



Legislative Assembly of Alberta

The 28th Legislature  
First Session

Select Special  
Conflicts of Interest Act  
Review Committee

Friday, September 13, 2013  
10:03 a.m.

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

**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)  
Kubinec, Maureen, Barrhead-Morinville-Westlock (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)  
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\* substitution for Jacquie Fenske

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

**Ministry of Justice and Solicitor General Participant**

Joan Neatby	Solicitor, Legislative Reform
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10:03 a.m.

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[Mr. Luan in the chair]

**The Deputy Chair:** Good morning, everybody. If you are ready, it looks like we have quorum. I think we are ready to get started. My name is Jason Luan, MLA, Calgary-Hawkwood, and deputy chair of this committee. I am very pleased to welcome everybody to today's meeting.

I'd ask that members and those joining the committee at the table introduce themselves for the record. We do have two members on the telephone. We'll go around to do that, too. I'd like to start this time, if I may, by turning to the right side.

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

**The Deputy Chair:** Welcome.

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

**Ms Notley:** Rachel Notley, MLA, Edmonton-Strathcona.

**Ms Blakeman:** Laurie Blakeman. I would like to welcome each and every one of you to a sparkling morning in the fabulous constituency of Edmonton-Centre. Thank you all so much for being here with me.

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

**Mr. Resler:** Glen Resler, office of the Ethics Commissioner.

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

**Mr. Odsen:** Brad Odsen, office of the Ethics Commissioner.

**Mr. Dorward:** My name is David Dorward. I'm the MLA for Edmonton-Gold Bar.

**Ms Kubinec:** Good morning. I'm Maureen Kubinec, MLA for Barrhead-Morinville-Westlock.

**Ms Robert:** Good morning. I'm Nancy Robert, research officer with the Legislative Assembly Office.

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

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

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

**The Deputy Chair:** Thank you, everybody. Just for the record Ms Kubinec is the official substitute for Ms Fenske. Thank you.

People on the phone, please go ahead. Identify yourselves.

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

**Ms L. Johnson:** Good morning. Linda Johnson, Calgary-Glenmore.

**The Deputy Chair:** Thank you. Welcome, Linda. Welcome, Everett.

Anybody else on the phone? That's all. Okay. Thank you very much.

**Ms Blakeman:** Is anybody substituting today?

**The Deputy Chair:** Maureen.

**Ms Blakeman:** And who for?

**Ms Kubinec:** Jacquie Fenske.

**Ms Blakeman:** Thank you.

**The Deputy Chair:** Next I'd like to remind folks of a couple of operational items. The microphone console is operated by *Hansard* staff.

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Next is approval of the agenda. If you have a copy of it, it's pretty simple: approval of minutes, carrying on the deliberations that we left last time, any other business, and the date of next meeting. Any questions about that?

**Mr. Wilson:** I'll move acceptance.

**The Deputy Chair:** Thank you so much.

Those who support the agenda as presented? Thank you very much. Anybody opposed? No. Carried.

Next on the agenda is approval of the minutes. Are there any errors or omissions to note? I hear none. Can I call on somebody to make a motion to accept the minutes? Mr. Dorward. For those in support, please raise your hand. Anybody opposed? No. Thank you. Motion carried.

Next on the agenda is the deliberations or the discussions. Before we begin, I want to congratulate our committee members for very, very constructive discussions and a nice pace last time. I think we took the approach that we will discuss the issues in groups or chunks and then make a motion and decide from there. Thank you so much. I really appreciate the co-operation of the whole committee. With that in mind, should we continue with that kind of format and approach?

**Ms Blakeman:** I'm happy to as long as your words are not used as a limitation. I think it's important that we do the work that we have to do, and if we have to get fierce and argue a point out, we should take the time to do it because ultimately this act will not be reviewed again for another six years. Not that I'm encouraging anyone to go on at length or to argue about any given point, but I need to put that on the table. I'm hearing limitations being put on the discussion, and I think we need to be clear that if we have to do the work, we do the work so that we can present a report that reflects our best effort at engaging all of these issues.

Thank you.

**The Deputy Chair:** Thank you for the suggestion. As the chair I can assure you that I share the same passion and ideas you have just presented, but I also want to make sure we have a balance so that we do have time to have meaningful discussions, and then we can carry on with the rest of business. Thank you for that.

I think we had left last meeting on item 100. Now in front of us is the advice on confidentiality on page 19, item 101. Again, I'm going to invite Ms Leonard to give us a briefing first, and then we'll go from there.

**Ms Leonard:** Thank you, Mr. Chair. What we're looking at right now is the provision for confidentiality with regard specifically to advice and recommendations. The committee had previously

discussed section 26, which is the general confidentiality provision, and decided to defer it. Perhaps this section should be deferred as well until sort of the general confidentiality is discussed.

**10:10**

**The Deputy Chair:** Any comments from the members of the committee?

**Mr. Dorward:** I don't think it's a separate issue. I think it's bundled with that one. I think that recommendation 101 can be discussed in the context of section 26 when we do it later.

**The Deputy Chair:** Okay. I see some heads nodding. All agreed? Okay. Let's do that.

Let's move on to the next one.

**Ms Leonard:** Okay. Now we're on the larger section of sanctions. The first topic here is compliance and enforcement. These are 102 and 103. Currently the Ethics Commissioner in his report can recommend one of a number of sanctions that are listed in section 27(2), but under section 29 ultimately it's up to the Assembly to decide what sanctions to impose for a breach, if any. The issue here is whether to change the act to give the commissioner compliance and enforcement powers over members for breaching the act.

There were suggestions both for and against it. Recommendation 102 suggested that any powers to enforce should be vested in the Ethics Commissioner as an independent body rather than the Assembly because of the potential for conflict of interest resulting from the partisan aspects of members' roles. Recommendation 103, however, suggested that the act should stay as it is because the Assembly has sufficiently broad powers to enforce the act.

Mr. Chair, I don't know if the Ethics Commissioner would like to add something on this issue?

**The Deputy Chair:** That's a great idea. I'd love to hear that.

**Mr. Wilkinson:** Well, thank you. Just to kick it off, and then I'd ask my friends on either side here to comment as well if they wish. We agree with recommendation 103: "should not be amended to enable the Ethics Commissioner to apply sanctions." We agree with that.

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

**Mr. Wilson:** I guess one of the issues that I have with that falling to the Legislative Assembly is that in the case of a majority it's very easy for a majority to choose not to enforce any sanctions against a member of its own. I'm wondering if you can comment on, you know, even though a breach has been found, why you would consider not wanting to have any authority yourselves to actually enforce your decision?

**Mr. Odsen:** If I may, I'll speak to that, Mr. Chair. Thank you, Mr. Wilson. That is a good question. In essence the issue is one, it seems to me, revolving around parliamentary privilege, or legislative privilege. So it is the privilege of the Legislative Assembly and only the Legislative Assembly to discipline its own members as it presently stands now. Whether it's appropriate or advisable for the Assembly to delegate that power to an officer is really the question that's being asked here. I think that, certainly, parliamentary tradition – unfortunately, our Parliamentary

Counsel is not with us today to perhaps expand on that – is such that that's not the kind of thing that would typically be delegated.

The other thing that I can tell you: I think that if you take a look at both this jurisdiction and other jurisdictions across Canada, whenever an Ethics Commissioner has recommended a particular sanction against a member, the relevant Assembly or Parliament or whatever has had no hesitation in adopting that recommendation. I'm not aware of an instance where an Assembly has voted against what has been recommended by an Ethics Commissioner after an investigation has been completed and sanctions are recommended.

**The Deputy Chair:** Thank you very much.

**Ms Notley:** Well, I guess two points and a question. I mean, yes, it's the privilege of the Assembly to impose discipline. It's also the privilege of the Assembly to construct this legislation, and it's the privilege of the Assembly to delegate it to a more objective body should that be a decision of the Assembly. Speaking as one who has watched with growing distress the fact that there's been, you know, one party in power in this province for 40 years, quite frankly, there are a lot of good, solid arguments for why you might want it to be removed from that particular forum. That being said, I think it's really not the issue of privilege because the greater privilege is for us to define our own legislation.

My question. I know we're always going back to Leg. research, but I'm looking through the crossjurisdictional document, and I don't see anything on this topic in there. Am I missing it? I was just looking through the table of contents, but maybe there is something on that. Could you advise the committee?

**Dr. Massolin:** Mr. Chair, I can certainly advise the committee. I think, you know, strictly speaking, Ms Notley is correct, but I would draw your attention to the new appendix E of the revised document that was recently posted to the committee website because there is some information there on sanctions for members; as an example, information that bears out what Mr. Odsen says in terms of current members being typically the ones who sanction their colleagues in the Assembly. It also talks about the appeals as well. So it's not exactly what we're on here, but it's got some related information.

Thank you, Mr. Chair.

**Ms Notley:** Can you give us a page number? I read the stuff about the appeals and would appreciate the crossjurisdictional status with respect to appeal mechanisms.

**Dr. Massolin:** Page 64.

**Ms Notley:** Thank you. If someone wants to maybe review that while I'm looking for the documents, I'd like to know what the status is. If we've got some information that we can extract from the documents that you have there inferentially, could you perhaps review it for us?

**Dr. Massolin:** Yes. I can certainly say that the case Mr. Odsen put forth in terms of the members sanctioning their colleagues is the situation in the Assembly of the Northwest Territories. I suspect that that's the situation in other Assemblies as well, but we don't have comprehensive information on that, to be quite honest. As I indicated, it's not here, as Ms Notley pointed out. Mr. Chair, we could go back and do some additional research on this as well.

**Mr. Odsen:** If I may, I may be able to save you some research. In no jurisdiction in Canada does the Ethics Commissioner have the

power to completely sanction. The closest thing you've got is that the federal Ethics Commissioner can impose an administrative penalty for certain kinds of activities very narrowly specified, not unlike the kind of thing that we have asked for in terms of the ability to impose an administrative penalty for late filing of disclosure, for example. So it's that kind of thing where the federal Ethics Commissioner has the power, and the maximum administrative penalty that she can impose is \$500.

As an example of the kind of thing you're talking about, the Ethics Commissioner of the province of New Brunswick issued a report after an investigation of the Premier of New Brunswick. He found that the Premier of New Brunswick had breached their act, and he recommended a sanction of a fine of \$3,500. I'm not aware of what has happened with that, but I certainly haven't heard or no indication has come to us that the Legislative Assembly of New Brunswick rejected that recommendation and failed to impose it.

For a majority party, if it's a member of that party, for example, against whom wrongdoing has been found by the Ethics Commissioner, to then turn around and say, "Well, yeah, wrongdoing was found, but we're not going to impose any kind of a sanction even though a sanction has been recommended" – stop and think about that one, I guess.

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

**Ms Blakeman:** This is a sticky wicket. What I'm struggling with is: do we have an act that makes it clear what you should and should not be doing and enables the Ethics Commissioner to make a very solid ruling? I go back over some of the difficulties that members have encountered over the years and test them against the legislation that we have. Although the public would view what happened, for example, with Multi-Corp – and I'll keep names out of it – as wrong, although the public without question views that as wrong, it did not get captured in the legislation. I think that we should stick with what we have, which is a recommendation from the Ethics Commissioner to the Assembly.

**10:20**

I believe that for the truly, truly egregious, there is no question. Everybody recognizes it. The last time there was a truly egregious proven breach, the Ethics Commissioner had or was about to make a recommendation to the Assembly, who would have indeed moved forward with it. Instead, the member chose to resign, so it never got there. Where I'm struggling is: how do you capture the rest of the ones that we've seen in, like, the last eight years? They don't make it through that legislation, through the sieve of that legislation, and I think that's a problem for us. How do we fix that or make a recommendation to fix that while it's in front of us now? I hope that was clarifying.

**The Deputy Chair:** Can you give an example? When you say that those others were missed, I don't get it. What do you mean?

**Ms Blakeman:** I think we have a couple before us now which the Ethics Commissioner has not had the opportunity to rule publicly on, so I'll omit those. Again, I think that if we walked them out in front of the public or, indeed, went back and read some of the newspaper columns over the last six months, there's certainly a public reaction there.

**The Deputy Chair:** Okay. I hear you now.

I just wonder. At the commissioner's office does that ring a bell? Do you want to add anything or maintain the same as what you just stated?

**Mr. Wilkinson:** Our view would be that we should stay the way we are.

**The Deputy Chair:** Okay. Thank you.  
Dr. Massolin.

**Dr. Massolin:** Thank you, Mr. Chair. Just to sort of get back to the earlier discussion about documents, there is actually the document produced by Alberta Justice, the crossjurisdictional charts, that talks about sanctions on page 10. There's a whole raft of information in terms of the abilities of the various Legislatures to impose sanctions listed there. I'll say that again. The document produced by Alberta Justice, the crossjurisdictional charts, specifically page 10, has to do with sanctions.

Thank you.

**Ms Notley:** That's on page 10?

**Dr. Massolin:** Yes.

**Ms Blakeman:** The digital age is not helping us here.

**The Deputy Chair:** You know what? As a comment, I certainly appreciate all the hard work our committee staff has been doing in generating all this information. Thank you for that. I can also say that it's challenging for us to find which one is where. I found it. Anybody else having difficulties? It's page 10.

Okay. I'm going to suggest, as I'm following the discussion, that it's pretty clear to me where things are at. From our supporting staff's point of view, the information is there, the current practice works, and so on and so forth. We have some other suggestions for consideration. I'm just wondering: at this point is anybody else ready to move us forward? I see Mr. Dorward's hand is up.

**Mr. Dorward:** Yeah. You know, underlying the motion that I'm about to make is that I trust the Ethics Commissioner and his professionalism, and I trust the staff of the Ethics Commissioner and their professionalism. Some of the comments that we've had in the last couple of meetings have been along the lines of: we need to toughen up the legislation because we're not sure you'll do what you should do. At least, I kind of get a sense of that.

Now we're looking at the legislation and saying: well, we want you to do something because we don't trust the Legislative Assembly. You know, I don't know who you want to trust and who you don't want to trust, really. I trust the Assembly as well. I trust the process of the Assembly and the public openness with respect to which it carries on its activities and duties and responsibilities in the public forum.

With that as background, I'd like to move that we accept 103 and that we reject 102.

**The Deputy Chair:** Okay. Thank you. That's the motion on the floor. Any further discussion? No? Okay. Those who support that motion, please raise your hand. Those on the phone, if you support this, say yes. Ms Johnson and Mr. McDonald, can you hear me?

**Ms L. Johnson:** Good morning. I support the motion.

**Mr. McDonald:** I support it as well. Thank you.

**The Deputy Chair:** Okay. Thank you. There are six people supporting.

Those who are against this one, raise your hand. I think that motion is carried. Thank you very much.

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

**Ms Leonard:** Thank you. Well, let me organize all my papers here. The next topic is administrative fines. Numbers 104 and 105 both suggest introducing an administrative fine system that the commissioner could levy for minor or technical breaches of the act although number 106 recommends against it. If the committee is interested in including this type of system, they might want to look at sections 52 to 63 of the House of Commons act, which is the only such system in Canada. As the Ethics Commissioner was discussing this just now, maybe they'd like to talk about it some more.

**The Deputy Chair:** Any questions?

**Mr. Resler:** I guess just a comment. As Brad mentioned earlier, the federal House of Commons does have the ability to levy administrative fines up to \$500, and in discussions with the commissioner she said that it has been very effective for her. The naming and shaming is always a good method. As far as someone breaching the act, they're able to report on it, and it's made public. The additional ability to have the fine has assisted her, though.

We've reported annually on the difficulty or the amount of work that has engaged our office as far as ensuring that members comply with filing their disclosure statements. As an example, in 2012 46 per cent of the statements were still outstanding on the last day of filing. There's considerable effort to ensure they're coming in in order for members to meet their obligations. For us the administrative fines would be an effective tool.

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

**Mr. Dorward:** Yeah. I'm wholly supportive of this. From my former life as a chartered accountant in public practice, you know, I'm fully aware that fines and things like that do move people to get things done. We just heard it said that that would be a good thing. I'm totally supportive of it and would make a motion that we accept number 105 and reject 104 and 106.

**The Deputy Chair:** Okay. Thank you very much.

Any further comments or discussion before I call for a vote? I hear none. On the motion Mr. Dorward put forward, those who support it, please raise your hand. On the phone? All agreed. Thank you. Unanimously carried.  
Next one.

**Ms Leonard:** Okay. The next issue is failing to co-operate with the Ethics Commissioner. There was one suggestion not to amend the act to allow the commissioner to sanction members for failing to co-operate since his powers under the Public Inquiries Act are sufficient. I would point out that the requirement to co-operate with the commissioner in section 25(1.1) is in the context of investigations, but the powers under the Public Inquiries Act only apply if the commissioner is conducting an inquiry. In light of the suggestion at the previous meeting to incorporate wording from the Election Finances and Contributions Disclosure Act with regard to inquiries and investigations, this point may actually be moot.

**The Deputy Chair:** Okay.

**Ms Notley:** Just a quick question: what are the authorities, again? What is the power that the commissioner has pursuant to the Public Inquiries Act?

**Ms Leonard:** Compelling witnesses and the production of documents, essentially.

**Ms Notley:** Just by judicial order ultimately?

**Ms Leonard:** I don't know. I think he can sanction people. You know what? The Ethics Commissioner should . . .

**10:30**

**Mr. Odsen:** Notwithstanding the fact that this office has never had the necessity to move to an inquiry from an investigation, if there's a failure to co-operate, then the Ethics Commissioner would in effect be forced to move to an inquiry. The same powers are vested in the commissioner as are vested in a commissioner under the Public Inquiries Act, so it's all the power and authority of a Queen's Bench judge save and except that there are certain things that only the court can do.

The commissioner would have to go to the court if a witness, for example, was subpoenaed and failed to appear. I don't know off the top of my head whether the commissioner could himself or herself impose a sanction for contempt of the commissioner, whether they would have to go to court and get an order and then the person failing to comply would be subject to being found in contempt of an order of the court. But the power is there through the inquiry process if need be.

**Ms Notley:** I actually remember doing a day-long legal argument around whether the LRB had the authority to direct the police to do something. It's the same law. Yeah, you're right. It's one or the other.

**Mr. Odsen:** Yes.

**Ms Notley:** All right. Okay. Thanks.

**The Deputy Chair:** Thank you very much.

**Mr. Dorward:** In my way of thinking, because we adopted it by item 78, I believe that means that 107 is redundant. Would you concur with that?

**Mr. Odsen:** Yes.

**Mr. Dorward:** I would make a motion that we reject 107.

**The Deputy Chair:** Okay. Thank you. On that motion, those who support it, raise your hand. On the phone, if you support it, say yes. All agreed. Carried. Thank you.

Next one, Ms Leonard.

**Ms Leonard:** Okay. The next topic is appeal and review. There's currently no mechanism for appeal or review of the Ethics Commissioner's recommendations or the Assembly's decisions. Item 108 is actually moot now because the committee decided not to give the Ethics Commissioner powers to apply sanctions.

Item 109 suggested that if an administrative fine system is introduced, there should be a means to appeal such decisions. I don't know if perhaps the committee would like to just discuss general appeal and review provisions. Research services has prepared a document, a crossjurisdictional analysis, looking at such provisions. Perhaps it would be helpful to have it introduced now.

**The Deputy Chair:** Please, go ahead.

**Ms Robert:** Thank you, Mr. Chair. We had a look at the jurisdictions across the country with respect to appeal and review mechanisms. What we found was that there are no appeal or review mechanisms in Alberta, B.C., Saskatchewan, Ontario,

Quebec, New Brunswick, P.E.I., Newfoundland and Labrador, Nunavut, the Yukon Territory, or the House of Commons with respect to the conflict-of-interest code from members.

In the Northwest Territories current members are sanctioned by the Assembly, and there is no mechanism for appeal. A former member whose conduct was inquired into or the Speaker can appeal to the Court of Appeal on a question of law from any finding or action taken by the sole adjudicator within 30 days of the sole adjudicator submitting a report. With respect to what a sole adjudicator is, after the conflict-of-interest commissioner investigates an alleged breach of the act, his or her report can recommend that an inquiry be held before a sole adjudicator, to be appointed by the Assembly.

In Manitoba there are no appeal mechanisms with respect to decisions of the Assembly regarding the failure to file statements of assets and interests under section 11 of the act. Breaches of the act other than the failure to file statements of assets and interests are dealt with by the Court of Queen's Bench. If the court finds that the act has been violated, the judge can impose certain penalties, including fines, suspension of the member's seat, and disqualification of the member. If a member appeals a disqualification or a suspension, he can also apply to the Court of Appeal for a stay of the penalty until final determination of the appeal.

In Nova Scotia a finding, direction, determination, or order of the commissioner or a judge made regarding a breach of the act can be appealed to the Nova Scotia Court of Appeal within 30 days. The appeal can be brought by the person affected, which includes the person who initiated the request for the inquiry.

In Canada under the Conflict of Interest Act with respect to ministers every order and decision of the commissioner is final and shall not be questioned or reviewed in any court except that an application for judicial review may be made on the grounds set out in the Federal Courts Act; that is, if the commissioner

- (a) acted without jurisdiction, acted beyond [his or her] jurisdiction or refused to exercise [his or her] jurisdiction;
- (b) failed to observe a principle of natural justice, procedural fairness or other procedure that [he or she] was required by law to observe;

or

- (e) acted, or failed to act, by reason of fraud or perjured evidence.

**Dr. Massolin:** Mr. Chair, I just wanted to mention that this information that Ms Robert just conveyed exists as appendix E, starting on page 64 of the revised crossjurisdictional comparison.

Thank you.

**The Deputy Chair:** Thank you. I was following that already.

Okay. On that, are there any questions or comments? Ms Notley.

**Ms Notley:** Yeah. Well, I mean, we asked for this last time. We had a discussion about the whole question of appeal and stuff, and I appreciate the work done by the researchers to bring this to our attention. I am personally somewhat compelled by the model that you see reflected within the federal jurisdiction, where you're looking at the potential to have a decision reviewed on the basic sort of natural justice criteria that many decisions of many public administrators and commissioners can be appealed by. You know, I think it's worthy of consideration. I think that parties to it want to see that we are in fact engaging in the jurisdictional application of authority as well as ensuring that natural justice and procedural fairness are adhered to. Right now, obviously, we don't have that in the act, but it exists in the federal legislation, so it can't be disastrous. It certainly provides for greater certainty.

**The Deputy Chair:** Thank you.

**Mr. Dorward:** Can you go over that again? Now I'm confused. Have you got the report there, page 65?

**Ms Notley:** Yeah, 60.

**Mr. Dorward:** Can you explain that again? I'm not a lawyer, so I don't know. So there's no appeal mechanism set out in the court of conduct for members of the House of Commons? Then section 66 of the Conflict of Interest Act says that

every order and decision of the Commissioner is final and shall not be questioned and reviewed in any court

except on the grounds of – it's not in the code of conduct for members of the House of Commons, but it is in the federal Conflict of Interest Act?

**Ms Notley:** Yeah.

**Mr. Dorward:** Of the feds?

**Ms Notley:** Yeah.

**Mr. Dorward:** Which says – the section is 18.1 – boom and boom and boom, so three bullets there.

**Ms Notley:** Yeah.

**Ms Blakeman:** It's a high test.

**Ms Notley:** It's a very high test.

**Ms Blakeman:** It's a high test, so you wouldn't fool around with this. Someone would have to go to great commitment and lengths in order to be able to appeal this. This is something where if somebody feels really, really strongly about it, you're not going to have . . .

**Mr. Dorward:** Frivolous.

**Ms Blakeman:** . . . frivolous or vexatious people trying to contest this. This is serious stuff and probably will cost them money and a great deal of personal commitment to get there. It's a very high test.

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

I have Mr. Odsen on the list.

**Mr. Odsen:** Maybe this would be helpful to the members. If you didn't know the difference between the two federal acts, the code of conduct applies to all members of the House of Commons, and the Conflict of Interest Act only applies to ministers, okay? That's the difference. In the code of conduct there is no provision for appeal. It's only a decision rendered against a minister where there is the provision for an appeal under the federal legislation. The federal appeal mechanism is what's commonly referred to in administrative law as a judicial review. Any time anybody is dissatisfied with a decision of an administrative tribunal, there is the option for them to apply to have the decision reviewed.

**10:40**

However, the judicial review that's talked about in that legislation and the normal process of judicial review is that it's very, very rare that the reviewing judge can overturn the decision, in essence say, "That's the wrong decision; the decision should have been this" or even send it – what they can do is say that there was a flaw in the process, that there was a denial of natural justice because there was bias on the part of somebody on the

administrative tribunal that heard the matter or that the person against whom the complaint was or who was the subject of the process didn't have a full and fair opportunity to be heard or some of those kinds of things. In that case, what they would normally do is send it back to the tribunal to do it properly.

**Ms Notley:** To be fair, it's what they do. It varies. They sometimes send it back. They sometimes don't.

**Mr. Odsen:** Yeah.

**The Deputy Chair:** Okay. Any further questions on that?  
Mr. Dorward, does it clarify your question?

**Mr. Dorward:** I do have a couple of more questions. Do you mean to say, then, that the appeal mechanism whereby the commissioner's decision can be appealed only affects ministers but not all MPs?

**Mr. Odsen:** That's correct.

**Mr. Dorward:** If this is the way that we feel we should go, is it as easy to weave into here that it would apply only to ministers and not to – is that what your thoughts were? Would it also only apply to decisions of ministers or all members?

**Ms Notley:** I'm not sure what the history was that brought that forward, but in my view I don't know that there's really a reason to distinguish. I think that it should simply be there through the act. I mean, we don't have two acts. There are a number of dissimilarities between the federal code of conduct and what we have versus the Conflicts of Interest Act, so, you know, we already have a bit of a hybrid of those two acts in our legislation in a number of different ways. So it would make sense, then, that because our act is already a hybrid, the appeal piece could apply to both.

Obviously, as you know, these issues tend to come up most typically, I suppose, with people that have more authority although we currently have some that don't. Anyway, the point is that I'm not trying to make it complicated. I just think that this is a pretty standard thing that exists in a number of public administration pieces of legislation, and it's the kind of thing that safeguards the process, the neutrality, the objectivity of the process. It is, as has been explained, not a rehearing of the facts. It is simply a review of the objectivity and neutrality of the process, and it's not something that's brought easily.

**The Deputy Chair:** Thank you.

**Mr. Odsen:** Just one further comment. The way it presently stands in Alberta and most other jurisdictions in Canada is that the Ethics Commissioner makes findings of fact, issues a report to the Legislative Assembly with recommendations but does not in fact have the order-making type of power that is normally associated with administrative tribunals for which judicial review is allowed or enabled. In other words, the report goes to the Legislative Assembly, and the Legislative Assembly – it's right in our act – can accept or reject what's in the report or in the recommendations.

Certainly, any member who is the subject of an investigation and a report of course has the opportunity, should they so wish, to stand up in the Assembly and state their case and have the Assembly, in effect, rule on it. That could include saying, "The commissioner was biased" or "The commissioner didn't give me a fair hearing, and here's why." If the Assembly accepts that, they have the opportunity to do whatever they want with it.

**The Deputy Chair:** So it almost functions as a review in that regard.

**Mr. Odsen:** So who's going to do the review? Is it going to be the Assembly, or is it going to be a judge? In essence, that's what we're talking about here.

**The Deputy Chair:** Yeah. Gotcha. Thank you.

Mr. Dorward, you raised your hand earlier. Do you still want to talk about it, or are you good now?

**Mr. Dorward:** No. I've heard all my . . .

**The Deputy Chair:** Thank you.  
Ms Blakeman.

**Ms Blakeman:** Thank you. The other thing that's at play here, Mr. Dorward, is who can ask for it, which we have the choice of writing into the legislation, I think. That makes a big difference because if it's only the individual who can ask for a judicial review of it, it's one thing, but if anyone else, a complainant that's unspecified, can ask for a judicial review, that's another thing.

**The Deputy Chair:** Thank you.

**Mr. Dorward:** Before either making or entertaining a motion, personally I'd like to just take a boo at this at lunchtime myself and give it a little bit more thought and read through the cross-jurisdictional work that was done. I would suggest that maybe we table this for a couple of hours and maybe try to get it.

**The Deputy Chair:** I'm okay with that. How about the rest? All right. Let's pause this one. Remind me in the afternoon session, and we will bring it back. Okay. Thank you.

Let's move on to the next one.

**Ms Leonard:** The next big section we're on is the Ethics Commissioner's reports. The first topic is investigation reports. Number 110 suggested that in order to improve transparency, the Ethics Commissioner should be required to publish a report of every investigation that discovers a breach of the act on their website within a specified time frame.

There currently aren't any provisions in the act requiring the commissioner to post reports or have them available within a particular time, so the committee might want to consider both issues.

**The Deputy Chair:** Okay. Thank you.  
Anybody want to comment? Mr. Wilson.

**Mr. Wilson:** Thank you, Mr. Chair. I believe that it is within the public interest to have a deadline or some sort of time frame in which the public can expect the Ethics Commissioner's office to file a report. I'd be interested as to your comments on that, but I don't know or understand why it would take, you know, 12 or 18 months in order to complete an investigation and, quite frankly, why the public needs to wait that long to hear a ruling from your office.

I also think that once an investigation is complete, you should be compelled to make it public as opposed to sit on it and wait for the most politically expedient time for others to make that public. I know that that was the way in which we were thinking when we came up with this recommendation, but I am curious to hear your thoughts on that.

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

**Mr. Wilkinson:** Mr. Chair, I'd be happy to. Actually, we cannot hold back the report. Our reports go directly through the Speaker to you. There is no method for anybody to hold our reports back. That's all.

**Mr. Wilson:** That's once you choose to issue the report to the Speaker, though.

**Mr. Wilkinson:** Well, we have to issue a report by legislation if it falls within our jurisdiction.

**Ms Blakeman:** It doesn't say when, though.

**Mr. Wilson:** Yeah. It doesn't give you a timeline.

**Mr. Wilkinson:** That's correct, but your question was that we could hold back until politically expedient. That cannot happen. It goes to the Speaker. I'll let Brad comment. It says in our legislation, I believe, that it has to go the Speaker when we're finished, and then the Speaker has to release it within 15 days. Are you suggesting we would hold it back for political reasons?

**Mr. Wilson:** I'm saying that there is nothing in the act currently that would prevent that from happening. Again, we're talking about perception here, sir, so it's not necessarily that I am accusing you or your office of doing this. I'm suggesting merely that the public may perceive that when an investigation has been undertaken and the report is seemingly delayed, you know, perhaps there are political reasons why that would happen.

**Mr. Odsen:** I appreciate what you're saying, Mr. Wilson. I guess the issue is that – well, there is a twofold issue. Number one is that if you impose timelines that are, in essence, arbitrary – six months, one year, whatever it is. Pick a number. It's arbitrary. What happens if for whatever reason a commissioner is unable to conclude an investigation within the timeline? What happens then? He has to come and ask for an extension. Who does the commissioner ask for an extension? Does the commissioner have to come to the Assembly to ask for an extension, or what?

You look at police investigations. Sometimes they can conclude an investigation in a day. Sometimes it takes years. It's not something going in that you really have any kind of idea of how long it's going to take. You have to set up an investigation plan. You've got to decide who you're going to interview, how you're going to interview them, what kinds of documents you're going to need, all of those sorts of things. You then have to meet people's schedules, your own schedules, all of those kinds of things to ensure that no stone is left unturned in investigation because, of course, they're very, very serious matters.

**10:50**

I have grave concerns about imposing any kind of a deadline. The fact of the matter is that I can assure you that our office works as diligently as it can with the resources that we have to do these things in as timely a manner as we possibly can. Perhaps if we had, like some other officers do have, full-time staff investigators, we could do them more quickly. As it stands now, we do them as best we can with the resources that we have and as timely as we can, but we have to ensure, first and foremost, that we give every opportunity for all the evidence to be obtained.

**Mr. Wilson:** I appreciate that. If I could just ask two quick clarifying questions. In some of our discussions we've talked about how you now, once this hopefully gets passed by the Assembly, will have the power to call an inquiry, which is more serious than an investigation, is it not?

**Mr. Odsen:** We have the power now to call an inquiry.

**Mr. Wilson:** Okay. But our most public inquiries, those are given a deadline.

**Mr. Odsen:** No.

**Mr. Wilson:** They're not? Fair enough.

**The Deputy Chair:** Okay. I have a couple of people on the list. As we go through, we probably will get a clearer picture here.  
Ms Kubinec.

**Ms Kubinec:** Thank you, Mr. Chair. You've answered part of my question, but can you give me an idea of an approximate average time to do an investigation?

**Mr. Odsen:** The majority of the investigations that have been done by this office were done in the very early years as members had not yet really sort of got used to the notion of a Conflicts of Interest Act and the prohibitions under it. Over the years the number of investigations has gone down. I don't think you're going to see – and I'm really sort of having to cast my mind back now to that. All of the investigations, by the way, in terms of the public aspect of it in addition to them going to the Legislative Assembly, are posted on our website. So every investigation that's ever been done is on the Ethics Commissioner website.

I would expect that you're looking at no fewer than six months for any investigation and most of them sort of falling in that six months to one year kind of range, depending, I guess, on the overall complexity and the number of witnesses and some of those kinds of things.

**Ms Kubinec:** If I might continue, I guess this would be for the legislative staff: other jurisdictions and those practices.

**The Deputy Chair:** Dr. Massolin.

**Dr. Massolin:** Yes. Thank you. I'm just looking at the cross-jurisdictional that both my office produced as well as Alberta Justice. I stand to be corrected, but I don't see any information as to time limits on the investigations, so I can't comment. Sorry.

**Mr. Odsen:** Excuse me, Mr. Chair. I'm not aware of any jurisdiction that has time limits on investigations.

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

**Mr. Dorward:** Well, either we're totally off topic, or this is a poorly written recommendation because I'm not reading the recommendation that way at all. We're discussing something it doesn't even say, in my opinion. It says,

a provision should be added to the Act requiring the Ethics Commissioner to publish a report within a specified time frame on its website of every investigation that uncovers a breach of the Act.

I don't think this recommendation, as I read it, is even asking for – although I think the people that put it in are discussing this, that's not what it says. It says that once a report is done, I guess, or once the breach is uncovered, then it has to be put on the website in a certain time. I don't think that talks about how long the investigation is going to take. So I don't think how long the investigation is going to take is on the table with respect to 110.

I will go back to what I said before, which is that I fully trust that the Ethics Commissioner will do this in a professional way and advise the Assembly when they're able to with respect to the work that they do. So I would reject 110.

**The Deputy Chair:** Thank you.

I have Ms Blakeman, followed by Mr. Saskiw.

**Ms Blakeman:** Thanks. Mr. Dorward, it references 25(7), which talks about the report, and based on comments from the Ethics Commissioner during this discussion, he talked about timelines, I think. There is no timeline that is under 25(7). It just says that when it's done, he shall report the findings to the Speaker. This is where people are looking to inject a timeline.

**Mr. Dorward:** I don't see that in 110.

**Ms Blakeman:** It's following the discussion that pursued. I can't take the words out of people's mouths.

**Mr. Dorward:** Okay, 110(a) then.

**Ms Blakeman:** Whatever.

**The Deputy Chair:** What I can suggest is . . .

**Ms Blakeman:** Sorry. If I could complete what I started to say, what I'm more interested in, without doing timelines, is adding in fairly well accepted language like "forthwith" or "promptly" so that if there's any question of there being an unexpectedly long timeline or any question of there being a perception of reports being held in order to protect the office, they would have something in there that says, "Well, we've got it done, and we have put it forward promptly" so that they can't be accused of holding it back for some reason. "Forthwith" is the other language that you get often, that a report is to be produced forthwith, which means as soon as possible. That might help the situation that's developed in the conversation around 110.

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

I see the discussion moving forward. I just wanted to double-check if we're following the lines of moving forward. There are two things on the table I hear. One is: once the investigation is completed, how promptly does it go to the website? That one seems to me pretty clear. There's no issue there. The second one is: how long does it take to do an investigation? Do we need to impose a date or time on that? That is one I feel like is a bigger question here.

I know there are two other speakers on the list. If you can sort of move along those lines, help us move forward, I'd appreciate that.

**Mr. Saskiw:** Sure. Speaking to the first issue, I think that – you're right – it's a pretty clear issue.

**The Deputy Chair:** Okay.

**Mr. Saskiw:** I guess the concern without having any type of time frame is that there is a rule or a ruling in the legislation. The Speaker currently made a ruling that while something is under investigation, it cannot be discussed in the Legislature. I actually think that would extend outside of the Legislature.

**Some Hon. Members:** No.

**Mr. Saskiw:** Potentially not. Regardless, in the Legislature we wouldn't have the ability to question the government or question any other member if it's not part of the government membership on a particular issue simply because it's under investigation. Some of these issues are big issues, and my concern without having any type of time frame is that we obviously want to have questions on these issues, and it's an important public discussion, yet we're

seemingly prohibited from doing that without any time frame of when we'll ever get to ask that question again.

I mean, there's an existing investigation going on right now, and if it's not done by October, we won't have a chance to create questions on it. I think that would be completely against, you know, public interest and a disservice to us doing our job. Obviously, I wouldn't want to put an artificial time frame on any type of investigation, but if there's a reason for a delay, if it's lack of resources or witnesses aren't coming in for certain reasons, then those types of extensions can be granted. But I'm wondering if there's any type of suggestion that you folks might have in this regard to put in a provision that just doesn't arbitrarily cut a member's ability to question certain topics merely because they're under investigation.

**Mr. Wilkinson:** The extra authority that you've given us, without calling an inquiry, certainly if you give us that, that would be helpful. I would like to say that on behalf of the office, echo Brad's comments, that we want to complete these investigations as soon as we can. There's no question about that, and that's one of the reasons why we're asking for more power, to try and facilitate that, in this area only. We do do them forthwith, but Brad mentioned the limitations there are, and there are others as well, as you would know. Any time you get involved in a legal proceeding, not everybody always agrees with everything you're doing all the time, right? So there are some issues, then, to be worked out about the process sometimes. You know how long these things take, much longer than we would like to, but it's the nature of the beast.

**11:00**

I like what Brad said, and I know Glen feels the same way. We all do. We do not want to leave any stone unturned here. It would not be fair – because they're away on holidays, or they're sick, or whatever – to not have a chance to be able to come and speak. You know, we want to make sure everybody has that opportunity to speak and be heard, and we feel that that's their right and is in fairness to the person who is accused and the person that's the accuser also.

**The Deputy Chair:** Thank you, Mr. Wilkinson. That was very well said. I appreciate that.

**Mr. Resler:** Just to add one final comment to that, if there are constraints within the investigation – you know, additional manpower is required and we don't have the budget for it – we have full capacity under the current legislation to hire any other persons we feel are necessary to complete the investigation that's under way. We also have the capacity to come before the standing committee for supplementary funding if we feel we need additional funding to perform our mandated duties.

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

Ms Notley.

**Ms Notley:** Yes. Actually, it's interesting that you say that because that was sort of one of the points that I was going to raise.

I want to start by saying that I think Mr. Saskiw raises a very, very, very important point, which is that – and I know it's not necessarily the fault of the commissioner's office because, quite frankly, I think the Speaker is deeply flawed in his reasoning; however, that's another forum within which there is no appeal – we have a situation where there is a matter that in a healthy democracy should be the subject of open, public debate which is not the subject of open, public debate because the matter is under

investigation and because it has been under investigation for some time now.

Then going back to the points that were just made, you are correct, though, that . . .

**Ms Blakeman:** It's 24(6). That's the prohibition.

**Ms Notley:** In the standing orders?

**Ms Blakeman:** No.

**Mr. Saskiw:** It's in the act.

**Ms Notley:** Oh, it's in the act in 24(6): "has been referred to the Ethics Commissioner under . . ." Okay. So it's 24(6).

I think, in fact, because of the point raised by Mr. Saskiw, we need to do one of two things. We either have to look at putting a deadline on investigations being completed – and that's not to overlook the issues that you guys legitimately raise in terms of, you know, the barriers that you're faced with. The problem is that it has to be balanced against section 24(6), which is that there is a gag order put on public debate during the duration of the investigation.

So there is one of two ways to deal with it. We put a limit on the time of the investigation, potentially with the opportunity through the Speaker to request an extension, knowing, of course, that in terms of resource issues you always have the ability to request that the Legislative Offices Committee convene outside of their regular schedule to consider the issue of resources. So you always have that ability, and we can do that.

**Ms Blakeman:** Sure. More meetings. Yeah.

**Ms Notley:** Yeah, true. Nonetheless, that's the process. You have the ability to request that meeting and to request that we do it promptly to address your resource issues. So to us it seems like we're looking at one or the other. We are either looking at revising 24(6), or we're looking at putting in a limit on the time for investigation. Right now we have the worst of both worlds. We have no limit, and we have the bar to the public debate.

That being said, when I first put my hand up, before Mr. Saskiw made his point, what I had actually been looking for – I know someone asked, but I don't know that we actually got the specific results. I'm just wondering. Can your office provide us with sort of a list of the investigations that have been completed over the last – I don't know; you pick; I'm not even sure how many there are – five, 10 years where reports were submitted to the Legislature and what the timeline has been for them? If you can't do that right now, could we ask for that for another meeting?

**The Deputy Chair:** If I can interject, I think I have already heard that normally it's around a six-month to one-year time frame.

**Ms Notley:** Well, six months to a year. I mean, that six months is an important piece. What I'm looking for is the actual, not a guesstimate – I know you're doing your best to provide us with the information – but the actual number of investigations.

**The Deputy Chair:** Yeah. Okay.

Mr. Odsen, I see you want to say something.

**Mr. Odsen:** Yes. Thank you, Mr. Chair and Ms Notley. Undoubtedly, that's something that could be provided. As I indicated to you, every investigation report that's been submitted to the Legislature is on the website. It will start out each report by saying, "On such and such a date," or that I received a request for

an investigation dated this. Then the date on which the report is completed will also be on the report. So that'll tell you the timeline just by looking at each individual report if you want to do that. But we could undoubtedly put together a quick little table that gives you that information. That's the first thing.

The second thing is just with respect to going down the road of setting timelines and: well, you can always come and ask for an extension. I suppose that's true. However, what needs to be taken into consideration is that there are provisions in the act at present concerning confidentiality and, indeed, confidentiality around what's going on with an investigation. I guess the question that comes to my mind is that if we come asking for an extension on the timeline, the question is: well, why do you need a timeline? Well, we can't tell you why we need an extension. Just give us what we want. Okay?

**The Deputy Chair:** Okay. Thank you very much.

At this point I want to recognize that a committee member, Mr. Young, is present. For the record can you state your name? Then you're on the list next.

**Mr. Young:** Okay. Steve Young, MLA, Edmonton-Riverview. I just want to make the point that I don't like the word "limit" and I don't like the word "deadline" because I think that forces you to shoehorn in an investigation within that, and there's such a range. It could be a short one, or it could be a long one. We want to do it right. Whether there are guidelines, notwithstanding the confidentiality of the investigation, an update would be about as far as I'd go on that in terms of where we're at but, certainly, not a limit or a target. It has to be subject to the investigation and what it takes to do it properly, whether or not at some point you say: listen; we're not done yet. Okay? I mean, at least there's that. Whether there's an articulation of why you're not done yet is certainly for another debate. But I don't like the words "limit" or "deadline" because some investigations just don't fit into that, and we should not be shoehorning the investigation into some timeline.

**The Deputy Chair:** Okay. Thank you. That's a good point made.

I just want to advise the committee that on this subject about 10 people have spoken already.

**Mr. Wilson:** It's an important issue.

**The Deputy Chair:** It is important, but I'd like to invite your consideration. This is how I see the discussion going. There is some recognition that for the quality of an investigation to not impose an arbitrary time on it. There are some other thoughts that some kind of time frame is warranted. If you need more time, come back. So that's the issue we're debating. What I would like to invite all of the members to consider at this point is whether you want to move along one of those lines. I'd like to have a vote on where we're essentially going to land now, rather than going round and round and round on this issue. Okay?

Sorry, Ms Blakeman. I have Mr. Wilson in line first.

**Ms Blakeman:** This is directly to you.

**The Deputy Chair:** Oh, to me? Okay. Go ahead.

**Ms Blakeman:** I'm sorry. It's just a rebuttal. I'm disagreeing with the way you are presenting this argument. It commenced out of a timeline argument, that there was some question as to how long the timeline was, because we are precluded from discussing the issue in the Assembly. There is no freedom of speech in the Assembly while an issue is under consideration by the Ethics

Commissioner. That's what's under discussion here. The question here is: do we limit the time the Ethics Commissioner discusses this, which frees up the freedom of speech in the Assembly? Or, alternatively, do we go back and look at 24(6) and limit that and say: "Okay. If a matter has been referred to the Ethics Commissioner under these subsections, neither the Legislative Assembly nor a committee of the Assembly shall inquire into the matter for a period of X"?

**11:10**

**The Deputy Chair:** Yeah. I hear you.

**Ms Blakeman:** For example, if six months is the average, fine. Then let's say that we can't inquire into it for a period of one sitting.

**The Deputy Chair:** That's all I meant.

**Ms Blakeman:** The fall sitting or spring sitting or whatever.

**The Deputy Chair:** Yeah. I hear your point.

**Ms Blakeman:** Thank you.

**The Deputy Chair:** My understanding is that not only are you talking about whether you can comment on the investigation while in session; I think my understanding is that in general practice, even outside of session, when there is investigation, there's nothing to be discussed until it is all concluded anyway. I get your point. I think it's still along the line of what I was referring to earlier.

Any other suggestions from Mr. Wilson along this way?

**Mr. Wilson:** Well, sure, Mr. Chairman. I will make a motion and put it on the committee floor that we officially rescind 24(6) or at least discuss a timeline around 24(6) at this committee meeting and make a recommendation to it.

**The Deputy Chair:** Do you have a time that you can recommend rather than just saying "a timeline"? That's where I think we got bogged down.

**Mr. Saskiw:** This is a specific section in the act, 24(6), which prohibits any member from speaking about an issue that is currently under investigation in a committee or in the Legislature.

**The Deputy Chair:** Okay.

**Mr. Saskiw:** I think that would alleviate any of those concerns that we had with respect to timelines.

**The Deputy Chair:** Gotcha. Okay. So we have a motion on the floor, which is about rescinding 24(6). Say it again, the motion on the floor.

**Mr. Saskiw:** It's a discussion right now, right? We can have a discussion on this once a motion has been put forward?

**Mr. Dorward:** Absolutely. I thought we have been, but that's fine.

**The Deputy Chair:** Sorry. Let me see where we are.

I want to double-check with Mr. Wilson. You are putting a motion on the floor. Can you restate that one just so that everybody is clear?

**Mr. Wilson:** Sure. I would move that we as a committee rescind 24(6) from the current act.

**Ms Blakeman:** Recommend.

**Mr. Wilson:** Recommend. Thank you.

**The Deputy Chair:** Okay. So that is on the floor. Any comments on that one?

Mr. Saskiw.

**Mr. Saskiw:** Thanks. I guess the rationale for rescinding this section is that it is a freedom of speech issue so that while an issue is under investigation by the Ethics Commissioner, members of this Assembly are prohibited from speaking on that matter in a committee like this or in the Legislative Assembly. There must have been some rationale. I don't know if other jurisdictions have equivalent sections. I'm wondering from the Ethics Commissioner's office whether – you know, I don't know if you've commented on this section with respect to the review.

**The Deputy Chair:** I think I heard that already.

**Mr. Saskiw:** No. I don't think they have, actually.

**The Deputy Chair:** Okay. Let's invite them to respond.

**Mr. Odsen:** I think most other jurisdictions do have a similar section in their legislation, whether it's something that was just kind of adopted at the time in Alberta because somebody else already had it. I don't know the idea behind it. I'm not even entirely sure that it's interpreted the same way in other jurisdictions. I don't know that I want to comment any further than that in that regard.

**The Deputy Chair:** Okay. I have Mr. Young. He's been waiting for a while. The floor is yours.

**Mr. Young:** It seems strange to me that we would want to debate something under investigation just to politicize it. I mean, let's get to the facts.

Can we get a comment from Parliamentary Counsel on this?

**Mr. Wilson:** They're not here.

**Mr. Young:** He's not here?

**The Deputy Chair:** We can get him to respond. I don't know. It may take a couple of minutes.

**Mr. Young:** Because I think we should, just on the legalities around this.

**Ms Blakeman:** Well, it's in the act, so that has to be adhered to.

**Mr. Young:** Right. But you were talking about rescinding it.

**Ms Blakeman:** No, no, no. We're talking about the committee recommending to the Legislative Assembly as part of a review of the act. The report is then concurred or denied in the Assembly, who has the ultimate authority over this. Once it goes through, then the government will implement it.

**Mr. Young:** Well, thank you very much, Laurie, but I'd rather talk to Parliamentary Counsel on their opinion.

**Ms Blakeman:** Well, just read what the committee is charged with, then. Back to the beginning.

**The Deputy Chair:** Sorry. Can I have committee members speak through the chair, please? I'd appreciate that.

I think Jody is going to invite our Parliamentary Counsel to come and comment specifically about that one, so I will hold onto that one second.

Does anybody else at this point want to make a contribution to the conversation?

**Mr. Saskiw:** Yeah. No, it would be interesting to see if the Ethics Commissioner – is there any rationale that you may be aware of for why this provision is in place? It seems like they currently don't have one. Actually, legal counsel might be the ones. We should listen to legal counsel on this one, on whether we're allowed to rescind legislation.

**The Deputy Chair:** Okay. Mr. Young has already requested that.

**Mr. Dorward:** Just about everybody agrees with that.

**The Deputy Chair:** Yeah.

**Ms Notley:** We'll listen to legal counsel if you like, but we've already recommended eliminating provisions of the act in this committee, so for those of us who've been engaged in this all along, that's sort of what the committee is doing.

In terms of the issue at hand, again, it's a balancing act. We have to engage in a balancing act. We have to engage in, you know, balancing on one hand the ability of the Ethics Commissioner to engage in a fulsome investigation, knowing, of course, that they have the capacity to seek additional resources where necessary, against the right of the citizens of the province to be able, through the members of this Assembly, to exercise their democratic rights to have this discussed in a fulsome, transparent forum.

The fact of the matter is that, unfortunately, a lot of the good stuff that we do does not necessarily occupy everyone's attention all the time, but the stuff that is sometimes not as good does. For the purposes of ensuring that we maintain sort of the responsiveness of our democratic system to the political interests and concerns of regular citizens, we cannot allow the current situation that exists, where we've got sort of the combined impact of two sections of the act, silence on one level and another section on the other, to shut down discussion for an unlimited period of time about very important matters that matter to the people of the province.

This act is one of those acts that is central to politics, and, yes, it is political. It is political because this is governing us, and we're politicians. It is political, and it needs to be handled with balance and a certain amount of respect for the interests of Alberta voters.

**The Deputy Chair:** If I can sort of try, I think there have been a number of points made at this point. As the chair I'm trying to follow and listen very carefully about the points and nuances put on them. Here's my take.

On one hand, from the investigation point of view, investigation is about finding facts. It is about respecting the process and giving everybody a chance to have a fair judgment in the end, and that judgment has very huge implications. That sometimes takes time, and it's hard to make an artificial line there. I heard that voice at the table.

Then, on the other side, I hear the voice of: while an investigation is conducted, you cannot make any kinds of comments and questions and so on and so forth. That limited certain people's view of freedom: how come I cannot do this?

Here is my curiosity. I'm taking in the information I'm hearing so far. My understanding at this point is that on average those investigations take about six months' to a year's time. When that

is concluded, you have no choice but to speedily make the information available through the Speaker and the website and so on and so forth, so there's no delay at all. If we're talking about any kind of delay, it is the nature of the investigation that nobody can arbitrarily say one way or another to conclude.

I also heard Mr. Odsen talk about how, if we make an arbitrary line there, it essentially defeats the purpose of doing an investigation, that you're going to have to justify why you want more time without talking of the substance of what you're investigated for. I can see the rationales in that way.

Here's my thinking. We can go around, around, and around in circles about this, but the beauty of democracy is that after we've made all our points, it's about time we use democracy to show where we stand on this. That's where I'm standing right now.

So in that regard what I'm looking for is for those who support putting a timeline on it to think of putting a motion on the floor so we can . . .

**11:20**

**Mr. Dorward:** We have a motion on the floor.

**The Deputy Chair:** Yes, we have one rescinding. I'm aware of that one.

Are you ready?

**Ms Rempel:** Parliamentary Counsel is on his way.

**The Deputy Chair:** He's on his way? Do we have any idea how long it's going to take? No? Okay. A couple more minutes.

**Mr. Wilson:** Take a five-minute recess.

**The Deputy Chair:** Five minutes? Why don't we move on to the next item, and we'll pause this for five minutes when he comes back? Is that all right? No? It won't work?

**Dr. Massolin:** No, because we've got a motion on the floor, so just five minutes.

**The Deputy Chair:** A five-minute recess? Okay. Let's do that.

[The committee adjourned from 11:20 a.m. to 11:32 a.m.]

**The Deputy Chair:** I'd like to call the meeting back to order. Now we have our Parliamentary Counsel with us. I understand that there are some questions regarding legal proceedings. Mr. Young raised that question. I would appreciate it if you can, for the purposes of clarifying . . .

**Mr. Young:** Yeah. If you could just read the motion first for Rob's benefit.

**The Deputy Chair:** Okay. The motion is by Mr. Wilson to recommend to rescind section 24(6), which says that while an investigation goes on, you do not ask questions and so forth. Right?

**Mr. Young:** The purpose of my wanting to speak to legal counsel is because there is a principle that the person being investigated has an unbiased investigation going through without a public debate about what could have been, should have been, or might be part of that investigation. It also, I think, will taint the resulting investigation.

That being said, when the investigation is done, let's go at it. Let's have that public debate. Let's have the politics around the set of facts that has been unbiasedly investigated. My concern is that when we withdraw that, things are not as they seem. An

investigation that starts reveals the facts. I'm just concerned about the rights and the integrity of the investigation by rescinding this section.

**The Deputy Chair:** Okay.

**Ms Blakeman:** Just for the full context for Parliamentary Counsel, the other side of this was the concern that there is no limit on how long it takes to complete an Ethics Commissioner's report and also no particular wording that gives direction as to how promptly it would be given to the Speaker. There is a corresponding silencer on the other side with 24(6), which says that you can't talk about it. So we have no limit on one side as to how long it takes to have an investigation take place, but on the other side it says that you can't talk about it until the investigation is complete. There's an unevenness there.

While I absolutely agree that the investigation should go forward in an unbiased way and to collect the facts, I believe that in this case it is not equal or fair to be suspending the freedom of speech for all members of the Assembly for an unspecified period of time while we wait for a report to be put forward. So one or the other: put a limit on how long it takes the report to happen, or rescind the suspension of the freedom of speech on the other side.

Is that fair, guys?

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

Parliamentary Counsel, are you ready to give any advice?

**Mr. Reynolds:** Thank you very much. First of all, I must apologize for not being here. We're hosting a national conference of parliamentary and legislative counsel right now. Normally I would be here but for the fact we have guests from across Canada, so my apologies. However, I've left them to their own devices, of course.

The second thing is that I'm not sure whether you want me to appear as counsel or witness here to talk about the section. What I can say about the section, now that I've been briefed on what it is you'd like to discuss, is that first of all I'm not entirely sure when this section came in, when this provision came in. We would have to look at that to see if it was in the first act. My recollection is that this provision has in fact been here for a while. I'm going off the top of my head, which is dangerous, potentially, but I believe that the first ruling with respect to this would have been under Speaker Schumacher. He was Speaker between 1993 and 1998, I believe, or probably 1993 and 1997. I believe that was the first ruling under this.

Now, once again, I'm not entirely sure whether the issue is, yes, obviously, the wording of this section or partially the interpretation of the section. This has been interpreted by Speakers. Of course, when I got over here, I understood what you were looking for. Of course, I have these rulings upstairs, but now Philip is, I believe, feverishly looking for the rulings as I speak. In any event, successive Speakers have ruled that this section means that questions are not in order with respect to a matter that is under investigation by the Ethics Commissioner or the subject of an inquiry. That's how the Speaker has interpreted it. I believe the Speaker has interpreted that to mean question period. That's my understanding. Questions have been ruled out of order perhaps by the members of the committee with respect to matters that are before the Ethics Commissioner.

The other things that this section, if you were asking for my opinion, would be directed towards would be that if a matter had been referred to the Ethics Commissioner, a committee of the Assembly should not either be struck or tasked with looking into

the same issue or the same thing about the member or the House, I guess. If there was to be a motion to look into the activities of a member, that would seem to run afoul of this.

I guess there were a couple of principles. If I had to use conjecture as to why, one would be because the Ethics Commissioner is so tightly intertwined with the activities of the Assembly. In some ways this officer is closer to the Assembly, I would submit as an opinion, than other officers because pretty much the sole function is to advise members. I mean, there are no inquiries of other people, I would say, with respect to certain senior public servants where there's an involvement. Essentially, this office assists in assessing the conduct of members. I'm looking here to see if there's any concurrence. So I would say that this is in there as a matter of respect.

**11:40**

The other thing is that you could raise an argument about duplication of justice in the sense that you had a committee investigating the same thing that the Ethics Commissioner was. I don't want to sound overly lawyerly, but there are some Latin phrases that cover this. If you're duplicating the effort in forums, if you were proceeding in two forums at the same time or when a matter has been decided, you have *res judicata* or something. You know, if you've asked the Ethics Commissioner to investigate and you ask a committee to investigate at the same time, then that's a duplication.

With respect to questions and the Speaker's rulings I'm frankly not going to comment a whole lot on what the Speaker has said. I mean, it's on the record, and I'm not here to question the Speaker's rulings. I would say that part of the rationale might be that the Speaker has accorded the Ethics Commissioner's investigation the same status as other items that are sub judice. The sub judice rule, which is found in the standing orders at Standing Order 23, says that a member will be called to order by the Speaker if that member

(g) refers to any matter pending in a court or before a judge for judicial determination . . .

I'll just skip to subclause (ii).

(ii) of a civil nature that has been set down for a trial or notice of motion filed, as in an injunction proceeding, until judgment or from the date of filing a notice of appeal until judgment by an appellate court, where there is probability of prejudice to any party but where there is any doubt as to prejudice, the rule should be in favour of the debate.

I imagine that what's happened is that that rule does not apply to administrative tribunals. Once upon a time, before 1994, it did. It was changed. It doesn't apply anymore. I'm speculating here, but I would imagine that what the Speaker or how the rule has been interpreted is to accord investigations into members the same status as matters before the court. Generally speaking, while it wouldn't say this, this is the equivalent of being subject to the sub judice rule.

**The Deputy Chair:** Okay. Thank you very much. That's very helpful information.

**Mr. Dorward:** Thank you for that. At the end of your discussion there I wanted to thank you because I believe that you hit exactly what I was going to ask. But maybe just to put it in layman's language for myself and then have you reflect back whether I've got an understanding, if a matter is before a court, a different court, then my understanding is that you said that it shall not be

discussed by the Assembly, and therefore it is the same situation with an investigation that the Ethics Commissioner is undertaking.

**Mr. Reynolds:** Well, once again, yes. To sort of parse that down a little, the basis is that the sub judice rule applies so that there isn't prejudice to a party. As you know, in the Assembly, if a member stands up and starts asking a question about someone who's subject to criminal charges, the Speaker would in the usual course of events rule that out of order because you're not supposed to ask questions about someone who is in custody or is facing criminal charges, has been charged.

With respect to civil matters it only arises when a matter is set down for trial, let's say, which, without getting into the civil trial process, is further down the road than a statement of claim. The lawyers may wish to nod at this point. In any event, all I'm saying is that I would imagine that if I was looking at this, the interpretations placed on this section by Speakers have drawn on the principles of the sub judice rule.

**The Deputy Chair:** Thank you very much. That's an excellent point, and I think it really helped clarify where we're at.

One more comment, Mr. Dorward, and then I'm going to call for the vote.

**Mr. Dorward:** Yes, just briefly. Given that there is no squishing of democratic ability for discussion in the Assembly because presumably shortly, within six months or a year or some other time frame, the Assembly will be able to openly discuss the report, I don't see getting rid of section 24(6).

I'll be voting against that motion.

**The Deputy Chair:** Okay. Thank you very much.

On the motion that Mr. Wilson put forward, those who support the motion, raise your hand.

**Mr. Saskiw:** We're not voting yet, are we?

**The Deputy Chair:** I am calling the question.

**Ms Notley:** Sorry. You know, we just got some new information. I didn't invite it, but you folks did, so I think we get to have a bit of a discussion about that now.

**The Deputy Chair:** So are you saying that you have further questions for our Parliamentary Counsel?

**Ms Notley:** No. But I believe I have the right to have a bit of a discussion around the information that was provided.

**The Deputy Chair:** Okay. I already raised my concern earlier. We've gone through this in so many circles.

**Ms Notley:** But we haven't had a chance to discuss the information that was just provided.

**The Deputy Chair:** Okay. All right. Quickly, a couple more questions. Let's move on. Ms Notley, go ahead.

**Ms Notley:** Well, I mean, I was just going to make the point that it sounds like there are different reasons why the Speaker makes the rulings that he makes. Certainly, the Ethics Commissioner is not a court of law, nor is he a judge. We've already had that case made to us somewhat enthusiastically by members of the government when we look to things about, you know, natural justice and appeals and all those kinds of things. That is not what the commissioner is. More to the point, we are currently reviewing this legislation, so we get to have that conversation.

As well, part of the Speaker's ruling does come from an extended interpretation of section 24(6). I would not believe that in any reasonable setting most Albertans would characterize our political discussions in the Legislature as deliberations or judicial-like deliberations that, you know, attract the rule of *res judicata*. I mean, that's ridiculous. That's just not what we're doing. We're having political discussions. That's what we are there to do. We are not there to be judges. I find it a bit surprising that anybody would suggest that what we do is *res judicata* or could amount to that in any setting.

That being the case, we're not going to debate the merits of the Speaker's ruling at this point, but we do know that one element of the Speaker's ruling ties to this section which, unfortunately, because of the way it's been interpreted, has gone beyond simply saying that committees can't inquire into a member's conduct while the Ethics Commissioner is inquiring into the member's conduct because that's reasonable to now being interpreted to say that Members of the Legislative Assembly cannot even discuss the member's conduct in any setting. So that means that this section has been improperly interpreted in a way that has resulted in the suppression of free speech in the Legislature.

I am saying that we need to get rid of it. If people want to propose an alternative version to it that limits its application, that's fine. Right now, because it's doing damage to free speech, I would suggest that it needs to go.

**The Deputy Chair:** Okay. Mr. Reynolds.

**Mr. Reynolds:** I don't know whether this would deter Ms Notley in any way, but I just want to clarify that when I was referring to a matter being subject to a dual process or *res judicata*, I was referring to a committee investigating at the same time that the Ethics Commissioner was. Although I realize you called my interpretation ridiculous, thank you very much.

**Ms Notley:** Well, you've done the same thing. It happens.

**The Deputy Chair:** At this point I want to welcome Ms Fenske, who is joining us. Welcome. Can you just state your name for the record?

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

**The Deputy Chair:** Thank you very much.

Any further discussion about this, then? I have Ms Johnson on the phone, who wants to comment. Go ahead.

**Ms L. Johnson:** Thank you, Mr. Chair. Good morning, everybody. I'm going to be voting against this motion. From my perspective, in the Assembly when we discuss legislation, that's more than politics. We discuss the laws that will be governing Albertans. To say that we only discuss politics in the Legislature: I want to disagree with that comment.

I also have a concern that the suggestion of removing this from legislation is binding the Speaker's hands, which is a whole other parliamentary process and tradition in Canada.

That's where I'm coming from in not supporting this motion. Thank you.

11:50

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

Any further points?

**Mr. Wilson:** I would just respond to Ms Johnson by suggesting that the Speaker has always stood up and suggested that he is here to enforce the rules that we provide him. We have the opportunity

to provide rules, and the debate around this table right now is on what those rules will say.

Thank you.

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

**Ms L. Johnson:** Mr. Chair, those rules are through the standing orders and not through legislation in a document, in a piece of legislation that we're discussing called the Conflicts of Interest Act. If we are going to limit and influence how discussion happens in the Legislature, then it should be done through a document that is an instrument of the Legislature. We are discussing the Conflicts of Interest Act. That's my reason for not supporting the motion.

**The Deputy Chair:** Okay. Thank you very much. Your point was heard. Thanks.

Any other suggestions or comments at this point?

**Mr. Wilson:** I think that if you were to read the Speaker's ruling, he refers directly to this piece of legislation, so I would disagree respectfully with your position, Ms Johnson.

**The Deputy Chair:** Okay. I heard that.

So at this point now I'm officially calling again for the vote on the motion on the floor. Those who support it, please raise your hand. Those who are against it, please raise your hand. Those on the phone? The motion has lost.

**Mr. Saskiw:** Recorded vote, please.

**The Deputy Chair:** You want to count the vote? Okay.  
Record the vote, please. Let's start from my right.

**Mr. Wilson:** For.

**Mr. Saskiw:** For.

**Ms Notley:** For.

**Ms Blakeman:** For.

**Mr. Young:** Against.

**Mr. Dorward:** Against.

**Ms Fenske:** Against.

**Mr. McDonald:** Against.

**Ms L. Johnson:** Against.

**The Deputy Chair:** Thank you. The motion has lost.  
The next one is item 111. Can I ask Ms Leonard to . . .

**Mr. Dorward:** We're far from finished this section, Mr. Chair. I'm sorry.

**The Deputy Chair:** Oh, right. Just a second. Okay. We have one motion on the floor. Yes. Thank you for that reminder. There are a couple of others.

Okay. The rescinding part we've dealt with. Now does anybody want to consider a motion? I think that for those who already said, "No change; just leave it the way it is," I see a potential motion that way. For anybody who wants to put in a time frame, there's another potential motion on the way.

At this point I would like to invite anybody who wants to make a motion. Mr. Wilson.

**Mr. Wilson:** Thank you, Mr. Chairman. I would like to make another motion in regard to section 24(6). We would make a recommendation as a committee for this section to read:

Where a matter has been referred to the Ethics Commissioner under subsection (1), (3), or (4), a committee of the Assembly shall not inquire into the matter.

**The Deputy Chair:** Okay. On that motion, any questions?

**Mr. Wilson:** I will just justify my reasons why. We would prevent what Parliamentary Counsel has said would be dual justice or dual inquiry, but it would still be a matter that could be debated on the floor of the Legislature. It would just be precluding a committee working on it at the same time.

**The Deputy Chair:** Okay. Any other comments?

**Mr. Saskiw:** Just briefly, I think this amendment kind of meets the concerns of both sides, one from the legal side, where you'd have a committee looking into a matter that's already before the Ethics Commissioner, but on the second side allowing a member to have free speech in the Legislature. Of course, members have free speech outside the Legislature, so it seems awkward and odd to put a gag order on them while they're in session. So I think this kind of meets both concerns that were expressed in the other motion.

**The Deputy Chair:** Okay. Thank you.  
Any further comments?

**Ms Blakeman:** I think it is important that we recognize and uphold a balance. If there is an unspecified period of time, as has been argued it is necessary to have an unspecified period of time in order to do a good job with the investigations done by the Ethics Commissioner, I think it's important that we not allow a suspension of the freedom of speech privilege, which is so highly regarded in our Assembly, to also be for an extended and unspecified period of time. Therefore, by omitting it from inclusion in section 24(6), that would balance this out in a way that I think would be better.

I am noticing that the investigations are taking an increasingly longer period of time. Where investigations used to be completed in a matter of two or four months, we're now into eight-month and 12-month and possibly longer periods of time, which has been in the past an entire sitting, an entire session, of the Assembly in which a particular subject cannot be raised in the Assembly. I think that that is very problematic.

So I support this because it tries to rebalance and make sure that freedom of speech is not curtailed for an undue period of time.

**The Deputy Chair:** Okay. Thank you.  
Anyone else? Ms Notley.

**Ms Notley:** Yes. I mean, I would also support it because it does address the issue that was raised by Parliamentary Counsel in that it negates possible dual process in a committee setting, but it's very clear that we're not characterizing question period as part of some form of dual process. It clarifies the issue somewhat so that we don't have the repeated impediments to free speech in the Legislature that we've seen when certain issues have arisen in debate.

**The Deputy Chair:** Okay. Thank you.  
Anyone else?

I hear no one, so on the question put forward, those who support the motion, raise your hand. Those on the phone, if you support it,

say yes. Those who are against it, please raise your hand. Those on the phone, say against. Thank you. The motion has lost.

**Mr. Wilson:** Recorded vote.

**The Deputy Chair:** A recorded vote. We'll start from the right again.

**Mr. Wilson:** For.

**Mr. Saskiw:** For.

**Ms Notley:** For.

**Ms Blakeman:** For.

**Mr. Young:** Against.

**Mr. Dorward:** Against.

**Ms Fenske:** Against.

**Mr. McDonald:** Against.

**Ms L. Johnson:** Against.

**The Deputy Chair:** Thank you. The motion has lost.

Any other motions on the floor about this item before I move to 111?

I was just reminded that lunch is coming. Let's give it one more try, and then we'll break for lunch.

**Mr. Wilson:** Sure. I will speak to a motion that looks to introduce some sort of time limits. I believe that it's a reasonable compromise based on the information that you guys have given us thus far from the commissioner's office. Given that the Ethics Commissioner has suggested that most investigations can be completed within six to 12 months, I would like to put a motion on the floor that would add a recommendation to revise section 25(7) to the effect:

where the request is made under section 24(1), (3), or (4), the Ethics Commissioner shall report the Ethics Commissioner's findings to the Speaker of the Legislative Assembly within 24 months of commencing an investigation or inquiry.

And a sub to that.

After 12 months the Ethics Commissioner shall be compelled to request that the Standing Committee on Legislative Offices convene, and they shall request the additional means in order to complete their investigation within the time frame of 24 months.

**12:00**

**The Deputy Chair:** Okay. Thank you for that motion.

Ms Notley.

**Ms Notley:** Yeah. I wanted to speak in favour of that motion. I think it is eminently reasonable. I did go through the website to look at the average amount of time from investigation to presentation of report. From what I saw on the website, we haven't actually had any investigations completed or submitted since I believe it's 2007.

In any event, between 2004 and 2007 the amount of time between complaint and investigation report ranged from three weeks to a long one of nine months, and the average was 17 weeks, or four months. Based on that history of investigations that have been completed up until 2007, it is, I think, an eminently reasonable proposal on the part of the Member for Calgary-Shaw to put the limits that he's putting on because that's well outside the time that has been taken in past investigations.

**The Deputy Chair:** Thank you very much.

**Mr. Young:** A question for the Ethics Commissioner or for Glen: are you conducting these investigations in an expedient manner, or are you delaying? Are you unreasonably stalling? Are you reasonably and expeditiously moving the investigations forward as the investigations demand?

**Mr. Resler:** Yes, in compliance with the legislation.

**The Deputy Chair:** Okay. Thank you very much.

**Mr. Wilkinson:** I'd just like to add on behalf of us as well that we realize a lot of people's reputations are at stake. For people who are the subject of investigation, it's very stressful on them. We know that, and we try to get a conclusion as soon as possible. That's just one of the reasons.

Also, when we do complete a report, there is a fulsome explanation – and there will be – as to why it took as long as it did. As Mr. Young indicated earlier, when that report goes to you, you have a chance to debate it fully and openly and to make some suggestions as well and comments, criticism about timelines, et cetera. That's fine. That's fair game. We're open to that, for sure.

**The Deputy Chair:** Thank you. Well said.

Any other comments?

**Ms Blakeman:** I'm speaking against this motion. Given the earlier conversations about the reassurances that we've had on the record now from the Ethics Commissioner's office that they complete their investigations as promptly as possible and release the report forthwith even though that wording is not in the legislation, I accept that, and I am very reluctant to give an outer timeline, which can become a goal rather than a cap. Now we've said that it's okay to take 24 months, which I'm not keen on. Again, my concern is still focused on the suspension of freedom of speech in the Assembly, so this particular motion does not address the concerns that I had with this section.

Thank you.

**The Deputy Chair:** Thank you very much.

Anyone else wish to comment? I hear none.

For this motion on the floor, those who support it, raise your hand. Those on the phone, if you support it, say yes. I hear no one. Those who are against it, please raise your hand. On the phone, if you're against it, say no. Thank you. Motion lost.

It's lunchtime. Thanks to the supporting staff who have provided lunch for us again. Once again, shall we take a 30-minute break? Okay. Thank you very much. We'll resume in 30 minutes.

[The committee adjourned from 12:05 p.m. to 12:38 p.m.]

**The Deputy Chair:** We've got a quorum now. I'd like to call the meeting back to order.

We are at item 111, I believe. If I can have Ms Leonard lead us through again.

**Ms Leonard:** Thank you, Mr. Chair. The next topic we're looking at is annual reports. Section 46 of the act says that the commissioner has to provide a report to the Speaker at least annually that lists members who haven't filed their disclosure statements or returns or haven't made a full disclosure and generally reporting on the Ethics Commissioner's affairs. Recommendation 111 suggested that section 46 be amended to require including in the

annual report the number of requests for investigations and, of those, how many were actually undertaken.

The Ethics Commissioner actually indicated at a previous meeting that in addition to the information currently required by section 46, in practice they include in the report things like the number of requests for advice, the number of requests for investigations, that kind of thing, so perhaps the committee would like to consider incorporating what they provide in their report specifically into the wording of the act.

**The Deputy Chair:** Okay. Anyone wishing to speak on this one?

**Mr. Dorward:** I would like to ask the Ethics Commissioner to what extent these kinds of things are already in his report. I have a copy of it here. You know, this is a little bit broader, but I kind of went through this and thought that I was seeing those kinds of statistics in here already.

**Mr. Wilkinson:** That's correct. We provide that information in our report. You're talking about item 111?

**Mr. Dorward:** Yeah.

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

Essentially, what the recommendation is asking for is already there?

**Mr. Wilkinson:** Yes.

**The Deputy Chair:** Okay. Thanks.

Any other questions? No. It's a quick item. Okay. No change. Move on. Item 112.

**Ms Leonard:** This is the issue of acceptance of findings by the Assembly. Under section 29 the Assembly can either accept or reject the findings that the commissioner puts in his investigations report, or it can substitute its own findings. Then if the Assembly decides that there has been a breach of the act, it can either impose the sanction recommended by the commissioner, any other sanction it considers appropriate, or no sanction at all. Item 112 recommended that this section be amended to remove the Assembly's ability to substitute its own findings. The committee just may want to consider if it wants to restrict the Assembly's powers with respect to the commissioner's findings.

**The Deputy Chair:** It's an interesting one.

**Mr. Young:** It seems to me that if the Ethics Commissioner undertakes an investigation and comes to some findings, that should be accepted. What we decide and what we do from that report and their findings is a whole different thing, and I think we have a lot of latitude on that. I mean, they found what they found, and to substitute their findings with something else I think is – I respect it. At the end of the day I may agree or disagree, and we can debate that, but he's come to a report, he's come to findings, and we should be accepting that and then deciding what to do in the Legislature with that report.

**The Deputy Chair:** Okay. Thank you.  
Mr. Wilson.

**Mr. Wilson:** Thank you, Mr. Chair. I would just note to the committee that this recommendation was made by the office of the Integrity Commissioner of Nunavut, so I would ask our office of the Ethics Commissioner to comment on this and perhaps give us

some context as to why another Integrity Commissioner or Ethics Commissioner would look at our act and see a hole here.

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

**Mr. Odsen:** Thank you, Mr. Wilson, for that question. Thank you, Mr. Chair. As I understand it, when this process first began, all of the Ethics Commissioners in Canada received notification and were invited to comment if they felt they wanted to. The Integrity Commissioner from Nunavut was the only one that did. Primarily, as I recall, his submissions focused for the most part on differences between his legislation and ours, and this is one of the differences. The point made by Mr. Young was, I think, the point that the commissioner from Nunavut was pointing to at the time, which is that you can accept the findings, you can reject the findings, but how can you possibly substitute your own findings when you haven't in fact conducted the investigation?

**The Deputy Chair:** Okay. Thank you very much. Good point.  
Any further comments by committee members?

**Ms Notley:** I mean, it's an interesting discussion. You know, I'm just trying to think it through a bit. You're right. How would you substitute your own findings per se? If you reject the findings, can you still impose a sanction? I guess that's the question.

You see, we started to have a bit of a discussion around mechanisms of appeal. Let's just say that somebody felt that they had been subjected to an unfair investigatory process that didn't meet the standards of natural justice, yada, yada, yada. We talked already about how that person would get up in the House and say yada, yada, yada if we chose not to go ahead with putting in the appeal language. Let's say that the Legislature is convinced that it wasn't a fair process. Then can you on that basis just reject the findings but still impose a sanction if you only reject part of the findings? I'm just curious. That's all I'm trying to say. I'm not sure where this leaves us in relation to those questions.

**The Deputy Chair:** Any comment from our Ethics Commissioner's office on that? Mr. Odsen.

**Mr. Odsen:** Thank you, Mr. Chair. Ms Notley, that's a very good question. I don't know that I know the answer to that question other than, I suppose, to fall back on the sort of first principle, that the Legislature can do just about anything it wants within the realm of its authority. Presumably, I guess, if the Legislature wanted to reject findings and still impose a sanction, it could do so.

12:45

**Mr. Resler:** Under section 29, powers of the Legislative Assembly, as it's currently written, if it's determined that there is a breach, you may:

- (a) impose the sanction recommended by the Ethics Commissioner or any other sanction referred to in section 27(2) it considers appropriate.

**Ms Blakeman:** Yeah, but they can also substitute its own findings.

**Mr. Resler:** Yes, and that's the question.

**Ms Notley:** Right now, and that's the point. This is suggesting that we would not give the capacity to substitute their own findings. If you simply reject the findings, on what basis do you impose a sanction even if you still think something went wrong, but you don't entirely buy the findings for whatever reason?

**Mr. Young:** I guess I have a problem with “substitute.” I mean, you guys have your findings, and you’re going to have those findings, and we’ll accept them. We may disagree with them, we may have our own findings, but we can’t substitute what you found for ours. Your report and your findings are what they are. The Legislature now has quite a breadth of ability to impose sanctions and do many different things, but that is the basis of the factual investigation and their findings, and where we go is different.

**Ms Notley:** Well, that’s my question, though. If you reject the findings, are you left with a blank sheet? Then how do you impose a sanction?

**The Deputy Chair:** Ms Blakeman, you have the floor.

**Ms Blakeman:** Yeah. That’s right. This one has always puzzled me because it just strikes me as being written in a way that is very confusing. Yes, ultimately the Legislative Assembly always has power over itself and with unanimous consent can do anything. But the trick there is unanimous consent. This is also allowing us, the Legislative Assembly, to put a different sanction in place or to impose no sanction, which is the pointy bit that we all could sit on because you could either end up with a pile-on, where if people were annoyed, you could have a majority of people pile on and decide that they were going to really come up with something truly wretched. Oh, sorry. The pointy bit was the petard. Sorry. Hoist on a petard. Sorry about that. We’ll just clarify for *Hansard*. Thank you very much.

Honestly, it could be a pile-on from a bunch of people putting a drastic sanction on someone because they’re all mad. Additionally, it gives an opportunity for vexatious or mischievous sanctions to be proposed in the House. So this one has always puzzled me, why it’s been allowed to sit, because I think there are two faults with it. One is substituting the sanctions, and that has its own problems inside of it as I’ve just described, but also substituting the findings. I think the committee should recommend that this be reviewed, and we in particular have trouble with the “substitute its own findings” and with substituting sanctions.

**An Hon. Member:** Is that a motion?

**Ms Blakeman:** I guess it’s a motion.

**The Deputy Chair:** It’s a motion on the floor.

Mr. Wilson, followed by Mr. Young.

**Mr. Wilson:** No.

**The Deputy Chair:** Okay.

**Mr. Young:** There are two things here. One is about the findings, and then there’s the sanction piece. I think we need to have a consideration of those separately. I think we can come to our own findings, but I don’t think we can substitute them. They’re findings. They found what they found, and we could find what we find. They can recommend some sanctions, and we can make the decisions on what we actually want to impose. That’s sort of the framework that I’m thinking. I’d certainly support having a framework or some guidelines around more work done on this because it is very confusing.

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

**Mr. Dorward:** I’m just wondering. Do we understand the concept, don’t like the wording, or do we not like the concept?

**Ms Blakeman:** I think what I’m hearing is that we, one, don’t like the idea that the Legislature would substitute its own findings and in particular that wording, “substitute its own findings.” That raises a number of issues like: well, then, if you substitute your own findings, do you have nothing? So a member has contravened or breached the act, the commissioner investigates and reports, and the Legislature goes: no, we’re going to find differently; we don’t think that person did breach the act. Now what?

There are two issues there, and the second is about imposing different sanctions. Again, that creates problems for, if you want to look at it, either side because there could be mischief and there also could be an unwarranted pile-on. There’s a dash in between those two words. It’s not an orange thing. Yeah, it’s not a pylon, an orange thing on the road.

**The Deputy Chair:** I see that potentially we can reach agreement on this one. So, Ms Blakeman, if I can invite you to clarify the motion you put on the floor, given the conversation, and see if we can get agreement on that. What are you putting forward for the committee?

**Mr. Young:** If I may, I think “substitute” is the problem that I heard.

**The Deputy Chair:** Okay. Take away that one.

**Mr. Young:** Yeah.

**The Deputy Chair:** Is that okay Ms Blakeman? Still thinking?

**Ms Blakeman:** Well, my motion was two parts.

**An Hon. Member:** Can we get one at a time?

**The Deputy Chair:** One at a time.

**Mr. Dorward:** My apologies, but I don’t know what it is. Can we have the motion restated so that we can help to try to resolve where we’re at right now?

**Ms Blakeman:** That

the committee recommend as part of its review of the Conflicts of Interest Act that section 29(1) be amended by deleting the words “or substitute its own findings.”

**The Deputy Chair:** That’s clear.

**Ms Blakeman:** Sorry. That’s the motion, to delete “or substitute its own findings.”

**The Deputy Chair:** Okay. That’s very clear to me.

Any other questions? Ms Notley, followed by Mr. Dorward.

**Ms Notley:** Yes. I’m just trying to clarify. So you’re deleting “or substitute” or you’re deleting “delete or substitute”?

**Ms Blakeman:** “Or substitute its own findings” would be deleted. So with the motion we’re recommending, it would read: “The Legislative Assembly may accept or reject the findings of the Ethics Commissioner and may if it determines that there is a breach . . .” and then it goes on in subsections (a) and (b).

**Ms Notley:** Yeah. Right. Then there are several issues here. I would love for us to get to a consensus, but I think we have slightly different views of things. On one hand, what I hear Ms Blakeman saying is that she’s actually kind of got a little bit of discomfort with the idea of the Legislature having authority over

any of this stuff – right? – because of the reasons that she discussed with respect to her pile-on.

Then there's also the question I think Mr. Young is talking about. Well, we can't substitute his findings – they're always going to be the commissioner's findings – but we can make our own findings, which I think is a different concept than what Ms Blakeman is talking about. So that's the first thing that I think we need to clarify because that's a much smaller differential really. Okay. So the findings of the commissioner will always be the findings of the commissioner, but do we give ourselves in that forum the authority to make other findings, which are our findings, not the commissioner's findings?

**Mr. Dorward:** Which seems to be there now with that word.

**Ms Notley:** Right. But that's a different concept than what Ms Blakeman is talking about because she's saying that she doesn't want us to have the ability to play around with findings. I think that is what you're saying, right? Or not.

**The Deputy Chair:** Here are my thoughts, observations. I think at one point she touched on both.

**Ms Blakeman:** I did.

**The Deputy Chair:** But the motion she put on the floor right now is only dealing with the one about that the Assembly doesn't have the authority to substitute. That's the one.

**Ms Notley:** Then my question is this. It's twofold. Are we voting to eliminate this under the assumption that without it being said, we somehow would still have the ability to make our own findings? I don't think that's what the outcome of the amendment is.

**The Deputy Chair:** Yeah.

Mr. Young, further clarification?

**Ms Notley:** Sorry.

**The Deputy Chair:** Oh. You had more? Okay.

**Ms Notley:** Then the second question goes back to my first one. In the event that that's not the case, the question becomes: if we reject all findings, how do we impose a sanction on the basis of what we have concluded is no facts at all? I'm just a little concerned about the structure of this and what we're actually doing.

**Mr. Young:** Okay. Let me just say that I know the motion is to remove that "substitute its own findings." What I'm thinking – and it's not a motion at this point – is just that the Legislative Assembly may accept or reject the findings of the Ethics Commissioner or come to its own findings and may if it determines that there is a breach . . .

12:55

**Ms Notley:** Oh, I see what you're saying.

**Ms Blakeman:** Well, I was going to say that we would delete the word "substitute" and in its place put "make." So it would read:

. . . accept or reject the findings of the Ethics Commissioner or make its own findings . . .

And it would continue on. That's a friendly amendment, which I may do to my own motion. Thank you very much. It would now stand as delete "substitute" and replace it with the word "make."

**The Deputy Chair:** Okay. I see lots of nods around the table. Is that all agreed? Raise your hands. All agreed.

On the phone. If you object, say no. I hear none. I think it's carried. Thank you very much.

The next item, Ms Leonard.

Oh, Ms Blakeman?

**Ms Blakeman:** Well, my second is what was originally part of the first motion, but I was requested to sever it, so I did. I believe that we need to be very careful about these sanctions. I would recommend and will put on the floor a motion under section 29(1)(a) to

delete everything after "impose the sanction recommended by the Ethics Commissioner," including subsection (b).

**The Deputy Chair:** Okay.

**Mr. Dorward:** We already have the word "may" in the first little part. If we remove that, it removes the flexibility that the Assembly may have to do anything with the information that they garner. We already kind of decided that we would allow the Assembly to have their own methodology to go through in addition to the report, but if we remove the ability to change the sanction, then we can't do anything with that other than accept the sanction or reject it. This allows us to have that flexibility in between, depending on what the findings of the Assembly are. So it could be to make it worse.

**Ms Blakeman:** You can always change it with unanimous consent. This would stand unless by unanimous consent the Assembly decided to waive that particular section in that instance.

**The Deputy Chair:** Okay. On that note, I'm just wondering if our clerk's office has any comment on that. It looks like they're exchanging some views.

Thank you, committee members. I think Mr. Wilson has been waiting for some time. The floor is yours.

**Mr. Wilson:** Thank you, Mr. Chair. I just wanted to clarify. I think, in my interpretation anyway, what we just had voted in that last motion for 29(1) is in regard to the findings of whether or not there's a breach. Now we're talking about what we can do with the sanction?

**Mr. Dorward:** Yes. Correct.

**Mr. Wilson:** Okay. Thank you.

**Mr. Dorward:** The point I was making is that if we go with that motion, then we have to either impose the Ethics Commissioner's findings or reject them and we'd have no middle ground to change it in the Assembly. I think that middle ground is a positive thing.

**The Deputy Chair:** I have a question for the Ethics Commissioner's office. It's just my curiosity. Once a report is presented to the Assembly and we accept some and we reject some, does the Assembly have the authority to say: we want you to further investigate this and get back to us?

**Mr. Wilkinson:** Yes, you could. Yes. You have the right to direct us in that regard. Sure.

**The Deputy Chair:** In that way, my reading is that if we have the "may" there, it does give us that whatever needs to be done. Then we can raise a question. We can ask for further investigation. We can even ask for a different process if we so wish. It's covered. Does that make any sense?

**Ms Blakeman:** I'm happy to withdraw the motion.

**The Deputy Chair:** Okay. Thank you very much.

Is there unanimous consent to withdraw the motion? All agreed, raise your hand. Okay.

On the phone. If you agree to withdraw the motion, please say yes. Thank you. It's unanimously agreed to withdraw.

**Mr. Wilson:** I just was curious what the will of the committee would be to discuss – if you look at 27(2)(d), we're talking now about what the sanctions are that are within the power, the authority of the Assembly to do. I'm wondering if there's any discussion around whether or not we want to exclude (d) from that.

**Mr. Dorward:** I don't think so. Don't you think somebody should be punted if it was recommended by those guys that they be punted?

**Mr. Wilson:** But you would be accepting that recommendation anyway. The way that we've just said, by withdrawing that motion of Ms Blakeman's, is that now we can impose anything we choose.

**Mr. Dorward:** Correct. Including these things.

**Mr. Wilson:** Right.

**Mr. Dorward:** So even though the commissioner says you can't punt them, we actually could punt them.

**Mr. Wilson:** Right.

**Mr. Dorward:** You want to get rid of that?

**Mr. Wilson:** I'm asking if there's a discussion.

**Mr. Dorward:** Personally, I think we should be able to punt them. Why not?

**Ms L. Johnson:** Agreed.

**Mr. Young:** Well, clearly it's an extreme decision, and at the end of the day we're all duly elected by our constituents and we can get punted every four years. But there's always an extreme example. I don't know what the extreme example is. I mean, we could think of a worst-case scenario, and hopefully it doesn't come to that. I think it should be in there, but I think that we've got to be very, very, very . . .

**Mr. Dorward:** Well, that goes without saying, but still.

**Mr. Wilson:** If it goes without saying, then why have it in there?

**Mr. Dorward:** Well, I think it should be there because if it wasn't there, the Ethics Commissioner could not recommend that.

**Mr. Wilson:** No. The Ethics Commissioner could recommend it. I'm just simply saying that in 29(1)(a) if we were to exclude option (d) from the option that the Assembly has – only the Assembly.

**Mr. Dorward:** So if I understand you, Mr. Wilson, you're saying that with respect to the portion of 29(1)(a) that refers to the Assembly coming up with their own sanction, the Assembly can't add that as an extra sanction that the Ethics Commissioner didn't come up with.

**Mr. Wilson:** Yes. The Assembly could not use (d), but the Ethics Commissioner could.

**Mr. Dorward:** Just a question back to you: why would we want to remove the option for the Assembly to be able to do that even though the Ethics Commissioner didn't recommend that sanction?

**Mr. Wilson:** Because right now it's within the guidelines of the legislation to do it. I'm just wondering – again, this is just something that I wanted to open to the committee to understand the will of the committee here – if we recommend removing that as an option because as Ms Blakeman outlined earlier, the potential for . . .

**An Hon. Member:** Piling on.

**Mr. Wilson:** Exactly.

**Mr. Dorward:** Anybody ever been piled on?

**Ms Blakeman:** If it had come through the Ethics Commissioner, yeah, I think so.

**The Deputy Chair:** Okay.

**Ms Notley:** I have two minds on this because it can go either way. You can have a situation where let's say the Ethics Commissioner does an investigation, presents a report, finds a form of breach that's in the middle of the scale, and recommends something under section 27 but not (d). Then subsequent to the commissioner's investigation, you know, Charles Rusnell busts out with more documents, and we're debating it in the Legislature, and we suddenly discover that this is much more serious than we thought. At that point it might well be the case that we would want to be able to say: "You know what? This makes us all look bad if this person continues to draw a paycheque. Like, this is too much." Right? That's the one side where I would argue for keeping it in.

There's the other side, of course. Again, you know, the pile-on, right? The commissioner makes a finding, comes up with a mid-range penalty. Let's say it's a finding against the Leader of the Opposition, and we're three months away from an election, and everybody's insane, so then the majority of the House chooses to amend it so that that person loses their seat. It goes both ways. I think that would be sort of a political – in the normal course of things, you would think that politics would prevent that kind of abuse of authority because it would be such a slap in the face to the voters. But, you know, there's the normal course of things on a lovely Friday afternoon two years before an election, and then there's the normal course of things at 2 o'clock in the morning, you know, three days before a writ is dropped, so I don't know.

I'm not actually recommending. I'm just throwing out that these are two scenarios that we have to deliberate, exercise some judgment on.

**1:05**

**The Deputy Chair:** Okay. Some pros and cons on that. Thank you.

Any further comments? Anyone else? I'd like to invite somebody to give some thoughts on how we move forward on this one now that we've heard both sides.

**Ms Blakeman:** Well, I tried to do a motion, and people didn't want it. I withdrew it, so I think we move on at this point. You leave it like it is.

**The Deputy Chair:** Okay.

**Mr. Wilson:** Mr. Chair, I'd be happy to make a motion to amend 29(1)(a) to make an exception that would read, "impose the sanction recommended by the Ethics Commissioner or any other sanction referred to in section 27(2) it considers appropriate with the exception of (d)" or as per legalese – I don't know which would be better – 27(2)(a), (b), or (c).

**The Deputy Chair:** Okay.

**Mr. Dorward:** I don't know. With respect, I don't think that you can do what you said and have it make any sense because the first part of 29(1) deals with the issue of accepting, rejecting, or making an own finding. That's one part. The second part is that regardless of how it came about, there's a breach. So if there's a breach, if the Assembly feels there's a breach, then it can impose the sanction recommended by the Ethics Commissioner or another sanction.

**Mr. Wilson:** Right.

**Mr. Dorward:** I think I understand what you're trying to say, but I don't know that your motion captured the twist that you would have to throw into 29(1)(a) in order to make it happen. But it's academic because I don't agree with it, so I'll be voting no anyway, so proceed.

**The Deputy Chair:** One of the things I was wondering, if it helps as we deal with over a hundred and some suggestions: for those where we don't have a very strong case that we're agreed to make the change, the tendency is to leave it as is. If that's okay with Mr. Wilson, we'll just proceed that way.

**Mr. Wilson:** With respect, there is a motion on the floor, Mr. Chairman.

**The Deputy Chair:** Okay. Any further comment on that one before I call for a vote?

I hear none. Those who support that motion, please raise your hand. Those on the phone, if you support, say yes. Those who are against this motion raise your hand. On the phone, if you are against this motion, say no. Thank you. Motion is lost. Thank you very much, everybody.

Are we ready for the next subject now? Okay. Ms Leonard, lead us through.

**Ms Leonard:** Thank you. The next section is records management. This item deals with section 47(2), which is the retention periods for all records in the custody or control of the Ethics Commissioner. The committee had previously discussed retention periods in regard to public disclosure statements only, but this is specific to all the records that the office of the Ethics Commissioner has. It's currently two years after a member ceases to be a member and two years after the end of the cooling-off period for former ministers and former political staff members. Number 113 suggests that the committee consider lengthening the period.

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

**Mr. Resler:** I'd just like to clarify. The current legislation says, "for a period of at least 2 years after the Member ceases to be a Member." So we have the flexibility of a longer period should we choose.

**The Deputy Chair:** Okay. Thanks. That's important to know.

**Ms Notley:** It seems to me that one of the deferred issues was the limitation period. Did we not defer that, or did we vote and the opposition lost?

**Ms Blakeman:** Yes. But it was a different limitation, about when it was investigated, not how long.

**The Deputy Chair:** Yes, I think you're correct. There is a two-year time thing that we had on the deferred list.

**Ms Notley:** Yeah. If there is, then I think this obviously is a link to that.

**The Deputy Chair:** Combine all together? No? Different?

**Mr. Resler:** If you extend it from two to three years, that type of thing.

**Ms Blakeman:** Yes.

**Ms Notley:** If we end up deciding that investigations can happen outside of two years, then presumably that has an impact on how long we get them to hold on to documents.

**The Deputy Chair:** On that suggestion, should we bundle this together with that other one we are going to be dealing with?

**Ms Notley:** Yeah.

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

Let's move on to the next one.

**Ms Leonard:** Okay. The next section we're dealing with is postemployment restrictions. The first one is to do with government employment for former ministers. Section 31(1) says that for 12 months after a minister ceases to be a minister, they're prohibited from having certain dealings with the government. They can't contract with, accept benefits, or be employed by government entities with which they have had significant official dealings during their last year of being a minister. There is no acting on a commercial basis or making representations with regard to any ongoing matter that the minister directly acted on while in office.

The first issue to consider is the time period. Number 114 asks whether 12 months is an appropriate length of time, and 116 suggested reviewing when the 12-month period actually begins – does it begin when the minister ceases to be a member of Executive Council altogether or when the minister ceases to be the minister of that particular portfolio? – then considering whether the section should be reworded to make that clear.

The other issue is whether 31(1) should be amended so that the cooling-off period doesn't apply if the contract or benefit is in respect of further duties in the service of the government. This is 115. The committee might want to consider whether to include this type of exception so that, among other things, ministers would be able to be employed in the public service during the 12-month cooling-off period.

**The Deputy Chair:** Okay. Thank you very much.

**Ms Notley:** Sorry. I just did a quick scan of the jurisdictional comparisons, and again I didn't see anything on the cross-jurisdictional cooling-off periods, but perhaps I missed it. Is it in there somewhere?

**Mr. Resler:** It's 48.

**Ms Notley:** Forty-eight? Okay. Thank you.

**The Deputy Chair:** Thank you. Any other questions?

**Ms Notley:** I just want to look at that for a second.

**Ms Blakeman:** I'll venture out on this while other people speed-read their stuff.

**The Deputy Chair:** We'll come back to Ms Notley.

**Ms Blakeman:** From my observations and discussions with outgoing ministers, I think the 12-month cooling-off period appears to be appropriate, and I'm fine with keeping that.

With respect, the Ethics Commissioner and I have had quite a difference of opinion on one of the cases that he has given advice on. That one could be illustrated by recommendation 115, which would allow former ministers to be exempt if they continue to work for the Crown. I think that's the whole point of it. Once you're unelected, you're gone, and you can't use that knowledge that you had as a minister to somehow get yourself another job. I think that if you're gone, you're gone.

I'm sorry?

**Mr. Dorward:** I'm sorry. I shouldn't have spoken while you were speaking, but what I said was: to benefit the government. You don't think it should benefit the government, the person's knowledge?

**Ms Blakeman:** You know what? The purpose of this was to say to the public: here are the rules we're all going to work by. With respect, Mr. Dorward, I think it's highly unlikely that a member of the opposition gets employed by the government to do something. Really what we're talking about here is former ministers doing this. I think that for the purposes of the public they felt that ministers, once they're done, should not get an advantage in getting another job out there by being able to use the knowledge they gained as being a minister to get themselves a job in which that knowledge was directly used. I don't think that should be happening.

**The Deputy Chair:** Okay. If I can ask committee members to direct questions through me so I can keep track of who is on the floor.

Mr. Young, please.

**Mr. Young:** Thank you. Well, I respect what you're saying, and I think knowledge should be a decider of where you get your job, but the question should be about the conflict and if there's a conflict in that. That should not be about: you're done, you're done. I mean, we're not done. We did things before, we're going to do things after, and we carry our knowledge all the way through from grade school. But is there a conflict? That's what the purpose of our discussion should be.

1:15

**Ms Blakeman:** It's a conflict because they get an advantage.

**Mr. Young:** Advantage for whom? An advantage for Alberta is not a bad thing.

**Ms Blakeman:** There's an additional advantage on a partisan basis here, which I think is inappropriate, and I think that people out there think it's inappropriate.

**Mr. Young:** Bureaucracy is not a political element, but certainly the knowledge that would come to bear could be an advantage for

the department, the government, and everything else. It's whether there's a conflict. If you could point me to a conflict, I would love to discuss that.

**The Deputy Chair:** Yeah. Thank you.

**Mr. Young:** Knowledge is not conflict. Knowledge is knowledge.

**Ms Blakeman:** It is conflict, taking knowledge that you gained as a minister to get yourself a job.

**The Deputy Chair:** Okay. If I can interject, members of the committee, I think Ms Notley has the floor.

**Ms Notley:** I just had a further question at this point. I did just look through page 48, which was actually what I was looking at before, but it took me a while to collect. That crossjurisdictional stuff there on page 48 is about whether or not there is an ability to waive the cooling-off period, which is, of course, another very important issue, but what this is about is the length of cooling-off periods. So I'm looking for an interjurisdictional comparison on the lengths of cooling-off periods in other jurisdictions. I'm just wondering if that is somewhere else in the document. There's reference to New Brunswick and one other place, but none of the other ones seem to include length.

**The Deputy Chair:** Let's give Dr. Massolin a chance to clarify that.

**Dr. Massolin:** Sure. The whole issue of postemployment restriction begins on page 30 of the document.

**Ms Notley:** Page 30?

**Dr. Massolin:** Page 30. Page 33 gives an overview in table 9 of the length of, exceptions to, and exemptions from cooling-off periods in selected jurisdictions.

**Ms Notley:** Okay. There we go, 24 months. That's what I was looking for.

**Dr. Massolin:** There you go.

**Ms Notley:** Thank you.

**The Deputy Chair:** Thank you.  
I have Mr. Wilson.

**Mr. Wilson:** Thank you for that, Mr. Chair. I was just hoping to ask Mr. Young if he could clarify his comments and if he's in fact suggesting that we waive or get rid of the cooling-off period altogether. The way I interpret your statement is that it would be in the public interest for every former minister to continue working within their ministry because of the knowledge that they've gained and how that will help the public interest of Albertans.

**The Deputy Chair:** Mr. Young, please.

**Mr. Young:** Thank you for asking for the clarification. No, I think there should be a cooling-off period because there are things that are in the immediacy of government, so a cooling-off period does make absolute sense. Just because you're a minister, it doesn't mean you're right for whatever potential position, but if you are and you've gone through a cooling-off period and you have the knowledge and expertise, then you shouldn't be prohibited from a position.

**Mr. Wilson:** Okay. I think that we're in agreement that that cooling-off period should be in place, and as long as you've gone through the cooling-off period, then it's okay. I would absolutely agree with you on that.

**Ms Blakeman:** This is about exempting the cooling-off.

**Mr. Young:** That's the discussion about what conditions are around the exemption, but I wasn't speaking necessarily to the exemption.

**The Deputy Chair:** I think a number of points are on the table, so let me see if I can help to tease through some parts of this.

One of the questions is: a 12-month cooling-off period, is that adequate and appropriate? If so, let's agree, move on, and get it out of the way.

**Ms Notley:** I'm going to make a motion that the cooling-off period for the ministers be extended to 24 months as exists in British Columbia, Quebec, and the House of Commons.

We've got British Columbia, Quebec, and Ottawa with a 24-month cooling-off period. I think that we should be slowly creeping up the pole towards the higher bars, so I would recommend that we increase our cooling-off period to 24 months.

**The Deputy Chair:** Okay. Thank you very much.

Any questions on that motion? Any discussion on this one? Mr. Saskiw.

**Mr. Saskiw:** Yeah. I would just speak in support of extending the cooling-off period to a period of 24 months. I think the other jurisdictions put 24 months in for a reason, and part of that is that there are occasions when the public sees, for example, former ministers of the cabinet receiving very lucrative posts postdefeat or postelection. I think that incorporates a state of cynicism within the political culture, so I'd support an extension of the period from 12 months to 24 months.

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

Just a word of caution. When we use examples, I would appreciate it if you didn't mention specific people's names and so on and so forth because they cannot defend themselves.

**Mr. Saskiw:** I didn't mention anyone's name.

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

**Mr. Saskiw:** I want that on the record. On the record I did not mention any specific person's name.

**The Deputy Chair:** Thank you.

Any other comments?

**Mr. Dorward:** I buy into what our Ethics Commissioner already said here in 117, which is that

no changes should be made to the post-employment restrictions applicable to ministers. The 12-month cooling-off period is appropriate. The last review of the Act resulted in legislative changes which enabled the Ethics Commissioner to provide exemptions to the cooling-off period. If an exemption is to be granted it is best that the Ethics Commissioner have the ability to review it to ensure that it is not contrary to the public interest and to place any necessary conditions upon employment.

So I'll vote against the motion.

**The Deputy Chair:** Thank you, Mr. Dorward.  
Anybody else?

**Ms Blakeman:** What are we talking about now, 117 or 116?

**The Deputy Chair:** We're talking about the 24-month cooling off.

Are we ready to call for the vote on that one? Okay. Those who support the motion put forward to extend the cooling off to 24 months, raise your hand. Those on the phone, if you support that, say yes. I hear no one. Those who are against that one, please raise your hand. On the phone, if you're against this motion, say no. Motion lost.

**Ms Blakeman:** Could we get a recorded vote on that one, too?

**The Deputy Chair:** Record the vote. I'll start from my right again.

**Mr. Wilson:** For.

**Mr. Saskiw:** For.

**Ms Notley:** For.

**Ms Blakeman:** For.

**Mr. Young:** Against.

**Mr. Dorward:** Against.

**Ms Fenske:** Against.

**The Deputy Chair:** On the phone.

**Mr. McDonald:** Against.

**Ms L. Johnson:** Against.

**The Deputy Chair:** All right. So that's 5 to 4. Motion lost. Okay. We teased up one layer.

Any further suggestions so we can move forward?

**Ms Notley:** That's just for former ministers that we're dealing with now, right?

**The Deputy Chair:** Yeah.

Mr. Saskiw.

**Mr. Saskiw:** Yeah. If you look at recommendation 119, which is to amend section 31(3), which would remove the ability to provide an exemption to the cooling-off period, we've seen in the past where individuals . . .

**The Deputy Chair:** Sorry. If I can interject, we're still on the chunk before that one. We're talking about 114 to 116. If you don't mind holding off a little bit on the next one.

**Mr. Saskiw:** Okay. I'll hold off.

**The Deputy Chair:** Thank you very much.

Okay. On this chunk do I hear any further suggestions?

**Ms Blakeman:** Well, again, I will state that I do not agree with recommendation 115, which is coming from the Integrity Commissioner of Nunavut, that would allow the cooling-off period for former ministers to be exempt if they're going to work for the government or serve for the government. I think the cooling-off period is the cooling-off period, and it should be that

in government and in any of the other – I mean, it’s very clear, the point of that. I think this contravenes it, so I don’t support it.

Thank you.

**The Deputy Chair:** Okay. Thank you very much.

Mr. Dorward.

**Mr. Dorward:** I was actually going to talk about a different issue.

**The Deputy Chair:** You want to hold off? Okay. We can hold off.

**Mr. Dorward:** Unless there’s somebody who wants to talk about your issue, I can hold off my issue for just a second. It’s kind of a new issue.

**Ms Notley:** She’s speaking against an issue. Does anyone want to speak for that issue? If not, we can just move on, right?

**Ms Blakeman:** If not, let’s move on.

**The Deputy Chair:** Okay.

**Mr. Dorward:** Well, I didn’t hear a motion.

**Ms Blakeman:** Well, we’re not making motions for everything. If we don’t want to do anything with it, we’re just moving on.

**The Deputy Chair:** Let me clarify that. I think what I’m hearing, Ms Blakeman, is that you’re trying to put a motion on the floor to say that there is no exception?

**Ms Blakeman:** No.

**The Deputy Chair:** Just move on? No change?

**Ms Blakeman:** I’m saying to just move on. Don’t accept it. Just move on.

1:25

**Mr. Dorward:** Then I will bring forward my issue, which has got to do with 116. I’m trying to understand this issue. I believe I’ve got this right and would ask our Ethics Commissioner to confirm. When a person starts the clock ticking on the cooling-off period, the way I read the legislation, my understanding is that the following scenario could happen. The thing that you can’t touch during the cooling-off period has got to do with the knowledge that you gained as a minister in a particular field or area.

Therefore, if you were minister of agriculture, for example, and then you were flipped to be the Minister of Finance and were the Minister of Finance for 11 months and then the cooling-off period started for whatever reason, the legislation as it reads now would reach back to your period of time as an agriculture minister, when you have not been in that world for 11 months, and extend it for another 12 months, which would be a total of 23 months. Yet with respect to your adventures as a Finance minister – and I chose that word expressly – that would extend that for 12 months, which is wholly appropriate for the Finance one in the example I just gave.

With respect to agriculture, I’ll restate that you would actually have a 23-month cooling off period of time because you’ve already done 11 while you were the Finance minister. Now you’ve got to do another 12 months cooling off, but that cooling off is a result of your being a Finance minister, not an agriculture minister.

**The Deputy Chair:** Okay. I see lots of people trying to carve at this.

**Mr. Dorward:** Well, this is why I want the commissioner to tell me if I’m right.

**The Deputy Chair:** Okay. Mr. Resler, help us through.

**Mr. Resler:** The interpretation that you put forward is correct. The way the legislation is stated right now is that “a former Minister shall not, for a period of 12 months after ceasing to be a member of the Executive Council . . .” If you look at one year back, you were the minister of agriculture in January, and from February to December you were the Minister of Finance. You ceased at the end of December being part of Executive Council. The 12-month clock then commences. For that one month in which you were the agriculture minister, it does continue for an additional 12 months at the end of the year, so it is a 23-month period in which you did not participate in that portfolio.

**Ms Notley:** Well, the issue is being on Executive Council and being in cabinet and making decisions in cabinet. That’s the issue, and that’s why it’s there. That’s where key decision-making is done.

**The Deputy Chair:** Thank you.

Did I miss you, Mr. Wilson?

**Mr. Wilson:** You did, but that’s okay. Ms Notley made my point quite clearly.

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

**Mr. Dorward:** I would recommend that we revise section 31(1) to clarify for the Ethics Commissioner that, with respect to this section, the cooling-off period applies from the point in time when the former minister ceases to be employed at that ministry relevant to their prospective employment appointment rather than at the point at which they’re not a member of Executive Council.

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

Mr. Wilson.

**Mr. Wilson:** Thank you, Mr. Chairman. I wholeheartedly disagree with the sentiments expressed by that motion. I believe that the way that the legislation is written now, with it being a 12-month cooling-off period after ceasing to be a member of Executive Council, makes eminent sense. I do not think that it is reasonable that someone could lose an election and, because they were the Minister of Education two years ago, the day after the election take a job in the Education ministry because they hadn’t served in that portfolio. I believe there’s a 12-month cooling-off period. I would also ask our researchers to just let us know if there is any other jurisdiction that has a provision that would allow for this to take place across the country.

Thank you.

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

Mr. Saskiw.

**Mr. Saskiw:** Yeah. I just want to speak. Again, I wholeheartedly disagree with this type of amendment. I don’t think it’s in place in any other jurisdiction. I can recognize how the member opposite may want – you know, there may be a lot of defeated cabinet ministers in the next election, and they may need some new employment. But I still think that in this case it should not matter which minister you are to get a job the day after. You’re defeated as a cabinet minister, and then the next day you can just get a lucrative employment contract within the government? I just think

there's a reason for cooling-off periods. If this amendment is put forward, we might as well not even have a cooling-off period. There is simply no point to it, and I'm surprised this is the position, apparently, of the PC government, that they want to push this proposal forward. I'm surprised.

**The Deputy Chair:** Ms Notley.

**Ms Notley:** Yeah. I think the other thing that we have to remember is that we're not just talking about these poor unemployed cabinet ministers who suddenly are, you know, singing for their supper on Jasper Ave., looking for a job and not being able to find one in Alberta. What we're also talking about is the issue of, for lack of a better term – and I want to be careful when I say this term because this is not what I'm suggesting that anyone does, but it's exactly the kind of thing that this legislation is in place to ensure doesn't happen. There's, frankly, the question of influence peddling and the whole issue of the time between when someone is in the position to have an impact on a decision and the time at which they become employed as a lobbyist or a representative of an organization that is trying to get those decisions made.

Now, if it is the case that what you're trying to do is change this legislation – you know, let's say that a private health care provider wants something, and you are the Minister of Health. Then 12 months before the election you become – and I don't mean this personally; I'm just talking issues, not people – the Minister of Culture because you've announced that you're retiring, and they decide that's where they're going to put you.

**Ms Blakeman:** Which is an important position.

**Ms Notley:** It is. Nonetheless, I'm just, you know, getting myself into – whatever.

The point is that you're at the table. You are still at the table. You're at the cabinet table. It would be grossly inappropriate if someone could then go off and get a job working as a lobbyist for a private lab company three days after they ceased being a member of Executive Council. That's a whole other thing. It impacts the way they function at Executive Council, it impacts public trust of how they function on Executive Council, and it also impacts, frankly, how they function as the Minister of Health. If they know that their plan is to tell the Premier that they're not going to run again and these people are constantly lobbying them and they're offering them \$700,000-a-year jobs – and these are just private-sector companies – when they're no longer there, then this 12-month period that they can serve out as the Minister of Culture makes this irrelevant, this whole piece of legislation. That's why it won't work.

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

**Mr. Dorward:** If I can clarify something.

**The Deputy Chair:** You have a clarification?

**Mr. Dorward:** Well, yeah. I don't know. I appreciate the things that you've said, but effectively the way the act is written is that the act is not sticking to the 12 months. We've already had a motion and some dialogue relative to 24 months versus 12, and the motion passed that it should stay at 12 months. What I'm trying to fix is from the 23rd month back to the 12th month, when presently the legislation reaches back to the 23rd month and the 22nd, 21st, 20th, 19th, et cetera, to fix that issue. So I'm wholly agreeing that within the 12-month period of time it should still

stay there. If a person had eight different ministries within the 12 months, I'm agreeing that that should all be that period of time, but I'm wanting to fix what was noted by our Ethics Commissioner in 117, that this legislation effectively reaches back into that pre period of time.

**Ms Notley:** But Executive Council is Executive Council. Right now, or up until very recently, we had a Deputy Premier whom our leader used to refer to as, I think – what do you call the front of the car there? – the hood ornament. Based on what you're suggesting, back when we had a Deputy Premier in charge of hood ornaments, there would have been no prohibition under your plan on that particular person getting employed the day after he lost his seat even though he clearly has authority and power, and you know he does.

1:35

**Mr. Dorward:** Then I would ask the question with respect to, say, an ag minister who stayed as an ag minister or another minister sitting right beside the minister in the example that I gave of, say, Culture, who had been there for 18 months. That person leaves for a reason. They don't go back 23 months, but the person sitting here who happened to be ag minister and then the Finance minister does reach back to 24 months even with respect to things that happened in Executive Council. What we're trying to do is get a consistency in the legislation relative to the 12 months. Does that help at all?

**The Deputy Chair:** Okay. Thank you very much.

I can see lots of interest in this being clarified. I have Ms Fenske, followed by Ms Blakeman.

**Ms Fenske:** Thank you, Mr. Chair. I certainly won't be supporting this motion. It seems to be convoluting it even further. We've heard the Ethics Commissioner state that this section is working. The Ethics Commissioner said that this was working when we asked him about the whole cooling-off period, the whole issue with respect to this, and I will not be supporting this motion.

**The Deputy Chair:** Thank you very much.

I do have Mr. Resler on the speaking list. Do you want to comment at this point or after Ms Blakeman?

**Mr. Resler:** I'll go after Ms Blakeman. That's good. Thanks.

**The Deputy Chair:** Okay. All right.

Ms Blakeman, please.

**Ms Blakeman:** Thank you. I just have to refocus us. We are dealing with part 6 and subsection 31, which is dealing exclusively with dealings with government by former ministers. We're not talking about the ability of a past minister of whatever, ag or Culture, to go off and get a job in a different sector out there. This is about working for government or lobbying directly the government with the expertise you have gained from being around that table as a member of Executive Council.

I came to this going: you know, people have got a right to find work. We can't say that just because you've been a minister of the Crown, you never get to work again with the knowledge that you have gained from being in that position. But when I look at this again, I go, "Okay; this is about dealings with government; this is about a former minister of ag now getting to go and work for the ag department without having the cooling-off period applied," and that, to me, is wrong.

If there is a motion on the floor . . .

**Mr. Dorward:** There is. I made it.

**Ms Blakeman:** Okay. But now I can't remember it.

**Mr. Dorward:** More or less accepting 117.

**Ms Blakeman:** Okay. Then I'm going to be speaking against your motion – I'm sorry, Mr. Dorward – because I think it's important that we do speak on behalf of the public and say: fair is fair. You can't take that information and then turn around and be the most sterling person applying for the job or maybe the only person applying for the job. You just came out of Executive Council. You've got insider knowledge. It is a conflict of interest. It is information nobody else gets to have. You should have a cooling-off period, and that cooling-off period should be 12 months.

**The Deputy Chair:** Okay. Thank you very much.  
Mr. Wilson.

**Mr. Wilson:** Well, thank you, Mr. Chairman. I am genuinely confused by Mr. Dorward here, and I'm hoping he can clarify. We've already voted on a motion to maintain the 12-month cooling-off period, essentially. The way I read recommendation 117 is that that's all it's suggesting and that 12 months is appropriate. No change being made to the postemployment scenario would suggest that it's 12 months after you leave Executive Council, so I challenge your CA math in being able to . . .

**An Hon. Member:** No need to get personal.

**Mr. Wilson:** I'm not getting personal. I'm merely suggesting that the way the legislation is written and your motion are in conflict here.

**The Deputy Chair:** Mr. Wilson, I think you're talking about item 116, not 117. You said 117.

**Mr. Wilson:** Okay. Sorry. I believe that was what Mr. Dorward had last suggested, 117.

**The Deputy Chair:** Item 116 is what we're dealing with right now.

**Mr. Wilson:** Okay. You're right. It is 116.

Well, further to that, I still don't understand. If you could clarify for me how you've said during this debate, Mr. Dorward, that the 12-month period should still be in place, that it should just not be in place if you left the ministry afterwards. Are we still talking that a 12-month period after you leave Executive Council regardless is in place? Is that your motion?

**The Deputy Chair:** That's a fair question.

Mr. Dorward, feel free to answer if you want.

**Mr. Dorward:** Yeah. Mr. Wilson just tweeted out, saying that David Dorward "made a motion to essentially remove any cooling-off period for former ministers at #ableg Conflicts of Interest Act Review," which Mr. Saskiw retweeted out there to the world while we're sitting here talking about an open and somewhat nonpartisan discussion of ethics and morals and things like that in the Conflicts of Interest Act. You know, we have a healthy dialogue happening out there in the Twittersphere, making accusations about challenging my abilities as a chartered accountant to count in the middle of all of that.

**Mr. Saskiw:** Point of order, Chair.

**The Deputy Chair:** I'd like to have Dr. Massolin . . .

**Ms Blakeman:** I'm sorry. The point of order has to be recognized.

**The Deputy Chair:** Oh. Somebody is raising a point of order? I'm sorry. I was looking something up.

**Mr. Saskiw:** Mr. Chair, I just raise this point of order under the appropriate standing orders. Mr. Dorward is making allegations that we're somehow questioning his competency. I just want it on the record that we're allowed to have a fulsome debate in committee as well as outside of committee. There's nothing in the standing orders or rules that prohibits us the ability to express ourselves to the fullest extent outside of this room, inside of this room, to the media, or to anyone else, and he shouldn't question our ability to do that. Let's get on with business. We have a substantive discussion here. Mr. Wilson asked a question. Let's get on with it.

**The Deputy Chair:** Thank you very much.

Thank you, all, for giving me a second to review what's happening here.

Mr. Dorward, do you want to further clarify your intent there?

**Mr. Dorward:** Well, sure. Firstly, in response to that, I never questioned anybody's ability to do that. I simply stated that it was done. Then I did state that I felt that Mr. Wilson had made some comment about my CA math, which I took maybe inappropriately as a bit of a slice at myself. Certainly, based on your words, I'll reflect on that and dismiss the feeling that I had at that time.

**Mr. Saskiw:** Mr. Chair, I'll withdraw the point of order and clarify that if his feelings were hurt by the comment about the CA math, we'd respectfully retract that comment.

**The Deputy Chair:** Thank you very much.

**Mr. Dorward:** Now, with respect to the issue there's no intention in my motion at all to change the 12-month cooling-off period for ministers. I would again like to go back to the Ethics Commissioner to have these folks let us know whether or not my concern is valid relative to the inconsistency that presently exists in the legislation.

**The Deputy Chair:** Okay. Thank you very much.

Actually, I was trying to follow everybody's point of view. I actually see Mr. Dorward's point, too. I think he's trying to get some consistency with the 12-month period, too, but from a different angle.

I would highly recommend, hon. members of the committee, that if you could direct questions to me, in that way we'd avoid getting sucked into this personal/not personal, getting to a point of order or clarification, all that stuff. I do think everyone is trying their best to present a perspective, and I certainly appreciate that.

At this point I'd like to ask Mr. Resler to give us some of his information and experience so far to help us through.

**Mr. Resler:** Recommendation 116 was a recommendation which we put forth. We were asking for clarity because we've had comments received from members on how that section is applied, that 12-month period. What we're looking at is: at what point in time should the calculation of the 12-month cooling-off period take place? Does it take place when you cease Executive Council, or does it take place when you cease that portfolio, during that one-year period previous to being on Executive Council, whatever

portfolios you were in at that point in time? When does that clock start? That's the clarity that we're looking for.

**1:45**

In the example that was provided, if you ceased Agriculture in January and the 12-month period started the following January, there is a 23-month period in which you're removed from that portfolio. You cannot be employed in an area in which you had significant official dealings.

**The Deputy Chair:** In that regard, the way that I'm following what you're saying is that that person has extended more than 12 months. It goes beyond . . .

**Mr. Resler:** . . . when you're looking at Agriculture. We are looking for clarity to say: is that the intent of the legislation and correct, or would you like to choose?

**The Deputy Chair:** Okay. Mr. Odsen.

**Mr. Odsen:** Thank you very much, Mr. Chair and Glen. The issue then becomes, as he pointed out, that if you're talking about significant official dealings, which is part of the test to be applied as to whether or not the cooling-off period applies for a particular type of employment – for example, for the former minister of agriculture the cooling-off period applies to the agricultural sector or something along those kinds of things, but it wouldn't apply to employment, let's say, with an oil company or something like that, okay? If the issue is being a member of Executive Council and the cooling-off period, then I think that that raises issues around the significant dealings because it doesn't matter what these significant dealings were. That's kind of the thing.

Again, just to be clear, we're not making a recommendation from the Ethics Commissioner's office one way or the other. We're simply pointing out that this is what you've got. It's really two different issues, in a sense. Is it cooling off from being a member of Executive Council, or is it cooling off from being a minister with significant official dealings with respect to a particular sector? The effect is now and the wording is now that it's being a member of Executive Council, and that's where the extension of time comes in.

**The Deputy Chair:** Thank you. That's very helpful to clarify that.

**Mr. Wilkinson:** I may add that this actually happened. That's why we brought it forward. A member was quite upset when he found that he was facing 23 months. We sympathized with that, and we got a legal opinion and said that's the way the act was written. At the time when we canvassed people, there was nobody that said to us: "Oh, yeah. Sure. We wrote that in there. That should be 23 months." People around this table maybe have better knowledge than us, but at the time everybody felt 12 months was kind of the standard, the protocol. When 23 months came up, people said nobody ever contemplated that. So we said that we think you should have the opportunity, as both Glen and Brad have said, to discuss it.

**The Deputy Chair:** Thank you so much. It's very, very clear what the question on the table is.

**Ms Notley:** That's interesting. That may be where the source of this particular discussion arose, but I will go back to my original points. First of all, 31(1) refers to a member of Executive Council. At least some people who would have been behind putting that in place did that because they understand that the way government works is that Executive Council members have significant

decision-making abilities and authority over matters that do not necessarily live in their ministry. They also have access to information over matters which are not limited to their ministry. That is clearly the case when you look at, for instance, FOIP and the fact that we can't get any information around what happens in Executive Council. It's because Executive Council has highly confidential discussions about issues that are – it's not like: oh, well, we're talking about oil now, so you seven ministers can leave the room. That's not the way it works, folks.

Now, you add that to the fact that these folks are shaking up ministries about every three months these days. You go from one to the other to the other, and then you've got the minister of everything who has his fingers in everything, regardless of what the title is. That's why Executive Council is what is defined. It's because that's who makes the decisions. Be very clear that if we consider changing this to make it limited on the basis of ministries, we've just driven three oil-filled tanker trucks through this conflicts of interest legislation, and we have rendered it meaningless.

**The Deputy Chair:** Okay. Thank you very much.

I have Ms Johnson on the phone. Please proceed.

**Ms L. Johnson:** Thank you, Mr. Chair. Can we call the question? Then I'd like to make a motion.

**The Deputy Chair:** Okay.

**Ms L. Johnson:** But I need the motion on the floor reread.

**The Deputy Chair:** Yeah. We will clarify that. I have Mr. Dorward down on the list next. Can you address both?

**Mr. Dorward:** Yeah. That last comment by Ms Notley is really confusing. It leads me to believe that there is not enough understanding of the issue here. That's a relevant discussion about 12 or 23 months, but I have no idea why those comments apply to simply trying to get all of the legislative provisions in the act back to a 12-month position and not allowing an anomaly of the timing of a minister that is asked to be a minister go back to 23 months by some irregularity in the legislation which causes that to happen. That's all that this motion is about. It's to have it go back to 12 months, which is the way that it is now, and not have it at 23 months in there under a weird set of circumstances. It's all we're trying to do here.

**The Deputy Chair:** Okay. Thank you very much.

Hon. members, my reading is such. The decision point on the subject is: do we take into consideration the time on Executive Council as the time when we start talking about the cooling-off period of 12 months or the ministry, the portfolio, that you had before? The current practice, if I read correctly – I think our commissioner's response was that you are using the Executive Council as a timeline, and that resulted in some circumstances where people went way beyond 12 months. You're asking the committee to clarify the point to start at. You really don't have a strong preference one way or the other; you just want to clarify that.

Okay. If somebody wants to put a motion forward in this regard . . .

**An Hon. Member:** We already have a motion.

**The Deputy Chair:** Mr. Dorward has a motion already? Can you restate the motion?

**Mr. Dorward:** Sure.

We recommend that section 31(1) clarifies that the cooling-off period applies from the point in time when the former minister ceases to be employed at the ministry relevant to the prospective employment appointment rather than the time at which that member leaves Executive Council.

**The Deputy Chair:** Okay. Thank you. That's very clear. Any further discussion? Mr. Wilson.

**Mr. Wilson:** Thank you, Mr. Chair. I was wondering if research was able to find anything crossjurisdictionally.

**The Deputy Chair:** Dr. Massolin, please.

**Dr. Massolin:** Yes. Thank you, Mr. Chair. Ms Robert has some information that's included in the current crossjurisdictional comparison.

**The Deputy Chair:** Okay. Go ahead.

**Ms Robert:** Thank you, Mr. Chair. I'll refer you to appendix A of the crossjurisdictional, which has a table that includes all of the cooling-off periods for the jurisdictions that were included in the crossjurisdictional.

**Ms Notley:** What page is that?

**Ms Robert:** It starts on page 41.

**Ms Notley:** This is the one, September 10, 2013?

**Ms Robert:** It's all cumulative. So, yeah, that'll be part of it.

I just did a quick look at the jurisdictions that were included in the survey. What I found was that in B.C. and Ontario the terminology is: when a member of Executive Council ceases to hold office. That's when the cooling-off period kicks in. In Manitoba and Quebec it's when a minister leaves office, and in Nova Scotia it's when a minister ceases to hold office.

Okay. Now, with respect to what that means, how that's interpreted, we're going to have to have a bit of a longer look into how that's interpreted in each of these jurisdictions because it's not defined or clarified any more in the legislation.

I'll draw your attention to the Conflict of Interest Act applicable to ministers in the House of Commons. That's on page 45. Section 35 of the act says:

35. (1) No former reporting public office holder shall enter into a contract of service with, accept an appointment to a board of directors of, or accept an offer of employment with, an entity with which he or she had direct and significant official dealings during the period of one year immediately before his or her last day in office.

That's the only one that's a little different from the others.

1:55

**Ms Notley:** I thought somewhere else we saw that they had a 24-month cooling-off period.

**Ms Robert:** The federal one is kind of complicated. There's stuff for reporting public officers, there's stuff for public officers, and there's stuff for staff.

**Ms Notley:** Okay. We can go into that later. It's fine.

**The Deputy Chair:** Okay.

**Ms Robert:** That's basically everything I was able to find on this clip.

**The Deputy Chair:** Thank you so much. We appreciate that.

Mr. Resler, did you have some additional information for us?

**Mr. Resler:** Just to clarify as far as the legislation in the other jurisdictions, when we're looking strictly at postemployment restrictions as they apply to further employment with the Crown, I'll draw your attention to pages 48 and 49 of the crossjurisdictional. There are six jurisdictions that do not require an exemption from the Ethics Commissioner. There's no waiver required, so they're automatically allowed to be employed with the Crown.

**Mr. Dorward:** Regardless of the number of months?

**Mr. Resler:** Yeah.

**Ms Blakeman:** And that's Crown, government?

**Mr. Resler:** Yes, strictly the Crown.

**The Deputy Chair:** Okay. Thank you. Boy, this is a very interesting one.

Question on the motion. Those who support the motion put forward by Mr. Dorward, raise your hand. On the phone, if you support it, please say yes. Those who are against it, raise your hand. Those on the phone, say no. The motion is lost. Thank you very much.

**Ms L. Johnson:** Mr. Chair, may I make a motion?

**The Deputy Chair:** Yeah. Go ahead, Ms Johnson.

**Ms L. Johnson:** Okay. I move, in regard to item 116, that section 31(1) be amended so that the cooling-off period applies from the point in time when the former minister ceases to be a member of Executive Council. Period. Stop. The end.

**The Deputy Chair:** It's already there. That's the current practice.

**Mr. Odsen:** That's right.

**The Deputy Chair:** Ms Johnson, that means that we don't need to make any change if you are supporting that.

**Ms L. Johnson:** I would say that this discussion has clarified that when they're done Executive Council . . .

**The Deputy Chair:** Mr. Dorward put a motion to change that, but the current practice is counting based on their time after leaving Executive Council. I believe that's what you're going for, right?

**Ms L. Johnson:** Mr. Ethics Commissioner, do we need different wording, or is this discussion sufficient to clarify for your actions?

**The Deputy Chair:** Please respond. Mr. Resler.

**Mr. Resler:** The wording is sufficient, then.

**The Deputy Chair:** Okay. The wording is sufficient for the Ethics Commissioner's office.

Any further comment on that?

**Ms L. Johnson:** I'm good if the room's good.

**The Deputy Chair:** Thank you very much. There's no need to change it.

Any other comments before we move on to the next subject? I hear none, so let's move on, Ms Leonard, to 117.

**Ms Leonard:** This is the Ethics Commissioner's ability to grant exceptions. Under section 31(3) the Ethics Commissioner can grant an exemption to a former minister from the cooling-off period in certain situations if the conditions and the manner in which the contract or benefit is awarded are the same for all persons similarly entitled or if it's the result of an impartial process open to a significant class of persons or if the Ethics Commissioner believes that the contract or benefit won't create conflict between the minister's private interest and the public interest.

The first issue that the committee might want to consider is whether to keep this ability to grant exemptions as it is or remove it altogether. Recommendation 119 suggested that the power should be removed altogether, 117 was the commissioner's recommendation that it stay as it is, and 120 and 121 both raised the issue of the conditions under which the commissioner grants an exemption. So the committee might want to discuss the factors that the commissioner takes into account and whether they should be included in the actual wording of the act.

**The Deputy Chair:** Okay. Thank you very much.

I think we've touched on some elements of this already, so I'm going to ask the Ethics Commissioner's office to sort of share information, experience, and where you stand now.

**Mr. Odsen:** Thank you, Mr. Chair. I'll endeavour to answer the question if I can. This issue, obviously, is one that members have expressed some concern about from time to time, so we thought it was something that this committee was going to want to consider. By way of background and to mention this again – I think it's been mentioned before – this was not in the act when the act was initially enacted, and it may not have even been in the act for the first review or two. But in the most recent review it was the then Ethics Commissioner who recommended that it be placed in the act, and ultimately the committee was persuaded that it ought to be in the act.

In just about every other jurisdiction in Canada there is the ability for former ministers to continue to serve the public through employment in government, in essence, by becoming part of the bureaucracy. In the majority of instances no waiver of the cooling-off period is even required by an Ethics Commissioner. If it's employment in government to the benefit of the public, then the cooling-off period doesn't even apply.

In this instance, with the Alberta legislation, what you have is a situation where if a department contacts our office requesting a waiver – it's not the individual who is the former minister; it's the department that has to contact the office – indicating that they want to employ a former minister in some capacity or other and seeking a waiver of the cooling-off period to enable that to occur, they have to provide the case to us that meets the various tests that are set out in the legislation, as were mentioned. We then are obliged under the legislation as it presently reads to determine whether, firstly, the private interest of the member is not being furthered in a way that's contrary to the public interest. If that's the case, then we can grant the waiver subject to such conditions as the Ethics Commissioner may determine are necessary to ensure that the public interest is being met and served by that individual being employed in that position. So that's the context in which we're dealing here.

I guess the question, obviously, for the committee to consider is whether you want to leave that in place, whether you want to remove it, or whether you want to change it in some way or another.

**The Deputy Chair:** Okay. Thank you very much. I'll just try to recap. If I hear you correctly, you're saying that the majority of other jurisdictions do not even have that waiver there. We are to some degree already advanced in that way. There's a process where we have to ask for a waiver in this regard.

**Mr. Odsen:** Well, I certainly indicated that, yes, it's the case that the majority of jurisdictions – and that's shown, I think, in the crossjurisdictional information that you have – do not even require any kind of involvement from the Ethics Commissioner's office. I don't think I characterized that as advanced. I simply said that that's the way it is.

**The Deputy Chair:** Okay. Thank you. Yeah. That's very helpful.

**Ms Blakeman:** I think this should be removed. I think we've tried it, and I would argue it has not been a success. I think that the powers that were granted to enable the Ethics Commissioner to provide exemptions to the cooling-off period should be revoked.

So I would be speaking against 117, and I'm happy to put a motion on the floor to that end.

2:05

**The Deputy Chair:** Okay. Any other comments?

**Ms Notley:** Yeah. I mean, I agree with some of those comments in that I think that allowing discretion on an issue like this, which, you know, has to do with sort of very personal financial benefits to unelected previous cabinet ministers, is problematic. I think it's a bit problematic for the public trust, and there are different ways to approach that. I think that if there was more detail as to why the exemption was given, I might be more inclined to consider allowing for the exemptions to still be there. But I think if you're going to waive the application of a clear set of statutory rules, then I think there needs to be a very clearly outlined explanation for why that's happening.

That's not the practice now in part because of confidentiality issues and all that kind of stuff. Then the problem becomes that we go back to the other issue that, as well, we've got rules. Are we following them or are we not following them? So that would go to transparency, at least, if we had sort of clear reasons and rationales given for why we're waiving.

The other thing that worries me a little bit is that, I mean, I can see where there can be both problems and arguments in favour of the situation with a former minister ultimately being employed within the government. You know, there have been a lot of concerns raised in the public with the recent incident with respect to that.

My bigger concern is this whole issue of whether you're able to take a job, essentially, as a lobbyist or take a job for a private company that has significant interests with the government. That's also covered under section 31, and it appears to me in my reading of section 31(3) that that's also something that can be exempted under 31(3). I'm not saying that it's happened yet, but I'm very concerned that it could happen. I'm also not comfortable with that piece because that again gets back to the other issue that we have of certain people having – or, you know, basically the relationship between decision-makers and potential employers that have an interest to pursue within the public sector.

That's sort of my consideration on this issue. Either we ramp up the transparency and the rationale behind the exemptions or we eliminate the opportunity to waive them.

**The Deputy Chair:** Thank you very much. Any other comments?

There is a motion on the floor to delete that exemption. On that, any further discussion?

**Ms Blakeman:** Sorry. I should just say: recommend that.

**The Deputy Chair:** Recommend to delete. Okay.

**Mr. Saskiw:** I just would speak in favour of amending subsection 31(3) to remove the ability to provide an exemption to a cooling-off period for former cabinet ministers. You know, we either have cooling-off periods or we don't. I think what happens when a former cabinet minister right after an election gets a lucrative contract from government is that the public confidence wanes when they see that. They see this and say: "Was there something? Was it because of connections? There was no open job competition." Those types of factors come into play.

I think that, you know, going into public office, when you get elected, if you know that there's a cooling-off period of 12 months, you should expect that after you leave office, if you have certain information or certain connections, you cannot have a fat-cat job as soon as you get defeated.

I would speak in favour of maintaining cooling-off periods, and that's why I speak in favour of this motion that's been put forward.

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

I just have a quick question, just to help me along this question, for the Ethics Commissioner's office. You've mentioned already that across jurisdictions others do not really require that. My take from what I'm hearing from you is that you as semi-independent or arm's length from anybody else have the authority to assess whether this is a conflict or not, whether this is in the public's best interest. Therefore, that's what that clause is really designed for. Okay. That makes sense to me.

On that note, anybody else? Mr. Young.

**Mr. Young:** Yeah. With all due respect, Mr. Saskiw, the reference to fat-cat jobs I think is inappropriate. I mean, there are certainly well-paid jobs and there are less well-paid jobs, and they demand different skill sets and stuff. Your point can be very well stated, and I respect it, but I don't think you need to characterize it as fat cat.

**The Deputy Chair:** I will give Mr. Saskiw a chance to reconsider or withdraw that comment.

**Mr. Saskiw:** Yeah. I would just classify it as a significant compensation above their pay scale at a fair market value price.

**The Deputy Chair:** Okay. Thank you very much.

On that motion, I'm going to call for a vote. Those who support recommending to remove the waiver, raise your hand. Those on the phone, if you support it, say yes. Those who are against it, raise your hand. Those on the phone, if you are against this motion, say no. Okay. Motion lost.

**Mr. Wilson:** Could we have a recorded vote?

**The Deputy Chair:** We'll record the votes, again starting on my right.

**Mr. Wilson:** For.

**Mr. Saskiw:** For.

**Ms Notley:** For.

**Ms Blakeman:** Definitely for.

**Mr. Young:** Against.

**Mr. Dorward:** Against.

**Ms Fenske:** Against.

**The Deputy Chair:** On the phone?

**Ms L. Johnson:** Against.

**Mr. McDonald:** Against.

**The Deputy Chair:** Thank you, all. That motion is defeated. The next subject, Ms Leonard.

**Ms Leonard:** Okay. The next topic is the term "significant official dealings." Several of the cooling-off prohibitions in subsection 31(1) apply only to departments or provincial agencies with which the minister had significant official dealings during his or her last year as minister. This is defined in subsection (2) as being "directly and substantively involved" in an important manner.

Number 122 recommended expanding the prohibition in 31(1) to apply to dealings with all government departments, not just those with which the minister had significant official dealings.

The other issue raised was with regard to the definition of significant official dealings. The Ethics Commissioner's submission felt that the definition in the act was appropriate, but there was a submission that said it was too vague and should be amended to include the information in the Ethics Commissioner's bulletin of January 1997.

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

Any questions from members of the committee?

**Ms Blakeman:** I just had a momentary brain freeze. We're on significant official dealings now?

**The Deputy Chair:** Yes.

**Ms Blakeman:** Thank you.

**Ms L. Johnson:** Mr. Chair?

**The Deputy Chair:** Yes. Go ahead, Ms Johnson.

**Ms L. Johnson:** According to the document I'm looking at – I think I have the right version – line 124, the Ethics Commissioner's office is comfortable with the definition.

**The Deputy Chair:** Yes.

**Ms L. Johnson:** Is that agreed?

**The Deputy Chair:** Yeah. I see them nodding.

**Ms L. Johnson:** I therefore make the motion that we accept 124.

**The Deputy Chair:** Thank you very much. The motion is on the floor. Any further discussion?

Okay. Those who support the motion, please . . .

**Ms Notley:** Whoa. Whoa. Whoa. I'm just trying to make sense of it.

**The Deputy Chair:** I asked.

**Ms Notley:** No. I'm still looking at it.

**The Deputy Chair:** Okay. I'm going to call the question. Those who support the motion on the floor, raise your hand. Those on the phone, if you support this, say yes. It's to leave it the same, no change. Those who are against this motion, raise your hand. Motion carried. So there's no change. Just leave it as is.

2:15

**Mr. Saskiw:** I'd like to make a motion to broaden the scope of section 31(1) because the current statement is too restrictive.

**The Deputy Chair:** How are you going to do that? Do you want to think of a way to . . .

**Mr. Dorward:** It's contrary to our motion.

**Mr. Saskiw:** Yeah. It's contrary to the motion. I'm allowed to make that motion.

**The Deputy Chair:** Okay. Can you restate your motion? I'm not sure I followed that.

**Mr. Saskiw:** Yes. I make a motion to recommend amending the prohibition set out in section 31(1) to broaden the definition to apply to dealings with all government departments.

**The Deputy Chair:** Okay. Thank you. Any further discussion on that motion?

**Ms L. Johnson:** Well, I have to read the section.

**The Deputy Chair:** Okay. I'll give you 30 seconds.

**Ms L. Johnson:** I would respectfully ask for an example of what part of government isn't already covered in that section.

**The Deputy Chair:** Okay. Mr. Saskiw, do you want to clarify that one?

**Mr. Saskiw:** Yeah. Currently the prohibition applies to departments "with which the former Minister had significant official dealings." We'd want to apply the definition to all government departments.

**Ms L. Johnson:** Well, section 31(a.1) says, "a department of the public service or a Provincial agency." Departments are in (a), equivalent bodies are in (b), and (c) refers to "a department of the public service or a Provincial agency." So I'll be voting against your motion, respectfully, Mr. Saskiw.

**Mr. Saskiw:** Yeah. Just to clarify, of course the prohibition deals with significant dealings. We're stating that it should be applied to all government departments.

**The Deputy Chair:** Okay. Thank you for that clarification.

Do members have any other questions?

Okay. We're good. Now, for that motion, those who support it, raise your hand. Those on the phone, say yes if you support it. Those who are against it, raise your hand. On the phone, say no if you're against it. Five to four. The motion lost.

Okay. Are we good to move on to the next subject?

**Ms Leonard:** The next subject is the definition of former political staff member. In section 1(1)(b.1) this is defined as the former Premier's chief of staff; deputy chief of staff; former director of the office of the Premier, southern Alberta; and any former executive assistant to a minister. It was suggested that this could be expanded to include former press secretaries although it seems that because of the order in council that defines executive assistants, they're already included. Perhaps the committee just wants to consider whether anyone else should be included in this definition.

**The Deputy Chair:** Thank you very much.

**Ms Blakeman:** No. My reason for raising this was to ensure that the new category of political communications staff were in fact included under the category. I've had assurances from the Department of Justice representative that, in fact, given Order in Council 192/98 they do fall under the definition of a former political staff member and are subject to the provisions, and that's what I was looking for.

**The Deputy Chair:** So it's been dealt with.

**Ms Blakeman:** It's been dealt with. Move on.

**The Deputy Chair:** Thank you very much.

Let's move on, unless I hear anyone object. I hear none. Let's move on.

**Ms Leonard:** The next issue is the cooling-off period for former political staff members. Section 32.1(1) says that the cooling-off period for these individuals is six months. Under subsection (5) the Ethics Commissioner can grant an exemption in certain circumstances, like with ministers. Although the Ethics Commissioner suggested that these provisions didn't have to be changed, there was one suggestion to lengthen the cooling-off period to 12 months and another to remove the ability to grant exemptions.

**The Deputy Chair:** Thank you very much. Numbers 126 to 128. Mr. Saskiw.

**Mr. Saskiw:** Yeah. Just with respect to, I guess, 126, former political staffers in many cases have significant material positions within government, and oftentimes chief of staff positions are exceptionally significant. In those cases one would think that a similar restriction to the cabinet ministers should apply. That's why I would move a motion to recommend that paragraph 32.1(1) be amended to lengthen the cooling-off period of former political staffers from six months to 12 months.

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

**Ms Notley:** I would speak very much in favour of that for a number of reasons. We have countless examples of former political staffers ending up on payrolls of, again, major corporations that have significant interest to be gained through their relationship with the government. It is exactly that kind of relationship that undermines public trust, and, again, thanks to the crossjurisdictional comparison we can see that there are a number of jurisdictions that have already increased it past six months. So we would simply be adopting good practice relative to other jurisdictions in the country if we were to do this. That's a good thing to do, I would think.

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

Any other comment? I'm wondering: I see, I think, that the commissioner has a suggestion here of no changes. Can anyone outline a little bit the different perspectives?

**Ms Fenske:** Could I just jump in there for a minute, Mr. Chair?

**The Deputy Chair:** Okay.

**Ms Fenske:** I would think that should this be accepted, there would be some legal obligation as the employer to then compensate them for those additional months, and I think the ramifications of that are substantial. So I won't be supporting that. I think it's working right now. Unless we want to change the budget.

Thanks.

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

**Mr. Saskiw:** Just to respond, I don't think there would be any type of legal compensation result. This is just that a former political staffer could not have those types of dealings within 12 months rather than six. Respectfully, I don't think there's an issue.

**The Deputy Chair:** Okay. Gotcha.

I just want to make sure if our Ethics Commissioner's office wishes to say anything or not before we vote.

**Mr. Resler:** Yes. We looked at the comments as far as the crossjurisdictional. It ranges from six months to 12 months. Alberta, Nova Scotia: six months. Manitoba, Quebec, House of Commons: 12 months. You mentioned Quebec. We do feel that the more restrictive you are on any employment circumstances, you should look at possible compensation.

**The Deputy Chair:** Okay. Thank you. So you're thinking that we need to create an environment where you do attract talent, but you deal fairly?

**Ms Notley:** Well, can you tell us if there is a compensation system in the jurisdictions where there are 12 months?

**Ms Blakeman:** Or 18.

**Ms Notley:** Or 18. I'm thinking probably not.

**The Deputy Chair:** Anyone wish to comment on that one? No. Okay.

**Ms Notley:** So we've managed to do best practice in other jurisdictions without creating the obligation to compensate.

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

**Mr. Odsen:** I was just going to say that I don't know whether there is or not, one way or the other. That doesn't necessarily mean that there is. It doesn't necessarily mean that there isn't.

**The Deputy Chair:** So the evidence is not strong.

**Mr. Odsen:** I don't know.

**The Deputy Chair:** Okay. Thank you very much.

**Ms Blakeman:** Well, that's not what he said.

**The Deputy Chair:** What?

**Ms Blakeman:** He didn't say that the evidence wasn't that strong.

**The Deputy Chair:** That's my interpretation. Okay.

Go ahead, Mr. Odsen. If you feel like you want to clarify, that's fine.

**Mr. Odsen:** All I said is that I don't have the answer to that question, whether or not compensation exists in those other jurisdictions.

**The Deputy Chair:** All right. Close? Okay.

**Mr. Saskiw:** I guess, you know, when you look at the crossjurisdictional and you look at other jurisdictions that have 12 months – some have 18 months – I think a period of 12 months is kind of the middle of the road, and in Alberta we should try to incorporate the best practices and put the strongest piece of conflicts legislation in place. That's why I'd hope that the people of this committee would incorporate a 12-month period.

**The Deputy Chair:** Thank you very much.

That closes the discussion. Those who support this motion, raise your hand. Okay. So is everybody clear?

**Ms L. Johnson:** Which motion?

2:25

**The Deputy Chair:** The motion on the floor put forward by Mr. Saskiw is

to extend the cooling-off period for political staff from six months to 12 months.

**Ms L. Johnson:** Okay. Thank you.

**The Deputy Chair:** Okay. Again, we're going to call the vote. Let's repeat and make sure everybody is clear on this. Those who support this motion, raise your hand. On the phone, if you support this one, say yes. Those who are against it, raise your hand. On the phone, please say no. Five to four. The motion is defeated.

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

**Ms Leonard:** Okay. The next topic is senior officials and postemployment restrictions and other restrictions, but actually I thought that since we'll be discussing this in more detail when we get to the Fowler memo, perhaps the committee would like to defer it till then?

**The Deputy Chair:** Do you want to do that later? Agreed? Okay. It's going on the deferred list. Thank you.

Let's move on.

**Ms Leonard:** Okay. The next topic is just generally to do with the Ethics Commissioner. The first one is criteria for appointment. Number 131 was the suggestion to amend the act to include criteria for appointment of the Ethics Commissioner as the Parliament of Canada Act does for the federal commissioner. There are currently no criteria in the act, so the committee might want to consider whether they want to include any requirements or leave it as it is.

**The Deputy Chair:** Okay. Anybody have any opinions on this one?

**Mr. Saskiw:** So is this just like a job description requirement? Is that what we're talking about?

**Ms Leonard:** What it says in section 81 of the Parliament of Canada Act is basically that the Ethics Commissioner has to be either a former judge; a former member of a board, commission,

or tribunal who is an expert in conflicts of interest, financial arrangements, professional regulations, or ethics; or a former Senate ethics officer or Ethics Commissioner.

**The Deputy Chair:** Do we want to make any changes here? I hear none. Unless somebody objects, I'm going to move on. No change.

Let's move on. Next one.

**Ms Leonard:** The next topic is special Ethics Commissioner, and number 132 suggests including a provision for the appointment of a special Ethics Commissioner in cases where the commissioner can't act because of his own conflict of interest. Section 37 currently allows for the appointment of an acting Ethics Commissioner in certain circumstances like if the position becomes vacant or the Ethics Commissioner can't act because he's ill, but there's no provision for appointing a special Ethics Commissioner, so they might want to consider adding such a thing.

**Mr. Dorward:** Can I point out the notes there? I think it covers the area, and we should move on.

**The Deputy Chair:** Okay. Any objections? Mr. Saskiw.

**Mr. Saskiw:** Yeah. I mean, I kind of think this makes sense. I don't know of a situation where there's ever been a conflict where the Ethics Commissioner couldn't act, but what would happen now, I guess, if there was?

**Mr. Wilkinson:** Section 40(2) allows the Ethics Commissioner to "engage the services of any persons . . . necessary to assist the Ethics Commissioner in carrying out [his] duties." It's never happened, but it could do that.

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

**Mr. Odsen:** I can just perhaps help in that regard. That contemplates the kind of situation that occurred in B.C. recently, where the Ethics Commissioner was asked to investigate the Premier of British Columbia and felt that there was the potential for a conflict of interest because his son was or had been employed in the Premier's office. Therefore, he engaged the services of the Northwest Territories Ethics Commissioner to conduct the investigation. The interpretation in our office is that should a similar circumstance arise, that's the way we would proceed on the matter.

**The Deputy Chair:** So currently you do have the power to do that?

**Mr. Odsen:** We have the power to do that, yes.

**The Deputy Chair:** That means no change is necessary. Anybody want to object to that? If not, we're going to say: move on with no change. I hear none.

Let's move on.

**Ms Leonard:** The next issue is ethics adviser. Number 133 basically suggested amending the act to divide the responsibilities for advice and investigation between two separate positions. You'd have the ethics adviser, who would provide nonbinding advice, and the Ethics Commissioner, who would conduct investigations and adjudication. This is just because there's a possible conflict of interest that could arise if the commissioner had given advice and then had to investigate that same member.

I don't know if maybe the Ethics Commissioner would like to add something at this point.

**The Deputy Chair:** It would be a great idea.

**Mr. Saskiw:** I don't think this is necessary. I think if the Ethics Commissioner provided advice and then new facts arose, that advice would subsequently be amended if the facts were material in his opinion.

**The Deputy Chair:** Okay. I see a lot of heads nodding, so we all agree on that one. That means no change.

Unless I hear anybody object, I'm going to move on. I hear no one. Let's move on. No change. Thank you.

**Ms Leonard:** Okay. The next section is the Fowler memo. Before I go into the specific recommendations, I'll just give a brief overview of it. It's a memo sent in 1993 from the Minister of Justice to deputy ministers and senior officials, informing them that they'd have to comply with certain conflict of interest and financial disclosure provisions. "Senior officials" isn't defined in the memo, but according to the public service Code of Conduct and Ethics: Administrative Guidelines it's the list of individuals in a particular order in council.

If you actually look, there is another document that we produced. It's this one with the really long title, called Scope of Application of Conflicts of Interest Provisions to Non-elected Officials and et cetera, et cetera. The first section of it is actually a chart that goes into which legislation or which policy or which order in council applies to which senior officials. That might be useful to refer to when you're actually deliberating on the Fowler memo.

The first set of recommendations involves the provisions governing financial disclosure. Numbers 134, 135, and 136 are all suggesting roughly the same thing, that because of the Fowler memo the provisions that currently apply to senior officials should be incorporated into some legislation, although I think all of them say that it should probably be done via the Public Service Act rather than the Conflicts of Interest Act.

I guess the issue to consider is, essentially, whether or not the committee wants to amend the Conflicts of Interest Act to extend the provisions to senior officials.

**The Deputy Chair:** Okay. Thank you very much.

This one appears to have lots of appetite to make clear that the question on the floor is: through which venue, this act or the Public Service Act? Any comments from members of the committee?

**Ms L. Johnson:** I agree to 135.

**The Deputy Chair:** The motion is to accept recommendation 135.

**Mr. Saskiw:** We can't make that motion because it's amending the Public Service Act, which is outside the scope of our committee, so the question is whether we want to amend the Conflicts of Interest Act.

**The Deputy Chair:** Okay. Good question. Okay. We're dealing with the Conflicts of Interest Act. If we wanted to include this in, that means we include it in this act.

**Ms L. Johnson:** Mr. Chair, I didn't make a motion. I said that I agree to 135.

**The Deputy Chair:** Yeah. That's fine. Just clarifying.

**Ms L. Johnson:** When we look at other previous materials, there were discussions by committees and a recommendation that this consideration happen.

**The Deputy Chair:** Thank you very much. I hear you.

I'm just wondering, for the commissioner's office, if we were going to recommend this into the Conflicts of Interest Act, what are the pros and the cons you see to advise the committee? Do you wish us to proceed that way?

**Mr. Resler:** Our desire is to have a memo which has no force in law placed into legislation. That's our recommendation.

**The Deputy Chair:** Okay. Given that the mandate of this committee is only for the Conflicts of Interest Act, do you recommend we proceed that way?

**Mr. Resler:** If you look at a previous regulation, an example that currently exists is the Alberta public service postemployment restriction regulation. We have jurisdiction under that regulation. It's a regulation that's under the Public Service Act, right? It deals with the public service and the regulation for deputy ministers as far as the postemployment obligations fall under that legislation. It would be more appropriate under their legislation.

2:35

**The Deputy Chair:** Thank you. That's good information.

I'm wondering if Dr. Massolin can help us, share some of his expertise.

**Dr. Massolin:** Well, I would just sort of reiterate the consideration that this committee should be strictly dealing with changes and recommendations to the Conflicts of Interest Act.

**The Deputy Chair:** Gotcha. Yeah. Thank you very much.

Okay. Given that conversation does any member wish to make a motion to point us forward? That means that if you want this change, we will make the change within this act; otherwise, we'll move on.

**Ms Notley:** Well, I think this is an important issue, and I think it does need to be covered by a statute. Frankly, I think there needs to be consistency in what the expectations are between ministers and deputy ministers and other senior people, so I think that this is the forum within which to be talking about this.

I also think the other issue that needs to be addressed is expanding the application. If we think about including that in the conflicts of interest legislation, we would actually expand the application beyond what's currently covered under the Public Service Act because, of course, that excludes a number of very significant players whose conduct needs to be viewed through this lens.

Now, I'm not going to write that, but what I'm going to do is make a recommendation that this act be amended to bring that under this piece of legislation, that consistency be sought between ministers and other senior officials, and that the list of those captured be expanded beyond what is currently covered in regulation to include those organizations which are exempt. I believe it's under the finance . . .

**Mr. Resler:** The Financial Administration Act.

**Ms Notley:** The Financial Administration Act. Thank you. Yes. Because many of those . . .

**The Deputy Chair:** Thank you very much.

**Ms Notley:** Sorry; I wasn't finished.

Many of those that are exempted under the Financial Administration Act are people that, I think, most Albertans would be surprised to discover are exempted because those people and those organizations are ones which are for all intents and purposes arms of government.

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

I see Mr. Dorward. Do you want to try to further this line along?

**Mr. Dorward:** Yeah. I'm going to assume that your motion is broader than the Fowler memo.

**Ms Notley:** Yes.

**Mr. Dorward:** Okay. In that case, I don't know which ones are under the Financial Administration Act.

**Ms Notley:** I'm sorry. I know you guys know where it is. I've got such a big thing here, and I can't find my reading glasses, which has made me even more inefficient than usual.

**Mr. Resler:** It's in the same document by research services, application of conflicts of interest provisions to nonelected officials, page 5, at the bottom.

**Ms Notley:** Right. Page 5.

**Mr. Resler:** At the bottom they have the definition of Crown, which does not include any of the following listed corporations.

**Ms Notley:** Yes. Anything under the Post-secondary Learning Act, the Health Quality Council, Alberta Research and Innovation Act, a provincial health board, for instance. Does that mean that AHS is not covered?

**Mr. Resler:** That's right.

**Ms Notley:** Right. That's the biggie, of course, that AHS is not covered.

**Ms Blakeman:** And I think environment ones . . .

**The Deputy Chair:** Sorry to interrupt . . .

**Ms Notley:** Is the AER covered?

**Ms Blakeman:** Nope.

**Ms Notley:** Okay. The AER is not covered either.

**Ms Blakeman:** And CEMA and just about everything . . .

**The Deputy Chair:** I think that Ms Leonard has something more to offer.

**Ms Leonard:** I just wanted to point something out. This is actually two issues. The Financial Administration Act and what's excluded is specifically for sections 6, 8, and 9 of the act. It doesn't come into play when you're talking about who the act applies to, who the provisions apply to. That list is specifically who members can accept gifts from or who they can contract with or receive payments from. There are two separate – I don't know. I'm not really making it clear.

**Ms Notley:** Okay. Let me just get this straight. You're talking about this section 6, offices and employment, and 7, gifts?

**Ms Leonard:** Yeah.

**Ms Notley:** Those organizations that we just discussed are exempted, right?

**Ms Leonard:** Those organizations essentially – I think that the Ethics Commissioner might want to step in here. Members could accept, say, payments from the list in section 2(5).

**Ms Notley:** Now, the public sector regulations that currently govern the cooling-off period, you know, that kind of thing for senior officials: are those groups exempted from those?

**Ms Leonard:** I think those groups are exempted. There's a specific list that those apply to, and it's quite a narrow list.

**Ms Notley:** Right. That's my issue. That's really my issue. I mean, the gifts are important, but really my issue is about the cooling-off periods and that kind of thing with respect to senior officials in those organizations.

**Ms Leonard:** The senior officials that the cooling-off period and that kind of thing apply to are pretty much the ones in the order in council that are listed here. I mean, these people are not in that list, but they're two completely different lists. It's just coincidence, I guess.

**The Deputy Chair:** Mr. Resler has some additional information to help out.

**Mr. Resler:** Yeah. I just hope this clarifies. The senior official listing is by the order in council. When you're looking at the postemployment, the prohibitions as far as where they can find employment are in that definition of Crown as far as what the department is. That's where you're saying that certain agencies are missing. Those agencies would be able to go to and achieve employment through them because they're not prohibited – right? – under that definition.

**The Deputy Chair:** Okay. On this point let me see if I can try to make it simpler to move forward. I take it that the committee has a will to support the commissioner's recommendation to make this memo a piece of legislation, to have teeth in it. What I think we're trying to clarify is how extensive that list is. That is where we're getting into all of those questions.

**Ms Notley:** Yes. If I could, there are three issues here. The first is whether the committee wants to make a recommendation that it be included under the Conflicts of Interest Act or whether it be done through some other mechanism. We've already discussed how we don't really actually have the mandate to make any kind of recommendation with respect to mechanisms. That's why I'm saying: let's do it here.

The second issue, though, that I am incorporating into this is that one objective or one goal that is considered in the course of that work is establishing consistency between ministers and senior officials in terms of the application of that act.

The third principle. This is just a principle. I'm not going to write "checked out 47 different regulations" at this point. The third principle is that where necessary it be expanded to include where it doesn't currently include senior officials that are included under the exempt groups under the Financial Administration Act, senior officials in those organizations. That's what I'm getting at. I'm setting out objectives and goals, and I'm not writing a statute.

**The Deputy Chair:** Okay. With that, one way I can see that we can move forward is that we can just vote on item 1, then get that one out of here, and agree that recommendation 135 be considered for the Conflicts of Interest Act.

**Mr. Dorward:** We already have a motion.

**The Deputy Chair:** I know. That motion has several layers, three layers. I'm not sure it's going to help us get anywhere. What I'm trying to simplify is that if we all agree, let's deal with one at a time. Ms Notley, I'm looking at you because you put forward the suggestion, so if you're comfortable, we're going to say that the motion on the floor is: support recommendation 135 and confirm this to be included in the Conflicts of Interest Act.

**Ms Notley:** Okay.

**The Deputy Chair:** Okay. She's okay with that. That's the motion on the floor. Everybody clear? Okay. Those who support this one – Mr. Dorward, tell me what you're thinking.

2:45

**Mr. Dorward:** Can we hear the motion? Are we voting on a motion now?

**The Deputy Chair:** Yeah.

**Mr. Dorward:** Can I hear the motion?

**Ms Notley:** No. Sorry. That doesn't quite work as well.

**Mr. Dorward:** Thank you.

**The Deputy Chair:** Okay. Let's restate your motion. So what's on the floor, Ms Notley? You don't have a motion?

**Ms Notley:** Well, I can restate what I said.

The difficulty with respect to that, I think, is that the Fowler memo is not as expansive as the conflict-of-interest legislation. That is why – and I don't want to get into a clause-by-clause debate over that although we can; that's going to be longer – I am concerned about talking about the Fowler memo. What I'm talking about is instead incorporating the principle of – first, we do agree that it should go into legislation. I think that there's consensus that we're prepared to accept that it go into the conflict-of-interest legislation, right?

**The Deputy Chair:** That's why I was trying to push to clarify.

**Ms Notley:** That's good. That I can do. So I will move that but not reference the Fowler memo. How about that?

**Ms Blakeman:** Can you augment? Could we do the Fowler memo and then augment it with the additional senior officials not covered under the Fowler memo but who are covered in the Financial Administration Act? Could we do it that way?

**The Deputy Chair:** I like that. Okay. Let's deal with one at a time.

Mr. Dorward, are you clear on that one, or are you still having some questions?

**Mr. Dorward:** Well, I think I'm a no, so I don't know that it matters. But maybe we should hear from the Ethics Commissioner. Do you guys have any comments yet on this? I want the Fowler in there, too, but I don't want it expanded to include anybody else.

**Ms Blakeman:** That's why we do it as two motions. How about that?

**The Deputy Chair:** Two separate ones, yeah.

**Ms Blakeman:** Righty-ho, then. I will move that we accept the . . .

**Ms Fenske:** No. We have a motion on the floor already.

**Ms Blakeman:** Oh, do we?

**Ms Notley:** I believe the first motion on the floor was simply that we believe that these issues with respect to those people covered by the Fowler memo and potentially others need to be addressed in legislation and that the right piece of legislation is the Conflicts of Interest Act.

Is that correct?

**Mr. Dorward:** As a friendly amendment can we throw in the date February 3, 1993, for clarity as to the memo?

**Ms Notley:** Well, yes, but I said: and others, plus potentially more. Right? That's why I'm not wanting to tie myself to that memo.

**Mr. Dorward:** Okay. But in this motion you mentioned the Fowler memo. I'm just saying: can you also mention that this is the Fowler memo of February 3, 1993?

**Ms Notley:** Yeah.

**The Deputy Chair:** Agreed? Okay.

On that motion, are we ready to vote?

**Ms Notley:** Do we know for sure? Do we know what it is?

**The Deputy Chair:** Okay. Here's my understanding. We're supporting what is essentially the Ethic Commissioner's recommendation, which is to move the Fowler memo into the Conflicts of Interest Act.

**Mr. Resler:** Our recommendation said to legislate it, but the recommendation also said that the more appropriate means may be under the Public Service Act.

**The Deputy Chair:** Right, but we already discussed that that one is beyond the mandate of this group. So if we are wanting to make this into legislation, the only thing we can do at this point is to make it to the Conflicts of Interest Act. That's where I think you are proposing, right?

**Mr. Resler:** Yeah.

**The Deputy Chair:** Okay. Well, let's just vote on the starting point. Any further questions on that one? I hear none. Those who support that one, raise your hand? On the phone? Unanimously carried. Thank you. Now we are one step ahead.

Now, Ms Notley, I can see you have a second layer you want to recommend.

**Ms Notley:** What I want to do is to have there be a principle of – what's the word? – consistency between those who would be covered by the Fowler memo and the ministers that are covered under the conflicts-of-interest legislation, that there be an attempt to establish consistency. I'm not going to say, "Thou shalt be exactly the same" – it's too complex to say that – but that there be

a move towards establishing consistency. That might involve, then, a bit of an upgrade to the Fowler memo. That is my point.

Then the other principle is that it be expanded to include a greater number of senior officials, including those which are exempted.

**The Deputy Chair:** Gotcha. I think I got the spirit of where you want to go.

**Ms Notley:** Okay. Good. At least that's on the record.

**Mr. Resler:** Just a comment that the Fowler memo does mirror quite closely the Conflicts of Interest Act as far as the obligations of the members. You'll find that that is certainly done.

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

Mr. Dorward.

**Mr. Dorward:** Yeah. Can we drill down quite closely? Is there anything that concerns you that is not identical? Could you point that out to us so that we know what we're voting on if we go down the path of a motion in this regard?

**Mr. Resler:** The Fowler memo deals strictly with the financial disclosure portion of it. The public service code of conduct postemployment restriction regulation deals with the postemployment obligations, which mirror, again, the Conflicts of Interest Act for political staff members. It's close to that. It's in different documents, but it covers.

**Mr. Dorward:** If it's very close, Ms Notley, what's the concern over trying to tighten it up?

**Ms Notley:** The who.

**Mr. Dorward:** Oh, I get the who. We can get to that in a minute. I'm concerned about the what.

**Mr. Resler:** There is one difference between the two pieces. Senior officials are not subject to public disclosure of their financial information, so it's strictly a private disclosure to our office.

**Ms Notley:** Are the postemployment restrictions the same?

**Mr. Resler:** Yes, with the exception of employment with the Crown. They can have further service to the Crown.

**Ms Notley:** Right. It's really the postemployment stuff that I'm wanting to get at. That's my issue. I don't know if people here feel that there needs to be public disclosure of finances.

**The Deputy Chair:** Here is the chair's kind of view on this. When we have a strong view on something, we can generate quite a bit of support. When we're kind of fishing around, we couldn't really get anywhere. This is where I'm going to stop.

**Ms Notley:** Maybe I can try this. Let me try this. I think I can do it in one more motion.

**The Deputy Chair:** Okay. Let's give it one more try.

**Ms Notley:** The last one talked about the Fowler memo. It did not talk about the Public Service Act regulations.

**Mr. Resler:** Senior officials are subject to the public service code of conduct and ethics in addition to the Fowler memo obligations.

**Ms Notley:** Right. But it's the Public Service Act regulations which speak to postemployment?

**Mr. Resler:** That's right.

**Ms Notley:** Okay. What I want to do is suggest, as a supplement to the last one, that

we recommend consideration be given to also incorporating the Public Service Act regulations as they refer to postemployment restrictions into the deliberation we just referred to in the previous motion and that we consider expanding the list of people who would be covered by it.

Do you want to do it separately? Okay. We can do it separately. I'm fine with that. That's what I would like. Let's do the first half, then, because we didn't put that into the first one.

**The Deputy Chair:** For that motion on the floor, does anyone have questions? Everybody is clear?

**Ms Blakeman:** We're recommending incorporating those senior officials captured under the Public Service Act regulations, particularly with respect to postemployment criteria, expectations – what's the word I'm looking for? – regulations, rules.

2:55

**Mr. Resler:** Conflict-of-interest matters.

**Ms Blakeman:** Conflict-of-interest matters. Okay.

**Mr. Odsen:** I think I need some clarification if I may.

**The Deputy Chair:** Yeah. Mr. Odsen, go ahead.

**Mr. Odsen:** That is covered in the public service postemployment regulation. So is your suggestion that it be moved from there into the Conflicts of Interest Act?

**Ms Notley:** Yeah.

**Mr. Odsen:** Okay. Thank you.

**Ms Notley:** Yeah. One piece.

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

**Mr. Dorward:** My question was: where the rubber hits the road, it's not a big, huge change here. Is that true? It's just getting consistency within the act?

**Mr. Resler:** There's no change as it applies to our office as far as how we review and manage.

**Mr. Dorward:** That scares me. Is there another unintended consequence that we're not aware of?

**Mr. Resler:** The Public Service Commissioner may have a different opinion because they're responsible for the public service, but our role doesn't change.

**The Deputy Chair:** Very interesting.

**Mr. Dorward:** So we're taking a group of individuals . . .

**The Deputy Chair:** That are subject to another act.

**Mr. Dorward:** Yeah. We're adding a group of individuals into this act that asks the commissioner to do something that they're already asked to do under another act. Have I got that right?

**Mr. Resler:** Well, we're asked under a memo and a regulation.

**Mr. Dorward:** Okay. So something that you're already asked to do under a regulation or a memo we're recommending get entrenched into another act, this act, which then, I'm going to assume, doesn't change the reporting requirements or those captured by what they did in 2012 versus what they would do post this new act change if it was adopted. Is this correct? We're not making a substantive change to anything. We may be making it simpler and in the correct place and consistent. Is this true?

**The Deputy Chair:** I see heads nodding. This is a change to the practice already in, but now it would be clear. It's included in the legislation, has teeth. Okay?

On that, still Ms Notley's motion, are we ready to vote? Those who support that, raise your hand. On the phone, if you support that, say yes.

**Mr. McDonald:** Yes.

**The Deputy Chair:** Thank you.

**Ms L. Johnson:** I'm going to have to abstain. I'm sorry. I stepped away for a few minutes.

**The Deputy Chair:** Okay. That's all right.

**Mr. Dorward:** You can't abstain. You can now leave and go and do something else.

**The Deputy Chair:** No, no. You're already on the floor.

**Mr. Dorward:** Well, no. She could leave. That's what Dr. Sherman did many, many times in Members' Services.

**The Deputy Chair:** Ms Johnson, I don't think it will severely impact one way or another, so feel free to make up your mind.

**Mr. Dorward:** She's gone.

**Ms L. Johnson:** No. I'm here.

**The Deputy Chair:** Good to have you around.

**Ms L. Johnson:** My ear hurts.

**The Deputy Chair:** It's almost close to a unanimous pass.

**Ms L. Johnson:** So read the motion again. I abstain, people.

**The Deputy Chair:** Ms Notley.

**Ms Notley:** Me? Is someone taking notes?

**The Deputy Chair:** Or Ms Blakeman can try to help you out very eloquently. Let's try that again.

**Ms Blakeman:** I think the point was to augment the list of senior public servants.

**Ms Notley:** No. We're not at that one yet.

Okay. Here we go. The motion was to recommend that in the course of considering the inclusion of the Fowler memo in the previous motion, that we just agreed to and that you probably missed, we also include the standards found in the public service regulation that refers to postemployment restrictions and that that would also, then, be brought into the Conflicts of Interest Act and administered through that piece of legislation.

**Ms L. Johnson:** Okay. I'm going to continue to abstain.

**The Deputy Chair:** You cannot.

**Ms L. Johnson:** I cannot?

**The Deputy Chair:** Perhaps just vote against it.

**Ms L. Johnson:** Okay. Then I'm going to vote against it.

**The Deputy Chair:** Okay. Thank you very much. That's one against. All the rest support it. Carried. Thank you very much.

**Ms Notley:** Now the third one, which is the one that I really wanted to get to, so that then again in the course of deliberation we are recommending as per the previous two motions that we would also look at expanding the application of those rules to senior officials who are associated with the organizations which are exempted from other parts of the Conflicts of Interest Act as per the Financial Administration Act regulation.

**The Deputy Chair:** That was pretty good. Any further comment on that one?

**Ms Notley:** Well, I'll just give it to you again so that everyone knows which debate we're having right now. This is about trying to ensure that key people that are sort of arm's length but not entirely . . .

**Ms Blakeman:** Like senior officials.

**Ms Notley:** Yes. Senior officials, obviously. It would still be that. . . . are covered so that, for instance, the CEO of AHS is treated the same as the Deputy Minister of Health and the Minister of Health – that's what we're getting at here – and that the CEO of the Alberta Energy Regulator is treated the same as the Minister of Energy and the deputy minister and all that because these organizations are gargantuan and have much power.

**The Deputy Chair:** Yeah. Thank you very much. I hear you.

Any further comments from committee members?

Ready to vote? Okay. Those who support this motion on the floor, raise your hand. Those on the phone, if you support this, say yes. Those who are against this motion, raise your hand. Do I hear anything here? On the phone, say no if you are against this one.

**Ms L. Johnson:** No. I'm against it.

**The Deputy Chair:** Thank you.

Mr. McDonald, are you still on the phone?

**Mr. McDonald:** Yeah. Against. Thank you.

**The Deputy Chair:** Okay. So it's defeated. Thank you very much.

Let's move on to the next subject. If I can have committee members' attention, we're back to the meeting now. Ms Leonard is going to bring us to the next subject.

**Ms Leonard:** Okay. The next subject. I'm not sure how much you may have actually covered this, but it's with regard to senior officials of major provincial agencies. [interjections]

**The Deputy Chair:** Excuse me. Ms Leonard has the floor. We're onto the next subject.

**Ms Leonard:** Right. So it's senior officials of major provincial agencies, and it may be what you've already covered, but 137 just

says that the restrictions that are on senior government officials and ministers should also be put on the heads of major provincial agencies, including postsecondary institutions, school boards, health authorities, and Alberta Innovates corporations.

**The Deputy Chair:** Yes. Isn't that exactly what we just voted for? Okay. Thank you. Let's move on.

**Ms Leonard:** The next one is designation of senior officials. This is very much what's been covered already, 138. Do you want me to go through it?

**The Deputy Chair:** No. That's redundant now. Let's move on.

**Ms Leonard:** Okay. This is the very last recommendation.

**The Deputy Chair:** Do you have a question?

**Mr. Resler:** If I could, 139 was our recommendation. If you're looking at bringing senior officials into the Conflicts of Interest Act, we were looking to seek clarity on how the senior officials are defined in order to have a clear understanding of who is a senior official. It's just to address that matter.

3:05

**The Deputy Chair:** I thought the motion we just voted for, layer 3 of what Ms Notley put forward, was the definition of senior officials and who is to be included in that. Is that sufficient?

**Ms Blakeman:** But that didn't pass.

**The Deputy Chair:** Oh, right. That's right. I see.

**Mr. Dorward:** The way I understand it, is it true that 139 is not applicable because we didn't include those other ones? The ones that we added as a result of the Fowler memo are defined, and 139 does not apply to those. Is that true? Or do we still have some ambiguity that you're seeking clarification on within the recommendations?

**Mr. Resler:** The current status as far as who is a senior official. For us it's defined under the public service code of conduct administrative guidelines as an individual appointed pursuant to Order in Council 188/1997 as amended and whose appointment is made pursuant to the Public Service Act. That's the definition as it stands, and we're not clear as far as how that is constituted. If we look at the senior officials listing, it'll list members of agencies, boards, and commissions. Does that mean it's only full-time board members, or does that include part-time board members? What is the definition of a senior official?

**The Deputy Chair:** Ms Fenske.

**Ms Fenske:** Thank you. I'm going to go back to the motion that was defeated, that Ms Blakeman put on the floor, and, I think, the comments from Mr. Dorward. I think there was some opportunity to find some great, even ground, but it was too broad because it would include all of those part-time board members as well, and I'm not so sure that's where we want to go. Perhaps there could be some discussion about those senior full-time people, some of whom you mentioned as examples. That would mean, I would imagine – well, no. We could still have that defeated motion and then narrow the scope. I'm just bringing that up. I don't have an answer, but those are my thoughts.

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

**Mr. Dorward:** I feel like I'm about to ask the same question twice, which is fine, because that's what dialogue is all about, I guess. I'm still not understanding. Ms Fenske, I think that what you just said now is talking about the envelope of groups that would be subject to the legislation that we're reviewing, and I don't think that's what we're talking about right now. I think we're talking about the more microdefinition of the individuals captured by the addition of the Fowler memo into the legislation that we're reviewing. Is that the situation?

**Ms Blakeman:** It's the definition of senior official, and they have a definition they go by that says that a senior official is somebody under the Public Service Act and an order in council. But they're not clear if that includes people like the heads of ERCB, EUB, and the Alberta Energy Regulator because it's not clear whether they fall under that.

**Mr. Resler:** Yeah. Just to clarify, for senior officials whom we meet with and discuss matters with, we are provided a list of who those senior officials are. So there is an order in council. I'm not sure if that was distributed at all, but it's the same listing that's in the one research document. That list is provided to us. You know, it'll say: members of the appeals commission for the Workers' Compensation Board, as an example. They'll provide us the names, and in most instances they're full-time members. We don't receive part-time members.

**Mr. Dorward:** Who's they?

**Mr. Resler:** The Public Service Commissioner's office.

**Mr. Dorward:** Let me try to restate this again. Is 139 leaning towards finding some words that we can recommend in our report such that the way that it works now for your office is entrenched in legislation? You want to have what happens now entrenched in legislation?

Where I'm coming from is that I'm not suggesting we open the envelope to others; I'm suggesting that we first at least try to nail down or help get it clarified for you folks so that you know exactly who should be on the list in the recommendations that we make.

**Mr. Wilkinson:** I appreciate your efforts in rethinking this one. The Public Service Commissioner does give us a list, and really it's probably pretty hard, I would think, for you to try and get involved in his process. I suppose it's more up to us to go and work with the Public Service Commissioner and to sort this out rather than to make this more difficult for you to put this in legislation, I would think. You know, it's not a serious matter and not a hill to die on. It's just something that in all these regulations we put down to see if there were some ideas around the table. In retrospect I'm thinking it's better to leave it with us.

**The Deputy Chair:** I actually very much appreciate that.

**Mr. Wilkinson:** Okay. Thank you for your help.

**Ms Blakeman:** Well, does that mean that you would be seeking to be able to have people on the list like the heads of ERCB and EUB?

**Mr. Wilkinson:** That's a good question. We haven't had those discussions with him yet. We have had some discussions about how this comes about, and future meetings are planned to work on this issue.

**Ms Blakeman:** How do you do that if you're not empowered by the legislation to add people to the list?

**The Deputy Chair:** If I can sort of interject. My observation is that when recommendation suggestions come to the table, some are very solid because of experienced cases; others are suggestions for consideration. When it's not that ready for real action, it's quite okay that we continue to leave a case as it is as we're looking for other solutions as we move along. That somehow is my take from what the Ethics Commissioner is saying. This is a new issue. There are ways you can work collaboratively with other mechanisms as we speak. Whether or not we give you teeth at this point to be so specific: you're not even sure it helps you at all. In that regard I say: let's leave it as it is, and let's move on. Would that be all right?

**Ms Blakeman:** Well, I'll tell you that what I'm struggling with is that increasingly the government is creating positions or delegating extremely powerful policy decisions and implementation of government policy to individuals who are appointed to these positions, and those individuals do not seem to be captured under either the Conflicts of Interest Act or the Fowler memo or the Public Service Act.

We have a group of people out there with enormous influence and power over how things are done in Alberta like the Alberta Energy Regulator, enormous decision-making power over who gets to develop oil and gas and how the environmental considerations are going to be put in, and we have no ability to say: "What's your financial disclosure? Where are your conflicts of interest? Can you go back and forth? If you leave being the Alberta Energy Regulator in two years, can you go right back into the oil and gas sector, having just made up the rules under which the company will now operate?"

I mean, that's the kind of thing that makes the public go crazy. They look at us and say: why didn't you guys fix that when you saw it coming? For us to say, "Well, let's just leave it, you know, and maybe people will figure it out," this committee does not meet again for six years.

**The Deputy Chair:** Okay. Your point is taken.

**Ms Blakeman:** If we don't make recommendations, six more years are going to go by with that kind of a lack of transparency and accountability going on in this province. I don't think that helps you, and it doesn't help us.

**The Deputy Chair:** Thank you, Ms Blakeman. If you have a specific suggestion, you're welcome to put it on the floor. I'm speaking from the submission that the Ethics Commissioner had on the floor. They had offered some new thoughts.

I think Mr. Resler has something more to say.

**Mr. Resler:** I was just going to reflect further on that. With the Alberta Public Agencies Governance Act, that was proclaimed in June of this year, all agencies have codes of conduct that address the key issues that are raised in the public service code, the conflict-of-interest disclosure practices, and also safe disclosure practices. So there is a governance framework that provides detailed information in this regard. Each agency will have a code administrator for their code of conduct. Our office may have the capacity to act as an appeal mechanism similar to what currently exists in the Alberta public service code of conduct. So there are similar frameworks, and those are available on their website.

3:15

**The Deputy Chair:** Thank you very much. It's very helpful.

**Ms Fenske:** Well, actually, that helps in some respects, and frankly at 3:15 on a Friday afternoon to start creating a new list is not going to be beneficial.

**The Deputy Chair:** Okay. Thank you.  
Ms Blakeman.

**Ms Blakeman:** Thanks. But that group that you just referenced, which we now have a list of that was provided by staff, does not include any of the delegated administrative organizations that the government set up, so all of those are off the table. They're asked to do a code of conduct, but the code of conduct is very loosely worded. My understanding is that it does not have to come up to the standards that are outlined in the Conflicts of Interest Act. It is not monitored, and it is not enforced. So I do not accept that as an equivalency to what we are talking about, where we're trying to include those people under the full force and effect of the Conflicts of Interest Act. What you've just described – the agencies, boards, and commissions – is not the same by a long shot. It doesn't include a lot of the same people and does not put the same requirements upon them about transparency and accountability.

**The Deputy Chair:** Okay. Just a suggestion for the hon. committee members, if you have a suggestion in terms of a motion to move us forward to resolve this one, I welcome that. Basically, what I'm hearing so far is that the Ethics Commissioner, who submitted the recommendation, just stated that they are rethinking that now. It's not that much on their mind right now. So if anybody else has a different recommendation moving forward, let's deal with that.

**Ms Blakeman:** Well, I've tried this once already, and I got defeated.

**The Deputy Chair:** Okay. Thank you.  
In that regard I'm going to move on. That means no change.  
Next one.

**Ms Leonard:** Okay. So now we're on the very last recommendation, which is to do with the Alberta Public Agencies Governance Act, that we were just discussing. There was one suggestion – well, it was more of a question, whether reference should be in the Conflicts of Interest Act with respect to a member's role when sitting as a government agency board member, and I wasn't entirely clear what the submission was getting at. I don't know if the Ethics Commissioner has anything to contribute.

**The Deputy Chair:** Anybody wish to speak on that?

**Mr. Resler:** Yeah. I'm not clear on what the submission is either.

**The Deputy Chair:** Okay. If it's not clear, we're not going to waste our time. Let's move on.

That concludes all 140 recommendations in front of us. Thank you so much, members.

We're not done yet. We have a bunch of deferred ones from previously. Do people feel like carrying on or need two minutes, five minutes to re-energize and come back? We did book ourselves until 4, so we have about 45 minutes left.

**Ms Blakeman:** It's highly unlikely, I believe, that we will make our way through these. These were the most contentious issues,

that we deferred. We are going to have to meet for another date to work our way through this. It might affect your considerations as to whether you wanted a two-minute walk around the table or not.

**The Deputy Chair:** Okay. Well, I'm happy to carry on if the committee is okay. Feel free to go to the washroom if you want. What will happen is that we will carry on for a while, I will ask Jody to give me a heads-up 15 minutes before we run out of time, and then we'll talk about the next meeting.

Okay. Let's move on to the deferred list. Hard work, no break.

**Ms Leonard:** Okay. So now we are looking at the document that's called the Summary of Deferred Issues, and it is essentially all the issues extracted from the larger document that we were just looking at, everything that was deferred. I've just taken the recommendations out of the original document, plopped them in here, and sort of given a brief description of the discussion that the committee had before.

The first issue is very much to do with what we were just discussing in terms of the definition of the Crown. The issue that's really at hand here is the definition of the Crown with regard to sections 6, 8, and 9, which, as I mentioned before, are the restrictions on gifts, benefits, payments, and contracts with the Crown.

In the other document, the one with the very long title, scope of application, which I have lost, the second part of it, that starts on page 5, explains the definition of the Crown for the purposes of these sections of the act. Essentially, what the committee might want to consider is that when you're talking about who a member can accept payments from or who they can accept gifts from or enter into employment with, whether these entities listed on page 5 are sufficient to be included.

**Ms Blakeman:** Page 5 of what?

**Ms Leonard:** Sorry. Page 5 of the scope of application of conflicts of interest provisions to nonelected officials. I know there's a lot of paper. That sets out who is included in the definition of the Crown for the purposes of the act, and essentially the issue is whether this is sufficient or whether you think the restrictions should be broader or not.

That's about it.

**Mr. Dorward:** What line item are we at?

**The Deputy Chair:** Page 5.

**Mr. Dorward:** Yeah, but which line item?

**Ms Leonard:** It's 14, 15, 16, and 55. That's the first page of the new deferred issues document.

**Ms Blakeman:** I'm sorry. Is there a copy available of that document? It's the one that I don't seem to have.

**The Deputy Chair:** Okay. We'll get you a copy.

**Ms Blakeman:** Thank you.

**The Deputy Chair:** The rest, proceed.

**Ms Blakeman:** I'm one of the people that raised an issue with this because I feel that, again, the list that we're working from, that falls under that definition of Crown and/or under that definition of agencies, boards, and commissions which is captured under the recently passed government act, omits, by design or not, a number of agencies that continue to exist in this province which are

funded wholly by government funds or, in the case of delegated administrative organizations, are crafted through a regulation which establishes them to perform certain functions on behalf of government and to receive a revenue stream to do that.

The people that head up those organizations are also not subject to any code of conduct because they're not captured in the ABCs, nor are they subject to the Conflicts of Interest Act. So if we are going to try and bring more consistency across the board with our senior officials, we're going to have to figure out a way to do that, because right now we're all over the board. We capture some; we don't capture others. Some of them that we're not capturing make a lot of money; some maybe less. Maybe there's a way to do it by saying: anyone making a salary of more than that should be subject to this; anyone that's in decision-making positions of what level? That's the problem.

I've already given you an example of a group that is not included in this, and that's the delegated administrative organizations. Part of the problem is that our good researchers did attempt to find them, but because they are not listed in that legislation for agencies, boards, and commissions, they don't show up. You'd have to go through each and every ministry and look for a subregulation that establishes those DAOs to find them. They were a very select group of organizations that were established in the late '90s that are running under the radar right now, and they shouldn't be.

**The Deputy Chair:** Okay. Thank you, Ms Blakeman.

Anybody else to comment? No. Anyone at this point ready to put forward any suggestion on how we move forward on this?

Go ahead.

**Mr. Wilson:** Thank you, Mr. Chairman. I would like to move that we look to expand the definition of the Crown in the Conflicts of Interest Act to include the corporations listed in section 2(5) of the Financial Administration Act.

These corporations include the board or initial governing authority of a university under the Post-secondary Learning Act, the board or initial governing authority of a public college under the Post-secondary Learning Act, the board or initial governing authority of a technical institute under the Post-secondary Learning Act, the Health Quality Council of Alberta, a research and innovation corporation established under section 7 of the Alberta Research and Innovation Act, a provincial health board under the Regional Health Authorities Act, a mental health hospital board under the Mental Health Act, or a corporation that is a subsidiary of any of the above corporations or that is controlled by any of the above corporations directly or indirectly through intermediary corporations.

3:25

**The Deputy Chair:** Okay. Thank you very much.

**Mr. Dorward:** A question for Mr. Wilson: would your motion encapsulate that a university professor couldn't work as a university professor for a year after he or she wasn't a professor at the University of Alberta, for example?

**Mr. Wilson:** No, that it is not the intent.

**Mr. Dorward:** Can you explain why that wouldn't be? I think you just tried to put them into this legislation. I'm just seeking clarification. I want to make sure because I think that part of the problem we're going to deal with here is that there are a bunch of unintended consequences of throwing a big list of folks under the legislation that you don't intend to. I need to understand. What are

we doing when we're doing what the motion says we're going to do?

**Ms Blakeman:** Yeah. Remember that we're recommending that something be done, and there is a group of people with brains that is able to understand what we intended and work with that.

**Mr. Dorward:** Well, if we don't know what we intended, how are they going to know what we intended?

**Ms Blakeman:** Well, we didn't intend to put in professors.

**Mr. Wilson:** I'll just maybe clarify one thing, Mr. Dorward. This was part of a recommendation from a submission by the office of the Deputy Minister of Alberta Enterprise and Advanced Education, so I don't think that the unintended consequences would perhaps have the effect that you're questioning. I would defer to either research or the Ethics Commissioner's office to offer clarification on that. I take your point.

**Mr. Dorward:** I'm just trying to find out who would be covered by the legislation under the motion you made. Who is it, within all of that broad band of folks and groups that you mentioned? I'm trying to find out. How far, if you start with the person at the top of those organizations and go down? I just need to know where we're headed with respect to who is in that.

**The Deputy Chair:** Okay. I see there's a question for our excellent support staff. Anyone want to comment before I go back to the committee member?

**Mr. Saskiw:** Well, just briefly, the amendment specifically refers to the board or the initial governing authority.

**Mr. Dorward:** Just the board?

**Mr. Saskiw:** Yeah.

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

**Ms Fenske:** Well, I think that if it's that way, I have trouble with it. Again, I go back to individual board members and the amount of control as individuals they have, because it's the entire board that makes a decision. This goes back to what we've been talking about for the last little while. Who are those people that really need to be identified? I know that the Ethics Commissioner said that he receives a list occasionally, and I would like us to sort of, if there's any way to park this, have him come back with a list of people that we really need to identify. We've talked about a couple of them that keep popping up, the Alberta Health Services director, et cetera. We're going to have another meeting. Can we come back with a list? Can we send some people away to do some research and go back to the Ethics Commissioner?

**The Deputy Chair:** Okay. Thank you. That's a suggestion on the floor.

Ms Notley, and then Mr. Dorward.

**Ms Notley:** Yeah. I mean, I agree wholeheartedly with that recommendation. I think that's a good idea. The thing that we have to keep in mind, though, is that – I spent some time getting kind of confused by this, and in fact I think a lot of the issues that I have were actually addressed under the motion that was unfortunately defeated.

All this is talking about is whether it is just sections 6, 8, and 9 of the act, which basically come down to whether a member can be employed by the Crown while they're a member, whether a

member can enter into contracts with the Crown while they're a member, and whether a member can receive payments from the Crown while they're a member. That's all this speaks to. This does not speak to the conduct or the relationships or the conflict of interest that maybe exists with respect to the people that work for these organizations. This particular amendment is not going to do anything about the CEO of the AER going back and forth between being employed by Enbridge and being employed by the AER, for instance. A hypothetical, but that's, of course, the thing that I'm worried about, right? All this does is say that MLAs can't get contracts with, be employed by, or receive gifts from, so then it makes sense that you're just talking about the organizations. That's really what your motion is doing, just speaking to the organizations that are listed as you identified them.

We have to remember that it's a good proposal, but we need to be clear that we're not getting at a lot of the issues that we've already been talking about because this is very limited in its application, unfortunately. A lot of the concerns, therefore, that other people raised about "Are you talking about a university professor?" well, that's not relevant in terms of sections 6, 8, and 9.

**The Deputy Chair:** Okay. I think your point is well made.  
Mr. Wilson.

**Mr. Wilson:** Thank you, Mr. Chairman. If it pleases the committee, I'd be happy to withdraw the motion pending the information that Ms Fenske has requested from research services.

**The Deputy Chair:** Thank you very much.

Okay. Unanimous consent to withdraw the motion? All agreed? Anybody opposed? I hear none. Motion withdrawn.

Mr. Dorward.

**Mr. Dorward:** Yeah. The commissioner can speak for himself, but he's already said that the definition of Crown in number 15 does not need to be amended. The current definition fulfills the purpose intended in the act. I'm still trying to determine in my mind's eye if there's a board member of the University of Alberta who would move to Lethbridge and is willing to serve as a public member or whatever on the board of the University of Lethbridge but who, I understand, would then be prohibited from working for a year.

**Ms Notley:** You see, that's what we just said. That's absolutely not what this is doing.

**Mr. Dorward:** This is where I'm confused. This is talking about sections 31 and 32.1.

**Ms Notley:** No. This is talking about sections 6, 8, and 9.

**Mr. Dorward:** But in the sections relevant to 14, 15, 16 it's talking about 31 and 32.

**The Deputy Chair:** I have Mr. Odsen's hand up. He might be able to help with some information. Go ahead.

**Mr. Odsen:** Well, the motion has been withdrawn.

**Mr. Dorward:** There is no motion, but we can still discuss it.

**Mr. Odsen:** I guess maybe there are two things. There's the organization, whether it is or is not sort of included, and then there are the individuals within the organization. I think what Mr. Dorward is getting at is: how far does that extend? That may or may not apply when we're looking at things like postemployment

or disclosure or some of those kinds of things. But the other side of it is the ability of members to contract with or be employed by government. For example, if you're a member, could you contract to teach a course at the University of Alberta? Now, presently you can. If this is done, would you then be able to do that? That is a question there.

I guess what I'm wondering about is sort of the unintended consequences thing. It is a very large issue; there's no question. I understand the intent behind what's being sought here, and it's one that is particularly, I think, complex and perhaps ought not be just sort of jumped into. So I like the idea of: let's get a little bit more background from research and see if that can help guide the discussion a little bit better.

**The Deputy Chair:** Okay. Committee members, I think we've been going around on this one again. Unless somebody is prepared to have a motion move us forward again, if we're struggling or putting out suggestions that are not really very sound and with not a lot of support, that means we need to move on.

**Mr. Dorward:** My question is: move on to what?

**The Deputy Chair:** To the next subject, with no change.

**Mr. Dorward:** I know, but if we don't have any framework perspective – oh, you mean we're done with this? Yes, I'm in favour of that.

**The Deputy Chair:** That's what I meant.

**Ms Blakeman:** Are we giving instruction to research services, then?

**Ms Fenske:** I would like to make a motion, please.

**The Deputy Chair:** Okay.

**Ms Fenske:** Thank you. There was no motion. That was a suggestion at that time.

I would like to make a motion that we ask research services to go back and along with the Ethics Commissioner create a list of potential committees and members on those committees and organizations as well that we may want to address under this Conflicts of Interest Act.

3:35

**Ms Blakeman:** Could I add: full-time paid?

**Ms Fenske:** Sure. I would appreciate that unless that restricts them.

**Ms Blakeman:** I don't think we're interested in part-time, stipend-paid board members. We're interested in people that are full-time and that are paid a salary and that are falling under a list. You guys have some idea now of organizations that are doing business on behalf of government under the Crown's name or some other umbrella. Are you and I agreeing?

**Ms Fenske:** I'm fine with that, certainly.

**Dr. Massolin:** If I understand the committee's request correctly, Mr. Chair, it's kind of a recommendation as opposed to gathering research. I would kind of respectfully bow out on this one. I think that maybe the office of the Ethics Commissioner may make a recommendation. We're not really in a position to make any recommendations.

Thank you.

**The Deputy Chair:** Anybody else wish to speak about this one? Okay. So we're deferring this one, right?

**Ms Blakeman:** No.

**Ms Fenske:** Well, till the next meeting.

**Ms Blakeman:** Till the next meeting? Okay. So we are asking the Ethics Commissioner to come up with a list?

**Ms Fenske:** That would be my request, yes.

**The Deputy Chair:** That's the revision on the table.

Does that put our Ethics Commissioner's office in an awkward spot, or are you okay?

**Ms Blakeman:** I'm good with that. And add: full-time pay. I want those DAOs in there.

**The Deputy Chair:** Okay. There is a motion on the floor to ask our Ethics Commissioner's office to come back with a list that the committee will consider.

Okay. Thank you very much.

On that motion, all in support, raise your hand. On the phone, in support? Thank you. Unanimously agreed. Thanks.

All right. The next one, scope of relationships with the Crown.

**Ms Leonard:** Oh, yeah. Number 55 was part of that. I don't know if you want to discuss that separately or just park it. [interjections]

We can deal with direct associates now. The issue that the committee looked at at the previous meeting was essentially whether family members or relatives should be included in the definition of direct associates, and Ms Notley actually provided the committee with a sample definition. I don't know, Mr. Chair, if she'd like to go into that.

**The Deputy Chair:** Ms Notley, do you want to go over that with us?

**Ms Notley:** Sure. We were talking about, you know, family members, and we had a big conversation about people with big families and yada, yada, yada and what's directly associated and all that kind of stuff. Anyway, if I recall the way it came up, we had the discussion about: how do you list it? I just said: well, in fact, there are some sectors within which listing is pretty common. I was referring to, you know, labour-management stuff, where collective agreements will often list what are commonly considered to be family members or relatives. I just went to the collective agreement that essentially impacts AHS on one side and every nurse in the province on the other side and pulled out that definition of immediate family. You will see it there. Did people get provided with it?

**The Deputy Chair:** Yeah. We all have a copy.

**Ms Notley:** Okay. I don't need to read it. I think everyone can read it, right?

**The Deputy Chair:** Yeah. Thank you very much for that.

If I recall, on this item the committee at the time discussed it, was pretty much in agreement with it. We're just struggling to find specifics on how to list it. Now we have a list in front of us.

Any further questions?

**Ms Fenske:** I prefer our current list versus this list. I mean, the decisions we make in government could possibly touch every one of those people in some way, shape, or form inadvertently, so I think that's far too broad.

**The Deputy Chair:** Okay. So you're speaking against that?

**Ms Fenske:** Yes.

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

**Mr. Wilkinson:** Our position and our view is that it's fine the way it is. We feel it's all encompassing as it is. The comment just made, I think, covers our feelings as well.

**The Deputy Chair:** Thank you very much.

Ms Notley.

**Ms Notley:** Yeah. I'm just trying to find the language again. Spouse: that's it. Well, this is really the question. If I make a decision that impacts directly, as it sits right now, my spouse, then I need to declare it, and it should be covered because it would be the same, effectively, as doing it myself. What you're saying is that there is no need to consider whether the same kind of conflict exists if I make a decision that profoundly benefits my child, with whom I have, obviously, an extremely close financial relationship, my parents, my brothers, my sisters, my spouse's parents, and the rest that are on the list. I would suggest that that's naive. It's way too easy for people in government to make decisions that will affect, you know, corporations that are held by these relatives, and then they get the benefit of it after.

**The Deputy Chair:** The point is well taken. Thank you.

**Ms Blakeman:** I'm struggling with that list, actually, because in looking at, certainly, my fabulous constituency of Edmonton-Centre, while there are some families that are very much engaged in an extended family, for a lot of my constituents there isn't a lot of interaction. They may be very small families, people that came here from other places, and there is actually quite a small family unit and very little to do with other family members, or there are intense disagreements.

When I look back on what we're really trying to do here, and given the request to consider an investigation that happened at the last meeting, I'm now prohibited from using the example I had figured out to use as I tested this. The wording that we currently have in Alberta is "to further a private interest of the Member, a person directly associated with the Member or the Member's minor child or to improperly further another person's private interest." Am I correct in this?

**Mr. Resler:** Yes.

**Ms Blakeman:** Okay. That is the same language that Quebec had, which I was very keen on, and I think that should be able to capture the people that we are interested in. The words "improperly" and "another person's private interest" should be able to cover all of that list if we consider "improperly."

**The Deputy Chair:** Thank you very much.

Are we ready to vote on this one? I feel like a good point has been made on the floor. Is there a motion on the floor?

**Ms Notley:** I'm going to move that we amend it to broaden "directly associated with."

**The Deputy Chair:** Okay. All right. The motion is to change it to make it broader, as the list stated here. Those who support this motion, please raise your hand. Those who are against this motion, please raise your hand. On the phone, those who are against it?

Ms Blakeman, did you figure out how you want to vote on this one?

**Ms Blakeman:** I'm going to abstain.

**The Deputy Chair:** You cannot. Ms Blakeman, come back. I'll just advise that for us to follow the rules, you cannot run away during the course of a vote.

**Ms Blakeman:** I was indisposed.

**The Deputy Chair:** Okay. Are you opposed?

**Ms Blakeman:** No. I'll support it.

**The Deputy Chair:** You'll support it? Okay. Thank you. Motion defeated.

Okay. Let's move on to the next subject.

3:45

**Ms Leonard:** Okay. The next deferred issue is furthering private interests. The issue here was the role of partisan interests and how these should be addressed in the act. At the previous meeting the committee discussed what kind of behaviour could constitute furthering partisan interests and whether the concept of partisan interest could be refined. That's about it.

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

Any comments? Does anyone wish to make some recommendations?

**Ms Blakeman:** I think it is a conflict of interest to use your role as a member to further a partisan interest, whether that's furthering your own partisan interest or furthering the interest of your party through your activities, especially when you're on the taxpayer dollar.

To repeat my examples of two different areas where taxpayer dollars were funding activities that promoted a particular political party, we have exclusively government members handing out cheques. Whether they're for lottery funds or other grants that are coming out of a budget, it is furthering a private interest. It is intended to make people think that if you have a government member, you're going to get a grant. That is carried over where you see government members handing out cheques in opposition members' ridings and intentionally not inviting the member. So they're coming into the other person's riding and trying to pretend that they have somehow done all of this or that the local politician has nothing to do with it. I think that's inappropriate. It's there to further someone's ambition.

The second example I gave, which I think is a clear conflict of interest – but maybe somebody has been able to look into this and tell me – is that the PC MLA's website is funded by the caucus, which is taxpayer dollars. It's not funded by the political party, yet it names the political party right in the title. Now, we're prohibited from doing that. More specifically, we have to pay for that out of our own budgets. Therefore, individual PC MLAs now have more money at their disposal than any opposition MLA because they don't have to pay for that website out of their constituency budget; it's paid for them. So that's a distinct disadvantage, which I believe is intended to be used in partisan terms. I think we need to put forward a recommendation that says that we should be much clearer about the kinds of activities that are not accepted.

I can tell by the looks of my hon. colleagues opposite that they don't see a problem with this. You know, I just last longer, and I really believe now that I will be here in the day when my hon. colleagues are no longer opposite. You need to really look at the rules that you are always upholding and see if you want to live

under them because I don't think you do. You need to start considering that. I think we've got a huge hole in our legislation here, and we need to sew it up.

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

Any other comments? No.

I believe we've gone through this at length in the last debate, so if there's nothing else, I'm going to call the question.

**Ms Notley:** Well, there is no motion.

**The Deputy Chair:** Is there a motion?

**Ms Blakeman:** Yes. There's a motion coming.

**The Deputy Chair:** Okay. Now, that would be moving forward.

**Ms Blakeman:** That would be moving forward. Okay.

The motion is that

the committee recommend to the Legislative Assembly that the role of partisan interests be prohibited by members in carrying out their duties as a member and that caucus funds and taxpayer and lottery-generated funds should not be used to advance a political party.

**The Deputy Chair:** Okay. On that motion, any further discussion? Mr. Wilson first, then Mr. Young follows.

**Mr. Wilson:** Yeah. Thanks. I would tend to agree with Ms Blakeman. I think she's summed up the issue quite nicely. I agree with the intent of her motion and how she's defined it around using taxpayer dollars or lottery fund monies as opposed to just partisan interests in general.

As we discussed last time, I mean, we're all members of political parties. We operate in a partisan environment. So there are things that we will inherently do that will be partisan. However, the separation of taxpayer dollars for the purposes of partisan interests I think is something that we should recommend, and I will be supporting this motion.

Thank you.

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

**Mr. Young:** I just want to make it clear that when I vote against this it's not because what you're saying is true and I support what you're saying. Your premise is wrong, and I'm just going to vote against it. Outside this office there is a sign that says NDP opposition. Whenever we see the Leader of the Opposition stand up, there's a sign in a shade of green that says Wildrose opposition. I get that we have to have that diligent balance between government members. I'm a member of a party, too, and we've got to find that difference, but your presumption on using one for the other is incorrect. I just want to make that clear.

**The Deputy Chair:** Okay. Thank you very much.

**Mr. Wilson:** Just to clarify your point, the NDP opposition, the Liberal opposition, the Wildrose Official Opposition are all names that are given to us by the legislative office here. It's not something that we choose to use; it is what they give us to use.

**Mr. Dorward:** They give you the signage?

**Mr. Wilson:** They approve it. They give it to us. Absolutely. So it is all . . .

**Ms Blakeman:** They disapprove of our signage as well.

**Mr. Wilson:** Right. If, for example, I try to incorporate something that goes too far or anything that is party related, then I get yanked. Sometimes it happens four, five, six months after the fact that I've done it that they say: "Oh, sorry. That's a little bit too partisan now. We can't pay for it." So I think the issue that you bring up is one thing.

You know, the issue is around the Member for Calgary-Glenmore, who happens to be my shadow MLA, coming into my riding and delivering cheques all over the place with taxpayer money, using taxpayer dollars to fund or further partisan interests. It's furthering the government's partisan interests by demonstrating that they are the ones with the money. With respect, Ms Johnson, I'm not suggesting that you do it all the time. It's just that it is the nature of the game. You guys understand it. I think that you're using it to your advantage, and I believe that we have an opportunity here to pull that advantage back. You can't have your cake and eat it, too. That's all I'm saying.

**The Deputy Chair:** Okay. Thank you very much.

I have Ms Johnson on the phone. Did you say that you wanted to speak?

**Ms L. Johnson:** I would like to make an observation on that. I would like the hon. member to indicate when I've been in the constituency of Calgary-Shaw making those cheque presentations.

**The Deputy Chair:** Okay. Mr. Wilson, do you wish to respond?

**Mr. Wilson:** Fair enough. I will withdraw the remark because others have replaced you. Thank you.

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

**Mr. Young:** Let's be clear. We are currently the government caucus, and I don't make any apologies for that. But we're not representing the party; we're representing government and specifically the minister of whatever. If there is a cheque to be presented, she presents many of them, and if she can't do it, she gets another member of our caucus. We're not representing the party.

Now, the reality is that we do wear different hats. You are a member of the Wildrose, and you're in the Official Opposition. That's the dance or the balance we have to have, and we need to respect that alliance. As you said, the LAO is very challenging on that in terms of what we can and can't do, and we have those discussions, as do you. So I think it works very well.

**The Deputy Chair:** Okay. Thank you very much. Very well said.

**Mr. Wilson:** Sorry. Just one brief, brief clarification is the fact that when these presentations or these cheques are delivered, whether it be by yourselves, ministers, whomever, it becomes partisan when the calls don't go to the sitting MLA and the area to which you're going. That's it. So if every single time that a PC member was to present a cheque in an opposition member's riding a call went to them and advised them and invited them to be a part of it, I could see where you're coming from. But until that happens . . .

**Mr. Young:** We're not your scheduler, okay? If it was an LAO function, you would be invited.

**Mr. Wilson:** Is that your position?

**Mr. Young:** No. It's not an LAO function; it's a government function.

**Mr. Wilson:** With taxpayer dollars.

**Ms Notley:** You're not the government. I hate to break it to you. You're an MLA. I hate to break it to you.

**Mr. Young:** You're not breaking anything, okay?

**Ms Notley:** You are an MLA.

**Mr. Young:** I know I am.

3:55

**The Deputy Chair:** Excuse me, members. If I can have you all direct your questions to me.

Also, we are running out of time. Okay. Here's my suggestion.

**Ms Notley:** I've had my hand up, and you've had people speak repeatedly. I haven't had a chance to speak to this yet.

**The Deputy Chair:** There's a motion on the floor, and we're against the clock. I can see lots of people are excited about commenting on this back and forth. Here's my thought. We've discussed this endlessly, and we're revisiting it again. My suggestion is that the point is already made. There's no need to repeat and go on and on about it again. We heard different sides of the perspective on this issue.

**Ms Notley:** I've not been given one chance to speak yet, and I've had my hand up, and you've gone back to people who have spoken repeatedly and ignored my hand being up.

**The Deputy Chair:** Okay. Let me finish what I was going to say.

Here's my suggestion. If you have an additional, new point to add to what we've already discussed, let's have that very briefly. Then I'm ready to call the vote for the motion that's already on the floor because I don't see the sense, any further meaning to going back and forth continuously. This has gone back and forth many times.

On that note, any further new point, Ms Notley, you want to make very quickly?

**Ms Notley:** Well, there is a motion, so I'd like to speak to the motion at least once. First of all, quite honestly, on the issue of what caucuses do with their money in terms of the partisanship, to some extent I have a different position than some of my colleagues. Quite frankly, I find it ridiculous when I'm told that I can't say to my constituents what caucus I'm from. That, to me, is a completely ridiculous shutdown of the democratic process.

However, I think there is a difference between that pot of funds and money that is held in ministries to deliver public services. Just as I would be offended if I was a patient at, you know, the hospital and a Tory MLA walked in to present me with the wheelchair that was going to take me down the hall – that would just be ridiculous – people in my constituency are also offended when Tory MLAs show up to provide government money, because that is not political money. MLAs who are not members of Executive Council are not representatives of government. If you want a representative of government who is not a member of Executive Council, get somebody from the ministry.

**The Deputy Chair:** Okay. Thank you very much.

Now, on that motion on the floor, I'm ready to call the vote.

**Ms Blakeman:** A recorded vote, please.

**The Deputy Chair:** A recorded vote? Let's do that. Those who support the motion on the floor, please raise your hand. I'm going to go around from my right.

**Mr. Wilson:** For.

**Mr. Saskiw:** For.

**Ms Notley:** For.

**Ms Blakeman:** For.

**Mr. Young:** Against.

**Mr. Dorward:** Against.

**Ms Fenske:** Against.

**The Deputy Chair:** On the phone, if you support, say yes. If not, say no.

**Ms L. Johnson:** Against.

**Mr. McDonald:** Against.

**The Deputy Chair:** So 5 against 4. Motion lost.

Committee members, we are almost at the time to finish, so we need to decide the next meeting date, and there is a deferred item that we will deal with next meeting.

**Mr. Dorward:** I'm just going to poll everybody for September 25 at 9 a.m. as a toss-out.

**The Deputy Chair:** There's another committee meeting on that date. Perhaps we will do it this way. We'll have our clerk poll the dates, and then we'll go for the best that can accommodate the most people. Is the committee okay to meet again within two weeks?

**Ms Blakeman:** We're trying for two weeks from now?

**The Deputy Chair:** Yeah, or less because we're behind now.

**Ms Blakeman:** You and I are both gone, aren't we?

**The Deputy Chair:** Gone to?

**Ms Blakeman:** Oh, it's not you. Okay.

**The Deputy Chair:** This is exactly why I pushed that we deal with the issue within the time we've got. I know the longer we delay, the harder we're going to find it to schedule. Nevertheless, I think we've made significant gains. We're almost finished. I think we have about four items left on the deferred list, so it's okay. We'll deal with it next meeting.

Can I have the committee support the direction that we'll meet within 10 days? Dr. Massolin, I'm looking at you.

**Dr. Massolin:** It's fine by us. What we're going to do is that we're going to just compile those other issues that were deferred from the earlier discussion today into this current document. So there are a few more there, and that will be that.

**The Deputy Chair:** Okay. We'll have a two-hour meeting, I imagine. We'll deal with what's left over, and then we'll share a little bit of the concept of how the draft report will look. Then we're set to go.

**Dr. Massolin:** Yes.

**The Deputy Chair:** Thank you very much.

On that note, those who support a motion to adjourn, say yes. Thank you very much. See you next month.

[The committee adjourned at 4:01 p.m.]





