



Legislative Assembly of Alberta

The 28th Legislature  
First Session

Select Special  
Conflicts of Interest Act  
Review Committee

Wednesday, June 19, 2013  
10 a.m.

Transcript No. 28-1-6

**Legislative Assembly of Alberta  
The 28th Legislature  
First Session**

**Select Special Conflicts of Interest Act Review Committee**

Allen, Mike, Fort McMurray-Wood Buffalo (PC), Chair  
Luan, Jason, Calgary-Hawkwood (PC), Deputy Chair

Blakeman, Laurie, Edmonton-Centre (AL)  
Dorward, David C., Edmonton-Gold Bar (PC)  
Fenske, Jacquie, Fort Saskatchewan-Vegreville (PC)  
Johnson, Linda, Calgary-Glenmore (PC)  
McDonald, Everett, Grande Prairie-Smoky (PC)  
Notley, Rachel, Edmonton-Strathcona (ND)  
Saskiw, Shayne, Lac La Biche-St. Paul-Two Hills (W)  
Wilson, Jeff, Calgary-Shaw (W)  
Young, Steve, Edmonton-Riverview (PC)

**Office of the Ethics Commissioner Participants**

Neil R. Wilkinson	Ethics Commissioner
Brad Odsen, QC	Registrar, Lobbyists Act, and General Counsel
Glen Resler	Chief Administrative Officer

**Ministry of Justice and Solicitor General Participant**

Joan Neatby	Solicitor, Legislative Reform
-------------	-------------------------------

**Support Staff**

W.J. David McNeil	Clerk
Robert H. Reynolds, QC	Law Clerk/Director of Interparliamentary Relations
Shannon Dean	Senior Parliamentary Counsel/ Director of House Services
Philip Massolin	Manager of Research Services
Stephanie LeBlanc	Legal Research Officer
Sarah Leonard	Legal Research Officer
Nancy Zhang	Legislative Research Officer
Nancy Robert	Research Officer
Corinne Dacyshyn	Committee Clerk
Jody Rempel	Committee Clerk
Karen Sawchuk	Committee Clerk
Christopher Tyrell	Committee Clerk
Rhonda Sorensen	Manager of Corporate Communications and Broadcast Services
Jeanette Dotimas	Communications Consultant
Tracey Sales	Communications Consultant
Janet Schwegel	Managing Editor of <i>Alberta Hansard</i>

**Select Special Conflicts of Interest Act Review Committee**

**Participants**

Centre for Professional and Applied Ethics, University of Manitoba..... CR-51  
Arthur Schafer

Sheldon Chumir Foundation for Ethics in Leadership..... CR-59  
Dan Shapiro

**Public Participant**

Sarah O'Donnell, *Edmonton Journal* ..... CR-67



10 a.m.

Wednesday, June 19, 2013

[Mr. Allen in the chair]

**The Chair:** Okay. Good morning. Well, I guess I'll call this meeting to order. We do have quorum although we're still expecting, I think, a number of committee members. I know that Linda Johnson contacted me a few minutes ago to say she would be here very shortly.

Welcome to today's meeting of the Select Special Conflicts of Interest Act Review Committee.

We don't have anyone joining us by teleconference as we are running a video conference, so I'd like to ask the members and those joining the committee at the table to introduce themselves for the record. We'll start on my right.

**Mr. Luan:** Thank you, Chair. Good morning. Jason Luan, MLA, Calgary-Hawkwood, deputy chair of the committee.

**Ms Sorensen:** Good morning. Rhonda Sorensen, manager of corporate communications and broadcast services for the Legislative Assembly Office.

**Ms Leonard:** Sarah Leonard, legal research officer.

**Dr. Massolin:** Good morning. Philip Massolin, manager of research services.

**Ms Robert:** Good morning. Nancy Robert, research officer.

**Ms Neatby:** Good morning. Joan Neatby, Alberta Justice and Solicitor General.

**Mr. Resler:** Good morning. Glen Resler, chief administrative officer, office of the Ethics Commissioner.

**Mr. Wilkinson:** Good morning. Neil Wilkinson, Ethics Commissioner.

**Mr. Odsen:** Good morning. Brad Odsen, general counsel, office of the Ethics Commissioner.

**Ms Blakeman:** Hi. I'd like to welcome each and every one of you, including by video streaming, to my fabulous constituency of Edmonton-Centre. My name is Laurie Blakeman.

**Mr. Wilson:** Good morning. Jeff Wilson, MLA, Calgary-Shaw.

**Mr. Saskiw:** Shayne Saskiw, MLA, Lac La Biche-St. Paul-Two Hills.

**Mr. McDonald:** Good morning. Everett McDonald, Grande Prairie-Smoky MLA.

**Ms Fenske:** Hello. Jacque Fenske, MLA, Fort Saskatchewan-Vegreville.

**Mr. Dorward:** Hello. David Dorward, Edmonton-Gold Bar MLA.

**Ms Rempel:** Jody Rempel, committee clerk, Legislative Assembly Office.

**The Chair:** Before we turn to the business at hand, just a couple of operational items. Of course, the microphones are operated by *Hansard* staff.

We ask as well that you keep your cellphones and BlackBerrys off the table as they can interfere with the audiofeed.

The audio of committee proceedings is streamed live. It's on the Internet and recorded by *Alberta Hansard*. Audio access to meeting transcripts is obtained via the Legislative Assembly website.

Moving on to item 2 on your agenda, we have, of course, approval of the agenda. I'm assuming everyone has had a chance to review the agenda. Could I get a motion to approve the agenda for this morning? Mr. McDonald. Any comments? Anything to add or change? All in favour? Okay. That's been carried.

Item 3 is approval of the meeting minutes. Any errors or omissions to note? Hearing none, then I will call for a motion to approve the minutes of May 7. Mr. Wilson. All in favour? That is carried. Thank you.

Now, at our last meeting members of the committee had reviewed the written submissions, and we decided to invite two parties to meet with us and make oral presentations regarding the act. It was determined that a total of one hour would be set aside for each presenter, including 20 minutes of presentation time followed by questions from committee members. I'll ask committee members to hold their questions until the end of the presentation, but I will begin keeping a speakers list to facilitate our discussion following each of the presentations.

Our first presenter of the morning is Professor Arthur Schafer, director of the Centre for Professional and Applied Ethics at the University of Manitoba. As you can see, he has joined us via teleconference from Winnipeg, and he's been waiting very patiently as we've moved through our first few items of business this morning. So unless there are any questions before we proceed, I'd like to turn the floor over to Professor Schafer to begin his presentation.

**Mr. Schafer:** Thank you very much. A pleasure to join you. Can you see and hear me okay?

**The Chair:** We can hear and see you very well. Thank you.

**Mr. Schafer:** Good.

**Arthur Schafer**  
**Centre for Professional and Applied Ethics**  
**University of Manitoba**

**Mr. Schafer:** I've been doing research on and writing about conflicts of interest for almost 15 years now. I got involved because of a couple of university scandals involving pharmaceutical research and the influence of drug companies on universities and hospitals and the way in which researchers were treated when they came up with the sort of results that the companies weren't pleased with. Since that time I've published a number of articles, mostly in the area or the domain of biomedical ethics, but I lecture on conflict of interest to physicians and also to lawyers, to architects, to engineers. I'm the director of the Centre for Professional and Applied Ethics, and I'm quite interested in public service ethics and the way that the concept and the model of conflict of interest impact on public interest ethics, and that's obviously your primary concern.

I want to start by saying that the concept – you know, what is a conflict of interest? – is surprisingly elusive. It's difficult to pin down. I thought I might start by explaining a couple of things that conflict of interest isn't, how it differs from other things with which it could be easily confused. I'll start with myself. We have a jazz festival going on in Winnipeg this evening, and I have a pass. I went last night to a terrific jazz concert, and my plan is to go to a jazz concert this evening. On the other hand, I've been writing late at night trying to finish an article, and I'm sort of tired. So I want to go to the concert – it's an interest of mine,

something I'd like to do – but I'd also like to get an early night. My interests are conflicting. All of us have multiple conflicts. We'd like to eat a second piece of cake, and we'd like to lose weight. Conflict of interest doesn't have to do with conflicts between one of our interests and another, so let me set that aside. Conflicting interests are not the same as conflict of interest.

Second point. Almost all of us occupy a number of different roles in life, and these roles very often carry moral obligations. For example, I'm the director of the university's ethics centre, and I have certain commitments. I'm a university teacher, and I have commitments to my students, obligations to my students. I'm a researcher, and I have an obligation to the colleagues with whom I do my research. Sometimes these obligations conflict. If I pick you as an example, addressing myself to MLAs – most of you are Members of the Legislative Assembly. Is that correct?

**The Chair:** Yeah. All of the people you can see to my immediate left are Members of the Legislative Assembly.

**Mr. Schafer:** Terrific. Well, okay. So you have an obligation to your constituents, but you also have an obligation to your political party. Beyond that, you may feel that you have an obligation to the citizens of Alberta, not just the particular constituents or the geographical region of Edmonton or Calgary or wherever that elected you to the Legislative Assembly. Often the obligations coincide, but sometimes they conflict. What's best for your constituents may not be what's best for the province. In order to fulfill my obligation to my students, I might have to neglect other university obligations or I might have to neglect obligations to my family. I have obligations as a university professor, but I also have obligations as a human being, as a citizen, and so on in all of the different roles that I fulfill.

Having started with an illustration of conflicting interests, the second example I've given is an example of conflicting obligations, where you've got an obligation to do A, but you've also got an obligation to do B. In the case of conflicting obligations it can often be very difficult to know which one should trump which other one, how you should assign your priorities. Conflict of interest is not about conflicting obligations anymore than it's about conflicting interests.

#### 10:10

I mention these two points to start with because I want to now move on to explain what conflict of interest is and then show how it would apply to a Legislative Assembly or in public service ethics. Conflict of interest involves the conflict of a personal interest with – so here's the key. It's a conflict between your personal interest or someone's personal interest and an obligation they have. In the case of conflict of interest it's almost always an obligation that arises from a role. Let's say that it's your role as a public servant, as an MLA, as a member of the cabinet, as Premier of the province, whatever. You've got these obligations, and you've got your own private interests, and there are situations in which – let me start that thought again.

One of your central obligations as legislators is to exercise your judgment or your discretion. You have an obligation to exercise good judgment. Look, lots of people occupy roles or jobs that are mechanical, that don't involve discretion, that don't involve exercising judgment. If you're in a role that doesn't involve exercising judgment, you will never have a problem of conflict of interest with respect to that role. But if you have an obligation to exercise good judgment, let's say, on behalf of your constituents or on behalf of citizens or on behalf of truth or justice, if you're a presiding justice in a court of law, your obligation is to exercise your

judgment impartially between the litigants or impartially and well with respect to the innocence or guilt of the person who's on trial if it's a criminal trial. If you're a referee or an umpire in a sporting contest, again, you've got to exercise judgment or discretion.

There are certain rules, and your duty as a judge, as a police officer, as a physician, as an architect, as a public servant, as a Member of the Legislative Assembly, or as a university professor – let's say that if I'm grading my students or deciding whether a PhD candidate should get the degree or should be turned down, I have an obligation to exercise my judgment.

Now, some of my personal interests, my private interests, including especially financial and family interests, can potentially conflict. If I have an obligation as a Member of the Legislative Assembly to vote on an issue, let's say, of whether to build a bridge over the South Saskatchewan River at a certain point and I happen to own land at the point where it's proposed to build the bridge, I have an obligation as an MLA to exercise my judgment well and impartially, and at the same time, I've got a personal financial interest. I own that land or perhaps someone very closely related to me, a family member or an ex-spouse, owns the land. If I have to exercise my judgment, but at the same time, I have a personal stake with a tendency to bias that judgment, then I'm in a conflict of interest.

I can be in a conflict-of-interest situation and still exercise good judgment. The problem with conflict of interest and the reason it's an ethical concern is that it's a risk factor for bias and it's a risk factor for corruption. If I'm in a situation where I have an obligation to exercise good judgment, let's say, on behalf of the people of Alberta or the electors in my constituency and at the same time I have a financial self-interest, I or a member of my family, that might easily influence my judgment, then I'm in a conflict-of-interest situation.

Now, that doesn't mean I'm corrupt, and it doesn't mean I'll make a bad decision, but it does mean that there's an ethical concern. If a judge were hearing a case and discovered that he or she was personally related to one of the litigants or a business partner of one of the litigants, the judge might be convinced that she could exercise her judgment impartially: I won't be biased by the fact that my business partner is one of the people. Or let's say that it's a criminal case, and the person who's charged is a family member or someone who has been very kind to me financially in the past. I may think that I won't be biased. Actually, it turns out almost all of us think that our judgment will be impartial even in circumstances where we're blatantly conflicted.

As I mentioned, I think, I've lectured on biomedical conflicts of interest across Canada and in hospitals and in medical faculties. I've lectured at both the University of Alberta and the University of Calgary on this topic. I've lectured in England and America. I've lectured to practising physicians and to medical researchers. I've never met a physician or a medical researcher who thought that their judgment was biased by taking gifts from drug companies, by having their research funded by drug companies, by being on the speakers' bureau, for which they receive tens of thousands or perhaps hundreds of thousands of dollars from drug companies. Nobody thinks that their judgment is biased, yet the evidence in the literature is overwhelming.

I'll take one example since you've had a dramatic case involving tobacco litigation. Ninety-five per cent of all the research that showed that second-hand smoke was not a risk for lung cancer, almost all of the research that said that it was not a risk, was funded by the tobacco industry. The research that was industry independent virtually never found that tobacco was innocent. Coincidence?

These were scientists. I'm sure they were all convinced of their own rectitude, but somehow – and it's not just tobacco research; it's for virtually every drug. Many of you or members of your family will be taking drugs for hypertension or for high cholesterol or for depression. Almost all of the research on the efficacy and the safety of drugs for hypertension, for cholesterolemia, high lipid levels, depression, on whether Prozac and Paxil or Zoloft are safe and effective if you're suffering from mild to moderate depression, is funded by the drug industry. The people who are doing it are on the speakers' bureaus of the drug industry, and they're consultants to the drug industry, and they fly to Venice or to the Caribbean courtesy of the drug industry.

It turns out, when we do these meta-analyses, that when the research is funded by the drug industry, it's overwhelmingly likely – listen, these are randomized clinical trials. They're blinded. They're by dedicated physicians and scientists. Yet their research when they're funded by the drug industry almost always comes out in favour of the products of the company that's paying for the research, as it does with tobacco. That's a real problem. It's a problem of conflict of interest.

Let me just briefly review what I've said and then talk about what should be done about conflict of interest. Conflict of interest only arises if you're in a role where you have an obligation to exercise good judgment. By the way, it could be for a private company. If I'm the purchasing agent or I buy computers for an oil company and I'm taken out for fancy dinners and given special gifts and free travel and nice holidays by one particular computer manufacturer, will I be able to exercise my best judgment on behalf of the oil company that's employing me? I would say not. So it's not a matter of public service versus private service. It's a matter of being in a role where you have an obligation either to the citizens who elected you or to the public service or to the company that employs you or to the clients who have employed you.

I lecture on architectural ethics to the graduating class in our Faculty of Architecture. I know many architects who are advising their clients about flooring materials and windows who are accepting free flooring materials and windows for their lake cottages, and then they're giving impartial, unbiased advice to their clients as to which is the best value for money. Does that sound ethically suspicious to you? It is because they're in a conflict of interest. I tell my architecture students: you shouldn't be accepting gifts.

**10:20**

Even small gifts, by the way, have a tremendous power to influence people. Most of us think: oh, well. I mean, the doctors think that it's only a free sample or it's only a free lunch. Very handsome or pretty young drug representatives come to their office. They bring a nice lunch for the doctor, for the nurses, for the office staff. They leave free samples. They give Frisbees for the doctors' children. Everyone says: "Well, you know, I can't be bought for a free lunch. I make \$300,000 a year. How am I going to be?"

The truth is that friendship and even quite small gifts bias people's judgment. There's loads of empirical evidence that shows that the drug companies who spend thousands of millions of dollars in Canada buying gifts for doctors and leaving free samples for doctors – that there's a huge payoff for the companies. There are now some medical practices which forbid the acceptance of gifts. Most of the professors who are teaching the medical students are themselves in receipt of gifts from the drug industry and funding from the drug industry. So it's a real problem in medicine, but not just in the faculty of medicine.

Okay. So conflict of interest involves a role in which you have an obligation to exercise impartial, unbiased, good judgment and at the same time you have an interest – it can be financial, it can be familial, or it can be some other kind of interest – with a tendency to bias your judgment. That's what a conflict of interest is. It doesn't mean you're corrupt, by the way.

Here's an example. I may be on a panel. Suppose I'm a judge, and I'm set to hear a case. Then I discover that one of the litigants is someone who's had dealings with my law firm or even with me at some point in the past, and I didn't realize it. As soon as I realize it, I'm in a conflict of interest situation. It doesn't mean I've done anything wrong. It means I should declare the conflict of interest, and if I'm a judge, I should recuse myself. I shouldn't hear the case if it's a member of my family or someone with whom I've had dealings.

Being in a conflict of interest situation doesn't mean that you've necessarily been corrupt, and it doesn't mean that you've done anything morally wrong, but there's a kind of red light, an alert. This is ethically problematical. What are you going to do about it? What should you do about it?

I hope you'll forgive me. I'm going to use an example from Alberta, one that may be the occasion for your inviting me to speak to you today. The example I want to use, the illustrative example, is when Premier Alison Redford in her previous life as Minister of Justice and attorney general of the province of Alberta chose which firm would, in effect, get a billion-dollar gift from the taxpayers of Alberta to pursue the litigation against the tobacco industry. As everyone around the table will know, her civil servants presented her with a short list of three, and she chose the ultimate winner. There was some, I thought, rather silly argument that she was no longer Justice minister when the contract was signed, but she chose the winner.

I looked at the qualifications of the winning firm, and the choice was really dubious, but suppose she'd chosen the firm that was clearly the best. The committee that came up with the short list said that they were all qualified. I didn't think that the one that was chosen was qualified, actually, but suppose they had been qualified. They were the firm where many of whose principals had worked on her campaigns, funded her campaigns, and one of whose principals in this firm was her ex-husband, who was still a close friend of hers.

Suppose he'd been her sworn enemy and they'd had a bitter divorce. Would anyone think it was appropriate for her to make that decision enabling her to exclude or punish that firm? You know, if I were assigning a grade to my ex-wife or to one of my ex-wives, people would say: "Schafer, it's not appropriate. You can't promise yourself that you'll be unbiased, and you can't promise anyone else, because you're in a conflict of interest situation."

I was really puzzled that the chief law officer of your province and that all of the senior lawyers who were – I mean, where were those deputy ministers and assistant deputy ministers when the system was set up that they would provide a short list? Is it possible they didn't know that the firm of her ex-husband was one of the three shortlisted? I mean, surely they should have said . . .

**The Chair:** I'm sorry, Mr. Schafer, but we've run out of time on your presentation. I wonder if I could just get you to wrap it up. Twenty minutes was what we had allowed.

**Mr. Schafer:** All right. I'll wrap it up in 60 seconds.

The issue of conflict of interest: I think the case with which I've been illustrating the points is a clear-cut case. I didn't find it at all ambiguous or marginal. She was in a conflict of interest. Now,

then the question becomes: what do you do? I would say that someone else should have made that decision. It shouldn't have been hers to make. Did she break the law? Well, that's a matter for lawyers to decide.

You're going to be redrafting the legislation. If the legislation you draft makes it permissible for officials, whether elected or administrative, to make decisions when they have close personal or financial ties that might influence the exercise of their judgment, I think you'll have drafted poor rules, because in the end – and this is my final point – it's all about trust. The citizens of Alberta have to be able to trust that good judgment is being exercised. If there is a financial conflict of interest or a familial conflict of interest or some other important conflict of interest where most people would say, "Hey, I wonder if Schafer might be biased by the fact that it's his ex-wife whose qualifications he's judging," if a reasonable person might raise that question, then I shouldn't be making that decision.

Okay. Open for questions, comments, criticisms.

**The Chair:** Thank you very much, Mr. Schafer.

I guess at this point I'll open up the floor to questions. I've got two names so far.

As well, we'd like to welcome two more members that have joined the committee since we did our introductions.

Ms Notley, Edmonton-Strathcona, welcome.

And Ms Johnson from Calgary-Glenmore. Thank you for joining us.

We'll start with Mr. Saskiw. You had your hand up first.

**Mr. Saskiw:** Thank you for the presentation. It certainly made part of this room a little bit uncomfortable when you brought up the example here in Alberta.

You know, as a practising lawyer I – you brought up some of those examples where, in certain circumstances where there is an obvious close personal interest, the best thing to do is to recuse yourself, and you continually indicated that, you know, it was a clear conflict of interest. The question I have for you, though, is that the meaning of conflict of interest is as defined in legislation. What type of wording in the legislation would ensure that the example that you put forward would be encapsulated as what most Albertans, I think, would consider a clear conflict of interest? What type of language?

In the professional code of conduct we have language around, you know, if a reasonable person would even perceive it as a potential conflict of interest, something like that, that lawyer should recuse themselves. What kind of language would you suggest here in Alberta that would clearly and unequivocally catch the example that you provided, in which case it was a billion-dollar contract to an ex-spouse? What can we do here in Alberta to ensure that the integrity of our decision-making is upheld and that Albertans can trust us so that this type of situation is captured?

**Mr. Schafer:** Mr. Chairman, did you want me to respond to each one individually, or should I take several questions or comments?

**The Chair:** Yes, please, Mr. Schafer. We'll deal with it one at a time.

**Mr. Schafer:** You raise an interesting question. If you want actual, careful wording that you might use, I won't do it off the top of my head, but I'll send you something.

I'd like to address the notion of an apparent conflict of interest and how an apparent conflict of interest differs from a real conflict of interest. I'm sorry if it's making you squirm, but I don't see any point in not using the – you know, it's the elephant in the room. I

imagine it's the reason, at least part of the reason, you're meeting to reconsider.

**10:30**

Justice Minister Redford was not in an apparent conflict of interest. She appeared to be in a conflict of interest because she was in a conflict of interest. That doesn't mean that she was corrupt, and it doesn't mean that her judgment was biased. Sometimes people who are in a conflict of interest bend over backwards and do exercise good judgment, but that doesn't mean they weren't in a conflict of interest. If you're in a situation where you have an interest with the potentiality to bias your judgment, that's a real, not an apparent, conflict of interest.

Let's say that someone with the name Redford was a candidate and she was deciding and that person had no relation to her, that would be an apparent conflict of interest but not a real one. A real conflict of interest is when you have a private interest with a tendency to bias your judgment. Now, that doesn't mean you've been corrupt, and it doesn't mean that you have been biased, but a judge who's in a conflict of interest situation would recuse herself or himself not just because it looks bad but because it's inappropriate to be making a decision when you're in a real conflict of interest situation.

**The Chair:** Okay.

Our next questioner would be Ms Blakeman.

**Ms Blakeman:** Thank you very much. I'm going to tag on to my colleague's question. Do you have an opinion on the best wording around private interest? I'm particularly fond of the Quebec one, which, I'll remind you, says that when carrying out the duties of office, a member must not "act, attempt to act, or refrain from acting, so as to further his or her private interests or those of a family member or non-dependent child, or to improperly further another person's private interests." Then it goes on with a similar second clause.

If we're going to change our act, we're trying to find the best wording. So what's the gold star right now?

**Mr. Schafer:** Well, I think the Quebec wording is pretty reasonable. It identifies a duty to exercise good judgment and a conflict with a private interest, and it expands private interest beyond what the current legislation seems to indicate. Private interest includes your own financial interests, but it includes familial interests as well. It could include other things, the sorts of goals you might pursue that would be advantageous to you. They should all be included. The wording should not be so narrow that the fact that someone is one's ex-spouse or one's neighbour means that one is not in a conflict of interest. I mean, if I have a close relationship with someone, I shouldn't be using my judgment if I have an obligation to do it impartially. Like you, I think the Quebec wording is pretty good.

**The Chair:** Okay.

You had another one, Ms Blakeman?

**Ms Blakeman:** I did, but I'll go to the end of the list in order to give my colleagues . . .

**The Chair:** Okay.

I have Ms Notley and then Mr. Dorward.

**Ms Notley:** Actually, you know, my questions have been asked previously. I think we've kind of covered that by the last two. Thank you very much for your presentation, but I'll defer to Mr. Dorward.

**The Chair:** Thank you, Ms Notley.

**Mr. Dorward:** Thank you for your comments. You mentioned the word “judgment” in there, and I was a little confused. I wrote down: judgment is involved or judgment must be involved. So that’s the first question. I’d like to hear your comments on how you reconcile this word, “judgment,” in a scenario relative to a perceived conflict of interest and whether there is judgment involved in the perceived conflict of interest scenario.

**Mr. Schafer:** Well, if the official is not exercising her discretion – I’m using judgment to mean discretion, and I’m using judgment in a situation where others should be able to trust that you’re exercising good judgment and that you’re exercising your judgment impartially, let’s say, on behalf of your patient rather than your own self-interest or on behalf of your patient rather than something else that’s inappropriate.

**The Chair:** Thank you.

Next we’ll have Ms Blakeman again.

**Ms Blakeman:** Right. It strikes me, Professor, that a high number of what we interchangeably refer to as conflict of interest legislation and ethics legislation is in fact not interchangeable. I find that the Alberta act is primarily a financial conflict of interest document, not an ethics document. Could you comment on that? If you have a recommendation for an act that we can look at that has more strength, more vigour, more muscle on the ethics side of it, I would appreciate the recommendation.

**Mr. Schafer:** I think you’re right. Legality and morality often coincide, but they often diverge, so what’s ethically inappropriate may be legally permissible.

I’m going to switch from poor Alison Redford and Alberta to the city of Winnipeg. We have a mayor who seems to have a kind of moral astigmatism when it comes to conflict of interest. Now I’m going to give you a couple of examples which have been apparently found not to violate the law, although one of them is on appeal at the moment. We’ll see what the courts ultimately do with it.

Our mayor used taxpayers’ money to take councillors and city employees for a dinner at a restaurant – I think it was at Christmastime – and the restaurant he picked was a restaurant that he owned. When challenged about his conflict of interest, his answer was: “But it’s the best value for money. It’s got great food at good prices.” Now, that he would think that he would be the appropriate restaurant critic and that it’s okay for him – I mean, this didn’t just look bad. Eventually, he recognized that it looked bad. It appeared bad. The reason it looked bad was because it was bad. It was inappropriate, but it may not have been in violation of the law.

Quite often in these cases, whether it’s Mayor Ford in Toronto or Mayor Katz in Winnipeg or various legislators across the country, they’re sometimes found not guilty of breaking the law in circumstances where virtually – I mean, I don’t think there can be a dozen people in all of Winnipeg who didn’t recognize that the mayor shouldn’t have been using taxpayers’ money to take people to his own restaurant. It just didn’t pass the smell test. But, apparently, according to the Court of Queen’s Bench it passed the legal test.

Your first point, I think, is right. The solution to that is to redraft the law so that it better fits with people’s sense of what’s appropriate behaviour for public officials. The punishment for mayors if you are guilty of conflict of interest, as we know, is that you get kicked out of office. Maybe we need to rethink that and at

least for minor transgressions have minor punishments. But the courts have seemed very reluctant to convict. Partly, I think, it’s because the wording of our laws with respect to conflict of interest hasn’t captured the essence of the ethical point, and it’s missed the spirit of what conflict of interest is about.

Why should we be concerned? We should be concerned because it’s about trust. I trust myself to exercise good judgment in a variety of situations, but if my children or people I love or people with whom I have close familial or friendship relations are involved, could I exercise my judgment impartially? I might think I can. I might try to do it. We are, each of us, the worst judges of our own impartiality. We’re subjected to biasing influences of which we’re scarcely aware. The legislation should capture these, so I favour broader definitions that will capture this, the ethical spirit of what conflict of interest legislation should be about.

10:40

**Ms Blakeman:** And your recommendation is? From existing legislation anywhere in the world what do you think captures that?

**Mr. Schafer:** I’m not sure I would answer that off the top of my head. I’ve looked at dozens of them. Some are better in this respect, and others are better in that respect. Really, I’m not a lawyer, and I’m not a legislator. I see my role as offering broad philosophical or ethical concerns and analysis. If you do come up with formulae and you’d like to send them to me, I’d be happy to comment on them and offer suggestions and criticisms.

**Ms Blakeman:** Well, I’ll take any recommendation you want to make even if you come up with it later. You could address it through the clerk of this committee, and it would be shared with all of us.

Thank you.

**The Chair:** Thank you.

Going to Mr. Saskiw, I have Saskiw, Johnson, Luan, and Notley.

**Mr. Saskiw:** Sure. Just going back to some of the examples you raised, I think it primarily goes with respect to what relationships are. In our current act we have wording such as, you know, that it’s improper to further the private interests of a member, a person directly associated with the member. “Directly associated” is then defined as owning shares of a company, a partnership with somebody, a member’s spouse or adult interdependent partner. Of course, it doesn’t include ex-spouse in that, directly associated.

B.C., for example, has put forward wording where they include what is defined as an apparent conflict of interest, or in other words, you could say “perceived.” The wording that they have there is that 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.

I’m wondering whether that is the wording that you would support. Obviously, I think that wording would clearly have easily caught the situation here in Alberta. Is that broad enough in your mind?

**Mr. Schafer:** The legislation should clearly mention finances and family, but I think it’s important to add, as the B.C. legislation does, other factors that might be reasonably perceived as having a biasing influence. I don’t think that’s a perceived conflict of interest; I think it’s a real conflict of interest. Look, I may stand to make a lot of money, and I may not be biased by it. That doesn’t

mean I'm not in a conflict of interest situation. I may be exercising my judgment with respect to a close friend. It doesn't mean that I will be biased, but whether I'm biased or not, I'm in a conflict of interest situation. I don't like the fact that the B.C. government distinguishes between real and apparent as if money is real but other things are apparent. Financial conflicts of interest are clearly hugely powerful as are familial ones, but there are many other relationships that could bias your judgment.

To go back to the controversy surrounding Mayor Ford, he was using city resources to assist a football team he was coaching. I don't think he was paid as a coach of this Catholic high school football team, they weren't relatives of his, but it was an interest of his. Others might reasonably perceive that if city buses and city officials are doing things for this football team, the mayor had a private interest. I don't think you could conceivably list all of the interests. It would have to go on for pages and pages, and still it would be incomplete.

Having some vague form of wording such as B.C. does, where someone might reasonably fear that your judgment would be biased, although it's vague and requires interpretation, I think it will capture circumstances that wouldn't be anticipated if you try to nail it down very specifically: financial interests above a certain amount of money, familial interest as in children but not necessarily stepchildren or cousins. I think it's fine to specify, and I think it's important to add to these specific examples a broader clause about reasonable apprehension of bias. I do favour that.

**The Chair:** Thank you.

Ms Johnson.

**Ms L. Johnson:** Thank you. I have so many questions here. I'm really concerned about where the role of common sense comes in. If you look hard enough, you can find a conflict of interest anywhere. As I stood to become an MLA, my two children were adult, nondependent children who were finishing university and are now employed in Alberta. So if you go three handshakes out, one works for a company that has 5,000 employees in the province; another works for a company that has 20 employees in the province. There's a potential conflict of interest because I sit on the Legislature's Standing Committee on Resource Stewardship. I get a little concerned that if it's written too broad, if you have a cynical mind, you can find a conflict of interest.

We have a prime example in Calgary with the board of education. One of our trustees wanted to vote on the budget of the school board. She ran for office. She was elected – people knew she had two children in the system – and was criticized because she was going to vote on the budget of the school board that she was a trustee for. She had to step back from the vote. Then later on it was found that she could vote on it.

Where's some common sense, where's some reasonableness in writing the guidelines so that we still have people engaged in public service? You know, you could make an argument that my son works for an oil and gas company, so I'm in a conflict of interest sitting on Resource Stewardship. How does he go look for a job, because his mom is an MLA? Help me out here.

**Mr. Schafer:** Yeah. It's a good question. No law can be idiot proof because all can be idiotic or exercise bad judgment. Let's take your school board example. If a school trustee were to vote on an issue involving spending a lot of money on the particular school where her spouse worked or where her children attended, I think people might reasonably say: "Hey, is that unbiased? You're elected to represent the citizens of the entire district, and the interests of the particular school where your children are attending

or where your spouse is teaching is involved. Maybe you should recuse yourself." Or if your spouse is a teacher in the school system, is it legitimate for you to be voting on salary increases? I'm not sure about that case.

There will be some cases that are clear cut. There will be others such as the instance involving yourself. You've got a child who's working in the oil and gas industry, and you have responsibilities. I think there are clear-cut cases. I think there are cases where no one should object, there are clear-cut cases where everyone would object, and there will be some grey-area cases involving judgment or discretion. It may be that if your family has large holdings in the oil and gas industry or if their employment or their flourishing or you yourself are involved financially, this is not the portfolio in which you should be serving. That's a possible conclusion to reach.

**Ms L. Johnson:** I agree with that, and I would step up and make that statement. My concern is that if you look hard enough in a province with a population of 3.4 million people, we're not many handshakes away from someone else that has expertise or a connection to that world.

My other observation on your restaurant example. I work hard whenever I have money to spend – whether it's for printing, whether it's for entertaining, or whether it's for resourcing professional services – to use companies that exist in Calgary-Glenmore. Now, I open up the Yellow Pages. Where is their office? If their bid is competitive with someone else from another part of Calgary, I always go with the Calgary-Glenmore person. Does that mean I'm using undue influence because I pick a local supplier? We could just take this so far.

10:50

**An Hon. Member:** Because you're not personally gaining.

**Ms L. Johnson:** But the example of the mayor and the restaurant: he knew he'd have good service; he knew that his reservation wouldn't get lost, you know?

**Mr. Wilson:** He knew the money was coming back to him.

**Ms L. Johnson:** Well, if it was a company . . .

**The Chair:** Okay. I'm going to control the debate between the members.

**Ms L. Johnson:** You get a sense of my frustration, sir.

**Mr. Schafer:** Sir, may I respond?

**The Chair:** Yes. Go ahead.

**Mr. Schafer:** If you are exercising your judgment as to which supplier to use and if there's a local supplier from your constituency and there are potential competitor suppliers from other areas of the province or even from out of province, I would say that that's not so much a situation of conflict of interest unless the local supplier happens to be supporting your re-election campaign. I would say that that's not a conflict of interest situation so much as competing obligations. You can argue that it's legitimate to favour local businesses.

If your obligation is to get the best value for money, then maybe you shouldn't be making the decision. You know, if the mayor's restaurant is the best value for money, then perhaps that's where people should be going, but he shouldn't be the one to be making the decision. He should have recused himself for someone who doesn't have a financial stake.

Now, suppose one of his top officials had made the decision, not the mayor. It would have looked bad. People would have thought: that official is trying to curry favour with the mayor by choosing his restaurant, so there really was biased judgment. On the whole, if you've got a choice, I would say that public trust should trump every other value.

There's so much cynicism, not just in Montreal or Quebec. There's so much cynicism across Canada about the ethical integrity of our public servants that I would say that preserving trust ought to be a critical objective. So if you're going to err, I would say err on the side of caution, and the decisions should generally not be made by people who have a significant personal interest involved.

**The Chair:** Okay. Thank you.

**Ms L. Johnson:** Can you add me back to the list?

**The Chair:** You'll be back on the list. You got it.

The list is getting bigger. Luan, Notley, Wilson, Dorward, and then Johnson.

**Mr. Luan:** Thank you, Chair. Thank you, Professor. I think you raised a good question. One of the things I want to draw attention to is a report completed by our research staff here. It's been posted on our website already. It did crossjurisdictional comparisons for the Conflicts of Interest Act review. I know lots of members already raised this question. I am equally interested in that. It appears to me that you probably haven't had a chance to access this report or review it.

**Mr. Schafer:** I haven't.

**Mr. Luan:** Okay. Here's my question to you. I think that the issue here that I'm struggling with is that, on one hand, there is this perception of conflict of interest. On the other hand, there is real conflict of interest. My interest as a member of the committee is that we need to define something that is enforceable so that it's a piece of law. I have trouble leaving it open wider for public interpretation of conflict of interest by perception because, to me, you have a piece of law that has no teeth. Anybody can interpret in whatever way they feel like.

So I looked through the report briefly myself, comparing different jurisdictions. Here it talks about the House of Commons defining not only personal interests but association and corporate interests, so kind of starting to define that to some degree. The Senator one went even further to include associations. I'm interpreting that as nonprofit associations and so on and so forth. So if you sit on a board of one of the associations and then your decision-making has influence over the funding they receive, that can cause some conflicts of interest there, too.

So here the example I'm giving is specifically drawing attention. We need to draw a line somewhere. I have trouble with leaving it wide open. Anybody can interpret it. But I also have trouble if we only define certain ones and leave others out.

I can give you one more example which draws from my previous experience in working with the city of Calgary. It goes along the lines of what MLA Johnson is talking about. In the situation of an aboriginal community we were trying to administer the city's funding and so on so as to avoid conflict of interest. But with a small, specialized design issue in a community if you start saying "if the last name was associated with that of a chief, then you cannot have any one of them sitting on a review committee," you're going to eliminate about 90 per cent of the people who really know the subject. In that case we decided that we're going

to overrule that, and we reviewed that information. We allowed that input to come in. In that particular situation if you say, "Well, somebody is a family member or extended family member," you're going to exclude any reasonable person who would have expertise on this. If we put in a bunch like myself or others who have no specific information about that subject on a committee to comment and make decisions about it, it's totally irrelevant. The effect will be even more detrimental.

That's where it goes back to those specific examples. We can talk about the Premier's example; we can talk about Linda's. I can name a few I encountered. The key here is what's relevant to Alberta, what's relevant to our standard, what's relevant to our standing on the ethics so that when we define our conflict of interest, that applies here and that rule is clear to everybody. So that's where I'm going.

I know you already said that you're going to take a look at it and send back some of your comments. I would be really interested if you would take a thorough look at this report that's already been done and be specific. Where would you recommend we draw the line, the wording, and so on and so forth?

Thank you for that.

**The Chair:** Okay. Thank you.

If you'd like, Mr. Schafer, you can comment on that, but I will actually mention that I was mistaken earlier when Mr. Luan asked me about this report. This report is not publicly posted. It is currently just on the members' website. But if you would like to review the document, we would be happy to have our committee clerk forward it to you to comment on if you so desire.

**Mr. Schafer:** Yes.

**The Chair:** Okay. So we'll ask our committee clerk to e-mail that to you.

Now, in the interests of time I'm just going to point out that we have about eight minutes left in this first hour, and we have five names on the list. I don't see any other names really popping up, so I'd like to call it at that, but if we could ask everyone to be very brief in their questions and, of course, in the answers as well so we can get everybody in.

Next we have Ms Notley.

**Ms Notley:** Well, thank you. Basically, rather than engaging in a debate with you on this, I think that our job really is to discuss it with each other.

I just had two questions in terms of the additional information that we're looking for from you. I think we've now confirmed that you will take a kick at coming up with some ideas around language for us. You also mentioned earlier that there was quite a bit of evidence around bias, you know, people who believe they can make decisions without bias and what kinds of things resulted in or appeared to be associated with biased decisions. If you have any sort of citations or links to reports or anything like that on that issue, I would be quite fascinated to receive those, of course, particularly as they relate to studies that are somewhat equivalent or as equivalent as possible to the situation that we're in here as MLAs. I know that there probably are no studies about that exactly, but to the extent that you're trying to narrow down what to send us, that would be what I would find helpful.

The final thing is that, certainly, in listening to some of the hand-wringing that has commenced around the table about the concepts that you've introduced, which, personally, I think are quite valid, I think it's really important for us, of course, to understand the difference between a general application of a decision made by a legislator versus an individualized application.

Certainly, that's a distinction that we've used in Alberta. For instance, you know, we had a case where an MLA who was involved in agriculture was – there was consideration as to whether he could participate in decisions around an act of general application to the agricultural industry. Ultimately, the decision was that it was an act of general application and it was appropriate.

So if you have any insight into that distinction and where it's applied before and to maybe help some people exclude some of the more extreme examples that they're coming up with as problems so that we could perhaps refine our discussion a little bit, that would be also very helpful.

Those are my questions, which are really asking you to give us more information. Thank you very much for everything you've done so far.

11:00

**The Chair:** Okay. Well, then, we'll go on. We have Wilson, Dorward, and Fenske, and that will wrap up the questions.

**Mr. Wilson:** Thank you, Mr. Chair, and thank you, Mr. Schafer, for your presentation. I thoroughly enjoyed it. I'm wondering if you have any suggested repercussions that we should build into the act for not recusing oneself if they are after the fact found to be in a conflict of interest; however, they are not found to be in contravention of specific wording in the act. Are these mutually exclusive concepts?

**Mr. Schafer:** I think I'd like to hear all of the comments, and then I'll just briefly answer all of them at the end.

**The Chair:** And then we'll be able to wrap up. That will probably be more expeditious. Thank you.

**Mr. Dorward:** We have had lots of discussion, and the one thing that I have not heard and I'm interested to know is if you have any comments on the need for having a commissioner take care of the review of perceived conflicts of interest and, indeed, with the courts standing behind that. I think some of the tone today has been that it's a struggle to find the perfect wording and that logic and somebody independent looking at these issues and deciding if there is a conflict of interest are important. In Alberta we do have a commissioner, and we have the courts that are available as well. I don't know if you have done any work in that area, but I would be interested to see if you have any comments on that.

**The Chair:** Okay. And the final question is from Ms Fenske.

**Ms Fenske:** Thank you. Just two points. One, it's been said in our agricultural community in Alberta that because it's such a small group of people, if you don't have a perceived conflict of interest, you do not understand the business. This goes back to MLA Luan's comments on how far you can go without jeopardizing wise and good decisions. When you mentioned that things require interpretation, we would sit, I think, in limbo for a great deal of our time. How would you suggest that be dealt with?

Then my second point. What do you think should be done with people who recuse themselves and really shouldn't, who should be held accountable for making a decision? Should that be part of this act as well?

**The Chair:** Okay. That's all of our questions. Mr. Schafer, if you would like to take those at your leisure. We've got about three minutes left, a three-minute, leisurely talk.

**Mr. Schafer:** Okay. I'll offer a few general comments because lots of points have been raised.

Let me start with small communities. If you're working in a small community, it's often going to be nearly impossible to avoid conflicts of interest. Everyone knows everyone else. Everyone else is either a neighbour or an enemy. There are very few suppliers. There may be one physician, one dentist. So small communities often have difficulty. On the other hand, there is usually more transparency. Everyone knows what the conflicts of interest are. So I'm sympathetic to being more flexible when it comes to small communities.

On the other hand, I know that in Manitoba a number of our smaller municipalities are really dense of corruption, with the mayor or councillors shovelling out contracts to people who are very closely connected to them without open bidding and without fair accountability. It's a problem. It's a tension, I think, inescapable from being part of a small community.

Broad versus narrow. If you have very general guidelines, then you're likely to capture more of the items you want to capture, but on the other hand, you may capture too much. If you've got very specific guidelines, there's greater clarity, rigour, and predictability, but you may end up missing something really important.

Let me just tell you that there have been thousands of versions of the physician's code of ethics, the Hippocratic oath, in the several thousand years since Hippocrates first formulated it. During certain centuries the Hippocratic oath covered page after page after page, tens of thousands of words, as people who were cynical about doctors and suspicious of doctors tried to nail down very specifically what was ethical and what was unethical for doctors to do. The current physician code of ethics that your medical students and ours will take is less than one page and consists of four or five brief paragraphs.

There are advantages and disadvantages. Our physician code of ethics – the contemporary one, usually some version of the Declaration of Geneva – starts off with the principle: the life and health of my patient will be my first consideration. I think that's really important, but what does it mean in practice? Well, in practice the college of physicians and surgeons for each province is going to have to develop a whole bunch of precedents. What does it mean that the life and health of your patient is your first consideration? Does it mean that a patient's family can demand that they stay forever in the ICU even though they're now in a terminal vegetative state?

All sorts of difficult problems will arise, so you're going to have to make a choice. The more narrowly focused and defined you make your code, the clearer it will be, but the easier it will be for gaps to appear where outrageous things turn out not to be covered by the code. So there's kind of a balance or trade-off, and I don't know that there is one right answer.

On the issue of repercussions – I don't know. I think conflict of interest sometimes involves such a profound betrayal of trust that the proper punishment should be that you're kicked out of office or that you lose your licence to practise whatever the profession may be or that you're fired from your job. On the other hand, there are other cases of conflict of interest that seem to be pretty minor. So having a commissioner or having an adjudication process I think can be important, but the commissioner needs good legislation with which to work. If the commissioner is very legalistic and you've narrowly defined the crime, I'll call it, then all sorts of people are going to be found innocent – and that's going to undermine public trust – in circumstances where everyone knows that this doesn't pass the smell test. It's a kind of trade-off. There is no magic formula, and the balance that's appropriate may change or shift over time.

Just one last quick comment. Let me take the farmer example. I think it can be tough. If I'm a farmer and I'm voting on legislation to compensate farmers in the event of, let's say, a drought or a flood and I'm one of those who will be compensated – on the one hand, you want physicians who are also legislators to be able to use their knowledge of medicine in their role as legislators. You want lawyers to be able to bring their background in law. It would be good if we had many fewer lawyers and many more farmers, artists, broadcasters – maybe I didn't want to say that – people from diverse backgrounds. I mean, we don't want to exclude you from speaking and voting because you're a farmer because you may have the best knowledge. On the other hand, if you stand to benefit substantially from the compensation program on which you're voting, there's a real question of whether you can exercise unbiased judgment. That's a really tough call, and I'm not sure how to answer it. I'll plead ignorance.

I think there are gains and losses whichever way you go. Clearly, if it's a particular region of the province and you are heavily invested in that region and it covers your farm, it may be that you're not just a farmer. You're a farmer who is practising just outside Calgary, and that's the area that's going to get the compensations.

11:10

Accountability. Yes, I think people should be accountable, and they should sometimes recuse themselves where there's a tension or potential tension or conflict. I suspect in the end it's going to be on a case-by-case basis, and those may be the situations that have to be referred to your commissioner, who's going to have to decide whether a reasonable Albertan would lose trust in the Legislature if you spoke and voted on this issue or whether they would say: "Well, no. Your participation is reasonable." Tough judgment calls.

Thank you for your comments. As you will have detected, my expertise, such as it is, involves the broad ethical principles, and translating those into legislation is a different art and science. It's not one at which I would claim great expertise, but I will look over whatever materials you send me and happily offer some comments and suggestions.

Thanks for inviting me.

**The Chair:** Good. Thank you very much, Mr. Schafer, for sharing your thoughts on this. We appreciate your taking the time to meet with us this morning.

That wraps up our time for this agenda item. Before we proceed to the next presentation, I am going to call a short health break. We'll reconvene in five minutes, and that will allow our staff to look after the technical side here and get Mr. Shapiro set up.

Thank you very much.

[The committee adjourned from 11:12 a.m. to 11:20 a.m.]

**The Chair:** Okay, everyone. In the interests of time I'm going to call this meeting back to order, and we're going to proceed with our next presentation. I know we just have a couple of members that have stepped out for a minute that should be right back. If I can ask for everyone's attention, we're moving on with our next presentation.

We're joined this morning by Dan Shapiro, communications and research associate with the Sheldon Chumir Foundation for Ethics in Leadership. Once again I'll ask committee members to hold their questions until the end of the presentation, and I will as well just maintain a speakers list.

Mr. Shapiro, welcome, and thank you very much for joining us this morning. Proceed with your presentation.

## Dan Shapiro Sheldon Chumir Foundation for Ethics in Leadership

**Mr. Shapiro:** Good morning. Thank you very much to the committee for the opportunity to present on the Conflicts of Interest Act review. Our president, Alastair Lucas, sends his regrets. He completed the legal analysis of the act for our written submission. Unfortunately, he is out of province and unable to attend. I'm not a lawyer, so I won't speak to technical, legal questions about the act but will focus my remarks more on the broad principles concerning ethics and integrity that we think should inform your review.

Just a few brief notes about the foundation. The Sheldon Chumir foundation is a nonpartisan registered charity based in Calgary that aims to nurture public demand for ethical leadership. As many of you are likely aware, our founder, Sheldon Chumir, was a two-term Alberta MLA. During his time in office he became known for his commitment to principles concerning the protection of individual rights and liberties, the importance of open, transparent, and accountable government, and the idea that elected officials must be held to the highest standards of ethical conduct, befitting their role as community leaders. It is with Sheldon's public service as an MLA in mind, as well as the foundation's related work in the promotion of good governance, rule of law, democratic institutions, and ethical leadership, that I offer the following remarks on the recommendations made in more detail in our written submission.

I'll just stick to the headings that we laid out in that submission and give a few brief remarks about each section. Under Nomenclature, Commissioner's Mandate, and Scope of the Act, our main concern under this heading is that the act not only be appropriately focused on its objectives but also that this be as clearly articulated for the public as possible. Since the act is focused on conflict of interest, primarily narrowly defined in terms of financial interest, we think it more appropriate that the title of the Ethics Commissioner and the office of the Ethics Commissioner be amended to reflect this fact. If the mandate is to remain focused on financial conflict of interest, then the title should be changed to conflict of interest commissioner and office of the conflict of interest commissioner. I think this reflects largely what is done in other jurisdictions.

This clarity of nomenclature would help citizens to grasp the nature of this important role and its appropriate focus. The broader term "Ethics Commissioner" seems to imply that the office is empowered to deal with broader ethics-related issues in government and the Legislature. The fact that the commissioner and the office are not so empowered can lead to public cynicism concerning why only actual instances of demonstrable conflict of interest, here defined in terms of financial conflict of interest, constitute violations deserving of sanction while other perhaps ethically questionable behaviour does not. I think some of this gets to quite a bit of the discussion with the last presenter.

An obvious alternative, though, would be to expand the mandate of the commissioner and the office to include broader integrity and accountability measures. I notice that the submission from the Nunavut Integrity Commissioner actually makes the recommendation that the act not necessarily be expanded but that the office be changed to be the integrity commissioner with the idea being that it's speaking to broader measures having to do with integrity and promotion of public trust in the Legislature and its members.

The Chumir foundation, unfortunately, does not have specific recommendations in this regard, but we would encourage the committee to investigate best practices in this area in order to link

various accountability realms under a more comprehensive framework of open government that would include fiscal transparency, conflict of interest rules, access to information, and so on. One way might be to think beyond sort of the current, more narrowly defined act. One example to consider is the way in which Ontario's Integrity Commissioner is empowered to deal with "wrongdoing," defined more broadly than "conflict of interest." You can see page 3 of our written submission for quotation of the specific wording.

Our overall recommendation here is that the mandate of the Ethics Commissioner and the scope of the Conflicts of Interest Act be rethought more broadly than in terms of changes to the wording of the current act although, having said that and having listened to the earlier questions asking for specific wording, I would say that if that's not to be the case, then just renaming it to more accurately reflect the actual role of the commissioner and the office would make some sense.

Now, moving on to our heading of Advice and Recommendations by the Commissioner, we think it's a good thing that there's a mechanism for members, former ministers, and political staff members to be able to receive advice concerning their obligations under the act. We think promoting awareness and prevention, if you want to call it that, or compliance in advance is of course a very good thing, both for the members themselves and also for promoting public trust. However, there is a potential conflict of interest for the commissioner where he or she provides binding written advice concerning certain facts and then later receives a request to investigate the same person concerning the same situation. This could of course be further complicated by the emergence of new facts of which the commissioner was not apprised at the time of the original communication with the member.

We encourage the committee to consider ways in which the responsibilities for providing advice and conducting investigations could perhaps be divided. The creation of something like an ethics or a conflict of interest adviser position separate from the commissioner, who is the one charged with investigating complaints, would strengthen public confidence in the findings of those investigations.

There's a further complication here regarding section 43(3), whereby the advice and recommendations of the commissioner are confidential until released with the consent of the member. As a result, we can imagine a situation where a member, former minister, or staffer does not consent to the release of that advice but then makes claims about what the Ethics Commissioner recommended that are not in line with the actual advice and the recommendations. If the Ethics Commissioner is not able to set the public record straight by releasing that information because he's bound by that confidentiality, then this can only diminish public confidence in the office, which, of course, is a bad thing.

Now, there may be cases where the behaviour of a member, former minister, or political staffer is an apparent rather than an actual conflict of interest, but even this cannot be clarified for the public without the party in question consenting to the release of the relevant information. I can't help you necessarily with the wording of how to define apparent versus actual conflict of interest. One way to perhaps deal with that that isn't so much about sanction and so on but is rather about ensuring integrity in public trust is to make it the case that that advice and information can be released to the public so that the apparent conflict of interest can be clarified, and we can see that in fact there isn't a breach in that case, again, without necessarily having the member's consent for the release of that information. While we're mindful of privacy concerns for members, especially regarding personal financial matters, we think that the system should err on

the side of the greatest transparency and openness possible since citizens' trust in public officials and institutions is at stake.

Now, this last point raises some related concerns under the heading of Compliance and Enforcement that we used. Our chief concern here is that the inherently partisan nature of politics raises concerns – and that's not a value-laden statement; that's just to note as a fact – about the Legislature's powers to accept or reject the Ethics Commissioner's findings, especially since the commissioner is an independent officer of the Legislature. I believe there are some other independent officers of the Legislature who do have such powers, but the Ethics Commissioner does not. We think it appropriate that the commissioner should have compliance and enforcement authority. Again, here the emphasis should be on promoting public trust, discouraging cynicism about members, promoting the integrity and good behaviour of members, not necessarily about being overly punitive; nonetheless, that power should be vested in the commissioner.

A review or appeal function could be vested in the courts if there were concerns about those decisions not being subject to review and that being a problem in the case of a member feeling that they did not get a fair shake. This would be so as to preserve the commissioner's impartiality while still sending the message to the public that partisanship in the Legislature would not play a role in conflict of interest compliance and enforcement; in other words, where the Legislature might not agree to enforce the suggestions of the commissioner in a particular case.

Now, turning to investigation on the commissioner's own initiative, I noticed this in a number of other submissions from other parties agreeing with this. I gather this was almost universally suggested in the prior review of the act but was not incorporated into the act; nonetheless, we think the Ethics Commissioner should also be empowered to initiate investigations without a public request. This models the federal act, which specifically empowers the federal commissioner to initiate investigations. The idea that the commissioner would not only be responsive to public complaints, which, of course, they should be, but also proactive in initiating investigations can only enhance public trust in the office and therefore in the notion that members, former ministers, and political staffers will be extremely diligent in regulating their own conduct with regard to the act.

### *11:30*

Now, just to pick up on one comment or counterargument that I think people might make about the likelihood that this would actually decrease disclosure from members and so on, I would point to what the Canadian Civil Liberties Association notes in their written submission: we don't think this is likely to prevent members from seeking advice in advance but in fact, rather, to encourage it so that they know they're going to prevent being in a situation where they're in breach of the act. So I don't think the commissioner being able to initiate investigations is going to necessarily deter people from seeking his advice in advance.

I would also say that, going back to one of my earlier points, if it were the case that, in fact, the advisory and investigative functions were split in any case, you would solve that problem although I realize that's not how it is under the current act.

Now, finally, some brief remarks on the definition of private interest, being mindful that this may get me in trouble in terms of requests for specific wording and definitions that I will also not be able to provide to you. Nonetheless, we recommend that you consider amending "private interest" to include the interest of members in their status as members; in other words, their interest in furthering their own re-election. The idea here is to prohibit the

use of personal or party-related images or advertising in communications directed to the general public.

The case in point here – I’m not referencing an Alberta example – is the federal Conflict of Interest and Ethics Commissioner’s consideration of the use of partisan images on cheques and advertising used to announce federal funding initiatives. The restriction of the Conflict of Interest Act to private interests, narrowly defined, means that such behaviour does not breach the act. However, the use of partisan images in the announcement of public funding initiatives can only increase public cynicism and thereby decrease public trust concerning members’ interest in their own status as members above the promotion of the public interest or their public duties. Clear rules restricting promotion of the partisan interests of members and their political parties as well can only help to promote public trust in public officials’ efforts to uphold their duties as democratically elected officials serving the citizenry as a whole.

I do understand from both the Cheques Report from the federal commissioner and one of the other submissions, which I read and can’t call to mind at the moment, that there are provisions dealing with precisely this issue already in guidelines and policies in Alberta. I guess all I would say is that even if this isn’t happening, maybe it’s, nonetheless, a good idea to put it in legislation just as a clear indication to the public and also to members that this is taken very seriously and that there isn’t any room for pressing one’s own partisan interests as a sort of subspecies of their private interests. I would just refer you to what’s called the Cheques Report, issued by the federal office of the Conflict of Interest and Ethics Commissioner for further consideration of this issue.

I think I’m probably for the first time in my life under time. I’d like to thank you for your time and the opportunity to present to the committee. Of course, I’m happy to take questions regarding my remarks or the Chumir foundation’s written submission.

**The Chair:** Well, thank you very much, Mr. Shapiro. That was very concise and to the point. We appreciate that as a committee, I’m sure.

We do have only one hand that’s been raised so far. Ms Notley.

**Ms Notley:** Thank you. A lot of really good points, which we’d already had a chance to read through in your submission as well. I’m curious. I’ve been sort of giving some thought to this issue of sort of the advisory counselling role of the Ethics Commissioner’s office versus the enforcement, deliberation, and adjudication role. It is something that has troubled me in the past. That’s interesting where you’re proposing – I mean, they’re both good roles, but it’s potentially difficult, so you kind of crystallized some of the concerns that I had there. Are there other jurisdictions out there that you’re aware of that split those roles? Alternatively, do they emphasize the advisory role to the same degree that we do here, or is it a different mix? What’s the state of the union out there in terms of that particular issue?

**Mr. Shapiro:** That is a very good question. I’m not particularly aware of that, as a matter of fact, in any other jurisdictions, really. But I would just say that, of course, we support both of the roles, as you pointed out. We think they’re both hugely important. I can’t answer that question, though, as far as other jurisdictions go.

**Mr. Odsen:** I can.

**The Chair:** Mr. Odsen, you had a comment or question?

**Mr. Odsen:** Yes. The only jurisdiction that sort of has that, to my knowledge, is the province of Quebec. In Quebec they have what

is called a jurisconsul, who provides advice, and that’s the only role that that individual has. They did not have an Ethics Commissioner up until a couple of years ago.

**Ms Notley:** That’s worked out well for them.

**Mr. Odsen:** They do now have an Ethics Commissioner, who has an investigative role, but the Ethics Commissioner has an advisory role as well, similar to the Alberta model. So you’ve really got kind of two advisers now in the province of Quebec. The Ethics Commissioner is very recent in the province of Quebec, so we don’t know how that’s all going to play out in the way it goes. But that’s the only jurisdiction that I am aware of. Well, I know for a fact that in Canada that’s the only one that functions that way.

**Ms Notley:** Thanks.

**The Chair:** Okay. Good comments. In fairness to Quebec I will point out that the recent news is actually more of a municipal matter than a provincial matter.

I didn’t see any other hands pop up. Were there any other questions for our presenter? We do have one.

**Mr. Dorward:** Yeah. I was going to wait a bit, but that’s fine. I’m intrigued by this notion of starting investigations without a complaint and having the power with the commissioner. Where I stumble with that is: could you maybe give us an example, or are there any examples that you’re aware of where it was necessary to have that happen, where the public didn’t have anybody come forward to the commissioner and let them know that an investigation should be started? In other words, I kind of feel that if the commissioner sees something that is probably going to warrant his investigation, is that not also something that’s been seen by others that would likely bring it forward anyway? I just would like to kind of – and maybe there are other panel members that could enlighten me as to why this is kind of an issue.

**Mr. Shapiro:** I can’t think of a specific example, but I guess the suggestion isn’t that it would be used sort of willy-nilly every time he felt like initiating an investigation. I think it’s more that the potential would be there if there was to be a case where the commissioner was aware of something and perhaps in a better position to be better apprised of the facts than, say, members of the general public.

I can also think of where there might be cases, you know, vis-à-vis anonymous complaints, for example, where people might be unwilling to come forward because they’re worried about some kind of retribution or something like that, so perhaps members of the general public or of a department somewhere or whatever might not come forward with an issue that they know about. But if the commissioner himself becomes apprised of those facts, then he might be able to initiate that investigation. I think we can all kind of think up examples where that sort of thing happens fairly easily. Again, it’s not that it’s there, that he’s doing it all the time; it’s that it’s there as a potential possibility when needed.

**Mr. Dorward:** Yeah. Maybe a supplementary. Are there any comments from our commissioner or his staff on that particular issue?

**Mr. Wilkinson:** Sure. Seeing that we’re asked, Mr. Chair, if we may?

**The Chair:** Yes, please.

**Mr. Wilkinson:** I'd ask Brad Odsen to make that comment. He's our lead on investigations.

**Mr. Odsen:** Thank you, Mr. Chair. We believe that under the act as it's currently worded, we do have the power to do that although it doesn't specifically state that we can self-initiate investigations. Think of the scenario, for example, of something occurring in the media. I mean, obviously, if you don't know about something, you can't investigate, right? But if you do know about something and a complaint hasn't come but let's say that something comes up in the media and nobody comes forward asking for an investigation – I think that's almost incomprehensible, but that situation happens – the commissioner has the power under the act, section 43(3), I believe, to initiate the giving of advice to a member. So if it's a member and it's in the media and it looks like something that might fall within the Conflicts of Interest Act and is a matter of concern, the commissioner has the power and, clearly, would contact that member, get some information on what's going on, and undoubtedly end that discussion with: "Here's my advice, and it will be followed by written advice. This is what you need to do." Now we've got binding advice.

**11:40**

If the member follows that advice, the situation presumably has been rectified. If the member does not, then the commissioner has the power to self-initiate an investigation for failure to follow advice. That also addresses your earlier point, too, about the potential conflict between the commissioner giving advice and then subsequently being asked to investigate.

If there are new facts, then clearly the advice that was given was based on the facts that were present at the time. New facts mean that things have changed, and the commissioner does have the power to investigate. So there isn't that conflict, in fact, in the act as it's presently worded.

**The Chair:** Good. Thank you, Mr. Odsen.  
Next we have Mr. Wilson.

**Mr. Wilson:** Thank you, Mr. Chair. I simply want to add to the dialogue Mr. Dorward brought up about why the Ethics Commissioner may choose to self-initiate, and I just want to give a hypothetical scenario. Perhaps if a disclosure statement is filed that the commissioner is not comfortable signing off on, that's not necessarily going to be public information. No one in the public would know that because it's confidential. But if your commissioner is not comfortable signing off on it, you should have the opportunity to investigate and figure out what's going on.

**Mr. Wilkinson:** Well, we do have the power to investigate. We would say: this is our advice, and this is what the requirement is. If they don't do it, then, again, they're breaching the act, and we can launch an investigation.

**Mr. Wilson:** Has that happened?

**Mr. Wilkinson:** Yes.

**Mr. Wilson:** Where you've refused to sign?

**Mr. Wilkinson:** No. No, I've never refused to sign, because there's never been an issue that has not been resolved but there's not been an investigation either. There's been an investigation afterwards because information came to light that wasn't included, right? So then we can do an investigation. We can give advice, and if the advice isn't followed, we can do an investigation.

**Mr. Wilson:** Okay.

**Mr. Wilkinson:** Anything else anybody wants to add? Glen or Brad?

**Mr. Resler:** Yeah. There wouldn't be an instance where if you refuse to sign a disclosure document, the member would not be in compliance with the filing of the disclosure document, so that's where the binding advice would flow from there. Then if the information still wasn't provided to us, an investigation would be enacted. Yeah.

**Mr. Wilson:** And that's currently in the act.

**Mr. Resler:** As far as the process on the disclosures that they have to follow.

**Mr. Wilkinson:** Sorry. You were asking if they didn't sign. I thought you were talking about me not signing.

**Mr. Wilson:** Yes. The commissioner.

**Mr. Resler:** If the commissioner would not sign.

**Mr. Wilkinson:** Yeah. Okay. Because of inadequate disclosure.

**Mr. Resler:** Yeah. It would be incomplete.

**Mr. Odsen:** So make it adequate, or you're in breach, right? We'll do an investigation.

**The Chair:** That's pretty clear. Okay.  
Ms Fenske.

**Ms Fenske:** Thank you. I know that in your submission you have clearly highlighted private interest partisan actions. Some of our conversation from the previous presenter was on apparent versus perceived. Then, of course, we went on from there as to: how broad or how narrow do you have to identify apparent or perceived? Could you provide me some thoughts on where you would see that in this act or how you would see that addressed in this act?

**Mr. Shapiro:** I think it's very difficult. I believe it was in the commissioner's submission that they quoted the B.C. commissioner as saying that when it comes to apparent conflicts of interest, while it sounds pretty easy, you find an independent, nonpartisan, rational person apprised of all of the facts, except that that's actually pretty tough to find. I mean, you know, having not gone through this in detail, I think my intuition is that I would be wary of wanting to try to capture apparent conflict of interest specifically in the act in terms of clearly delineating exactly what it is and what is to be done about it because lots of things are apparent conflicts of interest, as we saw in the earlier discussion, where that doesn't necessarily mean that there's going to be some kind of consequences or sanctions. So I think that's difficult.

I should say, you know, that the way the foundation comes at most of these things and what we're concerned most about is public trust and the integrity of institutions and the members of those institutions and so on, so I think it's hugely important that it be fostered as much as possible. I think it can be done partly through the advisory role and sort of trying to help people make sure that to the greatest degree possible there isn't even the appearance of conflicts of interest. But there are going to be – I think someone mentioned it earlier – times when somebody out there is just going to say: ah, well, that looks like a conflict of interest to me. You can be perfectly in line and have all your

ducks in a row, and someone is still going to say that. I don't think you can sort of legislate that away, so I would be wary about putting apparent conflict of interest into the act specifically.

**Ms Fenske:** Thank you.

**The Chair:** Okay. Thank you.  
Ms Notley.

**Ms Notley:** Thank you. I had one question for Mr. Odsen just following up on his previous statements – sorry – and then a question for you on a different topic.

In terms of what you're saying with respect to your ability to initiate your own investigation as a result of somebody not following binding advice, if you do that, is the investigation limited to the decision to follow or not follow the binding advice, or does it go back to the beginning so that we have a fulsome discussion of what generated the binding advice in the first place?

**Mr. Odsen:** To begin, I suppose, to my knowledge the situation has never actually arisen yet where this has happened, so we would have to see. But it would clearly be, I think, initially around the issue of whether or not the advice has been followed. Now, the advice would be in relation to the apparent breach of the act, so it would be: this is our advice with respect to this apparent breach of the act. It may be, just as an example, that the advice is that you need to formally request that we investigate you. For example.

**Ms Notley:** Hmm. Okay.

**Mr. Odsen:** It could well be that advice. Depending on the circumstances, that could be the advice. You need to formally request that we investigate you. If you do, we will. If you don't, we still will.

**Ms Notley:** We'll investigate that you didn't request it.

**Mr. Odsen:** That you didn't follow our advice.

**Ms Notley:** I just want to make sure that we're not sort of tying ourselves up in knots and ultimately potentially limiting the authority of the commissioner to engage in as expansive and as fulsome an investigation as may ultimately be determined necessary. I know that there have been a lot of cases in the past – and I realize that at this point you're not subject to the courts – things that have, you know, risen and fallen over people not being allowed to look into certain things. We know that that can be a pretty significant problem. Creatively using that section to get to something else: is that the best way to go, or is it better to just give you the full authority?

**Mr. Odsen:** I appreciate what you're saying. Again, I think we feel that we would have the scope and authority to conduct as fulsome an investigation as the circumstances warrant in an instance like that. But further and in any event, as with all investigations, the end result of an investigation is findings of fact and recommendations to the Assembly. The Assembly then has the opportunity to review that, to go further if they want, to come to different decisions, to determine whether or not there are any sanctions that ought to be applied, any of those kinds of things. The member who has been investigated has the opportunity to stand up in the Legislature and, again, make any submissions that they may wish to make concerning the findings, all those things.

**Ms Notley:** Exactly. My concern would be that in the latter case the findings of fact would be that they didn't follow our recom-

mendation. That would be paragraph 1. That would be the end of the findings of fact because the rest of the facts were gathered under a different provision of the act.

I know we're getting highly legalese, but I'm just sort of saying that if you know for sure – for sure – that wouldn't be a problem, that's fine, but if we're not totally sure, then maybe there's a more direct way to get at that issue. That's all.

**11:50**

**Mr. Odsen:** I appreciate what you're saying, and it may well be that that's the case, as I say.

**Ms Notley:** Right.

**Mr. Odsen:** My interpretation is that we would have the ability to go beyond, "This was our advice." We would have to say: "What's the background? How did this come to our attention? What did we do? What was the advice that we gave? Why did we give this advice? Here's what we found happened in relation to that advice which is what led to this investigation, and here's what our recommendations are." So you would get the complete picture, I would say.

**Ms Notley:** Can I ask the question of our presenter?

**The Chair:** Actually, I was just going to comment that we probably want to focus most of our questions to the presenter today as the other folks at the table are at all of our meetings.

**Ms Notley:** That's right. Fair enough. Yeah.

Going back to one of the other points that you raised, the whole issue of whether or not the office currently has the capacity to sort of engage in a review of ethics as opposed to narrow financial conflict-of-interest issues, you said that there was the Integrity Commissioner in Ontario. Is that widely the case, or do you know in terms of the interjurisdictional stuff – and I apologize if that's covered in your interjurisdictional stuff that we've been provided. I haven't had a chance to look at it in as much detail. But I thought you might know where or what the status is of that broader set of rules around ethics.

**Mr. Shapiro:** I should say that I have requested a copy of that, which I also have not seen, so that would be helpful in thinking about some of that.

No. In the particular example I have cited, it's specifically related to wrongdoing. That had a more expansive definition than financial conflict of interest, but it wasn't getting as broadly into the kinds of ethics concerns, for example, that we were hearing about from our prior presenter. Obviously, a lot of those things are not the kinds of things you can – you know, he made the point about what's legally permissible but perhaps ethically suspect. The lines are not the same. Obviously, you can't capture all of the latter in legislation, nor do you want to.

I guess the point more that we were making, again, as an organization that's concerned about ethical leadership, that's concerned about public trust in good governance and institutions and all of those and everything that comes with that – transparency, accountability, all of that – is not that we would see a role for legislation there in specifically trying to sort of nail people on the ethics every time but maybe a broader ethics promotion kind of way, and that would maybe fit more with the advisory function.

I mean, an analogy that I know – it's not perfect, but it's maybe something that I know better about – is, say, the Human Rights Commission has an adjudicative function, obviously, vis-à-vis complaints, but it also has an educational side, the purpose of

which is the promotion and protection of human rights in Alberta. That includes, you know, educating employers about their responsibilities and that kind of thing. Obviously, the point being that you're dealing there with the broader public, and here you're dealing with a more specific subset of individuals, but the point just being that maybe if that ethics promotion role, that integrity kind of promotion role, is seen by the public to be taken very seriously and sort of given a fuller mandate, that just sends a really important message, which is more the point that we were making than how you would specifically . . .

**Ms Notley:** Do it.

**Mr. Shapiro:** . . . put it in the act. Exactly.

**Ms Notley:** Are there any other jurisdictions that have codes of conduct or anything like that?

**Mr. Shapiro:** Yeah. Your research report is probably the place to look for that.

**Ms Notley:** Okay. Fair enough. Thanks.

**The Chair:** Okay. Moving on to Ms Blakeman.

**Ms Blakeman:** My question is actually for the Ethics Commissioner and his legal counsel, so I don't need to do it now, but I would like to do it today.

**The Chair:** We'll make it through the rest of the questions, then, and if we have time still, then otherwise – and it was no disrespect. It's just that we only have a limited amount of time with our presenter.

Ms Fenske.

**Ms Fenske:** Thank you. I would just like to ask you if you have any additional comments on the private interest as it refers to members in their status as members of a party. The example that you used in your brief was the identifier of a party symbol on a cheque that was at the federal level. Certainly, you talk about any other kind of use of personal or party-related images or advertising in communications directed to the general public. I didn't know if you had any other comments you would like to make in that area.

**Mr. Shapiro:** No. Other than that, I think, we also note in there that perhaps there needs to be some way to look at – I mean, because parties are not persons. That was an issue in the federal investigation, that they were not covered by the act so that, you know, where one acts to further one's private interests because of their relation to a person, and the party is not a person, then it doesn't come into play.

I do think, though, that the negative definition vis-à-vis private interest is, as far as I can see, the better way to go. I don't think you want to get into a situation where you're trying to specify every possibility because then you may preclude cases that should fall under the act. Now, how you actually work to get in our point about partisan interests being in some sense a subspecies of private interest I think is difficult to do so that you can actually pin it down in that wording. Again, I don't have specific advice about that.

**Ms Fenske:** Okay. Thank you.

**The Chair:** Okay.

**Mr. Saskiw:** I have two questions. My first question. I think that on page 5 of your submission is that right now the commissioner

does an investigation and rules, but the punishment is decided by the Legislature. In your submission I think you've stated that it's appropriate for the commissioner to have that power and then to have an appeal mechanism to the courts. What would that appeal mechanism look like? Do you have any ideas surrounding that?

**Mr. Shapiro:** Not specifically, no.

**Mr. Saskiw:** Likely an appeal mechanism to the Queen's Bench, and the member would have fulsome rights there?

**Mr. Shapiro:** Yeah. Absolutely.

**Mr. Saskiw:** Sure.

My second question is regarding your comments on apparent or perceived conflict of interest. I think the two are basically the same. In the lawyer's code of professional conduct there is apparent conflict of interest, and you look at the reasonable person and what that person would have thought. I guess, you know, one would want to capture certain situations. I'll give you an example. Say that I had a friend for 20 years. He was the best man at my wedding, he's my campaign manager, and so forth. I was a cabinet minister, and I decided to award him a \$5 million contract. Now, to the average public, clearly I should recuse myself. That is beyond doubt. What would you suggest to put in legislation that would capture that without specifically defining relationships? I don't think you'd have a best friend relationship. I know that in securities legislation there's a close business associates definition. I'm just wondering what your comments would be.

**Mr. Shapiro:** My first thought would be that you fit it in under the relationships in some way and that you try in some sense to capture proximity or whatever. It goes back to some of the questions with the earlier presenter, you know, about how you could see a conflict of interest everywhere, that sort of idea. I think, again, where things if they're of general application and they're having to do with a member as a member of the broader public and so on, those things – you can kind of rule out a lot of the ones where people will point fingers because they think it doesn't pass the smell test, but it actually does on a kind of reasonable interpretation.

The kind of example that you give. It seems to me that there actually are intuitions, or the smell test if you want to call it that, that probably line up more closely with what should not be allowed; i.e., it should be a breach. It seems to me that in some way maybe expanding some of the definitions vis-à-vis what counts as a person who is related to the member in terms of their private interest might be – I mean, that came up in the other earlier example as well about spouse versus ex-spouse and so on, right? I think there's maybe room for some expansion in some of the definitions in that regard.

**Mr. Saskiw:** Thanks.

**The Chair:** Okay. Thank you.

Mr. Wilson.

**Mr. Wilson:** Thank you, Mr. Chair. My question was covered.

**The Chair:** Oh, good.

Then we do have time. Ms Blakeman, you had a question for the Ethics Commissioner.

**Ms Blakeman:** I did. Just following up on what you were putting out there because I note that under request for investigations it

spells out who can request one: a member, the Legislative Assembly, or Executive Council. The power is not given to the Ethics Commissioner there. Under investigation and inquiry, section 25, is that where you are taking your authority from? It's unclear in that section.

When I look further on to some of the other ones where I might have expected to find it, I'm not finding it. It's giving various other political powers, you know, to hold an inquiry in public and that kind of thing, but nowhere in here does it specifically say that the Ethics Commissioner can commence an inquiry or an investigation on own motion. So are you taking it from section 25, which is specific to a situation where someone "has acted or is acting in contravention of advice, recommendations or directions"?

12:00

**Mr. Resler:** It's in section 25(1).

**Ms Blakeman:** Well, that's what I'm reading.

**Mr. Resler:** "Has acted or is acting in contravention of advice, recommendations or directions." But the binding advice . . .

**Ms Blakeman:** Fair enough, but it's referencing section 24, which is, you know, on receiving a request, which again empowers only a Member of the Legislative Assembly or Executive Council to request an investigation on an alleged breach. Then it goes on to say that once you've had that request, if the commissioner believes that the member had advice and didn't take it, he can conduct an investigation. But that's not giving own motion because once again it's a member, Executive Council, or the Legislative Assembly. I'm wondering where you believe your power for own motion is coming from. If you can't find it now, I'm happy to receive it in writing through the clerk.

**Mr. Resler:** Okay.

**The Chair:** Yes, Mr. Shapiro. You have a comment.

**Mr. Shapiro:** I mean, I would just interject to pick up on that point and I think Ms Notley's earlier point, too, which is that it seems less cumbersome to just make it the case that the commissioner can actually initiate the complaint. Whether it can be done in this other kind of way seems to be a subject of debate, but it seems to me that if we think that that power would help to improve public confidence in the ability to make sure that members are behaving as they should, then it seems reasonable that the commissioner should have that initiative.

**The Chair:** Okay. Were there any other questions from any of our committee members?

Not seeing anyone rush to a microphone, I'm going to say that we've concluded this part of our meeting today and this presentation. I'd like to thank you very much for taking the time to come to Edmonton to meet with the committee and make this presentation and for your contribution also through your written submission to the committee. Thank you very much, Mr. Shapiro, and we'll hopefully see you in the future.

Just a note to the committee because this is a committee document. Mr. Shapiro had indicated to me prior to his presentation that he would also like to have a chance to review the crossjurisdictional comparison that we mentioned earlier. If the committee would like to release that to him as well, we would make sure that he would have that e-mailed to him.

**Dr. Massolin:** Mr. Chair, it is okay with us. It's all right with us as long as it's all right with the committee.

**The Chair:** All right. Thank you.

Mr. Shapiro, we'll make sure that you get a copy of that for your review.

**Mr. Shapiro:** Thank you very much. I appreciate the opportunity to present.

**The Chair:** Thank you.

Yes, Mr. Odsen.

**Mr. Odsen:** Yes. I'm sorry. I apologize. I didn't have a copy of the act in front of me to actually look at in response to Ms Blakeman's question. The answer is straightforward. In section 25 it says when an investigation is requested "under section 24 or where the Ethics Commissioner has reason to believe." That's where the power comes. It's not dependent upon section 24. It's section 24 or alternatively the other circumstance. That's where it arises. I was pretty sure that word was there, but not having it right in front of me, I couldn't reference it.

**The Chair:** So, Mr. Odsen, you're suggesting that that recommendation already exists within the act?

**Mr. Odsen:** I'm saying that the power is there in the circumstances. Now, that isn't to say that if the committee in its wisdom wants to add a specific subsection to section 24 stating that the commissioner can initiate on their own behalf – that's fine. That's up to the committee. Obviously, we follow what the legislation says. I'm simply pointing out that we believe that we have that power right now.

**Ms Blakeman:** Thank you.

**The Chair:** Good. Wonderful.

Thank you again, Mr. Shapiro.

We'll move on to the next item on our agenda. We have a few more items of business to wrap up today. Under committee research support – and this is a follow-up to the previous meeting – based on questions raised at that meeting, staff put together these four additional research documents for our use. The documents were distributed to committee members last week. I'd like to take a few minutes for a brief overview of each item.

If we could start with number one, which is the revised cross-jurisdictional comparison. Ms Robert, could we ask that you give us a brief run-through of this document?

**Ms Robert:** Sure. Thanks, Mr. Chair. The committee discussed the Ethics Commissioner's ability to waive the application of the cooling-off period at its last meeting on May 7. Our office was asked if ethics commissioners from other jurisdictions also had the ability to waive the application of the cooling-off period for former members of Executive Council or former senior political staff members. In response to that request we worked with the Department of Justice and Solicitor General and the office of the Ethics Commissioner to look at the provincial and federal conflicts legislation with respect to this question. We put the information that we found into a table that is contained in appendix A of the crossjurisdictional comparison, which was posted on the internal committee website a week ago. We called it table 2, and it begins on page 46 of the crossjurisdictional comparison.

I'll give you a brief synopsis of the information contained in table 2. Conflicts of interest acts in several jurisdictions contain provisions stating that postemployment restrictions do not apply to contracts or benefits with respect to further duties and service of the government. As such, in those circumstances a waiver by the

Ethics Commissioner is not required. The jurisdictions that contain these provisions are British Columbia, Saskatchewan, Manitoba, Ontario, New Brunswick, Nova Scotia, and Prince Edward Island. In addition, the ethics commissioners in Saskatchewan and Nova Scotia and the Executive Council in Manitoba are able to waive the application of postemployment restrictions under certain circumstances, for example if the “terms of the contract . . . are fair and reasonable, and [the exemption] is not contrary to the public interest.”

The Ethics Commissioner in Newfoundland and Labrador has the ability to waive applications of postemployment restrictions “on those terms and conditions that the commissioner considers appropriate, where in the opinion of the commissioner the public interest would be served by so doing.” The federal commissioner also has the ability to waive the application of postemployment restrictions if “the public interest in granting the waiver . . . outweighs the public interest in maintaining the [restriction].”

Finally, in Quebec postemployment restrictions do not include employment with the Crown; therefore, an Ethics Commissioner waiver is not required.

If you have any questions about that, I will go ahead and answer them. If not, I’ll just go on to the next document.

**The Chair:** Thank you, Ms Robert.

I’m not seeing any questions, so let’s move on to the next one.

**Ms Robert:** Also at the last meeting of this committee the committee asked if our office had come across any codes of conduct that were built into conflicts of interest legislation in the jurisdictions that we included in our crossjurisdictional survey. In response to that request we had a look at the provincial and federal conflicts legislation and gathered all of the information we were able to find into one document for the committee’s reference. This document was posted to the internal committee website last week.

To give you a brief overview of what is contained in the document, I’ll just give you a little bit of information. Although conflicts of interest legislation throughout Canada is structured in a similar manner, it should be noted that the legislation in Quebec and the House of Commons with respect to members and the Senate is referred to as a code of conduct as opposed to a conflicts of interest act. The code applicable to members of the House of Commons is an appendix to the standing orders. Alberta’s legislation contains a brief, general statement with respect to the conduct of members in the preamble to the Conflicts of Interest Act. There are similar preambles in the conflicts of interest legislation in Ontario and the Yukon.

Sections of the conflicts of interest legislation describing the purposes or principles of the act in Nova Scotia, Nunavut, the House of Commons with respect to members, and the Senate contain statements of principle related to a member’s conduct. Nunavut’s legislation also includes a provision outlining the general obligations and commitments of members. Quebec’s legislation includes a statement relating to observing rules of conduct, which is included in the preamble, and a statement of values in the main body of the legislation. In Newfoundland and Labrador the House of Assembly Accountability, Integrity and Administration Act requires the establishment of a code of conduct to be adopted by the House of Assembly by resolution. The House of Assembly agreed to a resolution adopting a code of conduct in 2008, and that code of conduct is also included in this document.

Again, if there are any questions about these statements of principle or codes of conduct, I’d be happy to try and answer them.

**The Chair:** Any questions on that?

**Ms Notley:** It may be a bit mischievous, but nonetheless just under Quebec I see that the members must be characterized by a number of superpositive traits and consequently members must do a number of things, one of which is “seek the truth and keep their word.” Have there ever been attempts to enforce this code?

12:10

**Ms Robert:** I’m afraid I don’t know the answer to that question.

**The Chair:** I’m not sure that would have been the topic of the research, but good question nonetheless. I’m sure Google will be able to assist you on that as well.

The next one we have is Ms Leonard. We have the definition of improperly.

**Ms Leonard:** Thanks, Mr. Chair. There’s not a lot to say on this issue, but I’ll just recap. You asked for a definition of improperly in section 3 of the act. There are not a lot of instances where they’ve actually discussed the definition of the term, especially in the conflicts of interest context. It’s not defined in the legislation of other jurisdictions, there are no court decisions on it, and there are very few commissioners’ decisions where they actually look at the definition of the word.

I think it’s fairly settled to say that improperly should be given its ordinary dictionary meaning, having regard to the context of the act as a whole, including the purpose of the act and the intent of the whole scheme. If you look at the document, it goes into more detail about where this comes from. There are two decisions of Ontario’s Integrity Commissioner that take this approach, and those are the only two decisions of any commissioner we found where they actually looked at the definition of improperly before they applied it. It also accords with what the Supreme Court has said about statutory interpretation in Canada.

This actually reinforces what the Ethics Commissioner said at a previous committee meeting and what the previous review committee said in 2006 when they recommended including improperly, which is that the Ethics Commissioner needs flexibility in order to interpret the act and to exercise his discretion because of the different circumstances that arise in each case. If you include an overly narrow or an overly broad definition of improperly in the act, this can compromise its flexibility. It’s impossible to include every single case that would count as improperly furthering someone’s interests. You can avoid these problems, basically, if you say that improperly is defined as it is in the dictionary and you look at it in the context of the whole scheme of the act. That way, you give the Ethics Commissioner enough flexibility to exercise his discretion, but you’re also giving guidance to the commissioner and the members themselves as to what they’re allowed to do.

Anyone have any questions?

**The Chair:** Not seeing any, then we will move on to the next piece, which was the crossjurisdictional charts. It was prepared by Alberta Justice and Solicitor General, so Ms Neatby would you like to comment on that?

**Ms Neatby:** Okay. One of the documents in front of the committee contains, I think, five charts.

**Ms Blakeman:** I’m sorry. Could we get you to name the document? I’ve got everything saved now.

**Ms Neatby:** Sure. It's called Cross-jurisdictional Charts Conflicts of Interest Act Review. It doesn't have a particularly distinctive title.

**The Chair:** It's a one-pager, and there's a spreadsheet that was included with it.

**Ms Blakeman:** Keep going, and I'll just keep looking for it.

**Ms Neatby:** Okay. There are five charts that comprise this document. What Alberta Justice and Solicitor General has done here is just taken a look at certain things that we thought might be of interest to the committee. Now, these charts are high level. They compare various aspects of Canadian conflicts of interest legislation. They likely don't address every question that the committee may have.

There may be instances in which you've got specific questions. Then we would take a look at these charts and maybe delve down another level because in some cases when you're comparing them, you lose a bit of the nuance that's contained in a section. Also, within a piece of legislation what you're aiming for when it's drafted is to have internal consistency, so it's sometimes hard to pick out different pieces of legislation across the country and properly compare them, but that's what we've done.

The first chart in this document compares select conflicts of interest provisions. These are dealing with decisions that a member may make to further private interests, sections dealing with members that may use their office or powers to influence or seek to influence a decision to further the private interest of another member or another person. Also, there is a comparison of provisions dealing with insider information.

This chart tries to show the similarities and the differences between the jurisdictions. With the decisions furthering private interests, some jurisdictions have applicable standards, so you'll see that in the second row of the chart. Basically, it's just an attempt to say: how are they the same and how are they different? Where it was very difficult to compare a jurisdiction, there are notes that follow the chart.

The second chart compares definitions of what is not a private interest, so it's fairly straightforward.

The third chart compares select provisions dealing with investigation and inquiry. There were quite a few questions earlier. There may be some aspects that you're interested in that aren't actually covered in these charts. For example, the chart doesn't give an explanation of the different names used in different jurisdictions for our Ethics Commissioner and his equivalents across the country. Again, there are quite a few notes because some legislation sort of stands out as being somewhat different or having unique provisions, and there are notes dealing with that.

The fourth chart deals with confidentiality. It's the same principle again: picking provisions and attempting to compare them.

The last chart deals with sanctions against members, the powers of the Legislative Assembly, and some related provisions. Again, there are quite a few explanatory notes for some jurisdictions that don't quite match up, or they have a different way of going after it.

So they're very dense in terms of the information provided, but it's hoped that they're a good starting point for some specific questions. It may be that you need to take another look and delve a little bit more deeply on specific questions.

**The Chair:** Okay. Were there any questions regarding this document?

Well, to all of you: thank you very much for the time taken to research that.

I'm not sure how normal this would be; I'm seeing a question from the floor.

**Ms O'Donnell:** Sorry. I apologize. Sarah O'Donnell, from the *Edmonton Journal*. Those reports are extremely informative. I'm wondering if they could be publicly posted.

**The Chair:** Comment taken.

I guess, Dr. Massolin, if I could ask for your comment.

**Dr. Massolin:** Yeah. I can speak for the reports we prepared. Of course, it's a committee decision, so I would suggest that the committee actually put a motion forward and vote on that. That's kind of the precedent.

**The Chair:** Yeah. These are committee documents.

**Ms Blakeman:** I was under the impression that we'd already done that. I know I've said on the record a number of times that anyone following should be able to look at the documents we looked at and understand how we came to a decision. That was certainly done at the beginning around the submissions. So you're telling me that we've got a bunch of documents that people haven't been able to see?

**The Chair:** These research documents that were prepared based on questions at the last meeting: my understanding – and I just understand that now – is that it was only posted to the committee itself. I think it's likely, because in the past we would require a motion or review by the committee prior to it becoming a public document. So I think, as we're saying, it's – I'm not familiar enough with what the past has been with this type of document that is being presented to the committee.

**Ms Blakeman:** Well, I've done motions – or someone else has – that said that they have to understand that submissions are going to be posted online, and if they don't want them to be posted online, we're not going to pay attention to them. So we've already done that half. I think we should be able to do the second half if they're not being posted.

**The Chair:** Yeah. I know previously this committee had discussed other documents, and it was decided that we would view them as a committee prior to them going online. We approved the document, and then it went online.

I see Mr. Dorward would like to say something.

**Mr. Dorward:** Yeah. I would move that all committee research documents be posted online for the general public of Alberta to be able to read and take a view of them.

**Ms Blakeman:** Good. I second.

12:20

**The Chair:** Well, we don't require a seconder.

Are there any other comments regarding this?

**Ms Notley:** Well, I just want to sort of put on the record that I'm a little concerned about this because this is not my understanding of how this has worked over my extensive five years of experience that we've had discussions, and it's not just this committee. Generally speaking, in committees the idea is that if we're having a public meeting where the public can come in, where the conversation is publicly available online and we've got *Hansard* and yada, yada, yada, the idea that we would be having discussions where we're referring to documents that the members of the

public haven't seen of course negates the whole notion of this being an open process.

It's a relatively new piece of information to me that there would ever be any reason to believe that the supportive research information that we seek through the committee chair from our support people would not as a matter of course become public the minute committee members are talking about them at this meeting. I just want to say that, in my view, this is a change. I'm happy that in this particular case we're doing it, but I do want to make note that I am concerned at the notion that we need to get committee consensus every time there is a document, because it really undermines the transparency of the process.

**The Chair:** Okay. Mr. Dorward, you had one more comment.

**Mr. Dorward:** Yeah. I respect that, but I also think that where information has been potentially gathered by our researchers in confidence relative to their sources of information, we can't assume that everybody has open government relative to the information that's been received. Therefore, I think it's as a courtesy to our researchers that we take their advice relative to the information that they have presented to us. Now that I've received that comfort from them, I'm quite happy to be able to pass on the information. I think it's a good step that we're taking to consider every one on its individual merits.

**The Chair:** Okay. Mr. Luan was next.

**Mr. Luan:** Thank you very much. I think I'm joining the forces of supporting an open and transparent process, as we always do, but I do have a question to our staff. I want to know the record, the facts. What was the tradition in the past on how we released those reports? Can anybody comment on that?

Thank you.

**The Chair:** I will ask our committee clerk, Ms Rempel, to address that.

**Ms Rempel:** Sure. Just in general terms what would happen – and this would apply to all of the legislative committees – is that any documents prepared are the property of the committee and it's not up to us as staff to be making the decision about passing them out, so to speak, beyond that. So without the specific direction of the committee, we can't do that.

Now, what usually happens is that by the process of approving the minutes – and you have the various attachments to those minutes – at that point all those documents are available to the public. They're not necessarily posted online, just partly because of manpower hours and so on, but certainly anyone who requests them through the committees branch can receive them, and they are filed with the Legislature Library as well. At that point, according to sort of the standard practice, that's how we are authorized to make them public.

If a committee wants something made public through a different process, they certainly can authorize that, as has happened very often, for example, with the submissions. You know, they'll say right off: we're going to put these online. Or the Standing Committee on Public Accounts has given the specific direction that the written responses that they receive from departments, those kinds of things, are going to be put online. Hence, that is what happens. But until we get a specific direction from the committee to make these documents public, that doesn't happen until, like I said, we go through the process of approving the minutes, which have those documents attached to them.

At this point, for example, because we've approved the minutes from the May 7 meeting, the crossjurisdictional comparison that was done for that meeting is, you know, a public document. Obviously, I haven't had the opportunity to file it with the library just yet, but that would happen shortly. Again, it would also be available by request through our office. But the documents that have been distributed for this meeting: without the direction of the committee they can't be made public until the next meeting when you look at those minutes.

**The Chair:** Mr. Wilson.

**Mr. Wilson:** I'll withdraw.

**The Chair:** Okay. You had one more, Ms Blakeman.

**Ms Blakeman:** Yeah. I want to speak in favour of this motion. I just believe so strongly that the public, media, researchers, anyone, should be able to understand how we reached a decision; therefore, they need to have access to everything we had access to. I am quite alarmed to find out that this has not been automatically done and/or that there is a time lag to it because, of course, what we talked about today will not go online, unless we pass a motion, until the next time we meet, which for some of the committees I sit on could be six months from now. I'm very concerned to hear that that's how this has been interpreted, so I'm very glad to have my colleague Mr. Dorward propose the motion, and I'm very glad to vote in favour of it.

**The Chair:** Thank you.

I think Mr. Wilson now wants to speak.

**Mr. Wilson:** Sorry. I will just quickly add that in the minutes of December 11, 2012, it does suggest that it was agreed the discussion guide prepared for the committee would be made available to the public following review by the committee members, not review postminutes at the following meetings.

**The Chair:** That is how I recall it as well.

The chair is unaware of how past practice of other committees has worked in this matter. What I'm going to suggest, though – and we have a motion now to make these documents public and post them on our public website – is maybe a friendly amendment. If someone wouldn't mind making a friendly amendment to it that says that any future research documents for this committee will be made public, and in the case where the committee would like to review it in advance, as we did on December 11, that the committee would have the opportunity to review prior to it being released publicly.

**Mr. Dorward:** Mr. Chair, as the maker of the motion I did make reference to the fact that I would, as a courtesy, like to hear from our researchers who do the work that there's no particular reason on an ongoing basis that they should not want that to happen. I'd like to hear whether they are fine with a *carte blanche* friendly motion that would forever from this committee allow research documents to be posted.

**Dr. Massolin:** I do have a concern with one of the research documents, and that's going to be the committee report because that will be a draft report. I think that at that point it's a working document of the committee, and I don't know that the committee – obviously, this is, again, a committee document. It's a committee decision as to whether or not the committee wants to make that public. But I would be a little leery of that one.

As well, the next document that I was going to propose under the next item of business is the issues document, where we simply summarize the issues that have come up during the course of this committee's review. You know, I'm a little bit more ambivalent there in terms of making that public. I mean, it could or could not. It's a working document. I don't know how much value it would have in the public realm.

I guess the point is that there are different types of research documents. Some are strictly working documents. Some are, strictly speaking, draft documents. Others like these cross-jurisdictional, the discussion guide: I think they're meant for wider distribution. I just would caution members to differentiate.

Thank you.

**The Chair:** Ms Johnson.

**Ms L. Johnson:** Yes. I'd like to pick up on that point as well. Reference documents that are consolidation research documents: I'm supportive that they be public. As we start writing a draft report and start working that through, I think that should go public when we know what our final decision is.

**The Chair:** Mr. Luan.

**Mr. Luan:** Thank you very much, Mr. Chair. I sort of second that opinion. After I listened to our professionals in terms of how the past traditional practice has been and what your recommendation is, I am strongly in favour of continuing on with that practice because, to me, if this committee requested any kind of a report, we as the author need to look at it first before we issue it to the public. I would be totally against it if the report has any information that is sensitive to the public, that we don't have a chance to even look at and everybody else has started to respond to it. I don't think I would be able to do my work to thoroughly understand the issue and deal with it. That's my reservation.

12:30

**The Chair:** We could go on with this forever, but our time is getting near.

Ms Blakeman, you had another comment.

**Ms Blakeman:** Well, if it assists or calms my colleagues, I'll just remind them that in the process that's being done for the land-use framework by this government, there is a constant feedback circle where all drafts that have been prepared – whether they're by the local water council or it's the first public input or the second public input – go up, and people are able to read how the plan is progressing that way. So it's not unusual for this government. I would have said that it's usual for this government to be able to post that kind of thing as they're investigating something and when they wish to be public about their conclusions.

**The Chair:** That may be government committees as opposed to legislative committees. I'm not sure.

**Mr. Dorward:** I'd just like to call the question on my original motion as I stated it.

**The Chair:** The committee clerk would like to ask for clarification.

**Ms Rempel:** I just wanted to clarify. Should the motion pass, is the intention that the documents be released to the public at the same time that they are being distributed to committee members? Or would this be, for example, that on the day of the meeting they get posted on the public website so members have seen them probably for several days?

**Mr. Dorward:** My understanding, my intention in the motion was to have the documents released after the meeting that they pertain to, so on the day of the meeting, after the meeting.

**Ms Rempel:** Oh, okay.

**Mr. Luan:** That's the status quo.

**Mr. Dorward:** Well, no. It's not the status quo in the sense that the status quo is that they're released after the minutes of the previous meeting are approved, which could be six months later.

**Mr. Luan:** Oh, okay. I hear you. Okay.

**The Chair:** Ms Notley.

**Ms Notley:** Thank you. I just want to go back to my first point, which is that the import of having these committees open, of ensuring that people can listen to the discussion as they go along, and also, you know, attend, is for them to be able to follow the discussion. So if the meeting ends up being about a series of documents that nobody has seen and we only release the documents at the end of the meeting, we have significantly limited people's ability to actually follow the discussion.

So I would suggest that as a matter of course what we should be doing, which is what I believe the clerk proposed in her second of three options – or I guess you had two, and then there was a third that was offered up – is simply that, you know, they be distributed via e-mail to the committee members. Everyone has a chance to review them, but when the meeting commences, we can have as the first thing on our agenda the decision to release those documents or post them so that people who are interested can access what it is we are discussing, and that way we're meeting both needs. Everyone has had a chance to review them before they are public, but then the public that is actively participating and observing and following our meetings will typically, as a matter of course, get access to those documents at the time that we're discussing them.

**The Chair:** Okay. I'm hearing several different opinions here. Mr. Dorward is the original mover of the motion.

**Mr. Dorward:** As the person that made the motion – we have completely gotten away from my motion. My motion, as I intended it, and maybe I'd ask the clerk to read it after my comments here, was simply to say that these information pieces that we've received today from our researchers should be posted now that I've made that motion. It's illogical to be discussing in the framework of that motion whether they would in the future be posted prior to us discussing them in a meeting. My intention in making the motion was to set a precedent that if a committee member feels like they want the materials that are at that meeting to be reviewed post that meeting, they can certainly make a motion to that effect, have some discussion, and then it can be voted on. Certainly, if somebody else wants to make a motion after we vote on my motion, to then always have them posted, so be it, but that wasn't my motion.

**The Chair:** Okay. The committee clerk does not write down your motion as you're speaking because this is recorded by *Hansard*. If you wouldn't mind, just restate your motion.

**Mr. Dorward:** My motion, as I intended it, was that the research materials that we have received prior to this meeting and have reviewed at this meeting be posted publicly

right after this meeting or as soon as possible after this meeting for the public of Alberta to read.

**The Chair:** Okay. That was the motion as stated. I'd like to call for a vote if we can. All in favour? That was carried unanimously. Thank you, Mr. Dorward.

I will point out just for the record that my understanding of that motion was that it did not include draft documents. Or did it include draft documents? Yeah, it does not. Okay. Thank you. I would say as well, just for matter of practice in the committee, that as we're moving forward, if the committee is ordering some research or document to be done that it wishes to remain internal, that would be done by a motion through the meeting process.

**Ms Blakeman:** Mr. Chair, I take it, then, that I would need to be introducing a motion at the beginning of every meeting henceforth to have the material presented at that meeting released.

**The Chair:** No. This motion has just covered that. What we're suggesting is that . . .

**Ms Blakeman:** No, it did not, sir. It was very specific to today's material only. So I take it that we repeat this motion now every time we meet.

**The Chair:** Or you can try another motion to do a go-forward basis, but that was the motion.

**Ms Blakeman:** Well, I've already heard the intent of my colleagues. I don't think it will pass.

**The Chair:** Well, I'm sure that there are not a lot of meetings left in the committee, and I'm sure that we'll be able to deal with this as we move forward.

The next item on the agenda. We have Dr. Massolin as well under additional research.

**Dr. Massolin:** Yes. Speaking of documents, I've got another one for you here. I just want to make a suggestion for the committee's approval. The committee research staff in the past put together an issues document basically summarizing the issues that a statute review committee has heard through the course of its review from the written submissions, oral submissions, also issues that have come up during the course of discussions that are recorded in *Hansard*, through the discussion guide, all those sources. We could put those issues into a table and give the source of those issues, and that document could be used at a subsequent meeting. I think that's where the committee is going in terms of helping to guide the committee in its deliberations. My question is for the committee: do you want us to prepare such a document?

Thank you.

**Ms Blakeman:** My concern is that there are some issues I specifically want to see moved forward, but I'm not sure that they would necessarily be picked up by the staff, so I need an opportunity to add to those to the list for consideration. At what point would that be done, and does it need to be done by consensus of the committee? If it is, I am going to protest very loudly.

**The Chair:** I'm going to ask Dr. Massolin to address that. He has a big grin on his face because he does have an answer.

**Dr. Massolin:** There goes my poker face. Yeah. I mean, this document is merely as comprehensive as we can make it. It's not restrictive in any sense. Obviously, the committee can decide to

bring up what it would like to during its deliberation period, so this is just a guide and an attempt to be as comprehensive as possible, but it's not restrictive.

Thank you.

**The Chair:** I'll reiterate a point that I made several meetings ago, when we had some committee members that had submitted a document or a submission to the committee back before March 30, and that is that as committee members you have the opportunity to put forward any recommendations that you would so wish to during our deliberations for what recommendations we want to bring forward in this document. That is the purpose of our next meeting. But do we have a motion, I guess,

to request that an issues document be prepared by our research staff.

Ms Johnson. All in favour? We still have a quorum here. Okay. That is carried.

Now, we do have a couple of meetings that we have to discuss yet. Oh, sorry. Item 6 is our communications update.

Ms Sorensen, can I get a quick update, please?

12:40

**Ms Sorensen:** Yes. Thank you, Mr. Chair. I'll keep this brief in appreciation of the time and everybody's schedule. At the last meeting, on May 7, this committee required communication services to look into previous act reviews to determine whether or not the committee's choice to advertise or not to advertise may have affected the end result. As a follow-up we did take a look at both the previous Conflicts of Interest Act review as well as the Legislative Offices Committee review of the Lobbyists Act. Unfortunately, at this time there's not enough qualitative data to base any real conclusions on. At the risk of sounding cliché, it's a little bit like comparing apples and oranges at this point just because of where we're at with all of the data.

If I can offer just a little bit of explanation, the very best comparison we could have drawn would be between this Conflicts of Interest Act Review Committee and the one done in 2005-2006. However, in the 2006 committee we did advertise, social media was not implemented, and the actual committee website was hosted externally. As such, there are no social media stats that we can draw on to compare, and we can't actually run a report on the website because it was hosted externally. The only comparison we would have is that 20 written submissions were received in 2005-2006, and 10 submissions were received here. However, I would like to stress that the number of submissions isn't really a true reflection of how many people are interested in an issue or following an issue, so that can't really be a true comparison.

More recently, in 2011, the Standing Committee on Legislative Offices conducted a comprehensive review of the Lobbyists Act, but again it's a little bit difficult to draw parallels between two different act reviews as one may hold a broader public interest than another. It's really difficult for myself or this committee, I would assume, to determine that level of interest. However, that committee did advertise, and they did have a website. The website's statistics were gathered at the end of the review, thereby covering the entire process, whereas the statistics we provided were specifically for that month that we had put the communications out there.

Social media was also used in that review but in a very different way because the LAO didn't have a formal social media program at the time. We did advertise on Facebook, and we relied on members to tweet out predrafted messages but have no way of knowing whether or not those members actually did tweet those messages.

With all of these variables in mind, the best we can do at this point is provide the statistics to the committee as a matter of interest. Unfortunately, we're not able to draw any measurable comparison to any degree of accuracy.

**Ms Notley:** So you can't give us the response.

**The Chair:** In short, there's really nothing to compare it to.

**Ms Notley:** Okay. Whatever. Fine.

**The Chair:** For the purposes of this act review.

Okay. Thank you, Ms Sorensen.

At this point I guess I'm going to propose that we have a couple of meetings toward the end of July to have discussions to formulate where we're going from here. Now that we're going to have an issues document, likely for our next meeting, we'll need to allow for time to prepare that. I'm going to suggest that the committee is ready to start discussing our recommendations and start thinking about what you would like to bring forward and that we have a couple of meetings toward the end of July to accomplish that.

As per our draft schedule the hope was that we would be able to then have a draft report ready for review sometime in September. Please, all committee members, if you can start thinking of any revisions or additions that we should be recommending to improve the act, we'll let our staff then do the wordsmithing and drafting of legal jargon, et cetera, and hope we can come forward with some solid ideas and suggestions. In the next few days the deputy chair and I will identify some potential meeting dates and have our committee clerk poll all of the committee members for your availability.

I do see two more hands up.

**Ms Blakeman:** Well, please try not to schedule these meetings after the 24th of July. I would hate to have spent all this time on this committee and not be here to debate when we actually look at the issues. I'm aware that it's customary that the government members don't have meetings in August, so if we could possibly have them before the 24th of July, that would help me a great deal.

**The Chair:** Are you planning on being away until the end of August or just for a week?

**Ms Blakeman:** No. Just that period.

**The Chair:** I think one of the difficulties is that if we were to try to accommodate meetings based on any one member's schedule, that can be difficult, but we appreciate you letting us know about that date.

**Ms Blakeman:** Yes. But I think that it being a nonpartisan committee, it's important that the three or four parties are represented, and some effort should be made there.

**The Chair:** I can appreciate that. I'll also advise, though, that if the majority is unable to make certain days, then we have to go with the majority and that any other member of the committee is still able to put their thoughts together and have another member of their caucus represent them. We also have the ability to dial in by phone conference. We don't have any dates set. We will poll the committee based on a number of dates.

**Ms Notley:** Can I just jump in, though, because I just need to put it on the record that July, generally speaking, is bad, and my hope had been that if you were going to pick two meetings for us to talk

this through, you would pick one in July and one in August. If I miss one, I still have the opportunity to put forward our rather substantive recommendations and have a discussion in August. You know, if you put them both in July, I can't be here. I'm telling you that now. We've had a problem with this already in the past. I appreciate that your caucus has a different schedule, where you collectively come up with what's open for your people and what's not, but there needs to be respect given for the opposition. The other two opposition members aren't even here anymore for this discussion. We are a small party, and if you ram all of the deliberations on this issue into one period where we've clearly told you we can't be here, that's going to be a problem for what the committee produces.

**The Chair:** I would like to comment on that. Our caucus has had no discussions. This is not a caucus discussion. This is a committee discussion as it is an all-party committee.

What I am suggesting is that the balance of June doesn't work because we would not be permitting our research staff enough time to prepare the document that we have just requested, the issues document.

There are two weeks in July that don't work for anyone. Past history has shown that during Stampede week we can't get people out. That's the week from the 5th until the 14th of July, and the week of the 14th is the Commonwealth Parliamentary Association regional conference here in Edmonton. That's from the 14th until the 20th, which would also lead to some difficulty in getting a full committee together. Those two weeks have been identified as perhaps not the best weeks to meet, but we will certainly poll a number of dates out there for the committee. Your date of July 24 has been noted.

We have a deadline of submitting our report to the Legislative Assembly by November 27, from my recollection, the 27th or 29th. I'm seeing a nod at the 27th. We do have time to continue deliberations in September if need be. The point here is just to try and stick with our original – again, it was a draft timeline. The chair will make all efforts to ensure that we can accommodate the committee to the best of our ability as a committee and for the majority of the committee. I don't think it's appropriate for us to necessarily cater to one member.

**Ms Blakeman:** I'm sorry. Are you considering meetings in August, then?

**The Chair:** I haven't cut anything out of there. I mean, I've been told by committee staff, not by our caucus – and I actually object to that being suggested here.

**Ms Blakeman:** Oh, I'm sorry. I've been told that by your House leader, so I took that as being on the record and fact.

**The Chair:** Well, there's been no discussion with this chair and the House leader as to what happens then. Committee staff have advised the chair that August in the past has typically been a very difficult time to get committees to meet. We do have the appropriate amount of time left in our schedule and on our deadline to file a report so that we will accomplish the goals of this committee, and that is the intent of the chair.

I'm going to wrap that discussion up. As advised, there is no decision to be made there, just that we will poll and get some meetings together so that we can have these deliberations.

Having said that, could I have a motion to adjourn. Thank you, Ms Fenske. All in favour? So carried.

[The committee adjourned at 12:50 p.m.]





