



Legislative Assembly of Alberta

The 28th Legislature
First Session

Select Special
Conflicts of Interest Act
Review Committee

Tuesday, August 27, 2013
10:02 a.m.

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Select Special Conflicts of Interest Act Review Committee

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Anglin, Joe, Rimbey-Rocky Mountain House-Sundre (W)*
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Dorward, David C., Edmonton-Gold Bar (PC)
Fenske, Jacquie, Fort Saskatchewan-Vegreville (PC)
Johnson, Linda, Calgary-Glenmore (PC)
McDonald, Everett, Grande Prairie-Smoky (PC)
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* substitution for Shayne Saskiw

** substitution for Steve Young

*** substitution for Everett McDonald

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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
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[Mr. Luan in the chair]

The Deputy Chair: Good morning, everybody. My name is Jason Luan, MLA, Calgary-Hawkwood. I'm the deputy chair for this committee, and in the absence of the chair I'm chairing today's meeting. I'd like to welcome everybody to today's meeting for the Select Special Conflicts of Interest Act Review Committee.

I'd ask that members and those joining the committee at the table introduce themselves for the record, and then we'll go to those on the phone. Mr. Quadri and Mr. Wilson, can you guys hear me?

Mr. Quadri: Yes, I can hear you.

The Deputy Chair: Okay. Good. You guys are on the phone.

Note for the record that pursuant to Standing Order 56(2.1) and (2.3), Mr. Quadri is substituting for Mr. McDonald, Dr. Brown is substituting for Mr. Young, and Mr. Anglin is substituting for Mr. Saskiw.

Okay. At this point I would like to go around the table to introduce everybody. I already mentioned my name, Jason Luan. I'm going to go around from my left.

Dr. Brown: Neil Brown, Calgary-Mackay-Nose Hill, and I'm substituting for Mr. Young.

Mr. Dorward: David Dorward, MLA for Edmonton-Gold Bar.

Ms Fenske: Jacquie Fenske, MLA, Fort Saskatchewan-Vegreville.

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

Ms Leonard: Sarah Leonard, legal research officer.

Mr. Anglin: Joe Anglin, MLA, Rimbey-Rocky Mountain House-Sundre, and I think it's already well known that I'm substituting for Mr. Saskiw.

Mr. Reynolds: Rob Reynolds, Law Clerk, Legislative Assembly.

Mr. Odsen: Brad Odsen, general counsel to the office of the Ethics Commissioner.

Mr. Wilkinson: Neil Wilkinson, Ethics Commissioner.

Mr. Resler: Glen Resler, chief administrative officer, Ethics Commissioner's office.

Ms Neatby: Joan Neatby, Alberta Justice and Solicitor General.

Ms Blakeman: My name is Laurie Blakeman. I would like to welcome each and every one of you to my fabulous constituency of Edmonton-Centre, and I hope you all appreciate the little mist and light show that we put on for you in Edmonton-Centre this morning.

Ms L. Johnson: Linda Johnson, MLA for Calgary-Glenmore.

The Deputy Chair: Can I have the people on the phone introduce yourselves, too?

Mr. Quadri: Sohail Quadri, substituting for Everett McDonald.

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

The Deputy Chair: Good morning.

I'll just recognize that one more member just walked in. Ms Notley, do you mind introducing yourself here?

Ms Notley: Rachel Notley, Member for Edmonton-Strathcona.

The Deputy Chair: Welcome.

Ms Rempel: Good morning. Jody Rempel, committee clerk, Legislative Assembly Office.

The Deputy Chair: Thank you, Jody.

Ms Blakeman: I know it hasn't been done before, but there is an increasing number of support staff that are here, and I don't know who they are. Would it be okay if they just quickly identified themselves?

The Deputy Chair: I'm okay with that.

Should I start from my left again very quickly?

Mr. Cust: Kelly Cust, legislative researcher for the PC caucus.

Mr. Mills: Douglas Mills, director of the government caucus.

Ms Elliott: Tawny Elliott. I'm EA to Douglas Mills.

Mr. Barber: I'm Chad Barber, with Minister Denis's office.

Mr. Menzies: I'm Evan Menzies down here. I'm with the Wildrose caucus.

Ms Bergman: Cadence Bergman, Wildrose caucus.

Ms Blakeman: That's great. Thank you.

The Deputy Chair: Okay. Thank you, all.

Before we turn to the business at hand, a few operational items. The microphone consoles are operated by the *Hansard* staff. Please keep all cellphones and BlackBerrys off the table as they can interfere with the audiofeed. Audio of committee proceedings is streamed live on the Internet and recorded by *Alberta Hansard*. Audio access and meeting transcripts are obtained via the Legislative Assembly website.

Any questions on that?

Mr. Anglin: Sorry about that. I just have a point of clarification, I guess. Maybe counsel can help out. Is Mr. Allen a member of this committee? If he's a member of this committee, is he a member of the PC caucus or is he an independent?

The Deputy Chair: Just for the record he has already made a public announcement resigning from the PC caucus, and he is still an elected MLA. He's still a member of this committee.

Mr. Anglin: That's not my question. My question is: is he a member of this committee?

The Deputy Chair: Yes.

Mr. Anglin: Okay. Is he a member of the PC caucus?

The Deputy Chair: No.

Mr. Anglin: How does an independent get to be a member of this committee?

Ms Blakeman: Because what's done in the House has to be undone in the House.

The Deputy Chair: That's right.

Ms Blakeman: He was appointed as the chair in the Legislative Assembly.

Mr. Anglin: But the makeup of the committee is appointed proportionately by party in the House.

Ms Blakeman: True. But you've got to go back into the Legislature to change that.

Mr. Anglin: You have to go back into the Legislature? I would like to bring up a point of order, then, that we are not constituted properly. We have an independent member who was not appointed proportionately by the House.

The Deputy Chair: You know what? I'm going to refer this question to our legal counsel to clarify that.

Mr. Reynolds: Well, thank you, Mr. Chair. I didn't know about this point of order, so I haven't really had time to consider it, but what Ms Blakeman said about the committees being constituted in the Assembly is absolutely correct. The motion is made in the Assembly, and of course a motion can only be amended by the Assembly, so the composition of the committee can only be changed by the Assembly. Committees are the creatures of the Assembly. In this case it was created by a special motion. It's not a standing committee. The members who were on it are those who were indicated by the Assembly. Therefore, irrespective of party affiliation members are appointed, and they still sit on the committee until they're, as it were, unappointed. I could advise the chair about the point of order. I'm not sure what the resolution of it would be in the end because I don't know if the committee would be capable of doing anything.

10:10

In any event, if you look at the tradition of parliament, typically members have been representing their constituencies and then chosen to affiliate with different caucuses. It's not a prerequisite to belong to a caucus to be a member, obviously. Typically the Assembly tends to look not at the caucus but at a person being a member. I realize that there is a standing order, which I believe everyone is racing to, that says that they shall be proportionate, but that's not an exact science. In any event, it would be up to the Assembly to change the composition of the committee, in my view.

Mr. Anglin: I got it. All right.

The Deputy Chair: Thank you very much, Mr. Legal Counsel. I really appreciate that.

Ms Blakeman: I think that the other issue at play here, which we do not see commonly in this House, is that you can have a caucus that decides to operate in the Assembly as a coalition; therefore, they're not necessarily attached. They don't necessarily follow as a train, where if you're a member of caucus, you are a part of that reckoning on the number of them. People can behave differently in the House by their own wish. So whether he's in or out of the caucus is not as important as the fact that the Legislature named him to this committee.

The Deputy Chair: Thank you. That's very helpful. On that basis I don't see a point of order here, and I'm going to proceed with our meeting.

Mr. Anglin: Okay. Then I would like to bring up a point of privilege. My point of privilege is just based on the fact that any

action that this committee takes that compromises or brings into question the independence of this committee is seen as impeding the work of the committee, and that impinges on the dignity and respect of its members in the entire Legislature, in my view. With that said, legal counsel did say that it is part of the makeup of the committee that it is proportional. I don't think this committee can change that. This committee has not the ability to change that, nor do we have the ability to kick a member off. That has to go back to the Legislature.

My point of privilege is this: this compromises my independence as a Wildrose member, and my point of privilege is now in your hands, sir.

The Deputy Chair: Your point is taken.

Dr. Brown: Well, I don't think there is a point of privilege, Mr. Chair. I believe that the depletion of the government caucus by one does not significantly change the proportions in the House, number one. It certainly is a novelty to have a member of the opposition suggest that we are not adequately represented at this table. I think that I can speak for all of the members of our caucus in saying that we're willing to soldier on with one fewer member on the committee.

The Deputy Chair: Thank you.

Just for the record I don't have any pertinent information that Mr. Allen is off this committee. All I've got is that he's unable to make it for today's meeting, and he asked me to chair for him. As deputy chair I am doing what I'm signed up to.

I think that's it. I'd like to keep our business moving. Before we get on to the discussion, I do want to share a few comments with you.

Mr. Anglin: Are you able to decide a point of privilege?

The Deputy Chair: I am the chair.

Mr. Anglin: I know that, but I don't believe you're able to decide a point of privilege.

The Deputy Chair: As chair of this committee I can tell you that I don't see any point of privilege being touched there; therefore, I am deciding that we're going on.

Mr. Anglin: That was my question. You are the chair; you are not the Assembly. Do you have the ability to decide a point of privilege?

The Deputy Chair: I was told yes. Okay. Legal Counsel, give us advice on that.

Mr. Reynolds: Thank you. I hadn't really seen this coming. If you could just give me a few moments to consult.

The Deputy Chair: Okay.

Mr. Dorward has a point.

Mr. Dorward: If it helps, I would like to read from *Hansard*. I believe October 23 is the date.

Mr. Denis moved:

Be it resolved that

- (1) A Select Special Conflicts of Interest Act Review Committee of the Legislative Assembly of Alberta be appointed to review the Conflicts of Interest Act as provided in section 48 of that act consisting of the following members, namely Mr. Allen, chair; Mr. Luan, deputy chair . . .

I could read the other names. Reasonable disbursements. I'm paraphrasing (3): "In carrying out its duties, the committee may travel." In carrying out its duties and responsibilities, "the committee may with the concurrence of the head of the department utilize the services." There are a few other notations. That motion was passed by the House, and there's no mention or anything respecting any party affiliation relative to the MLAs that are in that motion.

Mr. Anglin: That's not the issue before the chair now. The issue before the chair is: can he decide . . .

Mr. Dorward: I wasn't finished speaking, Mr. Chair.

Mr. Anglin: I'll just refer to Standing Order 65(3)(b).

The Deputy Chair: Okay. On the advice of our staff and legal counsel I'm going to call a three-minute recess. We'll get an answer to you on that, and then we'll move from there onward. [interjection] Five minutes. How's that?

[The committee adjourned from 10:16 a.m. to 10:32 a.m.]

The Deputy Chair: Thank you for all of your waiting. I would like to call our meeting back to order. We did take a few more minutes than I thought to go over the legal procedures, and we'll have some information to share with all committee members. If I could ask Mr. Reynolds to give us the legal advice on that point.

Mr. Reynolds: Well, thank you, Mr. Chair. I'll just wait till Mr. Anglin resumes his seat as it was his point.

Well, Mr. Chair, what's happened is that Mr. Anglin is raising a purported question of privilege in the committee, which is, as he indicates, discussed in Standing Order 65(3). Now, fortunately for us here today, there's been a recent incident where privilege has been raised in a committee, and the procedure for considering a question of privilege was addressed at that time. Members may be aware of a purported question of privilege that was raised by Ms Smith in the Members' Services Committee on February 7, 2013, which was dealt with on February 27, 2013.

While I certainly am not disputing the standing order that Mr. Anglin cited, there is an elaboration on the procedure which is based on the authorities, the basis of which you'll find in the handsome document Practical Guide to the Committees of the Legislative Assembly of Alberta, dated March 2013, which indicates in the second paragraph at page 46:

Should a Member wish to raise a question of privilege in committee or should some event occur in committee which appears to be a breach of privilege or contempt, the Chair of the committee will recognize the Member and hear the question of privilege or contempt or, in the case of some incident, suggest that the committee deal with the matter. The Chair, however, has no authority to rule that a breach of privilege or contempt has occurred. The role of the Chair in such instances is to determine whether the matter raised does in fact touch on privilege and is not a point of order, a grievance, or a matter of debate. If the Chair is of the opinion that the Member's interjection deals with a point of order, a grievance, or a matter of debate or that the incident is within the powers of the committee to deal with, then the Chair will rule accordingly, giving reasons. The committee cannot then consider the matter further as a question of privilege. Should a Member disagree with the Chair's decision, then the Member can appeal to the committee, which can sustain or overturn the Chair's decision.

So essentially the chair has a threshold or gatekeeper role, and this is, I mean, if one thinks about it, clearly to prevent, you know, superficial or vexatious, whatever, questions of privilege from

coming up in committee. In any event, the chair's role as gatekeeper is to determine whether or not a matter may touch on privilege, as was done by the chair of the Members' Services Committee, who is the Speaker, on February 27, 2013. In that case he determined that the matter may touch on privilege and in fact submitted it to the committee, which voted against recommending it to the House.

Well, I should point out that in the instance then the matter was raised at one meeting. The chair took it under advisement and came up with a ruling at a subsequent meeting, which is not unlike what happens in the Assembly when a member raises a question of privilege. The arguments are made, and then the ruling by the chair as to whether it's a prima facie matter of privilege comes a day or two later, sometime later.

In any event, Mr. Chair, that's what I have to offer in terms of procedure. One thing that you may consider would be to see if anyone has any more points to raise in connection with the purported question of privilege that's been raised by Mr. Anglin. If so, with respect, I would recommend that you may want to hear from them. You may wish to defer the question so that you can consider the matter more fully, but in my view that would not prevent the meeting from continuing.

The Deputy Chair: Thank you, Mr. Reynolds. That's very helpful information.

On that note I'm going to invite committee members to share briefly your comments on that. Two minutes.

Mr. Anglin: If I may just add one point for other members to consider before they comment, I do not believe it was the intent of the Assembly to appoint an independent as chair of this committee. I think it was the intent of the Assembly to appoint a PC member to represent that caucus. Now, I can't tell you what the internal thinking of each member of the Assembly was, but I can say with some confidence that the government and the PC Party intended to have one of its own members as the chair of this committee, and right now we have an independent as the chair.

The Deputy Chair: Are you finished your point?

Mr. Anglin: I just wanted to add that in for the discussion, among other things.

The Deputy Chair: Okay. Thank you very much.
Ms Blakeman.

Ms Blakeman: Thank you. Actually, I'll just rebut the last statement that the hon. member made because the motion is not placed before the Assembly based on which caucus the chairperson represents. That's not mentioned as part of the motion coming forward. If it shows up on the Order Paper designating Liberal or New Democrat Party or PC, it's used commonly throughout *Hansard* just to indicate something, but it doesn't mean that that position belongs only to a government member.

10:40

Secondly, part of the argument that the member was making was that the proportionality is of concern and is covered in the standing orders, and I'll argue with him on that as well. Section 52 is specific to the standing committees of the Assembly, and they name them: Privileges and Elections, Public Accounts, Private Bills, Heritage Savings Trust Fund, and Legislative Offices. It does not name or cover special select committees or other committees that are appointed by the Assembly. It's not, for example, covering the policy field committees or whatever name

we call them by now, legislative policy committees. They are specifically covering the ones that have been named, and they do set out the number of members that are included.

So when you get to subsection (4), “The composition of the membership of the committees established under this Standing Order must be proportionate to the number of seats held by each party in the Assembly,” that applies only to the committees that have been named in section 52, and it does not allow for any other kind of committee that the Assembly might be appointing at a given time. So I’ll give you the specific example of the policy field committees, which are dealt with in a different section.

Therefore, the central argument of the member’s concern that we currently do not have a proportionate – the proportion considered in 52(1) does not apply to this situation because this committee is not covered under 52, and two, that having a member who is not included in that proportion would somehow make this committee illegal or operating outside of the bounds is also not valid because it’s not covered.

Thank you.

The Deputy Chair: Thank you, Ms Blakeman.

Any other comments?

Mr. Anglin: I would like to just close if there are no other comments.

The Deputy Chair: Final one minute.

Mr. Anglin: Yeah. I can even do it in less than a minute, and that’s a record for me.

The Deputy Chair: Good. Thank you for that.

Mr. Anglin: I would argue with the hon. member that section 52(2) does say the special standing committees, and it lays out “consisting of . . . members.” So you have subsection (1) that talks about the committees that are set, as was rightly said. Subsection (2) then says that the Assembly must establish special standing committees. We are a special standing committee. Then you go down to subsection (4), and it says that the composition of members “must be proportionate,” without reading all the details.

So I would argue with my hon. member on the other side that all committees are subject to the standing orders that are applicable under section 52, which means that there is a proportionality, that it was considered. Regardless, I don’t know of any precedent where an independent has chaired a committee – maybe I’m wrong; maybe the hon. member can point to one – but I don’t think that was the intent of the Assembly at any time.

Ms Blakeman: I’m just going to point out that section (2) is specific to the Members’ Services Committee because subsection (1)(a) to (d) is naming the number of MLAs that are appointed, being 18, and the exception being 52(2), which is talking about the Special Standing Committee on Members’ Services, which has 11 members. So the section of the standing orders you’ve used to bolster your argument doesn’t pertain to this situation. It pertains only to Members’ Services.

The Deputy Chair: Thank you so much.

At this point . . .

Mr. Anglin: Do I get to finish under parliamentary privilege, which is that generally the person who makes the motion finishes?

The Deputy Chair: No. Sorry, Mr. Anglin.

Mr. Anglin: You’re going to deny me that ability to close the debate.

The Deputy Chair: I think I gave you that last one minute.

Mr. Anglin: You allowed someone to speak after me, and the normal protocol is to allow the person who brings the motion forward . . .

The Deputy Chair: Thirty seconds. Can you close?

Mr. Anglin: I will close in 30 seconds.

The Deputy Chair: Okay.

Mr. Anglin: Under section 52(3) it then goes on to say, “The Assembly must determine the membership of the committees established under this Standing Order,” and I would still argue that all committees are applicable under this standing order.

The Deputy Chair: Thank you very much, Mr. Anglin.

Thank you, all, for the committee members . . .

Mr. Anglin: My 30 seconds weren’t done. That’s not right. I still had about five more seconds left.

The Deputy Chair: I want to take the opportunity to thank every member for sharing their thoughts, particularly those who were time conscious, for getting to the point and moving on. I appreciate that. As the chair I am going to defer the ruling of this point to the next meeting. That will allow us some time to reflect on it. For today’s business I would like to proceed with what we planned.

Next we have a copy of the agenda proposed for today’s meeting. If I could have you take a quick look at it. Is somebody prepared to make a motion to accept the agenda? Do you all have a copy? I can read this through very quickly. The agenda is to approve the last meeting’s minutes; that was on June 19. Then we have a thorough discussion of the report, Conflicts of Interest Act: issues, recommendations, and deliberations. Then other business. Then we set the date for the next meeting and adjourn the meeting. So it’s very brief. The only items here are to approve the minutes and then discussion of this very comprehensive report. Do I have somebody to make the motion?

Dr. Brown: I move the adoption of the agenda as circulated.

The Deputy Chair: Thank you, Dr. Brown.

All in favour? Passed unanimously. Okay. Thank you. Let’s proceed.

Next is the approval of meeting minutes. Are there any errors or omissions?

If not, I will call for a motion to approve the minutes.

Ms Fenske: So moved.

The Deputy Chair: Thank you, Ms Fenske.

All in favour? Anybody object? No? Thank you very much. It’s now carried.

Now let’s move to the main part of today’s meeting. Before we start, I would like to have a few seconds to share some comments. First of all, I anticipate that this meeting to discuss this very comprehensive report may not be the only meeting that we’ll have, but we do have five hours set aside – well, five hours minus some time already spent. We still have some time on hand. I do know that the report contains a very comprehensive, long list of recommendations. If I recall, it’s around 140-some. I want to

thank our clerk and all the people who submitted recommendations for helping to formulate where we are.

That said, I think that if we can stay focused, we should be able to make a lot of headway in refining our ideas and the possibility of reaching some agreement. If we focus on developing and articulating our main ideas, then we can ask our staff to do the final wordsmithing because the intent of today's meeting is to give them some direction so they can go away and start drafting the main report. Then we can come back and discuss it.

Just so you know, as the chair my hope is that as we go through those recommendations, for those that we can easily reach agreement on, let's get them agreed to and out of the way. For those that need some heavy debate and serious thought, we can either defer to later in today's meeting if we have time or to the next meeting. The others that obviously you're not interested in supporting, we'll get them out of here, too. In that way we can hopefully get the main ideas out of the 140-some recommendations at the end of today so our clerk has some kind of direction from us.

10:50

In just a moment I'm going to ask our supporting staff to give us a brief overview of the issues and recommendations document we requested at our last meeting. I think this document will be very useful as we go through our deliberations. Of course, as we noted at the last meeting, this document is a tool to help the committee. It is not intended to limit or restrict our discussion in any way. Committee members may wish to raise additional issues and are encouraged to do so when we're discussing it, but the good news is that we have our staff on hand and they are here to support us.

At this point, before I ask Ms Leonard to give us the background briefing, I saw one hand up. I'll just give everybody a chance to clarify my opening remarks.

Ms Blakeman.

Ms Blakeman: Thank you for that opportunity because that's exactly what I need you to do. Thank you very much for that opening statement. I'm unclear about how you as the chair intend to handle classifying the various sections that we're going to go through. You mentioned that, well, we could go through them one after another and debate them until we're done and move on. Then you talked about if there was going to be a lot of discussion, we would park it, and we would jump to something else. Who makes that decision and when? Could you clarify that a bit? I'm not clear.

The Deputy Chair: Sure. Yeah. Okay. The intent is discussion. Here's my thought. I can sort of clarify what I'm thinking. Our staff have already prepared the background to orient us and guide us through the different chunks of the recommendations, following the order of the act.

Dr. Massolin, should I defer to you to share that, or can I carry on?

Dr. Massolin: It's your choice.

The Deputy Chair: Okay. I'm going to try my hardest, and if I miss anything, you can help me out.

My understanding is that there are 12 major sections according to the order of the act, and that is broken down into about 60 different core issues or subjects and then 140-some individual recommendations. I believe what they're going to orient us on is the overall document and then go with the main sections and go with chunks of those recommendations because they are inter-

related. When they finish what they've recommended and give us the floor to comment and discuss, they'll hear us, and then they'll go away and do the work. That's the format I'm anticipating.

Dr. Massolin.

Dr. Massolin: Thank you very much, Mr. Chair. I think you've got it. I would just add that, of course, this document, as you pointed out, is just a compilation of all the recommendations that the committee has heard to date, and as you pointed out as well, it's obviously not restrictive in terms of the committee's decision. The reason for structuring it this way is twofold. The first reason is that the structure of the document follows the structure of the act, so that makes sense, I think. Also, the idea is that we as committee staff here provide the informational background and answer questions if we can, and there are other individuals from Justice and the office of the Ethics Commissioner around the table that also lend us assistance from that perspective. We provide that data, the informational background. Of course, after we finish sort of highlighting maybe one section, one chunk, as you put it, we would pass it back to you and the committee, and the deliberations would proceed from there. We would be here, of course, to receive direction as to what recommendations would flow from those discussions.

Thank you.

The Deputy Chair: Thank you very much.

Ms Blakeman: I'm happier with the explanation that we've heard from Dr. Massolin because I'm not comfortable with what I was hearing the chair saying, which is that the staff would be recommending to us what we would be doing. I think the intent is that the staff have given us some analysis. They've given us some sorting, they've given us factual background, and they've given us categories to work from. They've done everything they can to make it easier for us to then start to talk about this and move forward, but the recommendations should be coming from us, not from the staff.

The Deputy Chair: Yeah. Agreed.

Ms Blakeman: Thank you.

The Deputy Chair: Any other questions?

Okay. At this point I would like to turn the floor over to Ms Leonard, who is going to give us a brief overview of the document.

Ms Leonard: Thank you, Mr. Chair. I think you've actually given a pretty good overview already. I'll just say that this document, Summary of Issues and Recommendations, is a consolidation of all of the issues and other recommendations that we received from various sources. We've taken them from the 10 written submissions, the two oral presentations, the transcripts of previous committee meetings, and the discussion guide. You'll see that at the end of each recommendation there's a code in brackets. This refers to the source that we took it from. If it's an S followed by a number, that means it's from a written submission. If it's a P followed by a number, it's one of the oral presentations. At the back of the document, on page 27, is a list of all the submissions and the presentations and the codes so that you can correlate which one it's from.

As the chair mentioned, there are 140 recommendations that have been organized into 12 broad categories. They generally follow the structure of the act. Within the categories the recommendations have been grouped by issue. That's the first

column you'll see in the chart. Then the substance of the recommendations is in the second column. The third column refers to the relevant sections of the act, and then if there are any notes, that's in the final column there.

I'll just point out that, strictly speaking, not all of these are recommendations. Some of them are just points that were brought forward by submitters or presenters for consideration but without recommending any particular course of action. As was previously mentioned, of course, this isn't an exhaustive list and it isn't restrictive, so of course the committee can discuss any other matter it wants to with regard to the act without being limited by this document.

The Deputy Chair: Thank you very much.

Any questions on that? Thank you.

Okay. At this point I think we should move on to the main point of the chapters. Ms Leonard, take it away.

Ms Leonard: Okay. The first of the big categories is the interpretation of the act. I guess I will just give a brief overview of the very first chunk, the first two recommendations, that deals with the names of the act and the commissioner. There were two recommendations here. One suggested changing the Ethics Commissioner's name to conflict of interest commissioner to reflect the current mandate of the act so that the public doesn't think the commissioner is ineffective when he's only dealing with financial conflict of interest rather than broader ethics-related issues. There was also a recommendation to change the names of the act and the commissioner to integrity act and integrity commissioner to show the public that there's an emphasis on integrity, not just conflicts of interest.

The Deputy Chair: Before I open it up for the committee to comment, I also know that we have excellent expertise in the room from the Ethics Commissioner's office and the Justice department, so I would also open the floor to both of you at this point. Do you want to add anything before we invite committee members to comment?

Mr. Wilkinson: Thank you. Not at this point.

The Deputy Chair: Okay. Thank you very much.

Any comments from the committee on the first one? Ms Blakeman.

Ms Blakeman: Thanks very much, Mr. Chair. If we're starting right into it, then on page 4 – I'm sorry. Just let me back up to one other thing. In the previous minutes which were passed, the Member for Edmonton-Gold Bar had asked that everything up to June 19 that we were examining in the committee be posted on the public website. Are these documents that we are now examining also posted on the public website, or do we need a motion from this committee to do that because anyone that's trying to follow along would be struggling?

The Deputy Chair: We need a motion today to put that on.

Ms Blakeman: Great. I'm happy to make a motion that the Summary of Issues and Recommendations, Conflicts of Interest Act Review, which was prepared by research services as of July 18, 2013, be made available on the public website immediately.

Is that possible?

The Deputy Chair: As soon as possible.

Ms Blakeman: As soon as possible, immediately, as fast as you can manage it. Yes.

11:00

The Deputy Chair: Any discussion on this one? Okay. Anyone want to comment on that one? No?

Okay. Ready to call the vote? Those that support it, raise your hand. On the phone, please indicate if you are supporting it or not. It's passed. Thank you. Good motion.

Ms Blakeman: Okay. Thank you very much.

All right, then. Looking at the first section, which is subtitled Names of Act and Commissioner – and thank you for doing this, following the set-up of the act. It does allow us to tackle some of these larger issues at the beginning. What we have talked about quite a bit as a committee is that I believe we have before us an act of fiscal conflict of interest. It's not an ethics act. It doesn't talk about how members are expected to perform their job outside of anything to do with conflict of interest on a financial basis. So we have a choice here. We can either make the act fit the concept of an ethics act or an integrity act, which is how they're listed in other places, or we can accept the fact that what we have in Alberta is a financial conflict of interest act, stop, and we are not straying into any other area.

I have read this act a number of times now, and I really can't find very many sections that actually pertain to how you're expected to operate. You've heard me. In fact, it's noted later in here that we don't even have a personal code of conduct as MLAs that says: you're expected to do some work every day; you're expected to have a constituency office that has public hours, not which public hours but the fact that you have public hours and that you have a constituency office. We don't even have that. So when we look at this act, it really is a fiscal conflicts of interest act. I'm happy to admit that, name it, and move on.

If we do want to hang on to the name of the act as an integrity act or an ethics act or anything else, we'd have to put an awful lot more in here with a lot more work in order to be worthy of the title, if I may say so. I would argue that we should call it the financial conflicts of interest act, and the Ethics Commissioner title should also be changed to reflect that because right now there are expectations placed on that office and that individual by members of the public which he is not empowered to follow. The public is going to him saying: yes, but what about this unethical conduct of X MLA? He has no ability through the act to answer that question or to do any kind of own motion or discovery or anything else.

That would be my particular comments on this.

The Deputy Chair: Thank you for that.

Mr. Dorward.

Mr. Dorward: Yeah. I don't see any need to make any changes. The preamble says:

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

And the next paragraph:

Whereas Members of the Legislative Assembly, in reconciling their duties of office and their private interests, are expected to act with integrity and impartiality.

That does it for me. I appreciate the fact that the act isn't called the integrity and ethics act, and rightfully so. I agree. It shouldn't

be and isn't and doesn't purport to be. I'm quite happy with the way it's named, and the preamble is strong enough for me.

The Deputy Chair: Thank you, Mr. Dorward.

I've got Dr. Brown and Ms Notley following that.

Dr. Brown: Well, I was going to make the same point as Mr. Dorward. It does refer to those standards that are expected of members in the preamble. If one wanted to, I suppose one could say that members shall perform their duties of office. You could incorporate it into the body of the act very easily. That was discussed, incidentally, at the last review of the act, and it was decided that it would be more appropriate in a preamble. But it would be possible to put that in there, to say that the Members of the Legislative Assembly, in reconciling their duties of office, shall act with integrity and impartiality and so on. You could put it into the act itself. But I would be interested in knowing how the gentlemen from the Ethics Commissioner's office feel about that in light of their experience in dealing with the various matters that come before them, whether they believe that, you know, a change of their title is warranted or appropriate.

The Deputy Chair: Please proceed.

Mr. Wilkinson: Mr. Chair, thank you. Early on in the act Bob Clark did recommend to the committee that the name be changed, but it was not. Don Hamilton felt much more comfortable with the name and didn't come forward to recommend any changes. We don't have any objections one way or the other.

Just as background, they're called Conflict of Interest Commissioner in eight provinces, Integrity Commissioner in two, Conflict of Interest and Ethics Commissioner in one, Ethics Officer in one, Ethics Commissioner in two, and Commissioner for Legislative Standards in one.

I think the thing for us now is that we don't see initiative. This has been branded now for over 20 years. People call the ethics office sometimes not knowing where to turn. They go through the phone book, and they use ethics as kind of: well, maybe that's a catch-all. We have had much less lately because I think people understand the brand and know what we do. I think our stakeholders, our shareholders if you will, the people we report to, know very clearly what we do. So if we are a bit of a catchment, then we're happy with that. For instance, I got a call from a lady who said: "My landlord increased my rent too much. That's unethical." We were happy to take the call, and we just directed that person to the landlord and tenant board. Each of us under our desk blotter have a list of all the different agencies and so on where we can recommend people go to. We see that as a service to the public, and we're happy with that.

If you did change the name, we're fine with that. I guess you need to consider – we've all been involved in organizations that have changed their name, and if after 20 years the name changes, that creates other issues as well. You've certainly been involved in more of that than we have, so I guess I'd look to you to think about, you know: has that been good for that organization? Has it been good for the people you serve? Does it clarify things for the people you serve, or does it create more confusion?

In conclusion, whatever you people decide is fine with us.

The Deputy Chair: Thank you for your clarification. Some good points.

Ms Notley: Well, I agree, not surprisingly, with some of the points that were put forward by Ms Blakeman. You know, this is a

difficult one to discuss in some ways because it actually touches on a lot of other elements of things that we have to discuss.

We have basically three options here. The least preferable option is that we continue to use the word "ethics" in the title in the current situation, where there is absolutely no provision for the enforcement of ethics in the act. We may have a preamble, but we do not have any provisions in the act for enforcing ethics as understood by the public. We are not being as forthright as we need to be with the Alberta public. We have the added problem that I see, which is that we're not actually expanding the scope that we should be to ensure that issues are addressed.

Now, the next way to deal with it is to simply be honest about it and say that this is about a relatively narrow – narrowly applied to a small group of people – concept of financial conflict of interest, and then we call it what it is and proceed accordingly. Now, that's the next least preferable.

Then the most preferable is that we actually look at expanding this. I'm going to be a bit provocative here, but I think that this is the kind of thing that Albertans want to see from us when we have a conversation and a review of this act.

11:10

The fact of the matter is that there are currently two members of this Assembly who have been subjected to allegations, neither of which have been proven. I think one is criminal activity, and the other one was, I think, providing false information under oath. Now, those haven't been proven, and I'm not saying that they will be.

In talking to people in my constituency, when they talk to me about these issues, they say, "Well, if that ends up being proven, I guess that that person is going to have to step down." Then, of course, I have to say, "Well, you know, actually, they don't." They will probably for political reasons be ejected from their caucus. Indeed, they have been, I believe, in both cases, or, more accurately, have resigned from their caucus, but they will continue to serve as Members of the Legislative Assembly. They will continue to receive salaries from the Legislative Assembly until the next election.

So the question becomes: is this what we want in this province, or do we want a broader ability for our commissioner to engage in an evaluation of what's ethical and what's not, even something as simple as being convicted of a criminal offence?

I would like to see us engage in a more meaningful discussion about how we can broaden and raise the standards of expected MLA conduct. I'm not saying that that conduct is not already high, but I am saying that it's very much on an honour system right now. The public doesn't really know that. I'd like to see that, which means, then, that I'm opting for one and not the other. Alternatively, I would say: let's just be clear about what we do do. We don't enforce ethics. The act does not currently allow for us to enforce ethics. We shouldn't be suggesting that it does, so then we change the name to reflect the more narrow scope.

Now, that's not my preferred option, but it is better than the third one, which is to imply that we enforce ethics and then quietly not, unfortunately, because the provision is not there. Mr. Dorward, as I'm sure you know, that preamble was great, but it's not an enforceable piece of legislation. I have a, you know, if not A then B kind of approach to this.

The Deputy Chair: Thank you. I think your main point has crossed, so thank you for that.

I have Mr. Wilson on the phone with a comment.

Mr. Wilson: Yes. Thank you, Mr. Chair. I do agree with Ms Notley, and I think that perhaps we should revisit the naming or the potential renaming of this act after our deliberations. We have a number of recommendations that, if the committee agrees, could quite truthfully strengthen this act. Therefore, a new title could be justified. I would just simply suggest that we table the discussion on the naming of the act until we've completed our deliberations on these recommendations.

Thank you.

The Deputy Chair: Thank you.

On that idea of tabling this recommendation, are folks ready to have a vote? Oh, we don't need a vote. Okay. All right.

Ms Blakeman: Can we just park it? We'll put it in the parking lot and come back to it later and get it out before it's going to cost us too much money. Could we define how many parking spots there are, though? Well, less than 140, please, dear God.

The Deputy Chair: Thank you very much. I see that there is consensus at the table.

Before I finish, there's another question there?

Mr. Odsen: Just a comment if I may, Mr. Chair.

The Deputy Chair: Of course.

Mr. Odsen: It seems to me that whenever this kind of thing is being looked at, it's the public policy purpose that you want to consider when you're doing one of these kinds of things. As I understand the act presently, the real public policy consideration at the root of the current act is that members are not able to further their own or another's private interest arising out of their public office. That's the box within which things occur. That public policy purpose would be changed. It's certainly up to the committee, and if they want to go there, that's fine. But if you're going to expand that, change the box, the configuration, that sort of thing, I think there needs to be some consideration and discussion around what the public policy purpose is that we are now looking at achieving. I would throw that out to the committee.

The Deputy Chair: Thank you very much.

Clearly, we have some great ideas on the table, but we definitely need to work to refine them.

Did you have another comment?

Ms Rempel: Thank you. I just wanted to advise the committee that the document that we are discussing is now available to the public through our website.

The Deputy Chair: All right. Cheers. Speedy action. Thank you for that.

Okay. Can I ask Ms Leonard to move on to the next one?

Ms Leonard: The next set of recommendations, mandate and scope of the act, is actually very similar to what you were discussing previously. There was the suggestion to broaden the mandate of the act to include ethical conduct. There was also a suggestion to include a code of conduct in the act and to broaden the definition. I don't know if, perhaps, you'd like to defer discussion of that as well, Mr. Chair.

The Deputy Chair: Good point.

I'd like to proceed. Shall we continue? I have Ms Blakeman.

Ms Blakeman: Yes. I agree that it is part of what we just talked about, although that was specific to the naming of the act and the commissioner, but we started to talk about the scope and the mandate. For example, we don't have anything – if we do, Dr. Brown will find it for me – that is equivalent to the values and ethical principles in the Quebec legislation. They lay it out very clearly in section 6.

The following are the values of the National Assembly:

- (1) commitment to improving the social and economic situation of Quebecers;
- (2) high regard for and the protection of the National Assembly and its democratic institutions; and
- (3) respect for other Members, public servants and citizens.

The conduct of Members must be characterized by benevolence, integrity, adaptability, wisdom, honesty, sincerity and justice.

Consequently, Members

- (1) show loyalty towards the people of Québec;
- (2) recognize that it is their duty to serve the citizens;
- (3) show rigour and diligence;
- (4) seek the truth and keep their word; and
- (5) preserve the memory of how the National Assembly and its democratic institutions function.

Sorry for reading all that into the record, but it does give you a pretty clear example of where some of the other provinces have gone to talk about the expectations of how the members will act in carrying forward with that title, Member of the Legislative Assembly, and what their expectations are around duty, loyalty, integrity, and ethics. They spell it out. We don't. Where it is spelled out is in the preamble, which has been noted as not enforceable. If we did want to talk about somebody's behaviour as an MLA that other MLAs feel reflects badly on us as an institution or us personally, we don't have anything in this act to say: "You're contravening X. You have not followed through on that." We still have this larger problem in front of us of: do we admit that we're working with a narrower focus and narrower scope and narrower mandate, or do we try and expand that mandate?

I'm just pointing out that when we start to talk about scope, there are a lot of other examples that are available to us of people that have actually written it into their legislation with the expectations. We certainly don't talk about benevolence or integrity or wisdom or honesty or sincerity or justice anywhere in our act.

Thanks.

The Deputy Chair: Thank you, Ms Blakeman.

I have Dr. Massolin.

Dr. Massolin: I just wanted to bring to the committee's attention that research services have prepared a document, that was posted for a previous meeting, called Statements of Principle/Codes of Conducts within Provincial and Federal Conflicts of Interest Legislation. That is available to committee members for reference.

Thank you.

The Deputy Chair: Thank you. That was good information.

Do I have anybody else on the floor who wants to comment on this?

Ms Notley: Sure. I will. I found this document that Dr. Massolin refers to to be quite helpful. You know, just sort of doing a survey of them, you see that there are a number of interesting concepts that have been incorporated into different pieces of legislation across the country. We have the Quebec one, which is probably the most detailed one, that Ms Blakeman referenced. We also have Newfoundland and Labrador's, which is also rather extensive.

Then we also have, ironically, the Senate one, which, just given the news these days – nonetheless, I mean, it's interesting, and it's important.

11:20

We also have the House of Commons, you know, talking about things that go into – for instance, one of the principles that's identified in the House of Commons one is this notion that they have to perform their official duties and functions in a manner that bears the closest public scrutiny, and it may not be fully discharged by simply acting within the law. We have this laid out in the House of Commons code, which introduces some really significant concepts that I think are worthy of us as Members of the Legislative Assembly to give genuine consideration to. That's the House of Commons, which I think, generally speaking, is a good, credible place from which to get some guidance periodically, not always, but you know, they've been around for a long time, and it seems to still be working.

I'd like for us to genuinely consider the possibility now. I'm not really sure how we would do that in this committee setting, but I would love for there to be an opportunity for some potential draft codes with different principles included or not included to be put in a more systematic way before this committee so that we could talk about them, not every concept that's included in these codes – if we look at all the codes around the country, if you added them up, we've probably got about 15 different concepts that are included in the codes from different jurisdictions – but, you know, putting something together, and then us having a discussion about what a code might look like with different drafts of it. That may be something that we're not equipped to do right now because we're not organized quite well enough yet, but I'd like for us to consider asking the staff to help structure that conversation for us a bit so that we could have that conversation. I can't believe I'm using the word "conversation" as much as I am; I had sworn off it after the last election. I'm quite genuine about wanting to try and structure something so that we could have a meaningful discussion about the inclusion of some of these concepts into a revised act.

The Deputy Chair: Okay. Thank you very much.

We have Mr. Wilson on the phone, followed by Dr. Brown.

Mr. Wilson: Thank you, Mr. Chair. I just would like to express again my agreement with Ms Blakeman and Ms Notley. I think that we have a genuine opportunity here as this committee to really change this act to reflect what I believe the public is asking for in this legislation, and I do not believe that we should take that lightly or dismiss it. I would support Ms Notley's suggestion of having staff or researchers perhaps draft a couple of ideas around how we can change the wording of this preamble or this code and have that come back to the committee for further debate at a later date.

Thank you.

The Deputy Chair: Okay. Thank you.

Dr. Brown: I think that if it's the will of the committee, you know, to expand the ethical reach of the act, it's certainly easily done by moving some of those concepts that are in the preamble. In paragraphs 3 and 4 of the preamble I think it makes a fairly good start at it. You could certainly expand on that somewhat, but I certainly would not be in favour of trying to adumbrate all of the possible transgressions or possible expectations of a member like they did in the case of Quebec. I just think it's completely impossible. I think you have to set out the broad expectations, what you expect in terms of integrity and dignity and respect and

so on, and I think that in paragraphs 3 and 4 of the preamble it does that. Now, if you moved those things, perhaps with some changes and additions, into the act, then it would form a basis upon which the Ethics Commissioner could make judgments and find some transgressions. If the conduct of somebody was something that did destroy public confidence and trust in the Assembly, then I think that the commissioner would have the ability to act upon that. So I would put that forward as a suggestion, that perhaps we move some of those principles of integrity and so on and expectations of what sort of standards members would meet into the body of the act from the preamble.

The Deputy Chair: Thank you.

At this point I'd like to hear from our expert from the commissioner's office, Mr. Odsen.

Mr. Odsen: Thank you, Mr. Chair. Again, just sort of a policy comment. I'd initially thought of that in relation to the Quebec wording that Ms Blakeman provided to the committee, and the first thing that came to my mind is that one way of looking at this is: how would we deal with an allegation made against a member that they failed to act with wisdom? Conversely, are all members prepared to open themselves up to being subject to allegations being made against them that they failed to act with wisdom? That's a policy question that you need to be thinking about, and I would ask that you maybe reflect on that, on broadening that. Failing to act with integrity, failing to act ethically: those are pretty subjective kinds of terms, very much in the eye of the beholder. As long as we have it with actual conflicts of interest, those are pretty easy to nail down. Once you start getting beyond that, I think it starts to become very much subjective, and I'm simply saying that that's something you need to consider if you're going to be moving in that direction.

The Deputy Chair: Okay. Thank you. That's very valuable information.

Ms Notley: Well, I mean, obviously, there's no question that you could go through some of these codes and pull out elements of them that could cause much mischief, to use language often used by judges. You know, that's why I'm suggesting that it would be of value for us to go through it and come up with something practical. While, yes, inviting the public to file complaints every time one of us acted without wisdom would generate a hundredfold increase in the budget demands of the Ethics Commissioner's office, at the same time, injecting something like acting lawfully I think would be a really important addition, moving it from a preamble sort of language to an enforceable one, for instance. So I think there are some things that are possible for us to look at which will result in some notable change. It's not perfect. We may not be able to legislate wisdom. That's the voters' job, right?

The Deputy Chair: It sounds like you're suggesting some sort of a balanced approach. Okay. Thank you.

I do have Mr. Anglin and Ms Blakeman.

Mr. Anglin: Thank you. I'd just like to ask the commissioner's office. I understand what you just said, but could you give us a sense of how many frivolous complaints you get now under the existing act? I know that other offices and I know that all the members probably have experienced frivolous complaints about numerous things, and you have to weigh that and dismiss some. Then you take a look at the complaints that warrant investigation.

Is your office right now subject to a number of frivolous complaints, and what would they be?

Mr. Resler: On an annual basis we do receive, you know, several requests for investigations. If I look at the 2011-2012 fiscal year, the total number of requests for investigations was 20. You know, frivolous as far as if they apply under the legislation, so potentially an alleged breach: that year we did not receive any frivolous ones. You know, a request for an investigation, for the most part, is not applicable under the act itself.

Mr. Anglin: Just a last question for the commissioner's office. If the language were changed, would that substantially, in your view, affect those numbers? Let's just use the example of wisdom, if we try to legislate that ethically you have to act in a wise manner.

Mr. Resler: Potentially.

Mr. Anglin: When you say potentially, how would it affect you? I mean, you would get these complaints.

11:30

Mr. Resler: We receive numerous phone calls throughout the year as far as the public phoning in and making requests. Most of the times our response is to educate them as far as the mandate of the office and how the legislation applies. Those types of calls that come in would very much potentially fall under that category.

Mr. Anglin: Are those calls reflected in the numbers you just gave?

Mr. Resler: They would fall under the request for information, and that number is – you know, there might be a hundred currently.

Mr. Anglin: Okay. That answered my questions.

The Deputy Chair: Thank you very much.

Ms Blakeman: I'm quite supportive of Dr. Brown's suggestion. I think that might help us here without making too many people's heads pop off. If I could just repeat this, he's suggesting moving sections 3 and 4 – although they are unnumbered, they appear in the third place and the fourth place in the preamble – into the body of the act. I'm certainly willing to support that.

I would very strenuously argue that the word "lawful" should be included in that because I think it's a no-brainer. It does need to be included there because we should be acting within the law, and we wouldn't be acting properly on behalf of the people in the province if we acted against the law. I'm going to have to think about that a bit because of civil disobedience, of which I'm so fond. Currently we don't cover that, and I'm sure we can think of situations where members say: "What are we supposed to do? It's reflecting badly on all of us." The issue there is around laws, not around financial management.

I think that's very intriguing, and I would like to propose that we add those two sections and the word "lawful" and be willing to move on, remembering that it's our job to write a report that goes to the Assembly in which we say: here are our recommendations. We don't necessarily have to solve all the problems here, but I think it is incumbent upon us to say: in looking at all of this, here's where we see the problems definitively; we think the government should move forward on fixing the following things. I would be okay if that went forward under that.

Thank you.

The Deputy Chair: Thank you, Ms Blakeman.

Dr. Brown: One caution with respect to "lawful." I think one would have to be somewhat circumspect in defining what was lawful. You know, there are city bylaws; as you pointed out, there are civil disobedience things. There are all kinds of things which perhaps would not fall under the Criminal Code of Canada but which are not lawful, technically speaking. I think you would have to be a little bit more careful in circumscribing what you meant by "shall not act unlawfully."

Ms Blakeman: Well, fair enough. I don't want to see an MLA shown the door because they have unpaid parking tickets. I mean, we're trying to be reasonable here. So I agree that we should look at a cleaner definition of that, but I still think the concept should be included.

The Deputy Chair: Thank you very much.

At this point I think we're getting close to having some kind of consensus on that. I will leave that to our clerk to work out those details.

Dr. Massolin.

Dr. Massolin: Yes. Thank you, Mr. Chair. It would be very helpful if we were to get a sense. I think we're hearing a direction, but of course we have to make sure that it's the committee's decision on this to include paragraphs – sorry, was it 3 and 4?

Ms Blakeman: Yes. The third position and fourth position. They're not numbered.

Dr. Massolin: Right. Include paragraphs 3 and 4 of the preamble in the body of the act, and that would be a recommendation of this committee. I'm not sure what to do with the "lawful" issue. Obviously, you have to be careful of the definition. I guess we could work something like that into the report, and then the committee . . .

The Deputy Chair: Yeah. I think you got the sense that it's not everything, every piece of law, but the major, primary ones. That's common sense. I know we're not giving you a crystal clear direction, but . . .

Dr. Massolin: No, no. That's helpful, and there's obviously another opportunity, when this is written up in the report, to approve that. Thanks.

The Deputy Chair: Thank you.

I have Mr. Dorward with his hand up.

Mr. Dorward: Yeah. I'm a little bit concerned about adding things without having a whole bunch of research to know what we're going to add and how far you're going to go down that path. I'm still grappling with some of the overall comments that have said that the act is incorrectly named: it should be named this, but it doesn't do that so then we'll add those things. I respect the fact that it may not fully define what ethics and integrity are and have a list of criteria to check against that and then teeth for the commissioner to do things about it if they're breached. Maybe that's something that the Assembly should debate and find out if we in Alberta need something more comprehensive or another act that does delineate those kinds of things further.

It's kind of like I'm using the words "self-fulfilling prophecy" to say: well, let's change this to the morals and ethics act and integrity act, and then – oh, by the way, it doesn't really say that, so let's add all the things that that should say. I don't know that I

feel that as a member of this committee that's what I was asked to do. It's pretty broad. That's bringing in a bunch of things that, as has been stated here, aren't in here now, so I feel like we should be assessing the act as it sits.

Can we move something from the preamble into a part? I probably don't have a big huge problem with that, but then we start to add "legal," as Dr. Brown said. I'm concerned that when we start adding things we might only have one crack at that. Let's analyze or have the Assembly analyze what all should be in there and how far we want to take that part.

Dr. Brown: I think what we're suggesting is that one would agree to do that, but we'd do it at a later date when we have some concrete proposals.

Ms Blakeman: Yeah. Operationally today, we've given direction that more or less what we've discussed here would turn up on a list of suggestions for recommendations, and then we would look at that later.

I also want to point out to Mr. Dorward that the observation has been made not only by a couple of members but a number of people that submitted that the name of the act does not match the content of the act. Some of us here have agreed and said: "Okay. Well, we can do one of two things. We can make the content match the name of the act, which is conflict of interest, or we can say that this is what it's going to be, financial conflict of interest. There it is. Quit worrying about it." We didn't decide to do anything with that piece. We parked it.

We went on to talk more about the scope and the mandate, which is when we got into more of the specifics of saying: okay; well, if we took something like

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and moved that section into the body of the act, which (a) makes it enforceable and (b) makes it possible to codify, that is a reasonable thing for us to recommend to the Assembly in our report.

The second piece is that "Members of the Legislative Assembly, in reconciling their duties of office and their private interests, are expected to act with integrity and impartiality." I would add "and under the law," in whatever way we wish to define that. Just a bit of clarification there. We didn't complete that argument about: should we change everything or just sit with the title? We moved on to talk about the scope and some of the ways that we could start to address that.

The Deputy Chair: Thank you, Ms Blakeman.

I see that Mr. Odsen has his hand up.

Mr. Odsen: Yes. Thank you, Mr. Chair. I think the act is appropriately named for what the content of the act is now. The difficulty is with the title of the commissioner. Instead of it being conflicts of interest commissioner, it's Ethics Commissioner, and that's where the issue comes in in that regard.

Something that members may want to consider is whether this is the appropriate piece of legislation for the kinds of broad things that you're talking about in terms of members' duties and responsibilities or whether that in fact ought to be something that's contained in the Legislative Assembly Act or, indeed, in the standing orders. Certainly, one of the implications that I think the members need to consider in that regard is that if you have something like that and there is an alleged infraction, is it the

Ethics Commissioner that you want dealing with that, or is it the Assembly itself? That would be the difference in where you put the legislation.

Again, I'm simply throwing this out for the members to give some thought to because I think the public policy purpose here is being sort of looked at in a pretty broad way, and there are all kinds of implications that I think can arise that perhaps need more fulsome thought in that regard, and that's what I'm recommending.

Thank you.

11:40

The Deputy Chair: Thank you very much. That was very timely advice and information – I see several heads nodding – so a good point was made.

I do have Mr. Wilson on the phone with another comment, then Ms Notley, and I'd like to close after that. It looks like on this one in the order of eight people have talked already. I'd like to move on.

Okay. Mr. Wilson, please, on the phone.

Mr. Wilson: Okay. Thank you, Mr. Chair. I would just like the committee to reflect on our very first meeting. I've gone back to the transcript and looked at the mandate that the committee had. I'm just going to read a segment of what our chair at the time said.

The authors of the Tupper report stated that a mandatory review would acknowledge the importance of the act and recognize the need to assess it regularly in light of changing public expectations, alterations to the role of government, and the changes in the responsibilities of members.

I'm not sure what Mr. Dorward was referring to or what he was asked to do or what mandate he was given on the committee, but I do believe that because we are asked as members to review this every five years, it is incumbent upon us to reflect on where the public is at and deal with that appropriately. So making changes to this act is within the mandate that we were given. Now, we're not necessarily making changes; we're writing a report that will have recommendations that will then be approved by the Assembly or changed. So I don't necessarily see the issue that Mr. Dorward has raised as though we're overextending our mandate by adding more to this act.

Thank you.

The Deputy Chair: Thank you.

Lastly, Ms Notley.

Ms Notley: Well, thank you. Yeah, I had two comments to make, one in response to Mr. Dorward's observations. I believe Mr. Wilson has pretty much nailed that quite effectively, so I won't go any further.

Mr. Odsen raises the interesting question about whether or not something should be within the forum of the Legislative Assembly or whether it should be something that the conflict of interest and/or Ethics Commissioner engages in. You know, this is an act that circumscribes the authority of an independent officer of the Legislature. There are a number of different reasons why you get independent officers of the Legislature, but one of the reasons we have this independent officer of the Legislature is because there was a determination that Members of the Legislative Assembly and, quite frankly, sort of the majority-minority makeup of the Legislative Assembly are such that certain deliberations need to be removed and be made more independent. I would simply suggest that subjecting conduct-of-individual-member decisions to the majority rules forum of the Legislative Assembly goes against the very policy purpose that underlaid the original appointment of the

Ethics Commissioner. So I would suggest that this is actually something that would be along the same lines, that it would be appropriately delegated to an objective party.

That's all I have to say.

The Deputy Chair: Thank you very much.

I thought we were getting close to a consensus, but we went full circle on that. Would it be reasonable to say that we table this one along with the first one, too? We're getting close?

Ms L. Johnson: With all due respect, Mr. Chair and my colleagues, we've got to make decisions. We've got to make decisions. We have a variety of people that have submitted to the committee. We have a variety of briefing materials from the Assembly staff, from our caucus staff, from our personal research. We've got to decide what decisions we're going to make and what recommendations we're going to move forward with and move on.

The Deputy Chair: Yeah. Thank you very much.

Any other discussions? Dr. Massolin, can you clarify for us? You have a good sense of where we're going on this.

Dr. Massolin: Yes, I certainly do now, Mr. Chair. I've got direction from the committee to include a recommendation for the draft report, which will be evaluated by the committee at the appropriate time.

Thank you.

The Deputy Chair: Is that all clear and understood? Okay. Good.

Let's move on, then, to the next one.

Ms L. Johnson: Sorry, Mr. Chair. We're going to have to go back a step. If that's accepted as a recommendation . . .

Ms Notley: It's a draft.

Ms L. Johnson: A draft recommendation. If I disagree with that recommendation today, do I have an opportunity to say that I disagree? At what point are committee members going to take a position on whether we want that draft to go forward or not?

The Deputy Chair: That's the question I want to call. You know, if we end up agreeing on something with consensus, I guess we can move on. If not, if we have members opposed to it, if we couldn't agree on it, my understanding is that we're going to table all of those and decide at a later meeting. That's my thought.

Dr. Massolin, do you have something else to add?

Dr. Massolin: If I can lend assistance here, typically the practice has been to do what the committee I think has decided to do, and that is to have a recommendation for the draft report. Then there's a subsequent meeting of the committee, usually the penultimate meeting, wherein the committee members will approve the draft report to make it the final report to table in the Assembly for concurrence. It's at that point that the committee can discuss the specific recommendations and make alterations or have discussions or do that sort of work.

Thank you.

The Deputy Chair: Okay.

Ms Blakeman: I think if we start to dig down deep enough to come up with a position, a yes or no, a support or denial position, that we're going to hold to, one, this meeting is going to be very long, and two, I would prefer to see all of our recommendations in context.

I'd like to be able to go smaller issue or smaller recommendation or clusters or sections or however we were describing those and put out what we like or what we'd like to think about versus stuff we don't like or don't know what to do with and then look at the whole thing. We can box ourselves in if we say definitely yes or no to this, then we get four things down the line and go: "Whoops. Maybe we should have been a bit more open with that one because now we'd like to do something, and we've already voted that we can't."

I think the idea is to give direction, let them come back with something that should reflect our discussion more or less, and then we can have a look at it and come armed to battle to the death if need be on each and every item. If we do that now, we're not going to be able to see everything in context.

The Deputy Chair: Thank you.

Well, I appreciate all those contributions and suggestions. Thank you very much.

Timewise I know we have lunch prepared at noon. It's ready. I want to poll the committee members' recommendation. Do you want to have a half-hour working lunch or an hour? Okay. How about we recess now and come back in 20 minutes? That'll be 10 after 12.

Thank you very much.

[The committee adjourned from 11:49 a.m. to 12:20 p.m.]

The Deputy Chair: Okay. If I can have everybody's attention again. Thank you very much. It was a brief lunch: eat and talk and chat.

I did have a chance to kind of mingle around with our committee members during the lunch break just to get some sense of the way the meeting proceeded, the pace and so forth. Quite a few suggestions. The discussions mostly are very helpful, but if I may take the liberty as the chair, I'd suggest that we could improve a little bit on the timing. We only have about two and a half hours left, and we're only on the third section. If I can remind members to be brief, to the point, not repeat other points already made and just try to get a broader sense of if this is something the committee is supporting so that staff can take direction and work on those. We'll leave for the next meeting if needed, one more meeting, the heavy lifting debate about particular important items. So I would urge all members and try to remind you of that so we won't be bogged down on every recommendation. Thank you very much. Let's give that a try.

Back to the order of business. I'm going to ask Ms Leonard to carry on with the next section.

Ms Leonard: Thank you. The next section is definition of private interest. That's section 1(1)(g) in the act. There are quite a few recommendations for this category. There is one to amend the definition of private interest to include a prohibition on members furthering their private interests with regard to matters before regulatory tribunals; two suggestions to amend the definition to include partisan interests, both personal, meaning members' interest in their status as members, and political party-related interests; and there are recommendations both for and against including a list of some kind defining what constitutes a public interest.

On the one hand, one of the submissions said that having a list would give guidance to members and the public, but on the other hand, the current definition is consistent with other jurisdictions in Canada, and including a list or expanding the definition might restrict the Ethics Commissioner's discretion.

Mr. Chair.

The Deputy Chair: Thank you very much.

Dr. Brown: Mr. Chairman, I would like to propose that the committee adopt the recommendation in article 8, where it says, “The definition of the term ‘private interest’ should not be expanded to include what a private interest is ‘so as not to restrict the Ethics Commissioner’s consideration of an investigation request.’” This is the recommendation of the Ethics Commissioner in his submission to the committee. I believe that their office is the one vehicle that deals with the administration of the act on an ongoing basis, so I think they’re really in the best position to decide, you know, whether or not it’s in the best interests of the administration of the act to expand what a private interest is. I think it’s working very well as it is, from what I understand, so my recommendation would be that the committee go with the recommendation of the Ethics Commissioner as set out in article 8.

The Deputy Chair: Thank you.

Ms Fenske: I would concur with Dr. Brown and just add to it that it’s not only the Ethics Commissioner of Alberta that has made that recommendation but also the commissioner of Nunavut. So I would concur.

The Deputy Chair: Thank you very much. Good point.
Ms Blakeman.

Ms Blakeman: Sorry. I have to keep switching back and forth between things. There it is. When we look at the cross-jurisdictional analysis, there are a number of different solutions to this. Dear God, where am I going to find this? I thought that the best definition – and I apologize for this again – was Quebec. Theirs seemed to be – how do I describe that? – the cleanest and the clearest. When I look at some of the problems, scandals, tests of the legislation that we’ve had, I think that the definition that we saw in the Quebec one did it best.

That’s section 16 in their legislation if I’m remembering this right. Yeah. That was to say:

16. When carrying out the duties of office, a Member must not
(1) 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.

And then the same thing repeated, but to

(2) use the position of Member to influence or attempt to influence another person’s decision so as to further the Member’s private interests or those of a family member or non-dependent child, or to improperly further another person’s private interests.

I think that captures everything we’d usually be concerned about without starting a long list in which you’ve got people on the list or not on the list. I think it’s easily workable by the Ethics Commissioner’s office.

The definition used by the feds was even tighter, I think, and that would be the other one that I would be interested in, but I find the one that we have now is not sufficient. We didn’t want to get into sort of naming all the names and putting all the scandals or tests of this legislation on the table, so I won’t go through that. But we do know there have been times where this act has not been able to do anything because it didn’t cover it. Yet the public, which is the reason we’re all here, expects certain things to be dealt with, and then you have to turn back to them and go: “Well, sorry. I know that the public thinks this is a very important issue.

It’s actually not in the act, and therefore the Ethics Commissioner or conflict of interest commissioner can’t even rule on it because it doesn’t cover that.” I think this legislation is the nicest, cleanest one, that wording, of anything that I’ve looked at.

I will keep looking for the cross-jurisdictional one so I can give you the federal wording, but thank you for the opportunity to set that out.

The Deputy Chair: Thank you.

I’d like to hear from Mr. Odsen if you have any comments on that, further information for us.

Mr. Odsen: Thank you, Mr. Chair. Just briefly, I think the issue raised by the hon. member is a little bit different than the definition of private interest. It’s who it applies to as opposed to what it is. I think that was the issue that was initially on the table that Dr. Brown referred to and our recommendation. I think that if you take a look at the wholeness, if you will, of sections 2, 3, and 4 of our Conflicts of Interest Act, it pretty much covers everything that’s contained in the section quoted from Quebec by Ms Blakeman. I simply point that out to the members. But on the issue of the definition of private interest itself, again, as Dr. Brown has pointed out, our position is clear with respect to that.

The Deputy Chair: Thank you very much. That’s very helpful.
Ms Notley, a final comment?

Ms Notley: Maybe. Basically, the first one was going to be that which Mr. Odsen just made. I think we’re just talking about the definition of private interest, not the application. I agree with the previous statements made. I don’t think there’s a lot to be gained from trying to change it.

The only question I have, the one provision on that, to the commissioner’s office is that if I recall correctly, there was a bit of difficulty around this issue of private interest as it related to the then Member for Edmonton-Riverview and a decision rendered which prohibited him from participating in discussions. Then there was . . . [interjection] What’s that?

Ms Blakeman: Discussions and votes.

Ms Notley: Right. Discussions and votes around an agricultural matter.

If I recall correctly, there was a subsequent decision that was rendered that clarified that decision and reversed the decision. If I recall correctly, the reversal was premised on a clearer definition of what a private interest is and this sort of challenge of distinguishing between something that is a private interest but it’s a general application versus a private interest that’s just a private interest. My question to you is: do you think that the clarification that exists in the reversal decision is adequate, or is there room to inject some of that into the act so that we don’t have that kind of problem in the future?

The Deputy Chair: Please go ahead and respond.

12:30

Mr. Odsen: Thank you, Mr. Chair. The issue that the member refers to, I don’t feel comfortable getting into the particulars of that particular issue beyond stating that the initial advice given to the member was that the member ought not to be participating or voting in a particular discussion. Then the subsequent advice the very next day was: “Oops. We made a mistake. We applied the wrong section.” So we withdrew that advice and said: it’s okay for you to do those things. That was simply a matter of a mistake in

applying the wrong section. The sections as they're presently worded are adequate and appropriate for the purpose, in my view.

The Deputy Chair: Okay.

Mr. Resler: The definition of private interests includes what you're discussing. It does not include the following:

- (i) an interest in a matter
 - (A) that is of general application
 - (B) that affects a person as one of a broad class of the public.

Those are the two issues that relate to that.

Ms Notley: Okay. Yup. Thanks. I should have looked that up. Thank you.

The Deputy Chair: It's so nice to have our staff handy to clarify all those questions.

I see a possibility. This one is straightforward. Can we try? Can anybody put a motion? Can we get one agreed on and passed?

Ms Blakeman, you have one more comment?

Ms Blakeman: I'm sorry. Could I just ask Dr. Brown to expand a bit.

The Deputy Chair: Clarify?

Ms Blakeman: Yeah. Expand a bit. What you're saying is that, okay, it's the definition of private interest rather than who it applies to.

Dr. Brown: Yeah. Well, article 8 there says that definition of the term should not be expanded to include what a private interest is. We believe that the definition as given is adequate, and that is in concurrence with what the office of the Ethics Commissioner has recommended. You see a section 8 on page 5 of the table there?

Ms Blakeman: Yeah.

Dr. Brown: That's what I'm just suggesting, that we go with that option instead of one of the other options.

The Deputy Chair: On that note, committee members, are we prepared to accept that? Yes? Thank you. We finally got one agreed on. [interjections] A motion? Okay.

Dr. Brown, do you want to make a formal motion?

Dr. Brown: I think I did, but I would move that the committee adopt the recommendations set out in article 8 of the summary of issues and recommendations, on page 5 thereof, and that we adopt the recommendation that the definition of the term "private interest" should not be expanded.

The Deputy Chair: Thank you very much.

On that motion, those supporting, please raise your hand. On the phone say yes if you support the motion; say no if you don't. Okay. Motion is carried. Thank you. The count is here.

Mr. Anglin: You didn't take the no vote on this side.

The Deputy Chair: Oh. Okay. Mr. Anglin, what's your position on this one?

Mr. Anglin: No.

The Deputy Chair: No. Okay.

Ms Blakeman: I'm sorry. You asked for those in favour, but you didn't ask for those that are opposed.

Mr. Anglin: Yeah. That's what I was getting at. You didn't ask who was opposed.

The Deputy Chair: Thank you.

Those opposed? Motion carried. Thank you very much.

That one was dealt with quickly. I appreciate that.

Ms Leonard, let's move on to the next one.

Ms Leonard: Okay. The next section is also related to the definition of private interest. It involves a matter of general application. The definition says that a private interest does not include "an interest in a matter that is of general application," and one of the issues that arose was how to determine whether an interest is sufficiently general so that it doesn't count as a private interest. There were two suggestions, both essentially saying that perhaps we should clarify how to determine whether an interest is of general application.

Mr. Dorward: The previous motion carries that as far as I'm concerned.

Dr. Brown: It's the same.

The Deputy Chair: Okay. We have Mr. Dorward and Dr. Brown both saying that it's the same.

Any further discussion?

Ms Blakeman: Yeah. I'm not going to agree that it's necessarily the same, but I would argue that we should leave it as it is. We have a test. We have precedents that have given flexibility and also guidance to the commissioner on how to determine that. I feel very strongly that the Legislative Assembly should be as diverse and representative as possible. If we start saying: oh, you can't speak to any ag thing if you're a farmer or any teacher's thing or civil servant thing if you're, you know, a teacher – no, no, no.

I think the application of private interest as the way we have it is to the member's spouse and child. Now, I would argue in the next section that we should be adding third parties in there because we have had trouble with that. But as for leaving that definition of general application, it's worked very well for us, and I think we should leave it alone.

The Deputy Chair: Okay. Thank you very much.

Anybody else for further comments? Mr. Anglin.

Mr. Anglin: Yes. The way it's written is – and I've been subject to this, so I think it's appropriate. I like the way it's written in the act already . . .

The Deputy Chair: Okay.

Mr. Anglin: . . . because there are moments that – and I'm not going to make an argument now to digress into putting the public interest . . .

The Deputy Chair: Thank you.

Mr. Anglin: Quit interrupting, please. That's just out of basic respect.

The Deputy Chair: Okay.

Mr. Anglin: To put in public interest is not a debate I want to get into at the moment, but when it talks about a broader class of the public, that's what we advocate for, and the distinction is made when they're reviewing the act. There always is that balance

because the broader class or the broader public having an advantage will affect individuals, and we understand that.

Thank you.

The Deputy Chair: Okay. Thank you very much.

Ms Notley: I agree with what everyone said. I'm just wondering if I could get maybe assurance from the folks from Leg. research that there is a place where we can talk about the general application of the sections where private interest is included. I just want to make sure that we're not plowing through so quickly that we are negating our ability to talk about the application, you know, who it applies to. It may not have been specifically written appropriately.

The Deputy Chair: Okay. We'll have Mr. Odsen clarify that.

Mr. Odsen: Well, there are a couple of places, numbers 18 to 20, persons directly associated, is one of the things that's being touched on by the members of the committee. As well, numbers 25 through to 27 deal with the issue of furthering private interests under the obligations of members. So there are two places for sure where it's going to be under discussion.

The Deputy Chair: Thank you very much.

Any further addition to that? Okay. Good. Thank you very much.

On that one I don't see any hands up anymore. It looks like another tentative agreement again.

Dr. Brown: No change.

The Deputy Chair: No change. Okay. All agreed? Yes. Anybody opposed? No. Okay. That one is agreed. Agreed to leave it as it is, right?

Okay. Next one, please, Ms Leonard.

Ms Leonard: Okay. The next section is to do with the definition of adult interdependent partner. One submission noted that it's referred to in the terms used in the act, but it's not defined in section 1.

Another submission suggested that the term be included in the definition of spouse so that it wouldn't have to reference both spouse and interdependent partner throughout the act.

Ms Blakeman: I think it should be included in the definition of spouse so it doesn't have to be repeated all the way through. I know that this was a way of the government dealing with some difficult situations, but it's just not a term that's used very frequently. In essence, the law now regards it the same as spouse, and we should just put it under the definition of spouse and get on with it.

The Deputy Chair: Okay. Thank you very much.

Ms Johnson.

12:40

Ms L. Johnson: Thank you, Mr. Chair. I note that the Ethics Commissioner didn't ask for a change to this definition, so I'd like to go on record that I see no need to change it.

The Deputy Chair: Okay. I would like to have Mr. Resler comment on that one.

Mr. Resler: I'd just like to point out that the Adult Interdependent Relationships Act is where you find the definition of adult

interdependent partner. We have no objection to including it within the definition of spouse just for simplification.

The Deputy Chair: Okay. Thank you very much. Any further discussion on that one?

Dr. Brown: You're recommending article 11, then?

Ms Blakeman: I'm recommending 13.

Dr. Brown: Oh, yeah. Sorry. Thirteen. Yes.

The Deputy Chair: Okay. I see that as a relatively easy quick fix. Can we all agree?

Ms Blakeman: I think you've got mostly agreement but a few objections.

The Deputy Chair: Okay. Anybody object to that one? After the further clarification I thought it might change the votes. Okay. I take it we all agree on that one? Thank you very much. Let's move on.

Wow. I like this pace. Thank you. You guys are fantastic.

Let's move on, Ms Leonard, for the next one.

Ms Leonard: The next one is definitions of the Crown and provincial agencies. This is section 1(1)(a) and (h). There was one suggestion to expand the definition of the Crown to include provincial agencies that are currently excluded since conflict of interest can arise with regard to these agencies just as with the other provincial agencies that are included. The excluded agencies are those set out in I think it's section 2(5) of the Financial Administration Act. These include postsecondary institutions, provincial health boards, mental health hospital boards, research and innovation corporations, and any subsidiary corporations of those. But there was another recommendation that the definition of the Crown as it is is appropriate and doesn't need to be changed.

That's all.

The Deputy Chair: Okay.

Ms Blakeman: I think this one does need some work. As we've experienced over the last year, the public does not distinguish. They see that appointed persons – a chairperson or a member of a board for a government agency, board, or commission or, I would argue, anyone that is employed or on the board of a delegated administrative organization, which is a created entity of the government, and those on Crown and specified provincial agencies – should all be included in this. The public is not accepting the fact that someone who is a board member of Alberta Health Services or a staff member for some other organization that is created by an act of legislation and reports through to a minister or to the Alberta Assembly is somehow not included in this. It's not washing. People expect those individuals to be held to the same high standard of integrity and pursuing no conflict of interest with their finances. I think it's time that we did include this.

We've had rolling hills and valleys of co-operation from the government on this. Premier Klein was very open that he wanted agencies, boards, and commissions included in all of this, but then it never seemed to actually happen. We had a directive, and then we supposedly had an act, but it never seems to roll around. I think it's important and that we would be failing the public if we did not recognize and include those entities in this definition at this time. I'm particularly exercised about delegated administrative organizations, which truly are the creature of the govern-

ment and their financing is coming because of the government enabling that financing to come to them.

Thank you.

The Deputy Chair: Thank you very much.

Mr. Dorward: I don't disagree that some of the exclusions as noted on the notes section next to 14, 15, 16 either need to and may have similar legislation or similar rules. But to take our act and foist – maybe that's too strong a word or the wrong word – or assume that all of the tenets of our act would apply to them seamlessly is maybe a bit of a stretch, and I would appreciate the Ethics Commissioner's or his staff's discussion in this regard. For example, to just pick one, I can't imagine a situation where a university professor has a cooling-off period after he or she is not at the University of Alberta for a period of time. I mean, there would be a lot of things that would have to be adjusted and modified within our legislation, I think, to be able to make it applicable to those kind of scenarios out there.

So there you go.

The Deputy Chair: Thank you very much.

At this point could I ask our commission officer or any one of you to sort of offer some comments or clarifications?

Mr. Resler: For agencies, boards, and commissions we now have the Public Agencies Governance Act, which has been proclaimed. Under that legislation the agencies, boards, and commissions are required to develop a code of conduct, which most of them have already completed. Part of that code of conduct may establish ethics committees and will have specific codes and items with which they'll have to comply.

The senior officials designation, which is later in the recommendations document, is where it is defined as far as which senior officials come to our office under our authority. Specifically, this area is looking at what is excluded from the Crown and agencies, and on the right-hand side the notes pages list those specific ones. If those excluded agencies are brought in under the definition, we have to look at what applies. Is it strictly postemployment? What matters specifically are being addressed? What level of staffing? Is it just the boards that we're looking at? There would definitely be an impact on resources and budget with that.

The Deputy Chair: Thank you very much.

Ms Blakeman: Well, I guess I would say back to the member – and I'm actually not going to give him a chance to answer me until later – “Okay. So it's more resources. Is it doable?” I would argue that it probably is.

I'm going to go back to the general theory of this and ask my colleagues: how are these people accountable? If we're not going to include them here, how are they accountable? Ultimately people, the public, my fabulous constituents out there look to government and go: “Why didn't you hold that person responsible? You do something about them.” If we haven't included them in this or properly used the language, we demean all of us in the public eye. We have too long left these individuals that are appointed to government boards and agencies, delegated administrative organizations, Crown corporations out of this kind of thing and even, following on the previous speaker, allowed them to make their own rules of conduct. Well, that says nothing about whether that would come to the standard or even a minimum of what is expected of others.

We are all out there supposedly representing the best interests of the public, and I think we should increasingly hold everyone to

that high standard because the public certainly does. Make me the argument, then, about how else these various groups are held accountable because I've tried to hold them accountable, and I can't do it. There's no legislation with which to do it, and I would argue that if there isn't anything else, they should be in here.

The Deputy Chair: Thank you very much.

Ms Notley. Sorry; I should have recognized you earlier.

Ms Notley: That's all right. Thank you. I think that this is a gaping hole which, frankly, needs to be fixed. If we choose not to, then we kind of undermine the validity of this whole process. I mean, AHS administers – what? – \$10 billion a year out of a \$42-billion budget, yet they are not subject to conflict of interest. It's astounding.

We know that in the past there have been examples of just simple things. It may have been done in the greatest of faith, with the greatest of integrity, but people have open, continued economic interests in corporations which benefit from decisions made by AHS or previous boards and agencies. You've got, you know, private drug companies, private lab companies, and those folks, who have ongoing, open stock interests in those companies, are then in senior positions on boards and agencies.

There's too much money in this pot for these not to be subject to very rigorous regulation. I appreciate that they have the opportunity to possibly in their discretion come up with rules around conflict of interest and integrity and all that kind of stuff, but it remains far too discretionary. Frankly, this government has embarked upon a process of delegating good chunks of its responsibility to these agencies, which are not directly accountable. As that practice increases, so too does the opportunity for the very purpose of this act to be undermined. So we need to address that.

12:50

The Deputy Chair: Thank you very much.

Mr. Dorward: I hope this lends to the conversation. I have in my hands a copy of the Alberta Public Agencies Governance Act, that was proclaimed in June of 2013, just recently. Public agency is defined here. I've breezed through it now. I think it's pretty encapsulating or inclusive. The public agency definition – I don't know – does not appear to be discretionary at all.

Ms Notley: The standards are discretionary.

Mr. Dorward: Well, let's go right to the standards, then. The codes of conduct, which is section 11, says:

Every public agency shall implement

- (a) a code of conduct governing the conduct of its members, and
- (b) a code of conduct governing the conduct of its employees, if any.

Then it goes on to discuss more details respecting that code of conduct that they shall make.

I just heard a couple of discussions about how the public wants to have this, and I've just described that it's here now. I'm not understanding how it's not here.

The Deputy Chair: On that note I'd like to invite our commission office to further clarify that point.

Mr. Resler: As far as the basic standards with the Agency Governance Secretariat, the basic standard is the Alberta public service code of conduct and ethics. That's the basic standard, the template from which they initiate their codes. The secretariat also

publishes all the codes of conduct in addition to the actual agencies, boards, and commissions having them on their websites. You can look at them by department, which ABCs report to that department, and they're all listed there. Alberta Health Services does have a comprehensive code for the board members and their employees, just to provide reference to that.

The Deputy Chair: Did I see Ms Johnson's hand up earlier?

Ms L. Johnson: Yes, Mr. Chair. On a related topic, as the announcements came out on reporting of expenses and operations of MLA offices, each of the government agencies was expected to adopt that same frame of reference on how they behaved as boards of directors. I'm on the AHS website, looking for their press release when they made that adoption. I sit on the board of Alberta Innovates: Technology Futures, which adopted the same criteria and operations manual for their management. So I think the matter is being addressed within our existing guidelines, legislation, and regulations.

Thank you.

The Deputy Chair: Thank you.

Dr. Brown: I would support what Ms Johnson has said. I think that there's an opportunity there for public agencies to have more particular applications of their codes of conduct to specific fields. They're in the best position to see where possible conflicts of interest could arise and where, you know, ethical considerations could come into play. I really am reluctant to proceed with any move to expand it to further public agencies, and I think I would go with the recommendation of the Ethics Commissioner in this regard as well, to say: leave it the way it is.

The Deputy Chair: Okay. Thank you very much.

Ms Blakeman: No one has been able to show me where delegated administrative organizations are included under any of these. I maintain that those organizations are outliers out there, and they have to be brought in under some overriding piece of legislation. I mean, you can and have argued that the Alberta Public Agencies Governance Act – I'm desperately searching for the definition that would say who's included under that, but that's part of the problem.

I hear the hon. Member for Calgary-Glenmore arguing that she is on a recognized government agency, Alberta Innovates: Technology Futures, and it has done something, and I go: "Oh, terrific. Okay. Well, what about this group, and what about that group?" You know what? We have so many definitions right now of various kinds of organizations that operate at various levels of arm's length, from a finger to an arm, but that still ultimately respond back to the Legislative Assembly. This is where part of the problem is. So far none of you can show me where a delegated administrative organization is included because it's not in this one.

Mr. Dorward: Did you look in the definition part at the start?

Ms Blakeman: Yeah. I know they're not because I've looked at that before.

Mr. Dorward: Okay.

Ms Notley: I think the key thing to remember here is that I think they are covered under the act, but the problem is that the act ultimately allows for tremendous amounts of discretion. They say that they shall have a code of conduct, the code of conduct may or may not include prohibitions on behaviour which are currently

included in our conflict of interest legislation, the code of conduct may or may not require that it be enforceable by an objective person outside the organization, and it may or may not be required that it can be initiated or enforced by a complaint issued by a member of the public, all those very elements of it.

I mean, corporations and agencies are all great at writing policy on codes of conduct and stuff, and then they may or may not ever be enforced. There is a reason why we and senior members of government are held to account by an objective, independent office. That same reason applies to certain levels of delegated administrative bodies in this province, and that they themselves come up with their piecemeal rules does not answer the question. The Member for Calgary-Glenmore talked about the fact that they are, quote, expected to come up with their own expense policy. Well, that's great, but that's a reaction to a whole bunch of problems around expense policies, and that's not actually a global statement around preventing conflict of interest. The rules around it will vary from agency to agency to agency.

It needs to be enforceable, it needs to be objectively investigated and enforced, and it needs to be the kind of thing where a member of the public can initiate the complaint. Those are not components of the ones currently provided for under the legislation that was just proclaimed. It's two different things, and it's a bit of a bait and switch. If that's what government members want to do, that's fine, but it is not the same thing.

The Deputy Chair: Thank you very much.

I have Ms Johnson and Mr. Anglin following that.

Ms L. Johnson: Thank you, Mr. Chair. I'm hoping to wind this up so we can move on to the next one as well.

The Deputy Chair: Thank you for that suggestion.

Ms L. Johnson: I would suggest that we can include the observation in our report, but we have our Associate Minister of Accountability, Transparency and Transformation working with our agencies as well. We're in a philosophical difference here, so let's have the committee make a decision and move on.

The Deputy Chair: Okay. Thank you. I'll certainly observe that.

Mr. Anglin, very quick, briefly.

Mr. Anglin: No. Not quick. I get the same amount of time as every other member, so stop that nonsense, please.

The Deputy Chair: Two minutes.

Mr. Anglin: I don't even need two minutes.

The Deputy Chair: Thank you for that.

Mr. Anglin: I would ask you to give me that same respect that other members get; otherwise, we're going to have another little go-round. Let's stop that nonsense.

One is that I agree with the Member for Edmonton-Strathcona in the entirety, but there's one other item I want to add here. The public needs confidence and consistency, and they don't have that right now. It's not there. That needs to be undertaken by this committee when it comes forward with these recommendations.

1:00

The Deputy Chair: Thank you.

All right. On that one we are going around and around. Okay. There's a recommendation. All those discussions bring on different points of view, clarification after clarification. Do our

experts here at the commissioner's office have any further clarification that can help us move along?

Mr. Quadri: Actually, I have a suggestion. Somebody should give Mr. Anglin a little glass of cold water.

Ms Blakeman: While they're discussing, can I just make my comment to save time?

The Deputy Chair: Okay. Ms Blakeman, go ahead.

Ms Blakeman: I appreciate that we have people who work the act, but we're politicians, and there's a difference between how things are administered and the politics of things. I appreciate that they're experts in implementing it, but to be constantly referring to them as the final word in something is inappropriate, I believe. The work of this committee is deciding what is more representative. I value highly their expertise in their area, but to go back to them as a final word or as a deciding factor is inappropriate. They do a different job.

The Deputy Chair: Okay. I want to clarify that. As chair I understand that it's our committee that delivers the decisions. The staff, including our experts over there, only offer suggestions, information, and facts. That's what I'm asking for.

Okay. Go ahead.

Mr. Resler: Sorry. Not a final word but as clarification. These sections, as far as the definition of the Crown and the provincial agencies, are defined under the Conflicts of Interest Act. Those are defined as they apply to former ministers and former political staff members. That's how that definition is. A lot of the discussion surrounding whether it's senior officials or board members, that type of thing, is dealing with the Fowler memo definition of senior official, and that might be where that discussion comes into play. This is specifically applying to postemployment situations under the Conflicts of Interest Act and contracts with the Crown, that type of thing pertaining to members.

Ms Blakeman: So items 14, 15, and 16 you believe are specific to retiring or outgoing?

Mr. Resler: It's dealing with contracts with the Crown. So how is the Crown defined then? If members have contracts with the Crown, who is included in the Crown? If you have postemployment situations, who are considered the Crown and its agencies? Those are where those definitions are applied under the Conflicts of Interest Act. Just so we're certain.

The Deputy Chair: Wow. That's very critical information.

Ms Blakeman: Where does what we're talking about go?

Mr. Resler: Later on under the recommendations with the Fowler memo, definitions of senior officials, there's some discussion.

Ms Notley: I guess the key is that what we want to talk about is the application of the act as a whole. Is there a place where that is found as this is currently structured or not? We understood it to be relating to the application of the act as a whole. If we were incorrect – and I understand that you're saying that we may be – then the question becomes: where in our planned discussions is there an opportunity to have a conversation about the application of the act as a whole? Certainly, the recommendation of Deputy Minister Morhart was not just related to simply those limited

sections. That recommendation was with respect to the whole application of the act. We need to know that there's a place where we can have that discussion if it's not here.

Mr. Dorward: It's up in the 134 range; 134 is the main part. It bounces around a bit in there.

The Deputy Chair: Go ahead, Ms Johnson.

Ms L. Johnson: Thank you. In the whereas of the piece of legislation that this standing committee is reviewing, it's the "conduct of elected officials," so back to the focus of what our discussion is.

Ms Notley: But it's not this. It's also senior officials of government. There was a legitimate recommendation put forward, actually, by a very senior official of government, so we have the scope to address it and consider it.

The Deputy Chair: Sorry. If I can break up the discussion a little bit here, if I've followed our conversation so far, what we're saying right now, the definition of the Crown and provincial agencies really refers to our senior administrative officers and elected officials. When you have a contract relationship with the Crown and provincial agencies, this is where it refers to it. This is where it's defined.

Ms Blakeman: Postemployment. It's the cooling-off period.

The Deputy Chair: I think that's a critical clarification. Let's leave all the rest. We'll deal with it later. On that note, are you able to accept what the commissioner's office was recommending here, saying, "Do not change it; just leave it as is"?

Ms Notley: Can we get an answer about when we get to have the discussion reflected in Deputy Minister Morhart's recommendation?

The Deputy Chair: Let's just hear from Ms Leonard on the Fowler memo and those other pieces . . .

Ms Notley: Not the Fowler memo. It's a different recommendation. I'm not talking about the Fowler memo.

Ms Leonard: But is the issue not the general issue of whether the act should apply to senior . . .

Ms Notley: Generally speaking, yes. Not just one section here or one section there but whether the act applies to them equally as it would to a deputy minister. Where is that discussion in this?

Ms Leonard: I don't think there is explicitly that.

Ms Notley: I believe you are correct, and that is my point. My question to the chair is: if we're going to limit this discussion to the application you just proposed, when do we have the discussion that I am asking about?

Mr. Dorward: Just add it onto the list.

The Deputy Chair: Yeah. Can we just add one more to the list?

Ms Blakeman: Can I get clarification, then? Where do people like the ERCB or the single regulator – where are they?

Mr. Resler: That falls under the senior official definition.

Ms Blakeman: Okay. They're already defined, so they'd already be captured in this.

Mr. Resler: They're captured under the Public Service Act definition. There's an order in council that defines a senior official.

Ms Blakeman: Okay. So they're not part of this act. They're covered under a different one.

Mr. Resler: Well, not under the Conflicts of Interest Act. The Public Service Act has a postemployment restriction regulation specific to senior officials, being deputy ministers, and a couple of other definitions. It's defined there. Where we capture them is under that Fowler memo.

Ms Blakeman: Is it possible to look for some clarification about this because there seems to be different acts, different memos in which some people are covered and other people aren't. Is there some way for us to gather this all together and say that these people are covered under this and these are covered under this and these are not covered by anything? I mean, I may well agree with this, but, you know, I didn't know where the single regulator is. That's a fairly new position. I haven't seen him stated as being covered under any particular conflict of interest or code of conduct. So I need more information, and I'll quit arguing with you if you'll agree to give it to me.

Mr. Resler: One of our recommendations was to legislate the Fowler memo type of thing, put in legislation our authority for this.

The Deputy Chair: It's in the recommendations in this paper, I believe.

Thank you very much.

On that note, are we further ahead? Can we sort of try to agree on this piece and move on?

Ms Blakeman: Can I get the information?

Dr. Brown: Mr. Chair, I think Ms Blakeman has suggested that we request the staff to just provide a table or some sort of comprehensive analysis of which senior officials are covered under which legislation and so on to see if there are any gaps which remain.

1:10

The Deputy Chair: Thank you very much. That's very good clarification. That's why he has a doctorate degree. It helps. Thank you.

Now, for this recommendation on the table, what do we want to leave to our clerk as our direction? Accept it as is?

Ms L. Johnson: Are we talking about 14, 15, and 16?

The Deputy Chair: Yes.

Mr. Dorward: Now, there's no amendment here.

The Deputy Chair: Mr. Dorward, give me a word on the table.

Mr. Dorward: Well, we'll accept recommendation 15, which does not change anything.

The Deputy Chair: Okay, accepting 15.

Ms Notley: You want to make that decision before we get the information that we just agreed to ask for?

Mr. Dorward: Well, I'm saying that in the context of us rediscussing this around the 130 level of the recommendations, because we will definitely be diving into it there with respect to the officials that will show up on that chart, unless we want to defer the whole 130, which we may not get to anyway today.

Ms Notley: I just think that because it's kind of related and this information would clarify how it's related and not related, it might be helpful to just defer until we get that information back.

Mr. Dorward: Well, fine. Accepting 15 has changed nothing unless we decide later to change something.

The Deputy Chair: That sounds good to me. Okay. Let's park this one and move on. Thank you. We were quick on two, but we really took a lot of time on the third one. Hopefully, the next one will be a quicker one.

Are you okay – if we end up getting into a much deeper discussion, I'm going to interject and table that. I really want to have a sense when we go through this whole report and get a good feeling of some of the points that we need to reserve some time for next time.

All right. Let's move on.

Ms Leonard: The next section deals with whether there should be a definition of "improper" in the act, section 3. One of the prohibitions is on members using their influence to improperly further another person's private interest. There was one recommendation that "improper" and "improperly" should be defined in the act to give guidance to the commissioner.

If you recall, research services prepared a document on the meaning of "improperly," where essentially the conclusion was that the term should be given its ordinary dictionary meaning within the context of the act as a whole and that it probably wasn't necessary to include it in the act. But that's for the committee to decide.

The Deputy Chair: All agreed?

Ms Notley: Well, unfortunately, I mean, the application of a significant prohibition in this legislation rests on how the word "improper" is defined. I will grant you that it's very difficult because it doesn't appear as though there's been a great deal of decision-making on it, but the fact of the matter is that, unfortunately, there's actually, you know, a fairly significant decision that's pending and will probably rest on the interpretation of that word. I think that sort of everyone walking away from it very quickly and saying, "No, let's not talk about how we define 'improper'," is not the best way to go. I think that that section where you find it is sort of the linchpin of much of this act. We've heard some different opinions about what is and isn't improper, particularly in the context of recent activity, and I am not comfortable with just leaving it silent.

The Deputy Chair: Okay.

Ms Fenske.

Ms Fenske: Thank you. I would disagree that we are just going over it quickly. We have spent a great deal of committee time in actually looking at that specifically, as was indicated. We've had discussion, and we've had a report back from administration. We have their recommendation that "improper" be the dictionary definition, and I think that that's probably where we should go.

The Deputy Chair: Thank you very much.

Ms Notley: Which dictionary definition? Like, it's not defined anywhere right now.

The Deputy Chair: Okay. Let's move on.

Dr. Brown: Well, I would argue in favour of the fact that it should not be further defined.

I just want to quote from our report of this committee, the equivalent committee in 2006, when we talked about this thing. It says:

The Committee noted that it would be difficult to iterate all individual cases in which a Member would breach the Act by improperly or inappropriately benefiting a proscribed group of individuals. Instead, the Committee agreed it would be of greater advantage to focus in general terms on the impropriety of such activity.

I fully agree with that. I mean, it could be an uncle or an aunt, or it could be your next-door neighbour or your fishing buddy. It could be anything. If we try to get into anything other than the smell test, you're getting into an area where you're going to perhaps exclude people that should properly be included within the definition of "improper." I think "improper" means, you know: what is the public going to think about this? Does it pass the smell test?

I don't think you can get any further down that line. I mean, we have all sorts of provisions in the law which refer in terms of, you know, some judgment being involved, and I think that's why we have the office of the Ethics Commissioner, to make those judgments. I don't think that we can really parse it down to, you know, a specific instance of this or that or specific individuals and so on. I think you have to leave some elements. You have to have it broad enough so that it covers those improper situations. That's my view.

The Deputy Chair: Thank you very much. Well said.

Anybody else that wants to add any new points?

If not, on that last note of Dr. Brown can I ask if anybody is ready to suggest a motion we accept this?

Dr. Brown: I would move that we reject article 17.

The Deputy Chair: Okay. The motion is on the floor. Those who support it, show your hand. Agreed? Okay. On the phone, those who agree, say yes. Can you guys hear me on the phone?

Mr. Wilson: We can hear you. I'm waiting for you to ask if I'm opposed.

The Deputy Chair: For those opposed – let's go to the phone first – say no. Okay. Anybody here?

Mr. Quadri: Yes.

The Deputy Chair: Yes. Okay.

Mr. Quadri: I'm not opposed. I'm in favour. Yes.

The Deputy Chair: All right. We'll count you in.

For those who say no, just raise your hand now. One, two, three, plus on the phone. Carried. Thank you very much.

Ms Notley: Excuse me. I'm just wondering. I'd like to request a recorded vote on that one.

Ms L. Johnson: Don't you have to do it before?

Ms Notley: I don't think so, no.

The Deputy Chair: Just for the record you want to say the vote.

Ms Notley: Yes. Just a recorded vote.

The Deputy Chair: Okay. All right. Let's go. Let's put it on the record. I'm going to go to my left again. I'll start with Dr. Brown.

Dr. Brown: I'm in favour of the motion to reject article 17.

The Deputy Chair: Thank you.

Mr. Dorward: In favour.

Ms Fenske: I support the motion.

The Deputy Chair: Okay. Thank you.

Mr. Anglin: This is the strangest vote, but as MLA for Rimbeyp-Rocky Mountain House-Sundre, as Mr. Anglin, the vote is no.

The Deputy Chair: Okay. Thank you.

Ms Blakeman: No.

The Deputy Chair: Thank you.

Ms Notley.

Ms Notley: Yes. I vote against the motion to keep the definition of improper vague and undefined.

The Deputy Chair: Okay.

Ms L. Johnson: I support the motion that was presented to the committee.

The Deputy Chair: Thank you very much.

Those on the phone. How about Mr. Quadri first?

Mr. Quadri: I'm in favour of the motion.

The Deputy Chair: Okay. Thank you.

Mr. Wilson: No.

The Deputy Chair: No. Okay.

That concludes it. The motion is carried. Thank you very much.

Ms Leonard, let's go on to the next one.

Ms Leonard: The next section is definition of persons directly associated with a member. In section 1(5) it's defined as a member's spouse, certain corporations with which the member has an involvement, a partnership that a member is a partner of, or individuals acting with the member's express or implied consent. There were suggestions to expand the definition of direct associates to include possibly relatives, friends, or agents.

Mr. Chair.

The Deputy Chair: Thank you so much.

I'm inviting members for comment.

Ms Blakeman: Once again, I refer you to the wording that's used in the Quebec legislation, which talks about another person's private interests, which is a very nice way of giving the Ethics Commissioner flexibility without getting down to naming whether it's a relative or a stockholder or whatever else. So it is a member's private interest, a family member, nondependent child, or – and it's a very nice phrase – another person's private interests. So I think that's the way we should go. None of the rest of these are capturing the issue, I think, and I would prefer to see

the wording “another person’s private interests” included in place of what’s being recommended here.

1:20

The Deputy Chair: Thank you.

Any further comments by others? Sorry. Mr. Wilkinson, please.

Mr. Wilkinson: Thank you, Mr. Chair. Section 3, as many of the members know, I think, already addresses improperly furthering a private interest of another person, and that encompasses all persons, including a close friend. From there on we look at particular facts of the allegation and the act to make a determination. We are recommending to the committee no change there because section 3 already addresses it.

We’d also like to draw your attention to item 20 there. We would like to see the term “agent” put in there as described in item 20, for your consideration.

The Deputy Chair: Thank you so much.

Mr. Dorward.

Mr. Dorward: Thank you. Yeah. Items 18 and 19 are different than 20, and I’ve looked at this.

The Deputy Chair: Let’s do them separately.

Mr. Dorward: Yeah. Well, and section 3 covers it, as it was just stated. The last sentence in 18 is quite funny because 18 kind of says: well, you know, consider putting this in, but if you do that, it will be too narrow, so don’t. But I’ve thought through 20, and I’m supportive of that because if somebody is acting as an agent on behalf of a member, it could be included. I respect the commissioner on item 20.

The Deputy Chair: Thank you so much. May I suggest that I’m going to break this recommendation into two parts. For the first part it’s 18 and 19 together. Do I have somebody recommending?

Ms Notley: No. Thank you.

The Deputy Chair: No?

Ms Notley: That’s not going to work.

The Deputy Chair: It’s not going to work for you. How about the rest of you guys? No? Okay.

Ms Notley: Maybe I could say this. My concern is that I would like to separate the consideration of relatives from the words “friends” and “neighbours” and all that other kind of stuff. I think that if the federal conflict of interest legislation can include relatives, then so can ours. But I’m not advocating for including friends and neighbours, which is the way it’s written right now. With 18 and 19 it’s including that, too. I’m not suggesting that that would be doable or reasonable.

The Deputy Chair: So you’re essentially introducing another item there.

Ms Notley: I may be. We can deal with it however you’d like, but certainly rejecting both 18 and 19 together will make it hard to. I just want to put it out there, however you want to structure that.

The Deputy Chair: Okay. All right. Thank you. Noted on the record.

Mr. Dorward.

Mr. Dorward: Yeah. You know, if I could read section 3 of the act: “a person directly associated with the Member or the Member’s minor child or to improperly further another person’s private interest.”

Ms Blakeman: Under Influence. Watch the subheadings.

Mr. Dorward: Go ahead, Ms Blakeman. Explain that to me.

Ms Blakeman: Sorry. Watch the subheadings because they matter in legislation. You’ve got part 2, obligations of members. Then the first subheading is Decisions Furthering Private Interests. Then you’ve got Influence. So this is about a member breaching the act if they use their office or powers to influence, to seek to influence a decision, and then who could have their private interest furthered. Then they have the list of whose private interest could be furthered by the influence.

The next section is insider information, which is different than influence.

We have to be cautious about believing that one section covers everything because it may not. It may be quite specific to what the subheading is. Would I be correct in that, Parliamentary Counsel? Sorry to do this to you.

Mr. Dorward: Okay. I appreciate that. I’ll just extend my comments to 4, then, “or another person’s private interest.” Why isn’t that inclusive enough? I can tell you that in ’06 the act used to read at the tail end of 4, “a person directly associated with the Member or the Member’s minor child,” and it was tightened up in ’06 to change to “or another person’s private interest,” which for me is very inclusive.

Ms Blakeman: Yeah. I was okay with it once it was pointed out to me.

Ms Notley: Actually, if I could jump in there. I mean, I might be turning down into the wind here, but the difference is the one that we just discussed, that the standard is that

a Member breaches this Act if the Member uses the Member’s office or powers to influence or to seek to influence a decision to be made by or on behalf of the Crown to further a private interest of the Member, a person directly associated . . . or to improperly further another person’s private interest.

Then what happens is that group of people, the “another person” that you’re saying is covered already, actually is a different standard because what the standard is now is improper as opposed to the overall ban on influencing whether proper or not proper. That’s why I just want to include relatives. That’s why I’m saying include relatives, right? You can have improper for another person because there is proper furthering of another person’s private interests, but it shouldn’t be for a relative. That’s my point.

The Deputy Chair: Thank you.

Dr. Brown: Well, I hope that I can clarify that a little bit. In section 3 it says ipso facto that if you are a person directly associated with that or a minor child, that is improper by definition. But if you expanded it and just say “or to further another person’s private interest,” it would be meaningless. You have to have that test of improper. Let’s say it’s your close fishing buddy or your lodge partner or somebody you’ve known forever. It could be your brother-in-law. I mean, you can’t define all of those people. That’s why you need something like the “improperly further another person’s” interest. There has to be some sort of a test in there. For the other ones you don’t need a test because if

you fall within those proscribed categories, it is improper by definition.

Ms Notley: Well, we're kind of halfway on the same way. That's why I'm saying that in this particular discussion that we're having, not about improper but about who is in the group "person directly associated with the Member," you're quite right. I agree that there is a different standard, that it is possible to properly further the private interests of another person. But the key is that if you further the private interests of your brother, why is that so different than furthering the private interests of your adult child? I would say, really, that both are improper. The way this legislation reads right now, they're not.

The federal legislation says "relatives." If the federal legislation can include relatives in the first clause of that section – right? – such that they're included under "person directly associated with the Member or the Member's minor child," if you include them there, then we're at the same standard as the federal legislation. Why is that a problem? I'm not suggesting that we move "improper" out. I understand why it's there. I wanted to define it more, but I do understand it's necessary. What I'm saying is that in the first half of that it should be a larger group. I don't want to include friends and neighbours, which is what I started out by discussing, because I think that is too broad. I would, however, like to include relatives, like the federal legislation. That's all.

The Deputy Chair: Okay. Thank you very much.

On that point is there any other further clarification or comment? Okay. Please, Mr. Resler.

Mr. Resler: Just help me understand. It's the use of the words "family member" in that clause: is that what you're suggesting? In the federal legislation the family member is defined as the member's spouse or common-law partner, son or daughter of the member or the member's spouse. The family member doesn't define a brother or anything like that.

Ms Notley: According to this document here that we got from these folks over there, it says that relatives are included in the federal Conflict of Interest Act.

Ms Leonard: "Relatives" is section 2(3).

Mr. Resler: Section 2(3)?

Ms Leonard: The code, I believe, uses "family members."

Mr. Resler: I'm looking at the code, yes.

Ms Leonard: That's the difference. The code uses "family members." The act uses "relatives."

Mr. Resler: Okay. Thank you.

The Deputy Chair: Okay. Thank you very much.

I have Mr. Wilson on the phone.

Mr. Wilson: Thank you, Mr. Chair. I was simply going to add how it was defined in the federal act, but if everyone is looking at that now, I don't think I need to. Thank you.

The Deputy Chair: Okay. Thank you.

How do we go about this one? We have 18, 19, and 20 all separate. I'm going to call. Anybody want a motion about 18?

Ms Notley: Can I make an amendment?

1:30

The Deputy Chair: Okay.

Ms Notley: Move 18 as a motion, and then I will make an amendment that we simply expand the definition of persons directly associated with the member to include the word "relatives." That's it.

The Deputy Chair: Okay. Thank you.

Ms L. Johnson: That's what it says.

Ms Notley: No, no. Item 18 also talks about friend, ex-spouse, neighbour. I'm not going down that road. I'm simply going for the relative.

Dr. Brown: Well, I don't really like the term "relatives" because I happen to have a family that's got – I have over 2,000 relatives. We just had a reunion a couple of weeks ago. I have over 2,000 relatives that live mostly in southern Alberta. I would prefer to see some definition of family like the federal definition, if you want to include it, but not a vague term like "relatives." It's too big.

Ms Notley: Well, I can say from my days of union negotiating, when we got into this whole issue around who qualifies for getting leave for when there's a funeral . . .

Mr. Dorward: Compassionate leave.

Ms Notley: Compassionate leave. Thank you. There is actually quite a bit of language out there that does a nice, little, tight list of the relatives who I could accept as being included in that. If you would find it helpful for me to come back with one of those lists, I'm happy to do that.

The Deputy Chair: Can we do that?

Ms Notley: Sure.

The Deputy Chair: All right. Thank you.

We'll defer this one. We'll talk about it later.

Okay. Next one. Blind trust, I believe.

Ms Leonard: I took the two sections blind trust and managed funds together because the recommendations are actually quite similar. Section 20 of the act essentially says that ministers can only hold publicly traded securities if they're in a blind trust.

The Deputy Chair: Just a clarification. We're putting all the recommendations – 18, 19, 20 – on hold because there's so much debate about it. We're moving on to the next one.

Sorry about that. Let's restart.

Ms Leonard: Okay. I'll start again. I grouped blind trusts and managed funds, recommendations 21 through 23, into one category because they're quite similar. Section 20 of the act says that ministers can only hold publicly traded securities if they're in a blind trust – and that's defined in section 1(7) of the act – although they can get the Ethics Commissioner's approval to hold them.

One of the recommendations was from the Ethics Commissioner, I believe, saying that rules on blind trusts don't need to be amended. There were two recommendations that suggested expanding what investment arrangements were available to ministers from just blind trust to include, perhaps, financial advisers, mutual funds, or managed funds.

Mr. Chair, I don't know if perhaps the Ethics Commissioner would like to expand further on this.

Mr. Wilkinson: Thank you. This is Glen's.

The Deputy Chair: Okay. All yours, Glen.

Mr. Resler: For the blind trusts we are quite comfortable with the definition as stated. Where we're looking for some change is in the spirit of the blind trust. The terms of the trust, what we're ensuring, are that the trustee has the sole power over investments, all buy and sell decisions, and the member is precluded from having any knowledge of what is contained in his investments within the blind trust. There are other vehicles out there, or ways which manage investments in a similar manner as a blind trust, a managed fund or managed portfolio. They have different names depending on which groups are working with the investor. In those situations the same thing exists. The member would not have the buy-sell capacity.

Where they can be precluded from having any knowledge in the investments is by having a hold-mail capacity. A hold-mail capacity is used in other jurisdictions, where, you know, the member is not provided any mailings. The only information they're provided is for tax purposes. They can also ask for information as far as what is the balance of the holding. So they can know the dollar amount, have some comfort level as far as that, you know, they're not losing money and it's working in their favour in that sense. We feel that there are methods that can be used in a similar spirit without having to go to the blind trust formal document.

The Deputy Chair: Thank you very much.
Mr. Dorward.

Mr. Dorward: Yeah. I'm very familiar with managed funds in my former professional life, so I would move that we accept numbers 22 and 23.

The Deputy Chair: Okay. Thank you very much.
Any further comments on this one?

Ms Notley: Wait, wait, wait. There are two different issues here.

The Deputy Chair: Items 21 and 22.

Mr. Dorward: No. Items 22 and 23.

The Deputy Chair: Items 22 and 23. Sorry about that.

Ms Notley: Yeah. That's a different issue, is it not?

Mr. Dorward: I could separate them if you want. I would first move that
we take 22.

The Deputy Chair: All right. On 22, agreed? A show of hands, please. Six. On the phone, agreed, say yes. Thank you. Okay. Those who oppose? No one here. Anybody on the phone opposed? Okay. All right. So it's carried.

Mr. Dorward, do you want to separate so that the next one is 23?

Mr. Dorward: Yeah. I would move that
we accept 23 as well.

The Deputy Chair: Okay. Accept 23. All agreed, show your hands.

Ms Notley: I'd comment.

The Deputy Chair: Discussion. Okay.

Ms Notley: All right. Wow. Okay. I'm not an expert in managed funds, but what I am seeing from the submissions from a different submitter, the deputy minister, suggests that when you've got a management trust, there is still knowledge on the part of the member as to the class of the business that the investments relate to. Does someone want to speak to that? I'm concerned by that.

Mr. Odsen: That's item 24. We're on item 23.

Ms Notley: I thought those two sort of read to be somewhat mutually exclusive or contradictory.

Ms Blakeman: No. The funds and the trusts are different. I hope I've got this right. In my RRSP they bought into a managed mutual fund, and I started to get mailings that said that I had bought X number of shares in Enbridge, at which I went: I don't want to know this because it could influence the way I'm debating stuff in the House. I went to the Ethics Commissioner. They determined that it was a managed fund, and I made arrangements that they would no longer send it to me so I have no idea who they're investing in, so it can't affect what I'm doing. But it's not a trust. It is a fund that they're working with, and at the end of the year I get a number that tells me whether I'm up or down, and that's it. I don't know what they've invested in.

The Deputy Chair: Okay. Thank you very much.

Mr. Wilkinson: Glen Resler, did you have a comment?

Mr. Resler: Yeah. Just to clarify, mutual funds are acceptable. It's publicly traded securities which are the restriction for members of Executive Council. In managed funds they hold publicly traded securities, so that is you.

Ms Blakeman: Okay.

Mr. Resler: So you're correct.

Ms Blakeman: Just don't read my mail. That's what I know.

Mr. Resler: It's dependent on the holdings.

The Deputy Chair: Thank you very much.

Mr. Anglin: I just have one question, particularly as it is related to commodity traded funds, which by law have to have an invoice sent out to them. Then they also have to have the trading slip, which is absolutely required by law if any amount of their money is invested. So there is this communication that absolutely has to take place, and whoever – the CFO, commodity futures operator, whatever – is doing it has to do that. If I read this correctly, what this is telling me is that you would have discretion to make a determination whether that would be acceptable or not.

1:40

Mr. Resler: No. Securities regulation requires specific mailings, so by law they are required to notify or to provide that information. In instances where this has occurred, we have discussions with the companies as far as in what capacity, what's required as far as the fund, the notification, that type of thing. Some of the mailings can be held or aren't required as far as, you know, quarterly. It could be annual information that's provided. They may redact certain information and only provide information that we would require in that sense. Some of the mailings may come to

our office, so then we're holding the mailings instead of going to the member themselves.

Mr. Anglin: But where I'm going on this is that you're talking about managed funds. When you get into commodity traded managed funds, they operate quite a bit differently than securities. As a matter of fact, they're governed by the CFTC out of Washington, DC, for the most part. Many Canadians and probably some of our cabinet ministers may or may not participate.

Go ahead. I'll let the chair tell you to go ahead.

The Deputy Chair: Mr. Odsen.

Mr. Odsen: Thank you, Mr. Chair. Then that type of fund probably wouldn't qualify for what we're talking about. That is the short answer to your question.

Mr. Anglin: Okay. So it's just a probability there. You'd have to evaluate.

Mr. Odsen: We'd have to look at each one as to how it's set up and what kind of information – the key elements, as were noted at the outset, are the buy-sell powers, who has those powers. That's the first thing, and then the second thing is knowledge of where the investments are actually parked, where those investments are made, what public companies you hold shares in. If you don't have the knowledge and you don't have the buy-sell power, whether you call it a blind trust, a managed fund, a mutual fund, or whatever, it amounts to the same thing, okay? If you do have one or more of those elements, then it doesn't meet the criteria and we have to look at doing something different.

Mr. Anglin: I just wanted to make sure I was reading that correctly.

The Deputy Chair: Thank you very much.

This one seems to be very technical. I can see as more explanation comes, more heads nodding.

Ms Notley: I mean, I just want to clarify. What you're proposing in 23, which, really, actually does sound a bit like 24, is that you would have that discretion, but it would be absolutely never the case that a member would know the class of business or the subject or the nature of the investments of any type.

Mr. Resler: Exactly.

Ms Notley: If we make these changes, then that would be actually injected into the legislation, that no one knows any element of . . .

Mr. Resler: Yeah. That's part of the definition of blind trust, yes.

Ms Notley: Okay. Well, as long as nobody knows when to buy or sell, that's just what I need to know. Here, you know, buddy in 24 seems to imply that they would still know; they would still have some knowledge.

Mr. Odsen: Because it's a different thing we're talking about.

Ms Notley: Okay.

The Deputy Chair: Okay. Thank you very much.

On 23 I see lots of potential consensus on this one. Can we all agree? Agreed? Anybody opposed? I hear nothing, so carried.

Let's move on to 24.

Ms Leonard: Item 24, management trust, actually deals with section 21, which forbids ministers from carrying on business that creates conflict between their private interest and their public duty unless the minister has disclosed all the material facts to the Ethics Commissioner and the Ethics Commissioner approves it. The suggestion is to include a provision that would allow ministers to carry on running their businesses if they assign their interest in the business to a management trust, although not to let them vote or participate in meetings that might affect those interests.

Mr. Chair.

The Deputy Chair: Thank you very much.

Do I have a member wanting to comment? Anybody?

Ms Notley: Well, it does seem to be that, in fact, now you've missed one of the criteria, that obviously the member knows the class of business, so that's problematic.

Mr. Resler: What we're looking at here is that they have a business, a corporation. What we're proposing is that a member is not able to put their business in a blind trust. We are in agreement that as far as a management trust, if it is in the public interest, there's no conflict between the private interest and their public duty.

If there is this trust arrangement – I allow a partner to operate the business, manage the day-to-day operations. I am not having any regular activity within the business. It's a trust arrangement, but they still have a private interest, and that private interest, that relationship, has to be managed. If they have to recuse themselves from discussions, then they're required to do that. We're not looking at a blind trust for a private corporation.

The Deputy Chair: Thank you very much.

Mr. Dorward: What's the present status right now?

Mr. Resler: The legislation applies to members of Executive Council that have the restrictions of being active in a business or profession. Right now we do provide that members of Executive Council can have a trust arrangement similar to what we're proposing, so the legislation does allow that.

Ms Notley: I'm sorry. Are you saying that right now you allow something that's not allowed by the legislation? I'm still trying to get a sense of what the change is.

Mr. Resler: What we're looking at is to be more specific within the legislation that a trust relationship is allowed, an arrangement, not a blind trust.

Mr. Dorward: Just for clarity, you said that you were supporting this. That says that number 6 brought it forward. You didn't bring it forward, but you're supporting it. Just to clarify, is that correct? Am I hearing you correctly that you like number 24?

Mr. Resler: Okay.

The Deputy Chair: Take your time. No rush.

Mr. Wilkinson: We like number 24. We feel that – and this has been confirmed by other of our colleagues across the country – we don't want to be in the business, unless directed by you folks, of putting people out of business. We want to help them manage it so there's not a conflict of interest in their private and their public duty. We feel we've been able to achieve that under the act now, but we would like to get further clarification to ensure that we can continue to do this if it's your desire.

The Deputy Chair: Thank you. That's very well clarified.
Mr. Dorward, do you have a motion coming forward?

Mr. Dorward: Yeah. I'm supportive of 24.

The Deputy Chair: Okay. Thank you. Very clear.
Any further discussion?

Ms Notley: I have to say that I still feel uncomfortable that I'm not getting a clear explanation of what's different from what's happening right now.

The Deputy Chair: Between 23 and 24?

Ms Notley: No, no. Between what's happening right now and what would happen after this legislation was brought into place. I am uncomfortable with being unable to describe that to my constituents, so I want to know what the change is. Hypothetical examples would be helpful.

Mr. Dorward: Can I take a stab at that? My understanding is that the Ethics Commissioner does number 24 now and accepts section 21(1) and accepts the framework of a person having a business and putting it in this type of arrangement. They want the act to explicitly ratify that rather than their interpreting that it's acceptable.

I would like to hear from the commissioner as to whether my interpretation is correct.

Mr. Resler: The legislation, as far as the employment restriction:

A Minister breaches this Act if [they] . . . [engage] in employment or . . . [carry] on a business . . .

are two of the examples,

. . . that creates or appears to create a conflict between a private interest . . . and the Minister's public duty.

They may carry on the activity if the facts are disclosed to the Ethics Commissioner and

the Ethics Commissioner is satisfied that the activity, if carried on in a way approved by the . . . Commissioner, will not create or appear to create a conflict between a private interest of the Minister and the Minister's public duty.

There are specific employment or businesses which ministers hold that do not create a public conflict, and those are placed in a management trust arrangement, so it's not blind. They have someone else operating the business on their behalf, so the business continues the day-to-day operations under another person, and if the subject matter in which the business operates, potentially, is regulated, the member, the minister has to recuse himself from discussions and voting on any matters pertaining to that business. So we're saying that they will continue to have a private interest.

1:50

The Deputy Chair: Okay.

Mr. Odsen: If I may . . .

The Deputy Chair: Go ahead.

Mr. Odsen: Just to hopefully provide some clarification as to what item 24 or at least our position on that amounts to, section 21(3) says:

For the purposes of this section,

- (a) the management of routine personal financial interests does not constitute carrying on a business, and
- (b) maintaining qualifications in a profession or occupation as required . . .

yada, yada.

What we're suggesting is that the act is at present silent on the issue of what amounts to a managed trust for a business and that a further subsection under 21(3) – you've got 21(3)(a), 21(3)(b). Add 21(3)(c), that states that the type of arrangement that Mr. Resler just described also meets the requirements under the act. That's what that's getting to.

Ms Notley: So basically, though, what you're saying, then, is that – and I'm trying to just get my head around this – even though the sort of general perception of the public is that if the minister has a private interest in a business which is impacted by decisions he makes in his role as the minister, right now the way it is is that they either divest themselves of those private interests or they are put into a blind trust, which of course would be difficult because they would know that they're put into a blind trust.

But what you're saying is that there's this practice that's evolved where they may have a business that often doesn't bring them into conflict but every now and then may bring them into conflict, so on an ad hoc basis the conflict of interest commissioner says: on that one you should probably recuse yourself from the decision.

Mr. Resler: If the business in which they operate falls under their department, we would not approve of their engagement in that business because it's directly related to their responsibilities. If it has nothing to do with their portfolio and occasionally the business may have a contract with the Crown – I'm just trying to think of an example.

Mr. Odsen: A lease.

Mr. Resler: A lease or something like that. Then we place conditions on that, and it's in the legislation, those conditions. We may require a statutory declaration from the department stating that no preference was provided to the member because of the ownership in this business, that it was properly tendered, whatever the conditions may be. So restrictions would be placed to ensure that the public interest is always taken into consideration.

The Deputy Chair: Okay. Thank you very much.

I'm going to interject a little bit now. I think it's been back and forth a few times now. Are members prepared to move on this one?

Mr. Dorward: We did already. It's that we accept recommendation 24

The Deputy Chair: Item 24.

Mr. Dorward: It's accepted. That's what I moved.

The Deputy Chair: Okay. That motion is on the floor. Those who support that, show your hands. One, two, three, four. Okay. Those on the phone who support, can you say yes? All right. Thanks. Okay. Now I'm going to call for those who oppose this motion to show your hands. One, two. Thank you. On the phone, those opposed, say no. I think the motion carried. Thank you very much.

Let's move on to the next one.

Ms Leonard: Okay. We're now on the third big chunk, called Obligations of Members, and the first set of issues here is furthering private interests. This is related to recommendations 7 to 11, and they're all quite broad recommendations. Generally they suggest expanding what would be considered a private interest to include, for example, partisan interest, familial interest, or just generally other biasing factors.

Mr. Chair.

The Deputy Chair: Thank you.

Comments by committee members?

Ms Blakeman: Well, I'm interested in number 25, which was put forward by the Civil Liberties Association, because we do have a situation in this particular province with one group having been in power for a very long time. Certain things become assumed but, I think, looked at in a different context would not be considered acceptable behaviour.

I'm very aware of benefits that partisan activities can accrue to individuals. One of the examples is the habit, which has been done in larger and smaller ways, of having government members hand out lottery cheques in constituencies. This is never extended to opposition members, only to government members, and they happily do that in their own constituencies and in opposition constituencies. I think that's a perfect example of how a partisan interest is being used to further a member's electability or a member's interest, and it's inappropriate. I mean, that money is voted by everyone in the Legislative Assembly. It's generally lottery money, which in fact is not taxpayers' money or resource-based money. It's gambling money. That's a good example of where that should not happen.

I can't imagine that I'll be getting any kind of a warm response to this, but nonetheless I think it should be raised and discussed. It's inappropriate. Well, just let me leave it at that and let people discuss it.

The Deputy Chair: Thank you.

Ms Notley.

Ms Notley: Yeah. You know, this is an interesting one because I think there are some legitimate grey areas that all of us in good faith enter in the work that we do. To a certain extent I will say that there are times when I get frustrated when I'm told by people that I can't talk to my constituents about what party I represent. Obviously, I'm not talking about doing it when I'm using government funds, but the point is that people should be aware of politics. It's civic duty. It's engagement. It's all that kind of stuff.

I'm aware that it's not a black and white issue. But I will say that, I mean, it's absolutely true; after 40 years there are certain practices that have come up which are just ridiculous. I've heard from several community organizations within my riding that, after their lottery fund applications were presumably objectively considered by bureaucratic staff, when it came to their receiving the money for that, they had to negotiate through an MLA's office – not their own MLA's office, not the minister's office, but another Conservative MLA's office – and that they were not entitled to receive that cheque until such time as they arranged a public event for the government MLA, who was neither minister nor resident MLA, to present that cheque. There's a point at which that is clearly furthering partisan interest, and that's inappropriate, so we need to find a way to measure this stuff and to prevent this stuff.

The Deputy Chair: Okay. Thank you.

I just want to comment that when we bring discussions here, I would like just to focus on the contents here rather than bringing up some cases. I'd appreciate that.

Mr. Anglin: No. A point of order. We get to bring in examples. I'm sorry, but we get to bring in examples.

The Deputy Chair: I think examples . . .

Mr. Anglin: We want to stay on the subject matter. I'm not saying that we go off subject, but to use a real example to illus-

trate or demonstrate what we're talking about is totally within the context.

The Deputy Chair: Okay. I totally get your point, but the point I want to emphasize is that if we start getting into specifics – parties named, governments named – then we'll likely heat up.

Mr. Anglin: I didn't hear party names or government names. I just heard a specific example.

The Deputy Chair: Okay. All right. I think we all made our point on that.

Dr. Brown, please.

2:00

Dr. Brown: Thank you, Mr. Chair. Well, I can tell you that I as a government member quite often see communications where a minister can't attend at an event and asks one of the members of the government caucus to represent them. That would include presentations of cheques. Quite frankly, I see nothing whatsoever wrong with that practice. I think there are instances, and the federal Conservative Party of Canada, CPC not PC, got into some hot water because they put CPC logos on their cheques and whatnot. They made it into a partisan event. I mean, when I present a cheque, there's nothing to do with the PC Party, nothing whatsoever. I'm there as a member representing the government, and I'm asked to make a presentation. Quite frankly, I see nothing whatsoever wrong with it.

It would be wrong, however, if I put the PC logo on it or if I was waving a PC banner and handing out a cheque and purporting that it was the Progressive Conservatives that were giving them money. That never happens, I can assure you. So I really don't see the point that's trying to be made. If you can give me a specific example where partisan interests are dealt with, other than the cheque presentation, I might be willing to concede something, but I can't see anything with respect to representing a minister and giving out a cheque that is in any way, shape, or form improper.

The Deputy Chair: Thank you very much.

Mr. Anglin: Well, I mean, the member did ask for a specific example, but it's not the idea of a government minister or the fact that they would delegate that, for somebody to substitute, that is offensive or partisan necessarily, but when the invitations go out and specifically say, "Do not invite your existing MLA," I would argue to you that then it's completely partisan. There's the explicit, and then there's the implied. Either they are guilty of the explicit, which is, you know, very plain for everyone to see, or there is implied. That has to be evaluated. I think that one of the points that's been made here is that when you use this to advance partisanship, there's something wrong with that. There are a number of ways to do it – I don't want to use the word "underhandedly" – where it's implied. It's not exactly explicit, but it is implied. The example that I just brought to you, which is, "Do not invite your existing MLA to this ceremony," would be almost explicit, but it's definitely implied that it's a partisan request.

The Deputy Chair: Okay. Thank you for your point.

Ms Blakeman: Well, I disagree with my hon. colleague Dr. Brown. I think it becomes partisan when it is only government caucus members that are allowed to hand out the cheques. When you are in a constituency where the application was supported by the local MLA and they knew all about it and you still have a government MLA who knows nothing about the organization, who has nothing to do with the constituency being sent in to hand

out the cheque, that is partisan. I appreciate that you don't see it that way, but I certainly do, and a number of people out there certainly do. You know, there are other examples: "If you invite Laurie, then there won't be a cheque handout, so you'd better rearrange that," or "Please don't ask her because there will be no cheque handout." You don't get the cheque until it's handed out. You know, I don't make this stuff up. This happens. It's happened to me for 17 years. It's inappropriate.

Now, you want to talk about other examples. Who pays for the mypcmla.ca website? Is that a government-paid website? Can anyone answer me that? Is that paid for by the caucus of the government?

Dr. Brown: It's paid for out of caucus funds. It's caucus communication.

Ms Blakeman: Well, okay. That is caucus communication that is detailing a particular partisan organization. I'm looking at correspondence from someone. It says: mypcmla.ca. Is that, in fact, paid for by caucus? Okay. That's government funding. It's not party funding. There's a perfect example of where the government, i.e. the taxpayers, are paying for something that is blatantly partisan, and the members are getting the benefit of it. It's not being paid for by party funds, which are raised independently. It's being paid for by government funds, or legislative funds if you want to look at it that way. That is partisan, and it's inappropriate.

Dr. Brown: I don't believe it is partisan.

Ms Blakeman: Well, it is. We can't even . . .

The Deputy Chair: Okay. Sorry. Excuse me. Can I have . . .

Ms Blakeman: In the newsletter that I put out, I am not allowed to say the word "Liberal," and if I do, I personally have to pay for the printing cost of that newsletter. And it has happened. Go talk to Linda Sloan.

The Deputy Chair: May I call the member's attention to address that through the chair in the meetings. Thank you very much.

Point made. It's already on the record, so thank you for that.

Next, Ms Johnson.

Ms L. Johnson: Okay. Thank you. I was on the speaking list before this website came up, so I'm going to start with a reminder that we are meeting on the Conflicts of Interest Act whereas we are talking about the behaviour of elected officials. Line 25 is talking about the personal benefit to an elected MLA. The suggestion is that when I go into an opposition constituency, there's a personal benefit to me. There's no financial benefit. When I go into an opposition constituency, I'm not getting votes there. It's extra work. It takes me out of my constituency. So I don't know what the personal benefit is there. I want to remind you that we are reviewing the Conflicts of Interest Act.

In terms of the website, the website does not have partisan information on it. It's "Welcome to your Alberta Government Members' Caucus website." I've just called it up here. That's what it is. It doesn't have the logo of the party on it.

Ms Blakeman: What does the PC stand for?

Ms L. Johnson: That's been our standard operation for . . .

Ms Blakeman: Mypcmla.ca stands for what?

Mr. Anglin: Mr. Chair, you had me on the list.

The Deputy Chair: Okay. Sorry. Can I have Ms Johnson finish?

Ms L. Johnson: It did come out of my MLA budget. Yeah.

The Deputy Chair: Okay. Thank you very much.

Our expert staff have some information to share. Can I ask you to share your piece, and then we'll get on to the speakers list. Hopefully, that will resolve it.

Mr. Odsen: Again, thank you, Mr. Chair. Hopefully, just as a point of clarification, as I understand this particular recommendation and this point, it has to do with the furthering of the private interest of a member by engaging in partisan activities. I think that all members, by definition, are going to be engaging in partisan activities on behalf of their own particular party. The position that the office of the Ethics Commissioner takes is that engaging in partisan activity, which is, in effect, political activity, by all members, whatever the political persuasion, is furthering the public interest and not furthering the private interest of any individual member. It is in the public interest that there be political activity.

The Deputy Chair: Okay. Thank you very much. That draws certain lines in the sand. I appreciate that.

Mr. Anglin: That's a good explanation, but unfortunately that's not what we go by. That's not what has been the practice. I'll use the example that's been thrown out on the floor, which is the mypcmla.ca. It's been brought out now. I will tell you that partisanship to advance one party over another is an advantage to the individual who would be a member of that party dealing in partisanship. On the other side, using government money to promote that partisanship is, in my view, the offence.

I want to say one thing. When I did my website, and the e-mail address was joe.anglin@wildrose.ca – which I didn't really think about much, but that was my e-mail address – I had to pay for my whole website. I had that mistake with an ad because I used the same e-mail address. It was a nonpartisan ad promoting a thing for seniors, but my e-mail address was @wildrose.ca. Boom. I had to pay for it personally. I brought that example up upstairs: "Wait a minute. You've got mypcmla. It says pcmla."

2:10

There's a double standard. I would argue that when you have a double standard, you have partisanship, and then you're dealing with an ethical issue that has not been addressed. When I look at this, I see a number of double standards. I'm new, compared to my colleagues across the aisle here. This is my first term, and with the number of double standards I've seen, it's like: "Really? That's pretty inside baseball." Okay. It's politics. I can understand. But when it comes down to the actual expenditures of funds, where one side gets to actually expense to a constituency and the other side does not on these little, minutia details, it's partisanship, to me, and it's using government money in partisanship.

The Deputy Chair: Okay. Thank you very much.

Anyone else have further comments to make?

On this one I clearly see the division. Are we prepared to make a decision about it, or do we want to table it? Any thoughts from the committee members?

Mr. Anglin: Table it. Let's fight over it again another day.

The Deputy Chair: You know what? I'm prepared to just call the vote and get on with it.

Dr. Brown: It doesn't make a recommendation. It just says that we should consider.

Mr. Dorward: There's no recommendation here. It's all just gobbledygook stuff.

The Deputy Chair: Okay. We'll just ignore this 25 and move on?

Ms Notley: No. No.

Dr. Brown: We'll consider it. It said we should consider the role of partisan interests.

Ms Blakeman: Well, if you can get halfway through something here . . .

Mr. Dorward: Where do you want to go with it?

The Deputy Chair: The way I read 25, I don't see that it does anything different.

Ms Notley: Well, then, my motion would be that we should amend the Conflicts of Interest Act to ensure that there's a prohibition against furthering partisan interest in the course of engaging in activities as a Member of the Legislative Assembly. Off the top of my head and how we do it, I'm not drafting the legislation.

Ms Blakeman: We'd need a bit more time to craft this because that does reflect what Mr. Odsen just said. What we're trying to get at is that you should not be able to . . .

Ms Notley: You're right. That's why I don't want to actually draft it right now.

Ms Blakeman: Okay. But this activity should not go on, and it should be under the act to allow the Ethics Commissioner to deal with it. It's not currently, but I think it should be.

Mr. Resler: Just to bring your attention to section 5 of the act. It's called constituency matters. "A Member does not breach this Act if the activity is one in which Members of the Legislative Assembly normally engage." Just to bring that into . . .

Ms Blakeman: Well, I never have got a chance, so I'm not normally engaging in that.

Mr. Resler: Yeah. Just that it would come under that area.

Ms Blakeman: I've never been able to use the word "Liberal" in anything I do without having to pay for it out of my own pocket or out of partisan. There's clearly a division here. There's clearly an advantage. There is a benefit to be had. It is being enjoyed currently, and it's inappropriate. I understand that long-standing members of the PC caucus think that's okay. I don't, and a lot of the public does not think it's okay.

The Deputy Chair: Okay. Here's my take. I believe there is a piece of legislation that will address that. Otherwise, we wouldn't be having all those interpretations. What I'm hearing is that there are some different interpretations of how the rules apply and so on for us. My struggle is that in reading this 25, I'm not seeing where it will resolve that. That is my curiosity. If there's no current regulation on that, we would have all used partisanship in doing things, but we were all told no. What I'm hearing is that there are different circumstances as people interpret it differently. To me,

I'm not sure where we're going to look for that. I'm not sure that it's this committee. Anyway, let me try one more time.

Now, on recommendation 25, the way it's stated here, I don't see much substance that we're going to accept the way it is.

Dr. Brown, do you have something further to say?

Dr. Brown: I do. I think that if there's a specific recommendation, we should look at it as a committee. I think that instances such as I mentioned, like the federal thing that was in the press recently about the use of, you know, promotional opportunities to advance the party interest, certainly should be proscribed. But, I mean, where do you draw the line? You're going to have to be a lot more specific if you want to iterate some particular instances where partisan interests are interfering with the job of an MLA on one side of the House or the other. It's too vague, this idea of considering the role of partisan interests. Be specific. Come up with a specific proposal.

Ms Blakeman: Okay. Well, you know, as we have done other times, I'm happy to park this. I will do the work and come up with suggestions, then, on what we could consider.

Dr. Brown: I mean, we can't do it now anyway, Laurie. As you point out, we can't use those party affiliations in any of our communications. You know, I can't use them when I'm doing a cheque or whatever.

Ms Blakeman: They're using them now. So I'm happy to go ahead and try to draft something for you and bring it back before the committee.

The Deputy Chair: I'm happy to suggest that we table this one.

I do have Mr. Wilson on the phone. Very quickly, Mr. Wilson, if you can agree on it, we can table this one, and we'll move on to the next one. If you have something else to say, you're welcome to put it on right now.

Mr. Wilson: Well, just as a clarification or perhaps an idea for Ms Blakeman as she's doing this, I think it comes down to not when government money is being spent, as my colleague Mr. Anglin suggested, because as we all know, government doesn't have any money. It's taxpayer dollars. And when taxpayer dollars are being used to further partisan interests in any way, shape, or form, whether that be mypcmla.ca, whether that be newsletters, whether that be MLAs from the government caucus coming into opposition ridings and giving out cheques without inviting or even notifying the sitting MLA, that does further partisan interests.

The Deputy Chair: Okay. We're back to where we were before.

Mr. Wilson: I'm sorry. All I'm suggesting is that, yes, I would agree that we take this back. We come back and debate it, and we consider it strongly.

The Deputy Chair: Okay. Thank you very much.

I'm getting a consensus. Let's table this one, and let's move on to 26.

Ms L. Johnson: So we're tabling 25?

The Deputy Chair: We're tabling 25.

Do we need to deal with 26 and 27 separately, or should we now table them all?

Ms Blakeman: Well, the first one is partisan, but then you're talking about family private interests and biasing influences.

Dr. Brown: Twenty-seven is already in our act.

Ms Blakeman: Yeah. Twenty-seven is already in.

The Deputy Chair: What about 26?

Ms Blakeman: Rachel, that's the family thing.

Ms Notley: Is it?

Ms Blakeman: Section 2. To expand familial private interests.

Ms Notley: Twenty-six has got a whole bunch of stuff in it. It's got a bunch of different things, so it's kind of hard to break it down. Duty to exercise good judgment: help.

The Deputy Chair: Okay. Ms Fenske.

Ms Fenske: Yes. Based on the fact of, you know, the laughter based on some of the wording, I would suggest that we've already covered 26 and 27 in other areas and that we eliminate or not accept them at this point.

The Deputy Chair: Thank you very much.

Can we vote on that one? Those who support to not consider 26, 27, please . . .

Ms L. Johnson: I hate negative motions.

Ms Fenske: Okay. Yeah. Let's do something like 26 and . . .

The Deputy Chair: Okay. Clarify the motion.

Ms Fenske: I would suggest that 26 and 27 – I had it in my brain, but it's . . .

Dr. Brown: Be rejected.

Ms Fenske: Be rejected. That would be great. Yes. Thank you.

The Deputy Chair: So the motion is that 26 and 27 be rejected.

Agreed, show your hand. Thank you very much. On the phone, say yes if you agree. Okay. Those who oppose, raise your hand. On the phone, if you oppose, say no. Okay. The motion is carried, so 26 and 27 are rejected.

Moving on to the next quadrant, section.

2:20

Ms Blakeman: Are you covering this? To my eye, we've already discussed 28, 29, and 30 in the context of leaving alone the other class of people, unless I'm misunderstanding things again. Now, 28 in particular seems to be trying to prohibit a member from participating in discussions in which they have a personal interest or a professional interest. Again, it's part of a larger class of people, and we need that expertise. We've already talked about this. We've already decided it. So I would propose that 28, 29, and 30 not get considered or whatever language you want to use.

The Deputy Chair: Be rejected?

Ms Notley: Hold on. Thirty is a little bit different. I would hold up on 30 just a bit.

Ms Blakeman: Okay. Let me go back and try that again: 28 and 29.

The Deputy Chair: Good. We have that 28 and 29 be rejected.

That's a motion on the floor. Those agreed, raise your hand. Thank you. Those on the phone, if you agree, say yes. Thank you very much. Those who are against that motion, say no or you can raise your hand right now. Anybody on the phone, say no if you don't agree. Okay. Motion carried. Thank you. So 28 and 29 are rejected.

On 30 does anybody want to make a comment? Ms Notley.

Ms Notley: Yeah. This one is – and, again, it depends, I suppose, on the context where it comes in. I'm just thinking back to our discussion about these management funds and ministers and members of the Privy Council or the Executive Council, you know, removing themselves from decisions. I am quite concerned that we are doing this all on the honour system and that there's a lack of transparency there. That is my issue there.

I think there is value to be gained from having, whether they're filed through OIC or through some way in which – OIC is too official, but gazetted maybe would be the thing. When you've got senior members of Executive Council exempting themselves from discussions and decision-making, there should be notice given of that so that the public is aware and there's transparency about it. The nature of the notice: obviously, the notice would need to respect, you know, cabinet privilege and Executive Council privilege and stuff like that so you're not necessarily disclosing information the government is not ready to disclose yet. I think that if we're relying on this thing where we're going to sort of let people who periodically have ongoing active business interests about which they are vaguely aware make decisions that impact them and then just have them quietly recuse themselves, I think the public should be kept apprised of that.

That's what I have to say about that recommendation, and that's why I would suggest that we consider accepting it.

The Deputy Chair: Okay. Thank you.

Ms Blakeman: Well, section 2(8) is under obligations of members, decisions furthering private interests. This one specifically is that

information filed with the Ethics Commissioner . . . is confidential and may not be disclosed or inspected . . .

Yup.

. . . but the information may be inspected and used by the Ethics Commissioner if the information is likely to be material in determining whether [an MLA] has breached this Act.

That's 2(8), which I think is fine.

This number 30 is proposing that it's too restrictive and there should be more transparency about the member's withdrawal from a meeting based on a private interest.

These two things are not like each other. One of these things doesn't belong.

Ms Notley: That's true. The combination of them sometimes covers different issues.

Ms Blakeman: Yeah. This is not making sense to me because I think the system we have in place, where the member is recognized on the floor, they make an official declaration, they leave the room, and it's marked on the record by the Speaker: what's not transparent?

Ms Notley: That's supercool, but what about Executive Council and the Leader of Her Majesty's Loyal Opposition? We just talked about the case where there will be times when members of Executive Council may well be aware of general economic private interests that they have and they've talked to the commissioner

about it, so on an ad hoc basis they will remove themselves from decision-making on certain issues. I'm not sure if that's what this person was getting at when they said it, but if you read the first sentence: "a Member's withdrawal from a meeting based on a private interest."

Again, as I said, I'm not suggesting that we would say: oh, you know, Thomas Lukaszuk owns this company, and the Executive Council was rendering a decision on this planned regulation, and blah, blah, blah. But there would be, say, gazetted that on this day at Executive Council – I know that Executive Council decisions are typically minuted or whatever – this member recused himself on this decision number blah. No more information than that. But then we know that there's been a considered – that's what I'm talking about.

The Deputy Chair: Okay. Mr. Dorward.

Mr. Dorward: Yeah. Well, what this says is that the Ethics Commissioner should have the discretion to disclose the public information regarding the precise nature of the interest. So if somebody got up and walked out of a meeting because they happened to hear at a family birthday party last Sunday that their sister might buy a building that the government is discussing in that meeting, then the Ethics Commissioner has the discretion to put into the public domain the fact that the sister might buy this building. You know, what I'd ask the commissioner is: "Do you really need this power? Is this an issue?"

Mr. Wilkinson: It's not something we're looking for, no.

Mr. Dorward: Thank you.

Ms Notley: First of all, that's not what I described. Secondly, what we're looking at is what is going . . .

Mr. Dorward: I thought that's what the wording said.

Ms Notley: Yeah. But, you see, we also had a discussion about a new situation or an ongoing situation which was not provided for under the act about ad hoc recusals by Executive Council members from decisions based on their financial interests in decisions. So I believe that that is . . . [interjection] Well, but the commissioner would know about it because that's how it happens. They talk to the commissioner, and they say to the commissioner – the commissioner knows they have this information, presumably.

That's the way it was just described to me, that there is an ad hoc recusal – right? – based on ongoing communication, which is probably much greater between you and Executive Council members than it is between the rest of us. So based on that ongoing communication you might know that there has been a recusal. We know that it happens. The question is whether or not notification of that recusal is given to the public. Again, I am not suggesting that it be given in a way to disclose information that would otherwise be private under Executive Council privilege and/or information that would otherwise be private under the member's rights to privacy under different sections.

The Deputy Chair: Okay. Thank you.

Any further points?

Ms Blakeman, do you want to add, or are you okay? I saw you raise your hand earlier.

Ms Blakeman: I think that one is a tough one to monitor and enforce.

The Deputy Chair: Okay. Thank you.

Here's my take. The point has been made back and forth several times, and the commissioner's office has also made a very strong statement that they don't see it's an issue as it is. I'm going to call the vote on this one. I think it's going to be clear-cut.

Does anybody want to make a motion to accept or reject recommendation 30?

Ms Notley: No, no. What I would like to do is make a motion that we recommend amendment to the act that would allow for regular public disclosure of the occasion of a recusal.

The Deputy Chair: Okay. I want to clarify. Is that . . .

Dr. Brown: Allow for or mandate to?

Ms Notley: Mandate to. But again . . .

Dr. Brown: This is what it says here: allow for it.

Ms Notley: Well, again, these things were not written by lawyers. This is a summary of people's other submissions and all that kind of stuff.

Dr. Brown: It said they should have the discretion to disclose.

Ms Notley: Okay. Well, what I am recommending is that – I'm getting at this one issue. It's hard. You have to interpret what it is people are getting at, you know. I know that these folks . . .

2:30

The Deputy Chair: Ms Notley, can you restate the motion you are putting on the floor?

Ms Notley: My motion is that we would recommend that the act be amended to oblige disclosure of member recusal whether in the Legislature or in applicable meetings – and I'm not going to draft this – to the public and just the incidence of it, not the issues that would otherwise be private.

Ms Blakeman: So they're not disclosing anything. They're just making note that they're recusing themselves.

Ms Notley: They're vetting that they pulled out of that decision-making process, yeah.

The Deputy Chair: Okay. I'm going to call it. Let's vote on that motion. For those who support . . .

Ms L. Johnson: I have a question for the Ethics Commissioner and his advisers. Are those situations included in your count of referrals to your office?

Mr. Wilkinson: I'll refer that to Glen.

Mr. Resler: By count to the office – I'm not clear on what . . .

Ms L. Johnson: The number of times that . . .

Mr. Wilkinson: When we get a notice of recusal, you mean? Is that in the count?

Ms L. Johnson: Yes.

Mr. Odsen: No. It's a request for advice you're asking about.

Ms L. Johnson: Okay. So that's a different category.

Mr. Resler: Do we receive notifications of recusals? Yes.

Ms L. Johnson: Okay. One at a time. Do you receive notifications of recusals from discussions?

Mr. Wilkinson: Yes, we do.

Mr. Resler: Yes. As required under the act.

Ms L. Johnson: And is it part of your public reporting in your annual report?

Mr. Resler: I don't think so.

Ms L. Johnson: Okay. I just wanted to confirm that in my mind.

Mr. Dorward: What value is there out in the world for that?

Ms Notley: Well, because if someone is recusing themselves from half of the decisions made by the ministry, the public might want to know.

Mr. Quadri: Sorry. I just lost the connection. I'm back now.

The Deputy Chair: Okay. We're still here.

Back to the motion put on the floor by Ms Notley, those who want to support that, please raise your hand.

Mr. Quadri: I lost the actual – what was that?

The Deputy Chair: Ms Notley, can you repeat one more time just so we give . . .

Mr. Quadri: I apologize. I dropped the line. So sorry about that.

Ms Notley: Okay. That

the committee recommend that the act be amended in such a way as to require public disclosure of member recusal from applicable meetings as a result of private interest.

The Deputy Chair: Okay. You're okay with that?

Mr. Quadri: No. I disagree.

The Deputy Chair: Oh. Disagree. Okay. So three voted yes. For those who disagree, raise your hand now. One, two, three, four. On the phone, if you disagree, please say no. Thank you very much. That's five. Motion defeated. Okay. Thank you very much.

Let's move on to the next group.

Ms Notley: Did you count who voted for?

The Deputy Chair: Five against three.

Ms Notley: Oh. You counted. Okay.

The Deputy Chair: Yeah.

The remainder are 31, 32, 33.

Ms Leonard, can you give us a quick high level?

Ms Leonard: I will try. Recommendation 31 is pretty broad and isn't really recommending that much. It's just saying that decisions shouldn't be made if you have close, personal financial ties. I don't know if that's worth discussing.

Recommendation 33. I can say that it advises changing the standing orders, which is outside the scope of the committee's mandate.

Recommendation 32. I think you already decided on that one when you discussed 28 and 29. Yeah.

The Deputy Chair: Thank you very much.

Mr. Odsen, you have some further information for us?

Mr. Odsen: Well, if I may, recommendation, if it's a recommendation – comment 31: our act already covers that. I mean, it's superfluous. It's irrelevant.

The Deputy Chair: Okay.

Ms Blakeman: Item 32 has already been discussed with regard to broader interests.

The Deputy Chair: Okay. All agreed on that, that 31 and 32 are irrelevant? Okay.

Let's move on to 33.

Ms Leonard: Oh. Recommendation 33, as I mentioned, is the standing orders, so it's outside the committee's . . .

The Deputy Chair: So it's addressed, too? Okay. All right. So 31 to 33 I'll strike out. Thank you very much.

I just want to advise committee members that we made some gains in terms of the pace, but we're still far away. We're at item 34 out of some 130. So, everybody, if you can help move us along, I'd really appreciate that. Thank you so much. Great.

Ms Leonard: Okay. The next section is apparent conflict of interest. We had one recommendation to include it in the act, as it is in B.C., because it will hold members to a higher standard and increase integrity. There were two recommendations that it should not be included primarily because it's a very subjective concept. It could increase frivolous complaints and damage reputations, and there's also the issue of what the sanction would be for an apparent conflict that isn't a real conflict of interest.

Ms Blakeman: An apparent sanction. [interjections]

The Deputy Chair: Good point. Thank you.

Carry on.

Ms Leonard: There is one last recommendation saying that if apparent conflict of interest was to be included, there should also be a provision included to allow the Ethics Commissioner to release information to the public without the member's consent to explain if in a situation an apparent conflict had been found but it wasn't a real conflict of interest, just to clarify matters for the public.

The Deputy Chair: Okay. Thank you very much.

Ms Fenske: Well, I'm going to make a recommendation on 34, 35, 36, and 37. They all deal with "apparent," and apparent is obviously very subjective, and I think it either is or isn't a conflict of interest, and I don't even want to get into apparent. I move that we reject that 34, 35, 36, and 37.

The Deputy Chair: Thank you very much. I do recall that at our last meeting there was quite a bit of discussion on this, too. Point of clarification?

Mr. Odsen: If I may, 35 says that it should not be incorporated; 34 says that it should be included.

Ms Fenske: That's correct. Sorry. May I change that, please? Recommendation 36 is the opposite of them.

The Deputy Chair: Please.

Ms Fenske: I would move that we reject 34, 35, and 37, and accept recommendation 36.

Dr. Brown: Recommendation 35 and 36 are both empty.

Ms Fenske: Oh. Those are the two that I – okay. So I reject two, 34 and 37, and accept 35 and 36. I apologize. Thank you.

The Deputy Chair: Thank you. That’s an important clarification. On that one do you, committee members, want further discussion?

Ms Blakeman: I thought about this one quite a bit, and we’ve talked about it earlier in the committee. It’s a tough one. You could paraphrase that legal saying that justice must not only be done but must be seen to be done. That could apply here. Being free from conflict of interest must not only be true, but you should be free from any apparent conflict of interest. I can see all of that, but I, with my parliamentary-process brain, cannot begin to think of how we would write this in order to make it clear to people what behaviour they are to avoid, how this could possibly be monitored, and how it could be enforced.

We are struggling here. I mean, this is a living document, and every time we come back to it, societal and parliamentary norms have changed. It should be a living document, but I still can’t figure out how we would work the implementation of this idea, this concept, into something workable, where I would understand when I was about to embark on an apparent conflict of interest as compared to a real conflict of interest.

2:40

I think the intent behind this is some of what we’ve been trying to capture in other areas to clarify and to include some newer things like that concept of legality or lawfulness, as we were discussing at the beginning of this very long meeting, which now seems to be several weeks ago when we started it. Therefore, unless I can be convinced otherwise, I don’t think we should be supporting these suggestions to include “apparent.”

Thank you.

The Deputy Chair: Thank you.

Ms Notley: Well, I do think that we should be including it, to everyone’s great surprise, I’m sure. I mean, obviously, I’m quite moved by the fact that the Tupper report initially recommended it, and that was a very, very thoughtful, well-researched, well-considered, and restrained set of recommendations that came. Allan Tupper is not exactly a raving revolutionary. He recommended it, and he recommended it for a reason. This is about assuring public confidence as well. It doesn’t appear that the train has gone off the track in British Columbia even though they have it in their legislation. I mean, it may have gone off the track in a number of other ways but not about the inclusion of apparent conflict of interest in their legislation.

I, too, was going to talk about that justice must not only be done but be seen to be done. That’s really a fundamentally important issue. It’s a fundamentally important issue in the judiciary. I mean, you cannot have people having major decisions made about their lives by judges who they think, because a reasonable person would conclude that, is in a conflict of interest or not able to make a decision fairly. There are extremely important decisions made by Executive Council every day, and there needs to be confidence that those decisions are made fairly. That’s what this really gets to, raising the bar in terms of the government being conscious of: “Oh, no. Well, yeah, it’s my ex-partner and good friend, and it’s a \$40-million lawsuit or whatever the heck it was, and that’s just the

way it is.” I mean, those things truly undermine confidence, and it’s not just a partisan thing. It undermines confidence in all of us when those kinds of decisions are made.

I think that it is manageable in other settings. It’s manageable in a legal setting, and I don’t actually think that it’s unmanageable in this setting. The penalties and recommendations and the orders of the commissioner that would come from it would be adjusted to reflect the difference between an apparent versus an actual conflict of interest. That’s how you deal with it, through the commissioner’s discretion to order sort of remedial changes or explanations versus imposing actual penalties. So that’s how you deal with it. That’s how you raise the bar. That’s how you promote confidence.

The Deputy Chair: Thank you very much.

Mr. Anglin: The measurement of legislative integrity is as much about our actions as it is about the public’s perception of us. That is well established, particularly when you talk about issues of bias. We talk about the actual bias and then the apprehension of bias, which is well established in case law.

Now, with the idea of apparent conflicts of interest, there is the perception, and that is just as important in the public’s eye as the actual conflict of interest. For me, the whole reason we even have this department is so each individual case has to be sort of adjudicated on its own merits and decided accordingly because there are all these grey areas that come into being. So when I look at the wording – should it just be the actual conflict of interest or apparent conflict of interest? – I would argue that those apparent conflicts of interest have to be decided equally as if there was an actual conflict of interest that has been more explicitly laid out.

The whole idea is to protect the integrity of the Legislature. What I fear is that if we don’t include that and if we don’t allow that to be adjudicated, there are situations that could basically hurt the reputation of the Legislature for the perception or the apparent conflict of interest that would have been easily settled had we had the ability in law to settle that. That’s the point I want to make. I don’t think that it’s clear-cut, that you just say: only if there’s an established conflict of interest. There is that idea of the perception, and it should be a mandate to make sure that we do everything in our power to keep the perception that our integrity, that what we expect of ourselves is actually quite high.

The Deputy Chair: Okay. Thank you for that point.

I have Mr. Wilson on the phone.

Mr. Wilson: Thank you, Mr. Chairman. Many of the points I was going to raise have been brought up by my colleagues Ms Notley and Mr. Anglin. I would just point out to the committee that it was our party that brought this in our recommendations, our letter that we had submitted to number 34. When we recommended it, it was with the understanding that that meant inherently that we all needed to raise our game and we all needed to live to this standard.

I think that what we’re again doing here is being aware of the public perception and where it’s at and where it’s been for the last five years. Just because in 2006 it wasn’t added in, that doesn’t give us an excuse to not do it now. I think that what we do every single day needs to be held to the highest ethical standard, and apparent conflicts of interest are part of that. There is nothing prescriptive in this recommendation that suggests that a member would lose their job or a member would be punished beyond reasonable means, but I think that it is worth adding into the act.

Thank you.

The Deputy Chair: Thank you.

Dr. Brown.

Dr. Brown: Thank you, Mr. Chairman. I'd like to quote from the former Ethics Commissioner in Ontario, the hon. Gregory T. Evans, Q.C., in 2001, because I think he put it better than I could put it myself. He said:

Proof of a breach or complicity in a breach of the Members' Integrity Act must be based on facts rather than conjecture, suspicion, or affinity based on friendship, common interest or political affiliation. A person's reputation, irrespective of his station in life, is important and if it is to be impugned, there must be evidence to support that challenge.

The perception standard of morality which some suggest should be the test applied to politicians would require that a legislator should not engage in conduct which would appear to be improper to a reasonable, non-partisan, fully informed person. The problem with such an 'appearance standard' is that there are few, if any, reasonable, non-partisan, fully informed persons.

One person's perception of another's conduct is a purely subjective assessment influenced by many factors including the interest of the individual making the assessment. It is not the proper criteria by which the conduct of a legislator should be measured.

Mr. Chair, I believe that that is what we ought to respect here, and that is the fact that it is a subjective test. What we need to have is an objective test. It's just too vague, and it's too capable of misinterpretation. As I said, I don't think it's fair to those individuals who have put their lives forth in public service to be judged by some subjective measure of somebody else.

The Deputy Chair: Thank you so much, Dr. Brown. That was beautifully put forward there. I think that probably captured the essence of the common desire I'm hearing from all our members talking from different perspectives.

On that note, the motion on the floor was: we accept 35, 36; we reject 34 and 37. I would like to call the vote for that. Those who support that, please raise your hand.

Mr. Anglin: What if we support a different mix of it?

The Deputy Chair: We'll deal with it afterwards.

Mr. Anglin: How do you do that if you've already voted?

The Deputy Chair: We can propose an amendment after this.

Ms Blakeman: I'm sorry. Can you repeat the combination, please, just so those of us that have to keep switching back and forth can find it again?

The Deputy Chair: Sorry. Okay. Let's do that.

The motion as it stands from Ms Fenske is: we reject 34; we accept 35; we accept 36; we reject 37.

2:50

Ms Blakeman: Okay. Question.

The Deputy Chair: Do we have an amendment from Mr. Anglin? I think you're contemplating something.

Mr. Anglin: I suggest that you just vote on each one individually.

Ms Fenske: I'll withdraw my motion. I'll withdraw it.

The Deputy Chair: Okay. Motion withdrawn.

Now the motions to vote on each one.

Ms Fenske: I'll start with the motion that we reject recommendation 34.

The Deputy Chair: Rejecting 34 on the floor. Those who support rejecting recommendation 34, raise your hand. One, two, three, four, five. On the phone, if you reject recommendation 34, please say yes. Thank you. That makes six. For those who oppose rejecting 34, raise your hand. One, two. On the phone, if you're opposed to rejecting 34, please say no. Six to three. It's carried.

Thank you very much. Let's carry on.

Recommendation 35.

Ms Fenske: I move that

we accept recommendation 35.

The Deputy Chair: Thank you very much. Those who agree on accepting recommendation 35, raise your hand, please. One, two, three, four, five, six. Those on the phone, please say yes if you support it, if you accept 35. Thank you. Those who oppose accepting 35, raise your hand. One. On the phone, please say no if you oppose. Okay. Two. Carried.

Next one, item 36.

Ms Fenske: I move that

we accept recommendation 36.

The Deputy Chair: Thank you. Those supporting accepting number 36, raise your hand. One, two, three, four, five. On the phone, if you accept 36, please say yes. Thank you. For those who oppose accepting 36, please raise your hand. One, two. Thank you. On the phone, if you oppose, say no. Okay. Three. So six to three again. Motion carried.

Let's move on to the last one, item 37.

Ms Fenske: I move that

we reject recommendation 37.

The Deputy Chair: Okay. Thank you. Those who support rejecting recommendation 37, please raise your hand. One, two, three, four. On the phone, if you are rejecting 37, please say yes. Thank you very much. For those who oppose rejecting 37, please raise your hand. One, two. On the phone, if you are opposed to rejecting number 37, please say no. Okay. Thank you very much. Motion carried.

Dear committee members, I just want to give you a heads-up. We have about five minutes left. One thing on the agenda we have to do first is set our next meeting date. Can we do that first? If we still have time, let's hammer one more. Okay. Let's fix a date first. With a race there's a pace. We're racing.

Mr. Dorward: I move that we meet a week from today, on September 3.

The Deputy Chair: Okay. Another whole day thing? How many hours are we talking about?

Mr. Dorward: The same hours.

The Deputy Chair: The same hours? Any discussion, further suggestions?

Ms L. Johnson: I haven't had a chance to open my calendar yet.

Ms Blakeman: That's not the holiday, is it?

Ms L. Johnson: No. The holiday is the 2nd.

Mr. Odsen: It's the Tuesday following the Labour Day weekend.

Ms Notley: We're doing this on very little notice, and my calendar is ridiculous. I can do it later on the 3rd, not at 10.

Mr. Dorward: What's later, Rachel?

Ms Notley: Eleven.

Mr. Dorward: Eleven is fine.

The Deputy Chair: The other suggestion I can make on the floor is to go with the tradition, what we always do, and have the clerk do a poll.

Mr. Quadri: I agree.

The Deputy Chair: You agree? I hear you loud. Okay. The motion is for Tuesday. Tell me again the time, Mr. Dorward.

Mr. Dorward: From 11 to 4 o'clock, Tuesday, September 3.

The Deputy Chair: From 11 to 4 o'clock, Tuesday, September 3. All agree? Agreed. Done.

We still have five minutes. Let's hammer out one more.

Mr. Anglin: You didn't ask for opposed yet.

The Deputy Chair: Oh, sorry. Those opposed? One.

Ms Blakeman: That may not be enough. Shouldn't we do a second one?

Mr. Dorward: Laurie has got a good point. Why don't we try for another date as well.

The Deputy Chair: Yeah. Thank you. Good suggestion.

Mr. Dorward: The 11th all morning?

The Deputy Chair: Can I double-check with you, Mr. Wilkinson, if the proposed date will work for you? We absolutely appreciate having you around.

Mr. Wilkinson: Well, thank you. Yes. It will be for two of us. Are you talking about the 3rd now?

The Deputy Chair: Yeah, September 3 from 11 to 4.

Mr. Wilkinson: Yes, Brad and I will be here. Glen will be on vacation.

Mr. Odsen: But the following week we're away.

The Deputy Chair: The following week you are both away. Okay.

Mr. Wilkinson: We're at a conference of ethics commissioners, strangely enough.

The Deputy Chair: The proposed time is 11 to 4 on the 3rd.

At our next meeting we absolutely need to speed up further.

Mr. Dorward: Tuesday the 24th at the same time? That's the week they're back.

Mr. Wilson: That will not work for our caucus.

Mr. Wilkinson: We're back before that.

Mr. Dorward: Oh, okay. You're back on the 17th? The 24th is a lot better for my life.

Ms L. Johnson: But I'm hearing Mr. Wilson say that it's not good for his life.

Mr. Dorward: Jeff Wilson, what's good for you and what's bad?

Mr. Wilson: On the 23rd and 24th we're all in caucus.

Ms Blakeman: I could do the 25th, but for the rest of it I'll be jetlagged.

Mr. Dorward: The 25th is good for me.
The 25th, Jeff?

Mr. Wilson: I believe Families and Communities has got a committee meeting scheduled that day at 1 p.m.

The Deputy Chair: So we'd do the morning?

Ms Blakeman: Are we still talking about the next date being the 25th in the morning?

Mr. Dorward: How about the 20th? Friday the 20th?

The Deputy Chair: I'm not available that day. Back to the 25th.

Mr. Dorward: Why don't we just commit to getting it done on the 3rd?

The Deputy Chair: That would be beautiful. I love that.

Ms Blakeman: We just can't. You just can't.

The Deputy Chair: Can we do a half day on the 25th? What's the best time on the 25th?

Ms Notley: I've got no time on the 25th, and no one in my caucus does in the morning. In the afternoon, yes, but in the morning, none.

The Deputy Chair: So in the afternoon on the 25th?

Ms Fenske: I can't be here, but I'll have to get a sub.

Mr. Dorward: Let's go back then to the 4th of September, the next day.

Ms Rempel: September 4 is the Chief Electoral Officer search.

Mr. Dorward: How about the 5th or the 6th?

Mr. Odsen: The commissioner and I are going to Ottawa on the 4th. I get back on the 11th, and the commissioner gets back on the 12th. The earliest that the two of us would be available would be the 13th.

3:00

The Deputy Chair: What about the 3rd, and we extend the time beyond 4?

Mr. Dorward: What about the 13th?

Ms Fenske: Well, I have something, but I'll be gone for a while.

Mr. Dorward: The 13th is good for me.
Jeff Wilson?

Mr. Wilson: The 13th is open.

Mr. Dorward: Sohail?

Mr. Quadri: I'm actually substituting, so I cannot say.

Mr. Dorward: Okay. Well, let's tentatively go with September 13.

The Deputy Chair: The 13th, 11 to 4 again?

Mr. Dorward: No, earlier: 9 to 4.

The Deputy Chair: No, no. Travel time. What about 10 to 4?

Mr. Dorward: Travel time? It takes me 12 minutes to get here.

The Deputy Chair: Edmontonians have a different feeling about that.

Ms L. Johnson: I have five constituency appointments already booked that day.

The Deputy Chair: Yeah. I totally concur. Okay. So on the 13th from 10 to 4? All right. Thank you very much. That's done.

Yes, Mr. Wilkinson.

Mr. Wilkinson: Mr. Chair, would you mind please repeating the dates you've got and the times?

The Deputy Chair: Okay. As I understand it, the first one is September 3 from 11 to 4, lunch provided, similar kind of arrangement. The second one is September 13 from 10 to 4, lunch provided.

I want to thank every member of this committee. As a new chair I must admit that I'm a bit anxious to get started, and I apologize for my accent and my Chinese English. If I misspoke your name, here's my apology, but I'll do my best to try and learn the right English. Thank you very much.

Mr. Quadri: Actually, I understood most of it.

The Deputy Chair: Oh, thank you.

Can I have somebody adjourn the meeting?

Mr. Quadri: I propose a motion to adjourn the meeting.

The Deputy Chair: Thank you. I appreciate that. All right. All in favour? Motion carried. Thank you very much.

[The committee adjourned at 3:02 p.m.]

