



Legislative Assembly of Alberta

The 28th Legislature  
First Session

Select Special  
Conflicts of Interest Act  
Review Committee

Friday, October 11, 2013  
11:03 a.m.

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

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

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Brad Odsen, QC	Registrar, Lobbyists Act, and General Counsel
Glen Resler	Chief Administrative Officer

**Ministry of Justice and Solicitor General Participant**

Joan Neatby	Solicitor, Legislative Reform
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[Mr. Luan in the chair]

**The Deputy Chair:** I'm going to call the meeting to order. Good morning, everybody. Nice to see you all with this beautiful fall weather outside and the long weekend pending. Hopefully, we can have a very productive meeting and get back to our Thanksgiving celebrations.

My name is Jason Luan, MLA for Calgary-Hawkwood and deputy chair of this committee. I'm pleased to welcome you all to today's meeting. I'd ask that members and those joining the committee at the table introduce themselves for the record. I'll begin on my left-hand side.

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

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

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

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

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

**Mr. Dorward:** David Dorward, MLA for Edmonton-Gold Bar and the Legislative Assembly of Alberta.

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

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

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

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

**Ms Blakeman:** Good morning and welcome, each and every one of you, to my fabulous constituency of Edmonton-Centre. I'm Laurie Blakeman.

**Ms Notley:** Good morning. Rachel Notley, Edmonton-Strathcona.

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

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

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

**Mr. Young:** Good morning. Steve Young, MLA, Edmonton-Riverview.

**The Deputy Chair:** Welcome, Steve.  
And Robert, if you want to.

**Mr. Reynolds:** Rob Reynolds, Law Clerk, Legislative Assembly. Good morning.

**The Deputy Chair:** Thank you very much. Welcome, everybody.

For the record, pursuant to Standing Order 56(2.1) to (2.3) Mr. Lemke is the official substitute for Ms Fenske. Is he coming? I haven't seen him yet. We'll give some time for him to join us.

Before we turn to the business at hand, a few operational items. The microphone consoles are operated by the *Hansard* staff.

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I hope you all have before you the copy of the proposed meeting agenda. Does anybody need a hard copy, or are you all okay? With that, I need somebody to make a motion to approve the agenda. Thank you, Laurie. Those who agree with it, raise your hand. Those opposed? Carried. Thank you.

Next on the agenda is approval of meeting minutes of September 13, 2013. I know the clerk has circulated the minutes along with the call for the meeting. May I ask: are there any omissions, errors, or changes that any committee members wish to make? I see none. Do I have somebody prepared to make a motion? Mr. Dorward. Thank you. Those who support it, raise your hand. Anybody opposed? No. Thank you.

Okay. Next on the agenda is to continue on, reviewing what we have left. This is the deferred issue. Before we get started, I know that our lovely, wonderful staff have prepared a summary for that, and I'm going to turn the floor over to Dr. Massolin to give some overview.

**Dr. Massolin:** Thank you, Mr. Chair. Just the overview, I think, is simply that these are the items that have been deferred from previous committee meetings, including the last one, that took place on September 13, last month. The other thing to note as well is that these deferred issues are only the ones that remain to be discussed and deliberated on at this committee meeting.

With that, I'll turn it over to Sarah Leonard for a further explanation of the first issue on the list. Thank you.

**Ms Leonard:** Okay. Thanks. The first item that we're going to discuss is the deferred issue of the definition of the Crown and provincial agencies. The committee has discussed this issue at length previously but hadn't come to a conclusion. I'll just remind the committee that this issue involves items 14, 15, 16, and 55, and they relate to the definition of the Crown specifically in relation to sections 6, 8, and 9 of the act. Section 6 says that members can't be employed by the Crown, section 8 says that members can't enter into certain contracts with the Crown, and section 9 prohibits members from accepting payments of certain public monies from the Crown.

If you look at page 5 of the document from the last meeting, which was scope of application, and section 2 of that was called Definition of the Crown in the Conflicts of Interest Act, that explained the definition for the purposes of sections 6, 8, and 9 specifically. The definition is that it's the Crown in right of Alberta and includes provincial agencies. Provincial agencies are defined according to the Financial Administration Act as either a "Provincial corporation or a Provincial committee" but do not include the corporations in subsection 2(5) of the Financial Administration Act.

I'll just remind you that this is a different issue from what I would call the senior officials issue, which is specifically which nonelected government officials should also have to comply with the Conflicts of Interest Act, but we're going to discuss that next.

Essentially, the question here for the committee to consider is: do you want to recommend changes to the list of government entities from which either current members can accept payments or by which they can be employed while they are a member or with whom they can enter into contracts?

Mr. Chair.

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

11:10

**Ms Blakeman:** Thank you very much. This one being deferred I think was partly my fault. I think there are agencies where the full-time paid staff should be subject to the provisions of this act. This was immensely complicated because, as Ms Leonard has walked us through, in order to find out what's in the Crown now or included in the definition of the Crown, you get one definition, which actually steers you towards the Financial Administration Act. When you follow up on that, you find out that, really, the definition is around whether the members of a provincial agency have been appointed by the Executive Council or appointed by government. That seems to be a deciding factor. It also uses the same exclusions that are found in the Financial Administration Act from section 2(5) and all of the alphabet list that follows, which is a lot.

What we lose out of any possible choice to include here – and forgive me; I just thought it would help if I kind of walked everybody through this, and then we can argue. What gets excluded is that all of the postsecondary institutions are taken off because they're specifically excluded under 2(5), a number of them, both the initial governing authority and the current board of governors, for example. The Health Quality Council of Alberta is specifically excluded, all of the research organizations are also specifically excluded, provincial health authorities are out, which would take away Alberta Health Services, and mental hospitals are out. So we lose right off the bat a number of things that I would have thought were in.

Now, Ms Leonard, correct me if I'm wrong here. Did I read that wrong? Sorry to put you on the spot.

**Ms Leonard:** No, I don't think so. I think you have it right.

**The Deputy Chair:** Ms Blakeman, if I can recommend, I just realized that it's the Ethics Commissioner's office that provides this listing document and list of agencies. Would it be helpful if we direct that question there to clarify some of this?

**Ms Blakeman:** Sure. They provided something, and we also had something provided from somewhere else. I'm sorry; there's no – research something.

**Mr. Resler:** Services. Yeah.

**Ms Blakeman:** Research services. So we actually have two lists. I was specifically asking about the delegated administrative organizations. Some of them appear on both lists because that's a whole other zebra. I think I was right in excluding the – was I reading that legislation correctly?

**Mr. Resler:** That's the definition, and that's found on page 5 of the research document, which was previously referred to as scope of application of conflicts of interest provisions to nonelected officials and definition of the Crown.

**Ms Blakeman:** Good. Okay. Now, from the document that was provided by the office of the Ethics Commissioner, on the second page there is a list of agencies that have full-time, salaried CEOs, and some of these have already gone off the list according to what I just went over with you. For example, under the health and wellness section Alberta Health Services is off, Health Quality Council is off, and Alberta Innovates: Health Solutions is off.

But I would say that there are a number on this list that should be included specifically under the definition of Crown, and here's

the criteria I used. If there was a high risk that the employed person would be in a position of a high likelihood of conflict of interest, if the agency they were running has a broad influence or application, and if there's lots of money at play, then those CEOs of the organizations on page 2 of the Ethics Commissioner's submission to us should be included under the definition of Crown.

I'm sorry. That was a very long run-up to this. To point out what's left, you have Agriculture Financial Services Corporation, Alberta Livestock and Meat, Alberta Electric System Operator, Alberta Energy Regulator, Alberta Petroleum Marketing Commission, the Balancing Pool, the Market Surveillance Administrator. I think we lose Alberta Enterprise Corporation according to the Financial Administration Act, section 2(5), but he will correct me in a second. I'm going to keep going.

The Workers' Compensation Board should specifically be included, Travel Alberta, and the financial and Treasury Board agencies, which are Alberta Securities Commission, Alberta Pensions Services, Alberta Capital Finance Authority, Alberta Investment Management Corp., and ATB Financial.

I am not including the Credit Union Deposit Guarantee Corporation or the persons with developmental disabilities or child and family services authorities. They are already government of Alberta employees, but I think the rest of the ones that I have named should definitely be included. They are likely to have conflicts of interest because of their position and because of the world they are moving around in. These organizations have a broad influence or application, and they are playing with a lot of money.

Given that, if you need me to make that into a motion, I'm happy to do so to put it on the floor, or we can just discuss it now. But I think it's important that these organizations that I have named are included; therefore, their CEOs would be subject to the disclosure provisions of the Conflicts of Interest Act, and they would be subject at a minimum to the senior officials' cooling-off period.

**The Deputy Chair:** Thank you, Ms Blakeman. I certainly know that this issue is very complex, and that's part of the reason, I think, that we had the commissioner's office provide this long list. I applaud you for giving it the first shot and trying to get going somewhere on this. I'm wondering about the rest of the committee members; I certainly feel this way.

Can we ask the office of the Ethics Commissioner to give us the overall picture of this, and once you've prepared the list, what your take is on where you wish things to be considered? That will help us kind of really focus. I know even for myself, going through the list of 318 agencies of various different categories, it's very hard to have a good grip on that.

Thank you very much.

**Mr. Resler:** What I'm following up on is more the definition of a senior official, how it applies to our office, so the lower part, not specifically recommendations 14, 15, 16.

The question that was provided to us in the last meeting dealt specifically with looking at organizations who had full-time board members. Those with full-time board members, all of those organizations, agencies, currently report to us. That's found on page 1 of the report we provided. They report to us, whether chair or vice-chair or board members, whichever capacity in each office.

The remaining 309 agencies do not have any salaried full-time board members. We did provide, as Ms Blakeman stated, a listing of corporate entities that fall under APAGA that have full-time salaried CEOs or equivalents, and those are listed on page 2. As

correctly stated, some of those that are listed are GOA employees, so they're already falling under the public service code of conduct and ethics.

The remaining pages of the document are a listing of agencies as more of a reference for you to look at. Either they do not fall under APAGA, or they fall under APAGA but don't have any full-time salaried CEOs.

**The Deputy Chair:** APAGA stands for . . .

**Mr. Resler:** Alberta Public Agencies Governance Act.

**The Deputy Chair:** Right. It almost sounds like the Alberta professional engineers association.

**Mr. Resler:** Yes.

We also provided you with a definition of delegated administrative organization just to provide some reference if you weren't clear on what those organizations were. We provide that information for your reference. You know, as the definition currently exists, we are not proposing any changes – that's part of our submission right now – so it's more for your discussion on what agencies you feel should be reviewed.

11:20

**The Deputy Chair:** Thank you.

**Ms Notley:** I'd just like a clarification. I'm just looking at pages 2 through 4 of the package that your office provided to us – and thank you for that – and I just want to double-check. As things stand now, only the groups in the first box are subject to any provision of the Conflicts of Interest Act, correct?

**Mr. Resler:** On page 1, yes.

**Ms Notley:** Yes. Page 2, I think it is, actually.

**Mr. Resler:** Of which document?

**Ms Notley:** Sorry. Yeah. I'm looking at page 2 of the document dated September 10, 2013.

**The Deputy Chair:** October 9, 2013, is the one we're looking at.

**Ms Notley:** Oh, okay. October 9. Okay. I've got to find another document. That's irritating.

**Mr. Resler:** You're looking at September 10, 2013?

**Ms Notley:** Yes, I'm looking at September 10.

**Mr. Resler:** That listing is all the agencies, boards, and commissions that fall under the Agency Governance Secretariat.

**Ms Notley:** Which one? September 10?

**Mr. Resler:** September 10, 2013.

**Ms Notley:** Right. What's the difference between that and the October one? I can't find the October one, and I want to make sure.

**Mr. Resler:** Okay. All of the ones that are listed in the September 10 document are included in my listing, an expanded listing, obviously. Only the ones under the secretariat, which is about 172 agencies, boards, commissions – my listing has 318 in total.

**Ms Notley:** Okay. What I'm trying to look at – and I just want to make sure, because I'm flipping through here to find the October document, which does not appear to be readily available to me.

**The Deputy Chair:** Ms Notley, if you don't mind, I can let Ms Blakeman carry on with hers, and then we'll get back to you. The clerk is giving you a copy.

Yeah. Go ahead.

**Ms Blakeman:** Thank you. One of the concerns that I specifically had was around that somewhat rare entity called the delegated administrative organization. Thank you very much to the Ethics Commissioner's office, Mr. Resler, for providing the definition.

I did some digging, and they are organizations which have a specified revenue stream. They are sometimes set up by government to then distribute that revenue stream, but I really wondered if they shouldn't be part of this conflict of interest. There are not very many of them: livestock identification; Alberta used-oil management; beverage containers; tire recycling; horse racing, which does have access to a lot of money; Alberta Motor Vehicle Industry Council; Funeral Services Regulatory Board. Then a number of municipal ones – boiler safety, elevator devices, petroleum tank management – and three under sustainable resource development: Alberta Conservation Association, forest resources improvement, and professional outfitters.

Unfortunately, I think, according to the definitions and the exclusions they all come out, is my understanding. If they don't, I'd love to know which ones are still in because these organizations are totally under the radar. We had a difficult time finding them. They have a specified revenue stream that has been government mandated. For example, I just met with the Alberta Conservation Association. The extra fee, the levy that's added onto hunting licences, goes directly into the bank account of that organization, and they are then tasked by the government to deliver certain services. So it is citizens that are contributing to their revenue stream, but there's not a whole lot of regular oversight because they are sitting off to one side as a different organization.

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

I think Dr. Reynolds has something. Sorry. Mr. Reynolds.

**Mr. Reynolds:** Thank you for the honorary doctorate.

**The Deputy Chair:** You're sitting close to a doctor.

**Mr. Reynolds:** I knew that if I hung around long enough, there would be a benefit somewhere down the road.

In any event, I was just wondering, Ms Blakeman, with respect to the points you're raising, where in the act or what the points that you're making about the delegated organizations, et cetera – I was just trying to get your intent with respect to the definition of the Crown. Are you concerned about their senior officials reporting? I know that the committee adopted a recommendation about putting the Fowler memo requirements in the act. Is that your concern, or is the concern about contracts with the Crown by members, which is covered under section 8? Or is it postemployment? I'm just trying to get at whether changing the definition of the Crown is the way to address your concern. I'm just wondering what the mischief is that you want to correct, just for drafting purposes.

Thank you.

**Ms Blakeman:** What I was trying to figure out was which of the provincial agencies under the definition provided in the Conflicts

of Interest Act, which then leads you to a definition in the Financial Administration Act, were actually covered under the Conflicts of Interest Act. As I worked my way through that, I was aware that there is another set of organizations out there called delegated administrative organizations that wasn't particularly being captured in any of the discussions that I was hearing around the table, which is why I asked to find out who they were and what they were doing. I want to make sure that since we only get to have a look at this every six years or something, we were capturing everyone we needed to capture.

It's the definition of the Crown and who is captured under that that I was trying to work my way through. At this point I don't think the delegated administrative organizations do come into this, so I've set them off to one side, but we do have another category of provincial agencies whose senior staff, I believe, should be included under the coverage of the Conflicts of Interest Act, and those are the ones that I have gone through and named. If you're looking for a reference, on page 2 of the materials supplied by the Ethics Commissioner's office, he gives us a chart that outlines other provincial organizations where they have a full-time, paid CEO. When I look at where my concerns were – risk of conflict of interest, amount of money they were playing with, and coverage or application – those agencies seem to me to fall into my criteria, and I'm proposing that they be included under that definition of the Crown.

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

**Ms Blakeman:** In other words, I think the act should be applying to their senior officials.

**The Deputy Chair:** I think I've got your point.  
Anybody else wish to make a comment at this point?

**Mr. Odsen:** I guess, maybe getting back to what Mr. Reynolds had to say and just so we're clear, that would mean, if I understand you correctly, not only that we have the disclosure and the postemployment provisions, the conflict of interest provisions, but also the contracting-with-the-Crown sort of provisions. So in effect, then, if I understand correctly, somebody who is employed by the University of Alberta or the University of Calgary could not retain their position with the university and be an elected member. I think that would be the interpretation – would it not? – because they would be in a position of having a contract with the Crown now if we're including the Crown universities in the definition of the Crown.

**The Deputy Chair:** Okay. If I can direct that question back to our legal counsel, I feel like there's some legal ramification here. You're defining somebody who has arm's-length, independent financial status as Crown. What's the implication?

**Mr. Reynolds:** Well, Mr. Odsen is a lawyer, too, and I don't have any problems with that. Just to follow up on what he said, though, if you include, I imagine, the health authority as being the Crown, if you were a physician and had a contract with them, then you would be in a conflict if you continue to work there while you are a member.

**Mr. Odsen:** That's my interpretation, too.

11:30

**Mr. Reynolds:** But that would be if you changed the definition of Crown to include that.

**Ms Blakeman:** But they're explicitly excluded out of that definition of Crown. I'm saying that we're going to clarify that certain groups are included because there are already a whole bunch that are excluded according to that definition of Crown in the Conflicts of Interest Act, which refers you to the definition and exemptions of Crown under the Financial Administration Act, and there are two sections there that apply to the definition of a provincial agency. So the health authority wouldn't be included.

I would like to hear what the implications are in the business world if you say, as I'm proposing, that the CEOs of the Alberta Livestock and Meat Agency or the Agriculture Financial Services Corporation had to comply with the disclosure and cooling-off periods.

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

Ms Notley, are you ready?

**Ms Notley:** Yes. I was trying to get my head around this and to clarify this a bit, and that kind of explains to some extent why I was looking at the wrong document.

Going back to the first presentation, that was provided by Ms Leonard, I think we're trying to get at an issue, and there are two ways in which we've been approaching this discussion. We've been approaching it by talking about the Crown, and we've been approaching it, less obviously although I think this is really what is getting to our primary concern here, by the issue of how you define a senior official.

When we talk about the Crown, it becomes confusing because there are parts of the act which, I think appropriately, should and could be applied to an expanded group of people. But by talking about the Crown, it confuses the issue because the sections of the act where the Crown is referred to are not actually the sections of the act that I think most of us who are interested in this issue are trying to expand the application of, where we want that expanded to other officials.

For instance, 6, 8, and 9 simply relate to the issue of, you know, an MLA and, once they're elected, what other kinds of economic relationships they can have with parts of government while still being elected. Each of those sections applies to that in different ways, and it raises the kind of issues: "What if someone is on a leave of absence but maintains their employment once they're elected?" and that kind of thing and "Can that continue?" and that sort of thing.

To me, what I'm concerned about – and, of course, I can play around with these numbers. But, generally speaking, I'm looking at sections 2, 3, 4, 11, 12, 14, 15, 20, 21, 31, 32, 32.1, and 32.2.

**Ms Blakeman:** Of the act?

**Ms Notley:** Of the act. Those are the ones that talk about decisions furthering private interests, influence, insider information, the components of disclosure, the restrictions on holdings, the restrictions on employment, the postemployment restrictions and opportunities of these officials. Those are the issues that I think get to the question of how we limit opportunities for conflict of interest to arise, and those are the sections that I would like to see applied on a consistent basis to a greater number of people as per the Tupper report of a long time ago. That's why I was looking at page 2 of the September document, that was prepared by leg. services. That's the document that delineates this sort of inconsistency. I mean, they don't put it in that way, but if you read it, you see there's an inconsistent set of rules applied to different senior public officials, trying to get at parts of those components of the Conflicts of Interest Act.

I actually think that the better way to approach this discussion is to talk about the definition of senior officials and to talk about the components of the Conflicts of Interest Act which ought to apply to them and the extent to which their behaviour is already governed by other laws. I would argue that in many cases their behaviour is governed by other laws although they are in most cases weaker laws and less stringent laws. I would argue that there are a number of people who are exempted from even those less stringent laws. That's the way I'm viewing this. Please jump in if people think I'm misunderstanding it.

I think the way to talk about this, then, is to talk about the Crown issue as it relates to sections 6, 8, and 9, and I think we can probably dispense with that relatively quickly. Then we need to look at the conversation about senior officials and the expansion of protections against conflict of interest situations arising that taxpayers can rely on with respect to their very senior and powerful public officials. That's what I'm trying to get at here. Does that make sense?

**The Deputy Chair:** Okay. Thank you for another try. I think it's getting a little more clear in my head. Thanks so much.

Any further comment from the commissioner's office in terms of if we go that route? What are the implications?

**Mr. Odsen:** Well, I thank Ms Notley for stating her position. I think that is really what the issues are here exactly, and, you know, we can deal with that. Certainly, I've got some thoughts when we move to talking about senior officials as to maybe how that can be addressed, but we'll wait till we get to that discussion.

**The Deputy Chair:** Okay. If I'm following the conversation correctly, in terms of defining the Crown, we really don't have that issue. It's the focus on how to define the senior officials that applies to the other sections that we may want to have further discussion about.

**Ms Blakeman:** Yeah. I think what it is is that I can't get at what I'm trying to get at by changing the definition of Crown. We have to come at it in a longer, more complicated way by changing a whole bunch of sections.

**The Deputy Chair:** Yeah. So I see a consensus around the table, with many heads nodding, that we are agreed that we are not going to change the definition of Crown. Can we move one step ahead? I need somebody to make a motion for that. Can someone do a motion in that way?

**Ms Blakeman:** Why? We're not changing anything.

**The Deputy Chair:** Okay. Let's just move on, then. Let's move on to talk about senior officials, then, right? Ms Notley.

**Ms Notley:** All right. Well, then, unless there's a more up-to-date document, I'm now looking at your September 10, 2013, document. Have you updated that, or is that a good document? It's called Scope of Application of Conflicts of Interest Provisions to Non-elected Officials and Definition of the Crown in the Conflicts of Interest Act, and it's dated September 10, 2013.

Going back to that, on the left-hand side under Statute/Regulation/Policy, starting on page 2, we have a chart that outlines a number of different laws and policies which include bits and pieces of rules and regulations around conflict of interest. The second column, Applies To, lists the people that are covered by it. Then the third column tries to give some detail about what exactly that coverage means in terms of the actual rules.

A summary of this, then, is that, you know, obviously the MLAs, ministers, former ministers, and certain political staff members are covered by the broad scope of the provisions of the Conflicts of Interest Act. Well, maybe not the broad scope; there are certain sections. They are covered by the act for the purposes of the several different provisions which are geared towards limiting the opportunity for conflict of interest situations to arise. That's the way I'll characterize them for the time being.

Then we see that elements of the act apply to certain senior officials under certain pieces of legislation and/or policies and that other elements of the act apply to other senior officials under other pieces of legislation and/or policy. Some officials are covered by some, and some officials are covered by others, and some officials are covered by none. So, really, this document does a good job of providing a two-page chart of the dog's breakfast of conflict of interest provisions that apply to senior officials in Alberta.

The question that I started asking you guys about – just for clarification, because I think we need to get more information before we even get into the substance of the discussion. You had said at the last meeting that you have a bit of an oversight role with some people beyond the conflict of interest legislation, did you not? Do you not receive reports from senior officials? Did you say that you did?

11:40

**Mr. Resler:** The Fowler memo, anyone that falls under the Fowler memo.

**Ms Notley:** The Fowler memo. So you oversee the financial disclosure provisions which occur as a result of the Fowler memo already?

**Mr. Resler:** Correct.

**Ms Notley:** The other pieces, like the Public Service Act, the stuff that's covered under the Alberta public service postemployment restriction regulation, and the code of conduct and ethics for the public service of Alberta: those are not in your bailiwick right now?

**Mr. Resler:** The public service postemployment restriction regulation is, so we're the authority in which they come to us on postemployment issues.

**Ms Notley:** Okay. So the Ethics Commissioner is sort of the overseer for that one. You are not the overseer for the Public Service Act?

**Mr. Resler:** No. The Public Service Commissioner.

**Ms Notley:** You are the overseer for the Fowler memo?

**Mr. Resler:** Yes.

**Ms Notley:** You are, obviously, the overseer for the Conflicts of Interest Act. And for the code of conduct and ethics for the public service of Alberta?

**Mr. Resler:** The Public Service Commissioner.

**Ms Notley:** The Public Service Commissioner. Okay. We have two. And for the Alberta Public Agencies Governance Act? That's the last one in the chart.

**Mr. Resler:** Not us.

**Ms Notley:** That would probably be the Public Service Commissioner.

**Mr. Resler:** I think that falls under Executive Council.

**Ms Notley:** That's Executive Council. Okay.

So we have on this issue three different bodies which are responsible for overseeing and enforcing and investigating and all that kind of stuff.

**Mr. Resler:** One additional role that we have under the public service code of conduct and ethics is a review mechanism, an appeal mechanism. So if a public servant is not satisfied with the decision of a deputy head, they can come to our office for review.

**Ms Notley:** This is the code of conduct and ethics for the public service of Alberta enacted pursuant to sections 23 and 24 of the Public Service Act?

**Mr. Resler:** Yes.

**Ms Notley:** So you have a partial – you have an appeal role.

**Mr. Resler:** Yes. We have a review mechanism there.

**Ms Notley:** Okay. So we have a lot of different roles.

**The Deputy Chair:** As sort of a comment, Ms Notley, I think I'm following what you're saying closely. What I'm getting at is that, yes, you are concerned about whether for all those others there is a way of checking in, a way of tying in to who is going to look into that. It sounds from my observation that at the commissioner's office examinations are through two, three other legislations, and there are ways of governing such. That, to some degree, I think, covered the issues that you are concerned with.

**Ms Notley:** Not at all. Not at all. Quite the opposite. What I'm doing is – this is highlighting my concern because we have different overseers, we have different standards, we have different rules, and we have different levels of application. What I am simply doing at this point is reviewing.

**The Deputy Chair:** Got you. Okay. I just want to clarify where we are at. If I recall from the Ethics Commissioner's previous discussion, you were advising the committee that we are here talking about a specific act that is mainly focused on elected officials while for the senior staff and all that stuff there are various other ways, including part of this one, of coverage. Is that the rationale, that you are saying that we don't need to change?

**Mr. Resler:** That's the current status as far as how we maintain it, yeah.

**The Deputy Chair:** Okay. Ms Blakeman, I think you've been waiting.

**Ms Blakeman:** Well, I'm on the same page as Ms Notley on this one. My concern is that when we turn outward from this room and talk to constituents and Albertans and say that there is a Conflicts of Interest Act and they say, "Okay; well, is the head of such-and-such an agency covered under that?" – I dare anyone in this room to try and reel off which ones are covered and which ones aren't.

Part of what I want to point out is my concern about who was captured. When you look under the second piece of the document from September 10, Scope of Application of Conflicts of Interest Provisions to Non-elected Officials and Definition of the Crown, going off the Fowler memo, the Fowler memo is not enforceable

currently. Now, we've made a recommendation saying that it should be, but if it's not, we still have a bunch of senior officials running very large, wide-application, big-money, high conflict of interest agencies in Alberta that are not coming under this act. They're coming under some other form of it, which may or may not be and is likely not as wide a coverage, and that's the problem.

Given the amount of work the government is now doing through these agencies, they become more important every day.

**The Deputy Chair:** I certainly appreciate hon. members trying to figure out reasons and rationales to help us move forward. I was just given a reminder that some of the decisions we have decided already. I'm going to ask Dr. Massolin to refer us to the minutes and some of the decisions made on September 13, I believe, regarding this issue.

**Dr. Massolin:** Thank you, Mr. Chair. I'd just like to point out that at the top of page 36 of the minutes that have been adopted by this committee earlier in this meeting, the following motions were moved, two of which were carried and one of which was defeated. I'll read them out for the record.

Moved by Ms Notley that the Select Special Conflicts of Interest Act Review Committee recommend that the provisions of the Fowler Memo, dated February 3, 1993, be incorporated into the Conflicts of Interest Act. Carried.

Moved by Ms Notley that the Select Special Conflicts of Interest Act Review Committee recommend that the post-employment restrictions applicable to senior officials found in the public service regulations be incorporated into the Conflicts of Interest Act. Carried.

Moved by Ms Notley that the Select Special Conflicts of Interest Act Review Committee recommend that the rules for senior officials found in public service regulations and the Fowler Memo, dated February 3, 1993, be applied to senior officials of organizations that are exempted from other parts of the Conflicts of Interest Act as per the Financial Administration Act. Defeated.

Thank you.

**The Deputy Chair:** Thank you very much. That helps us to kind of angle back to where we are.

If I can sort of put my two cents in here, we discussed this issue before. We made some decisions. I think we made some movement on that. Then we're back to the definition of Crown, which I think earlier discussion this morning clarified. That's a separate issue. We're okay to just leave that as it is.

So with that, I'm recommending, hon. committee members, that we move on. We've probably addressed this in different ways and so forth.

**Ms Notley:** Part of the problem was that – I mean, fair enough. Some of the stuff that we've already agreed to we've moved forward on. Then, of course, we kind of went back and said: we still need a little bit more information. But you're right; some of it is covered by that, not all of it. The concern that I still have – and I'm not sure if that was entirely covered by the last motion that you read in, that was defeated – is simply this. Just looking at this document, the September 13 one, in the decisions that we've made, is the CEO of the Alberta Energy Regulator covered by the inclusions that we voted on last time, that were just read into the record? Can somebody answer that question?

**Mr. Resler:** I can tell you that the chair of the Alberta Energy Regulator is not a senior official under the definition of senior official.

**Ms Notley:** Chair or CEO?

**Mr. Resler:** Either.

**Ms Blakeman:** So they would not be included under the Conflicts of Interest Act even if the recommendations that we've put forward and have been accepted apply.

**Mr. Resler:** Right.

**Ms Blakeman:** Well, I think that's a problem, folks.

**Mr. Dorward:** Is the problem that the framework is wrong, or is the problem that it hasn't been defined as such?

**Ms Blakeman:** It's that it's so complicated right now that we can't tell who's in there and who's not. I would expect that a position like the Alberta Energy Regulator would be covered under this act, and I'm trying to figure out how we can actually make sure that these organizations, that are being increasingly empowered, are indeed covered under the conflict of interest legislation. So how do we go about doing that?

11:50

**Mr. Dorward:** My concern is that if we try to do that today, four years from now there's another body or another organization that also isn't covered.

**Ms Blakeman:** If the government continues to do that, then yes, we'd be looking at it again.

**Mr. Dorward:** My intention is to try to get a framework here – that's a good question for the Assembly, why they're not covered under the act – but not necessarily an attempt to try to add it to this for fear that there would be other ones that would come up that aren't in there either.

**Ms Blakeman:** But that's what we've been empowered to do. We've been set to examine the Conflicts of Interest Act to see if it's still good, and it's not good because it's not covering agencies that should be covered.

**The Deputy Chair:** Hon. members, I think that we're hitting a very interesting subject here. Lots of interest.

I have Ms Johnson.

**Ms L. Johnson:** Thank you, Mr. Chair. What I'd like to suggest is that we go back to the preamble of the piece of legislation which we are reviewing, which is to review the "conduct of elected officials." That's the legislation that we're reviewing, and that's what we've been working towards for the last how many days and how many hours. I just want to clarify the discussion in my mind that it's a piece of legislation for Members of the Legislative Assembly of Alberta.

**Ms Blakeman:** But we have expanded this legislation exactly to capture senior officials, according to the last group that was sent to do this. Why wouldn't we be looking at it? It doesn't say: don't look at it.

**The Deputy Chair:** Okay. Ms Notley.

**Ms Notley:** Yes. I mean, the mandate of this committee is to look at this act. When this act was first established, Allan Tupper, who was probably the most expert person to look at this, recommended that we ensure that it applies to senior officials. Repeatedly this government and the majority members of the Conservative caucus

on committees have refused to do that. Nonetheless, Albertans are growing increasingly uncomfortable with that. It is absolutely within the mandate of this committee as we review all the terms of this act to look at who it applies to.

Now, we've made recommendations for expanding its application to some extent as a result of the previous motions last September. My question to all the members of this committee is: why wouldn't the CEO of the Alberta Energy Regulator be covered by the rules which seek to limit opportunities for conflict of interest situations to arise? I need someone who doesn't support including that person in that list to give me the rationale for why you would exclude them, other than something like: oh, I don't want to talk about it today.

**The Deputy Chair:** I got your point. Thank you.

Let me clarify that. I have a question for Mr. Resler. I was looking at the paper that you have. On page 2 it lists the Alberta Energy Regulator. They have paid staff. They're supposed to be governed by the Alberta Public Agencies Governance Act, are they not?

**Mr. Resler:** Yes.

**The Deputy Chair:** So is Ms Notley's concern not addressed through that act? I want to hear from Mr. Resler.

**Mr. Resler:** Under that legislation, the Alberta Public Agencies Governance Act, they are required to have a code of conduct, which would apply to all staff members, including board members.

**The Deputy Chair:** So if they have conflict of interest behaviour related to that, is that addressed through that?

**Mr. Resler:** It's addressed internally, in the organization. Yes.

**The Deputy Chair:** Okay. Is that the basis of your recommendation or sort of your assessment to us, that it is covered through that angle? Therefore, you're not recommending any change to our Conflicts of Interest Act in this regard.

**Mr. Resler:** Yeah. We're not making any recommendations. We're just highlighting these organizations. That's all we're doing.

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

**Ms L. Johnson:** To further add to that comment, the 35-page document is online.

**Ms Notley:** Who cares?

**Ms L. Johnson:** Well, their conflict of interest policy and procedures are outlined. It's a public document.

**Ms Notley:** But it's not law, and the standards are lower than the Conflicts of Interest Act. That's what we're trying to fix here.

**Ms L. Johnson:** We're having the discussion.

**Ms Notley:** You want to lower the standards for these people?

**Ms L. Johnson:** No.

**Ms Notley:** At least openly say that, that you'd like these people to have lower standards, that that's what you think is the right way to go.

**Ms L. Johnson:** I'd appreciate your not putting words in my mouth.

**The Deputy Chair:** Ms Notley, I'd appreciate it if you gave the floor to the member, who can speak.

Thank you, Ms Johnson.  
Mr. Saskiw.

**Mr. Saskiw:** Mr. Wilson.

**The Deputy Chair:** Oh, you changed?  
Okay. Go ahead.

**Mr. Wilson:** Thank you, Mr. Chair. I'm wondering if we might be able to shorten this debate somewhat. Just from my interpretation of what's been said here, I believe what Ms Notley and Ms Blakeman are attempting to achieve here is that by encompassing the list on page 2 of the document that was provided by the Ethics Commissioner – the corporate entities with full-time salaried CEOs or equivalents, less CEOs that are already government employees – by including those individuals as senior officials, that would satisfy Mr. Dorward's concern around a framework because if a new board were to be introduced, it would fit into either a category where they are salaried or they are not. If they are salaried, they become part of the senior officials under the Conflicts of Interest Act.

Now, that is simply my understanding of the discussion, and I would just suggest that at this point I would be supportive of that.

**The Deputy Chair:** Thank you.

I just want to give Mr. Dorward a chance to respond to that. Does that satisfy your framework that you proposed?

**Mr. Dorward:** No. The experts in this area are sitting to my left, and they are recommending that we don't make any changes in this area. I mean, some of these questions may be great as questions for the Assembly, but I don't think they are questions that need to be reviewed by us as we review this legislation.

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

**Mr. Saskiw:** Well, I think that's the whole point of this committee. I take Ms Johnson's comments that this review has to do with the ethics of elected representatives, but of course this legislation deals with all sorts of other categories. We see that the chief of staff, for example, falls within the purview of this legislation. Perhaps given recent events, where an individual received a severance package of significant dollars, maybe this is why there's reluctance on the part of some members to apply ethics in these areas. I hope that that wouldn't preclude us from discussing it. I hope they're not doing that.

**The Deputy Chair:** I certainly welcome the committee members to get all those points on the table and say what you support. What I wouldn't recommend is your putting words to others who may have a different perspective on this.

At this point I am thinking, at least from my recollection, that we've thoroughly discussed this from many points. Are we ready to let democracy kind of speak for itself rather than continuing to try to go around and around to convince each other?

**Mr. Wilson:** Mr. Chairman, I'm happy to make a motion that summarizes my last statement if that satisfies the will of the committee to have something to vote on.

**The Deputy Chair:** Okay. Let's give it a try.

**Mr. Wilson:** I would then move that a list of agencies that are corporate entities with full-time salaried CEOs or equivalents that can be found under APAGA but not necessarily governed by APAGA – I would like those full-time salaried CEOs or equivalents to fall under the Conflicts of Interest Act and have the standards of that act apply to them, less CEOs that are already government of Alberta employees.

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

That's the motion on the floor. Any questions on this motion?

**Ms Notley:** Well, I would just like to speak in favour of it for the reasons that I've mostly outlined, but I just want to put them all together once again. This government has increasingly delegated excessive legislative authority to very powerful figures, who are at arm's length from government, who have troubling relationships with the very parties that they are tasked to oversee and govern. I would suggest that there are a number of Albertans who are increasingly uncomfortable with that trend as initiated and driven by this Conservative government.

I would suggest that that flies absolutely in the face of the recommendations that were made by the Tupper report over 10 years ago. Quite frankly, I think that if Mr. Tupper were writing his report now and looking at someone like, say, for instance – and I just use this example because it's one that everyone has a good understanding of. The chief officer of the Alberta Energy Regulator is not subject to the kinds of rules which the regular Albertan would expect would be in place to ensure that conflict of interest situations that might otherwise arise wouldn't arise. I think that Mr. Tupper would be shocked that we are actually enhancing the absence of transparency and the absence of accountability.

So I think the way to avoid that is to vote in favour of this motion. That is absolutely within the mandate of this committee. This committee was tasked to look at conflict of interest and how to avoid the occurrence of conflict of interest within this province, and that is what we are doing. By voting against this motion, you are tacitly accepting the fact that a lower set of standards will be applied to the most powerful public officials in this province.

**12:00**

**Ms Blakeman:** I want to speak in favour of this motion because I'm partly responsible for causing this. I know I'm responsible for causing this. My concern is with exactly the process we've gone through this morning. We now have a system that is so complicated that even a group like us, complete with lawyers and other advisers, are struggling to find our way through to identify whether someone is included in a conflict of interest or a code of conflict.

Now, I've just tried to find the code of conflict, and it's not easy. It's not obvious when you go onto the site for the Alberta regulator. I'm just picking on them; you know, I'm just using them as an example. But it's difficult to find this. I think it's important that as we have the government increasingly devolving tasks, money, responsibility, and accountability to delegated agencies, provincial agencies, we have a very clear understanding that we capture senior officials under conflict of interest regulation.

Let me put it another way. I am not comfortable going out to Albertans and saying: "I'm sorry. We don't cover the Alberta regulator under conflict of interest legislation. They are allowed to write their own code of conduct as long as they use the basic template that is allowed and put forward by the Agency Governance Secretariat." Whether that's as stringent – I don't

believe it is as the conflict of interest legislation. I would find it laughable, I would be very embarrassed to go out to the public and say: we didn't talk about this or do anything about it because the original mandate just said MLAs. I think that's embarrassing for us, to not have examined everything that is possible and all of the challenges and difficulties that are presented in current-day governance by the government of Alberta to all of these different agencies that they are now creating.

The Alberta regulator is a good example because it currently holds all the regulations for the oil sands, including environmental regulations. They are now going to be adding to their scope, I've heard. The regulator himself was out giving speeches saying that they're going to be adding to their scope and their mandate. But we would have to say to someone that the CEO of the Alberta Securities Commission is not subject to this. I would have to go out and say to someone: "Yeah, sorry. The ATB Financial board president is not subject to conflict of interest legislation in Alberta. They're subject to their own code of conduct, though, whatever way they want to write it." This is embarrassing.

We need to have as vigorous a code of conduct as possible. Why would anyone fear that? Surely, it would be in the government's interest to support the most vigorous conflict of interest legislation possible for everyone, as I stated in my opening comments, that is in a position of running an agency that has high conflict of interest risk, that has a wide application or service area, and that is dealing with a lot of money. I think those criteria are still valid, and we should be working very hard to make a good recommendation back to the Legislature, not trying to avoid it.

Thank you.

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

I have a suggestion I want to recommend to our committee members. We have one member that is substituting, as I mentioned earlier. He's ready to join us, but if we have him join now – it will take a few minutes to have the system go up. It's lunchtime right now. My suggestion, if it's okay with all of you, is: let's take a lunch break, and we'll have the system ready. In 15, 20 minutes, if we all agree on the time, we'll come back, and let's vote on this issue. Then we'll have kind of the full committee present. Is that something you can consider? All agreed? Okay. How long a lunch recess? Twenty minutes? Thirty? Or even shorter? How about we reconvene at 12:30?

I want to thank you for expressing all your different points of view. That's the beauty of democracy. Thank you.

[The committee adjourned from 12:06 p.m. to 12:35 p.m.]

**The Deputy Chair:** Welcome back. We have Ken Lemke on the phone. Ken, I'll ask you just for the record to state your name, and you're substituting for another committee member here, so state that, too.

**Mr. Lemke:** Yes. Ken Lemke, MLA, Stony Plain, substituting for Jacquie Fenske.

**The Deputy Chair:** Thank you, Ken. Welcome to the committee.

Our committee just had a lunch break. I think Mr. Dorward wants to make a final conclusion, sort of a discussion sharing point, and then we'll go for a vote.

**Mr. Dorward:** Firstly, I'd like to hear the motion.

**The Deputy Chair:** Okay. Can I have the staff read the motion that we had just before lunch?

**Ms Rempel:** Yes. Mr. Wilson's motion was that

a list of agencies that are corporate entities with full-time salaried CEOs or equivalents that can be found under the APAGA act but not necessarily governed by APAGA fall under the Conflicts of Interest Act and have the standards of that act apply to them, less the CEOs that are already government of Alberta employees.

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

**Mr. Dorward:** Okay. I've heard some things. My understanding is that we have an act which applies to elected members, and we have the Fowler memo dated February 3, 1993 – I have a copy right here – which we've already made a motion to incorporate into the act. The Fowler memo includes, with respect to financial disclosure, a limited number of individuals within the government and a deputy minister position or senior officials in the act as well. My understanding is that the Wildrose opposition member, Mr. Fox . . .

**The Deputy Chair:** Mr. Wilson.

**Mr. Dorward:** Right. I'm sorry. Why did I say Mr. Fox?

Mr. Wilson would greatly increase the capture of various groups into the act, which I think would lend a lot of confusion and not clarity in that they would be having to be governed by all the aspects of the act that we've just spent a lot of time going through, a lot of which wouldn't apply.

For example, I just think of colleges and universities and the posteducational, postwork, postemployment options that they have available to them, whether parts of this act now apply to them. For many of them my understanding is that they're already under the acts that we have just reviewed or reviewed a while ago, which would mean that they would be under two different acts, some of which might argue against each other in certain parts and not be consistent.

I sympathize with the issue that this is complicated, and I sympathize with the issue that we want to say something with respect to that. Certainly, from my position on the committee I do want to have the amount of disclosure and stop or not have conflicts of interest that benefit individuals through their public service as an elected or an employee of the Crown. That goes without saying. I don't like it when on the other side I hear that we're being accused of wanting to be Softee Toffees in this area. We're not. But I just don't think that there's a silver bullet motion that we can make right now which is going to solve the complexity and all of a sudden make it easy.

In fact, I see the Wildrose motion being very much the opposite of that and adding massive confusion. If that recommendation flowed all the way through to legislation – and by the way, we're just here to make recommendations, not to change legislation – I think it would cause great concern. It would complicate things. It wouldn't simplify them.

So I'll be voting no, Mr. Chair.

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

Mr. Wilson, last, hopefully.

**Mr. Wilson:** Well, just to respond – and I appreciate Mr. Dorward's comments – part of the reason why I qualified in the motion that it was only going to be corporate entities with full-time salaried CEOs or equivalents is because then it does not encompass all 300-plus boards. We're talking 21 boards plus presidents of postsecondary institutions. Period. I mean, it's a

pretty small set. They are all salaried CEOs or equivalents, and the differentiator is that they receive that salary.

I accept and take your point that it is a complicated issue. I think that we may be able to at this point understand that most motions that we pass around this table and in this committee were with the intent of research coming back with a report. So I would challenge your assertion that this is overly complicating things as I believe the list that the Ethics Commissioner's office so generously provided for us does not in any way, shape, or form make this a complex issue.

Thank you.

**Mr. Dorward:** If I could just go back, then, Ms Blakeman, because you are the one who has talked a lot about this issue, given that the Wildrose motion on the table right now does not do very much, does this go as far as you think it should go? Like, I guess what I'm looking to hear perhaps is that there might be some work that needs to be done in the Assembly in a broader way to bring up this overreaching issue that I don't know that we can sit here and solve today.

**Ms Blakeman:** Well, I view it as our work to try and keep the Conflicts of Interest Act up to date by making recommendations, which then, in turn, are indeed considered and possibly concurred with by the Legislature. So there is a second view with that, if you will. But I think it's important that we do consider the direction the government is moving in and make sure that when we turn back to the public, we've done the best job we can on their behalf.

We already know thanks to the document from the Ethics Commissioner, thanks to the Fowler memo, and the Alberta public agencies governance that there are a number of agencies, either chair or senior officer, that do report to the Ethics Commissioner, and with the acceptance of the Fowler commission, that would make it enforceable. Right now it's voluntary. That includes things like the chair of the Alberta Utilities Commission, Alberta Gaming and Liquor Commission, Environmental Monitoring Management Board, Labour Relations Board, Land Compensation Board, Natural Resources Conservation Board – it doesn't really exist – Surface Rights Board, appeals for workers' compensation, and the Alberta Human Rights Commission. Those are currently reporting under some sort of conflict of interest understanding.

The ones that are not reporting, that I think have an increasing place in the province and which I think we should be trying as a committee to figure out a way to include, are the ones that turn up on the second page of the information that's been provided by the office of the Ethics Commissioner. Those I have read in before, but I'll give you a little sampling: the Agriculture Financial Services Corporation, the Alberta Electric System Operator, Alberta Enterprise Corporation, the Workers' Compensation Board, the Alberta Securities Commission, Alberta Capital Finance Authority. The senior officials running these organizations are meeting the criteria I've mentioned before, and I think we need to find out as a committee how to cover these officials.

It may be that in five or six years we'll meet again and we'll need to be looking at how to cover additional ones. Yes. That's life. Things change. But I believe the public looks to us to provide that clarity and to figure out a way to include these very, very important, very, very influential people, and they have influence very widely across the province. It's our job to figure out how to make sure that they are included and that there is a consistency and that it is less complex and that we are able to find a way, without, you know, spending a week on it, where we can say whether somebody is included or not.

12:45

**The Deputy Chair:** Ms Blakeman, thank you for that.

If I can provide a comment, my read is that as the discussion goes on, I see the spirit where we all want to see something, want to address this issue this way. Where the difficulty is in terms of the specific resolution on the table at this time: does it resolve the issue, or does it make it even more complicated? That's the difference I see. We've been around a whole hour on this now, so I'm recommending that we make a decision and move on. There is this motion on the floor. I'm going to close the discussion at this point and ask hon. members . . .

**Ms Blakeman:** Can we record this, please?

**The Deputy Chair:** Record the vote?

**Ms Blakeman:** Please.

**The Deputy Chair:** Yeah.

Those who support, please raise your hand and state your name, starting from my right. Go ahead.

**Mr. Saskiw:** Support.

**Mr. Wilson:** Support.

**Ms Notley:** Support.

**Ms Blakeman:** Support.

**The Deputy Chair:** On the phone, if you support it, say yes, and state your name.

**Mr. Lemke:** I do not support.

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

For the rest in the room, if you do not support, state your name. I'll go from the left hand.

**Mr. Dorward:** I'm voting no.

**Mr. McDonald:** Against.

**Mr. Young:** Against.

**Ms L. Johnson:** Against.

**The Deputy Chair:** So it's five against and four in support. Motion lost.

Okay. Thank you very much.

Mr. Wilson.

**Mr. Wilson:** Thank you, Mr. Chairman. Seeing as that motion is defeated, I just thought I would quickly poll the room. I'm trying to get an understanding if this is an issue that you're interested at all in addressing, and I'm referring to my PC colleagues. I'm wondering if you can help me understand why you're comfortable having the Alberta Utilities Commission chair, vice-presidents, and board members fall under senior officials, but you're not comfortable . . .

**The Deputy Chair:** Sorry, Mr. Wilson. I think I'm going to interrupt if you don't mind.

**Mr. Wilson:** I kind of do, actually, because I'm looking to potentially make another motion that is friendly to achieving the result that I would think we're trying to get to, Mr. Chair.

**The Deputy Chair:** When this motion comes forward, yes, I can entertain that. I just don't want to have another hour conversation, okay?

**Mr. Wilson:** And fair enough. Nor do I, but I'm just trying to understand if the reason that that last motion failed was because of the wording of it or the intent. If it's the wording and we can manage to find one with the intent, then maybe we should do that. I'm asking Mr. Dorward or anyone who voted against that past motion if they feel that it's reasonable that the chair of Alberta Health Services or the president or CEO of Alberta Treasury Branches does not fit under senior official, yet the chair of the Alberta Utilities Commission does. Why are we separating those two?

**The Deputy Chair:** Anybody want to respond to that?

**Ms Blakeman:** Can we just go on the intent versus the actual wording? I'm wondering if there's any intent to work on this.

Linda, you look like you might be able to answer that.

**The Deputy Chair:** If I can sort of share my view, an observation on this, I believe the intent is there, but we've been through a whole hour. It's the technical part of: what are you specifically trying to change? Does it add value to the issue we're faced with, or does it just make it more complicated? I'm hearing back and forth, back and forth about this. There is no good solution at this point that really resonates with people that we can go by.

**Mr. Saskiw:** That's why we're here. If the intent is there, then the people that draft the legislation can draft that intent and come back to us with a possible solution. It's not for us to draft every single particular detail provided there is intent in this room. If there are members of the PC caucus that weren't happy with the previous motion but still want to do something, then we can still do it.

**The Deputy Chair:** Yeah.

**Mr. Dorward:** Well, I have a question for our ethics staff. In the broader context of agencies and bodies and groups that are receiving government money, is it true that they have their own set of ethical guidelines that they're governed by, generally speaking?

**Mr. Resler:** Yes.

**Mr. Odsen:** That is true.

**Mr. Dorward:** Well, I have no intention on this committee of going through all of those. You can come up with a list of them or some kind of wording, but I just don't see our mandate as being to go through all of the different ways that they're governed by their own ethics standards, if you will. I just don't see it. You can try to add things on to throw them under this legislation, but I just don't think it's part of our mandate right now.

**Mr. Wilson:** If I may?

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

**Mr. Wilson:** I'll ask the office of the Ethics Commissioner if they could just maybe clarify for me what separates the nine individual corporations that are listed on the first page of your submission, from an ethical standpoint, the governance ethically, from those that are listed on the second page.

**Mr. Resler:** What separates the two listings is the definition of a senior official. That definition is as per the regulation, and we're

provided with the listing of senior officials. We're not involved in any process that defines those persons.

**Mr. Wilson:** As a follow-up, the nine organizations on the first page: did they have a code of conduct in addition to falling under the Conflicts of Interest Act?

**Mr. Resler:** Yes, they have codes.

**Mr. Wilson:** So we've established that.

I'm asking you, Mr. Dorward. Based on that, we know that these nine fit into what you consider to be, I guess, a convoluted area because they have their own code, but they also fall in. I guess I'm looking for some advice from those who voted against that motion. Is there any possible intent to be able to incorporate those that are on the second page into a similar senior official title as those that are listed on the first page of the submission?

**Mr. Dorward:** No, because I believe that the mechanism is there, that they need to be defined as a senior official. The structure, in my opinion, is there, does exist. I think what you're saying is: why aren't they senior officials? That might be a valid question for a different place, but I don't think that's in the context of reviewing this legislation.

**Mr. Wilson:** A senior official is defined in this act.

**The Deputy Chair:** If I may, Mr. Wilson, I may ask our expert here. For those who still wish to submit any kind of suggestion to resolve this, is there another way they can do this through, I think, something called a minority report or whatever so that we can debate it again in the House?

**Ms Blakeman:** Are you serious?

**The Deputy Chair:** I'm just thinking out loud. Rather than keep circling this, is there any other way?

**Mr. Saskiw:** Is there, like, a type of dissenting report we can put forward, or is that allowed in this committee?

**Ms Notley:** Oh, of course it is. We have every plan to do that.

**The Deputy Chair:** Okay. All right. That means there is another vehicle to meet that need, so I'm going to let our meeting sort of carry on.

**Ms Blakeman:** I'm sorry. I understand you're trying to get this meeting finished, but we are trying to provide a good Conflicts of Interest Act and recommendations on it back to the Legislative Assembly. For us to go back there and say, "Sorry; we ran out of six minutes' worth of time," that is not what I want to tell the Assembly.

**The Deputy Chair:** No. It's an hour.

**Ms Blakeman:** It doesn't matter if it took us 10 hours and it came up with a really good way of dealing with this. So I would like to put forward a motion that's . . .

**The Deputy Chair:** You're entitled to your opinion. So is every hon. member of this committee. We discussed that. We respect what you say. We respect what others say. We voted on that. Now, as the chair I'm just wondering. We have other things we need to deal with here.

**Ms Blakeman:** Well, I'm trying to make a motion.

**The Deputy Chair:** Okay.

**Ms Blakeman:** The motion is to request that the research staff in conjunction with Parliamentary Counsel examine the current definition of senior officer as it appears in the Conflicts of Interest Act and, knowing the conversation that has happened here over an extended period of time and what officials we are specifically trying to include, that being those that appear on page 2, that are not already employees of the government, propose a change to legislation that would encompass those individuals.

That's the motion.

12:55

**The Deputy Chair:** Okay. On that motion, any comment? No? Those who support that motion, say yes.

**Ms Blakeman:** Recorded.

**The Deputy Chair:** Okay. State your name, please.

**Mr. Saskiw:** For.

**Mr. Wilson:** For.

**Ms Notley:** For.

**Ms Blakeman:** For.

**The Deputy Chair:** On the phone, if you support that, say yes, and state your name.

**Mr. Lemke:** Against.

**The Deputy Chair:** Okay. For the rest of you in the room, if you're against it, state your name.

**Mr. Young:** Against.

**Ms L. Johnson:** Against.

**Mr. Dorward:** Against.

**Mr. McDonald:** Against.

**The Deputy Chair:** So 5 to 4. Motion lost. Thank you very much. Ms Leonard, I'm going to ask you to carry on to the second item on the deferred list.

**Ms Leonard:** Okay. Thank you, Mr. Chair. We're looking now at limitation periods and record retention periods. This is numbers 88 and 113. I've grouped them together because they're directly related. Number 88 is the time limit on commencing investigations and inquiries, and 113 is the retention period for records in the Ethics Commissioner's custody and control. These are related because how long you keep the records is going to depend on the limitation period within which you can start an investigation or inquiry that requires those records.

The committee previously discussed both increasing and decreasing the limitation period and asked research services to look at limitation periods in other jurisdictions. I'll just ask Ms Robert if she could describe the results of the research.

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

**Ms Robert:** Thank you, Mr. Chair. I'll refer the committee to appendix D of the cross-jurisdictional document, dated as revised, September 10. On page 62 the chart begins. I had a look at the

other jurisdictions with respect to any limitation periods for commencing investigations and inquiries. There is no limitation period in B.C., Saskatchewan, Ontario, New Brunswick, Newfoundland, Nunavut, Yukon, or in the federal conflicts-of-interest code of conduct for members.

In Nova Scotia, Prince Edward Island, and the Northwest Territories there is a similar limitation period to what Alberta has, the two-year period. In Nova Scotia it's within two years after ceasing to be a member or public employee. In Prince Edward Island it's more than two years after the alleged violation.

The Northwest Territories one is a little more complicated. For a former member the investigation or an inquiry may only be filed within one year after an alleged contravention. For a current member it may be filed at any time before the term ends, or if it is from a previous term of the member, it may only be filed within two years after the alleged contravention.

Now, Quebec, Manitoba, and Canada have longer limitation periods. In Quebec they retain the authority for five years after the end of a member's term and beyond where an inquiry has already begun. In Manitoba inquiries and investigations are conducted by the Court of Queen's Bench as opposed to the Ethics Commissioner, and they may not be brought more than six years after an alleged violation. Under the federal Conflict of Interest Act, applicable to ministers, proceedings may be taken within five years of the commissioner becoming aware of the subject matter of the proceedings and not later than 10 years after the subject matter of the proceedings arose. Proceedings with respect to minor reporting violations may be commenced not later than five years after the commissioner becomes aware of them.

The other thing that I had a look at was the limitation period for prosecuting offences. You may recall that in Alberta prosecution of an alleged offence with respect to postemployment restrictions cannot be commenced more than two years after the alleged offence has occurred. In most jurisdictions there is no limitation period on when you can commence prosecuting an offence. However, in Saskatchewan and Nova Scotia there is a limitation period. Those are the only two jurisdictions that have limitation periods on this. In Saskatchewan and Nova Scotia no prosecution of an alleged offence with respect to postemployment restrictions may be commenced more than two years from the date the contract has been discharged or terminated or the benefit has been terminated or, in any other case, more than two years from the date of the commission of the alleged offence.

Does anyone have any questions?

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

**Ms Blakeman:** I didn't have a question, but I do have a motion if people are ready for it.

**The Deputy Chair:** Go ahead, for questions.

**Ms Blakeman:** The motion would be that the review committee recommend that section 25(12), respecting a limitation on commencing investigations or inquiries, be deleted from the Conflicts of Interest Act.

**The Deputy Chair:** Okay. Any questions on this one? Discussion?

**Mr. Young:** I'd be interested to hear what the recommendation from the Ethics Commissioner was on this and the consequences of changing it.

**Mr. Wilkinson:** I'll answer that. We don't have any recommendations for changes. It seems to work now, but whatever the committee wants, obviously, we'll be supportive of.

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

**Mr. Dorward:** I must have been dreaming, Ms Blakeman, when you made the motion. Was it just 25(12) that you had stated in your motion?

**Ms Blakeman:** Yes.

**Mr. Dorward:** Did you want to include 31(6) and 32.1(7) as well? Those are the other two that have the two years. I'm just wondering if there was a reason that you thought the one should go completely out of the act and the other two stay.

**Ms Notley:** What were the other two again?

**Mr. Dorward:** Sections 31(6) and 32.1(7). Those are the three places that the two years applies.

I do have a question for the Ethics Commissioner staff. When we discussed this issue before, I recollect something along the lines of, "Well, we do this anyway," which was longer than – I think that might have, now that I think about it, pertained to the length of time that you keep the records.

**Mr. Resler:** That was records management.

**Mr. Dorward:** Okay. So that was records management, not the issue of how long you have to initiate. In the history that you folks are aware of, have you ever had an issue relative to this kind of timing?

**Mr. Wilkinson:** Not that we're aware of, no.

**Mr. Dorward:** Can we have an open conversation about the other . . .

**The Deputy Chair:** Did Mr. Odsen have something to say?

**Mr. Odsen:** I just wanted to, I guess, remind committee members that, as was pointed out by Ms Leonard, the record retention ties in with this as well. In essence, if you're saying there's no limitation on when an investigation can be opened or a prosecution can be commenced, that means that there is, then, no limitation on . . .

**The Deputy Chair:** Files.

**Mr. Odsen:** . . . the files. Or another way of putting that is that we now keep permanent records with respect to all members, I guess, presumably until they pass away.

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

**Mr. Wilson:** Thank you for bringing that up. What is the current limitation on paperwork for us?

**Mr. Odsen:** Well, what the act says is that we may after two years; the practice is one complete election cycle. So if a member leaves office and then there's subsequently an election – four years, five years, whatever, later – and that member either does not stand for election or does but is defeated again, that's when we would then move to shred those records and destroy them, but not before.

**The Deputy Chair:** Ms Blakeman.

**Ms Blakeman:** Yes. Sorry. I did err. I'm looking at the top set of notes and not the bottom set of notes. I did intend to include 31(6) and 32.1(7) in that motion. In other words, there would be no time limit. As you look across the country, most of them don't have a time limit.

I would respectfully argue with Mr. Odsen that that doesn't mean that there is no time limit. It's silent on it at that point. He's already pointed out that there are habits that offices get into, that currently they tend to hang on to information for one election cycle. So removing the limitation is removing the limitation. That doesn't mean that it says: keep it forever. It doesn't. It's silent on it. I'm just refuting your point that you would have to keep all records forever.

**1:05**

I think we find as we look at what is happening across politics in the world that two years from the point the breach is committed is too short a time period. The others, if they talk about it, are talking about from when the Ethics Commissioner finds out, but this is from when the breach is committed. I just don't see why we've got a limitation at all. If someone did something, you know, truly horrific and had a terrible breach of conflict of interest, why wouldn't we be trying to get to the bottom of it?

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

**Mr. Dorward:** I'm going to suggest a friendly amendment of maybe something like five years only from the perspective that, gosh sakes, if something doesn't come up after – I'm very concerned about this record retention issue. I think it would be putting the office in a very difficult position to professionally have to decide that they're going to shred records that the legislation says they may still have to examine. Five years maybe works.

I don't know if I heard, Ms Blakeman, that 31(6) and 32.1(7) – do we need to have a discussion with the Ethics Commissioner staff as to whether those sections fall along with 25(12) and if we're going to change one of them, we might as well change all three? I think the other ones just refer to different pieces of the legislation. They're homogeneous with respect to the intent, aren't they?

**Mr. Resler:** Yeah. They're dealing either with former ministers or former political staff members.

**Mr. Dorward:** So friendly amendment 1 would be that we include all three, and my friendly amendment 2 suggestion would be that maybe we go to five years.

**Ms L. Johnson:** I'm reading through the election accountability act which we all were involved in last fall, and it has three years.

**Ms Blakeman:** I think people would argue that that's not long enough.

I've already corrected myself, but if you need it as a friendly amendment for the inclusion of the other two sections, fine. I'll take five years over nothing because I think the two years is just too short.

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

**Ms Notley:** Well, if the mover is going to take five years over nothing, I guess I'll support her in that although I will say that the previous example given – I mean, that's a perfect example of where the limitation periods have very intentionally excluded a public examination of allegations of wrongdoings that the public was very concerned about. I think what we know very clearly, just

even in the last two days, is the amount of work that had to go into extracting very simple information that's a year and a half old. We know that two years is absolutely a limitation period that would shut down any kind of rigorous review and investigation.

So if Ms Blakeman is prepared to accept five because she thinks others might vote for it, it is an improvement. I think that the first choice of having no limitation, much like the rest of the jurisdictions, is better. Five would still give us the harshest limitation period of any province in the country, but it's better than the two, that's for sure.

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

**Mr. Young:** I just want a clarification. The limitation period starts from when? Is it from the investigation?

**The Deputy Chair:** From the event.

**Mr. Young:** From the event. Okay.

**The Deputy Chair:** You're good? Okay.

**Mr. Wilson:** I'm seeking more than anything a point of clarification. I appreciate the friendly amendment to five years, and I think that that's a number that most of us can agree with. I'm wondering if there's an exception built into the act currently if the individual is still a member. Let's say, for example, a breach occurred five or six years ago, but they're still a member. Does that mean that you are precluded from launching an investigation and/or prosecuting based on the way the act is written?

**Mr. Odsen:** We can investigate a member.

**Mr. Wilson:** At any time.

**Mr. Odsen:** Well, within the limitation period. We cannot investigate somebody who's not a member – okay? – unless it has to do with postemployment. If, for example, an investigation is commenced against a member and that member resigns his or her seat before the investigation is concluded, that's the end of it. The jurisdiction under the act is to investigate members.

**Mr. Resler:** To clarify, if a member has been a member for 10 years and the incident that you're looking at occurred 10 years ago, we would not be able to look at it because right now it's two years after the date on which the alleged breach occurred.

**Mr. Odsen:** So the motion is to change that to five, yes.

**The Deputy Chair:** Okay.

**Mr. Wilson:** I guess my question, then, to the committee would be: do we want to put in a further exception to that rule, that if you're still a member, then it encompasses the entire time of your service? I'll take your advice on this, Mr. Odsen.

**Mr. Odsen:** Well, yeah. We need to be clear here that an investigation results in a report to the Assembly with recommendations contained therein. The office of the Ethics Commissioner has no power to do anything other than investigate. So it's the privilege of the Legislative Assembly to police, if you will, its own members. If a person is not a Member of the Legislative Assembly – I mean, where do we go from there, right? So that's the point in terms of member/nonmember.

**Mr. Wilson:** True. I guess I'm asking if they were still a member. So they've served 10 years; there was a breach that happened in

their second year of service, but it wasn't discovered until their 10th year of service. It wouldn't be covered. What I'm asking is: if they're still a member, is there a way of exempting them from the five years to cover their entire period of service as an MLA?

**Mr. Dorward:** We're only talking about members. So if we can make it – I mean, you're kind of saying: well, if they're still a member, let's make it longer. Well, that's all there is here, just members, you see? You know what I'm saying? It's redundant. We're either talking about no period, five years, or two years, but there's no second class of people there. There's only the member. Personally, I think five years is adequate. I mean, if you leave it wide open, you could have a 12-year MLA, and somebody comes and says: man, 11 years ago they did this. Gosh sakes. You know, I just think five years is adequate. Flat out.

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

**Mr. Odsen:** For what it's worth, under the Criminal Code the limitation period for a summary conviction offence is six months. Just something to keep in mind.

**Ms Blakeman:** But we're politicians, and we're held to a higher standard.

**Ms L. Johnson:** Just to clarify, the five-year notion is for investigation and retention of records?

**Mr. Dorward:** Well, we've got to deal with retention. I've got a motion or somebody is going to make a motion . . .

**Ms L. Johnson:** It's going to be two separate motions. Okay. Good. Thank you.

**The Deputy Chair:** Thank you.

Any further comments? Okay. It looks like we may have a consensus on this one. Mr. Dorward, one more?

**Mr. Dorward:** No. I was voting yes already.

**The Deputy Chair:** Oh, you're voting yes already. Okay.

For this friendly amended motion, can I have somebody read it so that we are all clear? We're talking about five years. I know that.

**Ms Blakeman:** The motion is that

the Conflicts of Interest Act Review Committee recommend that sections 25(12), 31(6), and 32.1(7) have the limitation time period changed to five years.

**The Deputy Chair:** Okay. Thank you. That's pretty clear.

For those who support that one, raise your hand. Unanimous in this room. On the phone, if you support this, say yes. Okay. Unanimously carried. Thank you very much.

All right. Mr. Dorward.

**Mr. Dorward:** I think with respect to the records retention, since it's fresh in our minds, we can go straight to that. It's item 113 on the original list of issues. I'm referring to section 47(2), and my motion would be that

subsection 47(2) with respect to any reference to two years be changed to five years.

1:15

**The Deputy Chair:** Okay. Thank you. Let's just make it consistent.

Are we ready to vote on this one? Okay. A question.

**Mr. Dorward:** I'd just like to hear the commissioner's comment on that.

**The Deputy Chair:** Yes. Please.

**Mr. Resler:** For current records management there is no issue with compliance with the five years. I just would also like to bring up that under section 17(a), which is the filing of public disclosure statements, you may wish to – currently that's retaining it for a period of two years after the member ceases to be a member. You may want to extend that to the same five-year period.

**Mr. Dorward:** Seventeen what?

**Mr. Resler:** It's 17(a).

**The Deputy Chair:** Okay. Any questions on this one?

**Mr. Young:** I just want to make it clear that five years is when the five-year clock hits, those get shredded, right? This is not an election cycle add-on as a business practice?

**Mr. Resler:** No.

**Mr. Dorward:** Well, the next section of that act allows the commissioner to keep the records if they so feel for various reasons.

**Mr. Young:** Well, there needs to be a substantiated reason, not as a simple procedural practice. If there is a pending investigation or something, that makes sense, but otherwise, if there is not, and the five years hits . . .

**Mr. Resler:** Five years is a specific timeline, not at least five years.

**Mr. Young:** All right. Thank you.

**The Deputy Chair:** Okay. Thank you.  
Any further questions? I see none.  
All right. For those supporting . . .

**Mr. Dorward:** If I could add, then, to my motion that clause 17(a) be changed to reflect five years as well. So not only 47(2) but 17(a). You don't like that? Okay. Let's deal with them as separate motions, Mr. Chair. I'll just make my original motion for 47(2) right now, and we can discuss the other one.

**The Deputy Chair:** Okay. We're back to the original motion.

**Mr. Reynolds:** Just as a point of clarification – we'll call it that – in section 17 it refers to the Clerk retaining the records. My understanding is that based on what the Ethics Commissioner has said before, I'm not sure the Clerk would any longer be the repository of the records under the act. Therefore, the two-year limitation under that would not really apply because that section with regard to the Clerk's duties may not be in its same form. Once again, I don't know if that's a clarification or a confusion.

**The Deputy Chair:** I'll have Mr. Odsen help on that.

**Mr. Odsen:** In a previous meeting the committee agreed to move the record keeping with respect to public disclosures to the office of the Ethics Commissioner. So it would be a change, in essence, *mutatis mutandis*.

**Mr. Reynolds:** Okay. So the change would then apply to your office as opposed to the Clerk, which is what I thought. Thank you.

**The Deputy Chair:** That's a good clarification, though.

Okay. Are we ready for the motion that Mr. Dorward put forward? Those who support, put your hands up. On the phones, to support that, say yes. Thank you. Unanimously carried.

All right. Mr. Dorward, do you have something more to finish off?

**Mr. Dorward:** Well, I think maybe Mr. Young wanted to have a conversation about 17(a).

**The Deputy Chair:** Okay. Go ahead, Mr. Young.

**Mr. Young:** Well, I was more waving him off rather than having a conversation because my concern is about extending, and the two-year period to me is a reasonable time frame. In the other stuff, where there's an investigation, investigations end when you cease to become a member. We have a two-year period after you become a member where we retain those documents, and that's a reasonable period of time. In fact, you can't investigate – and correct me if I'm wrong – the person under the act if they're not a member, but we're retaining the documents for two years after the member. So tell me the validity or the reason or the rationale. Unless there's a larger scope here, why are we retaining documents for a potential investigation for something we can't investigate?

**The Deputy Chair:** Interesting question. Any comments from the office of the Ethics Commissioner?

**Mr. Odsen:** It's the public disclosure records that's it's referring to, those that are presently held in the office of the Clerk, the public disclosures only. It doesn't really have anything to do with investigations per se. What it has to do with is, in effect, the length of time during which these records would be available to the public. That would be the point.

Frankly, ladies and gentlemen, it becomes moot. It becomes moot because what we're going to be moving to is putting the public disclosure on the website of the Ethics Commissioner. Once they've been put up on the website, they're there.

**The Deputy Chair:** You have no control.

**Mr. Young:** I guess my concern is – and I agree. When it's out there, it's out there. But after two years of being out there – actually, from the period of time when they were first posted, two years following, they should be removed from there because the guy is no longer within the scope of the Legislature. They've been disclosed. They should not be within the realm of the Ethics Commissioner, whatever.

**Mr. Odsen:** Of course.

**Mr. Resler:** If you're looking at the postemployment aspect, so for a former minister, and if you're looking at an investigation that commenced within the five-year period, then those records do apply to a former minister, not to a former member. The member can't be investigated.

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

**Mr. Dorward:** Are the records that are contemplated in 17(a) a subset of the records contemplated in 47(2)? Where I'm heading with this one is just to say that if because we moved the record retention over to the purview of the Ethics Commissioner and the records under 17(a) are a subset of 47(2), then it may be academic anyway because under 47(2) they're already being retained for five years per the first motion.

**Mr. Resler:** They're retained by our office internally, so there would be no external record if it was stripped off our website as far as the subset information.

**Mr. Dorward:** If we don't change 17(a).

**Mr. Resler:** Correct.

**The Deputy Chair:** Okay. Anybody wish to make any change at all? If not, we'll move on to the next subject.

I see none, so let's move on. Ms Leonard, let's go to the next one concerning confidentiality.

**Ms Leonard:** Okay. Thank you, Mr. Chair. The next section is confidentiality. Again, there are two issues that are grouped together. The first issue involves section 26, which is the general confidentiality provision. It requires the office of the Ethics Commissioner to maintain the confidentiality of all information and allegations that come to their knowledge in the course of the administration of this act. At a previous meeting the committee discussed whether or not the commissioner should have the power to disclose information to the public in certain circumstances, and they asked research services, Parliamentary Counsel, and the office of the Ethics Commissioner to come up with some possible wording for section 26 for the committee to consider.

If you look at the last page of the summary of deferred issues document, the appendix, there's a list of the types of information that the commissioner might want to disclose to the public:

- that a request for an investigation has been received and the identity of the person who made the request,
- that an investigation or inquiry has been undertaken,
- the name of the person who is the subject of a request for an investigation or of an investigation or inquiry, or
- the matter to which the request for an investigation, the investigation itself or the inquiry relates.

One approach might be to list these specific categories in section 26 as the types of information that the commissioner is permitted to disclose to the public.

1:25

On the other hand, the committee might want to recommend an approach giving the Ethics Commissioner discretion by allowing him to disclose information that's necessary and in the public interest in certain circumstances. That's the second set of bullet points in this appendix, and that's to

- correct misinformation that is in the public realm concerning advice given to a Member or with respect to a request for an investigation, or
- in any other circumstance, where the Ethics Commissioner is of the opinion that the public interest served by the release of such information significantly outweighs the confidentiality provisions of the Act.

The second issue with regard to confidentiality is section 43(3) that says advice and recommendations provided by the commissioner are "confidential until released by or with the consent of the Member, former Minister, political staff member or former political staff member." There was one suggestion that this be amended to allow the commissioner to release advice or recommendations without consent if it was necessary to set the public record straight.

That's all.

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

Do any members have any comments or questions? I see none. If that's the case, I'm going to move on. Nobody has any comments or wishes to make any changes?

**Mr. Wilson:** We're just trying to catch up.

**The Deputy Chair:** Oh, okay. You just need more time.  
Ms Blakeman.

**Ms Blakeman:** Yeah. I'll put a motion on the floor that the Conflicts of Interest Act Review Committee recommend that amendments to the act be made to allow the Ethics Commissioner to, one, acknowledge that a request for an investigation has been received and the identity of the person who made the request; two, to correct misinformation that's in the public realm concerning advice given to a member or with respect to a request for an investigation; and, three, in any other circumstances where the Ethics Commissioner is of the opinion that the public interest served by the release of such information significantly outweighs the confidentiality provisions of the act.

**The Deputy Chair:** Okay. Thank you.  
Any questions? Mr. Young.

**Mr. Young:** Yeah. A question for the Ethics Commissioner on this grey area. I can imagine that if there's some kind of issue, some kind of investigation, certain parties will be demanding for you to make a statement and push that envelope of discretion on weighing the public interest. Are we setting you up for a position where that decision becomes more the contentious part rather than the investigation, which I think should be genuine and free from political interference rather than your refusing to weigh what is in the public interest? That whole debate, which there is no clarity on, really concerns me. I fear that that discretion, that I know you will weigh with great diligence, will be challenged by media, by certain political bodies, and by nongovernmental organizations wanting to know about an investigation before it's complete, and the lack of discretion on that issue puts you in that position. Could you comment on that for me, please?

**Mr. Wilkinson:** That's a good point. Certainly, we've discussed that in our office as well at length.

Glen is reporting on this one.

**Mr. Resler:** Where we're looking for clarification in a lot of instances is a confirmation, yes or no, that an investigation is occurring. In some instances partial information may be released and not the complete either advice letter or letter stating that we're commencing an investigation. When we're looking at clarifying or correcting misinformation for the public interest, it's to provide, you know, a full statement of what that information was. We are not going further into the investigation itself or disclosing what is occurring at that point. We would be reserving all that information for when the public report is released.

**Mr. Young:** Okay. So there's a – sorry. If I may, Chair?

**The Deputy Chair:** Go ahead.

**Mr. Young:** So there's a fence around what you in your discretion of public interest can release, and that's absolute, the discretion of whether you can release it? It's not about the investigation. It's confirmation that an investigation has been initiated, one has been made. Do we need to frame that?

**Mr. Resler:** By the motion that's put forth, where the Ethics Commissioner is of the opinion – that fence that exists is one that we're placing there, unless it's worded differently.

**Mr. Young:** Do we need to be more prescriptive? That is sort of where I am, that you need not put in details in terms of an investigation but that the process has been initiated or something to that degree.

**Mr. Odsen:** As Mr. Resler pointed out, to use the analogy, there would be a fence, but it's a fence of our devising, so it means that we would still be, I think, potentially subject to the kind of criticism for the fence that we've built. Maybe the way around this is that rather than a motion specifying these kinds of things, a recommendation that the legislation be amended to grant the Ethics Commissioner discretion in some instances with respect to advice and investigations and that the office of the Ethics Commissioner work with the legislative drafters to come up with acceptable wording for what that amendment might look like or something along those lines. I can't make a motion myself, of course.

**Ms Blakeman:** I think I gave enough leeway in the motion for that to be allowed, with respect, and I was proposing this in response, Mr. Young, to observations that the Ethics Commissioner had put before the committee. You may not have been able to be with us at that time, but this was to be able to resolve some of the current situations that the Ethics Commissioner has found themselves in, where someone had rushed out to the media and said, "I've sent this to the Ethics Commissioner," and they didn't even know it was happening because they hadn't received the request for an investigation yet. So this would allow the Ethics Commissioner to at least say, "Yes, we've got it; we're going to look at it" or whatever position they're in. But right now they can't say anything. It was to give them an opportunity to clarify, to say yes or no, that they had received it.

In particular circumstances – and I'm not willing to go as loose as Mr. Odsen is proposing. I like the words "significantly outweighs," and I think it's important that that is in there. I want to give some guidelines to the Ethics Commissioner that this would not be transgressed unless it was a big, big deal but not something of a more insignificant or general nature.

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

**Mr. Young:** Well, thank you, Ms Blakeman. I wasn't necessarily disagreeing with you. My comments were more around that fence and not a blank cheque. I am rarely with you, certainly even when I'm here. I just want to make the point that I don't disagree. It's just the fine point around how open ended that is, and it puts the commissioner in a position of people always wanting more. I think there should be tighter boundaries around that when they have that discretion. I agree with you that they should be able to acknowledge that investigations have been initiated.

Thank you.

**Mr. Wilson:** Mr. Chair, I'm in general support of the motion. I would just suggest that I'm not entirely comfortable with the last bullet point: "In any other circumstance, where the Ethics Commissioner is of the opinion that the public interest [is] served by the release of such information."

I agree with those first five bullet points. Sure, you should have the authority to come out and say that, but based on personal experience, I'm not entirely convinced that it would always be the public interest that your office would be necessarily concerned with. I think it might be personal. I'm more than happy to grant you the permission to have the ability to have some of these confidentiality provisions, but I just don't think that in any other

circumstance – I just don't see that as subjective enough to get my support.

**The Deputy Chair:** Thank you.  
Mr. Wilkinson.

**Mr. Wilkinson:** Thank you Mr. Chair. It's a good discussion. It's not a concern to us. We appreciate and think the motion is a good one. If there's a fence to be built, we'll build it, and then we'll take the heat for that. I appreciate the looking out for that in everybody's best interest.

1:35

**The Deputy Chair:** Okay. Thank you. Good conversation.  
Repeat that motion again, Ms Blakeman.

**Ms Blakeman:** That

the Conflicts of Interest Act Review Committee recommend to the Legislature that legislation be revised to allow that the Ethics Commissioner may acknowledge that a request for an investigation has been received and the identity of the person who made the request; secondly, that the Ethics Commissioner could correct misinformation that is in the public realm concerning advice given to a member or with respect to a request for an investigation and in any other circumstance where the Ethics Commissioner is of the opinion that the public interest served by the release of such information significantly outweighs the confidentiality provisions of the act.

**The Deputy Chair:** Okay. So you've got them all?

**Ms Blakeman:** Yeah. That's the motion.

**The Deputy Chair:** Okay. Good. That's the motion.

**Mr. Young:** Could we get a recorded vote?

**The Deputy Chair:** Okay. A recorded vote.

Those who support it, say yes, and state your name, starting on my right.

**Mr. Young:** Yes.

**Ms L. Johnson:** Yes.

**Ms Notley:** Yes.

**Ms Blakeman:** Well, I moved it, so yes, I'm voting for it.

**Mr. Dorward:** Yes.

**Mr. McDonald:** Yes.

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

**Mr. Lemke:** Yes.

**The Deputy Chair:** Thank you.  
Those who are against it?

**Mr. Saskiw:** Opposed.

**Mr. Wilson:** Opposed.

**The Deputy Chair:** Okay. Thank you. Motion carried.  
There's a question here.

**Mr. Resler:** If I could just bring one other item up before we move on to the next one. Under the grouping of recommendations for confidentiality there are a couple of other points that I wanted

to bring forward, one of them dealing with section 24(6), which states, “Where a matter has been referred to the Ethics Commissioner under subsection (1), (3) or (4), neither the Legislative Assembly nor a committee of the Assembly shall inquire into the matter.” What we would like in the confidentiality section is to add a subsection that specifies that we’re allowed to disclose to the Speaker what investigations are currently ongoing. Enabling that section would give us the permission to provide that information to the Speaker.

**Ms Blakeman:** Why just the Speaker?

**Mr. Resler:** Because we report to the Speaker under the legislation. It goes to the Speaker, and the Speaker goes to the Legislature or to the Legislative Assembly.

**The Deputy Chair:** It’s just a technical procedure. Otherwise, with the intent, we’re not able to get there.

**Mr. Resler:** Yes.

**Ms Blakeman:** Okay.

**Mr. Resler:** So just to enable compliance.

The other one. Section 26(1) deals with our office and staff maintaining the confidentiality of all information that comes to our knowledge in carrying out the administration of the act. Under Confidentiality add a new subsection that would state that that confidentiality prevails over the Freedom of Information and Protection of Privacy Act. It currently exists under the FOIP legislation. We just want to reciprocate it here in our legislation. It’s similar to what Ontario has under their Members’ Integrity Act.

**Mr. Dorward:** That was 97?

**Mr. Resler:** Yes, that was recommendation 97.

**Ms Blakeman:** I’m sorry. You want to exempt yourself from FOIP?

**Mr. Resler:** We currently are exempted.

**Ms Blakeman:** So this is reciprocal?

**Mr. Resler:** Reciprocal into our legislation.

**The Deputy Chair:** Okay. I want to make it simple, so let’s deal with one at a time. For the first one you talked about section 24(6). On that one I see lots of heads nodding. No? Okay. Let’s vote on that one unless you want to have a discussion. Go ahead.

**Mr. Saskiw:** I guess, just with respect to the first one, the reason I can’t support this is that I don’t support the whole concept of limiting free speech of Members of the Legislative Assembly, that when an investigation is ongoing, we are banned or blocked from discussing it in the Legislature or in a committee.

**Ms Blakeman:** No. Just the Legislature.

**Mr. Saskiw:** Okay. Just the Legislature. I do not want to support any type of amendments that further increase that type of ban on opposition or all members with respect to when an investigation is occurring. Just out of principle I cannot support this motion.

**Ms L. Johnson:** I wanted to clarify. Wasn’t the recommendation that you be able to report to the Speaker what you’re working on,

and it didn’t have to do with what is debated in the House or in the public?

**The Deputy Chair:** This is about disclosure. This is about sharing information, not about not sharing, right?

**Ms L. Johnson:** Section 24(6) or 26?

**Mr. Resler:** Section 24(6), to enable compliance with that section.

**Ms L. Johnson:** So it’s not that you’re asking to limit debate in the Legislature. You as an agency of the Legislature report to your boss, the Speaker.

**Mr. Saskiw:** But it is part of the enforcement mechanism. Basically, by them notifying the Speaker of which investigations are ongoing, that would then preclude Members of the Legislative Assembly from discussing those matters, and that’s why I fundamentally disagree with that.

**The Deputy Chair:** Okay. Any other comments or questions on this one? There isn’t a motion. There is a suggestion on the table. We need one of the members to make a motion before we vote on that one. The suggestion is really about cleaning up the logistic procedures that fulfill what we just voted on earlier. So it’s really a technical fix. Ms Johnson, could you make that motion so that we can do this? Can I have Mr. Resler help to craft this motion on what you were wanting us to fix?

**Mr. Resler:** That under section 26(2) we add a clause that specifies that the Ethics Commissioner is able to disclose to the Speaker any allegations and information, so any investigations that are ongoing.

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

Ms Johnson, you are feeling comfortable to make the motion?

**Ms L. Johnson:** Yes. Thank you, Mr. Chair.

**The Deputy Chair:** Thank you.

Any questions on that one beyond what was already discussed? No?

Okay. Let’s take the vote on that one. Those who support the motion on the floor, raise your hand. On the phone, please if you support it.

**Mr. Lemke:** No.

**The Deputy Chair:** Okay. All right. Those who are against that one, raise your hand. We’ve got a tie.

**Mr. Young:** Could we have a recorded vote, please?

**Ms Blakeman:** Is it the one on 24(6)?

**The Deputy Chair:** Okay. I see some confusion going on here. Let me clarify again so we know clearly what we are voting for. The motion on the floor: let’s repeat that again. Mr. Resler recommended . . .

**Mr. Resler:** That

under section 26(2) a subsection be included which would allow the Ethics Commissioner to disclose to the Speaker investigations that are ongoing, which will enable compliance with section 24(6).

**The Deputy Chair:** Okay. Linda Johnson, you sponsored that motion?

**Ms L. Johnson:** Yes, I did, sir.

**The Deputy Chair:** Does anybody, including the people on the phone, have questions? You are clear on what the question is in front of us before I call the vote?

*1:45*

**Mr. Lemke:** Actually, I'm sorry. The motion that you just took: was it the same motion that he just read?

**The Deputy Chair:** Yeah.

**Mr. Lemke:** I got confused. I'm sorry.

**The Deputy Chair:** That's why I sensed there was some confusion going around, including with people in the room. I am asking you to clarify again. Do you understand the question, and do you wish to vote the way you did? What's your current vote?

**Mr. Lemke:** Are you asking me specifically?

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

**Mr. Lemke:** I've changed my mind. My vote is yes.

**The Deputy Chair:** Okay. Thank you. So that's a yes.

Anybody else have questions? Okay. Let me handle this. Let me ask one more time. People in the room, do you still have questions on what is the motion on the floor? No? Okay. You have no questions. That's great.

**Mr. Saskiw:** I've already voted, so I'm not voting again.

**The Deputy Chair:** Okay. Your recorded vote is no, I understand, right?

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

**The Deputy Chair:** Of the ones who are supporting it, I heard Mr. Lemke on the phone. He is supporting that, and Ms Johnson is sponsoring this. People in the room, if you support this, raise your hand. Okay. Five are supporting that. People in the room who are against this, please raise your hand. I know Mr. Saskiw already stated no. Three. So 5 to 3. Motion carried. Thank you. Sorry about the confusion.

Okay. Let's move on to the next one.

**Dr. Massolin:** No, no. There's another suggestion.

**The Deputy Chair:** One more? I'm sorry. I lost track. Okay. Who wishes to speak on that one? Oh, yes. Mr. Resler hasn't finished that yet.

**Ms Blakeman:** Summary of issues and recommendations, item 97.

**The Deputy Chair:** That's right. Thank you.

**Mr. Resler:** What we're looking at or proposing is that section 26 should be amended to expressly state that the confidentiality provisions in the Freedom of Information and Protection of Privacy Act prevail, and this is to ensure the protection of all members and the ability of the Ethics Commissioner to provide confidential advice to members. This already exists under the FOIP legislation, so it's just reciprocating what exists there.

**Mr. Dorward:** So moved.

**The Deputy Chair:** Okay. Mr. Dorward moved that. Any questions?

**Mr. Saskiw:** I just have a question. If it exists in the other legislation, what is the effect of that?

**The Deputy Chair:** The intent?

**Mr. Saskiw:** Yeah, if there's no change.

**The Deputy Chair:** Anybody from the Ethics Commissioner's office? Mr. Odsen, go ahead.

**Mr. Odsen:** Yes. I suppose the primary reason that we'd like to see that embedded in our act is that there was a circumstance that arose several years ago where as a result of a process that takes place under the Freedom of Information and Protection of Privacy Act, there was a ruling that could well have had the effect of opening up the records, that are supposedly exempt under that act, of the officers. It might well have opened them up to having the act, in effect, make such records FOIPable. That went all the way to the Court of Appeal before a decision said: well, no, that's not correct. But it could happen again because the wording hasn't changed in that act. Another judge dealing with it, if the circumstances were different, could come to a similar decision. In essence, all we're doing, in effect, is putting in more protection for the confidentiality of members with respect to advice and communications and all that kind of stuff. That's what we're recommending.

**The Deputy Chair:** Thank you.

**Ms Notley:** I'm wondering. I know Ms Blakeman is really attuned to the details around many of the components of the FOIP legislation – I don't know about other people here – but what was the rationale for excluding the officers from the application of FOIP? I'm sure there is one. I just would like to be reminded of what it was because we're trying to support that rationale through this amendment. Could you give us a quick summary of what that was?

**Mr. Odsen:** Of course, I wasn't around at the time that this was all put together. The confidentiality provisions are stronger for our office than they are for any of the other offices. It's clearly, it seems to me, within the context of the policy intent of ensuring that advice to members, questions that are asked of the Ethics Commissioner, stay within the office. Those kinds of things are not to be in the public realm unless the member wants to put them there. It's up to the member to put them there if they want to go out there. It's not up to us, and they ought not to be subject to access to information requests, quite frankly.

The office is subject to FOIP insofar as somebody wanting to make an access request with respect to, say, contracts, those kinds of things, right? Only the records that deal with the work that we do with the members: that's what's confidential. We have the confidentiality provisions in the act, and this is just yet another way of ensuring, tightening down even more, if you will, that confidentiality.

**The Deputy Chair:** Okay. Mr. Reynolds, you have further comments?

**Mr. Reynolds:** Just a very quick comment. I believe, if I'm not mistaken, that there was a relatively recent Court of Appeal decision concerning officers of the Legislature – was there not? – and the FOIP Act.

**Mr. Odsen:** I just mentioned that, yes.

**Mr. Reynolds:** But did the officers intervene specifically?

**Mr. Odsen:** Yes, we did.

**Mr. Reynolds:** You did. I'm sure that we could provide a copy of that decision and the reference to Ms Notley or to any committee member that's interested. I just don't have it at the tips of my fingers, which you might.

**Mr. Dorward:** Well, I don't think we're here to discuss the merits of the FOIP Act. In the FOIP Act we're exempt. We're here to fix this.

**The Deputy Chair:** Ms Notley.

**Ms Notley:** Yeah. I think what we're here to discuss are the proposals for changes which are being made, and this is a proposal for a change that would further enhance or install the nonapplication of the FOIP Act. That's fair enough. In fact, I remembered there was a discussion at Leg. Offices a couple of years ago around the leg. officers as a whole group trying to ensure that all of them were exempt from FOIP. I remember at the time not being profoundly convinced by their arguments from a public policy point of view, but in your case I understand the point that you're making, which is, in my view, probably distinguishable, potentially, if we came to it, from the other officers.

I'm convinced. I'm fine. Thank you.

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

All right. Mr. Dorward, can you repeat the motion, just for everybody's sake?

**Mr. Dorward:** Yes. That the committee recommend that section 26 should be amended to expressly state that the confidentiality provisions in the act prevail over the confidentiality provisions in the Freedom of Information and Protection of Privacy Act.

**Mr. Odsen:** I don't know that the words "confidentiality provisions in the FOIP Act" should actually even be in there because it doesn't have confidentiality provisions. It has access provisions. So just take out: the confidentiality provisions of FOIP.

**The Deputy Chair:** Try again.

**Mr. Dorward:** Let me try this on for size. I move that section 26 should be amended to expressly state that the confidentiality provisions in the act prevail over the Freedom of Information and Protection of Privacy Act.

**Mr. Odsen:** Yes.

**The Deputy Chair:** Okay. Those who support the motion on the floor, please raise your hand. Unanimous at this table. On the phone, if you agree, say yes. It's carried. Thank you very much.

**Ms Leonard:** Okay. We're now looking at appeal and review. These are two issues grouped together. The first one is whether the act should allow a complainant some form of appeal or review of an Ethics Commissioner's decision if he decides not to investigate. The committee had asked for research on jurisdictions that allow for appeal or reconsideration of a commissioner's decision. Ms Robert summarized that for the committee at the last meeting when they discussed general appeal and review provisions.

This leads to the second issue, which is just general appeal and review. The committee had previously discussed whether or not

some kind of judicial review provision should be included in the act but hadn't reached a decision on that.

1:55

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

**Ms Notley:** Yes. I think I was one of the people that raised this issue, and I want to thank leg. services for their work in providing us with this crossjurisdictional information. Having looked at all the various and sundry mechanisms that exist out there for appeal, I think most of them provide just greater complexity and not much else. However, I was somewhat persuaded by the approach taken in the House of Commons with respect to section 66 of the Conflict of Interest Act, which essentially allows for judicial review on a very limited scope of appeal, not on the facts but simply where there's a case where the authority is not exercised or where the jurisdiction is exceeded or where there's a failure in the principles of natural justice and procedural fairness. They would also deal with a failure to exercise jurisdiction. So, you know, if four years later a decision wasn't issued, there might be a mechanism for a party to pursue some form of resolution on that, for instance. That's an example.

With that in mind, I'd like to make a motion that the committee recommend the inclusion of an additional section to the Conflicts of Interest Act that effectively replicates the intent and effect of section 66, which exists in the federal Conflict of Interest Act.

**The Deputy Chair:** Okay. Thank you.  
Does anyone have a question?

**Ms L. Johnson:** I would like the reaction of the Ethics Commissioner to this. It's not part of your original recommendations to the committee.

**The Deputy Chair:** Okay. Does anybody wish to speak?

**Mr. Odsen:** If I may. Thank you. Certainly, it's not something that we have recommended. We haven't, I think, sort of taken a position one way or the other. The one thing, I guess, that does concern me a little bit is any time you're taking something that falls within the exclusive privilege of the Legislative Assembly and hiving it off into the courts to a certain extent. I simply raise that as being one of things that you're ending up doing.

At any time, if any member has got a concern with something that our office has done, it's something that can be raised in the Legislature. It's something that can be raised in the standing committee of the officers of the Legislature. If, for example, a member felt that an investigation that had been requested was improperly rejected, a motion could be brought in the Legislative Assembly directing the Ethics Commissioner to commence that investigation, and the Ethics Commissioner would then be obligated under section 25, I think it is, to conduct that investigation. So there are certain kinds of mechanisms available now which do not chip away, if you will, at the privilege of the Legislative Assembly.

Those are the only comments I would offer in that regard.

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

**Mr. Reynolds:** I just wanted to point out – sadly, I wasn't here when this issue came up at the last meeting – that one of my job descriptions is as a defender of parliamentary privilege, so here I am. One of the aspects that the Ethics Commissioner operates under is, if you will, the cloak of parliamentary privilege in the sense that what he or she does is make recommendations to the

Assembly. Just the Assembly. It is up to the Assembly to accept them, reject them, whatever. This operates within the Assembly's scope.

Just like the decisions of the Speaker are not subject to judicial review, nor is what you say in the Assembly subject to a legal action. What the Ethics Commissioner suggests or recommends falls within that aspect of parliamentary privilege, which the courts are not to inquire into. There is some judicial recognition of that: in British Columbia, the Tafler case, where after a decision, I believe, not to investigate, judicial review was sought, and the B.C. Court of Appeal held that they didn't have jurisdiction to do that; and the Morin case in the Northwest Territories – sorry, I'm not sure whether that reaction was to raising it or to the facts of the case – where the Premier in that case sought judicial review to stop the Ethics Commissioner from reporting to the Assembly. He wanted to stop the report, and the court held that they didn't have jurisdiction to do that because it fell within the aspect of parliamentary privilege, the sphere of it.

All I'm saying is that I think the committee as parliamentarians might want to be reluctant or think about giving the courts jurisdiction over the proceedings of the Assembly and its officers.

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

**Ms Blakeman:** Thank you for raising that caution. I appreciate that you did that.

Part of the problem that we see right now is that as soon as we start talking about, "Well, it's possible to raise a motion in the Legislature to give direction," that actually becomes a partisan issue in this province because the likelihood that a motion, any motion, would pass is entirely dependent on the majority, and the majority is not likely to allow that to happen. So there is currently no way for an independent MLA or an opposition MLA or a member of the public to get anything before the Assembly without the permission of the majority. To say, "If anybody wants to know why something didn't get investigated, they can just raise a motion in the Legislature," no; it's not a matter of "just" in this province. It makes it almost impossible, and that's the reality of the thing.

Even Parliamentary Counsel, whose wise advice I always immediately take to heart, I would challenge because, in fact, you are allowed to ask for an explanation from the Speaker. So while you cannot take his rulings to an upper court, you can ask for an explanation, and that's essentially what's being asked for by accepting the wording or accepting the intention behind section 66, by using the examples from the Canadian code of conduct for members of the House of Commons. That is the point of this.

If something goes before the commissioner and we don't know what happened to it, there's no way to find out. There's no process to ask. There's no way to find out what happened. You know, asking for a motion in the Legislature depends on the beneficence of the governing party to allow that motion to go through in order to be able to have the Legislature instruct the Ethics Commissioner to tell us. I mean, you can try just flat out asking the Ethics Commissioner privately or publicly: why the heck didn't you do this? He's under no obligation to tell us, so there is no practical method of finding out why an inquiry did not proceed.

That's why I am supporting this motion that's on the floor that would in effect allow it to go to Federal Court. Then it gives very clear provisions that it's only in the case that the Ethics Commissioner

- (a) acted without jurisdiction . . . beyond its jurisdiction or refused to exercise its jurisdiction; [or]

- (b) failed to observe a principle of natural justice, procedural fairness or other procedure that [they're] required by law to observe; [or] . . .
- (e) acted, or failed to act, by reason of fraud or perjured evidence.

So it's not challenging their decision. It's just saying, "We want to find out why," and as long as they acted within what they were supposed to do, okay, fine. Otherwise, there's no practical method in Alberta at this time to find out why something didn't proceed.

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

We have quite a few people on the list. If you can speed up your points, I'd appreciate that.

Mr. Saskiw.

**Mr. Saskiw:** Yeah. I just, you know, respect what Mr. Reynolds has said, but in this case I think – and perhaps what has happened under the federal Canadian legislation is that the Parliament decided that in these circumstances their intention was to have a review done through the judicial process, and that, in some sense, is the will of the Legislature. If they feel that in certain circumstances there should be a review of decisions, then we as legislators should be able to do that. I think the federal model that is espoused in this motion is a good one, and I'll be supporting it.

2:05

**The Deputy Chair:** Thank you.

Ms Notley.

**Ms Notley:** Yes. Fair comment. There's no question that when we look at something like this, in every change that we make in the conflict of interest legislation, we potentially put more proscriptions on what otherwise would be parliamentary privilege. The jurisdictions that generated the decisions that Mr. Reynolds mentioned – I mean, fair comment. Obviously, there's always going to be tremendous deference, particularly where there's no provision in the legislation that would suggest otherwise. But the federal government and the federal parliament chose to actually somewhat share their parliamentary privilege in an ever-so-slight way in that the process, on very limited grounds, as judicial review applications are, could benefit from some judicial oversight in the Federal Court. So that's all we're asking for here.

To be quite honest, I can't think of what the exact process would be for us to bring a motion to the floor of the Assembly to for instance have a decision sped up. I worry that the very provisions in the act which prohibit members of the Assembly from raising certain issues because they're under investigation might also serve to prohibit members from bringing a motion asking those investigations to be sped up.

In any event, this is a very, very limited proposal. It has obviously been accepted as a reasonable one in our federal system, so I would ask our members to consider the same here.

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

**Ms L. Johnson:** I will be voting against the motion. I accept the concept of the cloak of parliamentary privilege as a Legislature. As soon as anything is raised on the floor of our Assembly, it is in public scrutiny and public review, and there are a variety of tools and methods through our standing orders to continue discussion. I want it to stay with our Assembly. I would remind the committee that we're talking about a remedy after a complaint, and it's not talking about limiting questions during the investigation.

That's my two cents. Thank you.

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

Mr. Resler, do you have some information that would help the committee further?

**Mr. Resler:** I just wanted to clarify that if a complaint came to our office, using the specific example where a decision was made by our office not to investigate, there would be a response to the person who made the request. They would be notified. They would be notified of our decision and provided reasons why the investigation did not continue or was not made. So as far as natural justice, those provisions would be provided to the person that requested the investigation, and that person can make it public if they so wish.

**The Deputy Chair:** Thank you.

**Mr. Young:** Like Linda I can't support the albeit little but incremental erosion of our parliamentary privilege, so I'll be not supporting that.

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

For the motion I'm going to call the question.

Okay. Thank you. Five against four. Motion lost.

Okay. The next item, Ms Leonard. I believe it's the last one, I hope.

**Ms Leonard:** Yep. This is the very last one, and it's actually the first issue that you looked at. It was just whether or not to rename the act and the commissioner the integrity act and the integrity commissioner to reflect a broader ethical mandate or to rename the commissioner the conflict of interest commissioner to reflect the act's role in dealing primarily with financial conflicts of interest.

That's all, Mr. Chair.

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

**Ms Blakeman:** Well, I think I started this way back when. I find that this Conflicts of Interest Act is almost exclusively concerned with financial conflict of interest, not with moral or ethical conflict of interest but financial conflict of interest. I would rename it the financial conflict of interest act because that's what it is right now.

To say that the person administering the Conflicts of Interest Act is the Ethics Commissioner – we have conflicting views of what is expected from the office or from the act. The act does not deal with ethics at all except in the preamble, I think, which is not enforceable. It does raise expectations that the Ethics Commissioner will deal with questions of ethics. I know that the office gets all kinds of requests to investigate all kinds of interesting things because people believe that that is an area of jurisdiction, and it's not.

I would say that for clarification purposes we do recommend that the Legislative Assembly consider changing the name of the Ethics Commissioner to the conflicts of interest commissioner, which puts the name of the person and the name of the act on the same page and better describes what the position and the act are trying to achieve.

I had another point, which has gone from me completely.

I would certainly support this idea, and I think it will save the office a little bit of grief and make it a bit clearer to everybody that that's the intent of what's happening here.

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

Anybody else? Mr. Young, you are on the list.

**Mr. Wilkinson:** I appreciate the comments, trying to save us a little bit of grief, but I think that our brand is Ethics Commissioner, the office of the Ethics Commissioner, and I don't know how many times that phrase has been used around this table. That's the brand. If you want to change that brand, obviously it's up to you. We'll support whatever you want to do. But you should know that in operation, day to day, that's our brand.

It's true – Ms Blakeman certainly makes a good point – that we do get calls related to other areas, but if they don't call the Ethics Commissioner, then who do they call? Conflict of interest: well, that's just members, then. The broader net allows us on your behalf, we feel, to catch a whole bunch of things which we can then reroute to the right place. I use the example of somebody phoning, saying: "My landlord increased my rent too much. They're not acting ethically." "Yeah. That's okay. You should take that to the landlord and tenant act," and so on. We have a whole list of places we can direct people to, and whereas we don't like to push people onto somebody else, at least, I think, we are a repository for – there's something out there that says somebody is thinking about ethics.

We do advise people, and some of the members around this table may know that even though we get a call saying, "Does this fall under the Conflicts of Interest Act?" we will say no. Then the discussion goes on from that to a discussion of ethics: what is right, what is the code, how does this vary across the country, around the world. We do get into a discussion of ethics. We have other organizations calling us as well with discussions of ethics, and we have met with them, talked to them, and made presentations to them. Both of these gentlemen have gone to Calgary and made presentations on ethics, which included partly the code but went beyond the code, and talked about ethics to organizations that are very much interested in ethics. One deals with ethics almost exclusively. I think that helps in that regard.

Also, the Conflicts of Interest Act is ethical. It's an ethical document. If you follow what it says in the Conflicts of Interest Act, you are acting ethically. True, it's in a certain range. But, nonetheless, if you're not ethical, you won't follow the code. You don't care about the code. You're going to do your own thing: "If I get caught, I get caught. If I don't, I don't. But I'm going to try to not get caught."

2:15

The people around this table that we deal with are ethical, and they do follow the code, all right? I say proudly, we all say proudly that members of the Legislature are ethical. They follow the advice of the Ethics Commissioner's office, not just the code of conduct. Our job is to help enhance your reputation amongst the public. Well, we deal with ethics with you as well, and I think that does enhance your reputation. You call us about ethical issues as well.

If you want to change the name, then you should also add on, in my view, lobbyists registrar because you put the Ethics Commissioner in charge of two acts, the Lobbyists Act as well as the Conflicts of Interest Act. Whatever you want to do, we're okay with it.

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

**Mr. Young:** Very well said, sir. I think, you know, that a rose by any other name would smell as sweet. I mean, people understand what the Ethics Commissioner is. You're in charge of ethics, and there are acts, as you described, under that. I think you'd create more confusion by changing it. We just had a whole committee discuss the substance of it. We could argue about titles and names,

but we have a title. People understand that title. It's not contentious. It makes sense. It's in the scope of what we do. Let's leave it.

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

**Mr. Dorward:** Yeah. I'm not in favour of making any changes in this regard. I don't think we have to tinker with what isn't really broken. Instead of just being kind of anecdotal, I think it was around 20 people that I asked. I actually carried around this binder with me in my briefcase, and I showed it to people. They did express an interest in kind of the general things of how this affects me. When I did do that, I talked about finances for the most part. You know, people don't really get the nuances of all this. I don't think it'll benefit them any more if the name is changed, so I'm not supportive of any changes.

**The Deputy Chair:** Thank you.

**Ms Notley:** Well, I have to of course disagree with the last couple of speakers. I think that, in fact, what we've learned as we've talked about this legislation over the last few months is that this legislation doesn't cover ethics. Yes – no question – people come to the Ethics Commissioner concerned about what they believe is the unethical behaviour of certain members. For instance, you know, there's actually no prohibition in that legislation against breaching the Criminal Code. Presumably that's ethics, yet if we had a member who was ultimately convicted of breaching the Criminal Code, the Ethics Commissioner could do nothing about that. Really, what I think it does is frustrate people. I think that most people coming to the Ethics Commissioner and being referred to the police or the landlord and tenant act would just simply be frustrated because that's not actually what they came to the Ethics Commissioner for.

Suggesting that following rules around conflict of interest is in and of itself ethical is accurate, but if that's the case, we ought to rename the children's advocate the ethics and children protection advocate and we ought to rename the Environmental Protection and Enhancement Act the ethics and environmental protection and enhancement act and we ought to rename the Criminal Code the ethics and criminal code. In each case following the rules, yes, is ethical, but that's all we have. We have a very narrow set of rules around limited barriers to situations where we get into positions of having financial conflicts of interest. That's what we have. We don't have legislation that does anything, for example, in the most egregious case of dealing with a member who might be ultimately found guilty of a Criminal Code offence.

So I think that the language should reflect what's in the legislation. I mean, the commissioner is tasked with applying the legislation. That is what's in his mandate, and that's good. But what the legislation does is cover financial conflict of interest. I think we should not fall into the unfortunate position of inadvertently misleading Albertans.

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

Ms Blakeman, just to double-check, can you restate your original motion so that we can get ready to vote?

**Ms Blakeman:** The motion is that the Conflicts of Interest Act Review Committee recommend to the Legislature that the title of Ethics Commissioner be changed to reflect the content and jurisdiction of the Conflicts of Interest Act and, therefore, be renamed as the conflict of interest commissioner.

**The Deputy Chair:** Thank you very much for that motion.

Those who support that, please raise your hand. On the phone, if you support that, say yes and state your name. Those who oppose that, please raise your hand. On the phone, if you oppose that, say no. Okay. So 7 to 2. That motion is lost.

Thank you very much. I believe, hon. committee members, that concludes all the 147 recommendations. Before we address the next item, I wanted to thank all committee members. I know we had moments when we all got excited. We agreed on certain things unanimously. There are others where we hold our heart to the differences that we have. Nevertheless, everybody put their best effort and your opinion and what you believe onto the floor and reached a decision, and I want to thank you so much for that. Let's give each other a hand, particularly the support staff. Their job isn't finished yet.

Now that we've gone through the details, made a number of decisions, it's time to get a report summarizing that. I'm going to turn the floor to Dr. Massolin to give us a high-level outline of the report format.

**Dr. Massolin:** Yes. Thank you, Mr. Chair. As you've indicated, the committee has now arrived at the point where it should turn its attention to giving instructions to us, to research services, to prepare a draft report as that will be the substance of the committee's next meeting, to review that report. I just want to go through the report, as you say, in a high-level way. Of course, this is just a proposal. It's up to the committee how this all happens. As I said, they'll get a chance to comment on it in due course.

For previous statute reviews we've prepared a substantive report, which of course lists the committee membership and activities, background information in terms of the striking of the committee. It also talks about some of the consultation process in terms of the written submissions and the oral presentations. Then the main, substantive section of the draft report, of course, will contain the committee's recommendations.

The proposal is to extract those specific recommendations, put them in an executive summary, and then in the main section of the report to elaborate on those recommendations in the following way: first of all, give a sense of what is in the act currently; second of all, provide a synopsis of the stakeholder input on the issue; third of all, provide a summary of the committee deliberations, which will culminate in the recommendation itself. Now, in this case the committee has gone through this arduous and laborious process of arriving at recommendations through motions, including some recommendations simply to indicate that the act stay as is. Those will be included as well. So anything passed through motion will be reflected in this report. The final portion will be an acknowledgement section. There is also a listing of all the stakeholder input as well.

That's about it. I don't know if there are any questions, Mr. Chair. Thank you.

2:25

**The Deputy Chair:** Any questions from hon. members? I understand this is a fairly standard reporting format that has been used for all kinds of other work, too.

**Ms Blakeman:** I'm sorry. When is this draft report ready, then?

**Dr. Massolin:** I think the next meeting is on October 24, if I'm not mistaken. We'll try to get it to the committee as far in advance of that meeting as possible but certainly within four or five days, perhaps even earlier than that.

**The Deputy Chair:** Just so you know, when we scheduled the meeting, I intentionally asked for two weeks' break time so that they could complete the report and also give us advance notice so we can read it before we come together next time. That was all considered.

Any other questions? No?

Okay. With that, thank you all very much. The next meeting is on October 24 from 11 to 3. I don't know if it's the same room or a different room but somewhere here. We'll see you then.

Motion to adjourn the meeting?

**Mr. Dorward:** Mr. Chair, before we do that, we probably should recognize the extraordinary research done here in this area. They've been around longer than I, some of the other members on

this committee, but this was an extraordinary amount of work. Very, very well done.

**The Deputy Chair:** For the record thank you so much to our research staff and legislative assistants for all the work you guys have done and to the Ethics Commissioner's office. Thank you so much.

**Mr. Saskiw:** I move we adjourn.

**The Deputy Chair:** Motion to adjourn by Mr. Saskiw. All agreed? Thank you, everyone.

Have a nice Thanksgiving long weekend.

[The committee adjourned at 2:27 p.m.]



