restrictions

regarding the activities of members that you wish to see incorporated?

**10:00**

**Mr. Hamilton:** No.

**The Chair:** Do any other members have issues that they wish to bring to the table on question 29? Does the Liberal caucus have any position on this? Okay. Are we agreed, then, that question 29 be left as is?

Question 30. This one is quite a thorny issue, and this is a difficult one. This is the issue of whether or not an apparent conflict of interest would be in breach of the act as opposed to simply an actual conflict of interest. I'm going to ask Mr. Hamilton again to lead off with this because I think you've had a change of opinion.

We've had some discussions, actually, with the Ethics Commissioners, when they came, about this very thorny issue. I mean, the upshot of those discussions, as I understood them, was that it leads you into a path of murky waters because what may be an appearance of conflict of interest to one person may not be to someone else whereas a conflict of interest is more easily discernable and more easily adjudicated, I guess, by the commissioner's office.

Mr. Hamilton, I'll let you comment further.

**Mr. Hamilton:** Well, Karen and Bob Clark decided this before. I don't know exactly why they changed their minds, but that happened before I was here.

**The Chair:** You mean, it happened that they reversed their position?

**Mr. Hamilton:** Yeah.

**The Chair:** That was a recommendation in the Tupper report originally, that there be a reference to an apparent conflict of interest.

Ms South, do you want to add some comments to that?

**Ms South:** The strongest supporters of the concept of including the apparent conflict are British Columbia and Ted Hughes, that you met when you did the round-table. When it was incorporated in British Columbia's act and after the Tupper report, yes, we did support the concept of apparent conflict. We thought that it established a higher standard of conduct, and that was our thinking, that it would add to the obligations on a member.

Over time we became persuaded by the arguments against it that were really enunciated by the former Conflict of Interest Commissioner and Integrity Commissioner in Ontario, the hon. Gregory Evans, and we've quoted him in Information Paper 11, that Ms Dafeo provided to you. I think the arguments that he makes, particularly in what is italicized there on pages 2 and 3, were what we felt most strongly.

**The Chair:** Dr. Miller.

**Dr. B. Miller:** Thank you. Yeah, I appreciate what the Tupper report has recommended on page 25, that

for the purposes of this Act, a member has an apparent conflict of interest where there is a reasonable perception, which a reasonably well informed person could properly have.

Now, the discussion in the discussion guide focuses on this issue of reasonability. I mean, even the comment is made that the problem with such an appearance standard is that there are few if any reasonable, nonpartisan, fully informed persons. I'm sure that you could argue that, but at the same time I wonder if those who are the

legal experts here would make a comment. It seems to me that the criterion of reasonability is applied in the courts of law all the time.

In fact, I was in the court here in Edmonton – I just happened to be there – to listen to an impaired driving charge. The lawyer was trying to get his client off an impaired driving charge, but the judge decided: well, what would a reasonable person conclude? If a reasonable person was in the constable's shoes, what would he conclude when the car was swerving all over, when he was going through stop signs, et cetera?

I wonder, you know, why in the case of the Legislature we would lift ourselves above a criterion like reasonability and say that, well, there are no reasonable nonpartisan people around, so we can't use this criterion. It seems to me that apparent conflict of interest on the basis of reasonable perception is quite in order. So I think I would support something in the act about apparent conflict of interest, not just actual conflict of interest.

**The Chair:** I think, Mr. Rogers, you were next.

**Mr. Rogers:** Sure. Thank you, Mr. Chairman. You know, the whole existence of this act cautions us all to be careful in how we conduct ourselves. To suggest that we might put a word in here that says that if you might be guilty of something, if it appears that you have done something untoward – until something is proven out of all of this, it is just that. It's an appearance. It's somebody's opinion. To put language in here that suggests that even just the appearance of doing something untoward might make you guilty: I would be very careful about that because this whole area is about opinion. It's about other people's opinion; you believe that my actions might be not of the best intent or might take me down a murky path, but subsequent investigation by this good gentleman over here might prove otherwise. So I would just caution us about the type of language: you know, guilt by association.

**Mr. Lukaszuk:** Mr. Rogers, you can't live inside and outside of that bowl that you just described not too long ago, you know. If indeed this bowl that we live in is a bowl of perceptions, then you have to live in accordance with what those perceptions are.

I agree with you. At times, to a bystander who is not privileged to any additional information than that of an average citizen, some actions may seem suspect even though if additional facts were to be unveiled, it would become abundantly obvious that nothing suspect is going on. However, in reality you can't fully inform all viewers of all the facts so that they can make that fully informed decision.

The standard of a reasonable viewer is a perfectly legitimate standard. You know, courts use the reasonable apprehension of bias as standard, and others alike. The question simply is: would an average citizen, who is informed through media and through his own observations without any additional access to facts, conclude whether the behaviour of a member is untoward, whether there is something suspect going on? If there is, then I guess we should conduct ourselves in such a way that we don't create those perceptions.

**The Chair:** Mr. Martin.

**Mr. Martin:** Well, yeah. Similarly, it seems to me that it's fairly clear what constitutes a breach now, but it's so very narrow that I don't think that the Ethics Commissioner can really deal with some particular issues that have that appearance. We all suffer, again coming back to the chairman's situation, when there is that apparent appearance of wrongdoing or of silly mistakes or whatever, but he doesn't have the ability to say that because it's a very narrow focus.

**10:10**

I realize that there's a problem on the other end, that it could, you know, become frivolous and too open, but I do think that most people would expect politicians to do things properly. If an average person looking at it said, "Well, something is wrong here; it doesn't smell right," the Ethics Commissioner should be able to say that. Now it's so narrow that they cannot do that.

I think that we should open it up. The Ethics Commissioner has a right, if it's a frivolous charge against the member, to say that it's a frivolous charge. I understand politics, that sometimes it's unfair, the charges that are laid from both sides and the rest of it, that this occurs, but I think we can live when it happens. We all have thick skins; you have to in this business because we'll all have columnists or somebody after us at one particular time.

I think this is very important. If the act is so narrow that you almost have to have a smoking gun and a private gain, that's not what most of the people are concerned about. I think very few people are doing that, but I do think they think of "If you scratch my back, I'll scratch yours," sort of approach. Giving the commissioner that sort of right to look into things that don't smell right would serve us all better, as far as I'm concerned.

**Dr. Morton:** My inclination would be to vote against including appearance of conflict of interest because it strikes me as simply too subjective. It would put members in jeopardy of allegations being made of a breach when, in fact, their conduct might be quite innocent. In the meanwhile, an allegation is made, and there's an investigation. Once you get dragged into the mud, even if you're found innocent, the mud sticks very often.

If there are some members who are in favour of expanding the scope to apparent conflict of interest, to persuade me, I'd like you to give me a specific, concrete example of a conflict of interest as opposed to appearance of conflict of interest. Persuade me that those distinctions are clear. If either members in favour of expanding or perhaps legal counsel can give me a specific hypothetical example, I would appreciate that. Otherwise, I'm going to vote against it.

**The Chair:** Just before we go on with that, I just want to remind members that we already have a reference to apparent conflict when we're dealing with the former ministers. During the cooling-off period we've said that a minister cannot carry on a business or hold an office or engage in employment that creates or appears to create a conflict between private interest – we've done it in respect to the ministers during the cooling-off period. I think the issue is: do we want to go beyond that?

Mr. Reynolds, are there any other jurisdictions that would have a similar provision to what Alberta has?

**Ms Dafoe:** Saskatchewan and Yukon both have a similar provision with respect to apparent conflicts for former ministers, but B.C. is the only jurisdiction that has the standard of apparent conflicts for everybody.

**The Chair:** For actual members.

**Ms Dafoe:** Right.

**Dr. B. Miller:** Mr. Chairman, just to add to that, the House of Commons has a reference under Principles that's at the beginning of the conflict-of-interest code for members of the House of Commons. All members are expected to arrange their private affairs so that foreseeable real or apparent conflicts of interest may be prevented



from arising but if such a conflict does arise, to resolve it in a way that protects the public interest. In a way, I think the Tupper report – I don't know whether it was an implication of the Tupper report that if there was a reference to a principle of apparent conflict of interest, it should apply to the whole act, not just be somewhere in it but apply to it throughout. That's why I appreciate the House of Commons putting it up front.

**Ms Dafoe:** Just in further clarification of Dr. Miller's point, it's true that the code does talk in the principles about: members are expected to fulfill their public duties with honesty and uphold the highest standards so as to avoid real or apparent conflicts of interest. However, when you actually look at the provisions themselves, the provisions only prohibit real conflicts of interest, so they don't use the apparent standard in the provisions that are enforced.

**Mr. Hamilton:** Just from my experience for the last two years: perception. When people phone me or come into the office and say, "I want to do this or that," about 70 per cent of the time I say, "Yeah, you can do it, but you have to work with the perception," and that's real. But I think we can live with whichever way you want to go.

**Mr. Elsalhy:** Mr. Chair, can we just simply add it in the preamble or the introduction to the act that all members are expected to try to avoid apparent conflict of interest and then leave it at this?

**Mr. Shariff:** In the preamble?

**Mr. Elsalhy:** In the preamble. So we're not only avoiding actual conflict of interest but maybe even the appearance of it. This should offer the reassurance to the public that we're expected to uphold the highest standards and the highest code.

**Ms DeLong:** I think it's pretty clear to everybody that it's in their own political best interests to avoid any perception of wrongdoing. I mean, it's just basic politics. So, you know, that really isn't an issue. Okay? The issue is whether or not you are guilty on the basis of one reasonable person thinking you're guilty.

In my job – and I'm sure that you guys also find that – when constituents phone in, your response is not, "Oh, you're stupid; I'm not going to do anything about you," or "You're not well informed; I'm not going to talk to you." Part of being who we are is relating to every person, regardless of their opinions, as reasonable people. You get all kinds phoning in, but you deal with them all as reasonable people. You don't say: well, you're stupid; you're uninformed. You may say, "Were you aware of such and such?" but everyone is a reasonable person in some way.

Because of what we're doing and also because of some of the extra powers that we are giving the Ethics Commissioner, I would like at least something to be based on fact rather than in the mind of one reasonable person. I really think it's important that our guilt, which is the part that we're actually looking at here, is based on actual fact rather than on the mind of one reasonable person. The whole problem with apparent conflict of interest is something that is simply dealt with by the fact that we are in politics, and apparent conflict of interest is important because of that. It isn't something that needs to be regulated.

10:20

**Mr. Martin:** Well, I'm going to ask the commissioner and staff – Karen has been there for awhile – what would it take for the commissioner to say that there was a breach? Would it have to be

that it was monetary private gain? You know, if you made that final decision that MLA X is in breach, what would determine that? Your interpretation of that.

**Mr. Hamilton:** Well, speaking for myself – and Karen can speak too – I would like to have some evidence, I mean not just hearsay that Martin went up to Fort McMurray and did all kinds of dirty things. You've got to have some meat to it before you can start looking into it.

**Mr. Martin:** Well, I understand that. But in terms of what would constitute a breach, let's say that the evidence is there.

**Mr. Hamilton:** That would depend on what it was.

**Ms South:** I think that's one of the advantages of private interest actually not being defined in the act, that it does leave it to the commission to decide what is a private interest. Obviously, financial is the easiest identifiable private interest. So far we have, as you know, said that political interests are not normally private interests, but we haven't ruled them out as being a component of private interest if the evidence proved somehow that it was.

The other thing. We did in one investigation report say that the only private interest identifiable in that was the minister's relationship with her brother, that wanting to see your brother do well would have been – and there's a component of financial interest there but also advancing his career and that sort of thing. There was no breach in that particular case because the minister had actually removed herself from discussions, but we had said that that was a possible private interest.

So I think that leaving it undefined in the act helps us to leave it open to interpretation on what might actually constitute a private interest.

**Mr. Martin:** Well, it seems to me that we almost need a smoking gun to get something in. That's why I like the inferred – it's not just one reasonable person; the society would say that this is wrong. The commissioner could take a look at it and all the rest of it. I think it's much too narrow. There could be all sorts of examples. It could be campaign donations. It could be friends. It could be political connections. All these things could be taken as not reasonable when the whole picture is taken to the commissioner. I think this is very narrow and probably too narrow. I mean, I'll live with it, but it seems to me that it's going to be very difficult to find anybody in a breach unless you have every phone call and you had people, cops running all over to find out what people are saying or doing.

I think the idea of apparent conflict of interest – and that doesn't mean you have to follow up. If it's a frivolous thing and you know it's frivolous, the commissioner is not going to waste his time doing it, but where there is something that looks wrong, smells wrong, they should have that ability to look into it, I believe.

**Dr. B. Miller:** I agree with Mr. Martin on that. You know, I appreciate Ms Dafoe's distinction on the House of Commons because while they accept the principle of apparent conflict of interest – members should be aware of that – when it comes to sanctions, you know, you have to have something that's factual. I mean, you can't pursue just on the basis of rumour. You need something in fact. So I appreciate the colleagues who have said that.

You know, it's a question of prophylactics, if I can use that word. I mean, some clergy deal with issues of sex and so on, but it's a question of prevention. What does the public expect? They expect us to be concerned about our will to prevent ourselves from getting into situations of apparent conflict of interest.

So that's why I think it's really important to have it up front in the preamble or as a part of the statement of principles that we are really committed to arranging our private affairs in such a way that we don't get ourselves into apparent conflict of interest and that the Ethics Commissioner, then, can actually counsel us about preventing getting into those kinds of situations regardless of the issues of sanctions and so on and punishment and so on.

**Dr. Morton:** I think we're wasting too much time on this issue, and we're talking at a level of abstraction that avoids the real point. I've been in office for about 10 or 11 months now. I can think of half a dozen things that I've done already that might appear to be a conflict of interest. I've lobbied ministers and voted on things that clearly reflect the preferences of people who've donated to my campaign. I suspect that everybody else here has as well. Does that appear to be a conflict of interest? Well, to some people it might.

Mr. Martin just said that if there appears to be something wrong, we should be able to ask the Ethics Commissioner to investigate. Fine. You can do that under the existing act, but if you put "appearance of conflict of interest" into the statute, you're guilty of something if there's an appearance of conflict of interest. That's an insane standard. It has the potential to lead to a multiplicity of complaints being laid to the Ethics Commissioner that are vexatious and frivolous and a waste of time but will have the opportunity to hurt members who are, in fact, quite innocent of doing anything other than doing what members of a Legislative Assembly do.

**Mr. Martin:** Well, I just have to respond to that. The fact is that people probably come to the Ethics Commissioner with all sorts of frivolous things, even now. I'm sure they do because they don't understand the act that much; you know, that it's only for private gain or whatever. They probably do that, and I'm sure they don't waste much time worrying about it. All of us, of course, are in that situation. I'm sure that if somebody came to you and said that you had lobbied for a particular law that your supporters want and like, you would say, "Well, fine. That's just politics." What we're talking about is the ability to take something beyond that that doesn't look right, that isn't right, that probably isn't right. That's what we're talking about.

**Dr. Morton:** Let's hear some examples.

**Mr. Martin:** Well, the examples are that if there are political connections and some people gain as a result of those political connections, then that should be a place where we say: well, something doesn't smell right. We can look into it and at a deeper level. That could be, again, an apparent conflict of interest. It could be campaign donations. It could be friends or whatever. But if things are happening that the public doesn't buy, then if we don't have the ability to sort of look at that, then people say, you know, the same old cynicism: "Oh, well, they're all the same. They're all in it for themselves or their friends" or whatever. All I'm saying is that that wouldn't happen very often, but if there was a case where, as I say, it didn't smell right, the commissioner should have the right to proceed and take a look at it. That probably wouldn't happen very often.

10:30

**Ms DeLong:** Are you saying that you cannot look into things? My understanding of the act is that you send in one letter and the commissioner has to look into it.

**Mr. Martin:** Yeah. But the point that I'm making is that the act is

so narrow that you almost have to have a round of police and everything else to prove that there was private gain. It's very hard, I think, to make the case.

**Ms DeLong:** So you're saying that people, just because you've sent in a letter, then they're automatically guilty.

**Mr. Martin:** No. Nobody said that. What I said is that there was the odd case where something perhaps didn't smell right, that the commissioner could take a look at it and say that all reasonable people or the public would say that something's wrong here and that we should do something about it. The vast majority of the cases that he gets now, as you point out: no; they're frivolous.

**Ms DeLong:** So if he looks into it and he finds that there is no conflict of interest, but you think that there's a conflict of interest, he's guilty anyway?

**The Chair:** Wait a minute. I think that's overstating the case.

**Mr. Martin:** Yeah, really overstating.

**The Chair:** The suggestion of the Tupper report is coincident with the provision in the B.C. act. Here's what it says.

For the purposes of this Act, a member has an apparent conflict of interest if there is a reasonable perception, which a reasonably well informed person could properly have, that the member's ability to exercise an official power or perform an official duty or function must have been affected by his or her private interest.

So we're not talking about a completely subjective test. It's based on the reasonable person test. There's some objectivity element to it.

Mr. Rogers and then Mr. Lukaszuk, and then we're going to close off the discussion.

**Mr. Rogers:** Thank you, Mr. Chairman. In an effort to move this ahead, I'm going to move that we not include apparent conflict of interest.

**Mr. Lukaszuk:** Just a question to the Ethics Commissioner. If this was to be included and he conducted an investigation and found that there was no actual conflict, that the member is not wrong-doing and benefiting, however there is a perception to an outsider that he may be, what would he do in that case? Ask the member to discontinue acting in the way that he does, even though he's not wrong-doing?

**The Chair:** I'm going to call the question here, unless there's any final objection. We've had a very thorough discussion on the point.

Can we just ask for a show of hands of anyone who is in favour of making the recommendation that we include apparent conflict of interest within the provisions of the act? Opposed? Okay. That idea is not accepted.

We'll take a break now for 10 minutes, say, have a coffee, and then be back with the next question.

[The committee adjourned from 10:33 a.m. to 10:45 a.m.]

**The Chair:** Okay. We'll call the meeting back to order. Before we move on to the next question, Mr. Elsalhy had maybe a suggestion that there seems to be some support for, and that was the issue of whether or not we would include the concept of apparent conflict of interest in the preamble. There already is verbiage in there that says that members "are expected to perform their duties . . . and arrange their private affairs in a manner that promotes public confidence and

trust in the integrity of each Member, that maintains the Assembly's dignity," et cetera. Is this something that the committee would wish to proceed with, to have something along the lines of the desirability of avoiding the appearance of conflict of interest put into the preamble?

**Ms DeLong:** I think the preamble is pretty clear the way it is.

**The Chair:** Anyone else?

Mr. Elsalhy, do you want to add justification for your proposal?

**Mr. Elsalhy:** Yes. I thought that was actually a reasonable compromise because Ms DeLong is concerned that we're already condemning people and convicting them of wrongdoing on the suspicion or the rumour. Here it's basically an issue of self-discipline. It's an issue of me taking control for my actions and trying to avoid the appearance of conflict of interest. So it's not what other people perceive of me; it's me dictating to myself what I should do and what I should not do.

**The Chair:** It's an objective then.

**Mr. Elsalhy:** It's an objective initiative on my own.

**The Chair:** Right.

**Mr. Shariff:** I'd support that.

**The Chair:** Dr. Miller.

**Dr. B. Miller:** Yeah. I'd support that. As I said before in an abstract way about prophylactic, that it's a prevention, we ought to be committed to preventing an apparent conflict of interest with the help of the Ethics Commissioner.

**Ms DeLong:** That's what the preamble already says. That's essentially what the preamble says at this point.

**The Chair:** Anyone else?

Can we ask for a show of hands? Those who are in support of the proposition of adding the desirability of avoiding apparent conflicts of interest into the preamble, would you please signify by raising your hands?

**Mr. Shariff:** Before you vote, Mr. Chairman. I'm just looking at the preamble now, and there isn't any mention about actual conflict of interest. Just inserting apparent conflict of interest doesn't make sense. You have to have both.

**The Chair:** So the proposal is that we would put in "actual" and "apparent." Mr. Shariff, are you suggesting that Mr. Elsalhy's suggestion would be modified by inserting that either a conflict of interest or apparent conflict of interest should be avoided in order to instill public confidence, et cetera?

**Mr. Elsalhy:** I'll just respond to Alana's concern. It might actually hint at it, but maybe what we're trying to do is make it stronger. So we're offering stronger assurance to the public: yes, we have expectations; yes, we have a code that we abide by, but it's self-discipline, basically. I'm expected to do 1, 2, 3, and 4.

**Ms DeLong:** I would say that it's actually clearer the way it is now.

Could I read it to you as it is now?

Whereas Members of the Legislative Assembly are expected to perform their duties of office and arrange their private affairs in a manner that promotes public confidence and trust in the integrity of each Member, that maintains the Assembly's dignity and that justifies the respect in which society holds the Assembly and its Members.

I think it's excellent the way it is now.

**The Chair:** Okay. I think we've had enough. Is there anyone else that hasn't spoken yet on the issue?

Could we ask for a show of hands? All those in favour of putting something relating to apparent conflict and actual conflict of interest in the preamble, please raise your hands? Opposed? That's 4 to 3, I see, so the proposition is defeated.

I don't think we need to have resolutions. We're discussing and trying to achieve some consensus in the committee here.

We'll move on then. Mr. Shariff, you had a suggestion regarding the further progress of the meeting here.

**Mr. Shariff:** Hon. members, the chair will have to leave after lunch, and there are two matters still within the rest of the issues that we're dealing with that I believe are sensitive enough. I would like us to jump to both of those while the chair is still around and deal with them, if the members so agree. They include the lobbyist registry, and the other one is the inclusion of senior civil servants within the conflicts of interest.

I don't know what question numbers they are. Let's see. Well, the next one is number 32, I guess. That's the senior civil servants. The lobbyist registry is 36. Those two will probably end up taking a lot of discussion time. Can we jump to those two subject matters and deal with them now?

**The Chair:** I'm at the will of the committee. I'm sure that my capable co-chair is more than capable of carrying on in my absence this afternoon.

**Mr. Shariff:** Without you the only lawyer around will be Rob. [interjection] And Sarah. Okay. [interjection] And Sandra. Okay.

**The Chair:** With respect, those are really not so much legal issues as issues of policy. I'm certainly amenable, whatever the committee wishes to have, if you want to proceed to the lobbyist registry now.

**Mr. Rogers:** Well, we're at 32.

**Mr. Shariff:** We'll finish with 32 and then go to the lobbyist registry.

**The Chair:** Okay. So we're going to skip over 31 then?

**Mr. Rogers:** I thought we did 31.

**The Chair:** We haven't done 31.

So, Mr. Shariff, what's your proposal?

**Mr. Shariff:** Let's deal with number 32 and number 36.

**Ms DeLong:** We've got to do 33.

**Ms Dafoe:** Thirty-two, 33.

**Mr. Shariff:** Okay. Thirty-two, 33, 36, and then we come back to 31.

**Ms DeLong:** And 34. Thirty-two, 33, 34.

**Mr. Shariff:** Are they the same, Ms Dafoe?

**Ms Dafoe:** Yeah. They're sort of a group.

**Mr. Shariff:** Well, if you agree on number 32, then 33 will fall in place very easily and probably 34 as well.

**The Chair:** Okay. Is the committee agreed that we will skip, then, over to question 32, and then we'll come back to 31?

**Hon. Members:** Agreed.

**Mr. Rogers:** Can I wade in, Mr. Chairman, or did you want to do an intro?

**The Chair:** Well, I'm going to ask the commissioner perhaps. If you don't mind, Mr. Rogers, I'd like him to lead off the discussion because he's made some positive recommendations here that I think we ought to take into consideration.

**Mr. Hamilton:** Well, senior officials: there are some covered and some not covered. We recommend that these additional staff positions be covered by some form of conflict-of-interest provisions.

10:55

**The Chair:** Ms South, do you have anything to contribute as far as policy officials, I think the Tupper report refers to?

**Ms South:** Tupper's concept is much broader than the current definition of senior official. There presently are somewhere in the area of 75 individuals who are designated senior officials. Those people file disclosure statements with our office. It has now become, as I understand it – and Sandra can correct me if I'm wrong – a condition of employment for these people to file disclosure statements with our office. Beyond the filing of disclosure statements, they are not subject to anything other than what is outlined in either the code of conduct for public service, if it applies to them – and it does not apply, apparently, to all of them – and to the memo that was distributed to those designated people back in 1993, which sets out very similar obligations as would be contained in sections 2, 3, and 4 of the Conflicts of Interest Act for MLAs.

The people who are covered are all of the deputy ministers and then certain full-time board members; for example, the board members of the Alberta Energy and Utilities Board, NRCB, Labour Relations Board chairs and vice-chairs, the appeals commissioners for Workers' Compensation, Surface Rights Board, full-time board members only and the chairs. No assistant deputy ministers are covered by that designation.

The second point really deals with the staff in ministerial offices, who are apparently not covered by either the code or by the directive for senior officials.

**The Chair:** Would representatives of the personnel administration office like to tell us a little bit about what government officials are covered and give us their viewpoint?

**Ms Croll:** Sure. Okay. First of all, the code itself is a regulation under the Public Service Act that covers all the public servants. So in terms of its legislative weight it is covered by the enabling piece of legislation that creates and manages the public service. Our public servants are not covered at all under the Conflicts of Interest

Act. They're covered under the Public Service Act, which has a reference, too, that there must be a code of conduct, which is the one that you have in front of you, but it has its roots in the Public Service Act, that creates the code of conduct. It covers all the deputy ministers and all public servants. That's approximately 20,000.

It's administered for the deputy ministers by the Deputy Minister of Executive Council, and then the deputy head manages the code for all the employees within their department. There are further obligations on the deputy minister group, as Karen outlined, through what we still call the Fowler memorandum, which is the financial disclosure for the deputy ministers and other senior officials. So they have financial disclosure outside of our code. The code itself also provides for other positions as designated to make financial disclosure. So you can authorize anybody to make financial disclosure. There are a number of other positions that are obligated to do that under the code.

**The Chair:** Deputy ministers and who else, for example?

**Ms Croll:** Well, it would be based on the type of job you do. It may or may not be some ADMs that do financial disclosures. There are other positions quite a bit lower down that may have to do financial disclosure if they deal with investments, those kinds of things.

The code does deal with real and apparent conflict throughout. That's sort of the cornerstone of the code, that you have to be aware of what your real conflicts are and what your perceived conflicts are. People write in all the time about that, as people discussed.

So it does cover a lot of disclosure obligations, not just financial, which is covered under the memorandum, but disclosing anything that may put you in conflict, and that goes all the way from contracting to anything else that you might do. We also have a supplementary code that deals with criminal disclosure. It's an obligation to disclose charges, which is a new obligation on everybody.

**The Chair:** What you referred to as the Fowler memorandum: this is really a policy statement which doesn't have any force of law, then, as I understand it from looking at the Tupper report. Am I correct in that assumption?

**Ms Croll:** That's probably correct even though we do deal with financial disclosure under the code, but it doesn't state the positions that must disclose whereas the memorandum does.

Other than that, most of the sections read very similarly to what's in the act in terms of your dealings and recusing yourself, those kinds of things, acceptance of gifts, making statements. So a lot of it is very similar.

It was reviewed at exactly the same time as the act was reviewed in the '90s. This version of the code came into place by regulation in 1998, and it hasn't been reviewed since. It's still operating. The Public Service Commissioner's office manages the administration of the code by giving advice and dealing with a lot of those advisory issues, but the authority for the code rests with every deputy head and the Deputy Minister of Executive Council for the deputy minister group.

If you have any questions, I can answer those.

**The Chair:** I'm sure we've got lots of questions on this.

**Ms DeLong:** Just quickly going through this, I do not understand how an investigation under this code would take place.

**Ms Croll:** An investigation would take place because the deputy head administers it for everyone under their purview. If there's an

issue with respect to the conduct of an individual in a department, typically what happens is that one way or another they're encouraged to write to the deputy head saying: "Someone under your purview has violated a section of the code. They haven't been impartial, they haven't disclosed, or they've accepted a gift." Then the deputy head is obligated to investigate it. That's typically how it works.

Sometimes the requests come through our office, the Public Service Commissioner's office, but we would route those back to the deputy head who has the authority. If it's with respect to a deputy minister, it would go through the Deputy Minister of Executive Council, and he would investigate or have someone do it on his behalf.

Even with the investigations themselves you have to make sure that you're not in conflict, that the investigation itself, you know, wouldn't become tainted because you're investigating someone who may have been involved at some point.

**The Chair:** I just want to remind committee members that there's a whole section in the Tupper report, starting on page 45 of the Tupper report, from 45 to 58, which deals with this very question, and I think it's very useful to go through that. It really does outline some of the issues, you know, which have been around for quite a long time.

Mr. Hamilton, you've identified some of the gaps, I guess, or what you perceive as gaps in the present system. Can you give us in a nutshell what kind of an amplification or amendment to the act you would recommend that the committee proceed with here in terms of filling the gaps between, you know, the code and what isn't there now that you'd like to see?

**Mr. Hamilton:** Well, with boards only permanent board members disclose to us. If you are part-time, you don't. So I think that's one of the issues.

**The Chair:** What kind of boards would they be?

**Mr. Hamilton:** Government boards.

**The Chair:** Like the ones that were in that list that we saw the other day then?

**Mr. Hamilton:** Yeah.

**Ms Croll:** Well, with respect to the boards, I mean, there are board members that are full-time public servants, and there are board members that are not public servants, that don't come under the Public Service Act. They're actually just paid their per diems and things like that. So they wouldn't come under the code if they're part-time and they're not appointed as public servants. Then they're not covered by the code by virtue of they don't have an employment status. So it would be whatever that board has come up with to determine how they're going to police their own conduct, and a lot of the boards, probably not all of the boards but more than there used to be, have their own operating codes of conduct as a board for members, both full- and part-time.

There are obligations under the code for those that are public servants, and then there are obligations that the board would put on them for the part-time people that aren't. They're not in an employment relationship.

11:05

**The Chair:** Mr. Rogers, you had a comment.

**Mr. Rogers:** Well, thanks, Mr. Chairman. I appreciate those clarifications, particularly from the PAO. If you look at question 32, it asks: should this be put into legislation? I think that it's important to look at the question. I agree, but I don't think we should mix civil servants in with the conflicts-of-interest legislation that's dealing with elected officials. So whether it's within the scope of this committee or not that we might recommend that, for example, this code be strengthened to include those 75 officials and possibly the ADMs, I think it's important that we not mix the two.

There may also be some need for some new legislation to specifically cover those board appointees because I hear, Sandra, that there's a gap. There are people that are on boards that are actually government employees who would then be covered, but then there are a number of others. So I see a need here, but I would caution that we not mix apples and oranges and grapes.

Thank you.

**Mr. Hamilton:** The other one is EAs, executive assistants or whatever you call them these days. They are not covered.

**The Chair:** Assistant deputy ministers, then, you're not concerned about?

**Ms Croll:** Everyone is covered from the deputy ministers down. Everyone that's a public servant, from the deputy minister to the people on the fire lines in the summer, which are seasonal, top to bottom, is covered. The only people that aren't covered are the people who, when you get into these boards, are not in regular positions. They're actually part-time appointees, and they don't have an employment relationship. They're basically sort of per diem appointments.

Just one point that I would make on the legislation is that when this was reviewed, at the same time as the Conflicts of Interest Act, it wasn't tied into a piece of legislation. It was just a policy. So one of the changes that we made in '96, when we were developing it, was to pass a regulation under the Public Service Act. That was new in '98 because that was part of when we looked at the Tupper report. We felt at that time that it did have to move from its current status as a policy into a regulation.

So that was a recent change, tying it into the legislation that actually refers to the code of conduct. That hasn't been around very long, but it was an active change that we made to try to put it under a piece of legislation because we agreed that it needed more weight, particularly in today's societies.

**The Chair:** Ms DeLong, then Mr. Martin.

**Ms DeLong:** Yes. Now, it seems to me that the thing that's missing in here, which the ethics department handles, is all the financial disclosures.

**Ms Croll:** The financial disclosures for the senior officials, yeah.

**Ms DeLong:** Okay. So right now it's the deputy ministers and certain board members that disclose to you. I mean, maybe the question we should actually be looking at is: who is it that should be filing disclosure statements with the department?

**Ms Croll:** There are other individuals that disclose under section 13, but they disclose to the deputy head or designate. The deputy ministers themselves disclose to the Ethics Commissioner by virtue of that separate obligation. There is a provision in the code for anyone to disclose, but they disclose within their own hierarchy. It

doesn't go into the Ethics Commissioner's office. That's under section 13.

**Ms DeLong:** But that's different. I mean, that's disclosing in regard to a particular item, isn't it? They don't have to actually file, you know, an overview of their finances.

**Ms Croll:** No, they don't. I mean, a lot of times that's what it works out to be if people are working with investments or things that put them in conflict, but it's just internal. The obligation of the deputy ministers is much more significant, and that's what Don manages every summer.

**The Chair:** I think Mr. Rogers' suggestion is certainly appropriate in view of the fact that the previous review of this legislation in fact did make such recommendations regarding the code of conduct and ethics. It certainly would be my understanding that it's within the purview of our jurisdiction as this committee to make some recommendations in that regard, if the committee wanted to do that, in addition to looking at whether or not we should incorporate it into the legislation. So I think it's certainly appropriate, if we wanted to make a recommendation along those lines, to do so.

Mr. Martin, you were next.

**Mr. Martin:** Yeah. Well, it seems to me, just browsing through, that this code of conduct and ethics has a very different purpose than what we're talking about. I guess that some are covered, some are not, and we're trying to get sort of a rule for everybody and where the line should be drawn. The point that we're talking about here with our act is that people have access to information that, you know, could be beneficial to them in a private way. That's what our act is about. We have a cooling-off period and the rest of it.

It seems to me that, at least at some level, the people dealing with the politicians almost directly do have access to the same information that the politicians do. I would suggest that some of them have more access to more information than MLAs do. So because of their political connections at the top level I think what we have to look at is who should be covered here, but it should be a blanket for all people. It seems to be hit and miss. I think that's what we've got to decide, then, because some are already. Is that part of the act, or they just did it on their own?

**Mr. Hamilton:** The senior people in the ministers' offices are not covered.

**Mr. Martin:** No. Only the deputy ministers are.

**Mr. Hamilton:** EAs or staff.

**Mr. Martin:** And some heads of boards, yeah. So I think we have to sort of find out who has access to the same information that the ministers do, and they should be under the same rules that the ministers are.

**The Chair:** Anyone else?

**Mr. Shariff:** Yeah. Mr. Chairman, first, I just wanted to find out: where in this act are some of the senior civil servants included? None at all? So not a single senior civil servant discloses any matters to the Ethics Commissioner?

**Ms Croll:** Well, they do but not under the act. The act deals with elected positions, and this deals with people in an employment relationship.

**Mr. Shariff:** So there are 70-odd people who under a different act disclose to the Ethics Commissioner?

**Ms South:** Not under an act.

**Ms Croll:** No. They disclose under a cabinet obligation.

**Mr. Shariff:** On a voluntary basis?

**Ms Croll:** Well, no. It's a mandatory obligation.

**Mr. Shariff:** But a policy at cabinet level.

So we do have that practice in place whereby some senior civil servants do disclose. The question, I think, that's appropriate before us is: (a) do we enshrine that in the act, and (b) if we do so, do we extend the scope to any other level of government members or senior civil servants?

**Dr. B. Miller:** I agree with Mr. Rogers. You know, I think we just have to have some mechanism, some accountability. I appreciate the fact that the act deals with elected members. It's difficult. If you extend it beyond elected members, then the whole approach of sanctions and everything would have to be different. In fact, we'd be writing a different kind of act.

So what is the alternative? To have rather than just a cabinet recommendation or order some sort of legislation that covers all of the people that are not covered? Extending this code of ethics to all of those people?

11:15

**Mr. Martin:** That doesn't deal with it.

**Dr. B. Miller:** That doesn't deal with it, no. It doesn't deal with disclosure. Right. So are we talking about a different piece of legislation altogether?

**The Chair:** Possibly. I mean, that's certainly within the purview of the committee's recommendations, I think.

**Mr. Martin:** What do other provinces do?

**Ms Croll:** It's very mixed, depending on how they set it up, whether they have legislation, whether they have policy. Everyone does it slightly different to get to the same result, I guess, is how I would summarize it, depending on whether they have one piece of legislation or two or whether they have everything in policy. So it really varies. Most of the other jurisdictions have their elected officials and their public servants covered quite separately, even though they may have a lot of similar provisions, just because when you get into an employment relationship, it's different than when you're elected. Also, there are just so many different rules that govern an employment relationship versus what the rules of the Assembly are.

**The Chair:** Information Paper 12, Ms Sawchuk has just pointed out, has some information that's relevant to this issue.

Anyone else wish to contribute to the discussion or make a proposal?

**Mr. Shariff:** Mr. Chairman, this act that is before us, as has been clarified, pertains to elected officials. Unless we change the act in the whole context, I don't think we could include civil servants in this matter. So I'm wondering whether the committee is able to even

make a recommendation. If it does, who does it make a recommendation to to come up with a new legislation that deals with senior civil servants who have inside information?

**Mr. Reynolds:** Well, I think the mandate of the committee in legislation is to do a comprehensive review of the Conflicts of Interest Act. In the sense that you looked at another review of the Conflicts of Interest Act, the Tupper report, presumably as part of your review you're reviewing the other reviews, and in that sense there was a recommendation about public servants. Also, you put it in the discussion guide, so it's a bit difficult, I would imagine, for the committee to say: well, we put it in the discussion guide, but we're not going to make a recommendation on it.

I would think, with respect to your point, that it's very well taken in the sense that you are the guardians of your own mandate to an extent. So I can't see anything – if the committee agrees to make a recommendation, if that was your desire, that the government look at bringing in legislation to put in disclosure statements in another piece of legislation which the committee may deem to be a more appropriate piece of legislation so that public servants are not mixed in with elected officials . . .

**The Chair:** Mr. Martin, would that be something that you'd be amenable to?

**Mr. Martin:** Yeah. Well, everything we make is a recommendation anyhow, right?

**The Chair:** Yes.

**Mr. Martin:** As long as we're saying that it be covered in another act or whatever. It seems to me that these people should be under the same sort of guidelines as the ministers. If it's more appropriate to do it with separate legislation, we could certainly make that recommendation.

**The Chair:** Your objective, then, is to see this not as sort of a policy document but to have some force of law.

**Mr. Martin:** Yeah.

**The Chair:** Well, I see some themes emerging here. Does somebody want to make a proposal or a suggestion? Dr. Morton, do you have anything you want to add to this discussion on the issue of senior public servants?

**Dr. Morton:** I think that two issues have emerged. One, should they be covered per the Tupper report? Two, what would be the proper instrument to cover them? Would it be adding them to this act or recommending a new statute? You might want to get a sense of the committee on those two issues.

**The Chair:** Do you want to try and dissect those and make a proposal on one or both of those issues?

**Ms DeLong:** I propose, first of all, that disclosure requirements for senior public servants be put into legislation.

**The Chair:** It doesn't say which legislation.

**Ms DeLong:** Without saying which legislation.

**Dr. Morton:** Do we want to limit it just to disclosure or to the other

set of restrictions that also apply to MLAs and ministers, which include postservice restrictions?

**Mr. Shariff:** If you look at question 33, it deals specifically with that subject matter. So 32, 33, and 34 are linked. What you're saying is also an important matter. If a deputy minister leaves office, should that person be subjected to a cooling-off period? Should that be included in this act or another act?

**The Chair:** Mr. Lukaszuk.

**Mr. Lukaszuk:** Thank you, Mr. Chairman. I would suggest to the committee members that in view of this conversation there is a clear need for stand-alone legislation, very much resembling the legislation which we're reviewing right now, which would entrench senior public officials. I would suggest to you that it should include everyone up to the level of a director within the departments, and the measures of that stand-alone legislation should be resembling those of the act that we're reviewing with cooling-off periods and restrictions.

**Some Hon. Members:** Agreed.

**The Chair:** Okay. Discussion on that point? Mr. Rogers.

**Mr. Rogers:** Thank you, Mr. Chairman. I do support that, but again I don't think that we would spend a lot of time on that at this committee beyond a recommendation because the realm of the public service, I believe, would require a lot of study and work, that we certainly don't have before us. So I think it's a reasonable recommendation to make, and it's certainly something that will add good value to this province, but I believe that it's a topic that's probably much larger than what we've been discussing around elected officials because of the complexities of our public service. That would probably be another committee.

**Mr. Martin:** Well, I think we also have to look beyond the public service. I think people have more power. It's been brought up as in the political offices. People come and go there. One day the person is in the Premier's office; the next day, a lobbyist. So surely if we're dealing with the deputy ministers, at least at the senior levels of the ministers' offices and the Premier's office and others if you like, they should fall under that same category, it seems to me. I think it's even more crucial for them.

**Mr. Lukaszuk:** I agree. Ultimately, the real buck stops with us. It's in our best interest to make sure that those who work for government don't involve themselves in actions that then could negatively reflect on the government and all elected members. As such, I would make a motion that this committee recommend that the Legislative Assembly of Alberta urge the government to undertake drafting stand-alone legislation that entrenches all restrictions reflected in the legislation which is currently being reviewed and make it mandatory upon senior government officials up to the level of director.

**The Chair:** Okay. Discussion on that motion?

11:25

**Dr. Morton:** Thomas, do you want to include politically exempt staff as well?

**Ms DeLong:** What does that mean?

**Dr. Morton:** I don't know.

**Mr. Shariff:** Who are politically exempt staff?

**Dr. Morton:** It's a term that appears in here. Is that chief of staff?

**The Chair:** I think the question that you're asking is whether or not it would apply to non civil servants, I guess. Is that the correct terminology, Mr. Hamilton?

**Mr. Hamilton:** We do disclosure with staff in the Premier's office but not ministers'. So ministers' staff should be covered. That's what you're talking about?

**Mr. Martin:** Yeah. Do they have a cooling-off period?

**Mr. Hamilton:** Yeah.

**Mr. Martin:** Well, then, yeah, that's what I'm saying. They may disclose, but then they don't follow the other things that happen to ministers and the Premier, right? So that should be included.

**Mr. Groeneveld:** Actually, it's the same. Do you want to go with the same code of ethics?

**The Chair:** You're anticipating question 33, which is, I guess, another part of the recommendation.

Are there any other comments regarding Mr. Lukaszuk's proposal and recommendation that we make to the government? Everyone clear?

**Mr. Rogers:** I need a little clarification, Mr. Chairman. Mr. Lukaszuk's motion: up to the rank of director. I'm just curious. What about the people above, ADMs, deputies, and so on?

**Ms DeLong:** Down to. He means down to.

**Mr. Shariff:** Director and above.

**Mr. Rogers:** Okay. Director and above. Again, clarity is really important here.

The other point. Maybe we're jumping ahead two questions. Again, I think it's important that we not mix appointed staff with people with an employment contract. So if we have some appointed political staff, for lack of a better term – and I don't know; I'm looking at some of our legal support staff and so on to give some thought to this – it may be that it would be doable or appropriate to have a piece of legislation that covers appointed staff as well as some of these people that are appointed to some of the large boards and so on that were referenced earlier. It may be that those could be accommodated in one piece of legislation so that we don't have anybody that's under a staff relationship, an employment relationship, mixed in with appointed types.

So it seems to me from our discussions here that we need three clear and effective pieces of legislation: the one we're currently reviewing, another revamped piece for employed staff, and then another piece for political and other appointed staffers.

**The Chair:** Again, back to Mr. Lukaszuk's motion, which is to recommend that

we entrench restrictions similar to those which we have in the present legislation into another piece of legislation that would apply to certain categories of executive positions.

I guess that is the way to put it. Are we prepared to vote on that now? All in favour? Anyone opposed? It appears to be unanimous.

**Dr. B. Miller:** Just to support Mr. Reynold's comment about the

Tupper report, to have it as part of our recommendation that we affirm the direction of the Tupper report that appointed officials – that's the term they use – are not included under legislation. So that would be part of our rationale: leave it to others, this task force, to decide who is in that category because that's the issue.

**The Chair:** Mr. Hamilton, are you satisfied with that recommendation? Is there anything else that you wish to add before we move on to the next question?

**Mr. Hamilton:** No.

**The Chair:** Anyone else? Is there any amplification or other recommendations on question 32?

**Mr. Shariff:** Just the amplification that I want to do is this: the integrity issue about what we do here is a reflection of how we conduct ourselves. There are people within the organization that are much more informed and much closer to decision-making than a lot of private members or, in some cases, even ministers.

The broader concept is that we want to build integrity. We also want to have an accountable mechanism in place and to have sanction in place should somebody breach whatever this new act will be. It overall enhances every member that is elected to the Legislative Assembly.

I don't know where this will go in terms of a recommendation, but I surely hope it happens and happens in my lifetime.

**Dr. Morton:** Does the resolution we've approved include – did we just use the term senior public servants? Does that include not just people in the civil service but also political appointees?

**The Chair:** Well, I think that's a good point. I think the Tupper report talks about the term "policy officials," and I think that may be a somewhat broader term. Would you like to make a proposal that we also look at that?

I mean, bear in mind that what we're doing here is we're asking our drafting people and our legal advisers to come back with a distillation of what our recommendations are. We're going to have an opportunity to debate this further and to add to or take away from. This is just our first cut through these questions. When we get to the recommendations, we may want to look at that.

If you want to make a motion to the effect that the recommendation would include looking at what Tupper calls the policy officials, I think that would be an appropriate motion.

**Dr. Morton:** I recommend that the scope of the motion that we've already approved be defined or expanded to include the category of people described as senior policy officials in the Tupper report.

**The Chair:** They don't call them senior; they just call them "policy officials."

**Dr. Morton:** Just policy officials. Excuse me.

**Ms DeLong:** Does this also include heads of boards and tribunals? Have we covered heads of boards or members of boards and tribunals like health boards, children's services boards? You know, have we included them?

Do you want me to bring this up later?

**The Chair:** Well, I think it's a good point. I don't think we have dealt with it.



**Dr. B. Miller:** The point I was trying to make is, you know, that Tupper refers to the thousands of civil servants and appointed officials – appointed officials – in Alberta. I don't like the term policy official; I like appointed officials. That's what they're talking about.

We don't have to decide the scope of that here, do we? If we're recommending new legislation to cover appointed officials, then leave it to them to decide how much that covers. I'm not interested in debating that right here. I'm interested in having a different kind of legislation to cover it.

**The Chair:** Well, I think policy officials as it's defined in there is somewhat more restricted because it talks about people "who exercise significant influence over the development of policy." It gives a fairly manageable definition of who's included in that category of officials.

**Dr. B. Miller:** Appointed officials undertake technical, regulatory, and policy advisory roles. That's the definition of appointed officials.

**Mr. Martin:** I would agree. I think, as I understand Dr. Morton's motion, it's more to deal with the people in the ministers' offices. The rest of it: the boards are a separate thing, and if we want to deal with that, I think we should deal with that separately.

**The Chair:** Why don't we come back to the issue of boards and whatnot later, Ms DeLong? Is that okay?

**Ms DeLong:** Yeah. That's great.

**The Chair:** Can we vote on Dr. Morton's proposal?

We include policy officials as that term is defined in the Tupper report within the scope of this recommendation that Mr. Lukaszuk has made.

All in favour? Anyone opposed? That is unanimous.  
Anything else?

11:35

**Ms DeLong:** I think we should look at also including board members as publicly appointed officials.

**The Chair:** Are you talking about board members or board chairs?

**Ms DeLong:** Board members.

**The Chair:** Are you suggesting everyone under, for example, the governors of the universities, the boards of colleges, and whatnot? That's a huge list. In the earlier discussion we talked about these positions that were proscribed under the Conflicts of Interest Act, that you couldn't hold office in those and still be a member. There's a huge list of boards, and I don't know: it's a large chunk to bite off.  
Mr. Hamilton, do you want to weigh in on that?

**Mr. Hamilton:** Well, you know, we can't spread ourselves out that far. Hospital boards? School boards? Police commissioners? I mean, it goes on.

**The Chair:** Well, I know from my experience sitting in some of those boards that they almost invariably have codes of conduct or ethics. For example, a university or college: I mean, they all have very detailed codes of conduct. I'm sure hospital boards and health regions and so on all fall within those parameters as well.

Mr. Lukaszuk.

**Mr. Lukaszuk:** Thank you. I would tend to agree with you, Mr. Chairman. In most cases if not in all, but definitely most cases, judging from my experience sitting and chairing boards, there usually are provisions in the enabling legislation under which they serve. So your boards of directors or governors for universities will be governed by the university act and so on and so on. So I think this would be a duplication.

Second of all, my argument would be that if we want to in a meaningful way enforce ethical standards upon those on which we have already conferred those limitations, then it would be in our best interests not to spread the office of the Ethics Commissioner so thin that they can't enforce those rules upon us and upon senior public officials. By adding on, because one could invariably keep on adding on and adding on, what you're doing is actually weakening that office because of the fact that for pragmatic reasons he won't be able to overview that large of a cohort of people and enforce the regulations.

There is a balance we need to strike. We can cast a really wide net, but it will have very large holes in it, or cast a smaller net that's pretty tight.

**Mr. Hamilton:** I agree.

**Ms DeLong:** Could I move that it be just the heads of boards and tribunals that would be included in the proposed legislation?

**Mr. Martin:** Well, if you're going to go that route, I would say "appointed" because school boards are elected the same as the rest of us. I don't think that where we have elected positions, we're determining that. "Appointed" might be better. I'm not sure about the need, but I don't think we should be going and telling elected school boards . . .

**The Chair:** Well, before we go there, can we just see whether there's any appetite on the committee to cover the heads of boards of any type? Can we have an indication?

**Dr. Morton:** The Tupper report actually recommends a process by which the category "policy officials" will be built. It doesn't try to enumerate who's on that list, it just says: here's how they'll be determined. This is on page 52. It talks about the minister in consultation with the deputy minister consulting with a number of people. That might be sufficient, just to leave it at that, because all of these boards and commissions ultimately fall, even at arm's length, under one ministry or another.

**The Chair:** Can we achieve some consensus here? Again, is there any desire to see board chairs included in this thing? All in favour? Any opposed?

**Mr. Rogers:** I would prefer to vote, Mr. Chairman.

My concern is that, you know, when we talk about boards – again, it's been raised: there are so many boards – which boards? What are we actually trying to achieve? I know we're looking for, I suppose, some of the same expectations from some of these individuals as we've put on ourselves in the piece of legislation for members that we're exploring right now. My point is: before we make a recommendation to do something with these boards, it's important to determine what it is that we're trying to gain. As such, how broadly do you cast that net? What is the net? That's why I'm having trouble. I don't even know what I'd be voting on.

**The Chair:** Mr. Rogers, I think you're beating a dead horse because I didn't see a lot of support for the idea of extending the thing here.

**Mr. Rogers:** Okay. That's fine then. All right.

**Ms DeLong:** Did we actually take a vote?

**The Chair:** Let's call for a vote, then, again. Anyone that's in favour of extending the recommendation that the government provide some conflict of interest guidelines to board chairs, I think was your motion, could you please raise your hands? Opposed? Okay, well, that idea is defeated.

**Dr. Morton:** My vote is based on the understanding that if we're using the term from the Tupper report, a policy official, whoever acts on this, when and if our recommendation is acted upon, might in fact decide to include some board members based upon the criteria designated for policy officials.

**The Chair:** I think that's right. If they fell within the parameters of the definition of policy officials, then it could be looked at. Okay. Can we move on, then, to question 33?

**Mr. Shariff:** I think, Mr. Chairman, basically, number 33 and 34 are now moot because we are referring this as a recommendation.

**The Chair:** Oh, okay. Well, we didn't make recommendations regarding cooling-off periods, I don't think. Did we?

**Mr. Martin:** Well, we did in the sense that we said that we would put this under our act.

**The Chair:** Well, then it's included in the legislation, I mean, right now. Okay. All right.

**Mr. Martin:** We said that they should fall under the same act.

**The Chair:** Yeah. I stand corrected on that.

**Mr. Shariff:** So 33 and 34 are included in that recommendation.

**The Chair:** Okay. We'll move on that.

**Dr. Morton:** So you're saying that in the motion that we've just approved, Mr. Lukaszuk's motion, number 33 has already been answered in the affirmative?

**The Chair:** I would think that's the committee's intention, that the provisions, including the cooling-off period, would apply to those persons that came within the parameters of the motion. Correct, Mr. Lukaszuk? Is that what your intention was?

**Mr. Lukaszuk:** That was the intent of my motion, yes.

**Dr. Morton:** For the sake of clarity, I'd like to see that maybe recorded.

**Mr. Lukaszuk:** To clarify my motion: my motion was requiring that the restrictions placed under question 32 be identical to those that are being conferred upon ministers under the legislation currently reviewed.

**Dr. Morton:** Ministers and members.

**Mr. Lukaszuk:** And members. Correct.

**Ms DeLong:** Just for clarity, could we vote on this question, question 33?

**The Chair:** Sure.

**Ms DeLong:** Okay. It just takes a moment.

**The Chair:** Sure. Okay.

The question as modified, as I understand it, would be whether or not the recommendation, as we've previously discussed and passed, put by Mr. Lukaszuk, would also include the notion of having a cooling-off period for those policy officials that we have referred to. Are we clear on that then?

**Ms DeLong:** Agreed.

11:45

**The Chair:** All in favour of that modification notion? Anyone opposed? One. Okay. That is carried. In other words, the committee is agreeing that a cooling-off period should be part of the consideration and recommendation.

Moving on to question 34. "Should the Act be expanded to apply to other people, such as those involved with Regional Health Authorities?" I guess that we've peripherally dealt with this as well. I think it may fall within the same sort of parameters as your boards and so on.

Ms DeLong, do you want to speak to it?

**Ms DeLong:** Again, I would just like to see it voted on, as handled under Mr. Lukaszuk's earlier recommendation. I'd like to see us vote on this particular one.

**The Chair:** Mr. Hamilton, do you have some comments on this particular one? You have made a recommendation.

**Mr. Hamilton:** Well, we can do it if you want to, but you have already voted on the regional health authorities.

**The Chair:** Well, we didn't talk specifically about them.

**Mr. Shariff:** I think we discussed boards, generally speaking, but one-third of the Alberta government's budget is spent by the health authorities. You know, I don't know whether we're talking about the president or the CEO, but hopefully the proposal that Thomas made about separate standing legislation and using the Tupper process that Ted identified, policy officials, will include these people as well.

I think Alana just wants a kind of a vote to say that this committee agrees that bodies such as RHAs would also be considered as part of this standing legislation that we are recommending, correct?

**Ms DeLong:** Agreed. Yes.

**Mr. Elsalhy:** Mr. Chair, can we expand it a little? I know that every time I say the word "expand," I get voted down. But can we include the word "appointed"? Regional health authorities are appointed, and by the same definition other boards who were maybe formerly elected and now are appointed should be included in there too.

**Mr. Shariff:** That is already clarified through the Tupper report, about the appointed officials.

**Mr. Elsalhy:** Okay. But in question 34 it just says "people, such as

those involved with Regional Health Authorities.” Why are we picking on the regional health authorities? They’re appointed, so they fit in a group of boards.

**The Chair:** Well, we’ve already dealt with the broader category of boards and whatnot. I think what we’re dealing with, as Mr. Shariff pointed out, is that there may be some reasons optically to carve out the regional health authorities in view of the importance of their budgetary expenditures and so on.

Ms Dafoe, do you want to add something?

**Ms Dafoe:** Maybe I could just provide a little history on where this question came from. It arose out of an Auditor General’s report. If you look at submission 15, the response to this question provided by the office of the Auditor General, I think it’ll help clarify. He says:

We are not suggesting that senior management be bound by the disclosure requirements in the Act. Rather, there should be an independent third party review available upon request in RHAs, and the Ethics Commissioner is suited for that task.

The RHAs already have their own conflict-of-interest bylaws. They have set out their own rules governing RHAs. The Ethics Commissioner’s submission indicates that they believe the internal disclosure is sufficient under those rules, but the Ethics Commissioner would agree with the Auditor General’s recommendation relating to an outside, independent, third-party review of complaints. So we’re not looking at the entire act, just the complaint process going through the Ethics Commissioner’s office.

**The Chair:** If I understand that correctly, then, you’re saying that the Ethics Commissioner in that case would act merely in an advisory role or to give advice and directions without having jurisdiction over them, because we’ve already established that we don’t want to go there and expand beyond members and former members. At least I think that’s what I’ve heard the committee say. What you’re saying is that the Auditor General wants them to be available as a resource or a reference or an arbiter of what is or isn’t a conflict of interest and so on. Am I correct there?

**Ms Dafoe:** Under the RHAs’ own bylaws, yes.

**The Chair:** Mr. Hamilton, any comments here? You’re agreeable, obviously, to that proposition.

**Mr. Hamilton:** Yeah, we agree.

**Mr. Groeneveld:** Mr. Chairman, we’d have to change the question then. We’re talking about this act now, so we have to change the question. We have to be careful how we vote on it, or we’ll put it in the wrong spot here.

**The Chair:** The question as presently posed is inappropriate, really. What we’re really asking I think, as I just stated, is that we recommend that the resources of the Ethics Commissioner’s office be available as a resource or that it could be referenced by the RHAs.

**Dr. Morton:** I was just going to make the point that George made, that this question is much broader than what we actually want to do.

**The Chair:** I don’t think there’s any appetite to expand the act.

**Mr. Shariff:** I think Alana made this point earlier on, and that’s what I clarified. This committee is not suggesting that we expand the scope of this act, but the stand-alone act should include people,

and there’s a process that’s recommended in the Tupper report for how you identify them. Those people should be included under that act with the same provisions or similar provisions as we have under the current Conflicts of Interest Act.

**Ms DeLong:** Yeah. That’s just what I wanted to clarify, essentially, that regional health authorities – we’ll call it the Lukaszuk motion – be covered under the Lukaszuk motion.

**Mr. Lukaszuk:** Committee members, friends . . .

**The Chair:** Mr. Lukaszuk, Mr. Reynolds has a comment first.

**Mr. Reynolds:** Thank you. The only point I would make with respect to allowing the Ethics Commissioner to be an arbiter or authority with respect to resolving disputes that may arise under the regional health authorities’ bylaws is that there could be a provision in the act specifically giving him the ability to perform a function like that. Now, I don’t have it with me, but in the Ombudsman Act there are certain provisions that allow him or her to undertake additional responsibilities not incompatible with the office or something like that. That would be the amendment to this piece of legislation that I imagine would relate to the role that you’re talking about.

**The Chair:** Thank you. That’s helpful, actually. Mr. Lukaszuk, you’re next.

**Mr. Lukaszuk:** Mr. Chairman, I wanted to point out that I’m just a humble and insignificant member of this committee. It would be unfair to have any motion named after me. Considering that there are some 20,000 public servants living in my city, maybe it would be more appropriate to name it after the chairman, who resides in Calgary, where there are very few public employees residing.

**The Chair:** Well, given Mr. Reynolds’ clarification there, I think that the essence of what I’m hearing is that there is some desire to proceed along the lines of having the commissioner’s office empowered.

Mr. Hamilton, correct me if I’m wrong, but a significant part of your time is already spent on things that perhaps are beyond your jurisdiction presently anyway. You’re routinely contacted with a view to getting input on ethical or code-of-conduct violations which really fall outside the parameters of your act. Am I correct there?

**Mr. Hamilton:** Yeah. We don’t give it a lot of time, because we know what we can do and what we can’t. About 70 per cent of the phone calls and letters and so on, we don’t have . . .

**The Chair:** Well, I’d like somebody to make a specific proposal then.

**Mr. Shariff:** I think you have one motion already on the floor.

**The Chair:** Yes.  
Yours?

**Ms DeLong:** Yes.

**Mr. Shariff:** We will do Mr. Reynolds’ suggestion later, but let’s deal with hers.

**The Chair:** Okay. What was the motion again?

11:55

**Ms DeLong:** The motion is that regional health authorities be a part of the Lukaszuk motion. I mean, we're spending – what is it? – a third of our money right now through our regional health authorities. Essentially, if we're going to put in a code of ethics that is similar to our Conflicts of Interest Act which applies to public servants, we should at least include the regional health authorities.

**The Chair:** Well, a regional health authority is an inanimate body. Are you talking about specific individuals?

**Mr. Shariff:** The individuals, according to Tupper's process, that are identified as senior policy – what was the word?

**Dr. Morton:** Just policy officials.

**Mr. Shariff:** Policy officials. They should be included.

**Mr. Lukaszuk:** I can live with that, but my question would be to Ms DeLong. Are we talking, then, about the board members? Are we talking about the CEOs of the health authorities? Once you clarify, I'll make up my mind on that particular question.

Then going further on that, if we're going by budgetary allotments, then what would stop us from addressing school boards? I can see Mr. Martin's answer, that they are duly elected, so I guess that maybe they would fall out of the process. Are we looking at CEOs or the board members or the chairs?

**Ms DeLong:** I'm not familiar with the hierarchy in the regional health authorities. Generally what we've been talking about with the public service is that the top levels of the public service would be covered by this proposed legislation. So if the top levels of the public service would be covered, then I would say, you know, that the top levels of the public service in the regional health authorities ought to be included also.

**The Chair:** Okay. Can we vote on that now? I think we've heard full discussion on that. The proposal is  
to include policy officials who are involved with the regional health authorities under the ambit of the previous motion put by Mr. Lukaszuk.

All in favour? Anyone opposed? It looks like it's unanimous.

**Mr. Groeneveld:** I'm not opposed, Mr. Chairman, but I'm not sure that we captured exactly what Alana was trying to do in that. She made an important point at the end there.

You weren't talking about board members, all of a sudden?

**Ms DeLong:** No.

**Mr. Lukaszuk:** You're talking about CEOs as well.

**Mr. Martin:** Well, it falls under policy officials.

**Dr. Morton:** This will all be left to the discretion of the people that develop the list that falls under policy officials. We're just recommending. There may be some people from regional health authorities that do and others that don't. We don't have to decide.

**The Chair:** Mr. Groeneveld, are you okay with that?

**Mr. Groeneveld:** I'm all right with that. The question we asked was: "people . . . involved." I think we were assuming boards here,

but when you analyze it a little further – that's where we were trying to go with our original question, I think, or probably where the Ethics Commissioner was trying to go with his statement in here.

**Mr. Shariff:** I'd like to make a motion that  
the current Conflicts of Interest Act have a provision that would allow the Ethics Commissioner to undertake an investigation, or whatever the appropriate words are, of matters that are outside the scope of elected officials.

By that, I'm meaning that issues that come before you – what's the terminology? – RHAs or other such institutions that expend government resources, to have that provision. You know, the concept that Rob Reynolds mentioned.

Now, Rob, you have the technical words. I'm just trying to make a motion that that be incorporated.

**The Chair:** I think that's what Mr. Hamilton was asking for: something along the lines of what the Auditor General has suggested.

**Dr. B. Miller:** My question, Mr. Chairman, is: why would that have to be in the legislation?

**The Chair:** He has no jurisdiction.

**Dr. B. Miller:** Well, somebody could contract with the Ethics Commissioner to enter into . . .

**The Chair:** Absolutely not.

**Mr. Shariff:** I think it happened at the RHA. It's our money, Alberta taxpayer money.

**Dr. B. Miller:** So it's not sufficiently covered under their bylaws. It has to be in ours.

**The Chair:** Well, he would have no jurisdiction unless the act gives him the jurisdiction. The act is what appoints him. It gives him his powers and gives him his jurisdiction. So the act presently doesn't allow him to get involved as an arbiter or on a consultation basis or any other basis with the RHAs. I think what he's asking for is that power.

**Ms DeLong:** These are, you know, sort of new ideas that we're trying to grapple with in terms of: we've got the Conflicts of Interest Act, we've got possible other legislation that we are recommending. I guess ideally the way I see it is that the Ethics Commissioner would be sort of – you know, you'd have one piece of legislation that deals with politicians that the Ethics Commissioner is overseeing, and then we have our other piece of legislation, which possibly the Ethics Commissioner would be also involved with somehow, maybe only as a final referral to or possibly it would be set up so that it actually came under the Ethics Commissioner. I don't know.

**The Chair:** Well, I think this is quite a narrow proposition. I think what we're talking about is a third-party review by the commissioner of an RHA decision or an issue. So it's fairly narrow. We're not asking the RHAs to come under all of these provisions of the act. We're asking that the commissioner's office be a resource for reviewing a particular conflict or whatever.

**Mr. Hamilton:** We can do that, but what's the mechanism to get us to go there?

**The Chair:** Well, that's what the motion is. I think we would need to have a motion that we would make the recommendation that the act be expanded. As Mr. Reynolds has indicated, it would be possible to do it with those narrow parameters though.

**Mr. Hamilton:** Those people would phone us or get in touch with us. That's probably not going to happen.

**The Chair:** Are we there? Does everybody understand what the issue is now? No? Mr. Reynolds, do you want to restate that?

**Mr. Reynolds:** The initial idea was just to allow the Ethics Commissioner the ability to undertake these new responsibilities that you're talking about. Now, whether it was the RHAs – frankly, I thought it could be a little broader. I mean, I don't think it's down to the level of fine drafting. It's just a recommendation, as I would see it, that the Ethics Commissioner's responsibilities be expanded in the act to allow him to undertake what basically you've already asked him to do, to look at the RHAs, you know, even to meet with public servants because that, for instance, is not expressly stated in the act. It's to undertake additional responsibilities. Now, you can go back to that. That could be later on. It's just a recommendation that his powers or duties be expanded. That's all I'm saying.

If you don't, then you've got this inconsistency where you've asked him to do all these things, yet the act doesn't allow him to do them. So he would have no jurisdiction to do what you've asked him to do. I realize that may be a simple point. You're saying: but we've already said he could it. Yes. But when you look at the legislation and say, "What can the Ethics Commissioner do?" you look at the Conflicts of Interest Act. If you look at what the Ombudsman can do, you look in the Ombudsman Act. If it's not found there, people would tend to think he didn't have the jurisdiction.

12:05

So all I'm saying is that you might want to consider a recommendation to allow the Ethics Commissioner the jurisdiction or the ability to do what you've just asked him to do, for the RHAs or senior public servants.

**Mr. Shariff:** Can you help us with words that I can use to move a motion?

**Mr. Reynolds:** Yes, if I assume that we have the same intent.

**Mr. Shariff:** Yes.

**Dr. B. Miller:** I'm not sure. I think I need to think more about this because, I mean, all along we've been trying to not extend the act beyond elected officials, and this is a kind of exception. I don't know why the stand-alone legislation we're talking about that applies to all the others wouldn't possibly have something in it about the role of the Ethics Commissioner. Why does this have to be in this particular act?

**Mr. Reynolds:** I just didn't think this would be a big deal. I didn't really see that happening at all when you look at, you know, the Ombudsman Act – I mean, a number of years ago the Ombudsman Act was amended to allow him to undertake certain additional responsibilities, one of which was to be the part-time Ombudsman in the Yukon – or the Auditor General Act, which allows the Auditor General to perform audits, I think, based on the approval of the standing committee, or certainly he or she can undertake additional tasks as directed by the Lieutenant Governor in Council.

If you want to go that way, I'm just talking about recommending a simple amendment to section 42 that talks about the general duties of the Ethics Commissioner, just to allow him to do what you've just asked him to do.

**The Chair:** Is everyone agreed with that proposition?

**Some Hon. Members:** Agreed.

**The Chair:** Anyone opposed?

I think that's an appropriate place to stop for the lunch break.

**Mr. Hamilton:** Are you leaving?

**The Chair:** Soon.

**Mr. Hamilton:** I want to thank you and the members here for the work you've put in. I was thinking this morning that it's too bad the media wouldn't be here instead of question period to show what you're doing because it's two different places, and thank you for that.

[The committee adjourned from 12:08 p.m. to 12:36 p.m.]

[Mr. Shariff in the chair]

**The Deputy Chair:** We'll call the committee to order. We only have four matters to finish, and I would suggest that since we were already dealing with 32, 33, let's deal with 35. Then we can go back to 31, which we had left pending, and come back to 36 and 37, if that's okay with members. We haven't dealt with 35, so let's deal with it now.

"Are there any other provincial public figures that ought to be subject to conflict of interest provisions?" The office of the Ethics Commissioner recommended that "staff in ministerial offices ought to be captured by some conflict of interest policy." So they would be incorporated in the recommendation that proposes a stand-alone act. Is that okay then? We don't need to discuss this any further?

**Hon. Members:** Agreed.

**The Deputy Chair:** You will capture that it's included in the proposed legislation. Okay.

Let's just go back to 31, which we had skipped.

Should MLAs who chair Standing Policy Committees, or who chair or supervise an agency of the Government of Alberta, be subject to cooling off periods? What criteria should be considered when determining if an agency whose Chair is an MLA should be subject to these additional restrictions?

So let's get a sense first. Is there an appetite to deal with standing policy committee chairs and chairs of agencies of government?

**Ms DeLong:** I think I made this point earlier, that the SPC chairs do not have access to sort of insider ministerial information. You know, if they're good chairs, they may have some influence on policy, but they just don't have access to insider information.

**Mr. Martin:** How would we know?

**The Deputy Chair:** Anybody else? George.

**Mr. Rogers:** Thank you, Mr. Chairman. I would tend to agree with Alana and some of the comments from the Ethics Commissioner,

that it might be punitive because of the nature of these chairs. Although on the comment that maybe someone, say the chair of the energy SPC, may not hold shares, I think that if somebody has got a varied portfolio of investments, particularly in this province, to suggest that you shouldn't invest in the energy industry might be, again, rather punitive. I don't think these people are of the stature of ministers in reality or by the nature of what they do. I think this would be too much.

**The Deputy Chair:** Any other views?

**Mr. Groeneveld:** I kind of tend to agree because the information that they are privy to – everyone sitting at the SPC has that same information of what's going to be recommended.

**The Deputy Chair:** So the question then. I'm getting a sense that members feel that they should not be included.

**Mr. Martin:** I guess that as the opposition we have to take the word that these people basically are harmless and that therefore we don't need to worry about them.

**The Deputy Chair:** Okay. So I'll put the question just for the record: should MLAs who chair standing policy committees or who chair or supervise an agency of the government of Alberta be subject to cooling off periods? Anybody in favour of that? No? It's unanimous.

Well, that deals with the second part of it then: what criteria should be considered? That doesn't apply now.

So we move on to 36. Now, this is an interesting one, and I was hoping Neil would be here. Maybe I will ask the Ethics Commissioner to lead based on his recommendation where he supports a lobbyist registry in Alberta.

**Mr. Hamilton:** Well, I think you know that we should have one because we want to know who is lobbying government members and others, and there are a lot of them. It's not just industries that come and lobby. It's the lobbyists for the medical people, for the dentists, for the school boards, all those things. There are more of those than there are of the Syncrudes. Through this we would have a level playing field and fairness for intervenors and members' integrity and present or future insider confidential information.

So we highly hope that we will have a registry of lobbyists.

**The Deputy Chair:** Any other discussion?

**Dr. Morton:** Mr. Hamilton, do you have some response to the issue of how much this would cost, whether it would be burdensome to administer and enforce?

**Mr. Hamilton:** I think Karen has talked to the people and gotten to know the people in Ontario, and she has seen the system that they have. So maybe she can – I don't know if you have a handle on that.

**Ms South:** I didn't unfortunately bring it with me. In Ontario the lobbyist registration system is administered through the Integrity Commissioner's office. My counterpart in that office is the lobbyist registrar, and she has indicated to us that if Alberta proceeds with a lobbyist registration system, they would be willing to share the software necessary to set it up. There would be a need to tweak the software to coincide with whatever Alberta's legislation said, but it would reduce the cost of it.

In their office it resulted in the addition of one person to their

staff, a technical person because there are a lot of security issues associated with filing registrations and maintaining that confidentiality. It's difficult, even with that, to know the exact cost of it because part of her salary is covered by the Integrity Commissioner's budget, and part of it is assigned to the lobbyist part, as is the commissioner's salary. I can't remember what their overall budget is. It certainly didn't double from what it was when they were just doing the conflict-of-interest legislation.

12:45

**Dr. Morton:** We have these forms. Are these available online? Is that how most lobbyists register? They go online and self-report?

**Ms South:** The vast majority of lobbyists do register online. There is a provision, I think, in most jurisdictions that if you register on paper, hard copy, there's a fee and that if you register online, you do not have to pay a fee.

**The Deputy Chair:** What forms are you referring to?

**Dr. Morton:** These are stapled to the back of Mr. Hamilton's letter of May 11, back when he talked about issues that the committee might want to consider.

**The Deputy Chair:** Okay.

We have George and then Bruce. Ray, you can go after.

**Mr. Rogers:** Thank you, Mr. Chairman. As we discuss this item, I think it's important for us to explore what it is, again, that we hope to achieve by a lobbyist registry. How will we use this information? Is it important that this information be available to the public so that the public knows who's lobbying whom and what their issues are? Obviously, there's going to be a cost. But if this is just a list that draws no further actions, then I would wonder: what is the real reason that we would need to have this? You know, if having a registry of lobbyists doesn't lead to some other action, something that happens out of the Ethics Commissioner's office, then I would question why we would need it.

So I'm just wanting to explore what we will do with this information once we have it. We've got a list of some 4,370 people that on an ongoing basis are registered as lobbyists, but what does that information provide us? What's the value that we get out of having that? I don't know that.

**The Deputy Chair:** Does anybody have an answer for George?

**Mr. Hamilton:** Well, as I know it, if you're a lobbyist, you register when you go to see an MLA or a cabinet person or whatever, and you do that online. The people who are looking at that see that this one consultant was at this minister's 15 times this week or this month. You've got that information. Now, what you do with that is another thing.

**Dr. B. Miller:** Well, I guess the issue is transparency, and I think the whole impetus towards this has been evolving. We had a good discussion with other ethics commissioners across Canada, and there was a discussion about how the U.S. has gone crazy with this lobbying. I have a friend, a brother-in-law actually, in the state of Missouri, and he himself is a professional lobbyist. State governments are just deluged by that kind of thing, and it's increasing in Canada. I have statistics on Ontario, and it's just phenomenal. In Economic Development and Trade there are 543 lobbyists; in Health there are 463 lobbyists; in Taxation and Finance, 439; and so on. I

think it's just a question of being transparent. These people have signed a form, they say what they're about, and that's available to the public. The time has come, I think, for Alberta to face this and go with it.

**Mr. Martin:** Well, I was just pulling stuff from the registration office, their annual report. It looks like their budget total was \$116,000 and change according to this.

Then I was just looking through – George, in answer to your question, there is an enforcement part to the Ontario act. It does have clear penalties for noncompliance in Ontario, and most of the other ones that I'm aware of do have some enforcement. I remember talking to her at that meeting that Bruce is talking about, and there were a couple of cases. Most of the time, again, they could work it out ahead. I think they had one or two that they actually followed through on with the noncompliance, as I recollect, but most of the time it was probably a simple mistake where they hadn't complied, and after just a phone call, then they complied.

So I think it's important. I'm not saying that it solves all the problems of the world. But I think one of the things we've talked about is accountability and that idea that it's who you know and who's lobbying whom. I think it just takes it and puts it in a different realm: here's the lobbyist, and they're registered, and everybody can see it. They were very positive about it, but they didn't seem to think that it created a lot of extra work, and the people complied. They were quite willing to do it. The companies were quite willing to do it.

**Ms DeLong:** I still haven't heard a really good answer to George's question. I mean, it's one thing that, "Oh, well, they've all complied, and, oh, well, they've all got their names down there," but I don't see what we're trying to accomplish. You know, if we put everybody's name in Alberta on the list as being lobbyists, where are we? I don't understand what problem we're trying to solve.

**The Deputy Chair:** The Tupper report recommended that lobbyists be registered and that there should be standards governing their conduct, and this is what it states. "In a democracy, citizens must know which organizations and individuals influence public policy, the techniques they employ, who in government they meet and when and the extent of their efforts to shape public policy." That's coming from the Tupper report.

The Ethics Commissioner's recommendation is also supporting a lobbyist registry which would include a number of things. A registry should

include disclosure of amounts received by lobbyists for their successful efforts . . . The amount of the contract, the name of the client, and any contingency fee paid to the lobbyist . . . should be public information.

He also goes on to say that a registry should "not reside within a government department but should be an independent office reporting directly to the Legislative Assembly," perhaps with one of the existing legislative officers. They are able to take on this responsibility.

So we have a number of arguments that are being put forward and additional information that would become available in the public domain for transparency.

**Ms DeLong:** I guess what I still don't get is – as far as I'm concerned, everybody in Alberta has a responsibility to be a lobbyist. You know, I see that as sort of a basic citizen's responsibility. Now, if we're going to look at who gets paid to be a lobbyist, if you're going to look for the biggest payments, it's not going to be the

registered lobbyists. For example, the IBM salesmen would be one of the best paid lobbyists in government, and they would not be on the list because the salesmen for IBM are internal to IBM. They're called client relationship managers.

**Dr. Morton:** Both types are covered in the legislation: professional and internal.

**Ms DeLong:** Oh, okay. So every salesman who works with the government, then, would become a lobbyist, would be listed as a lobbyist? I just don't know where we're going with this. You know, I just don't understand where we're going.

**The Deputy Chair:** Maybe Ted can throw some more light.

**Dr. Morton:** I just noticed on the Ontario or federal forms that there are two types of lobbyists. There are lobbyists that act as consultants, and you could indicate that you're that kind of lobbyist, or there's also a category for in-house lobbyist, corporations that have lawyers or other types of people on staff that do government relations. In fact, government relations officers are fairly common now in larger corporations. So the lobby registry catches both types of people.

12:55

**Ms DeLong:** Then the other people who would be missing would be any contractor who works for the government, and especially, you know, a private contractor who works for the government, as they are working as a contractor, is going to be lobbying to make sure that they get the next contract. I still don't understand what we're trying to accomplish with it.

**The Deputy Chair:** Ted has a response for that.

**Dr. Morton:** There are lots of examples from both Canadian and American experience of where either political parties or individuals use lobbying in a way that is unacceptable. They tell potential clients: you have to hire so-and-so if you want to meet with me. Then so-and-so could be a relative or could be a political party supporter who then channels some of those fees back to the party or back to the individual's political contributions.

So the idea of transparency legislation is that it deters people from unethical conduct if they think they're going to get caught or if the spotlight is going to be on them. If you know that there's no way the public is going to see what you do, human nature is such that you're more likely to do things that you wouldn't do if the world is watching. There are opportunities for abuse of the system in lobbying that this won't prevent at all, but it will deter a lot of it.

**Ms DeLong:** Okay.

**Mr. Martin:** I think it's interesting to get a side of the perspective of what it's meant where they've had the lobbyist registration.

In 2002, the Government of Canada's lobbyist registry included a total of 1,442 lobbyists of all types. Approximately 60 per cent . . . of these . . . were consultant lobbyists. In-house non-profit lobbyists totalled 233, and in-house corporate lobbyists totalled 351.

They note that that compares to the States, which Bruce talked about, where they have 26,000 federal lobbyists. Ontario had 765; B.C. had 126; Nova Scotia had 65 active in it. So the Canadian model is certainly not moving in the direction of the States, but I think it's important that it be there.

The other thing: it's not how many people they catch; it's just that

we all begin to operate in a little different way, including ministers and the lobbyists.

**Mr. Hamilton:** Yeah, but we don't even know how many come and who they visit. You know, we don't have anything.

**Mr. Martin:** That's my point, that this would act, I think, as a stimulus to do it right. The fact that you're a lobbyist doesn't make it wrong.

**The Deputy Chair:** No. Lobbyist is legit.

**Mr. Martin:** It's a legitimate business. Sure.

**The Deputy Chair:** Mo.

**Mr. Elsalhy:** Thank you. I was actually just going to say that there's nothing wrong with lobbying, like you said. It's a legitimate tool or mechanism that people can use to further their cause or bring their issues forward or ask for funds or, you know, stuff like this. We have committees that ask for funds or grants from the government all the time. Yes, they are lobbying for a cause, whether to expand a college or pave a road or whatever it is, you know, communities or boards across the province.

Ray mentioned that it is becoming an art now of who you know, not what you know, and putting it on the list, which is not trivial – Mr. Rogers was alarmed that it might be trivial, that it might be useless or worthless. It isn't going to be, because it offers the Ethics Commissioner a readily accessible list or database that includes who has which minister's ear and what they are talking about.

Bruce drew some comparisons to the U.S., and I was actually reading an article about the U.S. registry. Maybe we're not going to charge people to be admitted or listed on the registry – we'll have it for free or maybe just an application fee if they fill it in on paper and mail it in – but they charge them severe penalties for failure to register after. For example, if I was lobbying the minister of agriculture on some treatment for BSE and my bid was successful and they contracted my services and it's later found out that I was actually talking to the minister and lobbying the ministry, then I pay a hefty penalty for failure to register or failure to disclose what I was doing.

Lobbying has a big influence on government, and it's only bound to grow. Alberta is prospering. Alberta is really powerful, really rich on the Canadian scene, in the world maybe. We're just putting safeguards and criteria in place so people do it the correct way, the right way.

So I'm in favour of it.

**Mr. Lukaszuk:** I think I would be inclined to support it as well. I've given this particular proposal a great deal of thought. I think that it takes us back to some of the questions that we had on our list prior. There really is no meritorious benefit that stems out of it other than perceptual to a large degree. Definitely, in the spirit of what we have done over the last two days – and I think it should be pointed out that the spirit was of openness and opening up government – it would fall in line that we allow for such a registry to take place.

Again, the mechanisms, the details of how it would work who would fall within the realm of it, what penalties would be issued: that's something that should not be discussed at this table. I think that's something that would be much better off discussed in the legislative Chamber. We would be contradicting ourselves as a committee if we were to allow, for example, you know, all the

boards and all the public service to fall under the purview of ethics and then all of a sudden not vote in favour of this one. It would be contradictory.

So I would be inclined also to support this particular motion.

**The Deputy Chair:** Any discussion?

**Ms DeLong:** We get e-mails that are from some group. It could be a church even. They get sent to all the MLAs. It's an e-mail saying: you should do such and such. Would that person be a lobbyist?

**Mr. Hamilton:** No.

**Ms DeLong:** Because?

**The Deputy Chair:** They're not getting paid.

**Mr. Hamilton:** Well, a lobbyist goes and makes an appointment officially on behalf of somebody who is paying him.

But let me ask you a question. What's the downside?

**The Deputy Chair:** Alana, do you have any comments to that question?

**Ms DeLong:** I don't know, aside from that it's just sort of a bureaucracy essentially. That's all.

**Mr. Hamilton:** The what?

**Ms DeLong:** The bureaucracy.

**Mr. Hamilton:** Do you mean the lobbyists?

**An Hon. Member:** Are you talking about what we lose if we don't have it?

**Ms DeLong:** There's just the cost. You know, you have to have a system, and before anybody comes to talk to you, they've got to make sure that they sign up as a lobbyist.

**Mr. Hamilton:** Why would that worry you? What's the problem with that?

**Ms DeLong:** Well, it's just that it is a roadblock for people to make an appointment to see me.

**Dr. B. Miller:** Well, just at the beginning when we had the discussion with other ethics commissioners, I was concerned about the nonprofit sector, the volunteer groups and so on. My own experience is working with groups in the community who want to lobby government on social policy and that kind of thing. But that's not what we're talking about here. I mean, those groups would continue to approach governments. Money isn't involved; most of those groups don't have much money particularly.

**Mr. Hamilton:** Well, they're there to get some from the government.

**Dr. B. Miller:** Well, right, but they don't have professional lobbyists.

In the Ontario lobbyist registry act lobbyists are expected to register when lobbying activities account for 20 per cent of the



employee's time spent on the job. That leaves out most nonprofit citizens' groups because they don't spend that much time lobbying, but lots of people representing various companies do.

**1:05**

**The Deputy Chair:** Sarah, I believe, has some additional information.

Ted, you may make your point, and then Sara.

**Dr. Morton:** Just a small point. If a government program costs a lot of money and requires the hiring of a lot of bureaucrats, it doesn't achieve much. The federal gun registry comes to mind. That's the downside. So that's why my first questions were: how many people does this require, and how much does it cost? If you're recommending that the government initiate a new program, the benefits have to outweigh the cost. So it's a legitimate question, but I think you've answered it, that the costs are fairly minimal, that staffing is one or two people, that the software has already been developed at a decent cost, and that it's online and people do it in a self-registering type of way.

I have a question about enforcement still. I'd like to know a little more about enforcement. It's one thing to tell people that they should register themselves, but I'd like to know how in Ontario or Ottawa or Washington the office in charge of registering lobbyists actually does enforcement.

**Ms Dafoe:** My point was simply to try and clarify what is and what isn't lobbying and try to address your concern. Generally speaking, the jurisdictions that have lobbyist registration in Canada govern individuals who are paid to communicate with public office-holders. Then oftentimes the legislation will include some examples of what is not lobbying. Information Paper 13 in your materials has a little list, but I'll just read it for you for your convenience. Some of them will say

Lobbying does not include:

- routine constituency communications with respect to personal matters
- responses to a call for input on a proposal
- submissions to a public office holder regarding enforcement, interpretation or application of legislation
- participating in public proceedings before a legislative committee.

So the idea is to try and catch those people who as part of their employment duties interact with MLAs and ministers to try and persuade them one way or another, not to deal with routine constituency matters.

**The Deputy Chair:** Does that help clarify, Alana?

**Ms DeLong:** Would John Reid, who is representing the arts community, be considered a lobbyist?

**The Deputy Chair:** If he's paid to change government policies, then he's a lobbyist.

**Ms DeLong:** Well, what about engineering, APEGGA and ASSET? I mean, they do an awful lot of work to push their agendas. Are they lobbyists then?

**Mr. Hamilton:** Are they being paid by a company?

**Ms DeLong:** They're being supported by an organization. They're being paid by their professional organization.

**Ms Dafoe:** Legislation in the other jurisdictions, I think it was

mentioned earlier, often breaks down the types of lobbyists into consultant lobbyists and in-house lobbyists. In-house lobbyists can be part of a not-for-profit organization, or they can be part of a for-profit organization. The legislation generally speaking tries to set out a point at which the amount of time you spend doing lobbying means you have to come under this legislation. Dr. Miller had mentioned a 20 per cent number. If 20 per cent of your employees spend time lobbying the government, or if 20 per cent of your full-time equivalents are lobbying the government, then you need to register. But if it's only 2 per cent of your work, then you may not fall into the definition. So who is and who is not a lobbyist and what type you are can all be worked out in the definition.

**The Deputy Chair:** Does that help you, Alana?

**Ms DeLong:** Uh-huh.

**The Deputy Chair:** So if it's less than 20 per cent, then it doesn't really apply, but if more than 20 per cent of their work involves lobbying government, then they are considered lobbyists. Okay, Alana? Good.

**Mr. Lukaszuk:** Just a quick question for verification. Would it then be incumbent upon the MLA or minister to verify whether one is registered prior to meeting him? Or is it up to them to be registered, and we need not verify it?

**The Deputy Chair:** Well, I don't know. Sarah, is there any clarification on that issue?

**Ms Dafoe:** I, sadly, didn't bring the legislation with me, but my recollection is that the onus is on the lobbyists and that the sanctions contained in the legislation from the other provinces are sanctions against the lobbyists who fail to register.

**The Deputy Chair:** So we don't even have to ask.

**Dr. B. Miller:** I can add to that. In Ontario the penalty for failing to comply with the act: the maximum fine is \$25,000. Noncompliance includes failing to properly register or update activities, making false or misleading statements, and knowingly placing a public official in a situation of real or potential conflict of interest. So the onus is on the lobbyist to make sure that he or she is registered.

**Mr. Groeneveld:** Yeah, that's actually correct. When I was with the executive of Agricore Grain, after the second time I went to see the agriculture minister, I indeed had to be registered as a lobbyist. The onus was on you. You got a card, something like we wear here, and of course you were checked when you went into Parliament anyway. I'm not sure I used the card. Indeed, if there is a penalty, I'm not sure. I don't know if anyone can answer that question.

**The Deputy Chair:** Well, we don't have a lobbyist registry right now in Alberta, so there would be no penalty.

**Mr. Groeneveld:** No. I was talking federal. I'm sorry; I was talking federal.

**The Deputy Chair:** Ontario is \$25,000. Does anybody know what the federal penalty is?

**Mr. Hamilton:** Well, it's a two-way street. The minister or deputy minister has to ask the question: "You're a lobbyist. Are you registered?" And that's important.

**Dr. B. Miller:** There's no penalty if . . .

**Mr. Hamilton:** Not to the minister, but, you know, we want the thing to work.

**Ms Dafoe:** Perhaps Ms South found something. Did you?

**Ms South:** The federal act says:

- (1) Every individual who contravenes any provision [of the Lobbyists Registration Act] . . . is guilty of an offence and liable on summary conviction to a fine not exceeding twenty-five thousand dollars . . .
- (2) . . . who knowingly makes any false or misleading statement in any return or other document submitted to the registrar . . . is guilty of an offence and liable
  - (a) on summary conviction, to a fine not exceeding twenty-five thousand dollars or to imprisonment for a term not exceeding six months, or to both; and
  - (b) on proceedings by way of indictment, to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding two years, or to both.

**The Deputy Chair:** Stiff.

**Ms DeLong:** Is it possible to have a system set up where you can get immediate registration? In other words, if you need to get in to see someone right away on an issue, would you be able to get immediate registration?

**The Deputy Chair:** It's an online registration system. It's probably as good as instant, isn't it?

**Mr. Martin:** If somebody's spending 20 per cent of their time, they should be able to figure that they have to get registered, it seems to me.

**Mr. Groeneveld:** Well, I know that federally there was no such thing. You had to apply, and I assume somebody must have checked you out somewhere along the line before you were accepted. Now, the world has changed since then with the online, the way that the world works today.

**The Deputy Chair:** Maybe I can just help this discussion. I think we first need to arrive at the decision: are we going to have registration of lobbyists in Alberta? If the answer is yes, then I think we can deal with these other matters. But if the answer is no, then it's a moot point. So if you have any questions on the concept of having a registry of lobbyists, let's discuss that now. We have a motion on the floor from Thomas. We can have a vote on it, and then ask secondary questions. Are we ready for the vote? Let's have a vote then.

All those in favour of having a lobbyist registry set up in Alberta, raise your hands. Any opposed? One. Okay. So we have a recommendation that we will have lobbyists registered in Alberta.

The next question then. Sarah you can help me here. Do we need to answer the following questions, or is it something that will come back in a recommendation format at the next meeting? One: "What benefits would a lobbyist registry provide?" Two: "Who should be required to register?" Three: "What kind of information should be collected from lobbyists?" Those were the three questions that we had in the questionnaire.

1:15

**Ms Dafoe:** Yeah. The questions were created as an attempt to generate discussion amongst those that we consulted with. I think the important thing for the committee to determine is that they are

in favour of having a lobbyist registry, and if there's any specific direction they want to provide, they can do so. Otherwise, if there's going to be legislation that's set up, it's going to come before the Legislative Assembly after sort of a further study of what details might be most appropriate for Alberta.

**The Deputy Chair:** What I'm understanding is that we don't need to make any further decisions. The decision that we had to make was whether we should establish a registry or not, correct? So we can move on to the next subject?

**Hon. Members:** Yeah.

**The Deputy Chair:** Okay. Good.

Question 37: "Do you have any additional comments, suggestions or concerns regarding the Conflicts of Interest Act?"

Maybe we'll start with the office of the Ethics Commissioner. You have quite a few pointers there.

**Mr. Hamilton:** Yes, we have additional comments, and you can read them there. There's no point in me reading them to you. This is what we have thought about, and this is what we would like to go forward with.

**The Deputy Chair:** Okay. Would members want to deal with one bullet at a time, or do you want to have just general discussions?

**Ms DeLong:** Sure. One bullet at a time.

**The Deputy Chair:** Okay. Let's see. The first one is that the Ethics Commissioner

has heard concerns regarding the publication of amounts paid to direct associates under some programs where premiums may be paid to the Crown, ex. insurance programs. Should a "net" amount be reported or should those types of programs be excluded from this report?

Interesting question: "direct associates."

**Ms DeLong:** I think the example is the CAIS program. Yeah, they do pay premiums. I think that it should be net rather than the gross amount, which is reported now.

**The Deputy Chair:** Mr. Hamilton, maybe you can clarify this issue. When direct associates make a payment to the Crown, such as insurance programs, are you saying that that should be published?

**Mr. Hamilton:** Should a net amount be reported, or should those types of programs be excluded?

**The Deputy Chair:** From reporting?

**Mr. Hamilton:** Uh-huh.

**Mr. Rogers:** Mr. Chairman, if I may, a question.

**The Deputy Chair:** Yes, George.

**Mr. Rogers:** Mr. Hamilton, is this backwards, by any chance, in terms of payments going out to individuals? This suggests that these are payments coming into the Crown. I'm thinking this has to do with payments from the Crown to individuals.

**Mr. Hamilton:** Yes.

**Mr. Rogers:** If that's the case – and pardon the pun, the word “case” – my suggestion would be that the only amounts that really should be reportable are amounts that are specific to an individual, that are not programs that are open to the rest of the general public. If these payments are part of a program that's open to the general public, why would they be reported under an individual member of this body?

**The Deputy Chair:** A CAIS example would be the BSE scenario, where MLAs who are farmers did receive amounts from the Crown.

**Mr. Rogers:** But they're not excluded. They're just like any other farmer.

**The Deputy Chair:** The question is: should those amounts be publicly disclosed, published?

**Mr. Rogers:** I don't see why.

**Ms DeLong:** With all these programs – for instance, if it has to do with a drought – there are certain crops that are covered, certain crops that aren't covered, and certain crops that are covered in some way and not covered in another way. The same, you know, with any of the farm programs: there are some that are covered and some that aren't. There are rebates that come back. None of it is available to everyone. Certainly, none of it is available to Calgarians or Edmontonians. So it's not available to everybody.

**The Deputy Chair:** Okay. Let me read this again. What we get paid as MLAs is disclosed. That's not the question. The question here is with direct associates: our spouses, our minor children. If the Crown pays them, should that amount be publicly disclosed? That's the question, correct? No?

**Dr. B. Miller:** Well, we've already limited ourselves to: an income source of less than \$1,000 is excluded. Anything over that – wait a minute. You're talking about public disclosure statements.

**The Deputy Chair:** Publication of the amount.

**Dr. B. Miller:** No. It's just disclosing it to the Ethics Commissioner.

**The Deputy Chair:** But the disclosure already happens.

**Ms South:** This is a separate issue from the members' disclosure statements, either private or public. This falls under section 16 of the act – it says, “Provincial Treasurer's report”; it's now the Minister of Finance's report – which deals with payments from the Crown to members' direct associates. Yes, that report also lists every MLA and the salary that you've received from the Crown, both your MLA salary and any other monies that you might have received from the Crown. Section 16(4) lists a number of programs that are excluded from that report, and (4)(j) deals with the question that Mr. Shariff asked the other day about the salaries that are paid to direct associates who are employed by the Crown. Their salaries are no longer disclosed in that statement that the Minister of Finance issues.

So that issue, that was raised by an MLA to our office, fell within this report, the one that the Minister of Finance tables.

**Dr. Morton:** The current policy is that payments to direct associates are not disclosed?

**Ms South:** The Minister of Finance is required each year to table a report of all payments from the Crown to members and members' direct associates.

**Dr. Morton:** Is required to?

**Ms South:** Required to. Then there are a number of payments under programs that are excluded from that report.

**Dr. Morton:** The complaint is that these payments . . .

**Ms South:** For example, on an agricultural program where members pay into the program and then sometimes receive benefits from that program, that it be the net amount that be reported, not that there not be any report at all.

**The Deputy Chair:** As far as this point is concerned, what decision do you want us to make today? This is about a disclosure by the Provincial Treasurer, nothing to do with publishing for the Ethics Commissioner's office.

**Ms South:** No. But it is in the Conflicts of Interest Act. We assured the member who raised it with us that we would bring it to the committee's attention, and it is up to this committee to decide whether it's an issue for them to include or not.

**Mr. Martin:** Well, with that explanation, I come back to what George was saying. This is an insurance program. You're not making money on it, the CAIS or the other ones. Probably you're losing money if you have to collect on it. So I don't see the need for it particularly.

**Mr. Groeneveld:** I was going to say: do you want us to report a negative balance?

**Mr. Martin:** Exactly, yeah. It's not that you're making money; you're losing money.

**The Deputy Chair:** Anybody else?

**Dr. Morton:** What's the difference between the gross and the net amount in this particular case? Would it be the benefit you get minus the premium you paid?

1:25

**Ms DeLong:** Some years it could be negative, then, if we did it net.

**Mr. Martin:** Most years. It's an insurance program. You never make everything back in an insurance program.

**Mr. Elsalhy:** Let me clarify. Are we required to ask the Treasurer to issue the report every year regardless of whether it's positive or negative, or are we only going to report the amounts that were paid out in a particular year out of 10? Maybe for nine years the person was just paying the premiums and never collecting. One year they had the drought, and this is the year they get paid from the Crown. Is this the only year we report, or are we reporting all 10?

**Ms South:** My understanding of this process is that when you fill out your direct associates' returns, we are required under the act to provide a copy of that return to the Minister of Finance.

**The Deputy Chair:** Currently the Provincial Treasurer files a report once a year with the Legislative Assembly that actually includes amounts paid to us and our associates. If you happen to be a

recipient of a BSE subsidy grant or a flooding grant, then that dollar value is publicly disclosed so that Albertans know that this individual has received so much money. Now, the question is: should that be done or not?

**Mr. Elsalhy:** Yes. If it's done already, let's keep it.

**Ms DeLong:** I'd like to make a motion that we change it so that instead of gross amounts, it's the net amount that they receive. With CAIS, then, they might have three years of a negative amount and then a year of a positive amount, but it would be net instead of gross.

**The Deputy Chair:** I'm not so sure if I understand this, but I think Rob wants to come in.

**Mr. Reynolds:** Sorry. That's your motion.

You know, in looking at this, I'm just even wondering if Karen has had any contact with Finance. If you look at these sections, they deal with money that the Crown has paid out. When you're looking at net amounts, I'm not entirely sure how they'd calculate that if it went to a separate corporation, a Crown corporation or something like that, how you would sort out exactly what the net amount is. Maybe Treasury could do that. These all seem to be dealing with amounts that the Crown is paying out. It's the total amount that they're paying out. I mean, I'm not sure whether they have the technology to figure out what the net amount is.

**Ms DeLong:** It's only, like, four or five of the members who actually would have that amount, so the technology doesn't have to be there. They can use their pencil and eraser.

**Mr. Reynolds:** Okay. I'm not even sure that they cross-check. I don't know if Treasury, in looking at this, looks at your income tax forms or anything like that. I would somehow doubt it. This is just dealing with payments. You know, I don't want to make this more complicated. I realize that the committee spent half an hour on the difficult issue of lobbyist registry, and we're engaging in half an hour on this payment.

**Ms DeLong:** What clause are we on, by the way, in here? Where is it?

**The Deputy Chair:** The Provincial Treasurer's report, 16(j) and (k).

**Ms Dafoe:** I have a suggestion that the committee may want to consider. Given that this is dealing with duties of the Minister of Finance and that that minister is not here, the committee may want to simply bring this question to the minister's attention and not make any recommendation on it, simply bring the query to her attention.

**The Deputy Chair:** Sounds reasonable. Is that okay? Is it agreeable?

**Dr. Morton:** What does that achieve?

**The Deputy Chair:** Just to bring to the Provincial Treasurer's attention that such a concern has been raised at this committee level, and we're bringing it to her attention. That's about it.

**Dr. Morton:** Doesn't the minister have a statutory duty to report it under this act?

**The Deputy Chair:** Under this act, yes.

**Ms DeLong:** So if it's brought to her attention, then there isn't anything she can do about it.

**Ms Dafoe:** She could be asked for input on this particular question. I'm just concerned that without someone here from Finance to tell us exactly how this works and what factors they take into account, the committee may be making a recommendation that isn't practically possible. Perhaps asking the minister for some input on this would be a valuable process.

**The Deputy Chair:** Is that okay? We'll still be having another meeting where we'll be coming back to this subject, so it can be brought forward at the next meeting, if that's agreeable. Okay, then, Karen, we'll deal with it as correspondence.

The next bullet is recommending deletion of section 15(3), which deals with returns relating to persons directly associated.

(3) Where a person ceases to be a Member by reason of dissolution of the Legislature or otherwise,

(a) that person shall, within 30 days after ceasing to be a Member, furnish a return to the Ethics Commissioner showing

(i) the name and address of each person with whom the person became directly associated or with whom that person ceased to be directly associated on or after the date of that person's last return under this section, and

(ii) the date on which the direct association began or terminated, as the case may be,

and

(b) if that person again becomes a Member in the succeeding general election or by-election . . .

What are we trying to accomplish with this, Mr. Hamilton?

**Mr. Hamilton:** What penalties could be imposed for noncompliance by the former member?

**The Deputy Chair:** We had a discussion earlier on where I think we made a resolution that once a member is not a Member of the Legislative Assembly, there's nothing else we can do. Does that kind of resolve this matter?

**Mr. Hamilton:** Yes. By former members. I guess so. I defer to the legal, but that's what it says.

**The Deputy Chair:** Our resolution earlier on, either yesterday or today, takes care of this matter, right?

**Ms DeLong:** We should delete this section then?

**The Deputy Chair:** No, not delete. We made a resolution that the Conflicts of Interest Act will apply to members until the day they cease to be Members of the Legislative Assembly.

**Ms DeLong:** So we do delete this then.

**Mr. Rogers:** This is placing an obligation on the member after you've left, up to 30 days after you've left. If it's not pertinent anymore, we should omit it.

**The Deputy Chair:** I need some guidance on this.

**Mr. Elsalhy:** A question, whether to yourself or to the note takers: yesterday I think we also said that the mandate of the Ethics Commissioner to investigate was two years after a person voluntarily retires.

**The Deputy Chair:** For ministers only.

**Mr. Elsalhy:** For ministers only, but not for members? Okay. Thank you.

**The Deputy Chair:** Can anybody else shed a little more light so that we can have an enlightened discussion on this matter?

**Mr. Martin:** The other part, (b), occurs automatically if you run again, right?

**The Deputy Chair:** Rob, do you want some time to maybe reflect on this and report at the next meeting?

**Mr. Reynolds:** Oh. Well, the Ethics Commissioner's office has commented. I think that perhaps – and correct me if I'm just repeating what's been said – under 15(3), certainly (a), the difficulty arises when a member leaves and doesn't come back: it's very difficult to get a member to actually provide a list concerning their direct associates, and I guess the question arises as to why they would anyway.

**Mr. Martin:** They already have it.

**Mr. Reynolds:** Yeah.

**Mr. Hamilton:** If there are no penalties.

**Mr. Reynolds:** Yes. I imagine it's part of a cleanup in the sense that the commissioner is saying that it's a bit superfluous. I'm not entirely sure why it was put in. I can't speak to that; I'm sure it's in some report somewhere.

1:35

**The Deputy Chair:** So it will be okay for us to remove this from the act and have no bearing or impact on the legislation?

**Mr. Reynolds:** Well, there is a problem – sorry – having said that, of course. One thing to assess is – I'm referring here to 15(3); (a) we've just discussed – (b) deals with the situation where a member is returned and forms a new direct associate or something in the intervening period. Should that be reported? There is a little cleanup there.

**Mr. Martin:** As a new member, each member has to do it every year anyhow.

**Mr. Reynolds:** Yes.

**The Deputy Chair:** Any new member has to do it.

**Mr. Reynolds:** I think it's just that what you're trying to get at is: what happens in the intervening period? Between the time there's an election call, you stop being a member, you're re-elected, you're a member: what happens if you have a new direct associate in that period?

**The Deputy Chair:** Within that electoral 28-day cycle?

**Mr. Reynolds:** Yeah. I think it says 60 days, doesn't it?

**Mr. Lukaszuk:** Or three months.

**Mr. Reynolds:** Yes.

I hadn't really looked at this, but if you look at section 10 of the

act, it talks about deeming someone to be a member. The point is that in between the time when an election is called and technically you're no longer a member, the House is dissolved, and you become a member again – you run for re-election; you're elected. I mean, that catches the situation where you can't go out and do all these things against the Conflicts of Interest Act in that intervening period because you're deemed to be a member. So if you stop being a member, you run for re-election, you're re-elected, you're covered under this act.

What might be worth looking at is just to put this provision about the direct associates into the deemed-member provision so that the situation would be covered.

We can come back on that. That's fine.

**The Deputy Chair:** Well, maybe you should come back, but this is my understanding: when the Legislative Assembly dissolves, you are deemed not to be a member, but if you are re-elected, then you're deemed to be a member as though you continued the membership from when the writ was dropped.

**Mr. Martin:** Aren't you a member, actually, because you have a constituency office up to about two or three days before?

**Mr. Reynolds:** No.

**Mr. Martin:** You're not?

**The Deputy Chair:** No. You cease to be a MLA on that day.

**Mr. Martin:** But you have a constituency office.

**Mr. Reynolds:** It's somewhat interesting. In the document that we put out called dissolution guidelines – thank you, Rhonda. Rhonda would be pleased to give you a copy if you want. It's not an issue that's coming up in the immediate future, we suspect. In any event, the technical view is that once the Assembly is dissolved, members cease to be members. That's why there's a deeming provision in the act, so you're deemed to be a member.

Now, of course, under the Legislative Assembly Act, there are provisions in there where you get paid up to a certain date and you get paid back to a certain date, et cetera, but technically you were not a member. Everything else is an exception to that. That's why there are provisions deeming you to be a member during this period.

**Mr. Lukaszuk:** What if the intervening period is a little longer than 28 days?

**Mr. Reynolds:** As in so many cases, Mr. Lukaszuk, you're so special. We just had to – you know, the rules are just a bit different. We certainly wouldn't want to take up any more time of the committee discussing your particular circumstances.

**The Deputy Chair:** Do we want to make a resolution on this today, or do you want some more information on this?

**Mr. Martin:** That's technical stuff. Well, maybe they should come back with some recommendations.

**Dr. B. Miller:** Well, I'd like Mr. Reynolds to find out why this was put in in the first place. That would be interesting to hear. I mean, have we missed something? Why is it in here?

**The Deputy Chair:** I'm getting a sense from the committee that the recommendation in principle is okay, but we want to make sure that

the words and the technical language capture the essence of this. Is that the sense I'm getting from the group? Yes. Okay. So whoever is now going to take on the technical aspect of this has to come up with the right wording and the proper language for it. Okay? Understood? Clear? Great.

**Dr. Morton:** If it's just a question of taking it out, what wording is there that we have to work on?

**The Deputy Chair:** Well, you are taking certain portions of it out, but there is this intervening period that needs to be captured. Rob was trying to explain that there is a difference between the (a) part and the (b) part. You may be able to remove (a), but you have to make sure about the intervening period, which is captured under (b).

**Ms DeLong:** No.

**The Deputy Chair:** No?

**Ms DeLong:** No. The intervening period is captured under section 10.

**Ms Dafoe:** But section 10 only applies to sections 8 and 9.

**Mr. Martin:** Let them do it. Let them do the work, and when they come back, we'll spend two minutes on it.

**Ms DeLong:** Okay.

**The Deputy Chair:** Can we move on? Great. Thanks.

Third bullet: "the Act should make it clear that there is no access to a former Member's records of any kind once the Member leaves office. [You] may also want to set out rules regarding records retention." What is the current practice?

**Ms South:** We maintain members' files for a period of one year, and then the disclosure statements are either returned to the member or we shred them. Obviously, we will have to change that if the Assembly adopts some of the recommendations you made about former ministers and us keeping things for two years.

**The Deputy Chair:** Where in the act is that captured? It's not there?

**Ms South:** Records management is dealt with in section 47.

**The Deputy Chair:** The Leg. Offices Committee could make a recommendation.

So we want a little more clarity in the act by this bullet?

**Ms South:** A number of other jurisdictions set out the time period for which records are maintained.

**The Deputy Chair:** We have in the case of ministers up to two years; in the case of members we technically cease at the end of the term. Do we want to consider a two-year timeline, two years plus a day?

**Ms DeLong:** I think the question isn't, sort of, how long after you're elected that you're allowed to go back; it's a matter of how far back you're allowed to go at all. If you have a situation where you have an MLA in office, that MLA resigns and comes back after two years or after three years or whatever period of time, after 10 years, then the question is: how far back? You know, if you're sitting the whole

10 years, then you're allowed to go back the whole 10 years to investigate something with an MLA.

**The Deputy Chair:** But this is the keeping of our records. You know the reports that you file? That's what we're dealing with, maintaining information in the Ethics Commissioner's office. That's what we're dealing with.

**Ms DeLong:** Okay. But, again, it's the same thing. How far back do we go? Now if you are a sitting member, earlier yesterday we were talking about how we should be able to go back 10 years if we want. That means that the Ethics Commissioner should be keeping the records for that sitting member for the full 10 years from day one, which you do now. So why should it be any different for an MLA who is in office, goes out of office for 10 years, comes back in? So then you're starting all over again. In other words, you know, as long as you are not in office for a year or a month or two months or whatever period it is that you shred the documents, then it's sort of not a level . . .

1:45

**The Deputy Chair:** Alana, we've got a clarification currently, and a classic example would have been a person like Ray. When they cease to be a member, they would keep their records for one year. At the end of that, the records are either returned to the member or shredded. That's the current practice, but that is not stipulated clearly in the act. So the question is: should we be stipulating that for clarity in the act – and therefore the Ethics Commissioner has a clear direction – that this is the duration for which you will keep our records on file, that at the end of that, they will be shredded? Whether you decide to come back five or seven years down the road, that's your business. You would start business all over again.

**Ms DeLong:** Well, all I'm asking for is a level playing field. If the records of the person who is out of office are all shredded after two years, then the records of everybody who is in office should also be shredded after two years.

**Mr. Reynolds:** What?

**Ms DeLong:** Why not? Because they can always come back again.

**Mr. Martin:** When you're not there, you're not part of the act.

**The Deputy Chair:** Rob has something to add to this.

**Mr. Reynolds:** Well, the point you raise about 10 years is interesting because some jurisdictions actually have a 10-year limit. I mean, when you look at Ontario's Members' Integrity Act, it says:

The Commissioner shall destroy any record in his or her possession that relates to a member or former member of the Assembly, or to a person who belongs to his or her family, during the 12-month period that follows the tenth anniversary of the creation of the record.

So after the record is created, 10 years later you destroy it.

Frankly, I can tell you that it affects us because the Clerk's office keeps the public copies of the disclosure statements. We would appreciate guidance with respect to when to destroy it because, quite frankly, the situation arises when someone comes up and may ask for a former member's records. Well, should those be disclosed or not? I mean, they were once a public record. Does that mean they should still be a public record? What about former forms? For instance, by that I mean that a member submits one form in 2001, let's say, that there are changes along the way, and they submit a new form in 2004. Well, what about the original form? Should that

still be on the file, or should all the records be destroyed? It's something that we would appreciate some guidance on, as I say.

Karen is quite right. There is a diversity in the legislation that goes from 12 months after it's created or someone leaves office right up to the 12 months following the 10th anniversary. I think that one jurisdiction has a six-year period; I can't remember which one. In any event, there is a policy – Karen is quite right – that's set out by Leg. Offices. But really they're your records. It's your information. You know, this is why it would be helpful to have some comment by members about the destruction of those records.

**The Deputy Chair:** So, Rob, now this is raising two separate issues. One is the records of existing members, current members, while they are in office. Should we have a time limit on how far back you would keep the records?

The other issue is that once you finish office or you resign or retire, how much longer would you hang onto that information? Am I understanding you correctly?

**Mr. Reynolds:** It could be two issues. You could roll it into one issue, like Ontario did, I guess.

**The Deputy Chair:** My understanding was that after you finish your term of office, we want to discard the information in two years' time. After you finish office, when you retire.

**Mr. Reynolds:** Yes. I guess that perhaps there are two questions.

**The Deputy Chair:** I see them as two separate questions. There are members today in office who have been here for – what? – 20 years. Do you hang onto the information for the last 20 years for that person? I mean, the act only came about in '93, but today is 2005. So, yeah, there would be members who were here in 1993. It's 12 years now. Do you have information from the first two years? Are you still hanging onto it or not? That's the one question.

The second question is: once a person leaves or ceases to be a Member of the Legislative Assembly, how much longer will you hang onto that information?

Just based on the initial discussion, there was this point that after a person ceases to be a member of the Assembly, we hang onto the information for two years. Are we still on that same wavelength? Do we want to go there? We'll come back to that first question, Alana.

**Ms DeLong:** Can I give an example?

**The Deputy Chair:** Yes.

**Ms DeLong:** Okay. George and Ray were bad guys. They were both in the Legislature, and they both did something wrong. George halfway through his term quits. He says, "I'm out of here," and he's gone for two years. Then he gets re-elected again. Ray and George are both in the Legislature. They've both done something wrong. You're not allowed to look at George's records because he skipped out for a while, but you can look at Ray's records. I mean, that's the situation that I see. So however we handle these records, because an MLA can come back later, they should be handled the same way.

**The Deputy Chair:** Alana, we've already resolved that matter yesterday. Once you cease to be a Member of the Legislative Assembly, the Ethics Commissioner's jurisdiction of investigating you ceases except for ministers for up to two years. That has been resolved.

**Ms DeLong:** Yes.

**The Deputy Chair:** So looking at your old file doesn't apply.

**Ms DeLong:** Yes, it does if you've been re-elected.

**The Deputy Chair:** I don't know.

**Mr. Martin:** The public disclosure is not going to determine whether you did something wrong, is it? I mean, that's never going to do that. It's just a list of assets, as I recollect, and if there was a problem with it, you would have dealt with this right at the time. So all the disclosure things are not going to determine if somebody did something later on. It's not going to have any bearing on it at all.

**The Deputy Chair:** Okay, members. Any direction? How do we deal with this? If there isn't, then I would suggest that we deal with it in the following manner: a two-part question. One, for existing members who are current members how far back should records be retained by the Ethics Commissioner? Should it be five years, 10 years, or more? A model that's applied in Ontario, I believe, is 10 years. Would you like to see a 10-year term or more for retaining information of existing members?

**Ms Dafoe:** Just for my clarification, are you talking about 10 years after the member ceases to be a member or 10 years after the record is created?

**The Deputy Chair:** We are just talking about current members, existing members. I'm a member today. This is my 10th year. I first came into the Assembly in 1995. Next year the information from 1995 should be shredded if you take the 10-year cycle. If it's five years, then anything before 2000 is shredded.

**Mr. Elsalhy:** So it's an "older than" clause, anything that's "older than."

**The Deputy Chair:** Right. Only for existing members, not for retired members.

**Ms DeLong:** What are these records kept for? I assume that they're going to be kept for a possible investigation into past wrongdoing.

**Mr. Hamilton:** Well, there are a number of things why you would keep them, I suppose: if something happens or whatever.

**Ms South:** They can be used to assist us during an investigation. An investigation can include an allegation that someone failed to disclose something to the commissioner. So they certainly can be used. They have been used to verify that a member had a particular interest when they took part in a debate.

1:55

**Ms DeLong:** And you would go back how many years to look at something like that?

**Ms South:** We would certainly go back at least to find out when they declared the asset or liability.

**Ms DeLong:** So is 10 years reasonable then?

**Ms South:** I hadn't even considered destroying records as we went

along. I mean, we don't have the physical space to keep records for a long term, so it then becomes a question of: where do we store older records? We cannot accommodate them in our office.

**The Deputy Chair:** The average shelf life of a politician in Alberta is eight years. The average shelf life. I don't think that in the bigger scheme of things we will have too many members who will be here for, you know, much longer than eight or 10 years. That's the general trend, and they know.

You know what? If you don't want to deal with this, we can just leave it as it currently is, and the Ethics Commissioner can store that information until you retire. We just need to make a decision. Which way would you like to go? Ten years or until you retire? All those in favour of 10 years, raise your hands. One, two, three. All those who feel that we should keep records until you retire, raise your hands. One. Others are undecided.

Help me, please. We need a show of hands on retaining information for 10 years. One, two, three, four. Thomas, which way are you going?

**Mr. Lukaszuk:** Ten years.

**The Deputy Chair:** So we've got five for 10 years.

How many people feel that we should retain it until the member retires? Okay. Good. So for current members, Mr. Hamilton, we are saying 10 years. That's our recommendation.

For members who cease to be Members of the Legislative Assembly, how much longer should information be retained for?

**Some Hon. Members:** Two years.

**The Deputy Chair:** Two years? All those in favour of two years? Opposed? One. Okay.

So we're recommending two and 10.

**Mr. Elsalhy:** Mr. Chairman, these two clauses now would be added into the legislation?

**The Deputy Chair:** Yes.

**Mr. Elsalhy:** Okay.

**The Deputy Chair:** Bullet 4. "The Act is silent [re] who bears the cost of legal representation if an inquiry is held. In [the Northwest Territories] the legislation requires reasonable costs of a member to be paid." Interesting. Can you explain where such costs would be incurred?

**Mr. Hamilton:** Well, the question is: what's reasonable?

**The Deputy Chair:** When you say "an inquiry," what exactly does it mean, and where do the costs come from?

**Mr. Hamilton:** Well, if we go after somebody in the opposition and we have charged him – if we're going after somebody, they have to have, I gather, legal help.

**The Deputy Chair:** Rob, do the members' services – not the members' services but the legal whatever. Do you know what I'm referring to? The Stockwell Day matter.

**Mr. Reynolds:** I hadn't considered the risk management fund for a conflict issue. I'm just trying to think of how that would occur. Obviously, I cannot make a statement with respect to what risk

management would or would not cover, because that's fully within their jurisdiction, but usually it arises like an insurance fund when you're sued for something, such as if you were sued for defamation. A conflict of interest issue would be something a bit different, I would think. I hadn't turned my mind to the risk management aspect of it.

**The Deputy Chair:** In the current practice, Mr. Hamilton, have you had people requiring legal representation when you are doing an inquiry?

**Mr. Hamilton:** No, I haven't. I don't know if Bob had.

**The Deputy Chair:** Has there been, Karen?

**Ms South:** Some people who have been investigated by us have had legal representation. Yes.

**The Deputy Chair:** They have paid their own costs of the legal representation?

**Ms South:** Yes, they did.

**Ms Croll:** I can speak to the legal ramifications on it because it applies to public servants as well. The way it's worded is that if you believe you were acting in the course of your duties and there's an assessment of that, then risk management will cover you. They'll cover your legal costs. So that may apply. That, unfortunately, happens with public servants a lot. When they're charged with assault or things like that, there is an assessment that risk management does based on whether in fact you were acting in the course of your duties, and then they will cover you.

**The Deputy Chair:** Sarah, are the Northwest Territories the only province that has an inclusion of such coverage?

**Ms Dafoe:** As far as I'm aware, yes.

**The Deputy Chair:** So other provinces and the federal government haven't had a need to have such an inclusion so far.

**Ms South:** The distinction with the Northwest Territories is that their legislation at that time required an inquiry to be held, a public inquiry, a much more formal process. There is the cross-examining of witnesses, so legal representation was very much an issue for them. It involved not only the legal representation for the member against whom the allegations were made, but the member who brought the allegations also requested coverage of her legal representation costs. That is when they put into their legislation that their Board of Internal Economy would make those decisions.

**The Deputy Chair:** Thomas.

**Mr. Lukaszuk:** Thank you. I feel that it would be not only appropriate but incumbent upon us to allow some provisions for costs for legal representation, particularly in cases where, as a result of the inquiry, a member is vindicated. We would not expect a member to defend himself in an inquiry and at the same time – as I said earlier, if he's vindicated, why would his costs not be covered? Costs could escalate to a great degree in a hurry, and I think everybody should be allowed a proper defence when charges are laid against him. I don't mean criminal charges, but I mean when accusations are laid against him.



**The Deputy Chair:** If we do recommend that, then where would the funds come from? I'm just wondering whether we need a little more information so that we make an informed decision.

**Ms DeLong:** We can just decide that it should be covered and then request suggestions as to how to work it out.

**The Deputy Chair:** Any words of wisdom there?

**Ms South:** The Board of Internal Economy in the Northwest Territories makes that decision. I believe the funds came out of the Legislative Assembly Office.

**Mr. Reynolds:** The Board of Internal Economy in the Northwest Territories would be the equivalent of our Members' Services Committee, which, of course, sets the pay and benefits for members.

**The Deputy Chair:** Okay.

**Dr. Morton:** All we have to do is make the recommendation, and that detail could be dealt with by whoever drafts the legislation.

**The Deputy Chair:** Ted, you're moving that?

**Dr. Morton:** I move that.

**The Deputy Chair:** Any further discussion on this?

All those in favour? No opposition? Okay.

Next bullet:

The Act says that the Assembly "shall deal with" a report of the Ethics Commissioner within 60 days of tabling . . . but the majority of reports have simply been tabled. Should the Act specify that the Assembly must debate the report only if sanctions are recommended?

**Mr. Hamilton:** "Only."

2:05

**The Deputy Chair:** Okay. So your recommendation is that if there are no recommendations, then it just be tabled.

**Mr. Hamilton:** Yes.

**The Deputy Chair:** If there are recommendations, then those recommendations be debated in the Assembly within 60 days of tabling.

**Mr. Rogers:** Just to be clear, Mr. Chairman, are we talking about only when sanctions are recommended?

**Mr. Hamilton:** Yes.

**The Deputy Chair:** Any recommendations.

**Mr. Rogers:** We don't typically debate these reports in the Leg., so I think we want to be careful.

**The Deputy Chair:** Only if sanctions are recommended. Sorry.

**Mr. Rogers:** If sanctions. Right.

**The Deputy Chair:** Just out of curiosity, Karen, since the inception of this act, how many times has the Ethics Commissioner reported a sanction?

**Ms South:** A sanction? I don't believe we have. When the commissioner has found that there was a breach, normally it has been inadvertent or a breach committed in good faith, so no sanction was recommended.

**The Deputy Chair:** Okay. So this is a really, really rare occurrence if it ever happens.

**Dr. Morton:** Wasn't there a member that resigned mid-term last session?

**The Deputy Chair:** He resigned. That's true.

**Dr. Morton:** Was that the result of an ethics report or not?

**The Deputy Chair:** I'm not sure, and I'm not so sure that the Ethics Commissioner can even disclose the privacy of somebody else.  
Mo.

**Mr. Elsalhy:** Yes. Another question. When the report is tabled, is the Legislature in session? Like, are we in the Chamber, or is it tabled to the Clerk? So is it typically, like, tabled when we're in session so we can look at it, or is it tabled, like, over the summer months, when we're not there?

**Ms South:** Reports from our office are provided to the Speaker, who distributes it to members when we provide it to him. He is then required to table it when the House resumes sitting.

**The Deputy Chair:** Yeah. It's typically done that the Speaker would table it in the Assembly, and every member would receive a copy. It usually happens during session.

**Mr. Elsalhy:** On sort of a fixed date every year?

**The Deputy Chair:** I'm not so sure if it's a fixed date.

Rob, is it kind of a fixed timeline?

**Mr. Reynolds:** Yes. Section 28 of the act refers to the tabling of a report. Karen has gone through sub (2), which states that when a report is received when the House isn't sitting, the Speaker makes copies of the report "available to the public." Then 28(3) says, "The Legislative Assembly shall deal with a report of the Ethics Commissioner within 60 days after the tabling of the report, or any other period that is determined by a resolution of the Legislative Assembly."

**The Deputy Chair:** So the tabling can only happen when the session is sitting. The other process is just filing it with the Clerk. Correct?

**Mr. Reynolds:** No.

**The Deputy Chair:** No?

**Mr. Reynolds:** I know you're saying the same thing, but technically what happens is that it's provided to the Speaker to distribute to members or make the report public.

**The Deputy Chair:** But the 60-day timeline would happen when we are sitting in session and it's formally tabled?

**Mr. Reynolds:** Yes, Mr. Chair. The 60-day time limit would run from the time that the report is tabled.

**The Deputy Chair:** So we could have a scenario that a report is produced in the summer months, when the members are not sitting. On the first day that we reconvene or shortly thereafter, the Speaker would formally table it in the Assembly, and then we have 60 days from there. Is that how it would happen?

**Mr. Reynolds:** Yes, sir.

**The Deputy Chair:** Does that help you, Mo?

**Mr. Elsalhy:** These are 60 calendar days or 60 sitting days? Are they 60 calendar days, like, two months, or are they 60 session days?

**Mr. Reynolds:** Mr. Elsalhy, the section says, “The Legislative Assembly shall deal with a report of the Ethics Commissioner within 60 days after the tabling of the report.” It doesn’t say sitting days. In the absence of a specific modifier it’s 60 calendar days.

**Mr. Elsalhy:** And if we’re not in session, we can choose a different interval by resolution.

**The Deputy Chair:** Yeah. The Legislative Assembly can extend that period if the subject matter requires more debate.

Okay. What are we supposed to decide today then? Are we agreeing, then, with the recommendation that if there are sanctions in the recommendation, they should be debated within 60 days? We are agreeing on that, right?

**Some Hon. Members:** Yes.

**The Deputy Chair:** We already voted on that. Yeah, you just asked for clarification. I got confused. Sorry.

The final bullet:

recommend adding provision to deal with matters that may involve law enforcement or criminal proceedings. For example, enable Commissioner to suspend an inquiry if he learns of policy investigation or criminal charges. Also, enable Commissioner to alert authorities of any contravention of any Act/Criminal Code.

**Ms Dafoe:** I think that the committee dealt with this yesterday when they enabled the commissioner to report what he saw as wrongdoings.

**The Deputy Chair:** Did we have a vote like that?

**Ms Dafoe:** Maybe I’m imagining things.

**Dr. B. Miller:** Well, it had to do with ministers.

**Ms Dafoe:** Is that right?

**The Deputy Chair:** Not a criminal report. I don’t recall a debate that included reporting. It expanded his scope that he could initiate an investigation. We empowered him to do that.

**Mr. Elsalhy:** To relay it back to the Legislative Assembly or to the courts.

**Ms DeLong:** Yeah, that part is fine. It’s the second part that I’m unclear about though.

**The Deputy Chair:** So let me just get a sense. Do we have a problem with this concept? Whether we have dealt with it or voted

on it or not, do we have a problem with this? It’s okay for the Ethics Commissioner to deal with it as recommended?

**Ms DeLong:** Yes.

**The Deputy Chair:** Okay. So then maybe go back on the records. If it is captured in our minutes, so be it. If not, then it should be included at this point.

**Ms DeLong:** The first part of it is fine in terms of a “provision to deal with matters that may involve law enforcement or criminal.” But I’m a little concerned in terms of enabling the commissioner “to suspend an inquiry if he learns of policy investigation or criminal charges.” I guess that if the criminal charges are actually laid, then I can see that you should withdraw, but if there is only an investigation going on, I don’t think that means that you should have to stop your investigation. I don’t see why you would have to stop your investigation just because the police were investigating something. Maybe our lawyers need to comment on that for us.

**The Deputy Chair:** Rob?

**Mr. Reynolds:** Thank you very much. In attempting to resolve difficult legal issues quickly, I think that you could conceivably continue if you wanted to. I mean, certainly there may be very sound reasons for not doing so in the sense that it’s really one tribunal in deference to another one because a criminal proceeding is considered to be, if you will, a superior proceeding in the sense that the rights of an individual are at stake, his or her liberty is at stake.

There are cases on this – maybe Sarah is aware of them – about continuing. I would just say that certainly the Gomery inquiry continued even though there were criminal charges outstanding against some of the participants. It doesn’t really reinforce the commissioner’s position.

**Dr. Morton:** The risk is, though – this was discussed in the context of Gomery – that disclosures from the commissioner’s investigation may prejudice a fair trial under the criminal proceedings. That’s the rationale, I think.

**Mr. Hamilton:** Would it be all right to use the word “may”? For example, the commissioner may suspend.

2:15

**The Deputy Chair:** Depending on the nature of the inquiry, I guess it gives him the flexibility to decide.

**Mr. Hamilton:** Yeah, that’s right.

**The Deputy Chair:** “May” sounds reasonable to me.

**Mr. Hamilton:** Good.

**Ms DeLong:** That’s only to suspend it, right?

**Mr. Hamilton:** “May suspend.”

**Ms DeLong:** Okay, “may suspend.” What I mean is: supposing that the police stopped – you know, they started an inquiry, found that there was nothing that they could find, and then you could just sort of suspend your inquiry just to stay out of their way, essentially, and then resume later.

**Mr. Hamilton:** Well, you can put “may.”

**Ms South:** Well, just as another example in addition to Gomery: in British Columbia the Conflict of Interest Commissioner was doing an investigation under their conflicts of interest act in relation to the former premier Glen Clark and his receiving a gift from a contractor. At the same time there were the criminal proceedings against Mr. Clark and some of the other people. The ethics commissioner finished his report before the court case finished, and the court sealed the commissioner’s report until the court proceeding had concluded.

**The Deputy Chair:** Okay. So who’s moving a motion that we adopt this recommendation?

**Dr. Morton:** I will do that.

Are we going to amend it to say that the Commissioner may – may – suspend?

**The Deputy Chair:** Yes. Ted, you’re moving that? Any further discussion? Thomas.

**Mr. Lukaszuk:** No. I’m in favour.

**The Deputy Chair:** No other discussion? All those in favour of the motion as moved? Anybody opposed? Carried.

Okay. Any other additional comments or suggestions? There are a few other submissions. The one that stands out more is the inclusion of municipal officials.

**Ms Dafoe:** The Municipal Government Act already contains provisions dealing with municipal councillors, and I would submit that that’s beyond the scope of this committee. That would be a review of the Municipal Government Act; we’d need to do that.

**The Deputy Chair:** Agreed?

**Hon. Members:** Sure.

**The Deputy Chair:** Okay. Good.

Let’s move on. The last question that we have to deal with is 38. “What changes, if any, can be made to the Conflicts of Interest Act to improve public perception of elected officials and of the provincial government?”

**Mr. Lukaszuk:** A question to the Ethics Commissioner: now that all the changes have been proposed and if those changes are adopted by the Legislature, is there anything in your recommendations that speaks to your office’s resources? Your office by virtue of responsibilities has at least quadrupled over the last two days.

**Mr. Hamilton:** I don’t think so.

**Mr. Lukaszuk:** Okay. I gave you an opening.

Will your office be able to administer the newly assigned tasks with the current resources that you have?

**Mr. Hamilton:** I think so.

**Ms South:** Yes.

**Mr. Hamilton:** She said yes.

**Mr. Lukaszuk:** Okay.

**Mr. Shariff:** Including the registry costs.

**Ms South:** I would think that would be an issue for the budget submission for our office after legislation is adopted by the Assembly.

**Mr. Lukaszuk:** Okay.

**The Deputy Chair:** The lobbyist registry would have an impact.

**Dr. Morton:** You might be able to hire some backbenchers on a part-time basis, on an hourly basis, to help out.

**The Deputy Chair:** Any other changes that you would recommend?

We have done a lot. I think that just before we conclude, I would want to, for the record, requote this. From the office of the Ethics Commissioner: “Alberta’s legislators generally conduct themselves in an honorable fashion, deserving of the respect in which society ought to hold them.”

So I think, gentlemen, ladies, we have gone through a very vigorous two days of exercise. We now need to talk about when we meet again and a couple of other matters. So very quickly, let’s see. We need to give direction to Nancy for when to come back.

The timelines appear as follows. We will be going into session November 15, and what I think we should do is maybe meet when the session is over but before Christmas if we can find an appropriate timing that involves everyone. So that may give you some timelines to bring back the first draft report.

When we sent out the survey questionnaire to people for input, we had indicated to them that once the draft report is prepared, we will circulate the draft report and they would be able to come before us again should they want to make another submission. I think we will need to accommodate that because that was a commitment we made. So probably we should look at doing it in the third week of January. People will be back from Christmas activities.

If that’s okay with you, then those are the two timelines that we will work on from here on, and we may need to have a final report exercise some time in February. Sounds okay? Is that okay with you Nancy, timelines?

**Mrs. Mackenzie:** That sounds fine, Mr. Chairman. Thank you.

**The Deputy Chair:** Great.

**Mrs. Sawchuk:** We’ll poll the members for future meeting dates.

**The Deputy Chair:** Karen will poll members for future meeting dates, but generally speaking what we’re looking at is probably in the second week of December, third week of January, and sometime early February or mid-February. Okay?

We need to have expense claim forms filled out, please.

Thank you so very much for the two days. We’ve done some wonderful work. Have a safe journey home.

[The committee adjourned at 2:22 p.m.]

