



Legislative Assembly of Alberta

The 27th Legislature
Second Session

Standing Committee
on
Legislative Offices

Monday, February 1, 2010
8:39 a.m.

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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)
Elniski, Doug, Edmonton-Calder (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)
Quest, Dave, Strathcona (PC)**
Rogers, George, Leduc-Beaumont-Devon (PC)

* substitution for George Rogers

** substitution for Thomas A. Lukaszuk

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
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 Chief Electoral Officer	LO-157
Brian Fjeldheim, Chief Electoral Officer	
Lori McKee-Jeske, Deputy Chief Electoral Officer	
C.J. Rhamey, Director, Election Finances	
Drew Westwater, Director, Elections Operations and Communications	
Office of the Ombudsman	LO-163
Gord Button, Ombudsman	
Glen Resler, Director, Corporate Services	
Office of the Ethics Commissioner	LO-170
Neil Wilkinson, Ethics Commissioner	
Brad Odsen, QC, General Counsel and Registrar	
Karen South, Senior Administrator	
Glen Resler, Chief Administrative Officer	
Office of the Auditor General	LO-173
Fred Dunn, Auditor General	
Jeff Olson, Chief Administrative Officer	
Office of the Information and Privacy Commissioner	LO-179
Frank Work, Information and Privacy Commissioner	
Donna Check, Director, HR and Finance	
Marylin Mun, Assistant Commissioner	
Wayne Wood, Director of Communications	

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[Mr. Mitzel in the chair]

The Chair: Good morning, everyone. I'd like to call the meeting to order and welcome the Standing Committee on Leg. Offices. I'd like to ask the members and those joining the committee here at the table to introduce themselves for the record. I'd also like to ask the members that are substituting for committee members to so indicate.

I'm Len Mitzel. I chair the committee. I'm from Cypress-Medicine Hat.

Mr. Lund: Ty Lund, Rocky Mountain House.

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

Mr. Campbell: Robin Campbell, West Yellowhead.

Mr. Elniski: Doug Elniski, Edmonton-Calder, substituting for George Rogers.

Mr. Horne: Fred Horne, Edmonton-Rutherford.

Mr. Westwater: Drew Westwater, director of elections operations and communications, Elections Alberta.

Mr. Rhamey: C.J. Rhamey, director, election finances.

Mr. Fjeldheim: Brian Fjeldheim, Chief Electoral Officer.

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

Mr. MacDonald: Hugh MacDonald, Edmonton-Gold Bar.

Mrs. Sawchuk: Karen Sawchuk, committee clerk.

The Chair: Thank you very much.

The meeting materials were posted on the internal committee website, and I trust that everyone has their stuff with them.

Before we commence the meeting today, I'd like to note that this marks the second time that the officers of the Legislature are coming before 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. The first committee meeting to review the reports, last February, was very productive and provided members with an in-depth look at the operations of the offices of the Legislature.

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 offices of the Legislature. The committee is aware of the unique positions that officers occupy, and we respect your independence. I want to reassure the officers that the purpose here is not to second-guess your decisions or the operations of your offices.

Also, for the record I note that Ms Notley has joined us and also Mr. Bhullar.

We'll move right ahead to item 2 on the agenda, and we'll get some housekeeping done before we get into the reports. Approval of the agenda. Moved by Mr. Lund. All in favour? That's carried.

We have the minutes from the last two meetings, and I'd like to have separate motions to adopt each one of those. Moved by Mr. Marz that the minutes of the September 25, 2009, meeting of the

Standing Committee on Leg. Offices be approved as circulated. Any errors or omissions? Seeing none, all in favour? Opposed? That's carried.

For the record, also, Mr. Quest has joined the meeting.

Mr. Quest: Good morning, Mr. Chairman. Good morning, everybody.

The Chair: I'd like a motion, then, for the November 20, 2009, meeting. Moved by Mr. Campbell that the minutes of the November 20, 2009, meeting of the Standing Committee on Leg. Offices be approved as circulated. Any errors or omissions? Seeing none, all in favour? Opposed? That is carried. Okay.

Well, Mr. Fjeldheim, I think I'll turn it over to you. First, good morning to you and your staff.

Mr. Fjeldheim: Good morning.

The Chair: I'd like you to proceed with the overview of your 2008 annual report as well as, I guess, the report on the September 14, 2009, Calgary-Glenmore by-election. Your consideration of a 15-minute period is appreciated, and then it gives us plenty of time for questions and comments later.

Office of the Chief Electoral Officer

Mr. Fjeldheim: Good. Thank you very much, Mr. Chairman. It's certainly a pleasure to be here today. I want to thank you again for the opportunity to give an overview of the reports that were published in December of the past year as well as to share with you what I've initiated since I started and, hopefully, answer all the questions that you may have as well.

I first of all want to thank you for the opportunity that you have given me to serve as Chief Electoral Officer. I was most thankful the first time that I got the job, and I am certainly honoured to be selected once again.

Now I want to call on C.J. Rhamey, sitting on my left, to comment on the 2008 annual report of the Chief Electoral Officer.

Mr. Rhamey: Thank you. Good morning, Mr. Chairman and members of the standing committee. My name is C.J. Rhamey, director, election finances. I have the pleasure to provide you with an executive summary of the 2008 annual report of the Chief Electoral Officer, which includes significant activities in our office prior to the appointment of our new CEO.

This is the report, and I believe everybody has a copy of it. Section 1, which is on page 2, provides relevant information on annual activity for parties and constituency associations in the 2008 calendar year. As an overview, we had nine registered political parties as at December 31, 2008. Eight of these parties met their annual filing deadline of March 31, 2009. One party, the Alberta Greens, did not meet their legislative requirement to file an audited financial statement and at their request were subsequently deregistered, effective July 16, 2009. Deregistration of the party also triggers deregistration of related CAs, which has now been completed. As noted on page 4 of the report, we had a total of 354 registered CAs on December 31, 2008. Of these, 342 met their filing requirements by the due date of March 31, 2009. Of the other 12 CAs, six filed late, and the others have now been deregistered for nonfiling.

8:45

A chart on the bottom of page 8 provides a summary of the annual

financial statements for each of the parties. The chart on the bottom of page 11 provides a summary of all contributions to parties and their CAs. The 2008 annual reporting indicates parties received contributions totalling \$3.8 million, and CAs received contributions totalling approximately \$1.2 million, for a grand total of approximately \$5 million.

Section 2 starts on page 14. This section provides relevant information on campaign activities of parties and candidates for the 2008 general election, which was held on March 3, 2008. In total there were 412 registered candidates for the 2008 general election, and 35 candidates did not meet their filing deadline. Our office provided significant advice and assistance to these individuals, and we have now received campaign financial statements for all 412 registered candidates, which are posted on our website for public disclosure. All nine registered political parties submitted their audited financial statements for the campaign period by the filing deadline.

A chart on the bottom of page 19 provides a summary of campaign financial statements for each of the parties. The chart on the bottom of page 24 provides a summary of all contributions to parties and candidates. Campaign reporting indicates parties received contributions totalling approximately \$2 million, and candidates received contributions totalling approximately \$4.5 million, for a grand total of approximately \$6.5 million for the 2008 general election.

Section 3 starts on page 35. This section provides general information on funds held in trust, our public files, and events of interest during the 2008 calendar year as well as those since January 1, 2009.

Section 4 starts on page 37. This section provides the audited financial statements as at March 31, 2009, for the office of the Chief Electoral Officer.

Mr. Chairman and members of the standing committee, I thank you for the opportunity to speak today.

The Chair: Thank you very much. Should we continue right through the entire thing, or do we want to break it up and ask some questions on this part? It's your call on this, sir.

Mr. Fjeldheim: I think you could ask questions now while it's still current.

The Chair: Sure. Are there any questions?

I do have one. You mentioned that six constituency associations were deregistered. Now, what is the process for reregistration? You mentioned that of the 354, 12 were late and that of those, six late filed and six are now deregistered. What is the process if they wish to reregister? How does that work?

Mr. Rhamey: They would have to send in an application for reregistration.

The Chair: Start right from square one then, right?

Mr. Rhamey: Yes.

The Chair: Okay.

Mr. Rhamey: And they have to submit the outstanding financial statements.

The Chair: Okay. Any other comments or questions? Mr. MacDonald.

Mr. MacDonald: Yes. Some of us were audited after the 2008 election. I understand there were audits conducted on the New Democrats, the Alberta Liberals, and the Progressive Conservatives. Those constituency audits, that were done on a random basis: are the results of those audits going to be made public?

Mr. Fjeldheim: Just a moment. I don't know the answer right away.

Mr. Rhamey: I don't believe that we were going to disclose the results of that information. Oh, are you talking candidates or CAs?

Mr. MacDonald: Candidates.

Ms McKee-Jeske: The information was communicated to the individual candidates that were audited, and resolution was achieved between our office and the candidates. That information was not going to be released publicly beyond what is required to be placed on the public files in our office.

Mr. MacDonald: My next question, Mr. Chairman, would be why not?

Ms McKee-Jeske: Do you want me to answer that?

Mr. Fjeldheim: Yes, please.

Ms McKee-Jeske: The legislation is very specific in terms of the information that is to be released. The information that was requested during the audits of the candidates that were chosen at random was beyond the requirement for all the candidates. There would be real inequity if we were releasing very detailed individual information for those candidates when it wasn't requested for the majority of them.

Mr. MacDonald: Thanks.

The Chair: Any other questions? Okay. Thanks.
Mr. Fjeldheim, you can continue, I guess.

Mr. Fjeldheim: Okay. I'd now like to call on Drew Westwater to comment on the by-election. Drew?

Mr. Westwater: Thank you, Brian. Good morning, Mr. Chairman and members of the committee. My name is Drew Westwater, and as I told you earlier, I am the director of elections operations and communications. I am pleased to present to you an executive summary of the Calgary-Glenmore by-election report that is before you for consideration today.

A by-election was required to be held due to the resignation of Ron Stevens on May 15, 2009. Mrs. Carmen Carron was appointed as a first-time returning officer to oversee this election process, on July 8, 2009, which was about five and a half weeks prior to the issuance of the writ of the election. We provided her with the returning officer orientation program and an enumeration training program at our office in Edmonton prior to the issuance of the writ of election.

A targeted enumeration of high-density high-mobility locations and supportive living facilities for seniors was scheduled for September of 2009. In order to improve the quality of the register of electors database – as you know, there were some questions on the accuracy of the list during the general election, so we thought we'd try an initiative to improve that register prior to the by-election

– we mailed out enumeration notices to every elector residence in Calgary-Glenmore on July 27, 2009, asking electors shown on the notice: are you on the list? It asked if they had new or missing elector information to share that information with Elections Alberta and to reply before August 18, 2009.

A writ of election was issued on August 17, 2009, by order of the Lieutenant Governor in Council. Returned enumeration notices were data captured and the register of electors was updated prior to the production of the list of electors for the by-election. The planned target enumeration program was cancelled as a result of the issuance of the writ of election.

Returning officer, election clerk, and administrative support staff election event training was provided in Calgary over the three days during the writ period in the office of the returning officer.

The returning office was open and fully operational with supplies, furniture, phones, and computers within 24 hours of the date of the writ of election, which was August 18, 2009. Election supplies were organized and packaged, and staff recruitment, hiring, and training commenced for election day – there were 63 polling subdivisions and one mobile poll at the by-election – and for the advance poll in the returning office over three days.

Nominations closed on August 31, 2009. Six candidates were nominated: five from registered parties and one independent. Just as a comparison there were five candidates who ran in that particular electoral district in the 2008 general election. Ballots were printed, packaged, and delivered for the election. Printing of the ballots took place between September 1 and September 9, after the close of nominations.

Advance polls were held on September 10, 11, and 12. There were 901 voters over the three days, compared to the general election, where we had 735 voters at the advance polls. That's typical in a by-election scenario that there are more people who go to the advance polls than would in a general election. That's not unusual.

Special ballots. From day 28 to election day we issued 245 of those. These were for people who couldn't attend the advance polls or election day. It would be snowbirds or people who were out of the country during the by-election. For comparison, during the general election a year earlier there were 204 that used special ballots, so there was an increase in the usage of special ballots during the by-election as well.

On polling day, September 14, 2009, we had a 39 per cent turnout of 10,991 voters. Compared to the general election, we had a 41 per cent turnout of 12,701 voters, so we had a very comparable turnout at the by-election as we had at the general election. In fact, this was the highest by-election voter turnout since the 2000 by-election in Edmonton-Highlands.

The official results of this by-election were published on September 24, where Mr. Paul Hinman, Wildrose Alliance Party, received 37 per cent of the votes.

The candidate financial statements filing date was January 14, 2010. All six candidates have filed, and statements are posted on our website. The political parties' audited financial statements for the by-election filing date is March 15 of this year, so that date has not yet arrived. The total cost of the by-election was \$185,635.

8:55

We're pleased to announce there were a couple of new initiatives during the by-election that were very, very successful. As I spoke about earlier, the mail-out enumeration notice was sent to all electoral addresses in the electoral division, 17,000 of them, by Elections Alberta. We had a 30 per cent response rate, or 5,100, that were returned to our office. It improved the accuracy, completeness,

and currency of the list of electors for the by-election. As a measurement of that, that resulted in only 4 per cent of the electors on polling day having to be added to the list of electors. That's 465 electors.

Compared to the general election, when we had issues and concerns with the quality of the voters list, there were 19 per cent of the electors that had to be added to the list of electors, or 3,000. So it was a significant improvement in the quality of the list, judged by the number of people who showed up at the poll and didn't have to get added to the list before they could vote. Only 4 out of 100 that showed up had to get added this time, which is a marked improvement.

We also mailed out individual where-to-vote cards to every elector on the voters list. During the general election we sent them to the residential address, but it had all the electors listed on it. In the by-election we sent an individual card to each elector and asked them to bring them with them to the polls on election day. We had a tremendous response rate to that; 66 per cent of the electors who showed up on election day brought the cards with them. What that does is tell the voting staff or the poll officials when they arrive in the by-election: I'm on the list. It also tells them which polling subdivision to go to. They go straight to the DRO. They vote. They're in and out of there in five minutes. It's a nice speedy process, and it improves the efficiency and accuracy of the processing of electors at the poll on election day and gets them to the right location.

That, Mr. Chairman, is our report on the by-election. We'd be pleased to answer any questions that you have at this time.

The Chair: Thank you very much.

Mr. Marz: Mr. Westwater, due to the success of your voter cards I take it you're probably going to continue that process and expect to expand on that in the coming election.

Mr. Westwater: Well, it would be up to Brian to decide that for the general election, but it was a success in the by-election, and we would like to continue on with something that does work and is effective. Yes.

Mr. Fjeldheim: I'd just like to add that, yes, we will be continuing to do that. We want to ensure that people get to the right polls, obviously. That's the idea of these voter cards. We're just working on whether or not we're going to address it to individual electors or whether we're going to address it to residences because where they go to vote, of course, is based on ordinary residence. So we're going to be looking at that. Likely it will go to a residence so that people at this residence go to this location to vote. But, yes, we'll be continuing on with that.

Mr. Marz: Okay. Thank you.

Mr. Lund: I'm curious what kind of cost, because I understand the ones you did in the by-election were names as opposed to the address. Is that right?

Mr. Fjeldheim: Yes.

Mr. Lund: So what's the difference in cost to identify a location, where people live, and just send it there?

Mr. Fjeldheim: Well, it would be less. I'm not sure it would be half. I'm looking at Drew here. I'm not sure it would be half because, of course, if you send it to a residence that's one card; if

there are three electors in that residence, that's three cards. So we're going to be cutting down on the cost by sending it to a residence, but it would be difficult to say if it would be half.

Mr. Lund: I know that in the last federal election the federal people did something somewhat similar. Those were names, though. In the same household one spouse could be going to one poll, another spouse going to another poll, and it made matters worse instead of better.

Mr. Fjeldheim: Yes.

Mr. Lund: I really encourage you to use the address and not the name.

Mr. Fjeldheim: Well, of course, there could be people in the household that are not on the list of electors as well. Then they would not get a card, so there could be some confusion there. But, yes, we're looking at the household versus the elector.

Ms Notley: I just want to clarify, though. My understanding is that under the legislation you have to do an in-person enumeration once the new boundaries are put in place. Is that correct?

Mr. Fjeldheim: No. There's nothing about that a door-to-door enumeration has to be conducted. That certainly is an option. What we'll do when we get those new electoral division boundaries is we'll take those lists of electors we have, and we'll have to divide them up and take the subdivisions and put those into those new electoral divisions. Those subdivisions may be from two or three or who knows how many different electoral divisions. So we first put those in, and then we get the people in there. Then we can review and see what we think about the list of electors and how up to date it is.

Ms Notley: That concerns me, I have to say. I had been under the impression that with new boundaries you are bound to do an in-person enumeration and that this was the way we could hope to deal with the travesty of the last election.

Mr. Fjeldheim: No, there is no requirement for a door-to-door enumeration after electoral boundaries are changed. Years ago the legislation said that there should be an enumeration conducted in the third year and every year thereafter following a general election, but that has been removed from the act, so there is no requirement for a door-to-door. Now, we can do targeted enumerations. I haven't yet decided if we would do a door-to-door enumeration or not. Hopefully, we can team up with the municipalities who are conducting a census, and if they're going door to door, then we can work with them. Obviously, there is no better way than to go door to door, but it's getting more difficult to do.

Ms Notley: Yeah. I would just want to put it out there that I can't possibly imagine how you could choose to not do a door-to-door because the list is so, so flawed at this point in time. It truly is.

Mr. Fjeldheim: I'm sorry. The list of electors is flawed in terms of not enough names on the list?

Ms Notley: Or the wrong names.

Mr. Fjeldheim: Or in the wrong place and stuff like that.

Ms Notley: Or people occur three times on the list because they've moved three times since the last time.

Mr. Fjeldheim: It's very difficult in Alberta. You're quite right.

Ms Notley: Yeah. Well, it's quite ridiculous. I mean, almost half the people that voted in Edmonton-Strathcona last time were sworn in. That's ridiculous.

Mr. Fjeldheim: In '04 we conducted an enumeration in August and September, and the election was in November, which worked out perfectly. I'm not just patting myself on the back, but it was just very fortunate the way that worked out. Conducting a door-to-door enumeration is very, very difficult at this time and where we're at. They do it in other provinces sometimes. Elections Canada does not do a door-to-door anymore, and I'm not sure how many other provinces do.

Go ahead.

Mr. Westwater: Two, I believe: Saskatchewan and Manitoba, possibly.

Mr. Fjeldheim: Yeah. Saskatchewan and Manitoba. I think British Columbia has to, but in the other provinces it's not mandatory, and that's how it is here in Alberta.

Ms Notley: What is your intention at this point?

Mr. Fjeldheim: I haven't made up my mind, actually. It depends. Again, if we can team up with the municipalities, that would just be great. We've done it before. Again, Calgary does a regular census, and Edmonton is going to do one, we understand. So I'm in the process now of getting in touch with those people and trying to set something up so we can work together. Instead of having two groups of people going around, if we can have one, that certainly would be the answer. Now, not all municipalities conduct a census, so then we'll have to make a decision on whether or not we're going to go out and do a target enumeration in the communities around Alberta, in the rural areas. Those are the decisions that I'm working on now.

The Chair: Mr. Fjeldheim, that sounds good. How do you feel that collaboration will work with the municipalities? Certainly, the AUMA and the AAMD and C are probably the people you'll be approaching, and I'm looking at it from a rural perspective and the fact that some of them do conduct a census, some of them. Probably it's to their benefit that they have one. If there was an opportunity for encouragement for them, through their municipalities or through Municipal Affairs, to do a census, it's for their own benefit, and if you had the support of the AAMD and C and the AUMA, probably you would have some better success.

Mr. Fjeldheim: That's right, yeah. Then word would get out that we're looking at doing it. Last time – I have to look at Lori again because of my memory – I think we paid a dollar.

Ms McKee-Jeske: I think so.

Mr. Fjeldheim: It was around a dollar that we paid for each name we got. Of course, that's less than it costs us to gear up and do it on our own, and obviously it subsidizes what they're doing as well. We did it with Red Deer and Fort McMurray, so we do have some experience doing that. We were close to doing it with Calgary, but

it did not work out. There had to be some changes made and so on. We would certainly be looking at doing it with the municipalities in the province and, yes, making sure that the other municipalities are aware of it: "If you're thinking of doing it, here's an opportunity. Elections Alberta will assist you if you will ask these questions for us."

9:05

The Chair: Any other comments?

Mr. Fjeldheim, anything more to add?

Mr. Fjeldheim: Yes. I'd like to call on Lori McKee-Jeske to comment on the Electoral Boundaries Commission. As part of the electoral boundaries legislation we supply them with resources, and Lori has been one of their resources. She'll comment on that now.

Ms McKee-Jeske: Good morning, Mr. Chairman and members of the committee. I will give you a very brief update on the activities related to the 2009-10 Electoral Boundaries Commission, which was established in July of 2009.

As you are aware, the Chief Electoral Officer is responsible for providing advice, information, and assistance to the commission. Support to the commission required a significant time commitment, particularly in the start-up phase when we compiled necessary resources and organized initial briefings. The commission met in our office over the last six months, and we supported them in two main areas, collecting statistical information and developing mapping products, in conjunction with Alberta Finance and Enterprise staff.

As Acting Chief Electoral Officer I represented our office at some of the public hearings that they held across the province. The commission has completed its first round of public hearings and will share the areas, boundaries, and names of 87 proposed electoral divisions in the interim report, which will be transmitted to the Speaker of the Legislative Assembly by the end of February in accordance with the Electoral Boundaries Commission Act. Following the release of the report, the commission will hold a second round of public hearings across the province and will prepare their final report, which is due by July of 2010. We will continue to assist the commission members in the same manner through their second round of deliberations.

Once the new electoral divisions have been approved by the Legislative Assembly, our office will manage the task of delineating 6,000-plus polling subdivisions across the province and will develop lists of electors for 87 electoral divisions based on those new boundaries. Now, that was an activity discussed with this committee during our budget presentation in November 2009, and I wish to thank the committee for recognizing and funding the necessary activities to enable us to fulfill our responsibilities in this regard.

We're very much looking forward to the challenge and to reporting on our progress at our next meeting.

The Chair: Thank you very much.

Any questions?

Mr. Lund: Not on that report. Thank you very much. It was a good report.

I'm curious, looking ahead rather than back, about how we can get into electronic voting. A number of us were at a conference of legislative offices committees in the United States, and I believe it was Colorado that now has gone pretty much totally to electronic voting. Their chief electoral officer made a presentation on how they were doing it and how it evolved over time. Their participation

went up dramatically, like into the 80s. I think, Karen, that you've maybe got that presentation that he made.

Mrs. Sawchuk: We do have a copy of it, Mr. Chair, but I don't have it with me.

Mr. Lund: No, I didn't expect that.

I would be interested to hear your reaction to looking at that whole process because we always are talking about trying to get more people involved, more people voting, and I think that's really important. I was really taken with the success that they're having, and Colorado is not an easy state to operate a process like that.

Mr. Fjeldheim: Yes. Karen, if you get a chance and can find that, I'd appreciate having a look at that.

Actually, we are going to be looking at that. Later this month I'm going to Toronto. During the last conference of Canadian election officials, a subcommittee was set up to look at e-voting in Canada: where it's at and where it's going to go and so on.

Just briefly – I brought some of the briefing notes – e-voting can mean many different things. It can mean voting remotely, sort of voting by telephone or via the Internet. It can mean machine assisted: you go in and there's a machine and you mark it and it counts it right away. Then there are machines that just assist in tabulation. So it means a number of different things. I think most people think in terms of the Internet when they think about electronic voting.

The question: why? Well, you mentioned some of the reasons why. It enhances accessibility for voters, especially disabled voters, voters in remote communities, and members of the military and so on. So it assists in that area.

It does increase voter turnout, apparently. Drew has some experience with electronic voting, and in some areas they say that it really doesn't increase it that much. Is it Markham, Ontario?

Mr. Westwater: That's correct. The municipality of the town of Markham has done Internet voting for their advance polls for their municipal elections for a number of years now. What they found was that a lot of electors who were voting anyway have chosen to vote by Internet rather than going to the polls on election day, but it didn't actually increase voter turnout. So it's a convenience factor, and people do use it, but it didn't actually impact on the actual voter turnout rates in their municipal elections.

Mr. Fjeldheim: Thanks, Drew.

Some of the obstacles and challenges, of course, are security and protecting security and the high cost associated with it. Sometimes there's less of an audit trail whereas now when we have an election, we've got that piece of paper and so on. I think that's still important, obviously, and they're still working through that as to how people can vote electronically so that we'll still have a paper trail at the end of the day. We're going to get together later this month and discuss these items.

Also, Elections Canada has committed to do a trial on e-voting, and they're going to do that by 2013. It's a few years away, but we're certainly looking and moving in that direction.

Mr. Lund: Well, in response to that, it was very interesting because he went through all of those very same problems that people were identifying. A couple of things. When you say that in Markham it didn't increase the actual voting, I believe that could be true, but in his presentation he talked about the percentage of people who were on the voters list who were eligible to vote and the percentage that

did vote before, and when they went to e-voting, that percentage went up. Incidentally, costs went down dramatically, not right way but down the way, because they don't have nearly as many polling stations anymore. They have access to a computer in a public facility like we have all across the province, so if you don't have it in your own home, you could do it in a public facility. That's how they did it.

I really encourage you to look outside of Canada because I think we're kind of dragging our feet in Canada. Quite frankly, I think you'd find a conversation with the chief electoral officer from Colorado a very interesting piece of work.

Mr. Fjeldheim: Yes, we'll certainly follow up on that. Thank you.

Mr. Marz: Wouldn't there be adequate examples out there across North America? I don't know what Europe is doing. I don't think we have to reinvent the wheel on this. A lot of that work has already been done in other jurisdictions, and we could look at the most successful ones.

Mr. Fjeldheim: Oh, yes. I certainly agree with that. That's part of the idea of this: getting together with people from across the country. But also I agree that we don't have to just look inward here in Canada. I was not aware of this voting system that Colorado uses, but we'll certainly get the information.

Mr. Lund: Nor were most states in the U.S. aware of it either. It was very interesting.

Mr. Fjeldheim: Thank you.

The Chair: Any other comments or questions?

Well, thank you very much for coming, Brian. It was a little shorter than we anticipated, but that's fine. Brian, C.J., Drew, and Lori, thank you very much for coming.

9:15

Mr. Fjeldheim: Are we done?

The Chair: I guess we are unless you have any other comments. Do you have anything further, Brian? I'm sorry.

Mr. Fjeldheim: Oh, no, that's fine. Just real quick, since I joined the office in December, we've reviewed our service plan. I'd like to mention that. All staff participated in that exercise. It was a two-day event, and everyone was given an opportunity to have input in what we're doing. The changes we've made to our vision, mission, and goals, I believe, better reflect our core business, what we're doing. We look forward to doing things down the road: have a noncontroversial election, provide staff with a thorough understanding of their role.

Just very briefly, our new vision is that Albertans have confidence in an easily accessible electoral process. Our mission, what we're going to do about that, is that we're going to deliver effective, nonpartisan services that meet the electoral needs of Albertans. We've got three goals which we're going to follow to do that. Our first one is to increase the efficiency and effectiveness of election administration, our second is to increase services and accessibility for stakeholders, and our third is to increase Albertans' awareness and knowledge of the electoral process. Again, a review of that has been completed.

We've also just completed sending out 40,000 voter registration letters across Alberta to increase the accuracy of the list of electors.

We're getting those back now, and we'll be able to judge how successful it was and what percentage of information we're getting back.

I've also been contacting the registered political parties to request that they put a link on their websites. The link will attach their website to our Voterlink so people, when they're looking at the party information, are going to see a link to us, and they can get their name on the list, or they can check to see if their name is on the list. Hopefully, parties will help us out with that.

I've begun meeting with party executives to discuss any concerns that they have on how we can best move forward. I'm also looking at establishing an all-party committee of party executives to explain legislation and policies so as to increase awareness of our procedures and requirements.

That's about it. I'm certainly, once again, appreciative of this opportunity that I've been given. We were moving right along.

Thank you.

The Chair: Of the 40,000, were some of those the ones that are included in the new vehicle registration envelopes?

Mr. Fjeldheim: Would you just show that, please? What's in the vehicle registration envelopes is a bit of a different thing, other than this 40,000.

Mr. Westwater: That's a Voterlink advertisement that we in partnership with motor vehicles do with every registration to promote that throughout Alberta. That's a separate initiative.

The Chair: Will you be able to track that to see how well it worked?

Mr. Westwater: Oh, we do. When they come online, we track how they heard about it. It's either through motor vehicles, or we also have a partnership with Canada Post, where under the smart moves program when anybody moves and they get their little orientation package, part of the Voterlink package is in there as well. We ask them: "How did you hear about us?" and "Where did you find out the information from?" So we are tracking that, Mr. Chair.

The Chair: Okay. Thank you.

Ms Notley: I just wanted to sort of question a little bit. With your newly drafted goals or vision, whichever it was, I note that you don't have identified in there anything around the issue of turnout.

Mr. Fjeldheim: Well, that's something that, obviously, we've looked at. We want to make sure that all electors in the province have the information they need to get out and vote. I liken it to a smorgasbord, where we lay out all the information that we have. We want to make sure we have the best list possible. We want to make sure people have an opportunity to vote by special ballot, to know what that is and how to use it, when and where the advance polls are, when polling day is, and so on. We lay it out, but I believe we all have to participate in getting people out to vote.

I mentioned the other day that I didn't feel it was up to Elections Alberta to put big ads in the media getting people out to vote, encouraging people to vote. That is not in the legislation. I don't believe that's in my mandate. My job is to make sure that people know where to vote and the opportunities that they have to vote, and we certainly do not want to be any impediment to that.

Ms Notley: It would seem to me that one objective measure of the degree to which you've met some of the things you're talking about

is seeing a voter turnout increase, that it's an objective measure identifying that you've actually told people where to vote and made the system less complicated and met your other objectives, separate and apart from the value itself of having a voter turnout rate that is better than that of many developing countries, which it's not right now.

Mr. Fjeldheim: Yeah. It was 40 per cent. I mean, it's nothing to be proud of, obviously, a low voter turnout like we have here in Alberta. Obviously, I agree with you. My feeling is that through education is the best way to look at increasing voter turnout. It's not by putting a flashy ad on television that says: "Get out and vote. It's your responsibility." I'm not sure what good that does.

Ms Notley: No, and I wasn't really talking to you about the way you do it. I don't care if it's an ad or if it's that you're knocking on doors. I'm a big fan of the door-knocking thing, you know. Personally, I'm less about ads and more about being on the doorstep. I don't want to debate how you increase voter turnout. My concern is that if it doesn't even appear as an objective in your mission statement, that is somewhat concerning because to me that is both a measure as well as an objective in and of itself.

Mr. Fjeldheim: In number 3 our goal is to increase Albertans' awareness and knowledge of the electoral process. I see that as our role. Just a quote that Preston Manning gave when he spoke at the Conference of Canadian Election Officials, when that question came up. Mr. Manning stated that the primary responsibility to address declining voter participation rests with political players, parties, and civic leadership, with election officials playing a supportive role. I believe that does pretty well state where I think Elections Alberta belongs in doing that. We certainly want to assist and give everybody every possible opportunity we can to have them participate in the electoral process, but once again I don't see us as the prime mover in advertising for people to get out and vote in that regard.

Ms Notley: I guess I'll have to just be on the record as disagreeing with you and Preston Manning.

Mr. Fjeldheim: May I ask a question, then? What would you see us doing at taxpayer expense to get people out to vote?

Ms Notley: Well, one thing is that I'd start out saying that I would right now commit to a door-to-door enumeration because I know myself that one of the biggest problems you have is that you're not actually communicating with a huge portion of the population, and you're not going to be able to until you get people out on the doorstep to find out where they are and who's in what locations.

Mr. Fjeldheim: Okay. So updating the list of electors. Yeah, I agree with you: that certainly has to be done.

The Chair: Anything else, then?

Ms Notley: That's it for me.

The Chair: Okay. Thank you very much for the meeting. It was very informative. We'll take probably a 20-minute recess, I guess.

Mr. Fjeldheim: Thank you very much.

The Chair: Thank you.

[The committee adjourned from 9:24 a.m. to 9:51 a.m.]

The Chair: Good morning to our Ombudsman and his staff, Mr. Resler. For the record could we please go around the table and introduce ourselves. I'm Len Mitzel, MLA for Cypress-Medicine Hat.

Mr. Lund: Ty Lund, Rocky Mountain House.

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

Mr. Campbell: Robin Campbell, West Yellowhead.

Mr. Elniski: Doug Elniski, Edmonton-Calder.

Mr. Horne: Fred Horne, Edmonton-Rutherford.

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

Mr. Button: Gord Button, Alberta Ombudsman.

Mr. MacDonald: Hugh MacDonald, Edmonton-Gold Bar.

Mrs. Sawchuk: Karen Sawchuk, committee clerk.

The Chair: Thank you.

Before we begin, I'd like to note that 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. We're all aware of the unique positions that the officers occupy and respect your independence. I want to reassure you that the purpose here is not to second-guess your decisions. The first committee meeting to review the officers' reports last February was very productive and provided members with an in-depth look at the operations of the officers of the Legislature.

I'd ask you to please proceed with the overview of your 2008-09 annual report as well as your comments respecting the special report on out-of-country health services. Thank you.

For the record Mr. Bhullar is attending as well.

Office of the Ombudsman

Mr. Button: Thank you, Chair and members of the committee. It's my pleasure to be here again to discuss my annual report for 2008-09. With me is Glen Resler. Some of you may know that Glen has recently moved to the office of the Ethics Commissioner and is still providing me a bit of support as the director of corporate services for my office in the interim until such time as I can hire a suitable replacement. Glen will be here to answer any questions you may have with respect to the corporate services side, in particular any budget or financial issues.

I've provided you in advance with a copy of the annual report for 2008-09, which covered an introduction and key highlights of the year and expounded on the 200th anniversary of the creation of the first Ombudsman in Sweden in 1809. They provided you with a business plan update and an overview of our role and organizational structure, a statistical overview for the year, and then provided the usual administrative fairness guidelines and case summaries to more concretely explain those administrative fairness guidelines. We also provided you with a copy of the Prescription for Fairness report on the systemic investigation of the out-of-country health services program and provided in that report an overview of the AISH investigation along with our financial statements.

We've also provided you with hard copy and electronic copy, I believe, of Prescription for Fairness, which is the special report on the out-of-country health services investigation, and a copy of our strategic business plan and scorecard. I know a lot of this information was discussed in the presentation made to the committee in November, and I respect that and will try not to tread that ground again in the interests of expediency and the best use of time. I do have a few items that I believe warrant an update, and then I will hand it back to the chair and the committee.

The office currently stands at 25 FTEs. We have a very flat management structure. There's myself as the Ombudsman; my Deputy Ombudsman, who is in charge of all of the operational side, the investigators and the alternative complaint resolution and informal resolution; the senior legal counsel, who in addition to providing legal advice and counsel to investigators during the course of their investigations and providing me with legal counsel as the Ombudsman also supervises the analysis unit of two file analysts. I have 15 FTEs for investigation and complaints analysis and six FTEs for administrative support.

We currently have one vacant investigator position, which we vacated last April 1 as a result of the budget restraint to ensure that we would be able to come in within budget. We are currently in the process, as you were advised in November, of staffing that position, and in fact I'm interviewing a candidate tomorrow.

Statistically the workload continues to increase. In 2008-2009 oral complaints were up 5 per cent while written complaints, which are a more significant measure of our workload, were up 16 per cent. The number of investigations or complaints that we were able to resolve through alternative complaint resolution was up from 25 the previous year to 42 last year, which is a good movement to try and streamline our processes and be more efficient in the way we manage our work. Our written complaints and alternative complaint resolutions are up 28 per cent over the last two years, which is a significant increase with no change in our resources. I had a quick look: for the first nine months of the current fiscal year, up to the end of December 2009, written complaints are again up 3.2 per cent, and files open per investigator are up 10.5 per cent.

With all of that, I'd just say that statistics are what they are, but by and large our workload both in quantity and in complexity continues to increase with, as you've seen in the business plan and the scorecard, impacts on some of the key measures that we track to measure efficiency.

As a result of the increased quantity and complexity of our investigations and our workload, our carry-forward of open investigations continues to rise. At the end of the year being reported upon, we carried forward 299 open investigations, which is a significant number and, in our estimation, is too large. We've identified and we're utilizing flexible approaches to try and manage with the current resources to reduce the resource-intensive formal investigations through the use of tools like alternative complaint resolution and informal resolution, but the truth is that with the volume of work that we have and the resources we have to do it, we're currently in a situation where when new complaints come in and are analyzed and accepted for investigation, we're normally looking at a period of six to eight months before we're able to actually action that file for investigation, and then the investigations can take a significant period of time after that.

That's not acceptable to me or my staff, and we struggle with it every day, but we're pushing the resources that we have as hard as we can to try and ensure that doesn't get any farther out of scope.

As I mentioned, we provided you with a copy of the report Prescription for Fairness, which was a report on a systemic investigation conducted on the out-of-country health services program.

The out-of-country health services program is a program operated by Alberta Health Services to provide funding to people who are required to seek medical treatment outside of Canada for illnesses which meet the criteria of the program. We made a number of recommendations, 53 recommendations, as a result of that particular investigation, and those recommendations included addressing things like training, orientation, and recruitment of members to the Out-of-country Health Services Committee and the appeal panel; writing more detailed decision letters. We recommended four appeals be reheard. We recommended changes to the regulation to have physician-driven applications, which require specialists' reports, and recommended that the department enhance its public communication of the program.

10:00

We undertook that particular investigation following my meeting with this committee in the summer of 2008, where members of the committee reinforced their support for and the need for those types of systemic investigations, which go beyond complaint resolution and get into identifying systemic issues with administrative fairness.

The findings and recommendations in that report have very broad application. I made comment in the report itself that other programs and other departments should take heed of the findings in this particular investigation because in my experience they have broad application to the administrative fairness of a good number of departments, agencies, boards, and commissions that we routinely investigate.

The investigation had a significant impact on the office. I had three full-time investigators assigned for a six-month period of time to conduct the investigation, during which, of course, they are unable to undertake work on their own investigative files. Out of 13 investigators, taking three investigators away full-time for six months has a significant impact.

We had very positive outcomes for the committee, for the appeal panel, for the ministry, and for citizens affected, which really demonstrates the value of those investigations, but I would be hard-pressed to undertake another investigation of that complexity at this time with the current resources that we have. Many of you will recall that in my budget submission for the current year I submitted a supplementary budget estimate based on the discussions I had with the committee in July 2008 to enhance our capacity to do systemic investigations and also to do alternative complaint resolution, but recognizing the significant struggles and economic challenges that Alberta and the rest of the country and the rest of the world, as a matter of fact, are facing, we weren't able to fund those improvements at this time.

Just an update on the status of implementation of the recommendations in the report Prescription for Fairness. Fifty-three recommendations were made. Forty-four have been implemented fully, including the recommendation to rehear four specific appeals. Seven of the recommendations have been accepted, and target dates for completion have been agreed to between myself and the Department of Health and Wellness. Two recommendations require regulatory change, and they're being pursued by the minister and the department and are in process.

I did, of necessity, in December of this year start the process to commence another systemic investigation, which resulted from a number of individual complaints we had received, all with respect to the same authority. In December one of the complainants in that matter launched an action in court, and as I'm sure you're well aware, the Ombudsman Act requires that the courts and the Ombudsman be very considerate of each other's jurisdiction, and a matter that's before the courts is not to be investigated. What I've done is

put that investigation in abeyance at this time, and we will monitor the outcome of the court action. If the court action addresses the issues that we were investigating, that will likely be the end of it. If we find that the court action did not address all of the issues that we had open for investigation, we will then consider opening our investigation again at the end of the court proceedings.

We've been monitoring and tracking new jurisdictions since I've been the Alberta Ombudsman, since 2003, and just as a brief update, for the Health Professions Act we're now up to 22 of the 28 colleges proclaimed as jurisdictional, the most recent and most significant one being the College of Physicians and Surgeons, which was just proclaimed last month. So it will be interesting to see how that affects workload in the future.

In our experience so far we're just getting to a point, I think, where the public is becoming aware of the fact that when they don't feel they've been fairly treated by one of the health profession colleges, they can complain to my office. Our complaints last year were up 42 per cent over the previous year with the health professions, in number still relatively small. Most of the complaints we have investigated have resulted in very complex and very lengthy investigations, and we have identified a significant number of systemic problems in those investigations. We are getting very good co-operation and interest from the colleges. I think you're aware that these colleges were all self-regulated in the past, so having public oversight of their investigation and handling of complaints is something that's brand new to them, and most of them have expressed an interest in developing and improving their processes. We currently have 26 open investigations with respect to the health professions.

The other new jurisdictional area is the patient concerns resolution process within Alberta Health Services. That is a process that continues to evolve and, in my view, has been deterred somewhat from its evolution by the structural changes in the delivery of services by Alberta Health Services and the collapsing of the nine regional health authorities into the one superboard.

They've set up a new process. I've been working co-operatively with the new patient concerns officer and the team that is developing the patient concerns process for Alberta Health Services. They're still in the early stages of evolving that, but we have seen some success, and we've moved some matters forward in the last few months. There is a plan to undertake a very proactive educational initiative both for staff in Alberta Health Services and for patients and families of patients receiving services to better educate them on the complaint process, and I've offered to assist and be a part of that team. We currently have seven open files with the patient concerns process. We received 16 complaints in the year we're reporting on, '08-09.

There are a couple of other ongoing issues that I have addressed with you before and that I believe my Deputy Ombudsman and Mr. Resler addressed when they met with you in November with respect to the budget submission, but I just want to update you and provide any clarity and put these issues on the table.

One is our ongoing effort coming out of the requirement in 2007 to petition the courts to settle a dispute between the Ombudsman and the Alberta Human Rights Commission. At issue was my authority to investigate complaints about the actions and decisions of the commission and the authority of the commissioner to implement my recommendations if he chose to do so. The previous chief commissioner challenged me on those issues in 2007. I met with the then minister responsible for the commission, and subsequently he sought input from the Minister of Justice. The Minister of Justice responded in writing that in their view my interpretation was correct but that they agreed the matter needed to be resolved by the courts.

We ended up taking the Alberta Human Rights Commission to court in late 2007, and the court ruled in my favour in April 2008. I've updated you on that process previously.

A new chief commissioner was appointed in March of 2009. I met with him within the first month he was in office, and we've had a number of meetings since that time. He is still resisting and, in fact, refusing to implement my recommendations. I've met with the current minister responsible on a number of occasions. I've also met with the Minister of Justice. Through the efforts of the Minister of Justice she has now appointed an assistant deputy minister to chair a working group, which at this time consists of my senior counsel and contracted senior counsel for the chief commissioner, to try to find a way to move these matters forward and break the deadlock here.

10:10

We currently have 10 open investigations, which are on hold pending resolution of this, some of them dating back to I believe as far as 2005, something of that nature. So it's something that needs to be rectified. We need to have a clear road forward. But I finally am seeing some progress with this group chaired by the assistant deputy minister and with counsel representing Mr. Mason and I, and I'm hopeful that we'll be able to find resolve in the not-too-distant future. It's unfortunate, I think, that an officer of the Legislature had to take the commissioner of the Human Rights Commission to court to resolve these things, but hopefully at the end of the day we'll have very clear ground rules for how we move forward, and we'll be able to avoid these things in the future in the interests of Albertans.

The other legal matter I'm involved in. With this one it's a very ancillary role. In June of 2009 I myself as well as all of the other leg. officers intervened in a court application started by the Information and Privacy Commissioner. The Information and Privacy Commissioner took action to review an adjudicator's decision under the Freedom of Information and Protection of Privacy Act. The reason the other leg. officers and I sought intervenor status was that the finding of the adjudicator had implications for the protection we have always enjoyed under FOIP for the records of our investigations and my actions and the actions of the other leg. officers as officers of the Legislative Assembly. The outcome could in fact give the Information and Privacy Commissioner the authority and responsibility to look into and oversee our records.

This is a very different matter than the one I previously reported on. This is simply a matter where we're working co-operatively. In fact, the other four leg. officers have jointly hired counsel, and we're sharing the cost of that counsel to put our submissions forward and seek intervenor status to ensure that the privacy and confidentiality provisions of our legislation are not adversely affected as a fallout of the other action that the Information and Privacy Commissioner is taking.

As I understand, the Information and Privacy Commissioner was not satisfied with the result of the Court of Queen's Bench hearing on that matter and has filed an appeal. The other leg. officers have again asked for and been granted intervenor status and as of last Friday have filed a factum with the court. No court date has been set yet.

But for clarity, the matter with respect to myself and, I think, the other leg. officers is simply one of protecting our confidentiality provisions in our legislation and ensuring that we can move forward without any change in that. That's the only reason we're involved in that action. Any other elements of that action are the Information and Privacy Commissioner's, and I'm sure that if you have questions about that, you'll be asking Mr. Work.

For the year in question, 2008-2009, my office operated with a

budget surplus of I believe about \$90,000 if I remember right. Just as an update on that, as I mentioned, I vacated an investigator's position or didn't fill an investigator's position that became vacant this year to ensure that we still respected the fiscal restraints that guide us all in these difficult times. We also didn't backfill a maternity leave of one of our staff, and more recently, of course, Mr. Resler is now the responsibility of the Ethics Commissioner, so he's off my payroll as well. For this year, because of those moves, we'll be in a slight surplus position again.

Without covering ground that was covered before, I think that's all I have to offer you, and I'd certainly entertain your questions.

The Chair: Thank you very much.

Any questions?

Just one that I have regarding those carried forward. I looked at your pie charts with regard to the year in review on your carried-forward alternative complaint resolutions. I think I picked it out in your strategic business plan as well with regard to that amount. It shows the amount carried forward for this last year, but it doesn't compare that to previous years. I know that with your resolution you've got it at 100 per cent within two years for the most part. I was wondering, because it's not in the other pie charts, whether that carried-forward item is new. How does it compare with previous years?

Mr. Button: Just for clarity, are you talking about the carry-forward of formal investigations or of our alternative complaint resolution?

The Chair: The alternative complaint resolutions.

Mr. Button: There's carry-forward of the alternative complaint resolutions files. They're very short duration files. We have a business target to complete those investigations within 30 days. I believe I've got the material here somewhere. I think 90-some per cent of them are completed within 30 days, so carry-forward of alternative complaint resolution files is really just sort of an ongoing number that reflects that much.

Carry-forward of our formal investigations is more problematic because that reflects the larger part of our workload. That number has been edging upwards. The year prior to '08-09, you know, in '07-08, we had 278 open investigations as of April 1. As of April 1 last year we had 299 open investigations. Where we would like to see, through the various initiatives in the business plan, that number going the other direction, of course, in that we could gain some ground, as I mentioned, simply due to the volume of complaints coming in and the complexity of those investigations, with the resources we currently have we're not gaining ground. We certainly didn't gain any ground on it this year, I don't think, with having one investigator position vacant. It is something that we continue to pursue as an active goal.

We recognize that both for ourselves, for my staff, and for the citizens who are lodging those complaints, the time it takes to resolve a complaint is a significant concern and a legitimate concern. It's not where we would like it to be, but I can assure you that we're taking every approach as proactively and as innovatively as we can to find other ways to do that work. But there is a large number of those complaints that simply require a thorough investigation, and those investigations are very timely. As a result, as I mentioned, we're generally looking at anywhere between six and eight months after we receive and assess and analyze a complaint before we can get to the active investigation stage. That's really where the time lag is. Once we get into the investigation, by and large, depending on the complexity, we process them in what we think is a reasonable

period of time, three to four months. It's that lag time because of the backlog that is really problematic for us.

The Chair: Mr. MacDonald.

Mr. MacDonald: Yes. Thank you. Again good morning. On page 21 of your annual report you indicate that of your written complaints received, 7 per cent are around matters regarding the Workers' Compensation Board. My question is: of the 7 per cent – or it'd be over 60 written complaints; that's more than one a week – what percentage of those complaints regarding the Workers' Compensation Board have a formal investigation initiated by your office?

Mr. Button: Just give me a minute, Mr. MacDonald. I've got that here for the reporting period. In 2008-2009 at the start of the fiscal year we had 13 open files with the Workers' Compensation Board. We received 54 new files. Eight of those resulted in formal investigation and one in alternative complaint resolution, 37 didn't require investigation or were resolved in other ways, leaving us with 21 open files at the end of the fiscal year.

Mr. MacDonald: Thanks.

Ms Notley: I have several questions, but just carrying on with that one: with those 21 that remain open, those are still waiting for investigation, then?

Mr. Button: They would be in various stages, from complaints that have been recently received and are being analyzed and therefore in our system to investigations that would be completed and we have made recommendations or findings to the Workers' Compensation Board and everywhere in between those two sort of extremes.

10:20

Ms Notley: Okay. Thanks. I just wanted to jump back really quickly. Perhaps everyone knows it, and maybe I even do and I'm just not recollecting correctly, but you mentioned you'd started a systems based investigation and then delayed it because one of the parties to it went to court. Could you just tell me what that was with respect to?

Mr. Button: It was one of the health profession colleges.

Ms Notley: Oh, okay. The physicians, did you say?

Mr. Button: No. Physicians just became jurisdictional in the last month, and I don't believe we've received our first complaints yet. It was the certified dental technologists of Alberta. We had a number of open complaints and investigations ongoing which were coming together, and it was becoming evident that the only way to address them might be to address them systemically and look at the whole process. But as mentioned, previous court decisions have been very clear that the Ombudsman ought not to investigate matters that are before the courts or have been decided by the courts, and on the other side of the equation decisions have been very clear that the courts don't have jurisdiction to look into challenges of the Ombudsman's investigations for anything other than a matter of jurisdiction.

Ms Notley: Right.

Mr. Button: So we'll have to wait and see if at the end of the day we'll get the final decision of the court, and we'll assess it against

the complaints that we have and the matters being complained about and determine whether all issues have been addressed by the courts. If there are issues that have not been addressed by the courts, we'll still then be able to activate those investigations and continue to investigate those issues that the courts haven't made a decision on.

Ms Notley: Thanks. When you talk in your report about own-motion investigations, that's really what you're talking about with respect to the more systemic considerations.

Mr. Button: Yes. Many of the investigations we do are systemic in that we don't just look at the problem that the person brought forward; we look broadly at the program and at the decision or action that was taken that brought the complaint forward. We tend to do fairly systemic investigations of a lot of our complaints. The legislation, the Ombudsman Act, gives me the authority on my own motion to launch an investigation in the absence of a complaint from a citizen. That's where the terminology own-motion investigation comes from. The motion to bring the investigation forward is mine, not necessarily that of a citizen. In the Prescription for Fairness investigation we did have a number of complaints from citizens that had gone unresolved, and our efforts to bring about change had not met with results that were satisfactory to me. So I took it on my own motion to then launch the systemic investigation into that program.

Ms Notley: Just to review, because I believe I was unable to make a good portion or perhaps all of this meeting, you had been seeking to increase your capacity to do these kinds of investigations when you presented your budget request in the fall, correct?

Mr. Button: Yes. When I presented my budget request in the fall of 2008, I presented a two-part budget submission, one part sort of a status quo budget just dealing with inflationary issues and a subsequent submission for two FTEs for own-motion investigations in 2009-2010 and further for three additional FTEs in 2010-2011 for own-motion investigations plus two FTEs for mediation and alternative complaint resolution. Those were two issues that the committee and I discussed and agreed upon in July of 2008 when we met to discuss my reappointment.

Ms Notley: Right. Your report notes that your written complaints, which I assume are probably in many cases more substantive, have gone up 15 per cent, roughly a hundred extra complaints this year, ballpark, I think. How is that impacting your office with the reduction in FTEs at this point?

Mr. Button: Well, the number at the end of the day, I guess, sort of adds up. When we look at the number of open investigations that are carried forward at year-end, we're edging up every year, from 278 in '07-08 to 299 in '08-09, and simply our capacity to address the reactive, complaint-driven investigations, which are the mainstay of my office. Also, to do more in the way of systemic investigations and alternative complaint resolution obviously is affected by the resources that we have.

I have 25 FTEs for the province of Alberta. My counterpart in Saskatchewan, with a population of, I think, around a million or just less than a million, has 21 FTEs. My counterpart in British Columbia, with about a million more residents, has 42 FTEs. We have been and I have been successful with the committee's support in the seven years I've been here in increasing our FTE allocation from what it was when I arrived, but quite clearly we're still really challenged to provide the kind of service that I think we need to be and should be providing to Albertans with the resources that we have.

I'm not crying. I recognize the dire fiscal financial situation that the province faces, and I accept the decisions of the committee and the Legislative Assembly with respect to budgets. Maybe today is not the day, but I would hope that in the not-too-distant future, when things improve, we'll be able to move forward and properly resource the office so we can deliver the service that we should be delivering to the Legislative Assembly and to Albertans.

Ms Notley: Thank you. The irony kind of is, of course, that with budget reductions the kinds of problems that attract your services probably tend to grow.

Mr. Button: I think that's part of it, certainly. The numbers of people that are dependent on the social programs, the social net, of course, increase, and that brings about more of those kinds of decisions that people often need to come to the Ombudsman to complain about. So it is a bit of a double-edged sword.

Ms Notley: I had just one more question. With the increase in complaints is there any particular area which dominates that increase, or is it consistent with the breakdown of complaints that you'd had previously?

Mr. Button: It has changed over the years that I've been the Ombudsman.

Another factor in workload is that a much larger percentage of our complaints were from provincial corrections. As much as 25 to 30 per cent of our investigations when I became the Ombudsman were within provincial corrections, and a lot of those complaints tend to be simpler, less complex types of investigations without so many issues in them. We've done a lot of proactive work with the Solicitor General's department and in those years have been able to work with them to implement some strategies that help complaint management within adult corrections and thereby have reduced considerably the numbers of complaints coming forward. I think we're down to – about 12 per cent of our volume is from Alberta corrections versus 25 to 30 per cent six or seven years ago.

The unfortunate reality of that is that the other complaints that have gone up are the more complex, more lengthy investigations, which take more time and more resources.

Other than new jurisdictions, which are just coming on stream, as I mentioned, and starting to add to the volume, we haven't seen significant increases. In fact, we've seen some moderation in the Appeals Commission for Alberta Workers' Compensation complaints. They're at or below levels that they were at a few years ago.

There's nothing that really sticks out and says, you know: this is a problem area. It's just overall. I think your point is well taken that the situation, the economic realities that Albertans are facing, puts more people in a position where they need services, and that just results in more decisions and reductions, and constraints within the public service may well lead to more of those kinds of issues because you have more people working harder and trying to do a good job but carrying ever-increasing file loads.

Ms Notley: Thank you.

The Chair: Mr. Horne.

Mr. Horne: Thank you, Mr. Chair. Good morning, Mr. Button, and thank you for a very comprehensive report. I have a couple of questions for you, but before I get to those, I just wanted for the record to specifically compliment you on the report Prescription for Fairness. I thought it was an excellent analysis of some issues that

have been significant for a number of years in people's ability to access services under this program. I just wanted to make that statement. Having some familiarity with the issues myself, I thought it was an excellent piece of work that may in fact help guide future policy development in health care and perhaps other areas in social policy.

Mr. Button: Thank you.

10:30

Mr. Horne: I don't have any specific questions about the statistics in your report, but just kind of picking up on the theme that you just explored with Ms Notley, own-motion investigations, in particular looking at things at the systemic level, I can certainly appreciate how the economy might increase the demand for your services through additional complaints, but I would also think – and I'd like your comments on this – that there may be some opportunities if we look at the overall theme of administrative fairness and the extent to which administrative fairness issues lie at the root of the complaints that you're investigating. I'm just wondering if, in your opinion, there are opportunities to look at some common strategies government-wide that could be deployed, with the benefit of your advice, to actually help pre-empt complaints that we may see in the future.

Most of the report deals with specific programs within individual ministerial portfolios, and I understand that. I understand that it's a complaints-driven process, but I'm just wondering if you have any thoughts on that. If you agree that that might be an opportunity, what are the implications of current legislation regarding your ability to do that?

You know, just one other point by way of background. What sort of got me thinking about this was the Public Agencies Governance Act. Through that legislation we have streamlined a lot of the processes and the accountability structure around all agencies, boards, and commissions. Having been the sponsor of that bill and involved in the discussion of it while it was being drafted, certainly part of the thought was to look at what we could do to pre-empt complaints, to improve the perception and the experience of administrative fairness. Surely, there must be some opportunity in your portfolio to look at the same thing.

Mr. Button: Thank you, Mr. Horne. I've discussed and commented previously to this committee on the public agencies governance framework as it existed prior to the act being brought forward. I'm not sure if I'm right up to date or not. I don't know if the act is proclaimed yet. I think we're awaiting proclamation of the act.

Certainly, in the report Prescription for Fairness I've highlighted the application of the public agencies governance framework to committees and appeal panels such as I was investigating in that complaint, or that file. Also, I've highlighted in that report and otherwise in reports and presentations I've done that the public agencies governance framework and now the act when it's proclaimed provides a lot more in the way of transparency: competency-based appointments, reporting publicly, the requirement for annual reports, performance evaluation of agencies, boards, and commissions, all things which lead to transparency, which lead to accountability. Those are the underpinnings of administrative fairness.

I really do believe that the Public Agencies Governance Act will take us a long way with respect to agencies, boards, and commissions. As you noted in reading Prescription for Fairness, I took the opportunity to remind anyone else who might read that outside of Alberta Health Services that they ought not sit back and think,

"Well, you know, I'm sure glad the Ombudsman investigated the Alberta Health Services program and didn't investigate me," because proactively there are some good messages for most departments, agencies, boards, and commissions in the findings in that investigation. As I commented, a great number of them have application in a lot of the jurisdictional entities that we investigate.

Your comment, I think, goes further into the educative process in the making, adherence to, and understanding of administrative fairness, something that organizations stand up and say: this is what we're all about. I think that in delivering public services, that should be a central theme. I've done a number of presentations to various departments, agencies, boards, and commissions on administrative fairness and what it constitutes and why it's important. Those have always been well received, and I continue to receive requests from jurisdictional entities to do that.

I've also undertaken recently to fly out a bit of trial balloon, let's call it. I met with two organizations that I have a lot of investigations with. One is the maintenance enforcement program under Alberta Justice, and the other is the Workers' Compensation Board. I suggested to them and provided to them some material on the creation of administrative fairness offices within their entities, creating an entity within that type of organization whose focus would be, as informally as possible, to facilitate fairness for their clientele. This isn't something that I have dreamt up. It's something that I have borrowed from other jurisdictions. The counterparts to Alberta workers' compensation in many of the other jurisdictions have that type of a provision.

Many of you might be aware of the government relations department of the Workers' Compensation Board in Alberta that provides a very good service to offices like mine, to MLAs who have questions with respect to constituents who have come forward with WCB issues. But they don't have an office whose sole purpose is a vehicle to provide explanations and to facilitate resolution as informally as possible of complaints that injured workers might have with the WCB. So I met with the chair and the CEO and have discussed that with them. I talked to the CEO, actually, just a couple of weeks ago, and I'm anticipating a preliminary response from him as to what assessment they've done.

I think there is merit in those kinds of things, in saying in an organization: "We value administrative fairness. It's important to the way we do our business." This is what it is. We need to understand it. We need to make sure that everything we do every day in delivering service to Albertans as public agencies or as departments of government is based on administrative fairness principles.

Mr. Horne: Thank you.

Mr. Bhullar: Thank you very much, Mr. Button. I just wanted to follow up. You said that you've got some legal issues with the Alberta Human Rights Commission?

Mr. Button: Yes.

Mr. Bhullar: If my understanding is correct – and I'm really just seeking clarification – you wanted to conduct an investigation of their process?

Mr. Button: I've received complaints from citizens who have complained that the actions or decisions of the Alberta Human Rights Commission were unfair. Based on receipt of those complaints and our analysis of them, I've opened and conducted investigations.

In one particular investigation, that is the centre point of a court challenge, I made a recommendation to the chief commissioner that he provide a better explanation of the outcome of the decision of the Human Rights Commission to the complainant. The commissioner of the day, Mr. Mackintosh, refused to do so on the grounds that either (a) I didn't have authority to investigate his actions or (b) even if I did have authority to investigate his actions, he didn't have authority under his legislation to implement my recommendations. Both those issues were addressed by the court. The Court of Queen's Bench issued their decision in April of 2008 quite clearly outlining that I do have the authority to investigate complaints about the actions of the Alberta Human Rights Commission and the chief commissioner and that the chief commissioner, if he wishes to do so, has the authority pursuant to section 21.1(1) of the Alberta Ombudsman Act to implement my recommendations.

As in all of my investigations I only make recommendations, and the authority has the right to refuse to implement my recommendations. When that happens, of course, the Ombudsman Act gives me the jurisdiction, first of all, to take the matter to the minister responsible, table the report, and ask that the minister attempt to resolve it. If that isn't successful, I have the other alternative which is to table the report before the Legislative Assembly and have it debated in the House.

Mr. Bhullar: The complaint that you received: was it that the decision of a tribunal or an investigator was not fair?

Mr. Button: It was the decision of the investigator and chief commissioner. It had nothing to do with the tribunal.

Mr. Bhullar: Okay. Your recommendations focused on that as well?

Mr. Button: My recommendation was simply to write an addendum to the original decision to further explain to the complainant why there was no redress available to him.

Mr. Bhullar: Fair enough. Thank you.

The Chair: Mr. Quest.

Mr. Quest: Thank you, Mr. Chair. Just to back up to the conversation we were having earlier about resources, number of investigators and so on, making some comparisons to B.C. and Saskatchewan. Just looking at the completion time for investigations on written complaints, the 90 days and the 180-day measures, which obviously are creeping up a bit, do we have comparable information for Saskatchewan and B.C., what their completion times are?

10:40

Mr. Button: I don't have. Notionally I can tell you that in discussions with my counterparts from those provinces I think they are doing better than we are. One of the problems with doing a comparative analysis of these kinds of statistics is that we measure things in these different jurisdictions very differently. I have visited the Saskatchewan office and the B.C. office, and I've looked and tried to find an apples-to-apples comparison to get those kinds of concrete numbers. Simply because of the way they categorize their investigations and their complaints – what they call a complaint and what I call a complaint are two different things – it makes it very difficult to do those kinds of comparisons. But I do know that the ombudsmen in both B.C. and Saskatchewan have similar targets in their business plans and have made some inroads in reducing those

time frames for investigations. I'm sorry that I can't give you anything that is a concrete, fair comparison between the jurisdictions.

Mr. Quest: It would be interesting to see how we were doing. Great. Thank you.

The Chair: Any other questions or comments?

Anything to wrap up, gentlemen?

Mr. Button: No. I appreciate the questions. Mr. Horne's comments I take to heart. I think you're on the right track there. There are things that we can do proactively, and we certainly look forward to the opportunity to pursue some more of that proactive work. But, obviously, my responsiveness to Alberta's citizens in investigating their complaints has to be my first priority, and that's really our focus right now.

The Chair: Well, thank you very much, gentlemen. It's been very informative. Thank you very much for coming. We look forward to meeting with you again, perhaps this fall, when we go through budgets again.

Mr. Button: Thank you.

The Chair: We'll take a short break here until our next officer.

[The committee adjourned from 10:42 a.m. to 10:59 a.m.]

The Chair: Good morning to our Ethics Commissioner and his staff. For the record could we please go around the table and introduce ourselves. I'm Len Mitzel, the MLA for Cypress-Medicine Hat, and I chair this committee.

Mr. Lund: Ty Lund, Rocky Mountain House.

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

Mr. Campbell: Robin Campbell, West Yellowhead.

Mr. Elniski: Doug Elniski, Edmonton-Calder.

Mr. Horne: Fred Horne, Edmonton-Rutherford.

Mr. Bhullar: Manmeet Bhullar, Calgary-Montrose.

Ms South: Karen South, office of the Ethics Commissioner.

Mr. Wilkinson: Neil Wilkinson, Ethics Commissioner.

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

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

Mr. MacDonald: Hugh MacDonald, Edmonton-Gold Bar.

Ms Notley: Rachel Notley, Edmonton-Strathcona.

Mr. Quest: Dave Quest, Strathcona.

Mrs. Sawchuk: Karen Sawchuk, committee clerk.

The Chair: Thank you.

Before we begin, I'd like to note that 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. We're all aware of the unique positions the officers occupy. We respect your independence, and I want to reassure you that the purpose here is not to second-guess any decisions you've made. The first committee meeting to review the officers' reports last February was very productive and provided members with an in-depth look at the operation of the officers of the Legislature.

I'd ask if you'd proceed with the overview of the 2008-2009 annual report as well as your report on performance measures, and then we'll leave time open for comments and questions.

Office of the Ethics Commissioner

Mr. Wilkinson: All right. Thank you very much, Mr. Chairman and members of the committee. On behalf of our team here today it's certainly a pleasure to be back for our second meeting with you regarding our annual report, and we look forward to your feedback as we move forward.

I start this talk with a bit of sadness because Karen South is retiring. Her long-awaited retirement, her long, I guess, time in preparing for it has now come to fruition, and she is retiring on April 9 of this year. The good news is that she has been very co-operative and very helpful in our transition, and there are many aspects of that that we can discuss with you, not the least of which is the reception that we're having for her. I know you'll be getting an invitation from the Speaker soon, but just so you'll know the date, it's March 24. It starts at 9:30 a.m. in the Carillon Room, and of course it will be a celebration of her work in the Legislature. It's kind of an anniversary today in that 29 years ago today she joined the Legislature. Congratulations.

Of course, there will be more talk about her performance then, but just for the record and for this committee I'd like to say a couple of extra things. As you know, Karen has been an outstanding civil servant throughout her career. She has really set the tone for the office of the Ethics Commissioner for she was here before the first commissioner. She actually set up the office 18 years ago, and she has of course played a very important role in the success of the office. She was recognized this September by the organization called CCOIN, which is the conflict of interest commissioners from across the country, for her outstanding performance in her work for the association but also the furtherance of ethics principles throughout the country. Of course, she has really big shoes to fill.

We are very pleased that a gentleman that you know and have worked with before and respect, Glen Resler, to my far right, will be joining our team. We are very pleased that he was able to come on the 4th of January. Part of our succession is to have three months' time – good, concentrated, quality time – with Karen so that he can receive lots of good information and training from such an outstanding individual as Karen. He only has three months to learn everything that she knows.

11:05

You know about him, but I think I should say a couple more things on the record as well just so you know what an outstanding individual we are getting here. First of all, he has served as a public servant for the last 20 years. In 1990 he started with the office of the Auditor General as a staff auditor. He's held various positions since. Number one would be with Alberta Municipal Affairs as municipal treasurer with improvement district No. 17, near Slave Lake. He was social housing and financial adviser for southern Alberta and

business manager with the assessment branch. During that time he successfully completed his CMA designation with the Society of Management Accountants of Alberta. Then Glen worked with Elections Alberta as a director of registrations and financial operations and, as you know, recently as director of corporate services with the Alberta Ombudsman's office here.

With us as well is Brad Odsen, to my right, who has been introduced to you before. He, as you know, is our lobbyist registrar and general counsel for our office as well.

Now, members of the committee, as you know, I've completed my first year, just a couple of months beyond my first year, and I thought you might like to have just a few impressions very briefly of my office and my impressions. I can say that it's certainly been an honour and a privilege and a sense of great personal satisfaction to be able to serve the Legislature of Alberta, to serve you, to work with this committee and with the team that we have here at our office, and through you to serve the citizens of Alberta. I've really appreciated this opportunity, and I thank you for it.

One of the things I've discovered that I think is fundamental and key for me and for the citizens of Alberta is that we really do have, in my view, an excellent Conflicts of Interest Act. It goes beyond the act; it's much more than that. The act is a good code, but the fact is that there's a culture here amongst legislators, a culture among senior officials, in my view; that is, to not only follow the act but to go beyond that. And that's much appreciated by us. It is a self-administered act. You set it up that way, and it's very clear that you mean to be very careful in your day-to-day decision-making to consider the Conflicts of Interest Act.

I certainly agree with Professor Greene. I won't quote him completely because the quote is in the information that we gave you regarding performance measures, that separate paper that the chair referred to. Professor Greene says that "the concept of independent ethics commissioners who are officers of the legislature . . . is a Canadian innovation that is working." To quote him further, "It is clear that Alberta's office of the ethics commissioner has been successful." Having said that, of course, I can't take any credit for that, but I do pass on my congratulations to all those folks who have come before me – I stand on some pretty big shoulders – making sure that this office has been so successful.

One of the things that I've enjoyed the most is getting an opportunity to continue to meet with all legislators. Karen told me that the disclosure meetings would be what I would enjoy the most, and indeed they have been. The opportunity to meet with some very intelligent, very dedicated, very ethical people to learn about their challenges, their opportunities, and how this province is moving forward and in some small way how our office can help certainly has brought a great deal of satisfaction to us as well.

I also want to thank not only the team I mentioned but the part of the team that's not here, Val Henkel and Louise Read, who serve as our administrators, and Bob Clark and Don Hamilton, former commissioners, for sharing their experiences with me.

Now, to switch gears a little bit, I think you'd like to know, even though it's not covered under this reporting period, a little bit about the lobbyist registry, which had, we think, a very successful launch back on September 28. Just how is it doing? How many registrations do we have? We get these questions often, so I thought, if you'd allow me, I would just go on and give you a little more current information than you have in the report. Of course, the registry wasn't even launched at that time. Would that be all right, Mr. Chair?

The Chair: Yes, please.

Mr. Wilkinson: Okay. All right. We now have, Brad tells me, over 200 registrations that have been completed, and he expects probably to hit about 300 before the flurry is over. That would be consistent, he tells me, too, with other jurisdictions, looking at their population versus our population. So the compliance rate has been very high. And to promote the registry, Brad has been out since he started on . . .

Mr. Odsen: May 4.

Mr. Wilkinson: May 4. Thank you.

He's given 30 presentations to December 31. He has given seven to government, government agencies. Two more are planned – one this week and one next week – with Joan Neatby, and we've also presented to all of the caucuses. Brad has had two articles published in two law magazines in Alberta, and the reach of those magazines, they tell us, is around 260,000 people.

Because our outcome and performance measures are important to him, as they are to us, as they are to you, he's developed some here, and I'll just briefly go by them for you. He has received 512 calls since he started and 3,487 e-mails. His goal is to return voice mail in four hours. His target was to do that 90 per cent of the time; he's done it 98 per cent of the time. E-mail: his goal there is to get back within one business day. His target was 90 per cent of the time; he's done it 95 per cent of the time. Service requests: to get back to them within two hours. His goal was 95 per cent; he's achieved 99 per cent. To resolve those service requests within two days: his target was 75 per cent, and he's achieved 85 per cent.

I'm not here to tell you these things to blow our horn but just to give you some sense of how legislation that you set up, a program that you set up is doing. We're very grateful that you assigned this to us, and all members of our office, of course, are involved.

I think another outcome measure is a survey of people who actually use the registry, the actual registrars, people registering: how do they feel about it? Well, I've reviewed a lot of e-mails that have come in – there have been lots of them, as you know – and all except one have been very positive. I just want to give you a sample very briefly of some of the things that our clients are saying. I want to emphasize that this is a credit to our legislators as well for the act you've set up and the way you've set it up and also a compliment to Brad, of course, too.

These e-mails are directed at Brad: I just want you to know that you have been terrific through the whole process, which is a sentiment shared throughout the government relations community, and my personal experience with you as we have worked through this has been superb. The next one: thank you so much for your comprehensive response, Brad; this has been very helpful and addresses everything I needed to know. You'll probably get a kick out of this one: good morning, Brad. Thank you. We have successfully filed the registration. The registration process is easy to complete, especially when you read and follow the instructions. Thank you again for all your help. The last one: dear Brad, thank you so much for your thoughtful and insightful presentation to our registrars; we appreciate the time and attention to the college inquiries.

As far as hits are concerned, lots of people talk about these, so I thought I'd better throw these in as well: 56,328 hits since we started on the website. Brad has fit very well, you know, within the culture of this office, that was established a long time ago, and that is to be there to help people and to do the best we can for people to be successful and to stay out of trouble. That's what we've done.

On the ethics side things continue much as usual, as you can see by the report, but we do have some new performance measures in

there for you, and I hope you find those helpful, such as the report on compliance. We have a hundred per cent compliance, always have, and it's a goal to continue that, but we're reporting that to you now, compliance on disclosure forms being into our office on time. There's a chart 2, that talks about investments, and also a chart 3, that talks about our response time. Those are all new this year, and we'll continue those over in our budget presentations and others as well, depending on your feedback.

That's my presentation, Mr. Chair and members of the committee. We certainly would appreciate your feedback on what I've said, the report, and also on what performance measures you would like to see going on in the future.

The Chair: Well, thank you.

Are there any questions? Mr. Marz.

Mr. Marz: Yeah. Thanks for the report, Neil. First of all, I'd like to say all the best to Karen as she's looking to end a very stellar career. I very much appreciated it every time I phoned over there and had any questions. Her advice was always valued, and I'm sure I speak for all of us when I say that. So all the best to you, Karen, as you go forward and start your next career, whatever that will be.

11:15

Neil, on the issue of the Alberta capital bonds I understand that initially the advice was – and I can understand this based on the precedents – that members could participate in that. That decision, I think, was changed, and I'm glad to see it was because the members participated directly in the decision to do that. I think the optics of participating, being able to buy these bonds – it might be okay, but the optics wouldn't be good, so I was really glad to see that change. You can comment on it if you want, but I just wanted to make that comment on that. I understand that in years gone by members in previous administrations could participate in those types of things, but I'm glad to see that that decision was made.

Mr. Wilkinson: That decision was not made by us.

Mr. Marz: Oh. I thought there was an opinion put forth by your department on that.

Mr. Wilkinson: The opinion put forth as a general opinion – I'm not betraying any confidentiality here – was that it would be all right for members to participate as they did the last time, but of course it's a matter of personal choice if a member does not wish to do that.

The reason in part that we made that decision – as I recall, it was some time ago, Mr. Marz – was that the rate that is set is set more by market forces, so when you set the rate, you're not setting it to further any private interest, which is the key part of the act. We don't see in any way with you participating, buying these bonds, because of the way the decision is made and how the rate is set, that people would feel, nor do we feel, that it would further your private interest. But if a member wishes to not buy those notes, then that's, of course, fine with us.

Karen, would you like to elaborate on that at all?

Ms South: The commissioner has covered it. That was the basis. The decision that you would be involved with is approving a market-rate decision, and members cannot influence the market.

Mr. Marz: So basically your advice remains the same: you have no problem with members participating.

Mr. Wilkinson: That is correct. But can I ask you where you got that information, Richard?

Mr. Marz: I can't recall right now. When you read about eight inches of paper a day, it's hard to remember where that particular information came from.

Mr. Wilkinson: I understand. Well, if you're able to track it down . . .

Mr. Marz: Yeah, I'll do that.

Mr. Wilkinson: I'm positive that it didn't come from our office, but if there's a perception that it did, then maybe that's something we need to deal with.

Mr. Marz: Well, I feel it's always best to err on the side of caution rather than move ahead and create a perception in the public that we're trying to further our own ends.

Mr. Wilkinson: And, Mr. Marz, we applaud that. As I said in my opening comments, there's a culture here, you know, of ethics beyond reproach. Many members do go beyond what's required in the act, and we applaud that.

Mr. Marz: Okay. Thanks for the clarification.

The Chair: Thank you. Any other comments? Any other questions?

I have one, I guess. The conflicts of interest brochure that you put out I think was very good. I think it was helpful to everyone, you know, when you laid everything out. I'm glad that that was given out to everyone. If there's any requirement to update it, we'd certainly welcome that as well as we move forward over the next few years.

Mr. Wilkinson: Thank you.

The Chair: I just wanted to make a comment. You mentioned the people who use the registry. Your example must have been a woman who did this because men aren't generally known to follow directions or to read instructions too well.

Mr. Wilkinson: Due to privacy reasons I'm sorry, but I can't reveal that, Mr. Chair.

The Chair: Any other comments?

Well, hearing none, I guess we'll look forward to the meetings that each one of us is going to have individually in the next little while. If there's nothing else, this was a very, very short presentation and meeting. Do you have any closing comments?

Mr. Wilkinson: Well, Mr. Chairman and members of the committee, yes, I do. I just want to let you know the plan for the future of this office. Some of you may wonder about the plan after Karen, post-Karen. Where are we going after Karen? She's been such an important part of this office. The strategic plan we have laid out for that is coming along very well, and Karen has been very co-operative. She's developed a tremendous number of papers for us to follow and really established some outstanding work for us to refer to once she's gone. Of course, Glen said to me that one of the things he appreciated most about coming to our office was the fact that he had a chance to learn from Karen South for three months before she

left. We're looking forward to providing the same level of service that you've been accustomed to and for the same trust relationships to continue.

Having said that, Mr. Chair, thank you for your time.

The Chair: Thank you.

Before we go, though, on behalf of the committee – and I know it's been mentioned a couple of times now – I'd certainly like to pass on our best wishes to Karen, who's going to be retiring. I guess this will be your last meeting with this committee, won't it?

Ms South: Yes, it will.

The Chair: Thank you so much.

With that, we're recessed now until after lunch. Thank you.

[The committee adjourned from 11:22 a.m. to 12:15 p.m.]

The Chair: Good afternoon, everyone. I'll call the meeting back to order. First, I want to thank the Auditor General and his staff for accommodating us with this change. Things were moving along quite quickly. Thank you very much for coming in early.

For the record could we please go around the table and introduce ourselves? I'm Len Mitzel, Cypress-Medicine Hat, and I chair this committee.

Mr. Lund: Ty Lund, Rocky Mountain House.

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

Mr. Campbell: Robin Campbell, West Yellowhead.

Mr. Elniski: Doug Elniski, Edmonton-Calder.

Mr. Horne: Fred Horne, Edmonton-Rutherford.

Mr. Olson: Jeff Olson, CAO, Auditor General's office.

Mr. Dunn: Fred Dunn, Auditor General.

Mr. MacDonald: Hugh MacDonald, Edmonton-Gold Bar.

Ms Notley: Rachel Notley, Edmonton-Strathcona.

Mr. Quest: Dave Quest, Strathcona.

Mrs. Sawchuk: Karen Sawchuk, committee clerk.

The Chair: Thank you. I know that you've provided a written response to a question put to you at our November 20, 2009, meeting. The clerk is handing that out at the moment.

Before you begin, I'd like to note that 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. We're all aware of the unique positions the officers occupy, and we respect your independence. I want to reassure you that the purpose here is not to second-guess your decisions. The first committee meeting to review the officers' reports last February was very productive and provided members with an in-depth look at the operations of the officers of the Legislature.

With that, Mr. Dunn, I'd ask you to proceed with the overview of the annual report.

Office of the Auditor General

Mr. Dunn: Okay. Thank you, Mr. Chairman and committee members. Before I get too far into matters, I'd like to introduce a few of the Assistant Auditors General who have chosen to join us. I invited senior people from my office to attend today if they had the time and they had the ability to come down here, just to hear the questions and the responses that we provide. Obviously, this will be my last, I expect, attendance before this standing committee, so I thought it would be important for them to hear.

We have Merwan Saher, Ed Ryan, and Jeff Dumont. You have probably met them at different times. Those of you who serve on the Public Accounts Committee would have seen them at various Public Accounts Committee meetings. They have chosen to join us here today. They'll hear the questions that you have asked, and then should there be further requirements for us to supply material after this meeting, we'll do our best to get it out prior to my departure. Should my departure come first, then it will be up to the Assistant Auditors General together with Jeff Olson to make sure the materials are supplied to you appropriately.

The material that we've provided to you in a PowerPoint form deals with it in two ways, first the past and then a little bit of the future. I respect what the chair has just read out to us about holding the officers to account. I would like to help the committee in this regard. If you can keep your questions initially to the past – and I know it may be somewhat difficult because some of this is a year old – before we move into what we're willing to engage into in the future. What is the office currently working on, and what might the office consider in the future? But if you first deal with the past and then we go into the future, that would be helpful.

If there are no questions regarding what I've said, I'm going to turn it over to Jeff Olson, who will walk us quickly, to keep us on time, through the handout material that you have before you.

Mr. Olson: Thank you, Fred, Mr. Chairman, and committee members. Hopefully, all of you have the package. If you don't, I do have some extra ones here. I'll be quick. I expect this presentation will take less than 15 minutes, which will allow time for questions during the presentation or after.

On slide 2 we talk about objectives. The first objective of today's presentation is to discuss the office's '08-09 annual performance report, that includes discussion on results analysis on both financial and nonfinancial key performance measures. As Fred mentioned, the second objective will be to provide you with some additional forward-looking comments on initiatives for the office and the upcoming April Auditor General report.

Slide 3. We've had a successful and challenging year for the OAG as we delivered again two multiminity public audit reports to the Legislative Assembly of Alberta. The intent of two reports was that we wanted to provide timely reporting of recommendations to improve the use of public resources.

Next slide. Of course, the major outputs of our office are those public reports, in this case October 2008 and April 2009. Thirteen major systems audits completed with recommendations attracted the most attention, but it's important to recognize that 183 assurance audits are done on the Alberta government and its entities, who collectively spent about \$37 billion in taxpayer dollars. All these reports resulted in management letters with recommendations to departments and agencies to improve the efficiency and effectiveness of their operations. It is the more significant ones that are selected to be reported on in our two public reports. In total for both the October 2008 and April 2009 reports, assurance and systems audits, we reported on 136 recommendations to the Legislative

Assembly, of which 44 required a government response.

Another major activity for the office is our work in supporting the Public Accounts Committee, where in the year 2008-2009 19 meetings were held on matters included on reports. All this is crucial in meeting our mandate and responsibility to you.

On slide 5 we talk a little bit about the report of the Auditor General October 2008, and we report on some of the results. Actually, there are eight major systems audits there. They were chief executive officer selection, evaluation, and compensation. The focus was on CEOs of agencies that are responsible for programs and services that affect all Albertans. The CEOs set the tone of these agencies; therefore, the selection, evaluation, and compensation is very important.

Protecting information assets. Albertans expect the confidentiality, integrity, and availability of this information to be assured.

Alberta's response to climate change. This was from the perspective of the target set out by the GOA on its two climate plans in 2002, 2008.

ATB Financial treasury management. ATB's returns, both the gains and losses, belong to all Albertans; therefore, it is important that we audit how ATB manages its funds and risks appropriately.

Alberta mental health service delivery system. The audit was done on the transformation of the mental health system as set out by the province's health plan in 2004.

On the next slide – and we're continuing with the October 2008 report – is Alberta Investment Management Corporation, AIMCo, an audit of the internal controls of the newly formed corporation as it manages \$70 billion.

Universities academic pension plan unfunded liability, an audit of the four universities in regard to those pension plans.

Finally, in the October report, managing Alberta's sand and gravel, a review of how the department of SRD manages these natural resources and the administration and compliance of the operators involved in this area.

The April 2009 report on the next page. Although the April 2009 report is released in the 2009-2010 fiscal year, much of the work is completed in the 2008-2009 fiscal year. In the Auditor General report April 2009 we released results of three other major systems audits: one, Bow Valley College, a focus on contracting in the international education workplace training department; University of Lethbridge, looking at the processes for investing in research; and one overarching review was improving financial reporting and internal controls in colleges. Here we reported on essentially a recurring theme, a weakness in colleges' financial reporting and internal controls. In addition, there were two follow-ups, reforestation and drinking water.

On the next page, results analysis from a financial perspective, I would like to highlight the following. As you know, the Legislative Assembly funds our operations. For the '08-09 fiscal year we were within one-tenth of 1 per cent of our approved combined spending of operations and capital, but it's not unusual to have a surplus or deficit in any one fiscal year due to changes in planned audit work because our audits, both systems and attest projects, span two fiscal years.

12:25

Of course, within the bottom line of a \$16,000 surplus we have some variances, and I'd like to highlight the major ones on the following slide: temporary audit services budget savings of about \$105,000 from better pricing through the use of lower cost staff from independent contractors; professional fees, training, and development savings of \$100,000 due to the cost-effective purchase of training materials from an audit firm instead of developing our own

from scratch. We did in that case do some development work after we got it, of course, but you're not starting it from scratch, so it's a very cost-effective way of getting our training materials together.

Salary and wages and employer contributions exceeded budget by .1 per cent, or \$71,000, as we were able to attract and retain a higher level of professional staff than we had anticipated.

Capital investments budget was exceeded by about \$59,000 due to the replacement of an IT server room's air conditioning – that was a critical thing where we were just about going to lose it, and without that our systems would be down – also, infrastructure, software additions resulting from the Alberta Health Services entities audit.

Field audit travel is up, and this is, again, just field audit; it's not travel for going to courses or anything like that. It's due to the fact of an increase in the number of systems audits and because we picked up the Alberta Health Services test audit, the entire sector. There are some miscellaneous variances. The end result was about a \$16,000 surplus.

Now, the next part of our annual report, on the next slide, deals exclusively with results in the '08-09 fiscal year for our performance measures targets as set out by our business plan. This is important as our financial accountability to you is our accountability in regard to nonfinancial performance measures. I'm going to highlight a couple of them. The issuance of reports relates to goal 1 of our business plan to conduct independent audits that confirm the reliability and relevance of financial and nonfinancial performance reporting to the Legislative Assembly. As you can see from this slide, the issuance of reports with a target of June 30, we did better by almost two weeks. The timeliness of our rework is important to the effectiveness of our reporting to government, and we work hard with Treasury Board and the other departments in meeting this goal. So we appreciate the hard work on their behalf in meeting these goals.

On the next slide, as part of our performance analysis for goal 1, spending on a percentage basis, is a target for our office's assurance system core businesses. A test auditing is a relative constant where we have a legislative requirement. With the resources in our current 2010-13 business plan, the one that we're in going forward next year, we have revised our targets to the costs dedicated to a test auditing in the high 70s per cent and costs dedicated to systems audits in the low 20s. This was mentioned to your committee in our budget meeting held in November of 2009.

On the next slide, probably one of the most important next couple of slides, when it comes to value being provided by the office to you, our performance measures on the Auditor General recommendations to the Legislative Assembly are essential. It aligns itself with the second goal of our business plan to provide solutions to improve government systems, including organizations' systems for identifying and managing their business risks. Well, we did not meet our target of 95 per cent of the Auditor's primary recommendations accepted. The actual result from the government response was 77 per cent, and that's 32 out of 42 numbered recommendations, a decrease of about 14 per cent compared to last year. Note that as of today's date we have not received a response from the government on the April 2009 report.

We actually apply a high standard in what we consider accepted. Out of the 10 that weren't accepted, five were accepted in principle, two were still under review, but for the first time there were three that government has advised us that they consider under a new category as policy matters outside the purview of the Auditor General.

The next slide. It's also very important to this office, once a recommendation has been accepted, that we follow up to make sure

it is implemented and not shelved as just a good idea. We missed our target of no unimplemented primary numbered recommendations after three years of government accepting it. As of March 31, 2009, 27 recommendations have not been implemented within three years, but we consider that 26 of the 27 have actually made satisfactory progress, with only one being slower than planned.

A new performance measure for this office this year is our staff turnover rate. We've met our target of less than 20 per cent. In fact, for 2008-09 the staff turnover is 16 per cent. This is an important measure for us because overall we've had as high as 22 per cent, but particularly in our management levels; it was as high as 30 per cent in the previous years. So it's something that we have to really, really work on.

The next performance measure is troubling to the office, and that is our pass rate in professional accounting progress when compared to the national average. In prior years we've had an excellent record of exceeding the national average. If you look there, you can see us at 92 per cent in '07-08, but for '08-09 we did not meet our goal to exceed the national average of a 72 per cent pass rate, and in fact our rate was 63 per cent. We continue to work on improving these results. So that was the first objective.

Our second objective for the presentation was actually, as Fred said, looking forward and – you shouldn't be surprised after my previous comments – staff training. As mentioned, we'll be devising a plan to improve our student results in the next business plan cycle. Continuous changes to our profession such as the new Canadian auditing standards and international financial reporting standards will require a concentrated effort in this area.

Then, of course, ministry performance measures. As we've indicated before in previous meetings, we are engaged in reworking performance measures reporting with the Treasury department. This year saw improved changes in the overall government report, Measuring Up. The coming year will see some changes at the department level, where we'll be focusing on key individual ministry performance measures.

Finally, we need to increase emphasis on control testing to manage risk in the stewardship of government, public resources.

Again, looking forward, of course, the next report we have coming up is the April 2010, and I'd just like to highlight some of the things we're expecting to report then. Number one, land titles systems, mortgage fraud vulnerability: assess if there are adequate processes in place to identify and mitigate the risk of mortgage fraud through the misuse of the land titles system. Workplace health and safety: does the department have adequate systems to promote, monitor, enforce, and report on occupational health and safety goals and objectives? Managing Alberta's water supply: we'll focus on Water Act regulations, on capital management, and actually the financial, technical, and leadership resources there. Oversight of financial institutions: review if the department has adequate processes in place to fulfill its responsibility to monitor the safety and soundness of Alberta's financial institutions. Public security, peace officer program: we'll be looking at that. School P3s and education extends our work on the government systems in regard to P3 opportunities.

I'd like to leave it at that and hopefully respond to all your questions.

The Chair: Any questions? Mr. MacDonald.

Mr. MacDonald: Yes. Thank you very much. The 10 recommendations that were not accepted or accepted in part: of all the audits that were done by either your staff or by contractors, as a percentage do you have any idea how much work was involved in these 10 recommendations that are not accepted – and this is on slide 12 –

when you compare it to the total work done by the office of the Auditor General?

Mr. Dunn: I'll give you an initial impression, but I believe we'll probably want to go back and look at our time reporting and get back to the committee as a whole with some follow-up information. The areas of the first five took a fair amount of time. The chief executive officer selection, evaluation, and compensation guidance was a major piece of work for our office, and that involved us using some outside contractors, and of course we went across many organizations, the vast number of the ABCs that were there. The first two there were a fair amount of work from our office. The one on the finance, financial reporting and succession planning, wasn't a large piece of work that came out, but the one on finance with ATB on internal control recommendations was a larger piece of work. The one that we did with AIMCo: although it just talks about internal control certification, we had given a number of recommendations to AIMCo. There was just this one on internal control certification. So, Mr. MacDonald, just in regard to that one recommendation, that would not have been a large piece of work although we spent a lot of time on AIMCo itself.

The main ones of the first ones would be the CEO selection and compensation, and I would suspect that we had probably spent on that piece of work somewhere in the neighbourhood of approximately 1,000 to 1,200 hours although I'll ask Jeff to get back to you specifically on that. Coming out of that one also is the CEO compensation disclosure, but that CEO compensation disclosure tied in with some other work that we were doing under the attest audits. The University of Calgary: we had some matters that we were concerned about regarding the compensation disclosure with that one. We also had some issues with the former regional health authorities, the nine of those. So some of that came out of the work that we were doing through our attest work on those ones.

12:35

Under review also the Health and Wellness province-wide services. This is an old chestnut. This has been around for many years. The amount of time we spent on that, by way of follow-up, wasn't that large. It would only be a few hundred hours. But we've spent many hours in prior years looking at this. That work is a throwback to the days when the regional health authorities, Calgary and Capital, were doing services for the province as a whole, the more sophisticated and elaborate health services, which includes things such as transplants, et cetera. How that is co-ordinated and made efficient for all health regions was what we were looking at before. So we have just re-emphasized the recommendations we had made in prior years, but the amount of new work done on that was probably only a few hundred hours.

Under the other ones, matters outside the purview of the Auditor General, first of all, who is going to address that response? It's going to be the Public Accounts Committee. They're going to have to be the ones to interpret that response. We stand behind the work that we've done and the matters that we've reported to management. The matters that we've reported to management have been thoroughly discussed, have followed all our due process and due diligence, and they have been accepted at the management level as to what they are able to work on. How that will be reported to Public Accounts and explained when those ministries or departments get before Public Accounts: it will be up to Public Accounts to sort that out with management's response there.

However, we did spend a fair amount of time on climate change. That was because you'll remember that the legislation on climate change came down in '07. Last year, in '08, we did our first piece

of work around that. Then subsequently, in '09, we did some more work. That one we've spent a fair amount of time on, getting our heads around the science and all the requirements, what the department expected would be done and achieved and the goals that were being developed there. So there was a fair amount of work that was in that. Again, Jeff will get back to you, but I would expect that we probably spent in the neighbourhood of a thousand or so hours on just that component of it. We spent many more hours subsequent to that, but that's in the following year than the year under question.

Mental health was another big piece of work. We had engaged specialists around mental health. It was a very challenging and complex area. I appreciate the fact that there is no one simple solution on that. However, we looked at it as a way in which you could evaluate the delivery of the services in a decentralized mode across nine regions – that was when we were doing that work at that time – and the way in which the ministry could evaluate the effectiveness of those services in that decentralized and, what we determined, inconsistent manner across the nine regions. That's why in that one on the mental health standards and the supportive living areas specifically we spent a lot of time around the standards side of it. The supportive living one, what we had identified there: we were trying to find best practices. The best practices we did identify were in the Red Deer area, the former David Thompson region. So, in total, maybe for those ones probably another thousand or so hours.

The Chair: Okay. Mr. MacDonald, you had another question?

Mr. MacDonald: Yes. Did I understand you correctly, particularly with the three recommendations, that the government had the view – and they expressed this in the fiscal plan from the 2009-10 budget – where the policy matters are outside the purview of the Auditor General? Were these accepted at the senior management level initially and then rejected during the budget planning process for 2009-10?

Mr. Dunn: I'm not sure if it's the budget planning process, but certainly we have, as you know, a process we go through, laying out before we do any work our criteria of what we're going to do, and we work with management so that the criteria are bona fide, that we haven't just made them up and they're irresponsible. We go through the criteria, then we look for evidence as to how the system performs against that criteria, and then we report our findings. Because of that process and the diligence we go through with management, yes, the fact that the criteria are accepted and our findings are accepted – therefore, the recommendations follow – those are accepted by management at that point.

As you're aware, Mr. MacDonald, we follow that on every audit and in every matter, whether it be an attest audit or a systems audit. The actual line between the end of the implementation of public policy and the start of new public policy is not a bright line. I know many Auditors General around the world struggle with the fact of: where are you bordering on the development of public policy? We like to think that we did not step over the line into the development of public policy; rather, we were looking at what was public policy and the successful implementation of public policy.

We always believed that Alberta had an approach to delivering mental health services. The public policy was that Alberta will deliver mental health services. Thus, what we were looking at was: how do you measure its effectiveness? That's what we were looking at. On the development of the standards one of the first questions asked was: where are your standards? Once you have standards, how do you monitor and enforce those standards?

In response to climate change we believe that Alberta has

developed its public policy around climate change. It was laid out, actually, not just in the 2007 material; it was laid out in 2002. There was a climate change policy. What we were doing was responding to: how have you implemented the planning to achieve the goals laid out in public policy? Thus, as I've said before, I would certainly stand by the recommendations we've made. But it will come to your committee, Mr. MacDonald and those who serve on Public Accounts, to decipher what that response is and how that impacts your committee and its questions around: how is management delivering on the expectations of public policy?

Mr. Marz: Mr. Dunn, just a point of clarification. In reading the cover letter to Mr. Mitzel, you point out the differences in costs between the public sector and the private sector. Your audit rates are 20 to 30 per cent less. Perhaps I didn't hear you right, going through the slides. On slide 9 a \$105,000 saving: did you say that that was because of contracting that out?

Mr. Dunn: No. That wasn't the whole message.

Mr. Marz: I was just wondering why that would be cheaper if you contracted that out.

Mr. Dunn: It wasn't that. First of all, to Mr. Horne's question, we have done a comparison of our internal rates that we charge as the costs of the office allocated over all the hours that people work compared to the private sector. It's very difficult to do it by category because, as you would expect, different private sector service providers' rates vary; they aren't all consistent whereas internally we'd be consistent.

When you look at the temporary audit services budget saving, we engage outside service providers as agents that do the predominance of the work. Where we plan and supervise, they execute the total amount. But we also rent in just by the sheer volume of work that we have to do which has a March 31 year-end. Of these 183 entities, 138 of them have a March 31 year-end. That sheer volume of work that we have to do in the February, March, April, May, and up to June time period: we just could never staff up for that. So we contract in for individuals just to supply us their staff, and we then, of course, put them on the job and certify them.

We were able to get better rates than we historically have gotten, and that was just doing tougher negotiations. In a time period when the economy was a little slower, we were able to negotiate rates lower than what we had historically received and had budgeted for on the seconded staff. So that's how we saved it, a little improved contracting.

Mr. Marz: Okay. Thanks.

The Chair: Mr. Campbell? Mr. MacDonald. Well, it's Scottish.

12:45

Mr. MacDonald: But there's quite a difference.

On page 13 of your PowerPoint presentation you indicate that between 2008-09 and 2007-08 there were, respectively, 27 and 26 primary recommendations not implemented within three years of acceptance. For the benefit of members, if you look at the Auditor's biannual report, you can see which recommendations have not been accepted or implemented within that three years of acceptance. It's quite an interesting list, and it's a good read. My question, again: how often does the government, at least in your time as Auditor General, use this sort of get out of jail free card, if I can use that politically, by indicating that policy matters are outside the purview of the Auditor General? How often have they used this?

Mr. Dunn: First of all, as we said in the slide, it was a new category identified last year, so that was the first time. Remember that on this one, with the 27, it's not yet implemented, accepted but not yet implemented, and we do admit that some of these matters are rather complex and that it takes a period of time to address the whole sum of the recommendation.

Your comment about: which are the ones not accepted? Those are listed. Even when we make a recommendation and it's not accepted, we still follow it up because we've gone through the process with management. We follow up from one of two things. Did we get the facts wrong? Generally, obviously, what we work toward is that we never run into that problem. It may come to pass: is the recommendation that we concluded on the most appropriate, practical, relevant? That's quite often when management will sit back and look at the underlying, root causes of the matter, and they may reconsider as to whether or not there will be a restructuring in the way in which the program is delivered or even if the program will continue, in which case we would report, in following up on that, since we still follow up on the recommendation, that there may be a change in the circumstances that surround the delivery of that aspect of the program, and thus the recommendation is no longer relevant.

Just to summarize, then: beyond the purview of the Auditor General is new. We follow up all recommendations, whether formally accepted by the government or not. We follow them up because they're already in a letter to management, and we determine with management if we have found the root causes of the matter and what is going to be the approach for management to deal with the root causes. It may turn out that the recommendation will be addressed in a different manner successfully, and thus we feel that the matter has been appropriately completed because they have implemented a solution to an issue. That's what we're looking at.

The Chair: Mr. Bhullar.

Mr. Bhullar: Thank you. Sir, I've been told that some jurisdictions across Canada and, actually, our federal Auditor General have acceptance rates in the 30s and 40s, and I speak of percentages. Can you shed some light on this?

Mr. Dunn: Yes. I've mentioned it openly with the committee before. Alberta has a very high rate. First of all, the fact that the province as a government even acknowledges the Auditor General's recommendation by way of accepted or not accepted: it's a strength of Alberta that the government does come out and formally report through to the chair of the Public Accounts Committee those that they do accept.

All Auditors General will follow up on their recommendations. The critical part is how many get implemented. We do have a very high success rate of recommendations being implemented. Why did we arrive at a three-year period? Because the nature of our work sometimes spans a fair amount of time. By the time we have reported it to management, management must then determine internally as to how and what resources they will apply to the issue. Then, can they actually get it successfully implemented, not just an actual plan but that they'll do something about it, actually get it successfully implemented?

You know, we worked out a protocol many years ago that three years seems to be an appropriate time span. Others use four years, and thus it's not a direct apples to apples comparison, but we would be the highest jurisdiction which has successfully implemented recommendations, not just the acceptance of them. Not all jurisdic-

tions formally go on the record as to: has the government accepted or not accepted it?

Mr. Bhullar: Well, sir, I think that's quite the achievement for government, for your office, for the public of Alberta, to be a jurisdiction that, in fact, implements more recommendations than any other and, quite frankly, just as you mentioned, even acknowledges the recommendations and the work that you do. I think we are leaders in this area across our nation, especially some of the data that I've looked at that has some other jurisdictions in the 30s and 40s, percentages, I mean. I look at the 10 that are not accepted, and five were accepted in principle; two are still under review. So, sir, I think that, by and large, we are doing fairly well.

Now, if I were to shift, I've just got a quick question on how you select firms to outsource work to.

Mr. Dunn: Okay. I'd like to think we contract versus outsource. Our office always remains responsible for the area or the subject matter under audit, the planning and the scoping of that work, and looks at the reporting. It takes on its responsibilities. We do not believe we can abdicate or outsource it directly to another firm.

How do we do it? We look at it from a risk profile, first of all, and we also look at it from a geographic perspective, in those regards. We look at the deployment of our staff, first and foremost. That's the critical thing: staff up as much as we can with our staff. Then we look at the additional amount of work that is there and who would be best to do it.

We use a contracting process, and we do try to follow what we preach, which is that we RFP it. We look at it on a rotational basis. We do challenge these every three to five years and RFP them out. We also look at where we could get service providers who give the best rate and the best value for understanding the issues.

Some of the ones have multilocations: obviously, the health authority. When we took on the whole of AHS, we did go to an RFP and asked all service providers to respond to that. We selected one that we felt had the best rate and best knowledge, and we said that we would commit to a three-year relationship so long as they were efficient, effective, and supportive of the office.

For other ones such as PDDs, children and family services, we look at having two or three service providers in those. We don't want nine in those. We are sensitive to trying to maintain a balance within the service providers across the province, so we recognize that certain of the firms have a regional area that they practise in, and we try to ensure that we're being fair and appropriate in how it gets allocated out but also maintaining the quality.

In the other area, when we get to systems auditing, because of the complexities of the matters that are dealt with in the systems auditing – this isn't just accounting, getting your accounting rules understood and getting the numbers into the right home – we look for unique skills, the specialized skills there. If we're doing reforestation, water, et cetera, you're not looking for accountants; you're looking for the specialized skills there without a conflict of interest. We go through our service providers in those cases after an RFP. We go through it with the management of the department to ensure that we do not have a conflict of interest, where the management has also engaged that organization.

Mr. Bhullar: Would you say that in balancing rate and other factors, sometimes you end up going with somebody that perhaps has a little bit of a higher rate to ensure that they have specific expertise or geographically they're able to manage something?

Mr. Dunn: Jeff, you wanted to say something?

Mr. Olson: Yeah. It's not only price in any of these RFPs; it's also the type of staff they can provide. So a lot of times it's a weighting. We apply weighting in so many points that they have on different sectors or whatever to provide us with a guide of who we should best go with.

12:55

Mr. Bhullar: Mr. Chair, if I may make one last comment to the Auditor General. I believe this is the last time that you'll be before this committee?

Mr. Dunn: Unless you have another meeting between now and a week Friday, then I believe it will be the last time before this committee.

Mr. Bhullar: Well, sir, thank you very much for your service. Thank you for, in fact, making Alberta the most audited province in the nation. Thank you for having such a profound and very high acceptance rate and implementation rate. Best wishes to you in the future.

The Chair: Thank you.
Ms Notley.

Ms Notley: Thank you. I just have two or three quick questions, I suspect.

I want to start by apologizing because I was not able to make the November meeting where your budget was discussed. Being a member of a slightly smaller caucus than others, it's not quite as easy to sub in sometimes. I apologize for not being able to make that, and if I'm repeating a question, I'm sorry about that.

You talk in your overall report about the evolving nature of the relationship between the more sort of traditional audits and the systems audits. You talk about how it had sort of been a 70-30 split and that we're basically moving towards more of an 80-20. I'm wondering if you could just review for me whether that move is something that your office is initiating because you see it as the best way forward in terms of providing accountability to Albertans or whether it is something that's driven by your budget and what must be done and then what's left in light of your budget. Or maybe it's neither, and maybe I'm misunderstanding the issue.

Mr. Dunn: Okay. Thank you for the question. I've explained to the committee in the past that the mandate of the Auditor General's office of Alberta is very large. Picking up on the previous questioner's point, we audit all the entities. Many of the other jurisdictions, including the province of Ontario, have a smaller Auditor General office. They don't audit the Crowns. In fact, they do the province as a whole, and they don't have the departmental/ministry type of reporting structure that Alberta has, so they don't do anywhere near the amount of attest audits.

As we explained, 183 entities that are involved in all forms and aspects of finance – you've got insurance operations, the WCB, AFSC, the ATB, you've got AIMCo, and all those sort – that takes a lot of time, and like it or not, there is a year-end every year. Every year you must have that audit completed. Alberta does have, as you know, legislation that requires it to publicly announce its provincial consolidated results before the end of June. You're not allowed the luxury of moving things to other periods of time. You must get it all finished, summarized, successfully reported, and up through the reporting structure really by early June in order that it can be made publicly available through the minister of finance and in accordance with the legislation. That takes an enormous amount of time and effort.

That, coupled with the changes that have come about in our profession of accounting – you’ve all heard about accounting rules and principles changing. Together with the requirements of the Auditor to adhere to professional standards known as assurance standards – those have gone through a lot of changes over the last number of years, and those have to be conveyed and properly worked with all the various entities. That takes a lot of time.

What has happened over the last few years is that the attest work has just demanded more of our time and effort. The alternative to just abandoning that work is that we have therefore deferred some of the work that we would have done in the systems audit area. That does mean that the Public Accounts Committee and all MLAs will have to just appreciate the fact that we will do as much as we can through our attest work, but where a matter requires greater and deeper analysis and auditing, we may not be able to do as much of that area as we have in the past.

Ms Notley: I’m wondering, just to follow up on that question: how does our breakdown compare to other jurisdictions?

Mr. Dunn: See, that’s again one that we look at as a member of what we call the CCOLA, the Canadian Council of Legislative Auditors. In Alberta, with its rigorous accountability and reporting structure, we spend much more in the accounting auditing area than other jurisdictions, who will spend more time in the value-for-money or performance auditing or systems auditing areas. However, many of them do not spend as much in the aggregate as we do. Our office is second largest only to the province of Quebec. Again, Quebec’s legislation was changed a couple of years ago to try to model Alberta’s, but they never got there, and the Quebec Auditor General doesn’t audit automatically all the Crowns. You’ve got some that they will audit, like Caisse de dépôt. We audit ATB. They don’t audit Quebec Hydro per se, whereas we will audit all the different Crowns. So it’s very hard to make those comparisons.

Ms Notley: Fair enough.

Then my last question. The category that we discovered in the last financial reporting, the outside of the purview of the Auditor General: is that something that is utilized in other jurisdictions? Is it common?

Mr. Dunn: Well, as I mentioned, Alberta has, again, an approach that not everybody follows, where the government actually responds formally by way of that. The others don’t get it. Do other Auditors General get push-back? Of course. Do other Auditors General get challenged as to whether or not they are approaching public policy? Yes, they do. We just end up having a written acknowledgement made public because, as you know, the response letter that goes to the chair of the Public Accounts Committee is incorporated into the budget document.

The matters around dealing with public policy we discuss as Auditors General when we get together and talk about that. In how the different jurisdictions try to approach it, we all, I believe, have the same philosophy and the same intent. We do not want to be commenting on the development of public policy, but we certainly all want to try our best to see if the government of the day and in that jurisdiction is successfully implementing the public policy.

Ms Notley: Thank you.

The Chair: Mr. Quest.

Mr. Quest: Thank you, Mr. Chair. Just back to slide 11 here and,

again, the percentage of cost that went to assurance auditing in the department and to systems auditing. I think I understand the cost of the systems auditing being lower because of some of the contracting and so on that was done, but is there more to that story? Was there a greater focus on assurance auditing than had been anticipated with the target? Some of the details there if you would.

Mr. Dunn: Well, as you’re probably a little more knowledgeable than some of the other members, you realize that the entities under audit have expanded. There have been more entities created over time through subsidiaries of whether it be the universities or organizations like ATB and that, who have created some subsidiaries. We’ve just had more requirements of matters to be audited. When you look at what’s happened in Travel Alberta, we have a new organization there that we have to audit. So there has been some growth within the number of organizations, there have been some challenging aspects to deal with within the financial issues of the last couple of years, and the challenge is also in the growth of the new rules and requirements under accounting principles and policies. Those three aspects have caused us to spend more time than I probably would have personally liked to have spent on some of that attest work, but it must be done, and therefore we are not able to do as much work around the audits on the systems work.

The other part, too, is that the systems work will move up and down, depending on the complexities of the subject matter that we undertake. Certain of the systems work may not be unduly complex, and we may have a very good body of knowledge and are able to through a little bit faster. By way of an example, when we looked at the review of the on-road vehicles, traffic safety, we’d had a very good body of knowledge there, and we were able to do that work and report on that probably within 400 or 500 hours. But if you look at something which is new and evolving, climate change, there’s a lot of background work that you must do and work very carefully with management and understand exactly what they’re trying to achieve. Those complexities take a lot more time and effort.

If we do smaller, easier to do ones, yeah, we can get more of those systems audits out, but we aren’t also able to do some of the more sensitive and important ones. Certainly, matters such as reforestation require us to spend a fair amount of time looking at many areas of Alberta. We don’t just audit it at Commerce Place, that sort of thing. We have to get out and do more work on that.

It evolves a little bit over time. We do look at it very judiciously: what can we get done successfully and report to the Legislative Assembly and then through the Legislative Assembly to the Public Accounts Committee that is important for you in the conduct of your work?

1:05

Mr. Quest: Thank you.

The Chair: Thank you. Are there any further questions?

Well, I guess, thank you very much. I want to echo Mr. Bhullar’s comments as this is probably the last meeting that you’ll be having with the Legislative Offices Committee. On behalf of the committee I’d like to express our appreciation for the commitment that you’ve had to this office for the last eight years.

Mr. Dunn: Well, thank you very much. But what you will probably hear me say more often than not is that it’s not just one individual. I know what you go through, the selection, but it’s not just one individual. My colleagues at the back and my colleagues in the office are the ones that do the work. They’re the ones that deserve the praise. So as I retreat and reflect upon what I’ll do in the future,

I appreciate working with all MLAs from all parties, and I respect very much the work that you do and the work that is done through the Public Accounts Committee. I think it's through your work and efforts and things like the Public Accounts Committee that we can say that Alberta is a responsible and responsive province.

Thank you.

The Chair: Thank you very much.

We'll take a five-minute break, and then our next one is at 1:15.

[The committee adjourned from 1:07 p.m. to 1:12 p.m.]

The Chair: Good afternoon. We're back on the record.

Good afternoon to our Information and Privacy Commissioner and his staff.

For the record could we please go around the table and introduce ourselves. My name is Len Mitzel. I'm from Cypress-Medicine Hat, and I chair this committee.

Mr. Lund: Ty Lund, Rocky Mountain House.

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

Mr. Elniski: Doug Elniski, Edmonton-Calder.

Mr. Horne: Fred Horne, Edmonton-Rutherford.

Mr. Bhullar: Manmeet Bhullar, Calgary-Montrose.

Ms Mun: Marilyn Mun, assistant commissioner, access to information.

Mr. Work: Frank Work, Information and Privacy Commissioner for Alberta.

Ms Check: Donna Check, director, HR and finance.

Mr. Wood: Wayne Wood with the Information and Privacy Commissioner.

Mr. MacDonald: Hugh MacDonald, Edmonton-Gold Bar.

Mrs. Sawchuk: Karen Sawchuk, committee clerk.

The Chair: Thank you very much.

Before we begin, I'd like to note that 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. We're all aware of the unique positions the officers occupy, and we respect your independence. I want to reassure you that the purpose here is not to second-guess your decisions. The first committee meeting to review the officers' reports last February was very productive and provided members with an in-depth look at the operations of the offices of the Legislature.

With that, I'd ask you to proceed with your overview of the '08-09 annual report.

Office of the Information and Privacy Commissioner

Mr. Work: Thank you, Mr. Chairman. It's a pleasure to be back here. I do believe that the new standing order, the practice of referring these reports to the committee, is a good idea and has been a good idea for us. Last time we had a spirited but very useful

conversation. I think anything that helps the committee understand better the sometimes complex work we do is to everybody's benefit, so I'm always happy to be here.

Mr. Chairman, we've got a short PowerPoint presentation. To you and committee members, if it's okay with you, Mr. Chairman, I don't mind being interrupted at any point, but this is quite brief, so there should be lots of time to talk afterwards.

The object of the exercise is the '08-09 annual report. By way of background, three pieces of legislation are under the mandate of my office: the Freedom of Information and Protection of Privacy Act, lovingly referred to as FOIP; the Health Information Act, HIA; and the Personal Information Protection Act, PIPA. The functions under all three pieces of legislation are pretty much the same. All three acts tend to be somewhat complaint driven, so people ask the office for a review of a response to their access request or to their correction request. Third parties can ask for a review of public bodies' decisions on release of information if it's their personal information. Complainants may file complaints that there have been breaches of the act in that personal information or health information has been collected, used, or disclosed in violation of one of the acts.

I'll just digress for a second there. You may or may not recall from my presentation to you last year, just by way of understanding how these three laws work, that they are all based on three verbs – collection, use, and disclosure – and a noun, “of personal information,” and another noun, “by a public body,” on the privacy side. So it's always collection, use, and disclosure that is the issue in any privacy event.

On the access side the FOIP Act says to what kinds of records access is to be given, and then it lists a number of exceptions, when access does not have to be given. Of course, the FOIP Act applies to government of Alberta entities, municipalities, universities, schools, and hospitals. Under that broad panoply what the commissioner does is institute investigations on his own motion; review and accept privacy impact assessments and privacy scans; provide consultations regarding self-reported breaches, programs, and so on; respond to requests for advice and direction; issue decisions, the second from the last bullet. There is a provision under each of the acts that allows the commissioner to allow an organization to disregard a request, and we have been using that provision when requests appear to be either vexatious in some way or repetitious or an improper use of the legislation generally. I don't like to do that on my own hook. We usually look for the public body or the organization to make the allegation that the act is being improperly used. And last but certainly lately the most popular, issue decisions on requests for time extensions.

The office has 38 positions. We have the commissioner, the assistant commissioner, a general counsel. We have 11 portfolio officers between the three acts. The portfolio officers are the people who, when we get a complaint or request for review, try to achieve a resolution of that on an informal basis, and that can take a number of different forms. Sometimes it's telephone diplomacy. They'll call the public body and say: “You know, you're not giving out very much access to very many records here. We think that in the past the orders have been that this kind of thing should be disclosed.” Then the public body will say, “Okay; we'll release some more pages,” and then the portfolio officer might go back to the applicant and say, “How do you feel about this?” If the applicant says, “Okay; that satisfies me,” the matter is resolved. I wish it was always that simple. Other times for whatever reason, either on a matter of principle or a matter of law or a matter of – I don't know – intransigence, sometimes the parties can't be brought to an agreement, and as a result the matter has to go to an inquiry.

We have six directors. It's a small office, so the directors do the

same work as portfolio officers, basically, plus the additional responsibility of managing that area. For the most part the directors all have caseloads.

We have five intake officers between Calgary and Edmonton. The intake officers are the front-desk people. They do the triage. If someone phones and says, "I want my employment file from my employer, and they won't give it to me," the intake officer is the person who kind of gets the details and assists the person. For example, if someone phoned and said, "I want my employment file, and my employer won't give it to me; what can I do about it?" the first question would be, "Well, who do you work for?" If the answer was Air Canada, we'd immediately say: "Well, we have no jurisdiction there. Here's the number for the Privacy Commissioner of Canada." The intake officers do that.

1:20

We have four adjudicators. The adjudicators are delegated by the commissioner to actually hear cases and make decisions and write orders. Back in the old days it was just the commissioner who did that, and he had four or five lawyers working for him. That didn't work very well. It turned the commissioner into the bottleneck. So now we just have the adjudicators issue their own orders and hold their own hearings.

We have nine support staff. Just to give you some idea of how the office has or hasn't grown over the past four or five years, we've stayed pretty constant at 38 FTEs.

That's the review process. I can't read it from here, so I'm not going to explain it to you unless you want to ask. But it is there.

The commissioner's order-making powers. Again, the legislation is designed so that the order-making powers are based on reviews of decisions made by public bodies, custodians, or organizations. The order can be to require them to stop – and again there are those three verbs: collecting, using, or disclosing personal information – or they can be required to give access to a document or a set of documents, or they can be required to destroy information that they've collected improperly.

Judicial reviews. Parties may apply for judicial review of an order. That normally works in the same way that the commissioner reviews decisions of public bodies. The courts review decisions of the commissioner under the sections of the various acts you see there.

Some performance measures for the portfolio officers. Remember that those are the people that try to achieve mediated, negotiated settlements of complaints: respond in a timely and professional manner, process cases in a timely manner, try to avoid time extensions, and properly document the cases.

On the portfolio officers I want to say – and this has been an issue lately, especially with the courts – that when you're dealing with these kinds of issues, the process is not at all straightforward. For example, with an access to information request you have someone, usually not someone who is represented, usually just a member of the public although not always, who just wants some information from a public body. Of course, they're not able to see the information, so they're kind of guessing at what they think they want or what they think is available to be had. So the public bodies have to guide them to some extent in terms of telling them eventually: this is what we have, this is what we're willing to give you under the legislation, and here's why we don't think we have to give you this other stuff. That's assuming that the public body, or the organization, let's call it, has found all of the information that's relevant in the first place.

The process can involve a lot of back and forth because, again,

remember that the applicant doesn't necessarily know what's available or what's there, and the public body may not have found everything.

The Chair: Is that what's considered a noncase file?

Mr. Work: No.

The Chair: As we're going through this, I was working through the breakdown of cases that have case-related and non case-related calls.

Mr. Work: A case-related call is any call where we have jurisdiction under the act and where we can open a file under the act. The noncase calls are general inquiries, queries.

The Chair: Is that what you were talking about here?

Mr. Work: I'm talking about the case calls where we actually have jurisdiction and we have a complaint or a request that we're able to act on.

The Chair: Okay.

Mr. Work: The process can be, well, quite complicated. It often happens that public bodies will either find more records from time to time as the process proceeds, or they sometimes change their minds about what they will give out. That's kind of what we want. I mean, ideally, given the resources involved, the more of these cases that we can settle in a mediation format, I think, the better it is for everybody, but mediation does take time.

The adjudicators, as I said, are the folks that hear inquiries and write orders. We require two orders a month from them. They should be, you know, good decisions, well written, completed in a timely manner. Of course, when you have four of them and one of me all writing orders on the same legislation, you're not allowed to influence each other's decisions. Every one has to be made independently, but you do have to take care that you're not contradicting each other every time you issue an order. So there is a certain amount of consultation and review at the level of principle.

Some statistics for you for the '08-09 year. Mr. Chairman, you were referring, I guess, to these numbers. We opened 1,341 cases. We closed 1,296, and then, as you pointed out, total calls and queries were much higher, 4,472.

Let's see. There are some more numbers. Between the three statutes, for the cases we opened, it just gives you a bit of a breakdown, and you can see it's somewhat evenly distributed. Fifty-six per cent of the FOIP cases are access related; 44 per cent are probably privacy related. That would be complaints that public bodies did the wrong thing with personal information.

The Health Information Act is always interesting because 66 per cent of the cases there are privacy impact assessments. I believe Alberta is still the only jurisdiction in Canada that requires privacy impact assessments before health information type projects are started up. So we get a privacy impact assessment from very significant aspects of Netcare, like PIN, the pharmaceutical information network. As you can imagine, that would be a very large privacy impact assessment. We also get a privacy impact assessment from the corner pharmacy when they want to go to an electronic health information system. It's a huge variety of privacy impact assessments. I think it's a very powerful feature of the legislation.

A number I heard just a week ago, actually, was that of all the jurisdictions in Canada, Alberta has far and away the highest take-up by physicians on electronic health records, about 60 per cent. I

know that Netcare and Wellnet and the other predecessors have certainly not come without some cost to all of us, but the fact remains that we're far, far ahead of any other jurisdiction in terms of the number of physicians that are actually using IT in the form of electronic health records, electronic patient records. I think that with our 60 per cent number, the next highest province is around 20 per cent. That just gives you some idea of, well, how far Alberta has come, and it hasn't been easy.

1:30

Sixty-six per cent of PIPA. Now, PIPA is the private-sector act, the Personal Information Protection Act. You might recall that there are only three provinces in Canada that have private-sector laws: Alberta, B.C., and Quebec. There is a federal law that covers the other provinces that haven't chosen to legislate in this area. Interestingly, 66 per cent of the private-sector cases opened are privacy complaints. As I mentioned earlier, in the bottom bullet, most of the FOIP cases and almost all of the PIPA cases are files initiated by the public, complaints or requests for review.

Cases closed: pretty good, I think. There were 391 FOIP, 646 HIA, 259 PIPA, for a total of 1,296 cases. We've boosted our numbers from the previous fiscal year, as the bullet says. Again, just pointing out the importance of the work that the portfolio officers do, 91 per cent of the cases that could go to an inquiry are resolved by mediation and investigation but, again, a time-consuming process.

To give you some idea of timelines involved, out of a sample of 511 cases, 48 per cent are resolved within 90 days, which is what the statutes require – or what the statutes mandate, let's call it – 24 per cent are resolved from 90 to 180, and 28 per cent are taking more than 180 days. I'll be honest with you: some of those ones that take more than 180 days take a long time and in some cases years. Sometimes that is not so much at the wish of the parties as much as mandated by the parties by the way they participate in the process. Our process is like any adversarial process. When it goes to inquiry, it becomes a very closely, judicially reviewed process where all the hallmarks of procedural fairness have to be adhered to. Things like notice to the other side, evidence disclosed between the parties, submissions disclosed between the parties, granting adjournments if adjournments are sought: those are all things that the courts have said go to procedural fairness. So the process can take a while.

There's the earlier number I gave you of 4,472 queries. This just breaks down the queries on the basis of jurisdiction. You'll notice, interestingly, that we get lots and lots of queries about the private-sector act but, happily, not a huge number of files generated by all those queries.

That's all I've got for you, Mr. Chairman. I'd be pleased to answer any questions the committee may have.

The Chair: Thank you very much.

Mr. Campbell.

Mr. Campbell: Yes. I was curious about your 91 per cent of cases that could have proceeded to inquiry that were resolved by mediation/investigation. I'm just wondering if that should be the other way around: investigation/mediation. Could you explain to me the breakdown of what you would see as the difference between the two? Actually, I'm probably more curious as to how many cases were resolved by mediation.

Mr. Work: Okay. The difference is that mediation occurs most often when there's a dispute between the parties. If I say, "My employer disclosed my personal information to someone else that they shouldn't have," if the employer says, "Yeah, I did, but I'm

entitled to under the law," then that becomes a mediation. If the employer says, "No, I didn't; that didn't happen," then it's an investigation. With access to information under FOIP, if the public body says, "This is all I have to give this person on the access request," it becomes a mediation to try to reach an agreement between the applicant and the public body over what information should go out. That's mediation. Investigation is where we have breaches reported: information lost, laptops lost or stolen. Those are investigations to see how it happened or what the circumstances were and how it could be remedied.

I don't have numbers at hand as to how many. As you can tell from what I've said, there is a point where it gets a little blurry whether you're investigating or mediating. I think the important point to take away is that since most of the cases are generated by either complaint, you know, someone complaining, or someone requesting a review, any resolution you can reach between the parties is fair. Even if one of the parties takes less than they're entitled to under the act – you know, you might be able to get a stack of paper this big, but for whatever reason you as the requester decide to settle for this – fair enough, and if you didn't want to settle, you could push it on to an inquiry. So the mediation becomes very important given the fact that it's a complaint-driven process.

Mr. Campbell: One more short question. On the freedom of information cases where you're either mediating or investigating, do you find that there's still a lack of understanding by employers in the province?

Mr. Work: Yeah. It's a good question. It's getting better, for sure. The word is getting out. We're a small office, so we've concentrated most of our effort on employer organizations like the petroleum producers or chamber of commerce. We try to focus on those kinds of organizations and then try to use them to get the word out. It's working, and the media coverage we get is often helpful because a lot of employers still don't know that they have these obligations. Service Alberta has an area and staff dedicated to these three acts, and they're very helpful as well as a resource in getting the word out.

To answer your question, I think we have a higher awareness than most other provinces because we've pushed that as hard as we can, but there are still organizations that we'll go to, and the answer will be: "What are you talking about? What law is this now?"

Mr. Campbell: My last question is, then: is there a differentiation between rural and urban? Like, you say that you're trying to get the message out through the chamber of commerce and stuff like that. I'm just wondering if you see a higher number of complaints with FOIP coming from rural areas versus urban areas, where you don't have the same organizations or the same sophistication of organizations.

Mr. Work: My hunch – and I'm pretty sure this is right – is that it's less awareness in the cities, for whatever reason. Your question allows me to say that it's often the bigger organizations, the bigger businesses that are aware of the act and prepared to do it, but of course they've got lawyers, they've got staff, you know, whose job it is to be aware of this stuff and to deal with it. A lot of the smaller and medium-sized organizations are not aware, but a lot of the smaller and medium-sized organizations sometimes don't have as much information either, so we get fewer complaints about them.

Mr. Campbell: Thank you.

The Chair: Mr. Horne.

Mr. Horne: Thank you, Mr. Chair. Mr. Work, on Friday of last week, I believe, you issued a news release regarding a decision by the Alberta Court of Appeal that pertains to the latitude and the circumstances under which you can grant extensions. Just a two-part question, and I'm not looking for a long explanation. I know it's a complex matter. One, could you tell us a little bit about what some of the common circumstances are that lead you to granting time extensions currently and, secondly, just what you think the implications are for Albertans as a result of the decision last week?

1:40

Mr. Work: Yeah. Thank you, Mr. Horne. Obviously, a very current topic. All three of the Alberta acts have this 90-day provision. I think it was probably inherited from British Columbia. Our FOIP Act was not entirely but largely inherited from British Columbia, where they have a 90-day provision, but the British Columbia 90-day provision is 90 days to do an inquiry, not 90 days to do everything. Somehow in Alberta we have 90 days to do everything, and I'll tell you in a second, in answer to your question, what everything consists of.

After the FOIP Act was passed here, when the Health Information Act came along later and then when the Personal Information Protection Act came along later, the 90-day period was moved. It was brought into each act. I mean, I don't know what went on in the Assembly when it was debated. I was there for the first one, but I can't recall. I'm not sure that of all the matters that were dealt with in that legislation, the time period was in the forefront of the MLAs' minds when they were debating that act. What I'm saying is that I don't think anyone really substantively analyzed whether 90 days was the perfect period, give or take. Anyway, we have it. But the act does provide for the commissioner to give extensions.

Now, what happens in that 90 days? Well, there's the mediation or investigation, which is just the groundwork by the portfolio officer. What happened? Who are the parties? What information is involved? When was the access request made? What paper has been offered? When did the privacy breach occur? What was lost? How was it lost? How was the disclosure made?

Where the matter can't be settled, the parties have to be notified that they can request an inquiry if they want, and we have to find out from the parties what they think the issues of the inquiry should be. I have the ability as commissioner to say whether or not this matter that's going to inquiry justifies the use of those resources. That takes time.

We then have to get the records involved. Obviously, if it's an access request, you need to see what records are at issue, so we have to get those from the public body; make decisions as to who are the parties, whether or not there are intervenors that should be brought in, other entities, other groups of people that are involved or have an interest; invite the participation of the intervenors; define the issues to be heard; if the inquiry is oral, which we don't do a lot of, determine the dates when all the parties can be there – I can tell you that that is a chore – send notices of inquiry; obtain the submissions from the parties because, again, it's a judicial process; make decisions about whether or not to extend the time.

At least half of the time one of the parties is not represented by counsel, so they're doing this on their own. They're writing their own submission. It's just a member of the public. They'll often forget stuff, or they'll omit stuff, or they'll ask for a time extension. My view is that it's probably unfair to hold them to very, very tight deadlines under the circumstances. Furthermore, even if a represented party says, "I need more time," it's very hard to deny time

extensions from the parties without getting yourself into a judicial review because they will say to the court, "The commissioner didn't give me the time I need to properly prepare my submissions." The courts will often find that to be a breach of natural justice if you don't grant them the time they need to make their representations.

Making decisions about what material to accept in camera. As you can imagine, when you have an inquiry, you can't throw all the paper on the table and let everyone have a look at it because then all the information would be out there, and there wouldn't be any point in having an inquiry. So we have to decide what information can be seen by all the parties in the inquiry, what can't.

We often ask for additional evidence. For example, if there's an electronic system involved, we need to know more information about how it worked, how the information was disclosed when it shouldn't have been. We have to get additional evidence on that and review the written submissions. Sometimes you need better information, better evidence from the parties. Then, having done all that, you take the time to review the submissions and decide all the questions of law and fact. That doesn't happen in 90 days, and I don't know of any place where all of that does happen in 90 days, quite frankly, so we have always relied on the ability of the commissioner to do time extensions.

As long as that worked, I never saw the need to – well, we always knew that the 90 days was problematic, but we didn't see it as insurmountable. Consequently, when the private-sector act was reviewed about two and a half years ago, we did ask that that 90-day period be changed, and it was changed in the private-sector act to a year from 90 days, I believe. I'm looking around, and Marilyn said yes. But that's just the private-sector act.

Now, what happened was – and I don't want to go into too much detail. What the court has now said is that what has to happen when the commissioner gives an extension is that the commissioner has to give reasons for granting the extension, and those reasons will be judicially reviewable by the courts. My concern with that is on several levels.

First of all, there are always extensions. Ninety days is just not realistic to do the entire process, so there are always extensions. That means that during the process of trying to get from complaint to order, there is yet another point in the process which can be judicially reviewed. Having to give reasons for that, you know, what are my reasons going to be? The parties were being difficult. One of the parties had a serious illness or a death in the family and couldn't deal with the matter for two months. I mean, is that the level of detail that the court now wants every time I grant an extension?

Furthermore, once I grant the extension and the court reviews it, if they decide my reasons aren't good enough for granting the extension, what are they going to do? Tell me to start over again? Well, that's just to the disadvantage of the poor bloke that brought the application in the first place. They can quash my process, I suppose, but what's the result of that? I start all over again. Or they could take the decision out of my hands and decide it themselves and hand it back to me, but they would never do that because they don't have the materials, right? They don't have the submissions. So this insertion of another point for judicial review by the Alberta Court of Appeal: I have a lot of trouble understanding the logic of it.

Certainly, part of the court's concern was that if the Legislature said 90 days, they must want this to be a quick process. Fair enough. Double the size of my office, and I could probably make it quicker, but, you know, I don't have the cost-benefit analysis on that. As a result of this, we're really kind of in the proverbial spot between a rock and a hard place.

That was probably more than you wanted, Mr. Horne.

Mr. Horne: Thank you.

The Chair: I do have copies of the newspaper article and everything there if some of the other members aren't aware of the circumstances regarding this, but you probably answered it.

Mr. Work: Yeah. I might mention that, as I said, the private-sector act has been amended to allow for a year. The other two, HIA and FOIP, remain at 90 days. We do have a case on this issue under FOIP that's going up to the Court of Appeal, and I think it's probably reasonable to anticipate that we may get a very similar result on FOIP, which will just cement the same issue in that act as well.

1:50

Mr. Horne: If I could, just as a follow-up, Mr. Chair. Am I to understand, then, Mr. Work – I think, if I recall, I did read the news release Friday; we have it in front of us now – that you are also concerned that there's some potential for the privacy of personal information to be breached through the process of a judicial review of potential reasons you may offer for granting an extension?

Mr. Work: Well, yeah. I mean, if you have an organization – and we have a few private-sector organizations – who has decided that this will be a highly adversarial process, certainly one way of avoiding the main question is by using some of these points to prolong the proceedings. So if I can't get my process done within 90 days, ask for a number of adjournments, which in all likelihood I have to give unless I want that decision to be judicially reviewed as well, and then make the application that the process is taking too long, or make the application that I haven't given good enough reasons, and we're into a judicial review process. The courts may want me to expedite my process, but I can tell you that when we go for judicial review, that's a very time-consuming process as well, being before the courts.

The Chair: Mr. MacDonald.

Mr. MacDonald: Yes. Thank you. I looked at the press release from last week. Your comments were strong regarding the Court of Appeal's decision. I'm looking at your annual report, page 45. It indicates here that through FOIP there were from April 1, 2008, to March 31, 2009, 42 requests for time extensions, with the Health Information Act there were two, and with PIPA there were none. The front of your annual report, I think on page 8, indicates that the previous year, 2007-08, there were 20 requests for time extensions. When you look at the total number of cases open regardless of which statute, I would like you to explain: if we were to adhere to the Court of Appeal's ruling and in light of the number of cases that are open and the requests, why would you need to double your staff?

Mr. Work: The numbers that you refer to, Mr. MacDonald, are where I've been asked to extend a timeline. Given the 90-day period, the majority of the extensions I grant without being asked just because the process is going over time. You know what I'm saying? On all the ones that I grant . . .

Mr. MacDonald: So how many do you grant?

Mr. Work: We're trying to get an assessment of that now. We need to know how many have been improperly granted given the court ruling. It looks like about 180 may have been improperly granted and are voidable or possibly void already given the court ruling.

There's a difference between when the parties ask for an extension and when I say: "This is going to go over the 90 days. I'm going to issue an extension." Once we're into an inquiry, the adjournments that I give once an inquiry has commenced are not captured by that number either.

The 42 under FOIP would be where the Department of Justice comes to me and says, "We've got a massive request under FOIP for all the records pertaining to this subject, and we can't." Under the FOIP Act a public body has to produce records within 30 days, or they can give themselves another 30 days. So that's 60, and they can take more time with my permission. Those 42 that we record, those numbers, are that situation where a public body has asked for an extension, not where I've extended the process unilaterally.

Let me make this clear. I do not extend the timelines on access requests unilaterally. If the public body needs more than the 60 days, they have to ask. Sometimes I'll say no. Other times I'll say, "Well, you better get some out now, and I'll give you a little more time to get more out" or "Go back and work with the applicant and try to narrow the request." Yeah, it's not a straightforward number.

The Chair: Mr. Lund.

Mr. Lund: Thank you, and thanks for that explanation. I was the person that took that act through the Legislature.

Mr. Work: I recall.

Mr. Lund: Some people criticize me for having done it. I don't remember a lot of discussion over that time frame. It's true that we were looking at other jurisdictions, and that's where some of those time frames came from. I guess I'm really concerned when you say that this could void all of those that you've already given instruction to. Do you mean void them for having more time and you can't have that, or do you mean that the decision would be void now because you did give them more time?

Mr. Work: It would be the latter, Mr. Lund. The Court of Appeal decision will have the greatest impact where there has been – let me go back a step. When FOIP first came into force in the mid-90s, the then commissioner made a decision that said that the 90-day period must have been what's called directory on the part of the Assembly as opposed to being mandatory. It sounds kind of odd to say, but there actually are legal reasons to be able to say 90 days. It's not a guillotine. It's like a boundary. Consequently, what came to happen was that if you knew it was going to take more time, you would extend within the 90 days if you could predict. If you went over the 90 days, the belief was that you could still extend, particularly if the parties were okay with it.

Now, what the Court of Appeal has said is: "No. You were wrong. It's a guillotine. Everything extended before the 90 days may be okay, but you're going to have to give reasons for those. Anything that was extended on day 91 and following is void because you lost jurisdiction on day 90 plus one minute," you know, one minute after midnight or something. We think that's about 180 cases.

As I said, in terms of remedy what we will have to do is send letters to those parties and say, you know, that because we didn't extend this on time, we've lost jurisdiction on this file. They would be entitled to start again, I would think, although we're considering that. I think that legally they would have to be allowed to start all over again. I mean, the only remedy is that they get to start all over again.

Mr. Lund: But on a go-forward, if the court determined that it was the will of the Legislature that it be done within 90 days, can't the Legislature pass legislation that actually extends it or words it in such a manner that it can be accomplished that way?

2:00

Mr. Work: Absolutely right, Mr. Lund. I'm meeting with the Minister of Service Alberta this week, and I'm going to ask that.

As I said to the media last week, I am going to appeal this to the Supreme Court of Canada. You have to ask leave to go to the Supreme Court. My lawyers tell me that we have a reasonable chance because there is a very strong dissenting opinion in this Court of Appeal decision. Justice Berger wrote a very strong dissenting opinion. It's a 2 to 1 decision of the court, and the Supreme Court is often willing to look at those kinds of cases because there is dissent. So, on the one hand, we will appeal.

But you're quite right, Mr. Lund. The only real solution to this, I think, is to amend the act. As I said, PIPA has already been amended to go to a year. My request is going to be to amend the act to allow for a longer time period and to make it clear that the commissioner has the ability to make this decision. There are words that can be used to that effect to let the courts know that the Legislature wants this matter dealt with by this body.

There's a Supreme Court case that I referred to called *Dunsmuir*, where the Supreme Court was at great pains to tell other courts: look, you know, it's a complicated world; Legislatures now often use administrative tribunals to do certain things that the Legislatures think are best done in that format. The Supreme Court went on to say that other courts have to respect this, that they have to respect this will of the Legislature. Of course, the job of the courts is to make sure that things are done properly and fairly, but I think that what the Supreme Court was trying to say in *Dunsmuir* is: look, courts, you have to try to understand what the Legislature was trying to accomplish here, and you have to pay some respect to that. That's become a real issue for me in the course of the number of judicial reviews that we seem to be getting on these pieces of legislation.

Mr. Lund: When you were here at budget time, if I recall, you mentioned at that time that you had two court cases that were going on up the ladder. Is this one of them?

Mr. Work: Yes, sir. This is one of them. We have another one, as I said, on the same issue, on the 90-day issue, that's going up under FOIP. This one went up under PIPA. As I said, given the fact that the Court of Appeal has ruled on the 90-day provision under PIPA, I'm anticipating they're going to rule in a similar way on FOIP. I probably shouldn't say that because the court has got it under deliberation, but we do have a decision from them on one 90-day period, so I guess we'll just have to wait and see.

Mr. Lund: Is that the one that the other officers have asked for leave to appeal?

Mr. Work: Ah. Thank you. No. That's a third case although the 90-day issue does come up in that case. The case Mr. Lund is referring to with the other leg. officers involved a privacy complaint with respect to my office. An individual alleged that my office had breached their privacy. Of course, I couldn't deal with it, so under the legislation that was given to what's called an adjudicator. The essence of that case was that the adjudicator decided that under section 4, which sets out the boundaries of the FOIP Act, information in my files as an officer of the Legislature was, in fact, subject to the act. There is a provision in section 4 that to the casual

observer would seem to say otherwise, but it was interpreted to say that now the files of all the leg. officers by implication may be subject to the act.

We think that's wrong, so we appealed that decision of the adjudicator. We took that to judicial review at Queen's Bench. The reviewing judge sided with the adjudicator. The other leg. officers participated in that, and now we're appealing that one to the Court of Appeal as well. Subsequently they have raised the 90-day period in that case, but it wasn't central to that case. What was central to that case was what records are subject to FOIP and what records aren't.

We have a very firm decision from a number of years ago involving the courts where Justice Bielby quite clearly said that the records in section 4 are not subject to the act. Now we've got an adjudicated decision which seems to go the other way, so we need that clarified.

Mr. Lund: You say you need it clarified. Then, basically, it's interpretation of the legislation. Is that correct?

Mr. Work: That's correct, yes.

Mr. Lund: Wouldn't it be reasonable to think that the Legislature should settle that? We wrote the legislation. We wrote it all. Can't the committee send it to the Attorney General's department or somewhere to adjudicate it and come up with legislation that clearly spells out what the intent of the Legislature is?

Mr. Work: The only way the Legislature can do that after the fact is by amendment unless the Legislature wants to intervene in the court proceeding through the Attorney General. Even then it's hard for the Attorney General. Let's say that we have this case where the dispute is who's in and who's out of the act by virtue of section 4. The court's job is to ascertain the will of parliament in writing that legislation. It's very hard for the Minister of Justice and Attorney General to come in and say: I know what was in the minds of parliament when they passed this. The courts would certainly listen to that, but it wouldn't be decisive. What the Legislature, of course, is always free to do is to go back and amend and say: "Okay. Obviously, we didn't make this clear enough. The courts have seen things here that we didn't see at the time. We will amend this to make our intention clear." We do live in a parliamentary democracy, and parliament is, within the realm of the Charter, supreme. So, certainly, it's open to the Legislature to do that.

Mr. Lund: Well, thanks for that. I hope we pursue that angle.

Mr. Work: I do, too.

Mr. Lund: One other thing. Mr. Campbell mentioned the public understanding of this legislation. With the most recent ones, PIPA and the Health Information Act, I'm not sure where it came from, but let me tell you an incident that happened out in my constituency that was really troublesome to me. There was a bad car accident down by Olds. Two people, a man and wife, were really seriously injured in the accident. They have two adult children living in the Rocky area. The police, of course, when they took the licence of the vehicle, phoned one of the siblings and told them that there had been this really serious accident. The question, then, right away was, "Well, what happened to mom and dad?" "Don't know." They pursued it a bit and were told, "Well, we don't know because we couldn't find out because of legislation." I don't know which legislation, but I suspect it was under the Health Information Act. I don't know.

Those children went through hell for two days till they finally found out where their parents were. They didn't even know if they were alive or dead. Of course, they didn't have a clue where they went. One went by ground ambulance to Calgary. One came up here by STARS. It really is troublesome when our legislation causes this information not to be passed on to people that are directly, adversely affected. So I just pass that on to you, that it is very troublesome when those kinds of things happen.

Mr. Work: Yeah. I understand how that would be devastating for those people not to know for two days. Obviously, I don't know much about the circumstances of that particular case, so I won't comment directly on it, but I will say that the Health Information Act does contain a provision that allows health care providers to contact either next of kin or relatives in the case of a health emergency.

2:10

Mr. Lund: But we had to change that act so that the ambulance attendants could tell the police. Then, of course, the police tell – I couldn't believe it when they phoned. I said: "Well, you've got to talk to the police. They must know." I didn't know at that time that the ambulance attendants were not telling the police.

Mr. Work: Yeah. The question with the ambulance attendants is a complex one as well. They were moved from FOIP to HIA, and HIA is somewhat more restrictive in terms of the information that can be shared among parties. With respect to the police under FOIP, though, you will often hear this, that the police won't release the name of a suspect. Now I've moved away from that particular case you were referring to.

There's a provision called the public health and safety provision in FOIP, and that says that whether or not an access request is made, a public body must, without delay, disclose to the public information about risks of harm. So I'm always a little bit mystified when, for example, there will be a public wish or the media will want to know about an escaped prisoner or someone who's committed a crime and so on, and the police say: well, we're prevented from disclosing that under the FOIP Act. I don't believe that that is the case. I think section 32 quite clearly says that if the head of a public body perceives a risk, whether it's an escaped gas or an escaped criminal, they are allowed to disclose that. To me that's pretty clear, so I'm a little puzzled on that count.

The one you mentioned is certainly of concern. Certainly, the health authorities under HIA would be able to contact someone and say: we have your brother, sister, mom, dad here. There'd be absolutely no impediment to that. I'll be silent on the rest of the details on that one.

The Chair: Thank you. I think we've got a great deal of information on that.

Before I move on, Mr. MacDonald has a supplemental question.

Mr. MacDonald: No. I'm fine. It's been answered. Thank you.

The Chair: Okay.

Mr. Quest.

Mr. Quest: My question has been answered, too, Mr. Chair. Thanks.

The Chair: Ms Notley.

Ms Notley: Okay. It came up quite quick.

I just want to go back a little bit to the issues that have been raised by the court decision. Let me say at the outset that, of course, I very much appreciate the constraints that you're under with respect to the staff that you have and the number of staff that you have and the budget constraints and the FTE growth or lack thereof and all that kind of stuff. I do appreciate that, but I guess I want to sort of step back a little bit from the administrative imperative that I hear you talking to us quite knowledgeably about, as you should, and just go back to the principle that was identified by the court.

We were looking at a case that was 17 months from when the thing started to when an adjudicator rendered a decision. Of course, you know, we talk about going back to what it was the Legislature intended and, certainly, what it was that the government told the public they intended when they brought the legislation in with respect to actually making access to information something that we all enjoyed. So I'm coming from that perspective, being concerned about the timelines.

I have a couple of questions. My first question is on the 90 days. Does that or does that not start when the person begins trying to access the information under the legislation? Let's say, for instance, that I'm trying to get something from a public body or someone else or I'm trying to get something from a private body under PIPA. Does the 90 days start when the request is formally made, or does it start when you're contacted because there's a problem?

Mr. Work: It's the latter. The 90 days start when someone has gone to an organization and said, "Here's my access request," and the organization says, "No, we're not going to give you that." Then they come to my office and institute a request for review or a complaint, and that's when the 90 days starts.

Ms Notley: Then in terms of, for instance, getting access to information from the government, because they have already under the act 30 days and then the next 30 days, we're probably looking at about 150 days when you get to that 90-day point. So Joe Average Citizen is trying to get information from the government. This is my example because, of course, this is the way I'm usually dealing with the matter as an MLA who's on the opposition side. Once the government is at the point of 150 days of not providing the information that's been requested, that's the point at which either you would extend or they would come to you and ask you to extend beyond the 90 days, and that's sort of where right now the court is suggesting that you should give reasons.

Mr. Work: Except that the court does not know about what went on before I opened my file, right?

Ms Notley: Absolutely. I'm talking more from a global point of view in terms of what it means for the citizens of Alberta trying to get access to information.

My question just simply then is – well, no, I have several questions. Obviously, we're talking about a long period of time, and that was, of course, the concern that the court was articulating. I'm just curious about: how do we in Alberta compare to other jurisdictions in terms of the timelines that people need to tolerate if there is difficulty getting information, for example, from a public body?

Then my next question is: with that 28 per cent that you identified in your report that do go beyond the 180 days, you said that they tend to go a lot longer past the 180 days, and I'm just curious as to how far that is.

With all that being the case, what is your view on it? If you were given your druthers, would you just look for more resources so that you could provide more access to Albertans?

Mr. Campbell: Good question. That would be a leading question in court.

Ms Notley: Yeah, I believe it would be, but I think I've heard a few from over there today.

Mr. Work: First of all, maybe to give some dimensions to the issue that you're talking about, our information is that with respect to provincial government bodies responding to FOIP requests, 87 per cent are completed within 30 days and 8 per cent within 30 to 60 days. I just want to make it clear that this is not an endemic kind of problem. Having said that, there are some files that do go long. There's no doubt about that. But we're talking about well over 80 per cent of access requests that government bodies that do deal with within the initial 30-day or 60-day period.

Now, I'm kind of jumping around your questions here a bit. Again, our numbers are on page 9 of the annual report. Once we open a file, putting aside however long a business or government may have taken to deal with it in the first instance, 48 per cent of our files are closed within 90 days, which is the requirement in the act; 24 per cent, 90 to 180 days; and 28 per cent, more than 180 days.

The ones that go more than 180 days: I don't have real hard numbers for you on that. I could get them, I think. Some of them go in the area of a year and some. I think the last word I had from my general counsel was that our backlog was in the area of a year on the inquiries. So that's 360 days, right?

I'm dealing with one file that we've had for almost four years, and there are a few of those. On the four-year ones there is usually a reason why they're taking four years, and it's not because we lost the file although that did happen once. It's often the case that the parties are just that adverse, and there are requests for adjournment, motions to have new witnesses brought in, motions to have new evidence in. Once you allow this party to bring in new evidence, you have to let the other side rebut that. So often the process takes on a life of its own, and we're no different than the courts are in that respect.

2:20

I don't have on hand numbers from, say, B.C. and Ontario, which are the closest comparables in terms of how long they're taking. I do know that British Columbia has a similar provision. No one has taken them to court on it yet. I can try to find out, get some idea of what's happening in other jurisdictions if you'd like. Service Alberta often talks to other jurisdictions just to collect information, so I can try to get you some idea of what timelines are like in other places. We'll do that.

Did I manage to hit most of your questions there?

Ms Notley: Well, notwithstanding my leading question I was sort of querying whether there might be a different approach to it.

Mr. Work: Yes, you did. The resource question. If I could have anything I want, yeah, I'd want some additional resources, and I would still want the amendments. If you asked me, "Well, pick one or the other," I would pick the amendments. You could give me a huge amount of resources, and I think we would still have challenges in meeting some of the timelines, so I think it's more important to be able to extend those timelines.

This gives me a chance to say: make no mistake; I'm not trying to oust the courts from this process. Judicial review is absolutely critical. My point is that judicial review has to be meaningful, and it shouldn't exacerbate the problem. That's the issue I see here. I certainly don't want in any way to oust the overall role of the courts in terms of making sure that natural justice is served.

Ms Notley: One last question?

The Chair: Okay.

Ms Notley: Just a follow-up on what you said. With the reports on the percentage, that 80 per cent of government requests are met within 30 days and 88 per cent within 60 days, is that self-reported, or are you auditing? Where are you coming up with those figures?

Mr. Work: That's self-reported. I do not have the resources to audit all government departments. We did do an audit once years ago on the motor vehicles registry, and it just about exhausted my office for the next year after that.

Ms Notley: I have to say that I'm kind of taking it personally because I don't think I've ever had a FOIP responded to in 30 days. Ever.

Mr. Work: Well, yeah. I think that's most unfortunate. Those numbers should be applicable across the board to access requests.

Ms Notley: Thanks.

The Chair: Any other questions?

Hearing none, we'd like to thank you very much for the presentation. It's been very interesting. If you'll bear with us for a moment, we've got a couple of items, and I believe we'll probably wrap this meeting up.

Are there any other items for discussion today?

Hearing none, the date of the next meeting will be at the call of the chair, and I'd like a motion to adjourn. Moved by Mr. Campbell. All in favour? That's carried. Thank you.

[The committee adjourned at 2:24 p.m.]

