



Legislative Assembly of Alberta

The 28th Legislature
First Session

Select Special
Conflicts of Interest Act
Review Committee

Tuesday, September 3, 2013
11:01 a.m.

Transcript No. 28-1-8

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Select Special Conflicts of Interest Act Review Committee

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

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

Also in Attendance

Anglin, Joe, Rimbey-Rocky Mountain House-Sundre (W)

Office of the Ethics Commissioner Participants

Neil R. Wilkinson	Ethics Commissioner
Brad Odsen, QC	Registrar, Lobbyists Act, and General Counsel

Support Staff

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

11:01 a.m.

Tuesday, September 3, 2013

[Mr. Luan in the chair]

[Due to a recording failure this transcript begins at 11:11 a.m.]

[The following committee members introduced themselves: Ms Blakeman, Mr. Dorward, Ms Fenske, Ms Johnson, Mr. Luan, Mr. McDonald, Ms Notley, Mr. Saskiw, Mr. Wilson, and Mr. Young]

[The following staff of the Legislative Assembly Office introduced themselves: Dr. Massolin, manager of research services; Ms Leonard, legal research officer; and Ms Rempel, committee clerk]

[The following staff of the office of the Ethics Commissioner introduced themselves: Mr. Wilkinson, Ethics Commissioner, and Mr. Odsen, registrar of the Lobbyists Act and general counsel]

[The chair noted that Mr. Anglin withdrew the purported question of privilege raised at the previous meeting of August 27, 2013]

[A motion by Mr. McDonald that the agenda for the September 3, 2013, meeting of the Select Special Conflicts of Interest Act Review Committee be approved as circulated was carried]

[A motion by Mr. Young that the minutes of the August 27, 2013, meeting of the Select Special Conflicts of Interest Act Review Committee be approved as circulated was carried]

[A motion by Mr. Dorward that the committee accept item 38 of the summary of issues and recommendations prepared by research services of the Legislative Assembly Office was carried]

Ms Blakeman: . . . conflict of interest that would give us any reason to believe that this is an issue. I've really become aware that we've had – I think I caught the tail end of Dr. Massolin, so I'll have to catch up a bit. These recommendations are coming from different sources and should have different weight put to them, and we're giving them all the same amount of weight, which is very good of us but may not be appropriate. I'm trying to figure out if this actually is a problem. I know I can't ask you to talk about investigations that have been done and turned down, so let me just phrase it as concerns raised or – anybody else want to help me here? – any reason to think that this particular section is in need of examination. Anyone?

Mr. Wilkinson: Yeah. I'll make some comments and ask Brad to as well through you, Mr. Chair, to the committee and Ms Blakeman. It has not been an issue for us at all. The question that we get mostly of activities to engage in would be: can I write reference letters? Can I write them on my letterhead? If not, do I have to use my own letterhead? Can I use the constituency letterhead? How do I use my website? What can I put on my website? What can I put on the constituency website? During our orientation that we had in front of the Legislature for the new members, we did address those issues, so they really aren't a problem. Occasionally we will get a question. Brad?

Mr. Odsen: Well, perhaps, Ms Blakeman, you . . .

Ms Blakeman: I just wanted to fine-tune that a bit, then. You've described the MLAs' questions about it. What about the public's questions about it? Does the public or outsider see a huge issue here?

Mr. Wilkinson: No, not at all.

Ms Blakeman: Okay.

Mr. Odsen: Just to expand on that a little bit, if I may, I think that the wording is quite appropriate because activities within which members are going to engage can encompass all kinds of things, not necessarily just constituency kinds of matters. It's going to be a question of fact in each case. If there's any concern either on the part of the member or anybody else, they bring it to us. Then we take a look at the facts, and we make our determination on that basis and provide the advice. I would strongly recommend just leaving the wording the way it is.

Thank you.

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

Any further questions before I invite someone to make a motion?

Ms Blakeman: Parliamentary Counsel, could I just confirm? On page 9 of the act the subheading Constituency Matters and then section 5, "A Member does not breach this Act if the activity is one in which Members of the Legislative Assembly normally engage": that phrase is specific to constituency matters, is it not? In other words, if we pass this, have we just given the royal rubber stamp of approval to any activity that a member normally engages in? We need to be careful.

Mr. Reynolds: Well, this is what's already in the act, obviously. The heading is Constituency Matters, and, as you said, the act says what it says. I'm not sure when you say that we'll rubber-stamp it because it's what the Assembly has already approved.

Ms Blakeman: Sorry. What I mean is that we lose any – if this motion is put forward and passes, then this committee will move beyond considering anything possible around this topic, which I'm not willing to do if we have approved a wider . . .

Mr. Reynolds: Well, that's really up to the chair and the committee, I mean, what you approve or you don't approve. If you're asking me if approving this restricts you from engaging in the debate later on, I can't prejudge what the chair would say, but I would imagine the chair would say no. Or is your specific concern about constituency matters?

Ms Blakeman: Okay. Thank you. I think you've given me enough information. I've got it. I'm okay.

The Deputy Chair: I would suggest that we've heard from the commissioner's office their point of view for us to consider, and we've certainly heard from Ms Blakeman some thoughts and queries about that.

Now, I'm wondering if we need further time to discuss this, or is anybody else ready to put the motion forward? Mr. McDonald.

Mr. McDonald: Thank you, Mr. Chair. I'd move that we approve 39. We've had no issues with this.

Mr. Young: No. We want to reject it.

Mr. McDonald: Sorry. I mean as is.

The Deputy Chair: So leave it as is, with no change for the current act on this one.

Mr. McDonald: Yes.

The Deputy Chair: With that motion on the floor, any discussion? Ms Notley.

Ms Notley: Yeah. I think we all know what the act is intending to do here. Notwithstanding that it hasn't come up in the past, you know, doesn't mean it won't come up in the future. I'm not sure why we wouldn't look to making a recommendation that the language itself be very clear that we're talking about constituency activity and that we're not inadvertently approving or allowing to slide language which, if literally interpreted, could pretty much approve any activity, whether appropriate or inappropriate, simply activity being that which that MLA normally engages in. My belief is that no one intends for that to be the case, but because we are now having this discussion and we're turning our mind to it – if the commissioner should ever be called upon to review it, you know, we now have us turning our mind to it and not clarifying it, not making any changes. So I'm a little worried that we may in fact be setting ourselves up for it to be potentially mistakenly applied.

The Deputy Chair: Do you have a different suggestion? Do you wish to make an amendment?

Ms Notley: Well, I'm speaking against the resolution. I think that we should actually make some change just to make this clarification.

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

Anybody else have a point to raise? I hear nothing.

For those who support the motion to not change . . .

Mr. Dorward: Can we have the motion reread, please, so that we make sure that we understand it?

Mr. McDonald: It remains the same, as is.

The Deputy Chair: Mr. McDonald's motion is that

this section remains the same.

With no change, right?

Mr. McDonald: Correct.

The Deputy Chair: Okay. With that motion on the floor, those who support that, put your hand up. One, two, three, four, five. Okay. Those who are against it? One, two, three, four. Motion carried. Thank you very much.

Can we move on to the next one? Ms Leonard.

Ms Leonard: Thanks. The next section is disqualifying offices, and this is more of a housekeeping issue. The schedule to the act lists the disqualifying offices that members are prohibited from holding, and it just needs to be reviewed to make sure it's accurate and up to date. In recommendation 40 it mentions the Child and Youth Advocate and the Alberta Energy Regulator. I've checked the latest version of the act, and actually both of those are included, so the committee may not even need to consider this issue.

The Deputy Chair: Thank you very much.

Mr. Wilkinson.

Mr. Wilkinson: Mr. Chair, thank you. That is correct. The schedule was revised on June 17, 2013.

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

With that being very straightforward, shall we move on?

Okay. Go on to the next one, Ms Leonard. Thank you.

11:20

Ms Leonard: Okay. The next section is gifts and benefits, and there are quite a few recommendations in this. They're all very disparate, so it was hard to group them together, and they might have to be taken more or less individually. Recommendations 42, 47, and 49 all sort of relate to who's giving the gift. The issues include whether gift giving between friends should be addressed in the act, whether gifts from charitable organizations should be allowed, and there was another suggestion that the subsection on gifts from political parties or constituency associations be amended to ensure they're permissible under the Election Finances and Contributions Disclosure Act.

Recommendation 44 suggests specifically addressing accommodations and hospitality and offers some possible wording.

Recommendations 46, 48, and 50 were just comments that the provisions on exemptions, charities, and the disclosure limit are appropriate. So the members might not even need to consider them since they're just saying that the actions stay the same.

Recommendation 45 suggests generally clarifying the wording of section 7 to make it clear that any gifts are prohibited if they're directly or indirectly associated with the performance of a member's office, regardless of the dollar value, and to make it very clear what the \$400 limit applies to. This was raised in the Ethics Commissioner's submission, and I don't know if they'd perhaps like to comment further on it.

The Deputy Chair: Okay. On this one I can anticipate there will be some good discussions, so Mr. Wilkinson, please.

Mr. Wilkinson: Only if it helps, Mr. Chair, I'd be glad to just give a very brief description of what we're recommending here and then leave it up to the committee, of course, to decide.

Item 46 is our first recommendation here. Basically, what this says is that we don't feel, judging by the MLAs that speak to us and members of the public, that there's a clear understanding that the \$400 gift is a line only for public reporting or not. There's a view by some of the members of the public and others that if the gift is under \$400, it can be accepted, but actually the prohibition begins at 1 cent. If the gift is given from somebody or some organization that is directly or indirectly associated with the business of an MLA, then it is prohibited.

For us, we would like to see something in the legislation that confirms that, that lays it out a little more clearly than it is now. Especially for new MLAs coming along, we get lots of questions around this. Every year every commissioner has gotten more questions around gifts than any other, and it's right across the country, you know. So we all just try – the questions we get, the information we get we hope we can pass on to maybe make it a little easier for MLAs.

Recommendation 46: "should retain [the] authority to provide an exemption for gifts." What that is is that everybody who has been given a gift and the gift is over \$400 then must come to our office for acceptance of that gift or disposal of it or whatever we work out, retention, whatnot. So we feel that still should be there, and that is used from time to time.

Section 47. We have a handout here. Glen, unfortunately, is away on a very well-deserved vacation. He works extremely hard, long hours and is very effective at it. Brad is going to hand them out for your consideration. We feel that to be consistent across the board, it would help – and you can have a look at this and judge for yourself – to have the same wording here as is in the Election Act.

Recommendation 48 is the next recommendation that we're making. I can go back and deal with these if you wish more fully, obviously, later on, whatever the committee wants. But we feel the charity exemption is appropriate.

Recommendation 50: the \$400 amount, we feel, is still appropriate as well.

Thank you, Mr. Chairman and members of the committee. Those are our comments for now.

The Deputy Chair: Thank you very much.

Mr. Odsen: Just as a matter of clarification – I'm sorry – the handout that you're getting now is not, in fact, in relation to the wording around the Election Act. It's for something that comes later on. But that's okay. You can hang onto it.

Mr. Wilkinson: Okay. I'm sorry. Thank you for that clarification.

But we are saying that this amendment will ensure exemptions allowed under the act comply with the election finances legislation.

Mr. Odsen: Correct.

Mr. Wilkinson: So is it the same handout, or is it a different handout?

Mr. Odsen: No. There's no handout for that.

Mr. Wilkinson: No handout for that. Okay. The members won't know what the wording is, then, so I guess we turn that back to the – sorry about that. We should have brought that wording for you as well.

Mr. Odsen: May I just add to that or, again, provide a little bit of clarification?

The Deputy Chair: Yes, Mr. Odsen, please.

Mr. Odsen: What we're suggesting is that the wording in our act be changed to say that gifts, benefits, fees, those kinds of things, must conform to the requirements of the Election Finances and Contributions Disclosure Act. That's all we're saying. So it's the whole act.

The Deputy Chair: Okay. Well, thanks for trying. I can see that we probably need to go back and forth a few times.

Ms Blakeman.

Ms Blakeman: Thank you. What we're always trying to do here is figure out if we've missed something. I've never had a gift from a constituency. What kind of gifts do people get? Anybody?

Mr. Dorward: From a political . . .

Ms Blakeman: Well, what kind of gift? This section is about gifts, and it's trying to make it conform from a constituency association. I've never had a gift from my own constituency association. Who does get them, and what are they? Like, is this minor? I don't know what we're talking about, so it's hard for me to say yes or no without knowing what's on the table. Do you have examples? No. Okay.

Mr. Dorward: I'm just surmising here, but if there was a meal-related constituency event that you attended or something like that and you didn't get charged for the meal, or if there was a leader's dinner and you didn't get charged for the leader's dinner. Other than that, I don't know myself what the gifts would be.

The Deputy Chair: Part of my suggestion is that I think the Ethics Commissioner's office deals with a lot of those, so if you need examples, I can defer questions there. They can give examples in general rather than really: "This is your problem. This is your gift." I never had that, so I'll try to avoid that part.

Before I ask for Mr. Saskiw, who has a comment, Mr. Odsen, anything further? I see your hand is raised.

Mr. Odsen: Well, just that the example that Mr. Dorward gave was one that springs to mind as possibly being a constituency type of gift issue that could arise. I don't believe that's one of the constituency issues that has come up very often in the time that I've been in the office, you know, questions around that. It's usually other kinds of things, whether or not it's acceptable to attend a fundraiser, a charitable event, or something like that where the ticket is provided as opposed to paying for the ticket, some of those kinds of things.

Ms Blakeman: Okay. Thank you.

The Deputy Chair: Thank you very much. That was very helpful. Mr. Saskiw.

Mr. Saskiw: Yeah. I guess that just with constituency associations there is no impediment on what they can spend on. I mean, I've heard in the news of a retiring MLA that got a trip paid for, so the sky is the limit. They can spend the funds within a constituency association on virtually anything.

The Deputy Chair: Okay. Thank you. Any other comments?

Mr. Dorward: I'd just like to make a motion that we accept numbers 45, 46, 47, 48, and 50 and that we reject 41, 42, 43, 44, and 49.

The Deputy Chair: Okay. Thank you very much. There is a motion on the floor. Any discussion?

Mr. Saskiw: Can you clarify which ones we're accepting?

Mr. Dorward: Yeah. I'll repeat them. We would accept 45, 46, 47, 48, and 50.

The Deputy Chair: So those are the direct recommendations from the Ethics Commissioner's office. Okay. And the ones that we're rejecting?

Mr. Dorward: They are 41, 42, 43, 44, 49.

The Deputy Chair: Okay. That's very clear to me. Any questions?

What I see Mr. Dorward has put forward is to group them. Those recommended by the Ethics Commissioner's office, as explained earlier, the rationales: he's supporting that. That's my read.

Ms Blakeman.

11:30

Ms Blakeman: All right. In discussion, then, on the motion before us on denying or not supporting, have I got it right? You're not supporting 49?

Mr. Dorward: That's correct.

Ms Blakeman: I think there's a larger issue here between information and access. That conundrum, to my eye, appears a

number of times in this legislation. Here's one example. It's one thing to invite people to a function with a not-for-profit that is trying to give you information about what they do as part of their services. It might be a fundraiser, but they're going to have a little slide show, or they have somebody come out and do a testament speech about how they've been affected by whatever the NGO does. That's information. But if they're inviting people to a particular function or inviting only certain kinds of MLAs or politicians to a function in order to get access to them, that's a different matter, and that is not clarified in what's being proposed in this particular resolution 49. In denying it, we're saying: okay; anything they do is a go. Is that what you want to do?

Mr. Dorward: I'm proposing that the act would be left the same way as it is now based on the fact that we still have the opportunity to have this out there in the realm of people, Albertans, understanding potentially what's going on, that the Ethics Commissioner could still do an investigation. I can't find, in my mind's eye, a way to further describe the situation that we run into with charitable organizations whereby, just like you say, we go to their dinners now and then to learn about what's happening with their organization, especially as most of them are from a fundraising perspective, unless we want to start to report all of those all the time as nonmonetary gifts. I guess I'm saying: where there isn't a problem, is there really a problem? I don't know. Maybe you can ask our experts if there's a problem in this area.

The Deputy Chair: Mr. Wilkinson.

Mr. Wilkinson: Yeah. It's a good discussion and worth raising. You're right. It's not a problem for us. Usually when a charity puts on something, it's a fundraiser, and usually the charity is not giving the tickets. It's usually a corporation giving the tickets. When we're phoned about, "Can we go to this function? It's put on by blah, blah charity. They have a number, and they're a charitable organization, so it's okay," we say: "Well, let's follow the money. Who is providing the ticket?" That's what you have to look at. What's behind the organization? Where is the money coming from? If indeed the ticket is coming directly from the charity, which happens occasionally, then fine. That's exempt. Usually it's coming from an organization, a nonprofit organization possibly but mostly profit organizations. Therefore, they want the member to sit at the table with them and so on.

Getting back, then, to gifts, if there's any association, directly or indirectly, it's out.

Ms Blakeman: Okay. And you're right. It's a good motion.

The Deputy Chair: Okay. Thank you.

Any further discussions?

With that, I'm going to call the vote on this motion. Those who support Mr. Dorward's motion, raise your hand. Unanimously passed. Thank you very much. Good job, Mr. Dorward.

Okay. Ms Leonard, the next one.

Ms Leonard: Okay. The next section is travel on noncommercial aircraft. Section 7.1 says that travel on noncommercial aircraft is not permitted unless the member is travelling in his or her capacity as a member and the member tells the Ethics Commissioner within seven days after the trip.

Numbers 52 and 53 were both similar, suggesting that the language be clarified with regard to what it means for a member to

travel in his or her capacity as a member, although neither of them really had any suggestions on what kind of language should be included in the act.

Number 51 recommended that members be required to get prior approval from the Ethics Commissioner before accepting such a flight, and only if that wasn't possible or practical would they be allowed to disclose after the flight.

The Deputy Chair: Okay. Thank you very much. So virtually there's one recommendation there. That's 51. The others are suggestions.

Mr. Dorward.

Mr. Dorward: Yeah. I've looked at this area quite a bit and thought it through quite a bit, and I think a healthy discussion of this would be a good thing. I want everybody to acknowledge if I'm right in my assumptions relative to the scenario that is being looked at here. If there are other situations, then let's explore them as well. I believe what we're talking about here is that the interpretation of the present act is that if a person wants to have – and a classic example is Fort McMurray – a tour of the Fort McMurray oil sands region so that you can go and see what the heck is happening there, I think that the interpretation in the past has been that we shouldn't get on an airplane that's owned by a private group in Calgary or Edmonton and fly there and tour the oil sands. Why? Because there is a commercially available, easy way to get to Fort McMurray physically, either on a government aircraft for some individuals that get asked to do that or on a commercial flight. You could get on a private plane after that because it's not practical to do it any other way and go past plants and fly around and look at things. You could do the same thing about the irrigation districts in southern Alberta or other examples.

I believe that the intention here is to create a situation that addresses the issue of all. Does that make any sense? If I as a legislator need to learn more about the oil sands and the best way for me in my position as an MLA to do that is to fly to the oil sands, why, just because there's commercial aircraft going to Fort McMurray, should I have to get on that one first and then get on a private plane to look at those oil sands? Is it not just as appropriate that I would get on the plane in Edmonton and go and look at those oil sands if it's part of what I need to do as an MLA in order to understand the issues that are up there in that area?

With that as background, as I say, I want to just have a fulsome discussion of whether I've got the facts right. Maybe our Ethics Commissioner, who suggested this area, can tell me whether or not that's where we're heading with this one, and then what is everybody thinking about whether this is a necessary restriction there or not?

The Deputy Chair: Thank you, Mr. Dorward.

I'd like to invite Mr. Wilkinson to give us some suggestions.

Mr. Wilkinson: Thank you, Mr. Chair. That hits the nail right on the head. I couldn't have said it better myself if I could at all. The complaints we get are just that: when we get up to Fort McMurray, there's no scheduled flight up there. Therefore, if I'm taking a tour of Fort McMurray, a helicopter is fine, but flights of convenience are not allowed. You can't jump on a company's aircraft that is going back and forth all the time and go up there. That's called a flight of convenience, and those aren't allowed. That's where we get probably more complaints than any other. I wouldn't call them complaints. It's suggestions that maybe it should be changed, that, gee, if an oil company has got planes going back and forth, we're going to be on their plane anyway to

get there. Why can't we take their plane back and forth to Fort McMurray or wherever else?

Those of you who were on the committee the last time maybe could remember why you said that that is not allowed. The only thing I can offer is that I have no evidence of this happening at all. This company plane is going to Fort McMurray, but it maybe could go somewhere else first to get involved in some of their activity, right? I think that's the worry. No evidence of that happening at this time, but I think that was part of the thought behind it, why you said that it's got to be for a very specific purpose when you're up there. That's the first issue.

The Deputy Chair: Thank you very much.

11:40

Ms Blakeman: I am very mindful that on this committee at this time we have two members who have served more than one term, so we're lacking in long-term experience on this issue. Please, my colleagues, correct me if I'm wrong, but this is primarily a government issue. I have once been on a government plane, and I don't get asked to fly up to Fort McMurray, so I think the reason that the previous committee rejected it is one of equity. How would you possibly monitor that, that you are not just having only opposition members being flown up to look at the oil sands and coming back with photos and expertise and doing media interviews in which they are describing it in a certain way? You can't monitor the equity of the application of this. I think that is why you end up saying: "No. Nobody does it."

The Deputy Chair: Okay. Thank you.

Ms Notley: I'm just looking at the act, and I need clarification because it doesn't look to me like we're actually saying that nobody does it. All we're saying is that you tell the Ethics Commissioner within a week of doing it.

The Deputy Chair: That's what they're recommending, I believe, in 51.

Mr. Wilkinson: We recommend that flights of convenience are not allowed.

Ms Notley: I'm looking at 7.1. Am I looking at the wrong place? It says:

- (2) A Member breaches this Act if the Member accepts travel on a non-commercial chartered or private aircraft for any purpose.

Fair enough. But then it says:

- (3) A Member does not breach . . . if
- (a) the Member is travelling in his or her capacity as a Member of the Legislative Assembly . . . and
 - (b) the Member informs the Ethics Commissioner within 7 days after the travel is completed.

Mr. Wilkinson: That's what we want the discussion around as well: what do you consider to be doing that, being involved in the business of a member of the Assembly? Taking that flight up there from that company? Our direction from the last committee, we understand, the way it's been interpreted by the office throughout, is that that would be a flight of convenience, not part of your job. There are other airlines that can be taken, government aircraft, there are regularly scheduled aircraft as well, so you don't need to take that company aircraft.

Getting back to the access argument, it's been said that maybe that would give that certain person too much access.

Ms Notley: I'm sorry. Again I'm a bit confused, and I apologize.

Mr. Wilkinson: It could be me, you know.

Ms Notley: Under 7.1(3)(a) your office is saying that you don't enjoy the exception to the breach provision because if there is a commercial flight available, then that's what the current interpretation of this is by your office. I see. Okay. I got you. Interesting. How do you deal with that? The act itself says that all they've got to do is tell you seven days afterwards. You must have people calling you after they've done it.

Mr. Wilkinson: Yes, we do. That's another part of the act that we'd like to see you consider, as B.C. has done, putting a little more teeth into, asking people to advise us in advance if at all possible.

Ms Notley: I see. Fair enough.

The Deputy Chair: Good discussion.
Any further questions?

Mr. Dorward: The commissioner mentioned the last time and therefore the last report, in 2006 – I'm referring to the final report of the committee, in May 2006, and number 14 says:

The Act should be amended to permit air flights on private carriers to be exempt from public disclosure when the flights are for the purposes of fulfilling Member duties to the province. Before accepting such air travel, the Ethics Commissioner shall be consulted by the Member.

"Before accepting such air travel": that sounded like before, not seven days after, and it sounded like it permits air flights on private carriers to be exempt from public disclosure. That sounded like this addressed the issue, but what came out in the act and the interpretation didn't.

Ms Notley: Right. To be clear, I would never have voted in favour of that particular recommendation because you could drive a great big 737 through that recommendation.

Mr. Dorward: Were it not for the Ethics Commissioner, you may be right, but the buck still stops with the approval, right?

Mr. Wilson: Well, it stops at the legislation.

Ms Notley: Yeah. But even with the Ethics Commissioner they would be struggling. That's why we wouldn't go with that one. Certainly, we wouldn't go for that one.

Personally, my view is that if it's disclosed, if MLAs want to disclose that Enbridge is flying them all over the province, then fill your boots. But I think a question of disclosure is the primary issue.

Mr. Dorward: My understanding is that if we were to accept 52, we would be turning back to the ministry or the department to review the area. At the end of the day we're a review committee anyway.

You know, I like this concept of doing it beforehand and not allowing the seven days after. I never did quite get that part. That seemed to be awfully open ended. I don't know how the commissioner deals with the situation where the flights have already taken place, other than the disclosure issue.

These get disclosed anyway, don't they, Mr. Commissioner?

Mr. Wilkinson: They do, yeah.

Mr. Dorward: So it's fully disclosed on the reports that the MLA must send in.

Ms L. Johnson: How many flights have taken place over the last three years?

Mr. Wilkinson: That's a good question. Looking back on the public disclosure statements, which are available to you, I'm guessing maybe five to 10 in the last three years. That would be a guess. I could be wrong. I'd obviously need to check that.

Brad, what would your thoughts be?

Mr. Odsen: I don't think it would be even 10.

Ms L. Johnson: Okay. Thank you.

The Deputy Chair: Thank you.

Ms Notley: But that's because it's prohibited right now, right?

Mr. Wilkinson: Yes.

Ms Notley: So that's the issue.

Mr. Wilkinson: And we've rejected some because it's, you know, directly or indirectly associated with their business.

The Deputy Chair: Okay.

Ms Blakeman: Can I just reconfirm? I'm sorry. Did somebody put a motion on the floor? Okay. We're still just talking about it. All righty.

I think if the purpose of 51, going between recommendation 51 and page 12 of the act, which is covering the same section, section 7.1 and all the subs – really, all this is asking is that the seven days after clause be removed. That's actually not a bad idea because it requires that it be prior. It doesn't give you an out after the fact.

The Deputy Chair: That sounds pretty good.

Mr. Odsen.

Mr. Odsen: Yes. We're not asking that that be removed, but we're simply saying that the only time that would kick in is if it had been impractical for the member or if they'd been unable to contact the Ethics Commissioner and get approval in advance. Then they must within seven days, for sure, contact the Ethics Commissioner and advise that this has happened. We will then make a determination as to whether or not it was appropriate.

Ms Blakeman: It's kind of done, though.

The Deputy Chair: Ms Notley, followed by Mr. Dorward.

Ms Notley: Yeah. I mean, it's interesting because it depends on what you're talking about. To some extent I want to refine and/or backtrack a little bit on what I somewhat flippantly said before. I actually think that the flights of convenience can be used inappropriately. As much as I said, you know, "Go ahead; disclose that you're spending lots and lots of time," you're probably not actually disclosing how much time. I do think that the flights of convenience can be a problem. I can certainly say that in my five years of being the environment critic and spending a lot of time talking about the oil sands area, I've been offered no flights there by anyone who happens to have a jet. So I think that is actually a problem.

That being said, if we're assuming that we continue with the interpretation that's currently being applied by the commissioner's

office, that discourages the flights of convenience to the level that you have, then I think that 51, with as far as reasonably practical, is not an inappropriate way to go. Obviously, I can imagine you're up in Fort Mac, and then somebody comes along at the last minute and says, "Actually, we do have a helicopter available. We didn't think we did, but now we do. You're here for another 24 hours. Do you want to do that tour?" or something. I could see in that setting, you know, then getting in touch within seven days and ensuring that that helicopter flight is disclosed would be reasonable as long as that's still what we're talking about and we're not talking about these regular flights all over the place on private jets. Frankly, we use Fort Mac as one example, but it can happen all over the place, all over the country.

11:50

The Deputy Chair: Good point.

Mr. Dorward.

Mr. Dorward: Yeah. I just was going to toss on the table another example, but you've kind of done that. I suppose you could have a forest fire in an MLA's particular area, and somebody says: well, we're going to go and fight that forest fire, and you can jump on this plane and see what's happening to your community. That might happen on Saturday morning, and there's nobody at the Ethics Commissioner's office to approve it, or it happens on Sunday morning. You know, I could kind of see, I guess, that timing. Just to finalize that, then, Member, would you say that there shouldn't be any changes to the present legislation?

Ms Notley: No. I'm saying that for 51 you would actually require that it be approved in advance, but you leave the out in terms of practicality, reasonably impractical, or whatever. But if it's, you know, an event that clearly was scheduled seven days in advance or more – and usually they are – then you would get prior approval. And we would maintain the current interpretation of what is prohibited and what is not.

The Deputy Chair: Thank you very much.

To me, it's a very good conversation. When I follow all the great ideas, here's my understanding. I just want to double-check if our committee is with me on this. With recommendation 51 it's asking you for prior approval first. With that change it's also required that when you cannot make the prior approval, you have to do the seven-day report afterwards. To me, the prior approval has been addressed, the notification, and public disclosure has been addressed, and I'm sensing those are the two issues that we've been talking about so far. To me, we're ready to get a motion on the floor. Do we accept this?

Mr. Wilson.

Mr. Wilson: Thank you, Mr. Chair. I would move that the committee accept recommendation 51.

The Deputy Chair: Thank you.

Any further comments? No?

Those who want to support this motion, put your hand up. Those who oppose? Unanimous. Carried. Thank you very much.

Ms Leonard, the next one.

Ms Leonard: The next issue is scope of relationships with the Crown. This is recommendation 55.

Mr. Wilson: Are we finished with travel?

The Deputy Chair: Yeah. We did.

Mr. Wilson: There are still a couple of other issues that we can debate on this.

The Deputy Chair: Let me hold off on that for a second, Ms Leonard. Thank you.

Mr. Wilson: Sorry. My apologies.

The Deputy Chair: Any other suggestions for travel, Mr. Wilson?

Mr. Wilson: Yeah. I would like to get the Ethics Commissioner's opinion on recommendation 54, as to whether or not sanctions should be made available to your office regarding the acceptance when you've deemed that there is a conflict.

Mr. Wilkinson: Not in this case. We would be asking for sanctions later on for a technical breach. When somebody doesn't file on time, for instance, there would be a sanction associated with that. But I would suggest that if something like this happens, our recommendation would be to put in a report to the Legislature, and the Legislature would decide whether there would be a sanction or not.

Mr. Wilson: Thank you.

The Deputy Chair: Okay. Thank you very much.

I just want to sort of further encourage our committee members. A suggestion: we are not going to go back to the vote on every number because that will take forever. For our committee's efficiency of time we'll try to deal with what changes we want to make on this particular section, and we can have comments, discussions, during that, but try to focus on the changes.

Mr. Wilson: With respect, Mr. Chair, I believe that the purpose of this committee is to go through these recommendations. I respect that opinion and that of Dr. Massolin, but I believe it'd be irresponsible of us just to wax over some of these in the interest of time. I would appreciate your, I guess, co-operation with this committee as we seek out further information on some of these things.

The Deputy Chair: Okay. Point made. Yeah. Thanks.

Any other suggestions, comments?

Ms Blakeman: I'm sorry. Now where are we? You wanted something discussed?

The Deputy Chair: No. I'm just saying: are you ready? We'll move on to the next one, the next chunk.

Certainly, I welcome committee members to share your thoughts and suggestions, but what I'm saying is that at the end of the day it is what you want to put forward.

Okay. I hear nothing. Now I'm going to formally ask Ms Leonard to move on to the next subject.

Ms Leonard: Thank you. As I was saying, the next one is 55, scope of relationships with the Crown. It's more of an item for consideration rather than a specific recommendation. It's just asking whether the scopes of sections 6, 8, and 9, which deal with restrictions on members with regard to Crown employment, conflicts with the Crown, and payments from the Crown, should be narrowed or whether the definition of the Crown should be amended. It's actually related to recommendations 14 through 16, which the committee deferred at the last meeting. Perhaps the

committee would like to consider deferring this one as well and discussing it with the previous recommendations.

The Deputy Chair: Sounds very good. All agreed? Okay.
Let's move on to the next one. Thank you.

Ms Leonard: Okay. The next issue is restrictions on contracts with the Crown, specifically referring to ATB Financial. Section 8 prohibits members or their direct associates from entering into certain contracts with the Crown, one of which is borrowing money from a treasury branch. One issue is whether or not to keep this prohibition with regard to ATB. Item 56 was the Ethics Commissioner's suggestion that the committee just consider this issue. They noted in their submission that there's no evidence that members would get preferential treatment from ATB and also that both the relationship between ATB and the Crown and its governance structure have changed since the act was originally proclaimed. Item 57, however, suggests keeping the prohibition because ATB is still a Crown corporation and members may need to make decisions affecting it.

So the issue here for the committee to consider is essentially to keep section 8(1)(a) in or remove it. In the event that you decide to keep the provision as it is, both 58 and 59 suggest that members be reimbursed by the Ethics Commissioner for any costs incurred in transferring mortgages from ATB to another financial institution.

The Deputy Chair: A very interesting one.

Mr. Wilkinson: If I may, just to help the work of the committee, kick it off, initially we thought that we didn't need to be involved with ATB and you didn't need to be involved with ATB anymore because it seemed to create some problems and confusion and whatnot. New MLAs coming on, some of them objected to it and whatnot, so it seemed a source of irritation. However, once we submitted our idea together and when we started presenting it to MLAs and some senior officials who came through on a disclosure meeting who had an interest in this, we asked their opinion. The opinion we got back was that they think it still should be there. There is still influence that can be exerted. So what we're left with now for your consideration would be to leave it as it is but also to allow us to have a line in the legislation and a line in our budget so we can compensate people who do need to make changes under the act.

The Deputy Chair: Okay. Thank you very much.
Any suggestions?

Mr. Dorward: I move that
we accept 59.

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

Mr. Wilson: I'm curious if there should be some sort of limitation as to what compensation would be provided under this provision.

Mr. Wilkinson: That's a good point. That's something we could look at. We do have limitations. I think we're asking for \$500 as a maximum in another section.

Mr. Wilson: Five hundred?

Mr. Wilkinson: Five hundred dollars, yeah. We're not looking for anything more than that.

Ms Notley: Oh. All right. We're not looking at differences in interest rates and things like that?

Mr. Wilson: Amortized over 20 years.

Mr. Wilkinson: Right.

Mr. Wilson: Okay.

Mr. Dorward: Let's get some clarity on that. The present situation is that I have a mortgage at ATB, full disclosure. My understanding is that as long as I'm contractually tied to ATB, then there's no requirement for me as a member to get rid of that mortgage until the mortgage comes up for renewal, at which time I can't contract again with ATB, which would mean that there would be no interest calculations and maybe with a new institution an appraisal fee or an application fee. But I'm totally in favour of adding a maximum of \$500 in this situation.

The Deputy Chair: Okay.

12:00

Mr. Wilkinson: Well, I may have misspoken. For some reason my mind – and I admit my mistake – switched to thinking of a sanction; for instance, for not filing. But as far as filing this – and we're also going to be talking about other items that the act requires you to do – some of the costs could be, I don't know, upwards of \$3,000 a year. So our plan would be to accept what we think is reasonable and normal and what the average cost for this is. There are guidelines out there. For instance, the government won't pay a lawyer more than \$250 an hour. There are guidelines out there for us to follow. We would propose under any direction from this committee to follow those guidelines, and I'd be happy to, you know, submit something to you. Sometimes the cost of the establishment of a blind trust and the management of a blind trust, you know, certainly could be more than that. I apologize.

The Deputy Chair: Well, thank you for that clarification. That certainly makes me feel a lot more comfort.

Mr. Wilson: The establishment of a blind trust also fits in with dealings with ATB specifically?

Mr. Wilkinson: No, but we're recommending that elsewhere. Anytime the act requires you to incur cost, then our recommendation would be – we don't now, Mr. Wilson – to have a line item for approval in the budget coming before the Leg. Offices Committee, that this is what we're recommending to cover, if necessary, costs caused by people acting under the Conflicts of Interest Act.

The Deputy Chair: Thank you.
Anyone else? Questions?

Ms Notley: I think I would want more information about what the compensation would look like before I'd consider voting on something like this.

The Deputy Chair: Okay. Yes, please.

Mr. Saskiw: Yeah. I would agree with that. You know, the example set forward by Mr. Dorward would indicate that there would be very few admin fees or whatnot, but if it's a transfer of an existing mortgage with an existing term on it, there would be, obviously, penalties when you switch institutions that could be substantial. I'd like more information as well.

The Deputy Chair: One suggestion I have, Mr. Dorward. I know we have a motion on the floor, but there seem to be some potential amendments in terms of having some proper wording or ceilings in terms of the cost for that. I'm thinking of a couple of ways. One is withdrawing the motion and putting forward something else, or we deal with it in principle and not worry about the wording per se, and then we can come back with that later. It's people looking for some kind of an appropriate amount of money being reimbursed versus the sky is the limit. That is where I see that the concern is, right?

Mr. Wilkinson: Just a thought – I don't know if this works for you or not – would be that, as I said, we would bring this forward to the Leg. Offices Committee as a separate line item in our budget whereas before this was lumped in with others. Now we would put a separate line item in the budget for this kind of compensation. Then the Leg. Offices Committee could say, "That's too much" or "That's too little," or it could be changed. Just a thought if that's of any help.

The Deputy Chair: Yeah. Thank you.

Mr. Wilson: A point of clarification. Are you suggesting that you currently are making payouts, that it's just not disclosed in your budget?

Mr. Wilkinson: No. There are allowances now. You can apply for compensation. Now the act does not say that it has to come out of our budget, so we turn it back to your budget, to Leg. Offices, or we turn it back to your department for your party to pay those expenses, right? It becomes a bit convoluted so that we have to write letters, and maybe they don't understand what's going on. In this case, you'd be dealing with us. We'd have preapproved guidelines, and we would just go ahead and take care of your compensation if so approved by the Legislature.

The Deputy Chair: It's more streamlined.

Mr. Wilkinson: Yes.

The Deputy Chair: More transparent that way, too. Thank you.
Any further questions?

Mr. Dorward, what are your thoughts in terms of the motion per se?

Mr. Dorward: I'll do whatever the committee feels we should do at this time. I'm very flexible in this area.

The Deputy Chair: Great.

Mr. Dorward: It sounded to me like now everybody is okay with what I said on the motion.

The Deputy Chair: Yes, with some limitation of how much we'll reimburse. That's the one I think we're debating.

Ms Fenske: Well, I think that if we went ahead with Mr. Dorward's recommendation and left that as a line item – Legislative Offices does discuss this every year in the budget. I would hate to see an amount put into the act which can vary every year, depending on what the financial situation is. So send it to Leg. Offices with a line item. I think that makes absolute sense.

The Deputy Chair: Thank you.
Was that an amendment, Ms Notley?

Ms Notley: Well, you know, I hate to sound like a Wildroser here – heaven forbid – but, you know, I’ve just spent the summer meeting with families who are having their supports for their disabled adult child cut by 40 per cent. I’m hearing about kids going to classrooms in closets. I understand that it’s rational and it’s reasonable, but (a) it’s something that impacts us, and (b) there are a whole lot of rational, reasonable places where we should legislatively authorize the expenditure of more funds, and this is not my starting point on that list. It’s nowhere close, so I can’t support that in the current context.

Mr. Wilkinson: We mention further on that there would be some numbers given, and again, just if this helps, these are reimbursements covering costs for private disclosure statements, blind trusts, and so on. For what we put in here, we use federal guidelines to estimate costs. A trust establishment by federal guidelines is \$3,000. Trust termination is \$3,000. Reasonable annual cost based on fair market value of the trust: for the first \$35,000 it is \$500, and over that it’s a percentage, 1.5 per cent. That would be something that we would present to Leg. Offices and then have an amount of money attached to that. But if you want to put it in the legislation or whatever you want to do, of course it’s fine with us.

The Deputy Chair: Thank you. That’s further clarified.

Now, to start, I think the issue, to me, is becoming much clearer now than ever before. I’d like to call for the amended motion on the floor to be voted on.

Mr. Wilson: Can you read it back?

The Deputy Chair: Okay. Let me try.

Mr. Dorward, can you try that?

Mr. Dorward: No. What I’m going to do is withdraw my motion and let somebody else start again. That might be a little bit easier.

The Deputy Chair: Okay. Thank you for that.

Unanimous consent to withdraw the motion? All in support, raise your hand. Okay. Passed. Now the floor is clean.

Ms Fenske, can I propose that you give the one that you recommended a try?

Ms Fenske: Give me a minute.

The Deputy Chair: Sorry to put you on the spot.

Ms Fenske: Basically, it would be 59 with the added words “such reimbursement should be through the Ethics Commissioner’s budget as a separate line item.”

The Deputy Chair: Okay. Thank you.

I saw Mr. Odsen’s hand up.

Mr. Odsen: Well, just in the hopes that it might help clarify things for members, when a member, obviously regardless of party, is obliged to incur costs as a result of something that is contained in the Conflicts of Interest Act – this is one instance. If you’re coming in and you’re banking with ATB and you have to change your bank or do something like that, you may end up incurring penalties or other kinds of costs. That’s one example. Costs may arise in having, for example, your disclosure statement prepared for you by a professional, a professional adviser or something like that, or from the costs associated with setting up a blind trust or a management trust or any of those kinds of things and then ongoing fees. What we’re recommending both here and

in other places is that reasonable reimbursement of those costs be through our office and that it be as indicated on a budget line item contained in our budget. Then, of course, in the budget discussion we would have a number.

But how did we arrive at that number? That would be showing, then, “Well, we’re estimating that our cost for this item will be so much,” the example that was given by the commissioner of the federal guidelines with respect to establishment of blind trusts and those kinds of things. That’s what we’re already using in a sense because we have to approve the reimbursement under the act as it stands now. We don’t make the reimbursement, but we still have to approve up to a certain amount. The cost may exceed what we approve, but we’re using these guidelines. We would use comparable kinds of guidelines for other kinds of things; you know, what the going market rate is for penalties on a mortgage, for example, or for transferring a mortgage or some of those kinds of things. Find out what it is, and then that’s what we would use as our guideline, and we’d stay on top of that at all times.

12:10

The Deputy Chair: Thank you very much.

That means that if we go with the proposed motion, there are existing checks and balances within the budgeting process. That is what you’re saying? Yeah? Thank you very much.

Now, are there any further comments or questions before I call the vote? Okay. Those who support Ms Fenske’s motion, please raise your hand. Those who oppose, raise your hand. Motion carried. Thank you very much.

Thank you, committee members. I know it’s about lunchtime or just a little bit after lunchtime. May I ask you again: shall we take half an hour for lunch and then come back? Okay.

Ms Blakeman: I’m just wondering if you had discussed the traffic issue and the end of the meeting, because we are scheduled to be here until 4. You did discuss it? We’re scheduled to be here until 4, but if anyone wants to drive a car out of the fabulous constituency of Edmonton-Centre, it has the time trials for the Tour of Alberta running right through the middle of it and around it and around the Legislature. If you want to get your car out of Edmonton-Centre, you’re going to have to do it before 3:30, or your car will stay here.

The Deputy Chair: Excellent point. Thank you so much.

Ms Blakeman: I don’t know if some of you are trying to get home to Calgary or get home to Terwillegar or something. You might want to cut the meeting short.

The Deputy Chair: Okay. Thank you for that.

Does anybody have that information handy? Or I can check it out during lunchtime.

Ms Blakeman: There was a Legislative Assembly memo sent.

Mr. Dorward: My understanding is that there are parts of downtown that absolutely are going to be shut down at 3. That’s my understanding. But we can get out of this parking lot as long as we’re out by 3:30. That’s what the sign out front said.

The Deputy Chair: We’ll get out more information during the lunch break. I will ask Jody to help us out on that. We’ll get some information.

Now we have a 30-minute lunch recess, and lunch is provided for you.

[The committee adjourned from 12:13 p.m. to 12:45 p.m.]

The Deputy Chair: You all would have gotten a copy of the information for this afternoon for the Tour of Alberta. It appears to me that by 3:30 things will really start kicking in. A number of members have recommended to me that we should consider finishing our meeting by 3 so that we can get out of the crazy traffic jam here. Would that be something you all agree to?

Hon. Members: Agree.

The Deputy Chair: Okay. No motion needed. All right. Thank you. We'll try to finish by 3.

Thank you, Jody, for bringing the information to us.

I want to thank our committee members again. For the first hour we dealt with 22 on the list. Very improved pace and efficiency. Thank you so much. Let's keep up with that.

With that in mind, may I ask Ms Leonard, if you're ready, to move on to the next item. Thank you.

Ms Leonard: Thank you. Okay. We're now on the section for disclosure statements, and the first issue is with regard to private disclosure statements. Number 60 recommends changing the wording of section 11(1) to allow the Ethics Commissioner to prescribe the manner in which members can file their disclosure statements so that eventually they can move towards electronic filing.

That's all.

The Deputy Chair: Okay. Thank you very much.

My apologies. I want to recognize that we have one more MLA joining us.

Mr. Anglin, can you state your name for the record.

Mr. Anglin: Joe Anglin, MLA, Rimbey-Rocky Mountain House-Sundre.

The Deputy Chair: Thank you.

Okay. Now going back to the subject here, with what Ms Leonard just outlined, any recommendations from members? Mr. Saskiw.

Mr. Saskiw: Yes. I guess what I'd like to see is not just an inquiry into electronic posting. It would just be a requirement compelling electronic submissions in the act, not just something that's possible but compels it.

The Deputy Chair: To make it even stronger. Okay. Thank you.

Mr. Wilkinson: I guess a little background from our standpoint. We came to the committee on another issue, so I wouldn't want you to confuse that issue with the one we get to next. With this one we feel that electronic filing would be something that would be a few years down the road, and we would like to get a start at it because we need the money to do it and we also need the agreement of all the MLAs. We would not want to come out and say that everybody has to file electronically. In Ontario they have an option of filing electronically or manually, the old way. In our view, we feel there needs to be a transition, and that's what we would recommend.

B.C. is recommending – it's cut and dried – that everybody goes electronically as of this date. You could direct us that way if you wish, but I guess our advice to you would be to allow us to phase it in. But we're open.

To make it easiest for us, a suggested wording – we don't usually do this, but what is in other legislation goes something like

this if I may. Every member shall file with the Ethics Commissioner a disclosure statement in the form and manner prescribed by the Ethics Commissioner. That gives us a lot of flexibility to meet members' needs.

The Deputy Chair: Thank you very much. Those were good thoughts on the table.

Any other suggestions, comments?

Okay. Anybody ready to put a motion forward? This is a pretty simple, straightforward one. Anybody? A motion on the floor? Ms Johnson.

Ms L. Johnson: Yes. I will make that motion, Mr. Chair.

The Deputy Chair: Thank you very much.

Mr. Dorward: What's the motion?

Ms L. Johnson: To

accept recommendation 60 as presented.

The Deputy Chair: Thank you.

On that motion, those who support it, raise your hand. Those who are against it? Okay. Motion carried. Thank you.

Let's move on to the next one.

Ms Leonard: The next section is public disclosure statements. Section 14 of the act says that after a member files his or her private disclosure statement with the Ethics Commissioner, their office then prepares a public disclosure statement, which involves removing certain types of information from the private disclosure statement. Nearly all the recommendations in this category involve the kind of information that can be excluded from public disclosure statements.

Section 14(4) has a list of the types of information that are excluded. It includes things like assets less than \$10,000, source of income less than \$5,000 a year. But subsection (5) allows the Ethics Commissioner to occasionally establish other categories of information to be excluded if they are of little or no importance and aren't likely to be material.

Recommendation 62 says that this power in subsection (5) is too broad, especially considering that subsection (4) already allows a number of trivial exclusions, and the committee could consider removing this section.

All of the other recommendations involve subsection (7), which allows the Ethics Commissioner to exclude income received by a member's spouse, adult interdependent partner, minor child, or private corporation if either (a) the income is received for services customarily provided on a confidential basis or (b) there's a possibility of serious harm to that individual's business that justifies departure from the general principle of disclosure. Essentially, the issues that the committee might want to consider here are clarifying the language in the section and either broadening or narrowing the exceptions.

Recommendations 67 and 63 both advise clarifying and improving the language, particularly with regard to the types of income excluded, although there weren't really any concrete suggestions for how to do this in terms of language. Some recommendations suggested either eliminating the exceptions or narrowing their scope. Recommendation 63 suggests removing them altogether. Recommendation 67 says that sometimes integrity requires disclosing income from confidential work, so presumably this is a suggestion to incorporate situations where such confidential income would have to be included in a public disclosure statement. Recommendation 63 also suggests that if

info is withheld because of a risk of serious harm, the public disclosure statement should have a note to that effect.

Then there are also some recommendations that suggest broadening the exceptions. For instance, right now the subsection just refers to income, but 65 suggests including assets and liabilities as well.

Recommendation 66 suggests that the committee consider replacing the exceptions with the broad exception that allows the Ethics Commissioner to exclude information if it's not relevant to purposes of the act and if departure from the general principle of disclosure is justified.

The Deputy Chair: Thank you very much.

Quite a bit in this section here. Anybody have comments, suggestions how to move us forward on this one?

Mr. Dorward: I have a brief comment about number 61. I think that government or legislation is famous for putting in numbers, and then all of a sudden somebody says, "Well, that hasn't changed for 28 years," and all of a sudden it's a number that's gotten out of hand relative to inflation, for example. These numbers, the \$10,000 and the \$5,000, haven't been changed, for everybody's information, for seven years. So I thought that they should jump up given that it's been seven years, which just makes them exactly the same in rough terms of inflation, which would be about \$12,500 for assets and \$6,500 for sources of income.

12:55

The Deputy Chair: Okay. Thank you.

Anyone else?

Ms Notley: As we're sort of dealing with the whole group, I guess, together, at least on a preliminary basis, I just had a couple of questions of the Ethics Commissioner's office. I was just curious as to whether or not you've had the opportunity to act under section 14(5), where you have the authority to establish other categories that might be excluded from public disclosure and, if so, what they are.

My second question is: how often have you used 14(6)? Then my question is: how often have there been exclusions under (7)?

The Deputy Chair: Anyone from the commissioner's office? Go ahead, please, Mr. Odsen.

Mr. Odsen: Thank you, Mr. Chair and Ms Notley. I'm not aware that the office has ever established any additional categories. There are also a couple of others as well. It's one of those kinds of things where the fact that we haven't done that doesn't necessarily mean that a circumstance might not arise where we would feel the need to be able to do that, but to this point no such thing has occurred.

Similarly, under 14(5) I don't believe that's ever been used by the office, but again circumstances may arise where it would be appropriate to invoke that.

With 14(7) it's pretty much the same thing. There's not been, to my knowledge, any use placed on that within the office, but again it's one where a circumstance could conceivably arise. Personal safety, for example, an ex-spouse, you know, or some of those kinds of things might be the kinds of ones. That might be something that we would want to take a look at, but so far, to my knowledge, none of those have ever been actually used.

Ms Notley: Okay. Thanks.

The Deputy Chair: Okay. Thank you very much.

Any further comments, questions?

Ms Notley: Well, I guess the other thing I would say in response to the comments that were made by Mr. Dorward is just that I always sort of thought that \$5,000 was a bit high when it was initially established. Yes, inflation would have it go higher, but since it started out rather high, I don't think there's anything to be lost by keeping it low right now. Five thousand dollars is enough money to be of value to some people in some circumstances, certainly many Albertans.

The Deputy Chair: Okay. Thank you.

Any other comments? Again, I want to direct our committee members to focus on what changes you wish to bring forward with regard to a number of suggestions on the table here.

What I'm hearing is that Mr. Dorward has a proposal for change, and Ms Notley sort of feels like that increase of index is not needed. That's the only change I'm hearing so far.

Any other comments?

Ms Notley: Just in reading through really quickly, given the answers that were given by the commissioner's office with respect to numbers 62 and 63, that they're not frequently used, I don't think changing that language is certainly necessary.

However, I do think 64 is not a bad one to consider adding, which is just simply that should 14(7) ever be used, there would be a notation that information was withheld under that. That's what's recommended under 65 without actually providing that information. I think there is value in that one. Otherwise, it doesn't appear to me that there is a tremendous overuse of those sections at this point in time or any use of them, really.

The Deputy Chair: Okay. Thank you very much. The suggestion is to support 64. Is that what you're saying? Thank you.

Any further comments?

Mr. Dorward: Yeah. I can't support 64. I wrote down: why? I just didn't know. You know, if there's a reason why I'm able to communicate to the Ethics Commissioner why my spouse should not have to disclose something under the act, I don't know beyond that simple fact why the public – I mean, I can only think that the public would go back to the Ethics Commissioner and say, "Why did you decide that?" and "What is it that's not being told to us?" The fact is that there are all kinds of things that the Ethics Commissioner deals with that aren't disclosed to public, even the fact that they necessarily looked at them. So I don't know what more we're doing for the public by just saying that there is something that wasn't disclosed.

Ms Blakeman: I think you could look at the freedom of information act, for example. If you applied the same principle, we'd be in serious trouble. You know, there has to be a way for the public to know or understand that information was there even if it's not released. Once they go to the Ethics Commissioner and say, "You've got an asterisk there; it means that there's something that isn't disclosed," he's going to say: "Well, according to the legislation that happened under allowable reasons, and that's the end of it. I'm not going to tell you about it." But they do know it.

The reverse of that is that somebody finds out that this happened, and they turn to us first, because that's who they call when they're mad, and say: "Why the heck did you guys allow that? There was no way for anybody to ever know that anything had happened." At that point I've got to say: "Well, yeah. That's true. We didn't indicate that there was information withheld there, and we should have." I think that's where it calls it in for us.

I think that too many times we allow information to be edited out or not indicated or not made available, and in fact the onus on

us is the opposite. We're supposed to be giving out as much information as we can, according to the FOIP Act, unless it's, you know, protecting definitive personal information. So I would support 64.

The Deputy Chair: Ms Notley.

Ms Notley: Yeah. The other reason in answer to why – although I just want to reinforce Laurie's comments about, you know, when you get a FOIP document. If you get a blank piece of paper with three lines on it versus a piece of paper that's 20 pages long, and it's all blacked out with three lines on it, then frankly there's information there in that second category simply in terms of what's not there, and that helps. It is actually kind of applicable to this.

From a more practical point of view, if you go back through the deliberation that I just personally went through to determine whether or not this section is being used too liberally, that's exactly what I'm asking to have in place all the time. I got the opportunity to ask whether (5), (6), and (7) are used typically by the office, and I heard that they're not, so I'm not at all concerned about narrowing those definitions. Should practice change – right? – or should we have a new set of interpretations of that legislation and we do start seeing use of that section, then I think members of the public would want to know, and they would want us as members of the Assembly to know so we could then determine whether or not that language continues to be appropriate. So that is why. It helps us do good oversight of this legislation, which is what our mandate is.

The Deputy Chair: Yeah. Thank you. Several points were made. Mr. Odsen, followed by Ms Johnson.

Mr. Odsen: Thank you, Mr. Chair. I think that referring to FOIP is perhaps helpful in terms of conceptualizing this. Really, what we're looking at here is the tension between transparency and privacy, which is the other side of the FOIP Act, and how far ought things to go with respect to members and their private affairs in terms of disclosing that information to the public.

Insofar as a recommendation, then, concerning some sort of notation if we ever did invoke that section, I think that our position probably is that as long as it's something that's pretty neutral, "additional information was received that has not been disclosed," period, or something like that, we're okay with that. But once you start getting more specific, that's when the concerns start to arise. Obviously, there's going to be a very good reason for not disclosing that kind of information – a very good reason – so we'd want to be really careful that, you know, we don't cross that line.

1:05

The Deputy Chair: Okay. Thank you very much. Your advice is always welcome.

Are there any comments, any further suggestions? Does the committee feel that this subject was well discussed and ready for a motion?

Ms Notley: That we accept the recommendation that is outlined in section 64.

The Deputy Chair: Okay. There's a motion on the floor. Any further comments or suggestions?

Mr. Dorward: Yeah. That was a good discussion. Did you mean that it's your opinion that it's okay to disclose that a spouse has

information that will not be disclosed, or is your recommendation that it be the way that it is now?

Mr. Odsen: Well, what I was suggesting, if I may, is that as long as the notation is very broad and general – like, I wouldn't even go so far as to say that there's information from a spouse that's not been disclosed. I don't think that is appropriate. That's going too far, in my view. But indicating on a form that additional information has been received by the office of the Ethics Commissioner which is not publicly disclosed might be okay. I mean, I think that would be acceptable. Leaving it the way things are certainly is acceptable, in our view.

Mr. Dorward: Then my question, Mr. Chair, would be: does the motion encapsulate that in your thought process?

The Deputy Chair: Well, you're welcome to further clarify or amend it.

Ms Notley: Well, I think the idea is that there would be a notation saying that information has been withheld under sections of the act. Obviously, if you start describing the information that's being withheld, then you start to . . .

Mr. Odsen: Then you go find it.

Ms Notley: Exactly.

The Deputy Chair: Thank you.

My understanding is that it's not exactly recommendation 64, because 64 specifically indicates a spouse, right?

Ms Notley: No.

The Deputy Chair: Okay. So 64 is broad enough?

Ms Notley: Yeah.

The Deputy Chair: Okay. Ms Leonard.

Ms Leonard: Recommendation 64 I think is just referring to subsection (b), the risk of serious harm. If you wanted to make the notation apply to all of subsection (7), you'd have to broaden recommendation 64.

Ms Notley: Where does it say (b)? Oh. Because of the risk of serious harm.

Ms Leonard: Yeah.

Ms Notley: You're right. In fact, I think, if anything, doing it your way gets rid of the too-much-information problem in some ways, right? It expands the things that would be noted, but it also ensures that less information is provided.

Ms Blakeman: So 14(7)(b).

Ms Notley: Just 14(7).

The Deputy Chair: Okay. For the record, can I ask Ms Notley to restate what you're recommending.

Ms Notley: Okay. What I'm recommending, based on 64, is that the committee recommend that where information is withheld under the authority provided under section 14(7), there would be a note indicating that information was withheld under that section.

The Deputy Chair: Pretty good. Is it good with all of you? Those in support, please raise your hand. Those who are against it? Motion carried. Thank you.

Okay. Ms Leonard, the next one.

Ms Leonard: Okay. The next one is returns relating to persons directly associated. This is section 15(3), which requires members to file a return with information on their direct associates within 30 days after they cease being a member. The Ethics Commissioner in their submission suggested removing it entirely because they're unable to impose any sanctions for noncompliance on nonmembers. I thought perhaps the Ethics Commissioner would like to comment.

The Deputy Chair: Thank you very much. A great suggestion.

Mr. Wilkinson: Yes. I'd be happy to, Mr. Chair. Utilizing the law now, the number of returns we get after people leave is very low. The act does require MLAs to notify us after 30 days if any situation has changed. What we have done is just to send a letter asking them after they have left: in the last 30 days of your office did anything change, and did you forget to notify us? That's about all we feel we can do under the legislation at the present time.

Ms Blakeman: To which they say: I'll get right on that.

Mr. Wilkinson: Yeah.

The Deputy Chair: Okay. Thank you, Mr. Wilkinson.

Any comments? No? It's a straightforward one. Are we all agreed? Thank you very much.

Let's move on.

Ms Leonard: The next section is the Minister of Finance's report. Under section 16, the minister has to prepare a report every year, and one of the requirements is that for each member it must include information on the payments made by the Crown to the member and their direct associates. Section 16(4) lists types of payments that don't have to be included, like EI or AISH payments or a senior's benefit. Recommendation 69 suggests that the committee consider whether amounts that are paid to members under programs where they've paid premiums to the Crown, like farm insurance programs, should be excluded from the minister's report or whether a net amount should be reported.

The Deputy Chair: Again, may I invite our commissioner to give us some thoughts.

Mr. Wilkinson: Sure. Yes. In our disclosure meetings we do hear from people about this item. This is what they tell us: "There are members who get a payout because they had a car accident. They get a payment to repair that car, and they don't report it. But we pay into farm insurance, and we have to report the payout under farm insurance." We're just passing this on for the committee to give some direction to us.

Mr. Dorward: That's kind of what I thought that section says, but then I went back to the actual report for the year ended March 31, and I just at random happened to pick a couple that had this kind of thing in there. Just for clarification, I'm looking at one just at random, page 63 of the report of selected payments to members and former Members of the Legislative Assembly, dated March 31, 2012. It says in here: "Surface Lease of land paid by Sustainable Resource Development" to this former member. It also, as a tab, says, "Total premiums received by the Crown in

respect of insurance programs." It does disclose the income and the expense side of the insurance paid. Does that kind of fulfill that satisfactorily, or was it more that we needed to have the discussion whether that's satisfactory?

Mr. Wilkinson: If I may, again, hopefully add some clarification to this issue. It is a bit of a thorny issue. It's one that has been raised in the past by members. I think historically it's largely been around things like payments for crop insurance, hail damage, those kinds of things, where it's reported that they've received income from the Crown. In fact, it's not income per se; it's damages that they've received. You know, they're saying: "You receive damages and payment from your insurance company if your car is in an accident and that kind of thing. You pay a premium, you make your claim, and you get your insurance. You make your payments to the hail insurance fund, and if you get your crops destroyed by hail, you get a payment. How is that different conceptually?" I think that's a fair comment. How is it different conceptually? The fact of the matter is that it is treated differently, as I understand it, in this Minister of Finance's report.

Ms Notley: Isn't it different because we don't have a public auto insurance system but we do have a public crop insurance system? That's the difference.

Mr. Wilkinson: That's a technical difference between the two, yes, but conceptually . . .

Ms Notley: Well, I would say that the difference between public and private is also a conceptual issue when you ask the taxpayer who funds the public corporation and our role and relation to the same.

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

1:15

Ms Fenske: So if we took this further, any MLA receiving compensation under the disaster plan that's just being rolled out would also have to declare that.

The Deputy Chair: Good example.

Ms Blakeman, and then Mr. Wilson.

Ms Blakeman: Thank you. Well, I think that's why this is important. I mean, I would certainly be willing to look at adding in things like benefits received from a damage claim on insurance from independent sources. But, no, the real reason it's in here is because it's government money going to MLAs, and far better to have that disclosed and clarified with the premiums shown than to have people wandering around out there going: "How come that MLA is getting all this money from the government? There's something really wrong here." When it's publicly disclosed, it's very clear there are insurance premiums paid and there may have been benefits received from any damages paid out. But it also does give us an indication of where that person has interests, and that is part of why we're doing a disclosure. So it should be there for those two reasons.

The Deputy Chair: Okay. Thank you.

Mr. Wilson.

Mr. Wilson: Thank you, Mr. Chair. I believe that this should stay as it is right now. I don't believe we should be making changes to not be disclosing this information in any way, shape, or form. Further, I would suggest that any time an MLA receives monies from the Crown, regardless of if it's DRP or farm insurance, that

should also be disclosed. So I don't know if we need to look at adding that in at this point or if the status quo is covering it.

The Deputy Chair: Okay. Thank you.
Did I see Ms Johnson's hand?

Ms L. Johnson: I'm still doing some research here. No, I'm good right now.

The Deputy Chair: You're good. Okay.
Any other comments?

Mr. Odsen: Just one more brief one so that we're clear. It's not that our office is recommending the change. We're simply pointing out that that has been raised by members in discussions with us, so we're throwing it out to the committee for consideration. We're not taking a position one way or the other on that.

The Deputy Chair: Okay.

Ms Blakeman: I'm sorry. Has this been raised by members other than those receiving these kinds of payments?

Mr. Wilkinson: No. It's just been raised by those receiving those payments, feeling they're been treated unfairly.

Mr. Dorward: They don't want it disclosed.

Mr. Wilkinson: On our public disclosure statements they feel that then everybody's income that maybe comes by them from insurance they buy should be registered as income as well and not just their income. This is what they tell us, right? It comes up every year, and it's somewhat of a visceral issue. So we thought it would be nice to go back to the committee and say, "Okay, verify that you still want it this way or not," and we will carry on one way or the other.

The Deputy Chair: Okay. Mr. Dorward, Ms Notley, and Mr. Wilson.

Mr. Dorward: Yeah. I'd like to make a motion that we do not make any of the changes noted in number 69.

The Deputy Chair: Okay. Thank you.
Does that address the two issues you have? Yeah. Okay. They all concur.
You, too, Mr. Wilson?

Mr. Wilson: Yes.

The Deputy Chair: Okay. Good.
So on that motion I see how you'll likely have a consensus. All agreed, raise your hand. Anybody opposed? Unanimously carried. Thank you.
Next one, Ms Leonard.

Ms Leonard: The next category is the availability of public disclosure statements. Currently the Ethics Commissioner files all the completed public disclosure statements with the Clerk, and the Clerk stores them and makes them available to anyone who wants to see them. But all three items here, 70 through 72, suggest that this responsibility should actually lie with the Ethics Commissioner's office itself since they're the ones collecting the information and preparing the statements. Both 71 and 72 also suggest that the public disclosure statements be made available online through the Ethics Commissioner's website and through

individual members' websites although they should continue to be accessible in person as well.

The Deputy Chair: Okay. Thank you very much.
Does anyone have questions or want to put forward a suggestion? Mr. Reynolds.

Mr. Reynolds: Yeah. I just wanted to say that this is something that we've been actively pursuing with the Ethics Commissioner's office for a number of years because one person was adamant about trying to get them online, and I believe the Ethics Commissioner's office recommended that the public disclosure statements be made available online. However, the committee wanted to await the results of this committee's review before doing it and thought it was premature to prejudge the issue on that. Our office would not object, I do not believe – Mr. Odsen seems agitated in the event that I've got this wrong.

The other thing was that right now – yes, just to take up your time with the history – we are the repository, the Clerk's office, which ends up residing in our Parliamentary Counsel office, of the disclosure statements. I think that that dates back to when the act was first passed, when it wasn't sure there would be an Ethics Commissioner's office. You know, they thought it was just something where perhaps he or she could do without an office. But now, of course, there is an Ethics Commissioner's office, which is fully staffed, and I'm sure they're capable of entertaining people who would want to take a look at these.

Historically – well, I won't get into this. But there will be another issue with respect to retention that may be relevant.

The Deputy Chair: Thank you very much.

I know Mr. Dorward is on the waiting list. Does the commissioner's office want to respond before I give it to Mr. Dorward?

Mr. Odsen: I just wanted to add a little bit more context to Mr. Reynolds' comments. What he was referring to there was that our office appeared before the Standing Committee on Legislative Offices over a year ago to make this request, and it was at that meeting that the committee ultimately decided to defer the matter to this committee. So that's just what he was referring to.

Thank you.

The Deputy Chair: Good. Thank you very much.

Mr. Dorward: I move that we accept 70 and 71.

The Deputy Chair: Very clear. Thank you.
Anyone want to have a discussion on that? No.
For that motion I'm going to call for the vote. Those who support it, please raise your hand. Those who are against it? Unanimously carried. Okay. Thanks.
Moving on to the next one.

Ms Leonard: The next topic is the retention schedule for public disclosure statements. Section 17(a) says that the Clerk must keep public disclosure statements for two years after a member ceases to be a member, after which they may be destroyed. Number 73 says that two years is too short and gave the example of six years in Nunavut and 10 years in Ontario. So the committee might want to consider lengthening this period or having it stay the same.

Number seventy-four recommends removing the discretion to destroy the disclosure statements and changing the wording to mirror section 47(3), which says that destruction of records in the Ethics Commissioner's control or custody is mandatory unless the

records are needed for an investigation or charges have been laid under any other act. The committee might want to consider making it mandatory to destroy public disclosure statements after the time period is up.

The Deputy Chair: Okay. Thank you. Pretty much technical.

Mr. Odsen: Again, if I may, this is referring only to the public disclosure statements. The private disclosure statements that we collect at our office are a different thing, right? This is just what is available to the public two years after a member ceases to be a member. So that's what it's referring to.

I think I'm probably not telling the members of the committee anything they don't already know, but once we move to public disclosure on the Net, it all becomes moot.

The Deputy Chair: Okay. That's a point. Thank you very much.
Ms Johnson.

Ms L. Johnson: Thank you, Mr. Chair. My question for the Ethics Commissioner is that in the legislation 17 says the Clerk of the Legislative Assembly, where this question was answered as if it was held in your office. I just want clarification on where the documents are going to be held or who is doing the destroying.

Mr. Reynolds: Well, I can tell you that the reason it says the Clerk of the Legislative Assembly – well, there are two reasons. I think there are two reasons. One is because, as you saw, the Clerk's office is the one that had them for the public consumption, if you will, to be publicly available, so it was assumed that the Clerk would retain the records. Also, historically the Clerk has retained these types of records.

1:25

The two-year limit on public disclosure statements presents an interesting problem – sorry to affect you with interesting problems – in the sense of if some member of the public comes and says, "I would like the disclosure statement of Ms A," who didn't run in the last election. So we're coming up to two years, and you say: "Well, I'm sorry. We've destroyed all those." I guess it's the issue as to whether because it's after two years – two years after you cease to be elected the records under the act are destroyed, and that's fine. That's what the legislation says. I guess the only thing is: does that mean that should someone come back three years later and say, "I just wanted to know what he or she disclosed at the time," that wouldn't be available?

Mr. Wilkinson: There's no action after two years anyway that we can do.

Mr. Reynolds: I mean, just to tell you.

Mr. Wilkinson: After two years, then, it's moot as well because we cannot commence an action after two years under the Conflicts of Interest Act.

The Deputy Chair: So that two years is consistent in that way?

Mr. Wilkinson: Yes. We would treat it differently if it was a private disclosure statement. We recommend hanging on to those longer, but that's another item.

The Deputy Chair: Gotcha. Thank you. That was my curiosity, that two years must have some rationale behind it. So now you've stated that. Thank you very much.

Does that answer all the questions?

Okay. On that, does anybody want to make a motion that we accept it, consider this, or move on without it? [interjections]

Move on.

Okay. All concur? No change.

Let's move on. Next one, Ms Leonard.

Ms Leonard: Okay. The next one is reimbursement for the cost of preparing private disclosure statements. Section 19 entitles members to be reimbursed for the costs of preparing disclosure statements and establishing and administering blind trusts, and the Ethics Commissioner suggested specifying that their office is responsible for reimbursement. This is similar to number 59, yeah, with the ATB costs.

The Deputy Chair: Okay. Thank you.
Mr. Dorward.

Mr. Dorward: Yeah. I'd like to move that we accept this.

Presently the legislation doesn't say who, so the Ethics Commissioner is caught in an awkward position of having to try to find somebody to pay it, which I understand he does. This puts it clearly in his budget, and he can deal with it.

The Deputy Chair: Fantastic. Streamlined, transparent, open. Good deal.

All agreed? Okay. Agreed.

Let's move on.

Sorry. There's one opposed.

Ms Notley: Yeah. I'm sorry. You're moving forward with this one?

Mr. Dorward: Yeah. That was the motion.

Ms Notley: Oh. Okay. Well, for the same reasons I gave before, that we shouldn't be coming up with new money . . .

Mr. Dorward: It's not new money. Mr. Chair, my understanding is that it's required to be paid under the act already, so they're not new expenditures. It just defines that it's in one pocket instead of the commissioner having to go to a bunch of different departments and say: "Well, that member is working either as a government member or this. Please, let's find some budget for it."

Ms Notley: So the act already says that.

Mr. Dorward: Right here. Section 19(1) and (2) say that.

Ms Notley: And what pocket does it come out of?

The Deputy Chair: A different pocket. A different department, a different ministry.

Mr. Dorward: The commissioner can tell us where he finds the money.

Mr. Wilkinson: Here and there, wherever we can.

The Deputy Chair: Can I sort of bring the committee members – we've discussed this earlier on if I recall. The act already asked that we reimburse. However, it's been hidden in various different ministries, different pots of money, and created an administrative burden that is not transparent, is not clear. All he's asking is that instead of doing that, let's just put it all under the Ethics

Commissioner's budget, end of story, so you see the clear line and track of it.

Does that help?

Ms Notley: Yeah. I didn't realize that it was already in there, that it was automatically covered.

The Deputy Chair: So I take it you agree, too, that we can move on? Thank you very much. So all agreed.

Next subject.

Ms Leonard: Okay. The next subject is employment restrictions and restrictions on holdings with regard to ministers and the Leader of the Official Opposition. Under section 20 ministers can't own publicly traded securities unless they're in a blind trust. Section 21 prohibits them from engaging in employment or practising a profession, carrying on a business, or holding particular offices or directorships. Section 23 extends these restrictions to the Leader of the Official Opposition as well.

Item 76 said that the restrictions were appropriate and don't need to be changed, and 77 is just a suggestion to consider whether these restrictions should be extended to the leaders of other opposition parties, too.

The Deputy Chair: Okay. Thank you very much.

Anyone volunteering a suggestion moving forward? Nobody? That means no change. Okay.

Mr. Wilson: Clarification, Mr. Chair.

The Deputy Chair: Yeah, Mr. Wilson.

Mr. Wilson: Is this section in any way in regard to the cooling-off period for ministers?

Ms Leonard: It's different.

Mr. Wilson: It's different. Thank you.

The Deputy Chair: Okay. With that, no change. All agree? Okay. Let's move on. Next one. Thank you.

Ms Leonard: Okay. Now we're looking at investigations into breaches of the act. The first section is powers of investigation. Section 25 deals with the Ethics Commissioner's ability to conduct investigations and inquiries. But there's no definition in the act of either term, it's not entirely clear what the difference is, and there are no criteria in the act saying why you would choose an inquiry over an investigation or vice versa. Rather than a recommendation, 78 is just more of an item be considered. The committee might want to discuss whether it wants to make any recommendations with regard to clarifying the distinction between inquiry and investigation in the wording of the section.

The Deputy Speaker: Okay. Thank you.

Yes, Mr. Odsen.

Mr. Odsen: Thank you, Mr. Chair. This is the item that the handout that I passed out before lunch refers to. We would like to see a change there, and we would like to see wording which is the same as the wording used in the Election Finances and Contributions Disclosure Act, where it says:

5(1) For the purpose of carrying out an examination or inquiry, or conducting an investigation, referred to in section 4(1), the Chief Electoral Officer . . .

In this case it would be the Ethics Commissioner.

. . . has all the powers of a commissioner under the Public Inquiries Act as though the examination, inquiry or investigation were an inquiry under that Act.

That removes all doubt as to just what you can and cannot do. We think this is the way to go.

The Deputy Chair: Thank you so much. That's very well said. Thank you.

Mr. Dorward.

Mr. Dorward: Yeah. I didn't understand this, so I dove into it and asked some questions around it. The way I think this through, just to put it on the table and then see if I'm right: an inquiry is a great big thing, and an investigation is a small thing in relative size with resources if you want to think of it that way. Presently the act does not give an investigation enough power without moving to an inquiry whereas diving into the Election Finances and Contributions Disclosure Act type wording and perhaps Child and Youth Advocate type wording will allow an investigation to proceed along in a more meaningful way. Can I get some confirmation that what I'm saying is correct?

Mr. Odsen: Yes, that's correct.

Mr. Dorward: So I'm supportive of number 78 and would move, Mr. Chair, that we accept 78.

The Deputy Chair: Thank you very much.

Any further discussion? Those supporting this motion, put your hands up, please.

Mr. Wilson: Point of clarification. Mr. Chair, would it be appropriate for us to further add that we echo the request of the commissioner's officer and actually use the wording as suggested from the Election Finances and Contributions Disclosure Act?

The Deputy Chair: Thank you.

Was that amendment looking for . . .

Mr. Dorward: I kind of thought it would be sure already. In other words, I thought that the bracket can be strengthened when the final report is done. Yeah. For sure.

The Deputy Chair: I think we're all in agreement. We're using this kind of language to phrase it. Thank you very much.

With that agreement, all who support, please raise your hand. Those opposed to it? Carried. Thank you.

Next subject, please.

Ms Leonard: Okay. Initiating investigations is the next subject. Section 25 currently says that there are two situations in which the Ethics Commissioner can start an investigation. Either he gets a request under section 24, or he has reason to believe that the member has contravened advice or recommendations that were previously given. The issue here is whether the act should be amended to also allow the Ethics Commissioner to initiate investigations of his own accord.

1:35

At the last committee meeting the Ethics Commissioner pointed out that they interpret sections 25 and 42 as sort of allowing them to initiate in certain circumstances. They start off by engaging members about their obligations. They provide them with formal advice, and then if they don't comply with it, they can initiate an investigation. For that reason and because they also believe that the ability to initiate investigations would compromise their ability

to candidly interact with members and provide advice, you'll see that in number 80 they suggest not giving them the power to initiate investigations. But, on the other hand, for number 79 there were four submissions and one presentation that all recommended giving the Ethics Commissioner this power.

So, as I discussed, the main issue before the committee is deciding whether or not to include wording giving the Ethics Commissioner the power to initiate investigations.

The Deputy Chair: Thank you very much.

May I invite our Ethics Commissioner to shed a bit of light here.

Mr. Odsen: Thank you, Mr. Chair. Yes, I think what the issue is around has been well described. What we're looking at and where we're coming from on this, I guess, is that we're trying to weigh the pros and cons of the value of adding this wording to what we suspect that others across Canada who are in the same type of office also feel quite strongly about, and that is moving from a role of adviser to one more of enforcement. You might almost think in terms conceptually, I suppose, of: we want members to be able to come to us with any kind of issue that they may have that may arise under the act or that they think may arise under the act and be able to freely and openly and candidly discuss those matters with us so that we can provide the best advice possible.

The concern is that if the person that you're coming to is now in effect empowered like a police officer, for example, are you going to be as open and candid? Are you going to be even perhaps a little bit concerned or reticent about whether or not, if you come, it's not unlike making a confession and the next thing that's on the table now is that there's an investigation because they're investigating? That's the fear.

The Deputy Chair: There's a conflict of interest to begin with.

Mr. Odsen: The other aspect of it is that we don't know that there's really anything to be gained by including this in the act. As it stands now, members of the public can come to us. Members of the media, members, of course, can come to us. Those jurisdictions that have the availability of a self-initiated investigation by a commissioner do not have provisions in their act where anybody can make a complaint. It's only other members that can make a complaint. It's either that a complaint has to come from a member or it has to be self-initiated. That complaint coming from the public to a commissioner in another jurisdiction where they have that power: okay, they can self-initiate even though it hasn't come from a member. That's not the case here. A complaint can come in from anybody.

Where would a circumstance arise where there's no complaint from anybody, yet something comes to our knowledge where we would want to initiate an investigation? That's the point that we make around section 42. If there's something like that – say we saw a media story on something. Nobody's come to us with a complaint or a request for an investigation or anything, but it sets off a red flag in our office. We see the media story on any member, so we follow up with the member and say: "Hey, you know, what we've seen suggests that there may be some issues around the Conflicts of Interest Act. You'd better come in, and we'll have a chat about that." We have a chat. At the end of it we might say: "All right. Yeah. It looks like we've got some issues here, and here's what we are formally advising you to do. If you do not follow this advice, we can then initiate an investigation for you failing to follow the advice that we have given you." As I think I pointed out in an earlier meeting, depending on what the circumstances are, the advice that we give might well be: we are

advising you to request that we investigate this matter. So that's an option that's there as well.

Does that help? I hope. [interjection]

The Deputy Chair: What's that, Mr. Dorward?

Mr. Dorward: I make a motion that we accept number 80 and reject number 79.

The Deputy Chair: Okay. That motion is on the floor. Go ahead, Ms Notley.

Ms Notley: Well, needless to say, I don't support that motion. You know, I've heard you talk before about this concern that you have, and I appreciate that concern. I do understand that there is a dual role that seems to exist right now, and in fact other recommendations that I assume we'll get to at a certain point also touch on that issue from a different perspective but also touch on that issue. I think it's something that is worthy of a good, broad-ranging discussion here.

My view is, though, that the problems that are created by that dual role are not remedied simply by failing to go forward on this initial investigation thing. I think that if there is a discomfort with playing the advisory role and then subsequently initiating an investigation, I suspect there also will end up being, just as a natural sort of extension and with human beings being human beings, discomfort with enforcement of the more sort of prohibitive elements of the legislation, particularly if it ends up being enforcement around something where previously there had been an advisory and counselling role. So I respect the advisory and counselling role. But I wonder whether or not what you're touching on here is not actually the broader issue of the need to separate the advisory and counselling role from the enforcement role.

You make a compelling case as it relates to the issue of self-initiated enforcement, but the problem is that that's not the only place where that problem comes up, then. There are other places in the act where the public expects a much less conciliatory, advisory, counsely response from the office, you know, if certain elements of the act are breached.

My view is that I think there's room for both roles, but I actually think that we need to have a good conversation about how they're fulfilled and who they're filled by and what their relationships are and if the same person can do those two roles.

The motion that's before us is simply to reject this notion that we give you the authority to initiate your own investigations. The reason I'm voting it down is not because I don't respect the counselling and advisory role; it's because I don't think that simply by voting down that recommendation we're dealing with the broader problem here. I think that there should be some component of the commissioner's office that can engage in a more investigatory approach and, if necessary, a more enforcement way to go.

I hope I'm marginally comprehensible in what I just said. You know, I'm not saying one is better than the other, but I think there is a need for both. I think this highlights that.

The Deputy Chair: Ms Notley, I think got your point. I do recall that the latter part of the recommendation list has this recommendation of separating the commissioner's office by adding one more position, one to advise and the other for enforcement or investigation and so on and so forth. I think I recall that one. There are a number of others similar to this line, in

regard to: once you receive information, do you disclose or not disclose? That's where I think I understand what you're saying.

Ms Johnson, do you have something?

Ms L. Johnson: Thank you, Mr. Chair. Just to clarify, my understanding, having met with you and your staff already once in the first go-round, is that if I called today with an issue seeking guidance and we discover in that discussion that whatever action I've taken is against the legislation, at that point you're obliged to do something anyway. So why would it be any different going forward?

1:45

When I've met with your office, the theme of the advice in terms of routine matters, to put that on the record, is that if I ever have a question, pick up the phone and call; never hesitate. Okay? If I do pick up the phone and call your office and say, "A situation has happened. I'm looking for guidance," in that conversation aren't you immediately obligated to take action and immediately give me advice as a sitting member of the Legislature no matter what party I'm in, to take appropriate action as well? Why is this a problem going forward? Is there a need for a change?

Mr. Odsen: Just to be clear, your question is: is there any need to add "initiate on your own volition"? In essence, what you're saying is that we would already do that in a sense by the advice that we give, correct?

Ms L. Johnson: Right.

Mr. Odsen: Which is, I think, reiterating what I said, what I was explaining. Yeah. Something would happen in that regard. It's also important, I think, that members be advised that we are very, very conscious of ensuring that when the advice that we give requires a member to do something, the member does it. We follow up on that. If the member doesn't – well, that hasn't happened. If it did, there would be an investigation, and it would be concluded with a report and recommendations to the Legislative Assembly that we gave advice to the member and the member did not follow our advice, refused to follow our advice. Frankly, I think that the position that we would take on something like that is that we consider that to be a pretty serious breach of the act and worthy of some pretty serious sanctions.

Ms L. Johnson: Okay. So what's the problem?

Mr. Dorward: Can I take a stab at that? I had the same question. You know, this is a fine little line, but I think the way I have it in my mind is that if we recommended that we put into the act that the Ethics Commissioner has to initiate an investigation, then absolutely that has to be done. In other words, a file has to be opened and an investigation under way. Boom. No questions asked. The number of investigations goes this big, and all of the things that that pertains to relative to reporting to the Assembly and da, da, da have automatically got to happen.

It takes away the ability of the Ethics Commissioner to work with a member and to say, you know, "You're into this area here which is really dangerous. Back off. That's not an area you want to go into. That's not something you want to engage in," and there's no investigation because you didn't go there. That grey area has now got some flexibility to it, if you will. Whereas if we say in the legislation that the Ethics Commissioner must initiate an investigation – boom – you're right into that whole file opening and all the rest. Have I got that close?

Mr. Wilkinson: Yes.

The Deputy Chair: Okay. Thank you.

Mr. Wilson.

Mr. Wilson: Yeah. Thank you, Mr. Chair. Thank you again. I know that this is not the first time we've had this discussion, so I appreciate the dialogue yet again, but it hasn't changed the fact that I'm still not quite taken by your arguments here. I'm trying to understand. I appreciate what Ms Johnson has suggested, about, you know, if a situation is brought to your attention and a member is in contravention of the act. Can you just help me understand what happens right from that point there?

The Deputy Chair: Good question.

Mr. Wilkinson: He's in charge of investigations. I may add some words later.

Mr. Odsen: Each situation, of course, is different, but the approach in the office first and foremost is that whatever the circumstance is, if it's already happened – so the member has breached the act in some way or another – then the starting point is: well, okay, what is the actual breach that's occurred? Is it possible to rectify the breach? If it is possible to rectify the breach, that's the route that we want to go. Yes, you've breached the act. You've accepted this gift that you ought not to have accepted. You've breached the act by accepting this gift that you ought not to have accepted. You can return the gift, or it gets turned over to Legislative Assembly for posting in the Legislative Assembly. It's not yours, it's to the people of Alberta, or something like that. Okay? That's an example of rectification.

Then the advice that we could give is, "Here's what you have to do to rectify" if it's one of those ones that's capable of rectification. Then we follow up. Did the member in fact do that? If the member did not do that, now we're going to investigate for failing to follow our advice, okay? If it's something that is not capable of rectification, then that's the time, I think, where we look at the advice. For example: we're advising you to investigate you on this particular matter because what has happened, what you've done, we can't see any way to rectify that under the act.

Mr. Wilson: For clarification, then, your suggestion or advice is for the member to initiate an investigation against themselves as opposed to your office having the ability to initiate that investigation directly.

Mr. Odsen: In effect, yes.

The Deputy Chair: Ms Johnson and Mr. Wilkinson.

Mr. Wilson: That's the next natural question.

The Deputy Chair: Ms Johnson, are you okay to have Mr. Wilkinson answer that first?

Ms L. Johnson: Well, I want to pick up on Mr. Wilson's question.

The Deputy Chair: Okay. Let's go in order. Ms Johnson first.

Ms L. Johnson: To clarify, if while you and I are having the discussion, I say that my colleague from Calgary-Shaw was at the same event and accepted the same gift, and he hasn't been in to see you yet, then you could start the investigation?

Mr. Wilkinson: Clear complaint. It's a clear complaint by a member.

Ms L. Johnson: Do you have that authority today?

Mr. Wilkinson: Yes.

Ms L. Johnson: Okay. Then what's the problem?

Mr. Wilkinson: One of the pieces of advice that we could give but have not had to is that because you have contravened the act, you will make an apology before the House and you will lay before the House the opportunity to provide sanctions if they wish to and a letter of apology, a remediation somewhere else, pay somebody, whatever, but you will make this public. You will publicly apologize for this. This is our advice. If it doesn't happen, we launch an investigation. Eventually we do our investigation and report, and if the facts we find are as we thought, as we suspected or alleged, then the Legislature gets it in the end, and you people will decide on the person's fate.

The Deputy Chair: Okay. Great.

Mr. Wilson: Sorry. The natural extension from the end of our conversation was, then, that if the member chooses not to self-initiate or ask you to investigate themselves, what is your next step?

Mr. Odsen: Well, to investigate.

Mr. Wilson: So you are essentially self-initiating?

Mr. Odsen: We're investigating because they failed to follow the advice, and we can do that under the act as it stands now.

Mr. Wilson: Okay. Again, it is such a fine line – right? – between what we've been advocating for and what you're saying is not something that you want to see because it will diminish your role or your advisory role or your ability for members or comfort level with members being open and transparent with you. What is the fine line as far as you're concerned? What's the difference?

Mr. Wilkinson: I think Brad has indicated that we're worried that people will hold back. They won't come and give us all the information, not come to us at all, will not confide in us knowing that there are pathways through the act that we can go through. It also enhances the dignity of the Assembly when a member comes forward, seeks advice, acts on that advice, and so on. There's a really good system in place.

1:55

I think that around the world, in countries that choose to use it, if you look, since the office of the Ethics Commissioner, or whatever you wish to call them, has come in, the number of incidents of breaches has gone down, mainly because the advice has been there. You'll see that the advice is the thing that members credit. It's the advice. If you open the door and say that entrapment is possible, you know, be careful of what you're going to say in here. Bring your lawyer. Entrapment is possible. That takes away what the office was set up for and how it's proven to work in this country and others as well.

But in the end it's up to you. I mean, it's your act, and it's the dignity of the Assembly here and the members that's involved, very clearly. So that rests entirely with you. Making sure that the act does its work rests entirely with you. We only implement what you tell us to do. From our experience, though, we feel it should remain as it is for your sakes.

The Deputy Chair: Okay. Thank you very much. That's very good information and discussion, back and forth.

Can I give it one more try, before we continue, to ask this question? It is becoming much clearer in my head. Essentially, what the commissioners are saying is that with the act as it is, they have the authority to investigate when you have failed to comply with advice. Mr. Dorward already mentioned that if we are going to change the way it says here to automatically trigger formal investigation, it will really force a lot of unnecessary procedural work that compromises the effectiveness of the commissioner's office's work. So that's the fine line we're talking about. Do nothing. The act has already given enough authority, and they do not wish to have that mandatory, automatic investigation triggered. So that's the key, the fine line we're talking about. Does that clear up everybody's questions on this?

Ms Notley.

Ms Notley: Yeah. Well, again, I mean, it's an interesting rationale, but I don't know that it – if there is the potential for there to be meaningful consequences for ethical breaches under the act, then the chilling effect that you described is going to occur either way. It seems to me that what this is about is the point at which it officially becomes an investigation and the point at which it then becomes subject to the rules around investigations and the potential need to make it public.

Let's say you hear rumours that somebody has engaged in quite a flagrant breach of the act. You don't hear it from another member. Nobody files a complaint, but you've heard it from very credible sources. So you call that person in and you have a discussion and you say, you know: this is not good. It's possible, from what I hear you saying, and please correct me if I'm wrong, that you could order that person to remedy that breach, make recompense, all that kind of stuff, but that it would never actually necessarily come out that that breach had occurred and that it only would if you chose to suggest that they had to apologize to the Legislature or whatever. If you hadn't had an investigation, then you wouldn't necessarily have findings, and then you wouldn't necessarily be reporting to the Legislature.

So isn't this really about when these things have to become public or not? Is it in the best interests of Albertans to have a politician who engages in bad judgment and does breach the act, and then they can just give the money back and everybody is fine? Let's say it's money. It might not be money, but let's just say it's something that's relatively easy to compensate for. So the money goes back. Let's say it's expense money for, you know, a body that looks similar to the Senate. Is just giving the money back the issue, or does the public have a right to know that the decision was made in the first place or that the bad act occurred?

Mr. Odsen: I think that you've identified a big part of what the issue is about, yes. In fact, now advice given must be kept confidential under the act, under section 26. If the advice in the example that you gave is, "You must pay that money back, and you must pay it back by this date," or whatever, and "You must prove to us that you've paid the money back the way that you have," and the member does pay the money back, they follow the advice, all the advice is kept confidential. It has to be kept confidential under the act. So of course, yes, that's not in the public realm. When it would go public is if they didn't pay the money back, that kind of thing.

Ms Notley: That's my concern.

Mr. Odsen: That's certainly part of what this whole debate is about, absolutely.

Ms Notley: That's why I'm concerned, that it's not just about the – whatever the phrase is for just talking about meaningless words. Sorry. I'm losing my vocabulary. The point is that what this is really about is public accountability.

The Deputy Chair: Okay. Thanks.
Ms Johnson.

Ms L. Johnson: Thank you, Mr. Chair. To me, that's a separate issue from what item 80 is. I'd like to make a motion that we accept recommendation 80.

The Deputy Chair: Yeah. The motion is on the floor.

Ms L. Johnson: Oh. It's on the floor? Sorry.

The Deputy Chair: Thank you.
I feel like on this subject we've had enough back-and-forth discussion.

Ms Notley: I just want to make one more point, then, on that.

The Deputy Chair: The last one before we go on.

Ms Notley: Yeah. The difference is this. First of all, going back to a point that was made some time ago, the language is not "must investigate." It's "may investigate." The fact of the matter is that what this does is that it puts the onus on the office to engage in a more public forum, and I think that's what Albertans expect of the office. By not having it in there, we allow for this "Yeah, Ms Wallin, you can pay back the \$50,000; it's all fine" kind of dynamic. I don't think that's what Albertans want from their conflict-of-interest legislation.

The Deputy Chair: Okay. Thank you.
With that, I'm ready to call the vote. The motion on the floor put forward by Mr. Dorward is to
accept item 80 and reject number 79.
Right?

Mr. Dorward: Correct.

The Deputy Chair: Those who support it, please raise your hand. One, two, three, four, five. Those who are against it, put your hand up. Four. Motion carried.

Ms Notley: Can I ask that it be a recorded vote?

The Deputy Chair: Okay. We can record this one.

Mr. McDonald: In favour.

Mr. Dorward: In favour.

Ms Fenske: In favour.

Mr. Young: In favour.

Ms Blakeman: Opposed.

Mr. Saskiw: Opposed.

Mr. Wilson: Opposed.

Ms Notley: Opposed.

Ms L. Johnson: In favour.

The Deputy Chair: Thank you, all. Motion carried.
Next subject, please.

Ms Leonard: The next topic is initiating investigations based on anonymous tips. Currently, if a member of the public requests an investigation, they have to identify themselves. The issue to consider is just whether or not anonymous tips should be allowed.

The Deputy Chair: Okay. Thank you.
I heard somebody already say no.
Is this very clear? We unanimously reject this one?

Ms Blakeman: It's ridiculous. No, we don't move forward on anonymous tips.

The Deputy Chair: Okay. That's a very clear one. All agreed? Okay. Thank you very much. We'll move on. Great, committee.
Next one. Thanks.

Ms Leonard: The next topic is fact-finding inquiries. This isn't really a recommendation, more just an item to be considered, whether the Ethics Commissioner needs specific authority to conduct fact-finding to decide whether there's enough evidence to warrant an investigation without actually triggering an official investigation.

The Deputy Chair: Any comments?

Mr. Wilson: Perhaps a point of clarification. If the revised act includes the wording from the Election Finances and Contributions Disclosure Act as discussed earlier, which would give the Ethics Commissioner the powers of a commissioner under the Public Inquiries Act, does this make this point moot?

Mr. Odsen: I believe it does.

The Deputy Chair: Good point. Okay. Thank you.
On that one, again, we just move on with no change. Thank you very much.
Next subject.

Ms Leonard: Okay. The next subject is probably moot as well. It's the ability to compel production of documents, and given the wording proposed, it's all included.

The Deputy Chair: Okay. Thank you.
Again, move on without any change? All agreed? Thank you.
Next one.

Ms Leonard: Okay. The next one is reporting to the person about whom the allegation is made. Section 25(8) says that before reporting findings to the Speaker, the Ethics Commissioner may give a copy of the report to the person against whom the allegation was made. The issue was raised as to why it's optional to give the individual the report, and the Ethics Commissioner said at a previous meeting that it's their practice to provide the individual with a draft of the report, give them a chance to respond to it, and then prepare the final report. The committee might want to consider incorporating this practice into the wording of the act.

2:05

The Deputy Chair: Okay. Since I put that forward, I'm satisfied with the answer. I'm ready to move on without change. No change, right?
Mr. Saskiw.

Mr. Saskiw: Yeah. I guess what this is stating is that the Ethics Commissioner on January 28 discussed potentially codifying this practice into the act, so instead of making it optional, just make it mandatory and codify the practice that they currently have at their office. Obviously, this Ethics Commissioner is doing this, but – who knows? – there could be future Ethics Commissioners that may not continue this practice, so we should make it mandatory.

Mr. Wilkinson: We have no objection to changing the word to “shall” from “may.”

The Deputy Chair: Okay. Thank you.
A motion?

Mr. Saskiw: Yeah. I’d like to make a motion that in subsection 25(8) the wording be changed to “shall.”

The Deputy Chair: Okay. On that, all in support, please raise your hand. Anybody opposed? Motion carried. Thank you.
Next one.

Ms Leonard: The next one is the time limit for commencing investigations and inquiries. There was a suggestion that it be amended. It’s currently a two-year time limit on commencing an investigation or inquiry or for prosecution of offences. The submission didn’t actually say whether to lengthen or shorten the period, so the committee might just want to consider both.

The Deputy Chair: Any comment from the Ethics Commissioner’s office?

Mr. Odsen: We don’t really have a position one way or the other. We don’t see the need for a change. With the Limitations Act in Alberta in most instances there’s a two-year limitation on commencing an action or any of those kinds of things, so it simply is consistent with the Limitations Act.

The Deputy Chair: Thank you.
Mr. Saskiw.

Mr. Saskiw: Yeah. I think that this is quite a different situation from the Limitations Act. This is the time frame that it would take to begin an investigation, and I question why it would take two years to begin an investigation if there is a valid issue that has been put forward.

The second part of this is that the legislation provides that once the Ethics Commissioner has an item under their purview, it’s improper to discuss that issue in the Legislature. Essentially, by keeping this two-year ban, it’s limiting public discourse on a topic for several years, so I would suggest that this be reduced, provided that the office has the resources to fulfill that type of obligation.

The Deputy Chair: Thank you very much.
Ms Notley.

Ms Notley: Yeah. I appreciate that concern, but I’m actually coming at this from the other angle. I’m thinking back to the myriad of breaches of the election financing act, where evidence ultimately was uncovered about that that was well outside a two-year period and some pretty outrageous ones, which, frankly, then escaped any kind of investigation or prosecution because by the time anyone was actually able to dig it out, it was too late. Unfortunately, with the way things are, because this is not framed as when it was known or ought reasonably to be known but simply when it occurred, it is more common than not that this stuff does not come out right when it happens.

If anything, I think that the two years is too short and that if stuff stays quiet long enough, then it will never get investigated even if other stuff comes out. I would hate to have some really inappropriate thing, where there was an exchange of something that was really a black-and-white breach of this act, come out 25 months after it occurred and have the Ethics Commissioner completely incapable of dealing with it, which is what this would do right now. It would further undermine the credibility of our protection of ethics in this province.

Yeah, I kind of look at it from a different perspective. I’m sorry, but it’s where I come from.

The Deputy Chair: Good point.

Ms Blakeman: I agree. I can think of a couple of investigations that, if we change this, would not have been done. I would recommend that we actually look at the wording that is accepted in most other places, where it talks about when the knowledge of it comes forward or when you knew or ought to have known rather than just from when it took place, because that is limiting us. Again, we’re all trying to make sure that we have public trust and confidence, and that’s very hard to uphold when things can go by because nobody knew about it or it didn’t come to the attention of anyone and you’ve now passed the two-year time. We should be recommending, I would say, making sure that the language is consistent across all of our legislation.

The Deputy Chair: Thank you very much.
Any further comment?

Ms Notley: I just had a question. To the researchers: I don’t know if you guys came up against this when you were doing your research, in terms of what kind of limitation period exists in other jurisdictions.

Ms Leonard: I didn’t have a look at that.

Ms Notley: Would it be possible to get that information for the committee?

The Deputy Chair: Before what time? The next meeting?

Dr. Massolin: We can certainly look into that, Mr. Chair, yes.

Ms L. Johnson: Mr. Chair, while they’re at it, could you check the Election Finances and Contributions Disclosure Act and the legislation in front of the House – I’m scrolling through it right now – on what the timeline is there on investigations? It used to be two years as well. I can’t remember.

Mr. Odsen: I can answer Ms Johnson’s question. It’s three years now under the election finance act. Unfortunately, I didn’t bring my binder, which is this thick, but it may well be that the answer to the question in terms of the crossjurisdictional comparison – it was the Department of Justice that did that, Ms Neatby, okay? – may well be in the materials that you’ve got right now. I don’t know because I don’t have mine to refer to.

Ms L. Johnson: Which page?

Mr. Odsen: Well, it would be the crossjurisdictional comparison. It may be there.

The Deputy Chair: Okay. So on this item, anybody wishing to make a motion to move forward?

Ms Notley: I’m looking for more information.

The Deputy Chair: All right. Let's defer it to the next meeting, okay? Thank you.

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

Ms Leonard: Okay. The next topic is confidentiality. Section 26 says that the Ethics Commissioner must keep confidential all information and allegations that come to their knowledge through the administration of the act except for certain limited exceptions. There were a number of recommendations to amend this section so that in certain situations the Ethics Commissioner would have the power to release information to the public without the consent of the person to whom it relates. Some said that the Ethics Commissioner should have this power if the member releases partial, misleading, or false information. That was 89, 92, and 93.

There were also a couple of suggestions that he should be able to do it to clarify a situation such as why the office isn't pursuing an investigation or why an investigation has been suspended. That's 94 and 96.

Recommendations 91 and 95 actually brought up the idea of confidentiality requirements for members. Recommendation 91 said that members should be prohibited from issuing press releases that the commissioner cannot respond to, and 95 said that a member who's requesting an investigation shouldn't be allowed to comment publically on it until the commissioner confirms receipt of the request.

There was also a recommendation that section 26 be amended to expressly say that the confidentiality provisions in this act prevail over those in the FOIP Act.

The main issues that the committee might want to consider are just whether the commissioner's ability to disclose information should be broadened and whether confidentiality requirements should be extended to members as well in some circumstances.

The Deputy Chair: Okay. Thank you very much.

Any comments from committee members? Mr. Dorward.

Mr. Dorward: Yes. Okay. Get buckled up for the ride.

Mr. Wilson: Are you going to make a motion first? Let's discuss this.

Mr. Dorward: Sure. I'm absolutely willing to discuss it. One, however, that I feel should be allowed or that we should agree on is 89 because I do think that

section 26 should be amended to allow the Ethics Commissioner to release information with respect to an opinion or recommendation without obtaining the Member's consent where the Member has released part of an opinion or recommendation.

If a member is going to cherry-pick a recommendation or part of an opinion and throw it out into the public realm, I think that it's okay for the Ethics Commissioner to follow that.

2:15

Item 90. I do not think that it should be thoroughly at his or her discretion.

Item 91 I agree with although that's covered in 89, so you don't really have to do that.

Item 92 I agree with. "If a Member issues a media release with respect to an investigation that is false, the Ethics Commissioner should be allowed to respond." Similar to 89. Not just part of it but false information.

Item 93 is: "Should be allowed to disclose information to clarify or correct any statements made by a Member about an investigation." Similar to 89. I agree with it.

Item 94:

The Ethics Commissioner should be able to comment publicly in a timely manner to correct misinformation with respect to an investigation or to explain reasons for not pursuing a matter that has been raised in the public domain, where doing so is in the public interest or helps clarify.

I think I want the Ethics Commissioner to be able to discuss publicly those kinds of things where there's a misunderstanding in the public and he's not able to express himself relative to that, so I'm in favour of 94.

I'm in favour of 95. "A Member requesting an investigation should be prohibited from commenting publicly on the request until the Ethics Commissioner has confirmed that he has received the request." I think the intention of this one is to say that – I don't think the commissioner should be blindsided by somebody saying, "Well, I've started an investigation with the Ethics Commissioner" when he hasn't and the Ethics Commissioner has not been asked to do an investigation.

Item 96. I don't agree with that one. "Should be allowed to disclose information about circumstances in which he... refuses... to investigate an alleged breach." I don't like the word "alleged." As soon as I see that word, there's an issue there.

Item 97. "Section 26 should be amended to expressly state that the confidentiality provisions in the act" – this is a tidy-up recommendation relative to the linkage with the Freedom of Information and Protection of Privacy Act, so I agree with that one.

Just to put it on the table.

The Deputy Chair: Just to double-check, Mr. Dorward, 89 you support; 90, not. Item 91 you support?

Mr. Dorward: No. It's covered.

The Deputy Chair: It's covered. Redundant. Okay. Item 92. Redundant?

Mr. Dorward: No. Item 92 I support.

The Deputy Chair: Item 93?

Mr. Dorward: Support.

The Deputy Chair: Item 94?

Mr. Dorward: Item 94 I support.

The Deputy Chair: Item 95?

Mr. Dorward: Item 95 I support.

The Deputy Chair: Item 96?

Mr. Dorward: Item 96, no.

The Deputy Chair: Item 97?

Mr. Dorward: Support.

The Deputy Chair: With that, further discussion? Mr. Saskiw.

Mr. Saskiw: Yeah. Just with respect to recommendations 91 and 95 I think it is a complete infringement on a member's freedom of expression to be prohibited from speaking to the media on certain matters. That's under 91.

Secondly, on recommendation 95, provided that the member has forwarded a complaint or an investigation to the Ethics Commissioner, I simply see no need to require some type of an

acknowledgement of receipt from the Ethics Commissioner. Sometimes these issues come up. It's fast. It's furious. We're in question period and, you know, you just need to push things out. You get it, and you want to release it right away. Personally, I try to refrain from commenting until I know that it's likely the Ethics Commissioner has received it, just as a matter of practice and a matter of respect for his office.

For issue 91 I frankly think that this is just a simple violation of freedom of expression. I don't think it's even constitutional. Frankly, I probably violate that, so I may have to talk to the Ethics Commissioner before I do that. I'm pre-empting it right here.

I just think that these are, quite frankly, outrageous, and I'm surprised that the member opposite would put these forward.

The Deputy Chair: Okay. Thank you.

Ms Notley.

Ms Notley: Yeah. I think there are a lot of problems with these, so let me start with . . .

The Deputy Chair: Just a reminder that for the ones we don't recommend, we don't need to spend a lot of time on them.

Ms Notley: That's right. I was about to speak to one, and then I realized it wasn't one of the ones recommended.

Let me start with 95. What every officer of the Legislature does when a member of the opposition tells the public that they believe that this is a matter that needs the attention of an officer of the Legislature, whether it be the Ethics Commissioner, the Auditor General, the Chief Electoral Officer, the Ombudsman, the Privacy Commissioner, is that in all cases, if they receive a complaint and they haven't had a chance to review it, they say, "I haven't had a chance to review it" or "I haven't actually received the complaint yet." The end. And the press is more than happy with that.

If anything, the opposition member – it's typically an opposition member; let's be quite honest here – looks bad if they throw it out there and the letter hasn't been received by the other office. Typically the media is more than happy for them to say, "Yeah; I haven't read the letter yet" or "I will look at the letter." You know, that's it. So blindsiding is not really an issue because there's not a huge expectation.

To suggest, however, that that office would then somehow be given a legislative ability to define the timing of when a Member of this Legislative Assembly can speak to the media about certain issues is unbelievable, and it sets a precedent which then, of course, I have no doubt members would love to try and extend to the other officers of the Legislature. It would be an unprecedented encroachment on the freedom of speech rights of all members of this Assembly. So this one is going to be a fight and a very loud one if you try to go anywhere close to that.

As for the other ones that have been identified by Mr. Dorward, some of them I have some sympathy for. The difficulty is that, read as a whole, it is difficult to define, and it's contradictory, and it would create more questions than answers. So that's my problem with the rest of it, this whole issue of: well, if someone says something that's misleading the public, then the commissioner gets to issue a statement. Well, who defines misleading the public? That just is going to turn into a bit of a zoo-like event. Frankly, I'm prepared to have a better discussion about that issue, the degree to which the commissioner feels limited in his ability to engage in public commentary versus, you know, examples where information has been out there which has been inaccurate.

I mean, with all officers of the Legislature, when there's an investigation and that kind of thing going on, what typically

happens is that the officer's commentary to the media is limited to: "I've received the complaint. I'm investigating. I will issue a report. Read my report." The end. And that's the end of it. The only time that the officer is going to get engaged in a more detailed discussion is when the complaint is about a process issue around the officer's conduct, and then, of course, in that case I don't think there's any prohibition on their engaging in public comment anyway because there are no privacy issues there. Now, I could be wrong.

Certainly, I'm more than happy to have that discussion because there should be balance there. I'm not suggesting that there wouldn't be. I think that we need to have a better sense of what the limitations are that currently exist for the office in terms of public commentary so that we can then have a better discussion about what parameters we want to put around that, and I'm happy to have that conversation because I don't really have strong feelings one way or the other about that element of it.

That's what I have to say about the other components that you've put forward, that as it currently reads, it's a dog's breakfast, and it doesn't make sense. We don't know what we're actually doing, so we need more information on that. But then going back to 95, that's just a nonstarter.

The Deputy Chair: Okay.

Mr. Dorward: My interpretation of 95 is maybe a whole lot more narrow than you commented on there. I didn't at all suggest that 95 – my interpretation of 95 is that anybody can discuss an issue that they want to discuss with the press. My simple thing with 95 is that I don't think in the context of that discussion a member should say that they have done something that they haven't done.

Ms Notley: That's not what that says.

2:25

Mr. Dorward: Well, okay. Then let's discuss what it says. "A Member requesting an investigation should be prohibited from commenting publicly on the request until the Ethics Commissioner has confirmed that he has received the request." I'm interpreting that to mean that the member shouldn't say that they have contacted the commissioner's office and made a request for an investigation when that hasn't ever happened.

Ms Notley: Well, that's an entirely different thing. That's an entirely different thing.

Mr. Dorward: Because the commissioner was the one who put that recommendation in, can you clarify where 95 is coming from?

The Deputy Chair: If I may have our Ethics Commissioner's office give some facts.

Mr. Odsen: An attentive gaze seems to be directed in our direction.

Our consideration and recommendation in this regard arose because there have been instances in the last several years where there have been press releases about investigations having been requested and we know absolutely nothing about any such investigation having been requested until the formal request actually comes into our office if, in fact, it comes in at all. What we are asking for here is simply to hold off with your press release until we've actually got it in our hands and we've acknowledged that we've received it.

Now, I appreciate what you're saying in terms of your opposition to that. But that's what we were asking for, simply to

get it to us and: “Yes. Thank you. We’ve got it. Go ahead. Say what you want to say to whom you want to say it.”

The Deputy Chair: Okay. Thank you.

Ms Blakeman: Thank you for trying to put this all together to go through this quickly, Member for Edmonton-Gold Bar. I think it’s causing us more problems than the time saved. We may have to pull it all apart.

Secondly, where we’re specifically talking about – I think this is an argument between process and politics. Frankly, we would have to be going to the media and saying: “If you don’t just mind hanging on for half an hour until we make sure we’ve walked this press release over and it has been officially time-stamped as being received by that office. Oh, you won’t wait for me? Hmm.” I think that when that happens, it’s often a matter of timing. I certainly hear the request to be considerate and try not to put the office in a bad position, but straight-ahead politics says that if I come out of that Assembly or I’m in that Assembly and I say that I think this is wrong – I would tend to say that I’m going to request or that I’ve put one in the mail or that I’ve asked it to be walked over or that I’m just waiting for it to come off the printer and I’ll sign it, you know. There are enough ways that members can have their ability to bring fractious and important issues to light silenced right now, so I think it’s important that we be as understanding but as firm as possible with this one.

The answer is no. I will try and be considerate in the future. But I believe that you have all the tools at your disposal to say: well, good on her, but I haven’t seen a word of this. You know, that’s fair. But to say that I can’t do anything about it or that no member can do anything about it until it’s been received by that office is just not practical in this world of politics.

The Deputy Chair: Okay. Thank you.

Mr. Young: Well, I actually think the members should be able to say whatever they want, but the Ethics Commissioner should have the ability to say that they haven’t received it, that they’ve received it or they didn’t.

Mr. Wilson: They have that ability.

Mr. Odsen: No, we don’t. Under the confidentiality provisions we don’t have that. That’s part of the problem.

Mr. Young: I think it goes hand in hand. I’d rather change on the side of allowing you to say that you’ve not received a complaint rather than prohibiting somebody from saying that they’ve made the complaint. We should have the right to say what we want. If you want to say it incorrectly, they should be able to stand up and say: it may be coming, but we haven’t got it yet. To me, that’s where the balance should lie.

The Deputy Chair: Great point. Thank you very much.
Mr. Saskiw.

Mr. Saskiw: Yeah. I guess I’m just confused. If someone asks you whether you’ve received a complaint and you haven’t received a complaint, you’re not allowed to say that you haven’t received a complaint?

Mr. Odsen: That’s correct.

Mr. Saskiw: Well, I think that we need to fix that, to not require this acknowledgement of receipt. I’ll give you an example. Today

I submitted a request to the Ethics Commissioner for an investigation. I’ve been working on it here, and you’re here, so you may not receive it until you get back to the office or whatever, but I’m not going to be stopped from talking about that publicly. I just can’t see any other jurisdiction possibly prohibiting a member from speaking publicly on important issues. That basically gags us for days until we see an acknowledgement of receipt.

Ms Blakeman: Right. Let’s fix the problem.

The Deputy Chair: Okay. Thank you. This is apparently touching many of our committee members’ interests.

I have Mr. Wilson next, then Ms Notley, and then Ms Blakeman.

Mr. Wilson: Well, thank you. Perhaps we can advance this and clarify what section of the act would need to be changed in order to allow you to respond in saying, if asked, that you haven’t received a complaint or request. How do we word that as a committee to suggest that that get added in as part of our recommendation?

The Deputy Chair: Thank you.

A quick response.

Mr. Odsen: Well, where we’ve requested the ability to correct misinformation or clarify if it’s in the public interest to do so, if that is a recommendation that goes forward, I think that probably would address the issue. I appreciate the insight that you’ve provided on this and the identification of it that way because that’s really what it’s all about. Now it’s this cloud of mystery. When it becomes public that we’ve received and are actually undertaking an investigation is when we send the letter of acknowledgement back to the person requesting it and they go public with that letter that says that. We can’t do that as it presently stands under confidentiality. There is nothing in that regard that we can presently make public. This would enable us to do the kind of thing that we’re talking about here.

The Deputy Chair: Thank you.

Ms Notley: Well, I guess, three things. First of all, yes, I think that you also, probably by now, have received a letter from our office as well asking for an investigation. Just FYI. However, that being said, that’s not the issue for today.

I think that there are two things here. The first issue is that nowhere . . .

The Deputy Chair: If you could direct your question through the chair, I’d appreciate that.

Ms Notley: Sorry. Nowhere in legislation anywhere should there be a statutory prohibition on the public and the free speech of elected officials. I just need to tell you that the very spectre of writing that somewhere is really a red flag, and it’s going to be a red flag for people across the political spectrum. It is bad news. That’s the first point.

The second point, if I can summarize, which I started to do before, is that I think there may be some work that needs to be done around the ability of this office to speak publicly on certain issues. I know I’ve heard other officers comment on not getting complaints when somebody had said that complaints had been sent. Maybe they were breaching it, or maybe their legislation was different. I think that this is an issue worthy of discussion, absolutely, but I think that what we need is greater clarity of

language and greater clarity of our current set of circumstances, the current prohibitions, and greater clarity on how to get around those. Then I think we should discuss that in a little more detail. I'm perfectly happy to do that. But I don't want to give a blanket, "Yeah, go to town when it's in the public interest" either. I think it does require a certain amount of consideration.

The Deputy Chair: Thank you. Good point.

Very quickly, Ms Blakeman, followed by Mr. Young.

Ms Blakeman: Isn't there somebody in between us?

The Deputy Chair: No. It's your turn.

2:35

Ms Blakeman: Okay. Just by way of supporting what I said previously about prohibitions that are already interpreted, if you look at section 24(6), which is the ruling commonly used by the Speaker to stop any discussion in the Legislature, with utmost respect, if I could disagree with the Speaker's interpretation, that is really saying that a committee or the Legislative Assembly cannot inquire into the matter. This has been interpreted very widely is what I'm trying to say, and it does prohibit us from asking any questions on the issue in question period. I think that it should not extend to any other debate, whether you put it in budget debate or bill debate or anything else. So there's one place where this legislation has been interpreted on a very wide basis, and the effect of that has been to shut down members' ability to question the issue at all. So there's something supporting what I said earlier. I think that interpretation is wrong, but there it is.

The Deputy Chair: Okay. Thank you.

Mr. Young: I agree that there shouldn't be any restriction on people talking about it, but I think the Ethics Commissioner should be able to respond to factual process pieces of whether it's been initiated or not. Let's be clear that that is not anything substantive about the case or anything to do with it, whether it's been initiated. Many people stand up on a pedestal and say, "I've initiated it," and if they haven't, they should be held to account that they haven't. If they have, then we should be able to confirm that. They've already publicly disclosed that they have, and we should be able to confirm it. Nothing about the issue, whatever it may or may not be. It's simply a process piece that has been initiated often by the member. It's just a correction of facts, and I think the facts are in the public's interest.

The Deputy Chair: Thank you so much. I think that's a very well-balanced way of putting it out.

Mr. Reynolds: Just a brief point, perhaps, to assist the committee. I do not see a proposal here that's directly on point with what's being discussed, about the commissioner being allowed to release information indicating whether he or she has received a request for an investigation, which I think is what you're saying, if I'm interpreting. So I think that if there was to be anything drawn up, which, of course, there will be, it would be to recommend – I'm not sure whether it would be section 24 or 26 – permitting the Ethics Commissioner to either comment on or release information as to whether a request has been made for an investigation or whether an investigation or inquiry has been undertaken.

Mr. Young: Just to clarify a little bit on your clarification, I'm not suggesting that it should be summarily advised, "We received a

notification," but if it's being brought up or it's inconsistent with what is being said, they should be afforded the ability to correct.

Mr. Reynolds: Yes. Well, perhaps the use of the word "may" could assist us in that.

Mr. Young: It may.

Mr. Reynolds: "It may" as opposed to "it shall." Yes, you must recommend "may." That may assist with that, that the commissioner may disclose.

Mr. Young: There's discretion at his end with the principle.

Mr. Reynolds: Yes.

Mr. Young: It's not summarily releasing information but, rather, clarifying.

The Deputy Chair: Okay. You know what? I feel, as the discussion goes on, that there is that consensus coming up because we're not saying that oppositions cannot discuss anything.

Ms L. Johnson: MLAs can't.

The Deputy Chair: Right.

We're not saying that the commissioner cannot disclose. Right now they cannot comment much about it, and I'm getting a sense that the committee members are supporting the commissioner's office having some leeway to comment as appropriate. On that line, if that's the will of the committee, can somebody try to put a motion in that regard, at least give our clerk direction?

Mr. Young: There is no motion.

The Deputy Chair: No motion on the floor. Well, Mr. Dorward had a whole bunch of recommendations, yeses and noes, right? So can somebody sum it all up in one recommendation that we can consider?

Can we revise it, revisit it? Okay. One suggestion is that we can ask our support staff to put something together that we'll decide on next meeting.

Mr. Young: Is it clear what the direction is?

The Deputy Chair: The direction, as I read it, is that the committee is supporting that the commissioner's office have the ability or flexibility to comment on things.

Ms Blakeman: On the receipt.

The Deputy Chair: On the receipt of the report.

Ms Blakeman: Of the investigation.

The Deputy Chair: I think that's the whole key issue here. As it stands now, they don't have that leeway. Now we want to open it up, right?

Mr. Saskiw: That's just a small part of it.

The Deputy Chair: A small part of it. Okay.

My read is that some of the recommendations, by their wording, give the opposition the feeling that you cannot say anything before you file the report, but I don't think that's the intent here, anyway. Am I reading the commissioner's office right on that?

Mr. Wilkinson: Yes.

The Deputy Chair: Okay. So the separate issue is not intended to be introduced here. If the wording currently on the table is not satisfying to us, let's find something else to address that issue, that they want to comment.

Okay. Ms Blakeman.

Ms Blakeman: I would move that we request that the research staff, with the co-operation and advice and guidance of the Ethics Commissioner's office staff, develop a proposal that can be considered by the committee at its next meeting regarding a change in wording to the legislation which would allow the Ethics Commissioner's office to comment on the receipt of a request for an investigation.

And I think the word "may" will be used in there.

Mr. Dorward: Covering 89 to 97, in general terms.

Ms Blakeman: Yes. You know what? I'm just going to leave it at that.

The Deputy Chair: With that motion on the floor, any further discussion?

Okay. Those who support it, please raise your hand. Those who oppose it, raise your hand. Thank you very much.

Next item. Just checking the time, we have about 18 minutes left before 3 o'clock. We did have the next meeting date already set, September 13, from 10 to 4, same place, here. So we're okay on that.

Is your office able to be here next time?

Mr. Wilkinson: Yes. We'll be here.

The Deputy Chair: Thank you. We need you. Thank you so much.

For the 17 minutes left we can continue on some of the comments from 89 all the way to 97, or we're good on that – we'll have a chance to revisit that anyway at the next meeting – and we can try one or two more.

Move forward?

Ms L. Johnson: Oh, if we could only get to page 20, that would be 10 pages a week.

The Deputy Chair: Okay. Thank you.

Let's motivate ourselves to finish up to 100. How's that?

Ms Leonard: Okay. The next topic is reporting of findings for members and political staff members. After an investigation the Ethics Commissioner has to report his findings to the Speaker, and section 27(1) sets out what that report can contain. The wording of the section seems to say that the report can only contain information with regard to whether a member breached the act. It doesn't mention if the commissioner was investigating a former political staff member. It seems as if the report can't contain any information with regard to that political staff member. So it was suggested that the committee look at the wording and decide whether there should be any clarification in the provision in that regard.

The Deputy Chair: Okay. Thank you.

Comments, please. Mr. Wilkinson.

Mr. Wilkinson: We're okay with this.

The Deputy Chair: Okay. Thank you. That's straightforward.

Ms Blakeman: I would move the acceptance of this recommendation.

The Deputy Chair: Thank you so much.

Ms Blakeman: You're welcome.

The Deputy Chair: All agreed, please raise your hand. Anybody opposed? Carried.

Let's move on to the next one.

2:45

Ms Leonard: The next one is if there's a remedy for a complainant if the commissioner finds insufficient grounds for investigation, and that's section 25(4)(b). The question was raised as to whether there was a remedy for a complainant if the Ethics Commissioner refuses to investigate if there are insufficient grounds. It was suggested that maybe the remedy would be to come before the Standing Committee on Legislative Offices, and the committee might want to consider whether this should be incorporated into the act.

There was another suggestion, that the committee consider whether there should be clarification in the section as to what constitutes insufficient grounds to investigate.

The Deputy Chair: Okay. Thank you.

Any further comments?

Mr. Young: Well, I'm thinking not necessarily of a remedy but a rationale for why it wasn't investigated, the principles or framework in terms of why it doesn't meet the standard as opposed to simply, you know, a generic "We're not investigating," so where it fits within the act and where it falls short.

The Deputy Chair: Okay. Thank you very much. Good point.

Any comments?

Ms Notley: Yeah. I think the idea was simply that it, you know, doesn't allow for the complainant to hear why there weren't grounds, and it doesn't lay out sort of what those are. I mean, as I think we discussed last time when we talked about it, there are different ways you can go about it. You can have a mechanism whereby the commissioner reports to the Leg. Offices Committee that there were X number that were denied on these grounds or, alternatively, that there is a requirement for more information to be provided to the complainant. As things stand now, it's widely discretionary, and it doesn't seem as though there's any option for people.

The Deputy Chair: Okay. Thanks.

Ms Blakeman, did you raise your hand?

Ms Blakeman: I think I might be coming at this from a slightly different direction. Part of my concern around this area is that from the reports – and I gather that the office is probably not empowered to give us any indication of investigations that were requested and not done. When we look at the report, we have no idea of how much time was spent on that or how many investigations were requested and turned down. This is around the same topic, but I don't know if it's looking for exactly the same end. I do find it frustrating that we have no idea if anyone complained about anything because all we hear about are the investigations that were completed. Even then, I think that in the annual reports we don't get a heck of a lot of information about what it was about. I've read too many annual reports recently, so I may be confused on that one.

The Deputy Chair: Okay.

Mr. Young: I just wanted to clarify that we're talking about everything but a remedy. To me, a remedy is more like an appeal or another option for a process. What I'm hearing is that in terms of when you're not moving forward on an investigation, there is some kind of category or some framework that in the opinion of the Ethics Commissioner didn't meet enough grounds or didn't have enough information or that it was anonymous or for various reasons. But, to me, that's not a remedy. That's just a rationale or a justification.

The Deputy Chair: Gotcha. Great point. Great clarification.

With that, do we need more discussion, or are we ready to move a motion on this one?

Okay. Go ahead.

Mr. Reynolds: Since you're taking them, just a brief comment. There was a slight clarification on how Ms Notley referred to the role of the Standing Committee on Legislative Offices in the sense that she mentioned that perhaps the overall results by the Ethics Commissioner in his or her report could come before the committee. I would just like to say, based on what's written here, that I just want to alert the committee that in no legislation is the Standing Committee on Legislative Offices an appellate body. While it's up to this committee, I would strongly think the committee would want to think about why it would do that. The committee is not an appeal committee for any of the officers. The point of the legislation is to give the officers the ability to deal with things. Remedies, to the extent they exist, are found in the courts or elsewhere.

With respect to the Ethics Commissioner, that office is the one most closely tied to the Assembly, and I have no idea why anyone would want to suggest a hearing by Leg. Offices. But I leave that with you.

The Deputy Chair: Thanks.

Ms Notley: I don't even know that I actually was proposing. I'm not quite sure how it ended up that way because that was not what I was proposing either. I shudder to imagine what that would look like.

What I'm interested in knowing about is: what is the status of this crossjurisdictionally in terms of the ability of the commissioner to sort of kill it summarily at the outset? Is there a review process, a reconsideration process, or is there an obligation to provide written reasons or something like that? That's what I'm looking at.

The Deputy Chair: Thank you.

Can we have some responses from the commissioner's office? Any comment on that one?

Mr. Odsen: Well, again, the crossjurisdictional survey was conducted by the Department of Justice and is in your materials. Whether this particular issue is one that's addressed, I don't know. To my knowledge – and I don't have the legislation from all the other jurisdictions in Canada memorized; I don't even have ours memorized word for word – my understanding is that it's pretty much the same across Canada as it is here in Alberta in that respect in terms of sort of reporting.

There's a distinction, I think. A complaint or a request for an investigation may come in, and it may on the face of it appear jurisdictional. That's when we get into questions of sufficiency of grounds and some of those kinds of things. That's one thing. But with the majority of the requests for investigation that we get that come from the public, we have no jurisdiction to investigate the

kind of concern or issue that they're asking us to investigate. I don't think that there's anything to be gained by the members by us providing you with particulars in reports: we received on this date a request from a person in Grande Prairie who's upset with the rent increase that they got and that that's unethical and that they want us to investigate. We've referred them to this individual, and that's been touched on before in that.

That's a different thing altogether from the kind of thing where, say, a member wants us to look into the conduct of another member or something like that and provides what appears to be on the face of it, at least, sufficient initial allegation for us to delve further into it and determine whether a full-blown investigation is required. That's a different thing. If we don't do an investigation in that instance, that is reported to the Speaker, and it is tabled in the House.

The Deputy Chair: Okay. Thank you.

Is that sufficient to address the concerns that we all raised so far? Any further questions?

I'm going to invite a motion on whether you want to accept this or just leave it as is.

Ms Notley: I'm just looking at the crossjurisdictional thing, and I can't find anything about it. I would like the opportunity just to double-check the structure of this in other jurisdictions or to defer it, I guess.

The Deputy Chair: I just have a quick question for the commissioner's office. If we leave things as is, does that create any troubles, difficulties for you at all, or are you okay with it?

Mr. Odsen: To leave things as is?

The Deputy Chair: Yeah.

Mr. Odsen: No. That's fine. I think it does address most of the issues. I had understood this particular recommendation being more along the lines of: if I've asked you, Mr. Commissioner, to investigate and you've said that you're not going to do that for whatever reason, to whom may I appeal that decision? That's the issue that I have.

The Deputy Chair: Okay.

Mr. Dorward: Are the members of the committee thinking that it might be okay to simply report in our report that we've noticed that or that there is a gap in that the person can't report anywhere else?

2:55

Mr. Odsen: From our perspective, I think it's probably fair to say that our view is that that's moving into the realm of legislative privilege, I think, constitutionally. That's the only place where something like that can be dealt with. I guess what I'm suggesting is that, no, there's no appeal on a decision or that there ought not be, certainly not to the courts.

The Deputy Chair: Okay. With that response from the commissioner's office, Mr. Dorward, are you ready to . . .

Ms Notley: I would really like to see if we could just put it off to the next meeting so I could just double-check how this is addressed in other jurisdictions because our crossjurisdictional comparison does not touch on this.

Mr. Dorward: I can support that.

The Deputy Chair: I see. Okay. So we just defer it?

Mr. Dorward: Defer it.

Ms Blakeman: Defer 99.

The Deputy Chair: Defer 99. We'll discuss this at the next meeting.

Who is going to do the research? Dr. Massolin. Thank you. I appreciate that.

Okay. The last one, number 100.

Ms Blakeman: It's been dealt with.

The Deputy Chair: It's been dealt with?

Ms Leonard, quickly.

Ms Leonard: The issue was just: if the Ethics Commissioner's term expires, what happens to investigations that are ongoing? The act doesn't say anything, but the issue was raised whether anything should be included in the act.

Ms Blakeman: But with the Ethics Commissioner, they just keep postponing his contract until they find another Ethics Commissioner, so the cases never lapse.

The Deputy Chair: So it's a nonissue.

Ms L. Johnson: But if he wins the lottery tomorrow, the new Ethics Commissioner is still going to do it.

Ms Blakeman: Well, then the Leg. Offices Committee can appoint an Acting Ethics Commissioner, but the cases don't lapse.

Mr. Odsen: They continue. They're not going to die if the Ethics Commissioner leaves, and that was the issue, as I understand this particular one.

The Deputy Chair: My understanding is that the issue stays, never dies. There is no issue here, and we'll just carry on. With that, can we agree on no change? All agreed? Thank you very much.

Everybody, thank you so much for such a constructive meeting, and do have a nice, safe drive home.

A motion to adjourn. Mr. Wilson. Thank you very much. All in favour? Anybody opposed? Carried. Thank you.

[The committee adjourned at 2:58 p.m.]

