Legislative Assembly of Alberta

The 29th Legislature
Second Session

Select Special
Ethics and Accountability
Committee

Election Finances and Contributions Disclosure Act Review
Public Interest Disclosure (Whistleblower Protection) Act Review

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Second Session

Select Special Ethics and Accountability Committee

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9 a.m. Tuesday, July 26, 2016

[Mrs. Littlewood in the chair]

The Chair: Good morning, everyone. I'd like to call the meeting of the Select Special Ethics and Accountability Committee to order, welcoming members and staff in attendance. To begin, I will ask that members and those joining the committee at the table introduce themselves for the record, and then I will address members on the phone. I'll begin to my right.

Loyola: Rod Loyola, MLA for Edmonton-Ellerslie.

Mr. Nielsen: Chris Nielsen, MLA for Edmonton-Decore.

Mr. Sucha: Graham Sucha, MLA, Calgary-Shaw.

Mr. Dach: Lorne Dach, MLA for Edmonton-McClung, substituting for Member Cortes-Vargas.

Mr. Coolahan: Craig Coolahan, MLA for Calgary-Klein. I'm substituting for MLA Renaud.

Dr. Turner: Bob Turner, MLA, Edmonton-Whitemud. I'm substituting for MLA Drever.

Mr. Carson: Jon Carson, MLA, Edmonton-Meadowlark.

Mr. Hourihan: Peter Hourihan, Public Interest Commissioner.

Mr. Hunter: Grant Hunter, MLA, Cardston-Taber-Warner.

Mr. Cyr: Scott Cyr, MLA, Bonnyville-Cold Lake.

Mr. Clark: Good morning. Greg Clark, MLA, Calgary-Elbow.

Dr. Amato: Good morning. Sarah Amato, research officer.

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

Ms Dean: Good morning. Shannon Dean, Law Clerk and director of House services.

Ms Rempel: Good morning. Jody Rempel, committee clerk.

The Chair: And on the phone. Would those on the phone introduce themselves, please?

Ms Miller: Barb Miller, MLA, Red Deer-South.

Mr. W. Anderson: Wayne Anderson, MLA, Highwood.

Mr. Nixon: Jason Nixon, MLA, Rimbey-Rocky Mountain House-Sundre.

The Chair: Okay. Just to note the substitutions for the record, Dr. Turner is substituting for Member Drever, Mr. Coolahan is substituting for Ms Renaud, Member Carson is substituting for Member Connolly, Mr. Dach is substituting for Member Cortes-Vargas, and Mr. Hunter is substituting for Mr. van Dijken.

Just a few housekeeping items to address before we turn to the business at hand. A reminder again that the microphone consoles are operated by the *Hansard* staff, so there is no need for members to touch them. Please keep cellphones, iPhones, and BlackBerrys off the table as they may interfere with the audiofeed. Audio of committee proceedings is streamed live on the Internet and recorded by *Hansard*. Audio access and meeting transcripts are obtained via the Legislative Assembly website.

Moving on to approval of the agenda, does anyone have any changes to make to the agenda? Seeing none, would a member like to make a motion to approve the agenda?

Mr. Nielsen: So moved, Chair.

The Chair: Moved by Mr. Nielsen that the agenda for the July 26, 2016, meeting of the Select Special Ethics and Accountability Committee be adopted as distributed. All in favour? Any opposed? On the phones? The motion is carried.

Approval of meeting minutes. Is there anything that anyone would like to change with the draft minutes, any errors, or omissions noted? If not, would a member move the adoption of the minutes? Mr. Dach. Moved by Mr. Dach that the minutes of the July 6, 2016, meeting of the Select Special Ethics and Accountability Committee be adopted as circulated. All in favour? Any opposed? Any opposed on the phones? That is carried.

Moving on to the PIDA deliberations, before we get going, I'd like to note for committee members here in person today that in response to suggestions from committee members, the LAO staff have set up a display laptop so that motions made will be projected on the screens around the room. This is something new that has been set up on a temporary trial basis for this particular committee. I hope that we can count on your patience as there may be some issues that need to be worked out. Motions made during our meetings will be typed out live, so there may be some delay, and there may be some errors. Once a motion is on the screen, there will be opportunity for editing to ensure it accurately reflects the intention of the member who moved it. Then, once the motion is in its final form, it will be read into the record, and deliberations can continue. When we are ready to vote on the matter, the motion will also be read into the record again for those that are joining us by teleconference. Does anyone have any questions about the screens before we proceed?

We will turn our attention back to the review of PIDA and quickly remind everyone that we passed a motion at our last meeting committing to considering this legislation by going through the issues and proposals document item by item. When we ended our discussion at the last meeting, on page 11 of the issues document, we had deferred decisions on three motions. So before returning to these motions, we will continue and complete our deliberations on the remaining points. We left off with item 8(c) on page 11, in the middle of the page. That point is the definition of employee.

Dr. Amato, do you have any opening remarks on that?

Dr. Amato: I believe that the committee is resuming discussion of point 8(c), which is on pages 11 and 12. There are two issues for consideration here. The first is that "the definition of 'employee' in section 1(g) of PIDA should be amended so that it includes 'new classes of workers' in vulnerable or non-traditional employment relationships who need employment-related protections."

The second is that "regulations 1(2)(b)(c) and (d) should clearly encompass independent contractors, members of Alternative Relationship Plans, other roles undertaken by physicians, residents and medical students."

The Chair: Okay. Are there any recommended changes for this item? Mr. Clark.

Mr. Clark: Thank you, Madam Chair. I'm just wondering if either the commissioner or, frankly, anyone else on the committee could help me understand what "new classes of workers" are in vulnerable, nontraditional employment relationships who need employment-related protections. I'm not quite sure what that is. If

anyone perhaps from LAO staff or the commissioner or, frankly, anyone on the committee has any further insight as to specifically what that is, how that's defined, I would appreciate the insight.

Thank you.

The Chair: Dr. Amato.

Dr. Amato: I can give a little bit of contextual information behind this recommendation although not specific to defining these terms. You may recall that the AFL submission requested that the committee extend the scope of the legislation to include all of the private sector, and under the private sector there are all sorts of different kinds of working relationships and employee-employer relationships established. I believe that this recommendation falls under private-sector working relationships.

Mr. Clark: Okay. Thank you.

The Chair: Mr. Clark.

Mr. Clark: Thank you very much, Madam Chair. Given that and given that previously, I believe – in fact, I know – we had passed a motion to explicitly exclude the private sector from PIDA, my feeling is that the committee ought to recommend that we do not pursue this recommendation.

Mr. Sucha: I'll echo what Mr. Clark said as well because we've already expanded this to contractors and to service providers as well, so this item has already been addressed.

The Chair: Okay. With that I will move on to item (d), definition of wrongdoing.

Mr. Clark: Sorry, Madam Chair. There's a second bullet point about contractors, members of alternative relationship plans, physicians, et cetera, which I believe falls under this. It's at the very top of page 12, which is the second bullet point under (c).

The Chair: Did you want to make a recommendation?

Mr. Clark: I would like to talk about that, yes, with your permission, because I do think that is, I believe, a different topic than broadening it to all of new classes of workers in the private sector. This is very specific to independent contractors, which I believe we've already addressed. But members of alternative relationship plans, which in the medical world is another way of saying physicians that are salaried, and other roles undertaken by physicians, residents, and medical students – again, a question for perhaps the commissioner or for my fellow committee members. I don't believe we've addressed this question previously in the committee. I stand to be corrected if we have. Perhaps, Mr. Commissioner, if you could comment on this as to whether or not this is, as far as you understand, either currently included in the act or, from your perspective, whether this is something that is desirable or necessary in terms of a change.

9:10

Mr. Hourihan: I don't know if I can answer that completely. We can accept complaints from, you know, employees, obviously, and the regulation extends this to medical staff and professional staff, which is physicians or other health professionals. That encompasses most people in that definition within the regulation and piggybacking on the definition in the act.

In terms of the alternative relationship plans or other roles undertaken, I can't speak to that specifically. We haven't had any situations where that's arisen. I do have the ability to accept a complaint from a nonemployee under section 31, or whatever it is. I don't have the section off the top of my head. I can do that. I can't really answer it any more specifically than that.

I do know that at the time when the regulation was brought in, the number that we got out of the Medical Association was – or I believe we got it, actually, from Alberta Health Services – that approximately 8,100 of the approximately 9,000 physicians in the province were covered under the definition within the regulation.

Mr. Clark: So that leaves 900 physicians outside. Would those be what's described here by the Alberta Medical Association in the AMA's submission? Would those 900 then be the "independent contractors, members of Alternative Relationship Plans, [and] other roles undertaken by physicians, residents and medical students"? Can you perhaps quantify who those 900 that are excluded are and if there are, in your opinion, any implications one way or the other about having those people excluded?

Mr. Hourihan: No. To start with, I can't tell you if that's that group. When I look at that group, you know, other roles undertaken by physicians, residents, and medical students to start at the bottom, those would likely be interpreted as employees under normal circumstances. If something came into our office, we'd look at that. The alternative relationship plans and independent contractors – well, independent contractors, I suppose, would be covered by other conversations that you've had, if that takes place. I can't speak to the alternative relationship plans. I would suspect that that might be where they would fall in. Any time there's, I suppose, increased clarity, that's not bad from my perspective.

Mr. Clark: Sure.

Mr. Sucha: Kind of as I spoke to before – and, Mr. Commissioner, feel free to elaborate or correct me if I'm wrong in any method – I think this would also still fall under the scope of the contractors and service providers as well if there was any small loophole in which they weren't being protected. Would I be correct to assume so?

Mr. Hourihan: I think certainly in part. Then the other part is, like I say, that I do have the authority in the act to accept complaints from nonemployees. We track those kinds of things now, and we haven't had any of these situations come up, so I can't really elaborate any further.

Mr. Sucha: Excellent. Thank you.

Mr. Clark: Given the importance of whistle-blower protection generally – and I would think within health care is as important as anywhere – I don't see a lot of downside in this committee recommending that we and, if I've heard you correctly, Mr. Hourihan would all agree that independent contractors have been covered by a previous motion. The "other roles undertaken" are very likely also covered, but there perhaps is a question about the ARP and whether or not those are covered. It sounds like it may be, but I wonder if the committee would entertain a motion that we recommend including – and I will just make that motion so we can discuss it. I will move that the Select Special Committee on Ethics and Accountability recommend that any physician included in an alternative relationship plan is covered by the Public Interest Disclosure (Whistleblower Protection) Act.

The Chair: Mr. Clark, if you would like to look at the motion and just ensure that that's how you want it to read.

Mr. Clark: It looks right to me. Thank you very much.

The Chair: So I will open that up for discussion. Mr. Cyr.

Mr. Cyr: I'm sorry. I don't know what an ARP is.

The Chair: Mr. Clark.

Mr. Clark: Thank you. It's essentially doctors paid by salary instead of fee for service. That's kind of a very short answer to that question. It's my understanding, anyway. Actually, perhaps Dr. Turner can answer that question. There may be some other characteristics of it. That's my understanding.

The Chair: Dr. Turner.

Dr. Turner: Actually, I was previously a member of an alternate relationship program, or an alternate revenue program. This is a form of contractual relationship between a physician and an academic entity such as the University of Alberta or the University of Calgary and Alberta Health Services. These contracts are actually facilitated or mediated by the Alberta Medical Association. There are several thousand physicians in this province – and that number is rapidly growing over the near future – that are in ARPs. So I would support Mr. Clark's contention that any member of such a relationship be included.

The Chair: Mr. Cyr.

Mr. Cyr: My colleague found out what the definition was, so bear with me. I apologize. I'd like to just know exactly what an ARP is. I appreciate the candour here. How is it that you felt that you weren't being represented, Dr. Turner? Do you feel that you didn't have protection for the whistle-blower? We've already alluded to that you have protection, so are we kind of doubling down on something? Whenever you make an exception to something, bad things happen. So if there's protection there already, why we would make an exception to the independent contractors, I guess, is my question.

Dr. Turner: I'm not sure what the question is, actually. I think that what the Alberta Medical Association was requesting when they asked for this change was just to ensure that any physician in any form of a contractual relationship would be eligible. In my opinion, it's a bit unfortunate that they've added the residents and the medical students to this because the relationship with those, quote, unquote, employees is quite a bit different than with a professional corporation, for instance, which can be a contractor or a physician who participates in an alternate revenue program. But I think this is just making sure that all of the possibilities are covered.

The Chair: Mr. Clark.

Mr. Clark: Thank you. As the British say, I guess I'm striving for belt and braces here on this in that, you know, I agree that it sounds very likely that residents and medical students are covered under the act in a different way. Really, I guess, I'm not seeking an exception here. What I'm seeking is this committee recommending that we ensure, in fact, that ARPs as a relatively new concept in Alberta – and not brand, brand new, not radically new but, as Dr. Turner said, rapidly expanding. I guess, I see no downside in including this as a motion supported by the committee. Frankly, when the legislative drafting piece happens, perhaps that can be delved into a little bit deeper, but I don't see any downside in including this just to ensure that we're absolutely clear that members of ARPs are in fact covered by the act and protected by the act.

Mr. Hunter: I think the motion says "any physician," but medical students are not physicians at that point, and I don't know whether or not residents would be considered as physicians at that point. Residents usually are, aren't they? So is "any physicians" inclusive of all these?

9:20

Mr. Hourihan: I can't answer that question specifically, but I would say that they're not physicians, so I would think that they would fall under the same definition in subparagraph (d), which includes all professional staff, which are the health workers who are not physicians.

The Chair: Mr. Nielsen.

Mr. Nielsen: Thank you, Madam Chair. I guess the question would be to Dr. Turner, then. With what we have up here right now, I guess, if there's currently the possibility of a loophole and people falling through the cracks, do you feel that this would cover that loophole and seal up that crack?

Dr. Turner: Yes.

Just to the previous comments, too. Medical students, I am assuming, would be covered as students through just the same way any university student would be covered. Similarly the residents, who are physicians – they are a hybrid of a practising physician and a student – would not be included in this comment about the alternate relationship plans. They are not members of an alternate relationship plan. They have a contract with Alberta Health Services for employment.

Mr. Clark: Yeah. I think that, as Dr. Turner said and just to answer Mr. Hunter's question, based on what Commissioner Hourihan said previously, this recommendation by the AMA speaks to independent contractors. I think that we all agree that is covered based on previous motions of this committee. Other roles undertaken by physicians, residents, and medical students also, again based on the comments of the commissioner, I would say, we would all agree are covered by the act, based on our understanding. The only piece that's perhaps lacking clarity is the specific question about members of an alternative relationship plan. To be clear – again, Dr. Turner can clarify this – I do not believe that medical students, at the very least, are ever under an ARP, and I don't know if residents ever would be either. Are they, or are they not? I don't know.

Dr. Turner: Residents and students would not be members of an alternate relationship plan. These are all graduate physicians usually with a specialty or members of the College of Family Physicians who have banded together in a group under the aegis of a university and are contracting their services to the university and to Alberta Health Services.

The Chair: Mr. Clark.

Mr. Clark: Thank you. I suspect that, perhaps, it would likely be that, you know – Mr. Commissioner, if you could weigh in – if there is a contractual relationship between a body called an ARP, which includes a dozen physicians or a hundred physicians or whatever, I think my interpretation of the act would be that it probably applies. But I wonder if, given that the AMA has made this submission, they may believe that there's a lack of clarity there and are seeking an explicit clarification from this committee. Again, I guess, I reiterate that I don't see a lot of downside in us passing a motion that says: let's ensure that we've included ARPs to avoid any loopholes or gaps in the act.

Mr. Hourihan: If they're contracted, I would say that they would then fall under the contracted one that you've talked about, that will be into the future as compared to currently. If they're employees as defined in the act, more specifically in the regulation, they would fall there. If they fall outside of those two yet it was appropriate, I can still accept a complaint under section 21, the anonymous complaint but also from people who are not employees. So in large part I think that they would be covered. However, that said, if it is a gap that makes more sense to be clear, I'm certainly not opposed to clarity in that regard.

Mr. Cyr: Do you believe that there's a gap there?

Mr. Hourihan: We haven't had enough work come into our office since our inception in 2013 to be able to answer that with anything concrete. We haven't had any issues arise to this point. Anybody that we have spoken to that has been a doctor has been appointed under section 2(c), "medical staff," or (d), "professional staff," if it's not been a doctor, so I can't speak beyond that. We're led to believe that a large portion of the physicians are covered within this. However, we don't have a clear understanding of the ones that aren't.

Mr. Cyr: I guess my question would be to Dr. Turner. What circumstance would the whistle-blower legislation be used for underneath this? I don't understand. You're looking for clarity, saying that they should be able to report negligence for assets underneath here. Now, they already seem to have this. What circumstance do you think would fall outside of what they can already do? I guess that's my question. What gap does this fill?

Dr. Turner: I cannot speak for the Alberta Medical Association, but I can speak from my experience. I was a member of an alternate revenue program for about 20 years. They're sometimes called practice plans. Even though they're 20 years old, they're still a relatively novel concept in employment relationships because the practice plan actually gives credit to the participants for participation in education activities, research activities, public service in addition to what they bill through fee for service. Often disputes arise about how much credit an individual gets for those varying activities.

I think that that's what's being referred to here. This is a relatively new employment relationship or contractual relationship. It involves several thousand physicians now, and it's going to involve a lot more because the aim is actually to get all of academic medicine throughout this province in some form of alternate revenue program. That may get to be maybe 30 or 40 per cent of physicians in this province. As I said, I can't speak for where the AMA was, but I think the AMA wanted to make sure that those sorts of disputes, which I don't think have been brought to the Public Interest Commissioner in the past, would be covered.

Mr. Cyr: So this would be a path for contract resolution with the government? That's kind of what I'm hearing.

Dr. Turner: No.

Mr. Cyr: I'm still trying to work out how doctors are being left out of the whistle-blowing process. What gap we're trying to fill, I guess, is what I'm trying to figure out.

Dr. Turner: Yeah. I guess my comment on that is that I can't answer that, and I can't also speak for the AMA. Just looking at this, it could be that if they're employees of a university, they could be covered there, but they would have to be employees. If they're not employees and they're in a contractual relationship, then it would be my interpretation that they would then be covered under what would be coming into place with the new iteration of the act, where contracted and delegated services are included. Again, if it provides more clarity and they're included, I'm certainly not opposed to that notion.

The Chair: Mr. Clark.

Mr. Clark: Thank you, Madam Chair. You know, my intention with this motion is to eliminate any potential loopholes. Given what Dr. Turner has said about some of the complexities of what the ARP is as a legal structure, I guess I'll pick up two pieces, one being that absolutely do I not see the role of the Public Interest Commissioner in any way mediating some sort of dispute about how many hours were spent on education versus something else. That's a completely different topic.

I would caution the committee to be mindful of any, I guess, what I would call institutional push-back. Should there be a situation arise where a physician under an ARP approaches the commissioner to raise an issue, the institution and their ever benevolent lawyers would perhaps make what we may consider to be a obscure procedural argument that, well, in fact, if you're part of an ARP, you're excluded from the act for these reasons. Perhaps the finding over time would be that that is not correct. But this, I guess, I would look at as a soft spot, I suppose, if we don't explicitly enumerate it in the act one way or the other to say that ARPs are absolutely, definitively, and without question included within the act because I would hate to see a situation arise where through a loophole there's a legitimate complaint that is dismissed. That's really the rationale here for this motion. Again, I would hope that the committee would support it.

Thank you, Madam Chair.

9:30

The Chair: Is there any further discussion?

I'll call the question, then. Ms Rempel, would you mind reading the motion back into the record?

Ms Rempel: Of course. Moved by Mr. Clark that

> the Select Special Ethics and Accountability Committee recommend that any physician included in an alternative relationship plan is covered by the Public Interest Disclosure (Whistleblower Protection) Act.

The Chair: All in favour? Any opposed? Any opposed on the phones? That motion is carried.

I will move on to (d), definition of wrongdoing. Are there any recommendations that committee members would like to make? Mr. Clark.

Mr. Clark: Thank you again, Madam Chair. I guess I would just ask the commissioner: given that we have talked already about wrongdoing – if I flip back a few pages here, under section 2(c) we have talked previously about the definition of wrongdoing, and the commissioner had some comments. I haven't read back *Hansard* or closely read my minutes, but I believe that we passed some motions on this topic already. Can you provide us with any context about the specifics of the U.K.'s definition of wrongdoing if you feel that there are elements of that we ought to be adopting? I guess I would just be interested in your comments on this.

Mr. Hourihan: Yeah. My comments would be that I think it probably was covered off in the earlier discussions or deliberations on parts 2(b) and (c). You know, at that time it was talked about, significant breaches of policy or codes of conduct violations, that

sort of thing, bullying, and harassment. I don't really have too much to comment on the U.K.'s wording of their act or section or any more comment about the submission as put in by – was it AUPE or ACLRC? We believe that the definition now is sufficient insofar as the interpretation is a fairly direct and noncomplex matter for our office. There just has to be the consideration, which I think I said has been covered earlier, in sections 2(b) and (c), of whether or not it should or should not include people or something broader than public assets and public money.

Mr. Clark: Thank you.

The Chair: Is there any further discussion on that?

Okay. Moving on to page 13, item (e), wrongdoings to which the act applies. Are there any recommendations that members would like to make? Mr. Clark.

Mr. Clark: Yeah. I was really curious about this from a legal perspective. Really what this is arguing for is retroactivity with respect to wrongdoings that occurred only after coming into force. I guess my question is either to Parliamentary Counsel or to the commissioner. One, is it even something that this Legislature can do? Can we in fact make rules like this retroactive?

My second question is to the commissioner. Does this solve a problem that we have? Is this something that you encounter on any sort of regular basis, where you say, "Well, that ordinarily would fall under the scope of my work, but it happened at a time prior to the act, and therefore we can't help you"?

Mr. Hourihan: Well, in that regard, to answer that piece, we've had two cases, only two, that we rejected because they were prior to the act coming into force. However, we did look at them. In one there were significant concerns around good faith and also whether or not it met the threshold of wrongdoing in the first place. So it's not been a big issue. That was early on, in 2013, when it was sort of contentious because the act was just coming into place.

There are other things. We have had discussions in our office and contemplation around something that's ongoing. If it started prior to June 2013 but is ongoing, then certainly we've interpreted that to be within the realm of the act and have looked at some of those, but those have been very, very minimal with anything that has been before 2013. Since our office's inception I've looked at it with, you know, a retrospective perspective. When if I did see something that happened prior to 2013, my comments would probably be in the direction of something like, "Although this is not under the act as of today and it's not relevant, if it were, I would find this today," which probably gives the direction back to the chief officer involved that if there is something there broken, it probably ought to be fixed.

Mr. Clark: Okay. Thank you.

Then just to that general question as to – and let me put this under the category of learning, maybe not learning for all of us because perhaps some of you know the answer to this question. Are we able to make this sort of legislation retroactive? Could we, if we chose, say that everything that happened after 2000 is within the scope of this act? Is that possible?

Mr. Hourihan: I can't speak to the legal aspects of that. You know, I've certainly been led to believe that that's extremely rare, to make anything retroactive.

The Chair: Is there some guidance on that?

Ms Dean: I would echo the commissioner's comment, but it is possible.

Mr. Clark: Possible but rare. Thank you.

The Chair: Is there any further discussion?

Okay. We'll move on to (f), procedures to manage and investigate disclosures. Are there any recommendations that the committee would like to make?

Mr. Clark: I guess I would ask the commissioner if you feel that this is hindering the work of your office, ensuring consistency between section 5(2)(f) and section 20, providing for the point at which investigations are referred to law enforcement. Service Alberta has raised this. (a) Has this been an issue in any investigations? (b) Do you foresee it being an issue in the future? Is this something that you feel the committee should address through amendments to the legislation?

Mr. Hourihan: Certainly, we didn't raise it in any way, so in that regard we didn't believe it was an issue. We haven't had any situations where it has become an issue. If there's been an offence committed, we do and would refer something to law enforcement. I don't really see any issues here. Again, you know, section 5 deals with the procedures for disclosures that need to be put in place by chief officers, and section 20 deals with my office and when we report it. I don't particularly see any inconsistencies. I mean, that said, if it were the exact same wording, I certainly wouldn't be opposed to that notion.

The Chair: Is there any further discussion?

Seeing none, I will move on to item (g), reporting alleged illegal conduct to law enforcement. Are there any recommendations that a committee member would like to make on this point?

Mr. Sucha: I was wondering if research services could elaborate on what might be seen in other jurisdictions similar to this item.

9:40

Dr. Amato: I have not as of yet looked into it, but I'm happy to take a look at it and report back to the committee.

Mr. Sucha: To the commissioner: have you heard from other jurisdictions if there's any clarity on this matter or if this has been implemented in other jurisdictions for their commissioners as well?

Mr. Hourihan: I believe that if there's an offence, most jurisdictions have to report it, but that said, I can't comment on that specifically. I don't have it in front of me, and I just don't recall. We haven't had any conversations, you know, across the jurisdictions in Canada to discuss that particular issue, so I ought not say. But as I recall, I think it's in there. I know that's not helpful.

Mr. Sucha: Do you feel that there needs to be a bit more clarification on the matter as well?

Mr. Hourihan: This really hasn't provided any confusion to anybody. Chief officers, their procedures: we'll look at it. You know, 5(2)(f) says that they have to put forward procedures for reporting an alleged offence. I mean, the indication is there that they ought to be reporting it, and that would be to law enforcement. That's also what section 20 requires our office to do. If it's an offence, we have to report it to law enforcement. So it seems fairly clear to me. There hasn't been any confusion at all, as far as I've been aware, from the designated or chief officers out there, and any of the procedures that they've put into place that we've had to look at and reviewed – certainly, there have been no issues of clarity around it at all.

The Chair: Mr. Clark.

Mr. Clark: Thank you, Madam Chair. I guess, you know, I'm always very interested in recommendations that the Auditor General makes because the work that his office does is so thorough and of really tremendous value to the people of Alberta. I have to say that from my perspective I tend to give any recommendations coming from that office a lot of credence. So I wonder if there is some rationale that we ought to be considering here for including this. Again, I think there's very little downside. As I read 5(2)(f) as compared to 20(3), there is some inconsistency, and I suppose that's what Service Alberta was really driving at. But, again, if we were to add to 5(2)(f) just wording that is similar to 20(3), I guess I don't see a lot of downside in doing that because while it may not have been an issue, again, our job here is to contemplate the possibilities. We do have an opportunity here to really harden the act and just be absolutely clear that the officers have that obligation. I guess I would be supportive of a motion that would be along the lines of what the Auditor General is talking about here.

Mr. Cyr: I would concur with my colleague. It appears that the Auditor General specifically narrowed in on this as being a problem. It must be something that he is coming across but maybe you aren't, sir. I'm uncertain why we wouldn't reinforce this, so I would be prepared to put a motion forward to, I guess, support this, something along the lines that: PIDA should be amended to clarify a chief or designated officer's obligation to report alleged illegal conduct to law enforcement or to the Department of Justice and Solicitor General in cases where there is a reasonable belief that an offence has been committed. Exactly what is written there.

The Chair: We'll just wait for it to be typed up and then see that it's reflecting what you were saying.

Mr. Sucha: I'll just speak briefly while the motion is typed up. You know, I think it's sort of on the analogy of better safe than sorry and making sure that we close any loopholes. So I'm willing to support this motion as well. While there may not be a problem that exists right now, it is good to look forward to the future to make sure that there won't be a problem down the line.

The Chair: Mr. Cyr, looking at the screen, does it reflect what you were saying?

Mr. Cyr: It absolutely does.

The Chair: I'll open that up for discussion.

Mr. Cyr: I'll just call the question.

The Chair: We'll just have to get that read back into the record for those on the phone.

Ms Rempel: Moved by Mr. Cyr that

> the Select Special Ethics and Accountability Committee recommend that the Public Interest Disclosure (Whistleblower Protection) Act be amended to clarify a chief or designated officer's obligation to report illegal conduct to law enforcement or to the Department of Justice and Solicitor General in cases where there is a reasonable belief that an offence has been committed.

The Chair: All those in favour of the motion say, aye. Any opposed? On the phones? That is carried.

Okay. On (h) there was a motion that was made and carried.

Moving on to (i), good faith, are there any recommendations that members would like to make on this item? Mr. Clark.

Mr. Clark: Thank you, Madam Chair. I'm very interested to hear from the commissioner, your perspective on why you believe good faith should be removed from the legislation and any comments you have about Service Alberta's recommendations about the proposed amendment to section 19(1)(d).

Mr. Hourihan: Okay. Just in terms of good faith, it's in the act currently. A lot of the opponents to the act and to this around the country and around the world, frankly, are aggravated that an act would have a requirement of a complainant to have good faith but not a requirement of the other side, who is being accused, to act in good faith, because that's silent within the act, that they need to act in good faith. So it's a bit of a notion that it seems a bit one-sided. I mean, to some degree I agree. When something comes into our office, good faith is presumed until shown otherwise. If it's shown otherwise, then it comes down to the validity of the facts and the evidence, if you will, of what we find. If it's frivolous or vexatious and bridges off into that territory, we can certainly act in that regard and do.

Now, that said, the notion of frivolous and vexatious doesn't fall within the scope of good faith, but they can stand alone. It doesn't need the words "good faith" in front of it to suggest that something that isn't isn't, if that makes sense. One of the slippery slopes of this is that we do have situations when there's a preconceived notion within a government entity that a whistle-blower is somehow frivolous and vexatious until proven otherwise. They come in with that attitude. We try and instill in everybody that we deal with that they ought not to look at it that way; they just look at everything at face value. When it's investigated and examined thoroughly, you'll be able to come to a conclusion that's much more objective, but don't go in subjectively assuming that everybody is acting in bad faith. I don't think it requires the notion that it has to be suggested that people must come in good faith. That almost lends itself to the notion that people generally don't, and we find that people generally do.

Now, if I can extend that a little bit. That said – and I know it says on the paper – my comments are that a person's motive for making a disclosure or reporting a reprisal doesn't determine whether or not an investigation is warranted at our office. The facts do. If their motive is that they just don't like the person, then that's what it is. But if they just don't like the person and they come in with fabricated information, that's a whole different thing than if they come in with accurate information that is reported only because of the purpose that they came in, because they didn't like the person. In that regard, we would look at it if the investigation warrants it in any case.

But we certainly looked at good faith, in the sense of everybody that we deal with. We look for honesty and truthfulness, if I can use those words instead. Good faith is added in. I don't think in this particular act it needs to be added in, frankly, and if it would help people from the authority side of the fence sort of to see things a little bit more objectively – i.e., not presuming that somebody is coming in with bad faith – that's not a bad thing.

9:50

The Chair: Mr. Clark.

Mr. Clark: Thank you, Madam Chair. To clarify or to perhaps take a bit of an extreme example, but based on what I've just heard you say, if someone comes in and their intent is vexatious – I'm going to get this person; I don't like him very much; look what I have – and the information they have is in fact a violation of the act, and

you therefore find that, I suppose by extension with the words "good faith" in there, one could argue that: well, you didn't come in in good faith. You came in trying to get that person. Now, the information you had was good. It actually creates a bit of a conflict, then, doesn't it? I mean, it's perhaps a bit of an odd example because surely the facts should determine. But, really, what you're saying is that the intent is not relevant because section 7 contains penalties if you come in with false information or you're making things up. Your intent shouldn't really matter if I'm to paraphrase what I've heard from you. If you could perhaps speak to that.

Mr. Hourihan: Well, I agree with your example, then. It's not an odd example. If somebody will come in and they'll say, "Well, I don't like this person," it could be that when you start to peel the onion on the situation, the reason they don't like the person is because of the things that they're doing, so we certainly wouldn't want to go in assuming bad faith because they don't have a good relationship. If somebody, just to use an obvious example, you know, stole money from the government by various means of their accounting and the person detected this and they didn't like that person, I suppose it could be said that they were more watchful on that person because they didn't like them. While that may be true, the fact really does come around to whether or not the person did in fact take the money. The motive there – I think there would be a distinction. We'd have a hard time determining whether or not that is good faith or bad faith or something like that. I suppose somebody wanting to argue our jurisdiction with this might argue that it's not in good faith. I think I could make the argument that it still is.

However, that said, like I say, having it included in the act doesn't really change what we do. We presume good faith, like I said, until proven otherwise, and it goes to the quality and the weight of the information that we get in terms of what has taken place. I think I do need to say that that stands alone from vexatious. Somebody can come in with very good faith, and it can still be vexatious, you know, when you look at the details. So it's not like one begets the other. Generally speaking, they might. You know, somebody who's not vexatious may be in better good faith than somebody who is, but vexatious has its own rules around it that we would look into irrespective of whether or not good faith was or was not in the act.

Mr. Cyr: So has this term "good faith" been used against your office as a reason not to do an investigation, let's say, for instance, by the Department of Justice or, say, Alberta Health, something like that? Is there something where they said, "That's not in good faith. You shouldn't have been investigating, and therefore we're not going to co-operate with you"?

Mr. Hourihan: Yes, we've had that. Well, they haven't gone to the extent where they've said: we won't co-operate with you. It has been raised by entities in some of our investigations, saying that the person is not coming in good faith. It hasn't caused us any great hurdles, frankly, but it has been raised.

Like I said, probably our biggest issue with it in an indirect fashion is that when we're speaking with – not so much in terms of individual complaints, because sometimes the facts just speak for themselves and you end up speaking about the facts of the case at hand. It's when you're having non case specific conversations, and, you know, if we have question-and-answer periods, we often get that the first question up is: what is the best way for us to deal with all these vexatious complaints that we get? When you talk to them and get into further details, they're not getting so many; they're just worried that they're going to. The first thing that we do try and do is to move them from that subjective perspective that a potential whistle-blower is somehow presumed to be vexatious or malicious. We need the culture of it to be one where there's a presumption of nothing going in.

The Chair: Mr. Nielsen.

Mr. Nielsen: Thank you, Madam Chair. I was wondering if maybe I could ask our fine research folks: when you are looking at the information from other jurisdictions, have you found any trends where, I guess, the words "good faith" are being removed or they're saying, "No; we really want to keep it"? I'm just wondering what you guys might have found during that. I find my labour background coming on with regard to language. You know, it's certainly all about keeping it simple, clear, and concise, but at the same time I don't want to necessarily lose anything by removing words as well.

Ms Robert: Thanks, Madam Chair. I can speak a little about this, and Sarah can perhaps supplement if necessary. I had a look at the PIDA legislation in the other jurisdictions to see who uses "good faith" and who doesn't in their legislation, and the term is used federally, in Saskatchewan, Manitoba, New Brunswick, Nova Scotia, Newfoundland and Labrador, and in the Yukon. What I found is that Ontario and Nunavut do not use it and talk about the commissioner having the authority to not conduct an investigation in the case where the claim is made in bad faith. That's how they use it, but the other jurisdictions seem to use the term "good faith" throughout their legislation.

I don't know if Sarah has anything more.

Dr. Amato: No. It's consistent.

Ms Robert: Okay.

Mr. Nielsen: So you're not finding, I guess, that jurisdictions are starting to move towards removing it, then?

Ms Robert: No.

Mr. Nielsen: Okay. Thank you.

Mr. Hourihan: I should add that it's not a big issue for us either way. The debate is alive and well across the various jurisdictions in the world about whether or not it ought to be there or if there's a necessity for it. We're certainly not a huge proponent of whether it is or is not in the act, just to be clear. It's not something that I'm certainly pushing hard to suggest, that it ought to be out of there because there are big issues. It's just that it is presumed, and if it would help the situation if it is removed to help people feel more on a level playing field and those kinds of things, then good. If not, that's fine too.

The Chair: Is there anyone that wants to make a motion at this time?

Mr. Clark.

Mr. Clark: I don't necessarily want to make a motion. I do just have one further question that I think will help me decide whether or not in fact we need a motion on this. Again, thank you to the research staff for the comparisons. I guess I just wonder – I'm not sure where I stand on this. You know, the flip side is: if we take it out, do we create new problems or new risks? Does that open the risk of an increased number of complaints, be they malicious or vexatious, which would then perhaps occupy the time of the commissioner's office and perhaps require you to apply part 7 more often? Have you ever had to apply part 7?

I guess I'm just curious: are there any potential unintended consequences by taking this out? It's interesting that other jurisdictions do have these words. At the same time, Alberta has an opportunity to be a leader here if there's a potential benefit to removing it. I would not want to have a situation where people feel uncomfortable bringing complaints forward because the words "good faith" somehow hold them back. The flip side is that I would hate to see your office inundated with complaints such that you need to spend a lot of your time potentially applying part 7.

Mr. Hourihan: The indication from our past work wouldn't suggest that we would get a bunch more. I just do go on the notion that the advocates for whistle-blowers, nongovernment folks out there like the organization FAIR and sort of the pundits in favour of stronger whistle-blowing laws, suggest that there's an imbalance when the term "good faith" is used. They suggest a variety of things to say why people would not want to come to an office like ours or to an entity within government to complain internally. They say that there are a lot of people that won't come forward because of this, this, this, this, and this. That good-faith clause is listed as one of those reasons why. We're not getting complaints about it on either side of good faith. Like I said, we presume good faith until shown otherwise, and we look to the situation at hand.

10:00

It doesn't detract a lot from us either way for the things we get, but I can't speak to the things that we don't get. If that other side is correct in saying that people won't come forward for a variety of reasons, if something like this helps them come forward, not having it in the act certainly is not an issue for our office and our investigations. That said, if there are no more complaints in there, having the words "good faith" in there doesn't cause a particular hurdle for us either.

Mr. Clark: Just one more, then. Just so I'm clear, what I heard you say is that you do not have any evidence that people are not coming forward because of that good-faith clause. I mean, I acknowledge it would be quite difficult to prove a negative.

Mr. Hourihan: Correct.

Mr. Clark: You don't know how many people are out there saying: well, I've got this, but I can't because I'm worried about good faith. Do you have any evidence either here in Alberta or anywhere else that that has been a restriction beyond kind of what sounds like almost an academic argument?

Mr. Hourihan: No, we have not had any experience.

Mr. Clark: Okay. So no downside necessarily in keeping good faith as part of the legislation. Limited downside, then, as well, I guess.

Mr. Hourihan: Correct.

Mr. Sucha: I know that with whistle-blowing that information is always sent off to employees and that there are posters put up as well. Most people, to be candid, when they're making a whistle-blower complaint, are probably not reading the legislation. They're probably referring to the poster. Does any of your information flat-out say that the complaints must be in good faith or send an implication to the employee with that wording?

Mr. Hourihan: Our posters and that sort of information that we have do not. Keep in mind, I guess, that the responsibility lies with the authority to provide awareness and education to employees, and in large part they're the ones doing that. We're happy to lend a hand, if you will, and put out stuff on our own, and we certainly have stuff on our website. We don't make a big production about good faith or any detail per se. We just put out the information there. No, it's not listed on our promotional material.

The Chair: Any further discussion?

Okay. I'll move on to item (j), reports after internal investigations. Is there anyone that would like to make a recommendation on this item? Mr. Clark.

Mr. Clark: Thank you. Again, I'd appreciate from the commissioner if you could just elaborate on the current process, if you feel that this is a gap in your current process. Do you receive reports of internal investigations of wrongdoing? Is that part of your process now? Does this recommendation solve a problem that we currently have?

Mr. Hourihan: We don't have a particular problem here, so to answer the last part of your question first, we have no issues with it.

Typically right now the designated officers will deal with our office. If they have an issue, they'll contact our office to have a discussion about whether or not they should be taking it or whether or not we should if the situation is something that would dictate that. They certainly are not opposed to letting us have comment, you know, or have a view of their reports, generally speaking. There's no requirement for them to do that. It's just sort of a bilateral conversation that our folks have with designated officers.

The entities are required to report all of the issues of wrongdoing and investigations and whatnot in an annual report, so there is a check in the system that way. If a whistle-blower is not satisfied with the action taken or not taken by the entity, they can come to us, so it's another stopgap there. You know, if we did receive them all, it wouldn't be a bad thing, but we don't have any issues right now by not receiving them all in a required fashion.

Mr. Clark: Thank you.

The Chair: Is there any further discussion?

On (k), internal investigations and the production of documents and other evidence, are there any recommendations on this matter?

Mr. Cyr: Has this been a problem typically, that you haven't been able to, I guess, compel production of documents? We've touched on it several times now, but I'd like to just hear clearly for the record while we're discussing this what your thoughts are. Is this going to provide clarity to get you what you're looking for?

Mr. Hourihan: Well, we did talk about when I can compel information, and I had indicated that I believe that the interpretation is that I can, but further clarity would be beneficial. But that was for when I ask for it. This (k) deals with: it "should be amended to grant authority for a chief or designated officer to compel the production." In that regard if we go to the department of whatever, to some department, and the designated officer or the chief officer within that particular department is investigating it – I can't speak for the Auditor General – I can't see a situation where the chief officer within a department couldn't compel the documentation and the information from within his or her own department. It's an internal question. We don't see where the difficulty would lie in them obtaining their own material.

The Chair: Mr. Cyr.

Mr. Cyr: Thank you, Madam Chair. Has this been used against your office in the process of an investigation where staff have said, "Well, I can't get that information, so you're going to have to sue us."? Like, what would be the next step to all of this?

Mr. Hourihan: Well, it would be for us, but like I said, this deals with chief and designated officers. We haven't heard of anything like that, where people have refused to give up information to their own bosses. I mean, I don't know. We just can't foresee. I can't speak for the Auditor General in this regard. The person would just need the direction from the chief officer to disclose it.

The Chair: Mr. Clark.

Mr. Clark: Thank you, Madam Chair. Just so I'm clear on the procedure and how this works, the chief or designated officer receives one stream. As the chief or designated officer receives a complaint internally, they conduct an investigation. Does your office necessarily get involved in every case?

Mr. Hourihan: No.

Mr. Clark: They may just say: well, we've deemed this to be not an issue. They find wrongdoing. They address it internally. That is one potential path.

Mr. Hourihan: Correct.

Mr. Clark: Your office gets involved when either the chief or designated officer contacts your office or the whistle-blowers themselves contact your office, or do you act as an appeal mechanism? I guess I'm just sort of curious exactly what that relationship is because if only your office can compel documentation and they can't, is there potentially a gap there?

Mr. Hourihan: Yeah. A typical whistle-blower will call either their own department or someone will call internally to the department, and they will look into it on their own without ever involving our office and come to whatever determinations they come to without ever involving our office. The whistle-blower is happy, or I suppose there are situations where they're not happy, but they still don't come to us. We never get involved.

There are other situations where they come to us first with questions about where they ought to go. We talk to them, and if we can refer it back to the internal process, we will. If they're concerned about reprisals and those types of things, then we will take care of the investigation ourselves. We will look into it. If it goes back to the internal side – we have not had any issues where any internal investigation that we know of has had difficulty getting any documentation from their own department.

10:10

We have had questions sometimes thrown back at us, and this has been by the legal counsel: no, we don't have to give this to you. But that's a different conversation that we had in earlier deliberations about whether or not I can compel, where it says that if I require it, I can get it. I see that as: I do have the ability to compel. Again, back to those comments, if increased clarity would help, that's certainly good in terms of my office. Like I said, that's not the situation here. So no, we've not had any issues where they've said: we can't even get stuff from our own department.

Mr. Clark: Thank you.

Mr. Hourihan: I guess I would add that if a whistle-blower came and said that this is the song and dance they're giving me, I would view it, quite frankly, as a bit of a song and dance, and I'd say: well, good. Then I'll look into it, and I will compel it.

Mr. Clark: Thank you.

The Chair: Mr. Nielsen.

Mr. Nielsen: Thank you, Madam Chair. I guess I'm just wondering if you see any implications in giving access to information that you have, you know, to any chief or designated officers. Do you see any downsides or upsides to that?

Mr. Hourihan: I won't give anybody the stuff that I get. I won't give the complainant stuff I get from an entity, and I won't give the entity the stuff I get from a complainant, much to the chagrin of both sometimes, but that's mostly for the confidentiality purposes that are within the act.

I mean, that said, if it's a document from the department, they can get their own. That's not a big deal. There are certainly measures in here. They get to reread the reports and get an advance copy in terms of having the ability to comment back to us to correct anything that's in error as compared to challenging something that's not an error, and then there's opportunity for them to do that later as well.

Mr. Nielsen: Okay. Thank you.

The Chair: Mr. Cyr.

Mr. Cyr: Thank you, Madam Chair. Could it be that the Auditor General is running into this problem, and he's trying to, I guess, solve this problem for you? I can only speculate on this. I don't like speculating, but it doesn't seem like you have a concern with it. But on your behalf the Auditor General seems to have a concern for your department. Has there been anything like that that you would know at all, any discussions between your departments? Nothing?

Mr. Hourihan: I mean, I talk to the Auditor General from time to time. The Auditor General becomes me if there's a complaint about either the Public Interest Commissioner's office or the Ombudsman's office. Then it's the Auditor General's responsibility to become the Public Interest Commissioner in those cases. But then that would not apply because he would be the Public Interest Commissioner. But no, we've had conversations, and we haven't had any that I can speak to on this, so I cannot speak for him. If there are situations where he's come across, I'm not aware of them.

Mr. Cyr: Okay. Thank you.

The Chair: Is there anything further on this?

Okay. I will move on to item (l), contact information of whistle-blowers. Are there any recommendations that members would like to make at this time?

Mr. Sucha: To the commissioner: have you ever run into any issues with having incorrect or out-of-date contacts for any whistle-blowers in any of your cases?

Mr. Hourihan: No.

Mr. Sucha: Is this ultimately a change that you want to see?

Mr. Hourihan: No. I guess we'd be able to get the contact information from a whistle-blower unless the whistle-blower is anonymous. If the whistle-blower is anonymous, then there are certainly provisions in the act to remain anonymous, which would

include any contact information. I mean, the downside to not providing us with updated contact information would be that they would not be getting the answers that they would, you know – they wouldn't be getting any feedback because we wouldn't know where to send it. But it hasn't been an issue.

Mr. Sucha: Okay.

The Chair: Is there anyone else that wants to make any comment on this?

Okay. I will move on to item (m), investigation by commissioner, right to procedural fairness and natural justice. Are there any recommendations that a member would like to make? Okay. Seeing none, I will move on to – oh, Mr. Clark.

Mr. Clark: Sorry, Madam Chair. I'm just trying to get my head around what our friends at Service Alberta may be driving at. Can the commissioner perhaps offer any comments on procedural fairness and natural justice as it relates to this act?

Mr. Hourihan: Sure. I can't speak for Service Alberta, but I can speak to a couple of matters we've had at hand where this has come up. What it stemmed around is that there were some situations where there was a complaint. We sent over a letter requesting information. The department counsel came back and said, "We want a copy of the complaint in its original form as provided by the whistle-blower." I said: "No, you can't have that. That would compromise their confidentiality. I'm not going to give that, but I'll give you the information you need to gather the information I need. And don't worry; you will have opportunity after the investigation to comment," as I said just a moment ago, "to have a look at it to see if there are any errors or things that need correcting as compared to things that need challenging because there's time for that." The procedural fairness is that the standard changes from during an investigation as compared to when the investigation is complete and what's provided then. So it really stemmed around the actual complaint of the whistle-blower.

If they have other issues – they being Service Alberta – in respect of this, then I can't speak to that. I don't know.

Mr. Clark: I think I understand what they're driving at. Again, I'm, sadly, not a lawyer, so I can't speak to all of the procedural pieces, but it sounds like it's almost Magna Carta kind of stuff that we're driving at. Maybe I'm overstating that. But essentially being able to – if there is an alleged wrongdoing, are we talking here about the department or the individual having access to full disclosure of what those allegations are so they can defend themselves appropriately? Is that really what we're talking about here?

Mr. Hourihan: Yes.

Mr. Clark: And in your estimation those safeguards are already in place in the act?

Mr. Hourihan: Yeah. The act requires us to provide procedural fairness and natural justice and those kinds of things. We do. We do have protocols and prefer procedural fairness in our business processes. We have had, in just a couple of instances, a disagreement as to what that includes. As I said, to this point the two disagreements we've had are that they have wanted the specific complaint in its original form that was provided by the whistle-blower. In both cases we declined and said: no; you'll get the information you need to provide me with the information and material that I need.

There's a comment within that paragraph in (m) about legal counsel present in interviews. We have had a conversation around that as well. Those conversations are going to continue.

Mr. Clark: Can you elaborate on that specifically?

Mr. Hourihan: Sure. There was an indication that the department wanted their counsel to sit in on all interviews. We did not see that as effective because if an employee is in there and the department counsel is in there, there could be a real or perceived indication of bias or threat, if you will, to not speak up.

As an example, if somebody within a department has complained about a whistle-blowing situation of whatever type, we go in to investigate, and we investigate other employees that work in the area. Let's say that the employee who blew the whistle is complaining about a reprisal, so something has at least on the surface has been reported as: I reported something, and because of it they reprised against me. We go in to investigate, and we are interviewing other witnesses who work with the person, and the department lawyer is in there, who's working on behalf of the department for other reasons. They may not feel comfortable to speak while that lawyer is in the room. We would prefer a situation where the department provides independent legal advice if the employee wants a lawyer in the room. They, being the Department of Justice, argue that they're protecting the notion of privilege, and we've argued that, no, if there's an issue of privilege, that certainly can be dealt with, but we're just looking for facts. That's not an issue of privilege.

10:20

I'm going to phrase it this way. We've had conversation around that, and we're in the middle of those conversations as to what will take place in the future in terms of counsel being in the room when we're interviewing witnesses.

Mr. Cyr: Talking about lawyers being in the room, this concerns me when we're outside of court proceedings, I guess. Do you allow a complainant's lawyer to be in the room?

Mr. Hourihan: If a complainant wants to have a lawyer in the room with them, sure.

Mr. Cyr: So . . .

The Chair: Mr. Cyr.

Mr. Cyr: Sorry, Madam Chair. So we allow a lawyer to be on the complainant's side, but we won't allow a lawyer on the government's side is what you're saying?

Mr. Hourihan: Yeah. That probably requires some explanation. If the employee wants that lawyer in the room, then that's different than if the department wants the lawyer in the room but the employee doesn't.

Mr. Cyr: Okay. So it's possible that you accept an employee's lawyer but reject the government lawyer? I'm trying to work out the process here because it seems one-sided if we're not allowing, I guess, the government to be able to have a representative of the same level sitting in the room.

Mr. Hourihan: No. During the investigation I have to have the ability to speak with somebody, and they have to be unfettered. Their questions can't be answered by someone else in the room. They can certainly receive legal guidance, and if they want somebody in there that provides them legal guidance in terms of

how they answer those questions, I'm certainly happy to do that. If that happens to be the departmental lawyer, who, I might add, is working on the civil case in the background as against the whistle-blower and witnesses relating to that, then I have some issues with that.

The Chair: Dr. Swann.

Dr. Swann: Thank you, Madam Chair. Can you describe a situation where there is disagreement over procedural fairness and how that's dealt with?

Mr. Hourihan: The only one we've had so far is when they wanted the original complaint from the complainant in its full form as compared to a presentation of the things that were complained about as provided by me in a letter to them so that they can understand what it is I'm looking for.

Dr. Swann: So it's not common to have a disagreement over procedural fairness.

Mr. Hourihan: No. We've just had a couple of instances, and they've been related to the same thing so far. Might we have in the future? We might. We're trying to make sure that, you know, as we have situations where this arises – for example, once these arose in this particular case, we looked at our future process and said: okay; well, you know, maybe we can have a better meeting with the department at the front end to provide any clarity they have in questions and try and provide them an understanding as to why we're not giving them the complaint in its full form, because it would reveal the confidentiality, and those sorts of things. There may be situations where we would give the complaint if it were structured such that it wouldn't be an issue in terms of that confidentiality. We're happy to give whatever we can, but we're not going to give something that's going to compromise that other piece to the act.

Dr. Swann: I think I'm speaking more generally about a disagreement over procedural fairness. If the two sides disagree on procedural fairness, who decides what constitutes procedural fairness?

Mr. Hourihan: Well, I don't think either of us. I suppose whoever wins the argument. If they refuse to give it to me, then they refuse to give it to me. I suppose in that regard they can always refuse to give it to me. The risk they run there is that my report will say that I didn't get what I asked for, so I can't make a determination, because the department didn't give me the information that I needed, if it were something around that. If it were something around procedural fairness where we felt that they raised an issue and said, "You weren't procedurally fair in this when you didn't give us a chance to do this," whatever that might be, and I looked at it, I would hope that if it were something that we did in error, then I would make certain that we changed our mind on that and provided that procedural fairness. The requirement I have under the act is to provide procedural fairness, and I do my level best to make sure that I give all the information I can and provide all the procedural fairness that I possibly can throughout any investigation.

To be fair on all of this, these discussions about the lawyer in the room are alive right now between myself and the Deputy Minister of Justice. I'm confident, at a minimum, that we're going to be able to iron this out. There were no issues in one of the ones where we did allow the lawyer in the room, and we allowed it because no issues arose. But there's certainly a perception if somebody from outside looks and says: well, why were they allowed in there? We say, "Well, yeah, because . . ." and I'd answer that question. We've had a situation where this has arisen and I've been challenged on that: well, why would you allow that to happen? Well, I'm comfortable under the circumstances that this is what took place. But I certainly would like to also eliminate that opportunity for that presumption of pressure or bias to be there. I'm certain that our conversations at the deputy minister level will provide lots of clarity there.

The Chair: Mr. Clark.

Mr. Clark: Thank you, Madam Chair. You know, that intimidation factor I think is a really important question here. Correct me if this is an inaccurate analogy. In a criminal investigation context is defence counsel allowed to sit in on every interview the police do with a complainant?

Mr. Hourihan: No.

Mr. Clark: So your position here is consistent, then, with criminal practice.

Mr. Hourihan: If it's their own lawyer, then certainly they're . . .

Mr. Clark: Sure. Yeah.

Again, I think, just to Mr. Cyr's point, you know, if I were to make a complaint against the government – I'm the complainant – I can say: I would like my lawyer present with me; I'm more comfortable with that. But if it's just me, irrespective of whether my lawyer is there or not, I'd probably rather not have the government lawyer as I tell you the story of my complaint because that could certainly be intimidating and could absolutely impact what I might tell you.

Mr. Hourihan: Sure. To level the playing field, if you will, where it levels on the other side for the department is that if the department comes in and says, "Well, we want our lawyer there," we say: "Certainly." No issues there. But I'm not going to bring the complainant's lawyer into that meeting. I'm not going to allow the complainant's lawyer into the meeting where I'm interviewing the department.

Mr. Clark: I see, I see.

Mr. Hourihan: Now, let's say that the person I'm interviewing with the department says, "I mean, that lawyer is there to just look after the interests of legal privilege. I could care less if they're in the room." Then we don't – okay. Fine. Not a problem. Now, let's say that it's an assistant deputy minister or a deputy minister or something that says: oh, I want the department lawyer in the room. Certainly. We're certainly not going to impose independent legal advice in that we understand that they're being interviewed from that perspective as compared to someone who might be interviewed with the potential presumption that: gee, I better not speak up here because, you know, the other side is in the room and looking for opportunities to do the same thing to me that they're doing to so-and-so. We certainly don't want that presumption or perception.

Mr. Clark: Again, just a point of clarification, the flip side of this being that the respondent or the department itself – the complainant's lawyer, in the same way, is not, unless the department is okay with it, allowed to be in that interview either.

Mr. Hourihan: Correct.

Mr. Clark: It's a mirror opposite of the situation.

Mr. Hourihan: Yeah. I certainly believe it's a level playing field.

Mr. Clark: Okay.

Mr. Hourihan: I certainly must provide procedural fairness and provide all the information we can, and we try and provide everything that we can to allow them to make those inquiries or look into the things that they need to give us. There is a check and balance to it after the investigation when, if they feel that they have not provided all of the information that they might have, we certainly give back the preliminary report to the department and say, "Here's what we've got so far; if there are gaps in here, if there are inaccuracies, please advise," and they get to look at them. That's when things settle down in the notion of: well, I wasn't getting everything I wanted. That's where things settle down because then they get to see that that's where they did have the opportunity to have a look at it. The complainant will have a similar opportunity to make sure that their pieces are accurate as well.

Mr. Clark: Okay.

Mr. Hourihan: Then, even later than that, after we get that done and we publish the report or put it out, there's certainly an opportunity for the parties to contest anything that's in there with us not so much in terms of their accuracy but in terms of their perspective.

Mr. Clark: Okay. Thank you very much.

The Chair: Anything further on this item?

Okay. We will take a 10-minute break, and when we come back, we will move on to item (n). Thank you.

[The committee adjourned from 10:30 a.m. to 10:40 a.m.]

The Chair: All right. It's been 10 minutes. I will reconvene our committee meeting and open up with item (n), balancing professional codes of conduct and ethics with the need to access all relevant information during an investigation. Is there anyone that would like to make recommendations on this matter?

Dr. Swann: I'll speak to this. I'd love to hear the commissioner's comments on how this has affected his capacity to get the information he needs. I'm not certain why this is an issue.

Mr. Hourihan: Yeah. It hasn't been an issue for us. We haven't encountered anything like this. You know, just a comment, I suppose. If someone is bound by a code of ethics not to release something unless it's required by law, then our stance would be: well, they're not breaching their code of ethics if PIDA requires it. PIDA authorizes clearly what it authorizes, so I don't know where the breach would be there.

I could certainly understand employees who are, especially in the health world, where it's health information, under the strictest of guidelines and the obvious urge to make sure that none of that information is released. When they're presented with a question from an office like ours to release it, I could certainly see where we would hope that when we have these situations come up – and we haven't – we would go in and explain things fully to them to provide them some sort of confidence that what they're doing is not wrong. If it were, we would certainly have that debate and make sure that they spoke with lawyers and that sort of thing. I don't see the issue, but I can't speak for the AMA or the BVCFA.

Dr. Swann: Thank you.

The Chair: Mr. Cyr.

Mr. Cyr: Thank you. Now, if I'm reading this correctly, it looks like what they're trying to do is that they're trying to say: we want to limit what we give to the Public Interest Commissioner based on what we believe is relevant. Is this the way I'm reading this?

Mr. Hourihan: Well, if that's the way you're reading it, I would suggest to them that I get to determine relevance and not them.

Mr. Cyr: That's what it appears that they are – am I reading this incorrectly?

Mr. Hourihan: I can't answer. We didn't submit that, so I can't answer in that regard. Like I say, I don't see the issue on the one hand if the law protects them from doing it as compared to their code of conduct. I can certainly understand their angst, and I would want to try and talk to them about that so that they were comfortable doing it or have them talk to somebody within their department to get that comfort level and maybe work it further up towards the authority, the head if that were required. But I don't see any issues, and we haven't really experienced any issues in this regard.

Mr. Cyr: So you haven't had any push-back from them asking why you would need a document or them saying, "Here's what you're going to get, and we believe this is all you need"?

Mr. Hourihan: Yeah. We get those questions about just documents, but I was looking more along the lines of the health information specifically in opposition to their code of conduct, not in terms of just general information. Sometimes they'll say, "Well, we don't want to give you that," you know, just information, general information, and we'll have a conversation about that. It's my perspective and my interpretation that my office gets to determine relevance, not the entity that we're asking the information from.

Mr. Cyr: Agreed. Thank you.

The Chair: Mr. Clark.

Mr. Clark: Thank you, Madam Chair. I want to talk about two different sides to this issue. First, we'll talk about individually identifying health information, as raised, I presume, by the Alberta Medical Association. I assume, although I guess I want to be careful about any sort of assumption – can you just speak to the fact that you and your office already limit disclosure of any information requested from any entity covered by the act to the least amount necessary to achieve the purpose of your investigation?

Mr. Hourihan: Correct.

Mr. Clark: I apologize. I just walked in as Dr. Swann was asking his question. But has an issue related to individually identifying health information come up at all in any of your investigations to date?

Mr. Hourihan: No.

Mr. Clark: Is all the information that you collect disclosed publicly?

Mr. Hourihan: No.

Mr. Clark: No. So when you collect information, you would create I guess I'd call kind of a walled garden, if you will, sort of a safe place where this information is reviewed confidentially. And should there be any need to communicate some of that information or portions of it for context of a complaint, I presume it would be fully

redacted and no individually identifying health information would ever be disclosed by your office. Is this a fair statement?

Mr. Hourihan: Correct unless it were in the public interest and within the authority of the act to do so.

Mr. Clark: Right. Okay. Then the second half of my question if I may, Madam Chair.

The Chair: Go ahead.

Mr. Clark: Thank you. The Service Alberta comments under the notes I guess I find interesting. They're concerned that some codes of ethics "prohibit disclosure of confidential information unless required by law," but the next sentence says, "employees may be violating a code of ethics . . . in spite of the fact that a disclosure of confidential information may be allowed under PIDA," which, if I'm not mistaken, is a law. Is there an inherent conflict, or is that second sentence there, PIDA allowing that confidential information to be disclosed to the commissioner, in fact required by law, the law that the Legislative Assembly of Alberta has passed requiring disclosure of confidential information at the request of the commissioner in the course of your conducting an investigation? In your opinion, does that hang together legally?

Mr. Hourihan: Yes. It does hang together legally as far as we are under the understanding. Now, that said, when they say there should be a conversation required to address conflicts, certainly we would entertain those as well. I tell authorities all the time: "If you're curious or concerned about a question we ask, then ask the question back so that we can have a conversation about it to clarify what it is. We'll show you under the act what the requirement of you is. If there isn't, we'll, you know, fall back from that position." If there's some inconsistency or nonclarity or if there is some code of ethics out there that suggests they don't have to abide by some PIDA laws or something like that, then certainly we would want to have those conversations.

Mr. Clark: Sorry; just one more, then. Has this been an issue at all in the past to date, anyone invoking professional codes of ethics as a reason not to disclose information?

Mr. Hourihan: No. No codes of ethics in that regard. We have had questions, comments back and forth about what we should or shouldn't receive in terms of information from an authority, but we have not had any that have revolved around the health situation. There have been no issues with that. We've had nothing that has come to a head, if you will, in this regard. We certainly entertain conversation and questions in all investigations as we progress. We still are early in this act, only being around for three years, so we certainly suspect and presume that we're going to have more of those conversations now. As the complaints become more routine, if you will, to people, there will be a better understanding amongst all of us as to what the processes and protocols are.

The Chair: Mr. Cyr.

Mr. Cyr: I apologize here. I realized that I'm not sure what codes of ethics are. Is that where a department says, "This is a best practice, and this is what we're going to do to fulfill our obligations," and therefore they're going to do their best to, I guess, strive to maintain that high level of professionalism? Is that what it is, or is this actually something that is written in law that they fall back on?

10:50

Mr. Hourihan: It's written. I'm not sure I'm qualified to answer whether or not it's in law. There are written codes of ethics by various professions, and I'm sure that there are government entities out there, public or otherwise, that have a code of ethics. I know that the government of Alberta has a code of ethics. It's, you know, a 15-section book on whatever you can or can't do. It talks about all sorts of things in that case, gifts and those kinds of things. Yeah, they're out there. I'm not sure I'm qualified to comment that they're a law.

Mr. Cyr: I don't see Parliamentary Counsel. Is she over there?

The Chair: Yeah. She stepped out for the moment, but if we need her, we could come back to this issue.

Mr. Cyr: I would love to hear her thoughts. It seems like they want to use codes of ethics to trump legislation. I don't know how this kind of works, so I would love to hear her thoughts on exactly what it is that they are proposing. I know; I had to wait until she left.

The Chair: Okay. We'll move on to Mr. Clark.

Mr. Clark: Thank you. I guess I share Mr. Cyr's concern that should we recommend anything along these lines, we would be, I think, constraining the powers of the commissioner in a way that's probably not helpful. I guess the question back, then, to the commissioner is: do you feel in this specific area that you have the powers that you need now, that in your estimation your office currently has the power to compel the disclosure of individually identifying health information or any other information that is confidential through any code of ethics or any code of conduct associated with a professional association for the purposes of an investigation so long as that information is kept strictly confidential within the bounds of that investigation and not disclosed publicly inappropriately? Do you feel that you currently have the appropriate power to do so?

Mr. Hourihan: Yes.

Mr. Clark: Okay.

Mr. Sucha: One thing to reflect on, too, that we did quite early on in the meeting is that we did pass a motion that would grant the commissioner the right to compel information. Moving forward on some of this, I also see that there could be the challenge that we may contradict an earlier motion that we did make as well by passing this forward.

The Chair: Yeah. Ms Dean, there's just a question from Mr. Cyr on item (n).

Mr. Cyr, did you want to clarify your question?

Mr. Cyr: I'm just going to see if she's ready.

Ms Dean: The question is about a potential conflict between the Health Information Act and PIDA. Is that correct?

Mr. Cyr: Well, I don't understand how codes of ethics work. Are they something that's in legislation, or are they kind of like a best practice that a department would bring forward, saying, "This is where we want to set our professionalism"? If (n) was to be brought forward, would it allow codes of ethics to actually overrule legislation?

Ms Dean: Well, I have a general comment just with respect to how PIDA interacts with codes of conduct because that is one of the submissions made with respect to this review, that some consideration should be given to how the legislation interacts with the various codes of conduct. But codes of conduct are developed by professional bodies to regulate the membership, okay? It's not legislation per se.

Sorry. I walked in halfway through this discussion, so I'm not quite sure I am getting to your question.

Mr. Cyr: I'm trying to understand what they're trying to get at in (n). It appears their intent here is saying that we shouldn't have to follow through with something because it's against our codes of conduct or codes of ethics. That actually seems to be alarming for me, that they can actually overrule or want to overrule legislation with a code of conduct or code of ethics. Now, if I'm reading that wrong, please correct me.

Ms Dean: That's not the way I interpreted that recommendation. I thought there was an issue with respect to disclosure of individually identifying health information and how that interacts with PIDA and how the two pieces of legislation interact with each other. Perhaps this has already been discussed, Madam Chair, but there is a prevailing provision in PIDA, and I'll ask the commissioner to just confirm that. PIDA prevails over the Health Information Act. Is that correct?

Mr. Hourihan: It's my understanding, yes.

Ms Dean: Okay. So I think that the recommendation is going towards trying to narrow the scope of disclosure to the extent possible so that it's not conflicting with the Health Information Act provisions when it's not required. I don't know if I helped.

Mr. Cyr: Okay. Thank you. You were very helpful.

Mr. Clark: You know, when we're talking about health information, I mean, we've been coming at this whole question from the perspective of potentially using the Health Information Act or other codes of ethics as perhaps a way around not disclosing information that would enable an investigation, and I think we have to be very careful about that. The flip side of that is that if it were my health information that were being disclosed to the commissioner's office, I may not be terribly comfortable with that. Two questions, then: is there a consent element? Should there be a situation where individually identifying health information would be required to be disclosed as part of an investigation, (a) does that individual need to consent to that or (b) do they simply need to be informed of it or (c) neither of those two things?

Mr. Hourihan: Neither or those two, I recollect. It just gives me the authority. I mean, section 15 gives a designated officer or chief officer the ability to collect directly or indirectly individually identifying health information and any other information that's considered necessary to manage and investigate disclosures, and I have the same protections in terms of our investigations. Then there are restrictions on when we can disclose that further because it's meant for the investigative piece as compared to the reporting piece. We certainly might have to make comment in reports about some things, but those types of things would be kept out of it unless it was absolutely within the public interest to do so.

Mr. Cyr: Something occurred to me. You've got a complainant that comes forward about a co-worker. Are you allowed to go to that co-worker's health information if the complaint is health related, I guess?

Mr. Hourihan: I'm not sure that we'd want to do that, you know, if it's a co-worker, especially, in terms of a witness or something like that. If there's some reason that we would have to go get it, I would have the authority to go get it because I'm allowed to look at those kinds of things, as is a designated or chief officer. I wouldn't want to speak to any fact situation without thinking it through, but under normal circumstances we wouldn't be looking for health information except in the most narrow of circumstances to be able to answer a question in terms of what the whistle-blowing is. You know, if the allegation was that person A within the government authority was going into the database and amending the identifying health information of a variety of individuals, I could see where we would want to go in and look at those individuals' health information to see if that is or is not correct. Yes, I could foresee that happening.

Now, would we take that information and release it somewhere else? No. We would use that information. You know, thinking forward, we keep as many things confidential as we can. There may be no interest in having any of that information released other than the fact of, you know, comments like that we reviewed 25 health records, and it's confirmed that 25 were inappropriately adjusted by the individual being investigated; therefore, there is credence to this whistle-blowing complaint, something like that. We might make a comment like that, but we wouldn't release the health information. That's for sure.

Mr. Cyr: This whole thing isn't about releasing information. It's access.

Mr. Hourihan: It's about getting it. We have the ability to get it, as does the designated and chief officer.

Mr. Cyr: You said that this hasn't even been an issue.

11:00

Mr. Hourihan: It hasn't been an issue so far, no. You know, like I said, the example I sort of gave might be a good one, where we would go and get a certain amount of health information. I mean, if somebody came to us and said, "Well, the person you talked to is mentally unstable, so you should go look at their records to make sure that you can see that from what I'm saying," something like that would be something that we would be pretty reluctant to go look at. We can examine information on our own behalf. We're not looking for that type of information, if you will. It would be more along the lines of if it was key to the investigation of the whistle-blowing complaint.

Mr. Cyr: Thank you.

The Chair: Mr. Clark, is that your hand?

Mr. Clark: Yes, please.

The Chair: Go ahead.

Mr. Clark: I guess what concerns me is that if neither consent for disclosure of that personal information is sought from the individual whose information it is nor at the very least is that person notified that their information has been transferred to the office of the Public Interest Commissioner, I can well imagine someone reading a report of the Public Interest Commissioner and going: oh, my God, that's me, and my ex-spouse is going to know that's me based on just the situation that was described here. Personally identifiable

information may not be disclosed knowingly by the commissioner, but a particular situation, I suppose, could arise where there are no names used, there is no facility used, but, you know, there was a situation where a complaint was lodged based on actions taken by someone in health care relating to a particular patient and there's a finding of wrongdoing somewhere in there and that person goes: oh, my goodness, that's me.

I guess I would have a real concern if the person whose information is being shared with your office is not at least notified of same. They may not frankly be able to do anything about it, but at the very least I think that they should be notified that there's a potential that that information is going to be disclosed. I suppose in an extreme situation it could put them at risk. We may not know that based on the facts, and your office may not know that based on the facts of the case. I guess I would think that, especially with health information and potentially other information governed by codes of ethics or codes of conduct, we ought to be very, very, very, very careful about that. I'm just wondering if you could comment on that.

Mr. Hourihan: I would agree. We are very, very careful about those kinds of things. You know, the example you gave: in all likelihood, I mean, unless there's a reason not to that makes good sense, we would be getting a hold of somebody whose information we're getting. We'd probably be wanting to speak with them to begin with, and that would come out, so they would be fully aware.

If it were something broader than that and we were looking – let's say that it was just something where it was thousands of records that we looked at, and we said, "You know, there have been thousands of records compromised in this regard," and somebody out there says, "Well, that could have been me." I can foresee where we wouldn't try and get a hold of everybody in those situations. In that case, if there was some issue where something had been compromised of theirs, certainly one of the recommendations that we'd go back to the department or government authority with would be: you'd best notify the people that are on this list of what they need to be notified about. I suppose there are those.

I suppose this is hard to – you know, it's not codified. We don't provide anybody any information that we don't have to provide or ought not to provide to them. We provide the information that we must provide. There's no requirement for consent, but I would suggest that if it were integral to the investigation, we would be speaking with that person, that individual and getting information direct from them.

The Chair: Mr. Clark, did you want to make a motion at this time?

Mr. Clark: Yeah, I will, actually. I will move that the Select Special Ethics and Accountability Committee recommend that the Public Interest Disclosure (Whistleblower Protection) Act be amended to compel the commissioner to notify any individuals whose identifying health information has been disclosed to the Public Interest Commissioner as part of an investigation.

The Chair: Does that reflect your motion accurately?

Mr. Clark: I believe it does, yes.

The Chair: Then I will open that up for discussion.

Mr. Clark: I'll just speak to that, Madam Chair. Really, I accept, Mr. Commissioner, I think, that there would – I don't doubt for a second that you would notify someone that their information has been accessed or disclosed to your office. My rationale behind this is that there may be situations that are unknown to your office or unclear to you, that you may feel like you don't need to disclose. It was not perhaps what you felt to be material information or identifying in any way but potentially, in fact, is. Really, again with greatest respect, I'm not sure that it should be up to you whether or not to disclose.

In the example you used of perhaps thousands of records being inappropriately accessed or disclosed, I believe that the Information and Privacy Commissioner would very likely be involved in that case as well. We've heard of cases of laptops going missing and those sorts of things, where those people, even in their thousands, are in fact notified that their records have been mishandled. That, I believe, is a separate process, which is, I think, absolutely appropriate.

I see nothing but benefit, frankly, in ensuring that we protect the identifying health information of Albertans and in making sure that Albertans are fully aware if their information has been shared with an office outside of the health system. So that's the rationale behind making this particular motion. I'd be interested to hear what my fellow committee members think.

The Chair: Mr. Nielsen.

Mr. Nielsen: Thank you, Madam Chair. Commissioner, I guess, in part, if I understood what you said earlier, are you not already doing this in practice?

Mr. Hourihan: We haven't had any situations where we've gone out and got identifying health information, so we're not doing it in practice in the sense that we haven't had any. If we were to get your information, you would be involved in understanding that we're getting your information unless there are situations out there – like I said, if somebody said, "Look, there are these thousand records that were breached," and we went in and looked at them for some reason, I could certainly foresee that we would go in there and look at all of those. At some point in time maybe we wouldn't disclose, but we would go back in terms of a recommendation to the government authority and say, "Look, these were all done; you'd best let all of those people know this."

Mr. Nielsen: But I think what you were saying earlier, in terms of if you were actually seeking to go look at somebody's health information, was that most likely you'd want to talk to them first about it anyway.

Mr. Hourihan: Generally speaking, yes. Like I say, the act doesn't require us to do that. If the act were to require us to do that, then it would, and we would abide by that. I don't see where it tells us to do that right now, so I suppose there may be situations where we might not do that. But just thinking through types of complaints we might get, specific whistle-blowing complaints where somebody says, "Look, this health information of person B is vital to this; go look at it," I would probably want to let person B know that I'm going to look at that and talk to person B about their perspective on that information there anyway.

That's not to detract from whether or not it should or shouldn't be in the act. I'm just sort of providing what I would foresee as the normal way to progress through an investigation.

Mr. Nielsen: Would you find this, then, either to be redundant or would it just simply solidify what you would already be doing? Would this compromise your investigations or help? I guess I'm looking for maybe some thoughts on how this motion may or may not help you.

Mr. Hourihan: I don't know if it would compromise an investigation. I suppose if I thought it would, then I could make the

decision not to go look at it. I'm not opposed to it being in the act and requiring disclosure. It would be simple for me to say: well, I wouldn't do that anyway, so it doesn't need to be there. That's not particularly helpful for the committee either. I don't know if I really am in the best position to have an opinion on this, frankly.

11:10

Mr. Nielsen: Okay. Thank you.

The Chair: Is there any further discussion?

Mr. Clark: You know, I actually believe that this commissioner wouldn't do that anyway, and I have no reason to think you would act in any way other than to the highest ethical standards. I don't question it at all, but I think part of the opportunity we have here as we review this legislation is to future-proof it and make sure that, especially when we're dealing with health information of Albertans, we're extra cautious. I suspect that in practice, very likely, the commissioner would disclose, but I think it's very important for us as a committee to be as clear as we can that in any case where health information is being accessed outside the health care system, the individuals whose information that is are notified at the very least.

You know, I suppose there's some risk of stymieing investigations if we ask for consent. I don't know if that's a step too far, although part of me would think that consent would potentially be appropriate. But I think that at the very, very least the absolute minimum we ought to do is to require notification that that information has been shared with the office of Public Interest Commissioner or any other office outside of health care. I think that is quite important.

The Chair: With that, I will call the question. Ms Rempel, would you be able to read the motion back into the record?

Ms Rempel: Thank you, Madam Chair. Moved by Mr. Clark that

> the Select Special Ethics and Accountability Committee recommend that the Public Interest Disclosure (Whistleblower Protection) Act be amended to compel the Public Interest Commissioner to notify any individuals whose identifying health information has been disclosed to the Public Interest Commissioner as part of an investigation.

The Chair: All those in favour of the motion, say aye. Any opposed? On the phones? That motion is carried.

Moving on to point (o), nondisclosure agreements. Is there anyone that would like to make a recommendation on this item?

Mr. Clark: Again, I'm curious if this has been an issue that the commissioner has dealt with. It feels like it's in a similar category to the discussion we just had around conflict of laws, where there's a nondisclosure agreement presumably between a government agency and an employee, although that's not clear here. Has this ever been an issue? Do you feel like this is a problem that needs solving?

Mr. Hourihan: Well, we've never had an issue, and we're not – I mean, I suppose, to be fuller in my answer, I'm not sure exactly what's meant by this. But we haven't had any issues with nondisclosure agreements, and we're not sure what this pertains to.

Mr. Clark: My interpretation, reading between the lines, is that perhaps there would be a – I actually agree with you. The nondisclosure presumably is a contract that the employee signs saying: I will not disclose confidential information outside of my employment. Would that ever stymie an investigation where you have a whistle-blower saying: I can't tell you something because of – or I suppose, I guess, you could have an employer saying: "Well, wait a minute. You can't disclose that based on this nondisclosure agreement that you signed with us. You cannot disclose that to the Public Interest Commissioner." Is that even a possibility?

Mr. Hourihan: Well, the act would allow me to look at it anyway under my authority to compel information, and then the other side is that we're not going to disclose things in any case, however material or otherwise. We don't disclose to one side about the other. I come up with determinations and recommendations, and I provide that back, but, you know, the details of those things, like the original complaint, I don't disclose.

Mr. Clark: Okay. All good.

The Chair: Okay. Is there anything further?

Dr. Swann: Maybe one quick comment, Madam Chair. Another example of a nondisclosure agreement would be a settlement where somebody has been either passed over for a promotion or moved out of a department and signed a nondisclosure agreement over that and there may have been some relationship to malfeasance.

Mr. Hourihan: Sure. And if there were, I don't foresee disclosing the agreement. I might make determinations based on that agreement, if it were correct or incorrect, whatever the case may be. We're certainly going to make determinations but not going to disclose those types of things in any case.

Mr. Clark: That's actually a really interesting question that Dr. Swann has raised, that perhaps someone has been terminated from employment for reasons of: either it is potentially a reprisal or they've been terminated because they had threatened to talk with your office, something like that. There's a lawsuit, a civil suit. The employee and the employer reach a financial settlement for the past employee, but through that settlement there's a nondisclosure clause within the settlement, that should the employee disclose the details of the settlement to anyone, then that settlement is invalid. But then they come back and say: well, you know, I was reprised against and forced to take this settlement, and now I've approached your office.

With that, because it is an agreement or a finding by a court of law outside of the public service, does that potentially constrain your ability to – again, when I'm talking disclosure, I'm not saying that you or your office would disclose that information publicly. The complainant disclosing the fact of this agreement and some of the details of that agreement to your office potentially breaches that agreement. Is that one step downstream? I mean, does that cause any issues for you?

Mr. Hourihan: Not really. I think I would look at it this way. Under normal circumstances if a past employee came and said, "I was fired for whistle-blowing," now it's a reprisal. If they just said that they were fired and they've got this nondisclosure agreement, I'd say: well, then, you'd best go to court because that's a wrongful dismissal issue and that's outside of my area. That's a court proceeding that ought to take place. But if they said, "No. I was reprised against for these reasons, and I have this nondisclosure," okay. You've got this nondisclosure agreement with the department of X. Yes. Okay. Then I'll go back to the department of X and say: show me that nondisclosure agreement.

Mr. Clark: What would the purpose be of seeing it? Now you've seen the nondisclosure . . .

Mr. Hourihan: Just to get the details and say: look here; yes, there was an agreement signed. I mean, they, being both sides, might argue that, well, it was signed under coercion or no it wasn't – it was signed under consent – and those kinds of things. Those are things that I would observe and be able to comment on in relation to the entire investigation. But I don't see the issue of the actual agreement being an issue. My interpretation of the Public Interest Disclosure Act is that I'd have the authority to look at those. I can make the demands.

Again, to go back to the general statement that I made a few sessions ago: I think there are definitely significant powers provided to my position as the commissioner for public interest disclosure. In large part that's because my powers when I go back after the fact and make determinations are limited to recommendations. I'm also giving recommendations back to the department or the authority that it pertains to. I'm actually giving the chief officer recommendations so that he or she can fix things wrong within their own department or authority.

Mr. Clark: I guess what I'm driving at is that even outside the remit of your office if there is some sort of termination or a settlement – it was an agreement, perhaps not even a termination. Again, I don't know enough about employment law to say whether or not this technically counts as a termination, but someone is deeply unhappy because of things at work. They take an agreement to leave, and in so doing, they are given a certain severance and sign a nondisclosure agreement about the nature of their leaving that position, about the quantity of severance, et cetera, and they subsequently discover: what a minute; what happened here actually is something I could disclose to the Public Interest Commissioner. You know, it was a whistle-blowing situation subsequent to that agreement having been signed, but by virtue now of coming to your office, they potentially have breached the terms of that agreement.

11:20

Mr. Hourihan: Well, that's one of the powers that our office does have and one of the benefits of having an external office like mine, I suggest. I get people from the media and other origins asking: "Well, what power do you have? What protection do you provide to a whistle-blower?" I say that probably the single best protection I provide is that when they come to me based on a complaint of wrongdoing and/or reprisal, they have the authority to come to me and not be breaching any confidentiality rules because they can give that information to our office without breaching any confidentiality. My interpretation is that they would be entitled to do that. So they wouldn't actually be breaching it by giving it to me.

Would they be if they went out to the media and did it there? Yeah. That's why we caution people, saying that one of the downfalls of going somewhere outside of either the internal organization or to our office externally is that those protections aren't offered elsewhere.

Mr. Clark: Okay. So even if that . . .

The Chair: Sorry. I'm just going to recognize Mr. Nielsen.

Mr. Clark: Yes. Of course.

The Chair: Thank you.
Mr. Nielsen.

Mr. Nielsen: Sorry, Madam Chair. I didn't mean to cut you off there. I guess, Commissioner, do you believe there's a need for clarification? Do we have what we need to move on? What would be your position on this? Are we trying to reinvent the wheel?

Mr. Hourihan: I don't think I need to address anything in this regard. I think we're fine under the act as it sits.

Mr. Nielsen: Thank you.

The Chair: Is there anyone that would like to make a motion at this time?

Is there any further discussion?

Okay. I'll move on to item (p), role of Ombudsman and role of Public Interest Commissioner. Are there any recommendations from the committee on this matter?

Mr. Sucha: Just to the commissioner, how has your experience been holding both positions so far? Do you find it challenging? Do you think it's important for us to be keeping them separate?

Mr. Hourihan: I haven't found it challenging. I'll answer that first. I do treat them as two separate offices. If I had a situation where somebody complained under the Ombudsman Act and I thought it was something that ought to be PIDA related, I could make a recommendation that the person report it to PIDA, to the Public Interest Commissioner. I might have some challenge with some complainants. They might look at me like: well, that's you, so just do it. But, you know, we would go through the process.

And the same in reverse. The odd one does get referred back and forth. Actually, it would probably be more common for things to get referred over to the Ombudsman office compared to the other way. It's just the way it is, and I'm not sure why that is. We don't have a lot either way, but we do have some. But I haven't had any issues with keeping it separate at this point in time.

I do know that there are other entities across the country where the Ombudsman is the Public Interest Commissioner, but they're treated as one office, so everything just refers to the Ombudsman. There's no such position as Public Interest Commissioner. It just deals with their authorities in disclosure.

Other than that, I don't see any real distinction. The bigger challenge I have, quite frankly, with two separate offices is just in the common services that we provide, making sure that we meet needs of ourselves and the Auditor General in terms of reporting all the finances and those kinds of things, which is not monumental.

Mr. Sucha: Do you find that there's a lot of confusion from the general public when they're trying to navigate the offices? Are you able to remedy them relatively quickly?

Mr. Hourihan: No, no confusion at all. On the whistle-blower side it's mostly employees for all intents and purposes, and on the Ombudsman side it's citizens. A citizen can be an employee and vice versa, but generally speaking if I have a problem with something that happened at work, they certainly see the difference with that compared to: I wasn't treated fairly.

Mr. Sucha: Okay. Thank you.

Mr. Clark: Just curious. You've mentioned other jurisdictions. Do you know if there are other jurisdictions that have a Public Interest Commissioner and Ombudsman as separate offices, or is this the common model that we have here in Alberta?

Mr. Hourihan: I can speak to Saskatchewan. It's interesting. Saskatchewan has the same model as we do. It's separate offices. It's interesting if you look at the legislation across the country. The old legislation that was put in, say, in New Brunswick, which I think was near the front end of having public interest disclosure, a number of years ago, you can see how their act was. The next jurisdiction would come in and do it, and they would look around the country,

so there would be modifications and advancements on that and so on up the line. We were seventh, I think, in number to enact PIDA, and we were after Saskatchewan, so you'll see some mirroring more in the Saskatchewan one than you might in others. Then you see I think it's either Nova Scotia or New Brunswick, that came in and relooked at their act and reviewed it, and then you see some of those things from ours implemented in theirs. So it's a bit cyclical like that, or hierarchal, if you will, chronological, if you will, and for all the right reasons.

You know, people aren't reinventing the wheel from jurisdiction to jurisdiction where they don't have to and are taking best practices where they can. Certainly, the offices that have one office have had no difficulty, and we've had no difficulty in ours. The only real difference we can see, frankly, is that I do treat it – and I believe Saskatchewan does too – very formally when I get a referral from one office to the other as opposed to just handing it to a different investigator. We certainly go through a protocol with the complainant to go through that process.

Mr. Clark: Thank you.

The Chair: We'll move on to item (q), records management. Is there anyone that would like to make a recommendation on this matter?

Mr. Clark: Well, as someone who's especially passionate about records management, as I'm sure we all are, I'm really interested in the commissioner's views on where PIDA is inconsistent with other legislative offices as it relates to records management.

Mr. Hourihan: Sure. In terms of the other legislative offices all the other acts have a records management section in them indicating, for all intents and purposes, that they go to the Standing Committee on Legislative Offices for approval of the process or protocols for retention and destruction of records. It's probably as simple as that. We would go there and be able to get the same types of records retention schedules that other offices have. Right now there is nothing in our act to give us the authority for records management, so the interpretation of that is that we keep all we get in perpetuity and we have to hold it onsite. It would be better if it was more consistent with all the other offices.

I mean, I can speak to the Ombudsman Act, and that is one where it needs to be amended as well. That act says that we have to keep everything for six years, and then it goes to archives. That's basically what the Ombudsman Act says whereas in ours it says nothing. Other acts say that you've got to go to the committee and get a schedule for it to make sense. Certainly, for the Ombudsman, to give an example, if somebody calls our office and asks if there's information on reporting something about a municipality, and we say, "No. Sorry. That's nonjurisdictional," we have to keep that for six years and then send it to archives. It's quite irrelevant compared to, say, a land erosion issue where the complaint is something like that the government hasn't been dealing properly with the erosion of a farmer's land, you know, for the last three decades, a big difference in how long you should keep those types of records, and there needs to be clarity on that.

So it would be simplest for the drafters or whatever to have a look at the other acts and implement what they've got in those other acts and put it in ours. This is one that I strongly recommend. We need something.

Mr. Clark: Okay.

Mr. Sucha: What are the current approaches you have in place, especially in relation to destroying documents and digitizing documents right now in your office?

Mr. Hourihan: Exactly that. We digitize and store.

Mr. Sucha: Okay. How do you destroy?

Mr. Hourihan: We don't destroy anything.

Mr. Sucha: You keep all the hard copies even if it's digitized?

Mr. Hourihan: No. We get rid of hard copies. We'll shred documents, you know, that are just printed off, but we're not destroying the record.

The Chair: I'm just going to recognize Dr. Swann.

Dr. Swann: I will make a motion that the Select Special Ethics and Accountability Committee amend PIDA to ensure that records management be consistent with that of other legislative offices.

11:30

The Chair: We're going to wait for the screen to just be accurate. Dr. Swann, does that reflect your motion?

Dr. Swann: Yes. Thanks.

The Chair: With that, I will open discussion.

Mr. Sucha: I think I would be in trouble with my sister who works in records management for Suncor if I didn't support this motion. I think it's important that we have that consistency and that we do the proper upkeeping, so I will be supporting this.

Mr. Cyr: Madam Chair, I'd like to ask: is this exactly what you were looking for in a motion, or is this something that is not hitting . . .

Mr. Hourihan: It's perfect.

Mr. Cyr: That's exactly what you were looking for.

Mr. Hourihan: Yes.

Mr. Cyr: So that's possible. That's just what my question was.

The Chair: I'll call the question then. I'll just get Ms Rempel to read the motion into the record for those on the phones.

Ms Rempel: Thank you, Madam Chair. Moved by Dr. Swann that

> the Select Special Ethics and Accountability Committee recommend that the Public Interest Disclosure (Whistleblower Protection) Act be amended to ensure records management be consistent with that of other legislative offices.

The Chair: All those in favour of the motion, say aye. Any opposed? Any on the phones? That motion is carried.

Moving on to item (r), when a chief officer or designated officer is involved in wrongdoing. I will open that up for anyone that has recommendations.

Mr. Sucha: To the commissioner: have you ever encountered any such cases?

Mr. Hourihan: Yes.

Mr. Sucha: How did you remedy that situation or report it?

Mr. Hourihan: We followed the rationale in the act. Like, section 23 indicates if something

> being investigated involves the chief officer or the designated officer, the Commissioner must, instead of providing a copy of

> the report referred to in section 22(3) to the chief officer and the designated officer, provide a copy of that report [to]

and then it lists out the different things from (a) to (d). In the case of a department it would go to the chief officer of Executive Council. It refers to there. It refers us to give those reports to those positions, but that's where the act stops. It doesn't tell the chief officer of Executive Council what to do with our report. Or in the case of – like, it's different ones – the head of a public entity, if it's an office of the Legislature, it would go to the Speaker, but there's direction to the Speaker as to what to do with the report that they get.

So we would like to see a provision in the act that says: okay; when the recipient – and that person shall, you know, manage the act. It can be very simple. They can manage it as they see fit or can manage it appropriately, something to give them a sense because they'll come back and say: what do I do with this?

Mr. Sucha: So basically there's . . .

Mr. Hourihan: It's just an open loop that just . . .

Mr. Sucha: Yeah. There's nothing concrete that allows them to remedy it, pretty much.

Mr. Hourihan: Yeah. It makes sense that once it goes to them and there are recommendations in there, they would deal with it, but clarity would increase the ability of us to say: well, now you have to deal with it.

Mr. Sucha: With that being said, I'd like to move a motion, then.

The Chair: Go ahead.

Mr. Sucha: That MLA Sucha moved that the Special Select Ethics and Accountability Committee recommend that PIDA be amended to clarify who has an obligation to act and report on recommendations made in situations where the chief or designated officer is involved in the matter.

The Chair: Is there any possible wordsmithing that needs to be done?

Does that accurately represent your motion?

Mr. Sucha: Yeah.

The Chair: With that, I will open it for discussion.

Mr. Cyr: I'm just trying to get the process down here. Now, we have a complainant bring forward that their supervisor is the person that's potentially done something wrong. Now, right at this point we're saying that nobody needed to act on it before because of the fact that the supervisor was the one that was at fault, so then it didn't get resolved, and this motion fixes that loophole?

Mr. Hourihan: Yes. I mean, to use different language, I wouldn't say supervisor because a supervisor may not be the designated or chief officer. If the person complains to somebody and the wrongdoing or reprisal involves the chief officer or the designated officer, then my report has to go to some other level, be it the Speaker, be it the chief of Executive Council, but there's no direction to those positions that they must do anything with the report. If it's the designated officer, they must act on it. If it's our office, I must act on it and report on it, but there's nothing when it goes to these other positions. It seems to be just a shortcoming in the act, where it didn't take that final step to say: and when they receive it, they need to act on it or provide information as to how they're going to act on it or some wording like that.

Mr. Cyr: Before you just had recommendations that you would put forward, and they could potentially ignore them, and we would embarrass them if they didn't follow through. This motion now forces them to deal with it instead of – am I getting that right? We're dramatically changing how your office deals with these now?

Mr. Hourihan: No. Just providing clarity, I think, to positions who are not often going to get reports because it's, you know, hopefully not often going to involve a designated or a chief officer. In this case, let's say, an officer of the Legislature and just the Speaker gets the report, and the Speaker goes, "Okay; well, tell me what I've got to do," and somebody, their staff or whatever, says, "Well, it doesn't say you have to do anything; it just stops there." It would be very handy if it says to them, "and act upon this as you see fit," or "it's now your responsibility to manage this." Now, they can certainly disagree with this. They can do all of the things that anybody else was able to. That's the advice we would give them now, to say: well, you do what you see is fit. We believe that there needs to be something in the act to just direct them in that regard to say: you can't just receive it and let it sit.

The Chair: I'm going to call the question on this.

Did you have something to add?

Mr. Cyr: Yeah. So this is going along with the guidelines of the Auditor General? Now we're changing this to where you would issue a report and then they would do a counterproposal, saying that this is the one – I'm trying to get the process, and it appears that by putting the words "obligation to act" in that motion, we're dynamically changing what your office is doing.

Mr. Hourihan: They've got an obligation. They do have an obligation to take it now under section 23, but they should have to do something with that. Now, that something can be to disagree with me or to agree with me and implement the things that I suggest. That's all sort of fair game, if you will, but I think they ought to have an obligation to do something. I just can't remember the section where it requires a designated officer, but it could take up the same similar language, too.

Mr. Cyr: Thank you.

The Chair: Did you want to find that first? Are you looking for that?

11:40

Mr. Hourihan: Yeah. Commissioner's report re investigation, under section 22(1), says:

> On completing an investigation, the Commissioner must prepare a report that sets out
>
> (a) [My] findings and reasons for those findings, and
>
> (b) Any recommendations [I consider] appropriate respecting the disclosure.

Subsection (2) says:

> If the Commissioner makes a recommendation pursuant to subsection (1), the Commissioner may request the affected department, public entity or office of the Legislature to notify the Commissioner, within any reasonable period of time that the Commissioner specifies, of the steps that the department, public entity or office of the Legislature has taken or proposes to take to give effect to the Commissioner's recommendations.

That's the language that it uses there. There's just no language when it goes up to the Speaker or those other people that are listed in section – well, it's actually listed in section 22 later on.

Subsection (5) says:

> If the Commissioner believes that the department, public entity or office of the Legislature has not appropriately followed up on the Commissioner's recommendations, if any, or did not co-operate in the Commissioner's investigation under this act, the Commissioner may make a report on the matter
> (a) in the case of a department, to the chief officer of Executive Council,
> (b) in the case of a public entity, to the minister responsible . . . and to the board of directors . . .
> (c) in the case of an office of the Legislature, to the Speaker . . .
> (d) in the case of a minister's office, to the minister,
> (e) in the case of the Legislative Assembly Office, to the Speaker . . .
> (f) in the case of Executive Council, to the chief officer of Executive Council, or
> (g) in the case of a minister or chief officer of Executive Council, to the Premier.

We feel that there just ought to be language to say: "Okay. Premier, Minister, Speaker, whoever you are, now you need to do the same thing. It's not appropriate to just say thanks."

Mr. Cyr: Does this motion reflect what you're asking for, or is it further reaching than you're anticipating?

Mr. Hourihan: No. I mean, I suppose my perspective would be that the drafters would then look at it and take the language probably that's consistent with the act. If I make that presumption, then this sort of fits the bill.

I would say that at the end of the day what it needs to say is, "and you have to deal with this as would the designated officer have to deal with it in section 22(2) above," just words to take it back to consistent language.

When I make recommendations, my expectation is that they will either agree with them or disagree with them. They can choose to ignore me, but they have to actually make that choice to ignore me and come back and say: we're not going to do anything. Then I would have my ability to either persuade or take it publicly or table it, et cetera. That's all certainly fine and well. It's just an open-ended thing for these people who, quite frankly, are not often going to get this type of report coming to them because it's a little bit out of sync when it shouldn't involve the chief or designated officer very often.

Mr. Cyr: Thank you.

The Chair: I'll call the question. Ms Rempel, would you mind reading that into the record?

Ms Rempel: Thank you, Madam Chair. Moved by Mr. Sucha that

> the Select Special Ethics and Accountability Committee recommend that the Public Interest Disclosure (Whistleblower Protection) Act be amended to clarify who has an obligation to act and report on recommendations made in situations where the chief or designated officer is involved in the matter.

The Chair: All those in favour of the motion, say aye. Any opposed? Any on the phones? That's carried.

On to item (s), review of act.

Mr. Clark: Madam Chair?

The Chair: Yes.

Mr. Clark: My apologies. Just back to item (q), records management. There were two other bullet points beyond the first that are, I think, different than the first one. I just wanted to explore those briefly, if I may, with the commissioner.

The Chair: Perhaps we'll finish through the next two items and then go back to that, then.

Mr. Clark: Sure. That's fine. Thank you.

The Chair: Are there any recommendations on item (s), review of act? Mr. Clark.

Mr. Clark: Sorry, Madam Chair. Again, I'd like to ask the commissioner if he feels a five-year review is appropriate. We are now doing the two-year review, if I'm not mistaken. Do you feel that five years is a reasonable amount of time from this point forward? Would you like to see it moved up to two or three years as recommended by a couple of the stakeholders that have contributed? What are your thoughts on that?

Mr. Hourihan: I think five is suitable. I think that five is what's in other acts pertaining to legislative offices, well, with the exception of the Ombudsman Act; we don't have any in there. There needs to be one, if I can make that comment. There certainly needs to be one. We noticed that in the Ombudsman Act, if I can by example. There's no requirement to review the act, and it's a long time past its due date to actually do that. But when it's a requirement in the act, it's a good thing because then it gets done. That said, I think it's a good idea to have one. Five years is probably a good amount of time. You know, five years is not that long in this type of work to get a good indication of changes that are necessary, and we certainly would keep track of things so that we can provide good advice back to a committee like this every five years.

Mr. Clark: Thank you.

The Chair: I will move on, then, to item (t), commissioner's power to delegate authority in the event of normal absences. Is there someone that would like to make a recommendation on that item?

Mr. Sucha: Just from the commissioner: could you explain the reasoning around this recommendation?

Mr. Hourihan: What it is right now – like, let's say that in my position I get sick, and I'm gone for, you know, a year or six months or something. It would go back to the standing committee, and they would put an Acting Public Interest Commissioner in place and those kinds of things. But it's not for the normal, day-to-day, if you will, absences for holidays, a sick day here and there, or just absences, like I might be away on duty at a conference, as I was recently in the Yukon with other people. There's no clear-cut delegation down to allow for these absences.

We do it under the Ombudsman Act, and we do it under this act by virtue of – we go to the Interpretation Act and we go to the Public Service Act because I'm a department under the Public Service Act, so I can do certain things, but it's kind of a roundabout way to get to the ability for me to name, you know, the director of investigations for the public interest, Mr. Ted Miles, if I'm going to be gone for two weeks on vacation. It's a roundabout way for me to try and delegate him to look after things while I'm gone for just a couple weeks, and it doesn't make much sense to be required to go back to the standing committee to get together for those types of things because they crop up on a fairly regular basis in a year, but they're all short term.

It would be much simpler if the ability was delegated down to me for short-term absences to put somebody in my position. It could be wording similar to the Ombudsman Act. That's under section 27 of

the Ombudsman Act and section 61 of the FOIP Act. They have it in there. If it was consistent language with that, it would be fine, but there's nothing in this act to allow me to do that.

The Chair: Is there someone that would like to make a motion on this item?

Mr. Sucha: I can move a motion, Madam Chair, that the Select Special Ethics and Accountability Committee recommend that the Public Interest Disclosure (Whistleblower Protection) Act be amended to allow the commissioner power to delegate authority in the event of normal absences.

I heard from Dr. Swann in regard to absences, but if there's a situation where the commissioner is absent for a long period of time, I think we'd want to make sure that we had a practical approach to find a temporary one that isn't necessarily delegated through the commissioner's office at that time.

The Chair: So you want to keep the word "normal" in there?

Mr. Sucha: Yeah.

The Chair: Okay. Ms Rempel, would you mind just reading that out for those on the phone before we go to discussion?

Ms Rempel: That

> the Select Special Ethics and Accountability Committee recommend that Public Interest Disclosure (Whistleblower Protection) Act be amended to allow the Public Interest Commissioner power to delegate authority in the event of normal absences.

The Chair: I will open that up for discussion. Mr. Clark.

Mr. Clark: Yeah. Thank you. Dr. Swann and I here were just chatting about the difference between a normal absence and a more – you know, are there some criteria? My understanding is that an acting commissioner can be appointed through the standing committee should the commissioner be out for a long-term disability type of situation, six months or a year, as you said. What's the difference between a normal absence and that? I don't know if we would need to put actual parameters around it. I think it's one of those things: you know it when you see it. If, as I understand what you're talking about here is, again, you're away on two-week holiday, you're off for four business days on a conference, something like that, there are just things that happen day to day that you need to able to, quite simply, just delegate your responsibilities to keep things moving, ticking along, as opposed to the formal appointment of an acting commissioner, which is a formalized process, which would be a longer term thing.

11:50

Mr. Hourihan: Correct. What would come with that formalized process would be the ability to delegate, and that wouldn't be given up in this. I couldn't delegate it to Mr. Miles and then, while I'm gone for four days or two weeks, he delegates it to someone else. He doesn't have the ability to delegate. Certainly, the initial one would require me to go to the standing committee and say, "I would like to have written authority to be able to appoint somebody in my absence on short-term absences" such as, you know – it probably wouldn't be a sick day, because that would be on us. But they can give it sort of a – I won't call it a blanket, but a time-standing authority to do that. That's what it is under the Ombudsman Act, and that's what it is under FOIP.

Like, for example, FOIP. If I may, it says, "the Commissioner may delegate to any person any duty, power or function of the Commissioner under this Act except the power to delegate." It "must be in writing and may contain any conditions or restrictions the Commissioner considers appropriate." That's what it says under FOIP, and that certainly fits the bill for those kinds of things.

Under the Ombudsman Act, which, again, is significantly older and hasn't been updated, it is more elaborate in what you can do within it. If I can, it says,

> With the prior approval of the Standing Committee, the Ombudsman may, by writing under the Ombudsman's hand, delegate to any person holding any office under the Ombudsman any of the Ombudsman's powers under this Act, except this power of delegation and the power to make [a] report.

That power to make a report actually has caused us some consternation over time, because it revolves around the definition of report.

I think the language is certainly cleaner in the FOIP Act, but it's consistent with the Ombudsman Act as well.

The Chair: Mr. Clark.

Mr. Clark: Yes. My question there is then perhaps: do we want to entertain a amendment here which would specify that our recommendation is to make the wording similar to the FOIP Act? I think that that's perhaps appropriate at this point. While I think the motion as it stands is good, I'd like to make a amendment, if I may, to add that the – I'm just reading that motion there. Then just at the very end of that,

> similar to the provision found in section 61 of the Freedom of Information and Protection of Privacy Act.

The Chair: With that, I will open up discussion on the amendment. Mr. Nielsen.

Mr. Nielsen: Sorry. Just a point of clarification: where do you want to put that in?

Mr. Clark: Right at the very end.

Mr. Nielsen: Got it. Thank you.

Mr. Sucha: You're referring to the Ombudsman Act, is the wording in the FOIP Act very similar? Like, would it change . . .

Mr. Hourihan: Yeah. The wording in the Ombudsman Act is – it's got six subsections that just elaborate on that. I mean, that's certainly fine. We work with it under the Ombudsman Act. It's just that it's older language, and the language in the FOIP Act is much more current.

Mr. Sucha: Oh, okay.

The Chair: Is there any further discussion on the amendment?

We'll call the question. Those in favour of the amendment say aye. Any opposed? On the phones? That is carried.

Back on the amended motion. I will open that up for discussion. Is there any further discussion?

Otherwise I will call the question, and I will ask Ms Rempel to read the amended motion into the record.

Ms Rempel: That

> the Select Special Ethics and Accountability Committee recommend that the Public Interest Disclosure (Whistleblower Protection) Act be amended to allow the Public Interest Commissioner power to delegate authority in the event of normal absences similar to the provision found in section 61 of the Freedom of Information and Protection of Privacy Act.

The Chair: All those in favour of the amended motion, say aye. Any opposed? On the phones? Then that is carried.

Mr. Clark, there are two bullet points under records management. Did you want to make a motion on those?

Mr. Clark: I just want to ask the commissioner your opinion on (q), if the motion we've already passed would cover an explanation of whether the processes should follow those set out under the FOIP Act. Has that been an issue that your office has faced? Do you have any comment on that?

Mr. Hourihan: No, and as I understand it, if we went to the processes that the other offices have, they would certainly fall within the requirements of freedom of information.

Mr. Clark: Okay. Yeah. I suspected as much for that one.

Now, the next one I think is an important corollary to our previous discussion about personally identifiable health information. Again, I'm curious about whether the motion we've already passed about records management and the way other offices deal with it – I don't know if other offices have a provision that allows them to access personally identifiable health information in the course of investigating anything or conducting their duties. I don't know, but perhaps the Auditor General may. Again, I don't know, but I wonder if it makes sense for us to specify explicitly that copies of records made or obtained in the course of an investigation are destroyed or otherwise protected. Coming from the Alberta Medical Association, I can only assume that their interest is very likely around personally identifiable health information, although it may be broader than that. I'm just curious if you feel the motion we've already passed would cover this or if this is something that we may want to consider separately.

Mr. Hourihan: I believe the records management piece would cover that. I think that if we do have some health information, say, or just other information, section 18 requires us to – when I go to an office or an investigator does and takes things, we have to take the originals and leave a copy or vice versa. More often than not we just take a copy, but we give them notice as to what we take. Subsection (d) says that we "must return them to the person to whom the receipt was given when they have served the purposes for which they were taken." Now, that said, when we have copies back at our office in terms of the investigation, we would have to keep those in respect of the records management requirements that we would have as provided for by the standing committee, in terms of how we keep or destroy those records.

Mr. Clark: Right. I think that's probably accurate, and if there is a proper records retention schedule and process, I can understand why you would need to retain those records for a certain period of time. But as it stands now, that period of time is infinite, which is unhelpful. So, yeah, I'm satisfied that the motion we've passed covers this.

The Chair: Okay. With that, we have finished that section of the document.

Seeing as we only have a few motions that have been deferred that we have to refer back to, we will take lunch first and then we will come back to those matters after lunch. We will adjourn until 1 o'clock.

[The committee adjourned from 11:59 a.m. to 1 p.m.]

The Chair: I will call this meeting back to order.

We have three deferred motions. The first one is a motion currently on the agenda proposed by Mr. Clark, moved by Mr. Clark that

> the Select Special Ethics and Accountability Committee recommend that the Public Interest Disclosure (Whistleblower Protection) Act be amended to expand the definition of gross mismanagement in section 3(1)(c) to include managing people in the public sector.

With that, I will open it up for discussion.

Ms Dean: Madam Chair, just to recap the committee's previous discussion on this, there was a commitment from us to go back and take a look at other jurisdictions with respect to how they handle this issue, and I can report back as follows. Currently the wording in our act, just to remind members, is that gross mismanagement means "gross mismanagement of public funds or a public asset," and that phrase tends to be used in most jurisdictions. There is, however, a more open-ended definition in the Ontario legislation, and in particular there's specific wording in the federal legislation that references "gross mismanagement in the public sector."

The Chair: With that, I will open it back up for discussion.

Mr. Cyr: When you did your investigation, did we find that we will be unique by adding this to the Public Interest Commissioner's office, by adding gross mismanagement to part of his mandate?

The Chair: Ms Dean.

Ms Dean: Thank you, Madam Chair. Gross mismanagement is already part of the legislation. The suggestion that came forward from the commissioner – and I welcome him to provide his comments – was that the committee may want to consider whether gross mismanagement of people, or the public service, should be encompassed in the definition of gross mismanagement.

In answer to your question in terms of whether we would be unique, no, not necessarily. There is reference in the federal legislation to gross mismanagement in the public service. Also, Ontario: I can't speak to how that's been interpreted, but it's a fairly open-ended definition as well.

Perhaps Mr. Hourihan has some further comments.

Mr. Hourihan: No. Just that Ontario does include it, just as Shannon said, as does the federal legislation, so we certainly wouldn't be unique.

I know there were comments before or discussion around: would that cross boundaries with other organizations, with internal organizations, and those sorts of things? I mean, there's always crossover in terms of what we do because it should all be handled properly in the first instance by the government authority in question. The fact that we need to get involved is because of those things that either are not being looked after or certainly are a marked departure from anything that could be at all, possibly, considered normal.

I don't believe that including wording such as "gross mismanagement in the public sector" and thereby expanding it past assets and monies would cause any added interpretation requirements or any added issues for our office in terms of, you know, investigations and that sort of thing. It would certainly broaden it to include probably the area that is mismanaged more than other areas, and that is the management of people or just the public sector in general.

The Chair: Dr. Swann.

Dr. Swann: Thank you, Madam Chair. Well, I've certainly heard a lot this year about harassment and bullying in the workplace and the failure of many workplaces to deal with it in an appropriate way, a fair or balanced way, and I heard from you at a past meeting that it's something that continues to be raised in your office. It strikes me that this would add legitimacy and confidence both in your office and in the public sector in this case that these would be legitimate concerns to be raised, legitimate issues to be challenged without so much fear in the workplace. Potentially we'd have more education around codes of conduct in the workplace. There'd be standards discussed around dealing with differences and especially dealing with harassment and bullying. It's a concern that I've heard a lot about in the last couple of years, more so than any previous years, I must say, so I certainly will be supporting this.

Mr. Hourihan: I'm just going to add one thing that I kind of forgot to mention. The section right now – like, to some people, when they call our office, we say: "Well, that's not jurisdictional, you know. We don't look after those things. It's an HR issue." That sort of response. We do get some that try and impress upon us section 3(1), which says:

> (b) an act or omission that creates
>
> (i) a substantial and specific danger to the life, health or safety of individuals other than . . . is inherent in [their duties].

They will try and make the argument that that would include, then, if somebody's harassing me or something like that, mismanaging me as a person, that that is therefore affecting the life, health, or safety of the individual. So we have pushed back on that, saying: no, that's not what that's meant to address, frankly. But they do assert that, that that's an angle.

We have looked at that in the past to say: well, at what point in time would it become that? That's a much more significant aspect, a danger to health, life, and safety. In that regard, when you consider it from a gross side, that doesn't actually apply although some may try and say that that does, but we don't believe it does. My assertion is that it would be much more effective to have wording in there such as "public sector" or "management."

Dr. Swann: Can I just follow up on that? What would you say the proportion of public-sector issues, managing public-sector folks, is in your work today?

Mr. Hourihan: We haven't had too many complaints that we've acted upon because we push back and say: no, that's not our area of concern. But we certainly get the calls. I don't have a definite number on the number of the calls that we get that deal with people, but it would certainly be at least half.

Dr. Swann: Is that so? Well, I guess it raises the question of whether they're getting satisfaction from other sources. If they've come to you first and been referred elsewhere and they haven't got satisfaction from other sources, whether it's human resources or something else, they may well feel that there is no recourse, there is no fair and just reconciliation around issues of allegations of mismanagement, of harassment, of bullying in the workplace.

It does raise questions in my mind of whether we could follow up on these in some way and find out the extent to which they're being resolved or whether they're simply being pushed underground or people are leaving or going on sick leave. I think about the massive sick leave and long-term disability in the health care system. From indications I've had, much of it relates to stress in the workplace, some harassment, some bullying, and a fair amount of discouragement to even report this, simply a toleration of difficult working conditions because they don't feel there is any way to get recourse on these issues.

Mr. Hourihan: That certainly would be our perspective, that we hear about.

The Chair: Mr. Clark.

Mr. Clark: Yeah. Thank you, Madam Chair, and thank you, Dr. Swann, for that example. I think, obviously, having made the motion, that it is a very important aspect for us to address in this committee, not least because I believe that it addresses specific issues in Alberta's public service but also that we wouldn't be alone in this regard. The governments of Canada, Nova Scotia, Nunavut all have this provision, the government of Canada's being the most specific, talking about specifically "gross mismanagement in the public sector." I think that it can only help by expanding, to be explicit, the role of the commissioner, to have the broadest possible definition of gross mismanagement because if this is going on, I think the people of Alberta ought to know that. It's in the best interests of citizens, of people who work in the public service and taxpayers as well. So again I would really encourage the committee to support this motion.

1:10

Mr. Cyr: One of the big concerns I had last time with adding this is that we don't have a definition of what gross mismanagement really is. Without a definition how exactly do I know what we're opening your department to for investigations? The thing when it comes to human resources: it's very difficult to define that, whether it's gross mismanagement or not gross mismanagement. It's very easy when it comes to assets. Either they took them or they didn't, or they used them inappropriately or they didn't. Don't get me wrong. I'm sure that you have to weed through it a little bit, but I just don't know how we can jump to adding gross mismanagement of human resources without actually understanding what gross mismanagement is first and how it will apply to your department. Have you come up with a definition of what gross mismanagement is so that we can at least work out what you'd be responsible for?

Mr. Hourihan: We do have a definition of sorts. We do get some of this from the common law because the common law has looked at this.

I mean, two points, I guess. It's a hard thing to describe definitively. You don't want to put things on a list. It was, I think, referenced before, you know. They said that they couldn't define insanity, but they could recognize it. There's some of that. It's very similar here. It's hard to define in a sentence or two, but you can certainly identify it when it's there.

I would disagree that it's easy when it's funds or assets. You know, if it's an out-and-out theft, that's one thing, but it's when it's mismanagement of it that it's another. The deployment of computers: that's not such a simple – but it's not so complex that you can't make a decision. It's not so complex that I can't make a determination and provide an explanation of that determination. Again, as I said before, the determination of it, at the end of the day, is a bit of a degree on a continuum. If it's mismanaged and it's not working well, in all fairness to the department it ought to be fixed. If that's not so gross or it's very gross, it still needs to be fixed. A determination could be made by my office. It certainly can be made internally by the office, and they are now. The responsibilities of the departments and other authorities are to look after human resource issues. The problem becomes when they're not looking after it. There are lots of times that that happens.

We do have a definition, and I just don't have it in front of me. Oh, I probably do have it in front of me; I've just got to find it. It mirrors the language used in the Nova Scotia act because that's good. It talks about a marked departure. I will be able to find it here because I know it's in here somewhere.

Mr. Clark: I've got it here if you want it.

Mr. Hourihan: You have it?

Mr. Clark: I do.

The Chair: Apparently, Ms Robert has that handy.

Ms Robert: Thank you, Madam Chair. Yes, I have the provision in the public interest disclosure of wrongdoing regulations in Nova Scotia, and it's a definition of gross mismanagement.

> "Gross mismanagement" means an act or omission that is
>
> (i) deliberate, and
>
> (ii) shows a reckless or wilful disregard for the efficient management of significant government resources.

Thank you.

Mr. Hourihan: We mirror that. We also have a variety of things that we look at. You know, what was the intent? What was the departure from normal, the importance of it? Those kinds. We ask a variety of questions that are in there. I think that they're appropriate for us to use as parameters. From my perspective, I'm not sure that it would be appropriate to have it within a whole, large, very prescriptive thing within the act, but that's not my determination to make.

The Chair: Mr. Nielsen.

Mr. Nielsen: Thank you, Madam Chair. You know, people should find this interesting because I kind of find myself leaning in the same direction as my colleague here. From time to time we actually, maybe, can see eye to eye on a few things, surprisingly enough. I'm struggling a lot with this one. I guess I was really hoping for a little bit more definition around the types of wrongdoings when we're talking about people. Yeah. I'm certainly, you know, struggling on this one. While I'm certainly open minded to getting some definitions around that and maybe moving forward on it, I'm a little hesitant to adding something in maybe at this moment unless somebody can provide me with something a little more. Like I said, I'm really struggling here.

Mr. Clark: I want to express my great surprise that our friends from the NDP government would be agreeing with Wildrose. Just on the face of it that's a surprise. But beyond that, you know, I interpret this as being a protection for the people in the public service, and it seems a little odd that a government that is ostensibly committed to workers' rights and safety and ensuring that workers' rights are protected would equivocate on this issue. That seems odd to me because what I interpret this motion as being is, frankly, closing a loophole where perhaps there would be a human resource investigation that was not dealt with satisfactorily, that in fact is a cover-up for a breach of the act, and that perhaps now the commissioner cannot properly investigate. I don't know why there would be a hesitation beyond perhaps now just simply finding yourselves in government and being told by whoever is typing on your screens there that that might be problematic for the management side of things. It just seems to be a bit of an odd perspective to hear from government members, especially those who have got a strong labour background. It just seems odd to me.

The Chair: Member Loyola.

Loyola: Thank you, Madam Chair. I think that the Public Interest Commissioner has made it abundantly clear that the way that the act exists at the moment is that it allows for a little bit of flexibility – and correct me if I'm wrong, Mr. Hourihan – for you to determine whether an investigation is worth moving forward on. Am I correct in assuming that from the statements that you've made today?

Mr. Hourihan: Well, I make determinations whether or not an investigation goes forward, yes, if it revolves around the area of harassment, bullying. Otherwise, what would be considered, say, gross mismanagement of the public sector, unless it relates to funds or assets, no, I don't look into it.

Loyola: From your perspective, then, and maybe to counsel here I can ask, if you will: what are the other avenues which an employee could then go to besides the Public Interest Commissioner if they had an issue with gross mismanagement in terms of HR?

Ms Dean: Well, I won't speak to gross mismanagement. I will speak to harassment. There's a respectful workplace policy that's in place for the public service of Alberta that employees can access.

Loyola: They can access, right? So there does seem to be that there is a place where employees can go if they have an issue.

Ms Dean: That's correct. I believe the commissioner commented on that when this discussion occurred at a previous meeting. The question really is whether the commissioner's jurisdiction would extend to these issues.

Mr. Hourihan: If I may, there is also a policy on what proper procurement is in government, too, but that doesn't mean that people obey it. That does revolve around assets or funds. In spite of the fact that there's a policy or a process or a place to go in reference to funds or assets, that still provides jurisdiction to me in terms of whether or not it becomes gross. My position would be that because there's another regime to go to – it isn't necessarily why we exist. We don't exist just because there's no other place to go. We exist in spite of the fact that there are other places to go. It's just that those places to go are not properly managing it.

1:20

Dr. Swann: Just a final comment. I hear the concerns expressed here. It in some ways raises ambiguity, uncertainty. But what it also does is expand the scope and confidence, I would say, in the commissioner's office to feel more empowered. When there are indications that things aren't being managed appropriately and where people and therefore productivity are suffering, in a sense, and it goes on and on and on for months, years, he does have the capacity to intervene with some confidence because it's included now in his job description. It's the way I would look at it. He still has discretion, but he now has a little more scope to include that.

The Chair: Is there any further discussion? Mr. Clark.

Mr. Clark: Yes. Just one, hopefully, final comment. You know, the question about ambiguity: I should think that this closes the loophole and makes the act more specific.

The question about whether or not there is a policy about harassment: I think the commissioner answered that question very well, but gross mismanagement and harassment are potentially very different things. We have bullying and harassment, which we've talked about already in this committee and I hope have addressed

adequately, but the question of gross mismanagement: I mean, to me this seems like a very significant loophole.

We've heard the commissioner here say that there are cases that he feels he cannot currently investigate because the act does not permit him to do so. If there is gross mismanagement going on in the public service, then I think we ought to know about it. If people are willing to blow the whistle and take that risk, then I don't see why we would not recommend that the act include that. Again I'll say it. It seems a little odd that government members who have a strong labour background would not be in favour of this. That seems very odd to me.

Thank you, Madam Chair.

The Chair: Mr. Cyr and then Mr. Nielsen.

Mr. Cyr: Thank you, Madam Chair. I don't believe this was a loophole at all. I believe this was intentionally left out of this because we had other mechanisms to deal with our human resources. I think it's unfair that we would be labelling the government as being antilabour by saying that the Public Interest Commissioner shouldn't be dealing with this.

I also think that when we start looking at this, the big concern actually isn't point 2. That probably should have been addressed before we got here, which is that the AG, AHS, and AMA came forward and said that there is ambiguity in the definition of gross mismanagement. Until we deal with that part of it, I don't know exactly what it is that we are giving to the Public Interest Commissioner for expanded roles. That, in my opinion, is truly what is the concern here. By just adding this, we still leave that concern that's in point 2 unaddressed, and that is really something that we need to move forward with first and then go to possibly seeing exactly what gross mismanagement would be underneath his role.

I would challenge that this is not a loophole. I would challenge that in the end the government in this case is doing its due diligence.

That's what I have to say. Thank you.

The Chair: Mr. Nielsen.

Mr. Nielsen: Thank you, Madam Chair. I guess it's my labour background that's maybe holding me up. I'm looking for something to sink my teeth into. You know, it's all about language in that world and what you have and what you don't have. I'm certainly not opposed to this in any way. I guess I was just hoping for something to really sink my teeth into and, you know, move forward or work through or add, delete, things like that. For me, that was, I guess, maybe not stopping me but just slowing me down here. I'm certainly interested to see what we could move forward with.

The Chair: Member Loyola.

Loyola: Yeah. Was it the federal legislation that you read out, or the federal act that you read out, that one piece? Would you mind repeating that, please, just one more time?

The Chair: Ms Robert.

Ms Robert: Thank you, Madam Chair. It was the definition of gross mismanagement in the public interest disclosure of wrongdoing regulations in Nova Scotia. That's what it was. I'd be happy to read it again.

> "Gross mismanagement" means an act or omission that is
>
> (i) deliberate, and
>
> (ii) shows a reckless or wilful disregard for the efficient management of significant government resources.

Ms Dean: If I could just supplement. Just to be clear, the distinguishing feature of the Nova Scotia regulation is the definition of gross mismanagement in terms of reckless or wilful disregard. What the Nova Scotia regulation doesn't do is deal with the public sector in the same way that the Ontario and federal legislation do.

Loyola: Then what's the distinction there? How does the federal act compare to Nova Scotia's?

Ms Dean: The Nova Scotia legislation just deals with public property or resources. It doesn't have the public-sector element, which is what you've got in Ontario and federally.

Loyola: Okay. Rather than proposing an amendment, I'd just like to throw something out there. How would people feel if we took into consideration the federal and Ontario acts and applied them to this motion rather than being directly – how would people feel about that?

The Chair: Mr. Clark.

Mr. Clark: Yeah. You know, as we talk through this – and I do appreciate the back and forth here and the sharing of ideas – I do wonder, in fact, if we are talking about two separate things as well. To answer your specific question, Member Loyola, the Ontario and the federal government do include gross mismanagement in the public sector or, in the case of Ontario, gross mismanagement by a public servant, minister, or parliamentary assistant. I am fine with that. I mean, I'd absolutely entertain withdrawing this motion – or we can vote it down, whatever we need to do procedurally – and coming up with a new one that just says: we believe the Alberta act ought to mirror, you know, incorporate the elements of the Ontario and federal acts as it relates to the public service. I'm fine with that.

To address Mr. Cyr's concern, perhaps we can consider a second motion that defines gross mismanagement. I like the definition that our friends in Nova Scotia have. That would be a separate discussion under a separate motion. If that's what you're proposing, Member Loyola, I'm certainly fine with the wording of the federal and the Ontario statutes.

The Chair: Did you want to withdraw your motion, then?

Mr. Clark: If I can. I think we need to defeat it, do we not? Can I withdraw it?

The Chair: Unanimous consent.

Mr. Clark: Unanimous consent? I'm fine with it if everyone else is. That's perfectly fine. I will withdraw my motion with the consent of the committee.

The Chair: All in favour?

Dr. Swann: No. I'd like to vote on it.

The Chair: Okay. All those in favour? Any opposed? That motion is defeated.

Loyola: I know we were discussing good faith before, so in good faith, Mr. Clark, I will pass it over to you so that you can put in the new motion.

Mr. Clark: Thank you very much. It matters that the motion is passed, not so much who passes it. Okay. Let's see if we can get the wording nailed down here that the Select Special Ethics and Accountability Committee recommend that the Public Interest Disclosure (Whistleblower Protection) Act include gross

mismanagement by a public servant or within the public sector in a manner consistent with Ontario and federal legislation.

The Chair: Is there any wordsmithing by counsel before we move on with the motion?

Mr. Cyr: Can I interject really quick?

The Chair: Not quite yet.

Mr. Cyr: Well, it's not quite finished yet.

The Chair: Yeah. Just hang on, please.

Ms Dean: Would it be consistent with the discussion here to simply state, "to recommend that the legislation be amended to parallel the provisions in Ontario and at the federal level with respect to the public sector"? Mr. Clark, does that . . .

Mr. Clark: I think so. Yeah. I do think we should mention gross mismanagement, but Mr. Cyr has made, I think, a valid point that perhaps we should define gross mismanagement first before we make this motion as a separate motion.

1:30

The Chair: You've made a motion.

Mr. Clark: I've made a motion. Motion's been made. All right.

Ms Dean: Just for clarity . . .

The Chair: Ms Dean, please.

Ms Dean: That the gross mismanagement provision be amended to parallel the provisions in Ontario and at the federal level with respect to the public sector. I think the keywords here are "the public sector." That's the distinguishing feature between the Ontario and the federal legislation and what we don't have in Alberta.

Mr. Clark: I guess . . .

The Chair: We're just going to hang on for Ms Dean here, please. I'll recognize you as soon as we're ready here.

Mr. Clark: Okay. Sure.

The Chair: Mr. Clark, does that look like a motion consistent with what you were saying?

Mr. Clark: I may have misspoken when I said: and the Ontario and federal. I guess I want to be careful that we don't overnarrow. It could be and/or. That legislation is not totally consistent with one another, so I want to be careful on that, one way or the other, frankly, because there are aspects of both that we want to incorporate, but we don't want to limit ourselves.

Ms Dean: Well, I think the key thing is that both the Ontario and the federal legislation reference gross mismanagement in the public service, and the concept is that that would encompass some of these issues relating to people management. You know, I don't think that there are huge differences between the Ontario and the federal legislation, but I haven't conducted any extensive case law research on that.

Mr. Clark: Perhaps we just use the word "or." That allows the drafters to pick and choose.

Ms Dean: Sure.

Mr. Clark: Let's use "or" instead of "and." I'd be happy with that. Thank you.

Dr. Swann: I'm just concerned that we're tying ourselves to an Ontario and a federal act that may change. I guess I'd like it to be more explicit. Instead of saying "parallels," just put in . . .

Ms Robert: The current Ontario and federal . . .

Dr. Swann: Well, I don't want to be tied to – how about just putting in what we believe is what we want?

Loyola: Congruent.

Dr. Swann: No. I just mean copy from those acts, put it in here now, and that's what we'll review in five years. Or is that what you're planning to do? Is this the wording that was going to go into our act? Is it the actual word for word from Ontario and the federal legislation that's going into our act? I would prefer the word for word so we know just by reading it what it is we've adopted.

The Chair: Maybe we can get some clarification from Ms Dean first.

Ms Dean: Okay. The Ontario legislation reads as follows: "gross mismanagement by a public servant, a minister or parliamentary assistant" – and this is the key phrase – "in the work of the public service of Ontario." Again, the key phrase is "public service."

The federal legislation uses in addition to the words "misuse of public funds or a public asset," which is what we have in our current legislation, also a reference to "gross mismanagement in the public sector." It's those words, "public sector" in the case of the federal legislation and "public service" in the case of Ontario.

Dr. Swann: And that's what we would be seeing in our legislation, those words, not these words.

Ms Dean: I believe that's the intent of this motion.

Dr. Swann: Okay. Thank you.

The Chair: Mr. Clark.

Mr. Clark: Yeah. My understanding of the process is that this committee makes a recommendation that it be amended as outlined in that motion. When we say, "parallels current Ontario or federal legislation," it would be up to the legislative drafters to pick and choose the specific words that are relevant to Alberta. Then when those amendments come to the floor of the Assembly, we have plenty of opportunity to say, "Well, actually, you know, we debated this in committee, and the intention was not what is written here in the legislation or is not there at all" or whatever. Really, we're not wordsmithing legislation; we're coming up with a fairly broad recommendation that will be put into legal language for the purpose of the amendment.

Dr. Swann: Thank you.
That's all I have.

The Chair: Is there any further discussion on the motion? I will call the question, then. We will read that into the record first for those on the phone to ensure that everyone has a clear understanding.

Ms Rempel: Thank you, Madam Chair. I believe that the final motion as moved by Mr. Clark is that

> the Select Special Ethics and Accountability Committee recommends that the Public Interest Disclosure (Whistleblower Protection) Act be amended so that the gross mismanagement provision in regard to the public sector parallels the current Ontario or federal legislation.

The Chair: All those in favour of the motion, say aye. On the phones? Any opposed? On the phones? That motion is carried.

Moving on to the next motion that was deferred.

Mr. Cyr: I'd like to address the definition, please. Can we read in that I'd like to propose a motion that the Select Special Ethics and Accountability Committee create a definition of gross mismanagement as an act or omission that is deliberate and shows a reckless or wilful disregard for the efficient management of significant government resources. Thank you.

The Chair: Mr. Cyr, looking at the motion, is it . . .

Mr. Cyr: It's significant government resources. I apologize for reading so fast.

The Chair: Is that accurate?

Mr. Cyr: We're good.

The Chair: Okay.

Member Loyola.

Loyola: Yes. Thank you, Madam Chair. I would just like to check with Mr. Hourihan on what he thinks of this definition.

Mr. Hourihan: Well, the test we use in our office, if I can answer it that way, is that we have a couple of other things that we look at when we test it. The facts of the matter are examined to determine whether the acts or omissions are deliberate and exhibit a reckless or wilful disregard for the efficient management of government resources. So everything is word for word what we already do with the exception of the word "significant." I'm just looking at the word "significant" in the motion, and I'm just thinking about how I would look at that if I was challenged on the notion that something is significant. Is it because it looks at significant government resources? I don't know if that particular word is helpful for me.

1:40

Loyola: So then by your comments I am to understand that if we were to take "significant" out, it would be more to your discretion.

Mr. Hourihan: No. I worry that "significant" – I guess I have to determine that the resource is significant.

Loyola: Okay. Let me ask this. How could a ministry or a designated officer or chief officer challenge you on this if we were to keep this in?

Mr. Hourihan: It may be minor, but I guess I question what a significant government resource is. I say that, well, obviously, a person is a significant government resource, but so is a vehicle, I suppose. But is it, you know . . .

Loyola: Well, let me ask this perhaps more clearly. Do you feel that you would be challenged in terms of being able to move forward with an investigation if this were to be left in? I'm hoping to count on your experience.

Mr. Hourihan: No. I mean, I would forge ahead.

Loyola: Okay. Thank you.

Mr. Nielsen: Maybe I'll just simply ask the opposite question, too. If we didn't have this, how would that impact what you currently do?

Mr. Hourihan: It wouldn't because what we also look at is the gravity of the situation. If it's a significant government resource but it's a minor issue, we look more at the issue as compared to the resource specifically. I mean, in terms of the public sector and if we're talking about people here in general, I would make an automatic presumption that a person within the public sector is a significant government resource.

Mr. Nielsen: So with or without this, then . . .

Mr. Hourihan: With or without the word I would – that wouldn't particularly concern me. Like I said, the only word in there that we don't already have in ours is the word "significant."

Mr. Nielsen: But other than that, then, with or without this life goes on for your office.

Mr. Hourihan: It's about word for word with ours, with our process now.

Mr. Cyr: What we're doing, though, is adding clarity to something that has obviously been deemed to be unclear, and we specifically brought forward a recommendation by the Auditor General to bring clarity to this. So he's already doing it. We've got recommendations to bring clarity to it. I don't know why we wouldn't put a definition in it. I believe that it is important that we bring some clarity to the whole issue.

Mr. Dach: I'd actually be in favour of adopting what's already existing in practice in the Public Interest Commissioner's definition by striking and voting down this motion and adopting a motion which encompasses the existing definition.

The Chair: Did you want to make an amendment?

Mr. Dach: Yeah. We could simply amend this motion. That would be fine if it's simpler.

The Chair: So you're making an amendment?

Mr. Dach: Yeah. The amendment would read that

> the Select Special Ethics and Accountability Committee recommend that the definition of gross mismanagement be that which reflects the current definition recently read by the Public Interest Commissioner,

which we can get the wording of, I believe.

Ms Rempel: Mr. Hourihan, would it be accurate if we removed the word "significant"?

Mr. Hourihan: Yes, for all intents and purposes.

Ms Rempel: That would be in line with what you already have?

Mr. Hourihan: The only difference in our definition is that we define it as an act or omission that is deliberate and exhibits a reckless or wilful disregard for the management of government resources. The word "significant" is really the only change, and whether it shows or exhibits is semantic.

The Chair: Mr. Dach, you're happy with the amendment?

Mr. Dach: Happy with that.

The Chair: Okay.

I will open discussion on that, then.

Mr. Hunter: I'm wondering whether or not we could get read into the record exactly what your definition of gross mismanagement is then, the exact wording.

Mr. Hourihan: Absolutely. "The facts of the matter are examined to determine whether the acts or omissions are deliberate and exhibit a reckless or willful disregard for the efficient management of significant government resources."

The Chair: Dr. Turner.

Dr. Turner: Thank you. To Mr. Hourihan. I'm concerned about the definition of resources in this. Is that just human and structural resources?

Mr. Hourihan: In light of the section that it would get added into, then my answer to that would be yes because assets and monies are already covered in either the previous or the subsequent subsection.

Dr. Turner: Right. Thank you.

Mr. Cyr: I'd like to remind the committee that this is gross mismanagement; this isn't just mismanagement. So "significant" is actually important to remain in this phrase because this isn't just every little concern that comes up. It needs to come up with an actual significant impact on government resources before it comes here. I would encourage the committee to vote this amendment down and go with the original, well-thought-out definition put by Nova Scotia. Was it Nova Scotia?

The Chair: Mr. Clark.

Mr. Clark: Yes. I wonder if at the end of the day this really matters one way or the other because it's pretty difficult to have gross mismanagement over three boxes of paper clips, right? By definition that isn't gross mismanagement; it's three boxes of paper clips, and three boxes are not significant government resources. I suppose in some way the words "gross mismanagement" and the word "significant" are somewhat redundant in that you do need to have a significant government resource for it to be gross mismanagement. I don't know. Frankly, I guess I'm agnostic on whether or not we take out "significant." I'm not sure I can imagine a case of gross mismanagement of insignificant government resources. I don't know. I don't know if that overbroadens it or not. Yeah. I'd appreciate other committee members weighing in on that question.

The Chair: Mr. Nielsen.

Mr. Nielsen: Thanks, Madam Chair. Well, I mean, we've certainly been relying, I think, on the commissioner's viewpoints and recommendations, and if he's concerned about that word "significant," then . . .

Mr. Hourihan: You know what? I think I just worry too much, and some things, when we look at these things – I wouldn't want somebody to come in and say, "Well, they're a brand new employee, so they're not significant, not like a manager would be a significant resource," so it's okay to misuse somebody new but maybe not so much somebody more seasoned. I don't want them to focus on the government resource.

In terms of the word "significant," it has to be a significant, deliberate departure and all that. I get that. If that's the case, then I would move the word "significant" to not focus on the resource but to focus on the action or the omission.

Mr. Nielsen: Okay. But without that word you're confident that you can execute this?

Mr. Hourihan: Yes.

The Chair: With that, I will call the question on the amendment. All those in favour of the amendment, say aye. Any opposed? Any on the phones? With that, the amendment is carried.

Back to the amended motion. I will open up discussion on that.

Loyola: Call the question.

The Chair: I will call the question on the amended motion, then. Ms Rempel, would you please read out the amended motion.

Ms Rempel: Thank you, Madam Chair. The motion as amended would read that

> the Select Special Ethics and Accountability Committee recommend that gross mismanagement be defined as an act or omission that is deliberate and shows a reckless or wilful disregard for the management of government resources.

1:50

The Chair: All those in favour of the motion, say aye. Any opposed? On the phones? That is carried.

The next deferred motion. Moved by Mr. Clark that

> the Select Special Ethics and Accountability Committee recommend that the Public Interest Disclosure (Whistleblower Protection) Act be amended to add a provision that provides protection from waiver of solicitor-client privilege in the event that a disclosure is made to the Public Interest Commissioner as part of an investigation.

I believe there are some comments from the LAO.

Ms Dean: Thank you, Madam Chair. There was some discussion about how this issue is handled in other legislation. In terms of other whistle-blower legislation the only example that you will find of a provision that's similar to what is contained in this motion is what's laid out in the federal legislation. In terms of Alberta legislation and other legislation that impacts officers of the Legislature, we could not find an equivalent provision. Bottom line: there is a precedent, or an example, in the federal legislation.

The Chair: With that, I will open discussion. Mr. Clark.

Mr. Clark: Sorry; just to make sure that I heard you correctly, there is an equivalent in the federal legislation?

Ms Dean: That's correct.

Mr. Clark: So it's not unprecedented.

Again, perhaps the commissioner could just speak very briefly about what benefit this would have to investigations and if this has constrained you in the past.

Mr. Hourihan: It's not so much our constraint as it is for the government entity. This just provides the protection back to them to say that if something does get disclosed to us that is of this nature, it does not constitute a waiver of privilege.

The Chair: Is there any further discussion? With that, I will call the question. Oh, Mr. Cyr.

Mr. Cyr: I apologize, Madam Chair. Was this the one that we had issues with before, that was waiving client privilege and you were concerned with that yourself?

The Chair: Mr. Hourihan.

Mr. Hourihan: Yeah. It was discussed before. My notes don't indicate where exactly it left off, other than to say that it was tabled and adjourned for this purpose. We were trying to make sure that we were clear about the notion that it's about protection for the entity that might give information to us, that that does not constitute waiver. There was concern on behalf of the Department of Justice and others, I suppose, that said: well, we don't want to waive any privilege. This provides some clarity to the notion that, no, you're not waiving privilege if something gets disclosed to us. It's not saying that they have to disclose this to us. This is saying that if it does get disclosed to us, they're protected in that regard and that it's not a waiver.

Mr. Cyr: Can I go to legal counsel? Does this say that we are waiving solicitor-client privilege in any way, shape, or form?

Ms Dean: Well, what it means is that if somebody provides information to the commissioner and it would otherwise be caught by solicitor-client privilege – let's say that there is a lawsuit involved with the same matter, and they might want to use that privilege in that different proceeding – this would protect them. This would allow them to exercise that right to say something subject to solicitor-client privilege.

Mr. Cyr: Right. My question is: does this motion that we're bringing forward in no way, shape, or form force them to waive that in any way, shape, or form? I don't see that . . .

Ms Dean: No, no.

Mr. Cyr: . . . but I'm not a lawyer, so whenever we start playing in this area I would really . . .

Ms Dean: What it protects them from is being able to exercise that right to claim privilege in another proceeding at a later date. It doesn't deem the disclosure to the commissioner to be a waiver of their solicitor-client privilege. I appreciate that the language is quite dense and confusing, but it's really for the protection of the persons that are providing something – they're co-operating – but there might be another proceeding at a later date where they might want to exercise that privilege.

Mr. Cyr: Thank you for your clarification.

The Chair: Mr. Nielsen.

Mr. Nielsen: Yeah. Thanks, Madam Chair. I mean, that was the whole, I guess, meat of the discussion we had last time, to ensure that organizations and individuals had access to counsel and could get advice, and in the event of an investigation that information could remain protected, which is what led us to this motion here. You know, we all took it away to make sure we had our i's dotted and our t's crossed, and I think we're safe here.

I'm certainly happy to support this and make sure that, you know, these principles apply equally to governments and protect the interests of their citizens. I think we've got it here.

The Chair: With that, I will call the question on the motion. All those in favour of the motion, say aye. Any opposed? On the phones? That motion is carried.

The next motion. Moved by Mr. Nielsen that

> the Select Special Ethics and Accountability Committee recommend that the Public Interest Disclosure (Whistleblower Protection) Act be amended to allow for the use of the Labour Relations Board to conduct hearings on reprisals and be empowered to call for remedies.

I will just note that we have received a response letter from the Labour Relations Board.

With that, I will open discussion on the motion.

Mr. Cyr: It's good to see that we reached out to the labour board and asked for their thoughts on this. I didn't realize that there was this much involved with moving this over to them. Is there any way we can get research to look into this and come up with the pros and cons? There's so much to this one letter that I would like to see more to this and exactly how the other jurisdictions deal with this as well because they actually have specific examples.

The Chair: Dr. Amato, I believe you have a crossjurisdictional.

Mr. Cyr: Do we have something on whether or not they hand the labour boards – I apologize. There's a lot of reading here.

Dr. Amato: It's page 24 of the crossjurisdictional. The answer is that in several other jurisdictions, amongst them Manitoba, Ontario, New Brunswick, Nova Scotia, and Newfoundland and Labrador, they employ labour relations boards to look into matters of reprisal.

The Chair: Mr. Nielsen.

Mr. Nielsen: Thanks, Madam Chair. That's, of course, why we asked the labour board if they could handle this, and I think their answer was pretty clear: all the infrastructure is in place; the people are in place; the rules, regulations, procedures are all in place. You know, I guess depending on how much work we send them, it might simply come down to the amount of hours they might have to spend. But the expertise is there, so I would certainly recommend that we move forward on this and let them do what they do best.

The Chair: Is there any further discussion on the motion?

With that, I will call the question. All those in favour of the motion, say aye. All those opposed? Any opposed on the phones? That motion is carried.

We should actually speak to having the report drafted. Now that we have exhausted our deliberations on the PIDA legislation, would someone like to make a motion to have a report drafted by the LAO?

Loyola: I so move, Madam Chair.

The Chair: Moved by Member Loyola that

> the Select Special Ethics and Accountability Committee direct research services to draft a report respecting the committee's review of the Public Interest Disclosure (Whistleblower Protection) Act which incorporates the recommendations and motions approved by the committee for consideration at a future meeting.

All those in favour of the motion, say aye. Any opposed? That motion is carried.

We will take a quick 10-minute break.

Thank you so much, Mr. Hourihan, for your availability and your answers and your insight. Thank you.

Mr. Hourihan: Well, thank you. We're available if you need anything else answered.

The Chair: Thank you so much.

[The committee adjourned from 2 p.m. to 2:11 p.m.]

The Chair: All right. I will reconvene this meeting, and we will move on to the Election Finances and Contributions Disclosure Act. Today we have the representatives from Elections Alberta with us. Thank you so much for joining us. They will be able to act as a technical resource during the deliberations on this act. If you could please introduce yourselves for the record.

Mr. Lee: Kevin Lee, director of election finances.

Mr. Westwater: Drew Westwater, Deputy Chief Electoral Officer.

Ms Vance: Fiona Vance, external legal counsel to the office of the Chief Electoral Officer.

The Chair: Wonderful. Thank you for joining us.

Committee members will recall, last meeting, that we passed a motion agreeing to review the issues document, and we will be doing that on a line-by-line basis again, the same as we did with PIDA.

Unless there are any general questions, at this time we will begin our deliberations with item 1(a), including "services" in the definition of contribution. Dr. Amato, would you mind opening up, just giving us a quick briefing on item (a), including "services" in the definition of contribution.

Dr. Amato: Thank you, Madam Chair. This is located on page 3, item 1(a). There are two proposals for the committee's consideration. The first is:

> The EFCDA should be amended to include non-voluntary services in the definition of "contribution."

The second is both a comment and proposal from the Wildrose political association stating that it

> supports recommendation 16 of Elections Alberta, suggesting that the EFCDA should be amended so that the "discounting of services" is considered a "contribution" and "services should be kept to fair value." It "should also include individuals who are given paid time off in order to volunteer for a specific candidate or registered party as illegal contributions from the employer."

The Chair: With that, I will open it up to the floor for discussion.

Mr. Cyr: I was just wondering if the Chief Electoral Officer has any opening comments that he'd like to give.

Mr. Westwater: Madam Chair, through you to the member. Clearly, we're trying to address a situation here on volunteer services. What is the definition of a voluntary service, whether it's a paid voluntary service or nonpaid voluntary service? Are they getting a normal day's pay for volunteering to work on a political campaign, or are they not?

As a result of that, we felt it was necessary to include nonvoluntary services as a contribution to the party. For example, if I ran a telecom company and sent all my employees to work on a political campaign and paid them for the day as volunteers, they wouldn't technically be volunteers because they'd be getting a normal day's pay while they're volunteering for a political organization or campaign. We felt that that was an appropriate definition of nonvoluntary volunteer work.

In addition to that, on the services front, if somebody is providing a service and they're providing it to a political campaign for less than market value, than they normally sell it to their normal clients, we felt that that should be a contribution as well to a political party. For example, if you're a sign maker and you sell signs as a business and you sell them for $10 a square foot or whatever and you offer them to a political party for $5 a square foot, then $5 of that would become a contribution to the party because it's not the market value of that particular product or service that they're providing to the parties.

In that way it provides a level playing field for all those concerned with volunteers and services that are provided to political campaigns.

The Chair: Thank you.

Mr. Cyr: In this last election we did that with rent. We checked what the market rate was and made sure about anything above and beyond. How is it that this has been overlooked? Is rent included in that, or is it just services? Like, what else could be overlooked when we're looking at property, real property or not real property, brought to the party for below market values? I guess the question is: is this a problem that has happened in past elections that we're correcting now, or is this something that just came up recently?

Mr. Westwater: No. It's become more prevalent in recent years in terms of: what's a service and what is not a service and should it be included in the definition? Many other jurisdictions across Canada have now included those services that are not sold at market rates as contributions. We're just following the trend nationally that are best practices in other organizations in making that recommendation.

The Chair: Mr. Sucha.

Mr. Sucha: To research services: what are some of the crossjurisdictional comparisons that you have in regard to services and how other jurisdictions have been handling these situations?

Dr. Amato: This information is on pages 12 and 13 of the crossjurisdictional review. In respect to services, as was just mentioned, Alberta is an outlier. Unlike Alberta, all other jurisdictions in Canada discuss services in their definition of contribution very much along the lines as has just been stated.

Mr. Sucha: Excellent.

Then to the office of the CEO: what ultimate changes are you suggesting for the committee?

Mr. Westwater: Through you, Madam Chair, to the member, just changing the definition to include those services as contributions to the party and that they would have to be included and reported in their financial statements at the end of each electoral event.

The Chair: I'm just going to go to Dr. Swann.

Dr. Swann: I'm just confirming that these are tax deductible contributions, then.

Mr. Westwater: Through you, Madam Chair, yes, that's correct. You'd issue tax receipts as you would for any other contribution you receive. That's correct.

Dr. Swann: Thank you.

Mr. Cyr: I think this is pretty cut and dried. I'd like to just propose a motion.

The Chair: Go ahead.

Mr. Cyr: That the Select Special Ethics and Accountability Committee recommend that the Election Finances and Contributions Disclosure Act be amended so that discounting of services be considered a contribution and services should be kept to a fair value.

The Chair: We'll just wait for a little bit of wordsmithing there. Just hang on. Mr. Cyr, does that reflect your motion?

Mr. Cyr: Yes, it does.

The Chair: Okay. I'll just get that read out again for those on the phone.

Ms Rempel: Thank you, Madam Chair. Moved by Mr. Cyr that the Select Special Ethics and Accountability Committee recommend that the Election Finances and Contributions Disclosure Act be amended so that discounting of services be considered a contribution and services should be kept to a fair value.

The Chair: With that, I will open up for discussion.

Mr. Sucha: Back to the office of the CEO: does this align with what you're ultimately looking to achieve?

2:20

Mr. Westwater: Through you, Madam Chair, yes. This addresses the services portion of it that are nonmarket value. In terms of nonvoluntary services that are provided, that could be added to it to address the volunteer issue.

Mr. Cyr: That'll be the next motion.

The Chair: Further discussion on the motion?

Mr. Coolahan: I just wanted to be clear. You were saying that you could actually have a volunteer, a paid volunteer, but that would just go towards your total of your campaign finances?

Mr. Westwater: Madam Chair, if I understand the question correctly, yes. It would be a contribution on behalf of that volunteer. You know, the paid amount would be a contribution, and they'd receive a receipt for that.

Mr. Coolahan: Okay. Thank you.

Mr. Sucha: I have a question with regard to the wording because with discounting – and this just comes from experience of sort of doing some of the financing within campaigns. There is wholesale purchasing. A case in point, for example, through you, Chair, is that if you buy 10 signs, you pay 50 bucks per sign. If you buy 20 signs, you get a discount because you buy more. Because you buy larger quantities, you get sales in regard to that. Could this in theory nullify some of those concepts because it is in theory some discounting? However, it is the market that dictates what these look like.

The Chair: Mr. Westwater, do you have any feedback on that?

Mr. Westwater: Yes. If that's the normal market practice and play that's going on based on volumes, that you get discounted rates for any service that's provided by anyone, that wouldn't be covered by this. That would be fine.

Mr. Hunter: Madam Chair, I would say that at the end there it says "to a fair value." You know, a fair value, if you're buying wholesale, is still a fair value, so I think that addresses that issue.

The Chair: Mr. Clark.

Mr. Clark: Thank you. Again, I just want to seek a little more clarity on the distinction between what services under subsection 1(e) do and do not include. They do not include things like lawyers, accountants, et cetera. They do include value of services provided free of charge by a self-employed individual who normally charges for them. I can think of several examples where there's perhaps a distinction without a difference. I don't know. Someone who ordinarily makes their money in health and safety puts a Band-Aid on the knee of someone who scrapes their knee in the campaign. I mean, that's a bit of an odd example, but, you know, somebody who normally does public engagement professionally and is volunteering their time to a campaign or someone who ordinarily is paid to drive a bus but as a friend of the Minister of Transportation decides to volunteer to drive a bus on his campaign because he feels strongly about the values of that person and that party: those seem to be things that I wonder about. Would that be captured under the self-employed individual who normally charges for it? It's interesting. Lawyers and accountants are fine, but those examples and others are not. I just wonder. Do we get into some grey areas there in terms of that definition? How challenging is that?

The Chair: Mr. Westwater.

Mr. Westwater: Through you, Madam Chair, to the member, yeah. To help you with that somewhat, the exceptions that we've listed in our recommendations are for those who are performing tasks as are required by the election finances act. You need an auditor, you need a chartered accountant, you need a chief financial officer, services the candidate or leadership contestant provides. Those are requirements under the act, so those wouldn't be contributions to the party. They wouldn't be included in that.

For a person volunteering to drive the bus who's normally a bus driver, if they're not getting paid to do it, that's volunteer service, and they can volunteer to drive your bus for you. They're licensed to do so, and that wouldn't be a contribution.

I hope that clarifies it somewhat for you.

The Chair: Mr. Clark.

Mr. Clark: Thank you, Madam Chair. That is helpful. The definition of volunteer, then, is fairly broad. I guess I'm wondering. Someone, perhaps, like a web designer, then, someone who designs websites for a living but has decided to volunteer their time to do that, perhaps they're even incorporated: can that be something that's considered voluntary, or is that a disallowed contribution because they are incorporated and corporate donations are not allowed? I'm curious about how that sort of thing would be handled.

Mr. Westwater: Perhaps I could defer to Ms Vance on this for a definition of professional services that are provided that normally would be paid for that they're not getting paid for, I guess. Would that be a contribution?

Ms Vance: Yes, I think it would be. You have to consider that we could, you know, parse out all the possibilities, but what these legislations would be looking for is a definition. Then as circumstances arise, you would figure out what would fall under the definition. So we start with principles, right? If it's a professional service versus a nonprofessional service, at some point it's quantified, and everybody is playing the same game. I think that is the hope here. I think that behind some of these proposals is a desire for greater accountability and transparency across the board in what's going on in people's campaigns. I don't know if that helps you.

Mr. Sucha: Madam Chair, I really want to investigate this one and look into it a little bit more thoroughly myself. I think Mr. Clark brings some great points. You know, if I hired someone from a temp

agency to be my campaign manager and they happen to have experience in web design, I may be getting web design experience or web design work done at a discount, theoretically. I wouldn't mind spending some time really thinking this over, so I'd like to move that we

adjourn debate on this motion.

The Chair: All those in favour of adjourning debate, say aye. Any opposed? We are adjourning debate on that motion.

I guess, are there any further motions?

Loyola: Sorry, Madam Chair. I do believe that you put carried, and we didn't carry it. We adjourned debate.

Mr. Sucha: I thought it was just a motion to adjourn debate.

Loyola: Oh. A motion to adjourn debate. Okay. Sorry. Pardon me. I didn't see what was higher up. I was like: what? What's going on here? Sorry.

The Chair: Mr. Cyr. Go ahead.

Mr. Cyr: Yes. I'd like to propose a motion that the Select Special Ethics and Accountability Committee recommend that the Election Finances and Contributions Disclosure Act be amended so that individuals who are given paid time off in order to volunteer for a specific candidate or registered party be classified as an illegal contribution from the employer.

The Chair: I'm just going to ensure that this reflects what you are saying. Mr. Cyr, does that reflect your motion?

Mr. Cyr: Yes, it does.

The Chair: Ms Rempel, would you mind reading that for the record?

Ms Rempel: Thank you, Madam Chair. Moved by Mr. Cyr that

> the Select Special Ethics and Accountability Committee recommend that the Election Finances and Contributions Disclosure Act be amended so that individuals who are given paid time off in order to volunteer for a specific candidate or registered party be classified as an illegal contribution from the employer.

The Chair: Discussion on the motion? Mr. Clark.

Mr. Clark: I just wonder if the words "from the employer" are overly specific or necessary. I'm just curious if that makes it overnarrow and perhaps adds a loophole. Could we just end it after the words "as an illegal contribution," period, generalized that that would be an illegal contribution irrespective of the source?

Mr. Cyr: I'd be okay with removing that. Can I just remove it?

Mr. Clark: I think I have to amend it. I will move an amendment, if I may, or can we just take it out? If we can just take it out, let's do it. If Mr. Cyr is okay with that, that's great by me.

The Chair: Are we still composing, Mr. Cyr?

Mr. Cyr: That is exactly what I wanted to say. I'm still composing.

The Chair: Mr. Nielsen, please.

2:30

Mr. Nielsen: Just a point of clarification. Would this then include – I don't know – somebody taking vacation time from their place of work to then go work on a campaign?

Mr. Westwater: Well, how you interpret the motion: the mover of the motion can interpret what the intent was there. Clearly, if an employee is on vacation time and they choose to use their vacation time to volunteer as part of the political process, I wouldn't see that as a contribution, no.

Mr. Cyr: My intent was never to limit people's vacation time. The fact is that if the company directs you to go out and campaign and then requires you to use your vacation time, I would argue, that's a different animal altogether. But that was never my intent, to limit vacation time.

Mr. Nielsen: Well, I'm certainly willing to explore this. I think that, much like the motion we just adjourned, I'd like some time to go research this a little bit, so I'm going to move to

adjourn debate on this.

The Chair: All those in favour of adjourning debate on the motion say aye. Any opposed? We have adjourned debate on that motion.

Are there any further motions for that item?

Moving on to contribution limits, item (b). Dr. Amato, would you mind giving us some background on that?

Dr. Amato: Sure. The issue is item (b), contribution limits, and there are a number of proposals listed here, that are on two pages, both page 4 and page 5. I'll begin to just list them.

The first is:

- The Committee should consider reviewing the contribution limits set out in the EFCDA.

So it's a general recommendation.

The second is:

- The EFCDA should be amended so that the contribution limit is $4,000 per calendar year (and $8,000 during an election campaign, less any other amount made in that calendar year) by individuals ordinarily residing in Alberta, to a registered provincial political party.
- The EFCDA should be amended so that the donation limit is set at $5,000 during a non-writ period and a further $5,000 during a writ. The donation limit should be indexed to inflation.

Another recommendation states:

- The EFCDA should be amended so that contribution limits are similar to those set at the federal level and corrected for inflation . . .

It is added to that recommendation:

> . . . In his presentation to the Committee, Mr. Hamilton made a similar proposal and suggested that a slightly higher limit may be appropriate if correlated to "empirical information about the Alberta contributor." He also suggests that the limit should never rise above $2,000. In its presentation to the Committee, Public Interest Alberta also suggested that "the everyday citizen needs to be able to afford" the limit.

Another proposal is:

- The EFCDA should be amended to lower the contribution limit to at most the Manitoba limit of $3,000, and ideally to the federal limit of $1,500.

Still another proposal is:

- If the contribution limit is made consistent with those set at the federal level, then this should be combined "with some form of public 'per vote' campaign financing as a top up mechanism." Allowing for twice the normal donation limit during campaign years should be also be ended.

Still another proposal is:

- The EFCDA should be amended so that contributions by a person ordinarily resident in Alberta do not exceed "(a) in any year (i) $5,000 to each registered party, and (ii) $1,000

> to any registered constituency association, and $3,000 in the aggregate to the registered constituency associations of each registered party; and (b) in any campaign period, $10,000 to each registered party less any amount contributed to the party in that calendar year under clause (a)(i) and (ii) . . .

And finally in that proposal is:

> . . . (c) $1,500 to any registered candidate, and $4,500 in the aggregate to the registered candidates of each registered party." The donation limits should be indexed to inflation.

Still another proposal is:

- The EFCDA should be amended to lower the maximum contribution permitted by a person ordinarily resident in Alberta set by the Act.

The second-last proposal is:

- The EFCDA should be amended so that all contributions are "limited to what an Alberta resident earning the median provincial income would be comfortable with."

And finally:

- The EFCDA should be amended so that cash donation limits are consistent with those in place at the federal level . . .

The Chair: With that, I will open up for discussion any of the recommendations. Mr. Nielsen.

Mr. Nielsen: Thanks, Madam Chair. I mean, certainly, when this committee was formed, the whole intent was to sort of revise how we seem to be doing things out here in the wild, wild west. I think that some of these submissions are pretty much dead-on, and I'm sort of willing to kind of jump right in here to maybe try and put something that's sort of right in between all of them. I'll just outright go ahead and propose a motion, Madam Chair, if I may.

The Chair: Please go ahead.

Mr. Nielsen: I propose that

> the Select Special Ethics and Accountability Committee recommend that the Election Finances and Contributions Disclosure Act reduce contribution limits to $4,000 per calendar year and be indexed to inflation with no variation during the campaign period.

The Chair: What was the end of that?

Mr. Nielsen: During the campaign period.

The Chair: We'll just ensure that that reads as you're intending, Mr. Nielsen.

Ms Dean: Madam Chair, may I just ask a question about the intent? By "no variation during the campaign period," do you mean that there's no ability to receive additional contributions during the campaign period?

Mr. Nielsen: In other words, no doubling up, as we have right now.

Ms Dean: Okay.

The Chair: So that reads as you're intending?

Mr. Nielsen: I think it is. Let the discussion begin.

The Chair: I'll just get Ms Rempel to read it into the record for those on the phone first.

Ms Rempel: Thank you, Madam Chair. Moved by Mr. Nielsen that the Select Special Ethics and Accountability Committee recommend that the Election Finances and Contributions Disclosure Act reduce the contribution limit to $4,000 per calendar year and be indexed to inflation with no variation during the campaign period.

The Chair: With that, I will open up discussion. Anyone on the phones?

Mr. Cyr: Well, this is an interesting thing. We've always had the matching when it comes to campaign periods, so I'm just curious of the thoughts on why the member has chosen to do "no variation" when this has been the common practice. I'd also like to hear: is this a common practice across the rest of the provinces inside of Canada, that there's no variation, or are we leading the charge on this?

The Chair: I'll recognize Mr. Nielsen first.

Mr. Nielsen: Thank you, Madam Chair. The whole point of this is so that regular, everyday Albertans are the ones that are involved in this and are the only ones involved in this. I guess I didn't want to sort of start beating the bottom of the barrel here either. Based on the submissions, I thought that the $4,000 per calendar year is sufficiently sort of taking that big money out of politics, which is what our committee was tasked to do. I think that by doubling up during the campaign period, it's still allowing for that to some degree. There's kind of my reasoning behind starting there.

2:40

The Chair: Dr. Amato, you have some comments from the crossjurisdictional?

Dr. Amato: Sorry. I'm just making sure that I have this right. It appears that the contribution limits are doubled only in the jurisdiction of Quebec, where the contribution limit is $100. So during an election year that's $200.

Mr. Hunter: I just wanted to address the issue, Mr. Nielsen, that, you know, most people are not really politically engaged unless it's an election year. I get your argument, and I actually agree with the majority of what you're saying there other than the variation during the campaign period because if we want to be able to have people engaged in politics – it would be great if they were engaged all four years, but most people aren't engaged unless it's during the writ period. So I'm just not sure how this would actually address that issue.

Mr. Sucha: I don't want to speak for any of the other committee members. I don't know about your friends, but I don't have any friends who have more than $4,000 who would be donating. I think it's incumbent on us that we ensure that everyday Albertans and all Albertans can participate appropriately. I think that when you start getting past that $4,000 mark, you're hitting a niche, and you're potentially having some influence that shouldn't be going your way. You know, I thought long and hard over this one thing. We talked about it during the legislative session as well, especially with Bill 1, when issues like this came up from many other members. I think that this is a very fair compromise with what we have seen from all the other submissions as well.

The Chair: Mr. Nielsen, did you have your hand up?

Mr. Nielsen: Yes, I did. Thanks, Madam Chair. I guess, to address the comment that people aren't engaged now: well, based on the rules we have – we have almost limitless ability to donate here – we can double up right now, and we're not getting engagement. Just because we take that away, I don't think it's going to dissuade them any less. If anything, like I said, we're taking the money out. If

you're only in it for the money, I think that you might have some other struggles than just simply being engaged.

The Chair: Is there anyone on the phone that would like to be added to the speakers list?

Mr. Cyr: With some of the past legislation that we've gone down this road with – say, union and corporate donations – they had brought this in as soon as the legislation was tabled. Is this your intent as well, that this fall we're going to be dropping this down significantly, or is this something that we're going to make retroactive? Is there a plan? I'm just curious what your intent is.

Mr. Nielsen: Well, we're simply the committee here. I don't think that we can dictate when something might be brought in or if it will or if it won't. We can simply make that recommendation and see what timelines come of it from that point.

The Chair: Mr. Clark.

Mr. Clark: Thank you. I'm sitting listening to the debate, and I'm reflecting on this. I think that dropping it down to $4,000 makes a lot of sense. That's a roughly 75 per cent drop from the $15,000 currently, and I do think that that's appropriate. Knowing human nature, however – and maybe the double during a campaign period is too much, you know, but I guess I worry a little bit about parties' abilities to adequately fund a general election campaign. I think that when it was $15,000 and then doubled during a campaign and included corporate and union, there's no question that that was a remarkable amount of money. Certain parties that are no longer government had a tremendous advantage for a very long time as a result of that. I actually don't foresee that being a challenge in the future. You know, any government that would be influenced by an additional $4,000 from an individual isn't going to be government very long. You know, it's a lot of money. It's absolutely a lot of money.

I guess, what I would maybe, frankly, appreciate – and I don't want to move to adjourn right at the moment. I'd appreciate the committee's thoughts on if we could take this away and give some thought to even doing some back of the cocktail napkin kind of calculations on what this actually means. I know some of the presenters have given us some data points that we may be able to use in that, but I guess I want to be careful that we don't go too far too fast, the unintended consequence being that, frankly, democracy suffers. There's a fine line there.

You know, I absolutely agree and voted enthusiastically in favour of getting rid of corporate and union donations – it was a very appropriate Bill 1 – and I do want to see a reduction of influence of money in politics, the flip side being that each party should have the resources it needs to communicate with Albertans. You know, I would really hate to see that parties could no longer travel to all corners of this province, this very large province, to actually engage with Albertans in person. There are times that probably you need to fly somewhere, and if you don't have the resources to do it, is that really in the service of democracy?

You know, again, the election period: whether we like it or not, I'm sure we've all gone through that fundraising process. The last minute matters, and people will step up and participate during a campaign either in a way they didn't beforehand, or it's something, I think, that parties can budget for.

Obviously, you can see which way I'm leaning. I would be inclined to see that we have some increase during the campaign period. If it's not a double, maybe it's a 1.5 or something. But I'd love to make this decision based on some empirical evidence as opposed to kind of a gut feeling from all of us. I won't make the motion to adjourn yet – I think there's more discussion to be had here around the table – but those are my initial thoughts, anyway.

The Chair: Member Loyola.

Loyola: Thank you, Madam Chair. I think it's very important that we focus on the overall objective of trying to improve the democratic process and to take big money out of democracy. That's what this is all about at the end of the day.

To the points that MLA Clark is bringing up, I think that it's our responsibility as candidates, as a party to get out there and rustle the bushes and find the support, and when you take big money out of politics, that means that you've got to get out there and you've got to find more people that are going to support you. Those people, yes, are going to be giving smaller contributions than in the past, but that's what you're going to have to go out there and do. If you have the public on your side, then you will have the contributions. By lowering the contribution amount, we're making sure that it's one person, one vote. They're providing the donation within the limit that the government sets so that we can truly enhance democracy and it truly reflects the will of Albertans and the political parties that they represent.

Mr. Cyr: I couldn't agree more with Mr. Loyola. I would like to do an amendment. I would like to

> change the number from $4,000 down to $2,300.

I would also in this amendment like to say that

> it doubles during a campaign period,

which will achieve exactly what you're looking for.

The Chair: We're just getting it up on the screen here. Just a moment.

2:50

Mr. Nixon: Madam Chair, I'd like to be on the speakers list once it's up.

The Chair: Thank you.

Mr. Cyr, does this reflect your amendment?

Mr. Cyr: Yes, it does.

The Chair: Okay.

Ms Rempel, I'll just get you to read out the amendment.

Ms Rempel: Thank you, Madam Chair. Moved by Mr. Cyr that

> the motion be amended to change "$4,000" to "$2,300" and that "no variation during the campaign period" be changed to "doubling during the campaign period."

The Chair: I will open up discussion on the amendment to Mr. Sucha.

Mr. Sucha: Yeah. I'm very intrigued by this one. It's quite interesting to see. The one thing that I was going to talk to the committee about and say that we have to also be very cognizant about – and this could be something that gets dictated by polls adjusting and things like that when it looks like there's a clear front-runner – is that we have, theoretically, fixed election dates, so if an election is called in the timeline between March and May and we were to double up the contribution limits from the original one to $4,000, that means that in December if some person realizes that there's a clear front-runner and they want to try to influence that political party, they could donate up to $12,000 within a span of six months. It's something that I'm very cognizant of.

Dr. Swann: I didn't understand your math.

Mr. Sucha: Because we work on the calendar year of contributions – right? – in December you determine that there's a front-runner, so you can donate $4,000 to the party. Then you reset in January, and you donate another $4,000. Then you can do an additional $4,000 during a campaign period if you were to double up in campaign periods. So over a six-month span, in theory, you could donate $12,000.

Mr. Cyr: Not according to my amendment.

Mr. Sucha: Not according to your amendment, no.

I'm interested to see kind of what the feelings are around the amendment as well because I'm quite intrigued by what I'm seeing here.

The Chair: Mr. Nixon.

Mr. Nixon: Yeah. Thank you. A couple of things. I support my colleague Mr. Cyr's motion. First, it stressed the doubling. Let's be clear. The reason the doubling was in there was to allow somebody the ability to donate to a candidate who was running for MLA as well as to donate to the party, to spread things out so they could support a candidate but also support their particular party. I think that's still a fair thing to keep in place for that reason.

The $4,000 number: I'm surprised that the NDP is bringing it forward given that every expert that spoke to this committee suggested significantly lower. I think that for most people that I talked to, a $4,000 donation is still quite a high number. You know, I've heard some indications from members of the committee today that the reason that they would like to push for $4,000 is to make it available to everyday Albertans. I think that most Albertans I'm talking to right now would think $4,000 is pretty ridiculous.

The Chair: Mr. Westwater, you had some clarification.

Mr. Westwater: Thank you, Madam Chair. Just to clarify for the committee, when you're discussing and debating this to understand clearly the intent of the motion that's before you and the amendment, are you intending that the $4,000 be a total combined for party, candidate, CAs? Currently in the legislation there are individual limits for each, and I wanted to know and understand: within this proposal, is that a combined total for parties, candidates, and CAs throughout the election period? Just so you're aware of that distinction, that's currently in the legislation.

The Chair: Sorry. Are you being added to the list, Mr. Cyr?

Mr. Cyr: Everybody was looking at me. I apologize. You can add me to the list, please.

The Chair: Okay. Thanks.

I'm trying to keep the speakers list here, and I'm trying to find out if Mr. Nielsen was still on the speakers list.

Mr. Nielsen: Yes.

The Chair: Okay. So you are next, and then it'll be Mr. Cyr.

Mr. Nielsen: Thank you. I guess I'm kind of backtracking here a bit, Chair. If I remember right from the crossjurisdictional, the only location that does the doubling in the election period was Quebec. No other jurisdiction does that.

The Chair: Is that correct, Dr. Amato?

Dr. Amato: That is correct. Not every jurisdiction has contribution limits, right? That's important to remember. But of the jurisdictions that have contribution limits, only Quebec does the doubling.

Mr. Nielsen: Okay. So right now we only have one jurisdiction doing the doubling and then us as well.

Dr. Amato: Us as one and, once again, several jurisdictions, including B.C. and Saskatchewan, which have no contribution limits whatsoever.

Mr. Nielsen: Right. Okay. I think that by setting those limits a little bit lower, we're achieving getting the money out by not doubling. I think that's setting us apart as the leaders in this. Again, you know, campaigns or political process are not about money. As Member Loyola said, we've got to get out there, we've got to beat the bushes, we've got to talk to the people, we've got to get them engaged. No amount of money is going to change that unless you're out there talking to them.

I mean, I'm certainly willing to go away and look at this, like Mr. Clark said, do some math on a napkin, and see what we come up with, so I'm certainly willing to look at adjourning.

Mr. Cyr: As was mentioned before, the intent is to make sure that you can give to your candidate as well as your party. I do believe that the total that I would have gone for between the two would have been $4,600, but again I'm open to the committee. I do believe, though, that $4,000 during a calendar year is a little high, and all of the speakers that have come before us have also said that it was too high, so I'm not sure where, I guess, $4,000 came from. I understand that this is why we're here, to debate this. I would hope that you would support my amendment. But if you need to adjourn another one of my amendments, I guess we can move that forward.

The Chair: Mr. Clark.

Mr. Clark: Thank you, Madam Chair. Yeah. I mean, I actually agree with Member Loyola that the campaigns are certainly not just about money. I think this most recent election told us everything we need to know about that.

But having said that, I think it is important to remember that of the 13 jurisdictions in Canada, if we include the territories, five of those jurisdictions have no limits at all, so that isn't completely accurate, to say that there's only one. It is technically accurate that only one jurisdiction in Canada beyond Alberta has a doubling, that being Quebec. Five jurisdictions have no limits whatsoever, so I think that's important to know.

To talk a bit about the doubling idea in concept, although we do have a fixed election law in this province, again we've seen that that can be changed, can't it? Ultimately, it's a showpiece, and it doesn't really matter that we technically do. While we can use our moral suasion to hope that our friendly government doesn't call a snap election on us, they could.

I guess I worry that there's some temptation. Again, coming back to the 2015 campaign, part of the reason that that election was called so quickly was that other parties were presumed to be not on a strong financial footing, and the governing party was seen as having every possible advantage. Again, we know how that turned out, but I think that that's part of that temptation. I think some of the rationale for the doubling, irrespective of if it's $2,300 or $4,000, whatever those numbers ultimately turn out to be, or some other number entirely – I think there's a case to be made that the double during a campaign period is a reasonable accommodation for the risk of the government calling a snap election, for other parties to

be able to have at least a fighting chance to contest that election with reasonable resources.

3:00

Again, I think it's important that we're mindful of the influence of money on politics, but all the money in the world doesn't sustain a 43-year dynasty, apparently. So I think that while, yes, it has some influence, I just can't see that even at $4,000 or $5,000 that's going to buy influence in the same way that we see in the United States with the massive amounts of money.

Just leaving aside the actual limits, I think that the doubling is an important concept to protect against a snap election problem.

Sorry. While I have the floor, Madam Chair, very briefly, I think that we need to clarify here if we're talking about donations to parties, which I believe we are although it doesn't say that. Then, I'll be interested in knowing what limits would be proposed for constituency candidate leadership contests as well, if this is in fact the same number or if there are different numbers for constituency associations' candidates and leaders.

The Chair: Mr. Sucha.

Mr. Sucha: Yeah. Aren't candidates on the list down the line?

The Chair: Yes. You're talking about leadership candidates?

Mr. Sucha: Yes.

It's also interesting to note that a lot of provinces right now are actually having the same conversation we are. It's quite polarizing in Ontario, too, from what I've been reading up on in regard to the contribution limits there. I think that we have to really stay true to the trend of the world that we're living in.

One thing that I'm curious about, just having read over the previous submissions – and hopefully some of my Wildrose colleagues could elaborate on this – is that the original proposal from the party was $5,000. What was the change in heart in regard to that?

Mr. Cyr: Well, when it comes to contributions, this is obviously a contentious debate, and having weighed in on the advisers, or the speakers, that had come in, I would say that what we really need to do is debate this. A lot of times what it is is that you need to start somewhere, and I'm sure that's where this $4,000 number came from, just like ours. I guess the question is that if after this thorough debate you come away raising it up, well, then I guess you were convinced that the original $4,000 was that number. I myself came up with $2,300 because it already fits our contribution limits. I'm open. I think that this debate is thought provoking, and I do believe that I look forward to hearing more from the government on my amendment.

The Chair: Member Loyola.

Loyola: Yes. Thank you, Madam Chair. It's obvious that there are a number of questions that I feel that we don't have the answer for and perhaps are not prepared to move on, the questions that Mr. Westwater has brought up as well as MLA Clark in terms of wanting to do some of the calculations. I would move that we adjourn debate on this at the moment.

The Chair: All in favour of adjourning debate, say aye. Any opposed? On the phones? We have adjourned debate on that motion.

Are there any further recommendations to this section?

Mr. Cyr: This is something that during the last set of debates on bringing in Bill 1 I put a lot of thought into already. I'd like to put forward three different motions on this one.

The Chair: We will start with one. Go ahead.

Mr. Cyr: We will? Fair enough. That the Select Special Ethics and Accountability Committee recommend that the Election Finances and Contributions Disclosure Act be amended so that only financial institutions can make loans.

The Chair: Mr. Cyr, you're actually jumping ahead. We are still on contribution limits. You're jumping ahead to section 3.

Mr. Cyr: I apologize. Apparently I really want that one.

The Chair: Would you like to withdraw it at this time?

Mr. Cyr: You bet I would.

The Chair: Are there any objections to Mr. Cyr withdrawing that motion? Seeing none, that is withdrawn.

So there are no more motions on that section currently, contribution limits?

Mr. Cyr: Is this the (c) one, or are we going back to (b)?

The Chair: No, (b).

Mr. Cyr: I'm good there.

The Chair: Okay. So from (b) to subsection (c), contributions to leadership contests. Dr. Amato, would you like to give some background on that?

Dr. Amato: Certainly. There are five proposals for consideration here. The first is that the EFCDA should be amended so that a contribution limit of $4,000 is applied to individual contributions to leadership campaigns within registered Alberta political parties.

The second proposal is that the EFCDA should be amended to govern contribution limits and spending limits during leadership contests. Consideration should be given to using other jurisdictions as models for Alberta.

The third is that the EFCDA should be amended so that leadership contests are subject to the same yearly limit as other contributions to political parties. Elections Alberta should have oversight over these contributions. Consideration should be given to adopting the federal rules in Alberta.

Fourth, consideration should be given to the expenses that are needed before registration for a leadership contest such as for travelling the province to get signatures.

Finally, consideration should be given to preventing individuals from getting around the maximum contribution limit during a leadership contest.

The Chair: With that, I will open up to any recommendations. Mr. Clark.

Mr. Clark: Thank you very much, Madam Chair. I think that this one likely will pivot on whatever we decide for the total party limit. Given that it is currently the same limit, if I'm not mistaken, as an annual donation to the party – I don't believe it's doubled; it's just the $15,000. Am I correct about that, or it is the double?

Mr. Westwater: No limits today, currently.

Mr. Clark: There's no limit to the leadership contest?

Mr. Westwater: No.

Mr. Clark: Well, there should be. My goodness.

An Hon. Member: Only you when you were running.

Mr. Clark: I was the first one to run under the new rules. That's right.

For the sake of simplicity I would like to make a motion that the act be amended so that a contribution limit to leadership contests is the same as the maximum annual allowable limit for party contributions. Whatever that turns out to be, that last part.

The Chair: We'll just wait for it to go up, and then I think there are just a couple of words that need to be adjusted.

Ms Rempel, would you mind reading that out for the record to ensure that it's accurate?

3:10

Ms Rempel: Sure. Moved by Mr. Clark that the Select Special Ethics and Accountability Committee recommend that the Election Finances and Contributions Disclosure Act be amended so that the contribution to leadership contests is the same as the annual maximum allowable limit for party contributions.

Mr. Clark: My rationale here is in the hope that perhaps we can pass a motion here today, this afternoon, without adjourning. I live forever in hope. I think in all sincerity that whatever the limit is that we decide upon for party annual contributions, it seems like a leadership contest limit should be the same. That seems reasonable to me. I'm open for discussion from the committee.

The Chair: Mr. Nielsen.

Mr. Nielsen: Well, thanks, Madam Chair. I must say that it's a pretty good motion. I mean, I certainly have ideas, of course, with the individual donations, party donations, leadership donations, and whatnot. I'm certainly willing to support this and see what we can come up with in the other section, which will obviously transfer over to this one.

The Chair: Any further discussion on the motion?

Mr. Dach: Just a friendly wording amendment. I'm looking at the wording where after the word "contribution" "limits" might be added, so the contribution limits to leadership contests "be" the same rather than "is" the same as the annual maximum allowable limits for contributions to parties. Just to clean the language up a little bit, "be" instead of "is."

The Chair: Mr. Clark, are you all right with that wordsmithing?

Mr. Clark: Yep. I'm fine.

The Chair: Can maybe someone start from the beginning for our transcriber?

Mr. Nielsen: You know, it's amazing what you start to think of once you start thinking about it. Just with regard to the period that a candidate potentially announces that they're going to be running for the leadership, if I could maybe make an amendment to this.

The Chair: Go ahead.

Mr. Nielsen: I think it would be after "party contributions": and these limits should apply from the time the candidate announces or the campaign period officially begins, whichever comes first. I could speak to the rationale.

The Chair: Does the amendment look right?

Mr. Nielsen: Yes.

The Chair: Okay. I'm just going to get Ms Rempel to read it for the record first for those on the phones before you speak to it.

Ms Rempel: Thank you, Madam Chair. Mr. Nielsen has moved an amendment to the motion such that

after "party contributions" he would add: these limits should apply from the time the candidate announces or the campaign period officially begins, whichever comes first.

Mr. Nielsen: Basically the rationale over this is that otherwise you could potentially have a candidate for leadership announcing six, nine, a year out with carte blanche to fund raise. I think we need to rein that in a little bit.

Mr. Hunter: Maybe legal counsel or the CEO could let us know, but isn't it already illegal for them to do that before the official start of a leadership?

The Chair: Mr. Westwater.

Mr. Westwater: Thank you, Madam Chair and through you to the member. Yeah. Clearly, in the leadership contest currently a candidate cannot raise or spend money until the campaign has been announced and shared with the CEO by the CFO of the party that's conducting the leadership campaign, so a candidate can't announce officially until the campaign has been announced. It's sort of a cat-and-dog thing. They can't raise money prior to the CFO announcing and advising the Chief Electoral Officer that there is a leadership campaign and the date that it starts and the date that it ends.

Dr. Turner: Through you, Chair, to Mr. Westwater: is there currently a limit on third-party support of leadership campaigns?

As a second question, referring back to a previous discussion, the limits that we're talking about: are they in addition to a registered party, to a candidate, and to a constituency association?

Mr. Westwater: Through you, Madam Chair, to the member. Two parts to the question. There are no restrictions currently in the legislation on funding for leadership campaigns by third parties or anyone else. The leadership contest contributions are separate from the party maximums and the contributions to candidates and the CAs during an annual period. So they are separate from the other leadership.

Dr. Turner: As a supplemental I'd just ask your opinion on whether or not you think we should add in a prohibition of third-party support for leadership candidates.

Mr. Westwater: That's certainly up to the committee to decide. That's your choice as to who can fund them and who cannot fund them and how they would be monitored and regulated. Currently the third parties are regulated for the election but not for leadership campaigns. If you wanted to add them, that's at the discretion of this committee.

Certainly, also, in terms of the member's motion we would like to clarify that that's for contests in whole or for leadership contestants. So the $4,000, or whatever the dollar amount would be, would be for the entire contest, whether there are six candidates or

two candidates or 10 candidates, just to clarify so we understand how that's working.

The Chair: Thanks. I just want to ensure that we're speaking to the amendment that we have here.

Mr. Clark.

Mr. Clark: Yeah. I mean, there's some other discussion, other points, recommendations made later on in the document that are specifically attached to this. There's a bit of a catch-22 in the way it's currently worded, that you can't raise money before you're officially a candidate and you need to travel the province to gather signatures. To even raise money to provide a deposit to the party is potentially a catch-22. I imagine we will address that issue in a separate motion. The principle of this I absolutely support because I just, you know, can't image the chaos that would be wrought in this province if there was someone who is announcing their intention to run for leadership of a party being funded by third parties and is not being within the bounds of the leadership rules. In all seriousness I do think this is an important issue that we address, so I certainly support this amendment.

The Chair: I'm going to call the question on this. All those in favour of the amendment, say aye. Any opposed? Carried.

We are back to the amended motion, and we'll open up discussion on the amended motion.

Mr. Hunter: Madam Chair, I don't know if I can go back to this, but the amendment that was just passed is actually illegal to do. It says, "whichever comes first." A leadership contender can't actually raise money, so I'm not sure what the amendment actually achieves.

Ms Dean: I'll ask Mr. Westwater to step in. We're discussing proposed changes to legislation, so this is part of the consideration of the committee about whether that piece of the legislation should change.

The Chair: Mr. Westwater.

3:20

Mr. Westwater: Thank you, Madam Chair. You know, I concur with Ms Dean. Certainly, if you choose to allow candidates for leadership of a party to start campaigning next week for a leadership convention that's going to be in three years and raise funds for it, that's at the discretion of this committee. Currently the law does not allow that. You're not allowed to raise funds as a leadership contestant until the party announces through their CFO that there's a leadership contest and they file those papers with the CEO's office. That's the rule now. You can change those rules because that's what we're looking at, the legislation. If this amendment is carried now, it means that someone can announce next week they're going to run for a party three years from now and start raising funds for it.

Mr. Nielsen: I think what the intention is here is to ensure that, I guess, any loopholes are looked after should something ever get changed, which is certainly not the intention to have happen here. But should that ever occur, we are now covered so that we don't have candidates coming in declaring, as the CEO even alluded to, three years outside of a campaign period and being able to start fundraising without checks and balances.

Mr. Hunter: I appreciate the intent, and I'm actually not arguing the intent. I'm just saying that the premise of the amendment is that someone outside of the official start date would be able to, so that law would have to be changed to allow someone to be able to fund raise outside of the official start date of a leadership campaign. We're not discussing that right now, though. The original motion does not talk about that. I appreciate what you're saying, but I'm just wondering whether or not the issue could be addressed, I guess, at not the appropriate time but at the appropriate section.

Mr. Clark: I may not achieve my dream of passing a motion here today, this afternoon, on this. Yeah. I actually see where Mr. Hunter is coming from in that the amendment, while I think it addresses a very substantive and important issue, is quite a different topic from what the original motion was trying to tackle. I agree that we absolutely as this committee must recommend some form of adjusting the way that funds are raised and the timing around that and, you know, fix the catch-22, but also there's a third-party question that we need to address and consider.

I guess we could do a couple of things. We could defeat this motion and come back to it. We could adjourn the motion. But I actually see where Mr. Hunter is coming from. I think the amended portion, which I realize we've carried: there's a lot to think about in ensuring that we do that properly, and that's something I think we all need to probably reflect on and come back with some more discussion. The first part, the original motion, setting the total contribution limit for leadership contests as the same as the maximum allowable for party contributions, is, I think, a different topic and one I would continue to advocate that we pass here today. I'm open to adjourning or whatever seems to make sense to the committee.

Thank you.

Mr. Nielsen: Yeah. I don't want to see, you know, what you have up there so far lost, so I'm going to move to

adjourn debate on this.

The Chair: All those in favour of adjourning debate, say aye. Any opposed? On the phones? We have adjourned debate on that motion.

Are there any other recommendations that the committee would like to make under contributions to leadership contests?

Okay. Seeing none, I will move on to issue (d), surpluses and leadership.

Mr. Cyr: I would like to come back to (c) just for a second. I'd like to ask the CEO a quick question here that has been brought to my attention. If a prospective leadership contestant for a contest that isn't official has a website up asking for donations, are they breaking the law as it sits right now?

Mr. Westwater: Through you, Madam Chair, to the member. Currently you cannot be a candidate for the leadership contest, and there are no rules outside of the campaign period when a contest is announced for raising funds if you plan to be a candidate. So currently there are no restrictions on fundraising for potential candidates.

Mr. Cyr: Thank you.

The Chair: Mr. Clark.

Mr. Clark: Thank you, Madam Chair. I hesitate to drag us backwards, but if we go back to (b), we didn't consider constituency associations or election candidates, which are some of the recommendations or proposals that are contained in 1(b). Is this an appropriate time to discuss that, or do you foresee there's a spot later on in the recommendations or proposals where we can address that? And there's another question about cash donation limits,

whether that needs to change. That was also under (b). Do we want to tackle that here as a committee at this point? Is that an appropriate thing to be discussing?

The Chair: Do you want to make a motion under section (b), then?

Mr. Clark: I'm not sure I want to be so bold as to go quite that far because I am not sure I have a specific number in mind. I suspect, perhaps, some of my colleagues around the table may have a number in mind. Does anyone?

Mr. Sucha: I think those were some of the underlying questions that kind of, I think, not speaking for all my colleagues, were why we adjourned debate because I think there were still some concepts to work out in relation to the initial motion because some of those questions got asked by the CEO as well.

Mr. Clark: So you envision, then – sorry, Madam Chair.

The Chair: Mr. Sucha is right.

Mr. Clark: Yeah. Okay. We'll come back to it, then, after. That will flow from the bigger discussion.

The Chair: Yeah.

Mr. Clark: Perfect. I just want to make sure we've got that. Thank you.

The Chair: Okay. We are back to surpluses and leadership contests. I will open it up to the committee to make any recommendations.

Mr. Nielsen: Just a quick question to our folks from CEO. Could you elaborate a little bit more on the recommendation for the surpluses from leadership contests?

Mr. Westwater: Certainly. Thank you, Madam Chair and through you to the member. Currently the only involvement Elections Alberta has with the leadership contest is the reporting of the finances after the leadership contest is done, contribution amounts received and how much spent on the campaign. What we found from recent experience is that there's a significant surplus in a number of instances from a leadership campaign, and the act does not address what is to be done with that money. So we've recorded in openness and transparency who's donated to the campaign, the total amounts spent on the campaign, and total amount left over, but it doesn't tell the public, it is not open and transparent as to what happens to the surpluses.

So we're suggesting and recommending that that should be part of the process as well, and we've recommended a number of ways in which the surplus monies can be disposed of following a campaign. You can just donate it to a registered charity. You can return it to the contributors that originally contributed to your campaign if they can be identified after your expenses have been paid. Give the surplus to the registered party that held the contest as long as it's made clear to each contributor that contributed to your leadership contest that if there are any surpluses after this, you'll be giving them to the party. As long as they're aware of that in advance, you can contribute it to the party, and that would be reported as such.

That's what we're recommending in our proposal to you. If it's dealt with as a contribution by surpluses going to the party, then the individual contributors must be given receipts for that contribution, and certainly they can't exceed their contribution limits for the year based on that. So you have to be careful when you do the contributions of surpluses from individual donors that they don't exceed the $4,000 limit or whatever the limit is that you set for future campaigns.

3:30

Mr. Nielsen: Just so that I'm right up to speed here, what's the current provision?

Mr. Westwater: There is no provision for what to do with the surpluses currently. We report that they've collected so much money, they've spent so much money, and there's this much left over. It doesn't record where the surplus goes, and there's no requirement for the leadership contestant to reveal what they've done with the surplus.

Mr. Nielsen: Okay. If I may, Chair, just to our great folks from research: from the crossjurisdictional what was the take on the provisions from those jurisdictions?

Dr. Amato: I don't have information on this, but I can get back to the committee with that information.

Mr. Nielsen: Okay.

The Chair: Mr. Clark.

Mr. Clark: Thank you, Madam Chair. That's addressed my first question, the other jurisdictions. I'd be very interested to know just what other jurisdictions do with regard to leadership contests in general in addition to what they do with the surpluses. I actually don't know the answer to that question.

I do have a question for Mr. Westwater on your proposal to add section 44.951(1) through (4). I'm getting very deep in the act here.

> (c) give the surplus to the registered party that held the leadership

or, frankly, to anything,

> (a) donate the surplus to a registered charity.

I presume that that potentially would trigger the need to receipt the individuals who made the donation.

> (b) return the surplus to the contributors.

The question I have is: how do you envision calculating the surplus, if you believe that the act should enumerate how that surplus is calculated? For example, a very simple example, we have $100 collected by a leadership contest, of which they spend $75, leaving $25, or 25 per cent. If I was to have donated $10, do you envision that I would get $2.50 back and someone who donated $5 gets $1.25, or does that piece necessarily get pro-rated? I guess what I'm looking at here is the administrative overhead, that starts to get quite remarkable when you start to think in those terms. I'm just curious if you feel that the act needs to specify that or if that would be up to the individual party or the leadership contestant to determine how exactly they go about doing that.

The Chair: Mr. Westwater.

Mr. Westwater: Thank you, Madam Chair, and through you to the member. Those details can be worked out with the party and the leadership contestants once they've identified all their expenses for the campaign. That's why I wanted in the motion that was originally proposed to identify whether it's for the contest or the contestants themselves. If it's the cost to the party to run the leadership convention and all the donations that are made, if those are different from the costs of a leadership contestant to run their campaign and what's surplus to that and the cost to run their campaign, those surplus funds could then be identified to the individual contributors and allocated as they see fit because they have the receipts for the

contributions, and they can sort out, allocate whose receipts they wish to donate to the party. That's something that administratively we can work out with the parties and the candidates themselves.

Mr. Clark: Just so I'm clear, then, you're saying that you don't believe that we should in this committee enumerate specifically how that happens. In your opinion, it's not necessary for us to talk about any sort of pro-ration or sort of an if-then kind of cascading model. If any amount transferred from a leadership contestant to a party would cause someone to exceed the maximum annual donation, whatever that may be, then the additional portion must go to charity or be returned, something like that. You don't believe that that's necessary for us to enumerate in the act. That's something you can handle administratively so long as these provisions that you've spelled out here are in the act. Is that a fair assessment?

Mr. Westwater: Through you, Madam Chair, we can do it either way. We can do it administratively. If the committee wants to get into that level of detail, feel free to do so.

The Chair: Dr. Swann.

Dr. Swann: Thank you. In the interest of progress I'd like to suggest that the main point of this is that the leadership candidate himself or herself not take the money away, the surplus, and this addresses that major concern and question. It identifies options. It identifies clear, I think, accountability for the funds, the surplus funds.

I would make a motion that we adopt the Elections Alberta's proposed 44.951(1) . . .

The Chair: Dr. Swann, would you mind slowing down just a touch? After recommend?

Dr. Swann: That we adopt Elections Alberta's proposal under section 44.951(1) to (4). You can go ahead and print all that out if you want, but I think we know what that is.

The Chair: Yeah. We're just waiting.

Dr. Swann, does that motion represent what you'd say?

Dr. Swann: Yes. Thank you.

The Chair: Okay.

Dr. Swann: One to four. Sorry; 44.951(1) to (4).

The Chair: Ms Rempel, would you like to read that into the record?

Ms Rempel: If I could just ask a question of the mover. You would actually want that text, though, included in the motion when we actually get about doing the minutes and so on?

Dr. Swann: That's it.

Ms Rempel: Okay.

Dr. Swann: Thank you.

Ms Rempel: I believe, with that in mind, that Dr. Swann has moved that

> the Select Special Ethics and Accountability Committee recommend that the Election Finances and Contributions Disclosure Act be amended to accept the proposed section 44.951(1) to (4) from the office of the Chief Electoral Officer be adopted.

The Chair: Mr. Hunter.

Mr. Hunter: Thank you, Madam Chair. I guess the question I have for Mr. Westwater is that 44.951(1)(c) says, "give the surplus to the registered party that held the leadership contest, as long as it is made clear to each contributor whose funds constitute the surplus." How would you do that?

Mr. Westwater: Through you, Madam Chair, to the member, when you issue the receipts and collect the monies from the supporters of your campaign, you advise them: if there's a surplus, we'll be donating the surplus funds to the party, and we will contact you if your funds have been allocated for that purpose.

Mr. Hunter: A follow-up, please, through the chair. In this situation, then, you would have to actually have that caveat at the beginning. You would state on their receipt that if there was a surplus, their contribution would be going to general funds or to the party or however it is.

Mr. Westwater: Through you, Madam Chair, you could communicate that to your contributors either verbally or in writing or if you want to amend your tax receipts for that purpose, yes.

Mr. Hunter: Okay.

3:40

The Chair: Further discussion on the motion?

Loyola: Correct me if I'm wrong, Mr. Westwater, but currently under a leadership race you don't get a tax credit for providing a contribution to a leadership campaign, correct?

Mr. Westwater: That is correct.

Loyola: All right. Yeah.

The Chair: Mr. Clark.

Mr. Clark: Thank you. A question to Mr. Westwater. I believe, though, that there is an Elections Alberta receipt that is associated with leadership donations. Is there not a form template that says, you know, that it's not eligible for tax receipt, but it allows leadership contestants to file donations? In fact, if I'm not mistaken, that's a required part of the process currently, is it not?

Mr. Westwater: Through you, Madam Chair, yes. We've created receipts for leadership contests for that purpose, but you can't get a tax credit for it. Yes, that's correct.

Mr. Clark: Thank you.

Mr. Cyr: I might have missed this. I'm sorry. If you transfer the funds from a leadership campaign to a party, does the party issue receipts?

The Chair: Mr. Westwater.

Mr. Westwater: Through you, Madam Chair, to the member. Yes. The party would issue a receipt as a contribution from the individual contributor if it was that portion of the surplus that came to them. If it came from 10 different individuals to make up the surplus amount or 15 or 20, you'd issue individual receipts to each of those individuals, yes, as a party.

Mr. Nielsen: Well, I'm certainly interested to see where this all goes. I'd really like to see that crossjurisdictional information, so I'd like to move to

> adjourn until we can get that info and add this to the discussion.

The Chair: All those in favour of adjourning debate, say aye. Any opposed? On the phones? That motion is carried.

On to section 2, contributors, item (a), individuals. Dr. Amato, is there some background?

Dr. Amato: Sure. This is on page 7, and there are two proposals linked to section 2(a). The first is that "the provisions that only permit individuals resident in Alberta to make contributions should not be changed," and the second is that "the EFCDA should be changed to prevent one individual from making out many cheques in the name of his or her employees and family members."

The Chair: Is there anyone on the committee that would like to make a recommendation on this matter?

Mr. Clark: A question for Mr. Westwater. The first point, of course, I certainly agree with. I'm not sure we necessarily need to make any sort of motions or do anything. I think we just stick with the status quo in terms of banning corporate and union donations. I think that's wise.

The question about preventing one individual from making out many cheques in the name of his or her employees or family members: I imagine this is referencing a certain situation from the 2012 election. Can you speak to whether the prohibition against corporate and union donations in any way addresses this issue or if this is in fact an outstanding issue within the legislation, and would you like to see this change made? Do you feel it's necessary, I guess, is my question.

Mr. Westwater: Through you, Madam Chair, to the member. Currently the legislation does not permit anyone to issue cheques of monies that do not belong to them anyway. The legislation currently prohibits this, so the suggestion that it should be amended so that one person could not write a bunch of cheques for different people is not necessary because the legislation currently does not permit it.

Dr. Swann: That was going to be my question also. I'm not sure what the decision was in 2012 on the 400,000-odd dollars that was contributed at that time on behalf of a corporation and family members, I believe. Was that the essence of the decision there, that this was illegal?

The Chair: Mr. Westwater.

Mr. Westwater: Through you, Madam Chair, to the member. The parts of that investigation that we could make public and we are allowed to disclose to this committee and our findings from that investigation are on our website currently. I think that explains currently what our position was on those donations. That's all I can say on that particular investigation.

Dr. Swann: You can't summarize it for us, then?

Mr. Westwater: Through you, Madam Chair, I'll do the best I can. The funds were collected by an individual from several sources and deposited with a political party from that single source. The funds were committed to that individual from individuals who had the funds to donate to the party. That individual issued a cheque on behalf of those individuals to the party, and it was identified in that cheque who the individual contributors to that amount were.

In our investigation we confirmed that the individuals had donated the money, and the monies had been received by the person that donated the amounts to the party, and therefore the contributions were valid other than the contribution from someone who lived in Ontario that was deemed to be invalid. All the other ones that were part of that process were valid contributors living in Alberta, and they did not exceed the dollar amounts that were permitted to be contributed from individual sources, as a summary for that particular case.

Dr. Swann: Thanks very much. Yeah.

The Chair: Any further discussion on the matter?

With that, I think we will move on to other business at this time. Is there any other business that the committee members would wish to raise at this time?

Seeing none, the date of the next meeting is tomorrow morning at 9, at which time we will reconvene to come back to deliberations on the election finance act. The agenda will be posted shortly as it is coming up tomorrow morning.

With that, I will ask for a motion to adjourn. Moved by Mr. Sucha that the July 26, 2016, meeting of the Select Special Ethics and Accountability Committee be adjourned. All those in favour? Any opposed? Carried.

Thank you.

[The committee adjourned at 3:48 p.m.]

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