



Legislative Assembly of Alberta

The 27th Legislature  
Second Session

Standing Committee  
on  
Legislative Offices

Friday, February 13, 2009  
8:35 a.m.

Transcript No. 27-2-1

**Legislative Assembly of Alberta  
The 27th Legislature  
Second Session**

**Standing Committee on Legislative Offices**

Mitzel, Len, Cypress-Medicine Hat (PC), Chair  
Lund, Ty, Rocky Mountain House (PC), Deputy Chair  
Bhullar, Manmeet Singh, Calgary-Montrose (PC)  
Blakeman, Laurie, Edmonton-Centre (AL)  
Campbell, Robin, West Yellowhead (PC)  
Horne, Fred, Edmonton-Rutherford (PC)  
Lukaszuk, Thomas A., Edmonton-Castle Downs (PC)  
MacDonald, Hugh, Edmonton-Gold Bar (AL)  
Marz, Richard, Olds-Didsbury-Three Hills (PC)  
Notley, Rachel, Edmonton-Strathcona (ND)  
Webber, Len, Calgary-Foothills (PC)  
Xiao, David H., Edmonton-McClung (PC)\*

\* substitution for Robin Campbell

**Support Staff**

W.J. David McNeil	Clerk
Louise J. Kamuchik	Clerk Assistant/Director of House Services
Micheline S. Gravel	Clerk of <i>Journals</i> /Table Research
Robert H. Reynolds, QC	Senior Parliamentary Counsel
Shannon Dean	Senior Parliamentary Counsel
Corinne Dacyshyn	Committee Clerk
Erin Norton	Committee Clerk
Jody Rempel	Committee Clerk
Karen Sawchuk	Committee Clerk
Rhonda Sorensen	Manager of Communications Services
Melanie Friesacher	Communications Consultant
Tracey Sales	Communications Consultant
Philip Massolin	Committee Research Co-ordinator
Stephanie LeBlanc	Legal Research Officer
Diana Staley	Research Officer
Rachel Stein	Research Officer
Liz Sim	Managing Editor of <i>Alberta Hansard</i>

## Standing Committee on Legislative Offices

### Participants

Office of the Auditor General . . . . .	LO-63
Fred Dunn, Auditor General	
Jeff Olson, Chief Administrative Officer	
Office of the Ethics Commissioner . . . . .	LO-71
Neil Wilkinson, Ethics Commissioner	
Noela Inions, QC, Registrar, Lobbyists Act, and General Counsel	
Karen South, Senior Administrator	
Office of the Ombudsman . . . . .	LO-76
Gord Button, Ombudsman	
Glen Resler, Director, Corporate Services	
Office of the Information and Privacy Commissioner . . . . .	LO-83
Frank Work, Information and Privacy Commissioner	
Donna Check, Director, Human Resources and Finance	
Marylin Mun, Assistant Commissioner, Access to Information	
Wayne Wood, Director, Communications	
Office of the Chief Electoral Officer . . . . .	LO-91
Lorne Gibson, Chief Electoral Officer	
Lori McKee-Jeske, Deputy Chief Electoral Officer	



8:35 a.m.

Friday, February 13, 2009

[Mr. Mitzel in the chair]

**The Chair:** Good morning, everyone. Welcome to the meeting of the Standing Committee on Legislative Offices. I'd like to ask the members and those joining the committee at the table to introduce themselves for the record. I'm Len Mitzel. I'm the chair of the committee.

**Mrs. Sawchuk:** Karen Sawchuk, committee clerk.

**Ms Norton:** Erin Norton, committee clerk.

**Mr. Webber:** Len Webber, Calgary-Foothills.

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

**Mr. Reynolds:** Rob Reynolds, Senior Parliamentary Counsel.

**Mrs. Kamuchik:** Louise Kamuchik, Clerk Assistant, director of House services.

**Ms LeBlanc:** Stephanie LeBlanc, legal research officer with the Legislative Assembly Office.

**Dr. Massolin:** Philip Massolin, committee research co-ordinator, Legislative Assembly Office.

**Ms Blakeman:** Laurie Blakeman, and I'd like to welcome you all to my slightly frosty but fabulous constituency of Edmonton-Centre.

**Mr. MacDonald:** Good morning. Hugh MacDonald, Edmonton-Gold Bar.

**Mr. Horne:** Good morning. Fred Horne, Edmonton-Rutherford.

**Mr. Marz:** Richard Marz, Olds-Didsbury-Three Hills.

**Mr. Lund:** Ty Lund, Rocky Mountain House.

**The Chair:** Thank you. Thomas Lukaszuk from Edmonton-Castle Downs has just joined us. We just got started, Thomas, so I've introduced you. Okay?

**Mr. Lukaszuk:** Thank you, Mr. Chairman.

**The Chair:** Now, the meeting materials were posted on the internal website. Do all members have copies of these documents? If not, I think there are extra copies around.

Before we commence this meeting, I want to note that this marks the first time that the officers of the Legislature are coming to the committee to discuss their reports. The standing orders were amended in 2007 to incorporate a provision, which is now Standing Order 55.01, that the reports of the officers stand referred to the Legislative Offices Committee. However, this event has not occurred since then.

Also, I want to point out to the officers and the committee members that the intention is to learn more about the operations of the respective offices. We're all aware of the unique positions the officers occupy and respect their independence. I want to assure the officers that the purpose here is not to second-guess any of their decisions.

Given the unique nature of this meeting I wanted to ensure as well that committee members were well prepared. That's why I circulated a memo this week excerpting some of the work performed by the committee research section of the LAO. I was simply trying to facilitate productive sessions and in no way trying to restrict or limit the ability of members to inquire into any matter they wish. As a presiding officer in the Assembly I'm very much aware of freedom of speech and wouldn't want to inhibit it. As with any research completed on our behalf by the committees branch research staff, the documents are completed in a nonpartisan fashion to provide background information based on the direction given.

With that, we'll start with the agenda. You have the agenda in front of you. Would someone move the agenda?

Ms Blakeman.

**Ms Blakeman:** Thanks. Just picking up on your comments there about what we're trying to do here. If I could make an observation – and I certainly don't feel in the least bit inhibited about asking questions, so no worry on that part – I find it useful as an MLA to have to review these reports myself. I have also been asked in the past by various departments and I think once even by the AG for my reaction as an MLA to what was in the report and how the report worked for me and how it could work better. I appreciate that the committee did ask the staff to prepare the research, but in reviewing it now, I think it's actually a very good exercise for the MLAs to do the work themselves. I think you learn a lot. We're being rather too well treated by the research staff. I think they're making it a bit too easy for us. It's just an observation that I thought I might make, but maybe we could look at that in the future.

**The Chair:** Thank you. Point well taken.

**Mr. Lund:** I would move adoption of the agenda.

**The Chair:** Moved by Ty Lund that the agenda be adopted as circulated. All in favour? The motion is carried.

Adoption of the minutes. You have the minutes before you. Are there any errors or omissions in those minutes? There being none, would someone move adoption of the minutes? Len Webber moves adoption of the minutes of the November 28 meeting as circulated. All in favour? That's carried.

As we go into item 4, I've asked the Auditor General and his staff to come in and sit in on part of this because it relates to his office. Perhaps any insights he might have might help as well.

**Ms Blakeman:** Is this the motion about appointing an auditor for him?

**The Chair:** No.

**Ms Blakeman:** No? Okay. All will be revealed, I take it.

**The Chair:** It'll be, I think, a motion for whether we talk about our RFP – remember that we had discussed this some time ago – because some new information came out.

**Ms Blakeman:** Okay.

**The Chair:** While they're coming in, I guess I could just let you know what's happened on this. Mr. Lund and I reported on the audit exit meeting that we attended on the committee's behalf in August of '08. In attendance were representatives of the auditing firm Kingston Ross Pasnak, Mr. Dunn, and staff from his office. At that

time KRP indicated their interest in further contract extension, and the committee passed a motion at that time, on November 28, approving a three-year extension to the existing contract with KRP. Well, I received information in January from KRP advising that they'd revisited the issue and that they've decided to withdraw from this function after completing the 2008-2009 audit. First, on the record and on behalf of the Legislative Offices Committee I'd like to offer our sincere appreciation to the firm of Kingston Ross Pasnak, who provided this service to Albertans for many years.

Next, in an effort to formalize the process for choosing an auditor, I asked that committee staff prepare a draft RFP for the committee's consideration inviting proposals from firms interested in the audit function. The suggestion is that the process start in early March and close by mid-April, with the committee rendering its decision on the successful candidate during the last week of May. Karen or Rob can explain the content of the RFP and the general process. I believe that the office of the Auditor General also will provide assistance in the wording of the RFP.

For the record here's where we are now. We stand with an auditing firm who's going to finish this year's, and we have a decent amount of time to be ready for next year, but we're going to have to put our RFPs out. This was discussed even during our discussion on the motion in November as to whether there should be an RFP going out, whether we should do an extension. So it has naturally evolved on its own.

I don't know, Mr. Dunn, whether you wish to make any comments with regard to the exit audit that's done on your committee. For the record Mr. Dunn and Jeff Olson are with us now as well.

**Mr. Dunn:** I was called by the partner of KRP to explain that they were going to step aside one year hence. The purpose of them stepping aside is that by being the auditor of my office, they are naturally conflicted about doing any work for the office. As you appreciate from our results, we contract out a fair amount of work, probably in excess of \$5 million of audit assistance a year, and therefore their firm is denied an opportunity of being involved in any of that work as the auditor of our office. Now, they have knowingly done this in the prior years, but it was their conclusion that their firm is of such a size that they could be an associate or an agent of our office in the future. Therefore, their preferred treatment would be to work for our office rather than audit our office. Therefore, I said that they would have to notify the committee.

In that regard, what you're doing is the appropriate thing. You're sending out a professional RFP. Our office has been through it; we've provided some input to the Clerk regarding the evaluation criteria. It models many of the RFPs that we send out to our agents for work that is done through our office. I believe that you'll receive some responses. Clearly, you will not be able to receive responses from those firms which do work for our office, but there are a number of firms out there who would be quite, I think, interested and capable of performing that office. You should be able to have this out on the street within, I would expect, 60 days, and you should be able to have a reasonable response to it, I would expect, within another 60-day period.

8:45

**The Chair:** Okay. Any questions from the committee? I think that there was one suggestion that perhaps the RFP should not be a three-year term but, perhaps, a five-year term if somebody new is coming in there. Is that correct?

**Mrs. Sawchuk:** Yes, Mr. Chair.

**Mr. Lund:** I think that when we met with you, Mr. Dunn, and Mr. Olson, there was discussion that if there was a request, in fact, it would be to specific auditing firms as opposed to putting it in the papers and advertising at large. Would you comment on that, please?

**Mr. Dunn:** Yeah. I would expect that you would like to have a firm which is capable of doing the work on a sustainable basis; thus, you would not want a sole proprietor or practitioner. Therefore, you would look at the ones which are not agents of our office, which will be excluded, but those other organizations, and you can see them through the institutes of auditors out there. You would be able to select, probably, five to 10 proponents. We'll certainly provide our input, if you so choose to ask us, into the size or the appropriateness of the organizations, but I think that you could probably find five to 10 that you could select. When we do our RFPs, clearly, we're looking for sustainability, continuity, and that sort of matter so that when a person works on behalf of our office in the public sector, they're not here today then gone tomorrow. You'd want something with, I think, a minimum of a couple of partners in the office and maybe a minimum of 10 to 12 staff in the office, that type of criteria.

**Mr. Lund:** Thank you.

**The Chair:** Are there any other comments? Ms Blakeman.

**Ms Blakeman:** I might have missed it, and if I did, I apologize. Did you give us a preference on three years versus five or make an observation?

**Mr. Dunn:** No, no preference that way. We make our RFPs subject to appropriate performance, so although we signal that it could be upwards of five years, it is always subject to adequate performance on the job.

**Ms Blakeman:** That would be a yearly performance review?

**Mr. Dunn:** Yes. I believe you should. That's why we've had in the past – and I believe, Laurie, that you've also attended those in the past – representatives, generally through the chair, vice-chair, and other members of this committee, attend the exit conference with our auditor and our staff. You have that opportunity to engage in an in camera conversation with them also to assess their performance.

**Ms Blakeman:** Yeah, I remember. Thank you.

**The Chair:** Are there any other comments?

Would someone be prepared to make a motion that we issue an RFP? Thomas Lukaszuk.

Would you read it into the record, please?

**Mrs. Sawchuk:** A motion that

the committee issue a request for proposal to independent accounting firms inviting proposals to conduct an annual audit of the financial statements, including the performance measures, of the office of the Auditor General as set out in the Auditor General Act and that submissions be brought before the committee for review and selection of the successful proposal.

[Motion carried]

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

Gentlemen, thank you for coming in. We'll start with the review of the reports and, certainly, the office of the Auditor General.

Good morning. For the record because some people may be

joining us and some not, we'll be going around doing the introductions every time.

Before I begin, I'd like to make some remarks and let you know that this marks the first time that the offices of the Legislature are coming to the committee to discuss their reports. The Standing Orders were amended in 2007 to incorporate a provision, which is now Standing Order 55.01, that the reports of the officers stand referred to the Legislative Offices Committee. However, this event has not occurred since then. I also want to point out to the officers and the committee members that the intention is to learn more about the operations of their respective offices. We're all aware of the unique positions the officers occupy and respect their independence. I want to reassure the officers that the purpose here is not to second-guess any of their decisions.

With that, my name is Len Mitzel; I chair the committee.

**Mrs. Sawchuk:** Karen Sawchuk, committee clerk.

**Ms Norton:** Erin Norton, committee clerk.

**Mr. Webber:** Len Webber, Calgary-Foothills.

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

**Mr. Lukaszuk:** Thomas Lukaszuk, Edmonton-Castle Downs.

**Mr. Reynolds:** Rob Reynolds, Senior Parliamentary Counsel.

**Mr. Olson:** Jeff Olson, CAO of the OAG.

**Mr. Dunn:** Fred Dunn, Auditor General.

**Mrs. Kamuchik:** Louise Kamuchik, Clerk Assistant, director of House services. Good morning.

**Ms LeBlanc:** Stephanie LeBlanc, legal research officer with the Legislative Assembly Office.

**Dr. Massolin:** Philip Massolin, committee research co-ordinator, LAO.

**Ms Blakeman:** Laurie Blakeman, and I know how much you enjoy spending time in my fabulous constituency of Edmonton-Centre.

**Mr. MacDonald:** Hugh MacDonald, Edmonton-Gold Bar. Good morning.

**Mr. Horne:** Good morning. Fred Horne, Edmonton-Rutherford.

**Mr. Bhullar:** Good morning. Manmeet Bhullar, Calgary-Montrose.

**Mr. Lund:** Ty Lund, Rocky Mountain House.

**Mr. Marz:** Richard Marz, Olds-Didsbury-Three Hills.

**The Chair:** Thank you.

#### **Office of the Auditor General**

**The Chair:** Mr. Dunn, please proceed with your overview of the 2007-2008 report of the office of the Auditor General. Your consideration, sir, of the 15-minute time limit would be really appreciated as well.

**Mr. Dunn:** Okay. You should have just now received the presentation that Jeff Olson will quickly lead us through. This being the first time for this venue, we weren't sure exactly how we should be covering the material. Hopefully all committee members realize that there is an annual report of the office of the Auditor General. You should have all received that. We do have a business plan, that we report to this committee at the time that our budget is being discussed and approved. What we're going to do is look at the prior year's results that were achieved up to the March 31, 2008, fiscal period and the dollars that had been expended at that time. We will then go into the future a bit.

As you appreciate, our work doesn't stop and start with each fiscal year. Obviously, the year-end of the province is March 31. Much of the work that relates to March 31, 2008, occurs in the next fiscal period: April, May, and June. Therefore, we will be explaining what we have done during that fiscal year plus the work that would have then proceeded with following that fiscal period and the reports that we have prepared. Of course, all our reports stand before the Public Accounts Committee.

I'll turn it over to Jeff, who will briefly go through this presentation.

**Mr. Olson:** Thanks, Fred. Mr. Chairman and committee members, as you know, this presentation's focus is on the annual report of the OAG operations for the year ended March 2008 and not the audits of the Alberta government, its entities, and boards. That discussion was part of the April and October public accounts reports we presented to the Public Accounts Committee.

Slide 2. The two objectives of our agenda here at the meeting are, first, to report to you the highlights of our 2007-2008 annual report/result analysis for operations, March 2008. They were last discussed with the subcommittee of the standing committee at our exit meeting with our auditors, Kingston Ross, in August '08. Second, to provide you with an update of some important actions that we will be undertaking as we go forward into the next years.

Slide 3. We had a successful and challenging year with a number of initiatives for the OAG. Two initiatives, in particular, stand out in the fiscal year '07-08. We delivered two multiminy public audit reports to the Legislative Assembly of Alberta. We did this because we wanted to provide timely reporting of recommendations to improve the use of public resources, and these reports made us more effective and efficient in our own operations.

Slide 4. The major outputs of our office are the public reports of October and April. In '07-08 we had nine major systems audits completed, with 42 major recommendations to improve the effectiveness and efficiency of the Alberta government operations. But this does not recognize the 190 assurance audits done on the Alberta government and its entities, who collectively spend over \$35 billion in tax dollars, or the 97 smaller systems audits. All these audits and reviews result in management letters with recommendations to departments and agencies to improve the efficiency and effectiveness of the operation. It is the more significant ones that are selected to be reported upon in our two public reports.

Another major activity for the office is our work in supporting the Public Accounts Committee, where in the last year, '07-08, 21 meetings were held on matters included in our reports. All of this is crucial in meeting our mandate and responsibility to you, the committee, the Legislative Assembly, and ultimately the people of Alberta.

**8:55**

Just quickly, with slides 5 and 6 I'd like to talk about the reports and what was in them. The Auditor General's report of October '07

reported the results of four major systems audits, assessing and prioritizing Alberta's infrastructure needs, child intervention services, energy royalty review systems, and the government's revenue forecasting system. We also included key recommendations on improving controls for the use of the government's credit cards, improving information technology service levels, and strengthening policies for members' service allowances.

The April 2008 report, slide 6. Although this report was released in the '08-09 fiscal year, much of the work was completed in the '07-08 fiscal year, so we've included it here in our reporting: postsecondary institutions' noncredit programs, implementing the provincial mental health plan part 1, seniors' care and programs follow-up, conflict of interest at Transportation, and managing information technology risk in government departments. That makes a total of nine with those two reports of major systems audits.

Our second initiative, slide 7. As you may remember, we talked about our MLA survey. Although we will be posting the results in the '08-09 annual report, we previewed the use of the survey in our '07-08 results analysis by management. Again to remind you, the survey identified that MLAs overwhelmingly, 94 per cent, thought that our work was worth while, and 84 per cent thought that we met or exceeded expectations. They also suggested focusing systems audits on health, environment, energy, investments, and finance.

Slide 8. I'd like to talk about our results from a financial perspective. For '07-08 we were provided \$20.2 million for operations and \$580,000 for capital requirements. We returned \$408,000, or about 2 per cent of our budget, to the Legislative Assembly for the '07-08 fiscal year. This unspent funding is mainly from using less costly OAG staff in audits as well as changes in planned audit work. It's not unusual – and Fred just mentioned this – that we might have a surplus or deficit in any one fiscal year due to the changes in planned audit work because our audits, both systems and attest, span over two fiscal years.

On slide 9 we have a summary of what really makes up our surplus: a \$305,000, or 3 per cent, increase in salaries and wages and employer contributions, more than was budgeted mainly due to the 4.9 per cent COLA – we had budgeted at that time 3.5 per cent – and the unbudgeted one-time economic adjustment of \$1,500 per FTE that corporate human resources, CHR, had provided; a \$201,000, or 5 per cent, decrease in agent fees from postponing system projects due to the lack of available suitable agent experience; then a \$403,000, or 21 per cent, decrease from budget in temporary services as we rented about 4,000 hours less from the more costly external temporary staff; finally, a \$109,000 decrease from what was budgeted for other supplies and services and advisory services. That's for a \$408,000 surplus.

On the next slides, beginning on 10, we talk about our annual report results. It deals exclusively with performance measures. We have a number of performance measures, but I'd like to highlight only the key ones.

Issuance of reports. As you can see from this slide on the issuance of reports, with a target of June 30 we did better by almost two weeks. The timelines of our work are important to the effectiveness of our reporting to government. We work hard with Treasury Board and the staff of all the departments and government entities at meeting this goal, but when it comes to value being provided by the OAG to you, our performance measures on the Auditor General's recommendations to the Legislative Assembly are essential.

Although we missed our target for the government to accept 95 per cent of our numbered recommendations in our October 2007 report and our April 2008 report, the government accepted 38 of our 42 numbered recommendations, or 91 per cent, for this current year,

an increase of 9 per cent over last year. Just as important, though, is the follow-up on those recommendations to ensure that improvements are being made; for example, mental health and food safety, to name just a few. During '07-08 the government had not yet implemented 26 of our primary recommendations that had been accepted three years prior, in '03-04, but it was making satisfactory progress on 25 of the 26 and unsatisfactory progress on one. The ministries concerned had not rejected the recommendations, but progress was slower than had been planned.

Slide 12. As mentioned in the beginning of my presentation, we had two objectives. The first was completed when we talked about the '07-08 annual report for the operations of the office, March 2008. The second objective was to provide you with an update of some important actions we will be taking as we go forward. The first is in the area of auditing performance measures, which has provided the government of Alberta and people of Alberta assurances that performance measures are reliable and accurate. This involves examining evidence of the achievement of performance measures in a rigorous manner. Currently we audit the performance measures in the Alberta government report Measuring Up and 24 ministry annual reports and certain entities.

As we look forward, slide 13, we have now met a number of times with Treasury Board representatives on how best to provide sufficient audit assurance while still remaining within our overall budget. We believe we have a responsibility, and Treasury Board has a strong desire for us to remain involved in this area. But we must be fiscally responsible, so it is our intention to limit our involvement in the government of Alberta's Measuring Up report to audit only the identified key measures and to reduce our coverage of ministries examined relating to performance measures in ministry annual reports. Currently discussions are also going on on that. Nothing has been completely finalized, and we're working with officials on this right now.

On slide 14, also as a result of our efforts to stay within budget and with the challenge of the ongoing increase and changes to the standards OAG must meet in auditing, we must reduce the amount of work done in systems audits. What we're saying is we cannot meet the Legislative Assembly's desire for more systems audits. We will be revising our business plan assurance/systems resources spent from a 70-30 split to a 75-25 split. This means we'll reduce and defer the number of systems audits we planned for '09-10. For example, it's uncertain if or when in the future we will do improving school performance in the Department of Education, IT project management cross ministry, royalty collection systems in Energy, and we're also deferring a reporting date on the workplace health and safety to assess compliance with legislative requirements and examine the effectiveness of its program.

Almost done here. On the last page, looking forward from a revenue perspective, we ask that you agree with our action to eliminate audit fees revenue charged to the Alberta Health Services entity. Our 2009-2010 budget shows a reduction in audit revenue fee to reflect that as Health Services is mainly funded by the GRF and as it is the practice – and we do have copies of the order from the standing committee going back to '97, the standard being that if it is mostly funded by GRF, there wouldn't be fees charged. We have taken it out of the revenue line for the '09-10 budget and coming years. Although this is about \$1.5 million on a full audit year basis, you must remember that this is not the OAG's office revenue but is more of a flow through back to the minister of finance.

Secondly, as many of the provinces' Auditor General's offices do not bill for audits and in light of our desire to be more efficient, we



would ask the committee to review its policy to collect audit revenue from other public-sector entities.

That concludes. Hopefully it'll give you an opportunity to ask some questions. Thank you.

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

We've got a couple of questions. Ms Blakeman.

**Ms Blakeman:** Thanks very much. I actually have three, so if I could go back on the end of the list, I'll just stick to one at this point.

**The Chair:** Sure.

**Ms Blakeman:** I have real concerns about reducing the number of systems audits. I notice that you've already had to postpone seven of them from the fiscal year that we're looking at in this report, and now you're talking about more of them. Can you talk to us about the consequences of that decision or the risks to the public's knowledge and the efficiency of MLAs to be able to go forward without these systems audits?

9:05

**Mr. Dunn:** Okay. Let me start off. As you appreciate, first of all we must comply with our legislation. There's no doubt that we will meet our legislative requirement. We are legislatively appointed the auditor of all the Alberta public sector entities.

Quite often I'm asked about why our mandate is not the same as other Auditor General mandates. Alberta's Auditor General mandate is the widest of all Auditors General. We are the statutory auditor of every entity. As Jeff has just mentioned, there are over 190 of those entities. That includes every postsecondary institution, every Crown corporation. We must statutorily audit all those, and we must report within the legislative time frame. As you know, the province of Alberta has legislation that it must publicly report by June 30 and by September 30. Alberta is unique also in that it is the only jurisdiction that publicly reports on every ministry. So you have 24 ministries with 24 annual reports, and underneath every one of those ministries are all these departments and organizations, all of which get audited. We must do that first and foremost. That's all under section 11 of our act.

Then we have section 19, which is to report at least annually to the Legislative Assembly on any improvements we note within our work which would improve the economy and efficiency and the effectiveness of the use of public-sector resources, which is known in our terminology as systems audits, where we go more in depth beyond the financial statements and into the actual operations of an organization and how they conduct their work. We do a much more thorough examination. That is discretionary. How much you do and what you do every year becomes quite often a discussion between ourselves and other entities of what we look at. Since I am statutorily required to do all the financial statement audits, then I'm only left with what is left over to do the systems audits. Therefore, we have to reflect upon that as to how much you can do in the year with the resources that you have available.

Why we chose to look at performance measures. We do this knowing that it is troublesome to Treasury Board, to say the least. It's troublesome for us to exit that area. However, that was approximately 11,000 hours of our office which is not required under our legislation that we do. We've been doing performance measures for many years, since Alberta brought in performance measures. Those of you who have had the opportunity of interacting with other jurisdictions recognize that Alberta has a very holistic performance measurement reporting. It's in its business plan. It's in its annual

reports of all the ministries. However, that is not under our legislation that we must audit it.

We have been doing so and, we understand through Treasury Board, being very effective in ensuring some consistencies, some prudencies, some appropriateness, and accuracy within that performance reporting. However, that is not in our legislation that we must do it. Therefore, the first area I looked at is that if I have to reduce the resources in my office, I must look at areas where I'm not statutorily required to perform the work. Why we are engaged with Treasury Board is that they do not want us to leave. So we're working out how much we can do, recognizing the consequence that to the extent we stay involved in performance measures, it therefore removes time and resources from the other discretionary area, which is performance audits, the systems audits; thus, we will have to reduce the amount of time there. The consequence at the end of the day is that we will be able to deliver less within our periodic public reports than we have over the last few years.

**Ms Blakeman:** My question was about the consequences and the risks.

**Mr. Dunn:** The consequence is that we'll do less systems auditing. I can't answer it any further. I'm not trying to be evasive; we just cannot do any more.

**The Chair:** Okay.

**Mr. Marz:** I've got two or three. Can I ask them all at once or one at a time?

**The Chair:** We'll see how long their answers are.

**Mr. Marz:** Okay. Just adding a little bit to Laurie's there on that slide 9, does that lack of suitable agent expertise relate in any way to the 21 per cent decrease in the budget of less temporary audit services? Or does that have more to do with the ability to hire more permanent staff? We've been farming out a number of temporary services over the years, and we haven't been budgeting very accurately for that. The year before it was 75 per cent over; this year it's 21 per cent under. If you could comment on that.

The other one, on slide 7, if I could, it says 94 per cent saw OAG work worthwhile. That's a pretty impressive headline for advertising, but when I looked, only 32 of the 83 MLAs actually responded: 94 per cent of that is 30, and 30 out of 83 is 36 per cent of MLAs saw the work worthwhile. Is that because – I'm not trying to be provocative here – perhaps MLAs didn't feel informed enough to fill that survey out, or was it a time constraint thing that they had enough time to fill it out? I myself looked at it, and I didn't feel I had enough information at the time to make an intelligent determination in filling that form out and getting it back to you.

**Mr. Dunn:** I'll start off, and maybe, Jeff, you can talk about the survey. I'm going to start off with the first part about the temporary staff and the consequences. As you appreciate, in the year in question up to March 31, '08, the economy in Alberta was very, very hot. The impact on professional accountants was extreme. We had reported to this committee in the past about the turnover in our office. We were able to recruit young people from university, train them very effectively. We had a very high rate of their success on their professional designation, but we were unable to retain them. They were being hired through the private sector but also the public sector. They were being hired as qualified, professional auditors and

accountants by Crown corporations. The RHAs and the postsecondary institutions would hire our staff.

The consequence of that, Mr. Marz, was that as a function of the marketplace we ended up having a higher than I would have liked number of seconded temporary staff coming in from other professional accounting firms. The cost is very expensive, as you appreciate, with a hot economy. Their rates were not going down; they were going up. Thus, we were caught in that dilemma of inability to retain all the staff we would have liked and provide a longer term career in our office with them. We had to use more temporary staff, which required more of our senior people out supervising the non Auditor General staff. That ended up having a cost consequence to it.

We addressed that as a strategy over time by hiring additional junior people and training more, trying to keep the absolute number that we ended retaining as permanent staff as a higher number, understanding the effect on our turnover. We did that, which resulted in us, by having the sheer number of more junior staff, eventually having to have less seconded staff in total. That's why that \$408,000.

So the two sides of the coin were that we were trying to build up our full-time equivalents in a very heated economy, recognizing – we basically tripled our hiring at the bottom – that at the end of the day facing 25 per cent turnover, we would end up in absolute numbers having more trained staff, but we'd also have spent a fair amount of time training people.

Now, regarding your other point.

**Mr. Olson:** The MLA survey?

**Mr. Dunn:** Yeah.

**Mr. Olson:** I'd just like to add to that on the temporary services, like Fred says, because of the turnover the strategy of maybe hiring more at the bottom end that actually do the performance measures actually provides us these savings, so it was a good strategic move on that part.

On the MLA survey, this is something new that the other Auditor General offices across the country are doing. It's very important that we start and get involved in it. What we saw is that it was the first time this year – it also happened to be a time where because of the last turnover of the Legislature and the election there were a lot of new members in there, so your comment that maybe some of them didn't feel qualified to comment on it I think is very true. We did try to get as many as possible. It was during the summer, so again that's harder to get that input. But it's a start. I think over the years we'll get more and more. I think it's very valuable for our office because not only do we ask, "Did you like us?", but we also ask, "Can you provide us some guidance in areas that you'd want us to really get more involved in?"

9:15

**Mr. Marz:** Just if I could, Mr. Chair. I think the first time I saw it was in a newspaper, and it said 94 per cent of MLAs. Basically, it was erroneous reporting, and I'm not blaming anyone in particular. It could be the way the press put the slant on it. But the actual fact was that 36 per cent of the MLAs actually felt that way because, of the others, either 2 per cent didn't respond or 4 per cent said no and the rest of them didn't respond, so we really don't know what their response would be.

**Mr. Olson:** Yeah. I mean, typically with surveys – and I was with the Department of Education for a number of years, and we do a lot

of surveying over there – a lot of times there'll be comments of a certain high percentage, but in reality, when they do these surveys with parents or with teachers, a lot of times we don't get that kind of a number. So I think you're always going to have a little bit of that problem.

**Mr. Marz:** That's why I just don't like reporting in percentages, because that doesn't paint an accurate picture.

**Mr. Olson:** Yeah.

**The Chair:** Sometimes that happens with most surveys.

For the record Mr. Xiao, a member, has joined us.

Ms Blakeman, you had another question?

**Ms Blakeman:** Yes. I'm wondering why the office has a performance measurement over which they have no control. Specifically, that's the performance measurement about the government accepting recommendations from the Auditor General within a specified period of time. It strikes me that that's darn hard to do when you have no control over the government actually accepting it. There's an underpinning there that's being assumed, and I'd like you to expand upon it.

**Mr. Dunn:** Okay. Why did we choose that performance measure? A number of Auditor Generals across the country do report a similar type of performance measure. The importance of the Auditor General's work is not what you recommend but what gets implemented. The recommendation in and of itself is of a hollow value if it just says, "We have a problem and something should be done about it," but nothing gets done about it. What it results in is that problem continuing to be repeated. Thus the recognition of, first and foremost, the acceptance of the recommendation – we agree that there is an issue and that something should or could be done about it – is the first step.

The next one was the result of me meeting with, actually, many years ago the then Premier and then with the current Premier about what would be an acceptable term or time frame in which you would expect an accepted recommendation – we understand there's an issue, and there can be a solution – to be achieved. I accepted, because it's practical, that three years. So from the time that you report on a matter which is of some significance – that's the numbered recommendations, and, Laurie, you know the difference between the numbered and the unnumbered.

**Ms Blakeman:** Oh, yes.

**Mr. Dunn:** A numbered recommendation is of a higher and greater significance. "We agree that there is an issue. We agree that there is a solution. Give us some time in order to address that." And we've agreed to that three years. Hopefully, the Public Accounts Committee understands and reflects on that because what happens is that we go back and we follow it up after three years to see if it has actually been implemented. By way of testing and following up on the implementation of it, we can then report to the Public Accounts Committee that it has been implemented and thus the issue has been addressed, or it has not been implemented and thus the issue still remains to be addressed, which allows the Public Accounts Committee to hold the management of the organization to account: why aren't you doing something about this?

That often, we hope, provides the basis for which there can be some very good questioning of the management of the organization. "Why are you not addressing this issue, especially since it's been

identified and you've agreed that something should be done about it? Why haven't you done it within that period of time?"

You're absolutely right. We have the responsibility to, well, (a) identify issues but (b) be practical as to what a solution is, what can be done about it. That's our obligation. But we are not in charge of the implementation. That is management. And it's the role and responsibility of the Public Accounts Committee to hold management to account about the improvements, the effectiveness of their performance. Thus by feeding it back to you, the Members of the Legislative Assembly and the Public Accounts Committee – this is what's been accepted, and this is what's going to be acted on – then we believe that you have provided the assurance that management has heard and they plan to respond.

By way of example, although it's not in the presentation here, Alberta has an extremely high rate of accepting and implementing Auditor General recommendations. We do. As I say, it's a two-way street. It's not just strictly the Auditor General. We are very fortunate that we have historically been able to work effectively with the management of the organizations so that when a problem has been identified, it will be addressed. Compare it to other provinces and the federal Auditor General – and these are publicly documented – and they are much lower. Much, much lower.

You might say: why do you set a high target of 95 per cent? We're virtually at 100 per cent, which we do report on. We do report on all agreed-to recommendations that have not been implemented. We look at every one of them. We just expect that Alberta will listen and will act.

**Ms Blakeman:** A supplemental. In the report that's under review today, you note that out of the 27 recommendations made within this three-year period you're talking about, prior to the three-year period, 25 have had satisfactory progress but two have not. Can you advise me, please, which are the two that did not have satisfactory progress and what you're doing about it?

**Mr. Dunn:** These are reported publicly in there. As I mentioned before, in our mandate, since we audit all entities in the public sector, there are some which are not directly managed by the government. Some of these relate to postsecondary institutions. One is Grant MacEwan College: improving its financial reporting. We've been very open with our comments regarding the controls within that organization. In fact, it's one of the reasons why I was appreciative that that institution was brought before the Public Accounts Committee and was directly asked about its controls and performance. So it's the Grant MacEwan College and other ones.

It is all laid out in our annual reports. We have that index at the back which shows all recommendations made not yet implemented. We have this continuity schedule there that does allow every representative of the Legislative Assembly to look at all Auditor General's recommendations in the past not yet implemented.

**The Chair:** Thank you.

Mr. Lund.

**Mr. Lund:** Thank you, Mr. Chairman. I remember, Mr. Dunn, when you were here and we were talking about budget, we did have a bit of a discussion about the selection of where you do the audits. I remember that you commented that when you do an audit and come out with recommendations, then three or four years later you go back and check to see that there have been changes, and I think that's good.

I'm curious. In October '07 and then in April '08 you made some recommendations and did some systems audits. In the October one

it was assessing and prioritizing Alberta's infrastructure needs, child intervention services, Energy's royalty review systems, and revenue forecasting systems; then in '08 the postsecondary institutions' noncredit programs, mental health plan, seniors' care and programs, conflicts of interest at Transportation, information technology risks. I'm really curious. What prompted you to take those? I'm trying to get an understanding. How come those were chosen? What criteria do you use for choosing? I believe, if I understand correctly, you're probably going to have difficulty doing as many this fiscal year as you have in the past. I want to understand the criteria if I could, please.

9:25

**Mr. Dunn:** Okay. I've answered this question a number of times before at many, many different meetings: why do you do what you do? Clearly, there's the statutory responsibility on the financial statements. I've addressed that. How do you pick these things? We've had generally four criteria that we use. We look at what is being discussed in the Legislative Assembly: what's important to you as legislative representatives, and what are you involved in?

So why did we look at infrastructure and prioritizing the needs around there? There's a lot of debate about the famous infrastructure deficit. As you might appreciate, we had looked a couple years earlier at P3s, and we had looked at P3s, really, from a perspective of demystifying what it is that's involved. We looked at the two that were being considered at that time, the courthouse and the Anthony Henday. So we have tried to look at matters that are being debated, discussed at the Legislative Assembly, that you're involved in.

We also, of course, pick up and build off what gets addressed at the Public Accounts Committee. That committee is very important in the way it asks questions of management and what management's responses are to the questions of the Public Accounts Committee. If we believe that there is a response there that needs following up, we will then go off and look into that area.

The other area that I've personally been interested in is dealing with vulnerable Albertans. So we went into long-term care. There were matters that were being reported in the media that related to long-term care, but it also addressed that which was very important to Albertans: where is the long-term care provision of services going to be, and how efficient and effective is that long-term care? So along the vulnerable Albertans area we looked at long-term care, children at risk, mental health. We looked into those areas because the Legislative Assembly provides direction through its policy to the ministries that carry out the programs to be efficient and effective and achieve your objectives there. So we say: let's go out and look at those programs and see if they're being done efficiently and effectively.

Other areas that I, then, also use as part of my criteria: ethics and good governance. We looked at areas such as recruiting, training, and evaluating directors, the whole governance area, the ethical behaviour. Why do I go into CEO selection, evaluation, and compensation? Because I felt in some cases that possibly those boards and oversight committees needed some assistance. In our involvement with all the entities of Alberta I obviously get to see lots of boards and lots of directors and that, and they also share with me areas in which they are looking for some assistance. So we choose to look into those areas, and that's what we use as the criteria.

A very brief summary. Does it affect vulnerable Albertans? Does it involve ethical and good governance behaviour? Is it of interest to the Legislative Assembly and how you're debating? Will it make the public sector better? We have chosen to look into those areas under the broad categories, and we looked into what we thought was

important to Albertans. We expect that because of the rate of acceptance of the recommendations by the management of those organizations, we are looking at matters which are important to the management. Since they are accepting the recommendations and are implementing them, we believe that overall the consequence of our work together with management's actions and follow-up should make improvements.

**The Chair:** Mr. Horne.

**Mr. Horne:** Thank you, Mr. Chair. Mr. Dunn, I just wanted to inquire a bit further about your decision in '07-08 to issue two public reports. A two-part question. One, as a new member of the committee I just wonder if you could clarify for me. I'm assuming that that decision was made at your discretion and it's not prescribed in legislation. If that is, in fact, correct, then I guess I'm wondering what your plans are for the coming year given that you've indicated you'll be doing fewer systems audits and considering the economic circumstances with respect to your budget. I'm just wondering if you'd considered the possibility that it might be prudent to consider reviewing that approach.

**Mr. Dunn:** Okay. First of all, a little bit of history. You might remember that our office issued an annual report but also some special reports. When we first did long-term care, it was a large piece of work that required a separate and special report. In fact, it ended up being debated in the Legislative Assembly separately. You might also remember the Alberta Securities Commission. Then we had the issues up in Fort McMurray. So we were issuing some stand-alone, separate reports. We said: well, this may not be the most efficient and effective way to do this. We were looking at the consequence of other entities with year-ends noncoterminous with March 31. We have all the postsecondary colleges that have June 30 year-ends. Because of just the sheer volume of our annual report, there were other matters that we were not reporting to the Legislative Assembly. We just weren't being given the chance to report it. They were, if you want to say it, falling off the table. I felt that that was unfortunate.

It would be more structured and disciplined if we were able to provide to the Public Accounts Committee – because it has a fall and spring sitting, we could align our reports also to the times of the Public Accounts Committee – and have it known that there will be two reports in a year and that in between there will not be separate special reports unless requested by the Legislative Assembly or a minister that there be a separate report. We did it, Mr. Horne, for efficiency, effectiveness, timeliness of reporting to the Public Accounts Committee, and ensuring that a number of other entities that we do audit and report on regularly also make it into the public reporting. So in answer to your question: no, I plan to keep doing the two a year.

**The Chair:** Mr. Lukaszuk.

**Mr. Lukaszuk:** Thank you. Mr. Dunn, based on your comments from earlier today, I gather that the reporting your office does is definitely not only at par but exceeds the reporting practices of other jurisdictions in Canada, and I appreciate hearing that. It means that Albertans can be satisfied that there's good oversight.

You also mentioned just very recently that you reviewed the matter of ethics and good governance. In a few minutes or hours we will also be meeting with your counterpart the Ethics Commissioner. I'm wondering whether you're not using your valuable office's time in an area that perhaps would more naturally fall within that office's

jurisdiction. Is it something that you would normally as an Auditor General do? Is it an accepted practice in other jurisdictions that an Auditor General would enter the realm of ethics and good governance?

**Mr. Dunn:** Thank you. Yes, they do. However, in what you were picking up on, the difference in our office is that we are the statutory auditor of all these entities, and we have a body of people and resources to go in and look at those. The Ethics Commissioner, with all due respect, receives matters brought to his attention and responds to them but doesn't have a body of people to go out and check on those. So we are there and working.

By way of an example, Thomas, of what we chose to do, a couple of years ago I chose to look at ministers' expense reports, and we reported on that. We chose to look at MLA expenses. You might remember that there was a very serious thing that came out of Newfoundland. We chose to get involved in that, looked at the systems, and reported on the integrity and the rigour with which Alberta reports. There is a report that comes to your Legislative Assembly – I've commented, I believe, too late, but it does come annually – about the payments made to Members of the Legislative Assembly. My expectation is that we won't have a problem like the one that arose in Newfoundland.

I also directed my staff that for every audit we do, we'll look at the expense reports of the CEOs. We'll look at every expense report of CEOs. You might remember what was coming out of Ontario with the CEO of Ontario Hydro. We look at all that. I believe that there isn't a fear factor here, but it sends a message that we expect that they will hold themselves to be responsible in the conduct of their business personally as well as the spending of the public-sector dollars will be efficient, effective, and prudent. So we look at that. I believe that that is the responsibility of ethical behaviour, and it's a good way of seeing a person's thoughts in life.

Around good governance. In order to run an effective business, you've got to have a good governance organization: independent, objective, strategic, the rest of that. When I looked at a number of the boards in the public sector, I saw that there was inconsistency in how they were behaving. Some were doing exceedingly well; others were struggling. It was maybe a lack of training, a lack of skill sets, a lack of availability of people.

What we thought we could do is identify the better practices, help identify what could be done to make these boards effective. The result of that work ended up with the task force of Allan Tupper – I forget the name of the chair of that one. But it did result in something which I believe will be very important for Alberta in the long term. It acted as the start for the secretariat that is being set up to provide good selection, training, and evaluation to initially make sure that we get the right people on the boards and that we don't have conflicts at the start and problems at the start.

9:35

Alberta has been creating more and more entities. AIMCo is a separate one, and as you're probably aware from your role and responsibilities, there are other entities being set up. They're being set up with good governance right at the front end, good governance around what type of directors we should have, the training, the evaluation, and with a standard response and expectation.

So, yes, it is an area that we should look at. It's probably an area we could have looked at earlier, but it's an area that I believe is better today than it was five years ago.

**Mr. Lukaszuk:** Thank you.

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

**Ms Blakeman:** Thanks. Just one quick clarification before my question. When you were issuing one set of reports a year, were you not doing it in two volumes, and now you're doing one volume twice a year?

**Mr. Dunn:** Yeah. In part, Laurie, we were constrained by just the sheer size of the binders. That's right. We started out with one volume, and as we became more and more involved in some of the systems audits, it did grow to two volumes. There are two things. First, under our legislation we're to report on everything that we have observed in the course of our work over the year, which means that we have a lot on the various small entities that we could be reporting there. As we started to do these larger pieces of systems work and in order to get an appropriate explanation around that, it resulted in us having two volumes.

We are trying to keep it to two individual volumes twice a year. We're trying to do that, but those who are on Public Accounts now realize that the second binder, the October binder, is very thick. We will try to report as efficiently and effectively as we can, but I'm not going to say that at the end of the day it'll only be two single volumes. It may come to pass that it will be that, but we'll report what is necessary and try to make sure that it's useful to the Public Accounts Committee.

**Ms Blakeman:** Okay. Thank you. The question I was looking to ask. I'm going back again over the decision to do fewer systems audits and listening to the broad categories that you've outlined as your criteria for choosing the work that you're doing. I guess I'm wondering why Treasury Board's request to concentrate on performance measurements trumps systems audits, which to me have a farther reaching, more in-depth effect and provide more useful working knowledge to both MLAs and taxpayers. Those performance measurements have not had a learning curve. They have not substantially moved and changed with the times. They still tend to be – well, now I'm opinionated. Sorry. I'll let you answer the question.

**Mr. Dunn:** I understand your sensitivity. However, accurate performance measurement is important right from the time that the business plan is prepared. Alberta has selected over many years the fact that it should be evaluating the outcomes achieved, and the performance measurement is quite an art in that reporting. However, since there are 24 ministries without a central organization that directs them, there is a concern that without the Auditor General being involved and providing some challenge where the performance measure may end up not being substantiated through evidence, there is a risk that the performance measures being reported in Alberta could deteriorate. It could deteriorate without the Auditor General's involvement. That was really, in all fairness to Treasury Board, why they said that we do serve a great role.

By going off and visiting, we do two things: (a) we hold them to account, and (b) we bring better practice. By looking at all 24 ministries, we can say, "Well, this ministry has addressed it in this manner," and we can bring the economies or the efficiencies that we've identified in other areas and then cross-pollinate that to another entity. We were seen to be the central group that goes around with a consistent team to look at all of these things, and we were holding them, as I said, to appropriate reporting. As you know, though, in cases we take exception: "You can't report that because it's not valid. It's not substantiated through evidence." So we do that, and we help them understand the challenge of selecting an appropriate performance measure with a sustainable database in order to give the evidence that's useful over time.

We appreciate – and Mr. Olson made his comments – that we have a responsibility here. I know I've got a responsibility. It would not be the best thing for the province – and that's my dilemma – for us to exit. But I have to control my time. We have to find a way in which we can do what Treasury Board sees as our value, being value-added to make sure the most important ones are appropriately substantiated and look at that. So we'll deal with a selected few key controls, the most important ones in the mind of management, how they can represent to you that they are efficient and effective in the achievement of their outcomes. We'll look at the key controls.

We may be doing some rotation. We may not look at all of them every year. We're trying to cut our time down substantially in that area while at the same time maintaining what Treasury Board sees as a role and responsibility to ensure that people are appreciating the importance of these performance measures and the accuracy with which they are reported. We act in a policing type of role there.

**Ms Blakeman:** It's essentially an internal management tool that is getting preference here in that Treasury Board – it's a management tool.

**Mr. Dunn:** Well, I don't want to get into too long a theoretical argument. It's not a management tool; it's public reporting. It's how the public at large should be able to evaluate the effectiveness of the spending of the public-sector dollar. That's why you have performance reporting. Management tools would be internal ones where they would hold management to account through their personal appraisals, their personal evaluations, and that sort of thing. There are many other matters which are controlled by way of management that we do not look at. This is public reporting. Thus, there should be the assurance that the public who rely on this can accept that this is reliable data because it's being audited by a credible external auditor group. So I'll differ with you: it is not a management tool that's taking preference over it, but it's an important public accountability report that we are I guess wrestling with. How can we minimize our time in that?

**The Chair:** Thank you.

Mr. Horne.

**Mr. Horne:** Thank you, Mr. Chair. Mr. Dunn, perhaps more of a comment, and then I'd be interested in your reaction. Just in following up on my colleague's question about concerns about a reduction in the number of systems audits, I guess my perspective on this would be that you are performing an important function for Treasury Board and, in doing so, across government in terms of your analysis of performance measures. A number of us do have some difficulty in comprehending the specific nature of the systems audits that you have performed in Alberta, notwithstanding that they have performed a very great service to the Assembly and to the Alberta public.

I guess my feeling on it would be that I would much rather see your direct involvement in the monitoring and refinement of performance measures for the simple reason that I find it difficult to envision a systems audit that is attempting to measure the value received for taxpayer dollars spent going much beyond the analysis of performance measures. I think that's, unfortunately, at times where we get into some questioning about whether some of the systems audit reports border on policy discussion, which, of course, is the purview of government. I actually take a lot of comfort in your decision to place a high value on the service that you're performing with respect to government-wide performance measures.

If you'd care to comment on that, that would be appreciated.

**Mr. Dunn:** To me the greatest value is our systems audits. That's the greatest value. As much as it may on occasion appear to be provocative, we're out there looking at the bureaucracy, the management that you rely on to effectively and efficiently implement your public policy. We're not there commenting on public policy. We're not there commenting on the development of public policy. In fact, I take great pains and we wrestle extensively internally with: are we inadvertently moving into public policy? We try our darndest never to do that, but we sure as heck get into looking at how public policy is implemented and applied effectively.

9:45

Remember, systems audits aren't just within the ministries. Systems audits go into others. If you had a chance to look at our report on ATB and its whole treasury management system, you might remember that there is something called asset-backed commercial paper, and there is a significant impairment to that investment. So we look at the system by which they were investing on behalf of, we believe, Albertans – Albertans own that bank – \$1.1 billion. We commented on that. We also commented on matters that deal with postsecondary education. I believe that is the real value that we can bring.

**The Chair:** Thank you.

We've got about five minutes left and three committee members yet. Mr. Lund.

**Mr. Lund:** Thanks. I'm looking at the issuing of reports, and I notice that there are actually five measurements. The one that seems to cause the biggest problem is 1(d), and it's the percentage of audits reported for entities that we issue within 120 days of the entity's year-end. The target was 80 per cent, which is not that high to start with, but then the result, while better than '06-07, is still at 75 per cent. I believe you commented that there was a lack of co-operation from the department or entity. Yeah. I'm wondering what kind of things you would suggest could happen to improve that relationship.

**Mr. Dunn:** This contains, essentially, our attest audits, or the audits of financial statements, and as we explained, there are a lot entities, some of which are quite small. So although we ask everyone to be within 120 days of their year-end, in some cases it's a very small entity which will be offside.

As Ms Blakeman has mentioned before, it's a bit of a two-way street. We can't audit that which has not been prepared. There are at times some smaller entities that have not been able to get their information available, suitable for the audit by us within the 120 days. We continue to believe that's an appropriate benchmark because the usefulness of data is if it's accurate and timely. Therefore, we believe that even the smaller entities should be trying to get their information available to the organizations that rely on it, rolling up into the departments within 120 days of their year-end, but there are a number that don't make that time frame. However, all the large and major ones do.

The important thing to Albertans is that the province – that's June 30 – and all ministries by September 30 are all out there. They're all within that time frame. I have to sign the audit reports of virtually every ministry and major organization by the 15th of July. There are a lot of reports that go out at that time.

**Mr. Lund:** Could you give us an example of one of these entities?

**Mr. Dunn:** You'll have ones like Government House and other smaller foundations, little foundations. When we say that we have

such a wide mandate, you must appreciate that we do all the foundations and all the different organizations that come in there. If you ever want to look at it, you look at that index, that inventory that came out of that McCrank report. You look at all those entities down there, and there are a number that just don't have the time. We're not arguing that they're doing something inappropriately, but we try to push them to get their information, that does become too stale-dated, out within 120 days.

**The Chair:** Thank you.

We'll have to move on quickly now. We have to wrap up. Mr. Bhullar.

**Mr. Bhullar:** Thank you, Mr. Chair. My comments have been made by my colleague here, Mr. Horne. Mr. Auditor, I guess the issue comes down to: where does auditing really stop and public policy input begin? I recognize that the work is extremely important. It's a matter of government setting direction and vision and then relying on bureaucrats to execute that. I've noticed in my short time here at the Legislature that very often when you come out with some reports, especially out in the public, it seems as if you're specifically looking at policy. How can we make this tighter? I mean, how can we better ensure that your work is more seen as a reflection of how the processes, the systems, and the internal management of government can be better as opposed to more public policy input?

**Mr. Dunn:** Well, I have expressed before and I'll express it absolutely clearly here: I do not believe that we've commented on public policy. At no point in any report that I've been associated with do I believe we've commented on public policy, but we've certainly commented on the implementation of public policy. I believe that the Alberta public policy, if I can read it correctly, is to take care of vulnerable people. So if there's a person in seniors' care and there are expectations by the ministry and the department of seniors as to how the various service providers should be delivering those services, I believe it's appropriate for me to go out and make sure that they are delivering it in accordance with those policies that may be administrative and to carry out the policy efficiently and effectively.

You might remember that we issued a report around PDDs. We looked at persons with developmental disabilities. There were some service providers there who were not providing the degree of service that was required under the policies; i.e., 80 per cent of the grant had to be spent on direct salaries. In fact, there was a lot of money being spent on executive bonuses. We took exception to that. I believe that it's public policy that the dollars that are granted out are spent efficiently and effectively to achieve the outcomes expected. That's all we do. We go out and make sure that it's done efficiently and effectively.

I don't believe that anyone – and I will get on dangerous grounds here – says that we do not expect grant monies to be spent efficiently and effectively and we do not expect achievement of outcomes. I believe that that's exactly what you expect. Thus, that's all we do on your behalf: ensure that we look at as many entities as we can to see that those dollars that are granted through the appropriations that you approve are being applied in accordance with what you expect them to be applied with in an efficient and effective manner. Therefore, I do not believe that we comment on public policy.

**The Chair:** Thank you.

We have the last question. Ms Notley.

**Ms Notley:** Thank you. I just wanted to take the opportunity, very

briefly, to sort of get on the record to provide some feedback which probably contradicts a little bit of the feedback you've just been getting because I think it's important for the breadth of expectations that exist to be fully canvassed.

Unlike the previous speakers, I don't have a concern that the systems audits are in any way crossing any boundaries. I speak as an opposition member who doesn't have the benefit of being inside the government caucus. From that perspective I come to this process and view many things which come out from the Legislative offices, yourself included, more like a member of the public and often see your reports as providing a level of transparency that those of us viewing government from outside the government caucus may not otherwise enjoy. I know that's not necessarily your role. I appreciate that. I appreciate that what you are doing is taking the policies that the government has established and simply doing an assessment of whether in fact those are being implemented. I think that that is a service that all Albertans need and rely on to a large extent.

I am disappointed at the processes and pressures which have been brought to bear such that the outcome is a reduction in the number of systems audits. I'm not entirely sure how to address that. I'm still giving that some consideration, but I do want to say that I think that the systems audits have served the public as well as the Assembly very well. I wanted to be sure that that was on the record.

**Mr. Dunn:** Thank you.

**The Chair:** Thank you very much. I'd like to thank Mr. Dunn and Mr. Olson for coming today, and I'd like to thank the committee for their engaging questions and for the responses that the office has given us.

With that, we're going to take a five-minute health break, and we will be back with the office of the Ethics Commissioner.

[The committee adjourned from 9:55 a.m. to 10:01 a.m.]

**The Chair:** Okay, ladies and gentlemen. I think we'll take our seats, and we'll get started again. Good morning, and good morning to our Ethics Commissioner and his staff. For the record could we please go around the table and introduce ourselves. I will start. I am Len Mitzel. I chair this committee.

**Mr. Lund:** Ty Lund, MLA, Rocky Mountain House.

**Mr. Marz:** Richard Marz, Olds-Didsbury-Three Hills.

**Mr. Horne:** Good morning. Fred Horne, Edmonton-Rutherford.

**Ms Blakeman:** Laurie Blakeman. Welcome to my fabulous constituency of Edmonton-Centre.

**Dr. Massolin:** Good morning. I'm Philip Massolin. I'm the committee research co-ordinator, Legislative Assembly Office.

**Ms LeBlanc:** Stephanie LeBlanc, legal research officer with the Legislative Assembly Office.

**Mrs. Kamuchik:** Good morning. Louise Kamuchik, Clerk Assistant, director of House Services.

**Ms South:** Karen South, senior administrator, office of the Ethics Commissioner.

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

**Ms Inions:** Noela Inions, registrar and general counsel, office of the Ethics Commissioner.

**Mr. Reynolds:** Rob Reynolds, Senior Parliamentary Counsel.

**Mr. Xiao:** David Xiao, MLA for Edmonton-McClung.

**Mr. Webber:** Good morning. Len Webber, Calgary-Foothills.

**Ms Norton:** Erin Norton, committee clerk.

**Mrs. Sawchuk:** Karen Sawchuk, committee clerk.

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

Before we begin, I'd like to note that this marks the first time that the officers of the Legislature are coming to the committee to discuss their reports. Standing orders were amended in 2007 to incorporate a provision, which is now Standing Order 55.01, that the reports of the officers stand referred to the Legislative Offices Committee. However, this event has not occurred since then.

I want to point out to the officers and the committee members that the intention is to learn more about the operations of their respective offices. We're all well aware of the unique positions the officers occupy, and respect your independence. I want to reassure the officers that the purpose here is not to second-guess your decisions.

I'd like to please proceed with the overview of the 2007-2008 annual report of the office of the Ethics Commissioner. Your consideration of the 15-minute limit would be appreciated as well.

#### Office of the Ethics Commissioner

**Mr. Wilkinson:** All right. Thank you. We certainly will stick within that limit, Mr. Chairman. Members of the committee and staff, it's certainly a pleasure to be here. We do appreciate the opportunity to have a chance for the first time, as you mentioned, to meet with you regarding our annual report and, of course, to discuss operations of our office, which perhaps really didn't take place as much as possibly we would have liked under the budget submissions, but we certainly value the opportunity to do that now.

Having only been in this office for two and a half months, obviously I was not part of this report and an author of this report, but I'm sure you're very pleased to hear that we have two people on either side of me who were authors of the report, contributors to the report. First of all, Karen South, on my left, has actually been in the office for about 17 years and was there before the first commissioner. She's extremely knowledgeable on all things to do with the office and the act. On my right is Noela Inions, QC, who's been on secondment to the office for a year now regarding the Lobbyists Act and is very knowledgeable. She's been working extremely hard. Both will be very willing, of course, to answer your questions, as I will be.

Given the introduction of Bill 2 last week in the Legislature, I also want to provide you with some updates if that's permissible, Mr. Chairman, on the activities of the lobbyist registry. That probably doesn't fit in with the strict review of the '07-08 report, but nonetheless I thought it might be of interest to you. Would that be all right, Mr. Chair?

**The Chair:** Okay. We will be working with the report, though.

**Mr. Wilkinson:** Yes. If you wish me to not report on it, we can just respond to questions on the Lobbyists Act.

**The Chair:** Perhaps we should work with the report.

**Mr. Wilkinson:** Okay. All right. That is fine. We're happy to do that.

Let me first start on the ethics side. Throughout the almost 17-year history of the office – it officially opened, by the way, April 1 of 1992 – the Ethics Commissioner has routinely commented on the quality of the individuals who are required to file disclosure statements with our office. This includes, of course, both elected and senior officials. I want to make that statement to the people around the room and to all those who are listening on the webcast. I want to make that at the outset because I don't believe it can be emphasized enough that public service really is an honourable profession. Based on our experience and certainly my experience, having met with most of the senior officials in the last couple of months, the people of Alberta are very well served.

As I say, I speak from experience because I have met with 71 of the senior officers, and I've certainly been impressed with the calibre of the people that have been filing with our office. I won't be meeting with all of them because some of them filed earlier, before I arrived, and they met with the former commissioner, Don Hamilton, and there are two deputies that are in the process of filing at the present time.

I thought, with the indulgence of the committee and because Don Hamilton served us very well and kind of in tribute to him but also to deal with the report, to read into the report one paragraph that Don Hamilton wrote that I think is extremely important and does further drive home exactly how we feel in this office about what our experience has been. I'm referring page 2, the third paragraph. As I said, I will, with your permission, read it into the record, Mr. Chair.

As this is my final report, I wish to take some time to comment on my experience. It is a rare privilege to serve as a Legislature Officer. Very few people have the opportunity to get to know elected and senior . . . officials in the way that my Office does. My Office has repeatedly said the public is well served in Alberta. I believe that statement but it does not totally capture our relationship with officials. My Office has the opportunity to hear officials talk about a wide range of issues, proposed solutions, and sometimes frustrations. I have been impressed with the knowledge officials have, their enthusiasm and their commitment to their roles and the people of Alberta, and their dedication to identifying ways to improve services or programs. Every year is a learning experience for my Office – we are extremely fortunate to receive so much information and to feel trusted by officials in sharing their knowledge, goals and enthusiasm.

I know that the other two commissioners before me certainly feel the same way about the MLAs, and I'm looking forward to meeting with all the MLAs starting towards the end of April.

Carrying on again with this report on the ethics side, those of you who have served multiple terms may be aware of the various initiatives the office has made to achieve the mandate regarding education of the office. The brochures produced by the office have been updated on at least two occasions, and additional brochures have been created to address issues such as school presentations or questions routinely posed by candidates. Brochures and guides relating to the Lobbyists Act have also been produced. The office issued ethics bulletins to provide more information to members on their responsibilities and have arranged ethics round-table discussions and speeches on a variety of ethical issues.

This is an example, by the way, of the new brochure that we have produced, several of them. They are available on our website, or just give our office a call.

Some people do not know – I'm sure many around this table do – that the office maintains a library of materials on ethical issues, including public- and private-sector matters and especially ethical materials from colleagues across Canada. Material relating to

comparative summaries of ethics legislation in Canada was developed by our office and has been used by other jurisdictions as well in their mandatory or other reviews that they might have.

**10:10**

The library also maintains materials on lobbying activities in Canada and elsewhere. Similarly, we monitor news items and maintain clippings and related databases. We use that material to assist in speeches or presentations and to help us keep informed about ethics and lobbying initiatives around the world. I've noticed, having been in the office, as I mentioned, about two and a half months, that Karen gets several phone calls from across Canada and across the United States as well, looking to her for information and advice. She is highly respected. I'm already learning that requests for advice we receive in our office are often complex and require much more than a "Yes, you can do that," and "No, you can't."

Since our advice can protect a member and a senior official against an allegation of a breach, it is incumbent upon us to make sure that we have complete information before giving advice. While we do not require the request and advice to be in writing – some jurisdictions do; they even require, actually, an affidavit – it is helpful to have the detailed information in written form if you can.

On the lobbyist side, certainly during this report our operations have involved site visits to Toronto, Ottawa, Montreal, and Quebec City. We have developed relationships with registrars in all Canadian jurisdictions with lobbyist registries. The work on the lobbyist registry was and is progressing, and we are certainly confident in its launch.

Questions regarding the lobbyist registry or on ethics will be answered by all of us but particularly by the two people that are beside me. That allows me to stick to the report on the ethics and also on the lobbyist side.

**The Chair:** Well, thank you, Mr. Commissioner. It's been brought to my attention, certainly, that because the Lobbyists Act is in the report and, of course, we do have an amendment to the Lobbyists Act as Bill 2, I think that there's going to be some discussion anyway, so I don't preclude your having to say anything about it. If you wish to comment, you certainly can.

**Mr. Wilkinson:** All right. Then let me say that the work of the registry is progressing, and we are confident that when it is launched, we will have a user-friendly registry that will meet the needs of all interested parties. The goal of the registry is to enhance openness and accountability of lobbying activities and to protect the integrity of our public services and the MLAs. The registry will allow citizens to obtain information on how government conducts its business and to obtain free of charge through the Internet the information that they seek about who is lobbying whom and for what reason.

Perhaps in anticipation of questions regarding the status of the registry I can offer a brief comment on the matter. Since the registry is technology based, as we have discussed during the budget meeting, we have acquired many pieces of equipment to support the registry. To support our IT needs, we need to have an RFP for those outsourced services. The RFP was posted, and if all goes well, we plan to have a contract in place by April. We also may need a new website host for our two office websites.

Security testing of the equipment has not yet taken place. Those tests and the following fixes and the period of stability following them are really critical elements of the process. Prior to the launching of the registry usability testing and pilot registrations have not taken place but we believe are essential for a smooth-functioning



registry. We are participating in ongoing requests for information, educational meetings, and presentations. In terms of our readiness to launch the registry we have had to put in place a whole new network, and it must be stable before we launch. We plan to have the registry ready by September of 2009.

Just an interesting quote that I will give you in conclusion. It's from Lobbyists, Governments and Public Trust: Building a Legislative Framework for Enhancing Transparency and Accountability in Lobbying. It's from the OECD, dated August 2008. Of course, there's much to it, but this one sentence, I think, gives you a little bit of an inkling of what they mean and where they're going. "Where lobby legislation is in place, it is one of a group of laws, policies and practices that define the quality of governance in the state."

Mr. Chairman, we're open to questions.

**The Chair:** Well, thank you very much.

Mr. Marz.

**Mr. Marz:** Thank you. Thanks for the report. I notice on pages 6 and 7 your graphs on requests for investigations. Last year there were 20, which is down from the 31 in the previous year, but no investigations were commenced, and you actually had only one carry-over from the '06-07 year, which was concluded. Could you comment on when you feel an actual investigation is appropriate after you receive a request for one?

**Mr. Wilkinson:** Well, when we receive a request for an investigation – and we've only received one so far – we take a look at the facts, take a look at the act, and decide if it is something that is truly within our jurisdiction and not part of somebody else's jurisdiction.

**Mr. Marz:** I believe the report says that in '07-08 there were 20 requests for investigations but none were commenced.

**Mr. Wilkinson:** A lot of those requests come down to a point where they say: "My house isn't finished. I think my contractor was unethical. You should conduct an investigation." Those are the kinds of things, Richard, that we take a look at. We take a look at, first of all: does it fall under the act, and is it definitely pertinent to the situation and not frivolous, it's in writing and we know who submitted it, and so on. Then if we feel it should be going forward, it will.

I looked at the history going back 17 years. When the act, Richard, was first introduced, I saw a tremendous number of investigations. I think there were quite a few, 17 or 18, as you talked about – I'm not exactly sure of the number – but then they worked their way down, I think, to none last year and just one request this year, which is not an investigation and will not be an investigation unless more information comes forward. I think that's a credit to the people around the table, and I've talked to other MLAs as well. Certainly, when I was doing my interviews, disclosure statements, I think these folks, the 160 people that we talked to in getting involved and getting advice in disclosures, really do get it. They call us often with advice to ensure that they never get to the point where we'd be into an investigation.

Maybe Karen has some comments too.

**Mr. Marz:** Okay. Thanks.

**The Chair:** Ms Blakeman.

**Ms Blakeman:** Thank you. On page 3 of your annual report in the second paragraph the previous Ethics Commissioner noted that the

senior officials were not as punctual in meeting the deadlines for the disclosure statements. I'm wondering. There were some noted in this report that had not filed as of the time the report came out. Are you able to give us a date by which these delayed filings were finally received, and also if you could comment generally on the completion dates for senior officials?

**Mr. Wilkinson:** Thank you. Don told me that there was only one, and it was only a day late. This year all were in on time.

**Ms Blakeman:** Okay.

**Mr. Wilkinson:** The MLAs have been very good as well and have always been on time. I look forward to receiving your reports on time as well and starting our meetings in April. There's never been a problem with the MLAs.

**The Chair:** Thank you.

Mr. Lund.

**Mr. Lund:** My question already has been asked.

**The Chair:** Well, I do have a question for you, Mr. Wilkinson. Maybe you can comment on the consultations, perhaps, that your office has had over the last year, and certainly now as you're getting up and running, with existing jurisdictions who already have a lobbyist registry in place and are working very well. You know, I hope you're not reinventing the wheel. I think you are doing some consultation. Maybe you'd want to comment on that.

I had an opportunity to speak with the lobbyist registry official from Ontario at a function I was at and also one from New York, just some of the comments they had about how they envisioned their lobbyist act when they started and how it kind of evolved to be just a little more than what they had anticipated. I'm wondering how your consultation is going on this. I think that's important for Alberta and for your office to understand as well.

10:20

**Mr. Wilkinson:** Yes. Thank you, Mr. Chair. As I mentioned at the outset, our registrar, Noela Inions, did visit other jurisdictions, not New York but certainly Ontario. She can talk about her experiences with Ontario. In fact, we saved a lot of money by adopting their source code. She does keep in touch with other jurisdictions. Of course, the amendments to the act I think were probably part of maybe looking at other jurisdictions as well, although I can't speak for Justice. I know that probably some of that did take place.

I'm also very impressed with the fact that there's a two-year review, which some would say would be quite short. The act will be reviewed in two years once it's proclaimed. That is, I think, good news, too, because if there are those situations that you talk about, Leonard, we can pick those up as well, and that too we will review and give you our thoughts and recommendations after operating the system.

I'd like to turn it over to Noela. I'm sure she might have some comments as well on it.

**Ms Inions:** Yes, I do. I will, first of all, look at the different legislative comparisons. That's the place that we started off, looking at the legislation in the different jurisdictions, doing comparative looks at the different requirements. Secondly, I wasn't in the office very many days when Karen set up a conference call with the Ontario office, for example. You mentioned Ontario. That is a piece of legislation that has a lot of similarities. There are still major

differences but a lot of similarities with Alberta. I would say that that's the jurisdiction that we have consulted with the most consistently and thoroughly and comprehensively. We spoke not only to the Acting Integrity Commissioner but to her staff and her IT support person.

We took a very close look very early on at what Ontario had done with their registry. It's a great way to learn. It's a good way to develop a registry much quicker and to learn from the operational things that they have done, not strictly legislative requirements but things that make it work and make it user friendly. We, as Neil said, ended up negotiating their source code as a base to start work on our software development for the Alberta registry. It still meant that there were substantial changes that had to be made, but we had a running start due to that relationship, that liaison, and that leveraging from Ontario.

We as well wanted to do site visits. We've done a number of visits now. They're not within the time frame of this report because, of course, we were only a couple months into it by the time of this report. Since then in conjunction with other activities, myself going to other meetings – whenever I could, I'd stay on an extra day, and I would work with the registry itself, go visit the registrar's office and look at the registry in various jurisdictions.

The first one I visited was Ontario. We went in detail through the registry, talked in detail with the staff. Second, we visited the city of Toronto. Although it's quite different because it's a municipal lobbyist registry, it was a significant place to learn because they were the most recent registry to launch, and they also have large numbers because of what they include in their registry. We looked very closely at the kinds of things they had learned and the kinds of things they put in place.

Another place that we visited in conjunction with a meeting, an annual meeting in September, was Quebec. They have a wonderful registry. It's also an extremely expensive registry. Their registry is separate from the Lobbyists Commissioner in Quebec, and I visited both offices and spent quite a bit of time and gained a lot of ideas on things that we can utilize in Alberta.

We also have very active online discussions. Probably every couple of weeks one of the different registrars across the country says: "What are you doing with this? What are you doing with that? How are you addressing this kind of an issue?" We consult with each other extensively. We have a really good network; we're very much helping each other to move along.

The federal jurisdiction as well is one that I visited in early November. I went to the federal registry, met with the Acting Commissioner of Lobbying on the federal side, and I also met with their director of operations and their IT director and had a very good look at their registry. Now, they of course have had a lot of changes just recently because their legislation has changed extensively. They've basically revamped their entire registry. Their legislation is fairly different, quite different from Alberta's.

I don't know if those are some of the kinds of things you were interested in.

**The Chair:** Yes, it was.

Mr. Lund.

**Mr. Lund:** Thanks. I notice that you don't have any performance measures in the '07-08 report. In the '06-07 report there was a comment made that the reason for not developing performance measures was because it doesn't clearly indicate or accurately evaluate the success of the ethics program. I'm curious. Given that there are no measurements, how do you envision the assessment of the program, and how could it be improved? Could you make any comments on that, please?

**Mr. Wilkinson:** Sure, I'd be more than happy to. On the ethics side there has been some difficulty. We can give you lots of statistics, but how do we measure what we're here for? That's to enhance and continue the high esteem that the public has in you and in your integrity. How do we measure that? If you've got some ideas on that, we would love to have them because we do believe in performance measures. You know, wherever I've been, we've always had performance measures. Any ideas you have on how we can alter this report to make it better, more interesting for you, provide you with more information, we're happy to do that. When we meet with you shortly, then I'll look forward to maybe further discussions as to how we can make this more user friendly for you so you can get a better handle on just exactly what we're doing.

As I meet with my peers throughout the year and talk to them as well and think more about this – certainly, that's on my priority list: look at what other jurisdictions are doing and what possible measures we can have that would help us and help you determine how we're achieving our mission.

On the lobbyist side, though, Mr. Lund, there are certainly some available measurements and statistics. I've asked Noela to look into that. Certainly, I believe that next year, probably, we will have at least some degree of performance measures and statistics for you. Probably the best that I've seen so far – and Noela just mentioned this to me this morning. She was talking to one jurisdiction; maybe let her comment on that. The best of all performance measures is client satisfaction; in other words, by doing a survey. On the ethics side we do a survey here, we do a survey at a budget meeting with you, so to speak, and when we meet with you, we talk to you about how we're doing as well, so there's another survey that we do with all of you. But that doesn't mean to say that maybe we shouldn't do a confidential survey with you on the ethics side. Certainly, I think it's appropriate to do a survey of our clients on the lobbyist side.

Noela.

**Ms Inions:** Thank you, Neil. Yes, Neil had said, "Take a look at some performance indicators on the lobbyist side," and that was one of our recent topics for the different registrars across the country. Most of the jurisdictions are not doing much more than what I would consider just statistical information: how many registrations do we have, that sort of thing. They're all working towards developing performance measures.

The jurisdiction that's furthest along in this area, I would say, is the federal jurisdiction. They measure from four different points of view, that I think would be instructive for utilizing in Alberta. The best performance indicator they find is the completeness of active registrations. That's something you can measure. You can take a look at when the initial request came in, how long it took you to process that registration, is it complete, is it updated when it ought to be, and is it terminated when that registration ought to be completed.

The second type of measurement: is there really online availability to the public? In other words, one of the goals of this registry is a public, searchable, free-of-charge registry. One way of measuring that is the number of hits on the website and also the survey that Neil has mentioned. The federal jurisdiction, although due to funding reasons they didn't do it this year, do an annual survey and ask people, you know, how they are doing: what is the users' experience with their registry? And that includes the lobbyists.

10:30

The third measurement is awareness, and that's numbers of presentations, numbers of educational sessions, numbers of requests for information, and the responsiveness to those inquiries.

The fourth measure is compliance and low levels of breaches. They look at their alleged breaches, they look at their findings, and if, in fact, there are very, very low numbers of contraventions, then they regard that as being an indicator of good compliance with their legislation.

Those are the four areas that we've looked at through the federal jurisdiction.

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

**Mr. Lukaszuk:** Mr. Wilkinson, don't worry about thinking about patience because having to meet with 160 people over and over again will require a great deal of patience.

In ethics it is not only important for the 160 people under your jurisdiction to be ethical, but also it is important that Albertans know that they're ethical. The same with the lobby registry: having a lobby registry is great, but if Albertans don't know about it and don't utilize it, it's of very little value. I'm wondering: are you satisfied, now that you've had a brief chance to experience the running of the office, that your office has sufficient enough profile in Alberta for Albertans to know and be satisfied that your office exists and that this type of overview exists of elected and nonelected officials?

Second of all, do you have any plans in place for the launching of that website so that most, if not all, interested Albertans will know that this tool exists if or when they need it?

**Mr. Wilkinson:** Two good questions as well. In answer to your first one I think our profile is not high enough, particularly in the area of the lobbyists registry, where we require the citizens to respond. We want citizens to respond, to feel they can use this registry and feel that it's user friendly and that it's there for them whenever they want to use it. We'll help them use it if they feel that it's maybe difficult for them or they feel awkward using a computer. There are other ways that we can allow them to access the registry as well.

On the ethics side we certainly do go out and give speeches and so on, but you know I must say that the request for those speeches has tailed off quite a bit. Certainly, we will get a lot of requests to speak on the lobbyists side, so we're going to throw in a little bit of an ethical component to that as well to let people know what we're doing there and how we feel, frankly, about the 160-odd people that do file with us.

Now that we know we have our live date, we've just started to work on your other question about a launch. We've discussed this. There needs to be a launch to give it the profile so people will know we're there and that we're ready to go. Also, we've already spoken to several lobbyists that have come in to see us. We've talked to them on the phone. Now that they know this is about to go live, they have said they'll be getting back to us. They want us to deliver speeches to some of their groups, to their people, have meetings in our offices. Certainly, I expect more and more media will be around us as well, Thomas. We'll get back to you on just exactly what the launch will look like.

**Mr. Lukaszuk:** Okay. Thank you.

**The Chair:** Mr. Webber.

**Mr. Webber:** Thank you, Mr. Chair. Just a quick question, Mr. Wilkinson, with regard to how you conduct an investigation if there is a request for an investigation, let's say, particularly with respect to a Member of the Legislative Assembly. Does the MLA know that there is an investigation going on with respect to that?

**Mr. Wilkinson:** Yes. The MLA involved would be notified.

**Mr. Webber:** All right. I'm just curious. Good. I'm glad that you've never notified me. I must be doing something good.

**Mr. Wilkinson:** I just want to give Karen a chance because she's been involved since the beginning in these investigations, and maybe she has some thoughts that might be of help to you.

**Ms South:** The standard procedure for us is that when we receive the request for an investigation, as Mr. Wilkinson said, we will review the letter and information that is provided with that letter to see whether, in fact, it falls within our jurisdiction to start with. If it does not fall within our jurisdiction, we would just merely respond to the person who requested it. If we believe there is something worth investigating, the legislation requires that the member who has had allegations made against them be notified. One of our first meetings when we conduct an investigation would be with that MLA.

**Mr. Webber:** I see. Okay. Thank you.

**Ms South:** Certainly, under the act, when the commissioner has completed his investigation and has prepared his report, if the member may be adversely affected by the findings, there is a requirement that the member know that before the report becomes public.

**Mr. Webber:** Great. Thank you.

**Mr. Lund:** Getting back to the performance measures, you know, when you look at these charts – and I'm talking about the ethics side of it, not the lobbyists registry – it looks to me like the bulk of your activity would be around giving advice as opposed to the investigation side. With that in mind, I guess, I would suggest that to be really meaningful – there's no question about the office providing an extremely good service, an important service, when you look at the times that there are requests for advice. But it looks to me like if and when you develop some performance measures, they need to really target this area because if it was just the investigations, I guess I would have to say: is it worth it? Over here on this side, to keep things on the straight and narrow, it is worth it. In my opinion, here is where the emphasis should be.

**Mr. Wilkinson:** We can take a look at that. Is there any sense you have of how you could judge our performance there, what you'd like to see in a report? The advice is given to you, of course, and senior officials. If we give you advice that you like and then we give you advice you don't like but that we have to under the act, does that mean we're not doing as well as we could? How would you like to see us measure that?

**Mr. Lund:** I would suggest that the fact that you've given advice and it was accurate and it worked because the individual that was asking the advice didn't end up in a situation where they had to be investigated: there's a connection, I would think, there.

**Mr. Wilkinson:** Yeah.

**Mr. Lund:** Certainly, it looks to me that when you get one investigation out of a whole year, then MLAs and senior officials that are covered under the act are not getting into trouble in any form. I would not want to think that that's because we have a Conflicts of

Interest Act. I would want to believe that it's because they're very ethical, all of them. So the measurement, I think, has to be on the area of where you're giving advice.

**Mr. Wilkinson:** Okay. Well, we'll certainly take a look at that. Karen and I have talked about this quite a bit because we know this question comes up each time. She might want to add to this as well. We were thinking of providing some statistics or measurements around advice. That kind of leads, maybe, to some examples. Our concern there was that through the example you might be able to tell who it is, and of course confidentiality is extremely important to us. You know, by law none of us can say anything or divulge any information. We can be fined \$20,000 if we do as well. That doesn't mean we can't do something, maybe. We'll take a look at it. That's kind of just the overlay of some of the things that we've discussed.

Karen, anything to add to that?

**Ms South:** Oh, we'll certainly consider it, Mr. Lund, and what further information we might be able to provide. I can think of a couple of the categories, for example, where we gave advice that somebody is required to divest their investments. We could perhaps say how many people actually complied or whether they complied within timelines. That's something that we could probably include.

The other one, for example, is where we review an agency's code of conduct, a draft code of conduct. We could provide information on whether or not that agency adopted recommendations that we made.

10:40

**Mr. Lund:** I agree.

**The Chair:** Thank you. What comes to mind following Mr. Lund's question and your comments is a statement that the previous Ethics Commissioner made to me and I'm sure others, as well, five times when we met over the years: I'm here to ensure that you don't get into trouble ethically. The point is to seek advice if there's any question at all. Every time we met, he said: that's what I'm here for.

**Mr. Wilkinson:** Hear, hear.

**The Chair:** Are there any other questions?

Well, if not, Mr. Wilkinson, Ms South, Ms Inions, thank you very much for coming in. Thank you for participating in this. Thank you to the committee, as well, for the engaging questions. I'm sure we'll all individually be seeing you by appointment in the next couple of months.

**Mr. Wilkinson:** Thank you, Mr. Chair. We enjoyed the meeting and look forward to our future meetings.

**The Chair:** Thank you. We'll be taking a break until 10:55.

[The committee adjourned from 10:41 a.m. to 10:55 a.m.]

**The Chair:** Good morning to our Ombudsman and his staff, Mr. Button and Mr. Resler. For the record we'll go around the table and introduce ourselves. I'm Len Mitzel. I chair this committee.

**Mrs. Sawchuk:** Karen Sawchuk, committee clerk.

**Ms Norton:** Erin Norton, committee clerk.

**Mr. Webber:** Hello. Len Webber, Calgary-Foothills.

**Mr. Lukaszuk:** Thomas Lukaszuk, Edmonton-Castle Downs.

**Mr. Xiao:** David Xiao, Edmonton-McClung.

**Mr. Reynolds:** Rob Reynolds, Senior Parliamentary Counsel.

**Mr. Button:** Gord Button, Alberta Ombudsman.

**Mr. Resler:** Glen Resler, director of corporate services.

**Mrs. Kamuchik:** Louise Kamuchik, Clerk Assistant, director of House services.

**Dr. Massolin:** Good morning. I'm Philip Massolin. I'm the committee research co-ordinator, Legislative Assembly Office.

**Mr. Horne:** Good morning. Fred Horne, MLA, Edmonton-Rutherford.

**Mr. Marz:** Richard Marz, Olds-Didsbury-Three Hills.

**Mr. Lund:** Good morning. Ty Lund, Rocky Mountain House.

**The Chair:** Thank you.

Before we begin, I'd like to note that this marks the first time that the officers of the Legislature are coming to the committee to discuss their reports. Standing orders were amended in 2007 to incorporate a provision, which is now Standing Order 55.01, that the reports of the officers stand referred to the Legislative Offices Committee. However, this event has not occurred since then.

I also want to point out to the officers and the committee members that the intention is to learn more about the operations of the respective offices. We're all aware of the unique positions the officers occupy and respect your independence. I want to reassure the officers that the purpose here is not to second-guess any of your decisions.

I know that we're probably treading on familiar ground and that perhaps we'll be re-covering some of the things we had when you were in front of the board with your business plans and budgets last December, but please proceed with the overview of your annual 2007-2008 report. If you take 15 minutes, we'll have plenty of time for some questions afterwards.

#### Office of the Ombudsman

**Mr. Button:** Thank you, Mr. Chair. Thank you for the opportunity to appear with you today. I've been looking forward to this process. As you know, last year the first go-round was derailed by the call of the election, so we got two shots at getting prepared, anyway. We're getting good at the preparation part. I am just trying to get over a cold, so if I get a little raspy or need to drink some water, please understand.

With me, as introduced, is Glen Resler, who is the director of corporate services. In a relatively small organization like mine Glen wears many hats. For your information he is the finance officer, the IT co-ordinator, and the HR co-ordinator for the office. Glen will be able to address questions in that vein that you may have.

As mentioned by the chair, part of my dilemma in preparing was that in July of 2008 I had an extensive meeting with the committee in considering my reappointment as the Alberta Ombudsman. Subsequently, in late November, of course, we talked about some of

those same issues again in my budget presentation. I don't intend to regurgitate what is in my annual report for 2007-2008 in any detail here in my introductory comments.

You will have noted that the first part of the report provides an introduction and a structural and statistical overview of the operations of the office for the fiscal year '07-08.

The main body of the report provides an explanation of the administrative fairness guidelines, which really are the foundation of our work as a complaints commissioner, along with some specific outcomes of investigations, which are given as examples to enhance the reader's understanding of these complex administrative law concepts and how they're applied to assess the fairness of decision-making processes in government departments, agencies, boards, commissions, and professional organizations that we investigate. We've had a lot of feedback on that portion of the report, and readers in the population seem to find that helpful in understanding what really constitutes fairness and what they should be looking for in fair decision-making.

Of course, the last part of the report provides a financial recap of the office for that particular year.

By way of introduction I would, then, instead of covering what you've already had a chance to read, just like to bring you up to date on some of the significant initiatives and challenges that were in the annual report that were live and carry on to this year so that you're up to date on those things. Just to provide an overview of our workload, it's noted in the report for '07-08 that our written complaints, which is really our main indicator of work, were up 12 per cent. In '08-09 they're up another 11.3 per cent over last year's numbers that were in the annual report. Oral complaints were up 5 per cent last year; they're up another 3 per cent so far this year.

New formal investigations were up 26 per cent last year. They are maintaining approximately that same level again this year. Our ACRs, alternative complaint resolution, which we talked about back in July, we've been able to increase substantially. For the current period we're up from 19 to 29 files assigned for alternative complaint resolution.

Our clearance rates. It has always been a challenge to clear our complaints within time frames that are acceptable to all; that's us as well as the citizens. In '07-08 the target of trying to clear our investigations within one year was 63 per cent. In the current year, '08-09, we've been able to bring that up to 73 per cent, so that's a substantial improvement there. We're still striving to improve on that. Within two years we're now up to 98 per cent.

Our total investigational closures this year for year to date are up from 152 to 167, or a 10 per cent increase over last year, so we are making some headway on some of those matters that I have talked with you about before. One of the performance goals we've set in order to try to address that was an expectation that each investigator will conclude 25 formal investigations each fiscal year. We've linked that performance expectation through performance agreements to the determination of performance bonuses for staff along with a number of other factors.

Some significant initiatives and developments we've spoken on before and have made commitments to in the annual report are own-motion investigations. Those are investigations that are conducted under the provisions of the Ombudsman Act that give me the authority to conduct an investigation on my own motion without having the necessity of a written complaint from a citizen. As you noted in the report, we did undertake an own-motion investigation, in the fiscal year we're reporting on, on the Alberta Energy and Utilities Board, and the outcome of that is in the report on page 35.

In order to enhance our capacity to pursue own-motion investigations, I've created senior investigator team leader positions in each

of my offices in Edmonton and Calgary who provide guidance and direction throughout the course of the year to the other investigators but also take a lead role in these larger systemic investigations, that are very complex and require that level of commitment and organization.

I reviewed the identified need for additional resources in subsequent years, but as noted in our budget submission, being able to put those teams together for subsequent years was contingent upon funding, and given the economic times that we're in, we've had to put that into a holding pattern for now because we aren't going to have the resources.

We do have an own-motion investigation currently under way, as I announced in early December of this year, into the out-of-country health services program administered by Alberta Health and Wellness. I have three full-time investigators, one full-time admin support, and some occasional investigative support working in order to bring that to conclusion. That's taking up probably 35 to 40 per cent of my total capacity for investigations. As you can see, it's a challenge that we can't do too many of without the resources, but we're pursuing that one through, and we hope to be reporting on that early this spring.

I mentioned in my annual report that we had been required to pursue a judicial review with respect to investigations with the Alberta Human Rights and Citizenship Commission. That was successfully argued, and we had a ruling from the Court of Queen's Bench in the early spring of 2008 confirming the two points being argued. One was my authority to investigate and make recommendations to the chief commissioner of the Alberta Human Rights and Citizenship Commission, and the second was the authority and legal right of the chief commissioner to implement my recommendations. Both of those were supported by the Court of Queen's Bench in a ruling provided.

#### 11:05

The chief commissioner retired April 1, 2008. There is an acting chief commissioner in office until the 1st of March coming. We tried to pursue our open investigations with the acting chief commissioner. We didn't have a lot of success, and it didn't move forward significantly on those investigations. I subsequently went and met with the minister and expressed my concern that I had 12 open investigations from citizens in Alberta with respect to the actions of the Alberta Human Rights and Citizenship Commission and have provided a report to the minister outlining my concerns. I'm pleased to see that we will have a new chief commissioner as of March 1. I have already taken steps to place on his desk a synopsis and update on each of those open investigations we have in order to be able to pursue them as early in his tenure as possible.

New jurisdictions I've reported on before are the patient concerns resolution process regulation, which governs patient concerns in the health services delivery area. It was proclaimed on September 1, 2006. It's been very slow to evolve as far as the development of those patient concerns resolution processes, and that has been further exacerbated by the significant changes in the structure of the health services delivery model, having gone from the nine regional health authorities to now the provincial Health Services Board. We continue to work proactively with the people delivering those services. I've been around to all of the former regional health authorities and made multiple presentations to boards of directors and management teams and their patient concerns officers.

I've also participated in two workshops that have been co-ordinated between my office and the Health Quality Council of Alberta to provide workshops to the practitioners in complaint resolution within the health authorities in order to give them an

understanding of the test of administrative fairness that will be applied to their process.

The Health Professions Act is another area that I've highlighted in that report and in previous reports. The Health Professions Act was passed in 1999. It applies to the 28 colleges representing the 30 health professions in Alberta. As each of those colleges passes their schedule and their regulation, they will fall under the umbrella of the Health Professions Act. As a consequence of that their complaint resolution process becomes my jurisdiction. As I've reported before, only 20 of the 28 colleges have so far passed schedules in order to come under the Health Professions Act, and the last of those was in 2007, so we really haven't made a lot of headway in the last couple of years. In fact, I would argue that given that the act was passed 10 years ago, it's long past due that those health professions should all be falling under the Health Professions Act, and I've continued to make that argument with the department.

The numbers of complaints in both those areas with the patient concerns process and the health professions are really starting to show now as the public becomes more knowledgeable and more aware of the facility and the fact that they exist. We've been receiving complaints with respect to health profession colleges, finding that in each case, recognizing that all the health profession colleges have been largely self-regulated forever, it's the first time they've had any external oversight into their complaint handling process, and we've had to go through a fairly in-depth process of orientation and discussion with them with respect to the standards of administrative fairness that will be applied. Those are starting to add more to our workload.

Actually, one more thing after this I'd like to just comment on is the public agencies governance framework, which was adopted in February of 2008 following a report from a committee chaired by Neil McCrank. The public agencies governance framework applies to all 250 agencies, boards, and commissions which have been structured by the Alberta government to deliver on services of the government. The framework provides for a new governance model, the standardization of governance of the agencies; promotes more accountability and transparency; for the first time clearly articulates that the authority of an agency, board, or commission flows from the minister to the agency, board, or commission head and that, therefore, the accountability must flow back from the agency, board, or commission through the minister to the people in the government.

It also provides for merit-based appointments to agencies, boards, and commissions, which I think is very much warranted and well overdue.

Education and training. It provides the requirement for performance evaluation at both the agency and the individual performer level within those agencies, boards, and commissions and also provides for a business planning and annual public reporting mechanism for agencies, boards and commissions so that their actions become more evident, more transparent to Albertans.

Of course, I have been and will continue to hold agencies, boards, and commissions accountable to live up to the requirements in that framework.

The last thing, if I could just maybe have Glen update you, that I commented on in that annual report for 2007-08 is the review of classification for our investigator positions.

**Mr. Resler:** A review is ongoing. The human rights officers were appealing their classification, and we mentioned that in the report. As a result, they were successful in their appeal to a higher classification. That has impact as far as comparability of our investigators with them. So we're currently looking at that. It does impact our ability to recruit and to maintain the current investigators on staff.

We're working with corporate human resources. We'll be looking at the classification of the staff, their job descriptions, the point scoring Hay system that's used by the public service. We'll look at documenting that rationale and look at a cross-jurisdictional review. That may impact our classification if our investigators are successful as far as when we look at that comparison, and that is not incorporated into our budget of this year. So if that does come back, it may have some financial implications.

**Mr. Button:** Thank you, Glen. The only other comment I would make is not '07-08 business, but if the committee wants an overview of how we were able to adjust our budget to the estimates for the coming year, we're certainly prepared to speak to that. I know there were questions asked at the budget meeting about how I would accommodate the budget given, so we're prepared to speak to that if anybody is interested. Other than that, I wanted to keep it brief and allow time for questions, Mr. Chair.

**The Chair:** Well, thank you very much, Mr. Button. We'll see what time is left over when we get toward the end of the session here.

For the record Mr. Bhullar and Mr. MacDonald have also joined the committee now.

I do have a speakers list. Mr. Lund.

**Mr. Lund:** Thank you. Thanks for the presentation. I want to tell you how pleased I was that you got involved in that issue with the EUB because, of course, many of those people were in the Rocky constituency. It was so obvious that there was a huge problem there. But I'm curious – you mentioned a couple others that you initiated investigations on your own motion. What criteria do you use to get involved on your own motion?

**Mr. Button:** That's generally very flexible and left open to me. In the case of the EUB, to use an example, it was a matter that was very, very high in the public's concern. It was well reported in the media. It was clearly within my jurisdiction. I had a number of complaints from interested parties to that particular process, but there was an available review that they could go to within the EUB which I had referred them to. I was already involved because I'd met with the then chair of the EUB and was monitoring the ongoing process. So when those matters became public and the interest was obviously so significant to Albertans and I didn't have a specific complaint, I used my own motion to launch that investigation.

*11:15*

The investigation I'm currently doing, as another example, into the Out-of-Country Health Services Appeal Panel stems from a number of complaints and investigations that I've launched over the last two years and an inability to work with the decision-making entities, primarily the appeal panel to the out-of-country health services program, to bring satisfactory resolution to my complaints. Since we were unable to achieve that through normal investigative and recommendatory processes, the avenue left open to me was to proceed publicly in an own-motion investigation.

**Mr. Lund:** So would it be fair to say that you base your decision more on the fact that people have contacted you as opposed to what you hear in the media?

**Mr. Button:** It can be either way. Certainly, if I have a significant number of complaints within one jurisdiction, that would be an indication that there is a systemic issue that bears that kind of an investigation. In the case of other issues that may come up where I

become aware of the issues, oftentimes they will be reported on in the media, but there will be a very strong public influence or public interest in them. If it's warranted, I'll base my decision on that. It really can be anything that brings a systemic problem or identified possibility of a systemic problem to my attention and can't be dealt with appropriately through either a one-off investigation or other means.

**Mr. Lund:** Thank you.

**The Chair:** Mr. Marz.

**Mr. Marz:** Thank you, Chair. I would like to echo Mr. Lund's appreciation for your involvement in the Rimbey AEUB situation as well because it affected many of my constituents.

I noticed in your report that you do some outreach tours, and I think that's very good because there are a lot of expectations amongst Albertans of what you can or maybe can't do for them. I think that's good. I guess my question is: how successful have these outreach tours been? I know that when I was on the Heritage Savings Trust Fund Committee, we started going out to rural Alberta, and our attendance went up substantially from that in major centres. I think that's a good testament that rural Albertans are kind of in tune with these sorts of things and anxious to get involved. Or maybe it's just lack of other entertainment; I'm not sure. Are these outreach tours open to the general public, and what type of attendance have you come to expect?

**Mr. Button:** What we've done on the outreach tours – and thank you very much for the question – is that we go out and do a media blitz to let the local people in these rural areas know that we're going to be in the area. Last year we were in the Red Deer, Lacombe, Stettler, and Innisfail areas. We learned one lesson there, and that is that we need to do the media blitz a week or two before we go out and then follow it up so that we've generated the interest and the public has had time to react to it. I also take two of my investigators along, and they set up walk-in offices in those communities to invite the public to come in and meet with them and talk about their issues or maybe make a complaint if they've got a complaint or find out more about our office and whether they do have something that they could complain to our office about.

**Mr. Marz:** Do you contact MLAs to help you get the word out?

**Mr. Button:** In those cases I don't, but I make routine visits to MLA constituency offices throughout the province. That's an ever-increasing challenge because, of course, about the time I figure I've pretty well caught up, there's another election, and there's a whole bunch of new ones.

**Mr. Marz:** Has the attendance been relatively good?

**Mr. Button:** The walk-ins have not been what we would expect, but I think that might be part of, as I mentioned, the way we scheduled the media. I was doing the media as we were holding the walk-ins, and it didn't give people enough time to respond to that. We did have one planned for last March, which we, obviously, cancelled because it was going to fall too close to the election, and we didn't want to get in the middle of all that.

Generally, the meetings and presentations that I've held when I'm doing those tours are very well attended and a good reception from a very good cross-section of community-minded people. I do those through local service clubs, through chambers of commerce, and

town councils. We've found that when we just hold sort of a public town hall, the turnout is not really significant to warrant continuing them. You have to have some way, I think, of encouraging and inviting people in. In rural Alberta we're also very aware of the time schedules of farming and agricultural events and bonspiels. We're trying to stay away from all those and find a niche when the weather is good enough that people will come out, but not overlapping some other big part of rural life is a bit of a challenge, too, and that's why we're trying to do them in the late spring, before the farmers get farming and after the Brier is over.

**Mr. Marz:** Thanks. I'd like to extend a standing invitation to my constituency.

**Mr. Button:** Thank you.

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

For the record Ms Blakeman has joined us as well now.

Mr. Lukaszuk.

**Mr. Lukaszuk:** Thank you. First a comment. I'm not really comfortable with the concept of your using media attention as a gauge for triggering your own investigations. You know, dog bites man: not a story. Man bites dog: a massive story. I would suggest to you that there are more problems with dogs biting man than the other way around, so it's hardly a gauge of whether there is a real issue out there to be investigated or not. Frankly, some of the underreported instances may warrant more attention than the ones that happen to be reported. That's just a commentary.

What I found really interesting is that you just told us that you are reviewing governance models and the merit of appointments to various boards and agencies, which is a good thing. However, about an hour ago we had our Auditor General, and he indicated in his report that he is doing exactly the same thing. I asked him whether that should fall within his portfolio, whether that's not something the Ethics Commissioner, perhaps, should be looking at, and he assured me that it definitely falls squarely within the portfolio of the Auditor General. He does the overview of governing models and appointments to agencies and how agencies govern themselves and further report. I'm wondering if the two of you are not doing exactly the same thing. As a matter of fact, I'm now convinced that you are doing exactly the same thing. How can we address that if indeed that is the case?

My second question to you. I'm glad that you're looking at the self-governing bodies within the province and the conflict resolution programs that they may have. I'm wondering: are you also looking at the mechanisms which they utilize for admitting or dismissing membership from their professions?

**Mr. Button:** Just let me make a note so I can make sure I keep track of your questions.

**Mr. Lukaszuk:** More specifically, are you looking at the fairness of the process that these self-governing bodies have instituted for admitting new members into their professions and/or for dismissing members from professions?

**Mr. Button:** Okay. I really take the comment, but I'll just respond to that with respect to using the media as one of the gauges I use to conduct an own-motion or systemic investigation. I can reassure you that what I glean from the media is: what is the public interest or the public concern? What is the public saying about this particular process, or what are the indicators that there may be systemic

unfairness or systemic problems? I agree that the media, as they should be in a free, democratic society, can make issues out of whatever they want to make issues out of. That doesn't necessarily mean it's an issue to me. Rest assured that there are many other factors that go into those decisions.

With respect to the agency governance framework I'll admit, first of all, that I was listening to the earlier discussion on the online streaming, so I know the discussion you had with the Auditor General. I don't see any conflict there whatsoever. The Auditor General has the authority to do systemic audits of entities like that.

Where I apply the agency governance framework – I do investigations of the administrative fairness of their decision-making process. During the course of that, I look at what the requirements are of the governance framework with respect to how this particular agency functions. I will make findings, for instance, that a particular agency has never published a public report, so therefore the public has no way of knowing what it is that that agency is doing as part of the delivery of programs. I probably wouldn't look in depth at things like the merits of appointments, but I would certainly look at the accountability relationship that exists in the governance framework between the minister who appoints and the agency who is accountable back through the minister to the people.

11:25

I see the role of the Auditor General as very different, and I wouldn't see any conflict there. I haven't considered the role of the Ethics Commissioner in that context, and I haven't seen anything yet that would cause me to go there, but it may well be something that comes down the road.

With respect to the professional organizations, my jurisdiction covers the health professions, veterinary medicine, accounting professions, forestry professions, and agrolgy. Yes, we have done investigations where professionals have either applied to a particular college for membership and been denied or were professionals within a college and have complained about how they've been treated by the college in a discipline or complaint process. I have complete jurisdiction to take those kinds of complaints as well as complaints from citizens or patients receiving services from a professional who feel they were not fairly treated, who had a disagreement with the professional and lodge a complaint with the professional college. What I investigate is how the professional college investigates and handles the complaint with respect to both parties: the patient in the context of the health profession as well as the member of the profession. I look at how the college administers their complaint-handling process to fairly settle those complaints.

**Mr. Lukaszuk:** Thank you.

**The Chair:** Thank you.

Mr. Horne.

**Mr. Horne:** Thank you, Mr. Chair. Mr. Button, thank you very much. I found your report very informative. You've addressed in part some of the questions in your responses to other members.

On page 21 of the report you show the administrative fairness guidelines that your office applies in its work. My question is specific to health professions and the work that you're doing with regulatory bodies as they come under the Health Professions Act. One of the things that would concern me, I suppose, in looking at this is the extent to which the regulatory bodies are receptive to advice that you may be wishing to provide them in terms of their own practices. In reviewing, for example, this part of your report on page 21, it would seem to me that in your evaluation of the college's

decision-making process in a given instance, whether it's something like Mr. Lukaszuk was talking about or another issue, some streamlining or standardization in terms of the guidelines that are used by these organizations would be in order. I was just wondering if in your discussions with the professional bodies you actually encourage them to adopt this or something like this as a standard practice, thereby putting you in a position to attest to us and to Albertans that guidelines that are acceptable in your sight are actually codified within the health professional bodies.

**Mr. Button:** Thank you very much. That's an excellent question, one that I have to give a little context around to respond to. First of all, the administrative fairness guidelines are not simply something that Gord Button, the Alberta Ombudsman, dreamt up or created. They're very much based on case law, on decisions that have been handed down by the various levels of courts provincially and federally in Canada over the years. By and large they are the same tests that are applied no matter whether it's the Alberta Ombudsman investigating a process or it is a provincial court or the Supreme Court of Canada looking at the same process. We're going to apply the same tests to determine whether a process is administratively fair or not. That's the context of those fairness guidelines.

It's a very interesting question that you ask within the professional colleges because they are recent additions to my jurisdiction. As I mentioned in my opening also, the health professions have been self-regulating for an eternity. Having oversight and having somebody come in and look at their complaint-handling mechanisms and apply administrative fairness tests to them is not something that they're used to. I would be less than honest if I didn't say that there has been some push back in virtually all of the professions as we go in for the first time. It's a challenge to them. A lot of these health professions are very small administrative organizations with very little in the way of infrastructure and support. So it's quite a challenge to them. Quite often the commissioner/registrar is a one-person office, so these are onerous tasks for them.

The Health Professions Act, though, sets out, finally, a codified set of guidelines as to how things like complaints are to be dealt with by the health professional colleges. Now, you put the requirements of the Health Professions Act together with the administrative fairness guidelines as determined by the rulings of the courts over the years, and we now have a transparent, relatively consistent process by which, whether I do it or the courts do it, we judge the fairness of the complaint-handling process in these professions that are now regulated to some degree by the Health Professions Act.

The Alberta Dental Association and College is probably the one that we got involved with first and have done more investigations on. I can certainly speak to my experience there. From where we were five years ago in working with that college to where we are today has been a significant advancement. The college has recognized the need to bring fairness into their process to include parties to give a patient, for instance, who lodges a complaint an opportunity to make their argument and provide further evidence in support of their argument, things that weren't being done before.

It has become almost a cookie-cutter experience as we get the first couple of complaints with each new college as they come along. We're finding that we have to go back to the drawing board, back to the basics, and sit down with these folks and work with them extensively to understand why we have things like the administrative fairness guidelines, why they're important, why they apply, and why it's important for them to ensure that they're complying with them. The Alberta Ombudsman is one thing – and hopefully I'm not all that scary – but if they're looking at civil court action, it could be quite a significant situation for them. I think I can honestly tell



them; if you are meeting the standards that I expect because of the administrative fairness guidelines and the way you deliver your complaint-handling process, you'll largely be in a good position to be able to defend your actions in any other challenge, whether that's in the courts or any other public forum.

I hope that that gives a little more context and that addresses your question, Mr. Horne.

**Mr. Horne:** Yes, it does. Thank you.

**The Chair:** Mr. Lund.

**Mr. Lund:** Thank you. I was encouraged to hear your comments about the completion of the investigations. I'm curious: what steps did you put in place that you got that improvement? Of course, in the report we only see for 2007-08, and the numbers that you gave, what's happening this year, indicate even more cases but yet completion in a shorter time frame.

**Mr. Button:** Thank you very much. That has always been a challenge to us. It's not only completing the investigations within a time frame that's acceptable to me, but it's completing investigations in a time frame that's acceptable to the citizens of Alberta and to the authorities that we investigate. No authority wants to have an open investigation hanging over their heads for too long a period of time either.

I sat down over a year ago with all of my staff at a retreat, and we all hung our hats in the corner and said: "We're all equal here. We all want to do the same thing. What do we need to do to refine it?" Out of that we came up with some minor changes and tweaks to our process: streamlining our investigation reporting process so that the internal administrative process of writing investigation reports wasn't so burdensome and so onerous; going to point form reports as opposed to free text reports; encouraging investigators to manage their own caseloads and not simply take investigations by the date stamp – the first one in is the next investigated on, and the other ones ride – but to look at their caseload and identify those investigations that maybe, based on the information you have at the start, look like they might be a little quicker and to move some of those along while you're also moving along some of the ones that take longer and to try and balance five or six open investigations at any one time so that we're moving things along in parallel mode instead of in lockstep.

11:35

We've streamlined some of the other internal processes with respect to review of investigations and completion of documentation. We've involved our administrative support staff much more in providing direct, hands-on assistance to investigators to do some of the busywork and the time-consuming work that they're capable of doing and allow the investigators to focus more on the skills of an investigator.

So we've implemented a number of procedural changes and process changes to try and streamline the way we approach the work, the way we manage the work, and give the investigators a little more flexibility to manage their file loads in a way that allows them that freedom.

As I mentioned, I've set a target of 25 completed formal investigations a year for each investigator. Not all investigators will meet those targets, but, then, there are some extraneous factors. As I mentioned, I have three investigators that have been assigned to an own-motion investigation since late October. Obviously, I can't expect them to continue to process their formal investigations.

A lot of it has been providing a better framework within which to

do our work. I have to accept some of the responsibility for those timelines. I think my staff would all agree – and they're probably listening – that I'm pretty demanding when it comes to the quality of investigations and the quality of reporting that we do and that we get it right every time. In some respects that demand as we have gone through the last six years has created extra work as the investigators try to react and respond to that. They don't disagree with that. It's just a matter of trying to still get the work done but ensure that the quality of our investigations and the outcomes of our investigations are very defensible at all times. The perception and the professionalism that we display and the quality of the recommendations that I might make to an authority are the absolute test of our ability to have impact.

In the going on six years I've been the Ombudsman, I make 100 to 150 recommendations a year to authorities where I have found unfairness with respect to a part of their process. Nobody likes to be told that they're not doing things exactly right. I think the true test is that there have been very, very few times – I can count them on one hand – that I haven't been able to bring resolution to those recommendations through my meetings and discussions with the deputy ministers and heads of agencies, boards, and commissions. That speaks to, one, the quality of the work behind our recommendations. When we put our reports forward, it's very evident what was unfair and why it was unfair. It facilitates, then, working with these agencies and government departments to constantly look at fine-tuning and improving their processes so they're more administratively fair. We can benefit the citizens downstream of those decisions as well.

**Mr. Lund:** Well, I've got to tell you that we've had many compliments on the work your office is doing, so thank you for that.

**Mr. Button:** Thank you. We appreciate hearing that. We don't get many slaps on the back in this work.

**Mr. Lund:** No. That's similar to MLAs. They rarely get complimented.

**The Chair:** Mr. Bhullar.

**Mr. Bhullar:** Thank you. Going through your report, similar, again, to my colleague Fred Horne's remarks, I think this a really equitable way for people and the public to essentially get judicial review of government action, in a way. So I think the more public awareness we create around the office, the better.

My questions are just around appeals of your decisions. First of all, are many of them challenged in court? Secondly, are they more challenged by the complainant or the body that you were investigating?

**Mr. Button:** First of all, the only access to the court with respect to my duties is on a challenge of jurisdiction. My findings and recommendations and results cannot be challenged by either the authority or the person lodging the complaint. The only way a complaint can be brought forward is if either side challenges whether or not the Ombudsman has the jurisdiction to investigate that particular matter. Outside of that, there is no appeal or review past my level.

**Mr. Bhullar:** This is more of a procedural matter, I guess, that I could read about, but you're here, so I'll ask you. When an individual files a complaint with you, does that in any way bar that individual from taking other legal action?

**Mr. Button:** There is provision in the act, and there are case law decisions that cover this. There's a provision that I cannot investigate a matter that is before the courts or has been decided by the courts. That is the exact reason that in the own-motion investigation into the Alberta Energy and Utilities Board, which we talked about earlier, I was forced to suspend my investigation partway through: because a number of the parties to that action filed an originating notice of motion and took the matter to court, which effectively ousted me.

There's also case law and an Alberta case in particular called *Smith*, where the courts found also on the other side of that equation that the courts should not overlap on the jurisdiction of the Ombudsman and that the courts should not render a decision with respect to the actions of the Ombudsman. So in case law and in the Ombudsman Act there are provisions for that. For instance, one of the determinations we have to make before we start an investigation is: is this matter currently or has it been previously decided by the courts? If it meets one of those criteria, I can't investigate it.

However, I can investigate how the decisions of the courts are administered by the government; child custody orders within children's services, as an example, maintenance enforcement orders within the maintenance enforcement program. If the concern or issue or challenge is with respect to the order of the court, be it a child custody order and the concern is with respect to who has custody, that's an order of the court, and I can't investigate that. If the concern is how that child custody order is being administered and interpreted by the department, by children's services, certainly I can investigate that and routinely do. There is a legal entity there, and there's a side of that that I have jurisdiction to investigate.

**Mr. Bhullar:** For the individual who's got a matter that could, I guess, either be investigated by yourself or the courts, what would you say to have that individual use your services as opposed to the courts?

**Mr. Button:** I've had that discussion. It's not about trying to influence anybody because that's their decision, and certainly I wouldn't want to influence it. But often I'm asked that question to help somebody decide what they're going to do. In lay terms I explain to them that by and large the courts are going to apply the same test to determine whether you were treated fairly that I might apply. The courts are likely to take a more legal, technical view of it. I think I probably have more flexibility to apply the concepts of administrative fairness more subjectively, but of course the courts have a much wider range of sanctions that they can impose. I can't impose sanctions. I can only make recommendations for redress or for changes systemically that will improve the process. People have to look at it from that perspective.

There's also, of course, a cost factor. My services are completely free to citizens whereas if somebody wants to take the matter before the courts, they're going to incur costs to do so. I'd like to say that my time frames are shorter than the courts'. I think that most of the time we are, but I will admit that there are times when some of our investigations take too long. Those are all factors that I think people have to consider when they're looking at what it is that they want at the end of the day.

The complaints that come forward to us are complaints of administrative unfairness. They don't have a dollar sign on them, and we don't look at the financial implications. We may and often do make recommendations that result in significant financial adjustments or awards to the complainants, but that's the department's decision to make at the end of the day. I don't have the authority to make any direction in that regard. If somebody is

looking for financial reimbursement and that's their main goal, then they're probably better off pursuing it through the courts than through me.

I hope that gave you some answers. It's a complex area.

**Mr. Bhullar:** It did. Thank you.

**Mr. Button:** Thank you.

**The Chair:** For just a sec I'd like to dig just a wee little bit deeper on that particular point and touch on a point that sort of fits in with what Mr. Bhullar was saying. That is, of course, the investigators and perhaps an instance where a person has lodged a complaint or concern with your office, it has been dealt with by a particular investigator, and of course that person isn't satisfied with the decision of that investigator. Is there any recourse for them? I do have a couple of examples. I won't use the examples, but I do have a couple of instances that I've been made aware of where they weren't particularly pleased with what the investigator's decision was.

11:45

**Mr. Button:** Certainly. Those things are going to occur often, and part of the background that leads to that is that quite often the citizens come forward with expectations for what I can do for them or will do for them that far exceed my authority and my ability to do so. We do have a process of internal review when somebody is dissatisfied with the results of their investigation or any part of their investigation, if they've got a complaint about the way they're being treated or that they're not being kept involved and kept informed. You'll see in my business plan that those are priorities we've placed on making sure we're meeting the needs and expectations of citizens.

Certainly, they can and they often will write to my Deputy Ombudsman, and if that occurs, she will conduct a review and an inquiry and will respond back to them. I keep myself to the final level of review. If they're still not satisfied, then it'll end up on my desk, and I'll review the investigation and all aspects and elements of it, including communication, and try to bring a resolve to the individual.

I assure you that we're not able to do that in all cases. Often it's because the expectations that the people have far exceed the mandate that the Ombudsman has, and there are just times when people become very engaged and very committed to their perception of how they were treated, as do authorities with respect to their perception of how they treated that individual, and oftentimes there are some pretty widely differing views left there at the end of the day.

We make it a priority. I suppose that in a strict, one-sentence answer to your question, the redress or the other avenue for that particular individual would be to pursue court action if that happens to be available to them in the particular circumstance.

**The Chair:** Thank you. That kind of clears that up because I had received, actually, letters as chair of this committee requesting some type of help, and I think I've passed those on, but I wanted to know what the appeal process was like internally. Thank you very much.

**Mr. Button:** Thank you.

**The Chair:** Are there any other questions?

Well, you know, Mr. Button and Mr. Resler, thank you very much for coming in. I appreciate the questions and comments from the committee, and I appreciate your answers. We look forward to working with you over the next couple of years.

**Mr. Button:** Thank you very much.

**The Chair:** We'll stand adjourned here now for lunch until 1 o'clock.

[The committee adjourned from 11:48 a.m. to 1:04 p.m.]

**The Chair:** Good afternoon to our Information and Privacy Commissioner and his staff: Mr. Work, Ms Mun, Mr. Wood, and Ms Check. For the record we will go around the table and introduce ourselves. I'm Len Mitzel. I chair the Legislative Offices Committee.

**Mrs. Sawchuk:** Karen Sawchuk, committee clerk.

**Ms Norton:** Erin Norton, committee clerk.

**Mr. Webber:** Hello. Len Webber, MLA, Calgary-Foothills.

**Mr. Lukaszuk:** Thomas Lukaszuk, Edmonton-Castle Downs.

**Mr. Xiao:** David Xiao, MLA, Edmonton-McClung.

**Mr. Wood:** Wayne Wood with the Office of the Information and Privacy Commissioner.

**Mr. Work:** Frank Work, commissioner.

**Ms Mun:** Marylin Mun with the office of the Information and Privacy Commissioner.

**Ms Check:** Donna Check, director of human resources and finance, OIPC.

**Mrs. Kamuchik:** Louise Kamuchik, Clerk Assistant, director of House services.

**Ms LeBlanc:** Stephanie LeBlanc, legal research officer with the Legislative Assembly Office.

**Dr. Massolin:** Good afternoon. I'm Philip Massolin. I'm committee research co-ordinator, Legislative Assembly Office.

**Ms Blakeman:** Welcome to my fabulous constituency of Edmonton-Centre. I'm Laurie Blakeman.

**Mr. Horne:** Fred Horne, MLA, Edmonton-Rutherford. Hello.

**Mr. Bhullar:** Hi. Manmeet Bhullar, MLA, Calgary-Montrose.

**Mr. Marz:** Richard Marz, Olds-Didsbury-Three Hills.

**Mr. Lund:** Good afternoon. I'm Ty Lund, MLA for Rocky Mountain House. Welcome to the Alberta Legislature precinct.

**Mr. MacDonald:** Good afternoon. I'm Hugh MacDonald from Edmonton-Gold Bar.

**The Chair:** Thank you. Before we begin, I'd like to note that this marks the first time that the officers of the Legislature are coming to this committee to discuss their reports. The standing orders were amended in 2007 to incorporate a provision, which is now Standing Order 55.01, that the reports of the officers stand referred to the

Legislative Offices Committee. However, this event has not occurred since then.

I also want to point out to the officers and to the committee members that the intention is to learn more about the operations of the respective offices. We're all aware of the unique positions the officers occupy and respect your independence. I want to reassure the officers that the purpose here is not to second-guess your decisions.

Please proceed with your overview of the 2007-2008 annual report of the office of the Information and Privacy Commissioner. Your consideration of a 15-minute time limit would be appreciated as well so that we can have enough time for questions.

#### **Office of the Information and Privacy Commissioner**

**Mr. Work:** Absolutely. Thank you, Mr. Chairman. I will respect that time limit. I appreciate your opening words about respect for the independence of the offices. I didn't come over here with any fear of being interfered with whatsoever, but I do appreciate the statement being made. I think it is an important one.

Actually, I welcome the chance to do this. I've always felt that, well, all of the Leg. officers – but I'm here to represent myself. In particular, I've been given the responsibility of implementing three complex pieces of legislation. Any chance I get to sit down with MLAs and talk about my mandate and talk about the challenges in terms of implementing those laws I'm just delighted to take advantage of. So I'm happy to be here. I know most of you well enough to know that you will feel free to ask any questions you want at any time you want, and that's the way it should be.

I've got a little PowerPoint. A lot of it is pretty routine stuff about mandate and so on, but I'll cruise through it anyway just by way of background. We have three pieces of legislation, as I said. Alberta has more access- and privacy-related legislation than any other jurisdiction in Canada, and that's a source of some pride.

The commissioner's functions. I think the constant across all three pieces of legislation is that, basically, the office reviews and investigates complaints. So under the access to information law, if there's a complaint from a member of the public that they weren't given records to which they should have been given access under the act, that's a complaint. We investigate that. If there's a complaint that someone believes that their health information has been improperly disclosed or improperly used, that's a complaint. We investigate that. All three pieces of legislation are designed on the basis of citizen complaint.

I do have the ability, as you can see on the top bullet there, to initiate investigations on my own motion. As you can imagine, with laws that span public sector, private sector, health sector, it's very hard to be everywhere at once. So even though I can initiate my own investigations, I do depend on individual members of the public and the media and so on to bring situations to my attention.

Something we use extensively in Alberta are privacy impact assessments. They're required under the Health Information Act in certain cases, and they're recommended under FOIP, the Freedom of Information and Protection of Privacy Act. A lot of government of Alberta entities are very good about preparing privacy impact assessments, even though they're not legally required to, when they initiate a new program that involves personal information.

#### **1:10**

We consult. We deal with public bodies when they lose things, self-reported breaches, losses of information. We respond to requests for advice and direction, which there is provision for under the law. Under any of the three laws if a public body or a private-sector organization feels that the act is being improperly used against

them, they can ask me to disregard a request or a complaint. I do that reluctantly, of course, but I do it because there are people who do use this legislation not in the manner in which it was intended but in a more vindictive or, well, just improper manner. And we issue decisions on time extensions.

Next, if you can make it out, is from the annual report. That's an org chart. We'll just move on. You always feel like you've got to put your org chart in for whatever reason.

What I would like to draw your attention to is staffing levels. We have 38 people, and you can see the breakdown there. Portfolio officers are, basically, the foot soldiers, I guess, for want of a better term. They do the investigations, and they do the mediation if someone makes an access request to a department and then the department isn't forthcoming. If there's a dispute over whether or not certain records should be handed over, it's the portfolio officer who will try to mediate that.

There are six directors. The directors are also portfolio officers in most cases.

The intake officers are the front desk people. They deal with the large number of phone calls and queries we get. They open files. They basically initiate the complaint system.

Four adjudicators. Years ago the commissioner used to be the only one who wrote orders. It turned out that that philosophy was causing a big logjam. So what I've done is appointed four people who write orders in addition to myself. As a result, we got rid of the logjam, and we're getting orders out on a much more timely basis now.

We have nine support staff.

I would just point out to you that in terms of responsibility or respect for the public purse we've tried very, very hard to keep our staffing at reasonable levels, you know, with one eye on the taxpayers' dollars and the other eye on the service we should be giving to Albertans. I think we've managed to find a medium ground. We've certainly availed ourselves of, you know, any efficiencies we find, and as a result, as you can see, we've been able to keep our staffing levels pretty constant over the years.

Next is the review process. I'm not going to drag you through all of that. It's a little bit complicated. It works pretty well. Well, it works very well, actually. If the process goes its full course, the outcome is an order. We issue an order if the matter can't be resolved through mediation. The act says that I have to conduct an inquiry unless certain circumstances apply. Either myself or one of the four adjudicators holds the inquiry. Most inquiries are written, where the parties submit a written brief on how they think the law should apply. I think Alberta is still the only jurisdiction in Canada that does do some public inquiries on some issues. As you can imagine, public inquiries are pretty time consuming, pretty expensive for everybody, so we try to economize on those. My predecessor, Bob Clark, believed and I still believe that there are certain issues that are fit for a public inquiry just because of their educational value or to maintain public confidence in the laws, that they're being implemented.

A commissioner can make orders, has extensive powers to make orders, unlike, for example, an ombudsman – no disrespect – and the federal Privacy Commissioner is an ombudsman. They don't make orders; they make recommendations. Myself and most of the other provincial commissioners in Canada have order-making ability, which is good. I mean, you know, people pay attention to you when you can make orders; that's for sure.

On the other side of that, of course, if you're an order-making quasi-judicial body, you have to come up to the standards of fairness in your procedures. That means, by the same token, that if a party to one of my proceedings doesn't feel I've been fair or if they feel

I've done something wrong, because I can make orders that have compulsory consequences, I can be taken to judicial review. Anyone can ask the court to review what I've done, and as I said, that's in the legislation. It does happen. It's happening a little more often than I would like at the moment, but I think part of that might be that the honeymoon is over. It might be that we're getting down into the really fine details of the information age and how the technology applies in everyday life, and we're finding that we don't always agree. Because the stuff is so new, we don't always agree on what the limits of the technology should be in terms of privacy. I can give you lots of examples of that.

Performance measures. I know these are an issue. Of course, the committee is concerned that the money that is allocated to these offices is used efficiently and effectively, so I wanted to spend a couple of slides on that. We have a centralized case management system. The directors are primarily responsible for its implementation in terms of monitoring the caseload in the office. We think it's a good process. We've been able to identify and eliminate duplication. We screen. As you can imagine, on an issue with topics like access to information and privacy you get a wide variety of calls. You get people calling who think their neighbour is looking in their windows, for example. I mean, you get that kind of call, and that's just not something we have jurisdiction over. So that has to be dealt with.

**Mr. Lukaszuk:** I'll stop calling.

**Mr. Work:** I appreciate that, Mr. Lukaszuk.

It's important to have a triage process to make sure that the cases we're taking are cases over which we do have some jurisdiction, that we can do something about, and that's the intake people's job.

The case management system helps us to ensure that the timelines are met. You know, the alarm goes off if we get near the 30- or 90-day period, for example. We have standards: same-day response on phone calls and e-mails. We review incoming correspondence twice daily, open cases, generate letters. As you can imagine, if you're a quasi-judicial body and you have time limits set out in law, it's critical to track those time limits, so we notify portfolio officers on a weekly basis of impending time limits and whether extensions are needed. These are more performance measures for the portfolio officers.

**1:20**

The next one, adjudication support. These are the people that support us in doing inquiries. I'm not going to read all of these for you. I'd be happy to go back over them if you like. For the adjudicators – those are the people that write orders – the expectation is that they will write two orders a month. Of course, we expect the orders to be well organized and clear and done in accordance with the timelines set out in the statute. This is tricky because, as you can imagine, these adjudicators are kind of like quasi-judges. Right? They hear the case, and then they write the decision. The interesting thing about it is that the commissioner has no ability to interfere with them. There's an old Latin maxim, which I can't remember, which says that he who hears must decide. The adjudicators have been an interesting experience for me because once you assign somebody as an adjudicator, you've got to pretty much back off. Otherwise, it would be the equivalent of phoning a judge, which, of course, one simply doesn't do.

The bottom bullet there: we do expect the adjudicators to consult with the commissioner and with their supervisor on interpretation of cases, especially with novel and high-profile cases. Of course, while there has to be independence, you don't want contradictory decisions

coming out. People have to live their lives by this stuff, so there has to be some harmony and consistency as well as the independence.

Next, statistics. This is for the '07-08 fiscal year. We opened 1,123 cases. We closed 1,066. We issued 81 orders. Total calls and queries: 4,371. You can see, as I was saying earlier, that there are quite a number of calls and queries we get which are nonjurisdictional, which, in other words, don't result in a case file being opened.

The next one will give you a breakdown by statute. FOIP, of course, is the Freedom of Information and Protection of Privacy Act. We opened 410 files there. Under the Health Information Act we opened 416 files, and most of those, as it says, were privacy impact assessments whereas with FOIP you'll see that 53 per cent of the cases opened under FOIP were related to access to information. Under PIPA, which is the Personal Information Protection Act – that's the private-sector act – 68 per cent of those were privacy complaints. Then the bottom number: 69 per cent of FOIP and 90 per cent of PIPA cases were initiated by public complaints.

Cases closed. I'm pretty proud of that: 436 under FOIP, 346 under HIA, 284 under PIPA, for a total, as I said, of 1,066.

The next one, 626 cases. I'm giving you this as a sample of adherence to timelines: 50 per cent resolved within 90 days, 20 per cent within 90 to 180 days, and 30 per cent took more than 180 days.

Non case-related calls, e-mails, and inquiries. Just to give you a breakdown by statute, as I said, there were 4,371 calls, e-mails, and inquiries.

Orders issued. I'm quite proud of the progress here. As you can see, we started out with '03-04. We were issuing, on the far right, a total of 24 orders a year, then 23, then 35, and then 52. Last year, when we revised the system, brought in the adjudicators, we dealt with – this is a little misleading – 88 cases through 81 orders. In other words, a couple of orders dealt with two cases. That's why there are 88 cases dealt with through 81 orders.

I know you would just love to go through some financial statements if only we had the time, but I won't. There they are, though.

I think that'll do it for me, Mr. Chairman.

**The Chair:** Okay. Well, thank you very much. I had two or three questions myself, but I think you answered those as you went through the slides.

Mr. Lukaszuk has a question, I think.

**Mr. Lukaszuk:** Thank you. Thank you, Mr. Commissioner. Quite a good report card day for the Legislature today. You and your predecessors in this meeting are telling us that, basically, our legislation seems to be intact and that we're well audited, and you're telling us that the legislation definitely is sufficient.

I take interest in this particular piece of legislation because I had the pleasure of taking part in the reviewing of it a few years ago. Actually, very recently I had the pleasure of meeting with a very large number of NGOs throughout the province that provide a variety of services to Albertans, and I was dismayed at the lack of understanding of the legislation and how it applies to them. I am convinced that they weren't ill intended, but very often when asking, "Why aren't you providing a certain service to a certain Albertan?" the answer would be: because of FOIP we can't do this and we can't do that. Now, maybe, just maybe, my understanding of FOIP is a little bit better than average, and I knew that their answers were not correct.

My question to you would be: what can we do together to bring better awareness of the rights and limitations set in the act so that they are not used perhaps as a crutch or so that misunderstanding of them doesn't enable NGOs and other agencies to not provide services which they are mandated or often want to provide but think they can't?

**Mr. Work:** I understand perfectly your point. Sometimes I want to pull my hair out, which is hard to do, when I hear certain organizations say, "Well, we can't do that because of FOIP," exactly as you said. It is challenging because we have three pieces of legislation, and there are some overlaps there. The most challenging overlap is probably between the Health Information Act and the private-sector act. Now, I know that Mr. Horne is fully aware of that from another committee that he chairs. It is complicated; there's no doubt about it. We need to keep, I guess, just sending the message out. We issued about 120 media releases last year. We certainly do a lot of public speaking. We have, you know, brochures and stuff that we give out whenever we can. It is confusing stuff. Am I FOIP? Am I HIA? Am I private sector?

There are still gaps in the application of the law. I know an issue that your review committee faced with PIPA was whether or not to bring not-for-profits into PIPA. Some of them are in, some of them are in to a certain extent, and others aren't in. Quite honestly, I think this just makes the problem you identified worse. I just think that we've got to bite the bullet and bring all the not-for-profits into the legislation, and between us and the government of Alberta we'll make it as painless as possible. I really don't think it's going to bankrupt anyone to come under the law. That'll give some consistency and eliminate some of the uncertainty that you've referred to.

**Mr. Lukaszuk:** Thank you.

**The Chair:** Thank you.

Ms Blakeman.

**Ms Blakeman:** Thanks. On page 3 of your report you note that you exercised your power to refuse to investigate, and you've got sort of two different subsections. Could you tell me how many cases you refused to investigate under your section one, which is requests or complaints which were "systematic, repetitious, frivolous or vexatious," and how many under your second section, where you'd "previously issued an order or investigation report on the matter"? Sorry. There is a third category there that "the only issue for the inquiry was adequacy of the search" and that there was a sworn statement that satisfactorily demonstrated something.

1:30

**Mr. Work:** Yeah. That's a good question because it sometimes causes a little consternation with applicants. On page 33 of the annual report there's a little chart. In answer to the first part of your question, Ms Blakeman, under FOIP I authorized a public body to disregard a request four times. I'm sorry; I don't have the breakdown as to exactly what the specific reason in each of the four was. Usually they all fall under the vexatious or repetitious and systematic reviews.

A couple I can think of. One individual wanted some information from a small municipality in Alberta. The access request was dealt with. This person didn't feel that they got all the information they should have. I think there was an inquiry, and the matter was finally resolved. Despite that, the individual came back with subsequent requests for exactly the same information. At that point the municipality complained, and I said: "Well, yeah. I mean, this has been dealt with. You've had your day in court. You've had your inquiry. The order's been issued. Stop asking for the same stuff." So what the chap did was go away and get a neighbour to sign the same letter and put it back in. I said: "No, no, no. You can't do that." I mean, that's one specific case that I remember, and they're usually of that order of issue.

What was the . . .

**Ms Blakeman:** It was: what was falling under the different sections? You've got seven under FOIP that were in April '07 to March '08, and – I'm sorry – under cases closed, then, you had four again all under FOIP.

**Mr. Work:** Right. There was a last part to your question that I've forgotten, though.

**Ms Blakeman:** No. I was just asking for the different categories.

**Mr. Work:** Yeah. The private-sector ones have been a little more challenging. We had one individual who was going into shopping centres where he knew there were surveillance cameras, and then he would make an access request to the manager of the shopping centre for the video footage of him on the premises. I mean, he was doing it again and again and again in dozens of different places, and I've now started telling those places that they don't have to fulfill those requests for his personal information. I think that there are some other issues there for this individual.

We've been using that very reluctantly. Again, in accordance with fairness I usually ask the party, before I disqualify them, to give me their side of it, of why I shouldn't disqualify them from being able to make that request. So, you know, we try to hear from both sides. I mean, it is a consumer-oriented law, but you do have to maintain the respect for the law as well. If you allow it to be used recklessly, it starts to undermine the veracity of it, I guess. Probably not the best word.

**Ms Blakeman:** I have an additional question. Could you put me back at the end of the list, please?

**The Chair:** Okay.  
Mr. MacDonald.

**Mr. MacDonald:** Thank you, Mr. Chair. I understand from the annual report, Mr. Work, that you excused FOIP fees six times.

**Mr. Work:** Yes.

**Mr. MacDonald:** That doesn't seem like very many. I would say that our caucus must ask six times a year or a month. Do you know of any government departments that have a general policy that there would be no fee waiver, period?

**Mr. Work:** I'm going to ask my assistant commissioner here, who is responsible for FOIP. I will say just as a preface to that, though, that I know, Mr. MacDonald, that you're pretty familiar with this legislation, but you should all be aware that you can't charge people in Alberta for their personal information anyway. What we're talking about is public documents.

**Mr. MacDonald:** Yeah. From a FOIP application.

**Mr. Work:** Are there any government departments that have policies exclusively?

**Ms Mun:** Not that we're aware of, any policy, because under the FOIP Act every individual has a right to ask for a fee waiver, and the public bodies have to respond to that request. You know, that's a discretion on their part. We have never been told that a public body has a policy to refuse fee waivers because if they did so, it would be contrary to exercising their discretion as well. You have to look at each case on a case-by-case basis and to say that the applicant has justified whether or not the fee waiver request should be considered.

**Mr. MacDonald:** Thank you.

**Mr. Work:** I have seen some departments – when we do get a request to review fees, we see the tariff of what they could charge. I do know that a lot of government departments apply a pretty significant discount in terms of what they could charge, but I'm not saying, as you know, that anyone is necessarily abolishing their fees altogether. Fees are allowed by the legislation, and they tend to be imposed. I've seen some staggeringly high fees. For example, in litigation cases where it's a private-sector entity looking for government records, I've seen fees over a hundred thousand dollars in some cases. I've seen other fees where journalists have asked for information. Political parties: I don't know off the top of my head.

I've used my power to excuse fees on occasion as a sanction. Where I feel a public body – never mind just government of Alberta because this legislation takes in municipalities and school boards and others as well – has breached their duty under the act, I've excused fees as a way of making that point with them.

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

**Ms Notley:** Thank you. I have two or three questions, so maybe I could go on the end of the list as well. Maybe I'll start by going to a different area for a second, which is PIPA.

The reason I ask this is because I'm looking through here and, of course, there's talk about its being primarily complaint based. You know, in the past I had the experience of having to work with a couple of organizations trying to make themselves PIPA compliant. My experience in that case was that the vast majority of the people within the organization that it applied to hadn't the slightest idea what the act meant or what it meant they should be doing. My experience since then is that that really continues to be the case in most organizations. So I'm wondering: do you have any opinions? Maybe you don't feel able to provide it, but if you had to ballpark, what would you think the percentage of noncompliance with PIPA would be at this point?

**Mr. Work:** Wow. Tough one. Maybe I'll go at it this way. I would think that compliance is probably highest – and this is consistent with the question you asked – with large commercial undertakings. Oil companies, large retail operations, and large not-for-profits, United Way for example, are very consistent. Of course, someone would immediately say to me: well, yes, and they have the resources to do that. They're also big, and they show up on the radar pretty good, so you can go after them in terms of education and so on. By the same token, those are often the guys with the most personal information either from their employees or from their customers or clients.

So I think that if I put it in terms of how many Albertans are receiving the benefits of the legislation, I would say probably the majority by a good chunk, maybe 75 per cent. Don't forget that one of the great things about PIPA and one of the good things that Alberta did by passing PIPA and not going under the federal law is that PIPA applies to employees. If you're subject to the federal law, to PIPEDA, and you're an employee, PIPEDA does not apply, so you don't have the privacy protection. By passing PIPA – this is too much, isn't it? PIPA, PIPEDA – Alberta ensured that employees got the benefit of privacy protection.

**1:40**

Moving down the scale, I agree that, as I said to Mr. Lukaszuk, the biggest problem or the biggest gap, let's call it, not a problem, is

probably medium-sized businesses and small and medium-sized not-for-profits. There is definitely a gap there. Again, I think part of the problem is because we as a government haven't told them, "You're in" or "You're out." I know that some of them are lobbying right now to not be brought in, which I think is unfortunate because, again, the employees of the not-for-profits, if they are brought in, get the benefit of the protection of the law as employees. The clients and donors would get some protection as well. So the problem becomes one of bringing them up to speed with the legislation. As your experience has indicated, there is a large gap there. But if they don't know if they're in or out, it's sort of hard to get them to buy into the training.

Now, I'm assuming that when you talk about non-NGOs, you're referring largely to not-for-profits, charities and stuff. If not, I can think of a better answer.

**Ms Notley:** Well, maybe as a follow-up, I mean, in many respects I'm referring to both just through my own experience with both for-profits and not-for-profits. For instance, you say that 75 per cent of Albertans might enjoy the protection as sort of a ballpark, but as an Albertan I suspect I need that protection in about 10 different contexts. So while I might enjoy the protection vis-à-vis any relationship I have with the United Way, is it fair to say that I probably don't enjoy it in five or six of the other contexts where someone holds personal information?

**Mr. Work:** Absolutely. As you stroll through a day in this or any other province, you're leaving a trail of personal information everywhere. Telcos will have your information. Telcos are a federal issue. You will be under surveillance. You'll have an employee file. You'll have a customer file here and there. There are a lot of places where you've left a trail of personal information. I'll stand by my 75 per cent figure on those. I think that for the most part the information is dealt with according to the legislation.

The tough ones – I should be up front at this point in case Ms Blakeman asks this because she has before: audits are tough for my office. Being proactive and going out and auditing a large organization is really, really tough. It's big bucks. We did it once years ago, and it was horrendously expensive. Certainly, at the moment I don't have the resources to do that. If there's a better way, we're trying to find it. With health information, for example, there are audit logs kept on most of the electronic health records that have been developed, and we're looking, in conjunction with Alberta Health and Wellness and the health care providers, at ways of doing economical audits of that. Maybe some of that learning can be transferred to the private sector. But in terms of proactivity, getting out there and auditing, I'm not doing a lot of it. We're doing lots of education but not much auditing.

**Ms Notley:** Thank you.

**The Chair:** Thank you.

I have one question I'd like to ask Karen. It goes back to the slide presentation you made, and that had to do with the number of orders. On the one slide it showed that in 2003-2004 you had 24 orders. In 2007-08 you had 84 orders. I'm just curious. Do you have any idea, you know, whether it's an educated opinion or whatever, as to why there was such an increase in the amount of orders?

**Mr. Work:** Part of it was the new legislation. PIPA came into force in '04-05, I think, so the '03-04 number would be pre-PIPA. PIPA, the private-sector law, certainly generated a fair amount of business for us. I think that's plausible because there's about a year's lag

from when a law comes into force and the complaints start coming in, and then they go into orders. You can see that year's lag. In '04-05, when the law came in, 23. Then a year later, in '05-06, we go up to 35, and then we continue to increase after that. Last year the reason we got so many more orders out was because, as I said, we appointed additional decision-makers, so it wasn't just the commissioner issuing orders anymore.

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

**Ms Blakeman:** Thanks. I'm referencing page 15 of your report, in which you describe one of your successful prosecutions for a health information offence. In my opinion, this is the biggest challenge for us around any database where personal information is kept: people who decide to breach it. No amount of electronic security is going to help us with that if they decide to breach it. My question is: how was this case discovered, and does it give us any lessons about how to lay some different kind of audit trails to discover when these deliberate breaches occur?

**Mr. Work:** I nodded my head to everything you said. It is the scariest part. You have to trust people with access to these databases or they're useless. I mean, the only reason for having them is to facilitate health care or facilitate human resource management, so of course you've got to let people into them. But people are people, and people do bad things. You try to counter that with kind of equal doses of training and encouragement and fear, and that's what this case, I guess, provided to some extent: a little bit of fear that this is what could happen to you if you do break the rules.

The case came to our attention, actually, through the individual whose health information it was. She felt that someone knew too much about her. She was in the health care system through a chronic ailment, so she was in the system a lot; it wasn't a one-off. She had reason to believe that someone she knew knew more about her than they should have, and we investigated that. Because of the audit trails in that particular medical office, we were able to identify what had happened and the individual who had done it. Consequently, we had the evidence that the court would have required for a conviction.

You're right about the size of the task. I think that at the present, if we take what used to be the Capital health region, for example, there are about 16,000 users on their electronic health record system, on Netcare. I could be wrong about that, but I'm in the ballpark. Now, all of these people have different levels of access, right? Like the docs, for example, get the big magic key because, of course, doctors have to have the greatest access. From there, you know, technicians, clerks, therapists, and so on won't have the same level of access as a doctor does. It's incredibly complicated, as you can imagine. So if you take 15,000 patients in a health care system, I'm probably not out of line to say that there might be a hundred thousand data transactions a day, you know, bits of information being accessed or input or going here and there. Those are tracked by audit systems, which, thankfully, we do have, so if something does go awry, you can find out what and who.

**1:50**

As you say, the size of the task is daunting. You know, potentially 100,000 informational transactions a day are a lot to keep track of. You certainly wouldn't be able to do it by active monitoring, having some poor bloke sit there and actually trying to make sure things are going where they should go. A lot of it has to be built on trust and education and commitment and some amount of fear.

There are some sophisticated auditing techniques that are used. The famous persons audit: sometimes that's used. You'll just run the names of famous people through the audit system. Of course, if Frank Work gets admitted to the hospital, people are going to want to find out why I'm there, so you run my name through the audit system to see if anyone checked me out, so to speak, and then go back and see if they had authority to do that. That's one way. Random checks you can do, but as you can imagine, given those numbers random checks are random, so it is a challenge.

From the number of complaints and incidents we've had in health information, we're doing very, very well. Let me say that. In terms of breaches and losses mostly what we see are accidents, like someone losing a memory stick with files on it or someone leaving their laptop in a Starbucks or there's a break and enter and someone walks off with some laptops or something. We see far more of those than deliberate thefts or deliberate intrusions, and I'm quite thankful for that. As long as these organizations are taking the very simple precaution of encrypting these devices, you can usually walk away from them unscathed. If they're not encrypting, then we're all in big trouble. It's the individual bad behaviour that, you know, will always be the challenge.

**The Chair:** Mr. Marz.

**Mr. Marz:** Thanks, Mr. Chair. Thanks, Mr. Work. I think you might have partially answered my question because it also deals with the Health Information Act. The few complaints I get at my office from constituents regarding the Health Information Act would be probably more around access than it would be breach of information, and that would be surrounding issues like the reluctance of a doctor to give out the information to the patient, especially when it pertains to maybe taking that information to another practitioner and especially if it's out of the jurisdiction of Alberta, perhaps to another province or country. There seems to be reluctance there. You answered about the breach, that most of them are more accidental than otherwise. I'm just wondering: what percentage of access complaints would you get under the HIA compared to, say, breach of information type complaints?

**Mr. Work:** Of the HIA cases we get, I think about 69 per cent involve privacy impact assessments, so that leaves about 31 per cent that are the kind of issue you're talking about. Yeah, here we are. We had 416 HIA cases, and 65 per cent of those, so roughly six-tenths, 240, were privacy impact assessments. So another 170 would be the kind of thing you're talking about.

You're right. Amazingly, after all these years there are still some physicians and other health care providers who don't realize that the law in Alberta is that you have to give the patients their records. You just have to do it. We've gotten really good support from both the Alberta Medical Association and the college of physicians and the other colleges on that. If there is the kind of thing you mentioned, where a doc won't give out the information, it usually gets resolved pretty quickly by a complaint to us or to the AMA. But it does still happen.

**Mr. Marz:** Have you seen a bit of a reduction since the act came out, that doctors are maybe getting a little more familiar with things being done that way?

**Mr. Work:** Yes. Absolutely. There's been a tremendous reduction. As I say, I think the number of health care providers who don't understand that the law is that you give the information out is quite small.

You gave me an opportunity just to say one thing a bit off topic. Very, very pleased to see that the government of Alberta and the Legislature are considering a bill to deal with orphaned health records. This is a related problem, but it's been a serious problem. As you know, with an aging workforce, baby boomers getting older, there are health care providers who are retiring, and the huge question is: where do their records go when they retire? Sometimes they get destroyed, which is great, but other times, and we've had cases like this, they get dropped off at the town office, the town of – well, I'll just pick one – Vauxhall. A doctor shows up with 20 boxes of records and says: "Here. I'm retiring. I don't know what to do with these. They're yours now." Worse still, with electronic health records, computers, you know, when your computer gets old and grey and you want to mothball it, is that being done properly? At the present time there's no law that deals with orphaned health records, but there is one now before the Assembly, so I'm very grateful to see that happening.

**Mr. Lund:** I've had at least three of these kinds of cases, one where a doctor was retiring and absolutely refused to give the records to the patients and/or to the new doctor that's coming. Another one would give them, but the costs were absolutely prohibitive, charging for the copying of the records. One just the other day said that, yes, they'd transfer the records. However, it was about a month later, and they still hadn't done it. It really, basically, meant that what the patient was going to have to do was go back and get these tests done all over again. So it's a huge cost to the public system.

I don't know. I'm sure Fred has a better idea of the new legislation. I haven't followed it closely enough to know what it's going to do with the records, but currently I'm not sure that there's anything that the Privacy Commissioner or PIPA could do.

**Mr. Work:** Yeah, it is a problem. The fees are set out in the regulations to the Health Information Act. There's a basic \$25 fee, and then you can charge specific amounts, like 25 cents a page, for photocopies and so on. Fees are an issue. They are permitted. My office has a mandate to review fees. To be fair, I think most health care providers don't charge fees; at least, that's my belief. We don't get a lot of fee complaints. Certainly, anyone is welcome to complain to my office about a fee.

The other problem you mentioned about doctors or health care providers just being stubborn, I guess, about not handing the stuff over: again, we've gotten a lot of support from the Alberta Medical Association on that. Often it's happened that if the AMA calls or their lawyer calls a doctor and says, "Listen, you have to do this," it sometimes turns the tide, even when an official call from my office doesn't. Sometimes the doctors are more receptive if they hear it from the AMA or the college. As I said, both the Alberta Medical Association and the college have been really good about dealing with those if they get the complaints. If any of you in your constituency offices have constituents who have encountered this problem, please have them call either myself or the AMA or the college of physicians. I'm pretty sure that another phone call will be made to that physician saying: look, you ought to do this; you've got to give them their records.

2:00

**The Chair:** Mr. MacDonald.

**Mr. MacDonald:** Thank you, Mr. Chairman. I have three questions. On the first one, regarding the slide where you had the full-time equivalents of between 37 and 38 over a five-year period, I would say that your workload has increased significantly over that time



frame, and you are to be commended for that. I don't know how you get by. How often is it necessary to hire, for instance, outside private investigators to do investigations on your behalf?

**Mr. Work:** Very rarely do we hire outside investigators. We have done when we need forensic help like with computer information system forensics. We don't have that expertise in-house. We have also used outside investigators where we're contemplating an offence under the act just because in order to bring evidence to court for an offence, the evidence has to be handled very carefully. People have to be given caution of their rights under the Charter, so in those cases we'll use outside professionals, usually former police officers, to gather that evidence and make sure that it's properly gathered. On judicial reviews I use outside lawyers quite often. Well, all the time on judicial reviews.

Those numbers are interesting. Part of the reason we've been able to keep the numbers down is that we've had really good luck with employees. We have very, very little turnover. As a result, we found that over time we've been able to – well, some HR people call it enrichment, and some other people call it giving people more work to do. Here, I'll enrich your job; here's a stack of stuff. But because we've been able to retain staff, we've been able to give them more things to do, and most people like that after a point. They like to, you know, advance. So we've been able to get people to develop in their jobs, to do more and more things and do them more quickly and efficiently. We've had very, very good success with our people.

**Mr. MacDonald:** How often have you laid charges under section 92 of the FOIP Act?

**Mr. Work:** I think we've done that maybe twice. I've wanted to do it, I think, around a dozen times. Again, the FOIP review committee addressed this problem. The problem with that offence is that it's a summary conviction offence under the summary convictions act, which means it's got a two-year limitation period. I can tell you that two years is not enough with these kinds of offences. By the time it comes to light and by the time you find out that the offence has been committed – and after you find that, then you've got to gather the evidence, take it to the Crown, and get a prosecution – two years is just not enough. So a lot of offences that I would have liked to have prosecuted – well, "liked" is a funny word in that case – would have wanted to prosecute I couldn't because of the two-year time lapse. I believe there is an amendment, or the review committee has recommended an amendment, to change that timeline. So that would be very helpful in that regard.

**Mr. MacDonald:** Okay. Thank you. One last question, Mr. Chairman. This would apply, I guess, to all offices of the Legislative Assembly. Are you covered or protected under the risk management fund?

**Mr. Work:** Yes, sir. I'm happy to say that I am.

**Mr. MacDonald:** I'm glad to hear that. Thank you.

**The Chair:** Thank you.  
Mr. Horne.

**Mr. Horne:** Thank you, Mr. Chair. Mr. Work, I don't believe this issue is addressed in your report, but I'd be interested in your general comments. Thinking about not just health care but other areas where information that is collected is increasingly stored in electronic systems and accessed that way by a growing number of users, I just

wonder: to what extent are you or your office ever consulted in the design of electronic information systems or operational procedures or guidelines that might be developed in tandem with those systems?

**Mr. Work:** Thank you for the opportunity to say that the government of Alberta is actually probably our biggest customer in that regard. Ms Mun and her people in FOIP do a lot of consultations with GOA entities on databases, which is great because, as I said earlier, under the FOIP Act no one has to prepare a privacy impact assessment. So the fact that things like the children and youth family initiative seek us out and say, "You know, here's what we want to do, and we'd like you at the table," is great. We do a lot of that with GOA entities but less, unfortunately, with municipalities and school boards, and that's where a lot of information is being collected now.

Police, law enforcement: pretty good, actually. We have a lot of consultations with the Solicitor General. As you can imagine, law enforcement develops a lot of databases for law enforcement. We have more consultations with the police now. That was forced upon them and us more than anything else, but we're doing it now.

Health information. The HIA requires privacy impact assessments be submitted to my office, which is a really good thing for two reasons. First of all, as you say, we do get to look at and comment on security issues, privacy issues, information flow, and so on when someone gives us a privacy impact assessment. But, just as importantly, by getting all these privacy impact assessments, we're the one place in the province that has, like, a catalogue of where all the databases are, which, as you can imagine, is more and more important in an age when any doctor's office can buy a laptop – well, anyone can buy a laptop – with 64 gigabytes on it and start their own database. The fact that the law requires privacy impact assessments be filed: we have a list of who has databases.

They're proliferating. I mean, it's just a fact of life. You know, you can't even return a package of screws at a hardware store without someone entering your information into a database. We count on the public a lot to complain about that: hey, I tried to return my new toilet handle at the hardware store, and they wanted my driver's licence. So, you know, we'll get on that, and we'll contact the retailer and say: well, why are you asking for a driver's licence for this return? Believe it or not, it's not as crazy as you might think to hear me say that. There sometimes is a reason for that, and we'll deal with it. But the proliferation, as you say, of databases is just staggering, everywhere from very sophisticated health ones down to, you know, who buys bran muffins at the local coffee shop. It's amazing.

**The Chair:** Well, thanks, ladies and gentlemen. We're starting to run out of time, but, Ms Notley, please.

**Ms Notley:** Thank you. I just had one question, which I hope you haven't actually already answered, and if you have, I apologize. I was flipping through the report, and I noted, you know, the charts with respect to number of files opened, number of files closed. I may have missed it, but I didn't see anything that mapped out the average duration, length of time that a file remains open. The thing in particular that I was curious about: our office had received one response back from your office which surprised us a bit. It may have been a typo or it may have been unique to that particular file, which we don't need to talk about, obviously, but it brought the issue to our attention, which is that for a matter that we had requested go to the inquiry level, we'd hear back on it sometime in the summer of 2010. I was a bit concerned about that kind of timeline in terms of, you know, what the relevance of the information might be to us at that

point if we actually were to be successful. So I'm just wondering if you can talk a little bit about the timelines with respect to having matters resolved.

2:10

**Mr. Work:** There was a slide that I glossed over very quickly that deals with cases at that level.

**Ms Notley:** This one.

**Mr. Work:** Yeah, the previous one.

**Ms Notley:** This is more like 450 days.

**Mr. Work:** That's a good one, and that deserves an explanation, for sure. All three of the acts have a 90-day time limit, which is 90 days from the day the file comes in till the day the order is issued. We can't do that. Fortunately, the act says that it can be extended. But we found out the hard way through a court case that if we miss that 90-day period, we're out of luck.

The reason you're getting letters like that is that in order to preserve the file if it's going to go beyond 90 days, the act and the courts have interpreted the act to say that I must write the individual and give them a ballpark of when it will be done. I'll be honest with you: we overestimate the ballpark. We give ourselves the benefit of the doubt, in other words. In terms of saying, "Your case will be resolved by such and such a date," we err on the side of generosity rather than the side of economy. I wish I didn't have to do that, but if I don't do that and I miss the timeline, I lose jurisdiction, and the poor individual who made the request has to go back to the start. Yeah. That's why we do that. In most cases we're able to resolve them sooner than the anticipated date, but I do have to give that anticipated date now.

**Ms Notley:** A supplemental question. For instance, in our case, then, the ballpark outside date roughly comes to about 450 days, between 450 and 500. Your chart there talks about, you know, 30 per cent more than 180 days. Can you give us a sense of what the average number is instead of "more than 180"? Where is it, actually, extending to in terms of the average timeline for that over-180 group?

**Mr. Work:** One of the 30 per cent: you're asking for a median kind of a date for those.

**Ms Notley:** Some sort of average. It says 180 there, but really in our case we're looking at between 450 and 500.

**Mr. Work:** Yeah. That's a good point. So you're talking about going right through to inquiry and order?

**Ms Notley:** Uh-huh.

**Mr. Work:** Once it gets up around 120 days, it usually indicates that there's a significant issue in the file. In a lot of cases the public body and the applicant reach some kind of a compromise earlier. You get 50 per cent of your documents right away, and then if there's an issue, that goes on to inquiry. Once you get beyond that 180 days, it usually means that both sides are pretty dug in on the issue, and it's going to have to go to inquiry. The timelines are such that I would say from in the door to inquiry a year. That would be my median date, 365 days, of that category of file just because there's usually an issue there that both sides are dug in on. I want

this information, and the public body is saying: you're not entitled to it under the act, and we're not going to budge until the commissioner makes us budge.

**Ms Notley:** Okay. Thanks.

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

I thank the committee for your questions and, of course, your very good answers, Mr. Work. I think that closes off this session. I'm going to ask the committee: do you want to continue on with the next one, or do you want to take a very short break? Five-minute break? Okay.

**Mr. Work:** Thank you, Mr. Chairman. Thank you, members of the committee.

**The Chair:** Thank you very much for coming in.

[The committee adjourned from 2:15 p.m. to 2:21 p.m.]

**The Chair:** Okay, ladies and gentlemen. I'll call the meeting back to order. Good afternoon to Mr. Gibson and Ms McKee-Jeske. For the record we're going to go around the table and introduce ourselves. I'm Len Mitzel. I chair this Legislative Offices Committee.

**Mrs. Sawchuk:** Karen Sawchuk, committee clerk.

**Ms Norton:** Erin Norton, committee clerk.

**Mr. Webber:** Len Webber, MLA, Calgary-Foothills.

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

**Mr. Xiao:** David Xiao, MLA for Edmonton-McClung.

**Mr. Reynolds:** Rob Reynolds, Senior Parliamentary Counsel.

**Mr. Gibson:** Lorne Gibson, Chief Electoral Officer.

**Ms Lori McKee-Jeske:** Lori McKee-Jeske, Deputy Chief Electoral Officer.

**Mrs. Kamuchik:** Louise Kamuchik, Clerk Assistant, director of House services.

**Ms LeBlanc:** Stephanie LeBlanc, legal research officer with the Legislative Assembly Office.

**Dr. Massolin:** Good afternoon. I'm Philip Massolin. I'm committee research co-ordinator, Legislative Assembly Office.

**Ms Staley:** Diana Staley, research officer, Legislative Assembly Office.

**Ms Blakeman:** Welcome to my fabulous constituency of Edmonton-Centre. I'm Laurie Blakeman.

**Mr. MacDonald:** I'm Hugh MacDonald from Edmonton-Gold Bar. Good afternoon and thank you.

**Mr. Horne:** Hello. Fred Horne, Edmonton-Rutherford.

**Mr. Bhullar:** Hi. Manmeet Bhullar, Calgary-Montrose.

**Mr. Marz:** Richard Marz, Olds-Didsbury-Three Hills.

**Mr. Lund:** Good afternoon. I'm the MLA for Rocky Mountain House. Welcome to the legislative precinct.

**The Chair:** Thank you. Before we begin, I'd like to note that this marks the first time that the officers of the Legislature are coming to the committee to discuss their reports. The standing orders were amended in 2007 to incorporate a provision, which is now Standing Order 55.01, that the reports of the officers stand referred to the Legislative Offices Committee. However, this event has not occurred since then.

I also want to point out to the officers and the committee members that the intention is to learn more about the operations of the respective offices. We're all aware of the unique positions the officers occupy and respect their independence. We want to reassure the officers that the purpose here is not to second-guess their decisions.

If you'd like to please proceed with the overview of the 2008 general election report as well as the report on the voter turnout commissioned by your office. Your consideration of a 15-minute time limit would be really appreciated.

#### Office of the Chief Electoral Officer

**Mr. Gibson:** Thank you, Mr. Chairman. It's always a pleasure for me to appear before the Standing Committee on Legislative Offices, and thank you for your introduction. You can see that I have with me my Deputy Chief Electoral Officer, Ms McKee-Jeske. Ms McKee-Jeske has been with the office for approximately 17 years, so depending on where the discussion goes this afternoon, if there's a need for some important historical perspective, hopefully Lori will be able to help me out on that.

I want to say first off that I welcome the opportunity to appear before this legislative committee to discuss my 2008 election report. I don't consider this to be a pro forma exercise. Rather, this is one of the few opportunities that I have as an officer of the Legislative Assembly to account for the activities that have been entrusted to my administration. As servants of the Legislative Assembly officers enjoy a great deal of independence from the executive branch of government to carry out our mandates. Independent offices are sometimes referred to as the integrity or the democracy branch of government, as protectors of the public interest. This is precisely because of the trust that's accorded to our offices because of our independence from government.

In no other case is this more evident than with the office of the Chief Electoral Officer since we protect a core value of our political system, democracy itself. We're armed with special powers and tools to engage in ongoing oversight of government activities. In my particular case I have the responsibility to oversee a quintessential pillar of democracy, to protect our Charter right to vote and to ensure that Alberta has free and fair elections.

Independence exists when there is no political consequence for the actions of an independent officer who is attempting to satisfy his mandate. There are several features of our independence that can give Albertans the confidence to trust that we will dispatch our duties professionally, prudently, and without fear of influence or reprisal from the government, from political parties, from elected or nonelected officials.

There are professional qualifications for the job, such as formal education and experience, that help guarantee expertise in judgment and freedom from influence. Typically our appointments are nonpartisan; rather, they have the confidence of the Assembly.

Typically we have some degree of security of tenure. For example, most officers have a fixed term of office. We don't serve at the pleasure of the government whereby we can be removed from office in a discretionary, arbitrary manner; rather, we can be removed from office for cause and only upon resolution of the Assembly.

Our authority is regulated by written statutes that are available for any citizen to see. We're not guided by instructions and cabinet orders from government. We provide written reports at least annually to the Legislative Assembly as a whole through the Speaker or, in this case, to an all-party legislative committee. We're not answerable to government. We do not report through a government ministry. Finally, we have a kind of institutional independence with regard to administrative matters whereby we're free to exercise our powers without fear of interference or retaliation.

Now, these are some of the reasons that Albertans can have faith in the independent information that we provide to the Legislative Assembly and the transparency we add to government activity. As a former Chief Electoral Officer for Canada, Jean-Pierre Kingsley, said to a House of Commons committee: "Independence, as a virtue, does not travel alone. It must be seen in the constant company of accountability."

The reason that accountability is so important is that it lends legitimacy to what we do as independent officers, and legitimacy comes about when we're held accountable to the Legislature for the responsibility that they have entrusted to us. My primary mechanism of accountability is the reports that I make to the Legislature following an election and annually on the financial activities of political entities. I'm also accountable for the financial affairs of Elections Alberta to another independent officer, namely the Auditor General. Our finances are audited annually by the Auditor General to ensure that we're maintaining good purchasing, spending, and accounting practices.

As I noted at the outset, I welcome the opportunity to account for the 2008 election, and as I recommended in this report and before in 2006, I would like to see consistency in our reporting mechanism such that reporting under both the Election Act and the Election Finances and Contributions Disclosure Act is made through the Speaker to the Assembly. Furthermore, while I'm required to report to the Legislature annually under the Election Finances and Contributions Disclosure Act, I'm currently required to report under the Election Act only after an enumeration, a general election, a by-election, a senate election, a plebiscite, or a referendum.

A period of five years may go by before I'm required to account to the Legislature for anything other than financial disclosure of registered political parties and constituency associations, and I believe this may contribute to the misconception that there is a period of inactivity in our office between elections. I can assure you that there's no downtime in any area of our operations. I fear that the mechanisms of accountability are weakened when officers of the Legislature are not held to account through the consistent review of their reports. It only bolsters the legitimacy of what we do when we're held to account for our activity and the actions we take and our recommendations.

On the topic of accountability I'd like to add that I'm in the process of establishing an all-party advisory committee. We'll be calling meetings of this committee regularly to obtain advice on matters related to our election plans and preparations, to share information on a timely basis, and to get feedback on campaign finance matters. I'll be soliciting their input on any of the recommendations that I'm contemplating in the future that could affect their interests. So far we've had a great take-up from the parties on this initiative.

2:30

In addition to the information that I'm required to provide to all members of the Assembly, in this past year I've also provided members with information regarding our launch of a full set of educational resources called Building Future Voters. I've supplied them also with a survey report of voter/nonvoter feedback from the election, a research report on the effects of plurality on turnout, information regarding enhancements to our website, and information regarding Voterlink, our secure online voter registration system.

We're also in the process of providing increased online access to the financial filings of political entities to improve access and disclosure to the public. This initiative involves the scanning and posting of financial information going back to 1978, the inception of the finance legislation and the requirement to publicly disclose annual and campaign financial activities.

We spent a fair amount of time answering questions and providing information to the committee's researchers in advance of this meeting. Many of these were excellent and insightful questions. I understand, however, that the full answers that we provided to the researchers were not provided to you, so if there's any additional information that you'd like, I would be happy to discuss these areas in more detail and share our full responses.

With that brief introduction, I'd be glad to answer any questions that you may have.

**The Chair:** Thank you, Mr. Gibson.

For the record Mr. Lukaszuk has joined us. Mr. Lukaszuk, your question, please.

**Mr. Lukaszuk:** Thank you, Mr. Chair. I'd like to compliment you and your staff – and you should pass that on to your staff – on the work that you do because most of the work that you do, really, is hidden work. Albertans don't know about it until one day when they go to the polls, and then you become visible. Then you disappear again for the next three years. I do appreciate the fact that your office is busy on an ongoing basis.

Having said that, not only for my benefit but I think Albertans should know as well, I want to learn about the last election. Why wasn't Alberta enumerated properly prior to the dropping of the writ? I know that your office is nonpartisan and nonpolitical, but being an officer of the Legislature, I imagine you're quite politically astute. I think that the forthcoming election in 2008 was no secret to anyone. We had a change of leadership in the governing party and a leadership race. I think it was fair to anticipate that an election would have come shortly thereafter, yet we were enumerating at the same time as candidates were door-knocking. That was of equal advantage and/or disadvantage to all candidates, so it should not have reflected on the outcome of the election but, nonetheless, probably made some Albertans' and candidates' lives much more difficult.

**Mr. Gibson:** Sure. Let me just say to begin with that, you know, contrary to what some Albertans might think, Elections Alberta is not privy to when an election is going to be held. Elections are called, really, at the discretion of the government. The Premier calls an election, and nobody gives us any advanced warning of that.

Now, you can say that there was speculation. Of course, we keep our ear to the ground. We read the newspapers, and we play the guessing game just like everyone else does. To say that we knew when the election was going to be is not true. We didn't know when the election was going to be. There was some speculation that right after the leadership race there would be an election, and there wasn't. What we have to do is make our best guess and make our

preparations for an election well in advance and be prepared and keep polishing those election plans and have them in the bag and ready to tip over when we issue the writs.

In terms of enumeration Alberta has had provisions in its legislation for over 10 years whereby we can maintain a register of electors in an automated fashion. Up until 2004 we had been enumerating each and every election. We looked at several things, the problems and experiences of enumeration in 2004 and the previous election. We have electors telling us that they don't like people coming to the door. We have enumerators telling us that people don't like to answer the door. We've had security incidents. People have been injured. In the past election during the target enumeration we had one of our enumerators attacked in an apartment block. So it's becoming increasingly difficult not just here in Alberta but across the country. I hear this from the other Chief Electoral Officers. In fact, there are only a few jurisdictions left that still conduct a general enumeration prior to an election.

As I say, we have the authority to maintain a register, and following the 2004 election, we have been maintaining a register of electors. We use a number of sources to keep that list up to date. We used as a base the 2004 enumeration, and we receive information from Elections Canada every quarter, updated information on electors for Alberta. We receive records on a monthly basis from driver licensing, and we receive information from Alberta health as well as vital statistics to remove decedents from the list. We'd been maintaining that list for a couple of years prior to this election, and it was in pretty good shape for a while.

We would have appreciated it had the federal government had an election just prior to ours because that would've given a very big boost in its quality. However, we did have, I guess, some indication of what the quality of the list was. This isn't something we just guess at; we conduct quality research annually on the list. There's quality research going on right now, as we speak, to assess the quality, the currency, and the completeness of the list.

We had something happen that was to our advantage in 2007. We conducted two by-elections: one in Calgary-Elbow and one in Drumheller-Stettler. Based on the experience with the lists in those areas – and it was a pretty good example because we had one urban riding and one rural riding, you know, fairly typical of each – we found that the lists were approximately 75 per cent current. So we had a pretty good indication.

We also had quality research, our own independent research where we send register records out to individuals and ask them if the information is complete or whether there need to be any changes. We go to the ends of the earth to try and get a hundred per cent response rate from those individuals. We found that our list was approximately 75 per cent complete through that process as well.

For the election we designed something called the target enumeration. It was an enumeration designed to not enumerate the entire population of Alberta because the vast majority of those records never change. We found in 2004, when we had gone out and done a complete enumeration, that 80 per cent of the records hadn't changed. So the plan was to go out and enumerate those areas of new growth and high mobility principally. In some jurisdictions and in some electoral divisions that would mean more than 25 per cent; in some it would mean less. That was the plan. Our plan had been to conduct a target enumeration of the entire province in September of 2007. We abandoned those plans because we had no returning officers.

Something else that people may not recognize or realize is that it's not the small staff at Elections Alberta that conduct enumerations. We don't have the people, and we don't have the authority in the legislation to do our own enumerations. Enumerations are done

through returning officers. That's their responsibility, and they're directed in the act to conduct that activity. They're the ones that hire enumerators and conduct that work. Well, without returning officers in September we abandoned those plans, and we rescheduled them shortly after we did have returning officers appointed. Returning officers, the bulk of them, as you know, were appointed December 19. The remainder were appointed in late January, just over a week before the election was called.

Well, I didn't know when the election was going to be called. Of course, I speculated, like some of you may have, that it was going to be called sometime in the spring or sometime after the Christmas break. So we had plans to conduct a target enumeration.

Now, the returning officers that were appointed very late in the game had to be trained. They had to be oriented. They had to review their lists. They had to review their maps and plan for a target enumeration. They had a very short time frame to do that. In fact, the time frame was so short that a lot of them couldn't do it.

We had planned the target enumeration to begin on February 1, and the election was called February 3. This isn't something that even the experienced returning officers were accustomed to. They weren't accustomed to conducting an enumeration at the same time as the election was being managed. In fact, the day the election is called, voters can come to their office and vote by special ballot.

2:40

There's also the issue of trying to obtain the staff to do an enumeration. In our case there's an unusual difficulty with that. The law requires that we contact the constituency association of the party that formed the government and the constituency associations of the parties that came in either first or second, had either the most or second-most number of votes. We have to contact their constituency associations by registered mail to ask for the names of enumerators before we can hire our own enumerators.

So when you've got a returning officer that's appointed on January 25 who's got to send out registered mail to constituency associations to obtain names of enumerators prior to hiring their own enumerators, you can appreciate that it's very difficult, especially with the employment situation in Alberta at that time, for us to find people that had nothing else to do but to go and enumerate for us in weather that, I might add, was extremely harsh. Some days the enumeration had to be discontinued because of the high winds and cold temperatures.

I hope that explains a little bit about what happened in the last election as far as enumeration is concerned. It was my call to not have a complete enumeration. As it turns out, that would not have been possible within the time frames that we had. It was my call to conduct a target enumeration, which is done in every other jurisdiction where they maintain a permanent register of electors. Unfortunately, because of the timing of the appointments of returning officers and the timing of the call of the election, we weren't able to do as much target enumeration as we had planned. We had planned 25 per cent province-wide; we ended up being able to achieve 7 per cent.

**The Chair:** Richard Marz on this point, please.

**Mr. Marz:** You brought up a number of points in answering Thomas's question. The election in 2004 was after three and a half years, as was the election in 2008. Typically it's four years. That's the tradition of the province ever since time immemorial, and with majority governments it's usually there unless there's a change for some reason or other.

We did have one in 2004, which was not typical; it was six months prior. Yet there are a number of differences that happened. Voter turnout in this one was lower. The costs were much higher.

So maybe you could comment on how effective you think your communication system was and how targeted enumerations versus a general enumeration would have been perhaps better. There are a number of issues there, I know. It's based on some of the things you brought forth. I would submit that a fixed election date in this situation wouldn't have fixed all of the problems that we encountered.

**Mr. Gibson:** I would agree with you. I would agree that one of the most important recommendations that I've made has to do with the appointment of returning officers. If I have the manpower in place to do the job, I can do the job. That's not an issue. It's never been an issue. I've operated under a system in Manitoba where the returning officers were appointed by the government. That law changed, and I operated under a system where we hired the returning officers. I can operate with both. What I can't operate with and what makes it extremely difficult is when the returning officers are appointed at the last minute. You indicated that, you know, it's typically three and a half years between elections. Well, the government has five years . . .

**Mr. Marz:** I said: typically four years.

**Mr. Gibson:** I thought you had said three and a half. I'm sorry.

**Mr. Marz:** The last two were three and a half.

**Mr. Gibson:** Sure. And, you know, that works for us as well in terms of a planning model. We look out to about four years. As the Premier indicated, as he said in the media at least, he planned to have an election in 2012, so that would be four years. I don't have a problem with that. All the plans were made to conduct the election. All the preparations were made, and the election was conducted according to the law that we have. What is very difficult, though, is when you don't have the basic staff to do the job. We have a very small staff at Elections Alberta. It's a corps of people that work between elections to plan and prepare and make sure that all of the materials and supplies and the training and the guides, ballots, everything, are ready to go when an election is called, and that was all ready to go.

You mentioned the enumeration. That's something that we couldn't do any more planning for. We had the voters list prepared. In order to update those lists with an enumeration, we needed to have returning officers in place. In 2004 the returning officers were appointed 13 months before the election call. In our case we had in some cases just over a month, in other cases a couple of weeks before the election call. There were requests made to the Minister of Justice on a very timely basis for returning officers, and there were repeated requests. In accordance with the law, returning officers are allowed to be appointed two years beyond the date of an election, so we began to make those requests on May 19 of 2006. We also made a recommendation to the Minister of Justice on October 31, 2006, for the Chief Electoral Officer to appoint returning officers. On January 17, 2007, we sent a letter to the Minister of Justice drawing his attention to our earlier recommendation. On March 29, 2007, the earlier May 19 letter was faxed to the executive assistant for the Minister of Justice.

On April 18, 2007, returning officers were appointed to conduct by-elections in Calgary-Elbow and Drumheller-Stettler. Following those two by-elections, when we experienced difficulty with the lateness of the appointments of two brand new returning officers, who'd never done the job before, the difficulties we had in terms of training and their map review and the enumerations we conducted,

on June 29, 2007, I wrote a letter to the Minister of Justice advising him of the adverse impacts of those late appointments on returning officers and once again urged him to provide names of returning officers for an upcoming election.

On August 20 of 2007 I sent out a report on the by-elections that highlighted the problems we had with the timeliness of the appointment of the returning officers. On September 12, after being informed that the PC Association would be co-ordinating the appointment of returning officers and the referral of names to my office, I sent a letter to the PC Association requesting that returning officers be appointed, that they be identified and referred to our office. On October 25 I sent a letter to the Minister of Justice stressing the need for timely appointments. On October 25 I sent another letter to the PC Association expressing concern over the lateness of the appointment of returning officers.

Finally, on December 19 of 2007 we began to get appointments. I must say as well that the names of the referrals to our office for returning officers initially were simply a list of the returning officers that had acted in 2004. The individuals on the list had not been contacted. Through the phone calls that I made, of the 83 returning officers I found one – only one – individual who had been contacted asking if they had any interest in the position. Two of the individuals on the list were working in my office in one capacity or another. These were two nonpartisan returning officers from an earlier election that were doing some work on some things for us because of their experience. They had no intention of being returning officers.

When I got other names for individuals referred to my office, I called them to find out if they were first of all interested in the position – as I mentioned, some of them had never been called before – and whether they were qualified for the position. By qualified I mean: were they qualified according to the act? A good number of them weren't even living in the electoral divisions where they were being appointed, which is a requirement of the law, and others were not available for the time frames that we were guesstimating the election would be held.

2:50

I just want to say that it's very difficult to conduct an election according to any plan that we might have and even according to the legislation that's in place when you don't have the bodies in place to do the job. I think that if we were to take a look at any of the other legislative officers – take the Auditor General, for example – and say: "Well, you know, we're expecting you to conduct all of these audits, but we're not going to give you your staff, and the staff may not even be auditors when you get them. We'll let you know when these audits need to take place, and we'll give you the staff a few weeks beforehand" – you know, I don't really think that there's much independence in terms of staffing when you face a scenario like that.

**The Chair:** Thank you.

We're going to have to tighten up the questions and answers a little bit. We're getting quite a list going here now. One quick point, Mr. Marz.

**Mr. Marz:** I don't think you commented on why the fees were higher for returning officers in '08 given the fact that they were hired from a previous time.

**Mr. Gibson:** The fees for returning officers and, in fact, all of the election staff are set by order in council – they're not set by my office – and the fees had increased over 2004. I believe something

else you'd indicated was that the cost of the election was higher in 2008. It wasn't higher; it was lower. In fact, it was lower on a per-voter basis.

**The Chair:** Ms Blakeman.

**Ms Blakeman:** Thanks very much. This, again, is following up on the discussion on enumeration. I'm genuinely puzzled by some of the choices that were made about areas to enumerate or not. I'll look to my own area. According to the table available on page 12 of your election report exactly zero enumerations were planned for my constituency, which traditionally has a turnover rate of 50 per cent. I was very surprised to find that out. In fact, it had the second-largest difference of increase in population of all 83 constituencies. I am completely baffled as to why a well-known area with very high mobility, very high turnover was actually targeted to not get enumerated.

**Mr. Gibson:** Thank you, Ms Blakeman. It would be inaccurate to say that your electoral division was not targeted for enumeration, but let me explain one unique situation that occurred . . .

**Ms Blakeman:** I'm sorry. What does this table mean, then, on page 12?

**Mr. Gibson:** It means that there was no enumeration conducted in your area.

**Ms Blakeman:** It says, "Number of PSDs Targeted."

**Mr. Gibson:** Zero. Okay. What I'm saying is that the plan overall, province-wide, was for a minimum of 25 per cent enumeration. In some areas there would have been greater enumeration. In fact, there would have been at least 75 per cent enumeration in your area because of the high percentage of apartment buildings and the movement of the population. The uniqueness in your particular constituency of Edmonton-Centre . . .

**Ms Blakeman:** Or Calgary-Buffalo. There are a number that would share those characteristics.

**Mr. Gibson:** Yes. I was going to address the question that you had asked me about your constituency.

**Ms Blakeman:** Sorry. Go ahead.

**Mr. Gibson:** In the case of your constituency the returning officer was appointed the day before the election.

**Ms Blakeman:** Actually, there was one previously, but she resigned.

**Mr. Gibson:** Yes. That's correct. She was appointed the day before the election. In fact, I trained her in my office on an individual basis on a Sunday before the election was called. She didn't attend the same training as the other returning officers because there was no time. There was no person in place for that. Now, obviously, you can imagine that a person who was appointed the day before the election was called has a little bit of catch-up to do. There was no possibility of her conducting an enumeration as well as organizing and conducting the election at the same time.

**Ms Blakeman:** Well, you did have someone in place prior to that, to be fair.

**Mr. Gibson:** The person resigned, yes.

**Ms Blakeman:** Yeah, but she was in place for a period of time, so I wonder if there was not follow-up there to catch on that she was going to resign. This enumeration was very difficult not only for me but, I think, for everybody in Alberta, and we're all baffled by this. I had put money down on a facility to use as my office space by the middle of January. I think it was pretty clear to anybody involved in this electoral cycle that there was going to be an election in the first three months of that year, so we're all struggling to understand why this stuff didn't happen. I take the long list of attempts that you made to try and achieve enumerators being appointed, but I don't know what else to say.

**The Chair:** Did you have another question, Ms Blakeman?

**Ms Blakeman:** Yes, I did. The second piece of that was that the notification that went out to the multi-unit security access buildings was less successful in 2008 than it had been in 2004, and I'm wondering if there are plans in place to address this or correct it for the next election.

**Mr. Gibson:** Are you suggesting that through the course of your campaigning you had more difficulty gaining access to multifamily units?

**Ms Blakeman:** Yes, and there was clearly less awareness from resident managers, remote managers, and residents that they were to give us access. There was less awareness overall and much more difficulty as a result of that.

**Mr. Gibson:** What you may be referring to is that there was less work that was able to be done by returning officers considering the timeliness of their appointments. We did send out, as we had in the past, the same notifications to building management companies and rental agencies, the same communication strategy there. The part of the communication strategy that we were a bit less successful on is the individual work that's done by returning officers with the owners and superintendents of blocks. I understand that you had difficulty in this past election, particularly with regard to one particular building. I've written to you, and you know the effort . . .

**Ms Blakeman:** Sorry. That was just a snapshot.

**Mr. Gibson:** Yes. That was an indication, and the way we responded to the one issue and the one complaint is an indication of the way we would respond to any complaint. We immediately sent our former Deputy Chief Electoral Officer out to the building to have discussions with the superintendent and the owner of the building. The police were involved, and I consented to charges in that case.

**The Chair:** Mr. MacDonald.

**Mr. MacDonald:** Yes. Thank you very much, Mr. Chairman. Mr. Gibson, I see a similarity between you and President Obama. You both took on a job with very difficult files. I think this whole process is a mess. It's not of your creation, but you are certainly trying to deal with it with your recommendations here. I don't agree with all of them, but I certainly agree with the majority of them. I commend you for providing us with many sound recommendations to improve our electoral system in this province.

However, my first question is regarding the lists that are provided

in your report. There was a significant reduction in the number of names on the list from March 3. I'm referring to pages 31 and 32, please. On March 3 there were about 2.5 million people on the voters list, and you did a completeness of the lists of electors. You concluded that in July of 2008. You knocked over 200,000 names off the provincial list for various reasons. That's about 8.8 per cent of the total.

**Mr. Gibson:** Sorry. I'm just having a little difficulty seeing the numbers that you're referring to.

**Mr. MacDonald:** On page 32, please, the number of names on the list in July 2008, the totals below the constituencies.

**Mr. Gibson:** The 2.3 million?

**Mr. MacDonald:** Yes. On page 29 on March 3 at the close of the polls there were 2,557,000-plus names on the list. So there's been a reduction between March and July of over 200,000 names on the list. Now, of those 200,000 names that were subtracted, is there any way of determining whether or not any of those individual names voted in one or more constituencies?

3:00

**Mr. Gibson:** I don't believe there is. Let me just explain. The register goes through a cleanup process following the election. People who've come and registered on polling day and haven't given us any indication of where their previous address was get entered on the list a second time. They may have moved from Calgary to Edmonton or vice versa. They come to Edmonton, they vote on polling day, and they're still on our list in Calgary somewhere and haven't been taken off. So we go through a process of purging after the election, and we clean up the list and take the duplicate names from the list.

**Mr. MacDonald:** Okay. Thank you.

Mr. Chairman, if I may. Mr. Gibson, earlier you indicated that you had contacted the PC Association many times regarding the appointment of returning officers.

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

**Mr. MacDonald:** Did you also contact the Premier's office? These are all order in council appointments.

**Mr. Gibson:** No. Past practice, in the last few elections, at least – I know in 2004 and the previous election – has been that our office always dealt with the Minister of Justice on this. In fact, the recommendation for the order is signed by the Minister of Justice, I guess before the order in council is passed.

What had actually happened in the by-elections in 2007 is that a recommendation to sign the order in council had been provided to me. I was to recommend to the Minister of Justice that these two individuals whose names I'd received were qualified to do the job of returning officer, and I refused to sign the recommendation for the order in council. The reason I refused to sign the recommendation was that I had no knowledge of these individuals, and I had no idea that they were qualified to do the job. I was informed that as a way to get around this issue, I was allowed to speak with the individuals before they were appointed so that I could determine whether they, in fact, lived in the electoral division, whether they were aware of the disqualifications, and whether they were going to agree to abide by the provisions of impartiality in the law before I would agree to

their appointment. The same procedure was followed in the 2008 election with all 83 returning officers.

**Mr. MacDonald:** So the Premier's office had no . . .

**Mr. Gibson:** I didn't contact the Premier's office. Our contact for this was the Minister of Justice's office. I can't remember the exact date, but at some point or other we were informed that we would be dealing with an individual from the PC Association.

**Mr. MacDonald:** Okay. Thank you.

Can I get back on the list, Mr. Chairman, please?

**The Chair:** Yes.

Mr. Webber.

**Mr. Webber:** Thank you, Mr. Chair. Mr. Gibson, Barack Obama also relied heavily on the use of the Internet to get the vote out on voting day. I just wanted to ask you if you can maybe make some comments on the difficulties that you experienced on your website during the day of the election, and do you believe that this may have affected the voter turnout on that day? Also, what have you done? Have you put things in place so that this problem will not occur down the road?

**Mr. Gibson:** Thank you very much for your question, Mr. Webber. It's something that I was hoping someone would ask about because this is one issue that had nothing to do with the appointment of returning officers, and so many of the issues and problems that we did have in the election centred around that.

You know, as long as I've been in this business and as long as I've managed information technology in elections in the past, of course, the technology always behooves me – as it did the Legislative Assembly when three months before the election it was announced that an election had been called.

We have this kind of problem occurring in many jurisdictions. In the past election Elections Canada had their website go down. In B.C. in a recent by-election the website went down. If you recall, last year at tax filing time the website went down, and tax filing had to be extended another day. I don't have all the answers to this, but what I can say is that we tried to detect the problem the same day. We had an outage of approximately an hour and a half. We followed the statistics for the individuals that were hitting the website to try to find out their voting location. Now, this information, I should say, was available throughout the entire period of the election. I'm not saying: well, it was up for 27 and three-quarter days; that's good enough. No. It should be up there for the entire election. I understand that, and I understand human behaviour, that people aren't going to look to find out where they're supposed to vote until the last minute, so we have to be prepared for that.

We discovered very early in the morning that a judgment call had been made in our office about allowing returning officers to use their equipment to start entering the names of the swear-ons from the advance voting. We allowed them to do that. It wasn't part of the procedure, but they said: "Well, we haven't got a whole lot to do today. Our administrative assistant would like to start entering the names." So we allowed them to do that. What ended up happening is that they were drawing on the same database to search for electors to make sure they weren't entering duplicate information as the public was searching in order to find out where to vote. Once we determined that that was causing a problem for us, we shut that down, and the problem went away.

We discovered, also, subsequent to the election and subsequent to

my report that our web servers, which were housed at Service Alberta – our information, our databases were supposed to be on separate servers, and we found that they were being shared with other users. People were processing month-end payments at the same time as we were trying to run an election. That was something that I was unaware of. It was unplanned, and it wasn't what we had agreed to at the outset in terms of how we were going to house our information.

What I've done to change that is that we're in the process right now, as I speak, of reclaiming our computer systems from Service Alberta. We're bringing them in-house. They're operating within our own buildings. They're not being shared with anybody. There's complete and total redundancy. If anything happens to any of the computer systems that we have, they automatically switch over to an additional set. We're also negotiating right now with the Auditor General's office to have a disaster site in his offices so that we can resume business if there's a power outage or something of that nature.

**Mr. Webber:** Great. Thank you.

**The Chair:** Thank you.

Ms Notley.

**Ms Notley:** Thank you. I have a plethora of questions. I can't even name them all, so put me on the end of the list right now just in case I don't get through them all.

**The Chair:** We have a long list, so I'm going to have to tighten up.

**Ms Notley:** I will try.

**The Chair:** We've got some time yet, but there's more and more interest being generated. I want to make sure everybody gets a chance to speak.

**Ms Notley:** Okay. Then I will go as long as I can.

As an opening, I appreciate the fact that you have made as many recommendations as you have, and I appreciate that, as has already been identified, you are struggling to do a job within a set of rules which I do believe are not designed to facilitate that job being done as well as they could be. So there's no question that there are some tremendous challenges.

There are a number of questions that arise from that, but one just jumped out at me right now which I find utterly shocking, so I just want to sort of clarify with you. We all know, of course, that we have this strange system where the Premier's office gets to put forward the names of the returning officers. I know that recommendations have been made with respect to that. Am I hearing that in the two or three months before the election the Minister of Justice's office recommended that you consult with a representative of a political party directly, that that was actually something that was recommended to you by someone in the Minister of Justice's office?

**3:10**

Let me just back up a bit. I think that as we get closer and closer to an election, you almost take on the role, frankly, of a judge, and your role has to be as objective as possible. The closer you get to an election, the more sort of ex parte discussions you have with one political party and not the other, the more difficult it becomes. I realize you're not a judge and that's not what you're functioning under. I do appreciate that. But I am deeply concerned that anybody in the Minister of Justice's office would have been recommending



that you work with a representative of a political party in terms of how the machinery is set up for the election in that period.

**Mr. Gibson:** Ms Notley, if I gave that impression, I apologize. I don't think that's exactly what I said. No one from the Minister of Justice's office contacted me to tell me that I would be dealing with an individual from the PC Association. I was contacted by an individual from the PC Association who indicated that he had the responsibility of providing me with the names of individuals to perform the role of returning officer.

**Ms Notley:** Okay. I had misheard. I thought you'd said that you had been working with the Minister of Justice's office, and then you were ultimately given a name.

**Mr. Gibson:** I had been writing letters to the Minister of Justice's office. Neither the Minister of Justice nor any member of his staff contacted me to say that's what would be happening, although, as you can appreciate, I was desperately looking for names to come forward to my office for returning officers. I was very pleased to hear that finally somebody was attending to this and had indicated that they would be my contact to refer names.

**Ms Notley:** Okay. Certainly, I know it's very hard to have this conversation and not sort of feel as though you're on the defensive. I am viewing this from the point of view of evaluating the circumstances and the framework within which we have asked you to work, so please see that for what it is, or try to, although it is difficult, I know. I do remain concerned if even anybody in the Minister of Justice's office knew that what you were doing was consulting directly with the political party itself in the period right before the election. I have some very deep, deep concerns about that.

Anyway, let me go on to the other issue that we've been talking a great deal about, and that is the issue of enumeration. I think you've heard from all of us that that's a concern. I certainly did some rough calculations. I know that for my riding just under 40 per cent of the people that cast a vote in my constituency had to swear in on the day of the election, so that is a concern. I think it raises two questions. One, of course, is the one that you've very ably identified, which we do need to address, which is the process of appointing returning officers as well as the delay in the returning officers being appointed. The second issue, though, that I would like to discuss a bit is the strategy vis-à-vis the targeting of enumeration.

On the first question, I guess, just as an example in my riding, I have two questions. When was the returning officer in Edmonton-Strathcona appointed, and what kind of work can an appointed returning officer do if they are appointed well in advance? I mean, is it up to them? Are they given resources? Do they have to wait to proceed with enumeration? What capacity do they have if they're actually appointed in time?

**Mr. Gibson:** In the case of Edmonton-Strathcona, Lori, do you recall when she was appointed? No. I don't have the information available, but she would have been appointed either December 19 or January 25. I apologize; I can't say. I believe it was a later appointment, though, because I know that this individual had done this work before and initially, I think, had declined and then later reconsidered and decided to come to work for us.

Now, one of the things to remember is that after an individual is appointed to the position, then they've got to be trained. I think that about 60 per cent of the returning officers that were appointed in this election were brand new, had never done the job. What they do is they come initially to our office for a two-day orientation period, and

this is where they learn about the lists and how the lists are compiled and what we expect them to do in order to look through the list for any anomalies. The second thing is that they learn about the mapping and dividing the electoral division into polling subdivisions, which contain roughly 450 people. So they've got to get that kind of training from us first.

They don't have the ability, as I mentioned earlier, to go out and hire enumerators until such time as they're appointed and not until they've been in contact with the appropriate constituency associations to get names of individuals that could perform the job of enumeration for them. Now, you know, I don't know how many other ways to say this, but with the lateness of appointments it's very difficult for people to get those sorts of plans in place and get the personnel in place in order to be able to do the job on a timely basis. We had to delay the plans that we had for September because we didn't have returning officers in place.

In fact, I even went out on a limb, and when the names had been identified to me, I had asked the returning officers to contact the constituency associations in advance of their appointment, which is not the proper protocol, and we were chastised by political parties and constituency associations who refused to acknowledge our letters and said: you have no authority to be asking us for this information right now because you're not returning officers. So we kind of got slapped on the wrist for trying to get ahead of the game to begin with.

You know, as I said, our second enumeration plan was for February 1, and then the election was called on February 3. A lot of the returning officers – and I wouldn't say it was a whole lot different between the new ones and the former, experienced returning officers. They all found it challenging to try and conduct an enumeration within the time frame of the election, while the election was going on. It wasn't something they were accustomed to.

**Ms Notley:** My final question, then, relates to the issue of the targeting. This is something I will say quite openly that I do have some concern with. I'd like to see that there be some consideration or reconsideration of this approach in that, again, in your chart I see that in Strathcona nine of the roughly 62 polls were targeted. Regardless of whether it was able to be done, that was what was intended. Yet when you look at the outcome and you see that almost 40 per cent of the people that voted swore in on the day of, I think that the nine out of 62 – i.e., 14 per cent – would not have actually ever addressed the problem of the inaccurate voters lists in that riding. I hope, then, that you would reconsider the idea of the target or, alternatively, reconstruct how that targeting is done.

**Mr. Gibson:** Sure. You know, I can appreciate how you're perplexed by that. Let me just say that it's probably a misnomer or, you know, our fault in the way this is described. Nine electoral divisions certainly is not ideal, and no one thought that that's what needed to be done. What we're trying to convey here is that we had hired resources to be able to do nine within the time frame that we had. We could have done 69 polling subdivisions within your electoral division, and that would have been ideal. What we were trying to reflect there is: here are the number of polling subdivisions where we actually sent a body out going door to door with a preprinted enumeration record to confirm or add people to the list. They went out in nine divisions, and we show the number of names that they got, or the net effect to the list, as a result of those.

We've heard from both Edmonton-Centre and Edmonton-Strathcona. Clearly, the number of polling subdivisions that were enumerated was not ideal, and it was not what we would plan to do. The 25 per cent was a target overall for the entire province. In some

of those electoral divisions – a good example is Calgary-Elbow. We didn't plan to do any enumeration in Calgary-Elbow because we had just done that in 2007 for the by-election. But in an area like Edmonton-Strathcona – I'm just guessing now – I would say a good 60, 70 per cent of the area would have been enumerated had we had the time.

**Ms Notley:** Thank you.

3:20

**The Chair:** Thanks.

Ladies and gentlemen, we've got 11 MLAs here, and I am sure that if we talk about returning officers and targeting enumerations, we're going to have 11 identical examples. So I think we've probably exhausted those two points, perhaps.

Thomas, you had one quick point, and then we'll move on.

**Mr. Lukaszuk:** Well, I had one quick point on that point. My question to you is that we can dwell on the past, but it's important that we learn from this because there will inevitably be another election, and I think it's in all of our best interests that we have repaired the system. Returning officers have a really onerous task because that individual would have to have a lot of wherewithal to be able to put an election together in a riding. It's a person that has to have administrative skills, leadership, a good understanding of the riding. We train that person, but then that person also has to hire additional dozens of people in that riding whom she or he has to train and find office space and do all that. So I would say it takes a fairly skilled person to do that, and that's a big demand to place on a person, particularly in this labour market.

**Mr. Gibson:** I agree.

**Mr. Lukaszuk:** Sir, if the task was given wholly to your office, totally to your office to identify such people in every riding, because I don't imagine you have personal experience with people in every riding, would you be able to do that?

**Mr. Gibson:** Absolutely.

**Mr. Lukaszuk:** Absolutely?

**Mr. Gibson:** Yes.

**Mr. Lukaszuk:** Good to hear.

**Mr. Gibson:** I've had experience doing that in another jurisdiction. I would conduct open, merit-based competitions. We have position descriptions. We have a system ready to go. We have many experienced people to do the training of these individuals. I think we'd be able to find excellent Albertans to come forward and do that job.

**Mr. Lukaszuk:** Good.

**The Chair:** Thank you.

Mr. Horne.

**Mr. Horne:** Thank you, Mr. Chairman. I won't pursue the issue of returning officers and targeted enumeration further. I think Mr. Lukaszuk made the point I wanted to make.

I wanted to turn, Mr. Gibson, to something I asked you about briefly the last time you appeared before the committee, and that is

the efforts you have made in the area of trying to increase voter participation, educate the public about the democratic process. It seems to me that a gentleman in your position, particularly with the challenges around election administration that have been identified here, must face some challenge or some difficulty in striking an appropriate balance between how much emphasis and resources you want to devote to the voter participation, voter awareness side of things. Certainly, all of us observed the newspaper ads and so on that were run during the election campaign encouraging people to vote. I don't know the numbers, but it would appear that, you know, a substantial amount of resources goes into that activity. I just wonder, in view of some of the challenges that you've identified around election administration, the potential that you may be taking on additional responsibilities for recruiting and retaining officers and training them, do you have any thoughts about how this balance that you've established to this point might change going forward?

**Mr. Gibson:** Thank you. We had a bit of a discussion about this when I presented my budget, and I had indicated that I was looking for some additional resources to establish a Calgary office and an outreach program for Elections Alberta. Unfortunately, I didn't receive the funds for that.

However, I want to mention as well another idea that we had, and it's presented in some of the material here that we've developed. It's all part of this building future voters notion, or this program that we have in place. We've developed a series of educational resource guides for students at grades 6, 9, and 12. We've been distributing that to public and private schools throughout Alberta. A substantial number of copies have gone out already. In fact, thousands of copies of this have gone out to the schools, and it's being taught in the schools right now, teaching kids about civic engagement, about participation, governance, how government works, and so forth, not just: rah, rah; let's go and vote. It's a long-term plan that's directed towards students and just broader civic engagement.

We had planned to have individuals that would be available to go out and do presentations in schools and mock elections. One of the things that I was planning to do with nonpartisan returning officers would be to have them involved in that program, so we'd have 83 ambassadors for Elections Alberta, for voting, that would be available to go out and do presentations in the schools. We've been unable to fulfill an earlier, I guess, promise or hope that we would be able to go out to all the schools and do those presentations. We simply don't have the staff for it.

So building future voters in our outreach program across the province is certainly one thing that we're planning to do. I'll be coming back to the committee next year asking for resources to do that. I don't want to leave it too late because this is a long-term thing. It's not something you just ramp up the day before an election or a month before an election, although in the past election we did do some different things with the intent of, hopefully, trying to get the message out that there was an election and that people should vote. We distributed voter cards to every household in the province, which is something we'd never done before, reminding people of the fact that there was an election and telling people where they were supposed to vote. We did some very limited advertising. It was something we hadn't done before, and we thought we would do that. We had commercials on TV and on radio encouraging people to go out and vote.

We also have an ongoing program of awareness which has to do with the voter registration system. We have Voterlink, whereby hundreds of thousands of letters go out to Albertans every month reminding them not only to renew their driver's licence or vehicle registration but also to register to vote online. So we're trying to

keep this idea of elections and responsibility to vote in people's minds on an ongoing basis between elections and not just at election time.

**The Chair:** We've still got a very long list. Ms Blakeman and then Mr. Xiao.

**Ms Blakeman:** Thank you very much. The individual who contacted you from the PC Association, did you verify their claim that they were to be the contact, and who was that verified by?

**Mr. Gibson:** I'm not sure I know what you mean.

**Ms Blakeman:** Well, if an individual contacted you from a political party and said, "I'm the go-to guy," you just talked to them, or did you verify that with someone in government or someone in some other position?

**Mr. Gibson:** What I did do is that I actually googled them, and I found out that there was an association between that individual and a PC constituency. I knew who they were, and I knew of their involvement. So I was aware of who I was speaking with, yes. I was also later referred to another individual, who was a regional coordinator in Calgary, who assisted me. She, as well, worked for the PC Association and provided some assistance in recruiting returning officers for the Calgary area. These are individuals that are, you know, known to people in my office as well. We knew who they were.

**Ms Blakeman:** Okay. Going forward and picking up on Mr. Webber's question about the Internet. If we're to achieve some kind of Internet voting, which is now being discussed, what are the points of action? What plans do you have in place to move us from where we are to a point where Internet voting is a possibility? Leaving aside the question of whether we actually want to do it or not, how do we get from here to there?

**Mr. Gibson:** I'm cognizant of the time and the number of questions that are out there. I'm very tempted to give a long answer, but I'll try not to.

I'd have to be honest and say that we don't have plans in place nor does any jurisdiction in the country have plans in place to conduct Internet voting in the next election. There are still too many unknowns and security risks, risks to the integrity of the system that we have not been able to overcome to our satisfaction to be able to recommend that.

However, what I have done is that I have recommended in the list of recommendations that we be allowed to experiment in by-elections, in a very limited and contained way, to try and increase automation at elections. As I mentioned in my report, voting anywhere, for example, would be a big boost to encourage people, to be able to vote anywhere they happen to be in the province, at any advance poll and any returning office.

Some of the automation that some people are talking about are things like voting machines that are used at civic elections. They've got a much more complicated ballot than we do, and that technology wouldn't be of any use to us. It would be a waste of money in a provincial election. We have a very simple ballot. With our first past the post system it's a simple matter of counting how many votes for this candidate or that candidate. It's not a matter of looking to see, you know, the first two out of three and voting for the mayor and voting for councillors, voting for the dog catcher. It's not a complicated system that we have provincially, so vote counting

machines would certainly not be on my agenda. Internet voting will take some time to come.

3:30

**The Chair:** Thank you.  
Mr. Xiao.

**Mr. Xiao:** Yes. I think most of my questions have been answered, but I want to bring up one issue. When you're talking about some advertising during the election, probably most can recall that you placed a lot of candidates' names in the wrong column. I turned up in a different constituency. My name appeared, and Raj Sherman was in my riding. It created huge confusion. You know, then later on you had it corrected, but you just placed a very, very small notice in the newspaper to correct that. I just wish that this won't happen again. You remember that, the flyers you sent out?

**Mr. Gibson:** Yes. The inserts in the newspapers.

**Mr. Xiao:** Yeah. You placed most of the new PC candidates' names in the wrong constituencies. I still have a copy in my archive, and it's quite interesting. We were all wondering: how can that happen?

**Mr. Gibson:** In my defence I have to say that it was not most of the PC candidates in the wrong column. However, there were some errors. I acknowledge that, and I apologize for that. We have a very short time frame to be able to get that information out to the four newspapers. When it was brought to my attention the morning of the first issuance by the executive director of the PC Association, we had a correction put in the next day. I apologize. These kinds of things happen in the short time frame that we have and the myriad of activities that are going on. All I can say is, you know, that we try to do our best to be as accurate as we can. It's unfortunate, and that's too bad. I'm sorry.

**The Chair:** Thank you.  
Mr. MacDonald and then Mr. Bhullar.

**Mr. MacDonald:** Yes. Thank you, Mr. Chairman. Mr. Gibson, in your 2007 annual report on page 27, section 4, you outline your initiatives to enforce your act. I sense that you're very frustrated. I know I certainly am frustrated with some of the conduct of the recent election in Edmonton-Gold Bar and the lack of initiative in pursuing, in my view, a thorough investigation of the matter, particularly with some of the mobile polls in Edmonton-Gold Bar. I see here that in 2007 investigations were undertaken in nine instances of contributions by prohibited corporations. Your office consented to prosecution in all nine cases and provided specifics, again, to Alberta Justice. In three instances the deadline for initiating prosecution was missed. In six cases Alberta Justice did not proceed with charges. Are you frustrated, or do you feel that your ability to enforce your act is compromised whenever you can't come forward and do this all on your own?

**Mr. Gibson:** I'd have to say that it is frustrating. One of the elements of the independence of legislative officers is, you know, the ability to be able to enforce the mandate that they have. Now, I have to say that in the past there wasn't an awful lot of enforcement that went on at Elections Alberta. In fact, I don't think we've ever had a charge laid under either the Election Act or the election finances act. However, I took my oath, and I take my responsibility seriously.

For the first time we've actually been looking at the financial

statements that come in, and we've been aggressively pursuing the kinds of complaints that we receive during elections from the candidates, from the public, from political parties. We do our best. The investigations that we conduct are overseen. They're directed by my deputy, and we engage the services of former city of Edmonton and city of Calgary police officers, former RCMP officers, and forensic accountants to investigate the matters that come to our attention. We do the best workup that we can with the best resources that are at our disposal, and we forward these cases to the Justice department as we're required to do by law.

I cannot prosecute myself. I am familiar with a regime like that in Manitoba, where the chief electoral office did prosecute. They retained independent counsel to prosecute the cases, and the Crown had absolutely no involvement in any of the cases. It was, in fact, illegal for them to have any involvement or any influence in the cases that we were bringing forward. So I'm familiar with that. Naturally, you have a lot more control in that kind of environment than I have.

Yes, it's frustrating. Sometimes the deadlines are missed. It's a very tight deadline that we have, two years from the date of the occurrence of the offence. Recognize that somebody could make an illegal contribution in January of one year, and it would be a full year before there would even be a requirement for it to be reported and then not until four months after that, so now we're talking 16 months out of a possible 24. Sometimes the information is not reported on financial statements, and it's not until we go digging around and asking questions for receipts that we'll even find out about it, and the time limit for prosecution has expired. As you see, I've made recommendations to extend that time to one year from the time I believe that an offence has been committed, which would give me sufficient time.

Sometimes there are disagreements with interpretation of the law. We have our own independent legal counsel, that's very familiar with this legislation and regulatory enforcement and interprets the law for us. It's on that basis that I form the opinion that an offence has been committed, and I put it forward to the Minister of Justice's office. It goes to the prosecutions branch, and they make a determination at that point as to whether they'll lay charges. There's very limited opportunity in the act for me to apply my own administrative penalties. There are two instances of prohibited contributions where I can apply an administrative penalty.

**Mr. MacDonald:** Why did Alberta Justice not proceed with any of those six cases?

**Mr. Gibson:** I think you'd have to talk to Alberta Justice, but let me just provide you with a bit of an update. There have been 19 cases so far that have gone forward, none of which have resulted in prosecutions.

**The Chair:** That's probably outside of the business plan.

**Mr. MacDonald:** No, it's not.

**The Chair:** A decision that Alberta Justice made? I don't think that's part of the report.

**Mr. MacDonald:** This, Mr. Chairman, is a committee of the Legislative Assembly.

**Mr. Gibson:** I'm sorry, but I wouldn't have the answer to that. I can't answer for or on behalf of Alberta Justice as to why they wouldn't have prosecuted. I think it would have been slightly different in each case.

**Mr. MacDonald:** Thank you.

**The Chair:** Thank you.

**Mr. Bhullar:** Thank you, Mr. Gibson, for being here. You know, I can go on and on and on, and we can talk for a long, long time about issues. However, in the interest of time I'll be very focused. I'll start out by saying that I'm willing to be an ambassador of democracy, to talk to students in Calgary-Montrose any time. Students are a very important area to engage in democracy.

Another segment of our population that's very important to engage is that of relatively new Canadians, so folks that are Canadian citizens, people that may have, you know, lived in the country for 10 years or whatnot. I find in my experience, in my dialogue with people that they are very often missing from electors lists. When they are on an electors list, there are significant problems with their names: Gurinder could be Barinder. Okay? Simple issues of spelling.

It is a very sad process when this ends up happening to those individuals. What ends up happening is that an individual goes to vote, and the person working will look at them with so much suspicion because that list has their name, which may not be a very common name, spelled inaccurately, and they end up not letting him vote or whatever and in many cases asking for more ID than is asked of any other non visible minority person around. This leads, I think, to an issue of disengagement of many populations, where people end up saying: you know, if I'm going to be treated in such a manner when I go vote, then why vote? Disengagement is a very, very scary thing in a diverse society. I'd just put that out there for your thoughts.

3:40

**Mr. Gibson:** Sure.

**The Chair:** We do have five minutes left and two more speakers on the list.

**Mr. Gibson:** Let me just say that new Canadians are one of the groups that we've identified as one of our target groups for our outreach program, which, unfortunately, we're not going to be able to pursue as aggressively as we'd planned. We have been invited to attend formal meetings with the centre for new Canadians and new Albertans, and we've agreed to do that. We're planning on sending individuals to attend board meetings in Calgary.

Now, as far as the ID requirements that you had mentioned, if an individual is not on the list of electors, if their name just simply doesn't appear on the list of electors, they do have to provide identification, and the identification they have to provide is the same for all Albertans. If an individual's name is misspelled on the list of electors, it is a simple matter of correcting the misspelling. Sometimes people show up and there may be a middle initial that's wrong or a spelling of a name wrong or something of that nature, and we correct that on the spot. There's no necessity to show additional ID for that. But the ID requirements are no stricter for new Albertans than they are for any other Albertan.

**Mr. Bhullar:** What I'm saying, sir, is that they're applied differently. You know, it's a conversation we can have about maybe some training of elections staff at that front-line level.

**Mr. Gibson:** I should mention as well one of the things that we try to do, and again we're not always successful, and it does take some time for the recruitment. We do hire close to 16,000 people province-wide to operate the polls on polling day, but in an area that

has a preponderance of a particular ethnic origin, we try to find people that are working at the polls, again for the purpose of translation and everything else, that are of that ethnic origin, or we try to have a mixture of people with different backgrounds working at the polls so that it will make it a little easier for people to vote, but that's not always possible.

**Mr. Bhullar:** We had a multitude of issues with people locally on election day especially, and I remember my volunteers simply trying to search for people that worked in your office in Edmonton, and when they got through to somebody, they were absolutely excellent. Your troubleshooting on the day of was, from my perspective, very well done for some of the issues we had.

**Mr. Gibson:** Thank you.

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

**Ms Notley:** Oh, I'm sorry. I didn't know I was back on the list. What a great opportunity.

I just want to clarify again, then: at what point in the process in terms of the dates around appointing the returning officers did you start working with I think you characterized it as a regional representative who is a staff person with the Progressive Conservative Party?

**Mr. Gibson:** I can't tell you the exact date that that would have been. However, from the chronology that I provided to the researchers, it would have been around September 12.

**Ms Notley:** Of 2007?

**Mr. Gibson:** Of 2007, yes. Up to that point I had been dealing exclusively with the Minister of Justice's office, but I would have had the phone call from the PC Association indicating that they would be providing me with the names of appointees. It would have been probably a few weeks into that, when there had not been much progress, that I would have then written to this individual at the PC Association. I wrote on September 12 to indicate that I was requesting the identification and appointment of returning officers and how important it was for us to have these people on a timely basis.

**Ms Notley:** Then just one quick question. You said that the Minister of Justice's office didn't directly refer you to them. Would you be under the impression, if you had to offer an opinion, that they were aware that that's who you were consulting with?

**The Chair:** That sounds like conjecture to me.  
It's already a quarter to 3. Really, can we wind this up?

**Ms Notley:** I think I can ask his opinion.

**The Chair:** Okay.

**Mr. Gibson:** You know, to be honest with you, Ms Notley, I wasn't really thinking of that. I was totally focused on the election, getting the election done. I was very happy to have someone to speak to that would provide me with some names that I could try and qualify to do the job.

**Ms Notley:** So it's fair to say that you probably never heard anything more from the Minister of Justice's office once you started working with the PC representative.

**Mr. Gibson:** Well, after that process still was not yielding the results that I expected as quickly as I expected, I did again write to the Minister of Justice's office indicating that it wasn't necessary to do the appointments en masse, that I would very happy and that it would actually be advantageous to our office to have the appointments done on a piecemeal basis so that we could at least begin to train those individuals and get them going on the responsibilities that they had. So I had no contact from them, but I had more contact with them, if you know what I mean. I wrote to them, but I didn't hear back from them.

**Ms Notley:** Thank you.

**The Chair:** I think it's a quarter to 4 now. I'd like to thank Mr. Gibson and Ms McKee-Jeske for coming by this afternoon and thank the members of the committee for the questions and answers.

**Mr. Gibson:** Thank you very much.

**The Chair:** We have a couple of extra items on the agenda that we'll deal with once everyone is gone.

Ladies and gentlemen, let's wind up here, okay? I'd like to deal with other business. The committee received an e-mail from the Chief Electoral Officer asking that the committee consider his reappointment, keeping in mind that his appointment will be expiring in the near future. We haven't discussed this in any committee context, and I think that it's probably appropriate that we've got some time to do that right now. Now, his appointment expires one year after the election. It's not a contract; it's an appointment. The contract, really, that he signs and the Speaker signs, is really the amount of money that he gets. So it is an appointment, and as I said, it expires one year after the election, which would be midnight, March 3, 2009, or March 4, I guess, if you want to call it that.

Any comments? Mr. MacDonald.

**Mr. MacDonald:** Yes. I would like to say in light of his recommendations to the entire Assembly through the Speaker and through us on this committee that we certainly consider extending Mr. Gibson's appointment as Chief Electoral Officer.

3:50

**The Chair:** You mean reappoint.

**Mr. MacDonald:** Pardon me?

**The Chair:** Extend or reappoint. That's what you're getting at, right?

**Mr. MacDonald:** Reappoint or extend, yeah.

He's got a lot to say about improving our system, and I think we should give him a chance to see how these recommendations would work out. Of course, they would be debated in the Assembly, and we'd have to amend the act, but I think we should proceed with that. The first step would be to extend or reappoint this individual as Chief Electoral Officer.

**The Chair:** Does anyone else have any opinions on this?

**Mr. Horne:** Mr. Chair, with all due respect, I must confess that I'm a bit surprised that this particular item comes to the committee in this fashion. I realize that there is a time constraint here; March 3 is not very far away. I can tell you that I certainly did not come to the meeting prepared to have such a discussion.

In addition, I would question whether it would be appropriate for the committee to discuss the merits or lack of with respect to reappointment in an open forum such as this. It's obviously your call and the committee's call, but at 9 minutes to 4 on Friday afternoon of a long weekend I don't think it's appropriate to proceed at this point.

**The Chair:** I would like to have a motion for us to go in camera.

**Mr. Marz:** I would move that.

**The Chair:** Moved by Richard. All in favour? Opposed? The motion is carried.

[The committee met in camera from 3:52 p.m. to 4:32 p.m.]

**The Chair:** Okay. Ladies and gentlemen, we're back out of camera. The next meeting of this committee will be held at 6:15 p.m. next Wednesday.

**Mr. Lund:** Mr. Chairman, I would adjourn the meeting.

**The Chair:** All in favour of adjournment? Opposed? It's carried.

[The committee adjourned at 4:33 p.m.]



