



Legislative Assembly of Alberta

The 28th Legislature
First Session

Standing Committee
on
Legislative Offices

Thursday, September 13, 2012
10:01 a.m.

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The 28th Legislature
First Session**

Standing Committee on Legislative Offices

Xiao, David H., Edmonton-McClung (PC), Chair
McDonald, Everett, Grande Prairie-Smoky (PC), Deputy Chair

Bikman, Gary, Cardston-Taber-Warner (W)
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Brown, Dr. Neil, QC, Calgary-Mackay-Nose Hill (PC)
DeLong, Alana, Calgary-Bow (PC)
Eggen, David, Edmonton-Calder (ND)
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Jill Clayton	Information and Privacy Commissioner
Brian Fjeldheim	Chief Electoral Officer
Del Graff	Child and Youth Advocate
Peter Hourihan	Ombudsman
Merwan Saher	Auditor General
Neil R. Wilkinson	Ethics Commissioner

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

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Joe Loran	Deputy Ombudsman
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10:01 a.m. Thursday, September 13, 2012

[Mr. Xiao in the chair]

The Chair: Good morning, everybody. My name is David Xiao. I'm the MLA for Edmonton-McClung and the chair of this committee. I'd like to welcome the members and support staff and guests to the meeting and ask that everyone at the table introduce themselves for the record. Let's start with the deputy chair, Everett McDonald.

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

Mr. Eggen: Good morning. My name is David Eggen. I'm the MLA for Edmonton-Calder.

Mr. Quadri: Hi. My name is Sohail Quadri, MLA, Edmonton-Mill Woods.

Ms Blakeman: Laurie Blakeman. I'd like to welcome each and every one of you to my fabulous constituency of Edmonton-Centre.

Mr. Hourihan: Peter Hourihan, Alberta Ombudsman.

Mr. Loran: Joe Loran. I'm the Deputy Ombudsman.

Ms DeLong: Alana DeLong, Calgary-Bow.

Dr. Brown: Neil Brown. I'm the MLA for Calgary-Mackay-Nose Hill.

Mrs. Leskiw: I'm Genia Leskiw, from God's country, Bonnyville-Cold Lake.

Mr. Bikman: Gary Bikman, MLA for Cardston-Taber-Warner.

Mrs. Sawchuk: Karen Sawchuk, committee clerk.

The Chair: Good. Thank you.

Members should have a copy of the meeting agenda and other meeting materials that were posted on the internal committee website. Please let the committee clerk know if you require any extra copies.

A few housekeeping notes before we get started. The microphone console is operated by *Hansard*. Please keep your BlackBerrys off the table as these can interfere with the audiofeed.

We have a full schedule today, so let's move on to the business at hand. I would like to have a motion to adopt today's agenda. Who would like to do that?

Mrs. Leskiw: I so move.

The Chair: Moved by Mrs. Leskiw that the agenda for the September 13, 2012, meeting of the Standing Committee on Legislative Offices be approved as distributed. All in favour? Any opposed? The motion is carried.

Also, I would like to ask a member to move a motion to approve the minutes of the previous meeting.

Mrs. Leskiw: I so move.

The Chair: It is moved by Mrs. Leskiw that the minutes for the July 23, 2012, meeting of the Standing Committee on Legislative Offices be approved as distributed. All in favour? Any opposed? The motion is carried.

I have just a few opening remarks, and then I'll turn it over to our Ombudsman, Mr. Peter Hourihan, and the Deputy Ombudsman, Mr. Joe Loran. As members recall, discussions during our July 23, 2012, committee meeting led to a motion to invite the officers to attend a future meeting to provide an overview of their mandates and the work done by their offices. This will be a useful exercise for the new members on this committee and a refresher for those members who have been sitting on this committee for a period of time. The meeting format provides for a 15- to 20-minute presentation by the officer, followed by questions from the committee.

With that, I will turn it over to Mr. Hourihan. Go ahead, please.

Office of the Ombudsman

Mr. Hourihan: Thank you, Chair. Well, I guess, first: who are we? I am the Ombudsman, and Joe is the Deputy Ombudsman. I got appointed on October 17 last year, so in the chair just about for a year.

Our office is situated at 103rd and Jasper, downtown Edmonton, so we are separate from everywhere else. We do have an office in downtown Calgary as well. We currently have 23 people on staff, including the two of us, with a goal of getting to 25, probably 24 by the time we meet again with you in November.

Along the lines of what we do, we investigate written complaints from individuals who feel they've been treated unfairly by any administrative decision, act, omission, or recommendation of an Alberta government department, board, agency, or commission; the patient concerns resolution process of Alberta Health Services; professional organizations under the Health Professions Act, professional accounting organizations under the Regulated Accounting Profession Act, professional forester and forest technologist colleges under the Regulated Forestry Profession Act, Alberta Veterinary Medical Association under the Veterinary Profession Act, and the Alberta Institute of Agrologists under the Agrology Profession Act. In reference to the Health Professions Act we now have jurisdiction over 26 of 29 of the colleges. There are three left to come just as a matter of process.

As I said, we do accept written complaints. The aspect of written complaints has caused some minor difficulties over time, but we do what we can to assist people to get those complaints in writing if they are not particularly capable of doing so. We permit online submission and respond to e-mail as well. E-mail is sort of a recent addition to our acceptance of information, but we get through and ensure that all complaints are put in writing in terms of individual investigations.

I can also conduct what we call my own-motion investigations. These are more systemic, and they delve into issues within a jurisdiction where it can address issues of concern that may affect many. They generally result in a public notification and include a detailed report on the findings. A variety of aspects need to be examined prior to launching such a motion. To do a better job there, we are looking at this particular area currently in our organization, too, which I'm going to discuss a little bit later.

I can also conduct minister-ordered investigations. These include investigations requested by any committees of the Legislative Assembly, a focus that we'd like to put some attention to as we move forward.

Our office is an office of last resort. We get involved only after all avenues of appeal have been exhausted. This doesn't include the option to take the matter to court. A complainant doesn't have to access the courts if they choose not to, but we won't get involved until the opportunity to appeal has been exhausted and the time has passed.

Our investigations are done confidentially and thoroughly. This can include interviews, site visits, obtaining documents and other evidence. We have contact persons in the various authorities whom we work with to obtain the information and the documentation that we need to do our investigations.

We don't investigate MLAs or ministers, matters before the courts are decided by the courts, and we don't investigate the actions of solicitors or counsel for the Crown.

Our act is not explicit in respect of the investigation of ministers' decisions; rather, it's implicit in section 12, where it refers to recommendations made to a minister and matters affecting administration.

We're not advocates of an individual or for the government. We remain impartial, and we seek to enhance the fairness of the decision made. Further, we don't seek to determine the correctness of a decision. Rather, we ensure the administration of the decision is carried out appropriately and fairly. We review the process as opposed to examining the merits of the situation.

There's often a debate around this as to where that starts and where it stops, and it's not always a simple matter to determine. Experts' interpretation have indicated that there's nothing in our act or any of the various acts across the Canadian jurisdiction that restrict us from reviewing the merits; however, it is generally not the focus. I do believe that the onus is on me to continually ask the question and seek to ensure that I'm doing what I can to address fairness to the extent possible.

Also, we're not an appeal mechanism, as I mentioned, rather a body that can provide an opinion on fairness. Once our investigations are complete, I make recommendations where they're warranted. I may find that a decision, recommendation, or omission was contrary to the law, unreasonable, unjust, oppressive, or improperly discriminatory, or it was out-and-out wrong.

In the case of individual investigations I report the matter to the appropriate deputy minister or administrative head. If that does not meet with my satisfaction, I can then report directly to the minister. Further, after that, I can report to the Lieutenant Governor in Council and then to the Legislative Assembly.

In the case of own motions I report to the public generally, and in the case of a committee- or a minister-ordered investigation I report to that body or that person.

10:10

Our act provides the authority for the government authority to rehear or reconsider a decision and to quash, confirm, or vary the decision based on my recommendation. Section 21.1 provides such authority, permitting the authority the exception to the *functus officio* doctrine, which otherwise directs that an authority is done once they've completed their decision-making process under their act. It permits them to implement my recommendations even though their particular act indicates that their decisions are final. For example, the Health Professions Act provides that authority specifically in that act.

I don't make decisions. I just have two powers, so to speak. One is persuasion, and one is publicity. This is a full topic on its own. But suffice it to say, I guess, for today's purpose that I work collaboratively with government to the extent possible, recognizing the desire of the political and the administrative components to provide Albertans with a strong and transparent government service. This means I maintain close networks with deputy ministers and other government authority heads.

Throughout our history of the Ombudsman in Alberta, which goes back to 1967, the government authorities have always been particularly supportive of our role, and we've been able to work

effectively within a collaborative environment. Departments and the like generally want to serve Albertans in the best manner possible. I'm going to continue to work in this collaborative fashion, and I'll reserve the power of publicity for situations where it is required. I think that publicity can take on a variety of faces, and a lot of that publicity is getting out there in terms of awareness, conversation, and networking, effective work in that regard, in addition to more public approaches with newspapers or radios, that sort of thing.

Just very quickly in terms of our statistics in our office. We receive approximately 4,000 calls for assistance each year. About 20 per cent of those, or 800, are in the form of a written complaint, of which about 20 per cent of those, or about 160, result in a full-blown investigation. Our annual report will be coming out by the end of this month with more details on this. For example, in this last year we had 3,709 oral complaints as compared to just over 4,400 last year, which is a drop of about 8 per cent, which has been consistently dropping over the last three to four to five years. I can comment a little bit on that, and I will in a minute in terms of what we think that means.

Our written complaints this year have gone up significantly, from 770 to 885, which is an increase of 15 per cent. So we're balancing out a little bit, but we have had a drop relatively consistently over the last few years, and that does concern us.

We deal with a significant number of nonjurisdictional contacts with our office, nonjurisdictional in the sense of totally private, maybe federal government, maybe municipal government, anything imaginable. There are times when we would like to attempt to get rid of our nonjurisdictional work and focus more on our jurisdictional aspects; however, we don't particularly control that. Actually, the nonjurisdictional area is an important service that we provide.

Some people may call about an insurance company or Telus or a bank, and the important part for us is that it's not government, and we can set them straight that it's not government, that it's private, and who to contact; we have pretty good databases out there. But an important role we play is that they believe it's government, and they believe that they're being mistreated by government. If we can set them straight in a small way, then it helps them understand that it's not government that's mistreating them if that's the case at all. So we do try and provide that service.

Another important thing is that there are areas that we aren't jurisdictional in that perhaps down the road we ought to be. You know, if we knew we got a certain number of nonjurisdictional calls in a particular year from an area that is – let's just say municipalities, for example. We don't have jurisdiction with municipalities, but if I were to get calls over the year of, let's say, just to make up numbers, a thousand calls from people about municipal issues, it might be a point in our time when we may want to look into that to suggest whether or not we should or shouldn't maintain jurisdiction. Or it may be a situation where I just want to make sure that I get hold of the municipality associations to let them know what kind of numbers of calls we're getting so that they can look into it from their perspective. So we want to make sure that we maintain a good, solid service there.

It's hard for me to sit here today and give you numbers of what the most prevalent departments or authorities are that we deal with in terms of numbers of complaints. There are some consistencies over the years, and they make some significant sense. For example, the Solicitor General and public security: last year 8 per cent of our calls were concerning that department, and this year it was 6 and a half. The difference is probably just because of the minor adjustments since elections in terms of who reports to whom and the department structure.

The Workers' Compensation Board is always going to be on our list because of the nature of the type of work that they do. I wouldn't say that it's indicative of particularly poor work or anything like that in any of these sort of the top departments on our list. A lot of it is the nature of the type of business that they are in.

Alberta Justice is on there, always at around 6 per cent, and the Appeals Commission for Alberta Workers' Compensation Board is around 3 per cent. Those are fairly predictable. We watch those. Now, keeping in mind that the top five are about 30 per cent of our workload, the other 70 are the rest of the departments and the authorities, so it's fairly evenly split across government when there are complaints. We look into them with the same amount of diligence and investigative approach regardless of where it is.

I present these merely as a point. I guess it's a segue into where I'd like to go a little bit next. Because it does represent under 30 per cent and there are some consistencies, I'm not in a particularly strong position to be able to provide you with good critical analysis of what our statistics mean. That's a shortcoming that we have, and I'm going to talk a little bit about it here in a minute. That's kind of our role.

Where are we at now? As I said, I've been here for not quite a year, and we're in a bit of a rebuilding phase at the Ombudsman office. As I said earlier, at the beginning, we will have 23 personnel on board as of next Monday. We've just had a couple of hires, and we're excited about the backgrounds and the skills that these people bring because we feel it's going to really help us enhance our abilities in our office. As I said, we're in the rebuilding phase. We've had our strategic meetings with all staff involved, and we're adjusting our strategic business plan. We've adjusted it, so we now have four main priorities, not as one, two, three, four, but they're all sort of equal in importance.

The first one, I would say, probably is the highest, to enhance awareness of our office in Alberta. This includes a number of potential initiatives such as the travelling intake approach, where we're going to take our services on the road somewhat: public appearances and presentations, which we're doing; networking; radio and newspaper spots if it's appropriate and where it will work well. We're going to work diligently in this, involving all personnel within the office, to provide insight and awareness.

One of the problems we have, when I talk about critical analysis and our inability to do that – I've been researching it around Canada and around the world, in fact. It's an area that everybody is struggling with. There's a lot of information that we don't gather. For example, if I have a diverse community that I think about out in the province somewhere and I wonder if we're providing service to that particular community, I can't answer that question because we don't ask those questions on our intake. Now, I may be able to go through our lists and guess, but that's not a particularly strong approach. We're looking at ways that we can do some critical analysis to improve the statistics that we do have without being too onerous and too survey oriented in terms of intake. We're just at the initial stages of that, so we want to focus on that for the next year.

We want to get out there and meet with different communities and areas, and we've been beginning to do that. I've been starting to go around to all MLA offices. Some of your offices I've visited; some of them I haven't. I'm trying to catch-as-catch-can here. My goal is that one of us will get to each and every office over the next several months. Two goals there: to make sure that your offices are aware, have our brochures and those sorts of things, and just as kind of a visit but also to seek information. If there are constituency meetings or gatherings or opportunities for us to

provide a presentation to your staff, please feel free to call us, and we'll go out. We're looking at a variety of different areas in our awareness, and we're going to advance those as we move forward on our strategic planning.

Our second priority is providing investigative excellence. That's always going to be done. It's our core duty, and it's our core piece of work. We're always going to do this. That's a little bit about looking at how we do things and why, the timeliness of our investigations. It also includes the critical analysis. We're looking for better ways to provide better information to ourselves and to others. As I said, this is a difficulty across the country and, indeed, across the world.

10:20

We're hoping, with some meetings coming up here in the fall – Joe is going to one. We're members of the United States Ombudsman Association, as are most ombudsman offices in the country. He's going to one in Spokane – they're looking at some of this – and I'm going to one in New Zealand, the international one, in November and hoping to find out some information about this. I'm also working at it from the perspective of being a member of the Canadian parliamentary ombudsman group – there are 10 of us – so that's sort of my area that I'm looking at at that level.

Our third priority is to foster a positive work environment. We have had a significant amount of change in the last year in terms of personnel. When I came on board, I was number 17, I think, of the office, so we had to hire a handful of people to try and get back up to strength. We had a couple of people move on to other opportunities. That's good and bad in the sense that we lost some corporate knowledge, but we also gained some opportunity to diversify and bring in new people. It's okay, but we want to make sure that our people are well developed. It's an area that's hard to develop people in in the sense that there are not these pre-programmed courses and training areas for them, but we can look at and develop some and look around the environment locally and around the country.

Our fourth is to explore technology. We're looking at our current environment, seeking information to see what new or alternative technology may be available to help us do a better job, aware, you know, that there are things available out there, but we need to look at it to see if it can be value-added and manageable from our perspective. We look at things like: are we relevant to anybody who's under 30? We're not on Facebook, not on Twitter yet in these areas. We do accept online, but in large part we want to make sure that we're accessible to people who are younger as well as to people who are older who may not want to have any part of that approach.

So those are our four priorities.

We're also looking at our branding – that kind of goes a little bit to the priority of awareness – to see if we can be better known in Alberta, have a better impact. We just want to be able to be in a position where when Albertans need our help, they know that we're there and that they can call us.

One thing that we are trying to do is not become too bureaucratic or legalistic. It's a problem that we could have if we're not careful and if we don't keep our eye on the ball in that regard. The purpose of the Ombudsman has always been to have the ability to look into complaints in a timely fashion without having to resort to a lengthy process or legal wrangling. This is not always easy in an ever-increasing, complex government world. For example, as the various government structures become more intertwined, where different departments or authorities work together, it's more difficult to review matters before us. We have to have more considerations on the table.

Similarly, as the number of contract or delegated service relationships that government gets into increases, it makes it more difficult to determine jurisdiction and role. A good example here is the area of seniors. There are a number of areas where we do have jurisdiction with seniors. Some of this falls to Human Services, and some of it falls to Health. There is public and private seniors' housing in Alberta, and Alberta Health Services has a highly significant role. We don't have jurisdiction there. We do have jurisdiction in some areas and not in others, so we have to make sure that we pay close attention to that to act in an appropriate fashion.

There are expectations that the Ombudsman will review matters as expected. However, there is often confusion where our role starts and where it stops, confusion sometimes at the government authority level and often with the general public, who sees it all as government services, where fairness is expected throughout. As government directs its attention to this area, I will certainly voice my opinion that I believe it would be best to give jurisdiction to the Ombudsman as opposed to another entity. I say this from a logistical and a consistency-based perspective.

As I said, we've been hiring people throughout the last six months. I said that we lost a couple. We lost one to the child advocate's office, so that's good. It's a perspective that they can provide over there. We lost another member to the University of Alberta tribunal level, which is a positive direction for our people to move on to further their own careers and that sort of thing. We've hired six investigators, and we are treading water to some degree in terms of our moving forward in some of our initiatives as we get the people trained, but we're excited about what the future has to offer us there.

We've reorganized the office structure in the last year. Prior to my arrival investigators reported directly to the Deputy Ombudsman. We had team leaders who did not have significantly expanded roles. We now have teams that are integrated between Calgary and Edmonton, and we also have an own-motion team. That team is not fully functioning yet, but it is ready to look at areas that we can focus on and how we might do a better job in terms of that and seeking more information.

We've also started looking at the possibility of sharing common services with other legislative offices to see if there are areas, some of the more nonoperational pieces there, where we might be able to work together and provide each other with some significant support and that sort of thing.

I guess I'll just close by saying some of the things that we're working on, some of our role. We are encouraging MLAs to keep our office in mind when constituents call with concerns. We're here to help Albertans as we can and move forward as best we can.

The Chair: Thank you, Mr. Hourihan.

Before we open it up for questions, I'd like to acknowledge Mr. George Rogers.

Ms Blakeman, go ahead.

Ms Blakeman: Thanks very much. Ombudsman, in my constituency office we really appreciate the service that you offer, and I'd like to personally thank the office for their professionalism and patience with my constituents. You get the largest number of calls from my office, and I will admit that some of my constituents are a little harder to love, so I appreciate your patience with them.

Now, a couple of questions I do have. You talked at the very beginning about a committee request and perhaps things you were possibly considering and considering doing requests coming from

one of the legislative committees. Is there something that has prompted that comment, or are you just open to that possibility?

Mr. Hourihan: No, nothing has prompted it per se. On the gentle side, I guess, what has prompted it in some respect is that there used to be the odd one of those requested over the years, and we haven't had one requested now since 1995. I believe that was the last one. So it's kind of fallen off the table, and I just want to make sure that the awareness is there.

Ms Blakeman: Okay. I have two more questions if that's okay.

The Chair: Sure. Go ahead.

Ms Blakeman: Okay. The second one. You talked about not having jurisdiction but that maybe you should have, and again I'm wondering if there's anything that's prompting that or if it's just theoretical.

Mr. Hourihan: More theoretical. We want to make sure that we're effective. If there are areas where it's confusing to the public, if there is going to be oversight and it can be at the Ombudsman level as opposed to two offices, we can provide better consistency and approach in that regard.

Ms Blakeman: Okay. My final question. If I'm hearing you correctly, you seem to have increased the number of FTEs in the office considerably since you started, but a quick glance back at the last available annual general report from that office doesn't indicate a huge leap in your budget. How are you doing this?

Mr. Hourihan: Okay. Thank you. Keep that in mind in November.

One of the things that we did last year was return a lot of money from our budget because our numbers were down. Our budget provides us with enough finances to probably run with about 23 to 24 people. We believe we can run pretty solidly with 24 at our current budget. Our establishment has always been set, I guess, notionally at 25 people. I don't know if the office has ever reached there; I don't believe it has. So we're as close as we've ever been right now at 23.

Now, this is sort of where the rubber is going to hit the road because as we get people on, we've got to get them oriented and trained and get ready and start to get out and do some of these initiatives that we want to do. So we're working really hard at looking at what our core business is, what we need to be doing in terms of our priorities, and providing a good sense of that as we move forward.

Last year we got about a 4 per cent increase, which just kind of covered wages and that sort of thing, but we still turned back a significant amount of money given the number of vacancies we had. We believe that at 24 we're pretty good, but we do want to move forward. The own-motion approach that we're looking at: it will probably take a year to get this settled out and to figure out where we are with that to make sure that we can do a decent job there. We're okay right now, but as we move forward, we're probably going to be looking at a request for more.

Ms Blakeman: Well, good luck. Make your case well.

Okay. That answers those questions. Thank you very much.

Mr. Hourihan: I'd just like to comment. You say that you get a lot of calls from people that can sometimes be hard to deal with. Our perspective is pretty significant in that regard, that the most vulnerable need the most attention. Our staff is very patient and diligent in making sure that we keep the attitudes out that we might otherwise fall into. Thank you.

10:30

Ms Blakeman: One last thing. When are we going to get your next annual general report?

Mr. Hourihan: It should be printed by the end of the month.

Ms Blakeman: Okay. Good. Thank you.

The Chair: Good. Thank you.

Mr. Eggen: Thanks very much for your presentation, and thank you as well for visiting our office in Calder. We certainly will try to make use of your services as much as we can direct constituents to your office.

I have a couple of questions as well that you can perhaps answer. You mentioned that you have the impetus to conduct your own investigations as well, and I was just curious for you to elaborate on that. You said that you are interested in pursuing that aspect of your mandate. What might you be pursuing, and what constraints do you have that might get in the way of an independent investigation?

Mr. Hourihan: Okay. We don't really have any constraints per se. I think they're self-imposed a little bit by us. We have the ability to do own motions, and they've been done in the past. The last really major one was the out-of-country health services one, and it was a very significant one. It was big. They take a lot of resources when they get that big. One of the challenges with a large one like that is that you often end up with a significant number of recommendations, and then, of course, you've got to deal with them and manage them through to fruition and that sort of thing. That's okay.

One of the areas where I think we've been a bit wanting is our ability to think in advance of the types of things we would like to know before we launch an own-motion investigation. I can give a bit of an example. Earlier this summer the Ombudsman in Ontario was doing an own motion – they call them something just a little bit different, but it's the same thing – in terms of diabetic drivers in Ontario. It had no particular relevance to Alberta, but the calls started to come into our office saying: "Okay. Ontario is doing it; therefore, you should." My sort of internal comment is that I'm not going to make an own-motion determination based on somebody else's determination. We need to have the facts, the figures, the understanding here. We did look into certain things to see whether or not there was any relevance in Alberta, and there wasn't.

However, the own-motion team now, one of their mandates – the team is a dedicated team. We are going to sort of put our money where our mouth is in the sense that if we're going to look at these kinds of things where appropriate, we want to be particularly well positioned. We want to start to build that critical analysis and look at the types of things and the types of information that we would want to know before we would get into this sort of thing.

So I don't have anything specific in mind at this particular point. There's nothing barring me from doing it or restrictions there. We just want to make sure that we do it in the best fashion possible.

Mr. Eggen: Absolutely. Thank you.

If I can, my second question is very brief. You mentioned that, of course, you have counterparts in each province, and you make connections with offices around the world. You've been in the job for about a year now. Have you identified any best practices from other jurisdictions that you might wish to employ here in the province of Alberta?

Mr. Hourihan: Well, Saskatchewan does a pretty good job along the mediation lines. Now, they are significantly more mediation oriented than most jurisdictions. However, there are certain things in there where we do alternative complaint resolution. We do look to them for help in terms of their expertise and background knowledge in that particular area. Ontario has a fairly robust and busy and large Ombudsman office. We look to them when we're looking for critical analysis. I'm going out and trying to find some of these larger jurisdictions just to determine if they do have it. Other than that I haven't identified any best practices that we want to employ just yet. We are looking to a couple in terms of how they handle things like Twitter and Facebook and those kinds of things but nothing particularly outstanding just where we are at this point in time.

Now the vice-president with the parliamentary ombudsmen across Canada, we meet once a year. The next meeting is in May in Edmonton. Our work is starting to work together to try and come up with some of those kinds of notions that you suggest.

Mr. Eggen: Thanks.

The Chair: Mr. Rogers.

Mr. Rogers: Thank you, Mr. Chairman. Mr. Hourihan and Mr. Loran, I want to thank you for being here today. Just two quick questions. The first one would be just to get a sense of what portion of what walks through your door by the various means that you outlined would turn out to be frivolous. I'm expecting that it's going to be small, particularly due to the fact that you mentioned that you are a place of last resort.

Mr. Hourihan: It's very small. We would only have a handful in a year at best. When I say "handful," like four or five in a year at best. There are times when I would sometimes like to take that route, but keeping that in mind, I try to be very inclusive and try and look at the opportunity to help out instead of hurting. Because we are an office of last resort, we do understand that people are at their wits' end often when they come to us and need the help. Sometimes it's just the frustration. The different types of individuals we may deal with can dictate that. We do use it, but we use it very sparingly.

Mr. Rogers: Thank you.

My next question refers to your travelling intake initiative, taking it on the road, as you call it. I'm just wondering if this is trail-blazing, whether this type of effort is common in other parts of the country. You mentioned part of that piece about more awareness, getting people to understand more of your service and the availability of your office, but I just kind of wonder about the travelling intake piece. I guess I'm just looking for a little bit more to explain why you would think that that would be . . .

Mr. Hourihan: Yeah. It's more of an awareness initiative. If we go out to a community and have a town hall or do a presentation and that sort of thing, just being prepared to accept intake on the road when we're there so that we can help, as opposed to coming in, doing a presentation, walking out, and saying, "Yeah, give us a call," being rather superficial. We would like to be more robust and more helpful on the road.

Mr. Rogers: Are there some examples of this across the country that have worked well, or is this something new?

Mr. Hourihan: It's fairly new. In fact, Alberta has used it before. It was used a few years ago in a very short spread, a couple of

places, and it seemed to work fairly well, and awareness peaked. Sometimes awareness peaks don't necessarily result in a high number of new investigations, but they result in some awareness of some ability that we have to provide people with information on past things that they've had or questions that they've just not quite pushed the button on.

Mr. Rogers: Fair enough. Thank you.

The Chair: Thank you.

Since we only have six minutes left and I've got two more committee members wishing to ask questions, I'll ask everybody to cut your questions short and your answers short as well.

Mr. Bikman: I've appreciated what you've had to say today. It's certainly helped me understand better the role that you're playing. I'm wondering: how do you measure your effectiveness, and how do you get your feedback on effectiveness?

Mr. Hourihan: That's another area where I'm not particularly well positioned to answer the question. I mean, surveys can help us out, and we're looking at that. In fact, I've had some conversation with the Privacy Commissioner because they've put out a survey just on the notion of where it can be helpful and where it's not particularly, and what we might do in that area. So we're exploring those areas as well.

It's also a question that I've been researching around the globe, and it's not particularly easily answered by ombudsman offices across the world. But that's some of the stuff that we're going to be seeking in terms of information, to be able to provide that, so that we have a better understanding as well.

Mr. Bikman: Maybe you'll include that in your next report to us.

Mr. Hourihan: Yes. This next report, because it was sort of mid-term, is going to look a lot like the last ones, and then the one next year is going to look significantly different.

Mr. Bikman: Thank you.

Mrs. Leskiw: Out of your 4,000 inquiries, how many were from rural areas? Farther away from the bigger centres do you find you get fewer and fewer people using your . . .

Mr. Hourihan: Yeah. I don't have those numbers in front of me. I apologize. I'm just trying to go from memory. We get more from some of the areas in the cities. Now, you can rationalize it fairly significantly depending on where it is, what it's about, and that sort of thing. In some areas we get very little. Just for example, the area of Fort McMurray: we don't get very many in terms of things that you might get from another area like workers' compensation issues and that sort of thing or seniors' issues coming out of there. Why? Well, it probably has to do with the nature of the people who are in Fort McMurray or in that area. If they are sick, they leave and come down.

10:40

Ms Blakeman: Here it is, in the report.

Mr. Hourihan: Oh, you have the – thank you very much.

We do manage this stuff. Across the province there should be no concern about the numbers that are in the areas. There is nothing too excessive. But there's a handful. You know, they range anywhere from a couple to 10 or 11: Bonnyville, seven calls in a year; Lac La Biche, five; Athabasca-Redwater, six; Lesser

Slave Lake, nine; Dunvegan-Central Peace, three; Grande Prairie, 18, more population right there. There's nothing really significant in those statistics. In fact, part of that we want to look at and say: what value does that add for the different MLAs across the province to know that?

I do bring a report when I come to each constituency office to go over some of that stuff – no names or anything; it's all confidential – just to provide you with some insight.

Mrs. Leskiw: The only reason I asked that is because with you saying, "taking your job on the road," I'm just wondering whether the farther away you are from the bigger centres, the less familiar they are with your office.

Mr. Hourihan: Well, that's a consideration that we have. There are a number of considerations, and one of my concerns is: are people aware of us?

Mrs. Leskiw: Thank you, and thanks, Laurie.

The Chair: Okay. We've got three minutes left. Any more questions?

I see none. I'd like to thank Mr. Hourihan and Mr. Loran. Thank you for attending and speaking to the committee today about the mandate of the office of the Ombudsman. The next meeting, to consider the 2013-2014 budget estimates, business plans, and the 2011-2012 annual report of the office, is anticipated for scheduling sometime in November. Our office will be in contact with you once the date is confirmed. Again, thank you very much for the presentation.

Mr. Hourihan: Thank you, Chair.

[The committee adjourned from 10:42 a.m. to 10:46 a.m.]

The Chair: Well, good morning. Before we start, I would like to go around the table and ask everybody to introduce themselves for the record. Again, let's start with our deputy chair, Everett McDonald.

Mr. McDonald: Everett McDonald, MLA, Grande Prairie-Smoky.

Mr. Rogers: George Rogers, MLA, Leduc-Beaumont.

Mr. Eggen: Dave Eggen, MLA for Edmonton-Calder.

Mr. Quadri: Sohail Quadri, MLA, Edmonton-Mill Woods.

Ms Blakeman: Laurie Blakeman. Once again I welcome each and every one of you to my fabulous constituency of Edmonton-Centre, including the newcomers. Welcome, welcome.

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

Mr. Fjeldheim: Brian Fjeldheim, Chief Electoral Officer, Elections Alberta.

Ms Pui: Benedicta Pui, senior management assistant, Elections Alberta.

Mr. Wilson: Jeff Wilson, MLA, Calgary-Shaw.

Dr. Brown: I'm Neil Brown, MLA for the fabulous constituency of Calgary-Mackay-Nose Hill.

Ms Blakeman: Pick another word, honey. You can pick "great" or "wonderful" but not "fabulous." This is fabulous.

Mrs. Leskiw: I'm going to beat you on that one. Genia Leskiw from God's country, Bonnyville-Cold Lake, in northeastern Alberta.

Mr. Bikman: Gary Bikman, MLA, Cardston-Taber-Warner.

Mrs. Sawchuk: Karen Sawchuk, committee clerk.

The Chair: I'm David Xiao from the marvellous riding of Edmonton-McClung, and I'm the chair of this committee.

Thank you, everybody, and welcome to the committee. For the benefit of our visitors the committee discussions at the July 23 meeting led to a motion to invite the officers to attend a future meeting to provide an overview of their mandates and the work done by their offices. This will be a useful exercise for the new members on this committee and a refresher for those who have been sitting on this committee for a period of time. The meeting format provides for a 15- to 20-minute presentation by the officers, followed by questions from the committee.

With that, I will turn it over to Mr. Fjeldheim. Go ahead, please.

Office of the Chief Electoral Officer

Mr. Fjeldheim: Thank you very much. I'm afraid our presentation is a little longer than the 15 to 20 minutes, and I will speed it up.

I want to first of all thank you very much for inviting us here this morning. Again, I'm Brian Fjeldheim. I've been involved with Elections Alberta for 25-plus years, and I can assure you, from those many years involved in this line of work, that there is something new that happens all the time.

With me today is Lori McKee-Jeske, the Deputy Chief Electoral Officer. She's been involved 20-plus years in this line of work. Also helping out today is Bene, and she's been with the office about 17 years. So we do have quite a bit of experience in this line of work. As I said earlier, there's always something new that happens.

As may be seen in our second slide, this overview today will consist of explaining to you our legislative framework, our mandate. We'll show you our organizational chart, our primary operational activities, and the activities that keep us busy during our electoral cycle.

Governing legislation. Well, we have the Electoral Boundaries Commission Act, and that prescribes the timing and the method of an independent commission to follow when reviewing and recommending changes to the electoral division map for the province. The act also directs the Chief Electoral Officer to provide support and assistance to the commission during this redistribution.

The Election Act prescribes the development and distribution of the lists of electors and the conduct of open, fair, and impartial elections.

The Senatorial Selection Act prescribes the conduct of Senate nominee elections, which may be conducted in conjunction with municipal elections, with provincial elections, as was done last time, of course, or as a stand-alone event.

The Election Finances and Contributions Disclosure Act provides direction to political entities for registration, financial reporting, and disclosure. The act prescribes the means for the Chief Electoral Officer to monitor compliance of political entities, including political parties, candidates, constituency associations, and most recently third-party advertisers.

Our vision is for Albertans to have confidence in an easily accessible electoral process. Our mission is to deliver effective, nonpartisan services that meet the electoral needs of Albertans.

As you can see in slide 5, we have a number of stakeholders. Alberta has a very large number. Each of these individuals and groups must be considered when decisions are made regarding changes to legislation or policies and procedures. A change to positively accommodate one group can have a negative impact on another group. For example, there might be a positive change for one group, electors in this case, to open the polls at 7 a.m. and close them at 9 p.m. But to another group, the election workers, this may have a negative impact because of the longer working hours, which would in effect be from 6 a.m. to 11 p.m., turning into about a 17-hour workday.

Our organizational chart, as you can see, is a relatively small group compared to the over 17,000 individuals that we hire during an election. Our three main functional areas are operations, IT and geomatics, and finance. The number of permanent full-time employees is 16. At this time I'd like to publicly thank them for the long hours and the hard work they put in during the recent enumeration and election.

The next area I would like to address relates to the activities associated with the boundary commission, enumeration, elections, and finance activities. Providing information on our activities over the past few years is the best way to illustrate the responsibilities of Elections Alberta through an electoral cycle. By legislation the office of the Chief Electoral Officer provides support to the boundary commission. This includes logistical support such as hosting meetings, providing background information, briefings, arranging for speakers, advertising, resource materials, and offering general administrative assistance. The other support system for the boundary commission includes the mapping and geographic information systems, which involved amalgamating the most recent census data together with geographical areas. An interim and a final report were required. This is what that final report looked like, and the boundary commission's is this CD if you recall. The Legislative Assembly passed that final report with about five amendments, all of them relating to name changes to electoral divisions.

The April 2010 legislative amendments required the review and revision of all resources and training material. For a small office that is a significant undertaking, particularly when all resources must be reproduced in large enough quantities to meet the needs of electors across the province. As you can see, with the passage of amendments in April 2010 returning officers and election clerks were required to be hired by Elections Alberta. Advertisements were placed in newspapers across Alberta, and those individuals interested were invited to apply online. A test was administered, and only upon successful completion were individuals able to submit an application online. Five teams were dispersed across the province to hire 174 election officials.

In September 2010 we began the map review, beginning with the orientation and training of all returning officers. Since the new electoral divisions had not yet passed through the Legislative Assembly, we based our preliminary review on the final boundary commission report. Returning officers reviewed 5,650 polling subdivisions. Many had to be changed because of the boundary changes and also because of, of course, the increase in population in Alberta. By legislation no subdivisions, these small areas, are to contain more than 450 electors. Following their review lists of electors were released to political parties in July 2011, with electors' names appearing in the newly created electoral divisions and polling subdivisions.

10:55

Returning officers were provided with enumeration training in July 2011. They went on to recruit, train, and supervise over 6,500

enumerators and over 800 data-entry operators to conduct the door-to-door enumeration and update via the Internet the lists of electors.

In addition to personal visits, electors who were not available during enumeration were able to add or update their personal information for the list of electors via Voterlink. Lori is now going to explain what Voterlink is and give you a brief demonstration.

Ms McKee-Jeske: Voterlink is a secure online voter registration system that allows electors to add or update their personal information on the list of electors 24/7 from any location that has Internet access.

There's no Internet connection? There is no Internet connection. I'll give you a bit of an introduction while we get that going. We're getting it.

Use is constant but peaks during events. We had 44,000 users access the site during our enumeration.

Enumeration notices that were mailed out to all residences had provided the Voterlink option to electors who planned to be away through the enumeration period. Albertans are notified of this online service via three main sources. Alberta Registries is the first one, and they provide Voterlink notices that look like this with all driver's licence and vehicle registration renewals. They send out an average of 200,000 of these notices for us every month – that's 2.4 million a year – at no charge. Most users identify Alberta Registries as the source that directed them to Voterlink.

Canada Post provides a notice as part of their Smartmoves program. They send an average of 10,000 Voterlink cards per month, about 120,000 per year, and those go to people who have registered with Canada Post a change of address.

Links are available on the Elections Alberta website and others, including the Legislative Assembly Office. We've invited all political parties to provide a link to Voterlink, and we have seen those links on different party sites at different points in the electoral cycle.

The quick demonstration: I see we're up and running. The first screen that you'll see explains the purpose, the type of identification that's necessary – either an Alberta driver's licence or the Alberta ID card – and the time it will take to complete my registration. It also provides a user with contact information for our office should they have any questions or comments.

As a user I am asked a series of questions to confirm that I'm eligible to register. The Election Act allows 16- and 17-year-olds to provide information, which is placed on the list of electors when they turn 18. I always have the option of moving forward or back to change my answers, and I have a progress bar at the bottom, which shows the status of my registration.

I'm asked to enter the nine-digit ID number from my driver's licence or Alberta ID card along with my first and last name as they appear on the card. You'll see samples of the ID provided showing where those numbers are, and those spots will vary depending on when the ID card was issued. Use of the identification provides security in the system. No one can change my elector record without having my identification in hand.

I'm asked to provide my first and last name as I'd like them to appear on the list of electors. That would allow me to choose Beth instead of Elizabeth, for example. I'm asked to provide my telephone number, which is optional, and my e-mail address, which will only be used to contact me if there are questions concerning my registration, possibly an incomplete address.

I'm asked next if I have an urban or a rural address. In my case I have an urban address, so I will select the top button. Here I provide my residential address, which is used to assign my

registration to an electoral division and polling subdivision. I'll provide my mailing address if it's different than the address provided at the top, which is very typical, of course, in a rural area.

I move forward to the next screen, where I'm asked if I have moved since the election. If I have, I'm asked if I've moved into a new home, which gives a flag to Elections Alberta that we may need to add this address to our database. If I've moved into an existing home, I'm asked if I moved in with the existing residents or if those residents have moved out. That allows us at Elections Alberta to determine whether we need to find an updated address for the residents who were previously registered at that address.

I have the opportunity here to change any information entered in error. I get to see what I've entered, and once I'm satisfied with it, I'm asked to declare that the information is true and accurate, in much the same way I would do if an enumerator was at my door.

At the end I'm asked how I learned of Voterlink, and this is what allows us to compile the statistics that tell us that the driver's licence or vehicle registration renewal is the most frequent source of notification. Through the early part of this year advertising came second, and likely that was due to the fact that all of our printed material for the enumeration and for the election identified Voterlink as one registration option.

I'm asked now if I would like to register another elector. My husband could register without having to provide the address information again. However, he would need to provide his ID number, again to ensure security in the system.

My electoral division and MLA are identified, with links to the MLA information on the Legislative Assembly Office website. My registration is now confirmed, so my name will appear on the list of electors.

One last point. All the resources prepared for the past enumeration and election had a QR code, a quick response code, which allowed users to access the website from a hand-held device, so you could register using your phone. It was a new initiative but one that was very well received.

Thanks.

Mr. Fjeldheim: When all the numbers were in, the enumeration list contained 2,066,026 electors. In the fall of 2011 a leadership convention was held by the Progressive Conservative Association of Alberta, and there was speculation that a fall election may be a possibility. In an abundance of caution I decided to conduct training sessions for returning officers, election clerks, and administrative assistants in September and October and provide political parties with lists of electors in October as well.

In December 2011 amendments were made to the Election Act which established that elections would be held between March 1 and May 31. This means that an election could have been called between February 2 and May 3, and this gives us the opportunity to allow returning officers to prepare for an election: establish offices, get phones, communication lines installed, and so on. Of course, this greatly enhanced the service we were able to deliver.

Since a fall election did not occur, we were able to enhance the list provided to the political parties and to election administrators for use during the election. This enhanced list was distributed in January 2012 to political parties and contained the names of 2,387,485 electors, an increase of about 300,000. We are pleased with the quality of the list. Details of that will appear in the report on the provincial general election, and that will be completed in a month or so and then will be given to this committee.

Because of the complexity of returning officer training we had a refresher session in January since three or four months had passed

since their initial training. This slide shows a session in Calgary where returning officers are being trained in working at the poll.

In January 2012 we finalized the materials for returning officers, and in this picture you can see the resource preparation. In the lower right-hand corner is our warehouse, where we had about 261 customized pallets built for transport across the province. The next slide you can see is the returning officers' office, and there are a bunch of ballot boxes that are filled with materials.

Finally, the conduct of the 2012 election. On March 26 I received an order in council ordering me to send writs of election to the 87 returning officers. On that same day I received a writ of election as prescribed by the Senatorial Selection Act from the Lieutenant Governor. As you can see, a number of activities took place on March 27; that's day 1. Returning officers and candidates could pick up and file nomination papers, special ballots could be issued, and so on. In addition, we had a number of outreach partners that we contacted: the military, ethnocultural groups, disabled communities, First Nation groups, postsecondary institutions, seniors' groups, and so on. Again, electors were able to update their information via Voterlink.

11:05

Over 17,000 election officials were hired to work at 6,763 polling stations. We had 1,421 locations across Alberta. Advance poll locations were established. There were 429 candidates nominated and 13 Senate candidates. This was the first election where there were no restrictions for voting at the advance poll, so electors could vote in advance for convenience and didn't have to provide any reason for voting at the advance poll. The advance poll turnout was higher than we expected, and more polls were added throughout that three-day advance poll period.

Ms McKee-Jeske: Activities were high through the entire election period. Our call centre answered about 8,000 calls on polling day. That's more than 10 every minute. The vast majority of callers wanted to know where to vote and whether they were registered to vote. Now, we expect that the call volume would have increased exponentially if we did not have this functionality available on our website, the Where Do I Vote? option. I'm going to quickly run through the screens as they would have appeared to a user during the election period.

Going in, the same as Voterlink, I indicate the type of address I have, urban or rural, and I'm asked to provide my residential address. The search confirms my address, returns my electoral division and the poll number, so that I know which table to head for in the school gym, and the name and address of the polling place, in this case Bishop Greschuk school. I see the location is wheelchair accessible, and I'm also given contact information for the call centre just in case I have specific questions.

This would all appear on one screen, but we've broken it up just for the purposes of the presentation. I'm going to skip the top field for now and come back to it in a moment. As I scroll down the page, you will see I get some additional information: date of the election and voting hours, dates and voting hours for advance polls, name and address of the advance poll location. In this case it's the returning officer's office. I'm advised that the advance poll location is wheelchair accessible, and at the bottom I have contact information for my returning officer just in case I need additional information from her.

As I continue to scroll down, I see a list of candidates for the general election and, below, for the Senate nominee election. Candidates' names appear as soon as they file nomination papers, so prior to the close of nomination papers I would see a message

that told me that the list of candidates may be incomplete. This is a complete list, so it would have appeared after nominations closed. Party links are provided over to the right for easy access to the party websites.

Right after "Where do I vote?", "Am I registered?" is the most common question that we get. Again, as a user I start by identifying whether I have an urban or a rural address. Now, if I came to this screen via Where Do I Vote? as I just did in this example, the address would be prepopulated. I would just have to add my name and my birthdate, and I see that Bene had done that already. Now, entering that information, I'm told that I am registered to vote. My name appears on the list of electors. You'll see I get additional information, and that's because users may go directly to this screen instead of going through Where Do I Vote? that we looked at a moment ago.

One last point. To ensure security, the system will only tell me whether or not I am registered at that particular address, so I get a yes-or-no answer and only after I have provided my name and birthdate. I can't find the address of another elector by entering his or her name, and I can't confirm another elector's address just by entering a name, an address. I do need the birthdate just to ensure the security of the data that we hold in the register.

Thank you.

Mr. Fjeldheim: Activity was steady throughout polling day, when no major delays were reported. At the conclusion we had one judicial recount – that was held in Calgary-Fish Creek, with no change in the results – and no controverted election applications were filed with the courts. Following the period for candidates to request a judicial recount, the names of the winning candidates were published in the *Alberta Gazette*. In the 30-day period candidates and their official agents can review documents, request poll books, and so on.

Now I'd like to move on briefly to the Election Finances and Contributions Disclosure Act. We have a book that I recommend everyone read, a guide to the Election Finances and Contributions Disclosure Act. It looks like this. I hope you all have that. If you don't, please let us know, and we'll get them out to you. It's responsible for a number of activities.

We had one new political party registered last year. It was the EverGreen Party that was registered. There are certain things that are outlined in here, what you have to do to form a party.

New constituencies were established. The old 83 constituencies disappeared when the writ of election was issued, and the 87 new boundaries came into effect. The old constituency associations: we had 378. That was as of December 31. There are presently 382 constituency associations that are now registered on these new boundaries.

Candidates, of course, are required to register under the finance legislation. We had 431 register, and 429 filed nomination papers.

Deregistration. That occurs most often when financial statements are not filed, so it is essential that those filing deadlines are followed. Political parties are required to file annual financial statements, and those must be audited. Constituency associations also must file an annual financial statement, including a nil return. All financial statements must include a list of the name, address, and the amount of all contributions over \$375, and that becomes public information.

We certainly provide all the guidance we can. We know there are many volunteers involved in this process, and we do everything we can to assist. Financial staff in our office review the financial statements, including lists of contributors, for proper completion and statutory compliance. Where errors occur, they work with CFOs to correct them, so final financial statements may

be revised as corrections are made. If noncompliance is discovered or reported and an investigation is conducted, appropriate penalties are levied if necessary. Legislation allows for prosecution and administrative penalties.

Contributions can be received from individuals resident in Alberta, corporations that do business in Alberta, and trade unions or employee organizations that hold bargaining rights. The act prohibits contributions from out-of-province based individuals and entities, municipalities, government-related or government-funded entities such as Crown corporations, school boards, postsecondary institutions, hospitals, et cetera. The amount of contributions that may be received by parties, constituency associations, candidates in Senate nominee elections are all outlined in this brochure.

For most candidates the election period is over. However, for those carrying a deficit, there is an additional three-month extension to retire any outstanding debts and, if necessary, a further three-month extension. I'm sure none of this applies to any of you here today.

Failure to file financial statements has major consequences for the candidate. For example, an elected candidate may lose his or her seat in the Legislative Assembly, and other candidates or CFOs may be prohibited from participation in elections for eight years unless they seek relief in the courts.

The Chair: Mr. Fjeldheim, I'm sorry to interrupt you, but, as you know, I also like to give adequate time to the members to ask questions.

Mr. Fjeldheim: All right.

The Chair: Let's move on with the questions. Please, everybody, limit your questions to one. If we still have time, we can have a second round of questions.

Go ahead, please, Ms Blakeman.

Ms Blakeman: Great. I have two, so put me back on the list.

This is around election donations, election financing. I'm interested in the process and the reporting. I know that with election access issues the office can investigate and then recommend to the Department of Justice that they pursue legal action. Ultimately, it's up to the government to take a suit against itself, possibly. You went over it very quickly. Are we in the same situation with finances such that you would investigate finances and then make a recommendation that it's followed through on and it's back to the government, the Department of Justice, to decide whether or not to pursue that? With the access cases they have consistently declined to follow through on any recommendations of pursuit legally that are forwarded from the Chief Electoral Officer.

11:15

Mr. Fjeldheim: The short answer to that is yes. No prosecutions can take place without the authorization of the Chief Electoral Officer. If I get a complaint, I investigate that, and if I feel it appropriate, then I will forward that to Justice. Then it would be a decision that they would make on whether there would be sufficient evidence for prosecution.

Ms Blakeman: And they can turn them all down.

Mr. Fjeldheim: I would think that is probably correct.

The Chair: Mr. Eggen, go ahead.

Mr. Eggen: Yes. Thank you. Thanks for the presentation. Just further to that, we have, I think, a significant problem here in the

province, where we are finding illegal donations, but we're not getting full disclosure as to who and where and why those illegal donations are taking place. Is there a mechanism in place by which we can in fact see where those illegal donations are taking place? We know there are lots out there. In order for us to turn this around and to discourage that kind of behaviour, we need to have full disclosure. What tools can we give you to strengthen that?

Mr. Fjeldheim: At the present time I am restricted from releasing that information. I have a legal opinion on that. Regarding sections 5(4) and 5(5) in the finance legislation, it prohibits me from releasing information. It says in part that I "shall maintain the confidentiality of all information and allegations that come to their knowledge" – that's my knowledge – "in the course of an inquiry or investigation" unless it can be disclosed under the next section, 5(5). I won't go into the details, but it would require a legislative change for that to take place.

Mr. Eggen: Right. Well, the government said that they got a request from the election officer to keep some of that information confidential, but then there was a lot of confusion about that. It came back, and it was revealed that the returning officer did not ask that. We just need some clarity on this, right? I'm sure you want it, too. As I say, rules act as a deterrent from this kind of behaviour happening again.

Mr. Fjeldheim: You recall that in the last sitting of the Assembly this was discussed at some length, and the minister asked if I would bring forward recommendations for the Assembly. That has been done, and it will be discussed, obviously, by you people in the Assembly.

Mr. Eggen: Excellent. I look forward to that. Thank you.

The Chair: Dr. Brown.

Dr. Brown: Yes. Mr. Fjeldheim, congratulations on, I think, a great job done during the election that came out. I found it a great improvement over the previous election in terms of the number of complaints we had about people being confused about where to vote or showing up at the wrong polling station, getting wrong information, or whatever. I think it was a substantial step forward. I found also that the voters lists were a lot better, a lot more complete.

The one thing I would observe, though, in looking at the voters lists is that while there was a much higher percentage of people that were reflected on the voters list, there were a lot more people on there that shouldn't have been on there, you know, that were at the same address. Sometimes I would get two or three different families at the same address, some of whom had moved literally years ago. I'm wondering whether there's any process whereby you can help to speed up or to clean up the list to get people off the list that shouldn't be there.

Mr. Fjeldheim: Well, first of all, thank you very much for your compliment on how we ran the election. We thought it was quite well run. We had problems. We had complaints. When you're dealing with 2.3 million people, you're not going to make everyone happy, and I'm afraid you're not necessarily going to make 17,000 election workers happy either.

Your concern is well founded. To get people off the list is very difficult. It's a creeping list, it's called. To get people off is very difficult. We do our very best to try to make sure that there are no duplicates on that list. That's why the birth date is important.

Again, it's a constant challenge to get people off the list, and we're certainly trying to find ways to do that.

Lori – I don't know – do you have anything to add to that?

Ms McKee-Jeske: We probably err on the side of caution in leaving an individual's name on the list at a particular address unless we know to move them elsewhere. During the enumeration that was our opportunity to go door to door, and using direct elector contact we cleaned up those lists as much as possible. Beyond that point we have to have a conclusive way to identify Lori McKee-Jeske to move her from one address to the next, so we do have to have a birth date to do that. If we can't move her with certainty, then we would leave her at the old address. As the Chief Electoral Officer said, that's something that we are continuing to work on.

We do share data with Elections Canada. They go through similar exercises, so we are able to use the information they have as people move out of province. That's one of the types of moves that's very hard at our level to track. We do find that using the federal list, the national register of electors, we're able to track that group.

Mrs. Leskiw: I live in an oil-based area, and one of the basic complaints we've had is that our oil workers that are not in their constituency but are in the area, whether in Fort McMurray or up in the bombing range or whatever, literally can't vote. For a lot of them by the time they get their day off, thinking about finding where the advance polls are or where the Elections Alberta office is sometimes just doesn't become a reality. Are we thinking of a different way of voting for the next election, electronically or something? We have this huge shadow population that is being denied their ability to vote because of the type of work that they do.

Mr. Fjeldheim: Yes. At the present time we have a system that's called the special ballot. In effect it's a mail-in, the same thing that people use when they're on holidays and so on. It is cumbersome. The special ballot can be applied for as soon as the election is called. Then the mail takes over. We had Xpresspost this time. We would mail that up to Cold Lake; they fill out the material on the special ballot. It's a write-in ballot because you can complete it prior to nomination day being closed. You can write in the name of the candidate or the political party. Then, of course, it has to be mailed back again. If you mail it right away and everything is clicking, then it works.

We saw a presentation – what was it? – two days ago now. The city of Edmonton, and we've been talking about this for some time, is looking at a computerized system, where you e-mail it in. You get the e-mail back again containing the ballot, containing the required documentation. It's a system they're looking at that you can e-mail it back again, so it would be just e-mail. Whether you're in Egypt working on an oil rig or whether you're in Cold Lake working on an oil rig, it would be instantaneous. That's certainly something that we're looking at for the next election.

Mrs. Leskiw: Thank you.

Mr. Bikman: Thank you for your presentation. Do you perceive the need for and would you welcome the creation of clear rules with regard to push polls, phony robocalls, and similar dirty tricks?

Mr. Fjeldheim: Yeah. I received a number of calls, of course, following the federal election. The robocalls were big news. There

is nothing that prohibits candidates or parties from phoning people. The CRTC controls that sort of thing.

As far as our legislation is concerned, not at this time that I can see. It's a jurisdictional thing. Again, other than putting in something to the effect that would prohibit campaigning via telephone, I don't think at this time there is really anything that can be done.

11:25

The dirty tricks: what we're doing there is we're going to be suggesting that it be very clear that the first thing you will hear in the phone call is who is sponsoring this and who is authorizing this phone call and a phone number that you can call back to. But the robocalls, of course, that's a very sophisticated thing. You can put any phone number you want on that thing, we found out. So those are the types of things we're looking at, just that the identity is made very clear on who is making this call. As far as prohibiting them, I don't see that happening.

Mr. Bikman: I wasn't referring to prohibition. I was referring to allegedly making a call on behalf of a candidate at 3 in the morning when that candidate didn't make the call himself, nor did his party.

Mr. Fjeldheim: I'm sorry; I'm not sure if I understand your question. But as far as us prohibiting the time frame that calls can be made, I'm not sure we could do that either. Or am I misinterpreting your question?

Mr. Bikman: You are. What I'm asking you about is: when one party sends out a robocall allegedly from another party and another candidate at 3 in the morning, or at any other time, the impact is pretty significant.

Mr. Fjeldheim: It's going to be illegal, first of all, if this identification is adopted. Specifically on behalf of the Brian Fjeldheim campaign I am calling you, and it's been authorized by Brian Fjeldheim, and the phone number is this. Hopefully that would prohibit or put a stop to that sort of thing. Of course, if someone is doing that illegally and saying this is Brian Fjeldheim and it isn't authorized by Brian Fjeldheim, then we have another situation.

The Chair: Mr. Wilson.

Mr. Wilson: Thank you. I think my question leads into that other situation, then, and specifically to the investigations that are stemming from dirty tricks from an election campaign or any other number of investigations that are a result of complaints that your office receives. What is the process? Can you help me understand what happens to those complaints? There are a few that I believe that our party has filed and others that we just, quite frankly, haven't heard back on. Are they all in a process somewhere? What is the end result of that?

Mr. Fjeldheim: Yes. Again, we run into that legislation that I referred to earlier. I can assure everyone that when we receive a complaint, we do an investigation. I have two ex-RCMP individuals. If we have enough information, we follow up with them, and they do an investigation, and we follow through on that.

Mr. Wilson: And by follow through you mean . . .

Mr. Fjeldheim: By follow through I mean we see if charges are necessary or what is required to resolve this situation. But, again, because of the legislation and the restrictions I mentioned earlier, I can't phone you up and say: this is what we've done about that.

Mr. Wilson: Thank you.

Mr. Fjeldheim: You follow me?

Mr. Wilson: I think so, yes. Thank you.

Mr. Fjeldheim: Okay. Thank you.

Ms DeLong: Just a question in terms of enumerations. I understand that enumerating is getting more and more difficult, just the same as for us when we're out there campaigning. We find so few people at home. Our enumerators, again, are having the same problems. Is there also an added problem in terms of the amount that we're able to pay the people who are doing the enumeration, so that we can make sure that it is a well enough paid job that we can really depend upon those results that come back to us?

Mr. Fjeldheim: Yeah. In the last enumeration that was held, there was concern regarding the pay. There was a pay freeze on at the time, so I was unable to increase the pay for the enumerators. There's a basic fee that is given to enumerators, and then they get a dollar per name, whether it's added or confirmed.

Ms DeLong: Or removed? Added, confirmed, or removed?

Mr. Fjeldheim: Not removed.

Ms DeLong: Oh. Okay.

Mr. Fjeldheim: There's the kicker, that you've hit on. When people are going through apartment buildings, for example, they get a dollar a name. So many people are not answering. When they do get a name, here's \$2. Then I'll cross these two names off, so then they're throwing \$2 on the floor. What are we doing here? Someone said: well, maybe we should increase the per-name. Those people that are on the other side of the door, they don't care whether you're getting \$20 per name; they ain't answering.

So we're running into problems. People do not want to be on the list. The privacy issue, of course, is coming forward again: I don't want to be on any list, I don't want my phone number out there, and so on. We had some problems, as I told this committee before. We lost three binders. I wrote each person personally, advising them of the situation and that they could contact our office. We would put them in touch with this company that would track their credit rating over the next three months, and we would pay for that, and so on.

So it's getting to be more and more difficult to do the door-to-door enumerating. We're going to have to look at other sources. Already we use driver's licence information, Alberta health care information, and so on to try to keep that list up to date. But it is getting more difficult to do enumerating, and I'm not sure, quite frankly, if an increase in fees would help that much.

Ms DeLong: Thank you.

The Chair: Thank you.

We're running out of time, so if any members do have some questions, I would ask you to read them into the record, and we'll ask the Chief Electoral Officer to respond in writing to the committee clerk for distribution to the committee.

Ms Blakeman: Two questions for the record, then. Where are the recommendations, or to whom did the Chief Electoral Officer submit the financial impropriety recommendations? The second one is: who would be responsible for putting in both legislation and enforcement mechanisms for your idea about making phone calls state up front

who's sponsoring or who's paying for them? That would seem to me to be a legal necessity. Have you put the recommendations forward, and who would be responsible for enforcing?

The Chair: Mr. Eggen.

Mr. Eggen: Yes. Thank you. I have two very quick questions. First of all, it was identified that at least 1,000 landlords refused access to candidates during this last election, and so far there hasn't been any prosecution of that. I'm just wondering how you might be proceeding with that. Second of all is the issue around campus voting stations. I think that we have a problem with students being able to vote, and I'm just wondering if you are looking to any change in policy to help facilitate more students participating in provincial elections. Finally, I thought the election was run – it was quite good, actually. So thank you.

The Chair: Mr. Wilson.

Mr. Wilson: Thank you, Mr. Chair. The question I would like to submit is just to get a better understanding of what's being done to ensure that our First Nations communities are able to participate in elections as well.

The Chair: Okay. Any more questions?

I see none, so I would like to thank you for attending and speaking to the committee about the mandate of the office of the Chief Electoral Officer. The next meeting, to consider the 2013-2014 budget estimates and business plans and the 2011-2012 annual reports of the officers, is anticipated for scheduling sometime in November. Our office will be in contact with you once the date is confirmed. Again, thank you very much for the presentation.

Mr. Fjeldheim: And thank you very much.

The Chair: Okay. Before the next one let's take a two-minute break.

[The committee adjourned from 11:33 a.m. to 11:37 a.m.]

The Chair: Well, let's get going. Good morning, everyone. Before we start another round, I would like to ask everybody at the table to introduce yourselves for the record. Let's start with the deputy chair, Everett McDonald.

Mr. McDonald: Good morning, gentlemen. MLA Everett McDonald, Grande Prairie-Smoky. Nice to see you again.

Mr. Rogers: Good morning. George Rogers, MLA, Leduc-Beaumont.

Mr. Eggen: I'm Dave Eggen. I'm the MLA for Edmonton-Calder.

Mr. Quadri: Sohail Quadri, MLA, Edmonton-Mill Woods.

Mr. Olson: Jeff Olson, Assistant Auditor General.

Mr. Saher: Good morning, everyone. Merwan Saher, Auditor General.

Mr. Wilson: Jeff Wilson, MLA, Calgary-Shaw.

Ms DeLong: Alana DeLong, Calgary-Bow.

Dr. Brown: Neil Brown from the majestic constituency of Calgary-Mackay-Nose Hill, containing the largest urban park in Canada.

Mrs. Leskiw: Genia Leskiw, Bonnyville-Cold Lake, and I do have the largest military base, 4 Wing Cold Lake, in my constituency.

Mr. Bikman: Gary Bikman, Cardston-Taber-Warner. There are no adjectives sufficient to describe it.

Mrs. Sawchuk: Karen Sawchuk, committee clerk.

The Chair: David Xiao from the marvellous riding of Edmonton-McClung, and I'm the chair of the committee.

Good. For the benefit of our visitors the committee discussions at its July 23 meeting led to a motion to invite the officers to attend a future meeting to provide an overview of their mandates and the work done by their offices. This will be a useful exercise for the new members on this committee and for those who have been sitting on the committee for a period of time. The meeting format provides for a 15- to 20-minute presentation, followed by questions from the committee.

With that, I will turn it over to the Auditor General. Go ahead, please.

Office of the Auditor General

Mr. Saher: Thank you very much, Mr. Chairman, and thank you to all of you for this invitation to come here today and speak to you.

As you know, I'm the Auditor General. Just some background. I've been the Auditor General now for two and a half years. I was recommended to the Legislative Assembly by the previous Standing Committee on Legislative Offices to hold that position.

With me is Jeff Olson. Jeff is one of five Assistant Auditors General in the office. Jeff's responsibilities are not audit focused. He's not supervising the audit work that we do. Jeff's responsibilities include oversight of our business system, in sort of technical speak resource acquisition and allocation, professional development, and most importantly our accountability as an audit office.

I'd just like to check before I go on. Have you in fact been given a copy of my presentation? The package is being distributed. At the front you'll find the presentation so that if you wish to make some notes as I go through it, that's available to you. In the package is also our latest business plan and our last performance report. Those last two documents you already have, but we thought it might be useful to make them into one sort of package for you today.

I'm going to start at slide 2, the goal for this orientation. You had asked as a committee that we come here and speak to you today to help you perform your work. From our perspective the primary task, our primary interaction, has to do with this committee's oversight and review of the office's annual budget request. There are other things in the Auditor General Act on which we have to interact, but I'm choosing to view your oversight of our budget request as a significant piece of the interaction if not the most.

For Jeff and me today I think the invitation offers us an opportunity to help you in your oversight with respect to my office's accountability to Albertans. When we use the term "accountability" in our office, we always think about it, that accountability is demonstrated by having a plan at the beginning of a cycle of work. At the end of the cycle there has to be performance reporting, reporting back against that plan. Most importantly there has to be what we call in Alberta results analysis. That's integrating the financial and the nonfinancial information and telling the story, what has in fact occurred in relation to the plan, then as part of results analysis searching for

opportunities to improve effectiveness. In summary, that's how we view the accountability cycle. Our office's interaction with you as a committee will, I hope, be guided by use of that cycle.

Over to the next page. Yes, my plan is that this will be no more than a 15-minute presentation. I'm going to try to restrict my comments to 15 minutes. Essentially, we're going to start by talking about our role, our view of your role. I'd like to spend a few minutes on the OAG's risk management approach and also mention some priority initiatives that we have at this time in the office. It's my opinion that if we give you an insight into how we look at our business, that will make it easier for you to carry out your responsibilities of, we believe, holding us accountable in a way that you won't worry whether or not you would be actually or be perceived to be interfering in the independence of the office.

Just as an aside here, you know, over the time I've been in the audit office and interacted with this committee, I've sort of had that sense that sometimes MLAs find it a difficult position that they're in in relation to: how do you interact with an independent officer of the Legislature? I'm trying to make the point that I believe that you can hold us to account without in any way interfering with the independence I have to direct and choose the work of the office within the Auditor General mandate.

11:45

Turning to our role, very quickly, who we are, we're about 140 qualified or students training to be chartered accountants, certified management accountants, and certified general accountants. Our office complement includes specialists. We have specialists in information technology, forensic investigation, and also performance measurement.

I need to tell you today that we couldn't do all of the work with just 140 people, so we use agents and temporary staff to assist us in our work program. It's a good business practice because it means that we don't have to staff up to a level and hold as full-time people the level of staff that we would need at the peak periods. There are certain peak periods when we have to complete our financial auditing work. About 25 per cent of that budget cost of \$26 million actually goes to our use of agents and temporary staff.

At the highest level I'd just like to put in your minds at the moment that in that \$26 million budget an important facet is that 80 per cent of it goes into what we call adding credibility. That's issuing opinions on financial statements and issuing opinions on the credibility of performance measures reports. And 20 per cent is applied to systems auditing. In some places in the world that's referred to as value-for-money auditing or performance auditing. But I just want to put in your mind that that \$26 million is really 80-20, 80 per cent on conventional financial statement auditing and 20 per cent on systems auditing.

Turning to slide 5: what do we do? Well, I mean, essentially our job is to execute the Auditor General Act. That act, the act in the form that we use today, was proclaimed in 1979. It's quite clear. The act tells us what to report. It's not an act which says what we should do. We have to deduce what we should do from the mandate in the act telling us what we need to report publicly. The act is pretty much unchanged from 1979, when it was first introduced. In it the act makes the audit office, makes me as the Auditor General the auditor of every ministry, department, postsecondary institution, and provincial agency. That's about 175 organizations.

This adding credibility task that we have: I always view the opinion we give on the consolidated financial statements of the province and the audit work we do with respect to Measuring Up as sort of being the umbrella. Within that umbrella are all of these

Crown agencies and postsecondary institutions. The point I'm trying to stress here is that as there are 175 of them, that's why 80 per cent of the office's mandate is applied to the statutory requirement to audit financial statements annually and issue Auditor's reports on them. That leaves 20 per cent of our budget, which, in a sense, is discretionary in that we use our discretion in applying it to do systems audits, sometimes known as value-for-money audits.

The office's role. I just want to end with trying to illustrate how we help you as MLAs. Our output in meeting the Auditor General Act is to deliver to you audit reports, the opinions that I've been talking about on whether the government's performance reports are credible – when I say “performance reports,” I'm referring to financial statements and performance measures reports – and also to deliver to you recommendations designed to encourage government managers to improve their systems, systems that they have by which they attempt to achieve economy, efficiency, and systems to measure their effectiveness. Why do we do this? So that you as MLAs and, particularly, the Public Accounts Committee can hold government accountable for its use of Albertans' money and resources.

How do we organize ourselves to execute the mandate? Well, we operate with an OAG business plan. I've turned to slide 7. In your package is the full business plan, and I don't have the time nor would it be desirable that I walk you through that full document. On this one page I just want to give you the essence of our business plan. It's built around what we call the three Rs. We look at our business through the lens of systems designed to ensure that the work we do is relevant, the work we do is reliable, and that we do it at a reasonable cost. So we call that the three Rs, and it's really the framework that we use to manage our business. I want to introduce it to you today because as we interact with you, you will see us presenting our reports, presenting our plans in that dimension.

On the slide we have some indications of the keys to relevance. The keys to relevance are that we identify and execute audits that focus on governance and ethical behaviour, the safety and welfare of all Albertans, and the security and use of the province's resources. With respect to reliability, in our minds the key to our reliability is that we have to be independent of those that we audit and that our reports should be based on fact, not preconceived opinion.

With respect to reasonable cost the challenge that we face as professionals trying to ensure that we do audit work at a reasonable cost is to match the skill requirement with the risk so that we're not at risk of providing to you conclusions that are unreliable. I'm trying to make the point here that it can't be reliability at any cost. We can't have an auditor do an audit, and then, well, let's be absolutely certain that we got that right and have another auditor do that audit. The point I'm trying to make is that we have to exercise our judgment in getting the right amount of input in terms of skill to deal with the underlying risk. That's one of the challenges we face. I'm sure that in the days ahead, you know, when we bring forward our plans, that might be something that you would like to engage in discussion with us. Today I'm just trying to give you the sense of the three Rs.

Our view of the committee's role. I'm going to read word for word the first paragraph on that slide, page 8. “We believe that those who use public resources should demonstrate their accountability through clear and concise plans and reports on results.” If we believe that, then we must believe that that standard be applied to us, and we reason that the body that will challenge us in that respect is this committee, the Committee on Legislative Offices. So to facilitate your ability to do that, annually we give

you our plan and request your approval of the funds necessary to execute that plan, and then we report to you on the results achieved.

When we make our next funding request to you, which I anticipate will be in November, at that time, before we get into you deliberating the funding request, we will, because we think this is the right thing to do, spend time on what we have achieved. So we'll go back to the last complete fiscal year and take you through the highlights of our performance report. We'll brief you on the year in progress, whether the current plan that we're operating to is going as anticipated or whether there are issues there. We feel that you need to understand where we've been and where we are before you consider a request for the future.

On the next page, which has mysteriously become page 3 – anyway, let's not fret about that; it's actually page 9. This is intended to help you as you look in at our costs, as you look in at that \$26 million; what's it about? Using a picture, the key message is that over 90 per cent of our costs are people costs. Our own full-time staff and the money we apply to bringing in agents and temporary staff, that's fully 90 per cent. You know, as you look in at our operation, our challenges are really to do with managing a professional workforce, and our cost structure is that 90 per cent of the costs go to people.

If we turn to page 10, I want to talk a little bit about risk management. This diagram is intended to illustrate our fundamental risks. As you see, I'm coming back to the three Rs. The diagram is intended to illustrate our main risks – a risk of not being relevant, not being reliable, and not operating at a reasonable cost – sort of conveying the picture that the real opportunity or challenge for us is to gain convergence of those elements, to maximize the congruity, if you will. From a picture point of view, we would be in an ideal state if all the circles, that shaded piece in the middle, came together.

I'm illustrating a concept. We'll never get there. It'll be impossible. Even if we claimed that we did, others would say: you haven't. I'm just trying to convey to you that when we think about our business, this is how we think about it: three legs of a stool. Somebody says: let's bring in some more people to add to that audit. Well, that's going to be a cost. Can we justify that in terms of is that necessary for delivering a reliable opinion? We're always working in these three dimensions.

11:55

I turn the page now to 11. It's not enough to identify risks and build systems to manage risks. We believe that an organization should develop performance measures that will inform the organization and all its stakeholders on whether or not the risks are in fact being managed well. I've given you an illustration there of some current performance measures that we have. We have targets for these, and we report to you on how we've done in achieving them. As you can see, we're always trying to relate our measures to our three risks.

I want to make the point to you today that our last business plan told the committee that we haven't got there yet. We're still working very hard on trying to get some better performance measures. I would like to say that as you interact with us, that is one area that we would really welcome any insights you have if you have some ideas or thoughts of better measures. The reason that I make that point today is that you are looking in at us, and if you don't see measures that would make it easier for you to assess whether or not we're being successful, we really would like to hear from you. The point I'm making today is that we don't have this nailed. I know that my colleagues across Canada in all of the legislative audit offices, we're all really working at: can we as a

group get better at identifying performance measures that will help us in illustrating our success or otherwise?

I'm just going to end with priority initiatives. These are mentioned in our current business plan. I'll just draw them to your attention today. When I became the Auditor General, I indicated that I believe that the office and Albertans would be well served by us commissioning and having done an independent peer review on the office. We're working at preparing ourselves for that, and as of today our target date to be ready is July 2013. I'll give you an update on that when we come forward in November.

Independent peer review: what's that about? Really, it's our attempt to answer the question, which is: who audits the Auditor? It's the sort of elephant in the room. It's always out there. We think that by going down this path, we can do something useful. Just by way of background, the only legislative Auditor in Canada who has had an independent peer review is the office of the Auditor General of Canada, and they have been doing this for 10 years. They've had a number of independent reviews. We've already been in close contact for advice as to how to go about this. We can talk more about that in due course.

Staff retention and development. Ninety per cent of our costs are people costs. If we invest a lot in their training, if we want to be effective with reasonable costs, we have to find ways to encourage those people to stay with us. We're happy to train people and have them move off into the wider public sector. We think that's a good use of public resources. Many professionals need to get out into the wider world to develop their careers, and we hope that some of them would consider coming back in due course. In fact, many of them have over the years. But one of our challenges is staff retention and development. It's a key priority of the office.

The third one is an initiative to reduce the number of outstanding recommendations that we've made to the public service in Alberta. Just some quick statistics. In October 2010 we had over 300 recommendations that had come from our systems audit work that had been made to the government and all of its agencies. That was too much.

We instituted a specific program designed to bring that number down. It's not that the government was not responding to them. We had not put enough resources into doing follow-up audits, which are really the most important thing. In a way, one might argue it's relatively easy to make a recommendation to an organization, but the audit work is not really done until the auditor has gone back and seen that after that investment of time and effort in making the recommendation, the recommendation has in fact been more than accepted; it has in fact been implemented. So that's the real payback on the investment in the audit.

So we had over 300 recommendations outstanding in 2010. By 2011, a year later, we'd brought that number down to 240. You may say, "Well, that's not very good," but it's always difficult because we're still making new recommendations. We brought it down, but the number went back up by the numbers of new recommendations we'd made. But we were on the right trajectory, if I can call it that.

Our goal is to have approximately 150 recommendations outstanding at any period of time, and we'll report to you soon where we are with that. That will allow us to have a better balance of new systems audits and those follow-up audits, which are incredibly important.

With that, Mr. Chairman, I'm going to stop. Jeff and I would be very happy to try and answer any questions you have.

The Chair: Sure. Thank you.

Dr. Brown, go ahead.

Dr. Brown: Thank you, Mr. Chairman. Mr. Saher, I know this is not the forum to get into details over your business plan or whatever, but you may recall that on a previous occasion when we dealt with the business plan, I expressed some concern about the risk to taxpayers about the defined benefit pension plans. In a cursory look at your business plan and the various departments, I don't see any appearance of that. Is it something that you're considering looking at as a general rule, the defined benefit plan and the risk to taxpayers of the rate of return?

Mr. Saher: Yes. I'm pleased you've asked that question. Before we do full audits, we often, depending on the subject matter, do something that we call knowledge of business, which is an attempt to gather all of the information we need to be sure that when we do the audit, we will in fact be doing the right audit, dealing with the right risks. So we have a knowledge of business project which is well under way and, in fact, coming close to conclusion. The subject matter is pension plan sustainability, the risk to the public sector in Alberta of its pension plans not being sustainable over time.

We're coming at this from a risk point of view, identifying the risks, who owns those risks in terms of the owner of a risk having a primary responsibility to manage that risk, and what is the quality of the risk-management systems. We're at a stage where I believe that we've gathered almost all of the information we need to actually do the correct audit. The issue, I believe, goes right to the heart of your question, which is: is the province exposed in a way that is not being well managed with respect to the sustainability of its public-sector pension plans?

Dr. Brown: Thank you.

Mr. Eggen: Thank you very much for your presentation. I have the perspective of having been on the Public Accounts Committee from 2004 to 2008, and now here today, looking at the scope of your work of the last couple of years – tell me if I'm wrong – it seems as though your capacity to do systems audits is constrained from that time to today. It seems as though you're less able to provide the scope that we might have been seeing in the past. The work that you're doing is great, and it's extremely valuable for a democracy. I just don't want to see it being constrained or narrowed over time so that we're not getting the systems audits that we need to hold government activities to full account.

12:05

Mr. Saher: Okay. Thank you for the question. I'll try my best to answer that. At the last review of our business plan and our request for funds, that question was asked directly by a member. In effect – I'm paraphrasing – it was: do you need more resources? My answer was no. I don't believe at this time that we're in a position to make a business case to this committee that the size of the office should be expanded in order that we can produce more. I want to assure you that if we believed that we could make that business case, we would make it.

In part you're looking in, and if it's your sense that we have not done as many systems audits as we may have done in the past, that's a fact. That's because we deliberately chose to invest effort in follow-up audits because of our belief that the work is not done until the follow-up is done. So there has been less new work.

I think as MLAs, all MLAs, and, you know, Albertans, I mean, there is that natural tendency: give me something new, please. The balance that we have to exercise, the judgment in our office is: how much new should we do? Even if there was no restriction, even if every follow-up audit had been done, I think there is an absolute limit on the quantum of new systems audits that should

be done from the point of view of the capacity of the public service to absorb new recommendations and deal with them. These are some of the judgments.

I suppose just to end I'd like to say that we are making inroads into that mass, if you will, of outstanding recommendations. I believe that we are now better positioned to do more new audits, and I believe that in the months and years ahead you will see that. In fact, you'll see that when we bring our next business plan forward. As we make the request, we do outline the audits that have moved from our inventories into active audits. I think you will see that there is change.

Mr. Eggen: Thank you very much.

The Chair: Mr. Bikman.

Mr. Bikman: Thank you. Thank you for your presentation. I just want to ask if you've seen the arguments made by the Canadian Taxpayers Federation about why the first-quarter update was inadequate. Given the arguments made there, to what extent did your office's approval of the first-quarter update take into account all of the requirements of the Government Accountability Act? Or is there a more narrow scope of accounting standards that you need met for your approval?

Mr. Saher: Okay. For the record I need to make it clear, and I've already made this clear: the audit office did not approve, has never approved, and I certainly didn't approve the first-quarter report. The facts are that the Minister of Finance called me and told me that he was planning a change in approach. He informed me that the fundamental change was that he planned to concentrate in the first-quarter update on giving the first-quarter actual against the first-quarter budget. That was going to be his focus. I told him that I didn't see any fatal flaw in that approach. That was the sum total of our interaction.

Given the expressions of interest in that first-quarter report and assertions by some that it doesn't comply with legislation, we're currently taking a look at whether or not, in our opinion, it does violate existing legislation.

Have I answered your question?

Mr. Bikman: You have, and I can't wait to hear the rest of the story.

Ms Blakeman: Thank you very much, Auditor General and the staff that came with you today. I sat on the Public Accounts Committee from 1997 to 2008, and one of the great interests for me was performance measurements, which should be a great tool for managers and also a good tool for the public, the media, and MLAs to be able to see how government is actually progressing.

To my eye, we continue to be stuck almost back where we were when the performance measurements were first introduced. They seem to be very basic, and they turn over with great rapidity so that it's very hard to track it. It often seems to be sort of a popularity poll. You know, how many people enjoyed coming into this arts and cultural facility? One hundred per cent. Oh. Okay. What did we learn from that?

Where are we even in a broader sense in the Auditor General world across Canada with getting more useful performance measurements out of the ministries? Or have they just moved away from it, and it's diminishing as a useful tool?

Mr. Saher: Thank you for the question. You know, this is sort of dear to my heart because I personally believe that preoccupation with financial statements alone is not enough. A financial

statement is most important in recording the dollars. In a way that's just the inputs. This government and this province has had arguably the best theoretical approach to dealing with performance measurement. The requirement for performance measures is, I would say, at the forefront in Canada if not in the world.

The trick is to invest the time and effort in analyzing. One has to integrate the financial and the nonfinancial. That's the results analysis. What does this mean? What have we learned? How can we use what we have learned to move forward? That requires good performance measures.

I think those who use them need some assurance that they're credible. That's what this office has been doing over these years, saying these are credible, but we have not been engaged in offering any opinion on whether they're relevant or useful because that has not been part of what we've set out to do.

Ms Blakeman, as you're interested in this, later I would like you to read page 3 of our business plan, items 3 and 4, performance measures and results analysis. I would ask you to read those because I think I'm trying to convey to you this office's huge interest in the use of performance measures and our desire to help the government and Albertans take that, if you will, to another level, in a way put Alberta back at the forefront of performance measurement.

Ms Blakeman: Yeah. It would be nice.

The Chair: Thank you.

Since we don't have too much time left, if any member wishes to ask questions, please read them into the record, and I would like to ask the Auditor General to provide the answers in writing to the committee clerk for distribution. Any questions?

Seeing none, I'd like to thank the Auditor General and the Assistant Auditor General for attending today and speaking to our committee. The next committee meeting, to consider the 2013-2014 budget estimates and business plans and the 2011-2012 annual reports of the officers, is anticipated to be scheduled sometime in November. Our office will be in contact with you once the date is confirmed. Again, thank you very much.

Mr. Saher: Thank you.

The Chair: Well, let's take a half-hour lunch. We'll be back at 12:45 sharp. Thank you.

[The committee adjourned from 12:14 p.m. to 12:45 p.m.]

The Chair: Well, let's start. Welcome, everybody. Good afternoon. My name is David Xiao. I'm the MLA for Edmonton-McClung. I'm the chair of this committee.

Before we start, I would like to ask everybody at the table to introduce themselves. Let's start from the deputy chair, Everett McDonald.

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

Mr. Eggen: Good afternoon. My name is David Eggen. I'm the MLA for Edmonton-Calder.

Mr. Quadri: Hi. My name is Sohail Quadri, MLA, Edmonton-Mill Woods.

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

Ms Clayton: Jill Clayton, Information and Privacy Commissioner.

Ms Mun: Marylin Mun, assistant commissioner.

Mr. Wilson: Jeff Wilson, MLA, Calgary-Shaw.

Ms DeLong: Alana DeLong, Calgary-Bow.

Dr. Brown: Neil Brown, from the magnificent constituency of Calgary-Mackay-Nose Hill, containing the largest civic park in Canada, the Nose Hill park.

Mrs. Leskiw: I've got all of you guys beat. Genia Leskiw from Bonnyville-Cold Lake, God's country, lots of lakes, great fishing, and the largest military base around.

Mrs. Sawchuk: Karen Sawchuk, committee clerk.

Mr. Rogers: George Rogers. Just a great place, Leduc-Beaumont.

The Chair: Well, thank you.

For the benefit of the visitors, the committee discussions at its July 23 meeting led to a motion to invite the officers to attend a future meeting to provide an overview of their mandates and the work done by their offices. This will be a useful exercise for the new members on this committee and a refresher for those members who have been sitting on this committee for a period of time.

The meeting format provides a 15- to 20-minute presentation followed by questions from the committee. With that, before I turn it over to Ms Clayton, I would like to acknowledge Mr. Bikman from . . .

Mr. Bikman: Cardston-Taber-Warner.

The Chair: Yeah. Cardston-Taber-Warner, with the sweetest corn in the world, may I add.

With that, I will turn it over to Ms Clayton. Go ahead, please.

Office of the Information and Privacy Commissioner

Ms Clayton: Thank you very, very much. I appreciate the opportunity to be here today to provide you all with an overview of the mandate of my office and what it is that we do. I'm also very, very pleased that Assistant Commissioner Marylin Mun is here with me. Marylin has been with the office for many, many years and is an acknowledged, recognized FOIP expert, so I'm very pleased to have her here with me today.

What I thought that I would spend my 15 to 20 minutes doing is give you a very, very brief overview of the three statutes that I have oversight for – that would be FOIP, HIA, and PIPA – talk just a little bit about the way the office is set up and the mandate and the work that we do, give you a flavour of some of the current issues that are in front of the office right now and out there in the access and privacy world, and then speak a little bit about some of the recent activities, what we've been up to, and what we have planned for the fall. I was appointed on February 1. I have just finished seven months, so, as I said, I'll focus on recent activities, what we've been doing since February 1, and then, of course, I'm really looking forward to hearing your questions.

The Freedom of Information and Protection of Privacy Act, FOIP. I think probably most people are familiar with that. It's certainly the statute that the public is most familiar with. It was passed in June 1994. It started to come into force in October 1995. There was a phased implementation of the legislation, with schools and health care bodies coming under in 1998 and postsecondary institutions and local government coming under in

1999. This is Alberta's public-sector legislation, so the terminology in the act is around public bodies. There's a list on the slide. I'm not going to read that, but just to highlight a few: government departments, boards, agencies, local government, municipalities, police services, postsecondary institutions, those kinds of public institutions.

The Health Information Act was passed in 1999. At the time Alberta was one of very, very few jurisdictions across Canada that had stand-alone health information legislation, and I think Alberta has very much been a leader in that area. The act came into force on April 25, 2001. It was amended in, I believe, September 2010, and the scope was expanded somewhat. Again, you'll see the list on the slide. It applies to custodians. FOIP applies to public bodies. That's the language. The Health Information Act applies to custodians, including Alberta Health, Alberta Health Services, nursing homes, and now many of the health professions that are named in the regulations, so individual physicians, pharmacists, nurses.

The third statute is our private-sector legislation, commonly known as PIPA. That legislation came into force January 1, 2004. It looks very, very much like B.C.'s legislation. They're very similar. Both statutes are substantially similar to the federal Personal Information Protection and Electronic Documents Act, PIPEDA, however you want to pronounce that.

The federal legislation applies in all jurisdictions that don't have their own private-sector privacy legislation, so that excludes Alberta and B.C., which both have PIPAs, and Quebec, which was the first jurisdiction to introduce provincial private-sector legislation.

The scope of the Personal Information Protection Act. It applies to personal information, broadly defined as information about an identifiable individual, and it applies to private-sector organizations, including corporations, partnerships, unions, private schools, professional regulatory associations – that one's a bit key – and nonprofit organizations to a limited extent. Nonprofit organizations, unlike in B.C., are exempt from our legislation except in respect of commercial activities: collecting, using, and disclosing personal information for a commercial activity.

What all of these statutes have in common is that they all talk about protection of privacy and also access to information. I'll start with protection of privacy. There are fundamental differences between each statute.

The public-sector legislation is authority-based legislation, so a public body can collect, use, or disclose personal information for specific purposes. Under the legislation we're authorized by law for law enforcement purpose or where the information relates directly to and is necessary for an operating program of the public body. That's the way the privacy side of FOIP is set up.

In contrast, the Health Information Act is based on the concept of a circle of care, so health care providers will have access to an individual's health information when they need access to that information and only for purposes that are set out in the legislation. Section 27 identifies those purposes, and they include things like, not surprisingly, providing health services, also conducting investigations and discipline proceedings, conducting research – there are provisions in the act around how that's supposed to happen – providing for health services provider education, and internal management purposes. The key thing to remember about the health legislation is that those purposes are set out in the act, and that's contrasted to the public-sector legislation, again, which is authority based.

Then we look at the private-sector legislation, which is consent-based privacy protection, and what that means is that the fundamental premise of the legislation – there are always excep-

tions – is that you collect information from individuals with their consent and for a reasonable purpose.

That's the privacy side of it. I'm going to spend a little bit of time talking about access to information as well. Again, the three statutes are similar. They all include a right of access to information.

I think the thing to remember here for those who might be new to these statutes is that FOIP, the public-sector legislation, is granting individuals a right to access any information, any record in the custody or control of the public body if the public body is subject to the legislation. There are, of course, specific and limited exceptions to that right of access: legally privileged information, for example, cabinet confidences, that sort of thing. Again, it's not only a right that individuals have to access their own personal information that's held by the public body, but it's that right to public records. So it's big, and it's broad. It's about freedom of information.

Whereas the Health Information Act grants individuals a right to access his or her own health information as defined in the legislation, primarily individuals who're looking for diagnostic treatment and care information.

12:55

Then PIPA. PIPA is a little bit more like the HIA. Individuals have a right to access their own personal information, not other records or information held by the private-sector organization. It's just a right to access your own information about you as an identifiable individual that's held by the private-sector organization.

Those are essentially the rules for collecting, using, and disclosing personal information and access to information. Again, that's common across all three statutes. All three also include provisions that give force to these other basic principles of privacy and access, so I won't spend a lot of time on them.

Very quickly, accountability is absolutely essential. All three statutes require that somebody be named to be accountable for ensuring compliance with the act. You'll see in the public bodies there are FOIP co-ordinators. In private-sector organizations we have often someone who's called a privacy officer. Accountability means that the entity subject to the legislation appoints somebody to be responsible for compliance, ensures that individuals are properly trained, policy requirements are in place, and the acts are complied with.

Each statute also includes provisions around safeguarding personal information. The language is fairly similar across the board. The entity is required to make reasonable safeguarding arrangements to protect personal information against reasonably expected risks: unauthorized access, collection, destruction, that kind of thing.

All three statutes include provisions around accuracy. There's a legal requirement to make sure that personal information is accurate and without omissions.

They all address retention in slightly different ways. One of the amendments to the Personal Information Protection Act some years ago was limiting retention, so when the information is no longer reasonably required, it must be securely destroyed.

All three statutes also give individuals a right of correction. Not only do you have a right to access your information, but you have a right to request a correction of your personal information if you think it's inaccurate or wrong.

Then, very importantly, all three statutes give individuals a right to make a complaint. There's oversight for the legislation. So they have the ability if they're not satisfied with the way their information has been collected, used, or disclosed or if they've

asked for information and they're not satisfied with the response they receive, they can come to my office, and we will investigate, or we will review the response.

Those principles that I've just covered are fundamental in access and privacy laws across Canada and internationally as well.

A little bit about the office. We have two offices. We have staff here in Edmonton. We also have staff in Calgary. There are approximately 40 individuals in both offices. About eight or nine of them are in Calgary and the rest in Edmonton. The Calgary office, by the way, was established when PIPA came into force in 2004. It was set up to deal specifically with private-sector regulations. The Edmonton office is home to our administrative and support staff and human resources. We did have a communications person. He resigned recently. Hopefully, we'll be filling that soon. We have some internal legal staff, and we also have our other two teams of portfolio officers, FOIP and HIA. The way the office is structured right now is that we have a private-sector team, a public-sector team, and a health-sector team. Two of those teams, public and health, are here in Edmonton, and Calgary is the private-sector team.

The work that portfolio officers generally do. The mandate is set out in each statute, but it's a big and broad mandate. Primarily the operational work of the office is investigating complaints and reviewing responses to access requests. We also review privacy impact assessments, particularly our health team. Alberta is the only jurisdiction that I'm aware of in Canada, possibly internationally, that has a mandatory privacy impact assessment process. Actually, that's not true. B.C.'s public-sector legislation was recently amended, and there's a mandatory PIA requirement in part that was built into that.

I think one of the huge advantages for Alberta and certainly for my office is that a privacy impact assessment is completed whenever a health custodian is introducing a new information system or administrative process that affects how health information is handled or a new component is added to the provincial electronic health record, or Netcare. Then an assessment has to be submitted to my office. It's one of those great tools that allows us to have a picture of what's going on in the province with respect to health information. So we review PIAs.

Self-reported breaches. We get a lot of voluntary self-reported breaches coming to us from the public sector and the health sector. There's no mandatory requirement to report to us, but we do receive a number of those kinds of reports. Alberta is the only jurisdiction in the country to have mandatory reporting of data breaches to my office under the private-sector legislation, and I have the ability to require an organization to notify individuals that might have been affected by that breach. Not every breach needs to be reported. There's a threshold where there's a real risk of significant harm. It's a legal requirement to report that to my office.

As I said, there are a number of decisions on our website where you can see where we've assessed and evaluated the incident and required notification. Interestingly, in almost all of those cases – the percentages are pretty high – notification happens before it makes its way to the office.

We also respond to requests for information. We have intake staff that handle a lot of e-mails and phone calls and respond to all sorts of inquiries, just over 4,100 last year.

We process time extensions. Under the public-sector legislation a public body has a required amount of time to respond to a request for access and can themselves extend that by 30 days. If it's going to take any longer than that, they have to apply to my office, and we review those and decide whether or not to grant extensions.

We also have an education and awareness mandate, and I'll talk a little bit about some of what we've done in the last couple of months and some of what is upcoming. We do cohost conferences. We produce guidance documents, FAQs, information bulletins, all sorts of things, and there's a lot of material on our website about that.

Finally, the portfolio officers and staff consult and liaise on new initiatives. Often with a public body or a private-sector organization or even in health if there's some new initiative that's been proposed, then representatives will want to come to the office and talk about it before it gets going, and certainly we provide that service as well. That's the main operational side of the office.

A high percentage of matters that come to the office, the formal complaints and requests for review, are resolved by the portfolio officers, the teams of portfolio officers. If something is not resolved, we have a second-stage process, a more formal inquiry process where the parties are able to make submissions to the office. It's assigned to an adjudicator, who will hear that. Ultimately, at the conclusion of an inquiry the adjudicator will issue an order, and those orders are binding on the public body, custodian, or organization. So we have the ability to compel compliance with the order. There is no right to appeal, but there is a right to apply to the courts for judicial review of a decision.

I have a few stats for you just so you can get a sense of the volume of workload. The numbers for 2011-2012 are in our annual report, which has not yet been tabled, but just so you get a bit of a sense, it looks like we had a bit of a peak in 2009-2010. We've reduced that somewhat. That was around the time we were peaking with privacy impact assessments also. I know that it looks like that might be starting to go in a different direction. Those recent amendments to the Health Information Act introduced a number of new professions. They're now covered under the Health Information Act, and they have privacy impact assessment requirements that they did not have before, so we're just now starting to see those coming in the door. Those are a general idea of the numbers.

Interestingly, there's been a little bit of a change in the last couple of years. The current stats: it looks like 64 per cent of those new cases opened under FOIP are access requests, 71 per cent of them under HIA relate to reviews of privacy impact assessments, and 32 per cent of cases under PIPA were privacy complaints. The number of self-reported breaches has gone up quite significantly. The number of cases opened or complaints under PIPA has gone down somewhat, and that's due to a new process that has been implemented. We're trying some early resolution to see if we can't streamline our processes a little bit.

1:05

The next slide. Just for your interest, so you have a sense of how long it's taking public bodies to respond to access requests, these numbers are from Service Alberta's FOIP report. The last information that we have is up to March 31, 2010. Just so you have a sense, again, the legislation requires a response within 30 days. Public bodies are able themselves to extend things by an additional 30 days, and then anything beyond that requires them to seek authorization from my office.

Quickly moving on to the next slide, some current issues, these are some of the issues that are in front of us right now. Data breaches and offences: that's right up there for me. I will let you know that Alberta is, again, the only jurisdiction in the country that has successfully had prosecutions under the Health Information Act or successful prosecutions under the legislation. In all cases up till now those have been incidents where trusted,

authorized users of a health care system have used that information to access information in an unauthorized way. The most recent one was last December, but just last week we actually laid charges in yet another offence. Just so you know, we'll be posting more information about that soon.

Another significant concern for me is public-private health partnerships, not necessarily in a bad way. I certainly understand that those kinds of initiatives can offer all sorts of benefits to citizens, but when you bring together all of these different parties subject to different legislation, then you've got some governance questions. You've got questions of authority for information sharing. What happens if there's a breach? Who's responsible for that? How does an individual get access to information? So there are lots of challenges there.

That's tied to the next bulleted point, integrated databases. It's very, very difficult. Again, this is an issue in the office. It's something I'm very interested in. How do we provide proper oversight for integrated databases when our model up until now has been very much focused on a reactive approach to resolving privacy complaints and conducting reviews of responses to access requests? The world is moving in a different direction. What is of interest to me and something that we'll be turning our attention to is how to provide oversight for these large, complicated, sophisticated initiatives to ensure that they're built properly and with due regard to privacy and access principles.

Open government, open data: not going to be a surprise to anybody. This is an international movement. From my perspective, it is nice to see the pendulum shifting a little bit. We're now focusing a little bit more on access as opposed to privacy.

Ubiquitous technology: we're seeing technology all over the place. That's becoming more and more the subject of complaints to our office. Surveillance: also another issue.

Finally, just to touch very, very briefly on recent and planned activities. I don't have a lot of time to go through that, so I'll just say that there are four areas that I wanted to focus on. One was consultation. I want the office to be consultative. I want to hear what's going on out there. I've been asking for feedback. We've conducted a survey; we don't have the results yet. I want the office to be proactive. We'll be providing education and awareness, trying to get ahead of issues.

Process review and reform. More effective, timely, more efficient, and improved access to and use of information: how do we communicate to the stakeholders?

Thank you very much for your time.

The Chair: Thank you.

Now we are open for questions. I'd suggest, you know, that the members limit their questions to one. If we have time, then we can have a second round.

Ms DeLong.

Ms DeLong: Thank you very much. I was a little disappointed not to see something on one of your lists of issues. We in Alberta have an enormous advantage in terms of our health records, and that is that because of the data we have been collecting – and we are ahead of most other jurisdictions in the world – we have an opportunity to use that data for research. It can be used in such a way that any identity is pretty well impossible to find from it, yet we seem to be stumbling over our health information legislation in terms of making this a reality. I mean, it's something that we could be, you know, right at the very top of the world on in terms of the research that's being done with this information. Is that an issue? Please say that it is.

Ms Clayton: It's definitely an issue. I do agree with you. There's only so much time to get through all sorts of things on the slides. I do think that health research is tremendously important. I think that Alberta is leading other jurisdictions in terms of the strength of the legislation that we have with mandatory PIAs and in terms of some of the other provisions that we have.

The issue of health research. I actually think that there's a lot that other sectors can learn from what we've been doing in health and in taking information that's personally identifiable, anonymizing that information so that it can be used for health research purposes. For example, when we talk about open data and open government initiatives, one of the concerns about open data, which is pushing datasets of information out there so that they can be manipulated and in machine-readable format, which is great, which I advocate for – but you can only do that if you're absolutely sure that you've got that information in anonymized format.

I think there's a lot that goes on in the health sector that is of benefit in the public sector. Having said that, there have to be rules around how information is used. I don't know the details of this, but I'm sure people have been following or may have some awareness that there's an issue in B.C. right now with some health information used for research purposes, some question about whether or not it was misused. I think that that just speaks to my general concern about integrated databases and these public-private health partnerships. Again, I see that there are lots of benefits to that – I understand that – but it has to be set up properly. It has to be set up properly because otherwise you've got massive, sophisticated, complex initiatives, and the individuals have no idea what is going on with their information. But it is possible to design systems and to build them to protect the information.

I don't know if your question is specifically whether or not I think the legislation supports it. I think we've got some strong, strong rules in there right now. It has to be implemented properly, and there has to be proper oversight.

Mr. Quadri: Hi. You know, I have a little question about surveillance. My office has been contacted by some parents. They are very concerned about fitting-room cameras. I think they have sent a letter to PIPA as well. Can you give me some more knowledge about where you're at from the surveillance point of view?

Ms Clayton: Well, I think that there's a bit of a disturbing trend in all sorts of ways around surveillance. When I use that term and when you see that term on the slide, I take a big, broad view of surveillance. It's not just cameras, but also sometimes it's those big datasets of information and being able to drill down and to target individuals.

Certainly, our office has received a number of complaints in all sectors around surveillance technologies in particular, and nobody is going to be too surprised to know my reaction to initiatives like the federal initiative around Bill C-30 and the increased ability for police to demand and receive information about individuals. I think that we see a little bit of a trend in that direction also with legislation, again, in all sorts of jurisdictions across Canada, more and more collection of information about individuals. Again, if it's not done properly and it's not set up properly, then you run the risk of having these, again, giant datasets of information, and individuals have no idea how it's being used. If they don't know how it's being used or that it's being collected, they have no ability to make a complaint to my office.

One of the things I'm interested in is trying to move the office away from – well, not away, because it's very important that

we're still able to resolve individual complaints and review responses to access requests. But these new initiatives, we're not getting complaints about them. Social media, for example: I know all kinds of public-sector and private-sector – everybody is out there collecting information from social media sites. We published some guidelines around that. It's the kind of thing, though, that we don't get a lot of complaints about because individuals don't know anything about it. To me, that's a form of surveillance in addition to issues involving biometrics and GPS and facial recognition software and cameras. Cameras are ubiquitous.

1:15

I'll just say one more thing about cameras. It's one thing to have the technology and say: we're going to collect this information because we can. Don't forget those other principles under the legislation. If you have the information, you have to keep it secure. Individuals have a right to access information about themselves. If you're collecting information on surveillance cameras, have you built in an ability to respond to a request for access? Sometimes that gets forgotten.

The Chair: Thank you.

Mr. Wilson.

Mr. Wilson: Thank you, Mr. Chairman. My question is really about the FOIP process and trying to get an understanding around some of the charges that are applied for certain FOIP requests. If you could just clarify for me how that works and who is available to be waived from a charge, I would appreciate that.

Ms Clayton: Okay. Well, one of the things that both FOIP and HIA do – and this is not in the private sector – is that there is a fee schedule that is set out in the legislation. That just sets out the maximum amounts that a public body or a health custodian can charge for a request for access. Overall, fees are not supposed to be an obstacle to access.

Certainly, there's a right to request that my office conduct a review of fees. If at any time an applicant is not satisfied that they're being charged reasonably or that the provisions under the legislation are being followed with respect to charging a fee, they can come to the office. That list of things that portfolio officers do I think is missing to review fee estimates. We certainly get those, more so under FOIP. There is the ability to have the fees waived. We get fewer of those under the private-sector legislation. I think organizations tend not to charge individuals for access.

There's much discussion publicly about a review of the FOIP Act. I know that the fee schedules are different in other jurisdictions. I think that one or two may have eradicated fees or established sort of a baseline of \$5 for a fee. I think those are things that might be considered if the act is opened up again. I think there's an argument, though, that fees, to some extent even a token fee, are a way of separating sort of the malicious or, you know, somebody who's just abusing the process or isn't a serious applicant from those who are making serious requests for access.

My overall concern is that fees should not be a barrier to access. The information belongs to the public on the FOIP side, and it belongs to the individual on the private-sector and health side.

Mr. Eggen: Thanks very much for your presentation and particularly your last comment that you just made. If, you know, we can do anything to strengthen your mandate to ensure that fees for FOIP applications are not a barrier to an individual accessing the information that they can, then we would be happy to help you with that for sure.

My question, however, was back to your comments on concerns about private-public partnerships in the health care sector. Again, what can we do to strengthen your mandate to ensure the integrity and privacy of people's medical records, especially in public-private partnerships? My main concern is that private medical information can get into the hands of insurance companies – right? – that will be dictating making decisions about people's health care. So I just want to know what we can do to help you legislatively that would make your mandate stronger in that regard.

Ms Clayton: Well, I certainly appreciate those comments. I do share that concern. I think the title of the slide was Issues. I do have concerns. Again, to be clear, I'm not opposed necessarily in principle to the idea of providing better services through partnerships. What I'm concerned about is that I see more and more of this, and I think the trend is increasing. Again, it raises all sorts of issues for me around accountability and: is it being set up properly? If you bring together the public and the private and the health into some new initiative, well, only one party there has a legal responsibility to do a PIA. The other two do not. Something that I have seen a little bit is that we'll get the legally mandated PIA from the health custodian, and we'll be missing the other piece of the puzzle, so it's hard to get a sense of the true picture of a new initiative.

What I will say generally is that, again, conversation around the FOIP review right now – I think it's still a ways before the PIPA legislation is opened up again; I'm not sure about the schedule for the Health Information Act – is that we're taking a look at in the office and also in some recent consultations with the Information Commissioner of Canada to have a look at best practices for access to information legislation internationally and nationally.

There are all sorts of things that are happening in various jurisdictions. You know, I certainly have some ideas around what I think would strengthen the office. Frankly, mandatory PIAs was something that was mentioned in the last review of the FOIP Act. Nothing really came of that. Amendments haven't gone through. There wasn't an amendment to make a statutory change to introduce mandatory PIAs, but that's becoming increasingly a concern for me. If there isn't that mandatory reporting, then I'm not going to know what's going on, and I can't be relying on individuals to bring issues forward because there's so much going on.

I will mention around consultation – I didn't get a chance to talk a whole lot about the four points on the last two slides – that we did just initiate this stakeholder survey. This is the first time we've done this in the office. We've gone out to the public sector, private sector, and health sector to ask a whole bunch of questions around general compliance, privacy and access management frameworks that are in place to get a sense of the level of maturity; to ask some questions around our processes, how well they are working; communication, how we communicate; and also issues and trends that are front and foremost for those entities because, again, I'm not sure that I know what those are based on the things people complain about to me.

Based on some of that information I will have a better sense of where I think the office needs to go and how we need to approach things, how the office might look a little bit different so that we can get ahead of issues and provide better oversight for the kinds of initiatives that are out there, and that will lead us to what kinds of changes might be required to enforcement and oversight power, mandatory PIAs possibly. Anyway, I've got a list of things, but certainly I'll be sharing that information as we move forward and study it a bit more.

Mr. Eggen: Thanks.

The Chair: Ms Blakeman.

Ms Blakeman: Thank you very much. There are three areas of concern for me. One is that I would like to see the language that is used and the approach that is used in the Health Information Act moved over and applied to the other two acts – that is, that you collect the least amount of information and be the least intrusive as you can possibly be – because the enthusiasm for collecting information from everybody for any possible reason is just increasing exponentially. At least that wording in that act said, you know: there are limitations on this, and try hard to collect the least amount and in the least intrusive way.

Second is the information, and this applies mostly to PIPA. Information, I think, for a lot of people is collected for one purpose and used for another because the use of blanket permission forms is ubiquitous. Everybody uses it, and people are signing away stuff without realizing how that information is actually going to be used.

The third is that the amount of information that is held or accessed by the police and security forces is stunning. I think people have no idea about how much information about them can be accessed with legislative authority by police and security. TALON is a perfect example of that, where databases that were individual were combined and can now be accessed by individuals from across the province. Always the breaches have been individuals who knew better and knowingly breached the system. So it's not the technology that's the problem; it's individuals who knowingly breach it.

Perhaps you can comment on how all of those are interrelating now.

1:25

Ms Clayton: Well, you've hit on three things that are of significant concern to me, and at least a couple of them, if not explicit, are implied in the slides in the issues that I've put up there.

I personally like that language in the Health Information Act as well, the explicit language. That basic principle of limiting the amount of information that is collected and limiting access to information is, as far as I can recall, not explicit in the other statutes. But it's certainly implied in PIPA because PIPA is substantially similar to the federal legislation, which includes the CSA, you know, the 10 principles, one of which is the least amount. It's implied. It's certainly part and parcel of when we're investigating complaints and interpreting the legislation. That concept of the least intrusive approach to something and the least amount of information is certainly up front and centre there. Like I said, I actually like that language in the Health Information Act as well. It's the only one that does state that explicitly.

Information being collected for one purpose and used for another. Again, one of the 10 principles embedded right in the statute at a federal level privately is not explicit in that same way in the other legislation, but we do see more and more of that. You know, it's the challenge. If the information is in front of you, you can access it. "Oh, well, we've already got it, and we could do this." Sometimes that fine line between what was the purpose you collected it for and if we're talking about something new and different here isn't that fine, and it still happens.

The amount of information that's accessed by individuals with authority. Again, we just published a summary of all the reports that come to our office on the private-sector side. By and large, the main cause of breaches are e-mail and fax transmission errors. But when it comes to the large databases, it's almost always an individual with authorized access who goes in and is snooping around and looking up their family or their friends or a celebrity or somebody.

As I mentioned earlier, Alberta is the only jurisdiction where we've actually had successful prosecutions of that kind of snooping. We are moving ahead with another one as of last week. Offence investigations is not the best way of dealing with these kinds of things. They're incredibly time consuming and resource intensive for my office. We don't do an offence investigation for every single incident like this.

I'm very, very concerned, again, as we see the world going towards these integrated databases and everybody having to have access because the information has to be available in a timely way in the event of an emergency – and you hear a lot of that kind of thing – and it having to be available to the people who need the information in order to do their jobs at any given time. It's that temptation. The information is there, and if you have access, you can just look up yourself or you can just look up your family.

Actually, I've had a couple of conversations within the office with my director from the health team. We've been talking about this. We see this in the health sector. We see it in all sectors, certainly, but in some ways it's more high profile when it happens in the health sector, and that's where the successful prosecutions have been.

I think there has to be a better way. There's more that we can do to try to prevent that sort of thing, to educate, to build controls into systems that limit the amount of information that is available when that's possible, and if it's not possible, you balance that with really strong auditing monitoring controls and oversight as well. It's not as good as upfront control. It's the combination of all of those principles: limiting the collection in the first place, limiting access to the need-to-know basis, ensuring there's good oversight, monitoring and auditing it. I think the more we see databases of information like that, that risk increases, certainly.

The Chair: Thank you.

It seems we're running out of time. If members have questions, I ask you to read them into the record and ask the commissioner to provide the responses in writing to the committee clerk for distribution.

Ms Blakeman: Two more issues: data matching and the prevalence of that, particularly as it happens around scientific inquiries, and the accuracy of the information that's held. I'm hearing that up to 45 per cent could be inaccurate information that's sitting on files, particularly health information.

Thank you.

The Chair: Any more questions?

Seeing none, I'd like to thank the commissioner and assistant commissioner for attending today and speaking to our committee about the mandate of your commission.

The next meeting, to consider the 2013-2014 budget estimates and business plans and the 2011-2012 annual reports of the offices, is anticipated for scheduling sometime in November. Our office will be in contact with you once a date is confirmed.

Again, thank you very much.

Ms Clayton: Thank you very much. I appreciate the opportunity to be here.

The Chair: Thank you.

Let's take a two-minute break.

[The committee adjourned from 1:30 p.m. to 1:34 p.m.]

The Chair: Okay. Let's start. Good afternoon, everybody. Welcome to the committee.

Before we start, I'd like to go around and introduce ourselves. Let's start with me. My name is David Xiao from the marvellous riding of Edmonton-McClung. I'm the chair of this committee.

Mr. McDonald: Everett McDonald, MLA, Grande Prairie-Smoky.

Mr. Rogers: George Rogers, Leduc-Beaumont.

Mr. Eggen: Dave Eggen, MLA for Edmonton-Calder.

Mr. Quadri: Sohail Quadri, MLA, Edmonton-Mill Woods.

Ms Blakeman: Laurie Blakeman, welcoming each and every one of you to my fabulous constituency of Edmonton-Centre.

Mr. Resler: Glen Resler, chief administrative officer, Ethics Commissioner's office.

Mr. Wilkinson: Neil Wilkinson, Ethics Commissioner.

Mr. Odsen: Brad Odsen, general counsel to the office of the Ethics Commissioner and Alberta's lobbyist registrar.

Mr. Wilson: Jeff Wilson, MLA, Calgary-Shaw.

Ms DeLong: Alana DeLong, MLA, Calgary-Bow, the beautiful Calgary-Bow. It's known for having the very best constituents in the world.

Dr. Brown: Neil Brown from the magnificent constituency of Calgary-Mackay-Nose Hill, with the largest civic park in Canada, Nose Hill park.

Mrs. Leskiw: See what you started, Laurie?

Genia Leskiw from Bonnyville-Cold Lake. I live in God's country: all the lakes and fishing and camping and the largest air force base around.

Mr. Bikman: Gary Bikman, Cardston-Taber-Warner.

Mrs. Sawchuk: Karen Sawchuk, committee clerk.

The Chair: Wow. Thank you very much.

For the benefit of our visitors the committee's discussions at the July 23 meeting led to a motion to invite the officers to attend a future meeting to provide an overview of the mandate and the work done by the officers. It is anticipated that this will be a useful exercise for the new members and for those members who have been on this committee for a period of time. The meeting format provides for a 15- to 20-minute presentation, followed by questions from the committee.

With that, I will turn it over to Mr. Wilkinson. Go ahead, please.

Office of the Ethics Commissioner

Mr. Wilkinson: Thank you very much, Mr. Chair. Hon. members all, thank you so much for inviting us here to do what the chair just stated. I want you to know that it's a pleasure to have a committee like this. We're accountable through you to the Legislature for several things. It's really nice to be able to come here, do what David talked about, but also to get your feedback and to get your input. It's very difficult to deal with a whole Legislature, but you'd be surprised to hear that half of the ethics commissioners in this country have to do just that. They don't have the luxury of having a committee like this, and they're envious of us.

Seeing all the compliments going around the table, could I say that we have really an outstanding ethics office, lobbyist office. We're very proud – I am – of the staff we have. There are four of us. On my left is Glen Resler. He is chief administrative officer. To my right is Brad Odsen, our corporate counsel, as you know. In the office somebody very important who's listening right now would be our executive support person, Louise Read, the person you often get if you call our number.

We thought you'd like us to start with just a bit of a history of our office, and that's what I'll do. Let's go back to 1989. A panel chaired by then Chief Judge Ed Wachowich was commissioned to investigate and report on conflict-of-interest rules applicable to members of the Executive Council as well as the Legislative Assembly and senior public officials. As a result of the recommendations the office of the Ethics Commissioner was established in 1991, and the Conflicts of Interest Act was fully proclaimed in March of 1993. Also in that year the hon. Dick Fowler, who recently passed away, unfortunately, Minister of Justice and Attorney General, issued a moratorium – not a moratorium, a memorandum; pardon me; that's one mistake, and I'm only allowed three – specifying that certain recommendations from the Wachowich report were to be implemented for senior officials. The Lobbyists Act was proclaimed September 28, 2009.

We thought it might be more user friendly for you if we dealt with our mandate and put it in relation to our clients. First, then, let's deal, with your permission, with senior officials. The authority to review senior officials, as we mentioned, comes from the Fowler memo, and our review is in addition to the obligations imposed upon all public servants by the Alberta public service code of conduct and ethics, or, if you wish, it's an internal code of conduct for that organization. The memo addresses financial disclosures similar to the ones that you fill out, the MLAs, with the exception that there are no public disclosures for them. We provide, though, advice and recommendations regarding investments, furthering private interests, undue influence, and insider information to officials, and should they follow our advice, they are protected from prosecution. Any unresolved concerns are forwarded to the minister and the Minister of Justice and the Solicitor General.

1:40

Postemployment restrictions for senior officials are pursuant to the Alberta public service postemployment restriction regulation, proclaimed in 2008, and political staff members fall under the Conflicts of Interest Act. Currently there are 84 senior officials. They range from deputy ministers, chairs, and board members of agencies, boards, and commissions. Staff from the Premier's office and international office representatives also fall in here. Political staff members consist of chiefs of staff, and now press secretaries have been added, too. Both have a six-month postemployment period, and they are restricted from, one, retaining outside employment where there are significant official dealings during their last year of service. Significant official dealings: what is that? Well, it's defined as direct and substantive involvement with an important matter.

No lobbying activities can take place with public office holders to any government official. Under the legislation those former staff members are also allowed to accept employment with any department or provincial agency in accordance with the Public Service Act. Now, that's even if they have significant official dealings. They can move within the government family, if you will, to any other department. Our office does provide advice on new employment opportunities to ensure compliance with the legislation.

Next we come to you, members of the Legislature. Ethics commissioners in Alberta before me – they were Don Hamilton and Bob Clark; some of you will remember them – kind of put my job down in one short sentence. They said: you're 90 per cent priest, and you're 10 per cent police. By priest we mean – and I include these gentlemen in this as well and all our office. We want you to succeed as MLAs. We want to help you in any way we can to get there, to achieve your goals. You leave with your head held high that you've done the right things for Albertans and yourself and your family as well but most of all putting the public first. We are there to ensure that there are no roadblocks along the way.

One of the roadblocks could be noncompliance with the Conflicts of Interest Act. That could range anywhere from us getting a complaint, doing an investigation, then a report to the Legislature. The Legislature then would decide on your fate through a vote that they have, and it could mean an expulsion from the Legislature. But, golly, no one wants that. No one wants that. Our purpose is promotion, education, not prosecution.

So how can we best help you? The best way possible to help you is: please remember that no matter what time of day or night, 24 hours, seven days a week, 365 days a year, if you've got something you want to talk to us about, give us a call. All our cards are in the back of the brochure that we handed out to you. On my card is my office number direct line, also the open line to the office, but also my home phone number and my cellphone number. Do not hesitate to call. These things could just be too important to you. Sometimes you think of something before you go to bed, and all of a sudden, you know, it's an item where you're not going to be able to sleep worrying about it. So, by all means, 24/7, 365, don't hesitate to give me a call.

Some of the things that you might call about, that we get calls about, are advice on gifts, legal opinions on information about what we do, why we do it, why we make certain decisions. There are many sources of information out there, and by all means listen to them, but we suggest that it's in your best interest before you act, please, even if it's accepting an invitation you're not sure about, to call us about it. If you're going to give a talk to the public you're not quite sure about, you're going to talk to colleagues, you're going to respond to something in the media, but you're getting your information from the media, yet it involves us, call us, and we'll give you the facts.

We can't tell you what to do. Our job is to give you the facts. You've hired us to research things, to give opinions, and to have the facts available for you. So take advantage. It doesn't cost you anything, and we won't tell anybody that you called. We can't. In fact, it would be a breach of the act. Did you know that? We would breach the act if we told anybody that you called us, let alone that we told you this or that. The only way we can divulge that information is if you give us permission to do that or you release the information yourself. The act is self-administered. It's up to you. We're here to help.

We consider advice, as a matter of fact, the most important thing we do, surprisingly enough. If you give us the relevant information – here's the lifetime guarantee we sometimes joke about – and you act according to our advice, you are protected against any potential prosecution of a breach of the act. But most often, though, you know, the advice you receive from us – and we've found this often – merely confirms what you already thought really was the appropriate action to take and the direction you were heading. Sometimes, though, we have a broader and sometimes a different perspective that you had not considered. If you call us, please keep in mind that there are no stupid questions at all. You can even just explore ideas with us. We can't tell

anybody, and you might get a chance to get some things off your chest, help formulate the direction that maybe you want to go.

Things are more complex these days. Sometimes there are layers upon layers of different things. It's our job. We can give you professional advice, legal advice as well. These gentlemen are available to you as well, and they advise me often. The act will tell you what not to do, but it'll also tell you what you can do, and it also will provide you with pathways to get there, to help you achieve your goals.

The preamble to the Conflicts of Interest Act is worth reviewing at least once, and permit me to do it for you very briefly here. The preamble to the Conflicts of Interest Act sets out basic principles for the members of the Legislature to follow. Number one,

The ethical conduct of elected officials is expected in democracies.

Two,

Members . . . can serve Albertans most effectively if they come from a spectrum of occupations and continue to participate actively in the community.

Now, what that means to say – that was added, I believe, in the last revision – is that you're going to come from all these areas; you're going to have conflicts of interest. But the thing is that these conflicts of interest can be managed. It's a good thing that you have conflicts of interest because you have that kind of background. But no matter where you land in the act, then, there are pathways, there are ways to manage it, and we'll help you get there.

Three,

Members . . . are expected to perform their duties of office and arrange their private affairs in a manner that promotes public confidence and trust in the integrity of each Member, that maintains the Assembly's dignity and that justifies the respect in which society holds the Assembly and its Members.

Finally,

Members . . . in reconciling their duties of office and their private interests, are expected to act with integrity and impartiality.

Common sense, but I thought you would appreciate my reciting it for you.

Common examples of advice that we give. These aren't just our ideas, by the way. We're talking this way to help you stay in compliance with the act. It's not us. First of all, questions involving family members, employment activities, or investments: family members are not allowed to work in your constituency office.

Two, volunteering with charities or local nonprofit boards. It may be in the best interests of the group, you know, that you do not sit on their board. You can help them elsewhere more effectively.

Three, how to manage outside employment. An MLA is able to carry on business activities if no conflict exists. A minister, however, is restricted in continuing business activities.

Reference letters for constituents. Some thoughts here for you. Please use stationery that is appropriate for the situation. I get a lot of questions about this. Do not provide references unless the individual or organization is well known and qualified for the posting or approval being sought. If the reference is personal, use personal letterhead. If responding as an MLA, use Legislature or constituency letterhead. Only in specific and directly relevant circumstances should a minister use ministerial letterhead. Additionally, a member should be comfortable with the possibility of the public release of the letter.

Postemployment obligations. Ministers have a one-year post-employment period. MLAs do not have postemployment restrictions.

1:50

The next one, appearance before quasi-judicial boards. Alberta Justice provided a legal review for you. Basically, it stated that MLAs, including ministers, should not appear before quasi-judicial boards for the following reasons: quasi-judicial boards are tribunals, and they're the ones making decisions affecting legal rights. They hear from people who are directly affected or have some other recognized interest. An MLA putting forward views on behalf of a constituent would be regarded as acting improperly and not having the proper interest.

MLAs are required to maintain an independence from board proceedings and avoid any appearance of attempting to influence outcomes. This has been confirmed by the courts. The risk as an MLA includes public criticism and allegations of attempting to improperly influence outcomes, negative court decisions ruling that the MLA acted improperly, and possible contraventions of the Conflicts of Interest Act if there's any suggestion of furthering private interests, influence, or insider information being used.

If an MLA was involved in a board proceeding in their individual capacity as a private citizen, the MLA would normally be represented by their own lawyer, and of course care should be taken to avoid any possible contravention of the Conflicts of Interest Act.

Everyone has gone through the completion of their private disclosure statements, and we are holding face-to-face meetings. I know we've had some with some of you in the room, and we talked a little bit about yours coming up. There we discuss your statements, identify any potential or real conflicts of interest, and devise a plan to manage them to ensure that the information is complete and up-to-date and allow members an opportunity to raise questions. Once our private disclosure statements are finalized, a condensed version is compiled and made available to the public through the Clerk's office. This usually takes place around November of this year. These public statements do not contain your home address or any dollar values of assets or liabilities. You will be provided with a draft in advance to review and provide comments before it goes public.

A few common conflicts that may exist and need to be addressed. You cannot borrow money from Alberta Treasury Branches or from the Agriculture Finance Services Corporation. This includes increasing a line of credit, increasing the amount available on credit, or renewing a mortgage. If you have a private corporation or are involved in a partnership, these entities cannot deal with ATB or Agriculture Finance Services Corporation. If you are a minister or the Leader of the Opposition, you are not able to invest in any publicly traded securities. You may be requested to divest your holdings or place them in a blind trust. Under the act associate ministers, a new class now, have the same restrictions.

Further restrictions are placed upon ministers and the Leader of the Official Opposition in that they cannot carry on a business or engage in outside employment. There are restrictions in holding an office or directorship.

Four, travel on noncommercial aircraft. Members are not allowed to accept travel in noncommercial aircraft – i.e. craft owned by a company, say, Syncrude – an aircraft that is not owned or leased by the Crown. The exception is that a member is travelling in his or her capacity as an MLA. An example of this would be if a member is going to Fort McMurray, where an aerial tour of a petrochemical facility was to take place. The member cannot accept a corporate flight to Fort McMurray because commercial air travel and, indeed, travel on a government plane are available. A member can accept, though, an aerial tour of the

facility as this flight is considered part of your business, and that would be disclosed publicly.

Five. Members are restricted in accepting gifts from a person or organization that is connected directly or indirectly with the performance of their office. All gifts that exceed \$400 from a single donor in a calendar year must be approved by our office. Several exemptions to this rule apply, and our office has a quick guide to assist you; indeed, it's in the folder that was circulated from our office.

Requests for investigations. These are requests for investigations into your behaviour or your activity that allege that you have breached the Conflicts of Interest Act that we're talking about now. They can come from any person in writing – it cannot be anonymous – from any member about a member, from the Legislative Assembly by resolution, or, finally, from Executive Council regarding a member.

We review all complaints that are received. I may refuse to investigate if I'm of the opinion that the request is frivolous or vexatious, was not made in good faith, and has insufficient grounds to warrant the investigation. If our administration review determines there is good and proper evidence, we will investigate, and a report will be submitted to the Speaker of the Legislative Assembly for tabling and may include recommendations for sanctions, and as we've mentioned before, up to expulsion from the Legislature. But that depends on the Legislature. It's their decision, not ours. We can only recommend sanctions.

All the ethics commissioners across the country, in North America have this discussion with their legislators. How do you avoid an investigation? Obviously, as I said, we're interested more in prevention than prosecution. Investigations are avoided by following our advice, which is based on the facts you the members provide and applied under the legislation, ensuring you adhere to the restrictions with ATB, the rules of gifts, travel, investments, and managing your own business interests.

There are three that are really critical. I'll just say A, B, and C. They're the most serious and the ones that probably more than any other the Legislature might consider would be a breach that might be considered to lead to expulsion. A, avoid furthering a private interest. Simply, it says: "A Member breaches this Act if the Member takes part in a decision in the course of carrying out [his or her duties] knowing that the decision might further a private interest of the Member," direct associates, or the member's minor child. To avoid an investigation, the member shall "declare that interest and must withdraw from the meeting without voting on or participating in the consideration of the matter."

Exemptions exist here under A. You may participate in the vote if the private interest is a matter that is one of general application; that means that all Albertans are affected, for example tax matters. Two, an interest in a matter that affects the person as one of a broad class of the public where a decision affects a group of Albertans; for instance, educational issues that affect all teachers, debates on agricultural issues that affect all farmers, or justice issues that affect all lawyers. If the issue is more narrow – for example, dealing with specialty crops for maybe only a few producers – a private interest may exist, and the member should withdraw from the debate. Call us if you like, and we'll walk you through it. Three, another exemption is an interest that concerns the remuneration and benefits of members. This is decided by the Members' Services Committee. It is not a private interest. Four, an interest that is trivial, that is less than \$1,000. Finally, an interest that relates to publicly traded securities held in a member's blind trust.

B, avoid improper influence. A member breaches the act if they use their "office or powers to influence or to seek to influence a

decision to be made by or on behalf of the Crown to further a private interest of the Member," yourself, a child, a direct associate, a minor child, "or to improperly further another person's private interest." The term "improper," so you'll know, is not defined, but as a standard you may want to consider: do you want to read about this in the newspaper tomorrow? Proper uses of influence, though – and there are those, of course. Here's a good one for you. A proper influence would include the work you do for your constituents in attempting to resolve their problems.

C, the third and last one, avoid using, please, insider information. Members breach the act if they use or communicate "information not available to the . . . public that was gained by the Member in the course of carrying out [their] office or powers" – and this is important – "to further or seek to further a private interest of the Member," a direct associate, the member's minor child, or another person's private interest.

If you believe you have breached the act, I would encourage you to come forward and talk to us anyway. That's happened several times over the years, and most generally and in most cases it was inadvertent and was committed in good faith.

The final piece of legislation is the Lobbyists Act, and I just want Brad to go on the computer and do something for us that might be of interest to you. He's going to go on the home page. You're familiar with the Lobbyists Act. This is a demonstration I think you'll like. On the home page, using the menu on the left side – this is for you so you can benefit from the computer – you can do a general search of active and inactive registrations.

2:00

Mr. Odsen: Thank you. Unfortunately, the view on this computer is not the same as the view on our computers. The menu we're talking about is over here, where the cursor is now, so you see why I've moved the cursor over onto it, and it is opening up submenus. The words are there. It's just that the view doesn't come through on this computer. Okay? Sorry about that.

Mr. Wilkinson: Okay. Thanks for explaining that.

You can do a general search, then, of active and inactive registrants and next for organizations and consultant lobbyists. Can they see that?

Mr. Odsen: Okay. So here are organization lobbyists.

Mr. Wilkinson: These provide a complete listing of registrants by the name of the designated filer, but that can be changed to show the listing by organization in the case of an organizational lobbyist. Does that come up? There it is. Or a firm name.

Mr. Odsen: That's for consultant lobbyists.

Mr. Wilkinson: Yeah. Or client in the case of a consultant lobbyist. The listing is alphabetical, and you can jump from letter to letter using the features on this page. You can also use the search function, which will enable you to put in key words such as a lobbyist's name, as we have here, or an organization's name, a department or prescribed provincial entity, and the information will come up. Brad has typed in the word "water," and the registration has brought up every registration that contains the word "water," where somewhere in the information the word "water" is used.

So if somebody is coming to see you and you want to know if they're a lobbyist, it's very easy to find out. If they're not registered, you might encourage them to register, to give us a call.

In conclusion, I just want to say that it's certainly been our experience, as for the ethics commissioners across this country –

and we meet with them once a year – that we know that you, the members of the Legislature, are very honest and well-intentioned people. You did not take on this job, you did not fight for this job, you did not sacrifice yourself and your family to take on this job to have you run into problems along the way, trying to achieve something by being dishonest. We know that. We applaud what you do. We applaud that you are here to serve the public, and anything we can do to help you achieve that goal we're here to do because we work for you.

Thank you.

The Chair: Good. Thank you, Mr. Commissioner.

Now we're open for questions. Ms Blakeman, go ahead.

Ms Blakeman: Thank you. I'm curious about one thing. Perhaps you can explain to us how the Ethics Commissioner has the authority – and not only the authority but on what criteria can he base a decision to waive the postemployment restriction on ministers? The most recent example of that is Mr. Berger from southern Alberta, in which the Ethics Commissioner waived the requirement that he have a one-year cooling-off period, and he went to a job that, in fact, didn't exist. It was being created for him, and they were unable to give us specifications of what the job description actually was. What's the authority that the office has to do that, and what are the criteria that the request is viewed with?

Mr. Wilkinson: Well, the authority is clearly under the act, and we just deal with the acts and the facts of the situation.

I think that maybe it would be helpful for you and for the committee as well if we could just run through a little bit of what we do look at, what we do consider when we're considering any postemployment, and then we'll get more specific on him. We do appreciate the opportunity to talk about this because normally we can't, you know. When you call us, I say that everything you tell us is private, and all of a sudden I've got to start talking about this. Well, the reason I can talk is because I have from the deputy and also from him written permission to talk about this. Otherwise, I would be saying to you or to anybody else I have to under the act: I'm sorry; I can't acknowledge any discussions with that person or have any comment. We do have that permission, so therefore I will proceed.

Here's the process we follow when reviewing postemployment requests. We review the facts of proposed employment and the application of the legislation. It's either the Conflicts of Interest Act or the Alberta public service's postemployment restriction regulation. We determine if there is a potential conflict. Are there significant official dealings, lobbying activities, or a private interest?

We look to see if the conduct can be managed through conditions of employment. For example, if a company has a presence throughout the country, one of the conditions we could put on it is that they could not do any business in Alberta during the 12-month period or six-month period, depending on what it is. So if there is a conflict, can it be managed through conditions? We just talked about that.

Is the appointment in compliance with the Public Service Act? We perform, then, a legal review, sometimes within the organization, perhaps, and sometimes even outside if we wish to get a second opinion.

If an exemption is to be granted for the GOA employment, what conditions should be placed to ensure the employment is not contrary to the public interest? Is the person qualified for the position? Is the compensation appropriate? We review the

employment contract with respect to the severance payments, clawbacks for senior officials, for instance, or delay payments and transition allowances for MLAs. There could be others as well, depending on the position of the employment and its relationships to government and its agencies. Then based on that, we issue an advice.

I want to stress to you that, getting into the exemption now, we do not take exemptions lightly. The test that I apply goes beyond the strict legal requirement that there not be a conflict between the furtherance of the individual's private interest and the public interest. There also must be a significant public interest that will be served by granting the waiver or the exemption.

I would like to note as well, before we get into his personal situation, that former senior officials and former political staff members are allowed to be employed within the government even if there are significant official dealings during the last year of employment. No exemption is required from our office as it is seen as in the public interest. It is not a conflict. Former ministers are allowed to be employed by the GOA when no significant official dealings exist. It is only in the situation where a significant official dealing exists that the former ministers are required to apply to us to request an exemption. In some other jurisdictions as well ministers can move within the family of the government.

Our postemployment legislation was primarily aimed at limiting furtherance of a private interest through the relationship going for a nonprofit or a profit organization. Our interpretation is the same and has been taken to other jurisdictions across the country, and they have said that they would say the same in this circumstance.

In any event, we received a request from Mr. Berger and the Deputy Minister of Agriculture and Rural Development to consider whether an exemption can be applied under the Conflicts of Interest Act, section 31(3). This states:

- (b) if in the opinion of the Ethics Commissioner the activity, contract or benefit will not create a conflict between a private interest of the former Minister and the public interest, and the former Minister observes and performs any conditions imposed by the Ethics Commissioner.

So we look at the postemployment obligations and determine if there is a conflict or not and whether a potential conflict can be managed and what public good can be served.

There is no conflict of interest in this case. First of all, as we talked about before, we talked about conflict. We looked at influence. We only can look at the Conflicts of Interest Act. First is influence. Mr. Berger is part of the public service. The contemplated harm, furthering a private interest, does not apply. He is not in a position of authority in which he is able to further a private interest.

When we look at insider information – the next one, that I talked about earlier – Mr. Berger is not being employed externally to government and using information to provide a competitive advantage to a company. He's not doing that. He is working in the public interest, and this section does not apply.

Also, Mr. Berger has the skills, understanding, and broad experience that will be of great benefit to the department, allow him to hit the ground running, very specifically on files that will benefit the deputy and his department and the people of Alberta.

There are conditions we put on it as well to ensure no conflict of interest is created or occurs and that the public interest is held paramount. Some of those conditions were placed on by us, and some were placed in his contract.

2:10

The Chair: Thank you.

Mr. Rogers.

Mr. Rogers: Thank you, Mr. Chairman. To Mr. Wilkinson, thank you for the presentation and that most recent clarification as well. My question was around references. I have been asked over many years, going back to my time as a member of council and a mayor in the city of Leduc and, more relative to what we're talking about here, my two terms and now third term as an MLA, to provide references for individuals, which I have done. I just wanted to clarify from your comments earlier whether there was a prohibition for me to do that reference on letterhead indicating my office, just a clarification of what is allowable there, particularly from a go-forward basis. It's tough to maybe fix something that I might have done five, six years ago, but certainly I think that for the benefit of myself and the rest of the members around here it would be helpful to know on a go-forward basis what is the best way to deal with that situation.

Mr. Wilkinson: Yes. I look for thoughts to help you from my colleagues here, but basically it goes on your MLA letterhead if it's to do with MLA business, if it's somebody that became known to you as an MLA because of your job as an MLA. But if it's a private reference, somebody from your private past or somebody who is a personal friend now, then it should go on personal letterhead. Ministers need to be particularly careful.

Mr. Rogers: If I may just clarify, Mr. Chairman, if someone was applying for something within government, where a certain expertise is desirable, that might be appropriate on MLA letterhead, for example, but – and this one has happened – where someone I know, whether a constituent or through my acquaintances, the son of a friend or a constituent, is applying to become a police officer and he says, “Mr. Rogers, would you write a letter of reference for me?” that would be more appropriately written on just a blank sheet, George Rogers.

Mr. Wilkinson: Personal letterhead. We would encourage you to indicate at the bottom that you are an MLA. It's just the use of letterhead that might get you into trouble. That's all.

Mr. Rogers: Thank you very much.

The Chair: Thank you.
Mr. Quadri.

Mr. Quadri: Yes. Regarding a lobbyist, suppose someone is coming to meet me, and I don't know if they are a lobbyist or not.

Mr. Wilkinson: Yes.

Mr. Quadri: Once I find out they're a lobbyist, should I meet them or should I not meet them?

Mr. Wilkinson: It's entirely up to you. That's a good question as well. You're under no obligation under the act to do anything. You're not under obligation to report anybody to us or to tell anybody else that they should lobby or not meet with somebody if they are or are not a lobbyist. It's more, therefore, your information, and the decision is up to you. It just allows you to decide: “Oh, these people are lobbyists. I'm not sure if I want to meet with a lobbyist at this time on this point.” Or maybe it's appropriate that somebody else meet with that person. I think that's probably the best.

Brad wants to get in here. Being a lobbyist registrar, I'd like to let him do that because of time. I missed part of the presentation devoted to him.

Mr. Odsen: Thank you, Mr. Commissioner. It's important to remember, I guess, two things. Generally speaking, number one, lobbying is a legitimate activity, and lobbyists have the right, people have the right, citizens have the right to talk to people in government or, indeed, in the Legislature about what's important to them. So the fact that they are not registered ought not to be grounds not to talk to them. That's the first thing.

The second thing is that there are a number of exemptions in the Lobbyists Act around whether or not registration is required. It may be that they're a lobbyist and that in certain circumstances they ought to be registered, but in fact because of an exemption that exists in the act, they are not required to be registered. That's not something that you have to worry about.

I think the thing to do is perhaps say to them: “Are you aware of the Lobbyists Act? Are you in compliance with it? If you're not sure, contact the registrar. Certainly, come on in and talk to me, but have a conversation with the registrar as well to make sure you are in compliance with the act.” That's probably the best route to go, I would say.

The Chair: Thank you.
Mr. Wilson.

Mr. Wilson: Thank you, Mr. Chair. Gentlemen, thank you for your time here today.

I just want to go back quickly to the Mr. Berger situation. If you could just maybe help me understand, when he came to your office with an application that had no job description, how you were able to then deduce that he would not have an ability to influence private interests.

Ms Blakeman: Good question.

Mr. Wilson: Thank you, Laurie. I appreciate that.
Please, if you could maybe just comment on that, sir.

Mr. Wilkinson: Sure. Indeed, his contract is filled with job descriptions, timelines, reporting procedures. There's no question that he has a job description and a thorough one. He started the job September 4, and he has a very thorough job description. We feel that it's quite in compliance with the act.

He also has to come under the public service code of conduct, which is very strict on your activities as well. He's a senior public servant, and if he doesn't follow his contract, you know, he's subject to dismissal. If he does not follow the advice we've given him, he's subject to a fine of \$50,000. So things are laid out quite clearly, and before we moved ahead with approval, we made sure we had all our ducks in a row, as is required by the act.

May I suggest – and I'm just trying to help you. That's all. Okay? Don't take this as a criticism. When that hit the news, we saw another MLA saying something and another MLA saying something and another MLA saying something. We were waiting for the phone to ring. All you had to do was call us, and I would have told you: here's what we go through; here's what we look at. I may not have been able to tell you specifically, I may not have had approval then to tell you specifically, but I could have said: yes, there is; very clearly there is.

All I ask in anything – and that's why I said it at the beginning – is: please don't rely on information about other people from news reports. There's nothing compelling you to call us – all right? – but nobody did, not one. The only call we got, to this person's credit, was when somebody who had spoken to the media called and apologized to us for not getting the facts right.

Please take what I've just said in the spirit that it's given, right? You hire us to make judgments, to make evaluations, to collect facts. Take advantage of it 24/7, 365.

Mr. Wilson: Duly noted.

The Chair: Good. Thank you, Mr. Commissioner.

Since we're running out of time for the remaining questions, I would ask the members to read into the record. Then we'll ask the commissioner to provide the responses in writing to the committee clerk for distribution.

Ms Blakeman, go ahead.

Ms Blakeman: Thank you. It's picking up on my previous question because I am confused. I read the legislation, and it's pretty clear. "A former Minister shall not, for a period of 12 months after ceasing to be a member . . . accept a contract." I see in subsection (3) "in the opinion of the Ethics Commissioner," but the conditions that are listed in the legislation specifically say that the way "the contract or benefit is awarded, approved . . . [is] the same for all persons similarly entitled." Well, we only had one person here, and it was not an open contest. It was designed for one person, and one person got it.

Secondly, "the award, approval or grant results from an impartially administered process open to a significant class of persons." Well, there was only one ex-minister of agriculture, so I'm struggling to see how we have this class of persons. If you can expand on the criteria that you used to override those sections, I'd be very interested in receiving that in writing on behalf of the committee.

Thank you.

The Chair: Mr. Eggen.

Mr. Eggen: Yes. Further to the same issue, I would just like to ask if you could reply in writing as to whether you were instructed by any member of the government to give Mr. Berger that exemption that allowed him to take that job.

The Chair: Thank you.

Any more questions?

Seeing none, I'd like to thank the commissioner and general counsel and the chief administrative officer for attending and speaking to our committee about your mandate.

Also, our next meeting, to consider the 2013-2014 budget estimates and the business plans and the 2011-2012 annual reports of the officers, is anticipated for scheduling in November. Our office will be in contact with you once a date is confirmed.

Again, I'll thank you for coming today.

Mr. Wilkinson: Thank you for giving us the opportunity to appear before you all. We appreciate it.

The Chair: Let's take a two-minute break.

[The committee adjourned from 2:20 p.m. to 2:24 p.m.]

The Chair: Okay. Let's start. Good afternoon again, everybody, and welcome to our committee. Before we start, I would like us to introduce ourselves around the table. My name is David Xiao. I'm the MLA for the marvellous Edmonton-McClung constituency, and we have the most beautiful river valley in Edmonton. I'm the chair of the committee.

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

Mr. Quadri: Sohail Quadri, MLA, Edmonton-Mill Woods.

Ms Blakeman: Laurie Blakeman. I'd like to welcome each and every one of you to my fabulous constituency of Edmonton-Centre.

Mr. Graff: Thank you. I'm Del Graff. I'm the Child and Youth Advocate.

Ms Stewart: I'm Jackie Stewart.

Mr. Reynolds: Hi. I'm Rob Reynolds. I'm the Law Clerk and director of interparliamentary relations.

Mr. Wilson: Jeff Wilson, MLA, Calgary-Shaw.

Ms DeLong: Alana DeLong, Calgary-Bow.

Dr. Brown: Neil Brown from the majestic constituency of Calgary-Mackay-Nose Hill.

Mrs. Leskiw: I'm sorry.

Ms Blakeman: She was waiting for: the largest civic park. You didn't give him enough time.

Mrs. Leskiw: She started it all, so we're just trying to outdo her.

Genia Leskiw from Bonnyville-Cold Lake. It is God's country, has all those lakes and the largest air force base.

Okay. Taber corn.

Mr. Bikman: I'm not going to say it.

Gary Bikman from Cardston-Taber-Warner.

Mrs. Sawchuk: Karen Sawchuk, committee clerk.

Mr. Eggen: I'm Dave Eggen. I'm the MLA for perhaps the world's finest constituency, Edmonton-Calder.

The Chair: Good. Thank you very much. It seems we all love our constituencies.

Okay. For the committee's information the Child and Youth Advocate was only recently designated as an officer of the Legislature, effective April 1, 2012, and is relatively new to the process of appearing before this committee.

For the benefit of our visitors the committee discussions at its July 23 meeting led to a motion to invite the officers to attend a future meeting to provide an overview of their mandate and the work done by their offices. The meeting format provides for a 15- to 20-minute presentation followed by questions. Once the advocate has completed his presentation and the committee has exhausted all questions in that respect, we will consider the other agenda item, relating to proposed amendments to the Child and Youth Advocate Act.

With that, I will turn it over to Mr. Graff. Go ahead, please.

Office of the Child and Youth Advocate

Mr. Graff: Thank you very much. First, I'd like to thank the committee for the opportunity to provide an orientation about the office of the Child and Youth Advocate. I'm joined on my right by Jackie Stewart, who is our executive director of advocacy. She's going to be helping me with part of the presentation. We have a PowerPoint, and you should have copies of our PowerPoint slides, so without further delay I'll get right involved in the PowerPoint.

The Child and Youth Advocate Act was proclaimed on April 1, 2012, and it set a new course for the Child and Youth Advocate as

an independent officer of the Legislature. Prior to that, the advocate reported to the Minister of Human Services.

The legislation includes a preamble that “recognizes that children and youth are our greatest resource.” It commits to “ensuring that the rights, interests and viewpoints of the most vulnerable children and youth in provincial government systems are considered,” and it “recognizes the importance of continual improvement in the provision of services to vulnerable children and youth.”

“The role of the Advocate is to represent the rights, interests and viewpoints of children,” and that’s identified in the legislation, in the act. The advocate serves children receiving a designated service under a couple of pieces of legislation. One is the Child, Youth and Family Enhancement Act. The other is under the Protection of Sexually Exploited Children Act.

A new responsibility as part of this legislation is to provide advocate services to young people involved with the youth criminal justice system. To provide a context, one of the things that I need to do is correct the information in this slide. It says there that in Alberta over 8,500 young people are involved in the child intervention system. What it should say is that there are over 8,500 young people in government care. In fact, the child intervention system involves more than 12,000 young people. The remaining 3,500 are involved with the child intervention system but aren’t in government care. They are either in their own homes or in some other situation, but they’re not in government care. I needed to clarify that piece of information.

2:30

The youth justice system has over 4,200 young people who are involved with either community corrections or are in custody, and the large majority of those young people are in community corrections, so in circumstances like having a probation order, for example. Of the 4,200, about 4,000 are in that circumstance where they’re involved in community corrections, and there are about 200 young people that are involved in custody situations.

Of those young people that are involved with youth corrections, about a third of them, or 1,400 of them, are involved with both systems, the child intervention system and the youth justice system, at the same time. That’s just to provide a bit of an overview of the numbers.

These are all young people who are involved with either child intervention or youth justice. These are young people that are often vulnerable and marginalized. Often they have backgrounds that are characterized by neglect, abuse, addictions, and violence. In fact, neglect is the most frequently reported situation by which young people come to the attention of child intervention services. They often live in foster homes or group homes or institutions or sometimes in kinship care homes, and they’re more likely to experience school problems, mental health issues, homelessness, and unemployment. This is a vulnerable group of young people that we work with.

To provide a bit of an overview of our office, our annual budget is just over \$11 million. We have a current staff complement of 56 full-time positions. We have two offices, a north office and a south office. The majority of those positions are in our north office – you can see that it says that 43 of them are in Edmonton – and in our south office we have 13 positions. That office is located in Calgary.

With respect to organizational structure as part of the new legislation we’ve had to reorganize to meet two distinct goals. One was to separate ourselves from the Human Services ministry. As you can appreciate, prior to this legislation all of the systems that supported our office were part of the Human Services ministry.

Our finance system, our human resource system, our information technology systems: all of them were part of that. Our need to separate was one of the key features of our organizational restructuring.

The other was to meet the new legislated mandate. Parts of that mandate included providing advocacy services for youth justice. Another part of our mandate now includes doing investigations of serious injuries or deaths of young people who were receiving designated services. A third area of our legislation that’s part of our new mandate is to provide public education about advocacy. Then the fourth area for us is an increased focus on systemic advocacy, and we’ll talk a bit more about what those areas involve.

To achieve these goals, we have restructured our organization, and we’ve identified four functional divisions: individual advocacy, systemic advocacy and outreach, legal representation and quality assurance, and strategic support. This is where I’d like to invite Jackie to just describe what those divisions are and what they do.

Ms Stewart: Okay. It’s my turn. Individual advocacy is one of the divisions, as Del has pointed out. The focus of this area and the work that’s done is to educate young people to ensure that they understand what their rights are and that they’re able to have them exercised. That often means, for example, an advocate working with a young person individually. An example of what that might be is for a young person that may want to see their family, and they are in a situation of having the ability to do so and having a right to do so. The advocate may help the young person to make that happen.

The next part of individual advocacy work has to do with ensuring that young people have opportunities to identify their problems and the solutions that they want to have achieved. Really, the key here is the young person leading the process. Also, our work has to do with having young people participate in decision-making processes on the decisions that affect them so that they feel that they’ve been a part of that process, also to ensure that young people are heard and taken seriously.

Then for those young people that are unable to express their interests, the advocacy efforts centre on ensuring that the decision-makers have the child’s interests at the forefront. That may mean, for example, that in a court process or in an appeal panel process it’s important that the decision-makers be clear on what that child’s interests are in order that they may be considered in the decision that’s needing to be made. That’s our individual advocacy division.

The next division is our systemic advocacy and outreach. Systemic advocacy really involves issues that affect more than one person or, in our case, one child. It’s issues that are likely to reoccur if changes aren’t made, and the resolution of the issues really requires a broad change, usually a policy or a legislative change. That’s the work that’s typically done in our systemic advocacy.

The other part to the division is outreach. To begin with, the work that’s done in our outreach area is public education, and the key work there is to ensure that the public and key stakeholders are informed on the issues that are relevant to the young people that are receiving services.

Is there a question?

Ms Blakeman: Not right now.

Ms Stewart: Okay. The next part to the work that we do in the outreach area is collaborative research. This has to do with doing

research geared towards improving services and addressing the needs of young people. We may, for example, collaborate with an educational institution or advocates in other provinces in order to conduct research.

The third area is community advocacy partnerships. The whole goal here is to increase advocacy resources available to young people, so really trying to look at involving the community in advocating for young people as well.

The last part is engaging with aboriginal stakeholders and communities to strengthen the capacity for advocacy for aboriginal young people in ways that recognize their unique circumstances.

Our third division is legal representation and quality assurance. The core work that happens in this division is to appoint lawyers for young people that are involved in Child, Youth and Family Enhancement Act matters and also PSECA, which is the Protection of Sexually Exploited Children Act. Those are the two pieces of legislation where they may appoint a lawyer for a young person that is involved in those matters. The role of the lawyer that's representing the young person is to ensure that their legal rights are being respected in those proceedings, and it's also to ensure that their voices are heard and that their interests are being considered in the court process.

The other half of the work that's done in the legal representation and quality assurance division is the quality assurance side. This is ensuring that quality assurance processes are being developed and implemented across our organization. A good example of that is that we have a youth feedback process that's in place. We ask young people about what their experiences are like when they have both an advocate and a lawyer, and we consider that feedback to ensure that our practice is always improving.

The other part to the work that's done in this area is the review of systemic issues arising from serious injury or death of a young person receiving a designated service. We've outlined in the PowerPoint presentation the four stages of what happens when we do receive a notification or a report that a young person has either been seriously injured or has died. The first part, obviously, is receiving that report. The second part is completing an initial assessment. In our office within this division an assessment is done to determine whether or not it would proceed further for an investigative review.

2:40

The third part of the process is conducting an investigative review. A notification may not in many cases lead to this process. A good example would be if a child had an illness where their death was due to a health issue that was known up front. We, obviously, wouldn't proceed to doing an investigative review.

The last part of the process is completing a report. Again, that may not happen in all cases, but it may happen in some cases.

The last area is strategic support, and this is our in-house support that we receive for our office. It's the division of our office where our admin support, finance, human resources, and information technology are housed and where business and operational planning happens for us.

Now it's Del's turn again.

Mr. Graff: Those are the functions of the divisions that enable us to fulfil the mandate of the legislation.

The next area I'd just like to talk briefly about is reporting, the purpose of reporting being to inform the Legislature and appropriate ministries, stakeholders, and the public on activities of the office of the Child and Youth Advocate. Historically we've always had some levels of report, most often either annual reports

or quarterly reports. It has been for this purpose, to deal with the activities of the advocate. We also use reporting to raise issues of relevance for young people receiving designated services and to make recommendations for improvement to services.

The types of reports that we create are an annual report to report the yearly activities of the office of the Child and Youth Advocate and special reports to identify key issues relevant to young people. There are kind of two areas of special reports. One is those reports that come out of investigative reviews, that Jackie was alluding to earlier, but the other is a special report that we may undertake as part of a systemic issue that we think we want to explore and where we want to make people aware that this issue exists. We can in fact do the research needed to engender a special report. Then the third area in terms of types of reports is our quarterly reports. We've done them for some time, and they're a communication tool that we use with designated service providers to discuss the issues of advocacy or the issues that young people are experiencing. Those quarterly reports are currently under revision. We're engaged in discussion with stakeholders now about how they'd like to see those evolve.

That's primarily our presentation about what we do and how we're organized and what some of the reasons are for our reports and our divisions, et cetera. Certainly, if you have any questions, now would be a good time.

The Chair: Yeah. Now we're open for questions. Ms Blakeman.

Ms Blakeman: Thanks. I have two questions, so maybe you could put me back on the bottom of the list if I don't have time now.

My first question is around clarifying for me the issue of being able to issue public reports about children who have died in government care. This is not an area of expertise for me, but I'm looking through the legislation while we're talking here, and what I keep hearing is that we can't publicize the name of the child or that we can't identify, you know, give any information about the child. As we try to learn the lesson publicly, it seems to me that that's a barrier in trying to understand how to better offer programming. Maybe I'm totally out to lunch on this one, but if I could get some clarification about whether or not, once you've done an investigation and then a report on a child who has died while in government care or receiving services from the government, it can go public, and if not, why not?

Mr. Graff: There have been reports that have been completed in other jurisdictions, where there was concern about the young person's name because of the impact on siblings or the impact on other family members, where the reports have come out with an identifier that's not specific to that young person – Baby X; this is the experience pertaining to that child – so that the learning can still happen without identifying the specific name of a child.

The legislation, as I understand it, now requires us to provide a public report but enables us to do it in a manner that the advocate deems as reasonable. What I've learned about that is that there are circumstances where the name of the child is public and every entity knows that name, so it would not be wise to use that kind of pseudonym type of approach. But where there are those concerns with young people's identities having impact on other family members, I understand that we don't in fact provide that identity.

Ms Blakeman: Okay.

Have I got time for a second? Oh, there are others. Okay.

The Chair: Thank you.

Mr. Eggen.

Mr. Eggen: Yes. Thanks so much for your report. Since this is, I believe, the newest office of the Legislature, you know, it's important for us to get it right and to have it evolve with the full main scope of a mandate that can meet the needs of children in care and outside of care. You probably have done a review of similar offices in other provinces, so I'm asking: what have you seen there that you've learned from that we could perhaps accommodate in our office here in Alberta? I'm thinking particularly of our scope of practice, your ability to conduct investigations. Correct me if I'm wrong, but it seems to be limited more to a reactive way when there's a serious incident or a death. Perhaps other places have a wider scope to be proactive, to initiate investigations.

Mr. Graff: It's safe for me to say that in Canada no two jurisdictions are the same. Part of our learning has been about: what have we seen in other provinces that seems to work quite well and effectively for them? An example is that the reactive investigations process that's undertaken in British Columbia has a series of steps that are consistently followed and are predictable. The system there is familiar with those steps now, and we've in fact had some dialogue with them as part of the development of our process.

Similarly, in Saskatchewan there's a significant public education structure that the Saskatchewan advocate treats as a real bridge-builder between the advocate's office and stakeholders in terms of helping stakeholders to understand what advocacy does and doesn't do.

There are also capacities in provinces to do those kinds of reports that are systemic reports about a specific issue but that aren't precipitated by an event. B.C. has that capacity. Saskatchewan has that capacity. Manitoba has it but only within the child intervention system. Those provinces have those capacities, but only in certain circumstances can they be applied.

There isn't a jurisdiction that has all of what we would be looking for. What we've done is looked at them and said: this is what works, and this is what we think is good for our process.

Mr. Eggen: Thank you.

The Chair: Okay. Any questions? Yes. Ms Blakeman, go ahead.

Ms Blakeman: Okay. Thank you. My second question. There's been a new process much touted by the government about outcomes-based service delivery in the child and family services sector, and I'm wondering if your office has done or has considered doing any analysis of how well it looks like that new program is affecting children. I know that it's for the most part in a pilot project stage at this point, but it strikes me that that would be a good time to analyze it, before we got in too deep. So I'm wondering if you have undertaken anything like that or even if you have the ability to undertake that given the legislation that you have.

2:50

Mr. Graff: We've not at this point considered that. My exposure to the outcome-based service delivery is just at a beginning of understanding as to what it is and what it does for young people in terms of actually producing outcomes. I've been involved in a number of discussions about it but haven't been to a point of saying: we need to take a serious look at what actual impact this is having. My sense is that it may be too soon although I'm not sure about the timing.

Ms Blakeman: Okay. The second part was the legislation, whether you'd be allowed to issue something to investigate it and analyze an issue or a report.

Mr. Graff: Yes, it certainly could be. We're not limited to say that we couldn't pursue that as a special report or as a topic of interest and relevance for young people who are in those designated services and then both do the research, explore the issue, and write a report for consideration.

Ms Blakeman: Okay. Thanks.

The Chair: Good. Thank you. Any more questions?

Seeing none, I'd like to thank you for the presentation.

We'll now move on to the issue of the proposed amendments to the Child and Youth Advocate Act. I would like to note that the officers may bring forward proposed statute amendments for the committee's consideration; however, the committee does not have the mandate to approve amendments but may forward its recommendations to, in this case, the Minister of Human Services.

Mr. Reynolds, is there anything that you would like to add at this point?

Mr. Reynolds: Thank you, Mr. Chair. Not really except to say that there have been occasions in the past when officers have come to the committee in order to present ideas or proposals for legislative change because, of course, there is no other avenue for them to go unless they go directly to the government. Of course, as this is the newest officer of the Legislature, it seems appropriate that instead of going to his former parent ministry, Human Services, he would come to this committee to share the concerns that he has in operating and in performing his mandate. What usually occurs at the end of a similar presentation is that if the committee agrees with the amendments that are proposed by the officer, then typically there would be a motion that the committee either recommend to the minister that the amendments be proceeded with or transmit the proposed amendments to the minister and that the minister would bring in the appropriate legislation.

The Chair: Thank you. We may call on you to answer any questions that may arise.

Mr. Graff, please go ahead.

Mr. Graff: Thank you. From our presentation you found out a little more about what the office of the Child and Youth Advocate does. You know that the role of the advocate is to represent the rights, interests, and viewpoints of vulnerable children and youth. One way to ensure that the interests and viewpoints of children and youth are heard is through continual improvement in the child intervention system. That's what brings me to speak to this topic with you today.

I'm here this afternoon to ask you to support two amendments to the Child and Youth Advocate Act. The first amendment deals with section 17 of the act. Section 17 prohibits the advocate from giving or being compelled to give evidence in any matter. The problem with this section is that it prevents me or advocates from my office from providing information to appeal panels in particular. There have been approximately four appeal panel matters where we have been unable to assist young people we were previously able to assist.

The Child, Youth and Family Enhancement Appeal Panel is a citizens panel that provides an opportunity for those affected by certain decisions of the director to gain access to a fair, impartial,

and independent review of those decisions. In some cases young people are affected by these decisions and are involved with the appeal panel process. The panel is a quasi-judicial appeal body that holds hearings on matters within its mandate to review.

Prior to April 1, 2012, the advocate was invited by the appeal panel to provide information in appeals affecting children receiving services under the Child, Youth and Family Enhancement Act. Our participation often involved providing written submissions, providing oral evidence, or both.

The exclusion of the advocate from providing information to the appeal panel has serious implications for my office and for our ability to represent the young people that we're there to serve. For example, during a recent appeal panel hearing my office provided a written submission on behalf of a child. This child had been removed from a foster home, and the foster parents were appealing this decision. In our submission to the appeal panel we provided an outline of the child's views on that matter. In the appeal panel decision it was determined that our written submission was considered evidence and thus was prohibited by section 17 of our legislation.

I want to point out that the intent of section 17, to prohibit the advocate and his staff from being compelled to provide evidence, is to protect the confidential and privileged information provided by a child, which is a good thing. This helps protect vulnerable young people who we serve. However, to fulfill my mandate, it's important that my office be permitted to determine when certain information should be shared to assist a young person in expressing their views and having their interests considered by the appeal panel or the court for the purpose of carrying out the advocate's mandate. In the past our office was able to provide information on behalf of a young person, therefore often avoiding the need for the young person to have to do this on their own. There needs to be a balance.

To resolve this issue, I'm respectfully requesting that the committee consider supporting an amendment to section 17 of the Child and Youth Advocate Act. The amendment I'm proposing would enable the advocate or a person employed by my office to provide information on behalf of the child in any action, proceeding, hearing, or decision regarding designated services for that child.

The second amendment I'm seeking your support for deals with section 9(4) of the Child and Youth Advocate Act. On April 1 the advocate was granted the authority to conduct investigations arising from the serious injury or death of a child or youth receiving designated services. This is a positive step by government to ensure that an independent third party can investigate the serious injury or death of a young person and issue recommendations to improve the system, the system that cares for those young people.

The problem with section 9(4) of our legislation is that it limits the advocate's investigative authority to children and youth under the age of 18. When a young person turns 18, they're often still receiving ministry services, and there are provisions for them to receive support and financial assistance up to age 22. Often my office is still involved in the lives of young people 18 and older by providing advocacy services and support to them.

I will illustrate a recent case that will highlight the importance of this amendment to us. Earlier this year an 18-year-old young person was found unconscious in Edmonton's Mill Creek ravine. She later died in the hospital. She had a long history of receiving designated services from government, having been placed in 21 different homes throughout her life. She'd been in permanent government care since she was three years old. In the last five years of her life she was in 15 different living arrangements. At

the time of this tragic event she was not in care as she had turned 18 about six months before her death. She was, however, receiving government support through a support and financial agreement.

Our legislation entitles us to receive notification of the death of a young person in this age group, which we did receive. We received the notification of her death. We asked for and we received the file information for this young person, which is also part of our legislation to do, and on the basis of that file information we completed what Jackie was referring to earlier in terms of an initial assessment.

Our initial assessment led us to a number of questions that we believe are important to consider further through an investigative review, questions that we think could lead to improving services for young people while they're still in government care. Section 9(4) prevents us from doing that investigative review. If this young person was 17 years old or younger, my office would have the full authority to investigate her case and provide recommendations to the ministry to help improve the system. As it stands now, the Child and Youth Advocate cannot complete an investigative review of this tragic situation even though she was continuing to receive government services at the time of her death.

I want to point out that research has shown that it's critically important for young people in care to be well prepared both before and during early adulthood to be successful. If the proper plans and supports are in place, a young person in care can learn the skills required to be a successful and productive member of our society. Often a way to know if these plans and supports are effective is to consider what happens to young people after they leave care but are still involved in supports from ministry programs. This is especially important when a tragic situation occurs.

3:00

I respectfully request that you support amending the Child and Youth Advocate Act to enable the advocate to investigate systemic issues arising from serious injury or death of a young person age 18 to 22 receiving designated services.

Thank you, Mr. Chairman and committee members. I'd be happy to answer any questions you have.

The Chair: Good.

Okay. Go ahead, Ms Blakeman. You have a question?

Ms Blakeman: I'm inclined to support the requests of the advocate in my reading of the conflict that has developed between best intentions and the way it actually works out. The one hesitation that I have about the first section is that both this act and organizations like the World Health Organization say that the child has a right to be heard, and I'm just making sure that this amendment could not be used as a way of circumventing the child's right to be heard.

It doesn't look like that to me because section 17 is really dealing with that the advocate can't be compelled to come forward and give out information, which is protecting the child's information, and section 20 is that information provided by a child to the advocate is kept in confidence although in this situation you need to be able to put it forward because it's important for their case. If you can just comment on that. I think I'm good with what you're doing here, and I'm definitely good with the second one.

Mr. Graff: Our intention – and it's a consistent principle of the advocate's office – is not to speak on behalf of somebody who is able and willing to speak on their own. We don't want to replace when young people's voices need to be heard. What we want to be

able to do is that when a young person is either unable or unwilling but wants a message conveyed, we're able to represent that message accurately and without any vested interest. We are, I believe, in those circumstances of appeal court, et cetera, as impartial as is possible in terms of those messages where many of the stakeholders are very much vested in the particular outcome. Often in our history appeal panels would look to us because of our impartiality around the messaging that a young person wanted conveyed.

Jackie, did you have any comments on that?

Ms Stewart: No. I think that the key is that if a young person is wanting to provide the information on their own, we absolutely support that. In fact, that is our first desire.

Ms Blakeman: Are there any other questions, or could I ask a second?

The Chair: Go ahead.

Ms Blakeman: Is there a second question?

The Chair: Yeah.

Ms Blakeman: Okay. Could you just refer me to the section in the act that gives the sort of end date of your ability to intercede on behalf? There's a comment here that you can be involved in the lives of children between the ages of 18 and 22 that are receiving ongoing support. So is the 22 age in your legislation or somebody else's legislation?

Mr. Graff: The 22 age is where the designated services stop. So the services that would be provided under the Child, Youth and Family Enhancement Act end at 22.

Ms Blakeman: I'm just thinking about privacy and that you can't be hooked to that child forever, that your involvement with them does stop when they stop receiving government services, right?

Mr. Graff: Well, that's partially right. What happens is that our involvement stops when they stop receiving government services except for this 18- to 22-year-old group. Then our ability to investigate stops, but our ability to advocate with those young people still continues.

Ms Blakeman: Okay. But your files are over at 22.

Mr. Graff: Yeah.

The Chair: I've got one more question. Mr. Wilson.

Mr. Wilson: It wasn't so much a question, Mr. Chairman. It was more speaking in support of both of the amendments.

The Chair: Okay. Sure. Thank you.

Then I would like to ask Mr. Reynolds to make some comments.

Mr. Reynolds: I just wanted to comment on Ms Blakeman's point. I think that in Mr. Graff's letter to the committee and his request for the amendments – it was posted – I believe he somewhere mentions section 1 of the act. Yes. If you look in section 1(c) of the act, it defines a child as “a person under the age of 18” and “a person under the age of 22.” I'm sorry. I'm not trying to intercede on behalf of . . .

Ms Blakeman: That's what I was looking for. Thank you.

The Chair: Good. Thank you.

With all the information received, you know, I would like a member to move a motion. Do you want me to read it? Okay.

Be it resolved that the Standing Committee on Legislative Offices transmit the amendments to the Child and Youth Advocate Act proposed by the Child and Youth Advocate to the Minister of Human Services with the recommendation that the amendments be introduced to the legislation.

Ms DeLong: I'll move that. Yes.

The Chair: Okay. Good. Any discussion about this motion?

Seeing none, I would like to call the question. Do we need to read it again? No? Okay. Then the motion is moved by Ms DeLong. All in favour? Any opposed? The motion is carried.

For the next meeting the members will be polled about the date in November.

I would like a motion to adjourn the meeting. Okay. Mr. Bikman. Any opposed? No? The motion is carried. The meeting is adjourned.

Thank you very much for attending today.

[The committee adjourned at 3:08 p.m.]

